

THE INFRASTRUCTURE PLANNING (EXAMINATIONS PROCEDURE) RULES 2010

FIVE ESTUARIES OFFSHORE WIND FARM DEVELOPMENT CONSENT ORDER

PINS REFERENCE EN010115

**DEADLINE 5: PORT OF LONDON
AUTHORITY'S COMMENTS ON SUBMISSIONS
RECEIVED AT DEADLINE 4**



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1 INTRODUCTION

- 1.1 This is a written submission made on behalf of the Port of London Authority (“**PLA**”) in respect of comments on Deadline 4 submissions.
- 1.2 Documents referred to in this submission are:
- (a) Applicant’s comments on Deadline 3 Submissions (REP4-040);
 - (b) Outline Marine Written Schemes of Investigation (REP4-025);
 - (c) Draft Development Consent Order (REP4-004);
 - (d) Outline Cable Specification and Installation Plan (REP4-019)
 - (e) Applicant’s Responses to ExQ2 (REP4-039)
 - (f) Outline Sediment Disposal Management Plan (REP4-041)

2 APPLICANT’S COMMENTS ON DEADLINE 3 SUBMISSIONS (REP4-040)

- 2.1 The Applicant sets out their comments on the PLA’s Deadline 3 submissions on pages 34 to 36 of REP4-040.
- 2.2 As highlighted in the Applicant’s response to PLA06, the Applicant and the PLA have not reached agreement on the issue of approval of the Navigation and Installation Plan (“**NIP**”). The Applicant clearly wishes for as few parties as possible to approve the document and seem to be saying that the PLA cannot have approval over the NIP because they would be approving matters that may impact other related parties. There is no reason why, if the Applicant has this concern, or other related parties such as Harwich or Medway considered it necessary, for these other related parties to also have approval over the NIP. The PLA notes and endorses Harwich Haven Authority’s comments in response to the Examining Authority’s letter dated 13 December, requesting an update regarding Harwich Haven Authority’s views on the Five Estuaries Offshore Wind Farm project in relation to the specific questions outlined in ExQ2 [PD-014], Reference NS.2.01, in particular their observation that:
- "Given the combination of challenging environmental factors, high-traffic density, the size of the vessels, and other maritime operations in the Sunk area, pilot boarding and the provision of pilotage services are inherently complex and require round-the-clock coordination, highly skilled personnel, and advanced safety measures. The integration and deconfliction of other activities, like cable laying, are crucial to maintaining safe and efficient pilotage services. Only with careful planning, constant monitoring, and effective communication between authorities and stakeholders can these operations be safely conducted, ensuring that the world’s biggest container ships are safely navigated into key ports like those under the jurisdiction of Harwich Haven Authority".(our emphasis)*
- 2.3 Given the importance of the NIP, as an embedded mitigation for “*minimising the significance of effects associated with shipping and navigation impacts*” and the implications if those impacts are not minimised including delays to vessels entering and exiting the Port, the PLA considers it to be entirely appropriate for it (and the other Ports who have concerns about the construction of VE) to approve the document.
- 2.4 Should the PLA (or any other Port) not be content with the content of the NIP, the Applicant is still able to provide a copy of the NIP for approval to the Marine Management Organisation (“**MMO**”) and this therefore creates the risk that the document could be approved by the MMO despite the concerns of the Port. Through protective provisions, if the PLA considered it

necessary, it could refuse consent which provides for a much more robust approach to this critical issue and ensures that there is joined up consideration and effective communication between all stakeholders.

- 2.5 It is also unclear who, if anyone, would approve any updates to the NIP. These are clearly contemplated by the Applicant – see for example section 2.6 of the oNIP [REP1-040] but the oNIP is quiet on the submission of updated plans to the MMO for approval simply stating interested parties will be invited to review and discuss any changes, and the updated NIP will then be promulgated to relevant third parties.
- 2.6 The NiP also does not appear to apply to pre-construction activities with paragraph 2.3.1 of the oNIP stating *“The NIP will apply from the start of offshore construction activities.”* This means that activities such as pre-construction surveys would not be covered by the oNIP with table 3.1 advising that the vessels ability to manoeuvre during a pre-construction survey is to be confirmed and surveys may be taking place within the DWR's. The PLA considers that either the NiP needs to include pre-construction activities, or the PLA must have approval of these activities through its protective provisions.
- 2.6 In relation to PLA08, the PLA received an updated version of the offshore protective provision on 9 January 2025. The PLA's requirements go beyond 'formal approval of a plan.' As Harbour Authority the PLA is responsible for navigational safety both within its jurisdictional limits and in respect of the approaches to the limits. In compliance with the requirements of the Port Marine Safety Code, as harbour authority the PLA has to discharge its general and specific statutory duties in respect of the conservancy of the harbour and its seaward approaches. Protective provisions are required to ensure that the PLA can effectively discharge its general and specific statutory duties.
- 2.6 In particular, the PLA needs to be certain through the protective provisions that the entrance and exit to the UK's largest port, a port which handles over 50 million tonnes of freight per year, is maintained during construction and operation of the proposed development and that over the lifetime of the project the port can adapt to changing vessel sizes and accommodate deeper draught vessels. On this basis, the PLA would highlight the Applicant's response to PLA12 which refers to a cable installation depth to 22m below chart datum (“CD”). The cable must be installed at a depth that allows the Sunk and Trinity deep water routes (“DWRs”) to be dredged to 22m below CD and the cable cannot be installed at 22m below CD because this would not provide any protection to the cable and should the DWRs be dredged to 22m below CD the cable would be disturbed or even damaged by the dredging process and potentially, in a worst case scenario, removed.
- 2.7 The matters which need to be covered by the protective provisions are set out within the PLA's Written Representations submitted at Deadline 2 [REP2-066 section 10] and if effective protective provisions are not forthcoming then the PLA will provide to the Examining Authority the preferred form of the PLA's protective provisions and invite the Examining Authority to recommend such provisions.
- 2.8 In relation to PLA10, the PLA's issue is a specific one which relates to the DWRs. The PLA has reviewed the outline Cable Specification and Installation Plan (“oCSIP”) [REP4-019] submitted at Deadline 4 and provides comments on the document in section 5 below. The PLA does note that the Applicant's response does not rule out maintenance of the cables occurring at a different depth to installation at locations outside of the DWRs which other Interested Parties may have comments on.
- 2.9 Finally, in relation to PLA13, the PLA has provided comments on the updated outline Marine Written Schemes of Investigation [REP4-025] in section 3 below.

3 OUTLINE MARINE WRITTEN SCHEMES OF INVESTIGATION (REP4-025)

- 3.1 Paragraph 6.7.17 of the Outline Marine Written Schemes of Investigation [REP4-025] has been amended at Deadline 4 with additional text added to make it clear that any archaeological relocations cannot be to the Trinity and Sunk Deep Water Routes (additional text underlined):

“6.7.17 Where items are being relocated from their original find spot to ensure that direct impact during construction activities can be avoided, strategies for relocation and methodologies for avoiding damage will be clearly outlined in the relevant MSs produced and submitted to the Archaeological Curators ahead of any archaeological works. Where any archaeological relocations are deemed necessary the Trinity and Sunk Deep Water Routes (DWR), utilised for shipping and navigation, will not be used for relocation sites to ensure the navigable depth is not reduced in these areas and also there will be no disruption to traffic movements.”

- 3.2 This additional wording, alongside additional wording in the oCSIP relating to archaeological finds (see paragraph 5.2 below) provides the PLA with sufficient comfort that archaeological finds will not be relocated to/within the DWRs and as such the PLA considers this issue has now been satisfactorily addressed.

4 DRAFT DEVELOPMENT CONSENT ORDER (REP4-004)

- 4.1 The PLA can confirm that the dDCO submitted at Deadline 4 contains the agreed onshore protective provisions for the benefit of the PLA.
- 4.2 As noted above, the PLA received amended offshore protective provisions for the benefit of the PLA on 9th January 2025 and the PLA will continue discussions with the Application as to the form of those. For this deadline the PLA simply reiterates its position that it is entirely appropriate for the PLA to have offshore protective provisions and that their scope should include approval of the NiP, CSiP and any activities, including pre-construction activities where they involve or impact on the DWRs. The offshore protective provisions recently provided provide for consultation of the PLA on the CSiP and not approval and is completely silent regarding the NiP.
- 4.3 The purpose of protective provisions is to address technical issues for statutory bodies which are not covered elsewhere in the DCO. The PLA falls within the definition of statutory undertaker for the purposes of s.8 of the Acquisition of Land Act 1981 as applied by s.127 of the Planning Act 2008. Nationally Significant Infrastructure Projects - Advice Note Fifteen: drafting Development Consent Orders Guidance (July 2018) states:

“3.1 4. Protective Provisions

4.1 Applicants are encouraged to agree Protective Provisions with the protected party(ies) prior to submitting the application for development consent. Where agreement on Protective Provisions has not been reached during the Preapplication stage, applicants should, as a minimum, submit with their application the standard Protective Provisions for all relevant protected parties with any amendments that the Applicant is seeking annotated with full justification included within the Explanatory Memorandum.

4.2 Where the Applicant is not proposing to include draft Protective Provisions for a Statutory Undertaker that has been identified as such by the Inspectorate (under Regulation 11 of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017), the Applicant needs to ensure that the Consultation Report explains why Protective Provisions for that Statutory Undertaker are not sought or required. Ideally this information will be provided as a table listing all of the Statutory Undertakers identified by the Inspectorate with either:

- a link to the proposed draft Protective Provisions; or*
- a brief explanation why the Statutory Undertaker is not affected by the application and/ or why Protective Provisions are not required.*

4.3 Submitting blank Protective Provisions Schedules is not acceptable and is likely to pose a serious risk to the acceptance of an application under s55 of the PA2008.

4.4 It is common for Protective Provisions to be drafted in unison with the protected party(ies) or by them first hand. Applicants should ensure that any Protective Provisions drafted by others appropriately align with the terminology and style of the draft DCO and are suitably drafted for use in an SI. If Protective Provisions for more than one protected party are included in a single Schedule, SI drafting requires the numbering of the paragraphs to follow sequentially throughout the Schedule and not re-start at '1' with each part (as with all textual Schedules in several parts). This approach should be adopted in the draft DCO submitted with the application and in each amended draft submitted during the Examination where Protective Provisions are changed."

- 4.4 The Application clearly has the potential to impact the Port of London and therefore the PLA. The Applicant has not provided a compelling reason why comprehensive protective provisions for the PLA that include approval of documents such as the NIP and CSIP, which are designed to manage and mitigate complex technical issues such as how the cable will be installed at the correct depth and how vessel traffic will be managed in a complex area are not required.

5 OUTLINE CABLE SPECIFICATION AND INSTALLATION PLAN (REP4-019)

- 5.1 The PLA welcomes the updates that were made to the oCSIP [RE4-019] at Deadline 4. The PLA considers that the following amendments are still required to the document:

- (a) The definition of "*Deep Water Route (DWR) areas*" should be widened to include the full suite of commitments that relate to the DWRs. The PLA suggests (addition text in bold) "*Areas within the ECC relating to the Sunk and Trinity DWRs as shown in Figure 2.1 where specific commitments are defined in relation to matters including cable installation and maintenance, boulder clearance, archaeological finds, disposal of dredge material, cable crossings and cable jointing.*"
- (b) 1.2.1 – it is recommended that the words "*will need to be*" are deleted and instead "*must be*" is used to provide a stronger commitment
- (c) Port of Tilbury London Limited should be added to the list of stakeholders at 1.4.2
- (d) 2.1.2 states that "*it may not be possible to address all potential impacts without compromise*" and that "*Where conflict arises between routing and installation considerations, VE will engage with the relevant stakeholders...to see the most appropriate solution.*" This is concerning and needs to be clarified – there can be no compromise in relation to the depth of the cable at the DWRs and it needs to be clear what types of compromise that the Applicant is envisaging in order for the Examining Authority and Interested Parties to be certain that the project is capable of delivery within the envelope of the impacts that have been assessed.
- (e) Table 1 – It is recommended that the Shipping and Navigation entries are split so it is clearer where the mitigation relates to the DWRs part of the ECC and where it relates to the area of the ECC that does not include the DWRs. As an example, Shipping and Navigation entry 1 refers to use of the DWRs not being compromised but then talks about reduction in water depths of no more than 5%
- (f) Table 1 – new shipping and navigation entry "*Impacts to the future use of case of the DWR's*" should be amended to read "*Impacts to the future use of the DWRs*" and the mitigation section should be updated to make it clear that cable installation and maintenance will be at a sufficient depth to allow the DWRs to be dredged to 22m below CD. As drafted, the entry gives the impression that the cables could be installed at 22m below Chart Datum and if this was to occur it would prevent the DWR's from being

dredged to the required depth. The text advises that boulders and archaeological finds will not be relocated within the DWR. In line with the commitment elsewhere in the document, the table should be clear that crossings with known projects will not occur in the DWRs; planned field joints will not occur in the DWR's and sediment disposal will not occur within or within a zone where disposal could reasonably impact the DWRs. The fourth column of the table should be updated as necessary in line with the updates to column three.

- (g) Paragraph 2.2.3 the text should be clear that the commitments do not just relate to cable installation, they also relate to maintenance and the reference to paragraph 4.44.2 needs updating to 4.4.2.
- (h) Paragraph 4.3.1 and Section 5 - the changes to the text appear to remove the Cable Burial Risk Assessment ("**CBRA**") from being part of the CSIP but the CBRA is specifically identified as a mitigation measure in the ES and should form part of this approved document.
- (i) Paragraph 4.3.3 "*cables will be installed and maintained at a depth of at least 22m below CD within the DWR areas Sunk A and Trinity. Cables will be installed at a depth of at least 19m below CD in the DWR area Sunk B.*" Whilst the PLA has not yet been able to agree the areas referred to in paragraph 4.3.3, as above, cable installation and maintenance needs to be at a sufficient depth to allow dredging to 22m and 19m below. As drafted, the entry gives the impression that the cables could be installed at 22m below Chart Datum and 19m below CD and if this was to occur it would prevent the DWR's from being dredged to the required depth.

5.2 The following additions/amendments to the text are also welcomed by the PLA:

- (a) The text at paragraph 2.2.14 that makes it clear that relocation of archaeological finds will not occur within the DWR areas
- (b) The text at paragraph 4.2.5 that makes it clear that boulders will not be relocated within the DWR areas
- (c) The reference to the Sediment Disposal Plan (see comments on the outline plan in section 7 below)
- (d) The reference at paragraph 4.4.2 to planned field joints not being located in the DWR areas
- (e) The clarification in section 4.6 about cable crossings and how the cable crossings of North Falls and Sealink will occur outside of the DWR areas

6 APPLICANT'S RESPONSES TO EXQ2 (REP4-039)

- 6.1 The PLA has reviewed the Applicant's Responses to ExQ2 [REP4-039] and notes the Applicant's response to EXQ2 NS.2.02 regarding the speed of cable burial, particularly the Applicant's comment that it is essential to ensure that the required installation depth is achieved at the DWRs, without the need for any remediation or further works. Emphasis is placed on the NiP to co-ordinate the works and this provides further justification for the PLA approving the NiP.

7 OUTLINE SEDIMENT DISPOSAL MANAGEMENT PLAN (REP4-041)

- 7.1 The PLA welcomes the submission of an outline Sediment Disposal Management Plan [REP4-041] at Deadline 4. It is noted that the purpose and scope of the document as set out at paragraph 1.2.1 relates to material that may arise during the construction of the offshore elements of VE. It is questioned why the document is limited to construction and why the same

commitments do not need to be in place for the DWRs during the maintenance period as well. It is assumed, but the Applicant should clarify, that sediment disposal would also be addressed through the decommissioning plan at the end of the project's lifespan.

- 7.2 There is a clear commitment at paragraph 3.3.2 that “*dredge and drilling disposal material that is created from construction activities will not be disposed of within the DWRs section of the ECC.*” This is linked to a plan to geographically show where this commitment applies. The PLA and the Applicant are still discussing the area over which deeper cable burial needs to occur. However, unlike in relation to the SAC, there are no additional measures proposed at the DWRs to limit the dispersion of disposal material. The PLA would expect a 50-500m tidal ellipse buffer to be implemented between the location of dredging/bed disturbance or disposal and the DWRs along the lines of that set out in paragraphs 2.10.7 to 2.10.11 of Vol 6 Part 2 Chapter 2 of the ES Marine Geology, Oceanography and Physical Processes [APP-071] to mitigate for the potential dispersion of sediment.
- 7.3 It is also unclear what depth the cables would be buried at – paragraph 3.3.3 states that the export cable would be buried to 22m below CD – the DWRs need to be dredged to 22m below CD (to allow a vessel to enter or exit the port with 20m draught and 10% under keel clearance) therefore the text at paragraph 3.3.3 needs to be updated to reflect the agreed position: that the cables are buried at a depth that provides the necessary protection of the cables to allow the DWRs to be dredged to 22m below CD.
- 7.4 The commitment in relation to disposal in proximity to the pilot boarding area is less clear and would benefit from amendments to the drafting. Paragraph 3.4.2 commits to avoiding ‘where possible’ disposing of dredge material within the pilot boarding area but this is subject to the measures for M&LS SAC which seeks to retain sediment locally. However, paragraph 3.5.2 goes on to say that VE has committed to not reduce navigable depth within the pilot boarding area. It should be clarified whether this is from current depths or whether up to 5% of navigable depth could be lost – with the shipping and navigation mitigation including “*VE will be compliant with MGN 654 and its annexes including in relation to reductions of no more than 5% in under keel clearance and the SAR Checklist*” (see for example table 9.10 of the Shipping and Navigation Chapter of the Environmental Statement [APP-078]).