

INFRASTRUCTURE PLANNING (EXAMINATIONS PROCEDURE) RULES 2010, RULE 17**PROPOSED FIVE ESTUARIES OFFSHORE WIND FARM DEVELOPMENT CONSENT ORDER****PINS REFERENCE EN010115****LONDON GATEWAY PORT LIMITED****RESPONSE TO THE EXAMINING AUTHORITY'S REQUEST FOR FURTHER INFORMATION OF 27 JANUARY 2025**

- 1 We act for London Gateway Port Limited ("LGPL").
- 2 In its request of 27 January 2025 the Examining Authority ("ExA") requests under Rule 17 of the Infrastructure Planning (Examinations Procedure) Rules 2010, LGPL and others to respond to questions raised by the ExA as to the most appropriate method to secure the position, now agreed with the applicant, that the passage of vessels with draughts of up to 20m should not be precluded by the authorised development and, for that purpose, dredging of the seabed down to a level of 22 metres below CD should be possible.
- 3 The ExA suggests four different ways in which this matter could be secured in, or under, the Order:
 - 3.1 incorporating a parameter into Table 1 in Requirement 2 of Schedule 2;
 - 3.2 adding a standalone requirement within Schedule 2;
 - 3.3 an express condition within the DML for the Transmission Assets; or
 - 3.4 additions to both Schedules 2 and 11.
- 4 LGPL submits that method 2 is the best and most appropriate way forward for the following reasons:
 - 4.1 The requirement not to preclude the specified dredge depth should be seen as a fundamental parameter to, or restriction on the carrying out of the authorised development – it is in a sense akin to an upwards limit of deviation. It is for the Order itself to specify such a restriction – this is in accordance with the Guidance on the content of a Development Consent Order required for a Nationally Significant Infrastructure Project [Paragraph 003, Reference ID 04-003-20240430 and Paragraph 008, Reference ID 04-008-20240430] and would follow accepted practice across other development consent orders and harbour orders under the Harbours Act 1964.
 - 4.2 It is not appropriate for such a restriction only to be secured in a third-hand way by virtue of being a factor set out in plan (the outline cable specification and installation plan) which a subsequent plan (the actual cable specification and installation plan) should 'accord with' prior to being approved by the MMO. Such an approach provides no guarantee to the Secretary of State (or interested parties such as LGPL) that this restriction will be applied – it may end up diluted or conditioned in a way that is not presently contemplated.
 - 4.3 Having established that a Requirement is appropriate and necessary, the relevant provision does not lend itself easily to the existing structure / provisions of Requirement 2.

- 4.4 Accordingly, we would propose a new Requirement to be inserted in Schedule 2 for clarity. We set out the necessary drafting in **Appendix 1** to this response. This would be accompanied by a slight addition to sheet 6 of the works plan (offshore) to show the relevant areas. For reference purposes, they are currently shown on the plan attached as **Appendix 2**.
- 4.5 Having set the matter out in a new Requirement, although it is not strictly *necessary* for the matters to be repeated in the DML in Schedule 11, we can see that it may be *convenient* to reiterate the provision in the DML so as to ensure those persons implementing the DML are fully aware of the restrictions set out in the Requirements. If the matters are reiterated in the DML, they should be done so exactly, without modification.
- 4.6 Following the responses to the ExA questions as set out above, certain amendments to the protective provisions set out in Part 7 of Schedule 9 to the Order necessarily flow. In addition to the changes set out above to secure the dredge depth, there remains the need for LGPL's involvement in the draft cable specification and installation plan as is already contemplated in the protective provisions in Part 7 of Schedule 9 to the Order. This is largely due to its importance in relation to programme and methodology for the relevant works. However, the logic of this must also be applied across to any future maintenance activities for cable remedial burial, cable repairs and replacement and cable protection replenishment which falls within condition 4 of the DML in Schedule 11 to the Order and which is within the scope of the operations and maintenance plan, not the cable specification and installation plan. Accordingly, we also now propose in Appendix 1 some additions to Part 7 of Schedule 9 to mirror the provisions in relation to the cable specification and installation plan to the operations and maintenance plan. This change simply corrects the unintended gap in provision on this point. Further amendments provide better clarity on the process for the grant of the approvals.
- 4.7 As a general principle, LGPL also proposes the addition in Part 7 of Schedule 9 the provision that both such plans should set out details of how any impacts on shipping to and from London Gateway Port will be minimised so far as reasonably practicable during the carrying out of the works
- 4.8 Lastly, we have added provision to Part 7 of Schedule 9 (new paragraph 13) to recognise that the grant of development consent for the authorised development does not affect the exercise of the powers granted to LGPL under the London Gateway HEO – it would be pointless making effort to secure a certain dredge-depth ability if LGPL's powers to carry out such dredge might inadvertently be seen to be affected or limited by this Order. We trust this clarifying amendment will not be controversial.
- 4.9 LGPL is also aware that the Port of London Authority ("PLA") seeks an explicit role in relation to the navigation and installation plan under condition 13(1)(j) to the DML in Schedule 11 to the Order. LGPL agrees that this is appropriate and important and suggests such a role for the PLA is recognised in that condition.
- 4.10 We have discussed the principles of the above with the Gowling WLG acting for the PLA and understand that we are in alignment on these matters.

Addleshaw Goddard LLP
11 February 2025

APPENDIX 1 - PROPOSED AMENDMENTS TO ORDER [REP5-007] BY LONDON GATEWAY PORT LIMITED IN RESPONSE TO EXA RULE 17 REQUEST OF 27 JANUARY 2025

1 In article 2 insert new definitions:

""CD" means Ordnance Datum (Newlyn);" *[We could not see that this has otherwise been defined]*

""Deep Water Routes" means those parts of the Order limits within the Sunk and Trinity channels that are respectively more particularly shown [edged in black and shaded yellow] and edged in [dotted blue and shaded yellow] on sheet [6] of the works plan (offshore);"

""Deep Water Routes Buffer" means those parts of the Order limits within an area 200m either side of the Sunk channel that are more particularly shown [cross hatched in orange and shaded in yellow] on sheet [6] of the works plan (offshore);"

2 Add reference to "Requirement 3A (Maintenance of Navigation)" to article 2(3)(a). *[N.b. there is currently a stray reference to "Part" towards the end of that sub-paragraph.]*

3 Modify sheet 6 of the works plan (offshore) to show the relevant areas referred to above, as per the attached plan. *[We would suggest adding the information to the existing works plan (offshore) is a better approach than adding a further new plan to the certified documents – it should present a more simplified situation for any subsequent contractors.]*

4 In **Schedule 2, include the following new requirement:**

"Maintenance of Navigation

3A-(1) The undertaker must ensure that in the design, implementation, operation and maintenance of the authorised development and ancillary works, a dredged depth of the Deep Water Routes to a depth of 22m below CD is not precluded or impeded.

(2) The undertaker must ensure that in the design, implementation, operation and maintenance of the authorised development and ancillary works, a dredged depth of the Deep Water Routes Buffer to a depth of 19m below CD is not precluded or impeded.

(3) The undertaker must not relocate any boulders or archaeological finds to the Deep Water Routes or the Deep Water Routes Buffer."

5 Amend **Schedule 9, Part 7 as follows (amendments shown in red track change):**

"PART 7

For the protection of London Gateway Port

1. In this Part

Interpretation

“cable specification and installation plan” means the cable specification and installation plan to be approved under condition 13(1)(g) of the deemed marine licence for the transmission assets in Schedule 11;

“London Gateway” means London Gateway Port Limited, Company No. 04341592 as ~~Port Authority~~harbour authority for the London Gateway Port, ~~forming part of the Port of London and pursuant to the London Gateway HEO situated at Corringham, Stanford-le-hope, SS17 9DY~~; and

“London Gateway HEO” means the London Gateway Port Harbour Empowerment Order 2008(a).

Application

2. The following provisions, unless otherwise agreed in writing between the undertaker and the London Gateway, have effect.

Approvals

3. The undertaker will obtain the approval in writing of London Gateway of ~~the a~~ draft cable specification and installation plan and a draft operation and maintenance plan (in so far as ~~that either of those plans~~ relates to any area or areas of Work No.2 which are within the ~~jurisdiction limits of deviation for dredging as defined by of~~ the London Gateway HEO) before any application for approval of ~~that those plans~~ is submitted by the undertaker in compliance with conditions 4 or 13 of the deemed marine licence for the transmission assets in Schedule 11.

4. The draft cable specification and installation plan referred to in paragraph 3 must be in accordance with requirement 3A and set out for Work No.2;

(a) ~~The the~~ proposed cable burial depth(s);

(b) ~~The the~~ proposed cable burial methods;

(c) ~~Any any~~ cable protection proposed including type, volume and anticipated locations;
~~and~~

(d) ~~The the~~ proposed programme of work for cable burial; and

(e) details of how any impacts on shipping to and from London Gateway Port will be minimised so far as reasonably practicable during the carrying out of the works covered by the draft cable specification and installation plan.

5. The draft operation and maintenance plan referred to in paragraph 3 must, so far as it involves any operations within sub-paragraphs (d), (e) or (f) of condition 4(2) of the deemed marine licence for the transmission assets in Schedule 11, be in accordance with requirement 3A and set out the relevant items listed at paragraph 4(a) to (e) above.

Approvals and refusals

56. London Gateway must issue any approval or refusal of a draft plan submitted to it in accordance with paragraph 3 within 28 days of the date of submission of that draft or of the date of the provision by the undertaker to London Gateway of any further information that London Gateway reasonably requests, unless any other period is agreed with the undertaker.

~~67.~~ All decisions of London Gateway under these provisions must be made acting reasonably.

~~78.~~ All decisions of London Gateway under these provisions must be issued in writing and the undertaker may provide a copy of any such decision to the Marine Management Organisation or any other regulatory body.

~~89.~~ Where London Gateway refuses to approve a draft plan it must provide reasons for refusal in writing to the undertaker at the same time as it issues the refusal.

10. Where the draft plan is refused, the undertaker must consider the reasons for refusal and redraft the draft plan accordingly, before re-submitting it to London Gateway. The provisions of paragraphs 5 to 8 will then apply to that re-submitted plan.

~~9.11~~ Where no decision is issued within the 28 day period set out in paragraph 5, the draft plan submitted will be deemed to be ~~approved~~ refused by London Gateway.

~~10.12.~~ Any difference or dispute arising between the undertaker and London Gateway must, unless otherwise agreed in writing between the undertaker and London Gateway, be determined by arbitration in accordance with article 48 (arbitration) of this Order. The undertaker may not refer any dispute in relation to the refusal of a draft plan to arbitration under article 48 until it has redrafted and resubmitted the draft plan in accordance with paragraph 9 above at least once.

Protection of London Gateway powers

13. Nothing in this Order affects or restricts the exercise by London Gateway of any powers under the London Gateway HEO nor imposes any liability on London Gateway in respect of any loss or damage that may be caused to any part of the authorised development by virtue of the exercise of any powers under the London Gateway HEO."

- 6 'cable corridor disposal site' referred to paragraph 2 of the DML at **Schedule 11** is not defined and needs a definition.
- 7 (Reference in condition 13(1)(h) to the DML at **Schedule 11** to the MMO's agreement in writing to the aids to navigation management plan is otiose – all plans within condition 13(1) are to be submitted to the MMO for its approval in writing.)
- 8 The wording "Following prior consultation with the PLA" should be inserted at the beginning of condition 13(1)(j) to the DML at **Schedule 11**.

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