

THE INFRASTRUCTURE PLANNING (EXAMINATIONS PROCEDURE) RULES 2010

FIVE ESTUARIES OFFSHORE WIND FARM DEVELOPMENT CONSENT ORDER

PINS REFERENCE EN010115

**DEADLINE 6: PORT OF LONDON
AUTHORITY'S RESPONSE TO THE EXAMINING
AUTHORITY'S REQUEST FOR FURTHER
INFORMATION PURSUANT TO RULE 17 IN ITS
LETTER DATED 27 JANUARY 2025**



GOWLING WLG

www.gowlingwlg.com

1 INTRODUCTION

1.1 This is a written response on behalf of the Port of London Authority ("**PLA**") in respect of the Examining Authority's request for further information pursuant to Rule 17 of The Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) in its letter dated 27 January 2025 ("**the Rule 17 Information Request**").

1.2 The Rule 17 Information Request requests that a number of parties including the PLA:

1. Consider the wording put forward by the ExA for a DWRs parameter and advise on whether the PLA consider the suggested wording would be suitable as drafted or would require amendment, suggesting any amendments considered to be necessary.
2. Advise on how the abovementioned wording of a DWRs parameter could be incorporated into the provisions of a made DCO, ie as an additional parameter incorporated into Table 1 of Requirement 2 in Schedule 2, a new standalone requirement in Schedule 2 or as an additional condition with the DML for the Transmission Assets (Schedule 11) or a combination of changes to both Schedules 2 and 11.

1.3 The ExA considers the following wording might be suitable:

'The construction, operation or decommissioning of the authorised development within the Deep Water Routes, as shown on drawing/plan ?????, must at no time preclude the dredging of the Deep Water Routes to a depth of 22 metres below Chart Datum'.

(Any such requirement or condition included in Schedules 2 and/or 11 would need to be accompanied by a plan or drawing identifying the extent of the affected DWRs relative to the proposed export cable corridor to be submitted by the Applicant as a document that could be included amongst the documents to be certified under Schedule 15 of the dDCO).

2 THE PLA'S RESPONSE TO THE EXA SUGGESTED DWR PARAMETER

2.1 Regarding the suggested wording for a Requirement in the Rule 17 Information Request the PLA is grateful to the ExA for the suggested wording and the acknowledgment that the wording of any Requirement needs to go beyond cable installation and include operation and decommissioning. The PLA also welcome the use of "authorised development" as this captures associated and ancillary development.

2.2 The PLA and London Gateway Port Limited have discussed the above. The PLA's preferred wording, which represents a variation on the wording put forward by the ExA, is as follows:

"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:

- a) *22 metres below Chart Datum within the area shown shaded in yellow and outlined in a bold black line (and labelled Sunk Area A (22m CD)) on [works plan [6]];*
- b) *22 metres below Chart Datum within the area shown shaded in yellow and outlined in a blue dotted line (and labelled Trinty (22m CD)) on [works plan [6]];* and
- c) *19 metres below Chart Datum within the area shown shaded in yellow and cross hatched in orange (and labelled Sunk Area B (19m CD)) on [works plan [6]];"*

is not precluded or impeded."

We understand that London Gateway Port Limited is aligned with the above suggestion.

2.3 The PLA, London Gateway Port Limited and the Applicant have also corresponded regarding the wording put forward by the ExA for the DWRs parameter. The PLA understands that the

Applicant would accept a Requirement imposing a level parameter and the Applicant's preferred wording is as follows:

"Any part of Work No.2(c), any associated development or ancillary works located within the Sunk and Trinity Deep Water Routes, as shown shaded yellow on the Deep Water Route Cable Installation Area (Future Dredging depths) plan must be installed at a level which would not impede the dredging of those parts of the Sunk and Trinity Deep Water Routes:

- d) shown shaded in yellow and outlined in a bold black line (and labelled Sunk Area A (22m CD)) to a level of 22 metres below Chart Datum;*
- e) shown shaded in yellow and outlined in a blue dotted line (and labelled Trinity (22m CD)) to a level of 22 metres below Chart Datum; and*
- f) shown shaded in yellow and cross hatched in orange (and labelled Sunk Area B (19m CD)) to a level of 19 metres below Chart Datum."*

- 2.4 If the ExA were minded to adopt the Applicant's drafting then the PLA would wish to see the parameter wording go further as amended in red:

*"Work No.2(c), any associated development or ancillary works located within the Sunk and Trinity Deep Water Routes, as shown shaded yellow on the Deep Water Route Cable Installation Area (Future Dredging depths) plan must be installed **or placed and thereafter maintained, operated and decommissioned to a** level which would not impede the dredging of those parts of the Sunk and Trinity Deep Water Routes:*

- a) shown shaded in yellow and outlined in a bold black line (and labelled Sunk Area A (22m CD)) to a level of 22 metres below Chart Datum;*
- b) shown shaded in yellow and outlined in a blue dotted line (and labelled Trinity (22m CD)) to a level of 22 metres below Chart Datum; and*
- c) shown shaded in yellow and cross hatched in orange (and labelled Sunk Area B (19m CD)) to a level of 19 metres below Chart Datum;*

- 2.5 The PLA have reviewed the Applicant's Deep Water Route Cable Installation Area (Future Dredging depths) plan and agrees that the levels referenced to the various areas of the DWR are correct. Having discussed with London Gateway Port Limited we do suggest that the areas are included on the relevant Works Plan (Works Plan 6) rather than creating a further drawing. If the Applicant's Deep Water Route Cable Installation Area (Future Dredging depths) plan is instead to be adopted then this should be included amongst the documents to be certified under Schedule 15 of the dDCO).

3 THE PLA'S RESPONSE AS TO HOW A DWR PARAMETER MAY BE INCORPORATED INTO A MADE DCO.

- 3.1 The ExA have asked the PLA to advise on how the wording of a DWRs parameter could be incorporated into the provisions of a made DCO, ie as an additional parameter incorporated into Table 1 of Requirement 2 in Schedule 2, a new standalone requirement in Schedule 2 or as an additional condition with the DML for the Transmission Assets (Schedule 11) or a combination of changes to both Schedules 2 and 11.
- 3.2 The PLA understands that the Applicant will accept a Requirement imposing a level parameter but do not agree that needs to be duplicated in the DML as for that purpose it is already secured in the Outline Cable Specification and Installation Plan ("oCSIP"). However, the Applicant is suggesting an amendment to the 5% depth condition as below:

Transmission DML, part 2 condition 4

" In undertaking activities under condition 4(2)(f), other than within the areas shown shaded yellow on the Deep Water Route Cable Installation Area (Future Dredging depths) plan where navigable depth may not be reduced to any extent, the undertaker must not reduce water depth by more than 5% referenced to Chart Datum unless agreed with the MMO in writing following consultation with the MCA."

- 3.3 The PLA do request that the DWR parameter is incorporated into the provisions of a made DCO through it becoming an offshore design parameter and we suggest as a new Requirement 2(3). The PLA did consider whether the parameters could be included in Table 1 but the parameters in terms of the installation depth to meet the required dredge depths are unknown at this stage and as previously indicated the DWR parameter needs to be wider than cable installation.
- 3.4 Should the parameter not be included in Requirement 2 then the relevant requirement needs to be referenced in Article 2(3)(a) of the dDCO as Article 2(3) provides as follows:
- "(3) All distances, directions, capacities, volumes and lengths referred to in this Order are approximate save in respect of the parameters referred to in—
- (a) requirements 2 (offshore design parameters) and 5 (onshore substation works, design and landscaping) in Part Schedule 2 (requirements);
- (b) the conditions in Part 2 (conditions) of Schedule 10 (deemed marine licence – generation assets); and
- (c) the conditions in Part 2 (conditions) of Schedule 11 (deemed marine licence – transmission assets).
- 3.5 The PLA would also request that the parameter is an express condition within the Deemed Marine Licence ("DML") for the Transmission Assets (Schedule 11), updated to reference the corresponding works in the DML. This ensures the Marine Management Organisation ("MMO") has direct oversight during the licensing process and in relation to ongoing compliance, the suggested parameter being more than a design parameter. Alternatively the DWR parameter at least needs to be signed posted within the DML so it is not overlooked.
- 3.6 The PLA agrees with Harwich Haven Authority that the dual approach ensures enforceability across both the overarching project framework and the more detailed marine licensing process, providing clarity for all stakeholders, including harbour authorities, the applicant, and the MMO.
- 3.7 There are changes required to the DML as suggested by the Applicant but there are also other instances where the 5% is referenced that would also require the same amendment namely paragraph 13(g)(ii).