

THE INFRASTRUCTURE PLANNING (EXAMINATIONS PROCEDURE) RULES 2010

NORTH FALLS OFFSHORE WIND FARM DEVELOPMENT CONSENT ORDER

PINS REFERENCE EN010119

**DEADLINE 3: PORT OF LONDON
AUTHORITY'S COMMENTS ON SUBMISSIONS
RECEIVED AT DEADLINE 2**

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 2 submissions.
- 1.2 Documents referred to in this submission are:
- (a) Applicant’s Response to Written Questions ExQ1 (REP2-020);
 - (b) Appendix to Applicant’s Response to Written Questions (REP2-021); and
 - (c) Draft Development Consent Order (REP2-007);

2 APPLICANT’S RESPONSE TO WRITTEN QUESTIONS EXQ1 (REP2-020)

- 2.1 The PLA notes the Applicant’s response to Q9.4.2 regarding the use of the term ‘substantially in accordance with’. The PLA supports the use of substantially in accordance with in Condition 12 of the Deemed Marine Licence Transmission Assets in Schedule 9 of the dDCO (“**DML**”). The PLA would further note that there are various references to plans being “in accordance with the principles set out in the relevant outline plan” in Condition 22 of the DML. The PLA would wish to see reference to substantially in accordance with, particularly in the case of the Navigation and Installation Plan (“**oNIP**”).
- 2.2 The PLA notes in response to Q9.4.3 and Q9.5.2 that the Applicant has advised that the Cable Specification and Installation Plan (“**CSIP**”) will be prepared during the pre-construction phase, post consent and that the Applicant does not propose to submit an oCSIP into Examination or include an oCSIP as a document to be certified in the draft development consent order (“**dDCO**”). Whilst the Applicant draws on precedent, the PLA would draw attention to the oCSIP submitted for Five Estuaries and the important commitments that are secured within the oCSIP in relation to the Deep Water Routes (“**DRWs**”). These relate to matters such as cable installation and maintenance, boulder clearance, cable jointing, archaeological finds, disposal of dredge material, cable crossings, wet storage and the need to allow for over-dredging of the DWR’s. With these commitments clearly set out in the oCSIP, Interested Parties have a degree of confidence that the commitments will then be carried forward into the CSIP at the post consent stage. Without an oCSIP it is difficult to see how and whether these important commitments will be secured for North Falls (“**NF**”). The PLA also seeks approval of the CSIP before it is approved by the MMO. The PLA would therefore urge the Applicant to re-consider its position on an oCSIP.
- 2.3 In response to Q15.1.1 regarding potential concurrent working in the Sunk area, the Applicant signposts to the oNIP [APP-259]. As set out in the PLA’s deadline 2 response [REP2-056] updates are required to the oNIP and the PLA awaits discussions with the Applicant concerning this important document. The Applicant also signposts to the Export Cable Crossing Zone Plan [REP1-059] and that the indicative cable crossing between NF and Five Estuaries is “*prior to any location around the pilot boarding station location, approximately 10km along the cable route from the pilot boarding station (just over 9km as the crow flies). This means that it will be virtually impossible to have any concurrent working in the vicinity of the Sunk Pilot Boarding Area between the projects, as the crossing works would necessitate a sequential arrangement of the works, with sufficient time in between projects cabling activities to construction the crossing. Given the time required to prepare the crossing and the speed of cable install for the respective projects, the second project is expected to be starting with a sufficient delay on the first project such that there will not be any construction activities between the projects in the vicinity of the Sunk Pilots Boarding Station buoy.*” The Applicant’s response is focusing solely on any cable crossing being the limiting factor, but there are works other than cable laying to consider which, if running concurrently, could obstruct vessels approaching the port (for example, pre-construction works, surveys, clearance etc some of which may be restricted ability to manoeuvre (“**RAM**”). The Navigation and Installation Plan (“**NIP**”) could be the appropriate document to mitigate and manage this issue with it setting out project activities from initial

activities such as surveys, UXO clearance etc through to cable lay, repair and reburial and it being clear whether concurrent activities are allowed. This is shown in table 2.2 of the Five Estuaries oNIP as:

Table 2.2 In Combination Concurrent Activities

	Trinity DWR Concurrent Working Area	Sunk DWR Concurrent Working Area
Pilotage Concurrent Working Area	No	Yes
Trinity DWR Concurrent Working Area		No

Updates are therefore required to the oNIP to properly deal with the issues associated with concurrent activities. The PLA also requires approval of the NIP before it is approved by the Marine Management Organisation.

- 2.4 In relation to cable depth in the Sunk Area (Q15.1.7) the Applicant states: *“When crossing the Traffic Separation Scheme (TSS) South and the Precautionary area, the water depths of the locations have been selected such that the cable burial will be below the 22m, CD. The crossings of the Sunk Deep Water and Trinity Deep Water channels are being investigated from an environmental perspective, with further discussions with HHA planned for the 20th March. The Applicant is not crossing the Sunk Inner, and is proposing to keep south of the main charted routes, outside of 1km from the charted locations”* (emphasis added). It is concerning that the fundamental issue of cable installation and maintenance levels at the Sunk and Trinity DWRs are not being discussed with the PLA given that the Sunk and Trinity DWR's are the entrance and exit to the UK's largest Port, the Port of London. Whilst the environmental impacts of the export cable corridor must of course be assessed, the cables must be installed at a level that will ensure that the Sunk and Trinity DWRs can be dredged to 22m below CD (with allowance for over dredge).

- 2.5 The PLA notes the Applicant's response to Q15.1.8 and would welcome engagement with the Applicant regarding the potential impacts of the proposed development on the PLA's equipment.

- 2.6 In response to Q15.1.13, the PLA would highlight its concerns about offshore buried cables becoming exposed and its recent experience with another cable project where the Applicant wanted to place material on top of the exposed cable rather than try to re-bury it because of the age of the cable. This would not be acceptable at the DWR's where the Sunk and Trinity DWR's must be capable of being dredged to 22m below CD over the lifetime of the project. It is essential therefore that the PLA have protective provisions and that these include a requirement to re-bury the cable if the required cable installation depth is not achieved or at any time following installation or maintenance if the cable has moved such that the required installation depth is no longer being achieved.

3. APPENDIX TO APPLICANT'S RESPONSE TO WRITTEN QUESTIONS (REP2-021);

- 3.1 The Offshore Cumulative Effects Assessment Plan on page 6 only shows the Five Estuaries array areas, it does not show the export cable corridor (“ECC”). For completeness, the plan should be updated to show the ECC.

4. DRAFT DEVELOPMENT CONSENT ORDER (“dDCO”) (REP2-007)

- 4.1 The dDCO does not include protective provisions for the benefit of the PLA. The PLA understands that the Applicant's position is that protective provisions are not required. The

PLA has set out in detail why protective provisions are required and included the form of the protective provisions which the PLA advocated for the adjacent Five Estuaries scheme (see section 14 of REP2-066). To not include protective provisions would be wholly inconsistent with the dDCO for Five Estuaries. Whilst certain provisions of the protective provisions for Five Estuaries are not agreed by the PLA, Five Estuaries Offshore Wind Farm Limited ("**FEOWFL**") did include protective provisions in its dDCO at Deadline 7. An extract from that dDCO as submitted by FEOWFL is annexed to this submission. The PLA would expect the Applicant to at least start negotiations on the form of the protective provisions on the basis of those agreed by FEOWFL as appropriate.

- 4.2 In line with the approach taken at VE, the PLA and the Marine Management Organisation are in discussions regarding amendments to the Deemed Marine Licence (transmission assets) to reflect amongst other things the requirements relating to the Sunk and Trinity DWR's and when consultation needs to take place with the PLA. It is anticipated that both parties will make formal submissions on this point at deadline 4.

ANNEX

Extract From Deadline 7 dDCO For Five Estuaries

Extinguishment of rights

110. Regardless of any provision in this Order, the undertaker may not extinguish any interest or right vested in or benefitting the PLA unless the consent of the PLA in writing has been given to such extinguishment.

Installation of structures

111.—(1) Without prejudice to paragraph 112 and the generality of any other protection afforded to the PLA the undertaker may not erect, install, move, store or use within plots 01-002 and 01-003 any structure or plant, including any assembled crane, which would have a maximum height at any point in excess of 25m from ground level unless and until the consent of the PLA in writing has been given to the erection or installation of that structure.

(2) As part of an application for consent under this paragraph 111 the undertaker must submit to the PLA a plan, section and description of the structure or plant and the works to be executed in connection with the erection, installation, movement, storage or use of the structure and plant.

(3) Any structure or plant to which this paragraph 111 applies may only be erected, installed, moved, stored or used in the location(s), to the maximum height and in accordance with the plan, section and description submitted under sub-paragraph (2) and approved by the PLA (such approval not to be unreasonably withheld or delayed) and in accordance with such reasonable requirements as may be requested in accordance with sub-paragraph (4) by the PLA for the protection of the apparatus, or for securing access to it, and the PLA is entitled to watch and inspect the structure or plant and the execution of those works associated with the erection, installation, movement, storage or use of the structure and plant (acting reasonably).

(4) Any requirements requested by the PLA under sub-paragraph (3) must be made within a period of 28 days beginning with the date on which a plan under sub-paragraph (2) is submitted to it.

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days or as agreed between the undertaker and the PLA in writing, before commencing the erection, installation, movement, storage or use of any structure or plant to which this paragraph 111 relates, a new plan instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

Services

112. Without prejudice to the generality of any other protection afforded to the PLA elsewhere in the Order, the undertaker must not decommission or remove any utilities and services and any right of the owner of the utilities and services to access and maintain the utilities and services must not be extinguished until alternative utilities and services have been constructed and are in operation serving the apparatus to the PLA's reasonable satisfaction.

PART 10

For the protection of the Port of London Authority (offshore)

113. In this Part

“Area of Interest means the area shown shaded in yellow on the Deep Water Route Cable Installation Area (Future Dredging depths) plan encompassing the Deep Water Routes;

“cable burial risk assessment” means the cable burial risk assessment appended to the cable specification and installation plan;

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

“construction” includes execution, placing, altering, replacing, relaying, removal, renewal works of maintenance and decommissioning, in its application to a specified work which includes or comprises any operation, means the carrying out of that operation, and “construct” and “constructed” are to be construed accordingly;

"commencement" for the purpose of this Part of Schedule 9 means the carrying out of any authorised development and monitoring activities;

“Deep Water Routes” mean the Sunk and Trinity deep water routes;

"installation" has the same meaning as construction and installed is to be construed accordingly

"maintain" has the same meaning as in Article 2 save that it includes monitoring within the Area of Influence and maintenance shall be construed accordingly;

"navigation and installation plan" means the navigation and installation plan to be approved under condition 13(1)(j) of the deemed marine licence for the transmission assets in Schedule 11;

"plans" includes navigational risk assessments, plans, sections, elevations, drawings, specifications, programmes, construction methods and descriptions including, where applicable, relevant hydraulic information as may be reasonably requested by the PLA;

“specified work” means Work No. 2(c), and any other part of the offshore works forming part of the authorised development (which for this purpose includes the maintenance and decommissioning of any part of the authorised development); and,

“PLA” means the Port of London Authority.

Application

114. The following provisions, unless otherwise agreed in writing between the undertaker and the PLA, have effect, for the protection of the PLA in relation to the construction of Work No.2(c) to be constructed and operated as part of the authorised development.

Consultation and notice

115. (1) The undertaker will consult the PLA on:

(a) the cable specification and installation plan (in so far as that plan relates to any specified work within the Area of Interest) before any application for approval of that plan may be submitted by the undertaker in compliance with condition 13 of the deemed marine licence for the transmission assets in Schedule 11 and any revisions arising from such application; and

(b) a navigation and installation plan (in so far as that plan relates to any specified work within the Area of Interest) before any application for approval of that plan may be submitted by the undertaker in compliance with condition 13 of the deemed marine licence for the transmission assets in Schedule 11 and any revisions arising from such application.

(2) The undertaker will consult the PLA on the proposed activities and programme for any pre-construction monitoring, construction monitoring, post construction monitoring and related reporting within the Area of Interest no less than 20 business days before such survey work is programmed to commence. The undertaker must have regard to any request made by the PLA for reasonable amendment to the or programme, which request must be made to the undertaker within 5 business days of receipt of the details of the proposed activities and programme.

(3) The undertaker must notify the PLA of the final planned programme for any survey work to be undertaken under this Order within the Area of Interest no less than 5 business days before such survey work is programmed to begin.

(4) The undertaker will consult the PLA on any application for marine licensing for the disposal of unexploded ordnance within the Area of Interest before such applications are submitted to the MMO. The undertaker must have regard to any request made by the PLA for reasonable amendment to the proposed application, which request must be made to the undertaker within 10 business days of receipt of the details of the proposed application.

(5) The undertaker must notify the PLA of the final programme for any clearance of unexploded ordnance to be undertaken within the Area of Interest no less than 20 business days before such disposal is programmed to begin.

(6) The undertaker will consult the PLA on the activities and programme for any specified work to be undertaken under this Order which is not covered by the cable specification and installation plan and which is within the Area of Interest no less than 20 business days before such specified work is programmed to commence. The undertaker must have regard to any request made by the PLA for reasonable amendment to the activities or programme.

(7) The undertaker must notify the PLA of the final method statement and programme for any for any specified work to be undertaken under this Order which is not covered by the cable specification and installation plan and which is within the Area of Interest no less than 5 business days before such work is programmed to begin.

Cable Specification and Installation Plan

116. The cable specification and installation plan referred to in paragraph 115 must be informed by a cable burial risk assessment, and set out for Work No.2(c), in so far as it applies to the Deep Water Routes:

(a) that any part of Work No.2(c), any associated development or ancillary works located within the Area of Interest 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:

(i) 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;

(ii) 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

(iii) 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.;

(b) The proposed cable installation methods and measures for management of construction risks;

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

(d) During construction of the cables and cable protection in the Area of Interest arrangements for the consultation of the PLA in a timely manner, on such matters regarding those works as the PLA may reasonably request including arrangements for providing the PLA with a point of contact for continuing liaison and co-ordination throughout the construction of these works.

(e) The proposed programme of work for cable installation and arrangements for notification of any changes to the programme to the PLA;

(f) Monitoring arrangements and the results of these surveys being made available to the PLA within 10 business days of the undertaker receiving reports of the survey results; together with methods and timescales to rectify any issues which may compromise the level referred to in sub paragraph a) of this paragraph 116.

(g) A requirement for a process (subject to paragraphs 119 and 120) and timescales (both the undertaker and PLA acting reasonably) for cable re-installation should the level of the cable is such that the under keel clearance specified in Outline CSIP cannot be achieved over the lifetime of the authorised development.

Monitoring

117. If following the results of any geophysical surveys carried out using multi-beam echo sounder survey (MBES), it is confirmed that cable exposure which has resulted the cables has occurred within the Area of Interest, the undertaker will notify the PLA as soon as reasonably practicable and in any event no later than 2 business days after the undertaker confirms any exposure has occurred.

118. The PLA must notify the undertaker of any potential cable exposure that is identified by the PLA in the relation to the Area of Interest as soon as reasonably practicable.

Remediation

119.Where, following the installation of cables forming Work No. 2(c) in relation to the Area of Interest it is identified by the undertaker (who shall notify the PLA as soon as reasonably practicable of this fact) and in any event within 2 business days) or, following inspection by the PLA, it is identified by the PLA (and the same is notified to the undertaker as soon as reasonably practicable), that the level of cable is such that the paragraph 116 (a) has not been achieved or at any time following installation or maintenance the cable has moved such that the requirements of paragraph 116 (a) are no longer being achieved, then, unless otherwise agreed in writing with the PLA, the undertaker is required to carry out remediation works as specified in the cable specification and installation plan subject to paragraph 120 in relation to the Deep Water Routes.

120.Unless otherwise agreed in writing with the PLA, the undertaker will carry out the following arrangements for the carrying out the remediation works:

(1) the undertaker will re-bury the cables to the required specification to achieve the requirements of paragraph 116(a); and

(2) Following the completion of the works in sub-paragraph (1), if it is identified by the undertaker or the PLA (following inspection) that the required specification is not achieved, then the undertaker will remove the cable without unreasonable delay and thereafter relay a new cable pursuant to an updated cable specification and installation plan which updated cable specification and installation plan specifically identifies and addresses why the previous cable burial was not successful, how that has been addressed and what measures are to be used in relaying the cable to prevent the failure reoccurring.

(3) The undertaker will consult the PLA on the draft updated cable specification and installation plan required under sub-paragraph (2) and the provisions of both this paragraph and paragraph 117 will apply to that updated cable specification and installation plan .

(4) The steps in this paragraph shall be repeated until the requirement in paragraph 116(a) is achieved or the cable is permanently removed from the Area of Interest.

Provision of as built details

121. As soon as reasonably practicable following the completion of the installation of cables forming Work No. 2(c) and after any maintenance of the same, the undertaker must provide (on a strictly confidential basis) to the PLA as built drawings of Work No. 2(c) in a form and scale to be agreed between the undertaker and the PLA to show the position, depth and any cable protection installed as part of Work No 2(c) in relation to the Deep Water Routes provided that the PLA must not disclose (without the written consent of the undertaker) any information that has been provided by the undertaker to the PLA on a confidential basis or which is marked as commercially sensitive and must hold such information on a confidential basis only, except that the PLA may provide the information to contractors and agents acting on its behalf (including but not limited to contractors engaged to carry out dredging operations) provided that such agents and contractors are required by the PLA to treat such information as confidential.

Transfer of the benefit

122.The undertaker must within 7 days after the completion of any sale, agreement or other transaction under article 7 (Benefit of the Order) in relation to which any powers, rights and obligations of the undertaker are transferred to another party, notify the PLA in writing, and the notice must include particulars of the other party to the transaction under article 7, the general nature of the transaction and details of the extent, nature and scope of the works or functions sold, transferred or otherwise dealt with.

Disputes

123. Any dispute arising between the undertaker and the PLA under this Schedule is to be escalated in the first instance to senior representatives from the PLA and the undertaker, and the PLA and undertaker must seek to resolve the dispute through a meeting between the parties promptly and in any event within 10 business days, Where following escalation the dispute is not resolved , it is to be determined by arbitration as provided in article 48 (arbitration) of this Order.

PART 11

For the protection of Essex County Council as local highway authority

Application

124. The provisions of this Part of this Schedule have effect in relation to the works (as defined under paragraph 125) unless otherwise agreed in writing between the undertaker and Essex County Council in its capacity as the local highway authority.

Definitions

125. In this Part of this Schedule—

“as built drawings” means—

- (a) drawings showing the as constructed local highways in an appropriate format (including digital storage media);
- (b) drawings showing the location for utilities installed in the local highway; and
- (c) specifications for materials used for the constructed local highway;

“construction period” means for each work, from commencement of the relevant work forming part of authorised development under this Order until the issue of the final certificate for that work.

“detailed design” means drawings and other information comprising the detailed design for the alteration and improvement of local highways comprised in the authorised development;

“detailed information” means drawings, specifications and other information relating to the local highway, as relevant to the works in question (insofar as both parties agree (acting reasonably) are relevant and not already provided for in any document that the undertaker is required to produce under Schedule 2 to the Order) which must be in accordance with the detailed design and include—

- (a) information and assessment required to demonstrate compliance of any trenchless crossing works with DMRB Volume 4 section 1 CD 622 (Managing geotechnical risk);
- (b) long and cross sectional drawings;
- (c) traffic signs and road markings;
- (d) landscaping, planting and any boundary features which will form part of the local highway;
- (e) a schedule of timings for the works, including dates and durations for any temporary closures of any part of the local highway;
- (f) traffic management proposals including any diversionary routes; and
- (g) a schedule of the existing local highway condition prior to commencement of construction related activities;
- (h) folio drawings in line with the Essex Standard Drawings, or such replacement or modification of the design standards applied to the construction of new roads and alternations to existing roads across the County of Essex.

“DMRB” means the Design Manual for Roads and Bridges published by National Highways. Or any replacement or modification of that standard for the time being in force;