

THE INFRASTRUCTURE PLANNING (EXAMINATIONS PROCEDURE) RULES 2010

NORTH FALLS OFFSHORE WIND FARM DEVELOPMENT CONSENT ORDER

PINS REFERENCE EN010119

**DEADLINE 4: WRITTEN SUBMISSION OF ORAL
REPRESENTATIONS MADE ON BEHALF OF
THE PORT OF LONDON AUTHORITY
AT ISSUE SPECIFIC HEARING 2**

INTRODUCTION

This is a written submission made on behalf of the Port of London Authority (“**PLA**”) in respect of oral submissions made at: Issue Specific Hearing 2 held on

- Tuesday 8th April 2025 on the Draft Development Consent Order; and
- Wednesday 9th April 2025 on Navigation and Shipping.

Issue Specific Hearing 2	
Agenda Item 3.1: Development Consent Order	Oral Submission made on behalf of the Port of London Authority (PLA)
Part 2 Principal Powers	
<p>Article 2- Interpretation</p> <p>The objections raised by the Port of London Authority (PLA) to the definitions of ‘commence’ and ‘maintain’ including any related proposed drafting amendments to Article 2 and/or Schedule 14 protective provisions.</p>	<p>Article 2 (Interpretation) definition of Commence</p> <p>In order to amount to commencement under the proposed definition an offshore work needs to be a licensed activity authorised by the deemed marine licences. The definition of commence carves out preconstruction survey and monitoring from the definition of commence. The PLA note that the Applicant has confirmed in its reply to the Relevant Representation of the Marine Management Organisation (“MMO”) (REP1-045) in relation to MMO-108 that there is pre-construction monitoring to be carried out and the PLA would want to be consulted about any surveys or monitoring activities that affect the Deep Water Routes (“DWRs”) in line with the process for the Five Estuaries (“VE”) Offshore Wind Farm Development Consent Order (“DCO”) in which the PLA agreed protective provisions which meant that any licensed activities and any pre-construction surveys and monitoring at VE are covered.</p> <p>The PLA's point is that both the PLA and North Falls need to be careful about how "commence" is used and in the context of protective provisions for the PLA within Schedule 14 the definition of commence may not be appropriate. To answer the Examining Authority's (“ExA's”) second question which was how can the concern be addressed, the PLA request that the point is covered in protective provisions in the same way as VE which would mean the PLA would be comfortable with the definition as it currently stands.</p>

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	<p>Article 2 (Interpretation) definition of maintenance</p> <p>In response to the ExA's query as to whether the same approach (ie protection via the protective provisions) applies to the PLA's concern in relation to the definition of maintenance, the PLA noted that it is a slightly different point. The PLA's issue with the definition of "maintenance" is that as drafted the definition is broad and includes adjusting and altering. In the context of the export cable works to adjust or alter could result in a change in location and/or depth which would not be acceptable to the PLA. Whilst the definition is broadly the same as that for VE, importantly the VE dDCO was clear in the offshore design parameters Requirement that the cable must be installed <u>and maintained</u> at a level. So, the PLA's concern is that whilst the cables are installed at an acceptable depth, by adjusting and altering, they are then not maintained at that level which has a knock on impact on the DWRs. It was also noted that for VE the PLA has an Outline Cable Specification and Installation Plan ("oCSIP") which is clear on the specific commitments in relation to cable installation and maintenance and also specifically referred back to the offshore design parameters Requirement ("Requirement"). So, the answer to the ExA's question is that it is a different concern here. The PLA were comfortable at VE because they had the Requirement but it does not have the benefit of that Requirement in the North Falls DCO at present.</p> <p>In response to the ExA's request for clarification that this is a matter that the PLA considers could and should be included within the offshore design parameters Requirement and that this would satisfy the PLA, the PLA confirmed that the PLA's main concern is to ensure that the cable cannot be installed at one level and then maintained at a different (shallower) level. The PLA would be content if the DCO contained a Requirement that provided it confidence in that respect.</p> <p>Article 5 (Benefit of the Order)</p> <p>The ExA asked the PLA to explain why it wishes to be notified of any sale, agreement or other transaction under Article 5 and whether there has been any progress on this following the last meeting with the Applicant. The PLA confirmed that there has not been any further progress with the Applicant further to the PLA's written representation. Whilst acknowledging that protective provisions are to be discussed later in the ISH2 hearing, the PLA's concern is that if protective provisions are not secured then there would be no requirement on the Applicant to notify the PLA in the event that the benefit of the order was to be transferred.</p>

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	<p>This would leave the PLA in a position whereby they are not notified and the PLA would be in the dark as to who has the benefit of the order. The mischief caused by not being notified of a transfer is that the PLA would not know who the undertaker is for the purpose of the project which in turn adds to the picture of not being consulted upon various items that may well affect the DWRs and thus having a knock on impact on the PLA and its ability to trade. The mischief is an administrative point which can easily be addressed via the protective provisions. To clarify, the PLA are not asking for Article 5 to be amended, the concern is that if the PLA do not have protective provisions and Article 5 remains as drafted, then what protection do the PLA have against the order being transferred (without the PLA's knowledge) and the DWRs subsequently impacted.</p>
Schedule 1 Part 3 Requirements	
<p>Other matters relating to requirements and conditions</p> <ul style="list-style-type: none"> The draft requirement proposed by the Port of London Authority (PLA) to ensure that a dredged depth of the Deep Water Routes to a depth of 22 metres below Chart Datum is not precluded or impeded. 	<p>In response to the ExA's query as to the present position on securing a dredged depth of the DWRs to at least 22 metres and the PLA's suggested draft wording for a Requirement and whether any progress was made at the 19 March meeting between the PLA and the Applicant, the PLA confirmed that the technical meeting went ahead on 19 March. At that meeting the Applicant tabled a plan showing the DWRs and a suggested area over which deeper cable burial could occur. On Friday last week, an electronic copy of the plan was provided to the PLA which the PLA are in the process of looking at. The PLA's initial view is that the plans are useful but that they need to be provided in a form that enables the PLA to drill down further.</p> <p>Securing the Requirement is crucial for the PLA to ensure that the water depth of 22m below Chart Datum¹ is not precluded or impeded. The PLA maintain that there must be certainty in the application that this Requirement will be met. If the 22m dredge depth is not secured, then it will limit the quantum of trade within the port, and the impact would be significant with a detrimental impact on the future of the UK's largest port. The ExA will note that this is the position as set out by the PLA in its representations. So whilst some progress has been made at the meeting, there is not any clarity at present as to whether the Requirement requested</p>

¹ The PLA requires future access for vessels with a draught of 20m at the DWRs and accounting for 10% under keel clearance this means that a water depth of 22m below Chart Datum ("CD") must be maintained by North Falls.

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	<p>is going to be accepted by the Applicant and whether the PLA and the Applicant can reach a position where a plan to be referred to in the Requirement can be agreed.</p> <p>A discussion between London Gateway Port Limited and the Applicant took place on the necessity for the Requirement to secure the required cable burial depth and for a corresponding amendment to the Deemed Marine Licence ("DML"). In addition, the Applicant confirmed that a draft oCSIP will be provided at deadline 4.</p> <p>Following the exchange, the PLA confirmed that it is fully supportive of the submissions made by London Gateway Port Limited in connection with this point and further that the PLA's position is that the point is so fundamental to it that the cable burial depth should be secured by a Requirement that is clear on the face of the DCO rather than being something that is hidden away in the DML or the Cable Specification and Installation Plan ("CSIP") - the CSIP being required to come forward in accordance with the oCSIP which is not currently provided for in the examination documentation. Such a Requirement would ensure precision and enforceability. Accordingly, if a Requirement is included in the DCO, the PLA feel that this is the most appropriate mechanism for securing the protection required on the face of the DCO without having to relying on what is in the DML and the connection between the oCSIP and the CSIP that eventually comes forward.</p>
Schedules 8, 9 And 10 Deemed Marine Licences	
The amendments to the draft Schedule 9 conditions proposed by the PLA.	<p>Schedule 9 Deemed Marine Licence Transmission Assets</p> <p>The PLA would just note that the MMO in the main accepted the proposed changes to the DML at VE and the PLA would expect agreement here. The PLA wish to secure parity with the VE DML. In line with the approach taken at VE, the PLA and the MMO are in discussions regarding amendments to the DML in Schedule 9. It is anticipated that both parties will make formal submissions on this point at deadline 4.</p>

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The amendments sought by the PLA and the London Gateway Port Ltd in their written representations regarding the permissible reduction in water depth for DWRs in Schedule 9 Condition 13(3)	The PLA support the submissions made by London Gateway Port Limited in this regard.
Schedule 14 Protective Provisions	
<p>The progress of any negotiations relating to the agreement of protective provisions including:</p> <p>Whether the protective provisions sought by the PLA and the changes to the protective provisions sought by London Gateway Port Ltd have been agreed.</p>	<p>It is fundamentally wrong that the Applicant is not willing to negotiate with the PLA in relation to the provision of protective provisions ("PP's") for the benefit of the PLA given that the scheme has a fundamental impact on the UK's largest port. Much has been made of how the Applicant will ensure onshore parity, consistency and equivalence with VE and that is what the PLA are asking for in relation to PP's for its benefit.</p> <p>It is understood that the Applicant is resisting including PP's for the benefit of the PLA because it says such PP's are not necessary to safeguard the PLA's statutory undertaking because the scheme is not within the PLA's jurisdictional limits. In response the PLA notes that VE is not located within the PLA's jurisdictional limits and PP's were agreed there.</p> <p>The Applicant submitted that there is/was no agreement in the VE case between VE and the PLA in relation to the PP's and that there are significant differences between the two forms of PP's that were tabled. Whilst the PLA accept there are differences between the version submitted by VE to the ExA and those submitted by PLA at the final deadline, it is not accepted that those difference were significant.</p> <p>The Applicant also submitted that there has been no indication from the PLA that there would be any scope to negotiate away from the PP's that the PLA say are required in this case. The PLA wish to make it clear that it is open to having further discussions and that it is simply not the case that there is no scope to negotiate away from the VE PP's. The PLA welcome any opportunity to discuss the PP's and wish to understand why parity with VE is thought to be inappropriate in this case. The PLA's view is that</p>

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	<p>having some form of PP's, ideally in a form that reflect the PP's agreed in connection with VE is fundamental and absolutely required so that the PLA can effectively discharge its general and specific statutory duties. To make it clear, the PLA's position is that whilst parity with VE is the PLA's clear preference, that is not to say that the PLA would not be open to a further discussion on a different basis. The PLA would welcome further meetings with the Applicant, particularly given that to date, the PLA and the Applicant have only met once on 19th March and not since then and given that the PLA maintain the need for PP's to protect its interests.</p> <p>The Applicant has indicated that it intends to submit a full response to PLA's submissions insofar as they relate to proposed PP's at Examination Deadline 4.</p>

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Agenda item 3.4 Navigation and Shipping	Oral Submissions made on behalf of the Port of London Authority
Whether there are any outstanding concerns regarding the risks to navigational safety being assessed As Low As Reasonably Practicable (ALARP) for both the project alone and cumulative effects, subject to implementation of management plans and the level of mitigation proposed by the Applicant.	<p>The PLA do have outstanding concerns in that Table 19.1 of the Navigational Risk Assessment ("NRA") (APP-106 page 226)) Embedded Mitigation Measures Relevant to Shipping and Navigation places significant weight on documents that are yet to be produced and they do not provide the certainty in relation to the DWRs that is required.</p> <p>The PLA have seen various plans and it is aware and appropriate that final versions of those plans come later. The PLA are content with that approach as a framework but the devil is in the detail. Since the PLA do not have confirmation that the outline documents will flow through to the actual Navigation and Installation Plan ("NIP") and CSIP it becomes a matter for the PP's and the Requirement that were discussed during agenda item 3.1. The PLA is hopeful that there is going to be further discussions on the suite of management documents but until the oNIP is updated and the oCSIP has been produced the PLA cannot be satisfied that the risks to navigational safety are as low as possible.</p> <p>As set out in the PLA's Written Representation (REP2-056), amendments are required to the oNIP and an updated plan needs to be submitted into the examination. The PLA awaits discussions with the Applicant concerning this important document but that is not something that has been discussed to date. Finally, we spent much of agenda item 3.1 talking about the oCSIP and it is understood that the Applicant is producing the same for submission at deadline 4. Following receipt, if PLA have questions on either the oNIP and/or the oCSIP, the PLA will raise these details with the Applicant.</p> <p>The PLA considers that an oCSIP should be produced and submitted to the examination which sets out information in relation to matters including cable installation and maintenance, cable crossings, cable protection and temporary works such as boulder relocation and archaeological finds, wet storage and the need to allow for over-dredging of the DWRs. 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. The lack of an oCSIP is inconsistent with VE.</p>

<p>Whether there are any outstanding concerns regarding the risks to shipping movements, including the passage of vessels to and from nearby ports.</p>	<p>In response to the ExA's query as to whether there are any future plans for dredging operations, the PLA confirmed that it currently has no timetable for future dredging, but that the PLA are actively looking at future proofing over the lifetime of this project. Once the cable is laid, if that is less than 22m, then it will cause a constraint. It is agreed between the PLA, London Gateway Port Limited and the Applicant that there is a need to dredge to 22m to allow for a 20m vessel. This is the agreed position.</p> <p>The ExA queried whether if the dredging is not undertaken before the North Falls cable is laid, whether it would then be reasonable and technically achievable to require the cables to be buried to this additional depth. The PLA supports the submission of London Gateway Port Limited in this regard that this is effectively a once and for all decision. This highlights how important it is for the PLA to have the remediation clause it has requested in the PP's and also the offshore design parameter Requirement to ensure the 22m depth is protected.</p> <p>The PLA made three further points:</p> <ol style="list-style-type: none"> 1) There is an error in the oNIP which refers to maintaining a minimum 20m water depth which is not sufficient. It is actually the case that 22m is required. 2) The Applicant refers to ensuring a 22m cable installation but actually the cable needs to be below that level in order for a 22m dredge to take place. 3) The PLA's overarching concern is that the Offshore Cable Corridor ("OCC") includes the Sunk and Trinity DWRs and the Sunk Pilot Diamond Area. The DWRs are used for entry and exit of vessels into/from the Port of London and pilotage is compulsory for large vessels within the London Pilotage District and its approaches. Boarding and landing of pilots takes place in the general vicinity of the Sunk Pilot Diamond. The Sunk Pilot Diamond Area is shown on Figure 2.1 of the oNIP (APP-259) but in reality other factors including traffic density, wind speed, direction and tidal conditions, determine its actual location and so the Sunk Pilot Diamond area goes a lot further than the diamond shown on the plan. It is the vicinity of the Sunk Pilot Diamond and the DWRs that the OCC have the potential to impact. The North Falls application needs therefore to provide clarity and confidence that long term access/egress to the Port of London and the Sunk Pilot Diamond would be maintained and that short term impacts during construction and maintenance would be kept to a minimum.
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	<p>The Applicant noted that there will be additional content on the Sunk Pilot Diamond within the outline documents submitted at Deadline 4 including the Sediment Disposal Plan and the oCSIP to ensure that the Applicant is maintaining suitable under keel clearance in those areas and the full technical details will be set out in those plans. London Gateway Port Limited noted that much documentation is expected to be submitted for Deadline 4. The PLA queried whether it might be possible to programme a meeting with the Applicant, London Gateway Port Limited and potentially the Port of Tilbury, shortly after Deadline 4 and before Deadline 5 to discuss the additional material since PLA is of the view that it will have questions and that it would be useful if the Applicant could go through the various documents with the PLA.</p>
<p>Whether the estimate of the effects from disruption to navigation and shipping in the assessment of socio economics is sufficiently robust.</p>	<p>The PLA's position is that the socio economics assessment could be sufficiently robust if the PLA has the necessary mitigations and measures in place to protect it – ie the Requirement, the PP's and the other mitigation measures discussed. The PLA's position is that if these elements can be put in place, then the impact on vessels accessing the Port of London is capable of being minimised and so would the economic effects. These elements are fundamental and will secure the mitigation that the PLA require.</p>
<p>Above points to include the effectiveness of the mitigation measures proposed and whether any additional mitigation measures and/or safeguards are necessary, to include project alone and cumulative effects.</p>	<p>The above representations addressed this part of the agenda.</p>