

**THE INFRASTRUCTURE PLANNING (EXAMINATIONS PROCEDURE) RULES 2010**

**NORTH FALLS OFFSHORE WIND FARM DEVELOPMENT CONSENT ORDER**

**PINS REFERENCE EN010119**

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**DEADLINE 5: PORT OF LONDON  
AUTHORITY'S RESPONSE TO EXAMINING  
AUTHORITY'S SECOND WRITTEN  
QUESTIONS**

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Set out below are the Port of London Authority's comments on the Examining Authority's Second Written Questions issued on 13 May 2025 directed at the Port of London Authority.

Question to:		Question:	Port of London Authority Response:
ExQ2			
7. Cumulative Effects			
Q7.0.4	The applicant, Port of London Authority (PLA)	<p><b>The Cumulative Effects Assessment (CEA) Summary</b></p> <p>The PLA comments on any submissions received at the previous deadline [REP4-087] seek a number of amendments to Table 1.1 which lists projects that are included in the CEA for offshore technical assessments. Table 1.11 provides a summary of the CEA outcomes for shipping and navigation and Table 1.27 concerns socio-economics.</p> <p>(i) Does the applicant agree the PLA's suggested corrections to Table 1.1 bullet points 1 to 5? If not, please given reasons.</p> <p>(ii) In relation to Table 1.11, the applicant is requested to explain why the only mitigation measures proposed are in relation to distances to be maintained from surface piercing structures and why there is no reference to embedded mitigation?</p> <p>(iii) In relation to Table 1.27, the applicant is requested to explain why there are only references to the ports of Felixstowe and Harwich and not to any other ports.</p> <p>(iv) In relation to Table 1.27, the PLA is requested to explain why it considers that reference to cumulative effects in relation to the</p>	<p>(i) to (iii) are for the Applicant.</p> <p>(iv) Table 1.27 rightly identifies that during construction and operation of North Falls there is the potential for 'wider economic effects from disruption to shipping and navigation.' However, the Applicant's rationale relates to multiple offshore projects causing 'disruption to shipping lanes' and the Applicant limits this impact to Felixstowe and Harwich. The route of the proposed offshore cables cross the deep water routes (the Sunk and Trinity which lead to Black Deep) (the "<b>DWR</b>") into the Port of London. The DWR is the only approach available for larger vessels to access the Port of London.</p> <p>North Falls has the potential to cause permanent impacts to navigation and to the capacity and operation of the Port of London, if the depth of the offshore cables and those of other schemes proposed in the same area (Five Estuaries Offshore Wind Farm ("<b>VEOWF</b>"), Sea Link and Tarchon) prevent dredging to the required depths (-22m Chart Datum).</p> <p>There are also the shorter-term impacts associated with the construction of the schemes set out in the PLA's Written Representation [REP2-056] sections 5 to 11. This includes construction and maintenance vessels impacting access into the Port and the ability to board or land pilots – for deeper draughted vessels a small deviation to their schedule could cause a delay until the next tide approximately 12 hours later.</p> <p>As set out above and in the PLA's Written Representation, the range of impacts vary from vessel displacement and delays to placing a constraint on the size of vessel that can enter the Port of London and therefore the capacity of the Port of London</p>

		Port of London should have been assessed and included in the summary.	This means that as with Felixstowe and Harwich who are referenced in Table 1.27, there could be economic impacts for the Port of London which could be far reaching.
9. Development Consent Order			
9.0 Articles Part 2 – Principal Powers			
Q9.01	The applicant, Port of London Authority (PLA)	<p><b>Article 2 – (Interpretation) definition of commence</b></p> <p>The PLA's post hearing submissions [REP4-088] identifies that the definition of commence carves out preconstruction survey and monitoring from that definition and express concern at to how "commence" might be used. The PLA request that the point is covered in protective provisions in the same way as VEOWF which would mean the PLA would be comfortable with the definition as it currently stands. However, the applicant's position as set out in its 'position regarding protective provisions for the ports' [REP4-044] is that there is no need for protective provisions for the ports.</p> <p>(i) Given that stance, the PLA is requested to indicate whether it is content with the Deadline 4 updated mitigation measures put forward by the applicant or whether, in the absence of protective provisions, any amendments to the Article 2 definition of commence are sought.</p> <p>(ii) The applicant is requested to explain and set out why the concerns of the PLA in relation to the Article 2 definitions have been addressed including by the updated mitigation measures submitted at Deadline 4 as set out in its submissions at that deadline [REP4-044]</p>	<p>(i) The PLA is not content to solely rely on the updated mitigation measures submitted at Deadline 4 as set out in its submissions at that deadline [REP4-044] for the reasons set out in the PLA's response to Q9.4.1 below.</p> <p>As noted below the PLA is concerned with, among other matters, pre-construction surveys and monitoring. These surveys are not necessarily licensable activities and the documents which the Applicant is relying on in mitigation, namely the outline navigation and installation plan ("<b>oNIP</b>"), the outline cable specification and installation plan ("<b>oCSIP</b>") and the outline sediment disposal plan ("<b>oSDMP</b>") collectively referred to as "<b>the Mitigation Plans</b>", are only required to be approved in the Deemed Marine Licence – Transmission Assets (Schedule 9) of the dDCO [REP4-004] ("<b>DML</b>") pre construction which is not the same as being required to be approved before pre-construction surveys and monitoring commence.</p> <p>The definition of commence needs to apply to pre-construction surveys and monitoring and approval of the Mitigation Plans in relation to such works need to be submitted and approved prior to commencement of pre-construction surveys and monitoring.</p> <p>In addition, the oNIP states it applies "<i>from the start of offshore construction activities.</i>" It is not clear when this is as it is not defined and the oNIP states at paragraph 11 that the "<i>installation and maintenance activities considered in this NIP include: Surveys (where they are considered to involve RAM vessels as defined in Section 2.3).</i>" Any surveys which do not involve RAM vessels are therefore not covered by the oNIP.</p> <p>(ii) Is addressed to the Applicant.</p>

Q9.02	PLA	<p><b>Article 2 (Interpretation) definition of maintenance</b></p> <p>The PLA's post hearing submissions [REP4-088] identify that the definition of "maintenance" as drafted 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. The definition is broadly the same as that for VEOWF, but the VEOWF dDCO was clear in the offshore design parameters requirement. The applicant's post hearing summary [REP4-034] confirms that the applicant has amended the offshore design parameters set out in requirement 2(3) at Deadline 4. Given the inclusion of such a requirement in the dDCO [REP4-004] are the PLA content that no amendment of the definition of maintenance in Article 2 is now required?</p>	<p>The PLA's position remains that this can be dealt with through protective provisions but in the absence of protective provisions the definition of maintenance needs to be amended to remove the ability to alter and adjust.</p>
Q9.04	The applicant, PLA	<p><b>Article 5 - Benefit of the Order</b></p> <p>The PLA's post hearing submissions [REP4-088] refer to them seeking notification of any sale, agreement or other transaction under Article 5. The concern is that if the PLA do not have protective provisions and Article 5 remains as drafted, then they question the protection they would have against the order being transferred (without the PLA's knowledge) and the DWRs subsequently being impacted. The applicant's position as set out in its 'position regarding protective provisions for the ports' [REP4-044] is that there is no need for protective provisions for the ports. (i) Given that stance, the PLA is requested to indicate whether it is content with the Deadline 4 updated mitigation measures put forward by the applicant or whether, in the absence of</p>	<p>(i) The PLA are not satisfied with the Deadline 4 updated mitigation measures Please refer to the PLA's response to Q9.4.1. As stated, the PLA has specific comments on the mitigation measures which are being discussed with the Applicant. The additional measures "secured" in these documents do not, however, appropriately address the PLA's concerns on their own. Full details of the PLA's concerns are set out in response to Q9.4.1 which includes the PLA's concerns regarding Article 5. In the absence of protective provisions, the drafting amendment set out below is suggested:-</p> <p>The insertion of a new subparagraph (10) as follows, " <i>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</i>".</p>

		protective provisions, any drafting amendments to Article 5 are sought? (ii) The applicant is requested to explain and set out why the concerns of the PLA in relation to Article 5 have been addressed including by the updated mitigation measures submitted at Deadline 4 as set out in its submissions at that deadline [REP4-044].	(ii) Is addressed to the Applicant.
<b>9.1 Schedule 1 Part 3 – Requirements</b>			
Q9.1.1	The applicant, London Gateway Port Limited (LGPL), PLA	<p><b>Requirement 2 (3) – Offshore design parameters</b></p> <p>The applicant's post hearing summary [REP4-034] confirms that the applicant has considered the ports' request for a dDCO requirement to ensure the seabed can be dredged to a depth of 22m Chart Datum further and the applicant has proposed drafting for a new requirement 2(3) in Schedule 1, Part 3 of the dDCO [REP4-004] to secure the cable burial depths in the Deep Water Routes. The applicant and the ports are requested to confirm that the drafting of this requirement is agreed, and the matter resolved. If not, please identify any amendments sought giving reasons.</p>	<p>Please refer to the PLA's response to Q9.4.1. The drafting of new requirement 2(3) is not agreed. As stated in the response to Q9.4.1 the Requirement should be amended as follows:</p> <p>"(3) Any part of <del>Work No. 3 and any associated development</del> <b>the authorised development</b> located within the following areas shown on the Deep Water Route Cable Installation Area (Future Dredging Depths) Plan, must be <b>designed</b>, installed, <b>operated</b> and maintained at a level which would not preclude dredging:</p> <p>(a) of the area shown shaded in orange and labelled Sunk A – Sunk DW Buffer, to a level of 22 metres below Chart Datum;</p> <p>(b) of the area shown shaded in pink and labelled Trinity – Trinity DW Buffer, to a level of 22 metres below Chart Datum; and</p> <p>(c) to the area shown cross hatched purple and labelled Sunk B – Sunk DW Buffer, to a level of 19 metres below Chart Datum.</p> <p><b>(4) The undertaker must not carry out wet storage or relocate any boulders or archaeological finds to or within the three areas referred to in paragraph (3)."</b></p>

			As set out in the PLA comments on deadline 4 submissions the area for deeper cable burial has not yet been agreed.
<b>9.2 Schedules 8, 9 and 10 – Deemed Marine Licence under the 2009 Act</b>			
Q9.2.1	MMO, MCA, PLA and London Gateway Port Limited	<b>Depths in the Deep Water Routes</b>  The question of the permissible water depth reduction was discussed at the ISH2. The dDCO (Rev 5) [REP4-004] has been amended at Condition 12 (3) of Schedules 8 and 10 and Condition 13 (3) of Schedule 9 to include further wording in respect of the water depth not being reduced by more than 5% Chart Datum when carrying out maintenance activities. Please confirm if the amendments now made are acceptable and address the concerns raised.	The amendments made are not acceptable. Please refer to the PLA's comments on the submissions received at Deadline 4, Paragraph 11.2 (b) to (h) which sets out the changes the PLA required to the DML.
Q9.2.3	PLA, applicant	In the written submission made by PLA [REP4-088], PLA requests parity of the DML's for NFOWF with the DML's for VEOWF. Please provide a schedule of the conditions where the parity is not achieved in the NFOWF DML's.	Please refer to the PLA's comments on the submissions received at Deadline 4, Paragraph 11.2 (b) to (h) which sets out the changes the PLA required to the DML.
<b>9.4 Schedule 14 – Protective Provisions</b>			
Q9.4.1	The applicant, LGPL, PLA	<b>Protective provisions sought by the Port of London Authority and the changes to the protective provisions sought by London Gateway Port Limited</b>  The protective provisions for the ports were discussed at ISH2. The applicant has submitted a full response at Deadline 4 on its position regarding protective provisions for the ports [REP4-044]. The applicant's Deadline 4 Action Points [REP4-036] has removed the protective provisions for the LGPL from	

		<p>the dDCO at deadline 4 [REP4-004]. The applicant has included a new Requirement 2(3) in the dDCO submitted at Deadline 4. In addition, the applicant has made changes to the Deep Route Cable Installation Areas (Future Dredging Depths) Plan [REP4-043], the Outline Cable Specification and Installation Plan [REP4-039], the Outline Sediment Disposal Management Plan [REP4-038] and updated Navigation and Installation Plan [REP4-012]. Updates have also been made to the DML conditions to make reference to these plans. The applicant's position is that protective provisions are not necessary, appropriate or reasonable in the circumstances, and would be unprecedented.</p>	
		<p>(i) Given the additional measures secured by the Deadline 4 updates to application documents, please can LGPL and PLA indicate whether they still seek protective provisions and, if so, explain why the package of mitigation measures committed to by the applicant would not appropriately address their concerns and whether there are any other mitigation measures in relation to the Sunk and Trinity DWR and Sunk Pilotage area that would preclude the need for protective provisions.</p>	<p>The core purpose of protective provisions is to prevent serious detriment arising to statutory undertakings from exercise of DCO powers. This is exactly what the PLA is seeking to achieve through its protective provisions.</p> <p>There is the potential for significant impact on the Port of London which is the largest Port in the Country. The PLA has actively engaged with the examination process and has commented on the oNIP, the oCSIP and the oSDMP, with the production of the latter documents as a result of the PLA's engagement in the examination process. The PLA has also engaged with the Applicant over the area required for deeper cable burial and has set out the changes that are required to that plan that is to become a certified document. The PLA has an important role in ensuring that the cables are installed and maintained at a depth that do not cause long term detrimental impacts on the Port of London and that the oNIP, the oCSIP, the oSDMP are fit for their intended purpose.</p> <p>The PLA has specific comments on the Mitigation Plans which are being discussed with the Applicant. The additional measures "secured" in these documents do not, however, appropriately address the PLA's concerns on their own for the following reasons:</p> <p><b>1. There is scope for the final Mitigation Plans to change</b></p>

			<p>Outline documents have now been submitted to the examination and whilst the PLA has no objection to this, given the important matters that the CSIP, NIP and SDMP will deal with and that these are being relied upon to mitigate the PLA's concerns, it is deeply concerning that as currently drafted the DML only requires the NIP and the SDMP to accord with principles of the oNIP and oSDMP and the CSIP to accord with the oCSIP (condition 22). There is the potential therefore for the final documents to change and for those changes to detrimentally impact the Port of London either temporarily or permanently. We would invite the ExA to include a requirement for the final documents to be in strict accordance with the relevant outline document.</p> <p>The PLA is not referenced as a consultee in the DML and there is no reference to the consultation of local harbour authorities in the preamble to condition 22(1) nor that final plans should be agreed with local harbour authorities prior to submission to the MMO.</p> <p>Condition 23(4) of the DML requires the licensed activities must be carried out in accordance with the approved plans, protocols, statements, schemes and details approved under condition 22, unless otherwise agreed in writing by the MMO with no reference to further consultation with the local harbour authorities.</p> <p>Protective Provisions in line with those agreed by Five Estuaries Offshore Wind Farm Limited ("VEOWFL") would mean that the PLA is at least consulted on final drafts before being submitted to the MMO for final approval. Given the importance of these documents the PLA (as per the representations made on VEOWF) would want to be able to approve these prior to submission to the MMO and any updates.</p> <p>The PLA and other ports can provide important input as they have done so to date and importantly will have had oversight of other overlapping schemes such as VEOWF. The PLA and the other ports ensure, therefore, that the cumulative effects are being properly considered</p> <p><b>2. There is no positive obligation regarding remediation if the cable depth is not met or if the cable moves, nor updates to the CSIP if burial to the required depth is not achieved.</b></p>
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			<p>The VEOF Protective Provisions agreed by VEOF included the following:</p> <p><b>"Remediation</b></p> <p>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.</p> <p>120. Unless otherwise agreed in writing with the PLA, the undertaker will carry out the following arrangements for the carrying out the remediation works:</p> <p>(1) the undertaker will re-bury the cables to the required specification to achieve the requirements of paragraph 116(a); and</p> <p>(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.</p> <p>(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 .</p>
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			<p>(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.</p> <p>In the absence of protective provisions there needs to be a Requirement and a condition in the DML to deal with the above.</p> <p>If the PLA is also not being consulted on the design which could be a requirement of the protective provisions the Requirement should be amended as follows:</p> <p>"(3) Any part of <del>Work No. 3 and any associated development</del> <u>the authorised development</u> located within the following areas shown on the Deep Water Route Cable Installation Area (Future Dredging Depths) Plan, must be <u>designed,</u> installed, <u>operated</u> and maintained at a level which would not preclude dredging:</p> <p>(a) of the area shown shaded in orange and labelled Sunk A – Sunk DW Buffer, to a level of 22 metres below Chart Datum;</p> <p>(b) of the area shown shaded in pink and labelled Trinity – Trinity DW Buffer, to a level of 22 metres below Chart Datum; and</p> <p>(c) to the area shown cross hatched purple and labelled Sunk B – Sunk DW Buffer, to a level of 19 metres below Chart Datum.</p> <p><u>(4) The undertaker must not carry out wet storage or relocate any boulders or archaeological finds to or within the three areas referred to in paragraph (3)."</u></p> <p><b>3. The PLA's concerns are wider than cable burial and include pre-commencement and post construction monitoring and survey work</b></p> <p>As is common with the installation of cables a number of pre-construction activities including pre-construction surveys and monitoring may need to be carried out in order to obtain more information to inform for example, the final</p>
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			<p>cable route and burial depth or to allow for the installation of the cable on the chosen route (e.g. boulder clearance, UXO clearance etc). These surveys are not necessarily licensable activities and the oNIP applies from the 'start of offshore construction activities' which is not clear as to when this is and it only relates to surveys where they are considered to involve RAM vessels.</p> <p>The PLA would want to at least be consulted on any surveys or monitoring (pre and post construction) and any pre-construction activities that affect the DWR because a survey vessel may pass slowly over the DWR or even stop to place/remove monitoring equipment which could affect shipping. Equally restrictions on how the pre-construction activity can be undertaken may need to be proposed e.g. a boulder or archaeological finds cannot be relocated to or within a DWR but must instead be removed.</p> <p>These surveys are not necessarily licensable activities and to the extent that the various mitigation plans deal with surveys, the final plans are only required to be approved in the DML pre-construction.</p> <p>Section 3.1 of the oCSIP provides information on UXO clearance but there needs to be a commitment to not relocating UXO within the DWR</p> <p>The VEOWF agreed Protective Provisions included the following:</p> <p><b>"Consultation and Notice</b></p> <p><i>115...</i></p> <p><i>(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.</i></p>
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			<p><i>(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.</i></p> <p><i>(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.</i></p> <p><i>(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.</i></p> <p><i>(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.</i></p> <p><i>(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."</i></p> <p>In addition, the agreed remediation provision for VEOF set out above under point 2 requires that where post installation of the cable it is identified by the undertaker that the required depth has not been achieved the undertaker is to notify the PLA as soon as reasonably practicable of this fact and in any event within 2 business days. Equally should the PLA discover that the cable is not at the required depth it must notify the undertaker.</p>
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			<p><b>4. Ensuring that the PLA has notice of who has the benefit of the DCO in the event of a transfer of the benefit or any part</b></p> <p>The Protective Provisions ensure that the PLA is advised where there is 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. This ensures that the PLA knows who they should be approaching should there be any concerns with how works are being undertaken or with the level of cable following installation or maintenance. The VEOWF Protective Provision included the following:</p> <p style="padding-left: 40px;">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.</p> <p><b>5. Ensuring that the PLA has as built plans</b></p> <p>Protective provisions can provide that following the completion of the installation of the cables affecting the DWR and after any maintenance of the same, the undertaker provides to the PLA as built drawings to show the position, depth and any cable protection installed.</p> <p>Absent Protective Provisions there would need to be a Requirement or a condition in the DML to secure the above.</p> <p><b>6. Ensuring that any cost or losses which the PLA are put to as a consequence of the Scheme are met by the undertaker.</b></p> <p>Protective provisions can ensure that the PLA's s proper and reasonable legal costs, professional fees and disbursements incurred in connection with reviewing the details submitted to the PLA; and that the undertaker is responsible for and must make good to the PLA all financial costs, charges,</p>
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			<p>damages losses or expenses which may be incurred reasonably or suffered by the PLA by reason of—</p> <p>(i) the construction or operation of the authorised development or its failure or a failure to adhere to the requirements of the protective provisions;</p> <p>(ii) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged on the construction or operation of the authorised development.</p> <p><b>7. Failure to include Protective Provisions is inconsistent with VEOWF and undermines the mitigations secured by the PLA in VEOWF</b></p> <p>Protective Provisions have been included in the VEOWF DCO and to not have similar protective provisions or at least a suite of enforceable Requirements and conditions in the Deemed Martine Licence which mirror those Protective Provisions completely undermines the mitigation measures secured by the PLA for the VEOWF, if North Falls is not under the same controls.</p> <p>The Protective Provisions enable the PLA to ensure that there is consistency across the projects and proper co-ordination.</p> <p><b>8. Ensuring Impacts on the PLA Navigation Equipment do not arise.</b></p> <p>The PLA raised concerns in its Relevant Representation about the potential impacts of the vessels required to undertake the horizontal directional drilling at landfall interfering with the PLA's radio link and lowering its reliability [RR-272]. At this stage this matter has not been resolved, and the PLA maintains its position that this matter could be addressed through protective provisions.</p>
		<p>(ii) Please indicate whether LGPL and PLA agree that there would no risk of detriment to the statutory undertaking of the ports arising from the powers conferred by the dDCO? If not, please identify the specific statutory functions that would suffer such detriment and/or explain why it is not necessary to do so.</p>	<p>The northern approaches for deeper draughted vessels into the Port of London (i.e the DWRs through which deeper draughted vessels <b><u>must pass</u></b> through to get into the Port of London) and the Port of London (the largest port in the UK) accounted for 12% of all UK major port tonnage traffic handled in 2023.</p> <p>The Order Limits also include the Sunk Pilot Diamond and pilotage is compulsory for large vessels within the London Pilotage District. The</p>

			<p>approaches and boarding and landing of pilots takes place in the general vicinity of the Sunk Pilot Diamond rather than at a specific point.</p> <p>The PLA would emphasise the importance of the Port of London and that it is only through protective provisions that the PLA will have certainty that the design and installation of the cables in the Export Cable Corridor will not have a detrimental long term impact on the UK's largest port. The PLA also has navigational equipment within the Order limits and the seaward approaches for the Port of London are also situated with the Order Limits.</p> <p>The seaward approaches are of relevance to the Port Marine Safety Code and the Guide to Good Practice on Port Marine Operations - section 2.3.1 stating that "<i>the Organisation Harbour Authority will discharge its general and specific statutory duties in respect of the conservancy of the harbour and its seaward approaches</i>".</p>
		(iii) Do LGPL and PLA agree that the MMO is the appropriate regulator for the proposed works and not themselves?	<p>The PLA is not suggesting that it is a regulator nor that it needs to "control" the seaward approaches to the Port of London, but it would wish to approve key documents that will control the delivery of the authorised works in the DWRs ahead of approval by the MMO. The MMO will be the final approver of the plans and details.</p>
		(iv) Can LGPL and/or PLA identify any precedent for such protective provisions in similar circumstances as for the proposed development?	<p>It is naturally the case that the majority of DCO's that the PLA has been involved in relate to projects located within the Port of London Act 1968 limits. It is also natural that there are a limited number of exceptions to this and there has until VEOWF been no projects advanced through the DCO process which specifically affect the DWRs.</p> <p>The Thanet Offshore Windfarm Extension Development Consent Order was outside the PLA's statutory limits but as the PLA had fundamental concerns about the extension (which ultimately led to the refusal of the application) no discussions took place regarding protective provisions for the PLA. The impact of the proposed project on marine navigation, shipping and ports was the principal issue generating most attention and contention from interested and other parties throughout the examination. The Examining Authority ("ExA") and the Secretary of State agreed with the PLA and other interested parties that the Applicant had failed to demonstrate sufficient mitigation of risks to safety of navigation to make them As Low As Reasonably Practicable</p>

			<p>("ALARP"). The concerns included the effect of the project on navigational safety of shipping traffic in immediately adjacent waters, the resilience of facilities and services accessed by that traffic, and in this context, the degree to which the proposed development was policy compliant.</p> <p>The London Gateway Harbour Empowerment Order ("HEO") included protective provisions for the benefit of the PLA and not all of the area affected by the HEO is within the jurisdictional limits of the Port of London yet the protective provisions provide that they apply whether in or out of the PLA's jurisdictional limits. Naturally some of the protective provisions are tied to specific works but that is no different to here. The PLA only have concern with certain works but that is not a factor of its jurisdictional limits but its operations.</p> <p>North Falls is the second project to come forward under a Development Consent Order that impacts on the DWR's into the Port of London. VEOWF was the first. The decisions made in relation to protective provisions for VEOWF and North Falls could therefore have implications for future schemes including Sea Link which is being brought forward through a DCO and has just been accepted for examination.</p>
Q9.4.3	The applicant, PLA	<p><b>The protective provisions sought by the Port of London Authority</b></p> <p>The PLA's post hearing submissions [REP4-088] seek some form of protective provisions, ideally in a form that reflect the protective provisions agreed in connection with VEOWF. Their position is that such protective provisions are fundamental and absolutely required so that the PLA can effectively discharge its general and specific statutory duties.</p> <p>(i) The PLA is requested to set out the general and specific statutory duties that it seeks to protect by way of protective provisions.</p> <p>(ii) The PLA is requested to submit, for the avoidance of doubt the two forms of protective provisions by</p>	<p>For the river Thames the PLA is the Statutory Harbour Authority ("SHA") and the Order Limits for the made DCOs on the river Thames are wholly within the PLA's area of jurisdiction. The PLA's jurisdiction as SHA does not include the Order Limits for the Proposed Development.</p> <p>As noted above, however, the Order Limits include the DWRs through which deeper draughted vessels <b>must pass</b> through to get into the Port of London; whilst outside the jurisdiction of the Port of London Act 1968 the DWRs form part of the seaward approaches within which the PLA have to discharge its general and specific statutory duties as noted by the Port Marine Safety Code and the Guide to Good Practice on Port Marine Operations.</p> <p>The Order Limits also include the Sunk Pilot Diamond. Pilotage is compulsory for large vessels within the London Pilotage District and the PLA is responsible for the piloting of vessels entering the Port of London, utilising the Sunk Pilot Diamond to discharge this function.</p>



		<p>both itself and VEOWF that were tabled at the close of the VEOWF examination.</p> <p>(iii) The applicant is requested to explain why it takes a fundamentally different approach to VEOWF in relation to protective provisions for the PLA and why it does not seek to achieve offshore consistency and equivalence with VEOWF on this matter.</p>	<p>In addition, the PLA is responsible for the navigational equipment located within the Order Limits.</p> <p>(ii) The preferred form of protective provisions preferred by the PLA is Appended at Appendix 1 and those included by VEOWFL at the close of the examination are included at Appendix 2.</p> <p>(iii) Is for the Applicant</p>
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## **APPENDIX 1**

### **PROTECTIVE PROVISIONS**

Port of London Authority's Preferred Form

#### **PART 9B**

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

**119. In this Part**

“Area of Interest” means the areas shown shaded in yellow on the Deep Water Routes Cable Installation Areas (Future Dredging Areas) plan, encompassing the cable corridor crossings of the Deep Water Routes;

“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];

“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

"operation and maintenance plan" means the operation and maintenance plan to be approved under condition 4 of the deemed marine licence for the transmission assets in Schedule [11];

"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];

“specified work” means Work No, 2(c), and any other part of the offshore works forming part of the authorised development including associated development and ancillary works (and 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**

**120.** 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, operation and maintenance of any specified work.

#### **Consultation and notice**

**121.** (1) The undertaker will, prior to commencement of Work no 2(c), obtain the approval in writing of the PLA on:

- (a) the cable specification and installation plan (in so far as that plan relates to any specified work within or which may affect 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 or which may affect 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]

- (c) the operation and maintenance plan (in so far as that plan relates to any specified work within or which may affect the Area of Interest) before any application for approval of that plan may be submitted by the undertaker in compliance with condition [4] 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, postconstruction 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 proposed activities 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 pre-construction monitoring, construction monitoring, postconstruction monitoring 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 clearance of unexploded ordnance within or which may affect 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 or may affect 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 or may affect the Area of Interest no less than 5 business days before such work is programmed to begin.

### **Cable Specification and Installation Plan**

**122.** The cable specification and installation plan referred to in paragraph [3] must be informed by a cable burial risk assessment and set out for Work No.2(c), and 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 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:
  - (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.];
  - (iv) and in all cases (i) to (iii) makes allowance for an ‘over-dredge’ tolerance of 0.5 metres in addition to the stated depths attributable to standard dredging methodology.
- (b) The proposed cable installation methods and measures for management of construction risks;
- (c) Additional cable burial depths required or any other forms of 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) The programme and methodologies for monitoring and the arrangements for the results of these surveys or other construction evidence being made available to the PLA within 10 business days of the undertaker receiving reports of the survey results or evidence to demonstrate compliance with the depths referred to in sub paragraph a) of this paragraph
- (g) Methods and timescales to rectify any issues which may compromise the depth referred to in sub paragraph a) of this paragraph 4.
- (h) A requirement for a process (subject to paragraphs 8 and 9) and timescales (both the undertaker and PLA acting reasonably) for cable re-installation should the level that the cable is such that the under keel clearance specified in Outline CSIP cannot be achieved over the lifetime of the authorised development.

## **Monitoring**

**123.** If following the results of any geophysical surveys carried out using multi-beam echo sounder survey (MBES), it is confirmed that cable exposure or reduction in navigable depth 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].

**124.** 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**

**125.** 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 [ ] 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 requirements of paragraph 4(a) has not been achieved or at any time following installation or maintenance the cable has moved such that the requirements of paragraph 4(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 (8) in relation to the Deep Water Routes.

**126.** 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 4(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 updated cable specification and installation plan required under sub-paragraph (2) will be submitted to the PLA for approval under paragraph 3, and the provisions of both this paragraph and paragraph 4 will apply to that updated cable specification and installation plan.

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

### **Provision of as built details**

**127.** 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.

### **Indemnity**

**128.** The undertaker will pay to the PLA its proper and reasonable legal costs, professional fees and disbursements incurred in connection with reviewing the details submitted to the PLA pursuant to this Part 9B of Schedule 9 and Part 9A of Schedule 9.

(2) The undertaker is responsible for and must make good to the PLA all financial costs, charges, damages losses or expenses which may be incurred reasonably or suffered by the PLA by reason of—

- (a) the construction or operation of Work no 2(c), any specified work or its failure or a failure to adhere to the requirements of this Part 9B of Schedule 9 or Part 9A of Schedule 9;
- (b) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged on the construction or operation of a specified work or Work no 2(c) or with any failure, and the undertaker must indemnify the PLA from and against all claims and demands arising out of or in connection with a specified work, Work no 2(c) or any such failure, act or omission or any failure to adhere to the requirements of the this Part 9B of Schedule 9 or Part 9A of Schedule 9.

(3) The fact that any act or thing may have been done—

- (a) by the PLA on behalf of the undertaker; or
- (b) by the undertaker, its employees, contractors or agents in accordance with plans or particulars submitted to or modifications or conditions specified by the PLA, or in a manner approved by the PLA, or under its supervision or the supervision of its duly authorised representative, does not (if it was done or required without negligence on the part of the PLA or its duly authorised representative, employee, contractor or agent) excuse the undertaker from liability under the provisions of this paragraph.

(4) The PLA must give the undertaker reasonable notice of any such claim or demand as is referred to in sub-paragraphs (1) and (2) and no settlement or compromise of it is to be made without the prior consent of the undertaker.

### **Transfer of the benefit**

11 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**

12 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.

## **APPENDIX 2**

### **PROTECTIVE PROVISIONS INCLUDED BY VEOWFL IN THE DRAFT DCO**

### **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 ordinance 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;