

THE INFRASTRUCTURE PLANNING (EXAMINATIONS PROCEDURE) RULES 2010

NORTH FALLS OFFSHORE WIND FARM DEVELOPMENT CONSENT ORDER

PINS REFERENCE EN010119

**DEADLINE 6: PORT OF LONDON
AUTHORITY'S COMMENTS ON THE
APPLICANT'S RESPONSE TO THE
EXAMINING AUTHORITY'S SECOND
WRITTEN QUESTIONS**

ExQ2	Question to:	Question:	Port of London Authority Response:	Applicant's Response	Port of London Authority's Comments on the Applicant's Response to ExQ2
7. Cumulative Effects					
Q7.0.4	The applicant, Port of London Authority (PLA)	<p>The Cumulative Effects Assessment (CEA) Summary</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 Port of London should have been assessed and included in the summary.</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 "DWR") 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 ("VEOWF"), 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> <p>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.</p>	<p><u>Bullet points 1-2 of [REP4-087]:</u></p> <p>Despite updates in other plans and projects' status since the submission of these assessments (e.g. Sea Link is now undergoing examination and Five Estuaries Offshore Windfarm is waiting for its DCO decision) the outcome of the assessment remains unchanged. The assessments have considered the best available information at the time of writing and taken into account the potential for overlap between North Falls construction/operation activities and therefore it is the Applicant's position that no changes are required to Table 1.1.</p> <p><u>Bullet points: 3-4 of [REP4-087]:</u></p> <p>The Applicant clarifies that the distances are:</p> <ul style="list-style-type: none"> • North Falls array area to VE array area – 0km • North Falls offshore cable corridor to VE offshore cable corridor – 0km • North Falls array area to VE offshore cable corridor – 0.7km <p>North Falls offshore cable corridor to VE array area – 12.9km</p> <p>While these are not all listed in Table 1.1 of REP1-059 for brevity, the purpose of this table is to determine projects which are screened in/ out of the CEA, and the Five Estuaries project is clearly screened in. The cumulative effects of all aspects of North Falls and Five Estuaries, where applicable, have been fully assessed in the ES.</p> <p><u>Bullet point: 5 of [REP4-087]:</u></p> <p>The Applicant notes that the offshore projects which were assessed in the cumulative effects assessment in ES Chapter 31 Socio-economics have been omitted from the CEA Summary [REP1-059]. An update to the CEA Summary will be provided at Deadline 6. As these were assessed in the Socio-economics assessment, shown in ES Chapter 31 Socio-economics [AS-010/011] there will be no change to the assessment conclusions.</p> <p>(i) Embedded mitigation is described in Section 15.3.4 of ES Chapter 15 Shipping and Navigation [APP- 029], The tables in the CEA summary, including Table 1.11 list additional mitigation and the SEZ is included as it was not part of the embedded mitigation when undertaking the CEA.</p>	<p><u>Bullet points 1-2 of [REP4-087]:</u></p> <p>Whilst the outcome may remain the same, the inputs have changed with time and it would be good practice to reflect this in the Cumulative Effects Assessment ("CEA") Summary, as well as mentioning the potential for North Falls crossing Five Estuaries (or vice versa); acknowledging that the Applicant is proposing to update the CEA Summary at Deadline 6.</p> <p><u>Bullet points: 3-4 of [REP4-087]</u></p> <p>No further comments</p> <p><u>Bullet point: 5 of [REP4-087]:</u></p> <p>The PLA note that an updated CEA Summary is to be provided at Deadline 6.</p>

				<p>A full list of all mitigation is provided in the Schedule of Mitigation [document reference 2.6, Rev 2]</p> <p>(ii) The references to the ports of Felixstowe and Harwich have been made as these are indicative service ports for North Falls. With regards to the PLA comments, it should be noted that there are two deep water routes (Sunk and Trinity) into the London ports. The Outline Navigation and Installation Plan (oNIP) [REP4-011/012] prevents concurrent working across both access routes by the relevant projects (i.e. North Falls, Five Estuaries and SeaLink), thereby always giving one access route into/ exit route from the ports. Further to this, the expected time for crossing the port channels with the cable burial tool will be of the order of 1.5-2 days. Therefore, the potential socio-economic impacts on the London ports have been minimised as one route would always be open. The access routes are being discussed in ongoing meetings with the ports and the tables in the oNIP will be updated at Deadline 6.</p> <p>(iii) Not directed at the Applicant.</p>	<p>(ii) In relation to the comments about there being two deep water routes ("DWRs") and that the oNIP prevents concurrent working, what the PLA was requesting was for the socio-economic impact to be assessed for the Port of London and mitigation measures to be set out in the same way as other ports. It is still unclear why the Port of London was initially left out of the consideration..</p> <p>The potential impacts for the Port of London are not simply based on the time it takes to lay the cables. Moreover we are not just dealing with one cable being laid. Work 3A provides for up to two cable circuits between Work No. 2 and Work No. 4A, including one or more cable crossings and cable circuits can be bundled as one cable or take the form of separate cables. The PLA understand that we are dealing with the laying of 4 cables.</p> <p>As indicated in the PLA's response to this question. 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 prevent dredging to the required depths (-22m Chart Datum).</p> <p>There are also the shorter-term impacts associated with the construction of the scheme set out in the PLA's Written Representation [REP2-056] sections 5 to 11. This includes construction and maintenance vessels impacting not only 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>Regarding the reference to one of the two DWRs being available, the Sunk DWR is deeper than the Trinity DWR so should this be unavailable during construction then this may mean that deeper draughted vessels are unable to enter or exit the Port. Furthermore, if vessels which are restricted to departing via the Sunk DWR cannot use it, they would have to remain on berth, as there is nowhere to stage them. This would cause additional delays to any inbound vessels due to take their berths.</p> <p>In the PLA's experience it is also not uncommon for cable laying projects to be delayed during construction due to the weather. Vessels may as best they can plan their journeys into/out of the Port of London to avoid cable laying activities at the DWRs but the laying of the cable is then delayed which has a knock on impact on the vessels journey.</p>
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Q7.05	The applicant	<p>Offshore Cumulative Effects Assessment Plan</p> <p>In the PLA Comments on any submissions received at the previous deadline [REP3-067], there is reference to the Offshore Cumulative Effects Assessment Plan in the Appendix to the applicant's Response to Written Questions [REP2-021]. Will the plan be updated to show the export cable corridor for NFOWF as requested by the PLA?</p>	-	An updated version of the Offshore Cumulative Effects Assessment Plan is presented in the Appendix to Applicant's Response to ExA's Second Written Questions (ExQ2), submitted at Deadline 5 [Document Reference 9.82, (rev 0)]. The Applicant notes that the PLA requested the Offshore Cumulative Effects Assessment Plan show the Five Estuaries cable corridor (as opposed to the North Falls cable corridor).	The update to Offshore Cumulative Effects Assessment Plan is welcomed by the PLA.
9. Development Consent Order					
9.0 Articles Part 2 – Principal Powers					
Q9.01	The applicant, Port of London Authority (PLA)	<p>Article 2 – (Interpretation) definition of commence</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 ("oNIP"), the outline cable specification and installation plan ("oCSIP") and the outline sediment disposal plan ("oSDMP") collectively referred to as "the Mitigation Plans", are only required to be approved in the Deemed Marine Licence – Transmission Assets (Schedule 9) of the dDCO [REP4-004] ("DML") 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>	<p>(i) Question not addressed to the Applicant.</p> <p>(ii) The PLA's point in relation to the drafting definition of "commence" only arises in the event there are Protective Provisions as it relates specifically to how "commence" would be defined in any such Protective Provisions. The Applicant's understanding of the wider concern is that PLA is requesting to be consulted in relation to relevant pre-construction surveys and monitoring. The pre-construction surveys and monitoring relevant to the DWRs form part of the Outline CSIP [REP4-039] and Outline NIP [APP-259]. The Transmission assets DML, Schedule 9, Condition 22(1) has been updated at Deadline 5 (dDCO Rev.6) so that the PLA must be consulted by the MMO in respect of the final CSIP and NIP (and sediment disposal management plan), which must be in accordance with the outline plans, before their approval.</p>	<p>(ii) The Applicant response is the wrong way round. The issue with the definition of commence arises if the PLA do not get protective provisions, not if the PLA do get protective provisions.</p> <p>The PLA acknowledges that Schedule 9 has been updated which requires consultation with the PLA on certain documents before activities 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>The NIP is to apply "from the start of offshore construction activities." It needs to be clear when this is i.e. is it from "commencement" as defined in the dDCO which would be of concern to the PLA.</p>

Q9.02	PLA	<p>Article 2 (Interpretation) definition of maintenance</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>	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.	-	
Q9.04	The applicant, PLA	<p>Article 5 - Benefit of the Order</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 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].</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> <p>(ii) Is addressed to the Applicant.</p>	<p>(i) Question not directed at the Applicant</p> <p>(ii) Please refer to the Applicant's response to Q9.0.1. The dDCO has been updated at Deadline 5 (dDCO Rev. 6) addressing the concerns of the PLA and protecting its interests.</p> <p>As those updated DCO provisions would continue to apply in the event of a Transfer of Benefit under Article 5, no drafting amendments are required.</p>	<p>(ii) There are no changes dealing with transfer of benefit under Article 5. If the benefit is transferred then the PLA would wish to be advised of the name of the transferee so that the PLA is clear who will be discharging the conditions and addressing the PLA's concerns.</p>
9.1 Schedule 1 Part 3 – Requirements					
Q9.1.1	The applicant, London Gateway Port Limited (LGPL), PLA	<p>Requirement 2 (3) – Offshore design parameters</p> <p>The applicant's post hearing summary [REP4-034] confirms that the applicant has</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:	The Applicant has since Deadline 4 met with LGPL and received further proposed updates to the drafting from LGPL. The Applicant has considered the LGPL's requests and made further updates to	The changes are welcome. The Requirement should reference the authorised development rather than just "Work No. 3 and any associated

		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>"(3) Any part of Work No. 3 and any associated development the authorised development located within the following areas shown on the Deep Water Route Cable Installation Area (Future Dredging Depths) Plan, must be designed, installed, operated 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>(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)."</p> <p>As set out in the PLA comments on deadline 4 submissions the area for deeper cable burial has not yet been agreed.</p>	Requirement 2(3) in the dDCO Rev. 6 submitted at Deadline 5.	<p>development and include sub-paragraph (4) in the PLA's response.</p> <p>As set out in the PLA comments the area for deeper cable burial has not yet been agreed.</p>
9.2 Schedules 8, 9 and 10 – Deemed Marine Licence under the 2009 Act					
Q9.2.1	MMO, MCA, PLA and London Gateway Port Limited	Depths in the Deep Water Routes 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.	It is not clear to the Applicant what the PLA means by 'wishing to secure parity' with the VE DML. The Applicant has made further updates to the dDCO and Schedule 9 DML at Deadline 5 which address a number of the comments made by PLA. The Applicant proposes that PLA set out the points in respect of which it thinks there is 'disparity' with justification as to why the changes are reasonable and necessary in the context of North Falls (as opposed to simply for the sake of 'parity').	The need for changes to the DML consistent with VEOWF was raised at the ISH and the PLA indicated that this was a starting point and were happy to discuss. The Applicant has, however, refused to engage to move this matter on. The PLA has included with its Deadline 6 submission a full mark-up of the DML that it would wish to see in order for its interests to be properly protected. The changes are not simply for the sake of parity.
9.4 Schedule 14 – Protective Provisions					
Q9.4.1	The applicant, LGPL, PLA	Protective provisions sought by the Port of London Authority and the changes to the protective provisions sought by London Gateway Port Limited			

		<p>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 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>1. There is scope for the final Mitigation Plans to change</p> <p>Outline documents have now been submitted to the examination and whilst the PLA has no objection to</p>	<p>The Applicant notes that none of questions (i) – (iv) are directed to it.</p>	

			<p>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>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.</p> <p>The VEOWF Protective Provisions agreed by VEOWFL included the following:</p> <p>"Remediation</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,</p>		
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		<p>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> <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 Work No. 3 and any associated development <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</p>		
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			<p><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>3. The PLA's concerns are wider than cable burial and include pre-commencement and post construction monitoring and survey work</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 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>		
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		<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>"Consultation and Notice</p> <p>115...</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> <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>		
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			<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 VEOWF 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> <p>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</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>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>5. Ensuring that the PLA has as built plans</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>		
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		(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	<p>The northern approaches for deeper draughted vessels into the Port of London (i.e the DWRs through which deeper draughted vessels must pass through to get into the Port of London) and the Port of London (the largest port in the UK)</p>		

		functions that would suffer such detriment and/or explain why it is not necessary to do so.	<p>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 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?	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.		
		(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 ("ALARP"). The concerns included the</p>		

			<p>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>The protective provisions sought by the Port of London Authority</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 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>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 must pass 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>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>(i)-(ii) Not directed at the Applicant.</p> <p>(iii) The Applicant cannot speak to the reasoning for the approach taken by another project. To achieve consistency with another project is not in of itself a reason to include the same provisions. The Applicant has committed to ensure that there would be no interference with the Deep Water Routes now or in future by securing commitments in respect of the cable burial, and related mitigation commitments to ensure water depths in the relevant areas are safeguarded via the CSIP and SDMP, and to manage concurrent working under the NIP.</p> <p>At Deadline 5 the Applicant has provided further updates to the DCO and relevant DML in Schedule 9 to ensure the ports will be consulted on the relevant plans, see Schedule 1, Part 3, Requirement 2(3), Schedule 9, Conditions 13(3)-(4), 16(15), 22(1), 22(1)(h), and 23(4) (Document Reference 6.1 dDCO Rev. 6). Any PPs would add an additional unnecessary and excessive layer of control, as well as inappropriate for all the reasons set out in the Applicant's Response to the Ports' Request For Protective Provisions [REP4-044].</p>	<p>(iii) The PLA has explained at length above why the current mitigation measures do not give it sufficient protection and has responded to the updates to the dDCO provided at deadline 5 and the relevant DML in Schedule 9 of the dDCO.</p> <p>To add to the concerns previously expressed at deadline 5 the PLA note that in response to Q15.0.9 the Applicant has stated that they require geotechnical information from surveys planned later this year before the Cable Burial Risk Assessment ("CBRA") can be conducted. Therefore the key commitments made in the oCSIP are still subject to the results of the CBRA which will not be available until after the examination closes. Clay is known to be present within the DWRs which can slow cable laying and or require proactive pre trenching to guarantee achievement cable burial depths.</p> <p>In particular statements such as "<i>All reasonable endeavours will be made to avoid the use of cable protection in the vicinity of the Sunk pilot boarding area so as to not reduce the navigable depth in this area.</i>" (Para 40 of the oCSIP) are still subject to considerable uncertainty and could have significant impact on global trade to the Port of London.</p> <p>Included as an Appendix to the PLA's Comments on Deadline 5 Submissions is a legal opinion from Robert Walton KC which supports the PLA's</p>

			(iii) Is for the Applicant		position that the Applicant's suggestion that the PLA is acting unreasonably, and that by extension it would be unreasonable for the Examining Authority to recommend / the Secretary of State to require the protective provisions that the PLA is seeking, is manifestly misconceived.
16. Socio – economic Effects					
Q16.0.6	The applicant	<p>Port of London Authority – Temporary impacts</p> <p>Environmental Statement Chapter 31 Socio-economics [APP-045] Table 31.58 presents a minor adverse effect (not significant) for wider economic effects from disruption to shipping and navigation for the construction stage.</p> <p>(i) Could the applicant advise to what extent has the socio economic assessment in Environmental Statement Chapter 31 [APP-045] considered the concerns raised by the Port of London Authority (PLA) [REP2-056], regarding temporary impacts, resulting from cable laying and repair, pre and post construction surveys and interactions with third party schemes (simultaneous operations)?</p> <p>(ii) What assumptions were made for cable depths and crossings and do these need to be reviewed in light of the PLA's requirement for a water depth of 22m below Chart Datum [REP2-056]?</p>		<p>(i) In [REP2-056] the Port of London Authority (PLA) raised concerns that North Falls may cause economic disbenefits to the port and disagreed with the Applicant's conclusion in ES Chapter 31 Socio Economics [APP-045] that the potential economic impacts of the Project would be concentrated on the ports of Felixstowe and Harwich, with all other ports being scoped out of the assessment. The PLA noted that, to accommodate existing and predicted future vessel sizes, it needs to safeguard access via the deep water routes (DWRs) for vessels with a draught of 20m. They noted that, in the event that it is not possible for vessels of this size to enter the port via the DWRs, it would limit the quantum of trade within the Port. It should be noted that there are two deep water routes (Sunk and Trinity) into the London ports. The Outline Navigation and Installation Plan (oNIP) [REP4-011] prevents concurrent working across both access routes by the relevant projects (i.e. North Falls, Five Estuaries and SeaLink), thereby always giving one access route into the ports. Further to this, the expected time for crossing the port channels with the cable burial tool will be of the order of 1.5-2 days. Therefore, the potential socio-economic impacts on the London ports have been mitigated as one route would always be open. The access routes are being discussed in ongoing meetings with the ports and the tables in the oNIP will be updated at Deadline 6.</p> <p>(ii) The assessment was carried out based on a typical burial rate required to achieve a notional depth. The crossings of the Sunk DW route is circa 1400m long, and the crossing of the Trinity is circa 2100m long. Based on a cable lay rate of circa 150-450m/hr, the length of time taken to cross even the longest routes is a few hours. Cable burial will be added to the final NIP, but is expected to be of the order of 50-150m/hr. Therefore, the length of time expected to cross the longest crossing (Trinity) is expected to be less than a couple of days.</p> <p>If, after ground investigations, it is found that burial tools cannot achieve the required depth on their own, the assumed volumes of material allow for dredging to take place in the vicinity. This would mean construction of a trench to allow the cable to sit at the required depth below the future seabed depth. This is around 2m and depends on the outcomes of the CBRA, and the volumes required are captured by the environmental assessment. If</p>	<p>Response to (i) and (ii):</p> <p>Question (i) is "to what extent the socio economic assessment in Environmental Statement Chapter 31 [APP-045] considered the concerns raised by the Port of London Authority (PLA) [REP2-056], regarding temporary impacts, resulting from cable laying and repair, pre and post construction surveys and interactions with third party schemes (simultaneous operations)". The answer is Chapter 31 hasn't considered these concerns and goes on to note perceived mitigation. As noted with the cumulative assessment the impacts should have been considered as significant effects.</p> <p>In term of the reference to one of the two DWRs always being open, the Sunk DWR is deeper than the Trinity DWR, so should this become unavailable during construction then this may mean that deeper draughted vessels are unable to enter or exit the Port on a given day. There is also concern re maintaining the ability to board or land pilots.</p> <p>Vessels come to the Port of London from significant distances and the PLA is managing multiple vessels entering and exiting the Port of London spread over 70 separate independently run terminals</p> <p>As noted against question 7.04 the potential impacts for the Port of London are not simply based on the time it takes to lay the cables. North Falls has the potential to cause temporary impacts associated with the construction of the schemes as set out in the PLA's Written Representation [REP2-056] sections 5 to 11.</p> <p>When it comes to the time period and programming for the laying of the cables as noted above, we are dealing with more than one cable and the time periods have the potential to be delayed or for programming to change not least due to the weather. There is a need, therefore, for continuous engagement with the PLA to be secured through protective provisions. Moreover as noted in point (ii) ground investigations may necessitate dredging to achieve the required depths. Clay is known to be present within the DWRs which can slow cable laying and or require proactive pre trenching to guarantee achievement cable burial depths so the points made in response to (ii) re the potential need for dredging could be highly likely. It is</p>

				<p>dredging was needed, this would be an episodic task, as it would mean the filling of a hopper that has a discrete volume. This material would need disposing prior to continuing, and hence there would be flexibility to work with the ports and authorities to schedule tasks based on vessel movements. The exact duration would depend on the size of the dredging vessels available for construction.</p>	<p>disingenuous to suggest that the time period for this aspect of the works is a mere 1.5-2 days.</p> <p>It might be possible for vessels scheduling to be changed to avoid programmed works but if that programme changes the rescheduling of the works needs to respect the rescheduled passage of vessels given the delay agreed to already, the volume of vessels and good handled by the Port of London and the vast distances often travelled by these vessels.</p> <p>No comment is made by the Applicant regarding how pre and post construction surveys and interactions with third party schemes (simultaneous operations) could impact the Port of London.</p>
Q16.0.7	The applicant	<p>Port of London Authority – Permanent impacts Could the applicant advise to what extent has the socio-economic assessment in Environmental Statement Chapter 31 [APP-045] considered the concerns raised by the Port of London Authority [REP2-056] regarding permanent impacts, resulting from cable depths and interaction with third party schemes at cable crossings?</p>		<p>It should be noted that the cable crossing locations known at this time are stated in the Export Cable Crossing Zone Plan [REP1-059].</p> <p>By comparing the red-line boundaries (RLBs) of the various projects, it should be clear that there are to be no crossings within the DWRs (the RLBs of the projects do not overlap in these areas), and the intention of the Export Cable Crossing Zone Plan is to show that any crossing of Five Estuaries would take place away from the Sunk Pilot Diamond due to water depth reasons. Therefore, there would be no impacts from crossings on the ability of a 20m draft vessel to access port.</p> <p>The crossing zones shown Export Cable Crossing Zone Plan are indicative because all projects which the Applicant is crossing are still in development stages and hence have not got a fixed location of their infrastructure on the seabed. Therefore, the Export Cable Crossing Zone Plan assumes that the cables being crossed could be anywhere within the indicated zone. It should be noted that the zone extends outside the respective project boundaries as the grade-in/grade-out distances (to bring the cable to the seabed) need to be considered. As the cable location could be anywhere within the boundary, the Applicant may need protection to extend beyond that to allow for the grading in/out of the Applicant's cable and associated protection.</p>	<p>The PLA is concerned that the Applicant will not commit to no cable crossings in the DWR. What is shown in the export cable crossing zone plan is indicative. The PLA has requested on more than one occasion for the Applicant to commit to no crossings in the DWR. If as the Applicant is saying it is clear that there are to be no crossings within the DWR's and away from the Sunk Pilot Diamond then the Applicant should be able to provide this commitment.</p> <p>The Applicant's position is contrary to the position set out in the oNIP (S3.1.6) which states:</p> <p><i>"There is an expectation that cable crossings will be required, most notably with the export cables for Five Estuaries, Sealink and Neuconnect. The indicative zones for such crossings has been shown in the Export Cable Crossing Zone Plan [REP1-059], which shows they will be outside of the DWR areas. As with cable burial or protection, any cable crossings in proximity to the DWRs will be designed so as to again ensure dredging is not restricted within the DWR areas defined in 9.57 Deep Water Route Cable Installation Areas (Future Dredging Depths) and the CSIP."</i></p> <p>For the first time the Applicant is saying <i>"It should be noted that the zone extends outside the respective project boundaries as the grade-in/grade-out distances (to bring the cable to the seabed) need to be considered. As the cable location could be anywhere within the boundary, the Applicant may need protection to extend beyond that to allow for the grading in/out of the Applicant's cable and associated protection."</i> This highlights the need for the areas for deeper cable burial that are to be shown on the Deep Water Route Cable Installation Area (Future Dredging Depths) Plan to be agreed without delay.</p>