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PORT OF
TILBURY
LONDON

PORT OF TILBURY LONDON LTD

LESLIE FORD HOUSE
TILBURY, ESSEX RM18 7EH

9 August 2021

Our Ref: PoTLL/TFGP/EX/13

Dear Ms Williams,

Planning Act 2008

Application for the Thurrock Flexible Generation Plant Development Consent Order

Deadline 7 Submission

1. This letter constitutes the Port of Tilbury London Limited's ('PoTLL') Deadline 7 submission in respect of the examination of the application by Thurrock Power Limited ('the Applicant') for the Thurrock Flexible Generation Plant ('the TFGP') DCO.
2. Following the DCO Issue Specific Hearing and Compulsory Acquisition Hearing on 26 July ("the Hearings"), PoTLL has been in intensive discussions to seek to come to an agreed position on all outstanding matters between the parties.
3. As such, this submission sets out an update of PoTLL's position on the issues that it has raised during the Examination and that were discussed at the Hearings, rather than being a full summary of all of the submissions that it made at the Hearings.

DCO 'Front-End' Matters: Articles and Requirements

4. PoTLL understands that the Applicant intends to agree with the majority of changes proposed by the Examining Authority ("the ExA") in its Schedule of Changes to the DCO ("the SoC"), many of which relate to matters raised by PoTLL.
5. PoTLL understands that the exception to this may be the ExA's suggested changes to Requirement 18; PoTLL therefore reserves its position on this Requirement until it has seen the Applicant's Deadline 7 submissions and will make any necessary further comments and submissions at Deadline 8.
6. PoTLL noted from the SoC that the ExA is not minded to recommend that article 8 of the DCO should include explicit provision for PoTLL to be consulted by the Secretary of State in advance of giving any consent for a transfer of benefit of the DCO.
7. PoTLL has set out in its previous written submissions the reasons why it is important that PoTLL should be consulted under this article given its position as a statutory harbour authority with a range of statutory powers and duties which could be affected by such a transfer.



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8. As was set out at the DCO Hearing by Mr Owen of Pinsent Masons LLP, on PoTLL's behalf, PoTLL is seeking to ensure that there is certainty that it is consulted, rather than leaving this to discretion at the time.
9. This is particularly the case as consenting to the transfer of benefit of DCOs is not a routine matter for government departments, meaning there is not necessarily a set process that can be relied upon to ensure that PoTLL is consulted.
10. Furthermore, it is noted that the consent-giving Secretary of State for the purposes of article 8 (i.e. the Secretary of State for Business, Energy and Industrial Strategy (BEIS)) is a different Secretary of State to the Secretary of State who would have an interest in ensuring that a statutory harbour authority is able to exercise its statutory powers and duties (i.e. the Secretary of State for Transport); as such there is no certainty that the interests of PoTLL would necessarily be thought of by BEIS as a relevant consideration before giving consent under this article, unless PoTLL's interests are expressly mentioned in article 8.
11. It is also noted that it is well precedented in the drafting of transfer of benefit provisions in DCOs for them to include drafting requiring the relevant Secretary of State to consult certain bodies rather than simply relying on discretion at the relevant time.
12. This has included:
 - the Tilbury2 DCO, requiring consultation with the PLA, National Grid and Cadent;
 - the Able Marine Energy Park DCO, requiring consultation with the harbour authority ABP Ports;
 - offshore windfarms DCOs such as those for East Anglia One, Hornsea 2, Hornsea 3 and Dogger Bank Creycke Beck; and other DCOs including Triton Knoll Electrical System, York Potash and Preesall have all required consultation with the MMO; and
 - the Lake Lothing Third Crossing DCO, in respect of Cadent.
13. Given its statutory position and these precedents, PoTLL therefore continues to consider that any DCO for the TFGP should include explicit provision for consultation with PoTLL under article 8 in all cases where Secretary of State consent to a transfer of benefit is required.

DCO Protective Provisions

14. Good progress has been made in respect of the proposed Protective Provisions ("PPs") for PoTLL's benefit within the draft DCO.
15. Further to the ExA's request at the DCO Hearing, a clean version of PoTLL's preferred PPs is appended to this submission at **Appendix 1**; and at **Appendix 2**, a tracked changed version of these PPs, showing changes from the PPs submitted at Deadline 6.
16. It is PoTLL's understanding that with the exception of the matter discussed below, the principle of all matters within the PPs is now agreed between PoTLL and the Applicant, with discussions on precise drafting limited now to the new paragraph 7 and subparagraphs 12(1)(a) and (c) – (d). It is hoped that the parties will be able to submit an agreed set of PPs at Deadline 8.

17. This will be with the exception of paragraph 3 of the Protective Provisions where the Applicant's position is understood to be that it does not accept PoTLL approving the use of the Applicant's powers within the DCO set out in that paragraph – even in their stripped back form now agreed as being limited to land-related powers.
18. PoTLL's position on this is that statutory undertakers being able to consent to the use of land-related powers within DCOs is very well precedented; and that, as set out by Mr Owen at the DCO Hearing in response to concerns raised by the Applicant:
 - the Secretary of State in making a DCO consents not just to each individual power or other provision, but also to its extent and the controls upon it. As such, if the Secretary of State did grant consent for powers in relation to land under PoTLL's control, it would be on the basis that he considered that there was no alternative and there was a compelling case in the public interest and justification to do so for the whole of that land;
 - PoTLL would not be able to unreasonably veto the use of powers over its land, once the Secretary of State has determined that powers should be granted over the full extent of it, and therefore would not lawfully be able to use the consent mechanism in the protective provisions to frustrate implementation of the Scheme;
 - the focus of the consent of the Protective Provisions is therefore on the 'how' of the powers being used, not the 'what' or the 'where'; and
 - it is the case that if PoTLL could reasonably show that the 'how' could not work, then it would be able to reasonably refuse consent, but in doing so it would have to show that it had acted reasonably in determining that such a consent could not be given.
19. As such, PoTLL will continue to require that its consent to land-related powers should be included within its PPs to ensure that its statutory functions are protected. As such, this is likely to remain a point of disagreement between the parties.

Agreement between PoTLL and the Applicant

20. Discussions between PoTLL and the Applicant, and between the Applicant and RWE, have continued apace since the Hearings; and it is anticipated that detailed Heads of Terms will be agreed early this week with the intention that these can be transferred into an Agreement quickly.
21. However, all parties are aware that time is running short and that it may not be possible to complete all Agreements in time for the end of the Examination. As such PoTLL anticipates that, at Deadline 8, if progress has not been made to the extent that legally binding legal agreements can be entered into, it will submit proposed changes to the DCO:
 - which make any additional suggestions for changes to the DCO to remove the causeway which PoTLL considers the Applicant should have made but did not in its response to the ExA's Rule 17 request that is due to be submitted at Deadline 7; and
 - to account for the fact that the Applicant is seeking an 'equivalent' position to the causeway in respect of AILs access before it will consider removing the causeway, which will:

- create a linkage between the use of DCO land-related powers and the Heads of Terms agreed between the parties to ensure that those powers are used in a way that is consistent with what has been agreed between the parties; and
 - provide for the parties to enter into a handling agreement on the principles that have been agreed between the parties in the Heads of Terms, even though PoTLL considers it would in any event be required to enter into such an agreement pursuant to its 'open port duty'.
22. In respect of RWE's' land, the drafting of PoTLL's Protective Provisions provides for the definition of the 'Port' that is protected not being time-bound to the date of the Order. This is important in the context of the following statement that was made in the DCO Hearing by Mr Owen:

To assist the ExA's understanding of the current and future position of RWE's land in respect of the TFGP proposals, PoTLL wish to make the following statement which has been agreed with RWE:

As has been set out in the Examination to date, PoTLL and RWE have been closely working together for some time on the use of RWE's land for the expansion of the Port of Tilbury and for the Thames Freeport. This joint working has the ultimate aim of achieving the sale of RWE's land to PoTLL. These discussions have progressed well, with most commercial points now settled between the parties. It is therefore anticipated that a sale will come under contract during August 2021, with the sale to complete at a later date.

From PoTLL's perspective, if this proceeds as hoped, this will mean that the land will have been acquired for the purposes of its undertaking.

From RWE's perspective, whilst it is actively working towards the above commercial position, it will maintain its objection to the DCO and still seek its protective provisions unless and until such time as any sale has completed. This is because it must preserve its ability to deal with its operational land as appropriate in case the sale to PoTLL doesn't happen as anticipated.

23. Further to this statement, when the sale from RWE to PoTLL completes, the 'Port' definition in PoTLL's PPs will apply to that land. In anticipation of that, the proposed Heads of Terms between PoTLL and the Applicant set out what additional provisions will apply to the RWE land. As such, any DCO amendments submitted at Deadline 8 which link to the agreed Heads of Terms will provide the certainty the Applicant requires as to how it will be able to access its development site over RWE's land in circumstances where PoTLL owns that land.
24. It is understood, however, that the Applicant also needs to account for a scenario where PoTLL does not own RWE's land at the appropriate time. In such a situation, PoTLL considers that the Applicant would still have an 'equivalent' position, as it would either be able to:
- utilise its compulsory acquisition powers, albeit subject to RWE's consent under its PPs, which PoTLL considers would be acceptable for the same reasons as are given in paragraph 18 above; or
 - as is hoped for, obtain access in accordance with terms agreed with RWE in advance, as the RWE PPs will create a linkage similar to that which is proposed for PoTLL, to the heads of terms that are anticipated to be agreed between the

Applicant and RWE this week on terms similar to the PoTLL/Applicant Heads of Terms.

25. In this way, it is anticipated that by the end of the Examination the ExA will be able to recommend the removal of the causeway from the DCO and:

- be able to report that Agreement has been reached by all parties, with associated changes to the DCO to be made; or
- to have in front of it the necessary DCO drafting and documents, with reasoning, to be able to ensure that the Applicant is able to build the Scheme utilising the alternative AILs access, and that RWE and PoTLL's interests are adequately protected.

26. If you have any further questions, on any of these submissions please do not hesitate to contact our legal advisers at Pinsent Masons LLP, [REDACTED] and [REDACTED]

Yours sincerely,

[REDACTED]

PETER WARD
COMMERCIAL DIRECTOR
PORT OF TILBURY LONDON LIMITED

Appendix 1: PoTLL's preferred Protective Provisions (clean)

1. The provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and Port of Tilbury London Limited.

2. In this Part of this Schedule—

“accumulation” means any accumulation of silt or other material (including any materials used to construct the authorised development) which constitutes an impediment to navigation within the Port;

“the affected highways” means the A1089 St Andrews Road, Ferry Road, Fort Road and the unnamed link road between Fort Road and the A1089 St Andrews Road;

“erosion” means any erosion of the bed or banks of the river or any quay or jetty or other structure of whatever nature within the Port;

“plans” includes sections, descriptions, drawings, specifications, proposed method statements, traffic management measures, vehicle movement profiles and hydraulic information including, but not limited to, information as to the intended discharge of water and materials within the Port;

“the Port” means—

- (a) any land (including land covered by water) for the time being owned or used by Port of Tilbury London Limited for the purposes of its statutory undertaking; and
- (b) the Work No.15 Land,
- (c) together with any quays, jetties, docks, river walls and other land (including land covered by water) or works held in connection with that undertaking;

"specified work" means any work, activity or operation authorised by this Order and their associated traffic movements which may affect-

- (a) the Port;
- (b) access to and from premises within the Port;
- (c) streets within the Port;
- (d) navigation within the Port;
- (e) the Port of Tilbury London Limited's ability to carry out dredging to facilitate shipping access to the Port; and
- (e) the functions of Port of Tilbury London Limited as the statutory harbour authority for the Port,

and includes without limitation Work Nos. 10, 11 and 15;

"street" has the same meaning as in the 1991 Act;

“Tilbury2” means the development in the river Thames authorised by the Port of Tilbury (Expansion) Order 2019; and

“the Work No.15 Land” means the land within the limits of deviation of Work No. 15 owned by Port of Tilbury London Limited.

3. (1) The undertaker must not exercise the powers conferred by articles 17 (authority to survey and investigate the land), 19 (compulsory acquisition of land), 22 (compulsory acquisition of rights), 25 (acquisition of subsoil only), 27 (rights under or over streets), 28 (temporary use of land for carrying out the authorised development), 29 (temporary use of land for maintaining the authorised development) and 30 (statutory undertakers) in respect of the Port unless the exercise of such powers is with the consent of Port of Tilbury London Limited.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to the Port, unless preventing such access is with the consent of Port of Tilbury London Limited.

(3) The undertaker must notify Port of Tilbury London Limited prior to exercising its powers conferred by articles 11 (street works) or 13 (temporary restriction of use of streets) in respect of any of the affected highways. Notification under this sub-paragraph will be effected by the undertaker sending to Port of Tilbury London Limited a copy of the documents seeking consent to or approval of the works or measures under those articles at the time as they are submitted to the relevant street authority for such consent or approval. The undertaker must also forward to Port of Tilbury London Limited a copy of any response received by the undertaker from the relevant street authority in response to any such submission for consent or approval under those articles.

(4) Articles 20 and 23 do not apply to the Port and any interests or rights held by Port of Tilbury London Limited unless otherwise agreed by Port of Tilbury London Limited, acting reasonably.

4. (1) At least 56 days before commencing the carrying out or maintenance of any specified work, the undertaker must submit to Port of Tilbury London Limited plans of that work for its approval.

(2) Any approval of Port of Tilbury London Limited under this paragraph—

(a) must not be unreasonably withheld;

(b) may be given subject to such reasonable requirements, conditions or restrictions as Port of Tilbury London Limited may make for the protection of the Port and navigation within the Port and its ability to carry out dredging to facilitate access to the Port, including a requirement for the undertaker to carry out protective works at its own expense; and

(c) must not restrict the powers granted to the undertaker by this Order where such powers do not affect the Port.

(3) The undertaker must carry out any specified work and any protective works required under sub-paragraph (2)(b) in accordance with the plans approved under sub-paragraph (1) or settled under paragraph 16 of this Part of this Schedule

(4) The undertaker must inform Port of Tilbury London Limited in writing of the intended start date and the likely duration of the carrying out of any specified work at least 30 working days prior to the commencement of the specified work.

5. (1) If during the construction of a specified work or after the completion of that work and wholly or partly in consequence of its construction there is caused or created an accumulation or erosion the undertaker, if so requested by Port of Tilbury London Limited acting reasonably, must remedy the accumulation or erosion to the extent attributable to the construction, maintenance or operation of the specified work and, if it refuses or fails to do so as soon as reasonably practicable, Port of Tilbury London Limited may itself cause the work to be done and may recover the reasonable cost of doing so from the undertaker.

(2) For the purposes of sub-paragraph (1)—

(a) in the case of an accumulation, the remedy must be its removal; and

(b) in the case of erosion, the remedy must be the carrying out of such reconstruction works and other protective works or measures as Port of Tilbury London Limited reasonably requires. In exercising the powers conferred by the Order in relation to the affected highways or any street through the Port, the undertaker must have regard to the potential disruption, delay or congestion of traffic which may be caused, and seek to minimise such disruption, delay or congestion so far as is reasonably practicable.

6. (1) Where the undertaker carries out any works to any street within the Port it must make good any defects in those works notified to it by Port of Tilbury London Limited within the period of three months after the date of its removal from occupation of that area of highway or street.

(2) The undertaker may, at its sole discretion and in place of carrying out any works to remedy any defects under sub-paragraph (1), pay to Port of Tilbury London Limited a sum equal to the cost to Port of Tilbury

London Limited of carrying out the required works as calculated by Port of Tilbury London Limited, acting reasonably.

7. (1) Where any event or accident on or affecting any road, street, way or the river Thames, prevents or obstructs access into, out of or within the Port, which event or accident is caused by or attributable to the undertaker, its agents or contractors, or which requires the removal of any item, vessel or vehicle which is preventing or obstructing access and which is owned by, contracted to or otherwise being used on behalf of the undertaker, the undertaker must use its best endeavours to reinstate access or remove the obstruction as soon as practicable.

(2) Port of Tilbury London Limited may, where an obstruction has occurred and has not been removed by the undertaker on request by Port of Tilbury London Limited, remove the obstruction itself and repair any damage caused by the event or accident causing the obstruction.

(3) The undertaker must not at any time prevent or unreasonably impede access by emergency services vehicles to the Port.

8. Any person duly appointed by Port of Tilbury London Limited for this purpose may at all reasonable times, on giving to the undertaker such notice as may in the circumstances be reasonable, enter upon and inspect any part of a specified work; and the undertaker must give to such person all reasonable facilities for such inspection and, if the duly appointed person is of the opinion that the construction of the work poses danger to any property of the Port or person within the Port, the undertaker must adopt such measures and precautions as may be reasonably practicable for the purpose of preventing any damage or injury.

9. (1) Port of Tilbury London Limited may at any time close the Port and exclude access by the undertaker (including access under any power granted by this Order, under any access right howsoever acquired and as provided for in any agreement between the undertaker and Port of Tilbury London Limited) where Port of Tilbury London Limited reasonably considers that it is necessary to do so in response to a request from an emergency service or government agency, any emergency or accident, or an imminent threat to the health or safety of persons or of damage to property.

(2) Port of Tilbury London Limited must inform the undertaker of any closure of the Port as soon as reasonably practicable, including details of the location and extent of the closure and where known, the anticipated duration of the closure.

10. (1) The passage plan to be prepared by the undertaker under Requirement 17(5) must include, but is not limited to, the following matters-

(a) a deconfliction process for use of Work No. 10 and vessels navigating to and from and berthing at berths adjacent to Work No. 10;

(b) a prohibition on use of Work No. 10 within the period between 1 hour before and 1 hour after a scheduled departure or arrival of large vessels at berths adjacent to Work No. 10; and

(c) protocols for sharing of information between Port of Tilbury London Limited and the undertaker to facilitate compliance with paragraphs (a) and (b).

(2) In this paragraph, 'berths adjacent to Work No.10' means the construction materials and aggregates berths constructed and operated as part of Tilbury2 and situated on the river Thames to the west of Work No.10.

11. Where transshipment use of the Port by the undertaker is authorised by Port of Tilbury London Limited (on such commercial terms as may be agreed), the undertaker may not commence such use unless and until a port passage plan in respect of that transshipment has been approved by Port of Tilbury London Limited.

12. (1) The undertaker is to be responsible for, and must make good to Port of Tilbury London Limited all losses, costs, charges, damages, expenses, claims and demands however caused, which may reasonably be incurred or occasioned to Port of Tilbury London Limited by reason or arising in connection with-

(a) the perusal of plans of any specified work, the perusal of those documents prepared by the undertaker under Schedule 2 to this Order (in relation to which Port of Tilbury London Limited is a consultee and for

which purpose reasonably commissions external consultancy support) or under this Part of this Schedule, and the inspection of a specified work;

(b) the costs of alterations to aids to navigation within the Port owned by Port of Tilbury London Limited, laying down moorings or buoys within the Port or carrying out any dredging operations in relation to either of those activities within the Port, as may be necessary in consequence of the construction of a specified work;

(c) the costs, expenses and losses associated with or arising from any obstruction, event or accident on or affecting any road, street, way or the river Thames which prevents or obstructs access into, out of or within the Port which is caused by or attributable to the undertaker or its agents or contractors;

(d) where the undertaker has not reinstated access or removed an obstruction the costs, expenses and losses of Port of Tilbury London Limited incurred in removing the obstruction itself and repairing any damage caused by the event or accident causing the obstruction;

(e) the construction, maintenance or failure of a specified work, or the undertaking by Port of Tilbury London Limited of works or measures to prevent or remedy a danger or impediment to navigation within the Port, or damage to the Port arising from such construction, maintenance or failure, including but not limited to—

(i) any additional costs of dredging incurred by Port of Tilbury London Limited as a result of the construction, maintenance, decommissioning or use of the specified work or the contamination of the riverbed caused by the construction, maintenance, decommissioning or use of the specified work; and

(ii) damage to any, street, plant, equipment or building belonging to Port of Tilbury London Limited that is caused by the construction, maintenance or failure of a specified work; and

(iii) any act or omission of the undertaker or its servants and agents while engaged in the construction, maintenance or use of a specified work.

(2) Without limiting the generality of sub-paragraph (1), the undertaker must indemnify Port of Tilbury London Limited from and against all claims and demands arising out of, or in connection with, such construction, maintenance or failure or act or omission as is mentioned in that sub-paragraph.

(3) Nothing in this paragraph imposes any liability on the undertaker to the extent that any losses, costs, charges, damages, expenses, claims or demands referred to in sub-paragraph (1) are attributable to negligence on the part of Port of Tilbury London Limited or of any person in its employ or of its contractors.

(4) Port of Tilbury London Limited must give to the undertaker notice in writing of any claim or demand for which the undertaker may be liable under this paragraph and no settlement or compromise of any such claim or demand may be made without the consent in writing of the undertaker.

13. The fact that any work or thing has been executed or done with the consent of Port of Tilbury London Limited and in accordance with any conditions or restrictions prescribed by Port of Tilbury London Limited or in accordance with any plans approved or deemed to be approved by Port of Tilbury London Limited under this Part of this Schedule or under Schedule 2 to this Order or to its satisfaction or in accordance with any directions or award of any arbitrator does not relieve the undertaker from any liability under the provisions of this Part.

14. Save to the extent expressly provided for nothing in this Order affects prejudicially any statutory or other rights, powers or privileges vested in, or enjoyed by Port of Tilbury London Limited at the date of this Order coming into force.

15. With the exception of any duty owed by Port of Tilbury London Limited to the undertaker, nothing in this Order is to be construed as imposing upon Port of Tilbury London Limited any duty or liability to which Port of Tilbury London Limited would not otherwise be subject.

16. (1) Any difference arising between the undertaker and Port of Tilbury London Limited under this Part of this Schedule (other than any difference as to the meaning or construction of this Part of this Schedule) will be resolved by expert determination.

- (2) The undertaker and Port of Tilbury London Limited will agree on the appointment of the expert and will agree with the expert the terms of their appointment.
- (3) If the undertaker and Port of Tilbury London Limited are unable to agree on an expert or the terms of their appointment within seven days of either party serving details of a suggested expert on the other, either party will then be entitled to request the President of the Institution of Civil Engineers to appoint an expert of repute with no less than 15 years' experience in the relevant matter, and to agree with the expert the terms of appointment.
- (4) The expert is required to prepare a written decision including reasons and give notice (including a copy) of the decision to the parties within a maximum of two months of the matter being referred to the expert.
- (5) The expert will act as an expert and not as an arbitrator. The expert's written decision on the matters referred to them is final and binding on the parties in the absence of manifest error or fraud.
- (6) The expert's fees, any costs properly incurred by them in arriving at their determination and the costs incurred by the parties under this paragraph will be borne by the parties equally or in such other proportions as the expert may direct.

Appendix 2: PoTLL's Preferred Protective Provisions (tracked changes)

1. The provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and ~~the~~ Port of Tilbury London Limited.

2. In this Part of this Schedule—

“accumulation” means any accumulation of silt or other material (including any materials used to construct the authorised development) which constitutes an impediment to navigation ~~at the Port or at or in the approaches to~~ within the Port;

“the affected highways” means the A1089 St Andrews Road, Ferry Road, Fort Road, ~~and~~ the unnamed link road between Fort Road and the A1089 St Andrews Road;

“erosion” means any erosion of the bed or banks of the river or any quay or jetty or other structure of whatever nature within the Port;

“plans” includes ~~navigational risk assessments~~, sections, descriptions, drawings, specifications, proposed method statements, traffic management measures, vehicle movement profiles and hydraulic information including, but not limited to, information as to the intended discharge of water and materials within the Port;

“the Port” ~~means~~ means—

(d) ~~(a)~~ any land ~~with the Port of Tilbury held (including land covered by water) for the time being owned or used~~ by Port of Tilbury London Limited for the purposes of its statutory undertaking; ~~and~~

(e) ~~(b)~~ the Work No.15 Land,

(f) together with any quays, jetties, docks, river walls and other land (including land covered by water) or works held in connection with that undertaking;

"specified work" means any work, activity or operation authorised by this Order and their associated traffic movements which may affect-

(a) the Port;

(b) access to, ~~and~~ from ~~and~~ premises within the Port;

(c) streets within the Port;

(d) navigation ~~to and from~~ within the Port;

(e) the Port's of Tilbury London Limited's ability to carry out dredging to facilitate shipping access to the Port; and

(e) the functions of ~~the~~ Port of Tilbury London Limited as the statutory harbour authority for the Port,

and includes without limitation Work Nos. 10, 11 and 15;

"street" has the same meaning as in the 1991 Act; ~~and~~

“Tilbury2” means the development in the river Thames authorised by the Port of Tilbury (Expansion) Order 2019; and

“the Work No.15 Land” means the land within the limits of deviation of Work No. 15 owned by Port of Tilbury London Limited.

3. (1) The undertaker must not exercise the powers conferred by articles ~~3 (Development consent etc. granted by the Order) including in respect of the permitted preliminary works, 5 (maintenance of authorised development), 11 (street works), 13 (temporary restriction of use of streets), 14 (access to works), 15 (traffic regulation), 17 (authority to survey and investigate the land), 18 (removal of human remains), 19 (compulsory acquisition of land), 22 (compulsory acquisition of rights), 25 (acquisition of subsoil only), 27 (rights under or over streets), 28 (temporary use of land for carrying out the authorised development), 29 (temporary use of land for maintaining the authorised development), and 30 (statutory undertakers) and 35~~

~~(felling or lopping of trees and removal of hedgerows)~~—in respect of the Port unless the exercise of such powers is with the consent of ~~the~~ Port of Tilbury London Limited.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to the Port, unless preventing such access is with the consent of ~~the~~ Port of Tilbury London Limited.

(3) The undertaker must ~~consult the~~ notify Port of Tilbury London Limited prior to ~~seeking to exercise~~ exercising its powers conferred by articles 11 (street works) or 13 (temporary restriction of use of streets) in respect of any of the affected highways. Notification under this sub-paragraph will be effected by the undertaker sending to Port of Tilbury London Limited a copy of the documents seeking consent to or approval of the works or measures under those articles at the time as they are submitted to the relevant street authority for such consent or approval. The undertaker must also forward to Port of Tilbury London Limited a copy of any response received by the undertaker from the relevant street authority in response to any such submission for consent or approval under those articles.

(4) Articles 20 and 23 ~~shall do~~ not apply to the Port and any interests or rights held by ~~the~~ Port of Tilbury London Limited unless otherwise agreed by Port of Tilbury London Limited, acting reasonably.

4. (1) At least 56 days before commencing the carrying out or maintenance of any specified work, the undertaker must submit to ~~the~~ Port of Tilbury London Limited plans of that work for its approval.

(2) Any approval of ~~the~~ Port of Tilbury London Limited under this paragraph—

(a) must not be unreasonably withheld;

(b) may be given subject to such reasonable requirements, conditions or restrictions as ~~the~~ Port of Tilbury London Limited may make for the protection of the Port and navigation ~~to and from within~~ the Port and ~~the approaches~~ its ability to carry out dredging to facilitate access to the Port, including a requirement for the undertaker to carry out protective works at its own expense; and

(c) must not restrict the powers granted to the undertaker ~~under~~ by this Order where such powers do not affect the Port ~~or the affected highways.~~

(3) The undertaker must carry out any specified work and any protective works required under sub-paragraph (2)(b) in accordance with the plans approved under sub-paragraph (1) or settled under ~~article 43 (arbitration)~~ paragraph 16 of this Part of this Schedule

(4) The undertaker must inform ~~the~~ Port of Tilbury London Limited in writing of the intended start date and the likely duration of the carrying out of ~~a~~ any specified work at least 30 working days prior to the commencement of the ~~first~~ specified work.

5. (1) If during the construction of a specified work or after the completion of that work and wholly or partly in consequence of its construction there is caused or created an accumulation or erosion the undertaker, if so requested by ~~the~~ Port of Tilbury London Limited acting reasonably, must remedy ~~such the~~ accumulation or erosion to the extent attributable to ~~such the~~ construction, maintenance or operation of the specified work and, if it refuses or fails to do so as soon as reasonably practicable, ~~the~~ Port of Tilbury London Limited may itself cause the work to be done and may recover the reasonable cost of doing so from the undertaker.

(2) For the purposes of sub-paragraph (1)—

(a) in the case of an accumulation, the remedy must be its removal; and

(b) in the case of erosion, the remedy must be the carrying out of such reconstruction works and other protective works or measures as Port of Tilbury London Limited reasonably requires ~~6~~. In exercising the powers conferred by the Order in relation to the affected highways or any street through the Port, the undertaker must have regard to the potential disruption, delay or congestion of traffic which may be caused, and seek to minimise such disruption, delay or congestion so far as is reasonably practicable. ~~The undertaker must not at any time prevent or unreasonably impede access by emergency service vehicles to the Port.~~

76. (1) Where the undertaker carries out any works to any street within the Port it must make good any defects in those works notified to it by Port of Tilbury London Limited within the period of three months after the date of its removal from occupation of that area of highway or street.

(2) The undertaker may, at its sole discretion and in place of carrying out any works to remedy any defects under sub-paragraph (51), pay to Port of Tilbury London Limited a sum equal to the cost to Port of Tilbury London Limited of carrying out the required works as calculated by Port of Tilbury London Limited ~~(acting reasonably)~~.

7. (1) Where any event or accident on or affecting any road, street, way or the river Thames, prevents or obstructs access into, out of or within the Port, which event or accident is caused by or attributable to the undertaker, its agents or contractors, or which requires the removal of any item, vessel or vehicle which is preventing or obstructing access and which is owned by, contracted to or otherwise being used on behalf of the undertaker, the undertaker must use its best endeavours to reinstate access or remove the obstruction as soon as practicable.

(2) Port of Tilbury London Limited may, where an obstruction has occurred and has not been removed by the undertaker on request by Port of Tilbury London Limited, remove the obstruction itself and repair any damage caused by the event or accident causing the obstruction.

(3) The undertaker must not at any time prevent or unreasonably impede access by emergency services vehicles to the Port.

8. Any person duly appointed by Port of Tilbury London Limited for this purpose may at all reasonable times, on giving to the undertaker such notice as may in the circumstances be reasonable, enter upon and inspect any part of a specified work; and the undertaker must give to such person all reasonable facilities for such inspection and, if the duly appointed person is of the opinion that the construction of the work poses danger to any property of the Port or person within the Port, the undertaker must adopt such measures and precautions as may be reasonably practicable for the purpose of preventing any damage or injury.

9. (1) ~~The~~ Port of Tilbury London Limited may at any ~~at~~ time close the Port and exclude access by the undertaker (including access under any power granted by this Order, under any access right howsoever acquired and as provided for in any agreement between the undertaker and Port of Tilbury London Limited) where ~~the~~ Port of Tilbury London Limited reasonably considers that it is necessary to do so in response to a request from an emergency service or government agency, any emergency or accident, or an imminent threat to the health or safety of persons or of damage to property.

(2) ~~The~~ Port of Tilbury London Limited must inform the undertaker of any closure of the Port as soon as reasonably practicable, including details of the location and extent of the closure and where known, the anticipated duration of the closure.

10. (1) The passage plan to be prepared by the undertaker under Requirement 17(5) must include, but is not limited to, the following matters-

(a) a deconfliction process for use of Work No. 10 and vessels navigating to and from and berthing at berths adjacent to Work ~~No.~~ No. 10;

(b) a prohibition on use of Work No. 10 within the period between 1 hour before and 1 hour after a scheduled departure or arrival of large vessels at berths adjacent to Work No. 10; and

(c) protocols for sharing of information between ~~the~~ Port of Tilbury London Limited and the undertaker to facilitate compliance with ~~sub~~-paragraphs (a) and (b).

(2) In this paragraph, 'berths adjacent to Work No.10' means the construction materials and aggregates berths constructed and operated as part of Tilbury2 and situated on the river Thames to the west of Work No.10.

11. Where transshipment use of the Port by the undertaker is authorised by ~~the~~ Port of Tilbury London Limited (on such commercial terms as may be agreed), the undertaker may not commence such use unless and until a port passage plan in respect of that transshipment ~~is~~ has been approved by ~~the~~ Port of Tilbury London Limited.

12. (1) The undertaker is to be responsible for, and must make good to ~~the~~ Port of Tilbury London Limited all losses, costs, charges, damages, expenses, claims and ~~costs demands~~ however caused, which may reasonably be incurred or occasioned to ~~the~~ Port of Tilbury London Limited by reason or arising in connection with-

(a) the perusal of plans of any specified work, the perusal of those documents prepared by the undertaker under Schedule 2 ~~of to~~ this Order ~~and (in relation to which Port of Tilbury London Limited is a consultee and for which purpose reasonable commissions external consultancy support) or under~~ this Part of this Schedule, and the inspection of a specified work;

(b) the costs of alterations to aids to navigation within the Port owned by ~~the~~ Port of Tilbury London Limited, laying down moorings or buoys within the Port or carrying out any dredging operations in relation to either of those activities within the Port, as may be necessary in consequence of the construction of a specified work;

~~(c) any disruption to the flow of commercial terrestrial or marine traffic to, from and within the Port caused by the construction, maintenance, decommissioning or failure of a specified work and any marine or terrestrial traffic associated with it or by the undertaker utilising the powers under article 37, which leads to a financial loss or penalty to the Port of Tilbury London Limited;~~

(c) the costs, expenses and losses associated with or arising from any obstruction, event or accident on or affecting any road, street, way or the river Thames which prevents or obstructs access into, out of or within the Port which is caused by or attributable to the undertaker or its agents or contractors;

(d) where the undertaker has not reinstated access or removed an obstruction the costs, expenses and losses of Port of Tilbury London Limited incurred in removing the obstruction itself and repairing any damage caused by the event or accident causing the obstruction;

~~(e)~~ the construction, maintenance or failure of a specified work, or the undertaking by ~~the~~ Port of Tilbury London Limited of works or measures to prevent or remedy a danger or impediment to navigation within the Port, or damage to the Port arising from such construction, maintenance or failure, ~~including but not limited to—~~

(i) any additional costs of dredging incurred by ~~the~~ Port of Tilbury London Limited as a result of the construction, maintenance, decommissioning or use of the specified work or the contamination of the riverbed caused by the construction, maintenance, decommissioning or use of the specified work; and

(ii) damage to any, street, plant, equipment or building belonging to ~~the~~ Port of Tilbury London Limited that is caused by the construction, maintenance or failure of a specified work; and

(iii) any act or omission of the undertaker or its servants and agents while engaged in the construction, maintenance or use of a specified work.

(2) Without limiting the generality of sub-paragraph (1), the undertaker must indemnify ~~the~~ Port of Tilbury London Limited from and against all claims and demands arising out of, or in connection with, such construction, maintenance or failure or act or omission as is mentioned in that sub-paragraph.

(3) Nothing in this paragraph imposes any liability on the undertaker to the extent that any losses, costs, charges, damages, expenses, claims or demands referred to in sub-paragraph ~~(2)~~ are attributable to negligence on the part of Port of Tilbury London Limited or of any person in its employ or of its contractors.

(4) ~~The~~ Port of Tilbury London Limited must give to the undertaker notice in writing of any claim or demand for which the undertaker may be liable under this paragraph and no settlement or compromise of any such claim or demand may be made without the consent in writing of the undertaker.

13. The fact that any work or thing has been executed or done with the consent of ~~the~~ Port of Tilbury London Limited and in accordance with any conditions or restrictions prescribed by ~~the~~ Port of Tilbury London Limited or in accordance with any plans approved or deemed to be approved by ~~the~~ Port of Tilbury London Limited under this Part of this Schedule or under Schedule 2 ~~of to~~ this Order or to its satisfaction or in accordance with any directions or award of any arbitrator does not relieve the undertaker from any liability under the provisions of this Part.

14. Save to the extent expressly provided for nothing in this Order affects prejudicially any statutory or other rights, powers or privileges vested in, or enjoyed by, ~~the~~ Port of Tilbury London Limited at the date of this Order coming into force.

15. With the exception of any duty owed by ~~the~~ Port of Tilbury London Limited to the undertaker, nothing in this Order is to be construed as imposing upon ~~the~~ Port of Tilbury London Limited any duty or liability to which ~~the~~ Port of Tilbury London Limited would not otherwise be subject.

16. (1) Any difference arising between the undertaker and Port of Tilbury London Limited under this Part of this Schedule (other than any difference as to the meaning or construction of this Part of this Schedule) shall will be resolved by ~~arbitration under article 45 (arbitration)~~ expert determination.

(2) The undertaker and Port of Tilbury London Limited will agree on the appointment of the expert and will agree with the expert the terms of their appointment.

(3) If the undertaker and Port of Tilbury London Limited are unable to agree on an expert or the terms of their appointment within seven days of either party serving details of a suggested expert on the other, either party will then be entitled to request the President of the Institution of Civil Engineers to appoint an expert of repute with no less than 15 years' experience in the relevant matter, and to agree with the expert the terms of appointment.

(4) The expert is required to prepare a written decision including reasons and give notice (including a copy) of the decision to the parties within a maximum of two months of the matter being referred to the expert.

(5) The expert will act as an expert and not as an arbitrator. The expert's written decision on the matters referred to them is final and binding on the parties in the absence of manifest error or fraud.

(6) The expert's fees, any costs properly incurred by them in arriving at their determination and the costs incurred by the parties under this paragraph will be borne by the parties equally or in such other proportions as the expert may direct.