



PORT OF  
**TILBURY**  
LONDON

**Section 56(2) Planning Act 2008**

**Application by National Highways Limited for an Order Granting Development  
Consent**

**for**

**Lower Thames Crossing**

**Planning Inspectorate Reference: TR010032**

**WRITTEN REPRESENTATION BY PORT OF TILBURY LONDON LIMITED**

**Deadline 1: 18 July 2023**

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## **1. INTRODUCTION**

### **1.1 Summary**

- 1.1.1 In order to avoid duplication, Port of Tilbury London Limited (PoTLL) requests that the Examining Authority treats PoTLL's Relevant Representation [RR-0863] (PoTLL's RR) as the starting basis for this Written Representation (WR). PoTLL has provided an update to its RR submissions where this is needed, and expanded through additional submissions as required. Where this document does not amend or add to the submissions of PoTLL's RR, the content of that RR should also be read as PoTLL's WR submission without change. In order to assist with navigation in the Examination Library and to ensure it is understood and accessible to all as a complete WR, PoTLL's RR is provided at Appendix 10.
- 1.1.2 Throughout this document, the original Port of Tilbury (now known as Tilbury1) and Tilbury2 are referred to collectively as 'the Port'. Port of Tilbury London Limited, being the statutory harbour authority and operator of the Port, is referred to as PoTLL.

### **1.2 Structure of this Document**

- 1.2.1 In order to assist the Examining Authority (the ExA), this WR has been set out into a series of main categories, covering the impacts of the Lower Thames Crossing Scheme (LTC Scheme) on the Port, with suggested solutions to these impacts where relevant. The document first provides an update to the submissions in PoTLL's RR, which is provided at Appendix 10 for ease of reference.
- 1.2.2 Section 3 then proceeds to explain in more detail the operational nature of the Port as an 'open port' and what this statutory duty on PoTLL means in practice, with the aim that this context will provide better understanding and clarity as to why PoTLL, as statutory harbour authority for the Port, is particularly concerned about the impact of the LTC Scheme, the lack of clarity and lack of clear, binding commitments that the Applicant is willing to agree to, and why the flexibility sought by the Applicant is accompanied by increased risks to the Port that could be avoided or mitigated against simply and effectively, were the Applicant willing to do so.
- 1.2.3 Section 4 Traffic and Transport provides further detail about the construction traffic impacts and how these could be reduced. It also looks at specific concerns around roads within the Port and the need for junction modelling that includes construction traffic, as well as the suitability of the outline Traffic Management Plan for Construction.
- 1.2.4 Section 5 is dedicated to the reasons why the LTC Scheme should be designed and constructed to be what is referred to as 'Tilbury Link Road(TLR)-ready'. This includes a review of the economic benefits, both subjective benefits and the objective benefits to journey time. An estimate, based on the Applicant's modelling for the year 2045, of the quantity of traffic to the Port has been provided. This traffic will be required, following completion of the LTC Scheme, to use the Orsett Cock roundabout due to the lack of any direct connection, further supporting and justifying the importance of 'TLR-readiness'.
- 1.2.5 Section 6 includes concerns about the management of construction workers, and the absence of any safety risk assessment for the use of and interaction with the Port. It also identifies potential opportunities for PoTLL and the Applicant to work together to avoid and minimise environmental impacts through enhanced Port use.
- 1.2.6 Section 7 sets out the potential impacts to the Port of a delay to the LTC Scheme. Section 8 considers policy and the planning balance, including the National Policy Statement for Ports which, in PoTLL's view, should be an important and relevant matter for consideration by the relevant Secretary of State when determining this application for development consent.
- 1.2.7 Finally, section 9 provides an introduction to PoTLL's review of the draft DCO (dDCO). This links to Table 1 in Appendix 4 responding to the matters identified by the ExA in Annex A to the Agenda for

Issue Specific Hearing (ISH) 2, and Table 2 in Appendix 5 identifying other drafting matters in the dDCO that raise concerns. This section also includes an alternative set of draft protective provisions in Appendix 9, drafted on a 'worst case' basis, seeking to protect the Port and PoTLL on the assumption that no changes are made to the management documents, no additional clarity around impacts is provided, and no legal agreement is reached between the Applicant and PoTLL. These draft provisions are intended to distil the concerns of PoTLL and the extent of the protections and solutions required, recognising that these can be tempered by the Applicant taking steps to minimise the potential for harm to be caused. A summary of the framework agreement requested by PoTLL is provided in Appendix 7, and the key points from a draft construction traffic management protocol presented by PoTLL, has also been provided in Appendix 8 for information.

## **2. UPDATES TO THE RELEVANT REPRESENTATION**

### **2.1 Traffic and Transport**

2.1.1 Further representations in this area are included below. PoTLL issued a draft construction traffic management protocol covering the road network essential to accessing and maintaining the operation of the Port to the Applicant on 4 May 2023, and comments were received from the Applicant on 8 June 2023. A call to discuss the protocol took place on 12 June 2023. Following this, recent correspondence from the Applicant indicates that some matters within that protocol may be able to be agreed, but that further discussion is required on others. PoTLL remains committed to finding agreement on this matter, which is fundamental for the continuity, operation and ongoing investment in and development of the Port, impacts on and integrated functioning of the wider area and therefore has provided a copy of this proposed protocol at Appendix 8 in order to assist the ExA.

### **2.2 Ecology**

2.2.1 There has been substantial correspondence exchanged between the Applicant and PoTLL's ecologists including a meeting on 4th May 2023 hosted by the Applicant's consultants Jacobs to go through the ecological points in PoTLL's RR and afford a better understanding of the baseline information the Applicant is working to. Notwithstanding that this has improved that understanding, PoTLL's ecologists remain concerned that there is over-reliance by the Applicant on inaccurate and substantially out of date baseline ecological information generally and with particular respect to the land in which PoTLL has interests. PoTLL's ecologists have continued to release additional and more up to date ecological information to their counterparts for the Applicant, but what remains unclear is the extent, if any, to which this information has been accounted for as further environmental information or incorporated into the processes of impact assessment, applying the mitigation hierarchy, land-use decisions in respect of Work No. CA5 and related land and/or the mitigation and compensation requirements arising (RR paragraphs 7.6-7.11 – Ecological baseline).

2.2.2 The position as stated at 7.12 and 7.13 of PoTLL's RR has not moved on substantially. Detail on matters such as whether the Applicant still intends to construct a conveyor linking Work No. CA5 to the CMAT within Tilbury2 (Plot numbers 21-18 and 21-19) remains uncertain or absent, albeit the Applicant has intimated that there is no intention to do so, whilst at the same time seeking to safeguard and maintain powers in relation to the relevant corridor of land within the dDCO powers and limits. Further information has been requested by PoTLL from the Applicant in relation to proposed temporary uses of the northern tunnel portal construction compound (Work No. CA5), which is defined in the dDCO as including (a) workers' accommodation, (b) batch plants, and (c) a segment cast factory. At PoTLL's request for further information, the Applicant has made reference to aspirations for stores, workshops and materials labs. However, these temporary works remain undefined in both extent and layout. Given that such needs are at present undefined, it is unclear how the mitigation hierarchy has been applied, e.g. in seeking to avoid impacts on ecological receptors that are not uniformly distributed across this area such as Priority habitats and important protected invertebrate communities (RR paragraphs 7.12-7.13 – Impact assessment and mitigation/compensation).

2.2.3 At the meeting with the Applicant's ecologists on 4th May 2023, the digital habitat mapping used for calculations of habitat loss and for determining the Biodiversity Net Gain (BNG) Metric (using version

3.1)<sup>1</sup>, and which is otherwise not in the dDCO submission, was shared via presentation and screenshare. A digital copy of the BNG dataset was not provided until 1 June 2023. PoTLL's ecologists remain concerned that it was demonstrably incorrect in some significant respects, in part due to reliance on aged third party datasets and the suggestion that ground truthing (up to date or historic) has been minimal by the Applicant. The concern that this generates, i.e. that there may be inadequate assessment and insufficient provision for application of the mitigation hierarchy and therefore avoidance, mitigation and compensation within the LTC Scheme, and that this could have knock-on implications for the Port's interests particularly when land is returned to them, therefore remains at this stage (RR Paragraphs 7.14-7.21 – Habitats).

- 2.2.4 There has been a significant shortfall or absence of appropriate coverage of this taxonomic group in the Applicant's assessment and submissions to date. PoTLL has recently released comprehensive and recently collected invertebrate data for the PoTLL land interests to the Applicant and would expect this information to be used to review the robustness of the Applicant's impact assessments and mitigation/compensation provisions in an open and transparent way (RR Paragraphs 7.22-7.25 – Invertebrates).
- 2.2.5 The concerns expressed in PoTLL's RR about the adequacy of the baseline data, impact assessments and/or mitigation/compensation provisions including for reptiles, birds, bats, water voles and badgers currently remain (RR Paragraphs 7.26-7.42 – other fauna (protected species)).
- 2.2.6 PoTLL is not aware of any significant additional and/or supplementary survey work having been undertaken by the Applicant on the Port's land interests, of any substantive engagement in relation to the concerns expressed in the RR. PoTLL is aware of additional land being secured by the Applicant for (primarily) reptile mitigation at Mucking landfill, but significant concerns remain about the mitigation and compensation provisions, their adequacy, and their ability to provide a comprehensive answer to the significant constraints on much of the land affected by Work Nos. CA5, MU27 and MUT4 more generally. In consequence, PoTLL's concerns about knock-on effects on its interests remain. PoTLL is hopeful that the environmental statement will be updated having full regard to the further environmental information provided by it. This data had been offered to the Applicant on previous occasions but had been declined as the Applicant did not wish to contribute to the cost of collecting this data; PoTLL has now provided this free of charge in order that progress may be made and the Examination and necessary assessments properly informed (RR Paragraphs 7.43-7.46 – Conclusions).

## **2.3 Land**

- 2.3.1 Since the RR was submitted, PoTLL has entered into leases and an agreement with the Applicant for four areas of land to be used for Work Nos. CA5/CA5A. A plan showing these areas is included as Appendix 2. A number of land matters, including clauses around contamination and ensuring that the land powers in the dDCO are not utilised except with the express consent of PoTLL, were omitted from the leases and the agreement on the basis that they would be included within the Framework Agreement that is being sought to be progressed between the Parties. As such, whilst PoTLL is encouraged by the progress made, demonstrated by the entering into of those leases, in the absence of those matters being resolved, and given the other land-related matters still outstanding and discussed below, PoTLL's substantive concerns in relation to land matters remain.
- 2.3.2 In respect of land plot 21-10, this plot contains two areas of land that PoTLL is seeking to let to tenants. The Applicant confirmed on 13 July 2023 that those two areas within this plot are not required. The Applicant proposes to add a commitment within the protective provisions in its dDCO

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<sup>1</sup> PoTLL recognises that the Applicant has followed guidance in utilising the metric in place at the time of the Application. However, the recent Longfield Solar Farm Order 2023 requires the BNG calculation to be calculated using the metric 4.0 "or the current version of the metric if this has been superseded when the plan is submitted for approval". Similarly, the recent Boston Alternative Energy Facility Order 2023 refers to the metric "published by Defra", which similarly will require that project's biodiversity off-setting scheme is calculated using the latest metric at the time of that scheme. PoTLL considers that it would be prudent for the Applicant to update its calculations using the latest metric 4.0, to ensure that it is able to provide the resulting quantity of BNG within the LTC Scheme as proposed.

for the benefit of PoTLL to not take temporary possession of those parts of plot 21-10 without the consent of PoTLL, though no drafting to this effect has been shared.

- 2.3.3 PoTLL considers that, if these areas are not required, they should be removed from the Order limits. Changes such as this have been included within the Applicant's first notification of a proposed change, and we note that the Applicant's second notification of proposed changes [PD-024] includes change EA03. This reduces the area over which rights are being sought for an outfall by splitting plot 16-45 into two, such that temporary possession powers are applied to the majority of what was plot 16-45, with rights being acquired over the remaining 26 sqm area. This change is being made following submissions of the Port of London Authority (PLA) during ISH2.
- 2.3.4 PoTLL is mindful that the areas of land concerned make up only part of plot 21-10, and that the solution proposed by the Applicant would require the protective provisions to sub-divide this plot in a manner not shown on the Land Plans. A solution would be to include a further plan, identifying those areas over which the temporary possession powers may not be used, as a certified document, so that it forms part of the dDCO and may be referred to by the protective provisions. Notwithstanding that PoTLL is seeking protection from the use of any compulsory acquisition or temporary possession powers over its landholding without its consent, as is standard drafting for statutory undertakers, this approach is needlessly complex.
- 2.3.5 As it has been established that the Applicant does not need these two areas within plot 21-10, there can be no justification for including temporary possession powers over these areas within the dDCO. In addition, by removing this land from the Order limits, prospective tenants would have greater certainty that the land would not be subject to interference from the Applicant, prior to development consent being granted and the final form of the protections set out. Whilst discussions with the Applicant are ongoing, PoTLL is requesting that the Order limits are updated and the areas of land that are not needed are removed from the Order limits.

## FURTHER WRITTEN REPRESENTATIONS

### 3. THE PORT OF TILBURY AS AN OPEN PORT

- 3.1 In PoTLL's RR, information was provided in respect of the importance of the Port to the national economy. In this WR, PoTLL seeks to build upon those submissions, to ensure that the ExA is fully aware of the Port's position as an 'open port'.
- 3.2 The Port Marine Safety Code, published by the Department for Transport and the Maritime & Coastguard Agency, sets out the general duties and powers of UK harbour authorities, including PoTLL. The Code provides a coordinated approach to the typical statutory provisions in all local enactments establishing UK harbour authorities.
- 3.3 The statutory footing for the Port being an 'open port' is found in the Port of London Act 1968, as applied to the Port and to PoTLL by the Port of Tilbury Transfer Scheme 1991.<sup>2</sup> Section 6 of the 1968 Act provides that, subject to enactments relating to the Port Authority, the byelaws and regulations of the Port Authority, payment of the Port Authority's charges and an exception for hovercraft, the port premises "*shall be open to all persons for the shipping and unshipping of goods and the embarking and landing of passengers*". This provision was expanded to cover the area of Tilbury<sup>2</sup> by article 4 of the Port of Tilbury (Expansion) Order 2019.
- 3.4 Further detail on the impact of the dDCO article 3(3) has been provided in PoTLL's review of the dDCO, in section 9 below. It is sufficient to note here that dDCO article 3(3) would make the 'open port' duty subject to the provisions of a statutory instrument authorising a highway scheme. It cannot have been the will of Parliament that the Planning Act 2008 be used to interfere with the operation of infrastructure that is essential to the functioning and welfare of the UK economy. PoTLL also considers that the National Policy Statement for Ports (NPSP) should be an 'important and relevant

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<sup>2</sup> Itself given effect by The Port of Tilbury Transfer Scheme 1991 Confirmation Order 1992.

matter' for consideration in the Secretary of State's decision-making, for the reasons set out in section 8.2.

- 3.5 The Port Marine Safety Code states that the harbour authority must discharge its responsibilities for *"taking reasonable care, so long as the harbour or facility is open for public use, that all who may choose to navigate in it may do so without danger to their lives or property"*. PoTLL is therefore responsible for ensuring the safety of all persons, vessels, vehicles and goods within the harbour. This is managed primarily through a series of byelaws, security procedures for all vehicles (including HGVs) entering the boundary of the Port, and a dedicated police force. PoTLL is not aware of any risk assessment having been undertaken by the Applicant and has not been asked to contribute to any safety risk assessment in accordance with National Highways' Design Manual for Roads and Bridges (DMRB) GG104 framework, approach and requirements for safety risk assessment in respect of the use of the Port. PoTLL considers that it is necessary and beneficial to all to undertake and share a GG104 framework assessment and for this to include PoTLL's input so that the assessment is properly informed of the practical operational aspects of the Port.
- 3.6 The 'open port' duty has the effect that PoTLL cannot, except in extraordinary circumstances where it would be unsafe, turn vessels away from using its facilities. Within the envelope of the harbour (i.e. the Port), the port infrastructure must be available to all operators. PoTLL is obliged by statute to remain open and operational 24 hours a day, 7 days a week, 365 days a year, and it cannot turn ships or goods away.
- 3.7 The location and facilities of the Port are such that it is frequently the 'safe port in a storm'. The location upstream in the river Thames provides shelter from adverse weather. This means vessels are often diverted from other ports (when adverse weather means it is unsafe to dock in those ports) such as Felixstowe. Similarly, when access to Dover is blocked due to road congestion, vessels will divert to the Port due to its close proximity. The facilities at the Port are particularly sheltered and include deep water facilities, meaning larger vessels can and do divert to it in order to unload cargo to avoid shipments being delayed, ensuring timely shipping – essential in the case of time sensitive and perishable goods.
- 3.8 As a result, the Port operation is dynamic and necessarily reactive. Whilst there are seasonal patterns and identifiable flow changes tied to contracts and other factors, the amount of Port traffic on any given day can be difficult to accurately identify with any specificity.<sup>3</sup> This need for ports to be dynamic is reflected in their broad ranging permitted development rights, ensuring that they can react to changing needs and demand. The range of uses and activities changes with market demand and the demand for goods and services. The make-up of freight also changes, including the quantity of perishable and time sensitive goods. The dwell time of vessels at a port is a significant factor in the cost of shipping, and the ability to ship goods in and out of that port. The operation of the Port is more than just the vessels but includes the road and rail transport to move the goods to and from vessels, as well as the Port infrastructure used.
- 3.9 The Applicant seeks to use Substation Road as the main construction haul route to the north portal construction compounds (Work Nos. CA5 and CA5A) and must therefore interact with this highly variable traffic environment. It must also do so in a way that does not result in a breach of PoTLL's duty to ensure the safety of those using the Port facilities and their property. PoTLL is not able to provide a traffic scheduling service to assist the Applicant, nor is it able to advise with certainty how much Port traffic will be present at a given date or time, particularly with the long forward time horizon presented by the LTC Application and dDCO.
- 3.10 The A1089 is the single point of failure for road traffic arriving at and departing from the Port. North of Marshfoot Road, the road is two-lane dual carriageway with no accesses and is generally free flowing. South of this point, the road is a combination of dual and single carriageway, with at-grade accesses and conflicting vehicle manoeuvres. It is, particularly, this southern section of the A1089

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<sup>3</sup> An estimated (average) of 17,000 vehicle movements are associated with the Port each day, consisting of 14,000 movements at Port of Tilbury (of which around 8,000 are HGVs, and around 3,000 movements at Tilbury2, of which around 2,000 are HGVs).



that is vulnerable to impacts from construction traffic, as any over-capacity in this area has the potential to cause gridlock on the A1089 and adjoining roads.

- 3.11 The rail connection to Tilbury2 also crosses Substation Road. Typical manoeuvres related to the arrival and despatch of freight rail from and to the wider railway network take around 10 minutes a day. The timing of these manoeuvres is subject to the availability of gaps in the network for the train to arrive, and capacity and slots on the wider network may impact when the train leaves the Port. The use of rail freight is increasing. It should be noted that the rail facilities at Tilbury2 support a number of key retail facilities directly served by rail including three trains per day of perishable goods for Tesco, being an important part of their supply chain. The construction materials aggregate terminal (CMAT) supports a number of key manufacturing plants around London as well as supplying significant UK infrastructure projects with raw materials. Both terminals on Tilbury2 are therefore of national significance and must be able to operate unfettered. Under the current drafting, PoTLL's ability to maintain rail priority would be subject to the LTC dDCO, and the Applicant could potentially interfere with rail priority in order to suit and prioritise its construction traffic scheduling. A review of the DCO drafting that has this effect is set out in full in Row 7 of Table 1 in Appendix 4.
- 3.12 PoTLL is seeking to ensure that the Port remains open and operational, in accordance with PoTLL's statutory duty, throughout the construction period and beyond. The management plans, protocols and agreements that form part of the dDCO must ensure that the LTC Scheme does not impact upon PoTLL's ability to comply with its 'open port' duty. This means that the free flow of traffic to and from the Port must take priority and be guaranteed, and disruption by the Applicant must be limited to what is strictly necessary and must be managed appropriately to ensure that Port traffic and transport is prioritised and can still access the Port at all times by all modes. Sufficient agility must be baked into the dDCO and management measures to prioritise and facilitate the Port and PoTLL's operations must be clear and guaranteed.
- 3.13 Various proposals have been suggested to the Applicant that would assist in meeting this goal, including a commitment to using the CMAT facility at Tilbury2 (which would greatly reduce LTC construction traffic on the A1089 and within Tilbury2), real-time traffic monitoring, and utilising the collective learning of PoTLL as to the traffic impacts from the recent construction of Tilbury2. To date, the Applicant has rejected the majority of these suggestions as redline issues, essentially dismissing the concerns as ones that can be effectively managed away via the Outline Traffic Management Plan for Construction (oTMPfC). A summary of the extent of the agreement that PoTLL is seeking from the Applicant, given the lack of clarity over matters such as whether the CMAT will be used, the volume of construction traffic, and the extent and potential delays to the LTC Scheme, is provided in Appendix 7.

## **4. TRAFFIC AND TRANSPORT**

### **4.1 Construction traffic impacts**

4.1.1 PoTLL has significant concerns about the impact of construction traffic on the Port's essential connection to the strategic road network (ECSRN), being the A1089 from the junction with the A13, and the link between the main entrance to Tilbury1 and the entrance to Tilbury2. The Applicant has not had full regard to or addressed these concerns by conducting detailed junction analysis of the ASDA roundabout, despite this having been identified as a risk factor for major congestion:

- by the LTAM wider model;<sup>4</sup>
- by National Highways, requiring modelling of the junction as part of new planning applications; and

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<sup>4</sup> See paragraphs 8.8.12 (that notes that '*a relatively small increase in overall traffic [on the ASDA roundabout] leads to a material increase in additional delay*'), 8.8.33 (that confirms explicitly that additional delay is caused, particularly at the ASDA roundabout, due to the addition of LTC construction traffic), 8.8.44, 8.8.55, 8.8.70 and 8.8.85 of the Transport Assessment [APP-529].

- by PoTLL in its experience of this section of the highway, particularly obtained and experienced in the recent construction of Tilbury2.

4.1.2 During ISH1, the Applicant advised that it was not appropriate to model this junction until later in the process, once detailed design had been undertaken. Furthermore, the Applicant has consistently suggested to PoTLL that such modelling is not required, on the basis that the impacts identified in the TA will be able to be acceptably mitigated through the oTMPfC.

4.1.3 The Applicant's approach is not consistent or compliant with the central tenet of environmental impact assessment: that the realistic worst-case scenario is assessed for both direct and indirect effects. Without such an assessment, PoTLL does not consider it possible to say with any confidence that the inherently limited measures in the oTMPfC will be sufficient to mitigate the adverse effects of LTC construction traffic on the Port and particularly at the ASDA roundabout. Further detail is set out below at section 4.4.

## 4.2 Reduction of Impacts

4.2.1 PoTLL's position is that it is essential in demonstrably seeking to meet the mitigation hierarchy to secure methods by which the volume of LTC construction traffic on the A1089, travelling to the main construction compound through Tilbury2, may be significantly reduced. The A1089, being the sole road access to the Port, is critical to the resilience of the Port generally. A key mitigation method is to require the Applicant to use the existing CMAT facility on Tilbury2. Second to this is a requirement that a minimum quantity of construction materials be brought to the site via the river Thames. These must be firm and secured commitments, in order that they can be relied upon by PoTLL in seeking to assess the risks that it must be protected against and to properly inform necessary protective provisions.

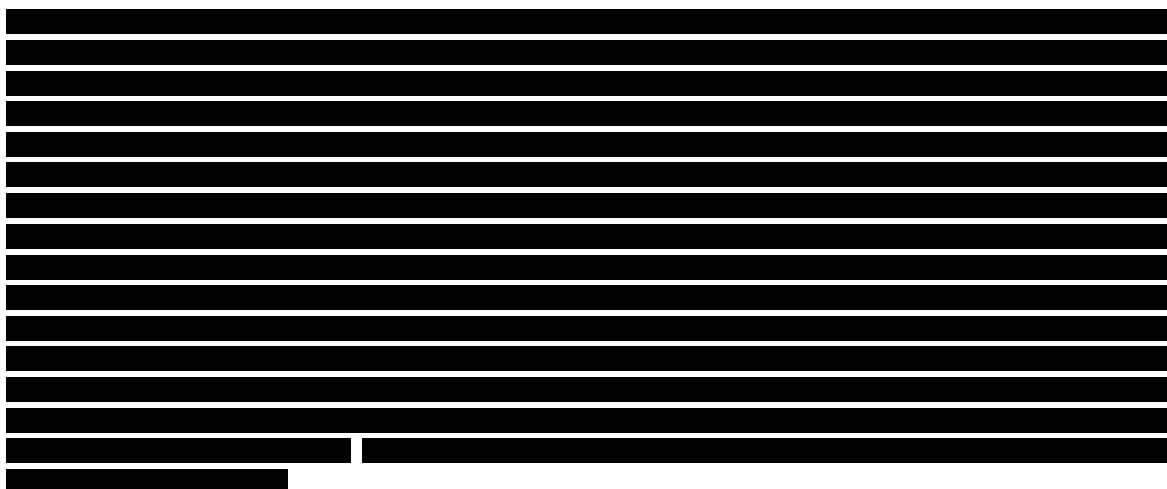
4.2.2 In respect of the CMAT, this would significantly reduce the amount of construction traffic as aggregates would be brought into the Port by river, transported to the CMAT by the existing conveyor, and could be transferred to the construction compound either by a further conveyor (albeit this would interfere with water vole mitigation and habitat established (for which a European Protected Species licence is held) under the Port of Tilbury (Expansion) Order 2019), or through a new access to the CMAT in the south-eastern corner that would limit the majority of construction traffic to that part of Substation Road located to the east of the level crossing, also avoiding impacts associated with the use of the level crossing and therefore rail freight movements. These parts of Substation Road are also not currently in common use by existing tenants. This would result in a substantial reduction in the volume of traffic on the strategic road network (SRN) and within the Port, with the knock-on beneficial reduction in impacts for congestion, air quality, safety and carbon/climate change, as well as facilitating the maintenance of the secure boundary to the Port as it would not need to handle LTC construction traffic at a rate of up to one HGV every 30 seconds.<sup>5</sup>

4.2.3 In response to this matter being raised during ISH1, the Applicant referred to the outline Materials Handling Plan (oMHP) [APP-338]. Paragraph 1.3.7 of that document refers to Port facilities being used for at least 80% by weight of bulk aggregates imported to the north portal construction area. Critically, however, this is a broad, general commitment to using Port facilities, rather than the existing CMAT facility adjacent to the construction compound, and the oMHP states that use of Port facilities is to be "*with onward transport via the road network*". There does not appear to have been consideration of the environmental effects of each measure in identifying the oMHP proposals, such as how differing commitments would lead to different air quality impacts from the correspondingly different traffic flows. It is the Applicant's over-reliance on the road network that PoTLL seeks to avoid, given its critical importance to the operation of the Port and wider negative environmental impacts.

4.2.4



<sup>5</sup> This figure was provided by the Applicant in early discussions but is not included within the Application documentation; PoTLL has been unable to confirm any new or updated estimate of construction traffic flows from the Applicant.



4.2.5 More generally, the oMHP lacks firm commitments, instead noting that multimodal transport options “*would be possible*” or are “*considered feasible*”. As an outline plan, it provides no clarity on what the Applicant’s approach to materials handling will be in practice, with no clear outcomes secured or effectively incentivised.

### 4.3 Junction Modelling

4.3.1 PoTLL has particular concerns over the absence of (shared) detailed modelling of the following junctions, despite being identified using the high-level LTAM modelling<sup>6</sup> as areas of concern:

- the ASDA roundabout during construction phases 3-7 inclusive,<sup>7</sup> expanded to all other phases if significant effects are identified by junction modelling; and
- the Orsett Cock junction during operation (including Port traffic travelling entirely around this junction in order to join the A1089 southbound).

4.3.2 Mindful of the apparently contradictory statements made by the Applicant during ISH1 (noting that detailed construction modelling would be done post-consent, whilst also noting that significant junction modelling had been undertaken and that this supported the case for the LTC Scheme), PoTLL formally wrote to the Applicant on 26 June 2023 to request that it provide VISSIM or similar traffic modelling of the ASDA roundabout within one week (i.e. by 30 June 2023) or advise why this was not available and the timescale by which it could be provided. A copy of this letter is provided at Appendix 1.

4.3.3 As at the date of this WR submission, over three weeks later, no response to or even acknowledgement of this letter has been received by PoTLL.

4.3.4 PoTLL is mindful that it is a core feature of Environmental Impact Assessment that the reasonable worst case scenario is assessed for both direct and indirect effects. A high level assessment has been undertaken using construction traffic figures for the LTAM assessment; it does not follow that these same volumes of construction traffic could not be used within VISSIM junction modelling.

4.3.5 In the event the modelling shows significant adverse impacts to the ASDA roundabout, there are numerous mitigations available to the Applicant, ranging from inclusion of the roundabout within the Order limits and physical upgrades, to a commitment to use the existing CMAT at Tilbury2 to remove

<sup>6</sup> These concerns are in addition to PoTLL’s concerns as to the information shared in respect of the LTAM assessment - see paragraph 4.15 of PoTLL’s Relevant Representation [RR-0863].

<sup>7</sup> Notwithstanding the fact that the LTAM does not assess the peak hour for this road of 08:00 to 09:00, the construction traffic still results in delays that are attributable to congestion at this junction.

construction traffic associated with the import of aggregates and engagement with PoTLL on how to manage the 80% by weight of materials that may be imported through its facilities.<sup>8</sup>

4.3.6 In summary, the Applicant should undertake the necessary junction modelling in order to understand the full impacts of the LTC Scheme (direct and indirect) during the predicted periods for construction and operation, and ensure that it is able to appropriately avoid or mitigate those effects. This must be done as a priority, given the potential that the Order limits may need to be extended, such as to cover the ASDA roundabout.<sup>9</sup> The assessments must also be updated in the event of any material delay to construction, to ensure that the impacts remain as assessed and to ensure that further mitigation requirements are identified and implemented.

4.3.7 The Applicant has indicated that it believes the oTMPfC will be sufficient to mitigate all of the (unassessed) impacts. PoTLL does not agree as there is no substantive evidence to support this assertion. PoTLL therefore considers that the oTMPfC is only one aspect of what must be a multi-faceted approach to minimising and mitigating the likely impacts. Furthermore, PoTLL does not consider that the oTMPfC, in its current form, provides sufficient protection for its undertaking, as discussed in its RR and expanded upon below.

#### **4.4 Outline Traffic Management Plan for Construction**

4.4.1 The oTMPfC is not sufficient to mitigate all the construction traffic impacts, in the absence of supporting assessment and mitigation. The oTMPfC states that in some instances, it may be deemed appropriate that junction modelling is carried out prior to works. It does not state what the results of the modelling would lead to or whether the outcome would result in mitigation or a restriction until that mitigation had been fully secured and realised. There is no benchmark to monitor against as there are no assessments of the impacts predicted to occur during construction. There is also no proper consideration of the impact of traffic management measures on traffic flows. Assessments should include a full capacity appraisal at least using the LTAM and detailed modelling at key junctions on the road network, including the ASDA roundabout. Construction is the stage of the Scheme which generates traffic, rather than re-assigning existing traffic as occurs during the operational stage. It is essential that the construction stage is suitably assessed, consistent with other NSIP schemes (e.g., Tilbury2 and Thurrock Flexible Generation Plant). Most importantly, the oTMPfC is not reactive enough – featuring groups that lack real time effect and who will not be sufficiently nimble enough to deal with the day-to-day reality of the dynamic operation of a working port (and PoTLL's subsisting 'open port' duty).

4.4.2 PoTLL has suggested a Port-specific protocol for managing impacts with the following key features:

- A dedicated engagement plan with PoTLL on traffic management during LTC Scheme construction, to agree a programme for traffic management works and estimating of construction HGVs, with modelling to be undertaken to determine the impacts of LTC construction traffic on the capacity of the essential road network to the Port and agreement of mitigations to be implemented.
- A PoTLL Traffic Management Working Group to meet monthly, supplemented by real-time escalation procedures and reactive and responsive communications.
- Detailed plan of traffic management measures provided 6 months before implementation. Agreed at least 3 months in advance of implementation. Specific clear 'red lines' on what forms of traffic management measures can be introduced at different times of the day on the essential road network to the Port.

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<sup>8</sup> PoTLL is not listed as a consultee for the Materials Handling Plan and the Applicant has refused PoTLL's request to be consulted on this.

<sup>9</sup> PoTLL understands that the boundary of National Highway's permitted development powers excludes the centre of the ASDA roundabout, further constraining the potential to carry out mitigation without this area being included within the Order limits. In any event, given that such works would be associated with the wider DCO, which is an EIA development, such permitted development powers would be unlikely to be able to be utilised in any event, as discussed in PoTLL's RR.

- Contingency plan introduced, traffic management measures modified or withdrawn and construction traffic flows modified should they adversely affect commercial operations and duties in relation to PoTLL's statutory undertaking.
- PoTLL to be provided with at least 28 calendar days' notice of the implementation date of the traffic management measures. Traffic management measures shall also be trialled beforehand to assess impact and feedback to PoTLL.
- Daily real-time communication whilst traffic management measures in place.
- Monitoring of the construction traffic, 3 months prior to construction and during construction. The contractor shall provide a monthly report of traffic flow monitoring and assessments to the working group and where necessary bring forward mitigation measures agreed by the working group. In addition, PoTLL shall be able to request an update at any time and receive a response within 5 working days.
- Incident response plan will be formed by the main contractor and agreed by the working group and kept up to date and fully implemented.

4.4.3 Following recent discussions with the Applicant, significant progress appears to have been made in respect of this protocol. A revised protocol, incorporating what PoTLL understands is now agreed, with clear commentary where matters are understood to remain outstanding, is provided as Appendix 8.

## 4.5 Mitigation Proposals

4.5.1 The Applicant's approach within its Wider Network Impacts Management and Monitoring Plan [APP-545] to mitigate operational impacts of the LTC Scheme is insufficient. The Applicant only provides for monitoring at key locations and does not propose any mitigation for its own impacts. The Applicant does not propose any mitigation for the impacts of the LTC Scheme in relation to the ASDA roundabout and integrated local road network. In the absence of a detailed assessment of the impact of the LTC Scheme on key parts of the road network, it is not possible to determine the likely expected impact and the works and mitigation that may be required.

4.5.2 The approach taken by the Applicant is contrary to the guiding principles of assessment of transport impacts set out in the National Planning Policy Framework (NPPF) and DfT Circular 01/22 '*Strategic road network and the delivery of sustainable development*'. These set out that development should mitigate its impacts on the operation of the SRN. The Applicant has instead proposed that traffic monitoring is undertaken during the operational phase of the LTC Scheme to identify changes in performance of the highway network. The changes identified may or may not be as a result of the LTC Scheme, but the outcome of this monitoring will provide local highway authorities with evidence to inform and enable their intervention case-making.

4.5.3 This approach postdates completion of the LTC Scheme, and therefore provides no opportunity to proactively mitigate its impacts. The approach places responsibility for identifying the impacts of LTC onto local highway authorities, not the Applicant. In the event that the traffic impact monitoring identifies that future investment would be necessary and suitable, the onus is on the relevant local highway authorities to seek funding to develop and bring forward potential solutions for the effects of the LTC Scheme on existing workstreams or future developments. This places responsibility for addressing the impacts of LTC onto the local community and businesses, representing a negative legacy liability and potential cost that is disproportionately imposed on the local area, but is avoided by the Applicant and the Scheme. The likelihood of direct and indirect impacts being mitigated is left unsecured.

4.5.4 In the event the Applicant wishes to retain a post-consent approach to identifying and mitigating against the impacts of its construction traffic, as opposed to amending the Order limits to include the ASDA roundabout to ensure mitigation may be put in place, PoTLL suggests that the requirement to

complete the necessary junction modelling and implement any identified mitigation should be secured by way of a pre-commencement Requirement. Suggested drafting to facilitate this approach has been included in Row 9 of Table 2 in Appendix 5.

## **5. TILBURY LINK ROAD READINESS**

- 5.1.1 The Port is connected to the SRN by one road, the A1089. As explained above, below Marshfoot Road, there are at-grade junctions, of which the ASDA roundabout is one. This roundabout is seen by National Highways as being sufficiently close to capacity in 2023, that new planning applications for development in the area are required to undertake junction modelling to ensure no mitigation is required. The ASDA roundabout was upgraded by PoTLL as part of the Port of Tilbury (Expansion) Order 2019, to ensure it had the capacity required to accommodate the additional traffic flows associated with Tilbury2.
- 5.1.2 A single point of failure for the connectivity of a major port is clearly a significant infrastructure challenge against the active growth at the Port tied to the recent Freeport designation. With the additional traffic associated with best use and therefore intensification at the Port and further development, it follows that ongoing reliance on the A1089 as the sole HGVs-suitable road access to the Port is tied to ever increasing risks. A Tilbury Link Road (TLR) will provide the much-needed resilience of a second access to the Port. This would, in turn, result in future capacity on the existing SRN by the simple expedient that much Port traffic could avoid the A1089 entirely. It would also reduce the congestion at the Orsett Cock junction that is caused by the LTC Scheme. These are benefits not just for the Port, but for the wider Tilbury area and non-Port development that would benefit, not only from the direct link to LTC for Port traffic and public transport that is not included in the current plans, but also by a reduced proportion of Port traffic on a key trunk road through Tilbury and on the Orsett Cock junction.
- 5.1.3 The TLR was included in an early iteration of the LTC Scheme but was removed before the application was submitted. PoTLL supports the submissions of Essex County Council and Thurrock Council, and disagrees with the removal of the TLR from the Scheme. However, noting that it may be difficult to change the application to include a TLR now the Examination is in progress, PoTLL has focused its representations on the need to ensure that the TLR is not impeded, and that wherever possible the construction of the TLR is made easier and simpler with little-to-no additional cost to the Applicant.<sup>10</sup>
- 5.1.4 The Transport Assessment [APP-529] does not provide the detail required to identify the proportion of northbound or southbound LTC traffic that will seek to access the Tilbury area. PoTLL's best estimate (see section 5.3 below) is that at least 10% of all northbound LTC traffic will be transferring onto the A1089. This estimate is based on the Applicant's future year assumptions. These allow for growth at other ports, but assume that traffic volumes at the Port will remain at 2016 levels through to the 2045 Design Year. Growth is anticipated to be between 32% and 46% for this period, increasing the proportion of traffic seeking to use the LTC and connect with the A1089 and Tilbury.
- 5.1.5 No allowance has been made for the growth associated with the Thames Freeport, which, as set out in the RR, should have been considered given its designation in November 2021 and its role as a key plank of Government economic policy.
- 5.1.6 PoTLL is confident that, should the modelling include an appropriate allowance for growth at the Port, it will further demonstrate the clear need for the TLR. Modelling that includes a TLR should also be carried out in order to properly quantify the benefits of including the TLR in the Scheme and, accordingly, why the Scheme must be constructed to be TLR-ready as a minimum. The potential

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<sup>10</sup> PoTLL notes comments by Dr Wright during ISH1 that the TLR was being developed separately by National Highways. PoTLL understands that the TLR is included as a potential project in Road Investment Strategy 3 (RIS3), whilst LTC is a RIS2 scheme. The TLR is therefore not in current development but is anticipated to be considered in future rounds of investment. TLR-readiness would greatly assist the economic case for the TLR, by reducing its financial and environmental costs.

economic benefits of the TLR are set out in more detail in section 5.2. PoTLL notes that these factors may also assist the Applicant in justifying the Scheme in light of the currently 'low' benefit/cost ratio.

- 5.1.7 The TLR will provide a much-needed second access to the Port and the future Freeport development. It is essential that LTC is constructed to be TLR-ready in order to ensure legacy benefits for the local area are secured and maximised. These benefits are potentially far reaching in the area, notwithstanding the role of the Port as an employer.<sup>11</sup>

## 5.2 Economic Benefits

- 5.2.1 During ISH1, the Applicant advised that it had not included the TLR in any economic assessment. It is therefore not clear whether the economic benefits of providing a TLR were assessed prior to its removal from the LTC Scheme as submitted in the DCO Application made to the Secretary of State.

- 5.2.2 PoTLL considers that the journey time savings of the LTC Scheme with the inclusion of a TLR would be substantial, improving connectivity for Tilbury and for road transport for the Port and reducing carbon outputs associated with both journey times and duplicate construction of the haul road / TLR. This is particularly the case when the journey time savings identified by the Applicant are scrutinised in detail, as set out in section 5.3 below.

- 5.2.3 However, in addition to the purely quantitative calculation of value, a qualitative assessment presents the TLR (or alternatively, constructing the LTC Scheme so that the TLR can be enabled and 'slotted in') as a highly beneficial option. In short, the TLR will:

- increase resilience for the Port's road connections by providing a second access to the SRN;
- ease congestion on the A1089 as substantial quantities of Port traffic route directly on and off the LTC Scheme. This will include both HGVs and people working at the Port who may also live south of the river once LTC Scheme is open;
- provide greater public transport connectivity between Tilbury and new housing developments planned in East Tilbury, by enabling a through-route for bus transport;
- improve cycling infrastructure, a key part of the Freeport ethos, to provide safe active travel access to the Port;<sup>12</sup>
- lower carbon impacts and reduced journey times through direct access to the Port in both directions;
- enable straightforward expansion of the Port, including the full potential of the newly-designated Freeport areas;
- reduce the environmental harm that may be caused by replacing and upgrading the haul road, drainage works and junction connectivity, by simply doing this work to the relevant standard at the outset (e.g. 'do it right, do it once');
- provide growth to the local economy, linked to the Port's significant role in the delivery of the Thurrock Local Plan for employment;

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<sup>11</sup> PoTLL recognises the Applicant's comments about changing behaviour, whereby people may live south of the river but work to the north once LTC is built. The poor connectivity with the Port as a major employer to the north of the river is a further lost opportunity to maximise the behavioural changes that the Applicant relies upon to justify the scheme.

<sup>12</sup> For safety reasons, PoTLL seeks to discourage pedestrian access to the Port. During the construction of Tilbury2, new shared use paths and low-traffic 'green routes' were constructed to enable safe access for cyclists to the Port and riverfront paths, and this approach will also be taken as part of the Freeport development. A map of the improvements is contained in the Section 106 Agreement provided in relation to the Tilbury2 DCO, being [REP5-003] of that Examination Library.

- ensure that Port expansion and local growth is enabled and facilitated, rather than made more challenging and costly, such as might occur if the junction is not designed and enabled with the future TLR in mind; and
- reduce economic expenditure by constructing the haul road and supporting infrastructure to the necessary design standards as though they were the future TLR (a not unreasonable suggestion given the duration of the construction period and that the haul road will be in constant use by HGVs during this period; it will need to be constructed akin to a highway in any event).

5.2.4 PoTLL considers that it would be beneficial for the Applicant to review the economic impacts of the LTC Scheme including a TLR. This assessment should include both the objective Level 1 and Level 2 metrics such as journey time improvements, and consideration of more subjective benefits tied with the Port.

5.2.5 The Freeport will increase the economic benefits associated with a TLR, over and above those that can be identified in respect of the existing Port. The Freeport area part covers areas T2, T3 and T4 as shown on the leases plan at Appendix 2. It will add significantly to the £398m Gross Value Added (GVA) that is associated with the existing Port operation. The generality of the designation of the Freeport is intended to boost the UK's trading position in the post-Brexit world.

5.2.6 The development that will take place within the Freeport will embrace sustainability, inclusion and innovation – innovation that covers various initiatives, including the move towards carbon neutral. This can be seen in the recent announcement that PoTLL, RWE and Mitsui are seeking to decarbonise Port operations.

5.2.7 The Thames Freeport is the Freeport closest to London, with 18 million people within 75 miles, both north and south of the river Thames. It will bring goods to one of the densest markets, taking traffic off roads. The Freeport will also benefit from one of the 4 rail terminals at the Port, and will constitute a £250m development.

5.2.8 The Freeport tax area is complemented by a further area of around 90 acres of development land, to the north of the existing Amazon fulfilment centre, east of the ASDA roundabout. This land will be used for logistics warehousing.

5.2.9 PoTLL has made areas available for the LTC Scheme to be constructed, and will facilitate use of the CMAT on Tilbury2, including a conveyor should this be necessary (although, given the interaction with ecological mitigation areas, the conveyor should either be a firm commitment in the dDCO that is fully mitigated or the land removed from the Order Limits). Should there be delays to the construction of the LTC Scheme, this may have knock-on impacts on PoTLL's ability to develop the Port. In view of the co-existence of the LTC Scheme and Port development, including the Freeport, PoTLL sees no reason to avoid further collaborative working to facilitate the TLR and ensure that the economic benefits for the Freeport development can be realised without delay or impediment.

5.2.10 Whilst PoTLL recognises that the LTC Application submitted by the Applicant did not include a TLR, and that any change now to include it may constitute a material change or a change to the nature of the Scheme, PoTLL considers that an assessment of the value provided by including a TLR would entirely justify the construction of all infrastructure in a way that it is TLR-ready and that this should be provided for in the Order and its associated documents.

### **5.3 Journey Time Assessment – Operational Phase**

5.3.1 The Applicant confirmed during ISH1 that the benefit to the Port from the LTC Scheme is reduced journey times using the existing Dartford crossing, the evidence for this being set out in various tables within the Combined Modelling and Appraisal Report - Appendix C - Transport Forecasting Package [APP-522].



- 5.3.2 A detailed review of these tables suggests that the reduced journey times identified from locations to the south-east - the locations where the reductions are most significant – are in large part not via the existing Dartford crossing. The journey time improvements are closely tied to the journey distance reductions, of between 8 and 10 km.
- 5.3.3 Paragraph 1.1.1<sup>13</sup> of the Combined Modelling and Appraisal Report – Appendix C explains that the route journey time analysis has been “*extracted from the LTAM forest skim matrices.*” The paragraph continues to explain what this means, namely that the values have been averaged, and this can lead to very small differences to the length of the average path.
- 5.3.4 PoTLL’s understanding is, therefore, that the tables show the average journey time and distance savings of a model that is using a web of different routes between the stated locations. This is consistent with the LTAM being built to accommodate changes in behaviour.
- 5.3.5 However, the 11 to 5 link, Rochester to Tilbury Port, is shown to benefit from journey distance reductions of 10.3km in the 2045 AM peak (Table 1.7), of 8.6km during the 2045 inter-peak period (Table 1.8), and of 8.6km during the 2045 PM peak (Table 1.9). This is much greater than the ‘very small differences’ in distance of the average path that the narrative advises. It suggests that a large proportion of traffic originating in Rochester will behave differently in the AM peak. It would be of assistance to gain a better understanding of the reasons why traffic outside of the AM peak appears to proactively choose not to use the LTC Scheme to travel to the Port.
- 5.3.6 PoTLL notes, however, that journey distances to the same location could be reduced further, by around 10km, with the inclusion of a TLR. This would also have the beneficial effect of removing traffic destined for the Port from the Orsett Cock junction. The absence of a TLR results in the Scheme providing reduced benefits for the Port than it presently enjoys, through restricted permitted movements at the proposed A13/A1089/LTC interchange. It is notable that 3 out of 4 proposed connections to the A1089 southbound are indirect, necessitating a route via the Orsett Cock junction from the LTC southbound, LTC northbound and A13 westbound. This includes the removal of the existing direct connection from A13 westbound. Therefore, there is not a net improvement to access.
- 5.3.7 In respect of the Orsett Cock junction, paragraph 7.3.26 of the Transport Assessment [APP-529] identifies that, of the northbound traffic on the A122 Lower Thames Crossing in the 2045 AM peak, 56% continues north towards the M25, whilst 47% turns east onto the A13. No figure is provided for how much of that eastbound traffic will proceed to connect with the A1089 southbound.
- 5.3.8 Similarly, there is no assessment as to the amount of traffic that would turn eastbound in the inter-peak timeframe, although this is likely to consist of significant amounts of Port traffic for both Tilbury and London Gateway, being 24-hour operations. Identification of the proportion of inter-peak traffic that proceeds to connect with the A1089 is also necessary to properly understand the effects of the LTC Scheme.
- 5.3.9 An estimate for the likely traffic connecting from the northbound LTC with the A1089 southbound can be obtained from the figures for where traffic originates to connect with the southbound LTC carriageway. Paragraph 7.3.27 of the Transport Assessment provides that 43% of the AM peak traffic originates from the A13 westbound, whilst 13% of the traffic originates from the A1089 northbound. If the same proportion of A13/A1089 traffic is applied to the northbound LTC traffic identified as heading east on the A13, to provide a rough estimation of the quantity of traffic that will connect with the A1089 southbound, the calculation estimates that around 11%<sup>14</sup> of all northbound traffic using LTC in the 2045 AM peak will be destined for locations in the Tilbury area. For the 2045 PM peak,

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<sup>13</sup> The second iteration of 1.1.1. This should be paragraph 1.1.5.

<sup>14</sup> The total % of traffic from A13 westbound and A1089 northbound is 56% of all traffic using LTC southbound. The A1089 is 23.2% of that traffic. Northbound traffic on LTC that turns east on the A13 and potentially connects with the A1089 is 47% of total. 23.2% of that traffic (47\*23%) is 10.9. Rounding, this suggests that 11% of northbound traffic using LTC will use the connection to travel south on the A1089.

this increases to 12%.<sup>15</sup> This estimate also does not include growth at the Port (see paragraph 5.1.4). It is reasonable to assume that the Port, as a major employer and import/export hub, will be the destination for a significant proportion of that traffic.

- 5.3.10 The modelling therefore demonstrates that it is inaccurate to state that the benefits to the Port are through shorter journey times using the existing Dartford Crossing. The modelling shows that traffic will use the LTC Scheme to access the Port from locations south of the river, despite the poor connectivity. Further assessment of the traffic flows suggests that more than a tenth of northbound traffic on LTC will be destined for locations off the A1089, including the Port. The natural conclusion must therefore be that opportunities to enhance connectivity with the Tilbury area have been missed in the design of the Scheme.
- 5.3.11 The proposed rerouting of movements through the Orsett Cock junction leads to increases in journey times at the junction and on the A13 to the east. Any increase in journey times reduces the monetary benefits of the Scheme and worsens the already 'low' benefit/cost ratio. There are therefore clear economic benefits in removing the need for traffic routing to and from LTC to utilise the Orsett Cock junction.
- 5.3.12 The TLR would achieve this aim, significantly reducing the impact on the Orsett Cock junction as no traffic to the Port, whether from LTC or the A13 westbound carriageway, would need to use the Orsett Cock junction. This would provide substantial time saving benefit for both Port traffic and other road users of the A13 and the Orsett Cock junction. The TLR also does not require further infrastructure to be fitted into the constrained area around the A13/A1089/LTC interchange, where the Applicant has stated it would be difficult at best to accommodate direct connections to the A1089 southbound.

#### **5.4 Junction Modelling**

- 5.4.1 PoTLL understands that the Applicant has undertaken junction modelling of the junction to the north of the North Portal, using a proportion of Freeport traffic. This modelling has not been shared with PoTLL, albeit the Applicant advises that the junction design functions appropriately under this use. PoTLL considers that it would be beneficial to provide this modelling to the Examination, to demonstrate the extent to which the Scheme is already designed with a future TLR in mind, and that a binding commitment to TLR-readiness is a small step with significant beneficial consequences to the Port and the wider Tilbury area.
- 5.4.2 PoTLL also notes that, by completing this junction modelling, the Applicant is factoring in a TLR into some of its assessments. However, by not including it in the wider modelling, or the Application as submitted, the Applicant has not recognised or realised the mitigation enabled and additional value to the wider LTC Scheme of incorporating the TLR, from journey time reductions to the Port, reduced congestion for other traffic at the Orsett Cock roundabout and A1089, and the legacy value in assisting development of the East Tilbury area.

#### **5.5 Proposed Methodology for TLR-readiness**

- 5.5.1 In terms of achieving TLR-readiness, PoTLL suggests the following actions:
- (a) include the haul road as a specific Work in the DCO and on the Works Plans, up to and including its junction with the operational access roads connecting with the junction north of the North Portal. The limits of deviation for this could be the whole of Work No. CA5 to retain flexibility within the LTC Scheme as to where it is located;
  - (b) revise the description of Work Nos. 5D, 5E and 5F, being the operational access roads forming the junction north of the North Portal, in the DCO to be public

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<sup>15</sup> The same calculation is applied to the total traffic proportion for the A13 and A1089 of 55%, with the A1089 accounting for 22% of that total. 22% is then applied to the A13 eastbound figure of 56%. This provides that 12% of the total northbound LTC traffic at peak will connect with the A1089 southbound.

highway, noting that this junction may in future be capable of additionally facilitating a link to future housing developments in East Tilbury;

- (c) amend Schedule 5 to the DCO and the classification of roads plans to make provision for the highway to be classified appropriately;
- (d) amend Part 2 of Schedule 6 and the traffic regulation measures plans to include a prohibition of vehicles (except authorised vehicles) on the haul road and operational access roads. Precedent for this approach can be found in Part 2 of Schedule 3 to the A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016;
- (e) allow for the benefit of both specific works to be transferred to a third party under article 8 of the DCO (noting PoTLL's comments on this more generally in row 23 of Table 1 in Appendix 4);
- (f) include the following within the Design Principles [APP-516]:
  - (i) the haul construction access road; and
  - (ii) the operational access roads;
- (g) include the operational access roads and haul road on the rights of way and access plans as public highway (currently shown as new private means of access or other street), with a sufficiently wide highway boundary to allow for future expansion where necessary. Their use as 'operational access only' could be ensured through traffic regulation measures included in the DCO;
- (h) include a DCO Requirement that:
  - (i) the haul road cannot be used for anything other than construction purposes; and
  - (ii) the traffic regulation orders in respect of the haul road and operational access roads cannot be revoked by the undertaker,  
  
until a document has been produced to the local highway authority which demonstrates that:
    - (iii) the use of these roads as public highway would not cause materially new or materially different adverse effects than those reported in the LTC Environmental Statement (inclusive of any additional mitigation measures that may be proposed); and
  - (i) provide in article 10 (construction and maintenance of new, altered or diverted streets and other structures) for the drafting relating to the adoption of highways to apply to the haul road once the DCO Requirement proposed above has been discharged.

5.5.2 This approach would allow for the conversion of the haul road to be carried out efficiently and expeditiously as the principle of planning permission would have been granted already, and enable any necessary expansion of the operational access roads to be undertaken (at least potentially) by use of National Highways' permitted development powers, with private funding if necessary. It would also ensure that the TLR could not be refused for other reasons at a later date.

5.5.3 PoTLL considers this approach to be reasonable as it does not require any change to the assessments already undertaken, nor would it require the Applicant to submit a Change Application,

as the Requirement would ensure that the current assumed position (that it is only used for construction) for the purposes of the ES remains the position. The Applicant assumes a high volume of HGVs within the construction environment, and it is likely that a similar volume of HGVs would use the TLR following the completion of LTC meaning that air quality and noise effects would be the same. It would be for PoTLL (on the basis of it having been transferred the benefit of the haul road and operational access roads Works) to show that no materially new or different environmental adverse effects would be caused, based on the circumstances and information available at that time.

5.5.4 In respect of the operational access roads, permitted development powers are not available where materially new or different environmental effects will occur. This would therefore prevent any unacceptable works from coming forward. Future development in the East Tilbury area would be subject to planning consent that would consider the impacts of additional traffic connecting with the junction, and mitigate for these as necessary.

5.5.5 In this respect, inclusion of TLR-readiness provisions within the Application, in the manner suggested above, would mean:

- (a) no Change Application;
- (b) minor amendments to the DCO Drafting;
- (c) no risk of further environmental harm to the impacts already assessed by the Applicant within the context of the LTC dDCO; and
- (d) separate planning permission in the event materially new or different environmental effects are identified.

5.5.6 PoTLL therefore considers that the Applicant should be obliged to include and secure TLR-readiness provisions within the LTC dDCO.

## **6. SPECIFIC INTERACTIONS WITH THE PORT OF TILBURY**

6.1.1 As advised during ISH1, there are a number of very localised or specific concerns that have not been adequately addressed by the Applicant.

### **6.2 Work No. MU27**

6.2.1 The Applicant proposes to divert multi-utilities along the length of Substation Road, being Work No. MU27. This is shown on Sheet 21 of the Composite Works Plans [AS-026].

6.2.2 During the construction of Tilbury2, PoTLL constructed ducting at the request of the Applicant to the north of the CMAT facility at Tilbury2, along the alignment of the railway. This was undertaken by agreement in order to avoid or minimise further impacts of the LTC Scheme on the Port. PoTLL understood that this ducting would provide for electric cabling, with other utilities being brought in from elsewhere. A wayleave was entered into in respect of this ducting.

6.2.3 PoTLL is therefore unclear why MU27 is required to be laid below Substation Road. In addition to PoTLL not understanding the need for the multi-utility provision on this alignment, the existing ducting beneath Substation Road is at capacity and will therefore not be available to accommodate the multi-utility diversion. At the location of the level crossing, there is also a buried conveyor serving the CMAT facility. In order to lay the (new or diverted) multi-utility, the Applicant will have to route around these obstacles or relocate all utilities and services in this corridor, something that is not possible within the current Order limits, or submerge the multi-utilities at much greater depth, below the existing infrastructure and allowing for safeguarding and necessary safety and stability clearances. This may not be possible, due to both the kinds of utilities to be buried, and the type of tunnelling this would involve, as well as the degree of disruption to the main road through Tilbury2 over which Port traffic and large quantities of LTC Scheme construction traffic are due to travel.

6.2.4 PoTLL is seeking clarification from the Applicant as to why MU27 is required in this location, given the installation of ducting during construction of Tilbury2 intended to minimise disruption to the Port. PoTLL is also seeking clarification as to quite what MU27 is intended to comprise, as the description within Schedule 1 to the dDCO is very broad and general, and could be implemented in a variety of different ways. In the event this work is required below Substation Road, PoTLL seeks clarification as to how the Applicant is proposing to resolve the issue of how constrained this location is within the terms of the Application, so that PoTLL may advise on the practical feasibility and likely consequences of the plans and on any consequential detail that may be needed in its protective provisions.

### **6.3 Railway level crossing**

6.3.1 The priority of rail over the Substation Road level crossing must be guaranteed. Rail freight is a key aspect of Port operations, as highlighted in paragraph 3.11 above. However, the current drafting of the dDCO does not enable PoTLL to ensure that rail traffic is prioritised over the level crossing. This is discussed in more detail in respect of article 3(3) in row 7 of Table 1 in Appendix 4.

6.3.2 Rail manoeuvres on Tilbury2 are subject to a lot of uncertainty and flexibility, as trains may enter the Port from a rail slot between passenger trains significantly before they are due to be loaded. They will then depart in a defined slot that is, itself, subject to disruption on the wider rail network. The level crossing is in use for around 10 minutes a day, but the timing of these closures is necessarily flexible and reactive to the wider rail network.

6.3.3 The main LTC Scheme construction traffic route proposes to use Substation Road and cross the level crossing. LTC traffic will need to be proactively managed to ensure that delays caused by the level crossing being in use do not have negative impacts on construction, such as where construction relies on a regular flow of a large volume of HGVs.

6.3.4 PoTLL is, however, mindful that a commitment to using the CMAT facility could avoid use of the level crossing for large volumes (potentially the majority) of HGVs, either by way of a conveyor or through a new access to the CMAT facility to the east of the level crossing. PoTLL is seeking a binding commitment by the Applicant to use the CMAT in order to avoid a series of impacts, of which the additional management burden of managing HGV traffic around the level crossing is one.

### **6.4 Environmental Mitigation Opportunities**

6.4.1 PoTLL has recently announced that it has teamed up with RWE and Mitsui to launch hydrogen operations at the Port, including that PoTLL has a site on which to build a small scale hydrogen plant. The Applicant meanwhile has announced that it is seeking to use hydrogen as a fuel source.

6.4.2 There are significant opportunities for the Applicant and PoTLL to work together to reduce their respective carbon impacts and help achieve Net Zero ambitions. Those opportunities are, first, to maximise the established, existing opportunities at the Port, particularly the CMAT facility; and secondly, to explore progressive, potential opportunities relating to hydrogen. PoTLL is committed to working with the Applicant to maximise opportunities to avoid and minimise adverse environmental impacts to the greatest extent possible.

### **6.5 Managing construction workers**

6.5.1 There is no proposed requirement for LTC Scheme construction worker vehicles to travel on specified routes between site compounds and the SRN. Additionally, no code of conduct for construction workers is required, and compliance with Port byelaws is neither mandated nor enforceable under the current drafting. See generally PoTLL's discussion of the impacts of article 3(3) of the dDCO in row 7 of Table 1 in Appendix 5, and the draft protective provisions in Appendix 9.

- 6.5.2 Construction workers from the Station Compound and Northern Tunnel Entrance must, if needing to use and rely on private road vehicle transport, be routed along Station Road, Church Road, Coopers Shaw Lane and Gun Hill to Chadwell St Mary. However, this route is not appropriate for significant numbers of construction workers. The route's capacity has not been sufficiently assessed, with no volume to capacity assessment provided for the construction stage of the LTC Scheme.
- 6.5.3 The capacity constraints along this route could lead to conflict with the railway level crossing on Station Road, and construction workers utilising the ASDA Roundabout, which has not been assessed.
- 6.5.4 In light of the number of vehicles and the additional difficulties involved in maintaining the safety and security of Tilbury2, PoTLL is seeking a requirement that construction worker traffic must not be allowed to use the haul road constructed as Work No. CA5 to access and egress the construction compound. This would be secured within the relevant construction travel plan for that compound.
- 6.5.5 PoTLL is also seeking a binding code of conduct for construction workers, enabling those in breach of the code to be prohibited from the Port. This is to both ensure safety of all users of the Port facilities, and to avoid PoTLL experiencing any reputational harm in the wider Tilbury area from any activity or actions outside the Port's control. This code of conduct should dovetail with the Tilbury2 byelaws to avoid duplication or conflict with the existing rules governing behaviour within the Port boundary.

## **6.6 Absence of a Safety Risk Assessment**

- 6.6.1 National Highways' DMRB GG104 sets out the framework and requirements for safety risk assessments by the Applicant. PoTLL notes that a safety risk assessment has been carried out in respect of the tunnel design. However, no assessment is referred to in respect of the extensive use of the Port for the construction of the Scheme.
- 6.6.2 DMRB GG104 requires a safety risk assessment to be carried out in respect of workers, users and other parties, with the objective of identifying hazards, analysing the safety risk, evaluating this, and identifying risk mitigations. The intention is to keep risks to workers, users and other parties as low as reasonably practicable.
- 6.6.3 Noting the scale of interaction with the operational Port, PoTLL believes that a safety risk assessment in accordance with GG104 should have been carried out in respect of the decision to use the Port as the base for construction operations, with construction traffic required to travel through the Port. However, PoTLL has not been approached to provide any data or assistance to identify risks, and no safety risk assessment associated with the Port is mentioned or provided for in the Application.
- 6.6.4 PoTLL is concerned that no safety risk assessment has been carried out, and that this has fed into the Applicant's unwillingness to commit to measures that would, in the view of PoTLL, reduce and manage safety risks. The lack of clarity as to how LTC construction traffic will engage with Port security is one example of an issue that would likely have been clarified as part of risk mitigation in a safety risk assessment. PoTLL would like to see the scope and extent of an assessment engaged on and agreed and then an assessment in accordance with that scope carried out at the earliest opportunity and shared for consideration and response before being finalised, having regard to that response, so that it may inform the Examination and necessary control mechanisms and protections for the Port.

## **7. IMPACT OF CONSTRUCTION DELAY ON POTLL**

### **7.1 Environmental Impacts**

- 7.1.1 The LTC Scheme has already experienced delays, with the initial application for development consent being withdrawn in 2020, and the recent written ministerial statement announcing a two-year delay. The potential for further delays is readily apparent as inflation and higher interest rates hit the

economy. The dDCO is drafted to accommodate further, extensive delay, with an 8 year timeframe to utilise compulsory acquisition powers and preliminary works being sufficient to discharge the Requirement stipulating a time limit for when consent may be implemented.

- 7.1.2 The drafting envisages extensive pre-commencement work, seeking to justify the need for the time limit for the use of compulsory acquisition powers to be extended to 8 years from the expiry of any legal challenge or period for legal challenge to the dDCO to be brought. With any delay for substantial works to start, there are risks that the basis of the Environmental Statement will become out of date and that the Applicant will not be providing adequate mitigation for the Scheme's impacts in changing conditions.
- 7.1.3 By way of example, the construction traffic associated with the LTC Scheme, being temporary, should not be a consideration when determining new planning applications. However, it is difficult to see how this would work in practice in circumstances where a delay coincides with an increase in baseline traffic such that a new development, combined with LTC construction traffic, would result in the road network being over capacity. In that scenario, there would be no onus on the Applicant to mitigate its construction impacts as these do not flow from changes to the Scheme, but from changes to the baseline. However, other development will be effectively stalled or prevented in order to ensure capacity remains in the network for the LTC Scheme's construction traffic. Alternatively, other developers must bear the burden of upgrading the road network to ensure that the baseline is 'reset' to be consistent with that used and assessed within the Environmental Statement, and/or that the design of their schemes can dovetail with the highways design for the LTC Scheme.
- 7.1.4 PoTLL is concerned that the Applicant's approach of postponing detailed modelling until after consent is granted risks the identification of new or materially different environmental impacts to those assessed in the Environmental Statement. If it transpires that mitigation is required that falls outside the Order limits, this will hamper the implementation of the Scheme. The potential for materially new and different environmental impacts increases where a delay will result in the baselines being out of date. It is important to understand the true impacts of construction through modelling, and to ensure that these models are updated before construction is commenced to ensure that the LTC Scheme does, in fact, mitigate its own impacts in line with policies such as DfT Circular 01/22 '*Strategic road network and the delivery of sustainable development*'.

## **7.2 Impact of Construction Delay on PoTLL - Land Impacts and Port Development**

- 7.2.1 In respect of Port development, PoTLL has negotiated leases and an agreement with the Applicant that include significant contingency for delays to occur, whether in respect of the grant of development consent, challenge to that consent, commencement of construction, or during construction. However, extensive delays would increase the likelihood of interaction with PoTLL's own development projects, in particular the delivery of the Freeport. The potential risk, flowing in particular from the current drafting using 'begin' to discharge Requirement 2, of the consent being permanent even if it is not implemented, is a further concern.
- 7.2.2 By way of background and context, PoTLL has entered into leases and an agreement with the Applicant for four areas of land (shown on the plan at Appendix 2) for use as part of Work Nos. CA5/CA5A. The leases are for the period January 2023 to July 2036, enabling the Applicant to implement the Scheme with an allowance for delays before and during construction. The Applicant also benefits from break rights, should construction be completed to schedule and the land no longer required.
- 7.2.3 The leases do not include any right of renewal, and should the Applicant remain in occupation beyond July 2036, this would impact upon PoTLL's ability to develop the leased area shown as T3 / A3. PoTLL considers that there is therefore a long-stop date for the completion of the Scheme of mid-2036, after which time the Scheme would be restricting development of the Port and PoTLL's requirement for its consent to the use of any powers sought in its protective provisions (powers which, by that point, should have fallen away in any event) would kick in.

7.2.4 PoTLL's concern is based in large part around the potential for the dDCO to be capable of implementation from the moment preliminary works are undertaken, as these are already being carried out. Should the LTC Scheme be abandoned, the sterilisation impacts will remain until the DCO's land powers run out after the expiry of the 8 year period, or in the case of the lease areas, unless broken by the Applicant, until 2036. The potential for compulsory acquisition powers to be extended in the event of delay is also a consideration, being a mischief identified in *Tidal Lagoon (Swansea Bay) v SSBEIS (2022)*. PoTLL is keen to minimise the risk of delays to its own developments, and to avoid any added complication of needing to include a detailed scheme of interaction with delayed construction elements of the LTC dDCO within development applications. Every step possible should be taken to provide certainty and encourage the prompt development of the LTC Scheme.

## **8. POLICY AND THE PLANNING BALANCE**

8.1.1 There has been a lack of progress with PoTLL's concerns raised in its RR as discussed in section 2 above, and these concerns have now been exacerbated following the potential revised programme and the consequential impacts of this discussed above.

8.1.2 In this context, PoTLL now provides further consideration of how these matters should be considered in the planning balance whilst insufficient controls are in place and how these matters can be resolved.

### **8.2 National Policy Statement for Ports**

8.2.1 First, in light of the LTC Scheme's fundamental interactions with PoTLL's port operations (and indeed for the Port of London more generally, given the Port of London Authority (PLA) and PoTLL's concerns in relation to dredging), it is PoTLL's submission that the National Policy Statement for Ports ('NPSP') should be seen as an 'important and relevant matter' for the purposes of section 104(5) of the Planning Act 2008.

8.2.2 This position was the case on the Thanet Offshore Extension Wind Farm DCO, due to the impacts to shipping utilising Thames Estuary ports (including PoTLL) by dint of the area of the wind farm's proposed extension being within the sea lanes on the approaches to the ports. As can be easily appreciated, the position on the LTC Scheme is analogous, with both construction itself and the movements to it, taking place in and around the Port.

8.2.3 In the Thanet case, the ExA stated<sup>16</sup> in the Recommendation Report, at paragraph 6.4.7, that: "*it is important and relevant for a decision-maker in regard to a Proposed Development affecting existing or possible future NSIP ports to consider growth assumptions in the NPSP need case for ports and also to consider any circumstances in which development might adversely affect the economic efficiency, competitiveness or resilience of ports*". PoTLL considers, in light of the impacts to the Port from LTC expressed in its RR, oral submissions at the hearings, and in this WR, that this statement should also apply to consideration of the LTC Scheme. Its fundamental concern is that the construction of the LTC Scheme could indeed have that effect, without proper assessment and management measures being put in place, including through the prevention of future growth.

8.2.4 This point is also key in the context of the importance of ports that is identified in the NPSP, which sets out how ports are vital for the UK as an island economy in respect of freight, energy supply and tourism, providing wider local and regional economic benefits and supporting national prosperity.

8.2.5 Government policy, as set out in the NPSP, is to encourage sustainable port development to cater for long-term forecast growth in volumes of imports and exports, in a competitive and efficient manner, ultimately contributing to long-term economic growth and prosperity (NPSP, paragraph 3.3.1). In general, port development is seen as an engine for economic growth, supporting

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<sup>16</sup> The Secretary of State did not disagree with this statement. In paragraph 3.4 of the Secretary of State's decision letter, he confirms that he has had regard to the NPSP "*on the basis that the application affects major ports including some that are NSIP Ports and the prospective development of future Ports, most particularly in the Thames estuary*".



sustainable transport and sustainable development (NPSP, paragraph 3.3.5). The importance of ports is fully recognised in the NPSP, with 95% of all goods in and out of the UK moving by sea, and there being very limited alternatives (NPSP, paragraph 3.4.2). The design of new port infrastructure must support economic growth and the role of ports in the wider supply chain; it follows that new development within and adjacent to a port should seek to do the same, and as a minimum should not harm or restrict future economic growth of that port.

- 8.2.6 The importance of the resilience of ports is set out clearly in the Secretary of State Decision Letter in the Thanet case, which notes paragraph 3.4.13 of the NPSP, to account for “*short term demand peaks, the impact of adverse weather conditions, accidents, deliberate disruptive acts and other operational difficulties without causing economic disruption through impediment to the flow of imports and exports*”. The Secretary of State found the Thanet project came with “*a probability of negative effects to the efficiency and resilience of continuing port operations as well as further port development*” (paragraph 4.24). The adverse effects, insufficiently mitigated, were a “*major net negative*” in the planning balance against the project (paragraph 4.25). The final conclusion of the Secretary of State, as set out in paragraph 6.1 of the Decision Letter, was that approving the project “*would not be in accordance with EN-3 policies relevant to shipping, navigation and ports*”, confirming the importance of the NPSP in considering the policy tests in the other NPS immediately relevant to the proposals.
- 8.2.7 The importance of ports has only increased in recent years given Brexit and with the designation of the Freeports, intended to further economic benefits through the application and provision of different economic regulations to specific areas. The Thames Freeport has been designated since November 2021 and since 3 March 2023, been given permission to formally constitute its board and start operating fully, following approval of the final business case by the Government. The Thames Freeport, part located at the Port and adjacent PoTLL land interests, overlaps with significant parts of the LTC Scheme construction compound, Work Nos. CA5 and CA5A, as shown on the Freeport Areas Plan in Appendix 4 of the RR.

### **8.3 Planning Act 2008**

- 8.3.1 As set out in its RR, PoTLL is concerned that the impacts of the compulsory acquisition of land and rights proposals of the LTC Scheme would amount to a serious detriment to its undertaking pursuant to section 127 of the Planning Act 2008.
- 8.3.2 The question of serious detriment was most recently considered in the Lake Lothing (Lowestoft) Third Crossing Order 2019 Examination, which involved a new opening highway bridge being built over the Port of Lowestoft. At paragraph 8.5.138 of its Recommendation Report, the ExA in that Examination set out that: “*We agree with ABP [the harbour authority] that the carrying on of port operations encompasses existing and future port operations together with the ability of ABP to comply with its statutory obligations and duties as SHA and CHA. We also agree with ABP that serious detriment is a matter of judgement on the scale of impact on the undertaking and that the decision maker should take a holistic approach. In this case, the impact on the port as a whole should be assessed*”. Both parties in that case agreed that the consideration of the serious detriment is not limited to the impacts purely of the compulsory acquisition of the plots in question, but also the wider scheme that those plots facilitate.
- 8.3.3 The question of LTC Scheme construction impacts, and how they are managed both at the time of construction and when considering the impact of any delay, should therefore be seen in the context of whether they would risk and contribute to a serious detriment to PoTLL’s current and future operations as a whole, including its ability to comply with the ‘open port’ duty discussed above.

### **8.4 National Planning Policy Framework**

- 8.4.1 Paragraph 187 of the National Planning Policy Framework (NPPF) states that:

*Planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities (such as places of worship, pubs, music venues*

*and sports clubs). Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or 'agent of change') should be required to provide suitable mitigation before the development has been completed.*

- 8.4.2 Whilst there is not an equivalent policy in the NPS for National Networks (NNNPS) or NPSP, the history of the agent of change principle is one not just of the need for existing pubs and clubs being protected, for which this principle is often associated, but also in relation to ensuring that existing employment land uses are able to be protected<sup>17</sup> (e.g. limestone quarries, logistics hubs and industrial uses and activities) – the point being that development being brought forward should not lead to restrictions on existing businesses.
- 8.4.3 Without the controls sought by PoTLL, the impacts of the LTC Scheme, as set out in the RR, will cause unreasonable restrictions on and to the Port's operations. Furthermore, without certainty as to when the LTC Scheme will come forward, these restrictions will be a blight on the Freeport delivery and PoTLL's future planning, as it will not know how its operations will be impacted in the future.
- 8.4.4 The dDCO and management plans incorporate a large degree of flexibility in how the Applicant may bring forward the LTC Scheme. Whilst this is understandable to a degree, the corollary of this flexibility is uncertainty. The LTC Scheme is an extremely large project that has already experienced delays, from both the initial DCO application being withdrawn and the written ministerial statement. The Scheme is potentially going to suffer from further delays due to rising costs and the uncertain economy.
- 8.4.5 In the context of PoTLL's current operations, and its need to deliver on the Freeport designation, without sufficient controls both the planned LTC Scheme construction timetable and the anticipated delays will:
- (a) at best hinder and at worst directly negatively impact, the Port's function as meeting economic needs resiliently, and its future growth as an important element of the UK's economy, contrary to the NPSP, Freeport and wider delivery;
  - (b) lead to a serious detriment to PoTLL's current and future operations by causing delays on its only road access point;
  - (c) mean that the LTC Scheme will be an agent of change to the area that, without appropriate mitigation, will disrupt PoTLL's established use, operations and business; and
  - (d) put PoTLL in the position where it will be seen to be causing impacts to the existing road network (as a receptor) when taken cumulatively with the LTC Scheme, even if those impacts have been exacerbated by the Applicant delaying its construction.
- 8.4.6 The impacts on the Port's undertaking are not static, and as the Port continues to make best use of Port land and facilities, intensify and expand, the additional construction traffic and its impacts will themselves change. In the period since the LTC Scheme application was first submitted and withdrawn, the Freeport has been designated, and since the present application was submitted, the Freeport has been cleared to commence operations. These changes are significant and the Applicant must ensure that its assessments, modelling and mitigations are based upon the circumstances in which the LTC Scheme is actually proposed to be consented and constructed. Suggested requirements to manage the changing baseline, particularly in the event of delay to the LTC Scheme, are set out in Rows 8 and 9 of Table 2 in Appendix 5.

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<sup>17</sup> See, for example, *Cemex (UK Operations) Ltd v Richmondshire District & Anor* [2018] EWHC 3526 (Admin) and *R (oao Ornuva Ingredients Ltd) v. Herefordshire Council* [2018] [2018] EWHC 2239 (Admin)

- 8.4.7 As set out above, these impacts are also considered unacceptable in policy and statutory terms. As such, alongside the protective provisions (see Appendix 9) and Framework Agreement (see Appendix 7) that PoTLL seeks on the basis of the LTC Scheme as it currently stands, in light of the potential delay, PoTLL is also of the view that the stakeholder actions and commitments register [APP-554] should be amended to provide that the Applicant must provide an annual update from the date of consent, and until construction commences, ensuring an adaptive approach, to include:
- (a) detailed updated construction timescales;
  - (b) updated traffic modelling and assessment to account for the updated construction timescales and any developments that have come forward for permission;
  - (c) updated ecological assessments supported by verified survey data; and
  - (d) confirmation of the adaptive mitigation measures arising from those updated assessments and how they will be delivered including, where necessary, in partnership with developers of other projects.
- 8.4.8 Such a commitment should be excepted from the provisions of paragraphs (2) to (4) of article 61, and PoTLL notes its comments about the wording of paragraph (1) of that article in row 5 of Table 2 in Appendix 5.
- 8.4.9 In proposing this mechanism, PoTLL is not seeking to circumvent the requirement for it (and other developers) to mitigate its own impacts, but is seeking to ensure that the Applicant will be involved in the LTC Scheme's own contribution to a cumulative impact, given its impact and objective to facilitate economic growth, rather than waiting for other developers to 'pick up the pieces' and costs in the meantime.
- 8.4.10 As such, PoTLL would suggest that any register should additionally require that the Applicant commits to being a party to, and to funding the LTC Scheme's contribution to the need for, any section 106 or 278 payment or works commitments that may be necessary for another development which has to account for LTC Scheme construction traffic movement or ecological effects.

## **9. DRAFT DCO**

- 9.1.1 The dDCO contains various instances of novel drafting that cause concern for the Port, as well as precedented drafting that, in the context of the degree of interaction with the Port, should make way for bespoke drafting provided to account for this context. PoTLL has included proposed revised drafting for those aspects of the dDCO where it considers changes are necessary to ensure that PoTLL's statutory undertaking is not unduly or disproportionately interfered with or caused serious detriment.
- 9.1.2 PoTLL has taken the opportunity to respond to Annex A of the Agenda for Issue Specific Hearing 2 (Action point 8 from ISH2), in Appendix 4. Further drafting points on which PoTLL wishes to comment are set out in Appendix 5.
- 9.1.3 The lack of information from the Applicant, combined with the reticence to commit to measures that would have an identifiable mitigatory impact, means that PoTLL is struggling to identify the true impact of the LTC Scheme on the Port in order to inform and develop the protective provisions to be fit for purpose.
- 9.1.4 As advised in ISH2, PoTLL has focused on obtaining clarity on these outstanding issues through seeking to develop a Framework Agreement (with a series of subsidiary agreements) with the Applicant, with a view to then updating the draft protective provisions to reflect a reduced degree of adverse interaction. In order to assist the ExA to understand the extent of PoTLL's concerns and the progress still required to be made with the Applicant in the absence of agreement, PoTLL has provided a summary of the agreement it is seeking from the Applicant in Appendix 7, along with a

copy of the revised proposed construction traffic management protocol, highlighting areas of agreement and areas where discussions remain ongoing, in Appendix 8.

- 9.1.5 In that context, and in light of the discussions at ISH1 and ISH2 and the ExA's Procedural Decisions, a draft set of protective provisions has also now been provided in Appendix 9, and reflect the protections that PoTLL believes are required to ensure no serious detriment occurs to its undertaking, in light of the degree of flexibility that the Applicant seeks to retain in the dDCO. These protective provisions are in place of those limited protective provisions included by the Applicant in Part 10 of Schedule 14 to its draft of the DCO.
- 9.1.6 By way of background in respect of the protective provisions, in its consultation response of 20 June 2022 PoTLL provided the Applicant with an outline of what would be required but the protective provisions subsequently included in the draft DCO do not adequately reflect the proposals then made by PoTLL.
- 9.1.7 PoTLL has sought to provide a robust set of provisions to set out the extent of the protections required to address its concerns, in a single location, in order that the extent of the potential for serious detriment may be easily recognised. PoTLL recognises, however, that a number of the matters covered by the revised draft protective provisions may be better managed through other mechanisms including management plans, DCO requirements and side agreements but this is not the current position given the lack of any agreement on these matters with the Applicant.
- 9.1.8 The revised draft protective provisions included in Appendix 9 have been put together having regard, in particular, to the following factors:
- (a) the Applicant's decision not to model construction traffic;
  - (b) the Applicant's decision not to add PoTLL as a consultee to numerous management plans, to the extent they impact on the Port;
  - (c) the Applicant not having considered how the Scheme will interact with the Port's byelaws;
  - (d) the lack of clear outcomes, targets and consequences in the management plans to ensure that the DCO powers are not exercised in a way that causes harm to existing businesses, of which PoTLL is one; and
  - (e) the lack of rapid escalation processes to account for circumstances where things do go wrong.

**APPENDIX 1**

**LETTER TO THE APPLICANT REQUESTING JUNCTION MODELLING OF THE ASDA ROUNDABOUT**



PORT OF  
**TILBURY**  
LONDON

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26 June 2023

Dr Tim Wright  
Lower Thames Crossing  
By Email

Dear Tim,

I am writing regarding the comments made during Issue Specific Hearing 1, last Friday morning. You confirmed that the Applicant wanted to be transparent and had undertaken extensive local junction modelling, using VISSIM or similar models. You also confirmed that you were happy to respond to requests for further information. This was strongly supported by the Examining Authority, who stressed the urgency of sharing such modelling with stakeholders (mentioning Port of Tilbury specifically, as one of the affected ports) and in advance of Deadline 1, in addition to the data being submitted into the Examination.

In previous discussions, you have suggested that it was not necessary to carry out VISSIM modelling of the Asda Roundabout, because the management plan would be able to significantly reduce the impacts. However, in the Hearing, you indicated both that modelling was carried out of many junctions (and then shared where you agreed with stakeholders that there would be changes to traffic flow), and that it would not be possible to complete traffic modelling of the Asda Roundabout until detailed design informed the number of construction HGVs that would be using the A1089. I understand that this latter suggestion is contrary to the central idea of environmental impact assessment, namely that the reasonable worst case scenario is assessed at the consenting stage.

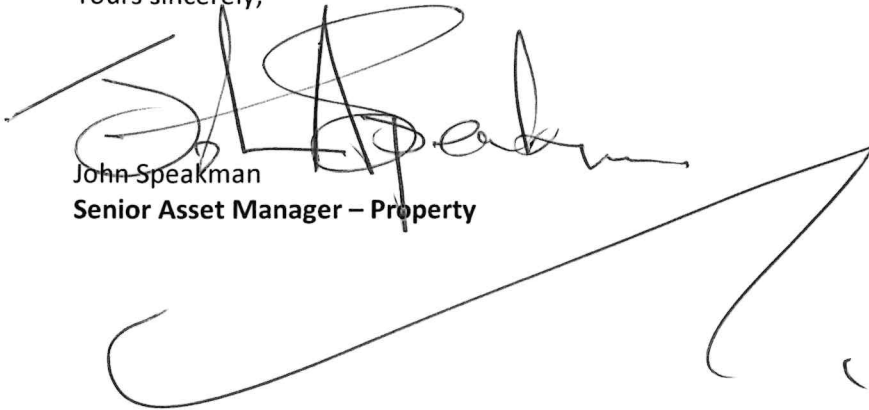
It is therefore not clear to me whether any VISSIM (or similar) traffic modelling of the Asda Roundabout has been carried out, but then not shared with us because the Applicant does not consider there are changes to traffic flows; or if the only assessment is that utilising the LTAM model as set out in the Application materials. In light of this, please would you now share with us all junction modelling undertaken in relation to the Asda roundabout on the A1089.

In the event modelling of this junction has already been undertaken, we are not aware of any reason why this could not be shared with us immediately for review by suitably qualified technical experts, who will not require the explanations and presentation that would accompany any submission of this data into the Examination.



We should therefore be grateful if this modelling would be provided by return so we have time to consider it before Deadline 1 and submission of our Written Representation. If this is not available, or cannot be provided this week, please advise of the reasons for this and the timescale it will be provided within.

Yours sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'J. Speakman', is written over the typed name and title. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

John Speakman  
**Senior Asset Manager – Property**

**APPENDIX 2**

**PLAN OF LTC LEASE AREAS WITHIN POTLL LANDHOLDINGS**






**Notes**  
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**Legend**

	LTC Lease Areas
	A2
	A3
	B

C	A2 Added, A3 Expanded	06/11/22	DWH	Yes
B	PDF Overlay Added	04/11/22	DCM	Yes
A	Area Hatches Colour Changed per Request	31/10/22	DCM	Yes

  
 PORT OF  
**TILBURY**  
 LONDON

DRAWN BY:  
 D Mickelburgh  
 REQUESTED BY:  
 M Faraway  
 CHECKED  
 ENGINEER

Location: Lower Thames Crossing  
 Subject: Lease Areas

Scale: NTS

DATE	DRAWING NUMBER	REV	SHEET No.
Sep' 22	TS 5450	C	

### APPENDIX 3

#### SUMMARY OF REQUESTS MADE TO THE APPLICANT AND RESPONSES RECEIVED

#### ECOLOGY

Dates	Information request & response from the Applicant
26 September 2022	PoTLL's ecologists supply Tilbury2 protected species licence method statements to the Applicant on request (including badger data compiled specifically for and issued to the Applicant in July 2020, and apparently subsequently lost by the Applicant). PoTLL is still waiting for the Applicant to incorporate this information to its baseline information and impact assessment (e.g. the Tilbury2 water vole compensation ditches have been omitted from the LTC assessment).
08 September 2022	The Applicant is invited by PoTLL to visit the route of the potential conveyor and related works area on Tilbury2 land. Date of 27 September agreed for PoTLL's ecologists host the Applicant at Tilbury2, then postponed by the Applicant until 04 October 2023.
04 October 2022	PoTLL's ecologists host the Applicant's ecology and construction staff at Tilbury2, in anticipation that this would allow the Applicant to address matters relating to the conveyor and provide details of the design and required ecological mitigation. This detail is still awaited.
10 March 2023	<p>The Applicant issued an engagement position tracker, identifying the following ecology issues where input is required from the Applicant:</p> <ul style="list-style-type: none"> <li>- Baseline information – further baseline information is required in respect of habitats, invertebrates, ornithology, badgers, bats, water vole and reptiles as the information is out of date. This is needed to ensure that the Applicant's proposals will 'work' and integrate and align with the requirements of the Tilbury2 DCO and PoTLL's future aspirations.</li> <li>- Mitigation – more detail is required on the mitigation measures proposed to be implemented to understand if they will work. Technical note to be provided to confirm the Applicant's position. Following review, a more detailed LEMP to be prepared.</li> </ul> <p>This detail is still awaited: no requests have been made to access PoTLL land for ecological field survey, despite the 2023 survey season being now well progressed; and no further mitigation detail (e.g. technical note or LEMP) has been forthcoming.</p>
23 March 2023	First Teams meeting on ecology held, where PoTLL summarised matters of concern within RRs. During the meeting it was agreed that a technical workshop would be held prior to the second Teams meeting on ecology.
18 April 2023	Second Teams meeting on ecology (programmed for 20 April 2023) was postponed by the Applicant. Technical workshop proposed instead, but not until 04 May 2023.
04 May 2023	<p>Technical workshop held in Jacobs' offices in Winnersh, where the Applicant's ecologists described the LTC BNG dataset. PoTLL requested the following further data during the meeting and via a follow-up email the next day:</p> <ul style="list-style-type: none"> <li>(i) map of baseline BNG classifications;</li> <li>(ii) map of proposed BNG classifications;</li> <li>(iii) maps and/or narrative explanation of temporary land uses in/adjacent to Port land;</li> <li>(iv) extent of accessible public space within the Tilbury Fields area.</li> </ul>
01 June 2023	A month later, the Applicant provided a GIS-based BNG dataset (items i and ii above) but omitted to directly answer the latter queries (items iii and iv above). PoTLL's ecologists therefore made a further request for clarity on items (iii) and (iv) above on 06 June 2023.
23 June 2023	Response issued by the Applicant on items (iii) and (iv).
14 June 2023	The Applicant requests data from the substantial programme of invertebrate surveys of the Ashfields that were commissioned by PoTLL in 2022. This information was provided freely by PoTLL to the Applicant on 04 July 2023, at cost to PoTLL.

## TRANSPORT

Dates	Information request & response from the Applicant
20 June 2022	<p>The Applicant provided following request on 12 May 2022:</p> <ul style="list-style-type: none"> <li>• GIS shapefiles showing operational traffic model forecasts, uncertainty log and accompanying note</li> <li>• Highways Scheme Uncertainty Log, companion to the main uncertainty log</li> <li>• GIS shapefiles showing construction traffic model forecasts for 11 phases and accompanying note</li> </ul>
8 July 2022	<p>Following the 7<sup>th</sup> July meeting with the Applicant on the LTC Traffic Model/Data Review additional information was requested:</p> <ul style="list-style-type: none"> <li>• the Local Model Validation Report (LMVR) of Orsett Cock junction modelling;</li> <li>• a copy of the presentation on Orsett Cock Modelling;</li> <li>• Orsett Cock Future Year Report on Orsett Cock Modelling when available (anticipated to be in 2-3 weeks);</li> <li>• LMVR of East West local modelling (noting report in draft);</li> <li>• The Applicant to investigate assumptions in strategic modelling of construction traffic in respect of use of Tilbury2 CMAT with reference to draft Access Agreement;</li> <li>• The Applicant to investigate apparent decrease in traffic on A13 Westbound off slip approach to Orsett Cock for Do Something scenario.</li> </ul>
19 July 2022	<p>The Applicant provides further information following request on 8<sup>th</sup> July except Orsett Cock Future Year Report on Orsett Cock Modelling</p>
21 September 2022	<p>Orsett Cock – Future Year Report on Modelling (2030 Do Minimum (DM) &amp; Do Something (DS) Orsett Cock report) provided. (Originally advised this would be provided in 2-3 weeks, it was not provided for 11 weeks.)</p>
5 October 2022	<p>Meeting held with the Applicant on 5<sup>th</sup> October 2022, the Applicant to provide PoTLL and PoTLL's traffic consultant with narrative explaining signalling / no signalling (A13) on the Orsett Cock Junction.</p> <p>The Applicant to provide the following, after the meeting:</p> <ul style="list-style-type: none"> <li>• queue and delay plots, graphically;</li> <li>• Traffic flows for DM and DS scenarios on approach to Orsett Cock junction (total flows and HGVs);</li> <li>• DS scenario zoned flows;</li> <li>• the Applicant to check why on the A13 west (particularly in the PM) the Mean Maximum Queue increased dramatically, whereby the delay only increased marginally.</li> </ul> <p>None of these matters have been provided to date.</p>

<b>Dates</b>	<b>Information request &amp; response from the Applicant</b>
18 January 2023	Request for the .DWG file of the Tilbury Junction, drawing number HE540039-CJV-BOP-SZA_RX000000_-DR-CH-10401. This has not been provided to PoTLL.
26 June 2023	ASDA roundabout traffic modelling requested following Issue Specific Hearing 1. Information remains outstanding, with the Applicant to provide.

## LEGAL

<b>Dates</b>	<b>Information request &amp; response from the Applicant</b>
15 March 2023	PoTLL request the Applicant review the geographic scope of article 18 to exclude the Port. This was chased on 27 April 2023. The only response received is during the hearings, where the Applicant submitted that the protective provisions for the PLA are sufficient to protect the Port from the use of this article.
22 March 2023	Discussion of land plot 21-10. The Applicant reviewing their need for this plot, and felt that there was potential to amend how they use the land in order that this area could be let by PoTLL. Confirmation received on 13 July 2023, some 16 weeks later, that the two areas within this plot in question are not required, however the Applicant does not propose to remove them from the Order limits.
17 March 2023	Applicant's solicitor to check with the Applicant as to the latest position on the potential to hand over the haul road to form part of a future Tilbury Link Road.
29 March 2023	Applicant's solicitors to draft a framework agreement to cover: <p>Mutual agreement of controls &amp; management</p> <ul style="list-style-type: none"> <li>- Consultation on plans</li> <li>- specific consultation on road closures (St Andrews Road)</li> <li>- specific consultation on use of Fort Road</li> </ul> <p>Communication framework</p> <ul style="list-style-type: none"> <li>- Points of contact</li> <li>- Escalation framework</li> <li>- Notification of incidents</li> </ul> <p>Information exchange</p> <ul style="list-style-type: none"> <li>- Monitoring of traffic</li> <li>- Reporting of flow</li> </ul> <p>No draft framework agreement has been received and no time estimate for a draft has been provided.</p>
27 April 2023	Applicant's solicitor indicates it would not be possible to leave the haul road in situ without a separate planning permission, despite the provisions in article 35.
16 May 2023	Applicant's solicitor advises the SoCG will be updated to reflect the latest position and include points from the PADS not already in the SoCG. The amended SoCG has not been received by PoTLL.

## APPENDIX 4

### POTLL'S RESPONSE TO THE DRAFTING MATTERS IN ANNEX A TO THE AGENDA TO ISH 2

*Table 1 - Comments on draft DCO provisions set out in Annex A to the Agenda for Issue Specific Hearing 2*

	<b>Matter / Provision</b>	<b>PoTLL Comments</b>
1.	Article 2(10) – definition of 'materially new or materially different environmental effects'	No comments on this provision specifically, but please see comments in respect of the environmental management plan at Row 6 of Table 2 in Appendix 5.
2.	Article 27 – time limits for compulsory acquisition	<p>PoTLL currently does not benefit from any protection from the exercise of compulsory acquisition (CA) powers within the protective provisions in the dDCO and such protection is required to avoid serious detriment to PoTLL's undertaking. Further commentary on the protective provisions is provided at Row 15 of Table 1, and revised protective provisions are provided in Appendix 9.</p> <p>In the absence of protective provisions, the extended time limit (8 years, when the convention is for a 5 year limit) for the exercise of compulsory acquisition and temporary possession powers conferred by the dDCO would extend the period of uncertainty arising from the existence of such powers over the Port. Such uncertainty would disincentivise further investment in the Port.</p>
3.	Article 28 – extent of imposition of transfer of compulsory acquisition powers without consent	<p>The area of Tilbury2 is crossed by numerous utilities and any new easements have the potential to sterilise development land. PoTLL is seeking a provision to require its consent to the utilisation of article 28 by any party over land held by PoTLL for the purpose of its undertaking, or where the exercise of this article would impact upon that land. This is set out in paragraph 136 of the revised protective provisions in Appendix 9.</p> <p>Article 28, in paragraph (3), enables any statutory undertaker to exercise the powers for the compulsory acquisition of rights and imposition of restrictive covenants. This is not restricted only to listed undertakers. There does not appear to be any restriction on the circumstances when a statutory undertaker may 'piggy back' on the broad CA powers in the dDCO in order to obtain rights and place restrictions on land. This increases the uncertainty of how and when CA powers may be exercised, and by whom.</p> <p>In view of the potential for land to be sterilised from standard provisions of easements such as stand-off distances, affecting long-term Port development, PoTLL seeks to ensure that this power cannot be used in respect of Port land without consent from PoTLL, the party best placed to manage the impacts of utilities on its land and to avoid serious detriment to the Port undertaking.</p>

4.	Article 56(3), (4) – planning permission	No comments.
5.	Work No. 7R – Traveller site & Requirement 13	No comments.
6.	<p>Articles 2, 4, 5, 7 and generally – definitions, maintenance and limits of deviation.</p> <p>Requirement 4(1) – ‘carve out’ for preliminary works (The Preliminary Works EMP)</p>	PoTLL has no general comments on these matters, but has commented on specific limits of deviation under article 6 in Row 1 of Table 2 in Appendix 5.
7.	Article 3(3) – General disapplication of provisions applying to land	<p>As currently drafted, the effect of this provision is to make all operations of PoTLL as harbour authority subject to a highways DCO. This is an unacceptable restriction on PoTLL’s duties as harbour authority, for the reasons set out above. Revised drafting is proposed to manage the interaction of this dDCO with the enactments underpinning PoTLL’s functions. The revised protective provisions found in Appendix 9 include further provisions dealing with the impact of this drafting. PoTLL is mindful, however, that both drafting changes are required as inclusion of updated protective provisions without also amending article 3(3) would see this article taking priority over the protections.</p> <p>The drafting of article 3(3) is taken directly from the Silvertown Tunnel Order 2018, article 4(2). The drafting is read in parallel with article 53 (disapplication of legislative provisions, etc.) and article 55 (application of local legislation) of the dDCO, and serves as a backstop provision whereby any local Act not explicitly disapplied or excluded under those articles is rendered subordinate to the dDCO.</p> <p>The reason for this inclusion in the Silvertown Tunnel Order was to ensure that there was no unidentified local legislation that could constitute an impediment to the implementation of that scheme. The provision is included in order to sweep up any historical legislation that remains in force, but which was not identified during a local legislation search. Simply, it is not intended to apply to <i>known</i> local legislation, as demonstrated by the specific management of identified legislation in articles 53 and 55 of the dDCO.</p> <p>The Port of Tilbury (including Tilbury2) is constituted and governed by local enactments and this is the source of PoTLL’s authority as statutory harbour authority - specifically The Port of Tilbury Transfer Scheme 1991 (applying, with modifications, parts of the Port of London Act 1968) given effect by The Port of Tilbury Transfer Scheme 1991 Confirmation Order 1992, and The Port of Tilbury (Expansion) Order 2019.</p>

		<p>The effect of article 3(3), in the absence of any express exclusion, is to render the entire authority of PoTLL within the boundary of the Port, being variously within, adjoining or sharing a common boundary with the Order limits, wholly subject to the provisions of the dDCO.</p> <p>It is not acceptable to subjugate all operations of the Port to a highway scheme; simply, this cannot have been the will of Parliament when drafting s120(5) of the Planning Act 2008. That section requires either alternative provision to be made in the dDCO (s120(5)(a)) or for it to be 'necessary or expedient' to make the amendment, repeal, revocation or inclusion of provisions (s120(5)(b) and (c)). The Applicant has not demonstrated that it is necessary, expedient, or convenient, beyond the limited perspective of the Applicant itself, to render all harbour authority functions secondary to the dDCO.</p> <p>As set out fully in Row 15, the protective provisions included within dDCO are wholly insufficient to protect PoTLL's statutory undertaking, are extremely narrow in scope, and do not consider the impact of article 3(3) in any respect.</p> <p>The practical effect of article 3(3) would be to erode the security of the Port and risk the customs barrier, as the Port byelaws could not be enforced against any person acting on behalf of the undertaker for the purposes of the LTC Scheme. This is extremely likely to occur where the Applicant intends to use the Tilbury2 infrastructure corridor and Substation Road, within the secure boundary of Tilbury2, as its main construction route.</p> <p>Simply, this provision, unfettered, would entitle the Applicant to interfere with the operation of the Port, and mean that any attempt to utilise statutory powers to undertake any Port operation would first need to be checked against the dDCO to identify if PoTLL is able to take that action.</p> <p>Suggested revised drafting is included below, with amendments shown in <a href="#">blue text</a>, aiming to balance the desire to avoid unknown local Acts from impeding the implementation of the Scheme, with the traditional approach of agreeing terms with statutory undertakers by way of protective provisions in order to avoid undue interference with their statutory undertaking:</p> <p>Article 3(3):</p> <p><a href="#">Subject to paragraph (4)</a>, any enactment applying to land within, adjoining or sharing a common boundary with the Order limits (other than land comprising part of the river Thames outside of the Order limits) has effect subject to the provisions of this Order.</p> <p>New article 3(4):</p> <p><a href="#">Paragraph (3) does not apply to The Port of London Act 1968, The Port of Tilbury Transfer Scheme 1991, The Port of Tilbury Transfer Scheme 1991 Confirmation Order 1992 and The Port of Tilbury (Expansion) Order 2019 or any byelaws, general directions or specific directions having effect, made or given under those enactments.</a></p>
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		As mentioned above, revised protective provisions that further manage the interaction of the dDCO with the enactments underpinning the Port are included in Appendix 9.
8.	Schedule 1 – Authorised Development Part 1 – Authorised Works	No comments.
9.	Compulsory acquisition and extinguishment of rights - Articles 25-34; Articles 35-36; Article 66	PoTLL is seeking protections to ensure that all compulsory acquisition powers within the dDCO can only be exercised in respect of land held by PoTLL with PoTLL's agreement. PoTLL also seeks to be a party to any agreement entered into in respect of easements, wayleaves, utility diversions, etc., that will be on or affect operational land and land held for the purposes of PoTLL's statutory undertaking. Further commentary on the need for revised protective provisions is set out in Row 15 of Table 1. Revised protective provisions have been included in Appendix 9.
10.	Article 27 – time limit for the exercise of CA powers	See above at row 2.
11.	Article 28 – restrictive covenants and transfer	See above at row 3.
12.	Articles 35 & 36 – Temporary possession	PoTLL is seeking improved and alternative protective provisions to protect it from the use of temporary possession powers in respect of its operational land and land held for the purpose of its statutory undertaking without PoTLL's consent. Revised protective provisions have been included in Appendix 9.
13.	Article 66 – Power to override easements etc.	PoTLL is seeking protective provisions (revised protective provisions are included in Appendix 9) to ensure that this article (and article 34 (rights under or over streets)) does not apply to PoTLL's land given the presence of a number of easements on its land that are necessary for Port operations and key third parties such as NGET and Cadent. Please also refer to Row 3 above for discussion around the complexity of utilities over the Tilbury2 area.
14.	Article 40 (Special category land)	No comments.
15.	Articles 37 & 38 – Statutory undertakers and apparatus	<p>PoTLL is seeking appropriate protective provisions for its benefit in the dDCO, to be supplemented by agreements. Revised protective provisions have been included in Appendix 9, and an overview of the agreements being sought is set out in Appendix 7. Both documents set out the protection required by PoTLL, in the absence of greater clarity as to the extent of the interaction with the Port, in order for it to be satisfied that there will not be significant detriment to its undertaking.</p> <p>For the avoidance of doubt, PoTLL does not consider the protective provisions contained in Part 10 of Schedule 14 to the dDCO to be sufficient. PoTLL considers that the protective provisions for its benefit in the dDCO appear to be drafted without consideration of its status as a statutory undertaker, as they omit numerous standard</p>



	<p>provisions that are contained in the protections for other statutory undertakers, for example in relation to the specified functions of the undertaker, protection from the use of compulsory acquisition powers, and specific consideration of the likely types of interaction between the LTC Scheme and the specific statutory undertaking.</p> <p>In its comments on Annex A to the Agenda to ISH2 [AS-089], the Applicant has relied upon the protections afforded within the current protective provisions for PoTLL, in respect of both the impacts of article 3(3) and the impacts of article 18. As currently drafted, the protective provisions are extremely narrow in scope, referring only to seven numbered works, each of which is a utility diversion. The protections are narrow in scope, only requiring plans for approval for those works. No consideration has been given to the protections required for the Port for the operational interactions between the Scheme during construction and the operational Port, and no protection is afforded in respect of the impact of article 3(3) (although see PoTLL's comments in relation to article 3(3), as set out in Row 7 above).</p> <p>PoTLL has provided revised protective provisions in Appendix 9. These protective provisions seek to protect PoTLL's statutory undertaking from serious detriment from the following provisions:</p> <ul style="list-style-type: none"> <li>• the carrying out of works authorised by the dDCO on Port land (until plans are provided to PoTLL for its approval, subject to reasonable conditions);</li> <li>• streets powers under articles 12, 16 and 17, etc. (as they affect the road connection to the Port and may therefore impact the operation of the Port);</li> <li>• traffic management measures (as imposed within the boundary of the Port);</li> <li>• the use of compulsory acquisition and temporary possession powers, under articles 25, 28 and 35, etc. (as they relate to the Port, without PoTLL's consent); and</li> <li>• the application for permits that apply to activities within the Port.</li> </ul> <p>The protective provisions also seek to manage:</p> <ul style="list-style-type: none"> <li>• the operation of article 18, generally;</li> <li>• erosion or accumulation of the river within the Port;</li> <li>• emergency procedures, including closure of the Port in an emergency;</li> <li>• interaction with the Port of Tilbury (Expansion) Order 2019; and</li> <li>• safeguarding of priority access to the port by rail.</li> </ul> <p>PoTLL notes that the efficacy of any protective provisions in its favour are tied to the drafting in article 3(3), for the reasons set out in row 7, above. PoTLL is also seeking to address impacts caused by matters beyond the boundary of the Port in control documents, such as the Construction Traffic Management Protocol provided in Appendix 8.</p>
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		Until adequate protective provisions that accord with those set out in Appendix 9 have been agreed and included in the dDCO, PoTLL strongly disagrees with the Applicant's submission that the tests in sections 127(3) and 127(6) of the Planning Act 2008 have been satisfied.
16.	Article 56 – Planning permission	<p>PoTLL's concern with this article is that it is seeking through the dDCO a number of important protections for its undertaking, which could be circumvented by the Applicant simply seeking planning permission for all aspects of the LTC Scheme that are Associated Development. For example, operations carried out pursuant to a separate planning permission would not come under the ambit of article 55(5) (which deems that works authorised under the dDCO do not give rise to a breach of the terms of the Port of Tilbury (Expansion) Order 2019) and so could put PoTLL back in breach of its DCO (noting that ecological mitigation and landscaping is associated development). Furthermore, PoTLL would not be able to approve the details of those works, even if they would fall under the definition of 'specified works' in its protective provisions were they carried out under the dDCO.</p> <p>PoTLL has included drafting to address this issue within the revised protective provisions in Appendix 9, however its preference is that this forms part of the proposed framework agreement, being the most suitable place to accommodate a coherent regime to ensure protections apply to any work by the Applicant, however authorised. This would be able to accommodate the potentially complex interaction with planning permissions and development consent orders.</p>
17.	Articles 15, 16 and 17 – classification of roads; clearways, prohibitions and restrictions; speed restrictions	PoTLL considers that the dDCO should be amended to ensure that it is 'Tilbury Link Road' ('TLR') ready; that is to say, that the Applicant should ensure that its LTC Scheme is not incompatible with the TLR and would not constitute an impediment to the TLR being brought forward in the future. An appropriate approach to ensure this has been set out at paragraph 5.5 of the main body of this Written Representation.
18.	Articles 12 & 13; Article 14 - Temporary stopping up and restriction of use of streets	<p><b>Article 13 (private roads)</b></p> <p>PoTLL notes that the use of private roads under article 13 is not time limited in any way, as maintenance of the Proposed Development is itself not time limited. If included in the dDCO in this form, it would effectively grant the Applicant an enduring statutory right to use private roads within the Order limits for the purposes of construction <i>or maintenance</i> of the authorised development. Maintenance in this context does not appear to be equated with the five year 'maintenance period' referred to in article 36(13) and so must be construed consistently with the power to maintain under article 4. While paragraph (3) makes provision for compensation for repairs there are two key flaws with this approach. This is particularly of concern to PoTLL given that Substation Road situated within Tilbury2 is within the Order limits and is a private road owned by PoTLL.</p> <p>First, the way that the provision is drafted ensures that the owner of the private road is put at a significant evidential disadvantage in pursuing a claim for compensation in relation to the repair of the private road. This is because the power is exercisable without notice or other reference to the owner of the private road. This deprives the owner of the opportunity of taking sensible steps, such as undertaking a condition survey prior to the private</p>

		<p>road being used in order to show that damage has been occasioned by the exercise of the power. The lack of notice poses further issues in that the owner is not even required to be made aware of the fact the road is to be so used by National Highways pursuant to this power. A prudent owner would therefore be required to undertake an enhanced maintenance and monitoring regime (which would come at a cost which the drafting of the article does not make any provision for in terms of compensation) to safeguard its position in case the power is exercised.</p> <p>Secondly, in effect the statutory power envisaged by this article would not be functionally different to the Applicant acquiring compulsorily a private right over the private road. However, put in this form as a statutory right with a provision to claim compensation after each compensation event, rather than as the compulsory acquisition of a private right, it deprives the affected person of seeking compensation for that right and any diminution in the value of the retained land associated with it. Instead its land is burdened by this uncertain statutory power with an administrative burden of seeking compensation for the costs or repairs where it is not even given notice of an intention to use the road in this way.</p> <p>If the Applicant seeks a permanent private right to use private roads, it ought to have made that provision rather than dress up the acquisition of private rights in the clothing of ongoing statutory powers.</p> <p>PoTLL is also seeking protection from the exercise of this power within its revised protective provisions, set out in Appendix 9.</p>
19.	Articles 53 & 55 – Disapplication or amendment of legislation / statutory provisions	<p><b>Article 53</b></p> <p>PoTLL notes that paragraph (4) of article 53 disapplies the requirement under the Port of London Act 1968 for the undertaker to have a licence to do anything to any structure forming part of the authorised development in connection with its operation or maintenance. PoTLL is concerned that this will have the effect of enabling the undertaker to apply scour protection to the tunnel without requiring a licence. The requirement for a licence is an important provision that protects the efficiency and effectiveness of the river Thames navigation. This is particularly the case as it is not clear that such works by the undertaker, such as applying scour protection, would be covered by the PLA’s protective provisions, e.g. whether such measures would count as a ‘specified function’ given long term maintenance is specifically excluded from the definition of ‘construction’ in the protective provisions for the benefit of the PLA.</p> <p>Accordingly PoTLL supports the PLA’s position and whilst PoTLL does not object to the replacement of the licensing regime with the bespoke provisions for the PLA on terms agreed with the PLA, these must be future-proofed to ensure that both the LTC Scheme and the Port can operate freely in the future.</p> <p><b>Article 55(5)</b></p> <p>This paragraph appears to be intended to address the risk of the exercise by the undertaker of the powers conferred by the dDCO of putting PoTLL or the undertaker in breach of the Port of Tilbury (Expansion) Order</p>

		<p>2019 (the <b>2019 Order</b>). The intent behind the drafting of the article is welcomed. However, it does not go far enough. Article 55(5) applies to “any inconsistency or conflict between any <i>works</i> authorised under this Order” and resolves conflicts with “any of the requirements “ of the 2019 Order. It does not address the potential for the exercise of the other powers conferred on the undertaker by the dDCO that fall short of “works” that may nonetheless place PoTLL in breach of the 2019 Order. For example, if the power to fell or lop trees conferred by article 23 of the dDCO was exercised by the Applicant over land PoTLL is required to maintain under the 2019 Order for the purposes of environmental mitigation, such felling may not constitute “works” and so would not enjoy the protection of article 55(5). Similarly, the drafting only protects from any breach of the <i>requirements</i> of the 2019 Order. It does not protect against any conflict or inconsistency arising with other provisions of the 2019 Order, for example, the protective provisions contained in Schedule 10 to the 2019 Order or in relation to any exercise by PoTLL of its functions in the remainder of the 2019 Order.</p> <p>PoTLL therefore suggests that article 55(5) is amended as follows:</p> <p>“Without prejudice to Part <a href="#">910</a> of Schedule 14 (protective provisions), to the extent that there is any inconsistency or conflict between any works authorised under this Order <a href="#">or the exercise by the undertaker of the functions conferred by this Order</a>, and all or any of the <del>requirements</del> <a href="#">provisions</a> of the Port of Tilbury (Expansion) Order 2019 (“the 2019 Order”) then, in respect of such inconsistency or conflict, there is deemed to be no breach, or non-compliance, of any provision or requirement of the 2019 Order by the Port of Tilbury London Limited or the undertaker and any such inconsistency or conflict is to be disregarded for the purposes of Part 8 of the 2008 Act.”</p> <p>PoTLL remains concerned that provisions of the 2019 Order are there for good reasons and that any inconsistency or conflict with them would need to be resolved. To avoid reliance on this provision, and to ensure that where it is relied upon the underlying conflict or inconsistency is resolved, PoTLL seek to reach agreement with the Applicant on a wide range of issues as outlined in Appendix 7.</p>
20.	Article 43 - Crown rights	No comments.
21.	Articles 23 & 24 – felling or lopping of trees and removal of hedgerows; trees subject to tree preservation orders	No comments.
22.	Article 65, Schedule 2 Part 2 – Procedure for discharge of requirements	No comments.

23.	Article 7 – Benefit of the Order and Article 8 – Consent to transfer benefit of the Order	<p>PoTLL considers that it should be included amongst those authorities listed. Article 8 sets out, at paragraph (5), a list of bodies to whom the benefit of part or all of the dDCO may be transferred “in respect of works relating to their undertaking”.</p> <p>PoTLL is seeking to be included in this list of statutory undertakers in view of the extensive physical interaction between the proposals during construction and the Port. There are a number of works that may make more sense for PoTLL to carry out, due to their location on operational Port land and subject to appropriate agreements being reached with the Applicant. This may include the installation of MU27 beneath Substation Road, due to the constraints in this location, or works to repair the roads within the Port. Furthermore, as much of the land in and around the north portal compound is within the Freeport designation and is owned by PoTLL as part of its statutory undertaking, it is possible that future activities for the LTC Scheme may form part of PoTLL’s undertaking, for example the movement of materials within the boundary, given that is a frequent existing Port occurrence.</p> <p>At paragraph 5.5 of this written representation PoTLL has set out a proposed approach in relation to ensuring that the LTC Scheme is not incompatible with the Tilbury Link Road and it would be appropriate for PoTLL to be named as an undertaker who may benefit from development consent and in relation to whom functions under the dDCO may be transferred without requiring the consent of the Secretary of State.</p> <p>In addition, given the quantity of works that are proposed to take place within land held for PoTLL’s statutory undertaking, it is considered that PoTLL should be notified of any transfer (whether Secretary of State consent is required or not) of benefit which takes place pursuant to this article that relates to land held by PoTLL for the purposes of its statutory undertaking. This is so PoTLL can be certain that those persons purporting to exercise functions under the dDCO are entitled to do so.</p>
24.	Article 19 – Discharge of water	No comments.
25.	Articles 35 & 36 – Temporary possession	PoTLL has provided revised protective provisions in Appendix 9 that will protect its undertaking from serious detriment caused by the exercise of temporary possession powers over its operational land held for the purpose of its statutory undertaking, without PoTLL’s consent.
26.	Article 64 – arbitration	No comments.
27.	Article 58 – defence to proceedings in respect of statutory nuisance	No comments.

28.	Article 60; Schedule 15 – Deemed Marine Licences	No comments.
29.	Article 18 – Powers in relation to relevant navigation and watercourses	<p>Article 18 provides the undertaker with extremely broad powers to interfere with navigation, moorings and infrastructure in the river Thames, subject to a threshold of it being ‘reasonably convenient’. The only geographical restriction on this power is to the river Thames, and the only other limit on the exercise of this power is contained in paragraph 104 of the protective provisions in favour of the PLA.</p> <p>Paragraph 104 of the protective provisions for the PLA stipulates that article 18(1)(e) may only be exercised in connection with Work Nos. 5A and 5X, ground investigation works, and ‘any other activity approved in writing by the PLA’. Article 18(1)(e) is specifically the interference with the navigation of the river Thames. The use of article 18 is therefore tempered only in respect of navigation, and only for the protection of the PLA. PoTLL receives no such consideration in the protective provisions proposed by the Applicant.</p> <p>Further commentary on the need for improved protective provisions is set out in Row 15 above, and revised protective provisions that include protection from the use of this power for the Port is found in Appendix 9.</p>
30.	Article 46 – Suspension of road user charging	No comments.
31.	Requirement 1 – Preliminary works	No comments.
32.	Requirement 3 – Detailed design	No comments.
33.	Requirements 4, 5, 10, 11	No comments.
34.	Requirements 7, 8, 9, 10, 11, 16	No comments.
35.	Requirement 9	No comments.
36.	Requirement 13 – Travellers’ site	No comments.
37.	Requirement 15 – Thurrock Flexible Generation Plant	No comments.

38.	Schedule 2 Part 2 – discharge of requirements – Requirement 18	No comments.
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**APPENDIX 5**

**POTLL’S FURTHER COMMENTARY ON THE DRAFT DCO**

*Table 2 - Further provisions of the draft DCO subject to commentary by PoTLL*

	<b>Matter / Provisions</b>	<b>PoTLL Comments</b>
1.	Article 6	<p><b>Tunnelling Limits</b></p> <p>Sub-paragraph (2)(p) relates to the vertical upwards limit of deviation for the tunnel, by reference to the tunnel limits of deviation plan. In its response to Annex A of the Agenda for ISH2 [AS-089], the Applicant has included revised drafting of the PLA protective provisions in respect of the dredging depth. Notably, however, article 6 and the power to deviate is not made subject to the protective provisions for the benefit of the PLA. There is therefore a potential for confusion as to what the upper limit of the tunnel is, in particular considering that the current iteration of the tunnel limits of deviation plan does not show adequate dredging depth.</p> <p>To ensure that the dredging depth protections within the PLA’s protective provisions are given full effect, PoTLL considers that a drafting change is required, either within article 6 or within the protective provisions for the PLA, in order to properly secure this provision and to ensure that it is clear that the tunnel may not deviate upwards so as to adversely impact upon the ability of the PLA to dredge the navigation to an appropriate depth.</p> <p>The clearest solution would be for the Applicant to re-issue the ‘tunnel limits of deviations plans’ (as defined in article 2(1) of the dDCO), so that the maximum depth upwards is shown clearly taking into account the PLA’s dredging requirements. However, failing that, article 6(2)(p) ought to be amended so as to make it clear that the upward limit of deviation is subject to the PLA’s protective provisions. It would also assist in avoiding ambiguity if the PLA’s protective provisions, paragraph 99(1) (as amended), are expressed in terms such that it is clear that they would prevail over article 6(2)(p), for example by adding “Notwithstanding article 6(2)(p),...”.</p> <p><b>Request for Clarification</b></p> <p>Sub-paragraphs (2)(h) and (2)(i) appear to be drafted identically and apply to many of the same works, including MUT works on PoTLL’s land. It is not clear why these two sub-paragraphs have not been consolidated into a single sub-paragraph if the same limits of deviation are intended to apply to each of them. It would be helpful if the Applicant would review and clarify its intention.</p>
2.	Article 12 – Temporary closure, alteration, diversion and restriction of use of streets	<p>Article 12(7) states that, where a temporary diversion under paragraph (4) is provided, it “is not required to be of a higher standard than the temporarily closed, altered, diverted or restricted street or private means of access specified” in Schedule 3. This does not provide comfort to PoTLL as the alternative accesses to the Port are on country roads, wholly unsuited to HGV traffic.</p>



		<p>As a minimum, in respect of traffic measures to the A1089 and to Fort Road (Infrastructure Corridor) (but noting that this issue may be present in other areas), the alternative route must be of at least the same general quality, i.e. suitable for HGVs.</p> <p>In more general terms and as set out in Row 15 in Table 1, PoTLL is seeking protection from the use of street powers where their exercise would cause serious detriment to the operation of the Port. In addition to drafting in the revised protective provisions in Appendix 9, PoTLL has included a draft Construction Traffic Management Protocol in Appendix 8. This protocol sets out the extent of agreement, and those matters still in discussion, that will manage the impacts of traffic management measures under article 12 on the Port. The protocol addresses a number of concerns that PoTLL has with the current traffic management plans, including the absence of an urgent escalation process in the event issues are caused by traffic management measures.</p> <p>The Applicant therefore seeks this change to article 12(7):</p> <p>(7) Where the undertaker provides a temporary diversion under paragraph (4), the new or temporary alternative route is not required to be of a higher standard than the temporarily closed, altered, diverted or restricted street or private means of access specified in column (2) of Schedule 3 <b>but it must be at least as suitable for use by the same volume and type of traffic as that street or private means of access.</b></p>
3.	Article 17 – Traffic regulation – local roads	<p>PoTLL is mindful of the breadth of this power, and that it is subject to a ‘deemed consent’ provision. PoTLL is acutely aware (from its implementation of the Port of Tilbury (Expansion) Order 2019) of the potential for traffic regulation measures to cause congestion that is so severe as to have significant detrimental impacts on the Port.</p> <p>PoTLL has provided a Construction Traffic Management Protocol in Appendix 8, demonstrating areas of agreement and matters still under discussion, that PoTLL believes will address its concerns in respect of traffic regulation on local roads. The revised protective provisions in Appendix 9 also include protections in respect of roads within the Port.</p> <p>PoTLL also refers the ExA to section 5.5 of this Written Representation, which provides detail of how traffic regulation orders may be used to facilitate the Tilbury Link Road.</p>
4.	Article 21 – Authority to survey and investigate the land	<p>Article 21 provides protection for street and highway authorities from boreholes being dug without consent in streets and highways. Specific protection from the exercise of this power over land that is held for PoTLL’s undertaking is included in the revised protective provisions in Appendix 9.</p>
5.	Article 61	<p>The Applicant has indicated that its intention is to make commitments and record these in the stakeholder actions and commitments register (SACR). During a tripartite meeting between PoTLL, the PLA and the Applicant on 15</p>

		<p>March 2023, it was suggested that this would be the appropriate place to record the commitment to ensuring the minimum dredging depth is secured.</p> <p>PoTLL and the PLA both rejected this suggestion, given the importance of the dredging depth, indicating that this should be secured on the face of the dDCO pursuant to article 6 and the PLA's protective provisions.</p> <p>Reviewing the drafting of article 61, this only requires the undertaker to “take all reasonable steps” to deliver the measures in the SACR.</p> <p>In short, the SACR cannot be relied upon for any material commitment. PoTLL is concerned that the Applicant is seeking to make commitments and record these only in the SACR, enabling it to make commitments that are potentially impossible to keep, whilst misleading the beneficiaries that they are securing a remedy to their concern.</p> <p>Article 61 should be amended to require the Applicant absolutely to deliver all measures contained in the SACR, whilst retaining the same ability to vary the commitments by agreement or by reference to the Secretary of State. This would provide much greater certainty to all parties whilst also ensuring that, should a commitment be found to be impossible due to matters that could not have been foreseen when the commitment was given, it would not bind the Applicant unduly.</p>
6.	<p>Schedule 2 – Requirements</p> <p>Paragraph 2 – Time limits</p> <p>Paragraph 7 – Protected species</p>	<p>Requirement 2 sets out that the authorised development must ‘begin’ no later than 5 years from the date the dDCO comes into force. As explained during Issue Specific Hearing 2, and confirmed by the Applicant in its response to Annex A of the ISH2 Agenda [AS-089], this is intentional drafting and, whilst ‘begin’ is not yet defined, we understand that it will be included in the next iteration of the dDCO and will include the carrying out of preliminary works.</p> <p>While PoTLL awaits the Applicant’s clarification, it is noted that if the threshold for the operations required to satisfy this requirement is set low then it may cause unforeseen issues. For example, Requirement 7 states that no part of the authorised development may begin until, for that part, final pre-construction survey work has been carried out. Given that the definition of ‘begin’, confirmed by the Applicant, includes ‘preliminary works’, this would appear to be impossible to comply with. The carrying out of the survey work itself constitutes a preliminary work that would constitute an operation that would constitute ‘begin’.</p> <p>PoTLL urges the Applicant to carefully review its proposed definitions for the terms ‘begin’, ‘commence’ and ‘preliminary works’ to ensure that its mitigation proposals will operate effectively.</p>
7.	<p>Requirements – Management plans generally</p>	<p>Multiple Requirements refer to management plans, the final versions of which are to be substantially in accordance with the certified outline version.</p> <p>However, as a general theme, these management plans lack ‘teeth’. There are no firm commitments to use infrastructure that would help to meet the spirit of the plans (e.g. using the existing CMAT facility at Tilbury2 to</p>

		<p>reduce carbon and energy use) and many of the working groups referred to appear to be ‘talking shops’ where disputes are either able to be ignored, or could take a long time to resolve whilst negative impacts remain. There is also a lack of firm targets to which the Applicant may be held.</p> <p>In general, these plans must be updated to set out clear targets by which the Applicant and its contractors must be bound. Alternatively, but preferably in addition, the plans should make firm commitments by which these targets may be met. There is no basis for the Applicant to avoid placing firm targets into these plans, and not doing so does not inspire confidence that the Applicant is actually committed to the spirit of these management plans.</p> <p>PoTLL also seeks to be added as a consultee, in respect of the land held for the purpose of its undertaking, in relation to a number of management plans. These have been set out in Appendix 6</p>
8.	<p>Requirement 5</p> <p>Landscaping and ecology</p>	<p>PoTLL is concerned to ensure that the ecological and landscape requirements of the LTC Scheme are proportionate, to both the actual impacts (based upon a baseline that remains ‘current’ to the actual commencement of the Scheme), and the extent of the mitigation required to address those impacts. The nature of PoTLL’s concerns is set out in detail in section 7 of its Relevant Representation.</p> <p>Amongst its concerns is the absence of up-to-date baseline ecological data that reflects the <i>current</i> baseline, taking into account the implementation of the Port of Tilbury (Expansion) Order 2019. Accuracy of environmental information is important in its own right for good decision-making, but PoTLL is also concerned to ensure that an inaccurate baseline does not lead to inappropriate ecological and landscape mitigation being approved that has the effect of sterilising future port development at one of the few locations where it is appropriate.</p> <p>To address this concern PoTLL suggests that requirement 5 is amended to require the provision of up-to-date baseline information, by the addition of a new sub-paragraph (2)(c)(iv):</p> <p>“(iv) updated ecological surveys of that part which have been carried out in compliance with BS:42020 and conform to the best practice guidance issued by the Chartered Institute of Ecology and Environmental Management.”</p>
9.	<p>Requirement 10</p> <p>Traffic Management</p>	<p>In section 4 of its Relevant Representation, PoTLL outlined its concerns with the Applicant’s approach to assessing and mitigating the adverse effects of the construction of the LTC Scheme on the surrounding highway network and, in particular, levels of adverse impacts that could impose a serious detriment to the operation of the Port.</p> <p>At paragraphs 4.58 to 4.77 of its Relevant Representation PoTLL outlined its concerns in relation to the ASDA roundabout, and other shortcomings in the Applicant’s assessment of construction traffic and provision of mitigation. PoTLL would wish to see the appropriate commitments given in the oTMPC that would give</p>

		<p>confidence that the necessary assessments would be completed so as to inform any traffic management plan submitted for approval under this requirement, together with an obligation to deliver the traffic mitigation required to render the impact acceptable.</p> <p>Notwithstanding PoTLL's overarching view that only very limited traffic management measures can be implemented on the A1089 and Fort Road (Infrastructure Corridor) without causing congestion that is so significant it would impact upon the carrying out of PoTLL's statutory undertaking, and notwithstanding the progress made in the draft Construction Traffic Management Protocol at Appendix 8, if the Applicant is unwilling to provide the required confirmations in an updated oPTMC, PoTLL suggests that the concern is addressed by way of an amendment to Requirement 10 to introduce a new sub-paragraph (3):</p> <p>“(3) The traffic management plan submitted for approval under paragraph (2) must be accompanied by a report that assesses the impact of the implementation of the proposed traffic management plan on the strategic and local highway networks and the traffic management plan is to contain details of the mitigation required to avoid or reduce adverse traffic impacts.”</p>
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## APPENDIX 6

### MANAGEMENT PLANS AND CERTIFIED DOCUMENTS FOR WHICH POTLL WISHES TO BE A CONSULTEE

- Environmental Management Plans – due to the importance of a coordinated approach to environmental management of the Port development land, to ensure the Freeport and other development is capable of being brought forward. Statutory nature bodies and local planning authorities are the only parties to be consulted on these documents;
- Landscape and Ecology Management Plan – due to the same reasons as the environmental management plans. PoTLL is not listed as a consultee and without this change would have to hope to fall within the category of ‘other appropriate parties’;
- Traffic Management Plan for Construction – due to both the potential for harm to be caused to PoTLL’s undertaking as a result of construction traffic (within the Port and on the road network immediately outside the Port), and PoTLL’s recent experience of managing traffic management requirements with the operational requirements of the Port. PoTLL is noted as a consultee, however it has concerns that the oTMPfC consultation requirement is not adequate in terms of controls to manage the impacts that may occur;
- Materials Handling Plan – based on the Applicant’s plan to bring in at least 80% by weight of bulk aggregates to the north portal via the Port, PoTLL should have a role in managing how this is undertaken. PoTLL is not included within the list of stakeholders to be consulted in Table 2.1 of the Code of Construction Practice;
- Construction Travel Plans – to ensure that roads within the Port are not subject to excessive traffic associated with workers at the main construction compound, as poorly managed worker travel plans may result in safety implications for the Port and/or reputational damage in the Tilbury area. PoTLL notes that the Applicant has recently been open to adding PoTLL as a consultee for the compounds accessed via the roads leading to the Port;
- Construction Traffic Impact Monitoring Scheme (not currently required as a management plan) – a real time monitoring scheme is required, to ensure that any harmful impacts of traffic measures are identified quickly so that appropriate measures may be taken to avoid those impacts. PoTLL is particularly concerned about construction traffic and has proposed a construction traffic management protocol to deal with these issues, the current draft of which is contained in Appendix 8; and
- Code of Conduct for Construction Workers (not currently required as a management plan) – a code of conduct is required to ensure safety on and around the Port. PoTLL should be consulted as to the content of this code of conduct in respect of the construction compounds on and adjacent to its land, in order that the code meets the safety requirements and byelaws of the Port generally.

## APPENDIX 7

### OUTLINE OF FRAMEWORK AGREEMENT

1. By way of background, PoTLL has been in discussions with the Applicant for some considerable time in respect of the interaction between the LTC Scheme and the Port. PoTLL and the Applicant have agreed and entered into leases for various parcels of land to be used for the temporary construction compound, Work No. CA5.
2. Following submission of the Application, PoTLL has had numerous meetings with the Applicant to discuss the dDCO and secured documents, traffic and transport, ecology, and land matters. To assist these meetings, PoTLL provided the Applicant with an overview of its proposed arrangement of legal agreements, sitting under a main framework agreement. This was sent to the Applicant's solicitors in advance of a meeting on 17 March 2023, with a view to discussing comments on the proposal at that meeting. Notwithstanding that comments were not returned, the meeting was productive. Comments on the document were then returned by the Applicant on 26 April 2023.
3. The content of the Framework Agreement was discussed further at a meeting held on 29 March 2023, with marked-up Protective Provisions requested by the Applicant at this time. As PoTLL advised during ISH2, there are a number of areas where the extent of the interaction with its undertaking is unclear and, accordingly, the extent of the protections necessary is also not clear. PoTLL therefore focused on furthering negotiations on these practical elements, to ensure its comments on the Protective Provisions were not premature or submitted in a vacuum.
4. During a meeting held on 27 April 2023, the Applicant's solicitors agreed to draft the proposed Framework Agreement in order that both parties could move to reviewing actual drafting, as opposed to hypothetical scenarios and verbal assurances.
5. PoTLL provided to the Applicant on 04 May 2023 a draft protocol to deal with its concerns as to construction traffic on the essential parts of the strategic road network (being the A1089 from the A13 to the entrance to Tilbury2). Comments on this protocol were received on 08 June 2023. PoTLL was disappointed to see that assurances previously made verbally, particularly around monitoring requirements, had been rejected in the mark-up. During a meeting to discuss this protocol on 12 June 2023, PoTLL's solicitors proposed an alternative approach to address PoTLL's concerns, being an outcomes-based approach, whereby agreed protections would be triggered in the event the outcome of a traffic management measure on the public highway resulted in excessive and harmful impacts to PoTLL's undertaking. The Applicant agreed to consider this approach further but PoTLL has not received any further comment from the Applicant as to the acceptability of this approach.
6. Significant progress has since been made on the draft construction traffic management protocol, and an amended draft of this, indicating those areas where PoTLL understands agreement has been reached and those areas where discussions are ongoing, has been provided at Appendix 8.
7. In light of the limited progress with the Framework Agreement in particular, and the ExA's desire to ensure that any legal agreements on which the Secretary of State is to rely must be in place before the end of the Examination, PoTLL has included in its Written Representation revised draft Protective Provisions (which deal with the scenario where agreement is not able to be reached) The revised draft Protective Provisions are provided separately at Appendix 9.

### SUGGESTED FRAMEWORK AGREEMENT STRUCTURE

- a) Approval of Work Nos CA5 and CA5A and identified utilities works to ensure works within and affecting the Freeport area and adjacent to Tilbury2 facilitate and do not preclude Freeport development, Tilbury2 operations and other future Port development.
- b) Agreed principles for construction planning, to ensure neither party blocks the other.

- c) Agreed principles for the design and handover of the haul road, including that the Applicant must not impose property rights that would interfere with the haul road being converted into a future Tilbury Link Road.
- d) Construction Worker Management Principles providing controls to manage construction workers and ensure they do not cause problems within the Port.
- e) Protocol for interaction with Tilbury2 byelaws.
- f) Prohibition on the use of DCO powers over PoTLL's undertaking except with consent.
- g) Communication protocol to cover land options, traffic, ecology and construction elements.
- h) PoTLL approval of agreements with utility providers, etc., including final form of easements where these are on PoTLL land, or where the agreements will impact PoTLL's land.
- i) Agreed principles for managing ecological mitigation without restricting future development land.
- j) Protocol to manage potential breaches of the Port of Tilbury (Expansion) Order 2019.
- k) Traffic management protocol to cover essential sections of the strategic road network (A1089 from the A13 to the entrance to Tilbury2) and Port roads (see below).
- l) Protocol for advance notification of works and traffic management measures likely to impact traffic flows in and out of the Port, including ability to request postponement of such measures.
- m) Monitoring and data sharing protocol for locations on the essential sections of the strategic road network.
- n) Consultation on the use of highway powers on the essential sections of the strategic road network.
- o) PoTLL to be a consultee on the detailed construction travel worker management plans.
- p) Contamination management to apply across all agreements, including migration of contamination between areas of land.
- q) PoTLL to be involved in development of an LTC flood response plan, including evacuation procedures, to be consistent with the existing Port evacuation plan.
- r) River dredging levels to be secured.
- s) Indemnity.
- t) Subsidiary, specialist agreements covering:
  - a. TFGP access road and LTC haul road;
  - b. NGET lease position; and
  - c. NGET Norwich to Tilbury project and replacement of existing cable tunnel under the river Thames.
- u) Mutual non-objection provisions surrounding known development plans.

## **APPENDIX 8**

### **DRAFT CONSTRUCTION TRAFFIC MANAGEMENT PROTOCOL**

PoTLL provided a draft Construction Traffic Management Protocol to the Applicant on 4 May 2023. Following recent discussions with the Applicant, a number of matters appear to have been agreed. PoTLL has updated this protocol to reflect what it now believes to be the agreed position, noting that due to time constraints it has not been possible to provide the amended protocol to the Applicant for further comment prior to submission at Deadline 1. Where matters are believed to remain outstanding, this has also been made clear.

PoTLL currently envisages that this Protocol will be secured as part of the proposed legal agreement with the Applicant. However, in the absence of agreement, the Protocol will need to be secured by a DCO Requirement or other means.



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# Port of Tilbury: LTC Traffic Management Protocol

Ref: ITL14229-006C TN  
Date: 18 July 2023

## **SECTION 1 Introduction & Background**

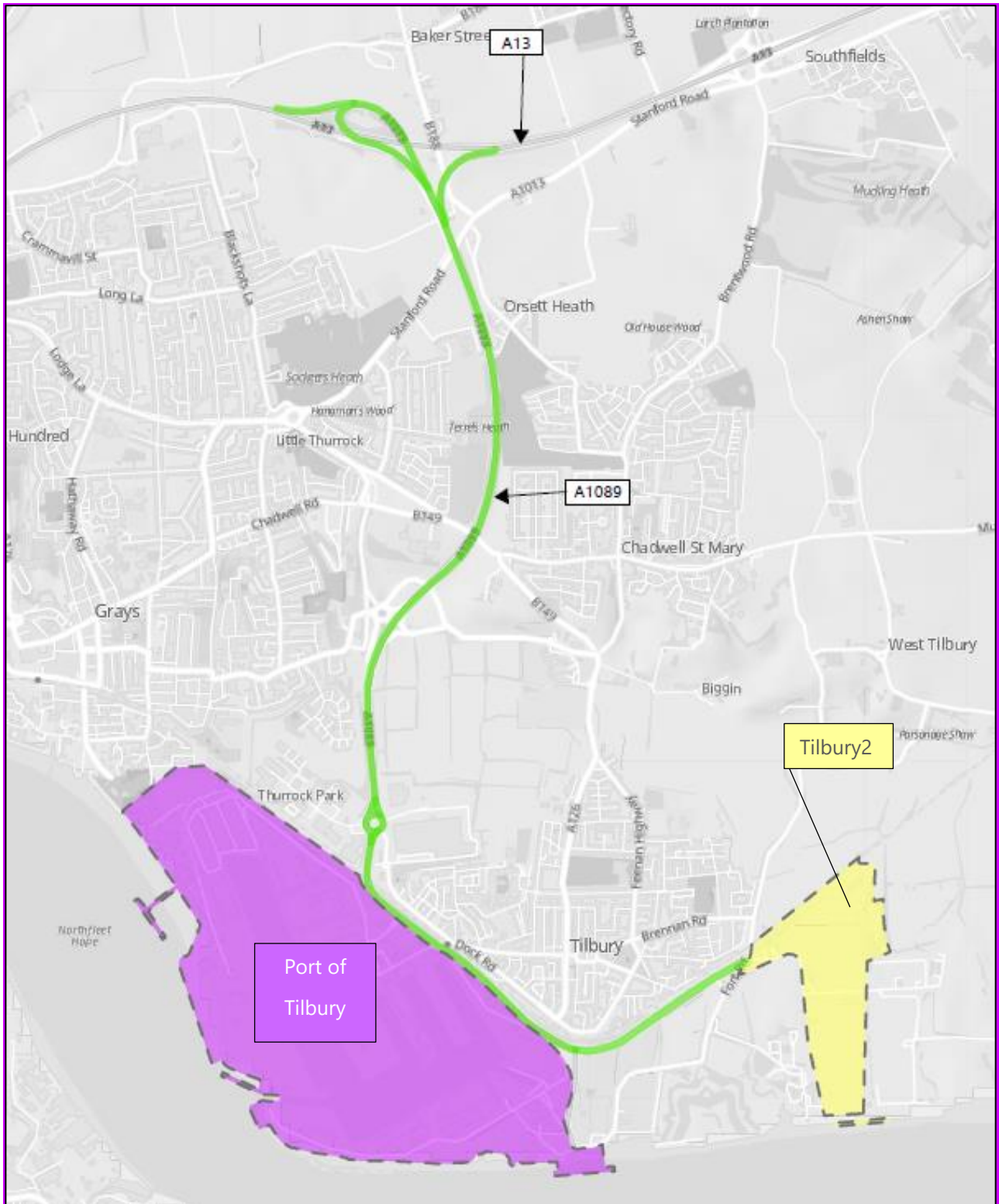
- 1.1 The Port of Tilbury (PoTLL) has been engaging with the Lower Thames Crossing (LTC) team following submission of the Lower Thames Crossing Development Consent Order (DCO) application. Following pre-application consultation and engagement generally a number of matters remain outstanding. These are set out in the PoTLL Principal Areas of Disagreement Summary (PADS) document. This note concerns the traffic management arrangements during construction.
- 1.2 PoTLL operates from two main locations, Port of Tilbury and Tilbury2 together known as the Port. Both these locations are accessed via the A1089, with Tilbury2 connecting to the A1089 via an extension to St Andrews Road/Ferry Road. Access to the Port is therefore reliant upon continued access to the A1089. The Port operations generate large volumes of HGV traffic across a continuous 24 hour period 365 days a year. Any period of reduced access adversely impacts upon Port operations.
- 1.3 During the construction of the LTC, the operations of the Port will be affected both by construction traffic using the A1089 (with potential increased delay day to day) and the imposition of traffic management measures required on the A1089 to construct parts of the LTC scheme.
- 1.4 The LTC team as part of their DCO submission have prepared an Outline Traffic Management Plan for Construction (oTMPfC), which provides a general framework setting out how the traffic management will be organised and delivered during construction as well as a project wide approach to stakeholder engagement. This is a generic document with very limited detail. Whilst it names PoTLL as a stakeholder, they are not named as a consultee, and it is not sufficiently tailored to the specific requirements of PoTLL to provide certainty on the delivery of the mitigation hierarchy and minimise potential effects.

- 1.5 This document therefore sets out how PoTLL expect the LTC to engage with them in the planning, implementation and monitoring of traffic management measures which directly affect PoTLL operations. It provides a framework for determining which traffic management measures will affect PoTLL operations. Detailed traffic management measures shall be prepared in accordance with the framework contained in this document.
- 1.6 This note is the starting point for the development of a Protocol to be appended to the proposed Side Agreement between PoTLL and National Highways in respect of the LTC.

## **SECTION 2 PoTLL Essential Road Network**

- 2.1 The principal road network essential to the operation of the Port is the A1089 between the Port and the A13 along with the link between Port of Tilbury entrance and Tilbury2. The critical importance of this route to the continued operation of the Port is apparent when alternatives are considered. The only alternative routes should the A1089 be unavailable are via the rural roads east of Tilbury and/or through Tilbury and Chadwell St Mary. These routes are not suitable for large numbers of commercial HGV's being either too narrow or through sensitive residential areas. Therefore, no alternative route could safely and efficiently accommodate the large number of HGV's that the Port generates consistently.
- 2.2 This protocol is principally concerned with the road network essential for PoTLL's day to day operation. This is shown graphically in green on Image 2.1 below:

Image 2.1 PoTLL Essential Road Network



2.3 Within this document this is referred to as the Essential Road Network (ERN).

## SECTION 3 PoTLL Traffic Management Engagement – part agreed

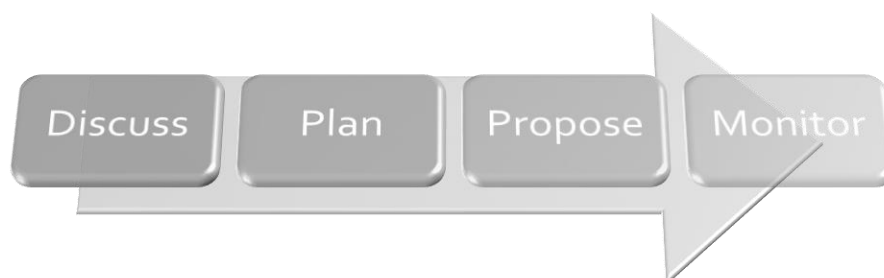
- 3.1 PoTLL require a dedicated engagement plan on traffic management during LTC construction that is tailored to the unique requirements of an operational port accessed at the end of the Strategic Road Network (SRN).
- 3.2 The Port operates 24 hours a day throughout the year. Maintaining suitable access routes along the SRN is essential at all times. Thus, ensuring that PoTLL has a clear understanding of, effective contribution to, and appropriate remedial redress to any construction traffic management activity along the ERN in real time is critical to its business operation.
- 3.3 This section sets out the requirements of PoTLL in respect of engagement, input and control over the traffic management measures along the ERN.

### PoTLL Traffic Management Working Group – agreed

- 3.4 At least 6 months prior to any construction activity commencing NH/LTC shall convene the PoTLL Traffic Management Working Group (TMWG). The members of the working group shall be:
- PoTLL;
  - LTC/National Highways;
  - Thurrock Council;
  - Main Contractor;
  - Any sub-contractor responsible for activities which require either traffic management on the ERN, or which will lead to substantial construction traffic flows on the ERN; and
  - Traffic management contractor (if different)

- 3.5 The terms of reference of the working group shall be as follows:

***To discuss, plan, and propose traffic management measures and to monitor and manage traffic management measures and construction traffic movements which affect PoTLL's ERN.***



- 3.6 The final authority over traffic management measures shall be with National Highways operations, with the TMWG facilitating its duty to consult and have regard to that consultation response. LTC shall only propose 'green tick' traffic management measures (see Table 2.1) unless it has obtained the agreement of PoTLL within the TMWG.

*Note: PoTLL understand this process – where NH has the final decision, but LTC will not put forward or propose 'red cross' measures without PoTLL's agreement – is agreed with LTC.*

- 3.7 The working group shall meet monthly throughout construction of the LTC or more frequently if requested by any one party.
- 3.8 The working group shall be chaired by the Main Contractor.

**Programme – not agreed**

- 3.9 At each meeting an up to date programme of traffic management works affecting the ERN shall be prepared and presented by the Main Contractor.
- 3.10 The programme shall be first presented 6 months prior to first construction activities for which the traffic management measures are required.
- 3.11 Each iteration of the programme shall provide a 12 month overview of traffic management works. It shall also provide detail of the measures proposed for the 3 months immediately following the meeting.
- 3.12 The programme shall be discussed by all members, and full regard given to the comments on the programme and then actively taken into account by National Highways in the measures brought forward and put into effect.
- 3.13 No 'red tick' traffic management measure (see Table 2.1) shall be submitted to National Highways for consideration without the full agreement of the TMWG.
- 3.14 The programme shall be accompanied by an estimate of the number of LTC construction HGV's using the ERN for the forthcoming 12 month period. Estimates shall include at least:
- Weekday peak hours (07.00-10.00 and 16.00-19.00);
  - Weekday daily (06.00-22.00)
  - Weekday Night-time (22.00-06.00);
  - Weekend (Saturday & Sunday 07.00-19.00); and
  - Other time periods as requested by members of the working group.

- 3.15 At each meeting, using the LTC construction traffic estimates, the working group shall determine the extent of any traffic modelling and capacity assessment on the ERN. The assessments will be presented at the following working group meeting.
- 3.16 Where the modelling and capacity assessment demonstrates that the capacity of any part of the ERN will exceed 90% in any time period, the working group shall agree whether mitigation is necessary and the form of that mitigation, which could include:
- Changes to construction timescales;
  - restriction on construction hours;
  - physical interventions to the road network.
- 3.17 The mitigation will be presented to the working group at least 3 months prior to the construction phase commencing. Once mitigation is agreed by all members of the working group the ERN shall be re-assessed with the mitigation measures and the results presented to the next meeting of the working group. If the agreed measures mitigate the effects such that the capacity remains below 90% the mitigation shall then be incorporated into the planning stage.

*Note: The modelling of construction traffic has not been agreed with the Applicant. The Applicant has indicated that modelling of traffic regulation measures would not be possible. However, the intention of this section of the Protocol is to identify and manage the impacts of the additional traffic on the ERN associated with LTC construction traffic (it is not proposed to model the effect of traffic management measures). The Applicant has raised concerns that 90% saturation is too low. This matter is subject to further discussion. Given the potential for additional traffic to over-saturate the road network, it is important to identify issues before they occur. This is also linked to the requirement for real time monitoring, to ensure that the impacts of construction traffic are as modelled.*

**Escalation Process - agreed**

- 3.18 In the event the mitigation measures cannot be agreed by the working group the following escalation procedure shall be followed:
- Senior officers in NH with tactical/strategic responsibility for the management of the road network shall be consulted. They shall have 5 working days to resolve issues before it is escalated;
  - The LTC Programme Director shall be consulted. They shall have 5 working days to resolve the issue before it is escalated;

- The LTC Executive Director shall be consulted. They shall have 5 working days to resolve issues before it is escalated;
- The CEO of National Highways shall adjudicate any unresolved matters having full regard to all matters raised and providing reasons for any final decision

*Note: PoTLL understand this escalation procedure to be agreed with the Applicant, with the Applicant's view that this will allow for quicker and better outcomes.*

### **Planning - agreed**

3.19 For each set of traffic management measures set out in the programme a detailed plan shall be prepared and presented to the working group at least 6 months before anticipated implementation of the measures in question.

3.20 The detailed plan for each set of traffic management measures must include as a minimum:

- The purpose of the measures and the works necessary;
- An assessment of alternatives to the traffic management measures proposed;
- Plans showing the exact location of the works;
- Plans detailing the traffic management measures proposed;
- Duration of measures;
- Time periods the measures will be in operation;
- Assessment of impact on traffic flow (including traffic modelling of the ASDA roundabout and the A1089);
- Specific traffic monitoring regime.

3.21 The full content shall be consulted on by the working group and comments shall be taken fully into consideration by NH.

### **Escalation Process - agreed**

3.22 National Highways representatives on the working group shall include officers with operational responsibility for the management of the road network. In the event that agreement on the detailed plan for traffic management measures is not achieved within 3 months of the expected implementation the following escalation procedure shall be followed:

- Senior officers in NH with tactical/strategic responsibility for the management of the road network shall be consulted. They shall have 5 working days to resolve issues before it is escalated;

- The LTC Programme Director shall be consulted. They shall have 5 working days to resolve the issue before it is escalated;
- The LTC Executive Director shall be consulted. They shall have 5 working days to resolve issues before it is escalated;
- The CEO of National Highways shall adjudicate any unresolved matters having full regard to all matters raised and providing reasons for any final decision.

*Note: PoTLL understand this escalation procedure to be agreed with the Applicant, with the Applicant's view that this will allow for quicker and better outcomes.*

#### **Contingency Plan – not agreed**

3.23 A contingency plan shall be prepared by the contractor for each set of traffic management measures. The contingency plan shall detail how the traffic management measures shall be modified or withdrawn should PoTLL raise an alert with NH and should be presented to the working group alongside the plan for the traffic management measures discussed above. There shall be two levels of alert which PoTLL shall be able to raise:

- **Amber:** the traffic management measures are adversely affecting commercial operations but at a manageable level; or
- **Red:** the traffic management measures are significantly affecting commercial operations.

3.24 On receipt of an Amber alert the contractor shall within 3 calendar days identify remedial actions to rectify the situation. These shall be agreed with PoTLL and implemented immediately.

3.25 On receipt of a Red alert the traffic management measures shall be withdrawn or altered to the satisfaction of PoTLL within 12 hours as an absolute maximum.

3.26 Alternative timescales for amendments upon receipt of alerts can be used if agreed by the working group.

*Note: The Applicant has agreed to the basic principle that Port traffic shall have priority. This will form a part of any contingency planning, once agreed.*

#### **Mitigation Measures**

3.27 A plan setting out how measures identified at the programming stage as necessary to mitigate the impacts of LTC construction traffic along the ERN shall be presented to the working group. The plan will include detailed scheme drawings of the mitigation measures and a detailed timetable of implementation. The plan shall be agreed by the working group.



### **Implementation – not agreed**

- 3.28 Traffic management measures shall be implemented in accordance with the decision of NH having taken the TMWG's comments fully into account.
- 3.29 PoTLL shall be provided with at least 28 calendar days notice of the implementation date of the measures.

### **Communication - agreed**

- 3.30 A communication protocol shall be set up between the members of the working group during the operation of traffic management measures.
- 3.31 There shall be a point of contact available 24 hours a day from:
- Traffic Management contractor;
  - Main contractor;
  - Any sub-contractor responsible for activities which require either traffic management on the ERN, or which will lead to substantial construction traffic flows on the ERN
  - PoTLL
  - NH operations
- 3.32 During periods when traffic management measures are operational there shall be a daily 'catch up' between the above nominated points of contact. The daily catch up shall be recorded and maintained by the main contractor.
- 3.33 Should PoTLL need to raise an alert under the Contingency Plan this shall be to all members of the above group. The main contractor shall be responsible for ensuring an alert is actioned.

### **Monitoring - agreed**

*Note: PoTLL understand the requirement for monitoring to be largely agreed, subject to the detail of how best to carry out the monitoring. The principle that these areas should be monitored in real time, in order that performance of the ERN can be assessed, is agreed.*

- 3.34 The effect of LTC construction will be monitored both through the implementation of traffic management measures as well as through the increases in construction traffic along the ERN throughout the construction period. Thus, there will be a need for ongoing monitoring on key parts of the ERN to ensure its continued effective operation and availability for Port traffic as a priority.

3.35 There will be a requirement for continuous monitoring of traffic flows on key parts of the ERN throughout the construction period. The continuous monitoring shall commence 3 months prior to construction and continue during the entire construction period as follows:

- ASDA Roundabout:
  - A working weekday 24 hour survey of traffic flows each month;
- A1089:
  - Existing permanent counters between ASDA roundabout and A13 (including slip roads) shall continuously record traffic; and
  - ATC's shall be placed quarterly for a minimum of a calendar week on A1089 St Andrews Road/Ferry Road between ASDA roundabout and Tilbury2.

3.36 LTC will provide and maintain cameras linked to the logistics control room, to include speed cameras to assess performance of the ERN.

3.37 The monitoring data shall be used to provide an assessment of the operational capacity of the ERN. Specifically, the following assessments shall be undertaken each month:

- Modelling of the ASDA roundabout; and
- Link capacity assessment of the A1089 at each count location.

3.38 The assessments shall be undertaken for peak periods as agreed by the working group in advance.

3.39 The contractor shall provide a monthly report of traffic flow monitoring and assessments to the working group. In addition, PoTLL shall be able to request an update at any time and receive a response within 5 working days.

3.40 Where the modelling and capacity assessment demonstrates that the capacity of any part of the ERN exceeds 90% in any time period PoTLL will be immediately alerted. These assessments shall be compared (where appropriate) to the modelling undertaken prior to implementation. The contractor shall then prepare a mitigation plan within 5 working days and present it to the working group. The mitigation plan could include:

- Changes to construction timescales;
- restriction on construction hours;
- physical interventions to the road network; or
- alterations to traffic management arrangements.

3.41 The mitigation plan shall include a range of measures for consideration and a modelling and capacity assessment of their expected effect on the ERN. It shall also include a timetable for the introduction of measures. The working group shall agree which measures are introduced and over what time periods.

3.42 In the event measures cannot be agreed by the working group the following escalation procedure shall be followed:

- Senior officers in NH with tactical/strategic responsibility for the management of the road network shall be consulted. They shall have 5 working days to resolve issues before it is escalated;
- The LTC Programme Director shall be consulted. They shall have 5 working days to resolve the issue before it is escalated;
- The LTC Executive Director shall be consulted. They shall have 5 working days to resolve issues before it is escalated;
- The CEO of National Highways shall adjudicate any unresolved matters having full regard to all matters raised and providing reasons for any final decision.

*Note: PoTLL understand this escalation procedure to be agreed with the Applicant, with the Applicant's view that this will allow for quicker and better outcomes.*

3.43 The monitoring regime shall be reviewed by the working group and modified as necessary.

3.44 In addition, specific traffic monitoring regimes shall be agreed at the planning stage for each set of traffic management measures.

#### **Incident Response Plan - agreed**

*Note: PoTLL understand the Incident Response Plan is agreed with the Applicant in principle, with the detail of the incident reporting and escalation process to be determined.*

3.45 The Main Contractor shall prepare an Incident Response Plan (IRP) which shall be reviewed and agreed by the working group.

3.46 The IRP shall include details of how NH/LTC shall respond to an incident (e.g a major traffic accident) at any point along the ERN and include as a minimum:

- Roles & responsibilities of named personnel;
- Liaison & communications;
- Reporting protocol.

3.47 The IRP shall utilise the communication protocol for the operation of traffic management measures.

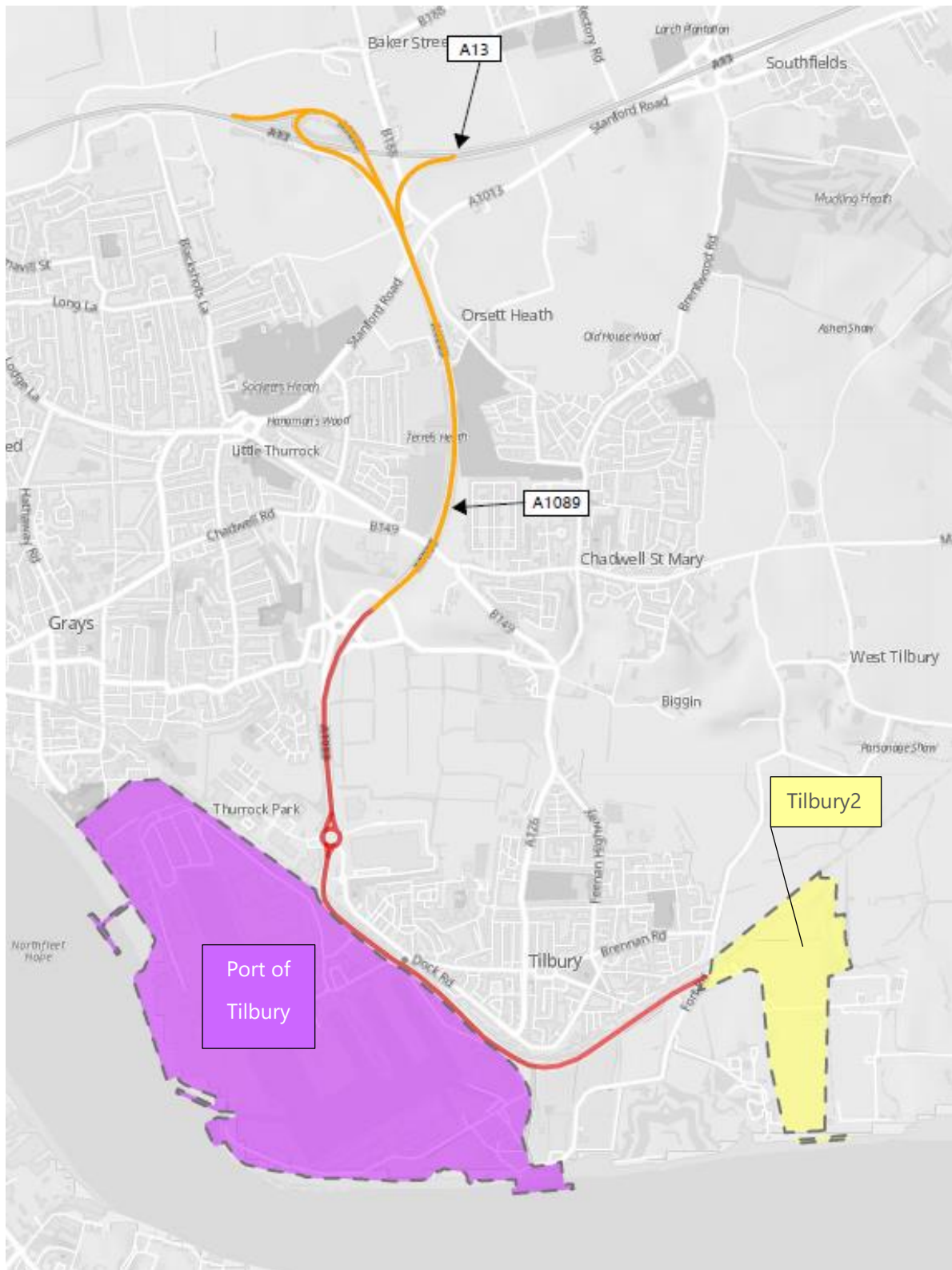
- 3.48 The IRP shall be used by PoTLL to report any traffic issues that are impacting the Port and LTC will support and take action to assist NH to resolve the issues.
- 3.49 Port traffic shall have priority over LTC construction traffic at all times.
- 3.50 The IRP shall be the responsibility of NH/LTC.

## SECTION 4 Traffic Management Framework - agreed

- 4.1 This section provides an appraisal of the expected type of traffic management measures which could affect the ERN and their likely acceptability to PoTLL. This in turn has been used to create a framework to help guide the preparation of detailed plans by the working group.
- 4.2 There are a number of traffic management measures identified in the oTMPfC which are expected to be necessary along the ERN during the LTC construction. The ERN has varied geometric characteristics along its length which affect its suitability and acceptability for various traffic management measures. The ERN can be broadly split into two categories to the north and south of the Marshfoot Road Interchange.
- 4.3 North of the Marshfoot Road interchange the ERN is a two lane dual carriageway with no accesses and generally free flowing. South of the Marshfoot Road interchange the ERN is a combination of dual and single carriageway with at grade accesses and conflicting vehicle manoeuvres. These two different sections of the ERN have been categorised in accordance with their ability to effectively cater for traffic flows associated with PoTLL operations. The categorisation is:
- **Amber Zone:** A1089 Marshfoot Road to A13
  - **Red Zone:** A1089 Marshfoot Road to Tilbury2

These are shown graphically on Image 4.1 below.

Image 4.1 ERN Traffic Management Zones



4.4 The following traffic management measures may be required during the construction of the LTC along parts of the ERN:

- Road closures and diversions;

- Lane closures;
- Uncontrolled contraflow operations;
- Signal controlled contraflow operations;
- Narrow lanes

4.5 A high level appraisal of the acceptability of each of these measure to the continued effective operation of the ERN has been undertaken to provide a framework for determining suitable traffic management measures.

#### **Road Closures with diversions**

4.6 There is the potential for a suitable diversion for the Amber zone of the ERN. Specifically, it would be possible for suitable periods for a diversion between the Marshfoot Interchange and the A13. The diversion would be via Old Dock Approach Road and the A1013 to the Orsett Cock junction with the A13. Thus, in some circumstances it may be possible to close the Amber zone of the ERN (A1089 between Marshfoot Road Interchange and A13).

4.7 The Red zone (A1089 south of the Marshfoot Road Interchange) has no suitable diversionary route. It is mostly single carriageway and provides access to a range of commercial premises. Therefore, in no circumstances could it be completely closed to traffic.

4.8 The Applicant has no requirement to put any traffic management measures in the Red zone. No road closures will be undertaken within the Red zone.

4.9 Weekend road closures are required at the northern end of the A1089. The number and extent (including time period) of these closures shall be agreed with PoTLL and a procedure for contingencies will be provided. The Applicant will provide reasonable notice for the closures. The dates for closures will be subject to change based on the construction requirements of LTC, subject always to reasonable notice being provided. The dates for closures will also be subject to change, with the works moved to reserve dates, due to other factors such as road incidents or the Port being especially busy.

4.10 Communication around and management of weekend closures will be managed by the TMWG.

#### **Lane Closures & uncontrolled contraflow**

4.11 The Amber zone with two lanes on each carriageway provides the opportunity to implement lane closures on both carriageways or to close one carriageway and use the other for two way traffic. This would only be acceptable during certain time periods (as set out below) with the volumes of traffic during the day too great to be accommodated in a single lane.

- 4.12 The single carriageway roads in the Red zone are not suitable for a full single lane closure (with necessary diversion) or uncontrolled contraflow measures.
- 4.13 The Applicant has no requirement to put any traffic management measures in the Red zone. No lane closures or uncontrolled contraflow will be undertaken within the Red zone.
- 4.14 The Applicant agrees not to implement 'red cross' measures in Table 2.1, below, without the agreement of PoTLL, such agreement not to be unreasonably withheld.

#### **Signal Controlled contraflow**

- 4.15 Contraflow measures with signal control would not be suitable in the Amber zone due to the high speed nature of the road.
- 4.16 During periods when traffic volumes are sufficiently low it may be possible to introduce controlled contraflow measures on parts of the Red Zone.
- 4.17 The Applicant has no requirement to put any traffic management measures in the Red zone. No signal controlled contraflow will be undertaken within the Red zone.
- 4.18 The Applicant agrees not to implement 'red cross' measures in Table 2.1, below, without the agreement of PoTLL, such agreement not to be unreasonably withheld.

#### **Narrow Lanes**

- 4.19 Narrow lanes will only be suitable where traffic speeds are controlled and full width carriageways to modern standards are currently provided. Parts of the Amber zone may during certain periods be able to implement narrow lanes in an acceptable manner.
- 4.20 The width of carriageway in the Red zone does not meet modern standards and therefore the ability to implement measures with narrow lanes is very limited.
- 4.21 The Applicant has no requirement to put any traffic management measures in the Red zone. No narrow lanes will be undertaken within the Red zone.
- 4.22 The Applicant agrees not to implement 'red cross' measures in Table 2.1, below, without the agreement of PoTLL, such agreement not to be unreasonably withheld.

#### **Time periods**

- 4.23 Three general time periods have been considered in determining the framework for acceptable traffic management measures:
- Weekdays (06.00-22.00)
  - Weekends (Saturday, Sunday and Bank Holidays 06.00-22.00); and



- Night time (22.00-06.00).

4.24 Each of the above measures has been considered for each time period to produce a Framework Summary Table.

### Framework Summary

4.25 A summary of the principal traffic management measures and their suitability for the two zones across each of the time periods is set out in Table 2.1 below:

**Table 2.1 Traffic Management Framework Summary**

Traffic Management Measure	A1089 Marshfoot Rd to A13			A1089 Marshfoot Rd to Port		
	Weekday	Weekend	Nighttime	Weekday	Weekend	Nighttime
Road Closure/Diversion	✗	✓	✓	✗	✗	✗
Lane Closure/restrictions	✗	✓	✓	✗	✓	✓
Contraflow - uncontrolled	✗	✓	✓	✗	✗	✗
Contraflow - signal controlled	✗	✗	✗	✗	✓	✓
Narrow lanes	✗	✓	✓	✗	✗	✗

Note: Weekend and Night-time measures subject to appropriate timings and duration

4.26 A green tick indicates that the traffic management measure in the appropriate zone and time period could be acceptable subject to a detailed plan approved by the working group.

4.27 A red cross indicates that a traffic management measure in the appropriate zone and time period will not be acceptable to PoTLL unless individually agreed as below.

4.28 The Applicant has no requirement to put any traffic management measures in the Red zone. No measures will be placed in the Red zone without the agreement of PoTLL, together with an explanation with full reasoning for why the measures have become necessary. Table 2.1 shall be amended to show a 'red cross' for all parts of the Red zone. *Note: the Applicant has not agreed to Table 2.1 being amended, however it has confirmed that no traffic management is required in the Red zone. Amending the table to reflect this will ensure clarity over where PoTLL's agreement to where a traffic management measure is required.*

- 4.29 **No traffic management measures are acceptable during weekday periods.** This is consistent with the statement in the oTMPfC *“Access and egress [is] to be maintained throughout the construction period with the exception of night time and weekend closures when required for specific planned works”*. The exception to this is where PoTLL agrees to the measures, such agreement not to be unreasonably withheld.
- 4.30 The above summary provides a Framework which can be used to guide the preparation of detailed plans which will be approved by the working group.

## **APPENDIX 9**

### **DRAFT PROTECTIVE PROVISIONS**

- 7.1 In respect of protective provisions, on 20 June 2022 PoTLL provided an outline of what would be required in response to a consultation exercise conducted by the Applicant but the Protective Provisions included in the dDCO do not adequately reflect the proposals made by PoTLL.
- 7.2 PoTLL has instead sought to provide a robust set of provisions to set out the extent of the protections required to address its concerns, in a single location, in order that the extent of the potential for serious detriment may be easily recognised. PoTLL recognises, however, that a number of the matters covered by the revised draft Protective Provisions may be better managed through other mechanisms including management plans, DCO requirements and side agreements.

## PART 10

### FOR THE PROTECTION OF PORT OF TILBURY LONDON LIMITED

**127.** The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and PoTLL, for the protection of PoTLL in relation to the construction, maintenance and operation of the authorised development.

#### *General*

**128.** Nothing in this Order, including but not limited to article 3(3), affects or prejudices the exercise of PoTLL's functions by virtue of, or under, The Port of Tilbury Transfer Scheme 1991 Confirmation Order 1992 and The Port of Tilbury (Expansion) Order 2019.

#### *Interpretation*

**129.**—(1) Where the terms defined in article 2 (interpretation) of this Order are inconsistent with sub-paragraph (2), the latter prevail.

(2) In this Part of this Schedule—

“the T2 Order” means The Port of Tilbury (Expansion) Order 2019(a);

“the 2021 Regulations” means The Designation of Freeport Tax Sites (Thames Freeport) Regulations 2021(b);

“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 and to and from 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 fluvial, mechanical or other erosion, collapse, disturbance or destruction of the bed or banks of the river Thames or any quay or jetty or other structure of whatever nature within the Port;

“plans” includes navigation risk assessments, plans, sections, elevations, drawings, specifications, programmes, construction methods and descriptions;

“the Port” means any land (including land covered by water) for the time being owned or used by PoTLL for the purposes of its statutory undertaking, together with any quays, jetties, docks, river walls and other land (including land covered by water) or works held in connection with that undertaking and land designated as a Thames Freeport Tax Site under the 2021 Regulations;

“PoTLL” means Port of Tilbury London Limited, as statutory harbour authority for and operator of the Port;

“specified work” means any work, activity or operation authorised by this Order, the Town and Country Planning Act (General Permitted Development) Order 2015 or under any planning permission under the Town and Country Planning Act 1990 and their associated traffic, rail and vessel movements which may affect—

- (a) the Port;
- (b) access to and from the Port and premises within the Port howsoever accessed;
- (c) streets within the Port;
- (d) navigation within and to and from the Port;
- (e) PoTLL's ability to carry out dredging to facilitate shipping access to the Port; or

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(a) S.I. 2019/359.

(b) S.I. 2021/1195.

(f) the functions of PoTLL as the statutory harbour authority for the Port, and specifically includes, but is not limited to, the exercise of the following provisions of the Order in relation to the Port: article 3 (development consent, etc. granted by the Order), article 4 (maintenance of the authorised development), article 5 (maintenance of drainage works), article 10 (construction and maintenance of new, altered or diverted streets and other structures), article 11 (access to works), article 13 (use of private roads), article 14 (permanent stopping up of streets and private means of access), article 17 (traffic regulation – local roads), article 18 (powers in relation to relevant navigations or watercourses), article 19 (discharge of water), article 20 (protective work to land and buildings), article 21 (authority to survey and investigate the land) and article 23 (felling or lopping of trees and removal of hedgerows) and the construction and maintenance of the following Work Nos.:

- (a) CA5;
- (b) CA5A;
- (c) 5D, 5E, 5F, 5G, 5L and 5O;
- (d) 14;
- (e) OSC5;
- (f) MU27, MU28, MU29;
- (g) MUT4, MUT5, MUT7, MUT8, MUT9, MUT30, MUT31, MUT32, MUT33;
- (h) OHT2;
- (i) OH3, OH4, OH5;
- (j) TFGP1; and
- (k) any other utilities works not situated on, over, across or under the Port but which connect to the Port in such a way that the interruption of these utilities would impact the supply of the relevant utility to the Port;

“vehicular access” includes but is not limited to access by road, rail, vessel and conveyor and any reference to “access” is to be construed as including vehicular access unless otherwise stated; and

“working days” means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971(a).

#### *Approval of plans*

**130.**—(1) The undertaker must, before the carrying out of any specified work, supply to PoTLL proper and sufficient plans of that work for the approval of PoTLL and the specified work must not begin except in accordance with such plans as have been approved in writing by PoTLL or settled by arbitration under article 64 (arbitration).

(2) Before approving plans provided under paragraph (1), PoTLL may require the undertaker to supply it with such further plans as PoTLL consider (acting reasonably) to be necessary to determine whether to grant approval.

(3) The approval of PoTLL under sub-paragraph (1) must not be unreasonably withheld but may be given subject to such reasonable conditions as PoTLL may make for the protection of the Port and navigation and current and future vehicular access to it, its ability to carry out dredging to facilitate vessel access to the Port, and to ensure that the future development of the Port is able to be brought forward in an effective and cost-efficient manner.

(4) When imposing conditions to any approval under sub-paragraph (1), PoTLL may specify any reasonably necessary protective works (whether temporary or permanent) that must be carried out before the carrying out of a specified work to minimise, to the extent reasonably practicable, the impact on PoTLL’s undertaking, and such protective works as may be reasonably necessary for those purposes must be constructed either by PoTLL at the expense of the undertaker, such

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(a) 1971 c. 80.

costs to be agreed by the undertaker prior to construction, or by the undertaker at its own expense in either case to be undertaken to a programme agreed between the undertaker and PoTLL.

(5) The undertaker must carry out any specified work and any protective works required under sub-paragraph (3) in accordance with the plans approved under sub-paragraph (1) and (2) or settled by arbitration under article 64 (arbitration).

(6) PoTLL is entitled at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey the specified works and the protective works and the undertaker must provide all reasonable facilities to enable that inspection and survey to take place and, if the person duly appointed by PoTLL is of the opinion that the construction of the work poses danger to any property of the Port or persons 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.

(7) The undertaker must inform PoTLL 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.

#### *Streets*

**131.**—(1) Not less than 28 days before exercising the relevant streets powers in respect of any affected road the undertaker must consult PoTLL on its proposed exercise of those powers and have regard to any consultation response provided by PoTLL.

(2) Not less than 28 days before exercising the powers conferred by article 12 (temporary closure, alteration, diversion and restriction of use of streets), article 16 (clearways, speed limits and prohibitions) and article 17 (traffic regulation – local roads) in respect of any of the affected highways.

(3) Consultation under this paragraph will be effected by the undertaker sending to PoTLL the documents reasonably required to describe its proposed exercise of the relevant streets powers and, where required by the provisions of the relevant streets powers to consult or seek the consent of a street authority or traffic authority, a copy of the consultation documents or application seeking that consent, at the time those documents are submitted to the relevant street authority or traffic authority as the case may be.

(4) The undertaker must send to PoTLL a copy of any response received by the undertaker from the relevant street authority or traffic authority in response to any such consultation or submission for consent under the relevant streets powers within 7 days of the receipt by the undertaker of any such response.

(5) In this paragraph “relevant streets powers” means the powers conferred by article 12 (temporary closure, alteration, diversion and restriction of use of streets), article 16 (clearways, speed limits and prohibitions) and article 17 (traffic regulation – local roads).

**132.** The undertaker must not exercise the powers conferred by article 11 (access to works), article 12 (temporary closure, alteration, diversion and restriction of use of streets), article 13 (use of private roads) article 14 (permanent stopping up of streets and private means of access) article 16 (clearways, speed limits and prohibitions) and article 17 (traffic regulation – local roads) within the Port unless the exercise of such powers is with the consent of PoTLL, such consent not to be unreasonably withheld or delayed.

**133.** In exercising the powers conferred by the Order in relation to the affected highways or any street within the Port, the undertaker must have regard to the potential disruption, delay or congestion of traffic which may be caused to the affected highways or streets within the Port and seek to minimise such disruption, delay or congestion so far as is reasonably practicable.

**134.**—(1) Where the undertaker carries out any works to any street in relation to which PoTLL is the street authority the undertaker must make good any defects in those works within the period of three months starting with the date the defects were notified to the undertaker by PoTLL, such notification to be given within 12 months of the undertaker ceasing to occupy that street for the purposes of the Order.

(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 PoTLL a sum equal to the cost to PoTLL of carrying out the required works as calculated by PoTLL, acting reasonably.

(3) Where there is a dispute as to the amount of the costs of carrying out the required works under sub-paragraph (2), the amount of the costs will be settled under article 64 (arbitration).

(4) Where any event or accident on or affecting any road, street or highway within the Port or on or affecting the River Thames, prevents or obstructs pedestrian or vehicular access into, out of or within the Port, such event or accident being caused by or attributable to the undertaker, its agents, employees 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 best endeavours to reinstate access or remove the obstruction without delay.

(5) PoTLL may, where an obstruction has occurred and has not been removed by the undertaker within 14 days of the undertaker becoming aware of the obstruction, or upon the undertaker being given notice by PoTLL that it is expedient for PoTLL to do so, remove the obstruction and repair any damage caused by the event or accident causing the obstruction and recover the costs of that removal and repair from the undertaker.

#### *Construction Traffic Management Protocol within the Port*

**135.**—(1) Before the commencement of any work constituting Work No. CA5 or ancillary to it, the undertaker must submit a construction traffic management protocol to PoTLL for approval.

(2) The construction traffic management protocol must include—

- (a) the security process to be followed by all vehicles accessing Work No. CA5 or otherwise travelling through the Port;
- (b) the code of conduct to which the undertaker, its employers, agents and contractors will be held to whilst on the Port;
- (c) procedures to be followed by all vehicles to ensure the Port and access to the Port does not become congested during any period in which the level crossing in the Port is in use;
- (d) the procedures to be followed in an emergency;
- (e) a suggested process by which advanced approval will be sought from PoTLL of the number of vehicular movements, including abnormal indivisible loads, expected to pass through the Port within a period to be agreed with PoTLL, and for updates to this information to be provided at the end of agreed period, for the next agreed period; and
- (f) a suggested process by which variations to the numbers approved by PoTLL under paragraph (e) are to be approved by PoTLL.

(3) The approval of PoTLL under sub-paragraph (1) must not be unreasonably withheld but may be given subject to such reasonable modifications, terms and conditions as PoTLL may make for the protection of the Port and its tenants, including in respect of their current and future operations.

(4) The undertaker must ensure that its employees, agents and contractors comply with the agreed construction traffic management protocol within the Port and failure of an individual or body to comply with the construction traffic management protocol will entitle PoTLL to prohibit that individual or body from entering the Port.

#### *Land powers*

**136.**—(1) The undertaker must not exercise the powers conferred by article 13 (use of private roads), article 20 (protective works to buildings), article 21 (authority to survey and investigate the land), article 25 (compulsory acquisition of land), article 28 (compulsory acquisition of rights and imposition of restrictive covenants), article 33 (acquisition of subsoil or airspace only), article 34 (rights under or over streets), article 35 (temporary use of land for carrying out the authorised development), article 36 (temporary use of land for maintaining the authorised development), or article 37 (statutory undertakers) of the Order in respect of the Port unless the exercise of such powers is with the consent of PoTLL, such consent not to be unreasonably withheld or delayed.

(2) The undertaker must not grant its consent under article 28(3) for the exercise by a person of the power to compulsorily acquire rights or impose restrictive covenants over the Port unless the grant of such a consent is with the consent of PoTLL, such consent not to be unreasonably withheld or delayed.

**137.** Articles 29 (private rights) and 66 (power to override easements and other rights) do not apply to the Port and any interests or rights held by PoTLL unless otherwise agreed by PoTLL, acting reasonably.

**138.** The undertaker must not enter into any form of agreement in respect of interests in land, or any licence, in respect of land within the Port unless PoTLL consents, such consent may be subject to whatever terms, acting reasonably, PoTLL requires to protect its statutory undertaking or land held for the purpose of its statutory undertaking.

#### *As-built plans*

**139.** As soon as reasonably practicable following the completion of the construction of any specified works within the Port or any protective works, the undertaker must provide to PoTLL as built plans of those works in a form and scale to be agreed between the undertaker and the PoTLL.

#### *Permitting*

**140.** The undertaker must consult PoTLL before applying for any permit under the Environmental Permitting (England and Wales) Regulations 2016 that will apply to activities in the Port.

#### *River powers*

**141.** Article 18 (powers in relation to relevant navigations or watercourses) does not apply to the Port and any interests or rights held by PoTLL unless otherwise agreed by PoTLL, acting reasonably and subject to such conditions as it reasonably requires.

#### *Accumulation and erosion*

**142.**—(1) If during the construction, maintenance or operation of a specified work or protective work or after the completion of that work there is caused or created an accumulation or erosion wholly or partly in consequence of its construction, maintenance or operation, the undertaker, if requested by PoTLL acting reasonably, must remedy the accumulation or erosion to the extent attributable to the construction, maintenance or operation of the specified work or protective work and, if it refuses or fails to do so as soon as reasonably practicable, PoTLL 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 PoTLL reasonably requires.

#### *Port closure in emergency*

**143.**—(1) Subject to paragraph (2), PoTLL may at any time close the Port and exclude access by the undertaker, including access under any power granted by this Order, under any other access right and as provided for in any agreement between the undertaker and PoTLL, where PoTLL 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.

(2) PoTLL 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.

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



### *Emergency procedures*

**144.**—(1) Prior to the authorised development becoming operational, the undertaker must provide to PoTLL a copy of its emergency evacuation plan in respect of the tunnel area.

(2) The emergency evacuation plan must include provision of places of safety for evacuated persons and vehicles to assemble and include measures to ensure evacuated persons and vehicles do not enter the Port except to the extent agreed by PoTLL under sub-paragraph (3).

(3) Any emergency evacuation plan that requires evacuation of persons or vehicles onto the Port must be reviewed and agreed with PoTLL when the emergency evacuation plan for the Port is reviewed and in any other case not more than 5 years after the previous review, whichever is soonest.

### *Interaction with the T2 Order*

**145.**—(1) Notwithstanding paragraph (5) of article 55, the undertaker will not undertake any work, activity or operation authorised by this Order, the Town and Country Planning Act (General Permitted Development) Order 2015 or under any planning permission granted or having effect under the Town and Country Planning Act 1990 that will or could result in a breach of the provisions, requirements, licences and other consents that form part of, are authorised by, or are ancillary to The T2 Order until a written scheme of management has been submitted to and approved by PoTLL.

(2) The written scheme of management must set out how the undertaker will—

- (a) minimise the extent of any breach;
- (b) monitor the breach;
- (c) rectify the breach at the earliest opportunity; and
- (d) reinstate the Port so as to ensure ongoing compliance with the provision, requirement, licence or consent following rectification of the breach.

(3) The undertaker is to be responsible for ensuring the rectification of any breach remains effective for the period of 12 months commencing with the date the breach was rectified or, should the breach recur, the date the recurrence was itself rectified.

(4) The rectification of any breach under (2)(c) and reinstatement under paragraph (2)(d) must be to at least the condition of the relevant land, ecological or other feature as at the date immediately prior to the action being undertaken that but for article 55(5) constituted a breach, but may include the provision of compensatory ecological provision where rectification would not otherwise be reasonably practicable due to the construction of the authorised development.

### *Safeguarding of access to the Port by rail*

**146.** The undertaker must not exercise any power under the Order in such a manner as to cause any vehicular access for the purposes of the authorised development to have priority over railway traffic at the level crossing in the Port.

### *Disposals, etc.*

**147.** The undertaker must within 7 days after the completion of any sale, agreement or other transaction under article 8 (consent to transfer benefit of Order) in relation to which any powers, rights and obligations of the undertaker are transferred to another party insofar as these would affect the Port or the operation of this Part of this Schedule, notify PoTLL in writing, and the notice must include particulars of the other party to the transaction under article 8, 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.

### *Costs*

**148.** The undertaker must pay to PoTLL its proper and reasonable legal costs, professional fees and disbursements incurred in connection with—

- (a) reviewing any information provided by the undertaker in seeking any consent or approval required by this Part of this Schedule;

- (b) inspecting any specified work or protective work; or
- (c) any other action required of PoTLL or its employees, tenants, advisors or agents arising in connection with or as a consequence of any provision of this Part of this Schedule.

*Indemnity*

**149.**—(1) The undertaker is to be responsible for, and must make good to PoTLL all losses, costs, charges, damages, expenses, claims and demands however caused, which may reasonably be incurred or occasioned to PoTLL by reason or arising in connection with—

- (a) the costs of alterations to aids to navigation within the Port owned by PoTLL, 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;
- (b) the costs expenses or losses associated with or arising from an 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; and
- (c) the construction, maintenance, use or failure of a specified work or protective work, or the undertaking by PoTLL of works or measures to prevent or remedy a danger or impediment to navigation or access within or to and from the Port, or damage to the Port arising from such construction, maintenance, use or failure, including but not limited to—
  - (i) any additional costs of dredging incurred by PoTLL 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 or protective work;
  - (ii) damage to any, street, plant, equipment or building belonging to PoTLL that is caused by the construction, maintenance or failure of a specified work or protective work;
  - (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 or protective work;
  - (iv) any remedial works necessary as the result of contamination being disturbed in, or migrating to, the Port or where such contamination means that the land affected by contamination cannot be used as part of the Port; and
  - (v) any indirect or consequential losses including loss of profits.

(2) Without limiting the generality of sub-paragraph (1), the undertaker must indemnify PoTLL 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) The fact that any act or thing may have been done by PoTLL on behalf of the undertaker or in accordance with a plan approved by PoTLL or in accordance with any requirement of PoTLL or under its supervision or under Schedule 2 to this Order or to its satisfaction or in accordance with any directions or award of any arbitrator does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of subparagraph (1).

(4) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage to the extent that it is attributable to the act, neglect or default of PoTLL, its officers, servants, contractors or agents.

**150.** 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 PoTLL at the date of this Order coming into force.

**151.** With the exception of any duty owed by PoTLL to the undertaker, nothing in this Order is to be construed as imposing upon PoTLL any duty or liability to which PoTLL would not otherwise be subject.

*Disputes*

**152.** Any difference arising between the undertaker and PoTLL under this Part of this Schedule must be determined by arbitration as provided in article 64 (arbitration).

**APPENDIX 10**

**POTLL RELEVANT REPRESENTATION**



PORT OF  
**TILBURY**  
LONDON

**Section 56(2) Planning Act 2008**

**Application by National Highways for an Order Granting Development Consent for**

**Lower Thames Crossing**

**Planning Inspectorate Reference: TR010032**

**RELEVANT REPRESENTATION BY**

**PORT OF TILBURY LONDON LIMITED (PoTLL)**

## PRINCIPAL AREAS OF DISAGREEMENT SUMMARY STATEMENT

This table summarises the key issues raised in this Relevant Representation, and how National Highways could seek to resolve them. In light of the ExA's Procedural Decision in [PD-005], this table should be considered as the first iteration of PoTLL's Principal Areas of Disagreement Summary Statement, as requested by the ExA.

Topic	Summary of issue	Suggested solution(s)	Likelihood of concern being addressed	Covered in SoCG? <sup>1</sup>
Traffic	Asda Roundabout Hard Mitigation – Outline Traffic Management Plan for Construction (OTMPfC) has no mechanism for delivery of mitigation if modelling indicates issues will occur. This is compounded by: <ul style="list-style-type: none"> <li>no junction modelling having been undertaken to date despite the Transport Assessment showing delays; and</li> <li>Asda Roundabout not forming part of the Order limits and no certainty that permitted development powers could be used.</li> </ul>	Junction assessments to be provided to PoTLL.  Tighter wording in the OTMPfC to deal with process for mitigation being delivered.  Order limits to be extended to include Asda Roundabout.	Low – Applicant has not yet done these assessments and may be unlikely to seek to change Order limits. PoTLL considers that Pre-Examination would be the appropriate time to do so.	Yes, but not Order limits extension
	OTMPfC soft measures – insufficient recognition of needs of a working Port alongside construction traffic.	OTMPfC to be updated to provide for more proactive and reactive mechanisms for PoTLL involvement, traffic management and Port traffic priority.  Some aspects of this may form part of a legal agreement.	Medium	Yes
	Outline Materials Handling Plan (OMHP) as mitigation: commitment needs to be stronger to utilise Port of Tilbury generally, a requirement to use the CMAT, and PoTLL needs better understanding of impacts to movements in and between Tilbury1 and Tilbury2 and the North Portal Construction Compound as a result (including right turns on St Andrews Road from Tilbury1).	Applicant to share detailed HGV movement estimates with PoTLL within the Tilbury area as a result of commitment as it currently stands.  Updates to be made to the OMHP in line with PoTLL's concerns.  Legal agreement to deal with mechanisms to allow for passage for agreed vehicle numbers.	Medium	Yes
	Inclusion of Freeport in Modelling – without this, impacts are going to be underestimated – PoTLL must deliver Freeport during LTC construction period.	Modelling data to be provided.	Low – Applicant has consistently refused to do so to date.	Yes
	Framework Construction Travel Plan – (FCTP) mandatory mode share targets to be introduced and PoTLL to be a consultee.	FCTP amended accordingly.	Medium	No
	Methodology concerns raised in this Relevant Representation undermine the veracity of the results meaning PoTLL are concerned that some impacts may be being underestimated and that appraisals are insufficient.	Technical Note responding to these concerns to be submitted to Examination.  Depending on content of that Technical Note, further modelling may be required.	Low	No
	DCO powers to suspend traffic on St Andrew's Road and Infrastructure Corridor mean that traffic could be prevented from accessing/egressing the Port.	Such powers to be subject to PoTLL's consent in the Protective Provisions.	Medium	No
	Fort Road to be discounted from use for construction purposes.	Commitment in the OTMPfC.	Medium	Yes
	Land	LTC land requirements are all within PoTLL's statutory undertaking and will cause a serious detriment.  Without mechanisms for consent and/or restrictions on the use of DCO powers within its Protective Provisions and in any legal agreements, PoTLL objects to land powers in the strongest terms.	Discussions are ongoing in respect of negotiated agreements for specific areas of land, but PoTLL requires that all land and works powers within its land must be subject to its consent via the Protective Provisions. This includes the conveyor 'finger' of land. Legal agreements between the parties will deal with the practical mechanisms of this consent.	Medium

<sup>1</sup> Column included at request of the Applicant. Where matters are not previously covered in the SoCG, this is because the issue has only arisen now that detailed application documents are available for the first time.

Topic	Summary of issue	Suggested solution(s)	Likelihood of concern being addressed	Covered in SoCG? <sup>1</sup>
	Utilities – PoTLL must be involved in the moving of existing utilities, the creation of new utility routes or works which will interfere with existing utilities within the Port of Tilbury as this will fundamentally affect the current and future working of the Port.	PoTLL approval to the compulsory acquisition of rights to be subject to its consent via the Protective Provisions. Legal agreements between the parties will deal with the practical mechanisms of this consent.	Medium	
	Plot 21-10 to be removed from the Order limits as the land is currently being marketed for use by PoTLL as part of Tilbury2.	Plot removed from the Land Plans.	Medium	No
	Errors in the Book of Reference.	Book of Reference to be corrected in line with comments in Appendix 2.	High	No
Design and construction methodology	<p>More detail and protective mechanisms need to be put in place to deal with:</p> <ul style="list-style-type: none"> <li>• how the Tilbury Link Road (TLR) could be brought forward in the context of the development of the haul route;</li> <li>• how the earthworks for the LTC scheme (in particular those associated with Work Nos. 5 and CA3) will be carried out and left in situ (including strata and landform);</li> <li>• the management of contamination risk;</li> <li>• construction and operational drainage and how they will be future proofed and interact with PoTLL's Freeport proposals;</li> <li>• the emergency evacuation procedures for the tunnel given that the northern portal is located adjacent to the Freeport land;</li> <li>• the development of utility provisions and commitments to PoTLL's ability to deal with future requirements and minimise consequential sterilisation and impacts;</li> <li>• the design of the junctions and roads contained within Work No. 5 to account for future traffic flows (or 'future proofing' to do so); and</li> <li>• how land temporarily possessed by LTC will be 'handed back' to PoTLL to enable its use for Freeport purposes.</li> </ul>	Predominantly to form part of separate legal agreements between the Parties, however PoTLL may seek amendments to the DCO and related documents, particularly in respect of the haul road/TLR and drainage, to ensure that appropriate design principles and legacy are secured.	Medium	Yes (in general terms)
River concerns	Amendments required to drafting of article 48, tunnel limits of deviation plan and river restrictions plan to allow for future dredging and construction of the tunnel.	Workshop to be held with PLA, PoTLL and the Applicant to agree amendments to be made.	Strong – it is understood that the Applicant agrees in principle, but points of detail will need to be discussed.	River issues in SoCG at high level – detailed matters not yet included.
	Wide ranging powers in article 18 need to be subject to PoTLL's consent.	Article 18 to be brought into the ambit of PoTLL's Protective Provisions.	Medium.	
Ecology	Baseline information – further baseline information is required in respect of habitats, invertebrates,	In the first instance, LTC to provide a Technical Note to PoTLL to confirm its position.	Low	No

Topic	Summary of issue	Suggested solution(s)	Likelihood of concern being addressed	Covered in SoCG? <sup>1</sup>
	ornithology, badgers, bats, water vole and reptiles as the information is out of date. This is needed to ensure that LTC's proposals will 'work' and integrate and align with the requirements of the Tilbury2 DCO and PoTLL's future aspirations.	Following review of this, further surveys may be necessary.		
	Mitigation – more detail is required on the mitigation measures proposed to be implemented to understand if they will work.	<p>In the first instance, LTC to provide a Technical Note to PoTLL to confirm its position.</p> <p>Following review of this, a more detailed LEMP may need to be prepared.</p>	Medium	Yes



## 1. SUMMARY

- 1.1 Port of Tilbury London Limited (PoTLL) are in support of the principle of the proposed Lower Thames Crossing (LTC) and the potential for economic benefits to the Port of Tilbury and local area. However, there are a number of matters where the objectives have not been met to their full potential, or benefits clearly secured and realised. There are areas where more information, detail and agreement by PoTLL to the proposed approach is needed. PoTLL are also seeking to ensure that adequate controls and mitigation are provided to ensure a positive legacy to the local area from the LTC. PoTLL's concerns and requests are broadly set out in this Relevant Representation.
- 1.2 Overall, PoTLL notes that the LTC is promoted based on the achievement of stated objectives. PoTLL's view is that whilst the LTC may be able deliver some benefits, in the DCO application as it currently stands National Highways has failed to fully recognise the impacts that it will cause to PoTLL and their operations, both direct and indirect, and to effectively apply the EIA hierarchy to seek to avoid, manage and mitigate those impacts.
- 1.3 Given the substantial economic presence and national importance of PoTLL's current operations, their planned expansion, and the future Freeport development (located within the LTC draft Order limits), the impacts that LTC may have on these, both direct and indirect, means that the achievement of the LTC objectives, particularly of economic benefit, are at risk. In particular, PoTLL are concerned to achieve the best legacy benefit for the local area, enabling future development such as the Tilbury Link Road to be brought forward with minimal disruption to the newly constructed LTC. PoTLL seek to ensure that the LTC co-exists harmoniously with the Port of Tilbury, with each being enabled to fulfil its potential without unduly hampering or disadvantaging the other.
- 1.4 Furthermore, the consequences of this failure to adequately address LTC's impacts are of concern and likely to cause a serious detriment to PoTLL's statutory undertaking. As such, PoTLL are making this representation with a view to participating in the Examination process and seeking to bring about improvements to the LTC, helping to ensure it can meet the identified objectives and deliver on the economic benefits claimed without harming PoTLL's established and future planned operations and development.
- 1.5 This Relevant Representation has been prepared in full form to allow the ExA to gain a strong understanding of PoTLL's concerns from an early stage, to allow this to be considered at the outset of the Examination process. In light of this, PoTLL considers it is likely that their Written Representation will not materially add to this Relevant Representation, depending on the extent of progress made with the Applicant in the meantime in terms of the issues raised within this document.

## 2. OVERVIEW OF THE PORT OF TILBURY

- 2.1 This Relevant Representation has been prepared by PoTLL as:
  - 2.1.1 the landowner and statutory harbour authority of Tilbury1 and Tilbury2 (together referred to as the Port of Tilbury), and the infrastructure corridor linking Tilbury2 to the A1089 and the London to Tilbury railway line. Part of the infrastructure corridor is contained within the draft Order limits within the LTC development consent order (DCO) application;
  - 2.1.2 the owner of land located to the east of Tilbury2. This land has been acquired by PoTLL for the purposes of its statutory undertaking and constitutes statutory

undertaker's land for the purposes of section 127 of the Planning Act 2008 (PA 2008). Much of this land falls within the draft Order Limits:

- (a) land previously used as the Tilbury B power station and its associated stock yards (coal field) to the north. This land currently benefits from temporary planning permission for port-related storage. It lies outside of the designated Green Belt; and
- (b) Areas A1, A2 West, A3 and B, which are former ash fields associated with the power station and are located within the designated Green Belt;

2.1.3 holder of an option over land known as Area A2 East. This land is designated Green Belt and is currently owned by a third party. This land, once purchased by PoTLL, will have been acquired for the purposes of PoTLL's statutory undertaking and will be statutory undertaker's land for the purposes of section 127 of PA 2008; and

2.1.4 a member of the consortium of parties that is bringing forward the Thames Freeport. Thames Freeport was chosen by HM Government as a successful Freeport location and formally designated as such in November 2021<sup>2</sup>. The designated area includes land within the LTC draft Order limits, including parts of Tilbury2, the former Tilbury B power station and associated coal fields and Areas A1, A2 West, A2 East, A3 and B as well as other land to the north-east.

2.2 This Relevant Representation is accompanied by a number of plans which are referred to throughout and are appended at Appendix 4. These plans are as follows:

- PoTLL Land Ownership and Interests Plan – this shows the extent of PoTLL's land ownership and interests in the Tilbury area.
- PoTLL Leasing Arrangements Plan – this shows the various leases that PoTLL are negotiating with LTC and other parties and the extent of IVL's permit.
- Existing Land Rights Plan – this shows the existing utility and access corridors that are the subject of PoTLL's property arrangements with third parties.
- Tilbury2/Tilbury 3 Identification Plan – this shows the areas of land that are caught by the terms 'Tilbury2' and 'Tilbury3' used in this Relevant Representation.
- 'Numbered Land Parcels Plan' – this shows the internal numbering of parcels that have been used by PoTLL in their future development planning, discussions with LTC and in their consultation responses.
- 'Freeport Areas Plan' – this shows the different elements of the Freeport, as designated.
- 'Order Limits Plan' – this shows the order limits for the Tilbury2 DCO, the Thurrock Flexible Generation Plant DCO and the draft LTC DCO mapped together.

2.3 The Port of Tilbury is located on the north side of the river Thames in Essex, some 5km east of the Dartford Crossing. It is London's major port and is one of the largest multi-

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<sup>2</sup> Designation of Freeport Tax Sites (Thames Freeport) Regulations 2021

purpose ports in the UK, covering over 1,000 acres (405 hectares) with 56 berths, over 10km of quay, 31 independent terminals and 5 million sq ft (464,515 sq m) of warehouse space. Currently there is a single point of access to the Strategic Road Network (SRN) via the A1089, catering to 8,000 vehicle movements per day. The A1089 routes north to the A13 and onwards to the M25 via Junction 30. The Port of Tilbury provides fast, modern distribution services, by water, rail and road for a full range of cargoes, cruise passenger traffic, and is home to the London Container Terminal.

- 2.4 PoTLL directly employs around 700 Full Time Equivalent (FTE) staff. Taking account of tenants and including induced, indirect and operator and tenant jobs, the Port of Tilbury supports up to 11,000 jobs in total.

### Tilbury1

- 2.5 The main services offered at Tilbury1 are:

- 2.5.1 **Containers:** The London Container Terminal is the only UK port with facilities to serve both deep sea and short sea customers. It has the capability to handle over 500,000 containers (over 900,000 TEU<sup>3</sup>) per year. The Terminal offers 24/7 working.
- 2.5.2 **Grain and dry bulks:** Tilbury1 has dedicated handling and storage facilities to handle grain and dry bulks, and is equipped with high capacity grabbing cranes and loadout elevators. Tilbury1 currently has six bulk handling berths and 7.4 acres of bulk handling operations plus 120,000 tonnes of covered and open storage.
- 2.5.3 **Paper and forest products:** Tilbury1 is the UK's leading port for paper products and is the major entry point for print houses and publishers in London and the South East, handling volumes of over three million tonnes per year. PoTLL opened the London Paper Terminal – a dedicated paper distribution centre – in 2014. The 14.5 hectare (36 acre) terminal includes 65,000sq.m. (700,000sq.ft.) of covered storage and state of the art equipment and technology. The adjacent Enterprise Distribution Centre (EDC) is a centre of excellence for paper handling and as a high bay warehouse has significantly improved throughput capabilities. Tilbury1 is a significant port for forest products with excellent links throughout the supply chain including shipping lines, importers, merchants and distributors. Tilbury1 has over 10 hectares (25 acres) of dedicated storage, transit, treatment and distribution facilities, and is able to deal with a full range of commodities from sheet materials to specialist timber.
- 2.5.4 **Roll on/roll off:** the RoRo berths deal with a range of cargoes including cars, ferry services and tracked and agricultural plant. Tilbury1 also has a dedicated Vehicle Handling Centre which allows for secure car storage. One of the main customers for this RoRo is Hyundai, which handles over 100,000 cars through the Port of Tilbury (some cars are stored within the Tilbury2 area) per annum.
- 2.5.5 **Recycling:** Tilbury1 is the UK's largest recycling and waste export facility, receiving, processing and exporting a wide range of waste products from the UK and overseas. It is estimated that some 15% of Tilbury1's throughput is recycling materials.

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<sup>3</sup> Twenty foot equivalent unit.

- 2.5.6 **Cruises:** the London International Cruise Terminal is London's only purpose built deep water cruise facility, and is located only 22 nautical miles from Central London and within easy access of London airports. The terminal consists of a large, historic Grade II\* listed cruise terminal with two elevated ship to shore gangways and a 348 metre landing stage. There are both short and long stay car parking facilities located adjacent to the cruise terminal. In 2022, a through flow of around 102,000 passengers came through the terminal.
- 2.6 The Port of Tilbury is a critical link in a wide range of supply chains for companies catering to all parts of the UK economy. Reliance is placed on the Port of Tilbury by customers such as Hyundai, Cemex, Aggregate Industries, Frontier, Stora Enso, SCA and Travis Perkins, due to its long track record of resilient operational and financial performance. This resilience was maintained through the Covid 19 pandemic, and continued infrastructure enhancement and focused investment and expansion has resulted in the Port of Tilbury being a key logistical hub for the UK. The Port of Tilbury is also the UK's greenest port, with a focus on sustainability and ongoing investment in renewable power, water and fuel saving solutions.
- 2.7 The Port of Tilbury is involved in initiatives aimed at relieving congestion on the capital's roads through promoting greater use of construction consolidation and river-based freight by using space at the Port of Tilbury for construction materials from projects on or near to the river Thames. By way of example, the Port of Tilbury acted as the logistics and distribution hub for the construction and operation of the Olympic Park, subsequently stored and refurbished cranes from the Battersea Power Station redevelopment, dealt with materials for the Thames Tideway project, and serves as the Waste Transfer Station for Cory's downstream riverside energy from waste facilities.
- 2.8 The Tilbury1 area has been subject to constant change, reflecting market and locational demands of current and potential tenants and the form and nature of an operational Port. Over many years this has seen intensification of activity including the construction of new buildings both at the quayside and over the wider port estate and increases in throughput. More efficient use of space has been coupled with less intensive uses, such as new vehicle storage being moved away from the quayside areas. Another feature of the changing character of the Port has been the diversification of uses, with an increase in production facilities and energy generation alongside the more traditional goods handling and distribution. Examples include the construction of the Tilbury Green Power Limited (TGP) renewable biomass power plant within Tilbury1, one of the largest biomass plants in the UK, and a proposal by Aggregate Industries to construct and operate a cementitious products manufacturing facility, the planning application for which is presently with Thurrock Council for determination (reference 22/00466/FUL). The latter will once again enhance the role of the port in the construction sector, creating additional jobs and economic benefits.

## **Tilbury2**

- 2.9 The Port has seen continuous expansion over recent years and PoTLL are in the process of investing circa £1billion in new facilities.
- 2.10 On 31 October 2017, PoTLL submitted an application to Secretary of State for Transport under PA 2008 for a Development Consent Order for the construction, operation and maintenance of a new port terminal and associated facilities. The application was accepted for examination on 21 November 2017 and the examination was completed on 20 August 2018. The DCO was made by the Secretary of State on 20 February 2019 as the Port of Tilbury (Expansion) Order 2019 (the T2 DCO).

- 2.11 The Tilbury2 terminal comprises two principal components, namely a RoRo terminal and a Construction Materials and Aggregates Terminal ('CMAT'), and associated infrastructure including rail and road facilities that link Tilbury2 to the existing road and rail network via an 'Infrastructure Corridor' adjoining the existing mainline railway. The CMAT includes stockpiling of construction materials and processing of aggregates for the production of asphalt and concrete products. The CMAT is operated by Tarmac and the majority of the storage and production facilities at the site are now operational. The CMAT is supported by a deepwater jetty which has the capacity for vessels up to 100,000 metric tonnes with a covered conveyor linking the jetty to the aggregate handling area. The capacity of the Tilbury2 CMAT makes it the UK's largest construction materials aggregates terminal. It is fully multi-modal, with a dedicated rail link and road access as well as the deep water jetty.
- 2.12 The adjoining RoRo terminal, as also consented by the DCO, is fully operational, providing container and trailer ferries to Europe, with a capacity of 500,000 units per annum.

### **London Distribution Park**

- 2.13 Although not within the Port of Tilbury's operational Port boundary, PoTLL are a joint venture partner with logistics developer SEGRO and successfully promoted the development of a new industrial and logistics scheme immediately to the north of the town of Tilbury, now known as London Distribution Park ('LDP'). LDP now accommodates an Amazon Fulfilment Centre, a production facility for electric vehicles and an HGV haulage depot presently operated by Maritime, one of PoTLL's long standing tenants.

## **3. PORT EXPANSION**

### **Planning context**

- 3.1 As highlighted above, the Port of Tilbury is a dynamic and ever changing facility. Over many years it has expanded its overall estate and adapted to changing markets and needs. This has included reclaiming land from the river, developing new landside areas including the area known as Fortland Distribution Park (which lies to the east of the main Port and north of Fort Road) and most recently, securing a Development Consent Order for Tilbury2 as described above.
- 3.2 Redevelopment within the existing Port has also taken place by means of buildings and other works not requiring express consent by virtue of PoTLL's permitted development rights and planning permissions granted by the local planning authority, Thurrock Council.

### **Permitted Development rights**

- 3.3 PoTLL and their lessees and agents within Tilbury1 have the benefit of Permitted Development rights (PD rights) within the Port of Tilbury. Part 8, Class B of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) confers a general right as follows:

*Development on operational land by statutory undertakers or their lessees or agents of development (including the erection or alteration of an operational building) in respect of dock, pier, harbour, water transport, or canal or inland navigation undertakings, required—*

*(a) for the purposes of shipping*

*(b) in connection with the embarking, disembarking, loading, discharging or transport of passengers, livestock or goods at a dock, pier or harbour,*

*or with the movement of traffic by canal or inland navigation or by any railway forming part of the undertaking, or  
(c) in connection with the provision of services and facilities.*

- 3.4 These permitted development rights also apply to the area of Tilbury2, expressly given effect by article 47(2) of the T2 DCO.
- 3.5 Increased flexibility in respect of these rights was introduced by government in April 2021, extending permitted development rights to the ‘agents’ of statutory undertakers and their lessees (a reform which was introduced alongside the announcement of Freeport policy) with the intention of encouraging investment and development in ports and simplifying and speeding up the planning system.
- 3.6 With the benefit of these PD rights, PoTLL are able to continuously ensure that optimal use is being made of the Port estate, proactively meeting tenants’ and economic delivery requirements as these change over time, adapting to the operational environment and market needs.
- 3.7 Where planning permission is required to redevelop land within its operational area, PoTLL has a history of working closely and positively with the local community and Thurrock Council (and its predecessor local planning authority, Thurrock Thames Gateway Development Corporation which operated from 2005 – 2012).

### **The Port of Tilbury and the Development Plan**

- 3.8 The Council recognises the importance of the Port of Tilbury in the local and sub-regional economy, and this is reflected in its current development plan for the area, the Core Strategy and Policies for Management of Development DPD (Adopted 2015). Policy CSSP2 within the DPD indicates that the Council will “promote and support economic development in the Key Strategic Economic Hubs” (of which Tilbury is one) “that seeks to expand upon their existing core sectors and/or provide opportunities in the growth sectors.” The “core sectors” are identified at para. 4.1 of the DPD as including:

*“the international port and logistic related facilities at Tilbury and the recent approval for a deep water port at London Gateway and the logistics and retail clusters at the Lakeside Basin / West Thurrock”.*

- 3.9 Tilbury is defined as a key location for employment in the Borough and will provide between 1,600 and 3,800 additional jobs in logistics, port and riverside industries and the land that became London Distribution Park was identified in the DPD as a Green Belt release. Policy CSTP17 (Strategic Freight Movement and Access to Ports) indicates the Council’s “support for the logistics and port sectors, and the positive impacts of freight activity in Thurrock and beyond. Policy CSTP28: River Thames, states that:

*“The Council and Partners will ensure that the economic and commercial function of the river will continue to be promoted through:*

- i. Priority being given to allocating riverside development sites to uses that require access to the river frontage, especially those which promote use of the river for passenger transportation purposes.*
- ii. Safeguarding port related operational land.*
- iii. Safeguarding additional adjacent land required for further port development, including expansion. For port development onto additional land to be acceptable however, it will be necessary to*

*substantiate the need for it over and above land that is already available for operational port uses.*

*iv. To safeguard existing and promote new jetties and wharves facilities where appropriate for transport of goods and materials.”.*

- 3.10 In summary, a combination of PoTLL’s permitted development rights and a supportive planning context has allowed PoTLL to expand and intensify its operations over many years and this is set to continue.

### **Future expansion plans**

- 3.11 PoTLL will be expanding their operations and plans circa £1billion of investment in the coming years. In doing so PoTLL have three main objectives:

3.11.1 to sustain existing and to create new jobs: the Port of Tilbury has been operating for 130 years and its success means that it will in the future need more land to grow business and create more jobs both directly employed by PoTLL and employed by their tenants and suppliers;

3.11.2 to increase the Port of Tilbury’s economic contribution: the expansion will create more jobs, further adding to the Port’s wider objective as a facilitator of economic growth and regeneration on a local and regional scale; and

3.11.3 to increase the economic contribution and meet the needs of the Port of Tilbury’s current and future customers, including growth sectors such as renewable power, recycling and port centric logistics.

- 3.12 PoTLL anticipates further longer term growth of the Port of Tilbury, driven by customer demand, making the most efficient use of the multi-modal facility, in close proximity to the capital and a large percentage of the population of the UK.

- 3.13 PoTLL considers that the only constraints to longer term growth are:

- (a) the size of the Port of Tilbury estate;
- (b) the access to the Port by road; and
- (c) (under the current proposals) congestion and disruption caused by the construction of the LTC and sterilisation of and interference with PoTLL development land.

### **Provision of additional development land**

- 3.14 Even with Tilbury2 only recently constructed, PoTLL has purchased a further 52 hectares of land to the east of Tilbury2. The land (shown on the Numbered Land Parcels Plan) comprises the site of the former TilburyB power station and adjoining stock yards (coal field), and associated ash fields known as land parcels A1, A2 West, A3 and B. Over several years the ash has been removed from the land for commercial purposes and it has been refilled and reprofiled with inert waste from London construction projects including Thames Tideway and Silvertown Tunnel. PoTLL has secured temporary planning permission for a period of five years to allow for the use of the former power station site and adjoining land for the storage of imported motor vehicles, HGVs and general port product.

- 3.15 A further area of land known as A2 East (20 hectares) shown on the Numbered Land Parcels Plan and the PoTLL Land Ownership and Interests Plan is subject to an option to purchase in favour of PoTLL.
- 3.16 These land parcels have long been identified by PoTLL (even prior to the advent of the national Freeport Policy as mentioned above) as the only viable area for further expansion of the Port of Tilbury with a river frontage (offering the opportunity for enhanced berthing infrastructure) given other constraints in the area, particularly Tilbury Fort and local ecology. The exact proposals for this area will, to a degree, depend on tenant demand but could include further containerised and unitised cargo capacity, port centric logistics, and further potential aggregates handling and manufacturing. This will include marine and terrestrial infrastructure.
- 3.17 Given that the Freeport powers will statutorily 'run out' in 2026, PoTLL are planning to bring development forward as soon as possible and certainly before the end of LTC construction.
- 3.18 The second opportunity is to expand LDP, which is located to the east of the A1089/Dock Road, to the north, as shown on the Freeport Areas Plan. Whilst this land does not have immediate dock side access, it is sufficiently proximate to the Port of Tilbury to attract port centric distribution uses. The success of the existing LDP provides a compelling track record of delivery.
- 3.19 This land is the subject of land promotion through the Local Plan process by London Distribution Park LLP, a joint venture between PoTLL and SEGRO, a leading owner, asset manager and developer of modern warehousing and light industrial property.
- 3.20 Furthermore, PoTLL are in the process of formalising leasehold arrangements with Anglian Water for land within their sewage treatment plant immediately to the west of Tilbury2 (as shown on the PoTLL Land Ownership Interests Plan). This land is subject to a current planning application for HGV parking and port-related storage as an expansion of Tilbury2 (Thurrock reference 22/01461/FUL) and is expected to be permitted shortly, increasing the size of Tilbury2 by a further 2.9 hectares.
- 3.21 PoTLL intend to continue to develop and expand the Port of Tilbury over their landholdings and interests shown on the PoTLL Land Ownership and Interests Plan, during the consenting and construction phases of LTC. Given LTC's proposals, an early focus of this growth is likely to be riverside development immediately to the south of the LTC draft Order limits in area A1 (shown on the Numbered Land Parcels Plan).
- 3.22 PoTLL are seeking to ensure that LTC is able to co-exist with their operations and expansion, during both the construction and operational phases (as discussed further in section 6 below), ensuring that the growth of the Port of Tilbury is not constrained by LTC, nor sterilised through unnecessary use or restriction of the PoTLL landholding.

### **Improving access and connectivity**

- 3.23 The baseline and future highway network are discussed in further detail below. PoTLL have invested significantly in improving connectivity of the Port of Tilbury to the Strategic Road Network (SRN) and national rail system, most recently by the construction of the infrastructure corridor, namely the new Tilbury2 link road to Ferry Road/St Andrews Road, to provide direct access to the A1089. PoTLL have also implemented improvements to the ASDA roundabout on the A1089 and funded changes to improve the efficiency of Junction 30 of the M25. This investment has resulted in an improved highway network to support the



development of Tilbury2. Alongside this, a new rail siding into Tilbury2 has been constructed. Improvements have been made to benefit the local community and employees at the Port through new and upgraded footpaths and cycle routes, waymarking and crossings and enhancing the Tilbury to Gravesend Ferry by means of real time information.

- 3.24 Traffic modelling undertaken by PoTLL (discussed further below) indicates that, absent the LTC (and in particular the impacts of LTC construction traffic on the ASDA roundabout), further development of land east of Tilbury2 would be possible with only limited further highway interventions. However, in order to fully realise the potential of the Port of Tilbury, incorporating the Freeport, a second access into the Port of Tilbury would be required by way of a Tilbury Link Road (TLR). This is discussed further in section 5 below.

### **Thames Freeport**

- 3.25 The Designation of Freeport Tax Sites (Thames Freeport) Regulations 2021 identified the areas of beneficial tax status constituting the Freeport. These areas are shown against the LTC draft Order limits on the Freeport Areas Plan. The main Freeport area at Tilbury comprises land located between Tilbury2 and the LTC North Portal, contained within the LTC draft Order limits for the main Construction Compound (Work No. CA5). PoTLL intend to develop the Freeport with a mixture of port-related development following the construction of LTC to provide, amongst other benefits, around 20,000 jobs, many of which will be in the Tilbury area. Further background information on the Freeport is contained in Appendix 1.
- 3.26 PoTLL are concerned that the LTC application should not hinder the delivery and benefit of the Freeport at the Port of Tilbury.

### **Conclusion**

- 3.27 The Port of Tilbury has a nationally significant role to play in the UK economy due to its size and the scale of operations. These operations also support major infrastructure projects being constructed across the UK, including HS2. Whilst PoTLL are supportive of LTC in principle, it is important that the construction and operation of the LTC does not hamper the ongoing operation and expansion of the Port of Tilbury due to its critical links to the economy. The remainder of this Representation sets out PoTLL's main concerns with the DCO application and an indication of how these shortcomings may be addressed in order that the two undertakings may successfully and beneficially co-exist.

## **4. TRAFFIC**

### **Context**

- 4.1 The Port of Tilbury has direct access to the A1089 part of the Strategic Road Network (SRN) operated by National Highways (NH). Tilbury2 is accessed via the Infrastructure Corridor (IC). The IC connects the A1089 at the main Tilbury1 access to Substation Road, which is the road running through Tilbury2 and on into Tilbury3.
- 4.2 The operation of the Port of Tilbury is fundamentally dependent on the A1089. There are no alternative road network connections capable of safely and efficiently catering for Port traffic. The A1089 is therefore critical to the Port of Tilbury's 24 hour continuous operations.

## Baseline situation

### Background

- 4.3 The A1089 routes north from the Port connecting to the A13. It is a two lane dual carriageway road with an at-grade junction with the ASDA roundabout providing access to Tilbury town.

### ASDA roundabout

- 4.4 The ASDA roundabout in Tilbury, being located adjacent to the first phase of LDP (including an Amazon Distribution Centre) and an Asda, is the key capacity constraint on the operation of the A1089. This was identified during the Tilbury2 DCO Examination and mitigation was required to improve the capacity of the junction. National Highways were particularly concerned about this junction, noting initially that *“the mitigation was insufficient to mitigate the additional traffic from the Proposed Development”*. Alternative mitigation was later agreed, with National Highways noting *“It is agreed that the traffic modelling of the ASDA roundabout accurately represents the impact of Tilbury2 development traffic and a scheme of measures to mitigate the impact has been agreed in principle.”*
- 4.5 The improvements to the ASDA roundabout delivered under the T2 DCO mitigated the impact of the additional traffic created from the development of Tilbury2 and provided some residual additional capacity allowing for further port expansion. Recent developments in the surrounding area have both increased traffic volumes through the junction and required assessment of traffic capacity at the ASDA roundabout. The most recent assessment of its operation<sup>4</sup> indicates that the junction is operating at a similar capacity level to that assessed in advance of the T2 DCO and completion of mitigation works. The residual capacity within the ASDA roundabout would, in the absence of LTC, be sufficient to accommodate further development of the Port of Tilbury.
- 4.6 PoTLL note that all the recent developments in the surrounding areas were required to undertake detailed traffic modelling of the ASDA roundabout to assess the development’s impact, although the associated increases in traffic volumes were low in each case. PoTLL understand from this that the ASDA roundabout junction is of concern to National Highways, when they respond as a consultee to other proposed new development, with any notable proposed increase in traffic being required to be subject to proper assessment and, if required, mitigation.

### Fort Road

- 4.7 The T2 DCO delivered the IC providing a new direct road link (and rail link) between the Port and the A1089. The primary reason for the new road link was due to the unsuitability of Fort Road to accommodate the traffic arising from Tilbury2 in a safe and efficient manner. The IC was assessed within the T2 DCO documentation<sup>5</sup> as providing mitigation to road safety, driver delay and pedestrian amenity.
- 4.8 Fort Road continues to provide local access. However, it remains a route which is not suitable for large volumes of HGV traffic such as those associated with the LTC construction.

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<sup>4</sup> Carried out by Anglian Water in respect of proposed development at its adjacent water treatment works to the west of Tilbury2.

<sup>5</sup> Surface Access Option Report, Appendix to Environmental Statement Appendix 5.A Masterplanning Statement, submitted as part of the T2 DCO Application Documentation.

## **Modelling Methodology**

### Lower Thames Area Model (LTAM)

- 4.9 The LTAM has been used to assess impact of the LTC during both construction and operation. The baseline model assesses the following periods:
- 4.9.1 07:00 to 08:00 (AM peak);
  - 4.9.2 average hour for the period 09:00–15:00 (Inter peak); and
  - 4.9.3 17:00 to 18:00 (PM peak).
- 4.10 The morning peak hour 08.00 to 09.00 has been excluded.
- 4.11 The peak hours have been identified as the busiest peak hour traffic flows on the main links of the highway network. It is noted that, for the Tilbury2 DCO, National Highways required assessment of 08:00 to 09:00 as the peak hour for the ASDA roundabout and the A1089. This was confirmed to be the peak hour for the local network.
- 4.12 The Applicant does not assess the peak hour of 08:00 to 09:00 in the LTC application. PoTLL submit that an assessment of this hour must be undertaken, both to ensure that the worst case impacts to local traffic have been properly considered, and to enable consistent consideration and assessment. No reason appears to be given for the omission of this information normally required by National Highways when considering development in the area interacting with the SRN.

### Capacity assessments

- 4.13 The Transport Assessment states at paragraph 5.5.3 that the assessment of construction traffic is based on:
- 4.13.1 the change in traffic flows;
  - 4.13.2 the baseline percentage of volume to capacity for the modelled road network and the forecast percentage of volume to capacity with the construction of the Project; and
  - 4.13.3 the change in travel speeds.
- 4.14 However, no assessment of volume to capacity has been provided. The impact of construction vehicles on the road network has therefore not been presented.
- 4.15 Assessments from the LTAM provide a percentage between 0% and 100% calculated by comparing traffic volume (V) to capacity (C). There is no information on the capacity used in this analysis; only a range of percentages is provided within the Transport Assessment. It is not therefore possible to verify the percentage impacts identified by LTC.
- 4.16 The Transport Assessment does not contain a detailed appraisal of junctions, with assessments, instead comprising the individual links approaching (and through) a junction. This approach does not account for interactions between different links which occur at junctions. The overall capacity of a junction, such as the ASDA roundabout, has not

therefore been adequately assessed to properly inform and understand the likely direct and indirect effects of the LTC on a project and cumulative basis.

- 4.17 The Transport Assessment presents the capacity of each link at the ASDA roundabout as having a V/C percentage of less than 75% in all periods in 2016. By way of comparison as to the detail of the assessment, the 2017 Transport Assessment undertaken for the Tilbury2 DCO demonstrated that the junction was operating at 86% on the A1089 Dock Road arm in the AM peak period. Recent assessments carried out at the request of National Highways (and accepted by them) have found the capacity of the ASDA roundabout to be operating at similar levels.
- 4.18 PoTLL are concerned that the approach taken by the Applicant is insufficiently detailed, to understand and properly assess and consider the likely direct and indirect effects of the LTC on a project and cumulative basis and does not use up to date and representative baseline data.
- 4.19 In the absence of these calculations, it is not possible to properly quantify the impact during construction. The construction phase of LTC will generate traffic in the Tilbury area, whilst the operational phase will reassign traffic. Major schemes within the area, including the Thurrock Flexible Generation Plant, have included such an assessment. It would be beneficial for the same assessment to be carried out by the Applicant, to provide a consistent metric across schemes by which the impact of construction traffic may be consistently assessed and examined.
- 4.20 The Applicant has also made no reference to the improvements made to the ASDA roundabout under the T2 DCO. Other road schemes are noted as being included in the future year network and it appears that this scheme may have been omitted. PoTLL would appreciate clarity from the Applicant as to whether the improvements to this junction have been included in the modelling. If this is an omission, it is important that the changes are added to the dataset before any further modelling takes place to ensure the accuracy of the results.
- 4.21 Given the importance of this junction to the operation of the Port of Tilbury, and the level of concern shown by National Highways as to the impact of local developments, there needs to be a consistent approach to information and assessment to ensure an adequate understanding and assessment.

#### Future year assumptions

- 4.22 The LTC future year model (Core Scenario) assumes that traffic volumes at the Port of Tilbury will remain at 2016 levels through to the Design Year of 2045, although it is unclear what information this assumption is based on. Historic and recent traffic survey data demonstrates that there has been (and continues to be) year on year growth in traffic levels associated with both Tilbury 1 and Tilbury 2, being the existing Port of Tilbury operations. It is noted that the LTC model assumes growth at other Ports (e.g. Purfleet, Dover).
- 4.23 PoTLL anticipate that, based on historic and recent data, traffic volumes associated with the Port of Tilbury would grow over the period 2016 to 2045 by between 32% and 46%.
- 4.24 The Core Scenario does not include any allowance for traffic associated with the Thames Freeport development. The Applicant includes future developments in the Core Scenario according to their 'certainty' of coming forward. Developments are categorised in Table 4.1 of Appendix C of the Combined Modelling and Appraisal Report. The categorisation follows

the advice of TAG Unit M4 with the Core Scenario of the LTC model including Near Certain and More than Likely expected developments.

- 4.25 PoTLL submit that the Freeport meets the categorisation criteria for ‘reasonably foreseeable’ as it is a committed policy goal of central government and provided for in regulations. In accordance with TAG advice, the Freeport should be included within a sensitivity test.
- 4.26 In accordance with TAG Unit M4 advice a High (& Low) Growth scenario has been developed within the LTAM which has been tested alongside the Core Scenario. These scenarios seek to adjust the Core Scenario to reflect changes in demand at both a national level and a local level. The LTC assessments adjust demand only at a national level. The decision to make no adjustment for changes to local traffic has not been explained.
- 4.27 The Freeport will be a significant source of local demand, located close to the LTC. It is reasonable to consider that it will have a local impact on traffic growth, which is considerably greater than the national uncertainty in growth allowed for in the High Growth scenario.
- 4.28 Traffic estimates for both the LDP2 and Tilbury3 were provided to the LTC team in 2021.
- 4.29 The Applicant has not included these traffic flows in the LTC traffic assessment, stating in the ‘Interrelationship with other Nationally Significant Infrastructure Projects and Major Development Schemes’ document that it is not possible to undertake an assessment as “*no information has been provided on the highway network mitigation*” expected to arise from the Freeport proposals. Conversely, the Applicant is content to rely on assessments which provide no information on highway mitigation.
- 4.30 PoTLL disagree with the decision of the Applicant to exclude this data and are concerned that this omission will alter the future baseline such that the worst case assessment has not been accurately addressed.
- 4.31 PoTLL recognise that, individually, one such omission may not make a material difference to the assessment. However, the number of omissions and methodology decisions that have not been explained and supported with reasoning, and the fact that this approach would not be acceptable to National Highways from a third party developer in this area, is of real concern to PoTLL. An underestimate of the impacts, and the failure to identify necessary mitigations at an early stage, may have serious repercussions on the future of the Port of Tilbury’s undertaking.
- 4.32 PoTLL are therefore requesting that the Transport Assessment methodology is assessed against the criteria National Highways consistently require of all new developments in this area (when they are a consultee on development proposals), in order that the reasonable worst case scenario will have been properly assessed.

## **Construction HGV movements and management**

### Construction HGV estimates

- 4.33 The LTC Transport Assessment at section 8.6 provides a description of the earthwork movements and supplier deliveries which constitute the HGV estimates. No detail of how the vehicle estimates have been calculated is provided. Total construction vehicles are broken down by phase into Construction Worker and Construction HGV movements. These movements have not been disaggregated by compound.

- 4.34 PoTLL are seeking to complete a full audit of the Applicant's Transport Assessment in order to ensure that their undertaking is adequately protected within the DCO. A fine grained granularity of analysis is required in order to effectively verify the estimates of construction traffic in specific areas, including in relation to the main North Portal Construction Compound, the access to which will be through an operational port. PoTLL are therefore requesting disclosure of the data underlying these assessments, the methodology that led to the estimate calculations, and data as to the number of movements associated with each compound. This will enable PoTLL to be confident that the reasonable worst case scenario has been assessed and provide a better understanding of how the construction phase will impact the Port of Tilbury.

#### HGV Routes

- 4.35 Construction HGVs will follow the construction traffic routes detailed in the Outline Traffic Management Plan for Construction. However, the proposed routes to and from the Station Compound and the Northern Tunnel Entrance compound are not clear. Plate 4.3 shows a primary route from the A1089 via the IC and Substation Road to the Northern Tunnel Entrance, with a secondary route via Fort Road and Substation Road. However, Table 4.1 identifies the Fort Road route as a primary route.
- 4.36 Fort Road is not suitable for HGV construction traffic. The assessments carried out for the T2 DCO demonstrate the unsuitability of the route to carry construction HGV traffic without substantial improvement. The LTAM assessment also assumes that traffic will be routed via the IC and not Fort Road. There has been no traffic (or environmental) assessment of the impact of construction HGV traffic using Fort Road. PoTLL are concerned that the Applicant may seek to use this route for an unknown quantity of construction traffic, despite it being unsuitable. PoTLL therefore seek clarity as to the primary construction traffic route to access the LTC Construction Compounds, and confirmation, secured in the Outline Traffic Management Plan for Construction, that the Applicant will not utilise Fort Road for construction traffic.

#### Outline Materials Handling Plan

- 4.37 The key tool for managing construction HGV movements is through the proposed Materials Handling Plan. PoTLL has a number of concerns in respect of the contents of this document.
- 4.38 The Outline Materials Handling Plan at paragraph 6.2.5 details the intended transportation of aggregate for LTC via the river Thames. Measures will be secured in the Environmental Management Plan (EMP) in connection with the use of port facilities (including Tilbury1 and Tilbury2) for at least 80% by weight of bulk aggregates imported to the North Portal construction area to be transported by river. This is referred to as 'the Baseline Commitment'. It equates to 35% of the total bulk aggregates to be used in LTC. This 'baseline commitment' has been incorporated within the construction traffic estimates used in the Transport Assessment and is therefore relied upon within all assessments.
- 4.39 The Baseline Commitment is to use the Port of Tilbury or other facilities along the river Thames. However, LTAM assessment appears to assume that LTC will only make use of Tilbury2 facilities, where HGV volumes are noted to increase markedly along Substation Road. The implications of importation via Tilbury1 (or elsewhere) have not been assessed.
- 4.40 Additional movements through Tilbury1 would require additional HGVs to utilise the ASDA roundabout as vehicles are prohibited from turning right out of the main port entrance. To

that end we note that the Applicant could have provided powers to remove this restriction for their traffic in the Application, but did not do so.

- 4.41 Equally, use of other ports would necessarily increase traffic along the A1089 and through the ASDA roundabout. This could further exacerbate PoTLL's concerns about flows through the ASDA roundabout discussed below.
- 4.42 The Baseline Commitment is assumed across the entire construction period. However, the assessments are based on a typical weekday average across each construction phase. The assessment therefore assumes that the volume of aggregates arriving by river remains constant across each construction phase. It is unrealistic to assume that there will be no variation in the volume of bulk aggregates required across each phase of construction. The Applicant has not applied any percentage uplift to the volume of bulk aggregates being transported by HGV. PoTLL consider that doing so would cover a likely range of variation in the volume of imports and ensure that the reasonable worst case scenario has been assessed.
- 4.43 The EMP does not set out how the Baseline Commitment would be monitored or evidenced in practice, beyond general construction traffic monitoring. There is also no detail as to what actions will be taken should the commitment not be achieved. The potential impacts of the Baseline Commitment not being met have not been assessed. Without a monitoring and enforcement regime to accompany the Baseline Commitment, it is reasonably foreseeable that the Applicant could fall short, resulting in additional HGV traffic in the immediate vicinity of the Port of Tilbury.
- 4.44 The Transport Assessment aims to review the realistic worst case scenario. In the absence of firm commitments supporting the fulfilment of the Baseline Commitment, such as to use the CMAT facility, falling short of the Baseline Commitment is a realistic possibility. PoTLL are seeking to have all realistic worst case scenarios assessed in order to understand the potential impacts of LTC, and request that a shortfall be factored in when reviewing the construction traffic associated with bulk aggregates.
- 4.45 PoTLL have not been given a role in the development of the detailed Materials Handling Plan. The contents of this plan will be fundamental to the impacts, in practice, of the construction phase of LTC. All materials used on the North Portal must be transported through the Port of Tilbury, whether arriving by river or road, and have the potential to impact upon the operational running of the Port. PoTLL are seeking to be a consultee on the Materials Handling Plan due to the potential for impacts on its undertaking.
- 4.46 PoTLL support the Baseline Commitment and seek to ensure that it is met and exceeded during the construction period. In order to achieve this, PoTLL believe that the commitments to monitoring the Baseline Commitment in the EMP should be strengthened and a regime of enforcement should be incorporated into the DCO.

#### Outline Materials Handling Plan - Opportunities presented by the CMAT

- 4.47 In particular, PoTLL are keen to emphasise that Tilbury2 is home to the UK's largest CMAT, located adjacent to the LTC Construction Compound. To date, the Applicant has made no commitment to use the CMAT to secure essential mitigation to avoid and reduce many of the traffic impacts that PoTLL are concerned about, in addition to helping the Applicant meet its Baseline Commitment and carbon targets.
- 4.48 The benefits of using the CMAT can be summarised as follows:

- 4.48.1 the CMAT has existing large scale aggregate import and processing capabilities;
- 4.48.2 aggregates can be brought to the CMAT by river and rail, avoiding the road network in the Tilbury area and reducing the number of HGVs required;
- 4.48.3 aggregates arriving at the CMAT by river are transported to the CMAT site by conveyor, with minimal environmental impacts, whilst the rail siding allows aggregates to be unloaded directly into the CMAT site;
- 4.48.4 the CMAT has a ready mix concrete plant and existing asphalt plant;
- 4.48.5 the CMAT is adjacent to land selected and promoted by LTC for tunnel section manufacture; and
- 4.48.6 due to the proximity of the CMAT to the Construction Compound, aggregates may be transported for use at the North Portal without impacting upon Tilbury2 traffic or the wider road network by:
  - (a) installing a conveyor to enable direct aggregate transfer into the Construction Compound; or
  - (b) creation of a dedicated secondary access direct from the south-eastern corner of the CMAT, adjoining Substation Road after all other traffic within Tilbury2 will have dispersed. This will limit HGV traffic related to aggregates to the end of Substation Road and within the Construction compound.

4.49 The positive environmental benefits of either approach are clear and easily understood. A reduction in HGV journeys or, in option (b) above, a substantial reduction in distance travelled per HGV journey, will reduce the impacts on air quality, noise, and the broader impacts of these journeys on the road network. Utilising existing facilities also avoids the expense, sunk carbon and other environmental impacts of constructing new facilities.

4.50 PoTLL believe that minimising the amount of construction traffic that is reliant on the A1089 route is essential to ensuring that construction of LTC is delivered to programme, with traffic variables and the vulnerability of this road link, particularly around the ASDA roundabout, being very likely to cause delays to deliveries and wider consequential effects on the Port of Tilbury and others.

4.51 PoTLL have strongly promoted the CMAT to the Applicant as it would constitute a substantial mitigation for many of their concerns. PoTLL are seeking a commitment, secured within the DCO, to use the CMAT, as this would, at a stroke, alleviate significant amounts of construction traffic, and associated impacts, from the local road network and have measurable carbon saving benefits.

### **Construction worker movements**

4.52 The average number of workers for each phase has been estimated and these estimates were used to establish the associated traffic movements at each compound. The number of vehicles is estimated based on the worker numbers for different sized compounds as follows:

4.52.1 Small compounds: 100%



4.52.2 Medium Compounds: 80%

4.52.3 Large Compounds: 70%

4.53 Unlike for construction HGV traffic, there is no requirement for construction worker vehicles to travel on specified routes between site compounds and the SRN. The Application does not indicate how the construction worker numbers have been assigned onto the highway network for assessment. However, the changes to traffic flow are provided as a range within the Transport Assessment from paragraph 8.8.6.

4.54 Construction workers from the Station Compound and Northern Tunnel Entrance must be routed along Station Road, Church Road, Coopers Shaw Lane, and Gun Hill to Chadwell St Mary. Considerable increases in traffic are predicted (100 to 500 vehicles per hour) on these roads. As these are not routes identified for construction HGVs, the increases must be construction worker vehicles. This route is not appropriate for this volume of additional traffic as it:

4.54.1 requires negotiating a level crossing;

4.54.2 has narrow carriageways limiting two way traffic flows in places; and

4.54.3 has limited visibility that restricts safe and efficient movement.

4.55 The Application documentation does not assess this route capacity and no capacity assessment (volume to capacity) has been provided for the construction stage. PoTLL note that the Thurrock Flexible Generation Plant assessed the most constrained section of Church Street as a maximum of 184 two way vehicle movements per hour. The Applicant has estimated 200 to 1000 two way movements per hour through this section of road during construction Phases 2 to 10.

4.56 PoTLL are therefore very concerned that the impact of this additional volume of traffic has not been properly assessed, and that the Applicant may be unaware of the potential conflict with the railway and capacity constraints on this route. This may lead to construction workers using the ASDA Roundabout and the IC/Fort Road which may exacerbate the impacts of the additional vehicular traffic to the detriment of Port of Tilbury operations.

4.57 In light of the number of vehicles and the additional difficulties involved in retaining the safety and security of Tilbury2, PoTLL are also seeking a requirement that construction worker traffic must not be allowed to use the Haul Road constructed through Work No. CA5 to access and egress the Construction Compound.

### **Construction traffic impact**

#### Within Tilbury2

4.58 The Transport Assessment does not make any assessment of the impacts of construction HGV movements (and Abnormal Indivisible Load (AIL) movements) on Substation Road during the construction period. These movements would need to interface with existing and future movements associated with Tilbury2 and ongoing development outside of the LTC draft Order limits. PoTLL have engaged with the Applicant on the impact of construction traffic on Substation Road, however further detailed information is required in order for PoTLL to be confident that the additional movements would not cause congestion within Tilbury2, impacting upon their operations.

## Outside Tilbury2

- 4.59 The Applicant has not conducted its impact assessments against recognised thresholds. As discussed above, no capacity assessments are provided so it is not possible to discern whether any parts of the network would be over capacity during construction. Construction is the phase of LTC that generates traffic in the Tilbury area, rather than reassigning existing traffic as will occur during the operational phase. PoTLL are seeking the assessment of LTC to be consistent with the methodology used on other schemes, such as Thurrock Flexible Generation Plant, to ensure that the realistic worst case impacts of the construction phase have been suitably assessed.
- 4.60 The Transport Assessment provides commentary on the changes in journey time and traffic flow ranges, but it does not indicate whether such changes represent an acceptable impact on the day to day operation of the road network. Whilst the construction impacts are temporary, lasting only during one or more phases of the construction period, due to the duration of the construction period of more than five years, it would be appropriate to review the impacts as permanent.
- 4.61 The Journey Time analysis during construction highlights that, on the route between the A13 and the Station Compound, travel times will increase by up to 21% depending on the construction phase. It is noted that additional delay will be experienced at the ASDA roundabout during all phases. The Transport Assessment notes that ASDA roundabout is significantly congested and “a relatively small increase in overall traffic leads to a material increase in additional delay”.
- 4.62 No further assessment of the impact of LTC at the ASDA roundabout has been undertaken, despite predicted increases in traffic of between 100 and 250 vehicles per hour. This is unacceptable to PoTLL, particularly if such movements would be coupled with further movements from Freeport development.
- 4.63 Furthermore, whilst PoTLL welcome that LTC’s modelling accounts for construction movements associated with the Thurrock Flexible Generation Plant project, they note that this presumes a 2022 start of construction. Whilst it is understood that this project was recently successful in the capacity market auctions meaning there is greater certainty it will be delivered, the construction start date clearly has not been 2022, meaning that it is more likely that its construction traffic movements may dovetail with LTC’s. These numbers would therefore exacerbate PoTLL’s concerns about the performance of the ASDA Roundabout.

## Impacts of construction traffic management on flows

- 4.64 The Transport Assessment models various temporary traffic management measures during construction as detailed in the Outline Traffic Management Plan for Construction. It does not assess the impacts of the following potential traffic management measures:
- 4.64.1 A13 (eastbound and westbound) closures;
  - 4.64.2 A1089 closures;
  - 4.64.3 A1089 northbound off slip to A13 westbound closures; and
  - 4.64.4 A13 eastbound off slip to A1089 southbound closure.

- 4.65 Any of these closures would impact the Port of Tilbury undertaking by ceasing movement along the A1089 corridor. During the period of any closure, the Port of Tilbury would be inaccessible by road.
- 4.66 These traffic management closures have not been modelled as they are noted as ‘short’ in duration and would occur at weekends or overnight. ‘Short’ duration is defined as closures which occur for less than half the duration of a phase. The construction of LTC is programmed to last for over 5 years; this may be significantly longer if construction is delayed for any reason.
- 4.67 The Port of Tilbury operates 24 hours a day, with access to the road network playing a critical role in the onward distribution of imported goods. PoTLL’s experience in constructing Tilbury2 has shown that lane closures on the A1089 swiftly caused congestion so severe that it risked closing the Port of Tilbury.<sup>6</sup> PoTLL are extremely concerned that the Applicant may close the road access to the Port of Tilbury, or impose restrictions such as lane closures that will have a potentially significant operational impact on PoTLL’s undertaking.

### **Construction mitigation measures**

#### ASDA roundabout mitigation

- 4.68 The Outline Traffic Management Plan for Construction (OTMPC) does provide for junction modelling to be carried out prior to works in some instances. The detailed Traffic Management Plan (TMP) will list the junctions to be modelled, if and where required, and this list will be discussed with the local highway authority.
- 4.69 However, no indication is given as to the criteria by which a junction will be included for modelling, or whether the results of the modelling would result in avoidance or mitigation. PoTLL are concerned that this approach, occurring wholly post consent, may, in practice, identify environmental impacts due to the congestion found through the detailed modelling that the Applicant has not taken into account.
- 4.70 Furthermore, PoTLL note that the ASDA Roundabout is not included in the LTC draft Order limits, meaning that if mitigation was required, there would no certainty it could be delivered, quickly, or at all. For instance, given that any works might be considered to form part of the wider LTC project, it is not clear that National Highways’ permitted development powers could be utilised.
- 4.71 PoTLL submit that it is in the Applicant’s interest to ensure that all junctions of concern (which would include the ASDA roundabout for the reasons detailed above) are modelled in detail and the findings taken into account during Examination and prior to any determination of the application. This will avoid any undue delay or disruption to the construction of LTC. Notwithstanding this, PoTLL are seeking a commitment that the ASDA roundabout will be subject to further modelling within the TMP, with the findings of that modelling taken into account and a commitment to provide that mitigation to offset any congestion that would be caused, prior to the impacts being caused.

#### ‘Soft’ mitigation measures – HGV movements

- 4.72 Table 2.3 of the OTMPC itemises the factors that must be addressed, as a minimum, when developing the TMP. PoTLL note that this states in respect of ports that “*Access and egress*

<sup>6</sup> PoTLL were able to carry out works to the A1089 through overnight closures, noting that the carriageway needed to be reopened by approximately 4:00am to avoid additional congestion.

*[is] to be maintained throughout the construction period with the exception of night time and weekend closures when required for specific planned works".* There is no requirement that the TMP must ensure that access to the Port of Tilbury is available during night time and weekend closures. As above, the Port of Tilbury operates 24 hours a day and is wholly reliant on the A1089 and A13 for road access. Any closure of these roadways would necessarily result in the closure of the Port of Tilbury as it would not be possible to continue to operate.

- 4.73 PoTLL are therefore seeking a requirement that access and egress to the Port of Tilbury is maintained throughout construction for Port traffic, in order that LTC does not cause undue interference with PoTLL's undertaking, with the consequential impacts on the UK economy of a major port being closed for up to 50% of its operational hours.
- 4.74 It is also noted that impacts may not only be caused by LTC road closures, but also by the sheer volume of movements that may be required on a given day, which cause undue delay to Port movements.
- 4.75 The Traffic Management Plan, for which PoTLL are listed as a consultee, does not anticipate significant impacts on the road network such as that seen during the construction of Tilbury2 (despite the concerns raised about this above), and does not provide an escalation process for any measure found to be unworkable in practice.
- 4.76 PoTLL are concerned that the OTMPC lacks consideration of the practical aspects of the LTC main construction movement corridor being adjacent to and within an operational Port. The OTMPC includes an escalation process, however this does not anticipate any need for immediate remedial action to be taken to remove or amend traffic measures due to the traffic impacts being caused, or proactive actions which could be taken to enable PoTLL to manage their own traffic flows both in and out of, and within Tilbury1 and Tilbury2. PoTLL are therefore concerned that the OTMPC is not sufficiently robust or effective.
- 4.77 The Port of Tilbury presents unique challenges due to its location, national economic importance and scale. PoTLL are concerned that the standard measures presented in the Application will not be sufficient to adequately protect PoTLL's undertaking. PoTLL are seeking improvements to the OTMPC including a requirement to engage with PoTLL regularly to agree detailed forward planning, a process for immediate remedial action to be taken where necessary, a process for PoTLL and other consultees to immediately liaise with the Applicant and its contractor(s), and an improved escalation process that retains involvement of consultees and avoids any potential for conflict of interest and priority for Port traffic.

#### Framework Construction Travel Plan

- 4.78 The key aim of the Framework Construction Travel Plan (FCTP) is to minimise adverse local disruption or traffic impacts on the highway network from construction worker or visitor travel. The FCTP has been provided at this stage, with Site Specific Travel Plans (SSTPs) to be formed by construction contractors once appointed.
- 4.79 Paragraph 5.4.10 details that the construction worker mode share, previously identified for the small, medium and large construction compounds as 100%, 80% and 70% respectively, will be used to develop suitable targets for increasing the sustainable mode share for the construction workforce. Targets (reductions in mode shares) are not included on the basis that it is difficult to do so before undertaking initial baseline travel surveys.

- 4.80 However, the assessment of construction traffic is reliant on the mode share being achieved, despite no target having been set. PoTLL are concerned that this assessment may not be robust in the absence of a mandatory mode share target, as the reasonable worst case may involve greater numbers of vehicle journeys than have been included in the assessment. PoTLL are seeking a firm commitment to initial mandatory mode share targets, consistent with other projects including the Thurrock Flexible Generation Plant. These targets underpin the construction traffic assessment, and a commitment is needed in order to be certain that the reasonable worst case assessment has been carried out.
- 4.81 The FCTP includes a list of stakeholders to be consulted with regards to the SSTPs. The list includes local planning authorities or local highway authorities only; however other local key stakeholders, such as PoTLL, have not been included.
- 4.82 PoTLL are concerned that key stakeholders have not been included within the TPLG, despite the location of the LTC main construction compound, and the extensive experience of PoTLL in this area, having been an active member of the Tilbury Amazon travel plan group for many years. PoTLL are seeking to be included as a consultee for the FCTP, in order that they are involved with the site-specific TPs for the compounds neighbouring the Port of Tilbury.

### **Operational traffic**

#### Traffic impacts

- 4.83 The traffic impacts of LTC are assessed in the future years of 2030 (year of opening) and 2045 (design year). The assessment considers changes in traffic volumes, volume/capacity ratios and journey times. Assessments are presented for traffic volumes and volume/capacity ratios for 2045 in the Transport Assessment at section 7.5. The impact of LTC is then assessed in section 7.6.
- 4.84 The first stage of the impact assessment is to 'screen out' all links where the V/C ratio is less than 0.85 in the Do Minimum and Do Something scenario. This screening is carried out using the 2030 assessment year. Notably the 2045 assessment year, in all time periods assessed (AM, PM and interpeak), shows links on the A1089 (slip roads to A13), Orsett Cock roundabout and ASDA roundabout exceed the 0.85 V/C ratio.
- 4.85 The assessment therefore excludes key locations on the highway network where, due to known capacity issues, it would be advisable to fully establish the impacts of LTC in order that this may inform the consenting decision.

#### ASDA roundabout

- 4.86 The Applicant has not included in the application any detailed modelling assessments of the impact of LTC on the operation of the ASDA roundabout. LTC is predicted to increase traffic volumes on the A1089 by between 100 and 200 vehicles per hour on both approaches to the ASDA roundabout. This is a significant increase of between 200 and 400 vehicles per hour through the junction. PoTLL have consistently requested that detailed modelling is undertaken throughout discussions with the Applicant, however these requests have been refused as unnecessary. As mentioned above, National Highways requires this modelling for third party developments in this area,<sup>7</sup> meaning PoTLL's request is simply seeking

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<sup>7</sup> The occupants of the LDP recently made an application for change of use that predicted an additional 70 vehicles per hour through the ASDA roundabout. The applicant initially did not undertake traffic modelling but was specifically requested to do so by National Highways.

consistency and the ability to understand the LTC application and its impacts on a like for like comparable basis.

- 4.87 PoTLL also note that the approach taken by the Applicant for LTC differs from its other major projects. The A66 Northern Trans Pennine scheme undertook local junction modelling, in addition to a network assessment using a Saturn Model (the same software as LTAM). The junctions modelled were identified through discussions with local highway authorities and assessed utilising the latest junction modelling software. PoTLL are concerned that the Applicant's resistance to undertaking and providing detailed modelling in this area has the potential to fail to assess direct and indirect effects of the LTC application and avoidance or mitigation of such effects being delivered through the LTC DCO.

### **Approach to operational mitigation**

- 4.88 The Applicant does not propose any mitigation for the impacts of LTC in relation to the ASDA roundabout and integrated local road network. In the absence of a detailed assessment of the impact of LTC on key parts of the road network, it is not possible to determine the likely expected impact and the works and mitigation that may be required.
- 4.89 The approach taken by the Applicant is contrary to the guiding principles of assessment of transport impacts set out in the NPPF and DfT Circular 01/22 'Strategic road network and the delivery of sustainable development'. These set out that development should mitigate its impacts on the operation of the SRN.
- 4.90 The Applicant has instead proposed that traffic monitoring is undertaken during the operational phase of LTC to identify changes in performance of the highway network. The changes identified may or may not be as a result of LTC, but the outcome of this monitoring will provide local highway authorities with evidence to inform and enable their intervention case-making. This approach postdates completion of LTC, provides no opportunity to proactively mitigate its impacts, and places responsibility for identifying the impacts onto local highways authorities and not the Applicant.
- 4.91 The management and monitoring of the operational LTC is outlined within the Wider Network Impacts Management and Monitoring Plan. The areas of monitoring include the ASDA roundabout and the Orsett Cock Junction. In the event that the traffic impact monitoring identifies that future investment would be suitable, the onus is on the relevant local highway authorities to seek funding to develop and bring forward potential solutions from existing workstreams or development that follows to resolve effects of the LTC. This places responsibility for addressing the impacts of LTC onto the local community and businesses, representing a legacy cost that is disproportionately imposed on the local area and not the Applicant and the Project.
- 4.92 In any event, PoTLL consider that they should be specifically referenced in the Wider Network Impacts Management and Monitoring Plan as a consultee on the development of any detailed operational mitigation measures.

## **5. TILBURY LINK ROAD**

- 5.1 PoTLL regret the omission of the Tilbury Link Road (TLR) from the Project during design development that led to the Statutory Consultation in 2018. It is considered that this is a missed opportunity for growth and development. It would also move traffic away from currently congested infrastructure, relieve pressure on the road network with a second access to the Port of Tilbury, facilitate future growth at the Port of Tilbury including the

Freeport in this location, as well as providing much needed resilience to the SRN. This is a critical element of the Government's growth agenda.

- 5.2 Since the TLR was removed from the LTC, PoTLL have worked closely with the Applicant to ensure that LTC does not prejudice, and wherever possible facilitates, the later delivery of the TLR as a standalone scheme through the Road Investment Strategy 3 (RIS3). However, the Applicant has made no commitment to this effect in ensuring this legacy is capable of realisation.
- 5.3 PoTLL consider that there is an opportunity through the design and construction of LTC to futureproof, ensuring that the junction north of the North Portal is capable of forming part of the TLR without requiring further construction work to the junction.
- 5.4 LTC includes provision of a haul road, connecting the eastern end of Substation Road to the Construction Compound and the junction to be constructed north of the North Portal. PoTLL are seeking a requirement for the haul road and the connection to the junction to be constructed to the standard that would be required of the TLR. That is, the geometry, sight lines and other geometric design standards of the junction must be as for an operational access, not just a works access. The haul road itself must also be constructed to the standard of a major A road, to be used by HGV traffic. This will ensure both that the haul road is of a standard to handle the large volumes of HGV construction traffic associated with LTC, and provide meaningful legacy value to the local area.
- 5.5 PoTLL note that the TLR is assessed within the Cumulative Effects Assessment as a known project on local roads. The Applicant therefore recognises the certainty that the TLR will be brought forward in due course. PoTLL submit that constructing the haul road and junction so as to be suitable as the TLR offers tangible benefits, whilst a failure to do so would result in significantly greater negative economic and environmental impacts. In short, reconstructing the haul road and junction would duplicate the sunk carbon and other environmental effects, constituting avoidable harm to an area that is and will continue to be ecologically diverse.
- 5.6 PoTLL are therefore seeking that the DCO and its related documentation require that the haul road and junction should be constructed to the standard that they can be utilised as the TLR in the future. PoTLL are not requesting that the Applicant reinstate the TLR or construct this, only that the legacy opportunities of LTC are fully realised and that identifiable future environmental impacts are avoided.
- 5.7 The DCO should also provide more active mechanisms, with suitable third party involvement, to facilitate the creation of the TLR, and full activation of the junction with the LTC, rather than the passive approach currently proposed which gives all control to National Highways. PoTLL will be seeking amendments to the draft DCO, and possibly also other application documentation, to achieve this.
- 5.8 Notwithstanding the above, PoTLL consider that:
- 5.8.1 the TLR would have been justified on the basis of the Project's objectives; and
- 5.8.2 the environmental justification for its omission is not soundly based.
- 5.9 In terms of Project Objectives, if it had been included, the TLR would have further enhanced the connectivity created by LTC, being fully aligned with the transport objectives of the proposal. It would allow for a second access into the Port of Tilbury, increasing resilience in

cross-river traffic from the Port. The TLR could contribute to each of the Scheme Objectives as explained in the following paragraphs.

Objective: to support sustainable local development and regional economic growth in the medium to long term

- 5.10 In meeting this objective, LTC will support economic growth and improved productivity by reducing journey times and improving journey reliability leading to improved accessibility and better connectivity. The LTC with the TLR would further enhance the connectivity for local traffic to cross the river Thames. The inclusion of the TLR would provide direct, shorter connections between labour markets on each side of the Thames, notably Northfleet and Tilbury.
- 5.11 The absence of the TLR limits the opportunities for the LTC to improve port connectivity. Specifically, LTC does not include any direct connections to the A1089 that would enable vehicles to travel to the Port of Tilbury. The inclusion of the TLR would considerably improve accessibility to the Port of Tilbury and contribute to this objective. The simple tables below illustrate the improved accessibility with the TLR. The first table is a reproduction of the connectivity of LTC as proposed and to be found at Table 7.3 of the Transport Assessment, with the second table showing connectivity enabled with the TLR.

Port of Tilbury Connectivity - A13/A1089/LTC Interchange					
	LTC Northbound	LTC Southbound	Port of Tilbury (A1089 Southbound)	A13 Eastbound	A13 Westbound
LTC Northbound	-	-	✗*	✓	✓
LTC Southbound	-	-	✗*	✓	✓
Port of Tilbury (A1089 Northbound)	✓	✓	-	✓	✓
A13 Eastbound	✗	✗	✓	-	-
A13 Westbound	✓	✓	✗*	-	-

\*indirect route available via Orsett Cock junction

Port of Tilbury Connectivity - A13/A1089/LTC Interchange & TLR					
	LTC Northbound	LTC Southbound	Port of Tilbury (A1089 SB/TLR)	A13 Eastbound	A13 Westbound
LTC Northbound	-	-	✓	✓	✓
LTC Southbound	-	-	✓	✓	✓
Port of Tilbury (A1089 NB/TLR)	✓	✓	-	✓	✓
A13 Eastbound	✗	✗	✓	-	-
A13 Westbound	✓	✓	✓	-	-

- 5.12 The inclusion of the TLR would enhance LTC by:
- 5.12.1 reducing more journey times (providing for all movements);
  - 5.12.2 improving journey reliability to a greater extent; and



5.12.3 providing better connectivity for local labour markets and to a strategically and nationally important port.

5.13 The inclusion of the TLR within the LTC would cause it to perform better against this objective.

Objective: to be affordable to government and users

5.14 The inclusion of a TLR would provide the opportunity to simplify the interchange between LTC, the A13 and the A1089. This interchange is a complex and large junction, which comprises some 30 highway structures and long lengths of link roads. Including the TLR within the LTC would enable a review of the junction design and the appropriateness of the connections, which in turn is likely to reduce the number of structures and links leading to cost and carbon savings.

5.15 Inclusion of the TLR within the LTC would better meet this objective.

Objective: to achieve value for money

5.16 The most significant monetary benefits from the Project are expected to be the time savings that road users experience when making journeys, and the productivity benefits that businesses experience from improved connectivity and journey time savings. The TLR would remove the requirement for vehicles using the LTC and travelling to the Port of Tilbury to undertake that journey via the Orsett Cock junction. The Orsett Cock junction is noted to be operating at close to capacity in the opening year of LTC (2030), meaning it is likely that this route would cause a delay to journey times. The TLR would also be a materially shorter route to travelling via the Orsett Cock junction. The time savings would apply to a large proportion of vehicles travelling to the Port. The TLR would provide a substantial time saving benefit.

5.17 Inclusion of the TLR within the LTC would result in improved performance against this objective.

Objective: to minimise adverse impacts on health and the environment

5.18 In respect of the environmental and health impacts the inclusion of the TLR would have the additional benefit of reducing the number of vehicle kilometres travelled, by providing a more direct route to and from Tilbury to the LTC, and by reducing the number of vehicles travelling through (the close to capacity) Orsett Cock junction.

5.19 Reducing the number of vehicle kilometres travelled has a correspondingly beneficial effect on air quality when compared to the current scheme.

5.20 Inclusion of the TLR within the LTC would result in better performance against this objective.

Objective: to relieve the congested Dartford Crossing and approach roads and improve their performance by providing free flowing north south capacity

5.21 The TLR would not directly contribute to nor reduce the effectiveness of the LTC in meeting this objective. There is no net change to this objective from inclusion of the TLR.

Objective: to improve resilience of the Thames crossings and the major road network

- 5.22 The inclusion of the TLR would not change the improvements to the resilience of the river Thames crossings. However, the TLR would improve the resilience of the major road network, in particular the A1089. The A1089 is the only major road connection to the Port of Tilbury and the wider Tilbury area. The provision of the TLR would enable the A1089 to be safely closed for all or part of its length during periods of maintenance without requiring vehicles to be diverted to unsuitable local roads, greatly mitigating the impact of lane closures found during the construction of Tilbury2. The TLR would equally assist with maintenance of the complex LTC/A13 junction, providing an alternative route for traffic that is suitable to accommodate both large volumes of traffic and HGVs.
- 5.23 Inclusion of the TLR within the LTC would result in improved performance against this objective.

Objective: to improve safety

- 5.24 National Highways work in three areas to improve safety: safer roads, safer people, and safer vehicles. LTC has followed a similar design philosophy. It has been designed to modern standards to provide for safer roads. The TLR, if included, would follow the same design approach and meet the same standards as the remainder of the route.
- 5.25 Driver behaviour, linked to safer people, can be influenced through road layout, signage and messaging. Providing simple, intuitive junction layouts is an important factor in providing for safer people. The inclusion of the TLR would enable a reduction in the complexity of the A13/LTC junction by allowing for a simpler arrangement. This would reduce the requirement for signage and messaging and provide a layout more intuitive to use. In short the LTC, and the A13/LTC junction in particular, would be safer.
- 5.26 Vehicle technology continues to develop, with safety systems such as lane change warnings becoming standard. In vehicle data can also be used to manage the road network more safely. This technology, and its contribution to safety, will be equally applicable to the LTC incorporating the TLR as the current scheme.
- 5.27 The inclusion of the TLR within the LTC would result in greater safety, an improvement of performance against this objective.

Conclusion

- 5.28 Inclusion of the TLR within the LTC would result in improved performance against 6 out of the above detailed 7 objectives, with the seventh objective having no material benefit or disbenefit resulting from inclusion of the TLR.
- 5.29 PoTLL also believe that inclusion of the TLR would have better enabled the objective of supporting sustainable local development and regional economic growth in the medium to long term, as applied to the Tilbury area. The TLR is required to ensure that the full development potential of the Port of Tilbury, as part of the Freeport consortium, is facilitated. In the absence of the TLR, the Port of Tilbury may be constrained by the existing strategic road network, particularly those parts south of the A13. Bringing forward the TLR as part of the LTC would have realised these benefits and opportunities, with economies of scale and at an earlier date than will now be possible.

5.30 The Applicant has relied upon the findings of the Environmental Assessment for the basis of its decision to remove the TLR from the LTC. The TLR is described in Chapter 3, Assessment of Reasonable Alternatives, Table 3.16, as follows:

*“Although a link road to Tilbury2 and Tilbury would have some benefits in providing additional connectivity, it would also have significant environmental impacts, including impacts on ecological sites and cultural heritage sites, particularly Tilbury Fort.”*

5.31 This high level conclusion is not justified by any assessment or evidence and is not reflected in the Cumulative Effects Assessment in Chapter 16 of the Environmental Statement. In particular, PoTLL note that the road link from Tilbury1 to Tilbury2 (forming part of the IC) is located within the direct setting of Tilbury Fort<sup>8</sup> and is visible from it. However, with the mitigation proposed as part of the T2 DCO, the Examining Authority concluded that there would be “an increased level of harm to the significance of Tilbury Fort, but that this would be less than substantial”.<sup>9</sup> This was factored into the Examining Authority’s overall planning balance in favour of that scheme.

5.32 In comparison to the IC, a link road east of Tilbury2 will have much less impact on the setting of Tilbury Fort. It would be further removed, in simple distance terms, and the intervening industrial character of the Anglian Water Treatment Works and the now developed Tilbury2 will reduce the degree to which any adverse effects on the setting of Tilbury Fort can occur.

5.33 In terms of ecology, PoTLL are developing a comprehensive ecological strategy for the expansion land east of Tilbury2 that seeks to integrate and co-exist with the TLR. This strategy is being developed in collaboration with Natural England, using the strategy adopted within the T2 DCO as the starting point. With appropriate mitigation in place, PoTLL are confident that the TLR would not result in additional significant ecological effects.

5.34 Table 3.16 in Environmental Statement Chapter 16 also notes that *“traffic modelling highlighted several drawbacks ... including unnecessary delays to HGV journeys and significant impacts on the local road network”*. PoTLL has engaged with the LTC team throughout the development of the scheme and requested the traffic modelling referred to. The Applicant has not provided this data to PoTLL.

5.35 In the absence of detailed modelling showing otherwise, intuitively, an additional link providing access to Port of Tilbury would relieve traffic on the ASDA roundabout, benefiting the local road network and its users. These benefits would be even more substantial when accounting for the traffic that will be associated with the Freeport. This data did not form part of the Applicant’s modelling as the Freeport was established after the TLR had been discounted from the LTC and this has not been re-visited since the material change in circumstances.

5.36 PoTLL request access to the data modelling used to support National Highways’ assertion that the TLR would cause delays and impacts, and that this modelling is repeated with the inclusion of traffic figures associated with the Freeport.

### **TLR conclusion**

5.37 PoTLL acknowledge that, notwithstanding all the positive reasons above, it may now not be possible to reinstate the TLR within the LTC. However, in light of the benefits that it would

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<sup>8</sup> At its closest point, the road is 270m north of this Scheduled Monument.

<sup>9</sup> T2 DCO Examining Authority Report, paragraph 4.9.73.

bring, including helping the LTC to achieve its stated objectives, PoTLL would request that the Examining Authority seeks commitments from the Applicant to taking as many steps as possible to enable and not preclude the development of the TLR at a later date. The current plans show that LTC provides for a haul road and roundabout and link roads to the north of the North Portal. This junction is the natural location for a connection between the LTC and the haul road/TLR.

- 5.38 However, the current plans are set up purely to meet the LTC's needs. PoTLL are seeking a greater commitment to the legacy of the project through the design of and future use of this junction and the construction standards applied to the haul road, to ensure future connectivity is possible without excess and unnecessary economic and environmental impacts, or National Highways' absolute veto.

## 6. LAND

- 6.1 The LTC draft DCO proposes sweeping land powers over:

- 6.1.1 the main access road into and within Tilbury2 (i.e. the IC and Substation Road);
- 6.1.2 a strip over the northern edge of Tilbury2; and
- 6.1.3 across the whole area within the Freeport boundary located to the east of Tilbury2.

- 6.2 These powers are not subject to controls in the DCO (e.g. through Protective Provisions) or otherwise (such as a legal agreement). In their current form, they provide the Applicant with unfettered powers, with no requirement that it should have any regard to PoTLL's current operations, statutory undertaking and future development operations. PoTLL are therefore of the view that, in their current form, the compulsory acquisition and other DCO powers sought in these areas are likely to cause a serious detriment to PoTLL's undertaking for the purposes of section 127 of PA 2008.

- 6.3 In particular, PoTLL are concerned about the following matters:

### **Existing covenants, easements, and rights over land**

- 6.4 All existing covenants, rights and easements that affect the Port of Tilbury and the Freeport area must be recognised, protected, and preserved or enabled to allow for future development. PoTLL and occupiers of the Port of Tilbury must retain priority of use in respect of these rights. These include but are not limited to:

#### Rights of all existing tenants, occupiers and operators within PoTLL's land and interests

- 6.4.1 Existing tenants, occupiers and operators include Anglian Water Group, Thurrock Power Limited (under option), NGET, EPN, Tarmac, IVL, Stobart, Virgin Media, Cadent, BT, Energis, Border Force, the Port Health Authority and their successors, sub-tenants occupiers and assigns. These rights include existing access, servicing and works rights over PoTLL-owned land, as well as variations to the routes of some of these rights that have been substantially agreed with NGET.
- 6.4.2 The routes of these rights are shown indicatively on the Land Rights Plan. This plan contains extracts demonstrating the significant infrastructure that is located within parts of Tilbury2, in particular, at the entrance of Tilbury2 and under Substation Road, both within and outside the LTC Order limits.

- 6.4.3 The extracts demonstrate the substantial pressure on infrastructure capacity that already exist in parts of Tilbury2 and the Freeport area. These pressures must be considered and accommodated alongside capacity and route proposals for infrastructure required in connection with the LTC.

#### Rights of entry for RWE to enter land to remove redundant electricity infrastructure

- 6.4.4 RWE have a right to enter land to the east of Tilbury2 in order to remove electricity infrastructure in the form of redundant overhead cables and electricity pylons. It is anticipated that this work will be undertaken in April to June 2023. However, there is a small window annually where this work can take place and accordingly a potential that the work, and associated rights, will remain outstanding beyond 2023.

#### Rights of access to inspect, maintain and undertake works to rail, conveyor and marine infrastructure

- 6.4.5 There exist rights of access to inspect, maintain and undertake works to critical rail, conveyor and marine infrastructure. These are shown on the Land Rights Plan and include (without limitation) the aggregates conveyor and rail links serving the CMAT.

#### **New rights over land**

- 6.5 The proposals for LTC include the temporary and permanent moving and addition of utilities within PoTLL's land. PoTLL will need to be a party to and agree any new wayleaves, easements and other rights or restrictions in respect of its land in order to ensure that these new utilities do not (a) impact upon existing rights, (b) impact on PoTLL's ability to maximise the use of Tilbury2, or (c) impact on PoTLL's ability to continue to develop the port in areas outside the LTC Order Limits, including the river frontage. There is currently no provision in the DCO to require this, nor does it form part of the Protective Provisions for the benefit of PoTLL.
- 6.6 Any changes must be agreed with PoTLL, including a provision for set-off around laying cables and future maintenance provisions. PoTLL will expect a protective corridor to be secured around utilities, and notes that PoTLL requirements for this corridor may be narrower than that required by other organisations and will therefore not be unreasonable. Furthermore, it is important that PoTLL are granted 'lift and shift' rights. This is to ensure the land remains as suitable for future development as is possible, ensuring that PoTLL have the necessary powers to make any changes required to accommodate and facilitate expansion plans without needing to undergo a protracted negotiation exercise.
- 6.7 There is currently no agreement in place to govern these activities and the Protective Provisions within the draft DCO are insufficient to adequately protect PoTLL's interests. PoTLL are not aware of any reason why these requirements should not be readily agreeable to the Applicant.
- 6.8 The involvement of PoTLL in these agreements is vital as it is important that LTC does not restrict, prohibit or otherwise compromise the current and future operation and expansion plans of the Port, including the utilisation of existing utility routes.
- 6.9 In addition, PoTLL are aware of elements of the Applicant's proposals that will not be possible using existing utility corridors as these are at capacity; the Port must be involved

in identifying the preferred route for LTC's utilities to avoid impacts on existing infrastructure and avoid stifling future growth. This includes the future expansion linked to the Freeport that will be within the land used for the main Construction Compound (Work No. CA5), and existing planned growth of the Port of Tilbury outside the LTC Order limits.

- 6.10 In respect of moving and adding utilities, LTC documents indicate that the Applicant plans to utilise existing ducting that runs parallel to and alongside the railway line to the north of Tilbury2. This ducting was installed by UKPN specifically for use by the Applicant to construct LTC. However, use of these ducts is not a requirement in the DCO and is not otherwise secured, such as within various management plans to be certified by the Secretary of State.
- 6.11 PoTLL consider that an obligation to utilise this ducting should be secured within the DCO, except to the extent that it is not practicable for the Applicant to use it. This would ensure disruption and sterilisation of land are minimised, both in terms of the physical impact and through changes to existing land rights.

### **Use of Infrastructure Corridor and Substation Road**

- 6.12 The LTC Order Limits include St Andrews Road (A1089) from the entrance to the Tilbury1, with temporary possession powers sought over this land as far as the junction with Substation Road within the Tilbury2 boundary. PoTLL are the owners of parts of this land and for those areas where they are not the owners, they are particularly concerned to note that, above and beyond land powers, the Applicant is seeking powers for these roads to be *"temporarily closed, altered, diverted or restricted"*.
- 6.13 PoTLL are particularly concerned by the potential for these powers to have a significant impact on their undertaking. During the construction of Tilbury2, it was found that a daytime lane closure on the A1089 caused traffic congestion so extensive that, had the restriction not been removed, it would have required the Port to close.
- 6.14 There is little specific evidence supporting the requirement for the draft Order limits to reach these locations and PoTLL do not agree that it is necessary for the Applicant's land rights, or its street closure powers, to extend so far onto the public highway.
- 6.15 The intended compulsory acquisition of rights continues within Tilbury2, over Substation Road, with the addition of permanent compulsory acquisition of rights to lay underground multi utilities. Whilst the exercise of these rights would only affect Port of Tilbury traffic, Substation Road is the only access route to the RoRo facility and numerous other undertakings within the Tilbury2 boundary. The impacts on the running of the Tilbury2 undertaking would be significantly impacted by any steps taken by the Applicant to restrict Substation Road, and the DCO currently provides no protection for the Port from this, other than minimal protections where the measures are linked to utilities works.
- 6.16 The route of the multi-utility corridor follows Substation Road and appears to be narrowly constrained to within the roadway. Furthermore, in this area the CMAT conveyor passes underneath Substation Road as a substantial asset. As such, any utilities that the Applicant wishes to install would have to pass a substantial distance underground or would need to 'go around' this obstruction.
- 6.17 In order to avoid this obstacle, the Applicant must either 'deep mole' below the ducting, or must route its utilities around. The work required to mole would likely involve the closure or restriction of Substation Road; this potential is not, in the view of PoTLL, adequately

controlled within the DCO. Alternatively, the Applicant will need to route around the obstacle; however, the multi-utility corridor limits of deviation are narrow, limited to the roadway.

- 6.18 There does not appear to be sufficient space within the limits of deviation to rectify this known, practical issue. PoTLL therefore do not believe that the Applicant has taken this into account in its land plans; and consider that the installation of such utilities pursuant to the rights plots sought could cause major disruption to Tilbury2 (either by obstructing Substation Road or impacting upon port operations either side of Substation Road) that have not been considered by the Applicant.
- 6.19 Should the LTC Order Limits remain as currently set out, PoTLL must receive significantly greater protections from road closure and restriction impacts within their Protective Provisions and secured in all plans relating to construction traffic (including those relating to workers and materials).

### **Other Land take**

- 6.20 The LTC draft Order limits include two sites by the Fort Road bridge.<sup>10</sup> These sites are included within the T2 DCO. PoTLL are in the process of marketing these sites and anticipate that they will be leased and in occupation prior to consent being granted and construction commenced. PoTLL are therefore concerned as to the impact of the Order limits on their commercial operations in these areas, affecting their ability to enter into lease agreements. These sites must be removed from the Order limits as they will not be available nor suitable for use to facilitate construction of the LTC.
- 6.21 The LTC draft Order limits cover a level crossing used in relation to the Tilbury2 rail spur. This is a core part of PoTLL's offering at the RoRo terminal, which is currently experiencing three train movements a day and involving time pressured deliveries such as supermarket perishables.
- 6.22 The proposed rights would enable the Applicant to have priority over the level crossing for construction traffic, overriding the current position where trains have priority. Given the frequency of construction HGVs delivering to the compound, and crossing the level crossing, PoTLL are concerned that the Applicant will amend priorities at the crossing in favour of its traffic.
- 6.23 This would render the railway siding largely unusable and at best commercially unattractive, severely interfering with the Port's undertaking and multi modal functionality. The priority of Port railway traffic over the level crossing must be secured.
- 6.24 The LTC draft Order limits include a 'finger' of land<sup>11</sup> that crosses the part of the access road and the rail siding that forms part of Tilbury2. This strip of land also crosses part of the ecological mitigation land formed under the T2 DCO.
- 6.25 PoTLL understand that the intention is for this land to be used for a conveyor link between the CMAT and the construction compound for the transport of aggregates. However, there is no provision within the DCO that would require the Applicant to construct a conveyor or utilise the CMAT in this manner. In any event, any use of this land must be subject to PoTLL's approval to ensure that it does not impact upon PoTLL's operations.

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<sup>10</sup> Land plot number 21-10.

<sup>11</sup> Shown crossing land plot numbers 21-18, 21-19, 21-27 and 21-31.

- 6.26 The LTC proposals envisage bringing in aggregates by road, resulting in large amounts of construction traffic within Tilbury2, on the same road that must be utilised by all traffic for the RoRo facility, the coal field, National Grid, the CMAT facility and rail functions. PoTLL consider that this 'finger' of land, properly utilised, would significantly mitigate this traffic by removing HGVs from large parts of Substation Road.
- 6.27 Alternatively, a further access point could be constructed leading from the CMAT directly onto the end of Substation Road, past the point at which RoRo and other traffic has left the road. HGV traffic could be redirected through the CMAT facility, greatly reducing the traffic impacts within Tilbury2.
- 6.28 PoTLL would be satisfied with either of these options being taken forward by the Applicant and secured within the DCO. This would work well with the strengthening of the commitments in respect of the CMAT discussed above.

### **Within the Northern Portal Construction Compound**

- 6.29 The Construction Compound (Work No. CA5) includes significant areas of the Freeport land which are subject to lettings and other occupational arrangements including (without limitation) options and pre-emption rights. The principal lettings within this area are shown indicatively on the Leasing Arrangements Plan.
- 6.30 The lettings include large areas of land (former power station) which are subject to an environmental permit and under restoration by Ingrebourne Valley Limited (IVL) who occupy under two leases (the locations of all of which are shown on the Leasing Arrangements Plan). The Western Lease (edged and shaded brown on the Leasing Arrangements Plan) has expired (contractually) and IVL are moving towards final restoration in respect of the Western Lease area. The Eastern Lease (edged and shaded blue on the Leasing Arrangements Plan) expires on 2 April 2023 and again IVL are moving towards final restoration. LTC's proposals and the DCO must not interfere with the final restoration of this area and the surrender of the environmental permit for these areas of PoTLL's land.
- 6.31 The Applicant proposes to construct a haul road. Further consideration must be given to the location and delivery of the new haul road, in particular in light of the multiple access and servicing rights that affect the Port Land (see the Existing Land Rights Plan). This consideration includes, without limitation, the access and servicing rights under option to Thurrock Power Limited, which incorporate rights to undertake works to existing access roads and construct new ones within the Freeport area along routes coloured green, orange, pink, and blue and hatched black on the Existing Land Rights Plan.
- 6.32 The Applicant will need to consult with PoTLL to agree a route for LTC and all users and occupiers of PoTLL's land that secures efficient, future proof access and servicing rights to all parts of the Port of Tilbury and the Freeport.
- 6.33 The tunnel boring machine (TBM) that will be required in connection with the LTC will require the placement of its own electricity substation on PoTLL's land. The positioning and delivery of the substation is yet to be confirmed. PoTLL will need to be consulted and require the right to approve the location of the substation to ensure critical Port infrastructure is not detrimentally affected (i.e. by earthing or other apparatus or by standoff zones). It is understood that the substation will have a capacity of up to 50MW and that the Applicant seeks its adoption. As this land has only recently been acquired by PoTLL, and development proposals are under consideration, PoTLL are not presently able to confirm (a) if and when



it will be able to accept a handover of the proposed TBM substation, or (b) the electrical capacity that it will require in connection with the Freeport development.

- 6.34 LTC's proposals, for the above reasons, do not adequately safeguard the continued development within and around Tilbury2, nor the future development of the Freeport, nor potential further development of the Port of Tilbury to the east of existing facilities.
- 6.35 PoTLL are mindful that the LTC land requirements for the Construction Compound directly conflict with PoTLL's future development plans. The powers sought within the DCO are on land that has been acquired by PoTLL to form part of their statutory undertaking. As such, whilst PoTLL are working with the Applicant to reach voluntary agreement in relation to some of this land, ultimately, in order to ensure that the economic benefits of the Freeport are able to be fully realised, the use of land powers in and around the North Portal Construction Compound must be subject to the consent of PoTLL. Without this, the Applicant's use of these powers is extremely likely to cause a serious detriment to the carrying on of PoTLL's undertaking.

#### **Issues with the Book of Reference**

- 6.36 In light of the above concerns, PoTLL has undertaken a review of the Book of Reference and Land Plans to ascertain whether they accurately reflect the position in respect of PoTLL's proprietary interests and rights.
- 6.37 In Appendix 2, PoTLL has set out the changes it considers should be made to those documents to more accurately reflect the position.

#### **Ongoing negotiations**

- 6.38 PoTLL are in advanced negotiations with the Applicant in respect of LTC's proposed use of some of the Freeport land. The proposals cover the letting by PoTLL to the Applicant of four areas shown indicatively on the Leasing Arrangements Plan, all of which lie within the North Portal Construction Compound.
- 6.39 The key to the Leasing Arrangements Plan sets out the proposed use of each area to be permitted under the leases to LTC. In general, the fallback position in the DCO insufficiently protects the interests of PoTLL, with very limited provision for protective provisions in favour of PoTLL that would adequately protect PoTLL and their tenants, occupiers and users.
- 6.40 Once the lease negotiations between PoTLL and LTC are concluded, the Applicant will have no need for the DCO powers over the land concerned. PoTLL has proposed to the Applicant that a Land and Works Agreement is signed alongside the four leases, acknowledging that PoTLL will be protected against the use of any such DCO power which is granted to the Applicant. This agreement would operate in a manner similar to the protections applicable to other statutory undertakers, namely that the Applicant may not interfere with PoTLL's proprietary interests and rights other than by agreement.
- 6.41 Within these negotiations, the Applicant is currently not accepting the principle of a restriction being put in place for the use of its proposed land and works powers on the basis of legal agreements being completed, despite such a restriction being contained in Heads of Terms agreed in late 2022. This is fundamentally unacceptable to PoTLL, who are willing to, and have, expended considerable resources into entering into such agreements notwithstanding the sterilisation of their future development opportunities during the construction of LTC.

- 6.42 Without such restrictions being put in place by legal agreement, and/or in the Protective Provisions, the Applicant would be able to ignore the terms of any legal agreements if it so wishes, without any control for PoTLL to ensure that a serious detriment is not caused to their undertaking. PoTLL therefore object to these powers in the strongest terms if the Applicant continues to maintain this position.
- 6.43 It is also noted that the Applicant potentially wishes to acquire a long term interest in approximately 4 acres (1.6 hectares) of PoTLL's landholding, shown on the Leasing Arrangements Plan. The relevant lease to be granted to the Applicant which includes the LTC Option Land, may include a right for the Applicant to acquire the LTC Option Land (at market value) at the end of the lease (unless by operation of a break clause) upon terms which do not interfere with future development of Port Land and the Freeport. The DCO must not interfere with the proper functioning of this option and must protect PoTLL from the improper exercise of compulsory acquisition powers by the Applicant over the LTC Option Land.
7. **ECOLOGY**
- 7.1 The T2 DCO contains a legal obligation incumbent upon PoTLL requiring the operation of Tilbury2 to comply with the following ecology related documents:
- 7.1.1 **Ecological Mitigation & Compensation Plan (EMCP):**<sup>12</sup>This document specifies the requirements for ecological mitigation and compensation for Tilbury2, as located within the Tilbury2 DCO limits, and off site within identified ecological receptor sites. The required on site mitigation and compensation measures have been either: (i) delivered in full, e.g. in respect of protected species; (ii) are in the process of being delivered, e.g. in respect of new habitats that have been created but are not yet fully established; or (iii) are no longer required, i.e. intertidal habitats where detailed design was able to fully avoid previously anticipated impacts.
- 7.1.2 **Landscape & Ecological Management Plan (LEMP):**<sup>13</sup> This document sets out the general principles for aftercare and management of habitats within the Tilbury2 site, both retained and newly created. Compliance with the LEMP is a requirement of the T2 DCO and applies for the lifetime of Tilbury2.
- 7.2 There are also residual requirements related to protected species licensing at Tilbury2 for bats, badgers, and water voles.
- 7.3 In addition to the documents above, considerable volumes of baseline ecological data for the T2 DCO application (submitted on 31 October 2017) and relating to the Tilbury2 site are publicly available via the Planning Inspectorate website.
- 7.4 The LTC proposals within the Tilbury2 site and connected IC have the potential to conflict with PoTLL's obligations under the Tilbury2 LEMP. To counter this, the draft DCO has been updated by LTC to stipulate that there will be no breach of the Tilbury2 DCO by PoTLL or National Highways to the extent there is any inconsistency or conflict between it and any future LTC DCO.

<sup>12</sup> Bioscan UK Ltd (2018). *Ecological Mitigation & Compensation Plan*. Port of Tilbury London Ltd. Via: <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR030003/TR030003-000994-Port%20of%20Tilbury%20London%20-%20Ecological%20Mitigation%20and%20Compenstation%20Plan.pdf>

<sup>13</sup> Bioscan UK Ltd (2018). *Landscape & Ecological Management Plan*. Port of Tilbury London Ltd. Via: <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR030003/TR030003-000935-Landscape%20and%20Ecological%20Management%20Plan%20v3%20-%20Clean.pdf>

7.5 This section considers the extent to which that stipulation is founded on suitably informed and robust assumptions and whether it provides the appropriate assurances. In particular, PoTLL note that even with the drafting in place, consideration will need to be given to how habitats and species are managed in the long term with such a breach occurring. The Application currently provides no reassurances in this regard.

### **Ecological baseline**

7.6 The Applicant has published various ecological baseline documents. These show that much of PoTLL's landholdings have not yet been subject to direct survey by the Applicant, with the information for these areas being based on desk study only.

7.7 Within PoTLL's landholdings, the Applicant's understanding of baseline ecological conditions is heavily reliant on T2 DCO Environmental Statement baseline data for the Tilbury2 area. However, this is now historic, having been gathered in 2007-2017; and has been superseded by events, with protected species in particular having been relocated to receptor sites (including elsewhere within the PoTLL landholding). The Applicant's baseline assessments for PoTLL's landholdings within the Ashfields are typically based on survey data gathered c.2017-2019 and are thus approaching five years in age. For the Tilbury2 area the data is more historic, and is up to 15 years in age, preceding the development and construction of Tilbury2.

7.8 PoTLL's ecologists have sought to assist the Applicant by providing more recent supporting data, advising on updated conditions, and hosting a site visit for LTC. To date, the Applicant has persisted with historic baseline and secondary data and has not attempted to update this via field survey, as would be required to accord with standard practice<sup>14</sup>. Indeed, industry best practice guidance<sup>15</sup> states that *"It is important that planning decisions are based on up to date ecological reports and survey data"* and recommends that only surveys less than 36 months in age are likely to remain valid. Given that the LTC baseline data has not been updated to reflect the passage of time nor the significant changes that have taken place in this area due to the T2 DCO, PoTLL do not believe it is possible to reliably use this data make a valid assessment of the ecological impacts of LTC within PoTLL's landholdings.

7.9 PoTLL have completed a review of the various ES chapters, summarising their concerns in respect of the ecological impacts within their landholdings. These concerns are set out in the table at Appendix 3. The key concerns have been set out in the body of this Relevant Representation.

7.10 The baseline information presented to the Examining Authority falls well short of best practice standards in terms of survey effort and the historic nature of the data. The Applicant has not made it clear within the documents that there is a survey 'vacuum' within PoTLL's landholdings. This is an obstacle to the clear identification of ecological receptors within PoTLL's ownership and is potentially misleading to the reader.

7.11 PoTLL are concerned that the issues with the data mean that the ecological impacts have not been adequately assessed, particularly in respect of habitats, BNG assessment, invertebrates, reptiles, birds, bats, water voles and badgers and that therefore any

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<sup>14</sup> British Standards Institute (August 2013). *BS 42020:2013. Biodiversity: Code of Practice for Planning and Development.*

<sup>15</sup> CIEEM (April 2019). *Advice Note: On the Lifespan of Ecological Reports & Surveys.* Via: [REDACTED]

management and mitigation measures are not based on a sound footing, leading to potential issues for PoTLL's future development.

### **Impact assessment and mitigation / compensation**

- 7.12 There is very little detail available for the works proposed within PoTLL's landholding, which include the following works:
- 7.12.1 Work CA5 – Construction Compound;
  - 7.12.2 Work MU27 – Underground Multi Utility Works; and
  - 7.12.3 Work MUT4 – Main Works Access Route & Overhead Electricity Lines.
- 7.13 A high level description of mitigation is provided within ES Chapter 8 – Terrestrial Biodiversity, at section 5, including a bulleted list of 'potentially significant effects'. In the absence of current survey baseline data on which to base the impact assessment, it is unlikely that potentially significant ecological effects within PoTLL's landholdings have been accurately identified and robustly assessed.

### **Habitats**

- 7.14 Projected habitat losses arising from LTC have been quantified at Table 8.35, however in the absence of a plan showing the location and extent of such losses, verification of these figures cannot be undertaken. This confusion is compounded by the described losses of Open Mosaic Habitat that make no explicit reference to PoTLL's landholdings. PoTLL seek clarity from the Applicant as to the extent and location of Open Mosaic Habitats within PoTLL's landholdings that are predicted to be lost to the construction of LTC.
- 7.15 PoTLL are concerned that any shortfall in mitigation and compensation within land temporarily possessed by the Applicant may need to be met as part of subsequent future development uses.
- 7.16 Within PoTLL's landholding, there is further doubt over how the calculations of habitat loss have been made. This is not only because the baseline data cannot reasonably be said to be current, but because the design detail and assumptions are inadequate. For example, given the change in levels across the Ashfields, it is unclear whether construction of the Main Works Access Route (MUT4) can be achieved without considerable land take for cut and fill (beyond that which is indicated in the LTC Works Plans).
- 7.17 Similarly, no design detail has been published for the proposed LTC conveyor, which it is suggested would cross the T2 DCO water vole mitigation site, numerous surrounding ditches, the adjacent Walton Common, and Priority Open Mosaic Habitat at the north of Ashfield A3. There is little evidence to suggest that this has been considered within the Applicant's ecological impact assessment. PoTLL are requesting the Applicant to provide plans showing the extent and location of all habitats within PoTLL's landholdings that are predicted to be lost or otherwise impacted, in order for this to be properly assessed and understood.
- 7.18 The Environmental Masterplan provides no mitigation or restoration detail for works proposed within PoTLL's landholding, except for Ashfield B. It is therefore unclear whether any restoration is proposed for the as yet undefined potentially significant ecological effects. This includes effects to the water vole receptor area.

- 7.19 In respect of Ashfield B, the expansive ditch at the eastern margin of this area appears to be mapped solely as ‘standing water’ despite it comprising large stands of swamp/marginal habitat. PoTLL also note that this high value ditch is well outside the footprint of the tunnel head and junction, and yet it nonetheless appears to be lost to the LTC proposals, this area being mapped within the Environmental Masterplan as falling beneath a new area of raised contouring. It is unclear why a high value wetland habitat mosaic (potentially representing remnant Priority coastal and floodplain grazing marsh within a matrix of Open Mosaic Habitat) is to be infilled as part of the ‘Tilbury Fields’ proposal, rather than being retained in situ. The impact of habitat loss here needs clearer quantification, with clarification as to the rationale for removing Priority habitat outside of the land required for the construction footprint, and the implications for calculations of BNG.
- 7.20 Parts of Ashfield C are also denoted as being allocated to new Open Mosaic Habitat creation as part of the ‘Tilbury Fields’ proposal. It is unclear how the baseline habitat has been recorded here, and whether the existing Open Mosaic Habitat is being destroyed in order to deliver new Open Mosaic Habitat, which would seem contrary to the mitigation hierarchy. PoTLL are requesting that the Applicant sets out clearly what works are proposed and how the potential impacts have been assessed, including in relation to calculations of BNG.
- 7.21 Considering intertidal habitats, PoTLL also note that 0.4 hectares of coastal habitat will be lost to the Applicant’s proposals and then reinstated. However, it remains unclear whether the loss of intertidal habitats has been taken account of within the Biodiversity Metric Calculations, especially as the raw data inputs/outputs from the metric calculation tool have not been made available in accordance with good practice. The impact of habitat loss needs clearer quantification, including by making the full detail of the BNG calculations available to the Examining Authority and relevant stakeholders.

### Invertebrates

- 7.22 The Applicant states within ES Chapter 8 that *“almost all the habitats which supported the invertebrate assemblages recorded there [within Survey Area 3 / the Ashfields] have now been lost as a result of the IVL [Ingrebourne Valley Limited] operations”*, and by implication that there would be little residual interest here to provide mitigation or compensation for. However, this does not accord with PoTLL’s understanding of the area in question. An as yet unpublished survey report, prepared on behalf of PoTLL in January 2023 states:
- 7.22.1 **Ashfield A3:** “the triangle of surviving pulverised fuel ash (PFA) substrates at the northern tip of Ashfield A3 is ... one of the surviving areas of original Ashfield.<sup>16</sup> The wetland habitats in the central basin of the triangle are of very high importance. This subcompartment should be regarded as of very high conservation importance for invertebrates in a national context.”
- 7.22.2 **Ashfield B:** “Ashfield B should be regarded as a site of rather high conservation importance for invertebrates in a national context ... The most important part of the Ashfield B compartment for invertebrates is the wetland and aquatic habitats associated with Ditch D11 [LTC ditch JN1] on the eastern boundary.”
- 7.23 It is also unclear whether the Ashfield C area has been discounted by the Applicant. PoTLL understand that Ashfield C, and particularly the exposed PFA cliff face, may be regarded

<sup>16</sup> Comprising Open Mosaic Habitat and a seasonal pond not identified by LTC baseline survey, e.g. by reference to [APP-263].

as a site of equal or greater importance for invertebrate conservation to Ashfield 1.<sup>17</sup> Under the Applicant's proposals, Ashfield C3 would be lost to a new road junction and accompanying grassland seeding, and potentially to 'new' Open Mosaic Habitat creation.

- 7.24 The mitigation by way of habitat creation at Tilbury Fields appears to be created in part by infilling ditch JN1, which itself appears to be of national importance for invertebrates. PoTLL do not understand the Applicant's rationale underpinning these proposals, which may cause unintended future consequences.
- 7.25 Insufficient information has been provided to enable PoTLL to undertake a full assessment of the Applicant's proposals to mitigate the loss of habitats within the Ashfields via habitat creation in the tunnel head area ('Tilbury Fields'). However, the Applicant's proposals for Open Mosaic Habitat creation may involve as little as 5% PFA coverage (10% of 50% coverage) with the shortfall being made up of tunnel arisings, and potentially therefore leading to generation of higher fertility habitats that do not adequately compensate for the predicted losses.

### Reptiles

- 7.26 The baseline assessment undertaken by the Applicant in respect of reptiles may have resulted in a significant underestimate of population densities in the locality of the Port of Tilbury. The impact assessment directs the reader to the Register of Environmental Actions and Commitments (REAC) which is set out in the Code of Construction Practice. Information within the REAC is extremely high level and states at page 107: *"Where protected species licences are not required, the approach to habitat clearance and the potential need to trap and translocate non licensable species (reptiles and/or native amphibians species excluding [Great Crested Newt]) to established receptor sites with sufficient carrying capacity would be determined and undertaken by the Environmental Clerk of Works. Where translocation occurs, species will only be translocated to receptor sites with established habitat."*
- 7.27 It is unclear therefore how the Applicant intends to approach reptile mitigation within PoTLL's landholdings, and whether reptiles would be trapped and translocated off site, or simply displaced elsewhere within PoTLL's land. If the latter, this may impose a greater burden of constraint on PoTLL, within the context of future development within land both within and outside of the LTC draft Order limits. PoTLL are therefore requesting detailed information relating to proposed reptile mitigation within and adjacent to PoTLL's landholdings and the containment of these to manage consequential effects on port development land. PoTLL would like some assurance that if off-site reptile receptors are appropriate, which may be likely in light of the numbers likely to be present and the magnitude of habitat loss, that this is accounted for in LTCs proposals.

### Ornithology

- 7.28 The ES states that *"The noise and vibration associated with the above ground Project construction works may disturb birds using the habitats within the [Thames Estuary and Marshes] SPA/Ramsar site and associated functionally linked land. Project construction works that would disturb the birds would be within ... the northern tunnel entrance compound and ... the northern tunnel entrance compound temporary drainage pipeline and*

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<sup>17</sup> For information regarding Ashfield A1, refer to planning application reference 07/00972/TTGFUL to Thurrock Council, and subsequent post-restoration monitoring reports.

*outfall and the water inlet with self-regulating valve or equivalent structure at Coalhouse Point.”*

7.29 However, it appears that impacts to birds using the foreshore adjacent to PoTLL’s landholdings have not been adequately addressed, as discussed in Appendix 3. This generates concerns for PoTLL in terms of cumulative impact assessment for any future works, in particular ongoing development to the river frontage that will continue alongside construction of LTC, as well as future expansion plans related to Freeport designation. PoTLL are requesting the Applicant provide detailed information relating to potential impacts on intertidal birds using habitat within and adjacent to PoTLL’s landholdings.

### 7.30 **Bats**

7.31 It is unclear whether the Applicant’s proposals for LTC would result in impacts to licenced mitigation already provided for bats by PoTLL. PoTLL are requesting greater clarity on the likely impacts of LTC on PoTLL’s licenced bat roost provision.

### **Water Voles**

7.32 The Draft Water Vole Conservation Licence Application baseline water vole survey results omit Tilbury2 entirely, with no reference to the Tilbury2 water vole licence information that PoTLL provided directly to the Applicant. The Applicant has attempted to make up the shortfall using baseline data from 2016/17 submitted with the Tilbury2 water vole licence method statement, despite this having been entirely superseded by events associated with the grant of the T2 DCO and subsequent licenced works which have altered local water vole distribution.

7.33 As a consequence, the Applicant’s mitigation proposals (shown at Figure 4 of the draft water vole licence) exclude consideration of the Tilbury2 water vole receptor site, which supports water voles at exceptionally high density. It is therefore unclear whether the Applicant’s proposals for LTC would result in impacts to licenced mitigation already provided for water voles by PoTLL, particularly in respect of the proposed conveyor, for which no design information has been provided by the Applicant.

7.34 A number of other areas inside the LTC draft Order limits and within PoTLL’s landholding have known water vole populations that have also been omitted from the mitigation proposals. It is likely that LTC will cause impacts to, and potentially loss of, these habitats; these impacts have not been considered by the Applicant in drawing up the scheme of mitigation.

7.35 The Applicant further states that licenced displacement methods would be used. However, displacement is not licensable for multiple 50m sections in close proximity; only one stretch of displacement is permitted per 500m. It is unclear why a destructive search phase is not also proposed, given that research demonstrates that vegetation removal alone is unlikely to be sufficiently effective.

7.36 The Licence application states that *“Any works that are being undertaken on lengths of banks longer than 50m would involve trapping out water vole from the waterbodies.”* Given the number of occupied ditches that have been omitted from the Applicant’s baseline survey, it appears likely that extent of ditches where trapping and translocation would be required will have been significantly underestimated. Consequently, the Applicant’s proposed receptor areas may have insufficient capacity to support the translocated animals,

particularly if an autumn season translocation is proposed (when population densities will be inflated by the young of the year).

- 7.37 Removal of ditches known to support high densities of water voles appears to be planned, solely in order to deliver other habitat creation measures. PoTLL are requesting the Applicant provide clarification as to the assessment of the impacts of water voles in these areas and whether the proposals are compatible with licensing and the mitigation hierarchy.

### **Badgers**

- 7.38 The Applicant's baseline survey has failed to identify multi entrance badger setts within PoTLL's landholding. PoTLL are currently undertaking a bait marking exercise to understand the relationship between the badger clans occupying these setts, but at present there remains a possibility that one of the setts may be used for breeding.
- 7.39 The mitigation proposed by the Applicant includes closing a large main or breeding sett in order to facilitate construction. Not only does this sett appear to have been inaccurately mapped, the loss of this main sett could potentially be wholly avoided simply by more sensitive siting of a proposed balancing pond.
- 7.40 The Applicant also proposes to provide a compensatory artificial sett within PoTLL's landholdings. If this sett were successfully adopted by badgers, it would sterilise works within a minimum radius of 20m from the sett, and it is not clear if any consideration has been given to PoTLL's development aspirations in developing this proposal. Conversely, if the mitigation were unsuccessful, PoTLL could be liable for addressing the failed mitigation within its land should future development dictate this.
- 7.41 Closure of the sett also risks behavioural changes by the badger clan using the sett, causing them to disperse westwards, relocating elsewhere on PoTLL's land, creating a future mitigation burden on PoTLL.
- 7.42 PoTLL are requesting that the Applicant review its mitigation in respect of badgers, in order to ensure that disruption is minimised and, if closure of sett(s) is required, that any potential impacts to PoTLL's landholding are reduced to a minimum.

### **Conclusion**

- 7.43 As recognised elsewhere within this Relevant Representation, ongoing cooperation between the Applicant and PoTLL is vital to ensure the LTC can be constructed without undue, unknown or unmanaged impacts on PoTLL's undertaking. The potential for the shortcomings in the Applicant's ecological assessments and mitigation proposals to cause knock-on sterilisation of development land, or increase the burden of ecological constraints and the associated increased costs and more onerous obligations that would be associated with future port development, is of significant concern to PoTLL.
- 7.44 PoTLL are seeking further survey and assessment work to be undertaken by the Applicant to address the issues arising from the age of its baseline data. These updates will inform the acceptability of the proposed mitigations, helping to ensure that LTC does not cause harm to the local ecology and develops proposals which are cognisant of wider development in the area. These steps will also ensure that any BNG provided by the Project represents a true gain, and not the provision of one type of habitat through the destruction of a different, potentially more valuable or important, habitat, which would not accord with the mitigation hierarchy and would breach the trading rules of the BNG system.



- 7.45 PoTLL currently have no protection within the DCO for potential impacts to their land from the displacement of protected species. The present mitigation plans involve the permanent sterilisation of part of PoTLL's landholding that is designated for future development; it is concerning that PoTLL have no control, nor any right to be consulted, over the permanent changes being made to their landholding, despite the clear and far reaching impact of these.
- 7.46 Due to the inadequacy of the data, inaccuracies in mapping and potential confusion over applicable licensing rules (such as those dealing with water vole displacement), PoTLL do not consider that the environmental impacts have been adequately assessed. These shortcomings operate cumulatively, with the potential for significant impacts including the sterilisation of development land and increasingly challenging and expensive development requirements through a failure to properly mitigate the impacts of the LTC.
- 8. POLICY COMPLIANCE**
- 8.1 Overall, PoTLL consider that the Planning Statement (Document 6.2) prepared by the Applicant is a comprehensive assessment of the Project against the relevant planning policy and legislative framework.
- 8.2 Section 104(2) of the PA 2008 states that in deciding an application, the SoS must have regard to:
- (a) any relevant NPSs;
  - (b) any appropriate marine policy documents;
  - (c) any Local Impact Report (LIR) submitted to the Secretary of State;
  - (d) any matters prescribed in relation to development of the description to which the application relates; and
  - (e) any other matters which the SoS thinks are both important and relevant to the SoS's decision.
- 8.3 PoTLL accept and agree that the key NPS against which this Project will be determined is currently the 2014 National Policy Statement for National Networks (NPSNN). Insofar as the Project also requires the diversion of an existing overhead powerline and existing gas pipelines, it is also agreed that the Energy NPSs (NPS EN-1, NPS EN-4 and NPS EN-5 and the 2021 draft revisions to these Energy NPSs) are relevant to the Project.
- 8.4 However, PoTLL consider that greater weight should also be attached to the National Policy Statement for Ports (NPSP) as an 'important and relevant consideration' under section 104(2)(d), given:
- 8.4.1 the importance of the LTC, once operational, to future accessibility, connectivity and operation of both the Port of Tilbury and DP World London Gateway;
  - 8.4.2 potential construction impacts that could affect the operation of the Port of Tilbury during the construction process;
  - 8.4.3 potential impacts in both land take and construction traffic movements that could undermine the delivery of the Freeport; and

- 8.4.4 marine aspects that may impact upon the current and future operations of the Port of Tilbury, DP World London Gateway and the Port of London overall.
- 8.5 The NPSP sets out the Government's support for the growth and development of the UK's port infrastructure. Section 3.3 of the NPS outlines Government policy for Ports. In summary, the Government seeks to:
- 8.5.1 encourage sustainable port development to cater for long term forecast growth in volumes of imports and exports by sea with a competitive and efficient port industry capable of meeting the needs of importers and exporters cost effectively and in a timely manner, thus contributing to long term economic growth and prosperity;
- 8.5.2 allow judgments about when and where new developments might be proposed to be made on the basis of commercial factors by the port industry or port developers operating within a free market environment; and
- 8.5.3 ensure all proposed developments satisfy the relevant legal, environmental and social constraints and objectives, including those in the relevant European Directives and corresponding national regulations.
- 8.6 Paragraph 4.1.1 of the NPSP states that the Government's objectives for transport include *'to promote economic growth through improving networks and links for passengers and freight, as well as ensuring an efficient and competitive transport sector both nationally and internationally'*.
- 8.7 It is PoTLL's contention that compliance with the NPSP, as an 'important and relevant' consideration, will only be achieved if:
- 8.7.1 the LTC DCO requires the maximum use of the Port of Tilbury (and in particular Tilbury2) during construction to minimise both the environmental effects of the project and the extent of construction traffic impacts on the SRN and the Infrastructure Corridor that routes construction traffic through Tilbury2;
- 8.7.2 all construction traffic effects on the SRN (in particular the ASDA roundabout) are fully assessed and mitigated such that the operation of the Port of Tilbury is not undermined by congestion and journey time increases caused by LTC construction traffic;
- 8.7.3 once LTC is operational, the long term accessibility to and connectivity of the Port is maximised, including ensuring that works are left in situ that facilitate the construction and operation of the TLR in the future;
- 8.7.4 the extent of land take within the Freeport boundaries is minimised;
- 8.7.5 sufficient legally enforceable controls are given to PoTLL in respect of the utilisation of LTC DCO powers on their undertaking (both terrestrial and marine) to ensure that those impacts can be managed effectively; and
- 8.7.6 the restrictions in the DCO in relation to dredging in the river Thames do not prevent future dredging of the river to facilitate current and future vessel sizes.
- 8.8 For the reasons set out elsewhere in these representations, PoTLL consider that as presently presented, the scheme does not comply with the NPSP. This should cause

concern to the Applicant in light of the decision not to make the Thanet Extension Offshore Wind Farm DCO for much the same reason.

- 8.9 PoTLL note the recital of local authority planning policy within Appendix C of the Planning Statement (Document 7.2) which includes reference (at page 98) to a 'shortened' version of Policy CSTP28: River Thames in the Thurrock Core Strategy and Policies for the Management of Development DPD (2015). This omits reference to Part I, sub paras (i) - (iii) of the policy. As highlighted above, these sub-paragraphs are material to the protection and promotion of land for port-related uses adjoining the river. They indicate that the Council will give priority to allocating riverside development to uses that require access to the river, safeguard port-related operational land and safeguard additional adjacent land required for further port development. PoTLL consider that it is important that LTC is assessed against Policy CSTP28 in its entirety, insofar as it must be demonstrated that it does not prejudice the delivery of port-related expansion in accordance with this policy.
- 8.10 Insofar as LTC has been modified through design development to reduce land take on the river frontage (by the removal/relocation of the previous Tilbury Fields proposal), PoTLL consider that the project design has sought to comply with this policy. The management of the construction process, including the land take and uses within the Northern Tunnel compound, should also be considered against the Council's objectives in Part I of Policy CSTP28. As currently presented, PoTLL consider that the Applicant cannot claim policy compliance in this regard.
- 8.11 Finally, PoTLL note that the LTC is being brought forward pursuant to 'Road Investment Strategy 2'. This Strategy includes within it a Performance Specification which the Government expects National Highways to meet, and which under section 3(6) of the Infrastructure Act 2015 it is statutorily required to meet. This Strategy includes a performance indicator of delays that are caused on 'gateway routes' to ports and airports. In PoTLL's view, absent proper mitigation being put in place for the construction phase, the LTC has the potential to cause significant delays to the gateway route to the Port of Tilbury. As such, the Applicant is in danger of bringing forward a project which will fail its own performance indicators.

## 9. RIVER CONCERNS

9.1 PoTLL works closely with the Port of London Authority (PLA) in relation to enabling the passage of vessels to and from the Port of Tilbury. PoTLL understand that the PLA have substantial concerns regarding the interaction of:

- 9.1.1 the drafting of article 48 of the LTC Scheme draft DCO and the associated river restrictions plans;
- 9.1.2 the powers to deviate set out in article 6 of the LTC Scheme draft DCO and the tunnel limits of deviation plans; and
- 9.1.3 the power to acquire compulsorily rights set out in article 28 of, and Schedule 8 to, the LTC Scheme Draft DCO,

with the ability of the PLA to undertake future dredging of the river Thames in this important part of the river where a large amount of commercial traffic passes through.

9.2 It is currently understood that the drafting of the above provisions and documentation would mean that future dredging to account for larger vessels could not be undertaken if LTC

needed to take full advantage of its upwards limit of deviation set out in article 6 of the draft DCO.

- 9.3 This is not acceptable to PoTLL or to the PLA – the Port of Tilbury and the Port of London as a whole should not be put at a disadvantage as a result of the LTC, particularly in light of the ever increasing size of vessels. Future riverside development by PoTLL will require both capital and maintenance dredging and potential alterations to the navigation channel. PoTLL support the PLA's representations on this topic as they seek to ensure that the Port of Tilbury and LTC can co-exist.
- 9.4 In this regard, it is noted that applying drafting from other projects such as Silvertown Tunnel or Thames Tideway Tunnel DCO is not sufficient, as those schemes took place in a different part of the river, significantly upstream and without the pressures linked to commercial shipping.
- 9.5 PoTLL also note their concerns in respect of article 18 of the LTC Scheme draft DCO, which provides the Applicant with the ability to (without geographic restriction or reasonable justification) interfere with river navigation and with a range of physical assets that would capture assets owned by PoTLL (such as moorings and river walls) without the need for consent from relevant interested parties.
- 9.6 This is fundamentally unacceptable to PoTLL, as it gives the Applicant carte blanche powers to interfere with the workings of an operational port. As such, these powers must be made subject to the absolute approval of PoTLL in respect of their assets and navigation within their statutory harbour authority boundary.
- 9.7 On a more positive note PoTLL do note that whilst they are still considering the detail contained in the Navigation Risk Assessment submitted with the application, broadly they accept its conclusions.

## 10. **DESIGN AND CONSTRUCTION METHODOLOGY**

- 10.1 A fundamental concern of PoTLL is to ensure that the construction and operational design of LTC is taken forward in a way that does not preclude, prevent, delay or make more difficult and costly, the development and operation of the Thames Freeport within the LTC Order limits. In particular, PoTLL are concerned that there is insufficient detail provided on:
- 10.1.1 how the Tilbury Link Road could be brought forward in the context of the development of the haul route, and how and when the TLR will connect with the LTC;
  - 10.1.2 how the earthworks for the LTC (particular those associated with Work Nos. 5 and CA3) will be carried out and left in situ (including strata and landform);
  - 10.1.3 the management of contamination risk;
  - 10.1.4 construction and operational drainage and how they will be future proofed and interact with PoTLL's Freeport proposals;
  - 10.1.5 the emergency evacuation procedures for the tunnel given the Northern Portal is located adjacent to the Freeport land;

- 10.1.6 the development of utility provisions and commitments to PoTLL's ability to deal with future requirements;
  - 10.1.7 the design of the junctions and roads contained within Work No. 5 to account for future traffic flows (or 'future proofing' to do so); and
  - 10.1.8 how land temporarily possessed by LTC will be 'handed back' to PoTLL to enable its use for Freeport purposes.
- 10.2 Separately, PoTLL are also concerned about the impact of having a large construction project immediately adjacent to their current harbour limits, with a large number of workers passing through Tilbury2, which could cause a safety and security risk. PoTLL are concerned to note that there are no measures in relation to construction workers included in the application documentation (such as a code of conduct) and would expect this to be developed. PoTLL also note that the Tilbury2 area is subject to byelaws that have also not been considered by the Applicant.
- 10.3 PoTLL are expecting further dialogue and discussion with National Highways on these matters, with amendments to the DCO, its certified documentation and/or legal agreements likely to be required to assuage its concerns.

## 11. ENVIRONMENTAL STATEMENT

### Chapter 3 – Assessment of Alternatives

- 11.1 As part of the Assessment of Alternatives in the Environmental Statement, PoTLL consider that the Applicant needs to evidence the need for the draft Order limits beyond the works comprising the completed scheme and immediate construction compounds such that it can be demonstrated that they are necessary and that any adverse economic and environment effects of the project related to the draft Order limits are therefore minimised. PoTLL therefore do not believe that some elements of the draft Order limits have been justified and are concerned that they would interfere with PoTLL's operations and statutory undertaking.
- 11.2 As also previously highlighted, PoTLL do not agree with the Applicant's reasoning for the omission of the Tilbury Link Road on environmental and traffic grounds as set out in Table 3.16.

### Chapter 16 – Cumulative Effects Assessment

- 11.3 PoTLL welcome the inclusion of the Thames Freeport in the Cumulative Effects Assessment (CEA). However, the CEA only considers the Freeport in certain topic areas, namely Cultural Heritage, Landscape and Terrestrial Biodiversity. PoTLL also welcome the inclusion of Tilbury Link Road as a Cumulative Project. Comments are made on the CEA in respect of each of these cumulative projects as follows.

#### Thames Freeport at Tilbury

- 11.4 The Applicant's omission of any modelling of Freeport traffic (with or without the TLR, which is also a cumulative project) is such that the CEA is not comprehensive. The omission of any consideration of Freeport traffic cannot be justified and undermines the EIA process in this regard, particularly given the related environmental effects of traffic such as noise and air quality. By way of example, if LDP2 is developed in line with LTC construction, there would likely be traffic impacts at Marshfoot Lane.

- 11.5 Provisional traffic estimates arising from the Freeport (provided by PoTLL to the LTC team) demonstrate the importance of allowing for this traffic in any cumulative assessment. In comparison to existing traffic volumes on the A1089, increases arising from the Freeport could equate to a 20-30% uplift. This would represent a substantial increase which would impact upon the operation of the A1089 corridor, particularly the ASDA roundabout. For context, Tilbury2 resulted in around a 6% increase in traffic through the ASDA roundabout. Similarly, construction traffic from LTC would equate to on average approximately a 4% increase at ASDA roundabout, peaking at 6% during some construction phases.
- 11.6 The Applicant has provided only a high level assessment of the environmental effects of Freeport. To some degree PoTLL accept that detailed information on the range of uses within the Freeport is not available, but some reasonable assumptions can be made as to the likely development that will take place within the Freeport area as this will be much as is found within the existing Tilbury1 and Tilbury2 sites. The likely character of the Freeport development will be a mix of berthing, transshipment, open storage, port-centric warehousing, haulier parking and potential value added activities. Assumptions can be made by comparing the effects of the current Port of Tilbury with the area of the proposed Freeport.
- 11.7 PoTLL comment on the Applicant's CEA as it relates to the Freeport, set out in Table 16.10 of the Environmental Statement (Application Document 6.1) as follows:

#### Cultural heritage

- 11.8 PoTLL agree with the Applicant's assessment that the area surrounding Tilbury Fort is already industrialised. The Freeport will extend this industrial character eastward away from the Fort and will be seen in cumulation with LTC. Mitigation for the effects in operation of the Freeport on Cultural Heritage will include consideration of an appropriate 'Rochdale Envelope' to minimise any intervisibility, the potential for areas of soft landscaping allied to ecological mitigation and the use of an appropriate colour palette for buildings (the latter approach being agreed with Thurrock Council and Historic England as part of the T2 DCO). As such, PoTLL do not consider that any additional residual cumulative effect with the LTC Scheme would arise. Any construction traffic for the Freeport would be routed along the Infrastructure Corridor, and therefore avoid a direct effect on the setting of Tilbury Fort. As such, PoTLL also consider that there will be no cumulative effects during construction on Cultural Heritage.

#### Landscape and visual

- 11.9 PoTLL accept that there could be a residual moderate cumulative effect of the Freeport with LTC and the Freeport on landscape and visual amenity during construction and operation. Whilst the Freeport would affect the Thames Estuary and Tilbury Marshes Local Landscape Character Area, further port-related development eastward from Tilbury2 towards LTC will reinforce the character of the Thames in this location as a working river with significant port facilities. Similar mitigation as described above for mitigating effects of cultural heritage would similarly have landscape benefits. The visual amenity of users of the Two Forts way could be adversely affected but this would depend on the exact design and layout of the Freeport, including the extent of marine infrastructure.

#### Terrestrial biodiversity

- 11.10 As described above, PoTLL are developing a comprehensive mitigation strategy to address biodiversity within the area of the Freeport. With that mitigation strategy in place, and if the

matters in section 7 of this Relevant Representation can be resolved, PoTLL agree with the Applicant's conclusion that there could be a slight and not significant adverse effect on biodiversity due to the cumulation of the effect of LTC on birds north of the river. The CEA identifies a moderate and significant effect of LTC on terrestrial invertebrates as, whilst there will be a delay in the establishment of mitigation, the integrity of the resource will be maintained. PoTLL accept that given a similar approach on the Freeport there is the potential for a cumulative effect in this regard. However, PoTLL's emerging biodiversity mitigation strategy is seeking to provide advanced habitat creation to avoid the temporary loss assumed.

#### Population and human health

- 11.11 PoTLL concur that during construction there is potential for a cumulative beneficial effect with the Project in relation to employment. Noise and air quality effects from construction of the Freeport would be mitigated and managed through a Construction Environmental Management Plan and, as such, no significant effects during the construction phase are expected to arise.
- 11.12 PoTLL also agree with the Applicant's assessment of moderate beneficial effects anticipated during operation of the LTC Scheme in terms of potential increased accessibility for businesses and employment cumulatively with the employment and investment benefits of the Freeport.

#### **Tilbury Link Road**

- 11.13 In respect of Cultural Heritage and Landscape many of the comments above in respect of the Freeport in terms of landscape mitigation strategies would apply to the proposal for the Tilbury Link Road, reducing or avoiding any cumulative effects with the project. The CEA raises the potential for a cumulative effect with respect to soils during construction due to the impact on *"agricultural land, some of which has the potential to be best and most versatile land."* PoTLL are not aware that the alignment of the TLR would affect any BMV land or land which has that potential. That said, the Applicant has not identified any significant cumulative effect in this regard.
- 11.14 It is noted that the CEA does not raise any cumulative effects on biodiversity with regard to the TLR and overall, does not provide the environmental justification for its omission from the LTC.

#### **12. DCO DRAFTING MATTERS**

##### **Updated definition of materially new or materially different environmental effects**

- 12.1 The draft DCO incorporates new wording providing for how 'materially new or materially different' environmental effects is to be interpreted. This definition is used throughout the DCO to ensure that any changes to the Scheme that are incorporated through the detailed design process do not exceed the worst case scenario that has been assessed within the Environmental Statement, in line with the *Rochdale Envelope* approach.
- 12.2 The Environmental Statement reviews the impacts of the worst case scenario and, where these impacts are significant, sets out the mitigations that are necessary in order to reduce these impacts to an acceptable level.

- 12.3 PoTLL are concerned that the impact of the amended definition has not been fully considered. There may be an unintended consequence that could, for example, result in reduced mitigation, which may have other implications. Because the level of final mitigation relates to the development brought forward at the finalisation of detailed design there is no certainty on linkages, integration and benefits forming part of the proposals and benefits of the project. There is concern that without a mechanism or defined and transparent process to assess whether different mitigation measures are required based on any new, reduced impact, there could be implications for other parties that are not known, assessed or capable of challenge. For, example this could lead to the haul road, or Work 5, being design in a different way that would not deliver on need for a link to a potential Tilbury Link Road, as discussed elsewhere.
- 12.4 PoTLL are mindful that part of their land being used by the Applicant to deliver the Scheme forms part of the ecological mitigation under the Tilbury 2 DCO, and the area is therefore especially sensitive should there be any attempt to avoid or reduce mitigations. The draft DCO excludes PoTLL from liability where the Scheme causes the Tilbury 2 DCO ecological mitigation requirements to be breached. PoTLL are therefore concerned that the Scheme may cause environmental impacts based on a change to the Scheme design that reduces the impact, but nevertheless requires a mitigation that the Applicant considers not to be binding.
- 12.5 PoTLL suggest that a requirement is included in the DCO to the effect that all mitigations identified within the Environmental Statement are to be implemented, irrespective of changes to the detailed design that may reduce environmental impacts.
- 12.6 Alternatively, this amendment to the DCO should be removed such that any change that results in materially new or materially different environmental impacts will require a further environmental assessment. This will ensure that the Scheme can be built without causing unnecessary harm to the ecological environment, both around the Port, and throughout the route as a whole.

### ***Hillside provisions and interaction with T2 DCO***

- 12.7 PoTLL welcome the inclusion of article 56 that addresses the potential for the DCO to interfere with existing planning permissions. PoTLL are aware of a number of planning permissions, including those held by statutory undertakers, covering their land and are therefore grateful for the added clarity that the Scheme will have no impact on these permissions beyond the extent to which the Scheme renders a part impossible to be implemented. With the use of PoTLL's land being largely limited to the construction period, this will ensure that partially commenced planning permissions will remain capable of implementation after construction is completed.
- 12.8 PoTLL also note the existence of article 55(5) of the DCO which seeks to explicitly deal with the interactions of the LTC with the T2 DCO. However, there is concern that the drafting here may not go far enough to protect PoTLL's interests. By way of example, the T2 DCO includes a requirement for PoTLL to comply with an Operational Management Plan that includes dust and noise monitoring measures – this article does not deal with the practical issues of ascertaining which scheme may be responsible for any dust or noise issue that may arise. PoTLL will therefore likely make further submissions on this matter in their Written Representation.



## **Treatment of permits within the Protective Provisions for the benefit of the Environment Agency**

12.9 PoTLL anticipates that the Environment Agency will make full representations in respect of the DCO and the Protective Provisions for its benefit. Notwithstanding this, PoTLL note that paragraph 116(5) constitutes a novel provision and that its effect is to cause any permit granted to the Applicant to 'overwrite' any existing permit. PoTLL are aware of numerous environmental permits within their land holding that may be affected by this provision, including, in particular, the IVL permits. PoTLL would seek to ensure that the environmental protections in this area are not reduced, due to the potential for wider ecological implications, by way of an amendment that the terms of any existing permits are generally transferred to the Applicant.

### **13. PROTECTIVE PROVISIONS**

13.1 In the light of all the above matters set out in this Relevant Representation, PoTLL are in the process of reviewing the draft Protective Provisions contained within the draft DCO for PoTLL's benefit, within the context of the wider Application documentation and the potential interactions with the Port of Tilbury.

13.2 In their current form, PoTLL do not believe that the Protective Provisions provide adequate protection to secure the Port and its operations, particularly given the concerns set out in this Relevant Representation.

13.3 Due to the extent of the interaction between the Scheme and the Port's undertaking, in particular, with the main route for construction traffic being through a continuous 24 hour operational port, PoTLL anticipate and expect that the Protective Provisions will be substantially strengthened. PoTLL are also considering the extent to which the certified plans and documents may need to be amended to ensure their undertaking is protected and will be continuing to negotiate appropriate legal agreements with the Applicant. PoTLL expect their protections to involve a package that fully addresses and incorporates all of the above concerns.

### **14. NATIONAL HIGHWAYS OBJECTIVES AND THE EXTENT TO WHICH THE PROJECT ACHIEVES THESE OBJECTIVES**

14.1 Drawing together the various elements of this Relevant Representation, PoTLL consider that it is clear that unless they are resolved, LTC is in danger of not meeting its scheme objectives, and therefore falling at the first hurdle of being a project that can and should be brought forward.

14.2 The Applicant's objectives for the LTC are set out in various places in the application documentation including at Table 1.1 of the Need for the Project. PoTLL comment on the extent to which they believe LTC meets these objectives as follows:

#### **14.3 Economic**

14.4 PoTLL accept that LTC will, in the long-term, support sustainable local development and regional economic growth and are in favour of LTC in principle on this basis. PoTLL consider that improved connectivity across the Thames between Essex and Kent will have the potential to encourage investment and allow better access to a wider labour market for the Port of Tilbury.

- 14.5 PoTLL remain of the view that the economic benefits of the LTC have not, however, been maximised, given the absence of the Tilbury Link Road and the detailed design of access between LTC and the A13/A1089.
- 14.6 Furthermore, PoTLL are concerned that during the construction period those economic benefits will be at risk, as the impacts of construction traffic movements and the lack of effective mitigation may bring negative impacts to the attractiveness of the Port of Tilbury during that period. This will also need to be managed with the temporal overlap between the construction process and the delivery of the Thames Freeport at Tilbury.
- 14.7 Furthermore, given PoTLL's concerns about LTC's position on river restrictions, PoTLL are concerned that future economic benefit will be affected by the inability to dredge the river Thames navigation channel for larger vessels.

### **Transport**

- 14.8 PoTLL agree that LTC will assist in relieving congestion at the Dartford Crossing and will provide additional resilience in the SRN that will be beneficial to the Port's operation.
- 14.9 However, the ability to meet this objective during the extended construction period is currently not certain and is subject to the comments in section 4 of this Relevant Representation, resolving the navigation concerns and dealing with the comments regarding the design of the proposals set out above.

### **Community and environment**

- 14.10 PoTLL, as a significant stakeholder in the Thurrock area, wish to ensure that the adverse impacts of LTC on health and the environment are minimised. Insofar as there could be cumulative environmental impacts with the TLR and Freeport, PoTLL have commented above.
- 14.11 PoTLL note and welcome the proposed Heads of Terms for a section 106 agreement (Application Document 7.3) that seeks to deliver benefits to the local community by way of a Skills, Education and Employment Strategy and a Community Fund of £1.89 million providing financial support to a range of community initiatives.
- 14.12 However, in terms of the wider impacts, it is essential that the Applicant can demonstrate to the Examining Authority and Secretary of State that adverse impacts on the local community are, wherever possible, avoided and, where this is not possible, mitigated such that it can be clearly concluded that the economic benefits are not outweighed by adverse environmental and community impacts.
- 14.13 Making better use of the Port of Tilbury to minimise construction movements through improvements to the Materials Handling Plan and commitments in respect of the CMAT will go a long way to achieving this for the LTC. Without these improvements, the Applicant is in danger of being unable to meet this objective with the volumes of construction traffic expected.

## **15. CONCLUSION**

- 15.1 This Relevant Representation has set out a number of concerns with the LTC and the assessments and mitigation measures set out in the Application documentation. Taken together, these concerns mean that PoTLL consider that the LTC does not, in its current

form, meet its own scheme objectives and imposes unacceptable impacts upon PoTLL's current and future operations.

- 15.2 As such, whilst PoTLL support the LTC in principle, further discussions are required with National Highways to ensure that PoTLL's concerns are fully dealt with – without them PoTLL must object to the DCO application and to the Scheme through this Relevant Representation, and will continue to do so until the issues that they have raised have been resolved. For the avoidance of doubt, this representation should be considered by the Examining Authority to be an objection made by PoTLL under section 127 of PA 2008.
- 15.3 PoTLL's concerns and proposals for resolving them are summarised in the first iteration of the Principal Areas of Disagreement Summary Statement set out in the first section of this Relevant Representation, and PoTLL look forward to working constructively with the Applicant to enable each of these areas to be resolved.

## APPENDIX 1

### FREEPORT

1. Freeports are a key plank of national government economic policy and central to the so-called 'Levelling Up' agenda. The bidding prospectus described Freeports as follows:

*...a flagship government programme that will play an important part in the UK's post Covid economic recovery and contribute to realising the levelling up agenda, bringing jobs, investment and prosperity to some of our most deprived communities across the four nations of the UK with targeted and effective support.*

2. The policy has three objectives:
  - (a) establish freeports as national hubs for global trade and investment – to drive economic activity post Brexit and as we recover from the global pandemic;
  - (b) promote regeneration and job creation (lead policy objective) – to drive levelling up in deprived areas. The Freeport will generate around 20,000 jobs, to which the Freeport at Port of Tilbury will make a significant contribution; and
  - (c) create hotbeds for innovation – to drive R&D and support decarbonisation targets.<sup>18</sup>
3. Freeports are designed to boost local growth and benefit from incentives relating to customs, tax, planning, regeneration, infrastructure and innovation. The successful bidders in England have access a share of £200 million of seed capital funding.
4. The bidding process opened in England in February 2021 with a deadline for freeport bids in England of 3 March 2021: The announcement of 8 freeport locations in England was made by the Chancellor (now Prime Minister) Rishi Sunak in the Budget on 19 November 2021, and included the Thames Freeport which began operation on December 2021. The benefits of Freeport are intended to last 10 years.
5. The Thames Freeport comprises a consortium of public and private stakeholders, namely, Port of Tilbury, DP World, Ford at Dagenham, Thames Enterprise Park and the local authorities of Thurrock, Havering and Barking and Dagenham.
6. Thames Freeport has been promoted as a digitally linked economic zone connecting Ford's world class Dagenham engine plant, the global ports at London Gateway and Tilbury and many communities in urgent need of 'levelling up'. Thurrock is in the top 10% areas of deprivation for skills, 9% of residents have no qualifications; unemployment in Tilbury is double the national rate and over 50% of children raised are in poverty.
7. Thames Freeport is proposing actions in five broad categories:

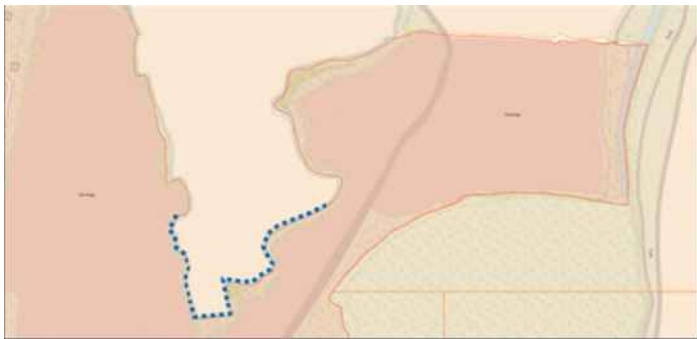
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<sup>18</sup> HM Treasury, Freeports: Bidding Prospectus, CP 315, November 2020, para 2.0.1. Sections 2.1, 2.2 and 2.3 of this document provide more information on these objectives.



- 7.1 regeneration projects using funding from retained business rates;
- 7.2 skills funding to support development of local skills relevant for Freeport businesses;
- 7.3 tax and customs sites to incentivise investment in trade relevant sectors;
- 7.4 develop trade infrastructure across Freeport sites with support of seed funding; and
- 7.5 establish a testbed for innovations through cluster development and facilitative infrastructure.
8. Land needed for the Northern Tunnel Entrance Compound (Work No CA5), west of the North Portal, and utilities works, are all located within the designated Port of Tilbury Thames Freeport tax site. PoTLL wish to ensure that nothing in the application for the LTC prejudices the delivery of the Thames Freeport at Tilbury and that direct and indirect effects are kept to a minimum. This land will be developed by PoTLL for a mix of port-related development including goods handling and storage, port centric logistics and value added activities, particularly associated with the low carbon economy, which is a key focus for the Freeport initiative. As such, Work No CA5 needs to have full regard to and minimise the effects on this.
9. Other land within the Freeport designation comprises the Fortland Distribution Park (a tax site) and London Distribution Park Phase 2 (LDP2) which is identified as a customs site only (i.e. it does not benefit from the tax incentives that form part of the Freeport offer). As noted above, this area is being promoted as a joint venture with logistics specialists, SEGRO.
10. These areas are all illustrated on the Freeport Areas Plan.
11. At present Freeports do not benefit from any new or different consenting regimes. The consenting of development within the Port of Tilbury Thames Freeport tax site will depend on what is proposed and its scale, such that a variety of consenting regimes (e.g. TCPA, DCO and LDO) might be used.
12. The development of the Freeport at Tilbury between now and 2031 is such that there will be significant overlap with the construction of the LTC. Moreover, once operational, the LTC will need to fully accommodate the Freeport development. Very significant weight should be placed on the delivery of the Thames Freeport as a key component of Government economic policy.
13. Detailed discussions with the Applicant on this vital interface have taken place and are continuing. This interface is therefore a key focus of PoTLL's Relevant Representation.

## APPENDIX 2

### CORRECTIONS NECESSARY TO THE BOOK OF REFERENCE

No.	Land parcels	Plan	Comments	Action required
1	Various – Land within Tilbury3 boundary	Various – Land within Tilbury3 boundary	The party entitled to be registered as proprietor of Tilbury3 (title number EX639032) is Port of Tilbury London Limited.	Owners or reputed owners to be amended from RWE Generation UK PLC to Port of Tilbury London Limited.
2	16-07, 16-10, 16-13, 16-18, 16-20, 16-25, 16-28, 16-30	Sheet 16	Land approximately shown by the dashed blue line below is unregistered. RWE Generation UK PLC noted as Category 1 owner. 	Owners or reputed owners to be amended from RWE Generation UK PLC to Port of Tilbury London Limited.
3	16-16	Sheet 16	Ingrebourne Valley Limited not a tenant of this land parcel as stated in the Book of Reference.	Reference to Ingrebourne Valley Limited as a lessee, tenant or occupier to be removed.
4	16-39	Sheet 16	This land (with other land) is subject to an Option Agreement dated 25 January 2022 made between (1) Melville Hamilton Lowe Mott and (2) Port of Tilbury London Limited in respect of land known as Tilbury4. Registration of the noting of this interest is pending at the Land Registry.	Reference to be made to Port of Tilbury London Limited as Category 2 party pursuant to the Option Agreement dated 25 January 2022.

5	20-03	Sheet 20	Ingrebourne Valley Limited not a tenant of this land parcel as stated in the Book of Reference.	Reference to Ingrebourne Valley Limited as a lessee, tenant or occupier to be removed.
6	20-17, 20-23, 20-27, 20-30, 20-39, 20-47, 20-52, 20-61 and 20-65	Sheet 20	<p>Land approximately shown by the dashed blue line below is unregistered. RWE Generation UK PLC noted as Category 1 owner.</p> 	Owners or reputed owners to be amended from RWE Generation UK PLC to Port of Tilbury London Limited.
7	21-07	Sheet 21	<p>Land approximately shown by the dashed blue line below is unregistered. RWE Generation UK PLC noted as Category 1 owner.</p> 	Owners or reputed owners to be amended from RWE Generation UK PLC to Port of Tilbury London Limited.
8	21-04, 21-05, 21-09	Sheet 21	Land approximately shown by the dashed blue line below is unregistered. RWE Generation UK PLC noted as Category 1 owner.	Owners or reputed owners to be amended from RWE Generation

				UK PLC to Port of Tilbury London Limited.
<b>9</b>	21-12	Sheet 21	<p>The land approximately shown by the dashed blue line below is unregistered and is located between two freehold titles owned by Port of Tilbury London Limited. Thurrock Council noted as Category 1 owner in respect of this land.</p> 	Owners or reputed owners to be amended from Thurrock Council to Port of Tilbury London Limited.
<b>10</b>	21-27	Sheet 21	<p>Category 1 owners noted as Riverside Willows Ltd, Saffron Gardens Investments Ltd and Walton Common Limited.</p>	Owners or reputed owners to be amended from Riverside Willows Ltd, Saffron Gardens Investments Ltd and Walton Common Limited to Diana Mary Cole and James Andrew Cole.



12	21-30	Sheet 21	Ingrebourne Valley Limited not a tenant of this land parcel as stated in the Book of Reference.	Reference to Ingrebourne Valley Limited as a lessee, tenant or occupier to be removed.
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### APPENDIX 3

#### SUMMARY OF POTLL CONCERNS IN RESPECT OF LTC ECOLOGICAL APPLICATION DOCUMENTS

LTC ES Figures	LTC Appendices	ES	Comments
<b>Designations</b>			
ES Figure 8.1 - Designated Sites [APP-262]	ES Appendix 8.1 Designated sites [APP-390]		<p>This report relies on information which is now out of date: it documents former Local Wildlife Site (LoWS) data designations that are no longer present (e.g. Tilbury Centre LoWS), or which have substantively changed in terms of their extent or interest features (e.g. Gossem's Farm LoWS).</p> <p>Up to date information for LoWS within the PoTLL landholding could have been obtained via discussion with PoTLL, by a review of DCO documentation from cumulative projects such as Tilbury2, via discussions with Thurrock or even by consultation of recent aerial photography.</p>
<b>Habitats</b>			
ES Figure 8.2 - Phase 1 Habitat Map [APP-263]	ES Appendix 8.2 - Plants and Habitats [APP-391]		<p>The Applicant's extended Phase 1 habitat survey was carried out between April 2017 and March 2020, and is no longer considered current by reference to established industry standards<sup>19</sup>.</p>
ES Figure 8.6 - Phase 1 Field and Desk Based Assessment Coverage [APP-267]	ES Appendix 8.21 - Biodiversity Metric Calculations [APP-417]		<p>For the Tilbury2 area and adjacent land, the Phase 1 habitat mapping, associated target notes, and reporting is apparently based upon historic desk study data from 2015-2017. However, ES Figure 8.2 [APP-263] does not appear to fully correspond to any of the habitat mapping submitted with the Tilbury2 ES, and may instead have been derived from interpretation of aerial photography from a similar (historic) time period. In either event, the habitat mapped in the LTC ES is no longer representative of the habitats present.</p> <p>For example, looking within Tilbury2 at the land immediately to the north of the National Grid Substation, the Applicant has failed to identify/map the extensive new ditch and pond habitat created as part of PoTLL's water vole receptor site. Immediately to the east of this, we note that Walton Common, which is readily distinguishable as permanent pasture even from aerial photography, has been mapped by the Applicant as arable cropland. More recent habitat survey data is freely available via the planning portal for the Applicant to draw upon, and could have been used to inform the Phase 1</p>

<sup>19</sup> CIEEM (April 2019). *Advice Note: On the Lifespan of Ecological Reports & Surveys*. Via: [REDACTED]

LTC ES Figures	LTC Appendices	ES	Comments
			<p>habitat survey. The Applicant also had the opportunity to update the Phase 1 habitat survey work for Tilbury2 during a site visit hosted by PoTLL/Bioscan on 04 October 2022, but did not do so.</p> <p>One of the major disadvantages of using the JNCC Phase 1 habitat survey classification is that it does not allow for identification of Priority habitat types<sup>20</sup> (which within the Tilbury2 and Ashfields area includes Open Mosaic Habitat on Previously Developed Land and Coastal Floodplain Grazing Marsh, with the latter also present on Walton Common). As a consequence, neither Priority habitat type has been mapped by the Applicant, and the location and extent of these Priority habitat types remains unqualified within the ES. The ditch to the east of Ashfield B also appears to be mapped as “standing water” despite there being large stands of swamp/marginal habitat present.</p> <p>Since Phase 1 data was captured for LTC in c.2018, the industry has moved towards use of UK Habitat (UKHab) Classification, in line with recommendations from Natural England.<sup>21</sup> As a consequence of using Phase 1 rather than UKHab, the Applicant has resorted within the Biodiversity Net Gain (BNG) document [APP-417] to identification of parcels of Priority habitat by proxy rather than making a direct assessment for each habitat parcel. It is therefore unclear whether the exposed and partially vegetated spoils within the Ashfields and at the fringes of the former Tilbury power station coal stockyard<sup>22</sup> have been identified as high distinctiveness Priority “Open Mosaic Habitats on Previously Developed Land” or low distinctiveness habitats such as “Ruderal/Ephemeral”, or even “Actively worked sand pit quarry or open cast mine”.</p> <p>The BNG metric document [APP-417] states at para 4.3.6.c that “<i>Parcels within areas of Open Mosaic Habitat sites, identified through a review of designated site citations and field surveys, were all assigned to ‘Urban - Open Mosaic Habitats on previously developed land’ regardless of their Phase 1 habitat type i.e., Open Mosaic Habitat is a collection of different individual habitat types.</i>” This implies that the Goshems Farm LoWS would be classified as 100% Open Mosaic Habitat</p>

<sup>20</sup> Further to S41 of the Natural Environment and Rural Communities Act 2006.

<sup>21</sup> Natural England (21 April 2022). *Biodiversity Metric 3.1: Auditing and accounting for biodiversity. USER GUIDE*. Via: <http://publications.naturalengland.org.uk/publication/6049804846366720>

<sup>22</sup> See Figure 2 of ecology report submitted to Thurrock Council with planning application reference 21/01928/FUL: Bioscan UK Ltd (November 2021). *Land at the Former Tilbury Power Station: Tilbury3. Temporary Use of Land for Port Related Storage. Ecological Appraisal*.

LTC ES Figures	LTC Appendices	ES	Comments
			<p>on Previously Developed Land for the purposes of assessment. However, the BNG metric document [APP-417] goes on to state at para 4.3.9 that <i>“The BNG baseline for the Goshems Farm area was assessed in line with the Ingrebourne Valley Limited (2018) project landscape masterplan, which is set to be completed before the [LTC] Project begins”</i>. It is unclear which ‘agreed landscape masterplan’ is being referred to,<sup>23</sup> but any/all Ingrebourne Valley masterplans that Bioscan has been sighted on propose very little in the way of Open Mosaic Habitat. We also note that restoration of Goshems Farm is not complete now, in early 2023.</p> <p>Para 5.2.4 goes on to say that <i>“At Goshems Farm, the agreed landscape masterplan has been used in the [LTC] Project baseline as opposed to the existing baseline. This is a precautionary approach that raises the value of the baseline as compared to the existing conditions.”</i> However, in the absence of current habitat survey data supplied by the Applicant, the Examining Authority cannot know whether this assumption is justified.</p> <p>Grassland habitats provide further examples of where the Applicant has translated habitat classifications from Phase 1 to UKHab. Grassland identified by the Applicant as “semi-improved neutral grassland” has been translated to two UKHab classifications: “modified grassland” and “other neutral grassland”. However, the Applicant’s default has been to assign “semi improved neutral grassland” to the lower ranking of the two UKHab/BNG categories wherever the habitat parcels were <i>“without target notes”</i>, i.e. wherever there was an <b>absence</b> of species information. Furthermore, in assessing habitat condition, the species diversity criterion was also deemed to be failed for any grassland where target notes on species had not been captured (<i>“Parcels with no target notes were assumed to fail this criterion.”</i>) Therefore, where a surveyor failed to record a species list during survey (e.g. due to seasonal constraints when undertaking survey early in the season) the default approach taken by LTC would be to classify the grassland parcel as the lowest ranking habitat, i.e. low distinctiveness “modified grassland”, in poor condition. This introduces a high risk of undervaluing or otherwise misinterpreting the baseline.</p>

<sup>23</sup> The Applicant references: *Ingrebourne Valley Limited (2018). 18/01564/CV: Section 73 application - Modify the conditions attached to planning permission ref: 98/00773/MIN. Goshems Farm, Station Road, Tilbury, Essex, RM18 8QR. Thurrock Council, UK. Accessed April 2020.* However, there does not appear to be a landscape masterplan with defined habitat types available via: <https://regs.thurrock.gov.uk/onlineapplications/applicationDetails.do?activeTab=documents&keyVal=PHEM51QGFQL00>

LTC ES Figures	LTC Appendices	ES	Comments
			<p>It therefore appears that the baseline habitat classification and condition assessments used for calculations of Biodiversity Net Gain (BNG) via the Biodiversity Metric v3.1 have been informed by data which (a) is out of date and in some cases inaccurate, (b) relies heavily on formulaic translation of baseline habitat types from JNCC Phase 1 habitat classification into UK Habitat (UKHab) Classification / Metric categories, and (c) is based upon numerous unevidenced assumptions, including about habitat condition.</p> <p>The full implications of this are unclear however, as the information provided in the relevant document [APP-417] is insufficiently detailed for a third party to make an informed assessment, including an absence of valid mapping for baseline habitat.</p> <p><b>For avoidance of doubt, and in line with industry best practice guidance<sup>24</sup>, any BNG proposals related to works within PoTLL's landholding should be supported by plans explicitly mapping the baseline habitat types (including Priority habitat types) and habitat conditions, and these should be based on up to date survey information. PoTLL are concerned that otherwise, any shortfall in mitigation/compensation performance may need to be met by the Port as part of future development uses of land temporarily appropriated by LTC and could impose constraints on meeting the economic growth potential of the Freeport.</b></p>
<p>ES Figure 8.3 - Hedgerows Regulations Assessment [APP-264]</p>			<p>No survey data or assessment has been provided for PoTLL's landholdings, despite some baseline survey information being publicly available<sup>25</sup>. Hedgerows are not a characteristic feature of the Greater Thames Marshes, and any fragments present are unlikely to qualify as 'Important' under the Hedgerows Regulations. However, PoTLL has created linear features with tree/shrub planting within Tilbury2 that will perform an equivalent function to Priority hedgerow habitat, and any potential impacts to these features should be identified by the Applicant. In particular, we note that there are hedgerows adjacent to the Tilbury2 water vole receptor site which would be impacted by the Applicant's proposed works (including a conveyor proposed within</p>

<sup>24</sup> CIEEM (2021). Biodiversity Net Gain Report and Audit Templates. Chartered Institute of Ecology and Environmental Management, Winchester, UK.

<sup>25</sup> E.g. Bioscan UK Ltd (October 2017). *Tilbury2 ES Figure 10.2d Priority Habitats*. Port of Tilbury London Ltd. Via: <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR030003/TR030003-000412-6.3%20Figures%20and%20Drawings%20-%20Figure%2010.2d%20Section%2041%20priority%20habitats.pdf>

LTC ES Figures	LTC Appendices	ES	Comments
			Tilbury2), and which have not been referenced in the baseline assessment for LTC.
ES Figure 8.4 - NVC and Lower Plant Survey Locations [APP-265]			<p>Surveys were conducted by the Applicant on unspecified dates between 2018 and 2020. Detailed NVC/quadrat sampling within PoTLL's landholding was restricted to a single location: part of the juncture between Ashfield B and Goshems Farm (APP-265, Community 2, NVC04, Q13-Q24, as mapped with green-hatching). The habitat here was classified by the Applicant as MG1 grassland [APP-391], which does not correspond with the Phase 1 habitat survey classification of tall ruderal vegetation [APP-263].</p> <p>This may be as a consequence of (a) the poor correspondence of the Ashfield habitats to NVC categories; and (b) the changing nature of the habitats present, with (one presumes) a temporal gap between the Phase 1 survey and NVC survey being undertaken. However, this does further bring into question the reliability of the baseline habitat information being used for BNG purposes; especially given that a simple review of recent aerial photography would show that this area is now largely represented by scattered scrub in the south, and exposed spoil in the north.</p> <p><b>As above, impact assessment related to habitat assessment within PoTLL's landholdings should be based on up to date survey information.</b></p>
ES Figure 8.5 - Invasive Plant Species Locations [APP-266]			<p>The Applicant's lack of survey within PoTLL's landholdings has resulted in failure to record where Invasive Non Native Species (INNS) are present within the proposed LTC Order Limits and would need to be taken account in LTCs proposals. INNS that are present include water fern <i>Azolla filiculoides</i>, which has a localised distribution within the Tilbury2 water vole receptor area, and is subject to ongoing treatment that has not yet resulted in complete eradication.</p> <p>Russian olive <i>Elaeagnus angustifolia</i> is also present within the Ashfields, this species having invasive tendencies when growing in PFA substrate. Other species with invasive tendencies (e.g. goat's rue <i>Galega officinalis</i>) may also merit attention.</p> <p>It is therefore unclear whether INNS would be subject to impacts from the Applicant's proposed works (including the conveyor proposed within Tilbury2).</p>

LTC ES Figures	LTC Appendices	ES	Comments
<b>Fauna: Invertebrates</b>			
ES Figure 8.7 - Invertebrate Survey Locations [APP-268]	ES Appendix 8.3 - Terrestrial Invertebrates [APP-392]		<p>Invertebrates are a very important receptor and consideration for this part of the Thames Estuary.</p> <p>Invertebrate survey was undertaken for LTC within the area of Ashfields and Goshems Farm<sup>26</sup> (mapped as Area 3 [APP-268]) during summer 2018 (dates unspecified). The report describes that <i>“An overall <b>SQI score of 11.2</b> for Survey Area 3 indicates that the site is of national significance. This value is strongly reflected in the habitat specific representation of assemblages from a mosaic of habitats and the stronger conservation features. This includes the rich flower resource and bare sand &amp; chalk and scrub heath &amp; moorland assemblages, which are of national significance. The presence of a previously Extinct cuckoo wasp <i>Hedychrum rutilans</i> onsite, the ecological position of the site in relation to other important invertebrate sites, the habitat representativeness and the overall size of the site also increase the intrinsic value of Survey Area 3 and reinforce the site as being of national importance for invertebrates.”</i></p> <p>A top-up survey was undertaken by the Applicant in June 2022, covering just the ditch immediately to the east of Ashfield B and C:  <i>“Three... protected / notable species ... the ground beetle <i>Ophonus ardosiacus</i>, plant bug <i>Asiraca clavicornis</i>, and Shril Carder Bee [were recorded again in this updated ditch survey] in addition to another 12 species of conservation importance. The previous overall SQI score for Area 3 - Goshems Farm was 11.2 which indicates a site of National significance. The findings of this survey update for Ditch “JN1” are in accord with this, with a high number of species, including protected / notable species, generated from one visit.”</i></p> <p>By contrast, invertebrate survey data pertaining to the Tilbury2 area (Area 5 and Area 6) is historic, having been gained from the Tilbury2 baseline (which was gathered in 2016/2017 or earlier); and which has been superseded by construction of the Tilbury2 DCO. The survey coverage areas have also been inaccurately mapped by the Applicant.<sup>27</sup></p>

<sup>26</sup> There is some uncertainty about the precise coverage of these surveys. Survey ‘Area 3’ as mapped at Figure 8.7 [APP-268] is termed “Goshems Farm” in the report [APP-392], yet its mapped extents correspond with Ashfield A1, A2, A3, B, C and beyond, and exclude much of the “Goshems Farm LWS”. This may be because much of Goshems Farm was deliberately excluded from survey (see para 5.4.17) but this has not been made explicit and therefore the naming is potentially misleading.

<sup>27</sup> For the geographical differences, cross-refer LTC ES Figure 8.7 [APP-268] with Figure 3 of the Tilbury2 ES Appendix 10.L

LTC ES Figures	LTC Appendices	ES	Comments
			<p>A cluster of LWSs to the north east of PoTLL's landholdings that support Open Mosaic Habitat (Survey Area 9) were curiously excluded from survey by the Applicant. Instead, this cluster of sites were adjudged by the Applicant to be of "at least regional significance" (para 5.3.11 [APP-392] simply on the basis of desk study data. It is unclear why these sites have not been precautionarily ranked as "up to national significance or higher", given the Thames Gateway locality, size of the sites, apparent floristic and structural composition, and the presence of potentially valuable invertebrate habitats.</p> <p>Notwithstanding that there does not appear to be any geographical breakdown for the Ashfields/Goshems Farm area (mapped as Area 3 mapped as Area 3 [APP-268] and described at para 5.4.17 – 5.4.23 of the Applicant's assessment [APP-392]), the conclusion that <b>the Ashfields area is of very high conservation importance for invertebrates in a national context</b> is consistent with PoTLL's previous and more recent survey findings. However, the paucity of detail provided in the survey reporting, and the absence of any attempt to attribute this interest to discrete areas or particular features renders assessment of impacts problematic.</p> <p>Areas of identified value for invertebrates include Ashfield A2, A3, and B, where LTC's proposed works are as yet ill defined. The tip of Ashfield A3 in particular, which appears to fall under the line of LTC's proposed conveyor, was found by PoTLL/ Bioscan to support a suite of uncommon invertebrate species which includes a rove beetle species that is new to Britain.</p> <p><b>As above, impact assessment related to habitat assessment within PoTLL's landholdings should be based on up to date survey information. In the absence of such assessment, PoTLL are concerned that any shortfall in mitigation/ compensation performance may need to be met as part of future Port development of land temporarily appropriated by LTC, and could impose constraints on meeting the economic growth potential of the Freeport.</b></p>
	ES Appendix 8.4 - Freshwater Ecology [APP-393]		<p>The report [APP-393] states at para 3.1.7.a "North portal: ... Summer 2022 macro invertebrate data is not yet available, and therefore not included within this report". This outstanding survey information should be published at the earliest possible juncture. This would also provide</p>



LTC ES Figures	LTC Appendices	ES	Comments
			<p>the Applicant with an opportunity to update the freshwater invertebrate survey locations, which have been unhelpfully omitted from the ES Figure 8.7 - Invertebrate Survey Locations plan [APP-268], and to ensure that the grid references provided for the ditches at Table 3.2 [APP-393] tally with B2 (at present, they do not).</p> <p>That notwithstanding, the freshwater invertebrate assessment concluded at para 4.4.4 that “[Community Conservation Index] CCI scores at the three ditches sampled in 2018 were all in excess of 20 indicating Very High conservation value. In 2022, JN3 and JN10 achieved a score of 20 or above. A number of species of conservation interest (CCI 7 or above, Notable) were present. These were all species of beetle, some of which classed as Nationally Scarce (Foster, 2010) and are presented in Table 4.5”; and this assessment is consistent with PoTLL’s previous and more recent survey findings.</p> <p>Considering eels, the report [APP-393] states “It has been assumed that European eel and minor species are present in the permanently wetted watercourses.” This assessment is also supported by PoTLL’s findings during the Tilbury2 construction phase, where eels were recorded by the Tilbury2 Ecological Clerk of Works (ECoW) in low numbers within Pincocks Trough.</p>
<b>Fauna: Amphibians</b>			
<p>ES Figure 8.8 - GCN Presence Absence Results [APP-269]</p>	<p>ES Appendix 8.5 - Amphibians [APP-394]</p>		<p>Surveys were undertaken by the Applicant in 2018 and are therefore no longer current.</p> <p>The Applicant has surveyed only a single waterbody within PoTLL’s landholdings see page 8 of Figure 8.8 [APP-269]) and has failed to correctly identify or map the majority of waterbodies present. That notwithstanding, eDNA surveys undertaken by Bioscan in 2022 found negative results for great crested newt (GCN) presence from all waterbodies sampled within the Ashfields area, so the overall conclusions (i.e. that this species is likely absent) would appear to be valid and robust within that area for decision making purposes.</p>
<b>Fauna: Reptiles</b>			
<p>ES Figure 8.9 - Reptile Survey Results [APP-270]</p>	<p>ES Appendix 8.6 - Reptiles [APP-395]</p>		<p>The Applicant’s reptile survey data was collected in 2017, since which time the relevant habitats have changed (in some cases considerably), and the results should therefore be considered indicative only.</p>

LTC ES Figures	LTC Appendices	ES	Comments
			<p>Furthermore, survey appears to have taken the form of limited geographical ‘sampling’ rather than being in any way comprehensive. <b>The Applicant’s surveys have entirely omitted Tilbury2 and the former power station areas despite some of these areas having been used as reptile receptor sites.</b> Limited survey was undertaken for discrete parts of Ashfield A1, B, C, and Goshems Farm (identified within the ES as areas N01, N02, N03, N04, N05 and N06).</p> <p>Those limitations notwithstanding, by reference to ES Figure 8.9 [APP-270] it is apparent that the Ashfields and land adjacent to the railway represent the highest density of ‘key reptile areas’ within the Order Limits. This is supported by PoTLL’s survey data from 2022.</p> <p>Reptile survey densities for the Ashfields as published by the Applicant, were typically “good” for common lizard and slow worm, with “low” counts for adder, and grass snake being recorded in a single locality (adjacent to the large pond at Goshems Farm).</p> <p>However, PoTLL’s experience of translocation within Tilbury2 was that reptiles could reach “exceptional” densities in well-structured habitat<sup>28</sup>, and PoTLL’s 2022 survey data for the Ashfields suggests that “exceptional” numbers may also be reached here. That same 2022 dataset also found adder and grass snake to be more widely distributed across the Ashfields than the LTC baseline data indicates. The current leaseholder for the Ashfields (Ingrebourne Valley Ltd) has also supplied reptile translocation data to PoTLL which further supports this assessment of ‘exceptional’ densities.</p> <p><b>The Applicant’s conclusion for land North of the river Thames, i.e. that “Low populations of adder and grass snake were estimated, with low to good populations of slow worm and common lizard”, is thus considered likely to represent a significant underestimate of reptile population densities in this locality, and further baseline information is required in order to be able to assess whether the reptile mitigation and compensation proposed for LTC is likely to be adequate.</b></p>
<b>Fauna: Birds</b>			

<sup>28</sup> E.g. as per para 10.263 and page 10-177 of the Tilbury2 Environmental Statement Chapter 10 Terrestrial Ecology. Via: <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR030003/TR030003-000213-6.1%20Environmental%20Statement.pdf>

LTC ES Figures	LTC Appendices	ES	Comments
ES Figure 8.10 - Ornithology Survey Areas [APP-271]	ES Appendix 8.7 - Ornithology [APP-396]		The Ornithology report (ES Appendix 8.7 [APP-396]) is light on detail, including in respect of dates, which have been omitted from the survey methodology summary at Table 3.3 for no clear reason. That notwithstanding, it appears that survey for wintering and breeding birds was typically carried out between April 2017- March 2019, and is therefore no longer current.
ES Figure 8.13 - Functionally Linked Land Transects - Wintering [APP-274]			
ES Figure 8.14 - Functionally Linked Land Transect Results - Wintering (Nocturnal) [APP-275]			The desk study portion of the Ornithology report (ES Appendix 8.7 [APP-396]) makes several references to the historic 2015 WYG report that formed Appendix 10.A to the Tilbury2 ES. This documents bird survey work undertaken between January 2007 - May 2008 and supplemented by breeding bird surveys in 2013 and 2015. As such, the breeding bird data relied upon by the Applicant for PoTLL's landholdings is approaching 8 years in age, whilst the wintering bird data is approaching 15 years in age. This is not made clear in the Ornithology report; and curiously, whilst the Applicant refers repeatedly to records from this historic dataset (e.g. paras 4.3.26, 4.3.40, 4.3.49, 4.3.53), there does not appear to be any reference to the extensive and more recent Tilbury bird data from 2017-2018, which is contained within the Tilbury2 ES, <sup>29</sup> and the HRA appendices <sup>30</sup> . Indeed, it appears that (once again) that the Applicant for LTC has failed to undertake a thorough desk study, despite relying heavily on third party data to make up the shortfall in their own.
ES Figure 8.15 - Functionally Linked Land Transects - Breeding [APP-276]			
ES Figure 8.18 - Ornithology Main Route Transects Results - Wintering [APP-279]			
ES Figure 8.19 - Ornithology Main Route Transects Results - Breeding [APP-280]			
ES Figure 8.22 - Ornithology Other Schedule 1 Species Distribution [APP-283]			Considering the field surveys undertaken, mapping at page 6 of Figure 8.10 (Ornithology Survey Areas [APP-271]) appears to show relatively extensive coverage of PoTLL's landholdings, with parts of the Ashfields, Tilbury2 and its infrastructure corridor encompassed within "bird transect areas" (indicated by magenta pink polygons, labelled: "Tilbury Fort", "Tilbury1 Coles Farm" and "2 Tilbury Power Station"). However, on further interrogation of the plans it appears that there is a map drafting error whereby transect routes (dashed blue lines) are shown coterminous with the magenta pink polygon boundaries. This is incorrect: the magenta pink polygons (bird transect areas) should not be overlain with the dashed blue lines (walked transect routes). Once this mapping error is understood, it becomes apparent that coverage within the purple polygons (bird

<sup>29</sup> Port of Tilbury London Ltd (October 2017). Tilbury2 Environmental Statement Chapter 10 Terrestrial Ecology. Via: <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR030003/TR030003-000213-6.1%20Environmental%20Statement.pdf>

<sup>30</sup> Port of Tilbury London Ltd (August 2018). Tilbury2 Habitats Regulations Assessment (HRA) Stage 2 Report. Final Version for Deadline 7. Via <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR030003/TR030003-000995-Port%20of%20Tilbury%20London%20-%20Habitats%20Regulations%20Stage%202%20report%20-%20Clean.pdf>

LTC ES Figures	LTC Appendices	ES	Comments
			<p>survey areas) was limited to the internal blue dashed lines (walked transect routes) comprising only a very restricted portion of what is termed the transect area. This is particularly problematic within the Ashfields area where the raised topography of the ash mounds would have obscured views to the west.</p> <p>It therefore appears that Tilbury2, the infrastructure corridor, and much of the Ashfields (e.g. areas A2 and A3) were subject to no direct survey coverage by the Applicant, despite the plans misleadingly suggesting to the contrary. Consequently, the absence of mapped bird activity within PoTLL's landholdings is due to of lack of survey effort, not absence of birds. This has resulted in a significant underestimate of birds within Tilbury2 and the Ashfields, including Schedule 1 species, particularly Cetti's warbler (but also little ringed plover); and other species of conservation concern, including nightingale. This lack of direct survey coverage applies to land within the line of the proposed conveyor, and the proposed access road, i.e. Works No. MUT4.</p> <p>In summary, bird survey data for PoTLL's landholdings appears to be derived mainly from historic surveys undertaken in 2007-08 or 2013/15, with almost no direct survey coverage of Tilbury2 or the adjacent parts of the Ashfields, thereby introducing a significant risk of undervaluing or misinterpreting the baseline.</p> <p><b>As above, impact assessment related to birds within PoTLL's landholdings should be based on up to date survey information. In the absence of such assessment, PoTLL are concerned that any shortfall in mitigation/ compensation may need to be met as part of future Port development, which could impose a constraint or practical/ financial burden on the delivery of such future uses.</b></p>
<p>ES Figure 8.11 - Ornithology Intertidal Vantage Point Results [APP-272]</p>			<p>Vantage Point survey by the Applicant appears to have identified higher wintering bird densities towards Coalhouse Fort, i.e. the western end of the intertidal zone to the south of the Ashfields. This aligns with PoTLL/ Bioscan's findings.</p>
<p>ES Figure 8.12 - Ornithology Intertidal Vantage Point Results - Assemblages [APP-273]</p>			

LTC ES Figures	LTC Appendices	ES	Comments
ES Figure 8.16 - Designated Woodland Transect Results - Wintering [APP-277]			Survey by the Applicant relates to woodland outside PoTLL's landholding only (noting that extensive blocks of mature woodland habitat are absent from PoTLL's landholding). Accordingly, this is of limited relevance to PoTLL's land.
ES Figure 8.17 - Designated Woodland Transect Results - Breeding [APP-278]			
ES Figure 8.20 - Ornithology Barn Owl Distribution and Breeding Sites (CONFIDENTIAL) [APP-281]			<p>The barn owl habitat assessment presented at Figure 8.20 [APP-281] is based on data which was gathered in c.2018 (and apparently via a review of historical aerial photography rather than direct survey) and cannot be considered current for Tilbury2.</p> <p>Barn owls have long used the Ashfields area. Two barn owl boxes were erected by PoTLL within the Tilbury2 site, and the southernmost box (located within the proposed LTC conveyor route) is on occasion used by barn owl for roosting. This was highlighted during the site visit hosted by PoTLL/Bioscan on 04 October 2022. However, <b>the Applicant has omitted to reference the barn owl boxes installed by PoTLL despite one of the boxes being sited within the Order Limits along the LTC proposed conveyor route.</b></p>
ES Figure 8.21 - Ornithology Marsh Harrier Distribution (CONFIDENTIAL) [APP-282]			Survey by the Applicant for marsh harrier has been focussed to the south of the river Thames, with very limited activity observed to the north of the river. This aligns with PoTLL/ Bioscan's findings.
<b>Fauna: Mammals (Bats)</b>			
ES Figure 8.23 - Woodland Assessment Locations and Bat Tree Survey Results [APP-284]	ES Appendix 8.8 - Bats [APP-397]		By reference to Figure 8.23 [APP-284] and Figure 8.24 [APP-285], <b>the Applicant has omitted to show the artificial roost provision made by PoTLL within the Tilbury2 site.</b> This information is available via the Tilbury2 LEMP and bat mitigation licence documents, which identify the locations of bat boxes, etc. Whilst roosting has not yet been confirmed within these features, the likelihood of occupation is expected to increase as the surrounding vegetation matures, and these boxes should therefore be identified as potential roost features on the Applicant's constraints plans, and potential impacts assessed accordingly.
ES Figure 8.24 - Bat Building Survey Results [APP-285]			
ES Figure 8.25 - Bat Transect and Crossing Point Locations			The Applicant's coverage of PoTLL landholdings is limited to Ashfield B and the edge of Goshem's Farm. The survey data is from 2018 and is no longer current.

LTC ES Figures	LTC Appendices	ES	Comments
[APP-286]			<p>ES Appendix 8.8 [APP-397] identified low levels of bat activity for this location (Transect 10), albeit with more localised nodes of activity coinciding with the two automated detector deployment locations.</p> <p>Notwithstanding that the Applicant's data is 5 years old, PoTLL's more recent data holdings support the findings, i.e. that the Ashfields do not overall appear to be subject to high levels of use by foraging/commuting bats. This is likely a function of the open landscape and a fairly robust assumption to make.</p>
<b>Fauna: Mammals (Water Vole &amp; Otter)</b>			
ES Figure 8.27 - Otter and Water Vole Survey Results [APP-288]	ES Appendix 8.10 - Water Vole [APP-399]		<p>The Applicant's technical appendix for water vole [APP-399] is light on detail and does not appear to give any dates/years for survey (although dates of 2017/18 are assumed by PoTLL/Bioscan based on information in the draft water vole licence [APP-416]). The Applicant has also not surveyed the Tilbury2 site directly and has instead attempted to make up the shortfall using now-historic Tilbury2 baseline datasets, from 2015-2017 (amalgamated within the LTC ES as Figure 8.28 [APP-289]). Many of the ponds and ditches referred to in that document no longer exist and have been replaced with new features elsewhere within the Tilbury2 site. Such data cannot be considered current, nor valid for decision making purposes.</p>
ES Figure 8.28 - Tilbury2 Water Vole Survey Results [APP-289]	ES Appendix 8.11 - Otter [APP-400]		<p>Since the datasets from 2015-2017 were gathered, PoTLL has created an extensive network of high quality water vole habitat within Tilbury2, which includes a dedicated water vole receptor site that is now occupied by water voles at very high population densities. Further ditches have also been created/enhanced subject to the requirements of the Tilbury2 LEMP, and these now also support attendant water vole populations, including in the proposed location of the LTC conveyor.</p> <p>PoTLL/Bioscan have appraised the Applicant of this information, including during a site meeting on 04 October 2022, where the Applicant's representatives were advised in person of the extent and location of water vole presence within the Tilbury2 site. However, this information has been excluded by Applicant from the LTC ES documents in favour of historic data from 2015-2017, for reasons that remain unclear.</p> <p>Water voles are also present on historic/relict coastal floodplain grazing marsh ditches between Substation Road and Shed Marsh, which the Applicant has failed to</p>

LTC ES Figures	LTC Appendices	ES	Comments
			<p>map, despite Works No. MUT4 engaging with and potentially destroying these ditches wholesale.</p> <p><b>In summary, the Applicant has omitted to identify several waterbodies/ditches within PoTLL's landholding that lie within the LTC Order Limits and which are known to support high-density populations of water voles, including the Tilbury2 water vole receptor site. Consequently, impacts have not been properly assessed within the ES, nor the draft water vole licence (for which, see below).</b></p>
<b>Fauna: Mammals (Badger)</b>			
ES Figure 8.29 - Badger Survey Results (CONFIDENTIAL) [APP-290]	ES Appendix 8.12 - Badger [APP-401]		<p>The Applicant's direct survey coverage largely excludes PoTLL's landholdings (see Page 5 of Figure 8.29 [APP-290]), and data supplied by PoTLL/Bioscan in 2022 is therefore relied upon for the Tilbury2 area. We note that as a result, the Tilbury2 artificial sett has been correctly identified in the ES as a main/breeding sett [APP-401], and this assessment accurately reflects the most recent situation, whereby successful breeding was confirmed in 2022.</p> <p>Beyond this, surveys undertaken by the Applicant date primarily from 2017-2020 [APP-401] and can no longer be considered current.</p> <p>Much of PoTLL's landholdings within the Ashfields have ostensibly been surveyed by the Applicant, but despite this a large number of setts known to PoTLL/Bioscan have not been found, including multi-entrance setts within or adjacent to Ashfields A1, A2 West, A3 and Goshems Farm. We are also aware via third party data of another sett close to Coalhouse Point which the Applicant has not recorded. PoTLL/Bioscan are currently undertaking a bait marking exercise to understand the relationship between the badger clans occupying these setts, but at present it remains a possibility that one of these setts may be used for breeding.</p> <p><b>In summary, the Applicant has failed to identify several badger setts within PoTLL's landholding that lie within the LTC Order Limits and may include main/breeding setts. Consequently, impacts have not been properly assessed within the ES, nor the draft badger licence (for which, see below).</b></p>
ES Figure 8.30 - Badger Bait Marking Survey Results (CONFIDENTIAL) [APP-291]			
<b>Fauna: Mammals (Other Species)</b>			
ES Figure 8.26 - Dormouse Survey	ES Appendix 8.9 - Dormouse		No coverage of PoTLL landholdings; however, dormouse was considered absent from Tilbury2

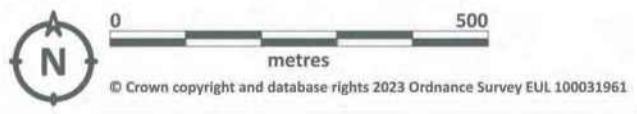
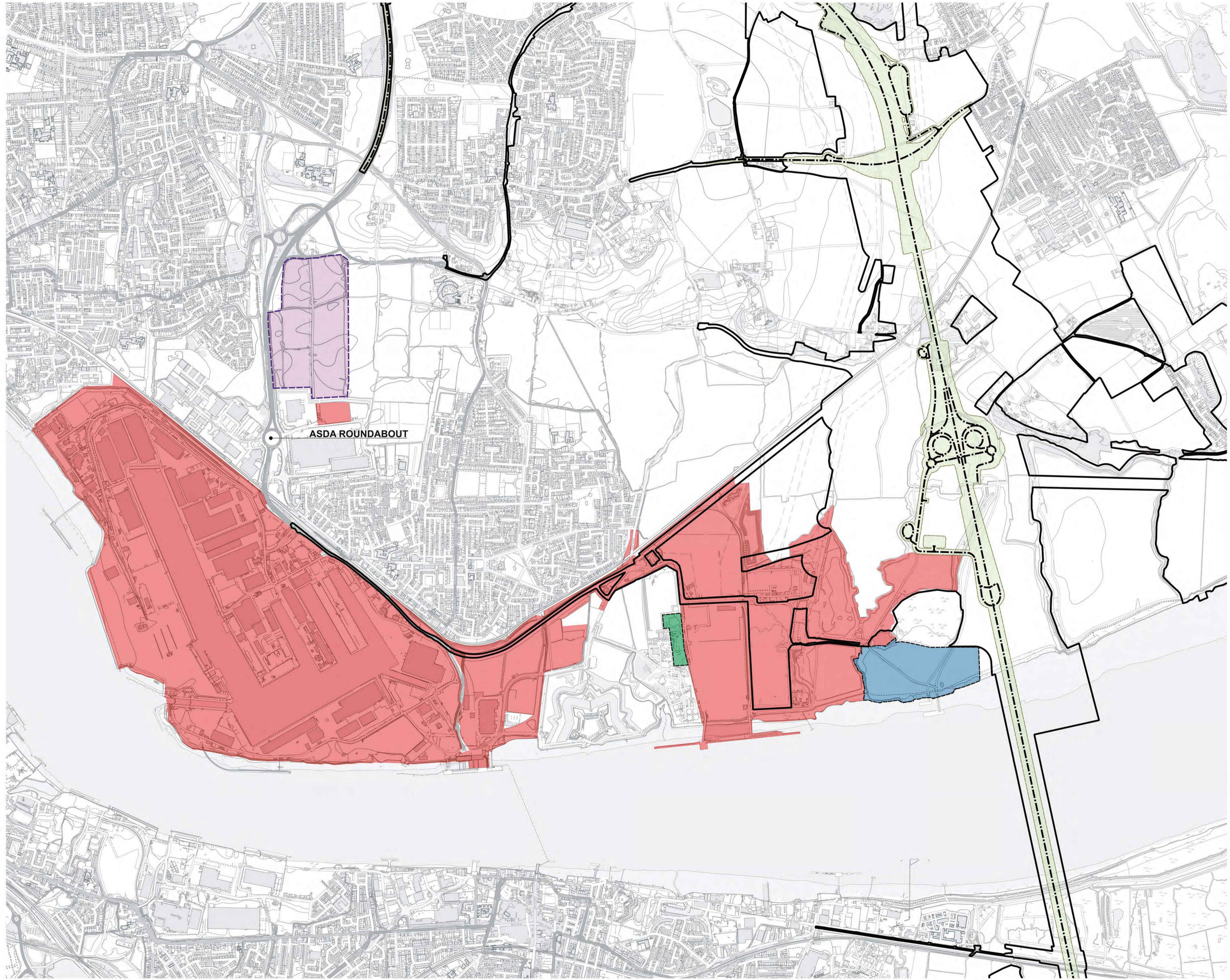
LTC ES Figures	LTC Appendices	ES	Comments
Locations and Results [APP-287]	[APP-398]		following specific surveys by Bioscan in 2016/17. It is unclear why the 'inconclusive' nest discovered in wooded habitat adjacent to the Mar Dyke was not subject to hair/dropping DNA analysis for certainty.
ES Figure 8.31 - Other Mammals Survey Results [APP-292]	ES Appendix 8.13 - Other Mammals [APP-402]		The Applicant has identified the Priority species harvest mouse in numerous locations within the Order Limits, including the flanks of the Ashfields. Brown hare was also sighted. This is consistent with PoTLL's survey findings.



## APPENDIX 4

### PLANS

-  LOWER THAMES CROSSING ORDER LIMITS
-  HIGHWAY WORK LIMITS OF DEVIATION (INCLUDES STRUCTURES)
-  LINEAR WORK CENTRE LINE
-  PORT OF TILBURY FREEHOLD OWNERSHIP
-  OPTION TO ACQUIRE FREEHOLD INTEREST
-  INTENTION TO ACQUIRE LEASEHOLD INTEREST
-  LDP2: PoTLL/SEGRO JOINT VENTURE OPTION LAND



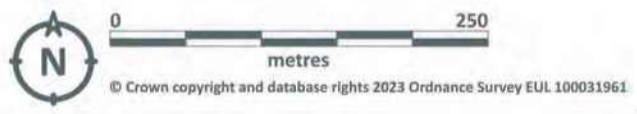
**LOWER THAMES CROSSING**

PoTLL land ownership and interests plan

PROJECT NO	DRAWING NO	REV
5133	301	
DRAWN	DATE	SCALE
HNA	FEBRUARY 2023	1:10000 @A1



-  LOWER THAMES CROSSING ORDER LIMITS
-  HIGHWAY WORK LIMITS OF DEVIATION (INCLUDES STRUCTURES)
-  LINEAR WORK CENTRE LINE
-  BOUNDARIES OF TILBURY2 AND TILBURY3
-  IVL PERMIT AREA
-  IVL LEASE AREA: WESTERN SIDE
-  IVL LEASE AREA: EASTERN SIDE
-  LAND UNDER NEGOTIATIONS FOR LEASE TO LTC: THE TUNNEL SEGMENT MAKING PLANT
-  LAND UNDER NEGOTIATIONS FOR LEASE TO LTC: THE HAUL ROAD
-  LAND UNDER NEGOTIATIONS FOR LEASE TO LTC: THE CONSTRUCTION SUPPORT AREA
-  LAND UNDER NEGOTIATIONS FOR LEASE TO LTC: THE LAYDOWN AREA
-  LAND UNDER NEGOTIATION FOR LTC TO HOLD OPTION TO ACQUIRE
-  TARMAC LEASE AREA
-  TARMAC OPTION AREA
-  EPN LEASE AREA
-  NGET LEASE AREA












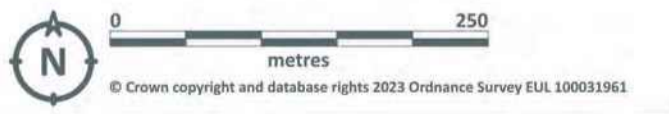
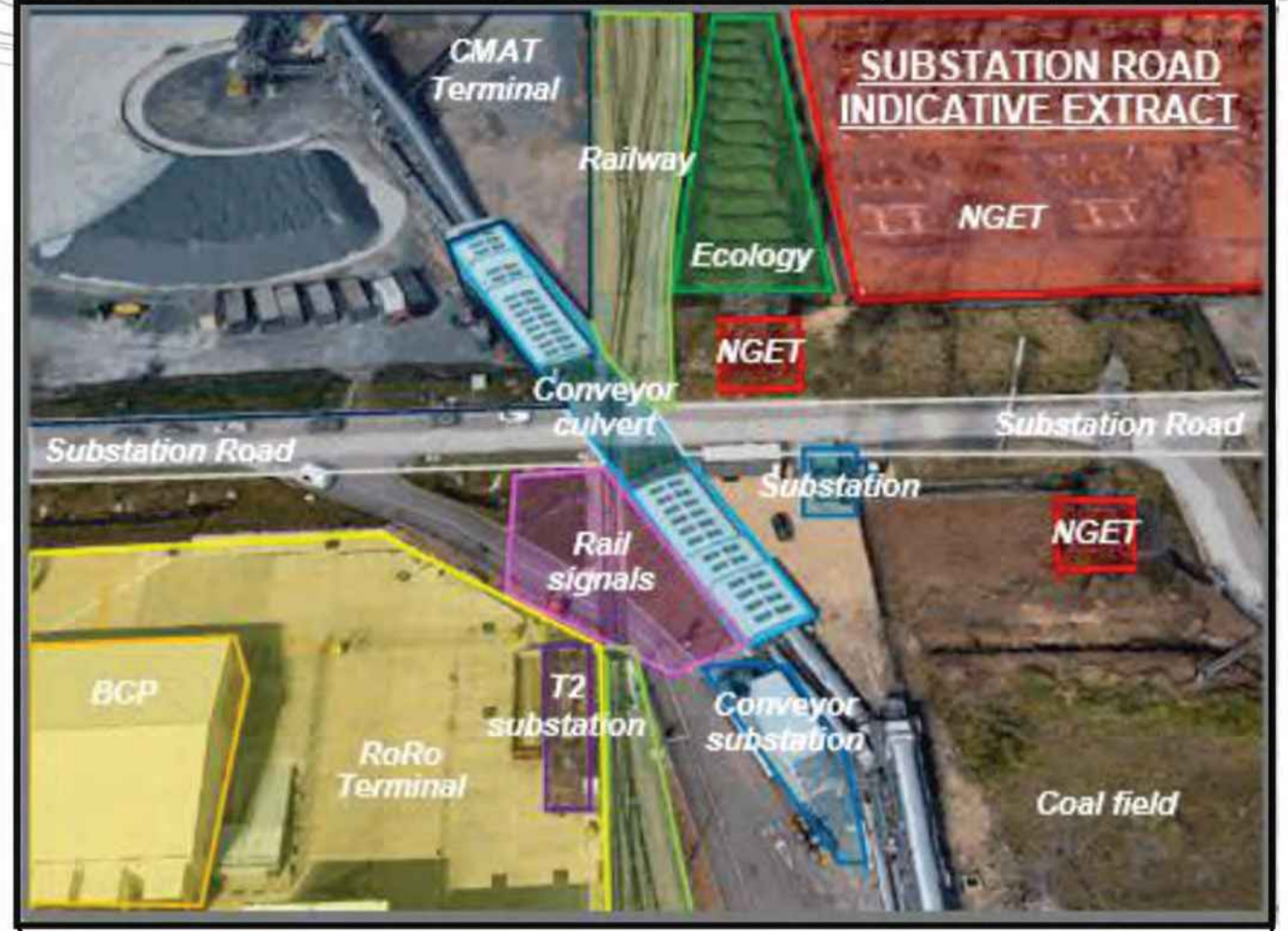
**LOWER THAMES CROSSING**

PoTLL Leasing Arrangements Plan

PROJECT NO	DRAWING NO	REV
5133	302	
DRAWN	DATE	SCALE
HNA	FEBRUARY 2023	1:5000 @A1

Existing land rights plan

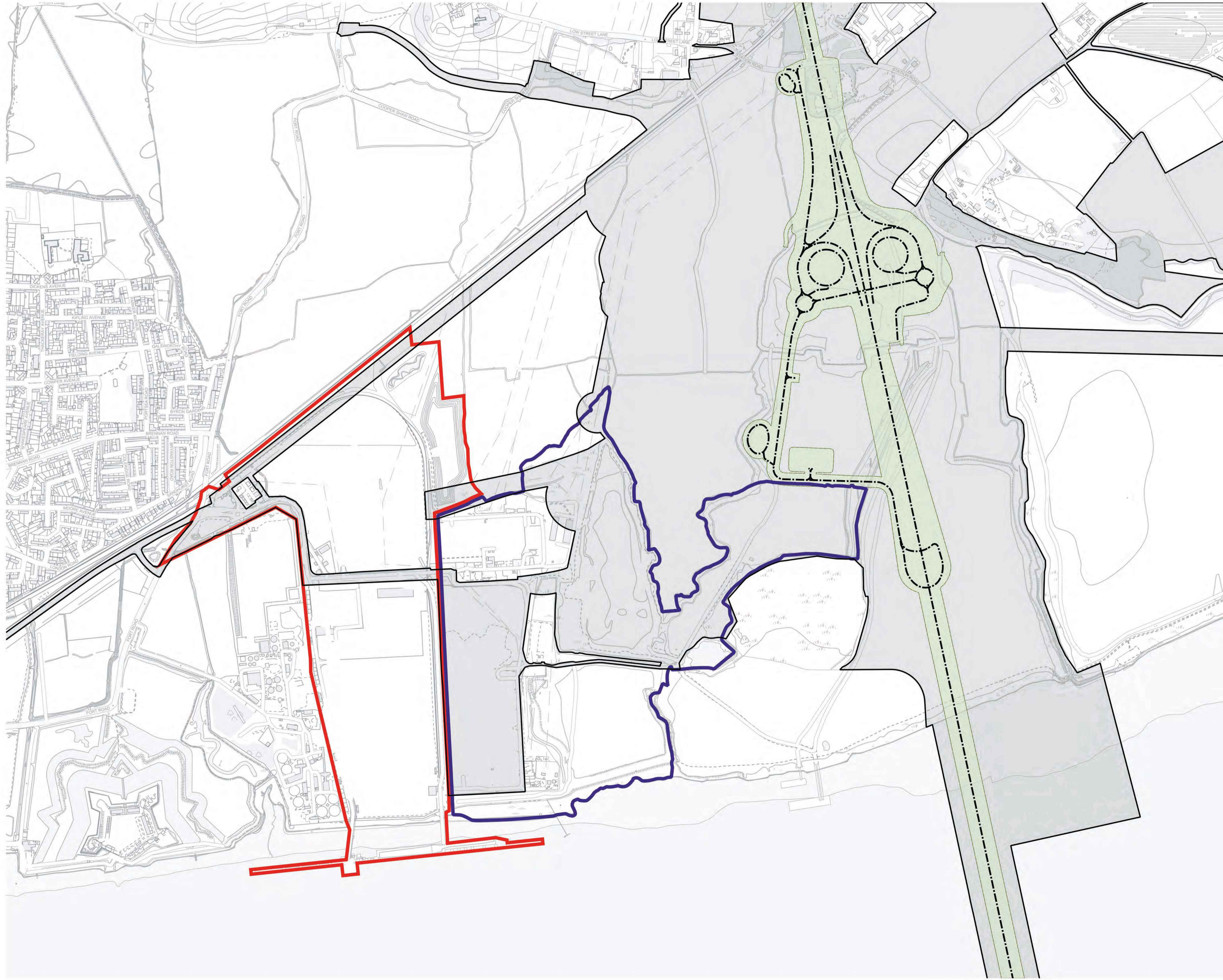
-  LOWER THAMES CROSSING ORDER LIMITS
-  HIGHWAY WORK LIMITS OF DEVIATION (INCLUDES STRUCTURES)
-  LINEAR WORK CENTRE LINE
-  ACCESS RIGHTS CORRIDOR
-  UTILITIES/SERVICES RIGHTS CORRIDOR
-  RAILWAY INFRASTRUCTURE
-  JETTY INFRASTRUCTURE
-  CONVEYOR INFRASTRUCTURE
-  SERVICES EASEMENTS TO BE GRANTED TO NGET








**LOWER THAMES CROSSING**

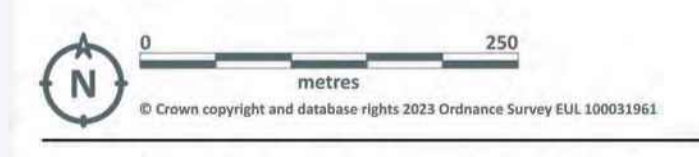
Existing land rights plan

PROJECT NO	DRAWING NO	REV
5133	303	
DRAWN	DATE	SCALE
HNA	FEBRUARY 2023	1:5000 @A1








PoTLL Relevant Representation:  
Appendix 4  
**Tilbury2 and Tilbury3 identification plan**

-  LOWER THAMES CROSSING ORDER LIMITS
-  HIGHWAY WORK LIMITS OF DEVIATION (INCLUDES STRUCTURES)
-  LINEAR WORK CENTRE LINE
-  TILBURY2 BOUNDARY
-  TILBURY3 BOUNDARY

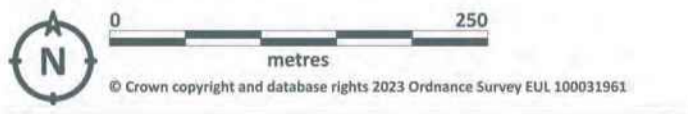
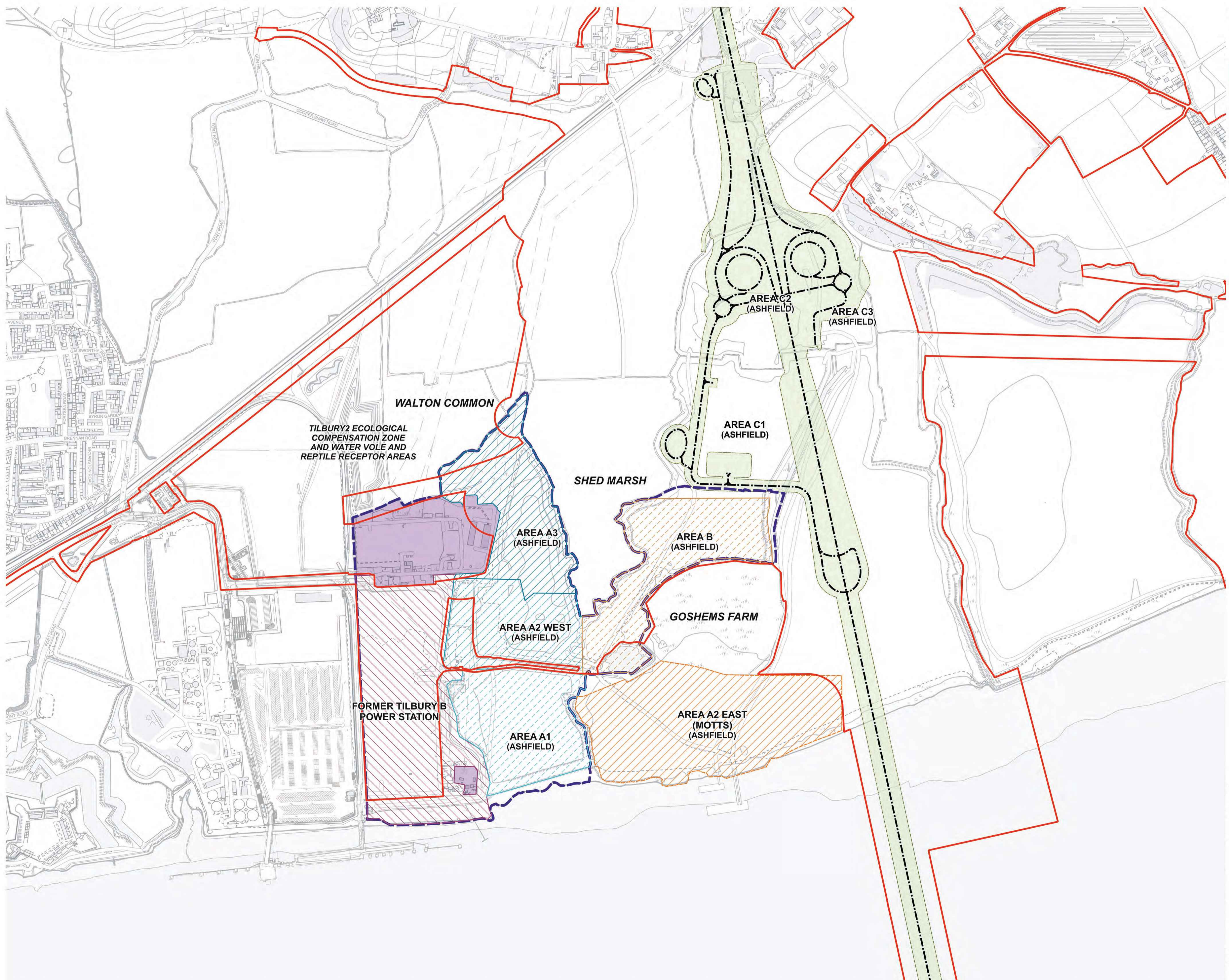


**LOWER THAMES CROSSING**  
Tilbury2 and Tilbury3 identification plan

PROJECT NO	DRAWING NO	REV
5133	304	
DRAWN	DATE	SCALE
HNA	FEBRUARY 2023	1:5000 @A1

-  LOWER THAMES CROSSING ORDER LIMITS
-  HIGHWAY WORK LIMITS OF DEVIATION (INCLUDES STRUCTURES)
-  LINEAR WORK CENTRE LINE
-  TILBURY3 BOUNDARY
-  NATIONAL GRID LEASEHOLD

**NOTE:**  
Areas A1, A2 EAST, A2 WEST, A3 and Area B denote areas of former ash fields



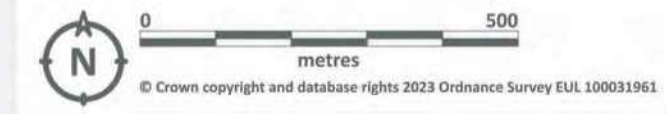
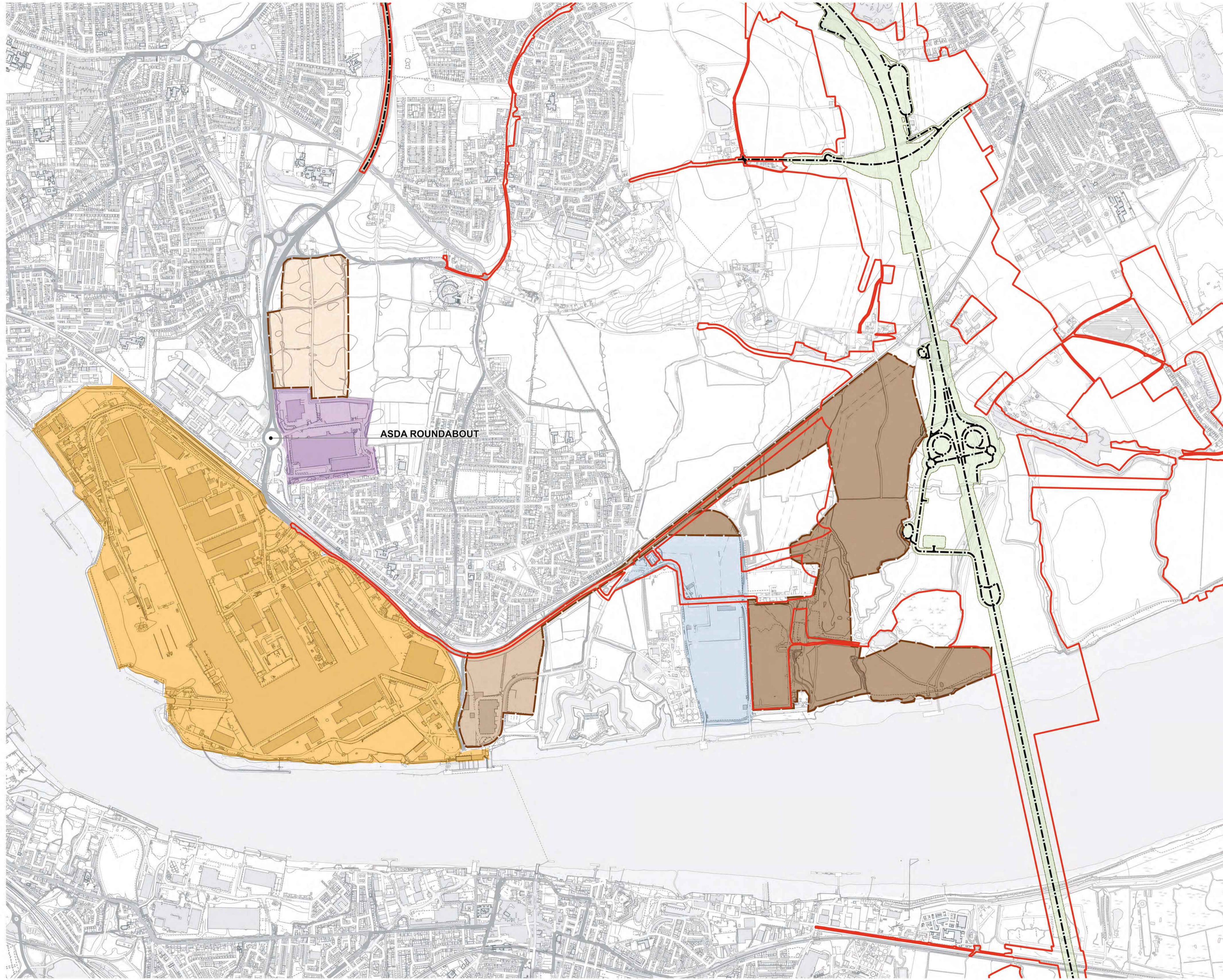
**LOWER THAMES CROSSING**

PROJECT NO	DRAWING NO	REV
5133	202	
DRAWN	DATE	SCALE
HNA	FEBRUARY 2023	1:5000 @A1

Freeport areas plan

-  LOWER THAMES CROSSING ORDER LIMITS
-  HIGHWAY WORK LIMITS OF DEVIATION (INCLUDES STRUCTURES)
-  LINEAR WORK CENTRE LINE
-  TILBURY1
-  TILBURY2
-  LONDON DISTRIBUTION PARK 1
-  FREEPORT BOUNDARY
-  FORTRESS DISTRIBUTION PARK 24.42ha (TAX SITE)
-  TILBURY PORT EXPANSION 136.94ha (TAX AND CUSTOMS SITE)
-  LONDON DISTRIBUTION PARK 2 33.91ha (CUSTOMS SITE)

**NOTE:**  
FREEPORT BOUNDARY IS AS PER THE DESIGNATION OF FREEPORT TAX SITES (THAMES FREEPORT) REGULATIONS 2021. THE DIFFERENT NAMED AREAS FORM DIFFERENT PARTS OF THE FREEPORT PROPOSALS





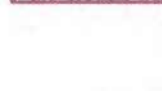


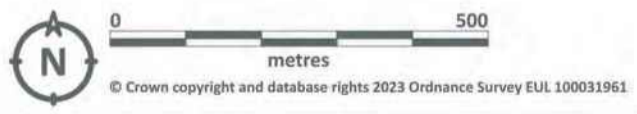
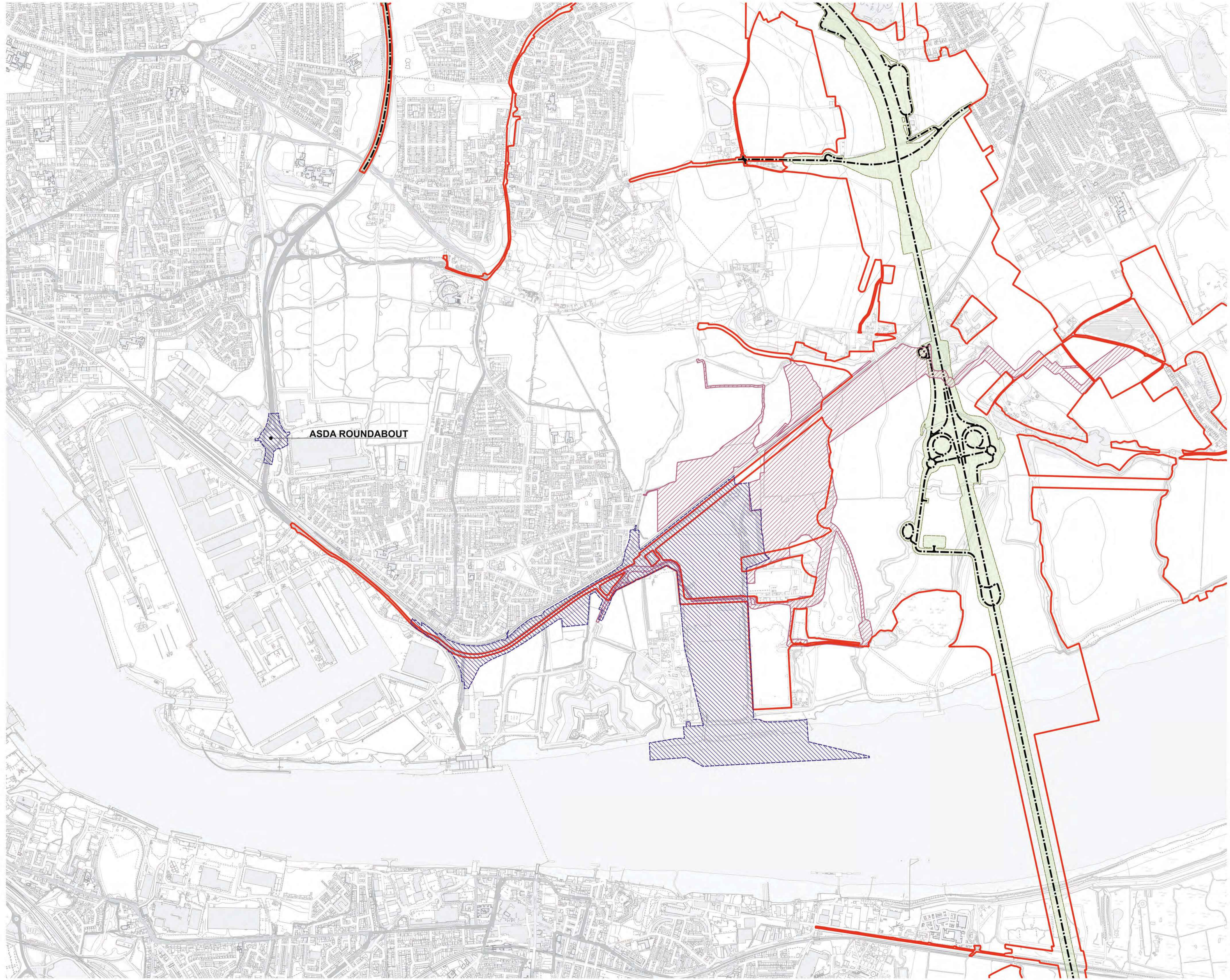
**LOWER THAMES CROSSING**

Freeport areas plan

PROJECT NO	DRAWING NO	REV
5133	203	
DRAWN	DATE	SCALE
HNA	FEBRUARY 2023	1:10000 @A1

Order limits plan

-  LOWER THAMES CROSSING ORDER LIMITS
-  HIGHWAY WORK LIMITS OF DEVIATION (INCLUDES STRUCTURES)
-  LINEAR WORK CENTRE LINE
-  TILBURY2 ORDER LIMITS  
IN ACCORDANCE WITH THE PORT OF TILBURY (EXPANSION) ORDER 2019, SI 2019 No. 359
-  THURROCK FLEXIBLE GENERATION PARK ORDER LIMITS  
IN ACCORDANCE WITH THE THURROCK FLEXIBLE GENERATION PLANT DEVELOPMENT CONSENT ORDER 2022, SI 2022 No. 157



**LOWER THAMES CROSSING**

Order limits plan

PROJECT NO	DRAWING NO	REV
5133	204	
DRAWN	DATE	SCALE
HNA	FEBRUARY 2023	1:10000 @A1