



JOINT STATEMENT ON POLICY COMPLIANCE OF THE LOWER THAMES CROSSING SCHEME WITH PORTS POLICY

1. INTRODUCTION

- 1.1 This statement is submitted jointly on behalf of Port of Tilbury London Limited (PoTLL), DP World London Gateway (DPWLG), and the Port of London Authority (PLA).
- 1.2 This paper deals with the extent to which the LTC Scheme complies with the National Policy Statement for Ports (January 2012) (NPSP), the UK Marine Policy Statement (March 2011) and the South East Inshore Marine Plan (June 2021) (SEIMP).
- 1.3 PoTLL, DPWLG and the PLA consider that National Highways (the Applicant) has failed to properly consider relevant national and regional policy in making its application for development consent for the Lower Thames Crossing. These policies concern PoTLL, DPWLG and the PLA to varying extents, but in making this joint statement we are seeking to simplify the submissions on behalf of the ports so that ports policy matters are summarised in one single document.
- 1.4 The ports consider that the Applicant must address those areas where the LTC Scheme is in direct conflict with or has the potential to impede the objectives, policy and purpose of the marine policy documents and NPSP, the first being a prescribed matter and second an important and relevant matter to the Secretary of State's decision, in order to ensure that the proposals both achieve the Applicant's stated objectives and that the operation and growth of the ports are maintained, enabled and not impeded.

2. LEGISLATIVE FRAMEWORK

- 2.1 In accordance with section 104 (decisions in cases where national policy statement has effect) of the Planning Act 2008 (PA 2008) (our underlining):

"(2) In deciding the application the [Secretary of State] must have regard to—

(a) any national policy statement which has effect in relation to development of the description to which the application relates (a "relevant national policy statement"),

[(aa) the appropriate marine policy documents (if any), determined in accordance with section 59 of the Marine and Coastal Access Act 2009]

(b) any local impact report (within the meaning given by section 60(3)) submitted to the [Secretary of State] before the deadline specified in a notice under section 60(2),

(c) any matters prescribed in relation to development of the description to which the application relates, and

(d) any other matters which the [Secretary of State] thinks are both important and relevant to [the Secretary of State's] decision."

- 2.2 As such, the ports contend (and the Applicant appears to agree)¹ that the following should be taken into account in deciding the Application:
- 2.2.1 National Policy Statements (NPS) which have effect in relation to the description of development, namely:
- (a) NPSNN 'National Policy Statement for National Networks', December 2014 (NPSNN); and
- 2.2.2 the appropriate marine policy documents, namely:
- (a) the UK Marine Policy Statement, March 2011 (MPS); and
- (b) the South East Inshore Marine Plan June 2021, which is a made marine plan including the Thames area;
- 2.2.3 any other matters which the Secretary of State thinks are both important and relevant to his/her decision, including:
- (a) the draft NPSNN, March 2023; and
- (b) the National Policy Statement for Ports (NPSP), January 2012².

3. MARINE POLICY

- 3.1 In addition to the various NPS provisions which have been outlined in more detail above, it is noted that in accordance with section 104(2)(aa) of the Planning Act 2008:

"in deciding the application the [Secretary of State] must have regard to the appropriate marine policy documents (if any), determined in accordance with section 59 of the Marine and Coastal Access Act 2009"

- 3.2 The UK Marine Policy Statement (including Guidance to the UK Marine Policy Statement from 1 January 2021) is therefore relevant and needs to be taken into consideration when determining the application. The MPS is the framework for preparing Marine Plans and taking decisions affecting the marine environment and contributes to the achievement of sustainable development in the United Kingdom marine area.
- 3.3 The South East Inshore Marine Plan 2021 covers the inshore waters between Felixstowe and west of Dover, including the river Thames.
- 3.4 The UK Marine Policy Statement broadly sets out at paragraph 3.4.7 in respect of Ports and Shipping that (our underlining):

Marine plan authorities and decision makers should take into account and seek to minimise any negative impacts on shipping activity, freedom of navigation and navigational safety and ensure that their decisions are in compliance with international maritime law. Marine Plan development and individual decisions should also take account of environmental, social and economic effects and be in compliance with international maritime law. Marine plan authorities will also need to take account of the

¹ See section 7.2 of the Planning Statement [APP-495], and the Applicant's confirmation in Table 2.60 of its Relevant Representations Report [REP1-180]

² A review of the Ports NPS was announced by the Department for Transport on 14 March 2023, however at the time of writing no draft has been published or consulted on. In the announcement the Department stated: "For the avoidance of doubt, the existing national policy statement for ports will remain in full effect during the period of the review. Any current or upcoming applications for development consent will be assessed under the current national policy statement for ports."

need to protect the efficiency and resilience of continuing port operations, as well as further port development.

- 3.5 Of note is:
- 3.5.1 the requirements to seek to minimise any negative impacts on shipping activity, freedom of navigation and navigational safety;
 - 3.5.2 the fact that environmental, social and economic effects must be taken into account; and
 - 3.5.3 the need to protect the efficiency and resilience of continuing port operations.
- 3.6 PoTLL, DPWLG and the PLA do not consider that the above points have been properly taken into consideration in the assessment of the impacts of the proposed development.
- 3.7 The UK Marine Policy Statement also highlights the importance of marine aggregates, stating at paragraph 3.5.3 (our underlining):
- “Marine aggregates can present reduced impacts on local communities compared to the extraction of land-won aggregates, in particular with regard to the extraction process and transportation. Substantial volumes of marine aggregates are landed on wharves close to where they are needed and locally distributed by rail, water (through barges) and road. Wider social and economic benefits include skilled, stable employment and the generation of income through the construction industry supply chain.”*
- 3.8 The importance of marine aggregates, and the benefits of importing by vessel, is fully recognised in the UK Marine Policy Statement as a mechanism by which land-based impacts may be avoided or reduced.
- 3.9 PoTLL and the PLA consider that the Applicant has failed to take this properly into consideration, instead placing an over-reliance on road transport, rather than maximising the use of the river to avoid land-based impacts during the construction phase. The Applicant states that an expanded river commitment may potentially result in larger volume of truck movements in more concentrated areas around the few suitable port facilities, which fails to consider that marine aggregates can present reduced impacts on local communities.³
- 3.10 Marine Plans, together with the Marine Policy Statement, underpin the planning system for England’s seas. The South East Inshore Marine Plan 2021 contains a number of provisions of note which are significant in the context of the proposed development. We have extracted the following salient provisions (our underlining):
- 3.10.1 Overall vision (2.1): the vision of the South East Marine Plan area to 2041 is that it will be a *“substantial marine gateway to the world with locally and nationally important ports that are thriving.”* It highlights the value of prosperous ports in *“contributing to long-term economic growth in the UK and south east coastal communities.”* The vision includes that *“The tidal rivers in the south east have been optimised for short sea shipping. The Tidal Thames facilitates more sustainable passenger and freight transport than before with improved access, infrastructure, local employment and air quality, benefitting the Greater Thames area.”*
 - 3.10.2 Objectives (Table 1): a number of these are relevant including:
 - 1. *Infrastructure is in place to support and promote safe, profitable and efficient marine businesses.*

³ See page 36 of the Applicant’s Comments on WRs Appendix A – Statutory Environmental Bodies [REP2-046]

2. *The marine environment and its resources are used to maximise sustainable activity, prosperity and opportunities for all, now and in the future.*

3. *The coast, seas, oceans and their resources are safe to use.*

3.10.3 Policy SE-DD-1: seeks to ensure that proposals do not adversely affect authorised dredging activity including those subject to navigational dredging “proposals for other activities will not be supported unless they are compatible with the dredging activity.” The policy aim is to ensure areas that require dredge activity are not adversely impacted by new proposals and “ensures continued safe access by vessels to ports and harbours...”

3.10.4 Policy SE-PS-1: sets out clear support for existing ports and their future growth. It states that “In line with the National Policy Statement for Ports, sustainable port and harbour development should be supported. Only proposals demonstrating compatibility with current port and harbour activities will be supported. Proposals within statutory harbour authority areas or their approaches that detrimentally and materially affect safety of navigation, or the compliance by statutory harbour authorities with the Open Port Duty or the Port Marine Safety Code, will not be authorised unless there are exceptional circumstances.” The policy aim emphasises that ports and harbours are “essential to realise economic and social benefits...” and emphasises that “proposals do not restrict current port growth and harbour activity or future growth.” The policy “protects the efficiency and resilience of port operations and further port development.” It adds that “Also recognised is the need to ensure safe navigation both within and in the approaches to ports, at present and in the future.”

3.10.5 Policy SE-PS-4 supports “proposals promoting or facilitating sustainable coastal and/or short sea shipping as an alternative to road, rail or air transport.” The policy aim highlights that short sea shipping is “an alternative to road, rail or air methods, lowering carbon dioxide emissions and reducing road congestion” and that bulk volumes are “moved quickly with a reduction in administrative burden and increased efficiency through economies of scale.”

3.10.6 Policy SE-AIR-1 requires that “Proposals must assess their direct and indirect impacts upon local air quality and emissions of greenhouse gases.” The policy aim makes clear that “Proposals that cannot avoid, minimise or mitigate air pollution and or greenhouse gas emissions in line with current national or local air quality objectives and legal requirements must not be supported.”

3.10.7 Policy SE-WQ-1 emphasises the importance of water quality and states that “Proposals that protect, enhance and restore water quality will be supported.” The policy aim highlights that proposals should result in no residual adverse effects on inshore water bodies.

3.10.8 Policy SE-BIO-1 sets out support for proposals that enhance the distribution of priority habitats and priority species whilst Policy SE-BIO-2 takes a similar approach to native species, habitat adaptation and connectivity.

3.11 Throughout the above policies, the approach enshrined in the mitigation hierarchy is emphasised, namely, in order of preference, avoid, minimise and only when this is not possible, mitigate adverse impacts so they are no longer significant. Compensation for significant impacts is considered a ‘last resort’ in the hierarchy and proposals need to demonstrate that they have followed the mitigation hierarchy before they are considered acceptable.

3.12 The efficiency and resilience of continuing port operations has the potential to be materially compromised by the LTC Scheme. However, the most significant impacts can readily be avoided or minimised by the Applicant committing, in clear and certain terms, to the mitigation measures proposed by PoTLL, DPWLG and the PLA, in particular:

- 3.12.1 Use of the CMAT with onward connection into the North Portal construction compound by either a conveyor or a new access to the east of the level crossing;
- 3.12.2 Use of the river to transport construction workers to compounds north and south of the river;
- 3.12.3 Use of the river to transport materials to construction sites south of the river;
- 3.13 In addition, to ensure the LTC Scheme, the ports and the industrial use of the river can co-exist without imposing restrictions on each other, the Applicant must carry out:
 - 3.13.1 Further sensitivity testing on the tunnel design following the Applicant's agreement to the minimum dredging levels, as failure to do so may make the LTC Scheme impossible to implement, or only capable of implementation in a manner that comes with an inherent risk that scour protection will be required for the safety of the tunnel, such scour protection encroaching into the agreed dredging area;
 - 3.13.2 Traffic modelling that is robust and includes an allowance for growth at the Port of Tilbury and London Gateway, to identify the impacts of the LTC Scheme more accurately and ensure that any mitigation required (to include but not limited to enabling Tilbury Link Road connectivity) is included within the LTC Scheme proposals.
- 3.14 Were the LTC Scheme consented in its current form, it presents unacceptable risks for the efficiency and resilience of continuing port operations, in the short, medium and long term. This is not in accordance with the MPS and Marine Plan policies.

4. RELEVANT SECTIONS OF NPSNN AND DRAFT NPSNN

- 4.1 National Policy Statement for National Networks (NPSNN) sets out the need for, and Government's policies to deliver development of nationally significant infrastructure projects (NSIPs) on the national road and rail networks in England. Paragraph 1.2 states that other NPSs may also be relevant to decisions on national networks nationally significant infrastructure projects including (footnote 3) the Ports National Policy Statement.
- 4.2 Section 2 of the NPSNN emphasises the significant role of national networks in supporting economic growth, as well as existing economic activity and productivity and in facilitating passenger, business and leisure journeys across the country. Paragraph 2.6 emphasises the economic role with development on the national networks needed to *"support national and local economic growth and regeneration, particularly in the most disadvantaged areas. Improved and new transport links can facilitate economic growth by bringing businesses closer to their workers, their markets and each other."*
- 4.3 Paragraph 2.8 is particularly relevant in stating that there is also a need *"to improve the integration between the transport modes, including the linkages to ports and airports. Improved integration can reduce end-to-end journey times and provide users of the networks with a wider range of transport choices."* Paragraph 2.12 highlights that by volume, roads account for two thirds of freight miles and, at paragraph 2.16 that congestion is a constraint on economic growth.
- 4.4 The general principles of assessment in section 4 emphasise that in considering any proposed development, and in particular, paragraph 4.3 emphasises that, when weighing its adverse impacts against its benefits, the Examining Authority and the Secretary of State should take into account:
 - *"its potential benefits, including the facilitation of economic development, including job creation, housing and environmental improvement, and any long-term or wider benefits;*
 - *its potential adverse impacts, including any longer-term and cumulative adverse impacts, as well as any measures to avoid, reduce or compensate for any adverse impacts."*

- 4.5 As with Marine Policy, the mitigation hierarchy is clearly set out as fundamental to the assessment of acceptability.
- 4.6 The draft NPSNN confirms, at paragraph 1.13, that it does not cover ports or airports, but that other NPSs, such as the NPSP, may be 'a relevant consideration for some decisions on development consent applications for national networks NSIPS'.
- 4.7 Section 2 of the draft NPSNN emphasises the importance of national networks to the economy. In respect of Freight, paragraph 2.2 notes that 95% of UK imports and exports are transported by sea, and that *"cost effective and efficient freight transport to and from such international hubs with seamless modal interchanges offers productivity benefits and boosts competitiveness for the domestic economy and international trade"*. The National Freight Network is identified, in paragraph 2.3, as being *"across road, rail, maritime, aviation, inland waterway and logistics infrastructure"*. The draft NPSNN therefore emphasises the importance of the entire freight network and, where there is potential for the LTC Scheme to have adverse impacts to that network, these impacts should be assessed and mitigated against, applying the mitigation hierarchy to ensure that impacts are avoided to the greatest extent possible.
- 4.8 Draft NPSNN continues to emphasise the importance of the road network for the movement of freight. Paragraph 2.8 confirms that 77% of domestic freight was moved in the UK by road in 2020. At paragraph 3.33, it further confirms that the strategic road network facilitates economic development, through supporting the development of the UK freight network, including *"through enhanced access to international markets through ports/airports"*.
- 4.9 Paragraph 3.93 notes that ports are predicted to grow to meet economic demand, and that *"whilst ports continue to invest in their own infrastructure growth, it is vital that this is mirrored in the growth in national network capacity and connectivity"*.
- 4.10 PoTLL, DPWLG and the PLA consider that the LTC Scheme, having removed the Tilbury Link Road from the proposals, and with the current junction layouts for the A13/A1089/A122 Lower Thames Crossing interchange removing direct access from the A13 Westbound, and with the Orsett Cock junction being worse in the Do Something scenario than in the Do Minimum scenario, that the Applicant has failed to deliver conformity with the NPSNN and the draft NPSNN which both emphasise the need to integrate national networks with ports, maximise economic benefits and, as highlighted by paragraph 3.93 of the draft NPSNN, the failure to take account of the predicted growth at the ports. Indeed, the scheme as now designed risks impeding growth at the London ports, causing in the medium-to-long term, economic harm when compared to proposals that would fully comply with the NPSNN and draft NPSNN.

5. **APPLICABILITY OF THE NATIONAL POLICY STATEMENT FOR PORTS**

- 5.1 PoTLL, DPWLG and the PLA consider that the NPSP is relevant to the LTC Scheme. In deciding the Application, the Secretary of State (SoS) is entitled to have regard to *"any other matters which [he/she] thinks are both important and relevant to the decision"* (PA 2008 s.104 (2)(d)) and as such he/she can therefore have regard to the NPSP if it is considered to be relevant without it having to be a *"relevant national policy statement"* in accordance with s.104(2)(a). The parameters in s.104 (2)(d)) essentially act as a final catch-all which means that the SoS can take into account any other matters which he/she considers important and relevant.
- 5.2 PoTLL, DPWLG and the PLA contend that, in the case of a Scheme which has the potential to cause such a significant impact on the ports located on the river Thames, the NPSP is both important and relevant to the decision. It is particularly important to consider the NPSP in the context of recent and pipeline port development on the Thames and in particular:

5.2.1 Tilbury2: consented in 2019, and fully opened in January 2022.

5.2.2 London Gateway Port: consented in 2007, with first operational use in November 2013 and currently under construction (3 berths remaining to be brought into operational use).

5.2.3 The Thames Freeport: designated in November 2021 and given final approval in March 2023. The Thames Freeport includes:

(a) The Tilbury Freeport site, located at the Port of Tilbury;

(b) The London Gateway Freeport site.

The Thames Freeport benefits from multi-modal transit onto the UK's networks including connections to the A13 and M25.

5.2.4 The 30% to 60% anticipated growth of the Port of London between 2022 and 2050 to between 70 to 90 million tonnes per annum (with 79% of vessel arrivals to the Thames in 2022 being to berths upstream of the LTC Scheme). With vessels that are using the river getting larger and deeper, the PLA needs to be able dredge to a greater depth to accommodate this traffic.

5.3 While the need for new port infrastructure is clearly not what is being assessed in this application, it is essential that the proposed development does not hamper the operation of new and the development of consented and planned port infrastructure. The NPSP is written to provide the framework for decisions on proposals for new port development and it also helpfully provides background and context in respect of the strategic importance of the UK Ports industry particularly in the South East of England.

5.4 Key excerpts from the NPSP have been set out below, with consideration of the extent to which the LTC Scheme falls short of complying or fails to comply with these policies, and such factors should be taken into account by the ExA and SoS when considering the potential impact of the proposed development. Generally, the NPSP should be considered as it sets the context and explains the importance of the Ports sector to the UK economy and therefore provides important and relevant information for the ExA and SoS.

5.5 The NPSP cannot and should not be considered as a stand-alone document and it needs to be taken into account alongside the relevant freight provisions which are outlined in the extant and draft NPSNs (as outlined in more detail below). The strategic importance of the ports industry and the South East is well evidenced in the NPSP and it is vital to the UK economy that this is not disrupted or constrained by the proposed development. As an island nation, it is important that the UK can ensure resilience and competitiveness of national ports infrastructure and the risk and potential limitations that the proposed development poses to this should therefore be fully considered and weighed with regard to the functionality and impacts on the UK trading economy by the ExA and the SoS in assessing the application. On the face of the application as submitted, ports infrastructure appears to have been largely overlooked by the Applicant as evidenced by its lack of agreement with major Thames Estuary ports in the DCO process, the lack of commitments to avoid and mitigate the impacts of the LTC Scheme on the ports, and the absence of any substantive assessment of economic impacts to the ports in the application documents.

5.6 The Government support for and recognition of the importance of ports has been further confirmed through the creation of the Freeports, with the stated objectives⁴ being:

5.6.1 establish national hubs for global trade and investment;

5.6.2 regeneration and levelling up;

⁴ Freeports – Bidding Prospectus – November 2020

5.6.3 creating hotbeds of innovation.

5.7 These objectives were to be achieved through the economic potential of the Freeports, with applications required to provide detailed economic rationale for the tax site as part of the business case. The Freeport designation, and the aspects of NPSP that apply to these new sites, are important and relevant considerations as the Government will not wish to frustrate this national initiative and new development.

5.8 Also of note is the publication by the Government in 2022 of the Future of Freight Plan ("FoFP"). This is also Government policy and should be seen as 'important and relevant' for section 104.' It provides an up-to-date assessment of and plan for freight and logistics in the UK, reflecting on the ever increasing importance of the sector during and since the Covid-19 pandemic. The FoFP highlights the central role that port's play in the freight network.

5.9 It is a comprehensive plan and identifies actions that need to be taken in five priority areas in the freight and logistics sector:

- Identification of the national freight network;
- The transition to net-zero;
- Improving the planning regime;
- Addressing people and skills; and
- Use of data and technology.

5.10 In opening, the FoFP highlights that:

"The multi-modal freight and logistics sector is critical to every supply chain into, across and out of the UK and is fundamental to our economic wellbeing" (para. 1.1)

5.11 The importance to the sector in the UK specifically is due to the fact that the UK is a trading nation *"with imports and exports comprising 62.9% of GDP, higher than the global average of 56.3% in 2019. We are, therefore reliant on the freight and logistics sector for our economic wellbeing."* (para. 1.3)

5.12 The importance of ports in this context is highlighted:

"As an island the UK is particularly reliant upon its international aviation and maritime freight connectivity and the efficient transfer of goods at ports and airports onto domestic road and rail freight modes. The country is well connected to global maritime and aviation networks. These networks are complex. The UK imports/exports 95% of goods by weight through maritime ports"

5.13 The FoFP highlights that the Freight and Logistics sector is crucial to the Government's Levelling Up agenda commenting that the largest and most important freight hubs – maritime ports and airports, warehousing and distribution centres, and rail freight interchanges – in the UK freight network and are more likely to be situated in former industrial heartlands and coastal towns. Tilbury is a case in point being located within a priority area (a key element in its designation as part of the Thames Freeport).

5.14 It particularly identifies Freeports in this context that *"bring together ports, local authorities, businesses, and other key local stakeholders to achieve a common goal of shared prosperity and opportunity for their regions. Freeports will be national hubs for international trade, innovation and commerce, regenerating communities across the UK, by attracting new businesses, spreading jobs, investment and opportunity to towns and cities up and down the country."* (para. 2.13).

- 5.15 A key strand of the FoFP is to move from a modal investment model (i.e. in roads, ports, rail freight interchanges or airports) to a cross-modal. *“As such, infrastructure investment and decision making must account not only for individual modes but also for intermodal links and cross-modal dependencies. Ensuring an efficient, resilient, reliable and environmentally sustainable freight sector will require government and industry taking a collaborative and cross-modal approach to investment to address inefficiencies.”* (para. 3.20)
- 5.16 Reference is made to the Port Connectivity Studies (2018), undertaken by the Department for Transport, that developed government understanding of freight flows by rail and road to and from the UK’s ports which *“highlight key areas of improvement for connectivity between modes in the national freight network, highlighting the need for greater cross-modal working in government and supporting the case for a full consideration of freight in transport decision making.”*
- 5.17 The FoFP commits the Government to ensuring visibility of freight in infrastructure planning:

“Government will work with our ports to ensure that regulatory frameworks continue to support high levels of private sector investment in port infrastructure. Government will also work with our ports to ensure port connectivity needs are adequately represented in road and rail infrastructure decisions.” (para. 3.29)
- 5.18 These comments are clearly pertinent to the consideration of the LTC and how it achieves (or fails to achieve) cross-modal integration with the ports in the Thames estuary, supports port investment and fully takes account of freight and logistics in considering the acceptability of the Scheme.
6. **RELEVANT SECTIONS OF NPSP**
- 6.1 The NPSP sets out Government policy for ports, including to:
- 6.1.1 *“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,*
- 6.1.2 *Ensure competition and security of supply; and*
- 6.1.3 *Enhance access to ports and the jobs, services and social networks they create, including for the most disadvantaged”* (Para 3.3.1 and 3.3.3 - our underlining).
- 6.2 In setting the above policies the NPSP confirms the Government's recognition of *“the essential contribution to the national economy that international and domestic trade makes.”* (Para 3.3.6) It states that *“for an island economy, there are limited alternatives available to the use of sea transport for the movement of freight and bulk commodities. Air freight is often used for high-value items and express deliveries, and the Channel Tunnel has a significant role in freight as well as passenger transport. But these alternatives are constrained by the volumes that can practically be carried by air, the capacity of the rail links through the tunnel and in the case of aviation the cost and environmental disadvantages. As a consequence, shipping will continue to provide the only effective way to move the vast majority of freight in and out of the UK, and the provision of sufficient sea port capacity will remain an essential element in ensuring sustainable growth in the UK economy”* (Para 3.1.4).
- 6.3 Furthermore, in concluding on the need for new port capacity, Para 3.4.16 states *“Against this background, and despite the recent recession, the Government believes that there is a compelling need for substantial additional port capacity over the next 20 – 30 years, to be met by a combination of development already consented and development for which applications have yet to be received. Excluding the possibility of providing additional capacity for the movement of goods and commodities through new port development would be to accept limits on economic growth and on the price, choice and availability of goods imported into the UK and available to consumers. It would also limit the local*

and regional economic benefits that new developments might bring. Such an outcome would be strongly against the public interest”.

6.4 The NPSP also discusses the need for competition and the importance for UK ports to be competitive, both with each other and ports in continental Europe (Para 3.4.13) as a mechanism to *drive efficiency and reduce supply chain costs. It also cites the need for resilience 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”* (Para 3.4.15).

6.5 In considering the Assessment Principles, and the extent to which the LTC Scheme meets these principles, PoTLL, DPWLG and the PLA have focused on those areas where the assessments and proposals, in the opinion of PoTLL, DPWLG and the PLA, fall short of what is required. In some cases, the LTC Scheme will restrict or inhibit PoTLL, DPWLG and the PLA from achieving the policy outcomes set out in the Marine Plan and NPSP. Further detail on these practical impacts is set out in PoTLL’s Written Representation [REP1-274], DPWLG’s Written Representation [REP1-331] and the PLA’s Written Representation [REP1-269], and include:

6.5.1 the lack of connectivity to the Port of Tilbury through the absence of a Tilbury Link Road and worsened connectivity at the A13/A1089/LTC junction;

6.5.2 impacts of construction traffic to the ASDA roundabout that may result in the road connection to the Port of Tilbury being over capacity, causing delays and congestion and impacting port operations;

6.5.3 the lack of assessment of the congestion and capacity issues at the Orsett Cock and Manorway junctions and the consequential impacts on the operations of the ports as a direct result of the LTC scheme;

6.5.4 the lack of a coordinated ecological approach, that has the potential to sterilise port development land;

6.5.5 the concerns around tunnelling depth, being now primarily practical in nature as sensitivity testing lacks key parameters to demonstrate that the tunnel can be constructed as required;

6.5.6 issues with the protective provisions for each of the ports, that may lead to a gap in the legal framework covering the tunnel once it is operational, to a lack of protection from compulsory acquisition of port development land.

6.6 Consideration of benefits and impacts

6.6.1 Paragraph 4.2.3 of the NPSP sets out that the benefits could include national, as well as local, benefits, and should include longer term benefits such as job creation. In terms of the impacts, the cumulative impacts of projects must be considered.

6.6.2 The guidance at paragraph 4.3.4, at the second bullet point, states that the decision maker should take into account positive economic externalities, using WebTAG economic impact methodology. It continues to state that, *“if such an assessment is not feasible, a qualitative assessment may be made”*.

6.6.3 The Applicant has utilised the WebTAG methodology in conducting the economic assessment, but has not considered the impact on the local ports within this assessment. It would be reasonable to do so, given the reliance on the road network of ports for onward travel, and that the road access to two major ports (Port of Tilbury and London Gateway) is being changed with existing direct connections being removed.

- 6.6.4 Should it not be possible to combine port impacts with those of the LTC Scheme within the WebTAG methodology, a qualitative assessment should be undertaken. This could consider the impact of the LTC Scheme on the ability of the ports to make best use of existing port facilities, intensify use and grow, detailing how the LTC Scheme facilitates or hinders this. The commercial impacts on ports should be included in the assessment, with paragraph 4.4.1 noting that ports operate from their own operating profits or from private sector investors, and that “*adverse impacts may arise from the impact of the development on other commercial operators*”. The adverse impacts of the project on the free passage of vessels should also be considered in any assessment.
- 6.6.5 Presently, due to the impacts of the LTC Scheme on the ports, and the economic potential of those ports, significant doubt and uncertainty exists in the benefit/cost analysis undertaken by the Applicant and in reaching its benefit cost ratio (BCR) for the LTC application Scheme. In any case, the core initial BCR of the Project is 0.48 (poor), and the core adjusted BCR is 1.22 (low) and must be considered against the protection afforded to maintaining the competitiveness and resilience of national ports in NPSP. The LTC Scheme also falls short of achieving the broader Government policies in how it interacts with the ports and the national networks close to the ports, as it has missed opportunities to provide greater resilience and competitiveness of the national ports infrastructure and therefore the national economy.

6.7 Environmental Impact Assessment

- 6.7.1 The Environmental Impact Assessment (EIA) must consider the likely worst-case impacts on various elements of the environment, both direct and indirect, as well as cumulative effects of those impacts taken together, and the cumulative effects of the development with other projects. In terms of other projects, this is to include, as per paragraph 4.7.3, “*projects for which consent has been sought or granted, as well as those already in existence*”.
- 6.7.2 There are clear omissions in the EIA completed by the Applicant and set out in the Environmental Statement (ES). In respect of ecology, the baseline data is significantly out of date in places, and in preparing and making the application the Applicant did not ground truth to ensure the validity of the data across the likely impact area of the LTC Scheme. (For further information, please see Natural England’s Written Representation, and PoTLL’s supplementary Deadline 2 submission).
- 6.7.3 There are significant issues in how the Applicant has assessed the construction phase in particular, with issues around the construction traffic assessment and ecological assessment. There is also a lack of data to inform the EIA in respect of key parts of the LTC Scheme, such as the tunnel depth (following agreement of the dredging requirements), amount of cover above the tunnel, and the potential for knock on impacts to the likely worst-case that must be assessed, such as where the entry and exit ramps to the tunnel are increasingly steepened.

6.8 Pollution control and other environmental regulatory regimes

- 6.8.1 As set out above in the section on EIA, PoTLL and the PLA have concerns that the likely worst-case impacts have not been assessed, or have been insufficiently assessed. This may result in additional impacts on for example air quality.
- 6.8.2 Paragraph 4.11.1 sets out clearly that issues relating to discharges or emissions that affect “*air quality, water quality, land quality and the marine environment*” may be subject to separate regulation under the pollution control framework, etc.
- 6.8.3 The Applicant’s proposals include work on land that has been used for landfill. Such landfill schemes are constructed to ensure the contents do not leach into the surrounding soil or water. Being close to the river Thames, with a series of drainage channels entering the

river, any contamination from these areas has the potential to create a direct pathway and potential significant effects, migrating to other land areas and the marine environment.

- 6.8.4 Being located directly adjacent to PoTLL's existing Port operation and areas within the Freeport, PoTLL is concerned to ensure that sufficient design to avoid and mitigation measures (including remediation where contamination spread is caused by the Applicant) are in place to avoid and manage the impacts of contamination to its operational and development land to ensure that its continued operation and the delivery of Port expansion is not restricted. It is seeking appropriate protections through an Agreement with the Applicant, but if this is not agreed, may require to be added as a consultee to Requirement 6 of the DCO (or similar mechanism in its Protective Provisions).
- 6.8.5 The Applicant has submitted Appendix 14.3 being the Operational Surface Water Drainage Pollution Risk Assessment, and Drainage Plans, however there is little-to-no information about drainage during the construction period, where the potential to interfere with contaminated land and cause migration of pollution is at its highest.

6.9 Climate Change

- 6.9.1 The NPSP notes the significant potential for ports to have a positive impact on greenhouse gases, as set out in paragraph 4.12.1, due to transmodal shifts from road to shipping.
- 6.9.2 In the view of PoTLL and the PLA, the Applicant has focused on road transport without giving full and proper consideration to the use of ports to reduce greenhouse gas emissions.
- 6.9.3 The Applicant has also not considered the mitigation hierarchy appropriately, as seeking to avoid greenhouse gas emissions would lead to firm and binding commitments to using river transport wherever possible, existing facilities (such as the CMAT on Tilbury2) and non-road based onward transport. The outline Materials Handling Plan should be updated to include firm commitments, with clear and binding targets, ensuring greater compliance with this policy, as well as providing certainty as to how the LTC Scheme will interact with existing ports infrastructure and the river.
- 6.9.4 Instead, the Applicant has made a generic commitment to using the Port of Tilbury, that may be undermined and avoided due to the broad ranging exceptions within that commitment, and that have the potential to put more road traffic onto local Thurrock roads, rather than reduce this. The Applicant has chosen not to take advantage of PoTLL's operational knowledge of its Port facilities, including recent construction and delivery of an NSIP project and the local road network in order to identify the best mitigations for its impacts.
- 6.9.5 The Applicant has also ruled out river transport for construction worker travel, and for locations south of the river, without meaningful engagement with the PLA on how this could be achieved.

6.10 Security considerations

- 6.10.1 Paragraph 4.17.3 notes that where an application for development consent relates to "*potentially 'critical' infrastructure*", there may be national security considerations. In making the decision, the Secretary of State must be "*satisfied that security issues have been adequately addressed in the project*".
- 6.10.2 PoTLL recognise the additional drafting in the latest revision of the dDCO, through the addition of Article 3(4), that resolves PoTLL's concerns that its byelaws would be subject to the LTC DCO. However, this is one aspect of the security concerns that require further consideration by the Applicant. The addition of Article 3(4) introduces a new issue for the

PLA because in disapplying Article 3(3) it has the effect of disapplying the PLA Act 1968 outside of the Order limits. We believe this to be unintentional, and it is hoped this can be easily resolved with the Applicant to the satisfaction of the ports.

- 6.10.3 PoTLL has set out its concerns around security in its submission on emergency protocols [REP1-272], and understands from the Applicant's Deadline 2 submissions that this is currently being considered. In respect of the concerns raised by the PLA about the loss of Higham Bight, and shared by PoTLL, the Applicant has made submissions at Deadline 3 which appear to be a step in the right direction, and PLA is engaging with the Applicant as to the precise effect of the changes to the dDCO. This remains a key security concern given the value and scarcity of explosives anchorages, and the licencing rules that prohibit such vessels from mooring in the Port of Tilbury.

6.11 Biodiversity and geological conservation

- 6.11.1 Paragraph 5.1.6 states, at the first bullet point, that the aim of the Government's biodiversity strategy is to ensure 'a halting, and if possible a reversal, of decline in priority habitats and species'. There are numerous issues with the baseline data and the methodology used by the Applicant for the EIA and biodiversity net gain (BNG) assessment, set out concisely in PoTLL's supplementary Deadline 2 submission [REP2-121]. A failure of the Applicant to preserve priority habitats and species will mean that these will be lost, and PoTLL will itself be unable to comply with this policy when planning and implementing future development at the port. This, in turn, and may make port development more challenging given the increased value of remaining priority habitats.
- 6.11.2 In addition, the ES does not include any assessment of the impact of scour protection, on the basis that there would be sufficient cover above the tunnel that this would not be required. Following the Applicant's acceptance of the tunnel dredging depth requirement, PoTLL and the PLA are concerned that there has been no consequential ES addendum confirming that sufficient cover is possible. On the contrary, sensitivity flotation testing shared with the PLA shows less-than-normal cover above the tunnel, without supporting justification for this.
- 6.11.3 PoTLL and the PLA are concerned that the environmental impact of the LTC Scheme may be significantly greater than currently assessed, due to the applicant's changed position on tunnel dredging, with implications for land, intertidal and marine biodiversity.

6.12 Flood risk

- 6.12.1 The guidance for the decision maker states, at the final bullet point in paragraph 5.2.9, that in flood risk areas, the project must be appropriately flood resilient and resistant, "*including safe access and escape routes where required*". In addition, as per paragraph 5.2.10, for construction work which has drainage implications, "*approval for the project's drainage system will form part of the development consent*".
- 6.12.2 The area of the north portal construction compound is crossed by waterways that provide drainage to the area. The Applicant's proposals do not include detail of how the drainage system will be maintained during construction. The lack of detail in the Applicant's current proposals means it is not possible to ascertain what work will be carried out to the existing drainage channels, in order to accommodate the construction works, as the Applicant has been unable to share where key construction infrastructure, such as worker accommodation, will be placed.
- 6.12.3 In particular, paragraph 5.2.19 of the NPSP makes it clear that flood risk is not contained to the area of the proposed development, but where the impact on the risk of flooding occurs outside of the port area, reasonable measures must be taken 'to reduce this as far as possible'.

- 6.12.4 Where the construction impacts have not been fully assessed, due to the lack of even high level information about the proposals, the view of PoTLL and the PLA is that the Applicant has not demonstrated conformity or avoidance of conflict with this part of the NPSP.

6.13 Traffic and transport impacts

- 6.13.1 Section 5.4 of the NPSP emphasises the importance of multi-modal transport to ports, and the potential for ports to impact upon the road network. As per paragraph 5.4.3, delays at ports can occur for a number of reasons and “*such delays can often result in a significant backlog of goods waiting to depart by ship*” leading to “*an adverse impact on connecting road infrastructure*”. The Transport Assessment [REP1-529] provided with the Application already indicates that the impact of construction traffic is likely to cause delays to the road connection to the Port of Tilbury.⁵
- 6.13.2 The transport impacts of port development should be assessed using WebTAG; this approach is shared by the Applicant for the LTC Scheme. However, in the view of PoTLL and DPWLG, the Applicant has not adequately applied the WebTAG methodology to traffic and transport impacts.
- 6.13.3 Paragraph 5.4.4 requires the assessment to distinguish between the construction, operation and decommissioning project stages; it is only following the intervention of the Examining Authority that the Applicant is now assessing the impacts of its additional construction traffic on the road network that will directly impact on PoTLL. For the operational phase, the Applicant has not allowed for any growth at the local ports. The exclusion of any growth at the existing ports in the transport modelling may have the effect of underestimating the existing and future baseline and therefore showing and assuming greater capacity available on the network, and consequently show a reduced adverse impact from congestion associated with increased traffic levels attributable to the LTC Scheme.
- 6.13.4 Paragraph 5.4.5 requires applicants to prepare a travel plan, including demand management measures to mitigate transport impacts. It should also provide details of measures to improve access by public transport, walking and cycling.
- 6.13.5 In respect of the LTC Scheme, the road is not designed for and capable of safe use by cyclists and there are no plans for dedicated cross-river bus or water transport routes. The extent to which the proposed cycle and pedestrian routes enable access, as opposed to ‘interesting’ leisure options such as the zig-zag paths at Tilbury Fields, should be considered.
- 6.13.6 Finally, paragraph 5.4.8 states that the transport assessment should include private traffic accessing and leaving the port, where significant, even where not generated by the development under application. There has been no assessment of the traffic impacts on roads within the Port from the additional construction traffic, and the Applicant has not addressed this to date. In the absence of any allowance for growth at the Port of Tilbury, the traffic assessment has failed to adequately meet this policy test.

6.14 Mitigation: Modal share

- 6.14.1 Paragraph 5.4.14 sets out that the modal share of traffic entering and leaving the port needs to be considered. Alternatives such as rail and coastal or inland shipping should be encouraged where cost-effective, “*in order to avoid significant detriment to network users*”.
- 6.14.2 During the construction phase, the LTC Scheme will be importing materials required to construct the highway and tunnel. Whilst the oMHP does envisage some use of the Port of Tilbury for the import of aggregates, the Applicant remains focused and prioritised on the

⁵ See paragraph 8.8.33 where this is explicitly recognised.

use of roads for the transport of those aggregates to the location of their final use. However, looking at the location of the main construction compound for the North Portal, there are opportunities to avoid road use, both public highway and private roads, almost entirely. Any onward road transport from Tilbury1 will require a left-turn only onto the A1089 and a u-turn around the Asda roundabout, with the knock on impacts for the capacity and free-flow of that road and junction. By contrast, the import of aggregates into Tilbury2 can be undertaken and delivered by way of an existing conveyor to an existing CMAT facility. A new access into that facility could be constructed to the east of the level crossing, further limiting the impact of onward transport by road to little-used areas of existing road within Tilbury2.

- 6.14.3 The Applicant could also go further in how it manages the movement of workers, by committing to mode-share targets for workers visiting the compounds, whether this is through encouraging active travel and car sharing, and providing shuttle - no or low emission vehicle transport. The Applicant has also dismissed the use of the river to transport workers to the compounds, without discussing how best this could be achieved with the PLA, local authorities or existing river transport providers.
- 6.14.4 PoTLL and the PLA consider that the Applicant has not fully explored the use of modal share, instead defaulting to a roads first based solution where alternatives would provide significant benefits, both generally and specifically in respect of the impact on existing network users and in other environmental improvements in accordance with the mitigation hierarchy.

6.15 Mitigation: HGVs

- 6.15.1 Paragraph 5.4.22 of the NPSP states that, where a development “*is likely to generate or attract substantial HGV traffic*”, requirements may be attached to a consent that “*control numbers of HGV movements ... during its construction*”, “*make sufficient provision for HGV parking*”, and “*ensure satisfactory arrangements ... for dealing with reasonably foreseeable abnormal disruption*”.
- 6.15.2 It is clear that the construction phase of the LTC Scheme has the potential to generate a large quantity of HGV traffic. As explained above, there are mitigations available to the Applicant that would greatly reduce the need for HGV traffic in and around the Port of Tilbury, thereby avoiding and reducing the impact of construction on the road network. The Applicant has declined to include a requirement to implement these mitigations on the basis that they do not wish to fetter the tendering process for contractors. This approach does not hold up to scrutiny as, where a mitigation is identified in the Environmental Statement as being required, this requirement simply forms part of the tendering process that contractors must work to. For example, contractors will be expected to comply with the oTMPfC.
- 6.15.3 In respect of the construction traffic impacts, the Applicant will be submitting detailed assessment of the impacts of the construction phase to the Asda roundabout. This work, being submitted at Deadline 3, is likely to demonstrate that mitigation work is required in order to avoid the impacts of the worst-case scenario, i.e. the extremes of the Rochdale Envelope. One such mitigation, to materially reduce the quantify of HGV traffic, and therefore reduce what the worst impacts will be, is to commit to utilising the CMAT facility on Tilbury2. The Applicant’s decision to not proactively assess the full worst-case scenario is contrary to the requirements of the environmental impact assessment, but has also hidden the extent of reasonably foreseeable abnormal disruption and, accordingly, the extent of potential mitigation required. This has hampered the Applicant’s ability to act consistently with this policy.

6.16 Mitigation: Access

- 6.16.1 Paragraph 5.4.24 sets out that, where a development would worsen accessibility, the impacts should be mitigated so far as reasonably possible. Paragraph 5.4.25 continues to state that an employee travel assessment should be undertaken for all major port development.
- 6.16.2 Whilst the LTC Scheme will generate employment primarily during the construction phase, this is scheduled to last some six years and will generate a large number of workers travelling to each compound.
- 6.16.3 The Applicant has a requirement that each contractor must develop site-specific travel plans (SSTP) (see the Framework Construction Travel Plan [APP-546]). However, the framework falls short of committing to firm targets for these travel plans; instead it sets out "*the high-level aspirations for the SSTP targets*". Whilst these aspirations align with the policy, it is unclear why the Applicant has not quantified what the targets to meet and exceed in the SSTPs should be.
- 6.16.4 In addition, the Applicant has, in the view of PoTLL and the PLA, not adequately explored the potential for the river to be used for worker access. Given the location of the LTC Scheme and the compounds located adjacent to the river to the north and south, the scale of the construction project and the quantity of workers involved, there is greater scope for the river to be used as a key part of the SSTP for the riverside compounds. The PLA has requested to work with the Applicant to identify how the river could be used, as this will mitigate the impacts of the construction workers on the local road network that have the potential to reduce accessibility for local residents. In addition, by not fully exploring opportunities linked to the river, it is not possible to say that employee travel has been adequately assessed.

6.17 Air quality and emissions

- 6.17.1 Paragraph 5.7.1 notes that ports can contribute to local air pollution problems, from large volumes of HGV traffic, as well as certain cargoes such as cements and aggregates. As set out in paragraph 5.7.6, air quality considerations should be given 'substantial weight where a project would lead to deterioration in air quality in an area'.
- 6.17.2 PoTLL are mindful that, as part of the consent for Tilbury2, it is required to monitor the local air quality. There is potential that the construction of the LTC Scheme will cause the air quality to exceed the specified limits. Whilst PoTLL note that the draft DCO does include provision to avoid PoTLL being liable for breach of any Tilbury2 requirement, this does not address the policy direction that air quality impacts should be minimised and avoided.
- 6.17.3 Tilbury2 has an existing CMAT facility that, if used, would help manage the dust, etc. from aggregates. It would also minimise the transport of aggregates on the road network, with the associated risk of migration of dust, and would avoid or greatly reduce the emissions associated with HGVs required to transport.
- 6.17.4 Given the importance of air quality to the policy decisions around port development, and the location of the LTC Scheme, being adjacent to the Port of Tilbury and close to London Gateway, and that the construction compound requires the use of port land, greater steps could be taken by the Applicant to identify mitigations to avoid worsening air quality in the area.

6.18 Socio-economic impacts

- 6.18.1 The NPSP recognises the role of ports as having socio-economic impacts at local and regional levels in paragraph 5.14.2. This may include the creation of jobs, the provision of

additional local services and improvements to local infrastructure, as well as considering “*the impact of a changing influx of workers during the different construction, operation and decommissioning phases*”. The decision maker should then have regard to “*the potential socio-economic impacts of new port infrastructure identified by the applicant and from any other sources that the decision maker considers to be both relevant and important*”.

- 6.18.2 The LTC Scheme will generate significant quantities of construction employment for a period of 6 years, benefitting the local area. However, once constructed, the benefits of the LTC Scheme relate to its ability to assist workers to travel from their homes to places of employment. The Port of Tilbury and London Gateway are large employers in the Tilbury area. It is noted that one of the benefits of the LTC Scheme is that it will create opportunities for workers living south of the river Thames to work north of the river, and vice versa. However, this socio-economic benefit has not been maximised, as the connectivity to the Port of Tilbury, a major employer, requires an extended journey by car, around the Orsett Cock roundabout, to join the A1089. By contrast, inclusion of a Tilbury Link Road would provide a direct route for workers to access the Port of Tilbury, as well as relieve congestion on the Orsett Cock roundabout that may affect workers travelling to London Gateway.
- 6.18.3 There are also socio-economic benefits to providing public transport routes that cross the river, to further facilitate workers living and employed on opposite sides of the river. The Applicant has opted not to provide any bus service through the tunnel, nor does it commit to providing any mechanism (such as the shuttle that exists at Dartford) to enable non-motorised users to utilise the crossing. This significantly limits the socio-economic benefits being provided by the LTC Scheme, and does not mitigate the socio-economic disbenefits associated with the proposed highway layout, instead relying on third parties to realise these benefits at a later date.