



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

PORT OF TILBURY LONDON LIMITED – SUMMARY OF ORAL SUBMISSIONS

Deadline 4: 19 September 2023

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1. ISSUE SPECIFIC HEARING 3 – PROJECT DESIGN

1.1 Agenda Item 4 – A13/A1089/LTC Intersection

- 1.1.1 The design and function of the A13/A1089/LTC junction will have adverse effects in respect of access to the Port of Tilbury, as three out of four connections to the A1089 are indirect, necessitating a route via the Orsett Cock junction. This leads to a net disbenefit in connectivity.
- 1.1.2 The proposed re-routing via the Orsett Cock junction induces congestion and substantial delays, leading to increased journey times through the junction, as well as additional journey distance, when travelling from the LTC, from needing to travel to and from the Orsett Cock junction via the A13. The result will be unreliable journey times, disruption and uncertainty for port users.
- 1.1.3 The Applicant, in explaining the factors taken into consideration when designing the A13/A1089/LTC junction, did not mention considering connectivity to the ports as a main consideration, although this is required by government policy in the Ports NPS.
- 1.1.4 In terms of mitigation to the Orsett Cock junction, PoTLL's transport consultants have identified a number of potential methods, including:
- (a) an additional lane on the eastbound slip;
 - (b) signalisation of the A128 approach (from the north);
 - (c) an additional lane southbound and northbound on the overbridge section;
 - (d) signalisation of the A1013 approach; and/or
 - (e) signalisation of the Brentwood Road approach.
- 1.1.5 PoTLL is also keen to ensure that the DCO secures the design and construction of the North Portal junction to a standard capable of accommodating the future RIS3 project, the Tilbury Link Road, as this would remove a lot of traffic to the Port of Tilbury from the Orsett Cock junction.

Post Hearing Note: The North Portal Junction shown in the outline design is intended to accommodate a future Tilbury Link Road, connecting Port traffic with LTC. However, this is not secured in the DCO, despite the intention of the Applicant to future-proof its design, and provide this legacy value, is evident in the plans. There is, therefore, no mechanism to ensure that a contractor does not design an alternative access of a greatly reduced scope, meeting the needs of an emergency and operational access, but frustrating the long-term strategic intentions of National Highways. PoTLL has provided draft wording for a new DCO Requirement that, in its view, would secure the intention inherent in the outline design for this junction, without fettering the Applicant's flexibility in detailed design and without requiring any additional construction costs above that which has been assessed as part of the Application. This drafting is set out in PoTLL's submission DCO Drafting Proposals, submitted at Deadline 4.

- 1.1.6 The slides showing connectivity through the A13/A1089/LTC junction [AS-146] categorise connections *from* the A1089 as strategic and local, and important for traffic from the Port of Tilbury. The reverse of this key connection is not recognised as strategic or local. Slide 9 shows a Major Connection between LTC and the A13 but the onward connection with the A1089 is not shown. Slide 32 is the only slide that shows the convoluted route that forms the connection between LTC and the A1089, adding significant additional distance over a direct connection.

Post Hearing Note: Full consideration of these slides is provided in response to Action Point ISH3-1, in PoTLL's Response to ExQ1 and Hearing Action Points, submitted at Deadline 4.

- 1.1.7 The Applicant provided figures to suggest that use of this route would be low, and that the benefit to the Port of Tilbury from the LTC Scheme is from reduced journey times via the Dartford Crossing. In PoTLL's view, the figures quoted by the Applicant demonstrate that, despite the poor quality of the connection, and congestion on the Orsett Cock junction, use of the LTC to connect with the A1089 is still clearly desirable. This makes sense as it is the reverse of the key strategic route from the A1089 onto the LTC.

Post Hearing Note: The Applicant has provided stakeholders with the additional traffic flows for the Orsett Cock junction that are caused by the LTC Scheme. These figures show that approximately 20% of the additional traffic in all time periods will connect with the A1089. This is a significant proportion and confirms that the connection between LTC and the A1089 should be considered strategic, in the same way as the connection from the A1089 to the LTC. In further considering that the A1089 is the sole road access to the strategic Port of Tilbury, the design of the LTC, including this junction, has not given appropriate priority to strategic connectivity.

In order to remedy this, PoTLL is seeking a new DCO Requirement to secure all necessary mitigation for congestion on the Orsett Cock junction to be in place prior to the opening of the LTC Scheme. This will avoid the immediate impact on the Port from congestion on three out of four approaches. Secondly, PoTLL is seeking a new DCO Requirement to secure the legacy value of the outline design as it relates to the North Portal Junction, to facilitate improved connectivity with the Port of Tilbury under a future project (i.e. the Tilbury Link Road). PoTLL's proposed drafting is set out in the submission DCO Drafting Proposals, submitted at Deadline 4.

1.2 **Additional Detailed Submission – Agenda Item 4(a)(iii) – Access to the Port of Tilbury**

- 1.2.1 The requirement for three of four connections onto the A1089 southbound to route through the Orsett Cock roundabout is of significant concern to PoTLL. The lack of direct connectivity southbound is in contrast with the direct northbound connections, that are recognised by the Applicant to be strategic.
- 1.2.2 No direct connection from LTC to the A1089 or the Port of Tilbury is included within the Application. Such a direct connection would both improve connectivity to the Port of Tilbury, and would constitute a significant reduction of traffic flows through the Orsett Cock junction. Direct connectivity between LTC and the Port of Tilbury would provide clear economic benefits associated with more reliable journey times to and from nationally significant infrastructure.
- 1.2.3 The Applicant has confirmed that the Tilbury Link Road is being invested in as part of National Highways' Road Investment Scheme 3 (RIS3). PoTLL considers that the Tilbury Link Road would provide greater resilience for the Port, enable the benefits of the Lower Thames Crossing in this location to be more fully realised, and provide a long-term mitigation of the impacts of the LTC on the wider road network. It will also enable National Highways to meet the obligation, to be imposed by the revised draft National Networks NPS (NNNPS) at paragraph 3.93, to ensure that growth in the road network mirrors growth and investment at the ports.
- 1.2.4 It is with this long-term strategic goal in mind, and recognising that the scope of the LTC Project is no longer capable of significant change, that PoTLL submits that the outline design contained within the DCO Application of a substantial junction at the North Portal, capable of connecting with the future Tilbury Link Road project, must be secured. The current drafting of the Order defines this junction as an operational and emergency access, and does not require a junction of the type and scale envisaged by and included within the

Application. It is therefore open to a contractor to design a greatly reduced junction, or even provide access directly from Station Road, that better meets their needs, at the expense of the overarching strategic ambitions of the Applicant.

- 1.2.5 It is important to ensure that the objectives of the LTC Scheme, in providing a legacy value to the Tilbury area, are secured; failure to do so means such benefits cannot be relied upon when assessing the value of the Scheme. In the event a junction was constructed that was not suitable to connect the Tilbury Link Road, this would need to be re-constructed almost immediately as part of that later project, resulting in the unnecessary duplication of the environmental harm and carbon release. The Applicant should not plan to cause a harm twice where it knows it can avoid doing so.
- 1.2.6 In light of the DCO's outline design, the clear statements by the Applicant that the Tilbury Link Road is in development, and the potential for greater environmental harm that could be avoided, the LTC Order should be drafted to ensure that the junction is designed and constructed in a way that will enable the Tilbury Link Road project to be brought forward.
- 1.2.7 PoTLL is mindful that a large volume of works will take place in the North Portal construction compound, within which a future Tilbury Link Road will be aligned. PoTLL is also proposing a more general obligation to ensure that the Applicant, as the promotor of both LTC and the Tilbury Link Road, when carrying out works in the area, must have regard to the prospect of the future Tilbury Link Road project. This will ensure that the developing Tilbury Link Road project is not hampered by the design and construction of LTC, where it is not necessary to do so, as well as enable the Applicant to identify opportunities for efficiencies and cost-reductions inherent in developing two schemes in such close proximity at the same time. For example, in the design of permanent drainage structures, having regard to the progressing Tilbury Link Road development plans will ensure that the design is done in a way that will not constitute an impediment to the future scheme.
- 1.2.8 This proposed DCO Requirement is entirely in keeping with the overarching obligations of National Highways as strategic highway authority, in particular its statutory responsibility to act in a manner that is best calculated to achieve efficiency and value for money. PoTLL is aware that the design and construction of LTC will fall to contractors who, in the absence of a secured commitment, may be unaware of the long-term ambitions of National Highways in this area. In order to secure the design set out in the Application, PoTLL has provided a draft Requirement in its DCO Drafting Proposals, submitted at Deadline 4.

1.3 Additional Detailed Submission – Agenda Item 3(c)(i) – elimination or mitigation of problems by improving operational conditions and minimising adverse impacts

- 1.3.1 PoTLL does not consider that the Applicant can confidently state that it has met this principal objective, due primarily to the impacts on the Orsett Cock junction, combined with the failure to provide any direct connection to the Port of Tilbury.
- 1.3.2 The Applicant's focus on relieving congestion on the Dartford Crossing has been at the expense of ensuring that the new infrastructure serves and supports the key connected infrastructure that relies on the road network. In view of the vulnerabilities inherent in the design of LTC and the reliance on the Orsett Cock junction for connectivity to the Port of Tilbury, effective mitigation must be secured in the DCO, to be in place before the impacts – and therefore the harm – arise.
- 1.3.3 The ExA is referred to PoTLL's DCO Drafting Proposals, submitted at Deadline 4, for a proposed mechanism to ensure that the requirement for mitigation mirrors the risks inherent in the design of LTC, and the flexibility that the Applicant seeks to retain in detailed design, ensuring that the Applicant's compliance with paragraph 4.31 of the NNNPS is secured.

2. ISSUE SPECIFIC HEARING 4 – TRAFFIC AND TRANSPORTATION

2.1 Agenda Item 3a(i) – Traffic Modelling re Orsett Cock

- 2.1.1 The Orsett Cock junction, and the free-flowing operation of this junction, is extremely important to PoTLL as three out of four routes onto the A1089 will connect via this junction. PoTLL supports the need for greater modelling, and for the results of that modelling to be fed back into the LTAM so that the full impacts of the LTC Scheme can be properly addressed.
- 2.1.2 It is important, in seeking to understand the impacts, not to lose sight of the need for any negative impacts that are identified to be mitigated. PoTLL asks that a mechanism is in place within the DCO to secure the mitigation that may be required for the Orsett Cock junction.

Post Hearing Note: The ExA is referred to PoTLL's submission DCO Drafting Proposals for drafting that seeks to ensure that any required mitigation is identified, in place and operational prior to the opening of LTC.

2.2 Additional Detailed Submissions

- 2.2.1 During the hearing, the Applicant provided details of the additional traffic flows through the Orsett Cock junction associated with LTC. These figures demonstrate that 1/5 of all additional traffic is connecting with the A1089. PoTLL is concerned that the LTC Scheme will make the Port of Tilbury vulnerable to disruption at the Orsett Cock junction, as direct connectivity is only available from the A13 eastbound carriageway. The volume of Port traffic that will need to circumnavigate the Orsett Cock roundabout only emphasises the need for the Applicant to ensure that its design is robust and free-flowing in both modelled and real-world conditions.

2.3 Agenda Item 3a(ii) – Modelling Uncertainties and TAG Unit M4

- 2.3.1 PoTLL has supplied the Applicant with the data needed to assess the Freeport in accordance with TAG Unit M4 on three occasions: the first in April 2020, then twice in 2021, most recently in September 2021. PoTLL has requested that the Freeport is assessed as an alternative scenario, on the basis that the Freeport is a 'reasonably foreseeable' project.
- 2.3.2 The Applicant has shared modelling that relates to the Freeport, however this has not been carried out in accordance with TAG Unit M4. The Applicant has looked at the impacts of the Freeport on a baseline that includes LTC. It has not updated the baseline to include the Freeport, instead assuming that the Freeport will be brought forward wholly after the LTC is operational. This is a misplaced application of the Environmental Impact Assessment Regulations, and the TAG requirements. It has never been the case that the Freeport will post-date LTC. Until the Freeport is included within an alternative scenario, the full impacts of the LTC Scheme cannot be fully understood.

Post Hearing Note: PoTLL has provided further detail in response to ExQ 4.1.8, directed at the Applicant but relevant to PoTLL, setting out the requirement for this modelling in order to accord with TAG. The ExA is referred to PoTLL's Response to ExQ1 and Hearing Action Points submitted at Deadline 4.

2.4 Additional Detailed Submissions

- 2.4.1 PoTLL's concerns in respect of modelling uncertainties should be seen in light of the ever-changing environment in the Thurrock area. National Grid Electricity Transmission (NGET) is promoting their Norwich to Tilbury (previously East Anglia Green) DCO and the new Tilbury to Grain Tunnel. A screening request for the latter project includes a cumulative

assessment with LTC and Thurrock Flexible Generation Plant (TFGP), to account for the potential that the construction of these projects will overlap. Whilst this assessment assumes, incorrectly, that LTC construction traffic will use Fort Road, it illustrates the potential scale of the cumulative impact on the A1089 and the ASDA roundabout.

Table 3-4: Forecast increases in cumulative daily construction traffic flows in Tilbury (Peak construction phases)

Road (Two-Way)	Proposed Development		Lower Thames Crossing		Thurrock Flexible Generation Plant		Total (Cumulative)	
	HGVs	Total Vehicles*	HGVs	Total Vehicles	HGVs	Total Vehicles	HGVs	Total Vehicles
A1089	114	114	415	2,128	164	286	693	2,528
A13 East	114	114	565	2,902	164	286	843	3,302
A13 West	114	114	565	2,902	164	286	843	3,302
Tilbury 2 Road	114	114	0	0	164	286	278	400

*excludes construction workers/ light vehicles, as these are not expected to be significant at this stage

Table 3-5: Forecast cumulative increases in daily traffic flows in Tilbury (Peak construction phases)

Road (Two-Way)	Baseline Weekday 12 hours (07:00-19:00)		Forecast Additional Cumulative Daily Movements (Two-way)		% Cumulative Increase	
	HGVs	Total Vehicles	HGVs	Total Vehicles	HGVs	Total Vehicles
A1089	6,226*	23,802	693	2,528	11.1%	10.6%
A13 East	6,972	60,881	843	3,302	12.1%	5.4%
A13 West	9,702	66,169	843	3,302	8.7%	5.0%
Tilbury 2 Road	2,526	3,957	278	400	11.0%	10.1%

*baseline data also includes LGVs (represents vehicles >6.6m in length)

2.4.2 These tables, from NGET's screening opinion, show increased impacts on the A1089. It is important that the Applicant:

- (a) properly takes into account future development in the area – including, but not limited to, the Freeport;
- (b) has reactive mitigation processes that are planned in advance; and
- (c) ensures that there is nothing to impede the Applicant from delivering necessary mitigation quickly.

2.5 Agenda Item 4 – Wider Networks Impacts Management and Monitoring

2.5.1 PoTLL supports the submissions made by Kent County Council and Thurrock County Council in respect of the need for the Applicant to mitigate the impacts it causes to the wider road network. In this regard, PoTLL also emphasises the importance of having regard to the Ports NPS when considering impacts that require mitigation.

- 2.5.2 In terms of the proportionality requirement for identifying impacts that require intervention, it is important to recognise that, where a local impact affects the ports, these should be considered to be national impacts, given the role of the ports in the national economy.

2.6 Agenda Item 5 – Construction Traffic Management

- 2.6.1 PoTLL has been reviewing the traffic modelling of the ASDA roundabout that was provided by the Applicant at Deadline 3 ([REP3-128], [REP3-129], and [REP3-132]).
- 2.6.2 The primary and secondary accesses to the construction compounds relate to HGV movements. For construction workers, a route is included in LTAM via Station Road up to Gun Hill, but this is not secured. This forms part of PoTLL's concern, namely that construction workers are unlikely to take the proposed route and will instead route via the Strategic Road Network through the ASDA Roundabout.
- 2.6.3 PoTLL also has concerns about a number of anomalies in the modelling report that have not been explained. There are instances where vehicle flows decrease, contrary to expectations, including during Construction Phase 6 where an additional 200 PCUs are expected. PoTLL's own traffic data collected two months earlier than the Applicant's data shows significant differences in flows.
- 2.6.4 PoTLL is seeking to fully understand the modelling and requests the underlying data used to carry out the modelling.

Post Hearing Note: The Applicant has now shared the VISSIM modelling with PoTLL and this is being reviewed in detail. A full discussion of the modelling reports is provided in PoTLL's Response to Deadline 3 Submissions – ASDA roundabout modelling, submitted at Deadline 4.

PoTLL has proposed a draft DCO Requirement to ensure that mitigation at the ASDA roundabout is secured; this includes finalising and securing construction worker routes and assessing that traffic in addition to general construction movements. Draft wording is provided in PoTLL's DCO Drafting Proposals, submitted at Deadline 4.

- 2.6.5 The construction modelling shows very significant impacts, but the report does not consider what further impacts the queueing may cause, nor whether or not the impacts identified need to be mitigated.
- 2.6.6 The outline Traffic Management Plan for Construction (oTMPfC) [REP3-120 (Clean); REP3-121 (Tracked)] is not fit for purpose, given the proximity of the North Portal construction compound to the operational Port of Tilbury, including that the sole road access to the Port of Tilbury is shared by the main construction route into that compound. The oTMPfC is fairly generic and does not deal with the unique situation here and the fact that a real-time response is needed when issues occur. In its current form, the oTMPfC is not reactive enough.

Post Hearing Note: The ExA is referred to PoTLL's response to Q4.6.5 in its Response to ExQ1 and Hearing Action Points submitted at Deadline 4 for a full explanation for why PoTLL does not consider the oTMPfC, secured by Requirement 10 of the draft DCO, to be sufficient.

3. ISSUE SPECIFIC HEARING 5 – TUNNELLING

3.1 Agenda Item 3 – Limits of Deviation

- 3.1.1 PoTLL fully supports the Port of London Authority (PLA) in its submissions that the construction risks of the Applicant's design must be managed. The risk of an issue during

construction may be small, but the potential impacts to the river, navigational travel and the Port of Tilbury located immediately upriver, are so severe that all steps to minimise the risks should be taken.

- 3.1.2 PoTLL confirms that, if the tunnel is constructed without issue and providing for the 12.5 metre dredging allowance plus 0.5 metre over-dredge, there would be no economic impacts to the Port of Tilbury. PoTLL is satisfied that the agreed dredging allowance is sufficient.

3.2 **Agenda Item 5 – Monitoring – Risk Management of Unexpected Incidents**

- 3.2.1 PoTLL supports the PLA in seeking to ensure that all aspects of the design, construction and maintenance of the tunnel are carried out satisfactorily with sufficient oversight and control.
- 3.2.2 The Port of Tilbury, being upriver of the tunnel, would feel the immediate impacts of an incident that caused interruption to the use of the navigational channel. The value of the Port of Tilbury to the economy is recognised by government in the Ports NPS. Any issue during construction that hampered navigation, or from any remedial approach such as building a cofferdam without appropriate oversight, may cause significant knock-on effects to the national economy.
- 3.2.3 PoTLL considers that the concerns raised by the PLA need to be resolved on a precautionary basis. The PLA needs to have proper and fulsome oversight and this needs to be properly secured within the DCO. There is an opportunity to learn from previous DCO drafting that has resulted in gaps in the PLA's oversight, and remedy these issues within this Order. The potential impacts of not resolving these issues, due to the location of a strategic port immediately upriver, represent a strong justification for taking such a precautionary approach as is put forward by the PLA.

3.3 **Additional Detailed Submission – Agenda Item 7(a)(iii) – Effect of Onsite Accommodation and Management of Potential Socio-Economic Impacts**

- 3.3.1 PoTLL has concerns about the management of workers located adjacent to an operational Port. The Applicant's current proposals include only a commitment to using contractors signed up to the Considerate Contactor Scheme. This does not address the need for a clear code of practice, developed in coordination with PoTLL, to ensure that appropriate behaviour is maintained at all times. This is for the safe and efficient operation of the Port at all times, as well as to ensure that the security of the Port is maintained, in accordance with PoTLL's duties as a statutory harbour authority.
- 3.3.2 PoTLL is also concerned about the lack of detail in the proposals that mean it is not currently possible to ascertain what work may be carried out to features such as existing drainage channels to accommodate the construction works, as the Applicant has been unable to share where key infrastructure, including worker accommodation, will be placed.
- 3.3.3 The Applicant could make greater provision for how it will manage the movement of workers, including by committing to mode-share targets for workers visiting the compounds, whether this is through encouraging active travel and car sharing, or providing shuttle bus. The Applicant has also dismissed the use of the river to transport workers to the compounds, without meaningful discussion as to how best this could be achieved with the PLA, local authorities or existing river transport providers. These commitments would help to ensure that environmental impacts from construction workers are minimised.
- 3.3.4 The uncontrolled approach to workers visiting compounds results in significant uncertainty around the assessed traffic impacts, and is likely to result in greater emissions than if mode share was committed to.

- 3.3.5 PoTLL is seeking to address some of these issues by way of agreement, including a code of conduct for workers. However, construction worker routes and clear commitments to mode share should be included within the DCO and certified documents in order to minimise the environmental impact of the construction of the LTC Scheme.

4. **ISSUE SPECIFIC HEARING 6 – MITIGATION, COMPENSATION & LAND REQUIREMENTS**

- 4.1 PoTLL did not attend Issue Specific Hearing 6.

5. **ISSUE SPECIFIC HEARING 7 – DRAFT DEVELOPMENT CONSENT ORDER**

5.1 **Disapplication of Local Legislation**

- 5.1.1 PoTLL is grateful for the amendment to the draft DCO in article 3(4) such that the Order will not override the Port's enactments. It may be clearer, however, if this paragraph is housed in article 53 (disapplication of legislative provisions) or article 55 (application of local legislation). Article 53 also appears to be the disapplication of public general legislation, whilst article 55 relates to the disapplication of local legislation. The reference in article 53 to the Port of London Act 1968, being a local Act, may be better located within article 55.

5.2 **Orsett Cock Junction**

- 5.2.1 The present design of the Orsett Cock junction will have adverse impacts on the Port of Tilbury and DP World London Gateway, with the consequential economic harm. The importance of the ports, recognised in the National Policy Statements, warrants a specific Requirement being added to the draft DCO in relation to the Orsett Cock junction.
- 5.2.2 This additional Requirement would require further modelling of the junction to be carried out including, where relevant, wider strategic modelling in consultation with the local highway authorities, the ports, and other key stakeholders, before the commencement of any works at the junction. Where that modelling identifies impacts, a specific monitoring and mitigation strategy must be produced for approval by the Secretary of State, including a proposed programme for implementation of the mitigation measures, ensuring the mitigation is in place and operational before the impact arises and, in all cases, prior to the opening of LTC.
- 5.2.3 This is justified and needed in addition to a broader, more general Silvertown Tunnel-style DCO Requirement, and will result in a proportionate approach to mitigation, ensuring that the detailed design of the scheme is one that does not cause negative impacts when LTC opens. The consequence of impacts to the Orsett Cock junction, disrupting access to the ports, themselves being national infrastructure, is not an acceptable one, irrespective of improvements made elsewhere.
- 5.2.4 Where an impact is known, specific mitigation should be secured; where impacts are not known, the Silvertown Tunnel-style approach provides a flexible mechanism to secure necessary mitigation.

Post-Hearing Note: The ExA is referred to PoTLL's DCO Drafting Proposals submitted at Deadline 4 for draft wording and further detail as to how PoTLL envisages this Requirement operating.

5.3 **Requirement for Mitigation of Scheme Impacts**

- 5.3.1 PoTLL does not agree with the Applicant's submissions that the nature of the Applicant is a relevant consideration in terms of the requirement to mitigate the Scheme impacts. All Applicants, especially those with an element of public funding, will have investment and

funding frameworks. Transport for London [the Applicant and undertaker of the Silvertown Tunnel Order], whilst not a strategic highway company under the Infrastructure Act 2015, nevertheless has strategic highway functions throughout Greater London.

- 5.3.2 There is no material difference between the National Networks NPS (NNNPS) and the revised draft NNNPS in terms of the obligation to identify impacts and mitigate them, with the current NNNPS making this obligation very clear. The revised draft NNNPS is clearer on this and, under section 104 of the Planning Act 2008, is an important and relevant matter for the Secretary of State to have regard to.
- 5.3.3 The Applicant has not put forward any legal basis for its position. The EIA Scoping Opinion was clear that no special position for the Applicant was envisaged. The Applicant was to look at all of the impacts that the Scheme is thought to result in. Regulation 33 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 provides a mechanism for the Secretary of State to direct that there should be an exemption from the requirement to undertake an environmental impact assessment. There is no suggestion that the Applicant benefits from a Regulation 33 exemption.
- 5.3.4 The Applicant's position is fundamentally misplaced and at odds with how the infrastructure planning regimes expect applicants to assess and mitigate impacts.

Post Hearing Note: A summary of the legal and policy requirement to mitigate impacts caused by the Scheme, and a consideration of the extent to which such mitigation may be considered betterment, is set out in the preface to PoTLL's DCO Drafting Proposals submitted at Deadline 4.

5.4 ASDA Roundabout – Construction Impacts

- 5.4.1 In light of the impacts to the ASDA roundabout identified by the Applicant's modelling, PoTLL considers that the Applicant should bring the roundabout into the Order limits to ensure that the Applicant can deliver any necessary mitigation.
- 5.4.2 In any event, PoTLL is proposing a new DCO Requirement in order to secure mitigation. This Requirement operates by requiring the preparation and approval by the Secretary of State of a mitigation and monitoring strategy before works can commence, and an obligation during construction to comply with the measures in the approved strategy. PoTLL is concerned about the modelled impact on the ASDA roundabout and the impacts on the Port of Tilbury if these impacts arise.

Post Hearing Note: Full consideration of the Applicant's modelling report of the ASDA roundabout is provided in PoTLL's Response to Deadline 3 Submissions - ASDA Roundabout Modelling. This response includes an indicative plan, showing the land that PoTLL believes should be included within the Order, including land that does not currently fall within the boundary of the public highway and would need to be subject to additional powers of compulsory acquisition.

5.5 North Portal Junction

- 5.5.1 PoTLL accepts that the Tilbury Link Road does not, and will not be able to, form part of the Application. It is, however, important that the LTC DCO, if made, does not frustrate or prevent the Applicant from bringing forward the Tilbury Link Road as a subsequent project. The Applicant has advised that the Tilbury Link Road is to be brought forward under RIS3 for the period 2025-2030. The Applicant has also confirmed that it is required, under its licence, to act in a way that is best calculated to achieve efficiency and value for money. The enabling mitigation DCO Requirement that PoTLL is submitting into the Examination would achieve this by ensuring that the North Portal Junction is designed to a standard that is compatible with the TLR.

- 5.5.2 PoTLL also considers that there should be a general obligation placed on the Applicant when designing, constructing, operating and maintaining the authorised development, to make sure that the Applicant has due regard to the prospect of a Tilbury Link Road.

Post Hearing Note: The draft DCO Requirement is set out in PoTLL's DCO Drafting Proposals, submitted at Deadline 4.

The DMRB standards that PoTLL considers are relevant are:
CD109 for Highway Link Design;
CD116 Geometric design of roundabouts;
CD122 Geometric design of grade separated junctions; and,
CD127 Cross-sections and headrooms,
as are applicable for a wide single carriageway road to be connected.

6. **COMPULSORY ACQUISITION HEARING 1 – STRATEGIC CASE FOR COMPULSORY ACQUISITION**

6.1 **Agenda Item 3a(iv) and (v) – Land subject to Temporary Possession**

- 6.1.1 The Applicant has referred to Temporary Possession (TP) land as being that which is *required* for the safe construction of the works. It does not appear to PoTLL that all land that is proposed to be subject to TP *is* required for this purpose. The Applicant has not demonstrated that the land is proportionate or necessary. Some flexibility is needed and is conventional, however the Applicant is seeking to retain all optionality even where it has confirmed that the land is no longer required.

Post Hearing Note: The Applicant confirmed during CAH1 that it would be removing two areas of land within plot 21-10 from the TP powers. This is welcome, however the delay in the Applicant taking this step is concerning. There are other areas where a proper application of the mitigation hierarchy would result in a reduced area of land subject to TP powers. This is discussed further at paragraphs 6.2 and 6.3.

- 6.1.2 Article 37 (Statutory Undertakers) provides an extreme breadth of power that, in PoTLL's view, would not allow the Secretary of State to be satisfied that the test under section 127 of the Planning Act 2008 has been met, and that compulsory acquisition could take place without detriment to PoTLL's statutory undertaking.
- 6.1.3 Whilst article 37 is well precedented in principle, the particular drafting of this DCO would allow a much greater potential land take. The difference is most marked in respect of the A303 Stonehenge DCO. PoTLL is seeking a clear justification for the approach taken by the Applicant, to demonstrate that there is a specific need for this power.

Post Hearing Note: The Applicant agreed, during CAH1, to make some drafting changes to the next iteration of the draft DCO in an effort to address this issue. This change is insufficient to address the underlying concern that implementation of the Applicant's draft DCO would cause a serious detriment to PoTLL's undertaking. This is discussed further at paragraph 6.4.

6.2 **Additional Detailed Submissions – Land Not Required Remaining Subject to Temporary Possession Powers**

- 6.2.1 Plot 21-10 is an example of the Applicant seeking TP powers over land that is not required and failing to remove this in a timely manner after confirming that the land is not needed. Whilst the concern around this plot appears, subject to the Applicant's Deadline 4 submissions, to have been resolved, PoTLL is concerned that this may not be the only instance of powers being sought where they are not needed.

- 6.2.2 By way of background, PoTLL requested two areas of hardstanding within plot 21-10 be removed from the Order limits in March 2023. The Applicant then sought to confirm whether these areas were required for abnormal indivisible load (AIL) movements. On 13 July 2023, the Applicant confirmed to PoTLL that it did not need the two areas for AIL movements, being the purpose plot 21-10 had been included within the Order land. The Applicant did not, however, propose to remove the land from the Order limits, instead suggesting that additional wording be added to the Protective Provisions (PPs) for PoTLL such that temporary possession of these areas would not be taken without PoTLL's permission.
- 6.2.3 Notably, this is the only instance in which the Applicant has been open to providing PoTLL with any protection from the exercise of DCO powers within the PPs, something that is required generally by PoTLL in order to protect PoTLL's undertaking from serious detriment.
- 6.2.4 The proposed way of dealing with the two areas was not satisfactory, as whilst the areas remained in the DCO, PoTLL could not provide appropriate comfort to prospective tenants that the land would not be taken by the Applicant. The proposed drafting (i.e. additional wording added to the Protective Provisions for PoTLL) was more complex and open to greater uncertainty than removing the areas from the Order limits as it attempted to describe the areas that could not be taken, without reference a plan. It also saw the Applicant maintain a power of temporary possession over land that it had confirmed was *not needed* for the construction of the LTC Scheme. PoTLL made submissions to this effect within its Written Representation [REP1-274], at paragraphs 2.3.2 to 2.3.5. In the Applicant's reply, [REP2-050], it stated only that it would 'continue to work with PoTLL on land needed and refine commercial arrangements'.
- 6.2.5 PoTLL notes that, between 13 July and 15 September (the date of CAH1), the Applicant had notified the ExA of two change applications. Neither of these included a reduction in the Order limits to reflect that this land was not required.
- 6.2.6 PoTLL is wholly unclear why the Applicant did not immediately remove the land from the Order limits once it had ascertained that it was not needed. This could have been completed for Deadline 2 if the Applicant did not consider it constituted a change (as appears to now be the case), or alternatively included in the second or third change application if reducing the Order limits was deemed to be a change.
- 6.2.7 Whilst the Applicant appears now to be taking the steps necessary to resolve the issue of taking powers of temporary possession over land that it has no requirement for, it is concerning that it has taken more than two months for the Applicant to even consider taking this step. The implication of this is that there may be other cases, equally clear cut or where the need for land powers is less certain, where the Applicant continues to request powers that are not required and, accordingly, cannot be justified as meeting the relevant statutory tests or being in the public interest.
- 6.2.8 PoTLL considers, in the context of the Applicant's approach to date, that it is reasonable to request clear justification for land powers wherever it is disputed that the land take or temporary possession powers are required.

6.3 **Additional Detailed Submissions – Land Not Required if Mitigation Hierarchy Applied**

- 6.3.1 PoTLL has discussed in its Written Representation [REP1-274] that the Applicant is seeking to take temporary possession of land that forms part of the Tilbury2 water vole mitigation area. Schedule 11 to the draft DCO ([REP3-077] Clean; [REP3-078] Tracked) sets out the purpose for which temporary possession may be taken over these plots to be 'temporary construction compound at surface for facilitating main works at the A122 Lower Thames Crossing north portal and tunnel approach, including workers accommodation, batch plants and segment cast factory'. PoTLL understands that this is intended to cover

the installation and operation of a conveyor in this area, intended to connect the CMAT conveyor to a radial conveyor within the North Portal construction compound.

- 6.3.2 A conveyor in this location will have negative impacts to the water vole mitigation area through habitat disturbance and diminished habitat quality due to dust dispersal. In applying the mitigation hierarchy, the Applicant should be seeking first to avoid those adverse impacts. The Applicant should identify if there is any reasonable alternative to a conveyor, located in this area. It is only if there is no such reasonable alternative that the Applicant should be considering how to prevent, minimise or compensate for the adverse impacts.
- 6.3.3 The Applicant has not done this. Instead, a REAC commitment, number TB023, has been provided that seeks to ensure the careful siting of the footings of the conveyor. However, this presupposes that a conveyor is required and no reasonable alternative exists.
- 6.3.4 The Applicant has not made any commitment to use the CMAT at Tilbury2, which renders the need for a conveyor inherently uncertain. There are also alternatives to transporting materials that are reasonable, including use of rail to the north of the water vole mitigation site (where environmental impacts would be reduced to possible disturbance of an artificial sett and disturbance to the remaining lytag brownfield site). The Applicant has also assessed the use of HGVs to transport aggregates, and has not committed to any measure to expressly avoid or reduce HGV use. Rail or short-distance HGV transfer both provide a less impactful solution to materials transfer between the CMAT and the construction compound than constructing a conveyor across the specific mitigation site, housing a protected species.
- 6.3.5 Were the mitigation hierarchy applied appropriately, it would be immediately clear that constructing a conveyor, however carefully sited, over a habitat mitigation site is to be avoided, with the alternatives preferred. The Applicant has not demonstrated that this land is needed and the use of it unavoidable, and has not demonstrated that taking temporary possession of this land is in the public interest. As such, PoTLL can see no justification for the retention of this land within the Order limits, and considers that the Applicant has not made out its case to justify temporary possession powers in this area.
- 6.3.6 PoTLL therefore requests that plots 21-18 and 21-19 are removed from the Order limits in order to avoid impacts to the water vole mitigation area. Where the Applicant is seeking to include land powers over wildlife habitat, such as specific mitigation, this should be reviewed in order to confirm that, following application of the mitigation hierarchy, the impacts to the habitat are necessary and unavoidable. Where this is not the case, the land must be removed from the Order limits in order for the Applicant to have demonstrated compliance with the tests for compulsory powers.

6.4 **Additional Detailed Submissions – Excessive Scope of Article 37 (Statutory Undertakers)**

- 6.4.1 PoTLL wishes to preface its submissions in respect of article 37 by confirming that, whilst a mark-up of its proposed PPs has been received, the Applicant has not agreed to any provision to protect PoTLL from the exercise of DCO powers over its land, including powers of compulsory acquisition and temporary possession. The Applicant instead has suggested the management of the interaction of DCO powers with PoTLL's undertaking is done solely within the framework agreement currently being negotiated. Accordingly, whilst article 37 is said to be subject to Schedule 14 (protective provisions), there is no relevant provision within PoTLL's PPs that would protect it from the operation of article 37.
- 6.4.2 In the absence of clear and unequivocal protective provisions on the face of the DCO, PoTLL will be maintaining its objection that the Applicant's request for compulsory acquisition (and temporary possession) powers over its land will cause serious detriment to its statutory undertaking.

6.4.3 Article 37(1) states:

“37. (1) Subject to the provisions of Schedule 14 (protective provisions), article 28 (compulsory acquisition of rights and imposition of restrictive covenants) and paragraph (2), the undertaker may—

(a) acquire compulsorily, or acquire existing or new rights or impose restrictive covenants over, any **Order land** belonging to statutory undertakers; and

(b) extinguish the rights or the benefit of a restrictive covenant of, or remove or reposition apparatus belonging to, statutory undertakers over or within the **Order land**.”

6.4.4 Article 2(1) defines “Order land” as “the land shown on the land plans which is within the limits of land to be acquired or used permanently or temporarily, and described in the book of reference.”, i.e. all of the land within the Order limits.

6.4.5 It merits note that the term “Order limits” is also defined in terms that would appear to include all of the land within the Order limits. It isn’t clear why the two terms have been defined so as to appear to cover the same land.

6.4.6 The consequence of this is that, under this provision as drafted, the Applicant would be entitled to compulsorily acquire the temporary possession land listed in Schedule 11 to the DCO where that land belonged to a statutory undertaker. This is of a particular concern to PoTLL (as a statutory undertaker) given the extent of its land that the Applicant would be authorised to compulsorily acquire as a result of this provision – and, as already advised, the Applicant has, to date, refused to consider providing a protection from the exercise of these powers within protective provisions for PoTLL’s benefit. The powers as drafted would enable the Applicant to circumvent the expiry provisions within the agreed leases and acquire on a permanent basis, or possess temporarily (but potentially indefinitely due to the drafting of article 27), so much of that land as it desired, with no check or balance against the impacts to PoTLL’s statutory undertaking.

6.4.7 The Applicant advised in CAH1 that it would be amending the drafting to include the same restriction as at article 35(10), and a further exclusion equivalent to that in article 33(8). These provisions set out that the Applicant may not compulsorily acquire the land listed in Schedule 11 (land of which temporary possession may be taken), and confirm that the power does not entitle the Applicant to acquire easements or other rights or impose restrictions on, over or under the bed of the river Thames.

6.4.8 In principle, PoTLL agrees that applying the article 35(10) restriction to article 37 will resolve the issue of the provision authorising compulsory acquisition of land belonging to statutory undertakers that is shown in ‘green’ on the land plans. However, PoTLL reserves its position as the way in which the Applicant alters the drafting in order that it satisfactorily operates with article 37(3), which expressly refers to an extinguishment power being exercised over land being possessed temporarily, may require further consideration.

6.4.9 One solution that is precedented in the recently re-determined A303 (Amesbury to Berwick Down) Development Consent Order 2023, is to amend the definition of ‘Order Land’ to only include that land that is subject to compulsory acquisition powers (whether for land generally, rights only, or subsoil only).

6.4.10 Finally, the PPs for the benefit of PoTLL must be updated to include clear and unequivocal protection from the exercise of DCO powers including powers of compulsory acquisition and temporary possession. This must be included on the face of the Order to ensure that the Applicant *cannot* overreach and acquire land over which it should have only powers of temporary possession.

- 6.4.11 The importance of robustly drafted PPs is crystallised by this drafting of article 37. Whilst the extent of the overreach appears unintended, and the Applicant indicated it will take steps to address the scope of this provision once it was brought to its attention, the power was nevertheless included in the draft Order. Intentional or inadvertent, the result was the same: an excessive and unjustified power of compulsory acquisition over any and all statutory undertaker land.
- 6.4.12 It is therefore imperative that appropriate protection is provided within PoTLL's PPs to ensure that its statutory undertaking is not caused serious detriment by the LTC Order. This applies in respect of the known and understood powers, but applies equally to any drafting errors that may not be identified during Examination but would, unchecked, cause serious detriment to PoTLL's undertaking.

6.5 **Agenda Item 4 – Statutory Undertakers**

- 6.5.1 PoTLL confirms that a draft framework agreement is being considered. PoTLL remains wholly dissatisfied with the form of the Protective Provisions (PPs) in the draft DCO. These are materially different and confer much less protection on PoTLL than the PPs for the benefit of the PLA, for reasons that are not understood. PoTLL must be content with the PPs as well as entering into a satisfactory framework agreement before it would be in a position to withdraw its objections.
- 6.5.2 At present, PoTLL has no protection from a swathe of DCO powers, not least those around compulsory acquisition and temporary possession. Until this is remedied, PoTLL will maintain its objection that the DCO will cause serious detriment contrary to section 127 of the Planning Act 2008. It is entirely conventional for protection to be included on the face of the Order as well as in a legal agreement. The mark-up of the PPs received from the Applicant is far from satisfactory.
- 6.5.3 PoTLL continues to discuss the terms of a framework agreement and the content of the PPs with the Applicant, and is optimistic that agreement can be reached on these matters in the coming weeks.