



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

DEADLINE 8 SUBMISSION

5 December 2023

1. INTRODUCTION

- 1.1 This document sets out Port of Tilbury London Limited's ("PoTLL") submissions for Deadline 8. It incorporates:
 - 1.1.1 a summary of PoTLL's submissions from the Hearings held at the end of November 2023 following its attendance at ISH12-14;
 - 1.1.2 responses to the ExA's Actions arising from the Hearings;
 - 1.1.3 PoTLL's response to the ExA's comments on the draft DCO; and
 - 1.1.4 updates on various other matters that have been raised in Examination, in the light of other timetabled deliverables for this Deadline.
- 1.2 Rather than being organised on a 'per-event' basis, this document is focussed on the key remaining issues from PoTLL's perspective: DCO drafting matters, traffic impacts and what is secured in the control documents.
- 1.3 These submissions have been prepared following extensive discussions with other Interested Parties and the Applicant to seek to make progress wherever possible. This has included an extensive all day meeting to try and move forward with the proposed Framework Agreement, which remains as yet uncompleted.
- 1.4 However, PoTLL will continue to work with the Applicant to progress matters as much as possible, with final SoCG and PADSS to be submitted at Deadline 9a, as requested by the Applicant. To this end, PoTLL welcomes the updates made to plot 21-37 of the Land Plans to remove the areas of land that PoTLL has been seeking to be removed since the LTC application was submitted.
- 1.5 At Deadline 9, PoTLL also anticipates working with DP World and the PLA, submitting an update to their Joint Statement on Ports policy in light of the Applicant's response to the first version of that statement submitted at Deadline 3 [REP3-196].

2. DCO DRAFTING - REQUIREMENTS

Introduction

- 2.1 As the ExA is aware, there was extensive discussion at the Hearings in respect of the proposed Requirements in relation to Orsett Cock Roundabout and Wider Networks impacts, with an associated action on all relevant Interested Parties to work with the Applicant to seek to make progress on an agreed position on the first Requirement. These discussions have taken place, and a Joint Statement between DP World, Thames Enterprise Park, Thurrock Council and PoTLL has been prepared to update the ExA on the latest position. This has been submitted at Appendix D of the Councils' Deadline 8 submissions and should be considered as also constituting PoTLL's submissions on those Requirements.
- 2.2 This is with the exception of the Action Point from ISH13, asking PoTLL if it would need to move to a position of an 'in-principle' objection to the LTC if the DCO was made with an Orsett Cock Roundabout Requirement in the form proposed by the Applicant.
- 2.3 This submission can confirm that PoTLL would not go as far as to move to an outright 'in-principle' objection if this was the case. However, as set out in its submissions to date, the Orsett Cock Roundabout no longer 'working' once the project is operational would mean that the project would be failing. As such, the Secretary of State would need to be convinced when determining the DCO application that the Applicant's design proposals for the junction are sufficient. PoTLL's (and the other Interested Parties') submission is that the Requirement as currently drafted does not ensure that the Secretary of State is given enough information to enable him/her to make that judgement.

The Applicant's form of Requirement cannot be demonstrated to meet the required tests, particularly failing in relation to precision and enforceability of the necessary monitoring and mitigation measures to address the identified direct and indirect effects of the proposed development.

- 2.4 The submission in this document therefore focusses on the Asda Roundabout and Tilbury Link Road passive provision Requirements.

'Asda Roundabout' Requirement

- 2.5 There was also discussion in respect of the 'Asda Roundabout' Requirement, dealing with construction phase traffic impacts to the local highway network. The latest preferred version of this drafting was contained at Appendix 3 to PoTLL's Deadline 6 submission [REP6-163], with the drafting also agreed by Thurrock Council as local highway authority.
- 2.6 The Applicant has made clear that it does not consider that such a Requirement is necessary, with its reasoning given in its response to an earlier iteration of PoTLL's drafting, set out in [REP6-123]. In short, the Applicant considers that such a Requirement is not required as it considers that there are sufficient protections and mechanisms contained within the Outline Traffic Management Plan for Construction ('OTMPfC').
- 2.7 PoTLL recognises that the OTMPfC sets out a range of measures to be taken to manage LTC construction traffic. However, as the Applicant acknowledges, LTC construction is a complex matter which will have a number of variables influencing the impacts and consequential effects that are caused during the construction phase, including a wide range of traffic management measures, and the likely imposition of construction worker travel routes through the Asda Roundabout that would change the modelled outcomes.
- 2.8 It should also be remembered that construction of the LTC is taking place in the context of access to the northern compound being taken from the SRN using Port access roads, with the potential for significant effects to be caused to the regional and national economy if impacts are not monitored, managed and mitigated properly. This is why PoTLL has been seeking to agree an additional set of Protocols with the Applicant, given the need for certainty that impacts and incidents will be dealt with as soon as possible. It is notable that the Applicant has agreed that such Protocols would be acceptable to it, but it is also notable that these Protocols have yet to be agreed and PoTLL cannot rely on them being agreed to pre-emptively consider the proposed mitigation mechanisms to be acceptable.
- 2.9 Proper accounting for these issues is important in the context of the Applicant's own submissions, which have demonstrated that there are significant impacts arising from the construction traffic movements associated with the northern tunnel compound activities. This means that a dedicated suite of mitigation is likely to be required for those activities. This is discussed further in section 4 below.
- 2.10 This Requirement ensures that a package is delivered that is specific to the impacts caused and which recognises, from the outset, the need to ensure adverse impacts are avoided or adequately mitigated. This is a much better approach than waiting for an impact to be caused and seeking to 'manage' a way out of it through an iterative process with impacts unmitigated in the 'discussion' period, without any certainty that issues will be able to be resolved.
- 2.11 As such, whilst the various commitments in the CTMPfC are welcomed, they are currently broadly drafted, and reference a number of things that 'could' happen, through the Traffic Management Forum ('TMF'). Ultimately, however, the TMF is just a 'talking shop' once construction starts with no 'teeth' to ensure that a specific set of measures are brought forward and complied with.
- 2.12 Bearing in mind the policy tests for the imposition of Requirements, PoTLL considers that the imposition of its suggested Requirement is necessary and relevant to planning (given the transport,

air quality, noise and socio-economic impacts of delays being caused) and provides the required precision and enforceability. Crucially, compared to simply relying on the OTMPfC, it is:

- precise, through ensuring specific mitigation measures responding to specific modelling are undertaken, rather than something unknowable through the TMF; and
- enforceable, as failure to implement the mitigation measures can then be enforced as something agreed pursuant to the Requirement, rather than something that is discussed at the TMF and not implemented or properly dealt with.

2.13 It is therefore not only appropriate, but necessary for these matters to be dealt with through a DCO Requirement, rather than simply another matter to be dealt with through the control documents mechanisms. PoTLL submits that it is entirely reasonable for the Applicant to be required to consider and plan for a scenario where its limited mitigation proposals are not capable of adequately mitigating the impacts on the Asda Roundabout or can only do so with consequential impacts for the construction of the Scheme.

2.14 It is noted that at ISH14, the Applicant indicated it considered that having a Requirement as well as the OTMPfC would lead to the potential for confusion as to what measures are sought to be brought forward.

2.15 In PoTLL's submission, this fear is unfounded, as the measures in the OTMPfC will be able to flow from any scheme developed pursuant to this proposed Requirement, with the relevant Traffic Management Forum for the north side of the River able to consider how the Contractor is performing against the approved scheme. This relationship could be made even clearer through making an amendment to draft Requirement 10, as follows:

No part of the authorised development is to commence until a traffic management plan for the construction of that part which is substantially in accordance with the outline traffic management plan for construction has been submitted to and approved in writing by the Secretary of State and which incorporates where relevant the scheme of construction traffic mitigation for Work Nos. CA5 and CA5A approved under Requirement XXX, following consultation by the undertaker with the relevant local highway authority and where different, the relevant planning authority and other bodies identified in Table 2.1 of the outline traffic management plan for construction on matters related to their functions.

2.16 PoTLL and Thurrock Council therefore continue to seek the imposition of a Requirement to ensure that the impacts of construction are properly planned for and managed. However, they also recognise the concerns that were raised at the Hearing in respect of drafting referring to 'material worsening' and 'measurable thresholds'.

2.17 PoTLL and Thurrock Council consider that it is necessary for the Requirement to have a process to allow for the creation of criteria by which a scheme of mitigation and monitoring can be judged. However, they recognise that it is difficult to create one at this point in time as flows related to construction traffic are subject to so many variables. It is considered appropriate, however, for the Requirement to provide that the measurable thresholds are a matter for the Secretary of State to determine at the time of the submission of the mitigation scheme, to ensure that such a scheme achieves its purpose and function of adequately avoiding and mitigating impacts.

2.18 It is acknowledged, however, that it would be appropriate to define 'material worsening' in order that all parties are clear as to the objectives that any mitigation should achieve (i.e. to alleviate that material worsening). The parties would therefore suggest that the following wording is added to subparagraph (6) of the Requirement:

"material worsening" means the creation of unreliable, unsafe or inefficient journeys through the Asda roundabout, having regard in particular to traffic going to and coming from the Port of Tilbury,

environmental impacts in the town of Tilbury, the need to minimise delays to all traffic using the Asda roundabout and the need to ensure that highway safety is not compromised”.

- 2.19 Further to the above, **Appendix 1** presents this proposed Requirement, as submitted by PoTLL at Deadline 6 but revised as per paragraph 2.18 above.

Tilbury Link Road Requirement

- 2.20 PoTLL notes the Applicant’s comments explaining its proposed approach to the drafting of this Requirement in the draft DCO submitted at Deadline 7, which builds on the version submitted by PoTLL at Deadline 6.

- 2.21 As set out at ISH14, PoTLL accepts the addition of ‘reasonably’ in sub-paragraph (1) and the addition of the tailpiece at sub-paragraph (3)(b). However, it does not accept the change in sub-paragraph (3)(c) to reference Regulation 26 (the adopted Local Plan) rather than Regulation 19 (the proposed submission draft of a Local Plan).

- 2.22 Regulation 19 versions of the Local Plan are the ‘proposed submission’ version of a Local Plan and therefore set out the true picture of a council’s policy aspirations and proper planning for an area, with the Tilbury Link Road as part of that. Given Thurrock Council’s responsibility and duties in planning for the area and its submissions in the Examination, it is clear that the Tilbury Link Road will form a key part of its development plan moving forward.

- 2.23 The Applicant will be aware that Regulation 19 versions of Local Plan are usually seen as material considerations in the planning process; and that this is reflected in the NPPF, para 48:

48. Local planning authorities may give weight to relevant policies in emerging plans according to: a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given); b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).

- 2.24 PoTLL therefore submits that:

2.24.1 in respect of (b) of NPPF paragraph 48, given the position of PoTLL and the designated Freeport, it seems highly unlikely that significant objections would be raised to a policy which supported a Tilbury Link Road; and

2.24.2 in respect of (c) of NPPF paragraph 48, in light of emerging practice with regard to National Development Management Policies and prospective NPPF reforms, it would be difficult for Thurrock to develop a Local Plan inconsistent with the Framework.

- 2.25 In this context, PoTLL is simply asking that NH treat any *emerging* TLR-based policy the same way that LPAs would, in bringing forward its scheme.

- 2.26 It is also important to remember that the point of sub-paragraph (3) is to reflect that, at present, whilst all parties want a TLR to come forward, it is not entirely clear how it is to be delivered. Given the current slow pace of the Thurrock Local Plan process, waiting for adoption could lead to unsustainable development if provision for TLR is not provided for at this earlier stage, as well as increased public expenditure.

- 2.27 Reference to the emerging local plan ensures that even if National Highways has decided not to take a TLR forward through RIS3 (where it is currently planned for), it still designs its schemes in a way which reflects what is happening around it, thus complying with its:

- scheme objectives for the LTC;
- Licence obligations to 'co-operate with other organisations for the purposes of long-term planning; ensuring the resilience of the network; and ensuring efficiency and value for money; and
- its Licence and Circular 01/2022 obligations to conform to the principles of sustainable development.

2.28 Following discussions with Thurrock Council, the Council has confirmed in the Deadline 8 joint submission referred to in paragraph 2.1 above that it is now also content with the Tilbury Link Road passive provision Requirement in the form proposed by PoTLL (rather than its own version), as tweaked by the Applicant in respect of sub-paragraphs (1) and (3)(b).

2.29 However, as part of agreeing to this approach, and a point with which PoTLL agrees, it is considered that sub-paragraph (3)(d) of this Requirement needs further development to ensure that the proposals that could count as the Tilbury Link Road are not just those brought forward by the undertaker, but those that have been considered by all parties, and for it to be the Secretary of State to determine.

2.30 PoTLL and the Council therefore propose a new paragraph (3)(d) and a new sub-paragraph (4) to this Requirement, alongside some small changes to sub-paragraphs (1) and (2) to ensure drafting sense, so it reads in full as follows:

17.—(1) The undertaker must undertake the detailed design of Work Nos. 5D, 5E and 5F in a manner that reasonably facilitates and accommodates a connection to the proposed Tilbury link road to the extent the route and design of the proposed Tilbury link road is available before the date of submission of the final iteration of the detailed design of the tunnel area north of the river Thames to the design review panel pursuant to clause PRO.01 of the design principles.

(2) If sub-paragraph (1) applies, Work Nos. 5D, 5E and 5F must be designed in detail and constructed by the undertaker so as to reasonably facilitate and accommodate a connection with the proposed Tilbury link road in compliance with the Design Manual for Roads and Bridges.

(3) In this paragraph, "the proposed Tilbury link road" means a proposal for a highway between the A122 and the town of Tilbury, passing through or in the vicinity of the Port of Tilbury, which includes a connection with or junction onto the A122, which is—

(a) reflected in a preferred route announcement by the Secretary of State;

(b) the subject of a request for a scoping opinion submitted to Thurrock Council under regulation 15 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, or an application to the Secretary of State under regulation 10 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017, whether the road forms the whole or part of the subject of the request for a scoping opinion (unless the Secretary of State directs the undertaker not to consider such a proposal as the proposed Tilbury link road);

(c) included in a local plan adopted by the relevant planning authority under regulation 19 26 of The Town and Country Planning (Local Planning) (England) Regulations 2012; or

~~d) in the absence of that announcement, such other proposal as is reasonably considered by the undertaker to constitute the likely route and function of that link road.~~

(d) submitted by any person to and approved in writing by the Secretary of State, following consultation with the undertaker, Thurrock Council, Port of Tilbury London Limited and any other person the Secretary of State considers appropriate.

(4) Any proposal submitted under sub-paragraph 3(d) must identify the likely route and function of the proposed Tilbury link road so that the Secretary of State can determine if the proposal should constitute the proposed Tilbury Link Road for the purposes of this paragraph.

3. DCO DRAFTING – PROTECTIVE PROVISIONS

- 3.1 PoTLL and the Applicant are continuing to discuss the drafting of the Protective Provisions and a version of the Protective Provisions is with the Applicant for comment as at the time of this deadline. The version of the Protective Provisions with the Applicant includes drafting dealing with the points discussed below.
- 3.2 As such, at this stage, PoTLL does not submit a revised form of the Protective Provisions, to seek to enable progress to be made. PoTLL and the Applicant are working towards submitting a form of the Protective Provisions at Deadline 9 which presumes that an Agreement is reached, with associated preferred forms of drafting. PoTLL will then submit at Deadline 9A its preferred form of the Protective Provisions to deal with any outstanding points of disagreement and drafting in relation to the 'with Agreement' scenario, and to deal with the drafting necessary in the alternative 'without Agreement' scenario.
- 3.3 In that context, PoTLL would note the following points in respect of the Protective Provisions, so the ExA is clear on its position on these matters:
- 3.3.1 (with reference to the ExA's comments on the draft DCO) its contentedness with the drafting of article 18 is subject to PoTLL's approval of its use in respect of its undertaking forming part of the Protective Provisions – it welcomes the Applicant's inclusion of this in the latest draft DCO;
- 3.3.2 (as set out at ISH14), article 65 applies to street authorities giving consent under article 12 (temporary closure, alteration, diversion and restriction of use of streets). This would include the undertaker using this power in the Port. It is PoTLL's position that article 65 should not apply to the Port as this matter should be dealt with through the PPs, as part of the specified functions consented by PoTLL, and subject to the dispute resolution in the PPs; and PoTLL will therefore be seeking drafting in the PPs to ensure that this is made clear, i.e. that article 12 is a specified function and article 65 does not apply to it;
- 3.3.3 given the concerns raised by PoTLL and others as to the differences between 'begin' and 'commence' in the DCO, that PoTLL's protections in the Protective Provisions should apply from any of the specified works being 'begun' rather than 'carried out' or 'commenced'; and
- 3.3.4 at ISH12, ISH13 and ISH14, PoTLL consistently noted its position of wanting to be a consultee on key control documents (as discussed further in section 4 below). The Applicant's view was that this was not needed (above and beyond what has already been catered for) as the relevant protections would be able to come through the Framework Agreement and associated protocols. PoTLL's position is that:
- (a) in the absence of Agreement being reached, the documents need to cater for a 'no-Agreement' scenario (notwithstanding that both parties are very much working towards such a scenario not happening); and
- (b) notwithstanding this, the structure set out in the control documents will exist above and beyond what is agreed in the Framework Agreement. For example, whilst the parties are seeking to agree a Traffic Protocol that will include accounting for construction worker movements, the development of the Site Specific Travel Plan outside of that Traffic Protocol will directly impact on what the Applicant then comes to PoTLL to talk about pursuant to the Traffic Protocol, e.g. how many workers actually route through the Asda Roundabout. It is therefore vital that it is clear that PoTLL is 'in the room' with other consultees when matters which affect its undertaking are being discussed, above and beyond the commitments made solely by the Applicant to PoTLL. As such, to ensure that this is something dealt with on the face of the DCO (as the Secretary of State is unable to amend control documents on determining the DCO application), PoTLL will be providing a paragraph in its Protective Provisions providing that it is a consultee on the key matters that it has raised concerns about during Examination; and

3.3.5 more generally, in the absence of an Agreement, PoTLL will need the Protective Provisions to reflect the key protections it is seeking in the Framework Agreement (as consistently set out in its submissions throughout the Examination) and so, as discussed above, it will provide drafting for these if the Agreement is not able to complete by Deadline 9A (dealing with, for example, breaches of the Tilbury2 Order and managing traffic impacts within the Port).

3.4 Furthermore, PoTLL makes the below submissions (as it did at ISH14) on three of the key conceptual points critiqued by the Applicant in its Deadline 6 and 7 submissions [REP6-087] and [REP7-190].

3.5 The Applicant sets out in the latter that these are positions 'unlikely to be agreed', however PoTLL is still working earnestly towards agreement with the Applicant on these points.

Issue	NH Position	PoTLL Position
Utilities	<p>With regards to utilities works within the Port, the Protective Provisions were also updated at D6 to incorporate utilities works within the boundaries of the Port (as widely defined – see above) within the scope of the plan approval rights. In addition, provision has also been added within the dDCO submitted at D7 [Document Reference 3.1 (9)] to enable PoTLL to exercise plan approval rights over works which might involve the grant of an easement strip that encroaches into Port land by virtue of any exclusion or protection zone alone. This means that the Port will have the opportunity to consent to the plans for any utilities work that might affect the Port, even where the extent of that effect is limited to easement provisions only.</p>	<p>The Applicant is conflating the position of plan approval (which directs how works can take place and are designed) and the impacts associated with property provisions – this can range from the ability to 'lift and shift' when either party may want to develop (e.g. for National Grid Electricity Transmission, given their development aspirations, and similarly for PoTLL), the types of uses that are permissible within an exclusion zone, and the nature of the access rights the Statutory Undertaker ('SUs') would have over Port land. These are all matters that have been a matter of negotiation with the plethora of SUs who already have rights within the Port.</p> <p>As such, whilst PoTLL welcomes the latter commitment from the Applicant, it does not solve the fundamental issue that PoTLL needs to be able to approve the property rights granted by a third party over its land, to protect its statutory undertaking.</p> <p>Furthermore, given the wide ambit of article 8, 28(3) and 37(3) and (5), the protections in the Protective Provisions (in both plan approval and land powers terms) need to account for the different delivery arrangements for utilities works that these articles provide for.</p>
Land Powers	<p>The Applicant's position, as set out at D6 is that the consent provisions being sought are both (i) unnecessary because of the works protections being proffered and (ii) run the risk of commercial disagreements dictating the progression of the Project, which again is unnecessary given the tried and tested approach available in the context of compulsory purchase law and practice.</p> <p>PoTLL seeks to identify other provisions within the draft Lower Thames Crossing Order arguing that these provisions demonstrate that PoTLL is being treated differently to other statutory undertakers.</p>	<p>PoTLL considers that the Applicant's position is fundamentally misconceived. In its Deadline 6 submission [REP6-163], PoTLL set out all the reasons why the Applicant's proposed land powers could cause serious detriment to the statutory undertaking, building on its Written Representation submitted at the start of Examination.</p> <p>The Applicant, in its Deadline 6 and 7 submissions, has not responded to those points. PoTLL has been clear throughout that, untrammelled, the land powers could adversely impact upon the operations of the Port, including its statutory Open Port Duty.</p>

Issue	NH Position	PoTLL Position
	<p>The Applicant strongly disagrees with this suggestion. The provisions PoTLL has cited relate to the acquisition of apparatus and associated easements and land interests not a general obligation to secure consent for the exercise of land powers of the type PoTLL is seeking. The consents/agreements proffered in those cases are closely linked to the Applicant's obligation to ensure that, before any proposal to remove electricity, gas or other essential apparatus can be exercised, replacement apparatus and associated rights and facilities must be provided. This is quite distinct to the position with regards Port land, which is more comparable to, for instance, railway land. The Protective Provisions for railway undertakers do not contain a consent provision of the type being sought by PoTLL.</p> <p>The Applicant has also cited precedents. The Applicant would further direct the ExA to the decision letter of the Secretary of State in respect of the previously cited Hinkley Point C Connection Project Development Consent Order 2016 where the specific matter of the appropriateness of including a consent provision was considered in the context of railway land (although note that that Order also does not include consent provisions for the benefit of the Port of Bristol notwithstanding that the scheme in question passed through the operational port). Paragraph 95 of the Secretary of State's decision letter reads: <i>'The first area relates to NRIL's request that provisions should be included in the Order that would ensure that the Applicant could not exercise powers of compulsory acquisition in relation to railway property without consent from Network Rail. The Applicant argued that this provision could compromise its ability to deliver the Development. The ExA noted that NRIL has not objected in principle to the proposal and not presented any evidence to suggest that the proposals would be incompatible with the efficient and safe operation of the railway. The ExA therefore concluded that this provision was not necessary or reasonable and could compromise the Applicant's ability to deliver the Development [ER 8.5.230]. The Secretary of State sees no reason to disagree with this conclusion.'</i></p>	<p>As that Deadline 6 submission made clear, in the context of the wide-ranging ambit of a Port's statutory undertaking, as established in the Lake Lothing case; and the sought for land powers which cut right through the middle of the Port, there can be no denying of the harm that could be caused.</p> <p>PoTLL notes the analogy drawn to railway land, when of course the correct analogy is other ports, and the range of precedents set out in the Deadline 6 submission which demonstrate that Ports are given the protection PoTLL is seeking here – again it is noticeable that the Applicant does not engage with these examples.</p> <p>As the Applicant will appreciate, works powers are not the same as land powers, and should be seen together.</p> <p>Furthermore, the standard of consent not being unreasonably withheld is the standard drafting applied across all DCOs, TWAOs and other similar legislation for decades – it is not clear why this is suddenly unacceptable for this project. The principle of the development cannot be re-opened when such consent is sought.</p> <p>Notwithstanding the above, PoTLL is working with the Applicant to seek to find a way through this, by providing sufficient assurances through the Framework Agreement, but in any event, it must be clear that the Applicant's position in this is clearly unreasonable.</p>

Issue	NH Position	PoTLL Position
	<p>The Applicant therefore maintains its position that the provisions being sought by PoTLL in respect of the exercise of the land powers are unnecessary and would be unduly detrimental to the delivery of the Project.</p>	
<p>Indemnity</p>	<p>Progress has been made with regards to the form of indemnity being proffered to PoTLL and the Applicant has proposed an updated form of indemnity in the latest iteration of the dDCO. However, the Applicant does not agree with PoTLL's request that indirect or consequential losses, including loss of profits be indemnified. In this regard, the Applicant notes that the provisions cited at paragraph 2.20.1 of PoTLL's representations actually support the Applicant's position on this point. None of the Lower Thames Crossing provisions cited include the recovery of loss of profits as is being sought by PoTLL but instead refer to losses incurred 'by reason or in consequence of' the relevant works. In fact, this wording has always appeared in the provision proposed for the benefit of the PoTLL. In fact, none of the provisions being cited from other Orders include this wording either. Indeed, the Applicant notes that PoTLL's own recent DCO, the Port of Tilbury (Expansion) Order 2019, does not include such provision for the benefit of any statutory undertaker. The Applicant therefore wholly disagrees with the suggestion made by PoTLL that the inclusion of indirect consequential losses including loss of profits is standard practice or appropriate.</p>	<p>PoTLL's key concern is that as a Port, the fundamental aspect of its undertaking is providing the land and services for tenants and their customers to undertake Port related activities and discharging its Open Port Duty.</p> <p>Any incident or damage caused by the Applicant's works could impact on its tenant's ability to carry out their activities, and if this were to happen, they would claim against PoTLL. This is what PoTLL wishes to be protected against.</p> <p>As such, its key position is to ensure that the indemnity explicitly covers 'claims and demands' and it is grateful that this is provided for in the Deadline 7 version of the DCO.</p> <p>PoTLL accepts that 'loss of profits' is not precedented in an indemnity, but notes the existence of sections 271, and 279-280 of the Town and Country Planning Act 1990 which allow for recovery of loss of profits relating to any land acquired or right extinguished relating to apparatus, or any apparatus removed, for CPOs made under that Act. PoTLL sees no reason why this should not also apply in the world of DCOs, and so will be adding provisions to this effect to its version of the draft Protective Provisions in the no Agreement scenario.</p>

4. TRAFFIC MATTERS

- 4.1 Following review of the Applicant's Deadline 6 and 7 submissions on traffic matters, whilst it will leave detailed submissions on Orsett Cock roundabout to Thurrock Council as local highway authority, PoTLL would make the following summary points:
- 4.1.1 its concerns in respect of the performance of Asda Roundabout and Orsett Cock roundabout during project construction and operation, respectively, have only been validated and reinforced by the Applicant's recent submissions;
 - 4.1.2 for the reasons expressed by Thurrock Council at the Hearing, it is considered that Vissim Model 3.6 underestimates traffic impacts at Orsett Cock roundabout as the Do Minimum is shown to operate worse and the Do Something better; and
 - 4.1.3 as a result the BCR and environmental assessments may need to be re-considered, but at the very least demonstrate the need (and thus mitigation requirements to deal with the impacts caused) to consider impacts using Vissim as well as LTAM.

- 4.2 In respect of Asda Roundabout, PoTLL has the following concerns.
- 4.3 In its Deadline 6A submissions, the Applicant has provided an assessment of the impacts at the ASDA Roundabout resulting from the construction of the project. PoTLL provided an initial response at Deadline 7 [REP7-226] following an initial review. A more detailed review has been carried out and expanded comments are provided below.
- 4.4 The Deadline 6A submission assessment uses Arcady (Junctions 10) local modelling to provide greater clarity on the impacts previously identified at Deadline 3 within the ASDA roundabout VISSIM Construction Assessment Report [REP3-132]. The impacts are summarised as being caused by a combination of construction traffic (consisting of construction staff and HGV movements) and the reassignment of existing traffic due to temporary traffic management measures.
- 4.5 The assessments show impacts at the ASDA roundabout in all three peak hours assessed (07:00-08:00, 08:00-09:00 and 17:00-18:00) and in every construction phase stretching over the anticipated 6 year construction period. The greatest capacity constraints are shown on the A1089 Dock Approach arm, particularly in the 07:00-08:00 peak hour. However, all peak hours, during every construction phase, show the junction to be operating at or over capacity on at least one arm of the junction. The impacts identified in the assessment result in unacceptable increases in delay at the ASDA roundabout throughout the entire construction period. The Applicant accepts these capacity constraints and that they are required to be mitigated.
- 4.6 The latest assessments submitted by the Applicant clearly demonstrate that the ASDA roundabout junction will be impacted during all phases of the 6 year construction period. It is important to consider the latest assessments in the context of both the original assessments provided in the TA [APP-529] and those at Deadline 3 [REP3-129]. The original assessment used the LTAM to determine the impacts, which showed that journey times, and hence delay, would only be affected in the AM peak (08.00-09.00) and only in Phases 1, 3, 4, 5, 6 and 7. Deadline 3 assessments only considered Phases 1 and 6, showing a large impact in Phase 1 in the AM peak. Three different approaches have all indicated that mitigation is required. Despite that conclusion, the Applicant has not sought to develop or assess the effect of its proposed mitigation.
- 4.7 The Applicant has set out that the mitigation is secured by control plans, namely the Framework Construction Travel Plan (FCTP) and the outline Traffic Management Plan for Construction (oTMPfC). Mitigation measures would be implemented in accordance with those Plans.
- 4.8 The control plans seek to mitigate the two identified causes of the capacity constraints at the ASDA roundabout, being the addition of LTC construction traffic and the reassignment of existing traffic onto the junction due to temporary traffic management measures elsewhere on the network. The mitigation will consist of the following non-physical measures:
- delivering temporary traffic management measures that have been designed to result in less traffic being reassigned from local roads onto the ASDA Roundabout; and
 - limiting construction vehicles (both construction HGVs and worker vehicles) from utilising the ASDA roundabout in the peak hours.
- 4.9 In each case, the Applicant has not demonstrated in detail that this approach successfully achieves an acceptable level of mitigation of the impacts at the ASDA roundabout. The Applicant has also not considered if these proposed mitigation methods are practicable or feasible within the wider limitations of the LTC construction programme, through consideration of the knock-on effects on construction cost and timescales.
- 4.10 PoTLL notes the Applicant's updated outline Traffic Management Plan for Construction [REP7-148], submitted at Deadline 7. It is noted that a hierarchy will be adopted such that, where impacts are identified and mitigation is considered necessary, non-physical intervention through the operational controls would, where appropriate, be implemented first to minimise disruption before implementing any physical interventions. PoTLL acknowledges this revision. However, the amendment prioritises

the implementation of non-physical mitigation. Implementation of non-physical mitigation can only be justified where advance modelling demonstrates that it will achieve the requisite level of mitigation. If advance modelling does not demonstrate (to the satisfaction of all stakeholders) that non-physical mitigation is sufficient, then physical mitigation measures must be developed and tested before construction commences.

- 4.11 Physical mitigation, such as the Scheme of Mitigation proposed by PoTLL for the ASDA roundabout provided at Appendix 1 to PoTLL's Summary of Oral Submissions [REP6-163], would provide constraint-free use of the Strategic Road Network (SRN) at the ASDA Roundabout during every phase of construction and during every peak hour. This is confirmed by the Applicant's assessment of traffic flows using LTAM with the addition of the PoTLL mitigation option. The additional traffic flows from construction traffic and reassigned traffic are shown to be able to use the junction without causing detriment to the local road network, minimising the construction impacts on local communities.
- 4.12 Providing physical mitigation at the ASDA roundabout would also positively contribute to the construction of LTC. This would be achieved through enabling a reduction in the overall construction period by allowing construction vehicles to have unhindered access to the SRN during all times of day. By contrast, use of the FCTP and oTMPfC would require construction traffic to avoid the SRN at peak times, with the corresponding slow-down of construction movements. This remains true after offsetting for the initial construction impacts of implementing the physical mitigation, which would be experienced for a far shorter period than the anticipated 6 year construction period.
- 4.13 Physical mitigation would also lead to reductions in the overall cost of mitigation, greater than the cost of implementing the physical mitigation, by allowing contractors to operate throughout the day without delays or unexpected pauses. The impacts on local roads and junctions would be reduced, particularly within the local communities of Tilbury, Chadwell St Mary and Linford. The primary routes in LTAM for construction workers accessing the North Portal Compound are through these communities (with increases of up to 500 vehicles during peak hours) and this is directly linked to the forecast constraints on the SRN.
- 4.14 As such, it is vital that there is certainty that physical mitigation measures are considered, which is provided for by PoTLL and Thurrock Council's proposed Requirement.
- 4.15 It is clear that PoTLL's concerns that the operation of the ASDA roundabout will be significantly impacted by the Scheme's construction traffic and traffic regulation measures elsewhere on the network are well founded and have been reinforced during the Examination. This has been demonstrated by the Applicant, despite construction worker traffic being assessed as using local roads, which are generally unsuitable for high volumes of construction workers, in preference to the strategic road network.
- 4.16 The Applicant's proposals are wholly reliant on the measures in the FCTP and oTMPfC being sufficient to mitigate each of these identified impacts. If the Applicant is confident that its mitigation proposals are acceptable and sufficient (including its commitments in the outline Materials Handling Plan), then there should be no complaint about including in the DCO PoTLL's suggested Requirement, which is supported by Thurrock Council and other key stakeholders, and which simply ensures that the Applicant demonstrates its mitigation proposals to be adequate.

5. CONTROL DOCUMENTS

- 5.1 Across ISH12 to ISH14, PoTLL made a number of submissions in respect of the Applicant's control documents. These, as well as considering the Applicant's responses to IPs' responses to the ExA's Second Written Questions, are summarised below:

Control Document/Related Process	PoTLL Comments
EMP Development	
Basis of EMP2 Measures	<p>The REAC contains the detail of the various environmental commitments that the Applicant is making.</p> <p>It is secured insofar as paragraph 4(3) requires EMP2 to 'reflect' the mitigation measures in the REAC. This leads to considerable uncertainty as to whether the REAC commitments will be secured and implemented.</p> <p>Indeed, the only instances of the word 'reflect' in a DCO relate to the update of certified documents to incorporate ('reflect') the terms of the Secretary of State's decision to grant the Order, the certified documents being amended to the SoS's satisfaction. Proper oversight and enforcement is inherent in that use of 'reflect', something notably absent from this drafting.</p> <p>PoTLL notes by way of contrast that standard practice in DCO drafting is to refer to being 'substantially in accordance with' outline versions of plans submitted with DCO applications. This is the language used in paragraph 4(3) generally, so it is not clear why the Applicant has chosen to apply a lower and uncertain commitment to the REAC of 'reflect', especially given the range of commitments given in the REAC and its use across multiple Requirements.</p> <p>As drafted, the REAC commitments are not secured, and there is no guarantee that the commitments will be implemented in the form set out in the REAC and therefore the required mitigation in the ES is not secured.</p> <p>Furthermore, it is noted that neither the DCO nor the CoCP provide for a mechanism to demonstrate that any changes away from the measures in the EMP First Iteration, or construction methodologies presented in the ES and which has formed the basis of the identification of mitigation measures, will not lead to materially new or materially different effects to those reported in the ES (as is the case with <u>design</u> matters pursuant to article 6 (Limits of Deviation), Requirement 3 or Requirement 8). Again, this is standard practice in DCOs, and without it, there is a lack of certainty.</p> <p>This is of concern as PoTLL seeks to ensure that suitable environmental protection measures are in place during the carrying out of construction works on and adjacent to Port land, to avoid (a) affecting current PoTLL operations; (b) future Port development; and (c) any public consideration that impacts caused by LTC are caused by PoTLL.</p> <p>Whether or not the REAC commitments are placed into a separate document the commitments in the REAC should be secured. If necessary, there could be a mechanism for deviation from the commitments but this should not lead to outcomes that are environmentally worse than the commitments and outcomes to be secured to ensure mitigation.</p> <p>PoTLL made submissions on the content of the REAC directly in its response to ExQ2 at Deadline 6 [REP6-162].</p>
Development of EMP2	<p>Paragraph 2.1.3 of the CoCP sets out the procedure for the approval of EMP2. In particular requiring consultation with the bodies under table 2.1.</p> <p>Table 2.1 provides the list of relevant stakeholders for EMP2 and its associated appendices. PoTLL is not included as a relevant stakeholder, despite the Applicant's intention to use PoTLL's land for the north portal construction compound, and import large quantities of materials through the Port.</p>

Control Document/Related Process	PoTLL Comments
	<p>With the Applicant seeking consent in relation to the carrying out of works in the north portal construction compound area, PoTLL has consistently requested to be added as a consultee in the development of the final Materials Handling Plan, given the impacts of materials handling directly affecting PoTLL, but this is not yet reflected in the CoCP or the DCO.</p> <p>For similar reasons, and given in particular its concerns on Ecology that have not yet been reflected in an agreed Framework Agreement, PoTLL considers it should be a consultee on the development of the EMP Second Iteration, so that it has oversight of the construction environmental management measures that are going to be put in place on land that it owns and will be returned back to it; and relates to activities taking place directly adjacent to port operations.</p> <p>This would be consistent with PoTLL's plan approval role in the Protective Provisions and the types of controls being sought through the Framework Agreement, but are needed for the reasons given in section 3 above.</p>
Ecological Matters	<p>The above matter is exacerbated in light of PoTLL's continued concern (despite the Applicant's response to PoTLL's comments on the ExA's Second Written Questions) that the Applicant's approach to species mitigation does not militate against the possibility that a sufficient number/area of reptile receptor habitat in a sufficient state of maturity and readiness/suitability to receive translocated animals may not be available in a timely fashion to facilitate use of Freeport-designated land within the timescales required by LTC. In situations where reptile translocations cannot be commenced or completed because of the lack of readiness of receptor sites, this would potentially create a knock-on conflict with the Port's ability to develop or otherwise use Freeport-designated and/or adjoining land in which it has interests in a timely manner.</p> <p>In this context, PoTLL particularly awaits the submission of the invertebrate 'heat map' around the North Portal, given the implications for PoTLL's future development and Natural England's evolving position. PoTLL does however remain concerned about the effectiveness of an approach that seeks to defer detail relevant to determination and policy compliance to the REAC process, in a situation where any failure of such processes could have significant implications for the Port's future expansion and by extension the effective and timely delivery of the Thames Freeport.</p> <p>In light of these concerns, unless these matters are able to be dealt with through a signed Framework Agreement between the parties, PoTLL will be seeking to be a consultee for EMP2.</p>
Development of EMP3	<p>Para 2.3.6 of the CoCP [REP6-038] states that the contractors will prepare an EMP3 "with engagement with relevant stakeholders (on matters relevant to their respective functions only) as listed in Table 2.1, and subject to agreement by National Highways."</p> <p>There is no approvals process for EMP3. It is only subject to 'engagement' and the only check or balance on EMP3 is that National Highways agrees to it.</p> <p>Whilst PoTLL is concerned about the carrying out of construction (hence seeking the approval of CA5 and CA5A in its Protective Provisions), PoTLL is also particularly concerned about EMP3 as the operation and maintenance of the western boundary of the National Highways works (including Tilbury Fields) will have direct impacts on the ability of PoTLL to develop its adjacent land, including the strategy for dealing with ecological mitigation and compensation.</p>

Control Document/Related Process	PoTLL Comments
	<p>PoTLL would, at the very least, expect the DCO and/or the EMP to reference that the measures in EMP3 must be in accordance with the measures set out in the REAC and EMP2 which point to EMP3.</p> <p>To this end, and in light of the lack of process for EMP3, PoTLL is seeking controls on how boundary works and maintenance proposals are carried out, through the Framework Agreement.</p>
Preliminary Works	
<p>Definition of Preliminary Works</p>	<p>PoTLL's concern about the Preliminary Works arises because of the broad scope of 'preliminary works' set out in the DCO and further to Table 3.1 of the CoCP and Table 1.1 of the PWEMP.</p> <p>Preliminary works includes sweeping categories of works that have the potential to have significant effects on PoTLL's operations and development, particularly given they could take place some years before main works commence. Based on the current drafting in the draft DCO, concerns include:</p> <ul style="list-style-type: none"> • the diversion and laying of utilities except for listed Work Nos, but including providing services to the northern compound, which therefore must take place within Port land; • the 'receipt and erection of construction plant and equipment for advanced compound areas'. Advanced compound areas includes the northern tunnel compound, so potentially therefore leading to extensive traffic movements through the Port; and • vegetation clearance, disturbing ecology prior to PoTLL's ecological proposals being brought forward. <p>The situation is notable given that the definition of preliminary works is read in conjunction with the definition of "begin". This definition, in article 2(1), refers to section 56(4) of the TCPA definition of 'material operation', but then expressly states that this <i>includes preliminary works</i>.</p> <p>It is therefore clear that the draft Order envisages preliminary works that are themselves material operations – a definition that includes construction in the course of the erection of a building (potentially falling within the definition of 'plant' due to the buildings being inherently temporary); the digging of trenches for foundations (also within the definition of 'plant'); the laying of utilities; and any operation to lay out or construct a road (which could include the haul road through the North Portal compound).</p> <p>It is entirely reasonable that, if the PWEMP is to be approved, there should be clear plans for what constitute preliminary works. PoTLL does not object to preliminary works being potentially material in nature. It is the fact that the preliminary works cannot be clearly identified from the Application documents that is the cause for concern and ensuring that there are appropriate reporting, control and mitigation measures in place in the context of the scale and nature of preliminary works proposed.</p>
<p>Preliminary Works EMP</p>	<p>In general terms PoTLL notes that the PWEMP does not have the same level of rigour attached to it and at the same time does not require detailed approval by any third party.</p>

Control Document/Related Process	PoTLL Comments
	<p>Noting the discussion at ISH14 that Requirement 7 bites on preliminary works, PoTLL's main concern with regard to the preliminary works REAC is in respect of the North Portal, particularly in the context that ExQ3 recognises that there is land that is likely to be contaminated from historical land uses. There are also ongoing waste disposal operations within the North Portal Compound boundary.</p> <p>The ExA identified REAC commitment GS021 as being particularly relevant to this, as it seeks to achieve "implementation of measures to prevent mobilisation of leachate and saline intrusion in consultation with the Environment Agency and Thurrock Council".</p> <p>Table 2.1 setting out the Preliminary Works REAC table <i>does not include GS021</i>. This is of significant concern when preliminary works so clearly includes excavations for utilities and foundations within its scope. GS021 should therefore be added to the Preliminary Works REAC, and PoTLL welcomes that this is an Action for the Applicant to consider for Deadline 8.</p>
Preliminary Works TMP	<p>Preliminary works are covered by Section 6 of the OCTMPfC, and the implementation of this section is secured by Requirement 10(1).</p> <p>Para 6.1.4 states that Appendix A lists the envisaged traffic management measures, including certain preliminary works. However, reviewing Appendix A, traffic management measures are provided only for construction phases 1 to 11. PoTLL understands that these construction phases relate to the 'commenced' construction works, not preliminary matters. Appendix A therefore does not appear to give any indication of what traffic management measures may be needed during the preliminary works.</p> <p>It would therefore assist if the Applicant could provide clarification within the OTMPfC of what traffic management is envisaged during preliminary works, especially given the inherent uncertainty about when these will commence and how long they will take to complete.</p> <p>Similarly, it would be helpful if the Applicant provided an equivalent of Table 4.2 to illustrate the traffic management measures envisaged for the preliminary works.</p> <p>This is of particular concern to PoTLL as the preliminary works definition in the DCO, as expanded upon in the CoCP/EMP First Iteration, includes underground apparatus connections to the northern tunnel compound, and the receipt of plant and equipment to the northern tunnel compound, all of which will involve substantial traffic movements/have the ability to affect traffic movements on the roads surrounding the Port.</p> <p>Reading Requirement 10(1) as compared to Requirement 10(2), which requires approval of a TMP once works 'commence' (which excludes preliminary works), alongside section 2.3 of the OTMPfC, it is clear that no pre-consultation or approval of a preliminary works TMP is envisaged.</p> <p>Whilst PoTLL recognises why the Applicant considers this is acceptable, PoTLL will want to ensure that it has sight of any such TMP. As such, it will be seeking management of preliminary works traffic movements/traffic management measures through the Traffic Protocol it is agreeing with the Applicant, whilst also seeking to be required to be consulted upon the draft TMP pursuant to its Protective Provisions</p>

Control Document/Related Process	PoTLL Comments
	<p>(unless the Applicant would be prepared to make this clear in section 6 of the OTMPfC).</p> <p>Furthermore, at the very least, PoTLL would suggest that the DCO/OTMPfC should explicitly provide that the preliminary works TMP is shared with relevant stakeholders once developed.</p> <p>It is noted that section 6 of the OTMPfC references the creation of a TMF, but it is not clear if this is supposed to be a different type of TMF to the main works TMF. In any event, PoTLL would expect to be invited to be a member of any TMF for the preliminary works in Thurrock – this should be made clear in section 6 of the OTMPfC (i.e. in specific reference to the TMF, rather than passing reference earlier in section 6).</p>
LEMP	
LEMP Development	<p>PoTLL notes the Applicant's comment "<i>It is not possible or appropriate for the Applicant to comment on the efficacy of future water vole mitigation strategies which may be proposed as part of the Tilbury Freeport area as no details have been provided</i>".</p> <p>PoTLL's position remains as discussed with the Applicant: that there should be no residual mitigation requirement for water voles on the Freeport land appropriated by LTC and therefore the question remains relevant to LTC and to the Examination. The Applicant's answer that effects on water voles from the Project "<i>would not result in adverse impacts which could affect the integrity of the population in this area</i>" provides only a high-level assessment. Within the ambit of 'no area-wide population level effects' is still clear scope for site-level and local implications, in terms of distribution and displacement of the species, and knock on implications for the Port. PoTLL remains concerned about that 'no adverse effects on local population integrity', and the scope of licensing envisaged by the LoNI issued by NE, does not provide sufficient reassurance that the impacts on the Port's interests arising from insufficiently particularised or anticipated mitigation measures have been addressed. PoTLL continues to seek assurance that adequate provision for a complete mitigation solution for water voles is suitably built into the Project to ensure no residual or increased mitigation burden for PoTLL.</p> <p>PoTLL is not listed in Table 2.1 as a relevant stakeholder. This is despite the creation of Tilbury Fields adjacent to PoTLL's land, and PoTLL's interest in the ecological status of land in the area as it may impact on Port development, through intensification or migration of species, in particular if habitat is not properly established, maintained and contained. PoTLL is also concerned about the potential for protected species to be established in areas where the zone of protection for the species would restrict development.</p> <p>The Applicant has agreed to a number of measures on this point in discussions on the Framework Agreement which should satisfy PoTLL. However, until that Agreement is finalised, it considers that it should be added as a consultee in this table (or, if not agreed by the end of Examination, PoTLL will seek for this to be included as a matter in its Protective Provisions).</p> <p>PoTLL is concerned that the Applicant replacing existing Open Mosaic Habitat with new Open Mosaic Habitat – paragraph 6.2.16 a. sets out the aim to establish a mosaic of open habitat on Tilbury Fields, and paragraph 6.2.17 b. advises that Open Mosaic Habitat is an existing planting and habitat typology in the area.</p>

Control Document/Related Process	PoTLL Comments
	<p>Paragraph 2.12 meanwhile, sets out that the oLEMP focuses on land parcels “<i>that perform specific landscape and ecological mitigation and compensation functions for the Project</i>”.</p> <p>It therefore appears that the Applicant is counting as a benefit the establishment of Open Mosaic Land, whilst ignoring the destruction of the existing Open Mosaic Land in the same location. It follows that the Applicant’s quantification of mitigation and compensation requirements may be underestimated.</p> <p>In light of these concerns, unless these matters are able to be dealt with through a signed Agreement between the parties, PoTLL will be seeking to be a consultee for the LEMP.</p>
Main Works Traffic and Materials Management	
OCTMPfC Drafting Points	<p>PoTLL highlights the points made in section 4 above in respect of this document. Additionally it has the following concerns in respect of its drafting:</p> <p><u>Role of TMF</u></p> <p>The intended purpose of the Traffic Management Forum is not entirely clear from the control document. The TMF appears as though it is intended to be a body of stakeholders that will be able to approve traffic management measures, respond quickly when issues arise, and identify and require alternative measures or mitigation in the event of unacceptable impacts.</p> <p>However the TMF is not given any of this power, nor is there any urgency in how the Applicant reports to it. Paragraph 2.4.22 advises that the TMF will receive quarterly summary reports – and monthly reports for urgent action on incidents, complaints and problems. It can hardly be considered urgent when the TMF may not be informed of an incident for up to a month after it has occurred.</p> <p>The TMF is attended by the contractor and the stakeholders listed in Table 2.1. However it is only where the contractor supports interventions that a request to modify traffic measures will be provided to National Highways. Even then, the Applicant is not required to implement the changes – only to give ‘due consideration to any such request’.</p> <p>The degree of input that the TMF has is also unclear. Paragraph E.5.3 states that the TMF will be able to input into the development of the Traffic Management Plan (TMP). However this is not reflected in Plate 3.3 which only has the Traffic Manager establishing the TMF; the TMF is not mentioned again until Delivery Stage. The involvement of the TMF should be clarified and Plate 3.3 revised to incorporate that clarification.</p> <p>A decision-making process for traffic management measures (including materials derogations) is set out at Appendix E.5. However, there is no requirement for the Applicant to adopt these decisions. The dispute resolution process has a stated purpose of resolving disputes that ‘may arise during the course of the collaborative efforts within the TMF’. It exists, therefore, to resolve disagreements between the members of the TMF – not to enable the TMF to challenge decisions taken by National Highways.</p>

Control Document/Related Process	PoTLL Comments
	<p>The TMF is powerless to hold National Highways to account. It also will not be provided with urgent information in an urgent timeframe – it is only to be provided monthly. There is an inherent risk that the construction of the Scheme will cause significant traffic impacts through the implementation of traffic regulation measures, where the Applicant has no motivation to implement a solution because the measure is suitable to assist in the construction of the Scheme. The TMF would only be informed about the issues up to a month after they occur, and the TMF has no power to require any steps be taken to manage the impacts.</p> <p>This is not proper oversight and there is no mechanism to ensure that the Applicant complies with the outcomes intended to be achieved by the oTMPfC, listed in Table 2.2. It is in this context, with the needs of an operational port to consider, that PoTLL has sought to gain additional protections through a Protocol with the Applicant and the proposed additional Requirement.</p> <p><u>Matters to be covered in TMF</u></p> <p>Para 4.1.7 d. - ‘Secondary’ routes used by HGV construction traffic throughout construction but ‘far less frequently than other routes’. No information is provided about how frequently they may be used, under what circumstances, or by what volume of traffic. It is therefore not clear how the secondary routes could have been appropriately assessed and how volumes and impacts from using those routes will be managed, and the use of them minimised. The secondary route to the main compound shows use of Fort Road which is unsuitable for HGV traffic.</p> <p>Table 2.3 sets out the interests and requirements that the Traffic Management Plan is seeking to address. PoTLL has made submissions throughout the Examination that these measures alone are likely to be insufficient to manage the impacts on the ASDA roundabout (the Applicant’s modelling of the roundabout supports PoTLL’s submissions in this respect [REP6-123]), and that the Applicant should empower itself to undertake greater intervention at this and other pinch points so that it can easily address more severe impacts, should this become necessary.</p>
Framework Travel Plan	<p>Table 2.1 lists the relevant stakeholders to be consulted on the Site-Specific Travel Plans. PoTLL is not listed as a relevant stakeholder.</p> <p>It is important that PoTLL is listed as a relevant stakeholder and therefore consultee to ensure that a coordinated approach to construction routes and travel plans is taken, that does not conflict with rules that may apply within the Port, and to ensure that PoTLL’s concerns about the Scheme’s construction traffic impacts are not exacerbated. Inclusion in the list of stakeholders would enable PoTLL to have a seat at the table to discuss the proposals and be able to directly input where a matter may adversely impact the Port, or conflict with rules that apply within the Port.</p> <p>This is also important as worker accommodation is being constructed within the north portal compound – accessed via the Port.</p> <p>PoTLL also refer to the PADSS submitted by it at Deadline 1 [REP1-276], stating that the “<i>Applicant has indicated willingness to add PoTLL as a consultee on the Site Specific Travel Plans relating to access via the A1089 road link to the Port, but mandatory mode share is not currently secured</i>”.</p> <p>PoTLL is therefore disappointed to be no further ahead on this issue, especially given that the impacts to the Port from measures secured in the SSTP for the north portal</p>

Control Document/Related Process	PoTLL Comments
	<p>compound could vary significantly. By way of simple example, the extent to which the Applicant requires workers to use public transport or dedicated shuttle buses, could significantly reduce – or increase – the volume of worker traffic entering the compound via the Port.</p> <p>The north portal compound is proposed to be in use for 63 months from January 2025, with 3,802 workers at peak, 480 of which will live on site. It is unreasonable to expect PoTLL to have no input to the SSTP for the compound, especially in light of the potential for conflict with the protocols required within the Port and the need for coordination between the two.</p> <p><u>Routing</u></p> <p>The routes to be taken by workers visiting the compound are not secured by this document. Paragraph 5.4.9 sets out how mode-share has been factored into the Transport Assessment, with an assumption that 30% of workers will use alternative modes of travel (see Table 5.3). This results in 820 two-way hourly car trips. This is a significant volume of traffic, and the routes into and out of the compound should be secured so that the impacts can be properly managed.</p> <p>As set out in its Deadline 6A submissions, PoTLL is also concerned that the Applicant has modelled construction workers using unsuitable local routes, which upon finalisation of the SSTP, will be pushed to use main routes such as the Asda Roundabout, exacerbating PoTLL's concerns about the performance of that roundabout. As such, the FTP should set clearer rules on this now, and PoTLL should be consulted on the finalised routings so the full traffic impact can be understood.</p> <p><u>Target</u></p> <p>The Applicant avoids committing to specific targets around modal split and travel behaviour on the basis that this is difficult at a Project-wide level. It is not clear why the Applicant has made no attempt to set targets on a Site-Specific level, even if this was only done at high level for the largest compounds.</p> <p>There is, ultimately, no clear and specific target that would give IPs detail about how effective the Applicant's proposals will be at managing workers.</p> <p>Appendix C sets out the terms of reference for a Travel Plan Liaison Group. This lists at C.3.1 that the membership would be by invitation; there is no mention of the Port as a potential member of this group, as it should be. The TPLG also does not appear to have any role in making binding decisions – it is a discussion forum only and the same criticisms made of the TMF therefor apply here, too.</p> <p>Plate 4.2 further suggests that the Travel Plan Liaison Group (TPLG) would have input only into the project wide measures and targets – it is only informed of the site specific measures and targets and has no input into these or the site-specific plans. The purpose of this group is unclear.</p> <p>Finally, Appendix D provides for a Workforce Accommodation Working Group. This too does not have any authority. It is simply a group created by the Applicant to provide feedback that it has no obligation to have regard to or comply with.</p>

Control Document/Related Process	PoTLL Comments
	<p>Given each of these groups has a dispute resolution process built in, it would make sense that the Applicant should be specifically required to comply with decisions made by the group.</p>
<p>Outline Materials Handling Plan (and associated appendix to OTMPfC)</p>	<p>The Materials Handling Plan is developed in consultation with the stakeholders identified in Table 2.1 of the CoCP. PoTLL is not listed as a relevant stakeholder.</p> <p><u>Process</u></p> <p>It is not clear to PoTLL why the Applicant does not want to add it to the list of stakeholders, given the Baseline Commitment and the Better than Baseline Commitment would see extensive use of the Port. The Applicant has included the Port of London Authority as a stakeholder, presumably to utilise its extensive knowledge of the river Thames. It therefore seems like an unusual choice not to include PoTLL in the list of stakeholders, given the amount of materials that the Applicant is intending to import through the Port of Tilbury.</p> <p>Furthermore, Appendix E.4.19 a. of the OTMPfC identifies a sub-group to monitor and manage the derogation process related to the use of Port facilities, set out in section 6 of the oMHP. The purpose of this group is to ‘discuss’ derogation requests, with NH giving due regard to stakeholder comments in deciding whether to allow the derogation – this is referred back to by the derogation process set out in the oMHP.</p> <p>The Port of London Authority has been included as a specific party to be included in such a group, and PoTLL does not understand why this has not been extended to PoTLL, given the direct impacts of materials handling to PoTLL operations (including whether they are to be used).</p> <p>Furthermore, it is noted that paragraph 6.2.10 states that the Baseline Commitment (of 80% of bulk aggregates at the north portal construction area are to be imported through Port of Tilbury) “<i>is consistent with the construction traffic inputs into the Traffic Assessment.</i>” This means that the Scheme modelling has not provided for the situation where the Applicant might need to derogate, which is all the more reason for PoTLL to be a consultee on detailed MHPs and be part of the relevant derogation sub-group and more reactive measures in the OTMPfC.</p> <p>At paragraph, 6.2.19, PoTLL presumes the text is meant to read “National Highways would then approve or reject the form provided by the Contractor”.</p> <p>As set out in PoTLL’s D6 submissions (and not responded to by the Applicant at D7), PoTLL notes that the derogation process provides for a form to be submitted (at Annex B.3 of the OMHP). However, that form does not appear to ask the two questions that would apply to whether an Exemption to the Better Than Commitment applies – i.e. to provide that it would lead to material worsening traffic conditions, or materially new or materially different environmental effects. For relevant stakeholders involved in the derogation process, this will be important information to consider.</p> <p><u>Measures</u></p> <p>PoTLL is also concerned about the proposed measures in the oMHP and how they may be implemented at the north portal compound. Paragraph 3.5 – Managing construction delivery movements – b. envisages queueing and holding points at site entrances. There are no areas in Tilbury2 to stack vehicles. In the event LTC Construction Traffic for the NP Compound is unable to enter the compound, and is expected to queue, this will back-up within the Port.</p>

Control Document/Related Process	PoTLL Comments
	<p>Vehicle holding points are referred to, as being located inside the Order Limits and close to agreed worksite entrances. The Applicant has provided no information on where the holding points will be located for the NP Compound, and it is therefore unclear if there is a risk that delays at these points could see traffic backing onto Port roads.</p> <p>This is of fundamental concern to PoTLL – demonstrating not only the need for it to be a consultee, but also the need for formal protocols to be agreed for managing traffic impacts on Port land (and if not separately agreed, for the Protective Provisions to provide that they must be before construction).</p> <p>PoTLL has made submissions around the benefits of using the CMAT; in light of the assessed impacts on the Asda roundabout from LTC's construction traffic, in PoTLL's view use of the CMAT should have been identified as embedded mitigation and to meet the mitigation hierarchy.</p> <p>PoTLL is satisfied that the Applicant's changes to the oMHP at Deadline 5 to revise the exemptions are appropriate to secure the Baseline Commitment. However, the Better than Baseline Commitment in 6.2.11 still refers only to the import of bulk aggregates for the north portal construction area. The exemptions targeted at the Better than Baseline commitment in 6.2.17 suggest that it is intended to apply to the import of aggregates for onward transport to areas beyond the north portal construction area – this should be clarified.</p>

6. CONCLUSION

- 6.1 As can be seen from this submission, a number of matters remains under discussion with the Applicant, but PoTLL remains committed to finding an agreed resolution to these.
- 6.2 However, it is prepared to make further submissions at Deadline 9 and Deadline 9A to protect its position in case such agreement cannot be reached and this submission has foregrounded the matters that in the event of there being no agreement, such submissions will cover.

Appendix 1: Updated Proposed Asda Roundabout Requirement

Asda roundabout – construction traffic mitigation

17.—(1) No part of Work Nos. CA5 and CA5A is to be commenced until a scheme of construction traffic mitigation for Work Nos. CA5 and CA5A has been prepared in accordance with the provisions of this paragraph, submitted to and approved in writing by the Secretary of State.

(2) The scheme of construction traffic mitigation for Work Nos. CA5 and CA5A submitted to the Secretary of State for approval under sub-paragraph (1) must include—

- (a) details of the routes on the highway network that are to be used by construction workers in connection with Work Nos. CA5 and CA5A;
- (b) an assessment, which must include junction modelling, of the impacts on the highway network, including the operation of the Asda roundabout, of the proposed construction worker routes and construction traffic related to Work Nos. CA5 and CA5A;
- (c) where the assessment demonstrates there is likely to be a material worsening of traffic conditions as a result of the construction of Work Nos. CA5 and CA5A —
 - (i) details of the locations on the highway network where such material worsening is assessed to occur;
 - (ii) details of the mitigation measures the undertaker proposes to implement to alleviate the material worsening of traffic conditions;
 - (iii) if the mitigation measures do not include highway improvements to the Asda roundabout, a statement demonstrating that such highway improvements are not required; and
 - (iv) a programme for the implementation of such mitigation measures;
- (d) details of the measurable thresholds, the exceedance of which would lead to a material worsening of traffic conditions;
- (e) a programme for monitoring throughout the monitoring period the operation of the local highway network such that any exceedances of the thresholds referred to in paragraph (d) will be identified; and
- (f) a report on the consultation carried out by the undertaker under sub-paragraph (3) that includes—
 - (i) a summary of the consultation carried out by the undertaker and the responses received to it;
 - (ii) the undertaker's responses to the consultation responses received by it; and
 - (iii) if any consultation responses are not reflected in the scheme for construction traffic mitigation for Work Nos. CA5 and CA5A submitted for the Secretary of State's approval, a statement setting out the undertaker's reasons for not including them.

(3) Prior to submitting the scheme of construction traffic mitigation for Work Nos. CA5 and CA5A the undertaker must consult the local highway authority and Port of Tilbury London Limited on a draft scheme of construction traffic mitigation for Work Nos. CA5 and CA5A and must have regard to any consultation responses received.

(4) The undertaker must carry out the approved scheme of construction traffic mitigation for Work Nos. CA5 and CA5A.

(5) In the event that the monitoring required by the approved scheme of construction traffic mitigation for Work Nos. CA5 and CA5A reveals that the thresholds referred to in sub-paragraph (2)(d) have been exceeded, the undertaker must—

- (a) develop in consultation with the relevant local highway authority and Port of Tilbury London Limited, the further mitigation measures that are necessary to restore the operation of the highway network to a level that does not exceed the approved thresholds during the monitoring period; and
- (b) promptly implement those mitigation measures.

(6) In this paragraph—

“the Asda roundabout” means the roundabout junction of the A1089, A126, Thurrock Parkway and the unnamed street leading to London Distribution Park;

“material worsening” means the creation of unreliable, unsafe or inefficient journeys through the Asda roundabout, having regard in particular to traffic going to and coming from the Port of Tilbury, environmental impacts in the town of Tilbury, the need to minimise delays to all traffic using the Asda roundabout and the need to ensure that highway safety is not compromised; and

“the monitoring period” means a period commencing on the earlier of the date Work No. CA5 is commenced or the date Work Nos. CA5A is commenced, and continuing until the undertaker has permanently vacated the land occupied in connection with those Work Nos. CA5 and CA5A.