



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 9 SUBMISSION

11 December 2023

1. INTRODUCTION

- 1.1 This document sets out Port of Tilbury London Limited's ("PoTLL") submissions for Deadline 9. It predominantly responds to the submissions of the Applicant and Natural England at Deadline 8 and provides an update on PoTLL's key matters of concern.
- 1.2 The Applicant is continuing its discussions with the Applicant to seek to resolve as many matters as possibly by the end of Examination and will continue to keep the ExA updated on the progress that has been made.
- 1.3 This submission should be read in conjunction with the update to the Joint Statement on Ports Policy with the Port of London Authority ("PLA") and DP World London Gateway, also submitted at this deadline by the PLA.

2. RESPONSE TO DEADLINE 8 SUBMISSIONS

- 2.1 PoTLL notes that limited changes have been made to the draft DCO and the project control documents at Deadline 8, notwithstanding the comments of PoTLL and many other Interested Parties made at the most recent Hearings.
- 2.2 As a result of this, PoTLL must continue to push for the controls that it has been seeking throughout the Examination. As set out at the Hearings, in the absence of the Applicant making changes to the control documents, and the inability of the Secretary of State to change those documents, PoTLL must push for drafting to be put on the face of the DCO. This is discussed further in PoTLL's submissions on Protective Provisions set out in section 3 below, but in respect of ecological matters, PoTLL notes that:
 - 2.2.1 Natural England, in [REP8-154], set out their concern as to whether there will be sufficient Pulverised Fuel Ash ('PFA') resource available for use in mitigation/compensation, e.g. in creating open mosaic habitats as part of its commitments in the LEMP, and that the Applicant has failed to provide reassurances on this matter. PoTLL emphasises that it will have its own demands on the diminishing local stockpiles of PFA and LTC cannot assume that there will be any available from the stocks over which PoTLL has control; and
 - 2.2.2 in light of the heat map submitted by the Applicant [REP8-047] and the comments by Natural England throughout Examination, PoTLL is concerned to ensure that any Port land (such as peripheral areas) that is not used by the LTC for development, and so could be used for ecological purposes such as species translocation, is either not so used, or is done so only with PoTLL's consent to ensure that it aligns with the wider ecological and development proposals being brought forward as part of Freeport development.
- 2.3 PoTLL also notes that the Applicant has only made changes 'for sense' to the PLA's Protective Provisions in the draft DCO, meaning that the provisions in relation to tunnelling disputes being able to go to both arbitration and the Secretary of State remain. For all of the reasons set out in PoTLL's Deadline 7 submissions [REP7-226], and the PLA's own submissions, PoTLL considers that this is not acceptable. PoTLL also notes:
 - 2.3.1 that if the Applicant is concerned about timeframes for arbitration, then it should be able to put forward drafting enabling an expeditious resolution of that process. It has sought to provide for this in PoTLL's Protective Provisions (as discussed below), so there is no reason why this could not be provided for in the PLA's;
 - 2.3.2 the Applicant's contention [in REP8-116] that it would not be appropriate to put timings on the face of the DCO given there could be varying levels of complexity of matters that could be subject to the dispute resolution process. This is not an issue as all drafting in Protective Provisions is subject to the proviso of 'unless otherwise agreed in writing' so the time periods could be amended if necessary; and

2.3.3 in any event, the fundamental point is that there should be one process for dealing with disputes under these Protective Provisions, not a situation where, essentially, the Applicant is asking to be able to find another 'way out' when it is told to do something it does not like.

2.4 In respect of the DCO Requirements that PoTLL has in its previous submissions stated should form part of the DCO, the latest position is as follows:

2.4.1 nothing in the Applicant's Deadline 8 submissions detracts from the reasons given in PoTLL's Deadline 8 submission as to why the 'Asda Roundabout' requirement (in the form most recently updated in [REP8-164]) is needed. PoTLL would also note, with regard to the constraints on traffic management measures discussed by the Applicant in [REP8-118] it is continued to be stated that 'traffic management would not impede peak hour vehicle flow' but the Applicant has still not demonstrated that this is achievable. Indeed, the Applicant acknowledges that 'the working width [...] would differ in width and length dependent on site specifics' and as such would not necessarily be limited to the 600mm wide trench dimensions envisaged by the Applicant. This is exactly the concern that PoTLL has;

2.4.2 in respect of the Tilbury Link Road passive provision Requirement:

(a) PoTLL notes that the Applicant has put forward drafting to deal with the concern raised by PoTLL at ISH14 about the Levelling-up and Regeneration Act 2023 receiving Royal Assent meaning that the 'Environmental Outcomes Report' ('EOR') regime may come into force before the provisions of this Requirement become relevant. Having reflected on this point since the Hearings, PoTLL considers that drafting such as what the Applicant proposes will not work with the new EOR regime. That is because the EOR regime proposes to remove the 'scoping' stage of environmental impact assessment processes. The submission of an EOR will come alongside a planning/DCO application, which is covered by sub-paragraph (d). As such no further drafting is required. PoTLL therefore continues to promote the version of this Requirement set out in [REP8-164 at paragraph 2.30]; and

(b) PoTLL notes the submissions of Natural England in [REP8-154] and considers that they fundamentally misconstrue this Requirement. The Requirement works on the basis that the Applicant only has to provide passive provision if there is a proposal for a Tilbury Link Road in principle, hence the reference to early stage procedures such as a Preferred Route Announcement, reference in a draft Local Plan, and submission of Scoping. Natural England would be consulted at all stages of any form of permission for the Tilbury Link Road. If, as the design develops, the Tilbury Link Road proposal would necessitate changes to its connection point to the LTC, this would need to be progressed in discussion with National Highways. Removing reference to submission of a Scoping request (not least given that Natural England would then be consulted upon in respect of that scoping request) would mean, on the Applicant's drafting which Natural England has amended, that this Requirement would not allow for proposals to be brought forward by parties such as PoTLL without some level of oversight from the Applicant, which PoTLL does not accept;

2.4.3 in respect of the 'Wider Networks' Requirement, PoTLL's position remains as per its Deadline 8 submission; and

2.4.4 in respect of the Orsett Cock Requirement, PoTLL's submissions are reflected in the Interested Parties' Joint Statement on this Requirement, also submitted at Deadline 9 as part of Thurrock Council's submissions.

3. PROTECTIVE PROVISIONS UPDATE

- 3.1 As foreshadowed in PoTLL's Deadline 8 submissions, discussions have been held with the Applicant, and it is understood that at Deadline 9, the Applicant will be putting forward updates to the Protective Provisions that contain agreed wording on many issues, on the basis that the Framework Agreement currently under negotiation is able to be agreed.
- 3.2 PoTLL welcomes the progress that has been made in this regard, in particular with respect to agreeing the scope of the indemnity. PoTLL also confirms that it is content that the Protective Provisions do not need to refer to the provisions of sections 272-282 of the Town and Country Planning Act 1990.
- 3.3 At Deadline 9A, PoTLL will put forward to the extent necessary its own version of the Protective Provisions with additional drafting to deal with:
 - 3.3.1 additional protections PoTLL seeks even if an Agreement is reached. The drafting PoTLL will put forward has already been the subject of extensive discussion with the Applicant and so will not be a surprise to it. PoTLL is waiting until Deadline 9A in the hope that agreement will be able to be reached on these provisions so they can be presented as such at that deadline; or
 - 3.3.2 drafting required if the Framework Agreement is not able to be agreed. Such drafting has also been the subject of extensive discussion with the Applicant and will be a further refinement of the drafting that PoTLL has previously submitted to the Examination [REP1-274].
- 3.4 A key aspect of the first category of changes continues to be two key concerns raised by PoTLL to date: (a) control of the Applicant's land powers; and (b) having a sufficient say in the various control documents and mechanisms the Applicant has brought forward to mitigate and manage the impacts of the LTC.
- 3.5 In respect of (a), PoTLL welcomes the drafting the Applicant is putting forward in respect of 'specified easements', however it continues to be concerned about the scope of the Applicant's land powers more broadly. Anything that is agreed in the Framework Agreement needs to 'hang' off of this principle, as is the usual approach to such matters. As such, PoTLL will continue to push for drafting requiring PoTLL's consent for these powers to be utilised in the Port.
- 3.6 In respect of (b), and given the Applicant's position at Deadline 8, PoTLL's concern is that, for some key matters, whilst mechanisms will be put in place between the Applicant and PoTLL through the Framework Agreement to manage interactions, such arrangements will only be one piece of the overall jigsaw puzzle that the Applicant will be putting in place to control impacts.
- 3.7 By way of example, whilst the Applicant and PoTLL are looking to provide for a protocol to manage traffic impacts within the Port, a big driver of those movements will be staff movements, which will be agreed pursuant to the Site Specific Travel Plans and discussions at the Travel Plan Liaison Group, neither of which PoTLL is currently a consultee for/member of. It is therefore important that PoTLL is 'in the room' for discussions/consultations on these plans, which will directly impact on the planned protocols – the protocols cannot be seen in isolation.
- 3.8 It is understood that the Applicant understands the nature of these concerns and considers that they can be managed through drafting in the Protective Provisions, through providing for PoTLL's involvement in respect of any matters or measures within the documents or discussions that may affect the Port or the carrying out of a specified work or a specified function (as defined in the Protective Provisions).
- 3.9 The version of the Protective Provisions the Applicant has put forward in its Deadline 9 submissions contains a provision which reflects the beginning of the discussions on such drafting (with PoTLL

having made clear to the Applicant that more protections would be sought), but there currently is, and it is understood that there will likely continue to be, some level of disagreement between the parties as to the full scope of that provision, as well as there being some differences between the 'with-Agreement' scenario and 'without-Agreement scenario' of what should be covered by the provision.

- 3.10 In light of this, and to assist the Examining Authority, PoTLL sets out its position on this matter below, which will be reflected in its Deadline 9A submission.
- 3.11 In respect of plans and schemes to be put forward to the Secretary of State under the Requirements:
- 3.11.1 the Applicant in its Deadline 9 submission, will provide that PoTLL will be a consultee on the EMP (Second Iteration), materials handling plan, travel plan, a written scheme and programme under Requirement 6(2) and fencing under Requirement 12. PoTLL welcomes this;
- 3.11.2 however, until a Framework Agreement is reached which provides for extensive mechanisms on this issue, PoTLL also considers that it should be a consultee on the LEMP, to ensure that the Applicant's ecological proposals align with PoTLL's development and ecological proposals for the Freeport. PoTLL is content, however, that this would not be required if a Framework Agreement is completed.
- 3.12 In respect of plans and schemes to be approved by the undertaker pursuant to the terms of the Code of Construction Practice:
- 3.12.1 the Applicant, in its Deadline 8 submission, will provide that PoTLL will be a consultee on the Security Management Plan, Emergency Preparedness Plan and Noise and Vibration Management Plan. PoTLL welcomes this;
- 3.12.2 however, for the reasons set out in its Deadline 8 submissions, PoTLL considers that it should also be a consultee on any environmental management plan and any traffic management plan for preliminary works (noting that no consultation whatsoever is currently anticipated, despite the imprecise and scarce information as to the nature and extent of the preliminary works), and the EMP (Third Iteration), whether or not a Framework Agreement is completed, to ensure that these controls dovetail with what is developed pursuant to the protocols within the Framework Agreement.
- 3.13 In respect of the groups to be put in place pursuant to the control documents, PoTLL considers that the provision in the Protective Provisions should provide that PoTLL should be a member of the following groups:
- 3.13.1 the Travel Plan Liaison Group, for the reason given above and in PoTLL's Deadline 8 submission;
- 3.13.2 the Traffic Management Forum ('TMF') for both the preliminary works and main works, to ensure that the impacts PoTLL has raised concerns about throughout the Examination are dealt with, and to ensure that matters agreed in this Forum do not impact on the operability of the protocols being sought;
- 3.13.3 the materials handling sub-group of the TMF, as set out in its Deadline 8 submissions, given that the scope of such a derogation would have a direct impact on traffic movements in the Port; and
- 3.13.4 the advisory group pursuant to the LEMP. This will ensure PoTLL will have oversight of the establishment of the ecological mitigation proposals and monitoring results to ensure that they 'work' alongside PoTLL's proposals. Given Natural England's concerns in respect of

ecology in the north portal area as a whole, it is important that PoTLL is part of the conversation of how this large piece of the overall ecological jigsaw puzzle is delivered.

- 3.14 PoTLL has noted the continued iteration of article 68 of the draft DCO. The existing permits that were previously referenced by that article are permits located in or adjacent to the Port (as defined in the Protective Provisions), and the permit holder is a tenant of PoTLL. Furthermore, any environmental scheme submitted under this article which could affect the permitted activities on that land could have direct implications on the ability for that land to be developed in the future. As such, PoTLL considers that the Protective Provisions should require that PoTLL is consulted on a draft environmental scheme under article 68(1)(a). PoTLL has discussed this with the Applicant and understands that its Deadline 9 version of the draft DCO will include, as part of the Protective Provisions for PoTLL, an obligation on the undertaker to consult with PoTLL prior to applying for any environmental permit or any environmental scheme under article 68, where it applies within the Port. PoTLL confirms that, as this is a matter in the control of the Environment Agency, it is not covered by the Framework Agreement. As such, PoTLL would seek this protection irrespective of whether the Framework Agreement completes.
- 3.15 Finally, the Applicant is including a revised paragraph 146 relating to disputes. The revision sets out a time-limited process by which disputes are escalated and then referred to arbitration under article 64. This process requires a meeting to be held where any dispute is to be resolved 'promptly and in any event within 10 business days', with a referral to arbitration being made within 20 business days of that meeting. As set out above, this type of time-limited ability to refer a dispute to arbitration could be included in the PLA PPs in respect of tunnelling disputes, or could be included within bespoke rules for arbitration applicable to those disputes (such as those commonly seen within energy DCOs, including most recently at Schedule 14 to the Longfield Solar Farm Order 2023 and Schedule 14 to the Hornsea Four Offshore Wind Farm Order 2023).

4. **CONCLUSION**

- 4.1 In light of all of the above, discussions will continue apace with the Applicant to seek to narrow issues down as much as possible by the end of the Examination.
- 4.2 It is, however, expected that not all matters will be agreed by Deadline 9A, with some matters likely to be left to the Secretary of State to determine. As such, PoTLL will at Deadline 9A:
- 4.2.1 submit its preferred form of Protective Provisions, with clear demarcation of those provisions that are required only in a 'without-Agreement' scenario;
 - 4.2.2 submit an updated PADSS to reflect the status of discussions as at Deadline 9A and clearly set out what PoTLL requires the Secretary of State to determine; and
 - 4.2.3 work with the Applicant to agree a SoCG which reflects the position at that time.