



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

FINAL PRINCIPAL AREAS OF DISAGREEMENT STATEMENT SUMMARY

Deadline 10: 20 December 2023

1. Further to PoTLL's Deadline 9A submissions and in light of its other Deadline 10 submission, PoTLL has updated its Principal Areas of Disagreement Summary Statement (PADSS) to set out a definitive position on what is not agreed with the Applicant. The below table sets out the remaining areas of disagreement only, setting out a summary of PoTLL's position on each matter (with references to previous submissions for further information).
2. PoTLL has also sought to advise the Examining Authority (ExA) in this document as to the extent to which the draft Framework Agreement being negotiated with the Applicant addresses each concern (in its current form, and noting that the agreement is not yet agreed or entered into), and the extent to which each matter is addressed in circumstances where no agreement exists (this being the present situation). Where the columns are merged, the matter is not addressed or managed by the draft Agreement.
3. PoTLL confirms that its intention is to continue negotiations with the Applicant whilst the Examining Authority considers and reports on its Recommendations to the Secretary of State. PoTLL will provide an update to the Secretary of State for consideration during their Decision period confirming the extent to which these areas of disagreement are resolved on the basis of any legal agreement that may have been entered into during the period of time between close of the Examination and reporting to the Secretary of State.
4. References in this document to PoTLL's preferred Protective Provisions ("**PoTLL's PPs**") refer to the version of the Protective Provisions for the benefit of PoTLL found at Appendix 1 to PoTLL's Deadline 10 Submissions document. References to Deadline 10 Protective Provisions ("**D10PPs**") are to the Protective Provisions in Part 10 of Schedule 14 to the draft Development Consent Order provided by the Applicant at Deadline 10.

Area of Disagreement	'With Agreement' Scenario	'Without Agreement' Scenario
Traffic and Transport		
<p>LTC construction traffic impacts on the Asda Roundabout</p> <p>The increased traffic flows from LTC construction traffic using the A1089, and impacts from traffic regulation measures redirecting more traffic onto this junction, may cause the Asda Roundabout to function below an acceptable standard, as noted by the LTAM assessment and subsequent junction assessments. Provision must be made for greater intervention to be made at this junction, where necessary.</p> <p>Please refer to PoTLL's submissions in [REP5-123], [REP6A-016] and [REP7-226] for</p>	<p>The Applicant's proposals see a significant volume of traffic accessing the North Portal compound via the A1089 and the Asda Roundabout. This volume of traffic reflects the achievement of the baseline commitment of 80% of bulk aggregates import to the North Portal compound being via the Port of Tilbury. Any failure to achieve this baseline commitment will result in greater traffic impacts than those assessed. It is not clear whether the Applicant will be able to significantly reduce the volume of construction traffic in this area.</p> <p>The Applicant's assessments do not demonstrate that the measures in the outline Traffic Management Plan for Construction (oTMPfC) [REP9-236] will be sufficient to avoid the congestion demonstrated by modelling (the impacts of which have not been assessed in the Environmental Statement). It is imperative that a requirement is in place to ensure that in this key bottleneck location, the Applicant's detailed design and plans for construction will not cause significant adverse effects. Where it is not possible to avoid the impacts, the Applicant must be required to take whatever action is necessary to ensure that the Scheme can be constructed in a timely manner (so as to avoid unassessed impacts associated with delay) without causing adverse impacts on the road network in this location.</p>	

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<p>consideration of the Asda roundabout modelling provided by the Applicant.</p> <p>A detailed explanation of the draft Asda Roundabout Requirement is found in [REP6-163] at Appendix 2.</p> <p>The final draft Asda Roundabout Requirement is found in [REP8-164] at Appendix 1.</p>	<p>PoTLL submits that the draft Asda Roundabout Requirement provides the mechanism for achieving this outcome, without placing an onerous obligation on the Applicant. In particular, where the Applicant can demonstrate that the measures in the oTMPfC enable it to avoid adverse impacts, it is not required to take any further steps to improve the road network. The Requirement provides comfort for PoTLL and the local highway authority that the impacts of construction traffic will be managed, whilst minimising the impact of any additional obligations on the Applicant.</p> <p>Whilst PoTLL and the Applicant are seeking, through the proposed Framework Agreement, to agree a protocol dealing with how LTC traffic flows and traffic management should work with the Port's needs, this cannot be seen in isolation of the wider impacts of the Applicant's flows to the wider highway network. It is therefore appropriate for there to be a scheme approved by a Requirement, with any protocol and measures in the OTMPfC, to sit alongside it.</p> <p>PoTLL's concerns also extend to preliminary works and the need for management of flows associated with the set up of the construction compound and utilities works to them. Whilst the anticipated protocols with the Applicant will seek to deal with preliminary works, PoTLL has sought through the PoTLL PPs to be added as a consultee to any preliminary works traffic management plan. This would operate alongside and complement any agreed traffic management protocols, as explained in PoTLL's Deadline 10 Submissions document. The Applicant has not agreed to this.</p>	
<p>Traffic Regulation – A1089 including Asda Roundabout</p> <p>Traffic regulation on the sole highway access to the Port has the potential to cause congestion that is so severe it is necessary to close the Port, contrary to PoTLL's Open Port Duty.</p>	<p>A detailed traffic protocol will manage and ensure that the impacts of the Applicant's construction traffic and associated traffic regulation measures on the public highways are monitored and, where these are impacting on the ability of traffic to access the Port, altered or removed as necessary.</p> <p>The protocol does not deal with mitigation that may be required in order for the Applicant to keep the relevant traffic regulation in place without impacts being caused. The Protocol will function best in tandem with the proposed Asda Roundabout Requirement, which focuses on ensuring mitigation is provided, necessary for ensuring the timely construction of the Scheme without unacceptable impacts.</p>	<p>Paragraph 135 of the D10PPs (Streets) requires the Applicant to consult with PoTLL on the exercise of its powers conferred by articles 12, 16 and 17 over the A1089 St Andrews Road, Ferry Road, Fort Road and the link road between Fort Road and the A1089 St Andrews Road.</p> <p>This provides a minimum protection from the impacts of the Applicant's traffic management measures as apply on the routes into the Port of Tilbury.</p> <p>PoTLL is mindful that the Applicant's submissions around the Asda Roundabout suggest that the congestion at this junction will be caused by traffic regulation measures elsewhere on the network. In this circumstance, the D10PPs provide no protection for PoTLL from the impacts of traffic regulation measures</p>

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		<p>where the impacts to its road access are indirect. The need for the Asda Roundabout Requirement is greater where no agreement exists as PoTLL has no ability to mitigate or limit the impacts on its access. In the absence of an agreement, PoTLL is concerned that it may have difficulty maintaining access to the Port in accordance with its Open Port Duty.</p>
<p>Orsett Cock interchange</p> <p>The final draft Orsett Cock interchange Requirement preferred by PoTLL and other relevant stakeholders, along with relevant joint submissions, is found in [REP9-229] from page 179.</p>	<p>The design and construction of changes to the Orsett Cock interchange must be carried out in a way that ensures access to the ports is maintained, given the loss of direct connectivity and the key importance of this junction to both the Port of Tilbury and London Gateway Port.</p> <p>PoTLL submits that the version of this Requirement preferred by Thurrock Council, DP World, PoTLL and Thames Enterprise Park is necessary, reasonable and a material improvement on the Applicant's draft Requirement, and should be included within any made DCO.</p>	
<p>Wider network impacts</p> <p>The final draft Wider network impacts Requirement preferred by PoTLL and other relevant stakeholders, along with relevant joint submissions is found, in [REP8-166] from page 190.</p>	<p>The impacts of a new road, connecting the highway network at a new location, may be widespread and not reflected accurately by modelling and assessment. A mechanism is needed to ensure that where the LTC Scheme causes adverse impacts on the local highway network, the local highway authorities are not left without recourse (other than attempting to secure potential future funding that may not be available to it) and that it is the Applicant that must make good the adverse impacts it causes.</p> <p>The draft <i>wider highway network monitoring and mitigation</i> Requirement is needed to secure this outcome and ensure that all significant adverse impacts of the Scheme are identified and mitigated against. This is set out further in PoTLL's Deadline 6 submission [REP6-163] and the Joint Position Statements submitted at Deadline 8 [REP8-166] and 9 [REP9-299].</p>	
<p>Freeport modelling</p> <p>Please refer to PoTLL's response to Q4.1.8 in [REP4-348] in respect of traffic modelling. Details of the Freeport at Tilbury are found in Section 5 of PoTLL's Written Representation [REP1-274].</p> <p>Please also see PoTLL's Deadline 10 Submissions document for further consideration</p>	<p>The Applicant has not demonstrated that the Scheme operates satisfactorily in a world where the Freeport is brought forward, despite the Freeport being known about and designated since November 2021.</p> <p>The Freeport Delivery Roadmap (https://www.gov.uk/guidance/freeports-delivery-roadmap and included as Appendix 2 to PoTLL's Deadline 10 Submissions document) published on 19 December 2023, also confirms and reinforces the importance of the Freeports, noting that "it is imperative that we do everything we can to realise that [transformational] potential". The Freeport Delivery Roadmap</p>	

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of the latest policy announcements relevant to the Freeport.	sets out the measures that the Government will implement to “accelerate Freeport delivery and maximise its benefits for all”. It is concerning that the Applicant has not given full consideration for how the Scheme will be constructed or operate with the Freeport in place, notwithstanding the uncertainty as to how this will be delivered at Tilbury, such uncertainty being in no small part associated with the intended use of designated Freeport land as the Scheme’s construction compound for the next decade.	
Construction worker traffic routes and restrictions Please see comments on the Framework Travel Plan made within [REP8-164] .	The Site Specific Travel Plans must include mandatory routes to and from construction compounds to ensure that the traffic associated with the high volume of workers involved in the construction of the Scheme can be assessed and, if needed, impacts managed and mitigated. Construction workers must be controlled so that they do not park within the town of Tilbury, something that will harm the relationship between the Port of Tilbury and the local population as the Port anticipates that it will likely be held responsible for poor behaviour of the Applicant’s workers.	
Fort Road unsuitable for use as a construction route	The draft agreement ensures that Fort Road is not used for construction traffic, other than for abnormal indivisible loads (AILs) that are not able to fit below the Fort Road bridge that crosses the main construction route into Tilbury2.	The Applicant will be able to use Fort Road for an undefined amount of construction traffic, despite this road being unsuitable for HGVs or large volumes of other traffic. This will have an uncertain impact on nearby heritage assets of significance and local traffic that uses this road, and has the reputational risk for PoTLL of local residents believing this to be large volumes of Port traffic.
Land Matters		
Serious Detriment The Applicant’s proposed land powers are extensive and cover much of the Port’s development land and areas now designated as Freeport. These, and the powers of temporary possession, are likely to cause serious detriment to PoTLL’s statutory undertaking if not subject to PoTLL’s consent.	The Applicant does not agree to any restriction on the exercise of its DCO land powers, including temporary possession, over the Port other than the ‘specified easement’ drafting contained in the D10PPs. As set out in PoTLL’s Deadline 10 Submissions document, this drafting does not adequately protect PoTLL’s undertaking in respect of easements (as it does not include easements for the benefit of the Applicant) or restrictive covenants, and this does not cover the exercise of temporary possession powers or the compulsory acquisition of the freehold (sought over land over which the Applicant already holds an option to purchase).	

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<p>Please refer to PoTLL's submissions on serious detriment from Compulsory Acquisition Hearing 3 [REP6-163] and in PoTLL's Deadline 10 Submissions document.</p>	<p>In light of the proposed Freeport development in this area, and the Government's support for it, this position is particularly alarming – the Applicant does not seem committed to avoiding or minimising impediment to this essential national infrastructure.</p> <p>PoTLL requires the additional protection found in paragraphs 140 and 141 of PoTLL's PPs to protect its statutory undertaking from serious detriment, and ensure that the Applicant does not use its DCO powers to circumvent obligations that it has entered into by negotiation with PoTLL and agreed to adhere to. This is standard, well-precedented drafting, and is also found in the protective provisions for the benefit of specified gas undertakers, National Grid Gas, and National Grid Electricity Transmission within the draft Development Consent Order [REP9-108].</p>	
<p>Utilities</p> <p>Please refer to PoTLL's submissions from Compulsory Acquisition Hearing 3 [REP6-163] and in PoTLL's Deadline 10 Submissions document.</p>	<p>The agreement will manage the condition of land before and after the Applicant undertakes utility works.</p> <p>The 'specified easement' drafting in the D10PPs must be updated in the way shown in PoTLL's PPs, to include restrictive covenants, clarify the language, and cover easements for the benefit of National Highways.</p> <p>If these changes are fully actioned and secured, PoTLL is satisfied that its general utilities concerns will have been resolved.</p>	<p>The changes referred to in the 'with agreement' column are required.</p> <p>In addition, in the absence of an agreement, the further drafting found in paragraph 133 of PoTLL's PPs is required to manage the restoration of the Port's land.</p>
<p>Work No. MU27</p> <p>Please refer to PoTLL's submissions made in respect of this work within Written Representation [REP1-274], from Compulsory Acquisition Hearing 3 [REP6-163] and in PoTLL's Deadline 10 Submissions document.</p>	<p>The agreement anticipates a circumstance where it is not possible to install Work No. MU27 below Substation Road, and provides a mechanism to manage the identification of an alternative route for this utility, the design of this route, and the obtaining of any required separate planning permission. This process recognises the physical difficulties in the Applicant's routing of this utility, and confirms that PoTLL is happy to agree to proactive mechanisms to identify ways in which the Scheme can be brought forward.</p>	<p>The changes to the 'specified easement' drafting to apply to 'a statutory undertaker' (rather than 'another statutory undertaker', in the D10PPs) is fundamental to protect PoTLL's interests. In the absence of this change, the easements associated with this multi utility work, being for the benefit of National Highways, could be imposed without reference to PoTLL. Similarly, the Applicant could interfere with the existing utilities below Substation Road that belong to PoTLL (as opposed to third party undertakers), resulting in an ongoing concern that the Applicant will have the power to fundamentally</p>

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		interfere with the infrastructure underpinning the operation of the Port undertaking.
<p>Design and construction methodology (including preliminary works)</p> <p>Please refer to PoTLL's submissions relating to consultation on the Control Documents, made within [REP8-164], and as updated in PoTLL's Deadline 10 Submissions document.</p>	<p>The agreement includes provisions for PoTLL to be consulted in respect of the design and construction methodology (including earthworks and drainage) of works at the boundary of PoTLL's land and the Scheme, with a view to ensuring the works do not make it harder to use that land for development and the Freeport. Ecology, in particular, is managed in detail by the agreement, including that ecological compensation and mitigation will not be placed on PoTLL's land, and to ensure that the land occupied by the Applicant is managed appropriately in accordance with the wider ecological management of the site.</p> <p>The agreement anticipates comprehensive drafting around contamination, recognising the historic and current uses of the areas of PoTLL's land that are used for the North Portal construction compound.</p>	<p>Whilst PoTLL welcomes the extent of the definition of 'specified works' in the D10PPs, in the absence of an agreement, the value of the land for future development is not protected, as PoTLL is not a consultee on relevant plans, nor a member of advisory groups created by the Landscape and Ecological Management Plan (LEMP).</p> <p>PoTLL is not consulted on the design of the Scheme or ecological management, both of which have the potential to cause a physical impediment to development (or prohibit it altogether).</p> <p>The amendments to include PoTLL as a consultee on the LEMP (paragraph 134(1)(b)) and the groups listed in paragraph 134(5) (both in PoTLL's PPs) are needed to provide a minimum protection for PoTLL's statutory undertaking, as regards to its value as Port development land and Freeport.</p> <p>In respect of contamination, the additions found in PoTLL's PPs at paragraphs 134(2) and 145 are necessary to ensure that the relevant contamination environmental commitments from the REAC are applied to preliminary works, and to ensure that the provisions of article 68 (interface with waste operation permits) also equally apply to preliminary works as the setting up of the construction compound is on land where current waste operation permits subsist.</p>
River		
The effectiveness of the Protective Provisions for the Port of London Authority (PLA) is fundamentally undermined by the Applicant's	The Protective Provisions for the PLA must be updated in the manner set out in PoTLL's Deadline 9A submission [REP9A-142] , in order for PoTLL to have confidence that the risk of serious detriment to its undertaking (through issues during tunnelling such as a 'daylighting' event) has been reduced	

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<p>ability to override the arbitration process by making a reference to the Secretary of State.</p> <p>Please refer to PoTLL's submissions on this outstanding matter, made in [REP7-226] and [REP9A-142].</p>	<p>as far as practicable. Arbitration, as the final process for resolving disputes about the management of that risk, must be respected by the Applicant.</p>	
Policy		
<p>The Scheme does not fully realise the claimed benefits to the Port of Tilbury; the impacts and detriment to the Port of Tilbury are not appropriately managed.</p> <p>Please refer to section 2 of the Ports Policy Response Joint Statement at [REP9-296].</p>	<p>The benefits to the Port of Tilbury are limited through the design of the Scheme that requires journeys from the east, or using the A122 Lower Thames Crossing, to travel to the Port of Tilbury via the Orsett Cock interchange; the failure to require the use of the CMAT at Tilbury2; and the absence of a coordinated approach to ecology in the area that may stifle the Freeport development.</p> <p>The potential disbenefits to the Port of Tilbury are tied to the absence of any plan for circumstances where physical intervention is required to mitigate traffic impacts to the road connection to the Port during construction; the significant journey time increases where the Orsett Cock interchange is used; and the unfettered land powers within the DCO as currently drafted.</p> <p>These matters mean that the Scheme is not fully compliant with the relevant Ports policies.</p>	
Control documents		
<p>PoTLL should be a consultee listed in Table 2.1 of the Code of Construction Practice (CoCP), relevant for (in particular) the Environmental Management Plan (EMP) (Second Iteration), the outline Materials Handling Plan, and should be a consultee for the site-specific travel plans.</p> <p>Please refer to PoTLL's submissions relating to consultation on the Control Documents, made within [REP8-164], and as updated in PoTLL's Deadline 10 Submissions document</p>	<p>The Applicant has not updated the CoCP to include PoTLL as a consultee.</p> <p>The D10PPs provide, at paragraph 133, for PoTLL to be consulted on the EMP (Second Iteration), the materials handling plan, and travel plans.</p> <p>PoTLL's PPs provide, at paragraph 134, for PoTLL to be included as a consultee on the groups to be created under various control documents. This is required for the reasons set out in PoTLL's Deadline 10 Submissions document.</p>	<p>The 'without agreement' scenario is broadly the same as the 'with agreement' scenario. PoTLL must additionally be added as a consultee on the LEMP (see paragraph 134(1)(b) of PoTLL's PPs), and be a member of the LEMP advisory group, if no agreement is reached. This is to ensure that environmental management over and around the Port is undertaken in a way that is consistent with, and does not obstruct or interfere with, the careful management of this land for the future of the Port and the Freeport.</p>

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<p>outline Traffic Management Plan for Construction (oTMPfC)</p> <p>Please refer to PoTLL's submissions relating to preliminary works, made within [REP8-164], and as updated in PoTLL's Deadline 10 Submissions document</p>	<p>PoTLL must be consulted on any preliminary works traffic management plan (see section 6 of the oTMPfC) in the same way as it is for the traffic management plan(s) associated with the main construction of the Scheme. This is due to the preliminary works including the setting up of the construction compound, and may therefore include traffic regulation and other measures that will impact the Port. This has been provided for in the PoTLL PPs.</p>	
<p>FCTP to include parking, set routes into the compound.</p> <p>Please refer to PoTLL's submissions relating to consultation on the Control Documents, made within [REP8-164], and as updated in PoTLL's Deadline 10 Submissions document</p>	<p>The Applicant's outline documents do not satisfactorily manage workers outside of construction compounds, i.e. through mandating a mode-sharing target, requiring workers to travel to compounds on fixed 'last mile' routes, and restricting workers from parking outside of the compounds.</p> <p>The management of workers in Tilbury, outside the Port, is something that is likely to impact upon PoTLL's reputation in the local area (as a major employer in the same location as the construction compound), with the potential for long-term damage to the Port's relationship with the community.</p> <p>PoTLL has therefore set out that it should be a consultee on site-specific travel plans, and to be a member of the Travel Plan Liaison Group, in the PoTLL PPs.</p>	
<p>Environmental matters</p>		
<p>Compensation and mitigation</p> <p>Please refer to PoTLL's submissions relating to consultation on the Control Documents, made within [REP8-164], and as updated in PoTLL's Deadline 10 Submissions document</p>	<p>The agreement will include provisions to avoid the ecological intensification of PoTLL's land, including a commitment not to place ecological mitigation or compensation on PoTLL's land, and oversee the management of ecology on sites occupied by the Applicant to limit unintended migration.</p>	<p>PoTLL must be added as a consultee to the LEMP (see paragraph 134(1)(b) of PoTLL's PPs), and be a member of the LEMP advisory group, to ensure appropriate environmental management is undertaken and the proposals in the area do not risk, by way of example, the migration of species onto adjacent Port development land.</p>
<p>Baseline data</p> <p>Please refer to PoTLL's written representations on ecology [REP2-121] and PoTLL's response to ExQ2 [REP6-162].</p>	<p>The ecological provisions of the agreement anticipate a cooperative and proactive approach to the identification and management of ecology within the Port.</p>	<p>PoTLL welcomes the use by National Highways of third-party ecological data where it is more recent than that held by the Applicant. There is no requirement that the Applicant undertakes further surveys, and no requirement to manage the Port land in a way that is consistent with its role as development land. The treatment of ecology in this area by the Applicant may have</p>

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		<p>far-reaching consequences for the developability of the remaining land.</p> <p>PoTLL must be added as a consultee to the LEMP (see paragraph 134(1)(b) of PoTLL's PPs), and be a member of the LEMP advisory group, to ensure appropriate environmental management is undertaken and the proposals in the area do not risk, by way of example, the migration of species onto adjacent Port development land.</p>