

PORT OF TILBURY LONDON LIMITED

RESPONSE TO SECRETARY OF STATE CONSULTATION LETTER OF 28 MARCH 2024

1. INTRODUCTION

- 1.1 In the letter of 28 March 2024, the Secretary of State requests Port of Tilbury London Limited (PoTLL) confirm whether an agreement on the form of Protective Provisions (PPs) for the benefit of PoTLL, to be included in the Lower Thames Crossing Order, has been reached.
- 1.2 Since the close of the Examination on 20 December 2023, PoTLL has continued to engage with the Applicant with a view to agreeing a Framework Agreement and the form of PPs, including most recently in a meeting held on 8 April 2024. Whilst these discussions have been positive and constructive, there remain a number of areas where agreement has not yet been reached. The form of PPs to be included in the Order once an agreement has been entered into continues to be discussed.
- 1.3 Therefore, to confirm the position, whilst no agreement is in place, PoTLL is wholly reliant on the PPs to provide the necessary protections for its statutory harbour undertaking, the day-to-day operation of the Port of Tilbury, and the ability to develop and deliver the Freeport. Once in place, the agreement will remove the need for a number of provisions to be included within the PPs, as these can be managed effectively by way of contract. However, until an agreement is in place, PoTLL continues to seek its preferred PPs to ensure that adequate and necessary protection is provided.
- 1.4 Accordingly, the form of PPs to be included in the Order is not yet agreed. In the absence of an agreement, PoTLL must therefore maintain its position, set out in section 5 of its Deadline 10 submission [REP10-038], that the Preferred Protective Provisions (as amended below) must be included in any made Order.

2. AMENDMENTS TO POTLL'S PREFERRED PROTECTIVE PROVISIONS

- 2.1 Notwithstanding the overarching position as summarised above, two changes to the PPs have been agreed in principle with the Applicant. The first amendment relates to the agreement that a number of plot numbers are no longer required for the Scheme. The second amendment relates to the resolution of disputes between PoTLL and the Applicant where they relate to the highways leading to and entering the Port of Tilbury.

2.2 Amendment to Remove Land Not Required

- 2.2.1 National Highways entered into four leases with PoTLL for land that would form part of the main construction compound for the North Portal (Work No. CA5). A plan showing the areas of each lease was included in Appendix 2 of PoTLL's Written Representation [REP1-274] (see electronic page 33).
- 2.2.2 The lease of the area shown on the plan shaded blue, labelled "LTC Lease Areas" in the Legend, and consisting of Coal Field and B Station, is referred to as the "Area 1 Lease", with the land known collectively as "Area 1". The whole of Area 1 is included within the Tilbury Tax Site within the Thames Freeport.¹
- 2.2.3 Shortly after the close of Examination, the Applicant issued a notice to PoTLL to break the Area 1 Lease. PoTLL advised the Applicant that, as it was not required for LTC and not under lease, PoTLL would seek to actively use and bring forward development of Area 1 as part of delivery of the Freeport from the date this land is returned to it.

¹ https://assets.publishing.service.gov.uk/media/61791fe88fa8f52986e61db3/Tilbury_Tax_Site.pdf

- 2.2.4 The Applicant met with PoTLL in early 2024, including by way of site visit, in order to confirm that Area 1 was no longer required for the carrying out of the LTC Scheme. The Applicant has confirmed that, aside from a small area adjacent to Substation Road, Area 1 is not required for the LTC Scheme and is freely available for use by PoTLL and others as Freeport.
- 2.2.5 However, whilst this land remains within the draft DCO, commercial decisions to develop or let Area 1 are subject to an ongoing risk of the potential exercise of temporary possession powers. This residual interference and uncertainty affects the commercial use of Area 1, due to the potential for the Applicant to take possession of the land, notwithstanding any development or tenancies that may be located there.
- 2.2.6 In recognition of this, the Applicant and PoTLL have agreed that the plots associated with Area 1 must be removed from the powers and effect of the DCO, so that Port development may take place unhindered. This will enable the benefits of the Freeport to be better realised during the construction phase of LTC, providing the confidence and certainty required for investors.
- 2.2.7 In order to effect the removal of Area 1 from the powers and effect of the Order, without requiring extensive amendments to plans and other documents, PoTLL and the Applicant have agreed that the PPs for PoTLL must include a new paragraph that excludes the operation of the Order over the relevant plots.
- 2.2.8 The amended Preferred Protective Provisions in Appendix 1 (which are required in the absence of an agreement with the Applicant) include this additional drafting as new paragraph 142:

Non-application of the Order to specified plots

142.—(1) Except for the retained provisions, the provisions of this Order do not apply to, and the powers conferred by this Order are not exercisable by the undertaker or any other person in respect of, the area 1 land.

(2) Other than as may be approved by PoTLL pursuant to the provisions of this Part of this Schedule, the undertaker must not exercise or permit the exercise of the powers conferred by this Order so as to limit PoTLL’s use, enjoyment and ability to develop, let or permit occupation of the area 1 land.

(3) In this paragraph—

“the area 1 land” means the land comprised in plots 16-65, 16-66, 17-08, 17-09, 21-32 and 21-34 as shown on the land plans and listed in the book of reference; and

“retained provisions” means paragraphs 142, 152 and 153 of this Part of this Schedule.

- 2.2.9 PoTLL understand that this drafting is agreed with the Applicant, subject only to minor differences in the preferred location of this provision within the PPs.

2.3 Amendment to Enable PoTLL to Participate in Relevant Appeals to the Secretary of State

- 2.3.1 The second amendment to the PPs is to revise paragraph 153, relating to dispute resolution.
- 2.3.2 The Applicant has sought to retain certainty for the method that will be used to resolve the various types of dispute that may arise between it and PoTLL insofar as the dispute may extend beyond the boundary of the Port of Tilbury and may include third parties. This scenario is foreseeable as the PPs include provision for consultation and the minimisation of impacts to the ‘affected roads’ and ‘the infrastructure corridor’ – being the only highway

connection to the Port of Tilbury that is suitable for port traffic, and therefore essential for access to the Port of Tilbury by road.

- 2.3.3 For any dispute relating to these roads, the Applicant has sought to apply article 65 of the Order, so that the matter is referred on appeal to the Secretary of State. However, the majority of the affected roads and infrastructure corridor are public highway and, by reason of the definition of 'local authority' provided in article 65(15), PoTLL would have no right or ability to make representations to the Secretary of State.
- 2.3.4 It has therefore been agreed that PoTLL is to be expressly included as a party to any appeal to the Secretary of State that relates to the access roads to the Port of Tilbury, given the critical importance of these roads to the operation of the Port and PoTLL's ability to comply with its statutory duties, in particular the Open Port duty.
- 2.3.5 In order to effect this, PoTLL has amended paragraph 153 (disputes) at sub-paragraph (2) so that, in any appeal relating to the essential highway connection to the Port of Tilbury, PoTLL is to be sent the appeal documentation on the same day as the Secretary of State and the relevant local authority. An express right to make representations to the appointed person as part of the appeal process is also provided and, for reasons of clarity, PoTLL is explicitly included as an appeal party for the appeal. This drafting has recently been shared with the Applicant for consideration and agreement.

153.—(1) Subject to sub-paragraph (3), any difference arising between the undertaker and PoTLL under this Order must be determined by arbitration as provided in article 64 (arbitration).

(2) In any appeal made by the undertaker pursuant to article 65 (appeals to the Secretary of State) that relates to, or is considered by PoTLL (acting reasonably) to relate to, the affected roads or the infrastructure corridor or the Port, PoTLL is deemed to be—

- (a) a party to whom the undertaker must provide copies of the appeal documentation on the same day the appeal documentation is submitted to the Secretary of State pursuant to article 65(2)(b);
- (b) a party entitled to submit representations to the appointed person pursuant to article 65(2)(d) and (e); and
- (c) an appeal party for the purposes of article 65.

(3) In the event of any difference arising between the undertaker and PoTLL under this Order, senior representatives of each party must seek to resolve the dispute through a meeting between the parties promptly and in any event within 10 business days of the dispute arising, and if either party is not reasonably satisfied following that meeting it may, within 20 business days of the meeting, notify the other party accordingly and refer the matter to arbitration.

2.4 **Amended Preferred Protective Provisions**

- 2.5 In order to assist the Secretary of State, the amended Preferred Protective Provisions are included as Appendix 1 in clean and tracked versions. An SI Template formatted version will also be submitted, should the Secretary of State be minded to grant the Order before the final agreement has been reached and entered into.

3. **NEXT STEPS**

- 3.1 PoTLL will continue to discuss the agreement with the Applicant with a view to entering into this before the statutory deadline for the Secretary of State to issue the decision for the LTC Scheme. With significant progress having been made since the close of Examination, PoTLL is hopeful that the remaining areas of disagreement will be capable of adequate resolution.

3.2 Following the 8 April meeting, the Applicant has taken away a number of matters and will be providing an updated agreement in due course for PoTLL to consider. PoTLL will keep the Secretary of State informed should agreement be reached and, following this, when that agreement has been entered into. As part of the agreement, the PPs will also take a finalised form, and this too will be submitted to the Secretary of State for inclusion within any Order to be made. However, whilst these discussions are ongoing, PoTLL requests that its Preferred Protective Provisions are included in any Order made prior to confirmation of the agreement.

APPENDIX 1

Part 1

Preferred Protective Provisions (Tracked)

PART 1
FOR THE PROTECTION OF PORT OF TILBURY LONDON LIMITED

Application

129. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and PoTLL, for the protection of PoTLL in relation to the construction of the authorised development and the operation and maintenance of the authorised development within the Port.

130.—(1) Where the terms defined in article 2 (interpretation) of this Order are inconsistent with sub-paragraph (2), the latter prevail.

(2) In this Part of this Schedule—

“the 2021 Regulations” means The Designation of Freeport Tax Sites (Thames Freeport) Regulations 2021(a);

“accumulation” means any accumulation of silt or other material (including any materials used to construct the authorised development) which constitutes an impediment to navigation within and to and from the Port;

“the affected roads” means the A1089 St Andrews Road, Ferry Road, Fort Road and the unnamed link road between Fort Road and the A1089 St Andrews Road;

“erosion” means any fluvial, mechanical, or other erosion, collapse, disturbance or destruction of the bed or banks of the river Thames or any quay or jetty or other structure of whatever nature within the Port;

“the infrastructure corridor” means the purpose-built highway to access Tilbury2 between the A1089 and Substation Road;

“plans” includes plans, sections, elevations, drawings, specifications, programmes, proposals, construction methods and descriptions;

“the Port” means—

- (a) any land (including land covered by water) for the time being owned or used by PoTLL for the purposes of its statutory undertaking, together with any quays, jetties, docks, river walls and other land or works held for or in connection with that undertaking; and
- (b) the land that was designated as a Thames Freeport Tax Site under the 2021 Regulations but only insofar as that land is included in the area shown edged and hatched in red on the map marked “Location: Port of Tilbury; Subject: Thames Freeport – Tax Site” referenced in Regulation 2(1)(c) of the 2021 Regulations;

“PoTLL” means Port of Tilbury London Limited, as statutory harbour authority for and operator of the Port;

“Required Easement Width” means any area of land comprising or forming part of an exclusion or protection zone pursuant to an easement for the benefit of a statutory undertaker and proposed to be—

- (a) granted or acquired by the undertaker;
- (b) acquired by a person or body under article 8(1), whether listed under article 8(5) or otherwise; or
- (c) granted or acquired by a statutory undertaker pursuant to a consent granted by the undertaker under article 28(3);

“specified easement” means any easement, restrictive covenant or any other form of property right, including a Required Easement Width, for the benefit of a statutory undertaker in

(a) S.I. 2021/1195.

respect of a work authorised by this Order, burdening land within the Port and proposed to be—

- (d) granted or acquired by the undertaker;
- (e) acquired by a person or body under article 8(1), whether listed under article 8(5) or otherwise; or
- (f) granted or acquired by a statutory undertaker pursuant to a consent granted by the undertaker under article 28(3);

“specified function” means any function of the undertaker under article 3 (development consent, etc. granted by the Order), article 4 (maintenance of the authorised development), article 5 (maintenance of drainage works), article 10 (construction and maintenance of new, altered or diverted streets and other structures), article 11 (access to works), article 12 (temporary closure, alteration, diversion and restriction of use of streets), article 13 (use of private roads), article 14 (permanent stopping up of streets and private means of access), article 17 (traffic regulation – local roads), article 18 (powers in relation to relevant navigations or watercourses), article 19 (discharge of water), article 20 (protective work to land and buildings), article 21 (authority to survey and investigate the land) and article 23 (felling or lopping of trees and removal of hedgerows) of this Order where exercised in respect of the land situated on, over, across or under the Port;

“specified work” means so much of the works and other matters listed at paragraphs (a) to (d) as is situated on, over, across or under the Port—

- (a) the following Works Nos. together with any preliminary works, associated development or ancillary works proposed to be carried out for the purposes of or in connection with their construction—
 - (i) Work No. CA5;
 - (ii) Work No. CA5A;
 - (iii) Work No. MUT4;
 - (iv) Work No. MUT5;
 - (v) Work No. MUT7;
 - (vi) Work No. MUT8;
 - (vii) Work No. MUT9;
 - (viii) Work No. MU27;
 - (ix) Work No. MU28;
 - (x) Work No. MU29;
 - (xi) Work No. OH3; and
 - (xii) Work No. OH4;
- (b) any activities associated with the undertaker complying with article 37(5) or any provision in Schedule 14 requiring the removal of apparatus;
- (c) any work, activity or operation associated with the authorised development authorised by the Town and Country Planning (General Permitted Development) (England) Order 2015^(a) or under any planning permission granted under the Town and Country Planning Act 1990^(b);
- (d) any part of the authorised development that is expected to require the inclusion of any land within the Port within the extent of a Required Easement Width; and
- (e) all traffic, rail and vessel movements associated with the works listed at sub-paragraphs (a) to (d) which may affect the Port, access to and from the Port and premises within the

(a) S.I. 2015/596.

(b) 1990 c. 8.

Port howsoever accessed, streets within the Port, navigation within and to and from the Port, or the functions of PoTLL as the statutory harbour authority for the Port

“Tilbury2” means that part of the Port constructed pursuant to the Port of Tilbury (Expansion) Order 2019(a);

“vehicular access” includes but is not limited to access by road, rail, vessel and conveyor and any reference to “access” is to be construed as including vehicular access unless otherwise stated.

Approval of plans

131.—(1) The undertaker must, before the exercise, or carrying out of any specified function or specified work, supply to PoTLL proper and sufficient plans of that work or function for the approval of PoTLL, acting reasonably, and the specified function must not be exercised or the specified work must not begin except in accordance with such plans as have been approved in writing by PoTLL or settled pursuant to paragraph ~~153~~¹⁵² of this Part of this Schedule.

(2) Before approving plans provided under paragraph (1), PoTLL may require the undertaker to supply it with such further information as PoTLL considers (acting reasonably) to be necessary to determine whether to grant approval, but such a request must be made within 28 days of the date on which plans have been supplied to PoTLL under sub-paragraph (1).

(3) The approval of PoTLL under sub-paragraph (1) must not be unreasonably withheld but may be given subject to such reasonable conditions as PoTLL may make for the protection of the Port (outside of the land which is the subject of the plan submitted under sub-paragraph (1)), navigation and current and permitted future vehicular access to it, and its ability to carry out dredging to facilitate vessel access to the Port and to facilitate the effective and cost-efficient future development of the Port provided that such conditions must not, if implemented, give rise to a breach of this Order.

(4) When imposing conditions on any approval given under sub-paragraph (1), PoTLL may specify any reasonably necessary protective works (whether temporary or permanent) that must be carried out before the carrying out of a specified work to minimise, to the extent reasonably practicable, the impact on PoTLL’s undertaking, and such protective works as may be reasonably necessary for those purposes must be constructed either by PoTLL at the expense of the undertaker, such costs to be agreed by the undertaker prior to construction, or by the undertaker at its own expense, in either case to be undertaken to a programme agreed between the undertaker and PoTLL, both parties acting reasonably.

(5) The undertaker must carry out any specified function or specified work and any protective works required under sub-paragraph (4) in accordance with the plans approved under sub-paragraph (1) or settled pursuant to paragraph ~~153~~¹⁵² of this Part of this Schedule.

(6) PoTLL is entitled at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey the specified works and the protective works and the undertaker must provide all reasonable facilities to enable that inspection and survey to take place and, if the person duly appointed by PoTLL is of the opinion, acting reasonably, that the construction of the work poses danger to any property of the Port or persons within the Port, the undertaker must adopt such measures and precautions as may be reasonably practicable for the purpose of preventing any damage or injury.

(7) If, by the end of the period of 28 days beginning with the date on which plans (or any subsequent information reasonably requested in accordance with sub-paragraph (2)) have been supplied to PoTLL under sub-paragraph (1), PoTLL has not approved or intimated disapproval of those plans and the grounds of disapproval, PoTLL is deemed to have approved the plans as submitted.

(8) Where an approval is provided under this paragraph, the undertaker will be deemed to have a reasonable excuse for the purposes of paragraph 4(4) of Schedule 7 to the Port of Tilbury (Expansion) Order 2019(b) (or any substituted byelaws made by PoTLL under that Order), and no

(a) S.I. 2019/359.

(b) S.I. 2019/359.

proceedings will be brought by PoTLL in pursuance of those byelaws, when the undertaker carries out the specified work or protective work or specified function in accordance with an approval.

Approval of specified easements

132.—(1) Before granting, imposing or acquiring any specified easement, transferring or granting the benefit of the Order pursuant to article 8(1) or issuing a consent under article 28(3) in respect of any specified easement, the undertaker must supply to PoTLL details of the proposed terms of that specified easement for the approval of PoTLL, acting reasonably, and the specified easement must not be acquired, imposed or granted except in accordance with the proposed terms as have been approved in writing by PoTLL or settled pursuant to paragraph ~~153~~¹⁵² of this Part of this Schedule.

(2) The approval of PoTLL under sub-paragraph (1) must not be unreasonably withheld but may be given subject to such reasonable conditions as PoTLL may make for the protection of the Port, and current and planned permitted vehicular access to it, and its ability to carry out dredging to facilitate vessel access to the Port and to facilitate the effective and cost-efficient operation and future development of the Port provided that such conditions must not, if implemented, give rise to a breach of this Order.

(3) In considering whether to grant its approval of the proposed terms of a specified easement submitted to it under sub-paragraph (1), PoTLL must have reasonable regard to—

(4) the reasonable requirements of the statutory undertaker for whose benefit the specified easement is proposed to be granted or acquired, including any relevant provisions of this Order;

(5) the intended purpose of the specified easement; and

(6) the desirability of the effective and efficient implementation of the authorised work or works to which the specified easement relates.

(7) The undertaker must acquire, impose or grant the specified easement, or transfer or grant the benefit of the Order pursuant to article 8(1) or issue a consent under article 28(3) in respect of any specified easement in accordance with the proposed terms approved under sub-paragraph (1) or settled pursuant to paragraph ~~153~~¹⁵² of this Part of this Schedule.

(8) If, by the end of the period of 28 days beginning with the date on which the proposed terms of any specified easement have been supplied to PoTLL under sub-paragraph (1), PoTLL has not approved or intimated disapproval of those terms and the grounds of disapproval, PoTLL is deemed to have approved the proposed terms as submitted.

Restoration of Port land

133. Before permanently vacating any part of the Port, the undertaker must supply to PoTLL a schedule setting out the condition of that part of the Port and any temporary works and apparatus situated in, on, under or over that part, and, notwithstanding articles 35, 36 or 37, PoTLL may confirm in writing the condition it wishes that part of the Port to be restored to, including if necessary the removal of any apparatus and the undertaker will put that part of the Port in that condition before vacating that part of the Port.

Consultation

134.—(1) PoTLL must be consulted by the undertaker on the development of the following plans and details in respect of any matters or measures within them that may affect the Port or the carrying out of a specified work or a specified function, before they are submitted to the Secretary of State for approval—

(a) an EMP (Second Iteration) under Requirement 4;

(b) a LEMP (as defined in paragraph 1 of Schedule 2) under Requirement 5;

(c) any materials handling plan developed under Requirement 4 as part of the EMP (Second Iteration);

(d) a written scheme and programme under Requirement 6(2);

(e) a travel plan under Requirement 11; and

(f) fencing under Requirement 12.

(2) Within the Port—

(a) the definition of ‘carrying out’ in Requirement 6(2) is to be construed as applying to the preliminary works; and

(b) measures GS-016 to GS-028 inclusive of table 7.1 of the code of construction practice apply to the carrying out of the preliminary works.

(3) PoTLL must be consulted by the undertaker on the development of the following plans, required by the preliminary works EMP, in respect of any matters or measures within them that may affect the Port or the carrying out of a specified work or specified function, before they are approved by the undertaker—

(a) a Security Management Plan;

(b) an Emergency Preparedness Plan; and

(c) a Noise and Vibration Management Plan.

(4) PoTLL must be consulted by the undertaker on the development of a traffic management plan for the preliminary works required by section 6 of the outline traffic management plan for construction.

(5) The undertaker must invite PoTLL to be a member of the following groups that are created in relation to the authorised development on the north side of the river Thames—

(a) the travel plan liaison group created under a travel plan approved under Requirement 11;

(b) the traffic management forum created under a traffic management plan approved under Requirement 11;

(c) the materials handling sub-group of the traffic management forum created under a traffic management plan approved under Requirement 11; and

(d) an advisory group created under a LEMP (as defined in paragraph 1 of Schedule 2) approved under Requirement 5.

Notification of works to utilities and services affecting the Port

135. Except in an emergency, prior to the carrying out of any works to any utilities or services within the infrastructure corridor, the undertaker will notify PoTLL of the intended works and the programme for the implementation of such works at least 28 days prior to the carrying out of the proposed works.

Construction traffic management protocol within the Port

136.—(1) Before the commencement of any work constituting Work No. CA5 or ancillary to it, including preliminary works, the undertaker must submit a construction traffic management protocol to PoTLL for approval.

(2) The construction traffic management protocol must include—

(a) the security process to be followed by all vehicles accessing Work No. CA5 or otherwise travelling through the Port;

(b) the code of conduct to which the undertaker, its employers, agents and contractors will be held to whilst on the Port;

(c) procedures to be followed by all vehicles to ensure the Port and access to the Port does not become congested during any period in which the level crossing in the Port is in use;

(d) the procedures to be followed in an emergency;

(e) a suggested process by which advanced approval will be sought from PoTLL of the number of vehicular movements, including abnormal indivisible loads, expected to pass through the Port within a period to be agreed with PoTLL, and for updates to this information to be provided at the end of agreed period, for the next agreed period; and

(f) a suggested process by which variations to the numbers approved by PoTLL under paragraph (e) are to be approved by PoTLL.

- (g) The approval of PoTLL under sub-paragraph (1) must not be unreasonably withheld but may be given subject to such reasonable modifications, terms and conditions as PoTLL may make for the protection of the Port and its tenants, including in respect of their current and future operations.
- (h) The undertaker must ensure that its employees, agents and contractors comply with the agreed construction traffic management protocol within the Port and failure of an individual or body to comply with the construction traffic management protocol will entitle PoTLL to prohibit that individual or body from entering the Port.

Streets

137.—(1) Before exercising the relevant streets powers in respect of any affected roads the undertaker must consult PoTLL on its proposed exercise of those powers and have regard to any consultation response provided by PoTLL.

(2) Consultation under this paragraph will be effected by the undertaker sending to PoTLL the documents reasonably required to describe its proposed exercise of the relevant streets powers and, where required by the provisions of the relevant streets powers to consult or seek the consent of a street authority or traffic authority, a copy of the consultation documents or application seeking that consent, at the time those documents are submitted to the relevant street authority or traffic authority as the case may be.

(3) The undertaker must send to PoTLL a copy of any response received by the undertaker from the relevant street authority or traffic authority in response to any such consultation or submission for consent under the relevant streets powers within 7 days of the receipt by the undertaker of any such response.

(4) In this paragraph “the relevant streets powers” means the powers conferred by article 12 (temporary closure, alteration, diversion and restriction of use of streets), article 16 (clearways, speed limits and prohibitions) and article 17 (traffic regulation – local roads).

Minimising disruption to affected roads and streets within the Port

138. In exercising the powers conferred by this Order in relation to the affected roads or any street within the Port, the undertaker must have regard to the potential disruption, delay or congestion of traffic which may be caused to the affected roads or streets within the Port and seek to minimise such disruption, delay or congestion so far as is reasonably practicable.

Obstruction within the Port

139.—(1) Where any event or accident on or affecting any road, street or highway within the Port or on or affecting the river Thames, prevents or obstructs pedestrian or vehicular access into, out of or within the Port, such event or accident being caused by or attributable to the undertaker, its agents, employees or contractors, or which requires the removal of any item, vessel or vehicle which is preventing or obstructing access and which is owned by, contracted to or otherwise being used on behalf of the undertaker, the undertaker must use best endeavours to reinstate access or remove the obstruction without delay.

(2) PoTLL may, where an obstruction has occurred and has not been removed by the undertaker within 14 days of the undertaker becoming aware of the obstruction, or upon the undertaker being given notice by PoTLL that it is expedient for PoTLL to do so, remove the obstruction and recover the cost of that removal and repair from the undertaker.

Land powers

140. The undertaker must not exercise the powers conferred by article 25 (compulsory acquisition of land), article 33 (acquisition of subsoil or airspace only), article 35 (temporary use of land for carrying out the authorised development) and article 36 (temporary use of land for maintaining the authorised development) in relation to any land within the Port unless the exercise of those powers is with the consent of PoTLL, such consent not to be unreasonably withheld or delayed.

141. Article 29 (private rights) and article 66 (power to override easements and other rights) do not apply to the Port and any interests in or rights over land held by PoTLL unless otherwise agreed by PoTLL, acting reasonably.

Non-application of the Order to specified plots

142.—(1) Except for the retained provisions, the provisions of this Order do not apply to, and the powers conferred by this Order are not exercisable by the undertaker or any other person in respect of, the area 1 land.

(2) Other than as may be approved by PoTLL pursuant to the provisions of this Part of this Schedule, the undertaker must not exercise or permit the exercise of the powers conferred by this Order so as to limit PoTLL’s use, enjoyment and ability to develop, let or permit occupation of the area 1 land.

(3) In this paragraph—

“the area 1 land” means the land comprised in plots 16-65, 16-66, 17-08, 17-09, 21-32 and 21-34 as shown on the land plans and listed in the book of reference; and

“retained provisions” means paragraphs 142, 152 and 153 of this Part of this Schedule.

As-built plans

143. As soon as reasonably practicable following the completion of the construction of any specified works within the Port or any protective works, the undertaker must provide to PoTLL as-built plans of those works in a form and scale to be agreed between the undertaker and PoTLL.

Accumulation and erosion

144.—(1) If during the construction of a specified work or protective work or in the carrying out of a specified function or after the completion of that work or function, there is caused or created an accumulation or erosion wholly or partly in direct consequence of its construction, the undertaker, if requested by PoTLL, acting reasonably, must remedy the accumulation or erosion to the extent attributable to the construction of the specified work or protective work and, if it refuses or fails to do so as soon as reasonably practicable, PoTLL may itself cause the work to be done and may recover the reasonable cost of doing so from the undertaker.

(2) For the purposes of sub-paragraph (1)—

- (a) in the case of an accumulation, the remedy must be its removal; and
- (b) in the case of erosion, the remedy must be the carrying out of such reconstruction works and other protective works or measures as PoTLL reasonably requires.

Permitting

145. The undertaker must consult PoTLL before applying for any permit under the Environmental Permitting (England and Wales) Regulations 2016(a) or an environmental scheme under article 68 (interface with waste operation permits), that will apply to activities in the Port.

146. Within the Port, the meaning of “authorised activity” in article 68 (interface with waste operation permits) shall be construed as including the carrying out of any preliminary works.

Port closure in emergency

147.—(1) Subject to sub-paragraph (2), PoTLL may at any time close the Port and exclude access by the undertaker, including access under any power granted by this Order, under any access right and as provided for in any agreement between the undertaker and PoTLL, where PoTLL reasonably considers that it is necessary to do so in response to a request from an emergency service or government agency, any emergency or accident, or an imminent threat to the health or safety of persons.

(a) S.I. 2016/1154.

(2) PoTLL must inform the undertaker of any closure of the Port as soon as reasonably practicable, including details of the location and extent of the closure and where known, the anticipated duration of the closure.

(3) The undertaker must not at any time prevent or unreasonably impede access by emergency services vehicles to the Port.

Interaction with the T2 Order

148.—(1) Notwithstanding paragraph (5) of article 55, the undertaker will not undertake any work, activity or operation authorised by this Order, the Town and Country Planning Act (General Permitted Development) Order 2015 or under any planning permission granted or having effect under the Town and Country Planning Act 1990 that will or could result in a breach of the provisions, requirements, licences and other consents that form part of, are authorised by, or are ancillary to Port of Tilbury (Expansion) Order 2019 (“the 2019 Order”) until a written scheme of management has been submitted to and approved by PoTLL.

(2) The written scheme of management must set out how the undertaker will—

- (a) minimise the extent of any breach;
- (b) monitor the breach;
- (c) rectify the breach at the earliest opportunity; and
- (d) reinstate the Port so as to ensure ongoing compliance with the provision, requirement, licence or consent following rectification of the breach.

(3) Unless otherwise agreed by PoTLL, the undertaker must carry out the written scheme of management approved under sub-paragraph (1).

(4) The undertaker is to be responsible for ensuring the rectification of any breach remains effective for the period of 12 months commencing with the date the breach was rectified or, should the breach recur, the date the recurrence was itself rectified.

(5) The rectification of any breach under sub-paragraph (2)(c) and reinstatement under sub-paragraph (2)(d) must be to at least the condition of the relevant land, ecological or other feature as at the date immediately prior to the action being undertaken that but for article 55(5) constituted a breach of the 2019 Order, but may include the provision of compensatory ecological provision where rectification would not otherwise be reasonably practicable due to the construction of the authorised development

Safeguarding of access to the Port by rail

149. The undertaker must not exercise any power under the Order in such a manner as to cause any vehicular access for the purposes of the authorised development to have priority over railway traffic at the level crossing in the Port.

Disposals, etc

150. The undertaker must within 7 days after the completion of any sale, agreement or other transaction under article 8 (consent to transfer benefit of Order) in relation to which any powers, rights and obligations of the undertaker are transferred to another party insofar as these would affect the Port or the operation of this Part of this Schedule, notify PoTLL in writing, and the notice must include particulars of the other party to the transaction under article 8, the general nature of the transaction and details of the extent, nature and scope of the works or functions sold, transferred or otherwise dealt with.

Costs

151. The undertaker must pay to PoTLL its proper and reasonable legal costs, professional fees and disbursements incurred in connection with—

- (a) reviewing any information provided by the undertaker in seeking any consent or approval required by this Part of this Schedule; or
- (b) inspecting during construction or on practical completion of any specified work or protective work

Indemnity

152.—(1) The undertaker agrees to indemnify and keep PoTLL, including any associated company (as defined in article 8(7)), indemnified at all times for all losses, costs, charges, damages, expenses, claims and demands which may be incurred reasonably or suffered by PoTLL, by reason or arising from or relating to—

- (a) the construction or failure of a specified work or protective work;
- (b) the carrying out of a specified function;
- (c) the undertaking by PoTLL of works or measures to prevent or remedy a danger or impediment to navigation or access within or to and from the Port;
- (d) the alteration to aids to navigation within the Port that are owned by PoTLL or the laying down of moorings or buoys within the Port as may be necessary in consequence of a specified work;
- (e) damage to the Port arising from paragraphs (a) to (d), including but not limited to—
 - (i) damage to any, street, plant, apparatus, chattels, fixtures, equipment or building belonging to PoTLL that is caused by the construction or failure of a specified work or protective work;
 - (ii) any act or omission of the undertaker or its servants and agents while engaged in the construction of a specified work or protective work; and
 - (iii) any remedial works necessary as the result of contamination being disturbed in, or migrating to, the Port or where such contamination means that the land affected by contamination cannot be used as part of the Port.

(2) The liability imposed by sub-paragraph (1) includes where this is attributable to the act, neglect or default of the undertaker's officers, servants, contractors, employees, agents and sub-contractors.

(3) The fact that any act or thing may have been done by PoTLL on behalf of the undertaker or in accordance with a plan approved by PoTLL or in accordance with any requirement of PoTLL or under its supervision or to its satisfaction or in accordance with any directions or award of any arbitrator does not, subject to sub-paragraph (4), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(4) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage to the extent that it is attributable to the act, neglect or default of PoTLL, its officers, servants, contractors or agents.

(5) PoTLL must give the undertaker reasonable notice of any such claim or demand as is referred to in sub-paragraph (1), and no settlement or compromise of any such claim or demand must be made without the prior written consent of the undertaker, such consent not to be unreasonably delayed or refused.

Disputes

153.—(1) Subject to sub-paragraph (3), any difference arising between the undertaker and PoTLL under this Order must be determined by arbitration as provided in article 64 (arbitration).

(2) In any appeal made by the undertaker pursuant to Article 65 (appeals to the Secretary of State) that relates to, or is considered by PoTLL (acting reasonably) to relate to, the affected roads or the infrastructure corridor or the Port, PoTLL is deemed to be—~~does not apply to any dispute between the undertaker and PoTLL as street authority in respect of the use of article 12 (temporary closure, alteration, diversion and restriction of use of streets) and article 17 (traffic regulation—local roads):~~

- (a) a party to whom the undertaker must provide copies of the appeal documentation on the same day the appeal documentation is submitted to the Secretary of State pursuant to article 65(2)(b);
- (b) a party entitled to submit representations to the appointed person pursuant to article 65(2)(d) and (e); and

| ~~(2)~~(c) an appeal party for the purposes of article 65.

(3) In the event of any difference arising between the undertaker and PoTLL under this Order, senior representatives of each party must seek to resolve the dispute through a meeting between the parties promptly and in any event within 10 business days of the dispute arising, and if either party is not reasonably satisfied following that meeting it may, within 20 business days of the meeting, notify the other party accordingly and refer the matter to arbitration.

Part 2

Preferred Protective Provisions (Clean)

PART 1
FOR THE PROTECTION OF PORT OF TILBURY LONDON LIMITED

Application

129. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and PoTLL, for the protection of PoTLL in relation to the construction of the authorised development and the operation and maintenance of the authorised development within the Port.

130.—(1) Where the terms defined in article 2 (interpretation) of this Order are inconsistent with sub-paragraph (2), the latter prevail.

(2) In this Part of this Schedule—

“the 2021 Regulations” means The Designation of Freeport Tax Sites (Thames Freeport) Regulations 2021(a);

“accumulation” means any accumulation of silt or other material (including any materials used to construct the authorised development) which constitutes an impediment to navigation within and to and from the Port;

“the affected roads” means the A1089 St Andrews Road, Ferry Road, Fort Road and the unnamed link road between Fort Road and the A1089 St Andrews Road;

“erosion” means any fluvial, mechanical, or other erosion, collapse, disturbance or destruction of the bed or banks of the river Thames or any quay or jetty or other structure of whatever nature within the Port;

“the infrastructure corridor” means the purpose-built highway to access Tilbury2 between the A1089 and Substation Road;

“plans” includes plans, sections, elevations, drawings, specifications, programmes, proposals, construction methods and descriptions;

“the Port” means—

(a) any land (including land covered by water) for the time being owned or used by PoTLL for the purposes of its statutory undertaking, together with any quays, jetties, docks, river walls and other land or works held for or in connection with that undertaking; and

(b) the land that was designated as a Thames Freeport Tax Site under the 2021 Regulations but only insofar as that land is included in the area shown edged and hatched in red on the map marked “Location: Port of Tilbury; Subject: Thames Freeport – Tax Site” referenced in Regulation 2(1)(c) of the 2021 Regulations;

“PoTLL” means Port of Tilbury London Limited, as statutory harbour authority for and operator of the Port;

“Required Easement Width” means any area of land comprising or forming part of an exclusion or protection zone pursuant to an easement for the benefit of a statutory undertaker and proposed to be—

(a) granted or acquired by the undertaker;

(b) acquired by a person or body under article 8(1), whether listed under article 8(5) or otherwise; or

(c) granted or acquired by a statutory undertaker pursuant to a consent granted by the undertaker under article 28(3);

“specified easement” means any easement, restrictive covenant or any other form of property right, including a Required Easement Width, for the benefit of a statutory undertaker in

(a) S.I. 2021/1195.

respect of a work authorised by this Order, burdening land within the Port and proposed to be—

- (d) granted or acquired by the undertaker;
- (e) acquired by a person or body under article 8(1), whether listed under article 8(5) or otherwise; or
- (f) granted or acquired by a statutory undertaker pursuant to a consent granted by the undertaker under article 28(3);

“specified function” means any function of the undertaker under article 3 (development consent, etc. granted by the Order), article 4 (maintenance of the authorised development), article 5 (maintenance of drainage works), article 10 (construction and maintenance of new, altered or diverted streets and other structures), article 11 (access to works), article 12 (temporary closure, alteration, diversion and restriction of use of streets), article 13 (use of private roads), article 14 (permanent stopping up of streets and private means of access), article 17 (traffic regulation – local roads), article 18 (powers in relation to relevant navigations or watercourses), article 19 (discharge of water), article 20 (protective work to land and buildings), article 21 (authority to survey and investigate the land) and article 23 (felling or lopping of trees and removal of hedgerows) of this Order where exercised in respect of the land situated on, over, across or under the Port;

“specified work” means so much of the works and other matters listed at paragraphs (a) to (d) as is situated on, over, across or under the Port—

- (a) the following Works Nos. together with any preliminary works, associated development or ancillary works proposed to be carried out for the purposes of or in connection with their construction—
 - (i) Work No. CA5;
 - (ii) Work No. CA5A;
 - (iii) Work No. MUT4;
 - (iv) Work No. MUT5;
 - (v) Work No. MUT7;
 - (vi) Work No. MUT8;
 - (vii) Work No. MUT9;
 - (viii) Work No. MU27;
 - (ix) Work No. MU28;
 - (x) Work No. MU29;
 - (xi) Work No. OH3; and
 - (xii) Work No. OH4;
- (b) any activities associated with the undertaker complying with article 37(5) or any provision in Schedule 14 requiring the removal of apparatus;
- (c) any work, activity or operation associated with the authorised development authorised by the Town and Country Planning (General Permitted Development) (England) Order 2015^(a) or under any planning permission granted under the Town and Country Planning Act 1990^(b);
- (d) any part of the authorised development that is expected to require the inclusion of any land within the Port within the extent of a Required Easement Width; and
- (e) all traffic, rail and vessel movements associated with the works listed at sub-paragraphs (a) to (d) which may affect the Port, access to and from the Port and premises within the

(a) S.I. 2015/596.

(b) 1990 c. 8.

Port howsoever accessed, streets within the Port, navigation within and to and from the Port, or the functions of PoTLL as the statutory harbour authority for the Port

“Tilbury2” means that part of the Port constructed pursuant to the Port of Tilbury (Expansion) Order 2019(a);

“vehicular access” includes but is not limited to access by road, rail, vessel and conveyor and any reference to “access” is to be construed as including vehicular access unless otherwise stated.

Approval of plans

131.—(1) The undertaker must, before the exercise, or carrying out of any specified function or specified work, supply to PoTLL proper and sufficient plans of that work or function for the approval of PoTLL, acting reasonably, and the specified function must not be exercised or the specified work must not begin except in accordance with such plans as have been approved in writing by PoTLL or settled pursuant to paragraph 153 of this Part of this Schedule.

(2) Before approving plans provided under paragraph (1), PoTLL may require the undertaker to supply it with such further information as PoTLL considers (acting reasonably) to be necessary to determine whether to grant approval, but such a request must be made within 28 days of the date on which plans have been supplied to PoTLL under sub-paragraph (1).

(3) The approval of PoTLL under sub-paragraph (1) must not be unreasonably withheld but may be given subject to such reasonable conditions as PoTLL may make for the protection of the Port (outside of the land which is the subject of the plan submitted under sub-paragraph (1)), navigation and current and permitted future vehicular access to it, and its ability to carry out dredging to facilitate vessel access to the Port and to facilitate the effective and cost-efficient future development of the Port provided that such conditions must not, if implemented, give rise to a breach of this Order.

(4) When imposing conditions on any approval given under sub-paragraph (1), PoTLL may specify any reasonably necessary protective works (whether temporary or permanent) that must be carried out before the carrying out of a specified work to minimise, to the extent reasonably practicable, the impact on PoTLL’s undertaking, and such protective works as may be reasonably necessary for those purposes must be constructed either by PoTLL at the expense of the undertaker, such costs to be agreed by the undertaker prior to construction, or by the undertaker at its own expense, in either case to be undertaken to a programme agreed between the undertaker and PoTLL, both parties acting reasonably.

(5) The undertaker must carry out any specified function or specified work and any protective works required under sub-paragraph (4) in accordance with the plans approved under sub-paragraph (1) or settled pursuant to paragraph 153 of this Part of this Schedule.

(6) PoTLL is entitled at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey the specified works and the protective works and the undertaker must provide all reasonable facilities to enable that inspection and survey to take place and, if the person duly appointed by PoTLL is of the opinion, acting reasonably, that the construction of the work poses danger to any property of the Port or persons within the Port, the undertaker must adopt such measures and precautions as may be reasonably practicable for the purpose of preventing any damage or injury.

(7) If, by the end of the period of 28 days beginning with the date on which plans (or any subsequent information reasonably requested in accordance with sub-paragraph (2)) have been supplied to PoTLL under sub-paragraph (1), PoTLL has not approved or intimated disapproval of those plans and the grounds of disapproval, PoTLL is deemed to have approved the plans as submitted.

(8) Where an approval is provided under this paragraph, the undertaker will be deemed to have a reasonable excuse for the purposes of paragraph 4(4) of Schedule 7 to the Port of Tilbury (Expansion) Order 2019(b) (or any substituted byelaws made by PoTLL under that Order), and no

(a) S.I. 2019/359.

(b) S.I. 2019/359.

proceedings will be brought by PoTLL in pursuance of those byelaws, when the undertaker carries out the specified work or protective work or specified function in accordance with an approval.

Approval of specified easements

132.—(1) Before granting, imposing or acquiring any specified easement, transferring or granting the benefit of the Order pursuant to article 8(1) or issuing a consent under article 28(3) in respect of any specified easement, the undertaker must supply to PoTLL details of the proposed terms of that specified easement for the approval of PoTLL, acting reasonably, and the specified easement must not be acquired, imposed or granted except in accordance with the proposed terms as have been approved in writing by PoTLL or settled pursuant to paragraph 153 of this Part of this Schedule.

(2) The approval of PoTLL under sub-paragraph (1) must not be unreasonably withheld but may be given subject to such reasonable conditions as PoTLL may make for the protection of the Port, and current and planned permitted vehicular access to it, and its ability to carry out dredging to facilitate vessel access to the Port and to facilitate the effective and cost-efficient operation and future development of the Port provided that such conditions must not, if implemented, give rise to a breach of this Order.

(3) In considering whether to grant its approval of the proposed terms of a specified easement submitted to it under sub-paragraph (1), PoTLL must have reasonable regard to—

(4) the reasonable requirements of the statutory undertaker for whose benefit the specified easement is proposed to be granted or acquired, including any relevant provisions of this Order;

(5) the intended purpose of the specified easement; and

(6) the desirability of the effective and efficient implementation of the authorised work or works to which the specified easement relates.

(7) The undertaker must acquire, impose or grant the specified easement, or transfer or grant the benefit of the Order pursuant to article 8(1) or issue a consent under article 28(3) in respect of any specified easement in accordance with the proposed terms approved under sub-paragraph (1) or settled pursuant to paragraph 153 of this Part of this Schedule.

(8) If, by the end of the period of 28 days beginning with the date on which the proposed terms of any specified easement have been supplied to PoTLL under sub-paragraph (1), PoTLL has not approved or intimated disapproval of those terms and the grounds of disapproval, PoTLL is deemed to have approved the proposed terms as submitted.

Restoration of Port land

133. Before permanently vacating any part of the Port, the undertaker must supply to PoTLL a schedule setting out the condition of that part of the Port and any temporary works and apparatus situated in, on, under or over that part, and, notwithstanding articles 35, 36 or 37, PoTLL may confirm in writing the condition it wishes that part of the Port to be restored to, including if necessary the removal of any apparatus and the undertaker will put that part of the Port in that condition before vacating that part of the Port.

Consultation

134.—(1) PoTLL must be consulted by the undertaker on the development of the following plans and details in respect of any matters or measures within them that may affect the Port or the carrying out of a specified work or a specified function, before they are submitted to the Secretary of State for approval—

(a) an EMP (Second Iteration) under Requirement 4;

(b) a LEMP (as defined in paragraph 1 of Schedule 2) under Requirement 5;

(c) any materials handling plan developed under Requirement 4 as part of the EMP (Second Iteration);

(d) a written scheme and programme under Requirement 6(2);

(e) a travel plan under Requirement 11; and

(f) fencing under Requirement 12.

(2) Within the Port—

(a) the definition of ‘carrying out’ in Requirement 6(2) is to be construed as applying to the preliminary works; and

(b) measures GS-016 to GS-028 inclusive of table 7.1 of the code of construction practice apply to the carrying out of the preliminary works.

(3) PoTLL must be consulted by the undertaker on the development of the following plans, required by the preliminary works EMP, in respect of any matters or measures within them that may affect the Port or the carrying out of a specified work or specified function, before they are approved by the undertaker—

(a) a Security Management Plan;

(b) an Emergency Preparedness Plan; and

(c) a Noise and Vibration Management Plan.

(4) PoTLL must be consulted by the undertaker on the development of a traffic management plan for the preliminary works required by section 6 of the outline traffic management plan for construction.

(5) The undertaker must invite PoTLL to be a member of the following groups that are created in relation to the authorised development on the north side of the river Thames—

(a) the travel plan liaison group created under a travel plan approved under Requirement 11;

(b) the traffic management forum created under a traffic management plan approved under Requirement 11;

(c) the materials handling sub-group of the traffic management forum created under a traffic management plan approved under Requirement 11; and

(d) an advisory group created under a LEMP (as defined in paragraph 1 of Schedule 2) approved under Requirement 5.

Notification of works to utilities and services affecting the Port

135. Except in an emergency, prior to the carrying out of any works to any utilities or services within the infrastructure corridor, the undertaker will notify PoTLL of the intended works and the programme for the implementation of such works at least 28 days prior to the carrying out of the proposed works.

Construction traffic management protocol within the Port

136.—(1) Before the commencement of any work constituting Work No. CA5 or ancillary to it, including preliminary works, the undertaker must submit a construction traffic management protocol to PoTLL for approval.

(2) The construction traffic management protocol must include—

(a) the security process to be followed by all vehicles accessing Work No. CA5 or otherwise travelling through the Port;

(b) the code of conduct to which the undertaker, its employers, agents and contractors will be held to whilst on the Port;

(c) procedures to be followed by all vehicles to ensure the Port and access to the Port does not become congested during any period in which the level crossing in the Port is in use;

(d) the procedures to be followed in an emergency;

(e) a suggested process by which advanced approval will be sought from PoTLL of the number of vehicular movements, including abnormal indivisible loads, expected to pass through the Port within a period to be agreed with PoTLL, and for updates to this information to be provided at the end of agreed period, for the next agreed period; and

(f) a suggested process by which variations to the numbers approved by PoTLL under paragraph (e) are to be approved by PoTLL.

- (g) The approval of PoTLL under sub-paragraph (1) must not be unreasonably withheld but may be given subject to such reasonable modifications, terms and conditions as PoTLL may make for the protection of the Port and its tenants, including in respect of their current and future operations.
- (h) The undertaker must ensure that its employees, agents and contractors comply with the agreed construction traffic management protocol within the Port and failure of an individual or body to comply with the construction traffic management protocol will entitle PoTLL to prohibit that individual or body from entering the Port.

Streets

137.—(1) Before exercising the relevant streets powers in respect of any affected roads the undertaker must consult PoTLL on its proposed exercise of those powers and have regard to any consultation response provided by PoTLL.

(2) Consultation under this paragraph will be effected by the undertaker sending to PoTLL the documents reasonably required to describe its proposed exercise of the relevant streets powers and, where required by the provisions of the relevant streets powers to consult or seek the consent of a street authority or traffic authority, a copy of the consultation documents or application seeking that consent, at the time those documents are submitted to the relevant street authority or traffic authority as the case may be.

(3) The undertaker must send to PoTLL a copy of any response received by the undertaker from the relevant street authority or traffic authority in response to any such consultation or submission for consent under the relevant streets powers within 7 days of the receipt by the undertaker of any such response.

(4) In this paragraph “the relevant streets powers” means the powers conferred by article 12 (temporary closure, alteration, diversion and restriction of use of streets), article 16 (clearways, speed limits and prohibitions) and article 17 (traffic regulation – local roads).

Minimising disruption to affected roads and streets within the Port

138. In exercising the powers conferred by this Order in relation to the affected roads or any street within the Port, the undertaker must have regard to the potential disruption, delay or congestion of traffic which may be caused to the affected roads or streets within the Port and seek to minimise such disruption, delay or congestion so far as is reasonably practicable.

Obstruction within the Port

139.—(1) Where any event or accident on or affecting any road, street or highway within the Port or on or affecting the river Thames, prevents or obstructs pedestrian or vehicular access into, out of or within the Port, such event or accident being caused by or attributable to the undertaker, its agents, employees or contractors, or which requires the removal of any item, vessel or vehicle which is preventing or obstructing access and which is owned by, contracted to or otherwise being used on behalf of the undertaker, the undertaker must use best endeavours to reinstate access or remove the obstruction without delay.

(2) PoTLL may, where an obstruction has occurred and has not been removed by the undertaker within 14 days of the undertaker becoming aware of the obstruction, or upon the undertaker being given notice by PoTLL that it is expedient for PoTLL to do so, remove the obstruction and recover the cost of that removal and repair from the undertaker.

Land powers

140. The undertaker must not exercise the powers conferred by article 25 (compulsory acquisition of land), article 33 (acquisition of subsoil or airspace only), article 35 (temporary use of land for carrying out the authorised development) and article 36 (temporary use of land for maintaining the authorised development) in relation to any land within the Port unless the exercise of those powers is with the consent of PoTLL, such consent not to be unreasonably withheld or delayed.

141. Article 29 (private rights) and article 66 (power to override easements and other rights) do not apply to the Port and any interests in or rights over land held by PoTLL unless otherwise agreed by PoTLL, acting reasonably.

Non-application of the Order to specified plots

142.—(1) Except for the retained provisions, the provisions of this Order do not apply to, and the powers conferred by this Order are not exercisable by the undertaker or any other person in respect of, the area 1 land.

(2) Other than as may be approved by PoTLL pursuant to the provisions of this Part of this Schedule, the undertaker must not exercise or permit the exercise of the powers conferred by this Order so as to limit PoTLL’s use, enjoyment and ability to develop, let or permit occupation of the area 1 land.

(3) In this paragraph—

“the area 1 land” means the land comprised in plots 16-65, 16-66, 17-08, 17-09, 21-32 and 21-34 as shown on the land plans and listed in the book of reference; and

“retained provisions” means paragraphs 142, 152 and 153 of this Part of this Schedule.

As-built plans

143. As soon as reasonably practicable following the completion of the construction of any specified works within the Port or any protective works, the undertaker must provide to PoTLL as-built plans of those works in a form and scale to be agreed between the undertaker and PoTLL.

Accumulation and erosion

144.—(1) If during the construction of a specified work or protective work or in the carrying out of a specified function or after the completion of that work or function, there is caused or created an accumulation or erosion wholly or partly in direct consequence of its construction, the undertaker, if requested by PoTLL, acting reasonably, must remedy the accumulation or erosion to the extent attributable to the construction of the specified work or protective work and, if it refuses or fails to do so as soon as reasonably practicable, PoTLL may itself cause the work to be done and may recover the reasonable cost of doing so from the undertaker.

(2) For the purposes of sub-paragraph (1)—

(a) in the case of an accumulation, the remedy must be its removal; and

(b) in the case of erosion, the remedy must be the carrying out of such reconstruction works and other protective works or measures as PoTLL reasonably requires.

Permitting

145. The undertaker must consult PoTLL before applying for any permit under the Environmental Permitting (England and Wales) Regulations 2016^(a) or an environmental scheme under article 68 (interface with waste operation permits), that will apply to activities in the Port.

146. Within the Port, the meaning of “authorised activity” in article 68 (interface with waste operation permits) shall be construed as including the carrying out of any preliminary works.

Port closure in emergency

147.—(1) Subject to sub-paragraph (2), PoTLL may at any time close the Port and exclude access by the undertaker, including access under any power granted by this Order, under any access right and as provided for in any agreement between the undertaker and PoTLL, where PoTLL reasonably considers that it is necessary to do so in response to a request from an emergency service or government agency, any emergency or accident, or an imminent threat to the health or safety of persons.

(a) S.I. 2016/1154.

(2) PoTLL must inform the undertaker of any closure of the Port as soon as reasonably practicable, including details of the location and extent of the closure and where known, the anticipated duration of the closure.

(3) The undertaker must not at any time prevent or unreasonably impede access by emergency services vehicles to the Port.

Interaction with the T2 Order

148.—(1) Notwithstanding paragraph (5) of article 55, the undertaker will not undertake any work, activity or operation authorised by this Order, the Town and Country Planning Act (General Permitted Development) Order 2015 or under any planning permission granted or having effect under the Town and Country Planning Act 1990 that will or could result in a breach of the provisions, requirements, licences and other consents that form part of, are authorised by, or are ancillary to Port of Tilbury (Expansion) Order 2019 (“the 2019 Order”) until a written scheme of management has been submitted to and approved by PoTLL.

(2) The written scheme of management must set out how the undertaker will—

- (a) minimise the extent of any breach;
- (b) monitor the breach;
- (c) rectify the breach at the earliest opportunity; and
- (d) reinstate the Port so as to ensure ongoing compliance with the provision, requirement, licence or consent following rectification of the breach.

(3) Unless otherwise agreed by PoTLL, the undertaker must carry out the written scheme of management approved under sub-paragraph (1).

(4) The undertaker is to be responsible for ensuring the rectification of any breach remains effective for the period of 12 months commencing with the date the breach was rectified or, should the breach recur, the date the recurrence was itself rectified.

(5) The rectification of any breach under sub-paragraph (2)(c) and reinstatement under sub-paragraph (2)(d) must be to at least the condition of the relevant land, ecological or other feature as at the date immediately prior to the action being undertaken that but for article 55(5) constituted a breach of the 2019 Order, but may include the provision of compensatory ecological provision where rectification would not otherwise be reasonably practicable due to the construction of the authorised development

Safeguarding of access to the Port by rail

149. The undertaker must not exercise any power under the Order in such a manner as to cause any vehicular access for the purposes of the authorised development to have priority over railway traffic at the level crossing in the Port.

Disposals, etc

150. The undertaker must within 7 days after the completion of any sale, agreement or other transaction under article 8 (consent to transfer benefit of Order) in relation to which any powers, rights and obligations of the undertaker are transferred to another party insofar as these would affect the Port or the operation of this Part of this Schedule, notify PoTLL in writing, and the notice must include particulars of the other party to the transaction under article 8, the general nature of the transaction and details of the extent, nature and scope of the works or functions sold, transferred or otherwise dealt with.

Costs

151. The undertaker must pay to PoTLL its proper and reasonable legal costs, professional fees and disbursements incurred in connection with—

- (a) reviewing any information provided by the undertaker in seeking any consent or approval required by this Part of this Schedule; or
- (b) inspecting during construction or on practical completion of any specified work or protective work

Indemnity

152.—(1) The undertaker agrees to indemnify and keep PoTLL, including any associated company (as defined in article 8(7)), indemnified at all times for all losses, costs, charges, damages, expenses, claims and demands which may be incurred reasonably or suffered by PoTLL, by reason or arising from or relating to—

- (a) the construction or failure of a specified work or protective work;
- (b) the carrying out of a specified function;
- (c) the undertaking by PoTLL of works or measures to prevent or remedy a danger or impediment to navigation or access within or to and from the Port;
- (d) the alteration to aids to navigation within the Port that are owned by PoTLL or the laying down of moorings or buoys within the Port as may be necessary in consequence of a specified work;
- (e) damage to the Port arising from paragraphs (a) to (d), including but not limited to—
 - (i) damage to any, street, plant, apparatus, chattels, fixtures, equipment or building belonging to PoTLL that is caused by the construction or failure of a specified work or protective work;
 - (ii) any act or omission of the undertaker or its servants and agents while engaged in the construction of a specified work or protective work; and
 - (iii) any remedial works necessary as the result of contamination being disturbed in, or migrating to, the Port or where such contamination means that the land affected by contamination cannot be used as part of the Port.

(2) The liability imposed by sub-paragraph (1) includes where this is attributable to the act, neglect or default of the undertaker's officers, servants, contractors, employees, agents and sub-contractors.

(3) The fact that any act or thing may have been done by PoTLL on behalf of the undertaker or in accordance with a plan approved by PoTLL or in accordance with any requirement of PoTLL or under its supervision or to its satisfaction or in accordance with any directions or award of any arbitrator does not, subject to sub-paragraph (4), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(4) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage to the extent that it is attributable to the act, neglect or default of PoTLL, its officers, servants, contractors or agents.

(5) PoTLL must give the undertaker reasonable notice of any such claim or demand as is referred to in sub-paragraph (1), and no settlement or compromise of any such claim or demand must be made without the prior written consent of the undertaker, such consent not to be unreasonably delayed or refused.

Disputes

153.—(1) Subject to sub-paragraph (3), any difference arising between the undertaker and PoTLL under this Order must be determined by arbitration as provided in article 64 (arbitration).

(2) In any appeal made by the undertaker pursuant to article 65 (appeals to the Secretary of State) that relates to, or is considered by PoTLL (acting reasonably) to relate to, the affected roads or the infrastructure corridor or the Port, PoTLL is deemed to be—

- (a) a party to whom the undertaker must provide copies of the appeal documentation on the same day the appeal documentation is submitted to the Secretary of State pursuant to article 65(2)(b);
- (b) a party entitled to submit representations to the appointed person pursuant to article 65(2)(d) and (e); and
- (c) an appeal party for the purposes of article 65.

(3) In the event of any difference arising between the undertaker and PoTLL under this Order, senior representatives of each party must seek to resolve the dispute through a meeting between

the parties promptly and in any event within 10 business days of the dispute arising, and if either party is not reasonably satisfied following that meeting it may, within 20 business days of the meeting, notify the other party accordingly and refer the matter to arbitration.