

INFRASTRUCTURE PLANNING

THE INFRASTRUCTURE PLANNING(EXAMINATIONS PROCEDURE) RULES 2010

THE PORT OF TILBURY (EXPANSION) ORDER

Written Representations submitted on behalf of the Port of London Authority

(Rule 8 letter 26 February 2018)

Unique Reference Number	TR03003
Rule No.	8(1)(a), and 10(1), (2) and (4)
Document Ref.	PLA1
Author	Winckworth Sherwood LLP
Date	20 March 2018
Date of revision & version number	

Winckworth Sherwood LLP
Minerva House
5 Montague Close
London
SE1 9BB

1. Introduction

1.1 These Written Representations are made on behalf of the Port of London Authority (“the PLA”) in respect of an application for Development Consent submitted by Port of Tilbury London Limited (“PoTLL”) for the Port of Tilbury (Expansion) Order (“the DCO”). The application is accompanied by a draft of the proposed DCO (“the dDCO”).

1.2 This document is submitted alongside the PLA’s response to the Examining Authority’s (ExA) first round of written questions, issued on 27 February 2018.

Structure

1.3 The structure of this Written Representation is as follows:

Section 1 – Introduction

Section 2 – The PLA

Section 3 – The DCO and areas of agreement

Section 4 – Overlapping jurisdictions – specific PLA legislation

Section 5 – Permanent acquisition

Section 6 – Temporary possession

Section 7 – Existing licensed works and future works

Section 8 – Works in the River

Section 9 – Dredging

Section 10 – Byelaws relating to the extended port limits

Section 11 – Transfer of benefit of DCO

Section 12 – Consents, agreements and approvals

Section 13 – Disapplication of PLA legislation

Section 14 – Protective provisions

Section 15 – Conclusion

2. The PLA

- 2.1** The Port of London Authority (“the PLA”) is the statutory harbour authority for the tidal River Thames (“the River”) between Teddington and the outer Thames Estuary. Governed by the Port of London Act 1968 (“the 1968 Act”) and several harbour revision orders, its statutory functions include responsibility for conservancy, hydrographic surveying, dredging, managing the public navigation and controlling vessel movements. Under section 66 of the 1968 Act, the PLA’s licence is required for the construction by other people of any works in, on, under or over the River and, under section 73, for the carrying out of dredging or other comparable operations. The PLA provides moorings in the River and licenses their provision by others. As the body responsible for licensing river works and moorings, the PLA must have special regard for the unimpeded use of licensed works by the PLA’s existing licensees and the impact of licensed river works and dredging on the River and its users.
- 2.2** The PLA’s functions also include the promotion of the use of the River for freight and passengers as an important and sustainable transport corridor for London.
- 2.3** The PLA owns approximately 95% of the bed and foreshore of the River between Teddington and Canvey Island, including land over which works have been constructed under licence, with most of the rest being owned by The Crown Estate. The PLA owns virtually all of the riverbed and foreshore within the Order limits up to Mean High Water, comprising plots 06/03, 06/05, 06/5a, 06/06, 06/07, 06/08, 06/09, 06/10, 06/11, 06/11, 06/12 and 07/01 in the Book of Reference.
- 2.4** The PLA is a trust port. Accordingly, it manages the River for the benefit of all river users and is obliged to turn its assets to account for the benefit of its statutory undertaking. As part of this obligation it must also minimise the conservancy and other charges payable under the 1968 Act by river users. The PLA is wholly funded by such charges and the other funds it generates: it does not receive any central or other Government subsidy.

3. The DCO and areas of agreement

3.1 The DCO would authorise PoTLL to construct, operate and maintain a new port terminal on the north bank of the River Thames at Tilbury, a short distance to the east of its existing Port. The proposed port terminal would be constructed on land that formed the western part of the now redundant Tilbury Power Station making use of an existing jetty. This development (in the dDCO defined as “the authorised development”) and the powers sought in the dDCO are referred to in these Written Representations as “the Scheme”. These Written Representations are submitted in pursuance of Rules 8(1)(a), and 10(1), (2) and (4) of the Infrastructure Planning (Examination Procedure) Rules 2010.

3.2 In principle, the PLA supports the expansion of port facilities along the River in general and the Port of Tilbury in particular. The PLA has therefore approached the Scheme constructively, with the result that it is believed broad agreement has been reached in principle on, or on many aspects of, the following issues:

- the regulation of existing and new structures in the River within the proposed harbour limits;
- the application of the legislation specific to the Port of Tilbury and the PLA;
- limits of deviation of the authorised development;
- construction methods and deposit of materials;
- acquisition and use of land;
- transfer of powers.

3.3 However, issues remain. The PLA welcomes the continuing discussions with PoTLL to secure that the protective provisions for the PLA proposed in the dDCO (Schedule 10, Part 3, “the PLA PPs”) are improved upon so as to be fully fit for purpose. Discussions between the PLA and PoTLL continue in relation to site-specific and more general River-related matters where the PLA still has concerns about the Scheme. These relate to:

- the interface between PoTLL and the PLA and overlapping harbour authority jurisdictions;

- use of the River Thames during construction; and
- dDCO and the PLA PPs.

3.4 An initial Statement of Common Ground (“SoCG”) between the PLA and PoTLL is in course of agreement and will be developed as discussions progress during the examination on the various issues that are the subject of these Written Representations. The joint SoCG will set out the position on the matters identified above as being agreed and not yet agreed. These matters are subject to change as the discussions progress and due to any Scheme changes that PoTLL may propose.

3.5 These Written Representations are addressing the Scheme, the details of which are subject to change. The PLA will endeavour not to trouble the ExA with details which, while very important for implementation, are technical and capable of resolution and do not affect matters of principle. If such issues remain unresolved, the PLA will provide particulars of any that should be brought to the ExA’s attention at a later stage in the examination.

3.6 Unless otherwise stated, references to the dDCO are to the draft published on the NIP website on 21/11//2017, which is the form in which the DCO was applied for.

4. Overlapping jurisdictions – specific PLA legislation

4.1 Because the Port of Tilbury was transferred out of the PLA, in relation to its undertaking PoTLL has some, but not all, of the functions in the 1968 Act. In framing the 1991 Transfer Scheme care was taken to ensure that this should not give rise to conflict and that the PLA would take precedence. This was easier to achieve when the two undertakings were physically separate. By authorising the Scheme in the River the dDCO would create not only a physical overlap but, unusually in such cases, overlapping/duplicate legislative provision. The dDCO does not deal with this adequately and it is essential that it should.

4.2 In the 1968 Act the inserted section 5AA provides that the exercise of PoTLL’s functions will be “subject to any enactment [...] relating to or made by the PLA”. This formula has worked while the Port and the River are physically separate. Now that the expanded Port will be in the River, however, problems that have been immediately identified include:

- the meaning of “subject to” is unclear;
- the “subject to” formula does not work if PoTLL exercises its functions first;
- section 5AA only captures the PLA’s exercise of functions under PLA its own Act and Orders, but needs to cover all the PLA’s functions, including under public Acts;
- section 5AA does not apply to legislation passed after the 1968 Act.

4.3 Section 5AA does not provide a means of the PLA’s continued operation and enforcement of its regulatory powers (in particular its licensing regime) within the extended port limits.

4.4 The PLA has proposed to PoTLL amendments addressing some of these issues but the provisions required are complex and further time is needed to identify what savings the PLA needs for the various powers PoTLL is extending to the River.

5. Permanent acquisition

Permanent acquisition of PLA’s Land

5.1 The PLA owns most of the land in the River that is proposed for compulsory acquisition. It consists mainly of the land occupied by and surrounding an existing jetty (“the existing jetty”) that served the former power station, a licensed river work (now owned by PoTLL) located on land belonging to the PLA. The existing jetty is to be greatly extended to provide a RoRo terminal (Work No. 1) and a Construction Materials and Aggregates (CMAT) berth (Work No. 2). This development of the existing jetty (which the PLA welcomes) does not require outright ownership of the land on which it is built. The PLA therefore strongly objects to the compulsory outright acquisition of the land it owns as being unnecessary and greater interference with private property than is justified to achieve PoTLL’s purpose in seeking the DCO.

5.2 In addition, acquisition by PoTLL could lead to the land passing to unknown successor companies and ownership being further fragmented. The PLA’s experience tells that splitting up the ownership of the riverbed leads to confusion and hinders good management of the River.

5.3 PoTLL and the PLA have agreed in principle that the PLA will grant PoTLL a lease of the riverbed, on terms that would enable the Scheme to be constructed and operated without compromising the PLA's ownership of the riverbed. The PLA would adopt this approach on the basis that the PLA's land within the Order land would not be acquired and the dDCO would be amended to omit compulsory purchase powers in respect of it. A draft lease and dDCO amendments are under discussion which, if agreed, should result in this head of objection being disposed of.

6. Temporary possession

6.1 In addition to the existing jetty the Scheme will make use of a jetty associated with the Tilbury Sewage Treatment Works ("the Anglian Water jetty"), which is licensed by the PLA under the 1968 Act. Article 3(2) of the dDCO would extinguish this licence on the date on which the DCO comes into force. Temporary possession of most of the area occupied by the Anglian Water jetty is to be taken for construction purposes and the jetty is to be demolished. The whole jetty is within the limits of deviation of Work No. 1. The PLA has no objection to this in principle subject to any issue Anglian Water may have (which the PLA does not know) and agreement of the PLA PPs. In addition, the PLA understands Anglian Water and PoTLL to have agreed in principle that in advance of the DCO being made PoTLL will acquire the Anglian Water jetty so that it can carry out the works and demolition it needs as an advance work. This would call for the PLA to grant PoTLL a works licence in respect of the Anglian Water jetty and license its removal. If PoTLL agrees this approach with Anglian Water the PLA will have no in principle difficulty with it subject to the necessary licences being subject to appropriate conditions.

6.2 Article 32 of the dDCO would authorise PoTLL to take temporary possession of, and use, land in connection with carrying out the Scheme. Article 33 would also authorise temporary possession and use, in this case for the purposes of maintenance of the Scheme after construction. The areas of land taken under these powers would be limited to what is required for constructing the Scheme or for maintenance but could potentially be, in relation to construction, all the land within the Order land and, in the case of maintenance, all the land within the Order limits.

- 6.3** The powers would be time limited but would nonetheless be exercisable over a long period. Applying the envisaged construction programme in paragraphs 5.115 and 5.116 of the ES to the timetable provided for in articles 32 and 33, article 32 notice might be served at any time after the start of construction in early 2019 and possession could continue until 2024 i.e. one year after completion of the last elements of the Scheme, potentially a total of up to six years. After that, possession for maintenance might be taken at any time up to 2028.
- 6.4** The water area that is potentially subject to temporary possession is an area surrounding the proposed extended port limits. It would extend into the approaches to the existing jetty and, for a length of the order of 220m, it would include water areas in close proximity to the main navigation channel. Articles 32 and 33 would therefore potentially enable activity associated with construction to take place in close proximity to traffic in the River. This is a concern to the PLA in the context, in particular, of navigational safety. In order to safeguard the navigable River for public use the PLA Harbour Master must have power to control vessel movements, lights and other matters that would or might have an impact on the use of the River. This has yet to be covered in the PLA PPs.

7. Existing licensed works and future works

Existing licensed works

- 7.1** There are licensed works within the Order limits and/or the proposed harbour limits which are owned by third parties whose ownership and use of the works will continue. These works consist of intake pipes and associated apparatus connected with the former Tilbury B power station and belong to RWE Generation UK PLC (“RWE”), which holds the licence and plans to provide a new power station on the site. These works extend from the former power station site, across the foreshore into the River and terminate in or under the existing jetty, all within the proposed harbour limits.
- 7.2** Article 3(1)(a) of the dDCO would disapply the works licensing regime in the 1968 Act in relation to the construction, operation and maintenance of the authorised development. Article 3(2)) provides that any works licences granted by the PLA to PoTLL, RWE and Anglian Water in relation to the existing structures within the extended port limits would cease to have effect on the day the DCO comes into

force and with effect from that day article 3(3) would remove the requirement under the 1968 for a works licence for those existing structures. Article 3(3) would provide the statutory authority for them to remain in the River. The dDCO does not include any means of removing that authority.

- 7.3** Construction of the Scheme will mean that the part of the RWE licensed works that is within the footprint of the existing jetty will be within the new CMAT berth (Work No. 2). Subject to any issue RWE may have (which the PLA does not know), in principle the PLA is not concerned with the removal of the present requirement for a works licence in relation to the part of the RWE works that will be physically within, attached to or beneath the berth structure, although there will need to be precise definition of which elements of the RWE works are within this category. However, the remaining RWE works within the extended port limits (“the remaining RWE works”) will be in the River and on the foreshore and must be regulated in the same way as any other work in the River. PoTLL does not have works licensing powers and (as is entirely appropriate given the purely commercial nature of its undertaking)) does not seek such powers in the dDCO. As the dDCO stands, therefore, the extinguishment of the existing RWE licence relating to the remaining RWE works would remove the 1968 Act licensing regime in respect of them, which would leave these works completely unregulated, without any means of control by either the PLA or PoTLL. The effect of this would also remove RWE’s only means of securing legal authority for any substantial change to these works in the River.
- 7.4** That is not a satisfactory outcome for the PLA, RWE or PoTLL and PoTLL has asked the PLA to propose an appropriate amendment of article 3 to preserve the 1968 Act licensing regime as regards the remaining RWE works. (It is assumed that the arrangements described in section 6.1 mean that a similar question will not arise in respect of Anglian Water’s existing structures within the extended port limits.) Article 3 amendments are under discussion with PoTLL.
- 7.5** Additional provision must be made in the dDCO to enable the PLA to operate and enforce its licensing regime within the extended port limits in relation to the remaining RWE works.

Future works

7.6 The PLA notes that as regards new structures, and also dredging, within the extended port limits the effect of article 3(4) of the dDCO would be to make its grant of works and dredging licences under the 1968 Act subject to PoTLL's consent, with no indication of the basis on which consent might reasonably be refused. In the absence of savings in the dDCO it would also remove effective means of controlling third party works and dredging that might in future be wanted within the River (including the foreshore) within the extended port limits. These constraints on the exercise of the PLA's statutory functions go beyond PoTLL's commercial need as operator of the expanded port and are opposed by the PLA. This issue and appropriate amendments in the dDCO have yet to be addressed by the PLA and PoTLL.

8. Works in the River

Article 22

8.1 Article 22(1) of the dDCO would operate during the construction of the Scheme to authorise the temporary suspension of the public right of navigation over any part of the River within the Order limits. This could only be done with the PLA's written approval, and the rest of article 22 provides a procedure for securing such approval and the giving of notice to mariners. With two exceptions the provisions are similar to precedent in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014¹ ("the Thames Tideway Order").

8.2 Article 22(6) would require the PLA to issue notice to mariners within 10 business days of an approval to suspend navigation rights. The period is impracticably short. It should be 15 business days, as in the precedented provision²

8.3 in the absence of a decision within 28 business days article 22(7) would provide for deemed approval. The comparable precedented provision³ is for deemed refusal.

8.4 The PLA will always deal with matters as expeditiously as possible. It would expect to be able to decide an article 22 application within 28 business days and would endeavour to do so. PoTLL's anxiety to prevent delays in its construction

¹ SI 2014/2384, article 47(2) and Schedule 16, Part 2, paragraph 5.

² Schedule 16, Part 2, paragraph 6(6)

³ Schedule 16, Part 2, paragraph 5(5). See also the Silvertown dDCO article 17(8).

programme is entirely understood. However, the PLA has a wide range of statutory duties that it must perform in the public interest and its priorities and PoTLL's may therefore not always coincide. There may anyway be good reasons why a decision cannot be made within the desired period. For these reasons the PLA cannot be placed under an absolute obligation to meet PoTLL's desired end date.

- 8.5** The article 22(7) proposal to force suspension without the approval of the PLA, as the statutory authority responsible for navigation in the River, raises immediate safety risks. The PLA has proposed its omission. If article 22(7) were to be retained it should follow the precedent and provide for deemed refusal, thereby maintaining the status quo.

Ancillary or related works

- 8.6** At the end of Schedule 1 to the dDCO there is an exhaustive list of ancillary or related development which would be authorised in connection with construction. The items relating to the River are paragraphs (e) to (l). These are very wide powers, including dredging and constructing works and other structures in the River. The application does not identify the ancillary works that are contemplated and it is not clear to what extent they are addressed in the ES. The PLA appreciates that to an extent this is the nature of ancillary works. However, given such wide powers, PoTLL could interfere with the River in ways that are not ascertainable but which could have a significant impact and which are not apparent from the ES.
- 8.7** The PLA notes that apart from the catch-all ancillary works on paragraph (z) of Schedule 1, the Schedule 1 description of the authorised development is not expressly linked to what has been assessed in the ES. In the PLA's submission this is not an acceptable situation and could well be ultra vires. At least part of the solution will be for the restriction on construction to what has been assessed in the ES to apply to the whole of Schedule 1, not just paragraph (z).

9. Dredging

Dredge levels – maximum depths

9.1 The PLA is concerned about the exercise by PoTLL of the dredging powers in the dDCO. These will be for the initial capital dredge for construction and thereafter maintenance dredging throughout the life of the Scheme.

9.2 In relation to both capital dredging and maintenance dredging under article 43, article 7(e) of the dDCO would authorise downward deviation to any extent “up to the limits” shown in the engineering sections and plans. The relevant sections (drawing no. 5153187-ATK-ZZ-XX-DR-ZZ-1009 rev P05) state figures all of which are stated to be approximate. An approximate figure is not a limit. More importantly, it is not the same as the familiar qualification that reference to a fixed figure is deemed to refer to that figure “or thereabouts”, or similar wording. In the latter case the qualification allows for the reality, that absolute precision is not a practical possibility, but it leaves the fixed figure as the limit that forms the basis of the developer’s calculations, in this case the intended maximum depth. By contrast, the formula adopted for the engineering sections makes the target figure itself an approximation. This introduces an unacceptable, and no doubt unintended, degree of uncertainty. In the PLA’s submission, it should be rectified by adjusting the drawing.

Maintenance dredging

9.3 The ES states the expected volume of material to be dredged during maintenance dredging. It is assumed that the figure actually assessed or assumed in the ES is up to 100,000 cubic metres per year (as in paragraph 5.68 and Table 11.1) rather than per day (see paragraph 5.12). If that is right it follows that paragraph 5.12 of the ES needs to be corrected.

9.4 The disapplication of the 1968 Act in article 3 of the dDCO would apply to maintenance dredging so that this too would be regulated by the PLA PPs rather than the 1968 Act. The PLA objects to this proposal, which would reduce the PLA’s ability fully to assess any planned maintenance dredging. That position was recognised in the two cases where this has been an issue, London Gateway and

Thames Tideway.⁴ In both cases the PLA's licensing jurisdiction was preserved in relation to maintenance dredging.

- 9.5** The capital dredge is a single exercise relating to construction which, if authorised, will have been the subject of rigorous assessment and evaluation by both PoTLL and the Secretary of State. Maintenance dredging, which will take place for the life of the Scheme, must be subject to comparably thorough scrutiny. The PLA, as the only relevant regulator with direct responsibility for the navigation of the River, will be the 'front line' regulator. The application of the PLA PPs to maintenance dredging would restrict the practical scope of the PLA's regulatory powers.
- 9.6** Maintenance dredging is a routine matter carried out along the length of the River and should in all cases be subject to the PLA's normal, routine controls. There is no reason for Tilbury 2 to be treated differently from other statutory facilities along the River.
- 9.7** In any case, PoTLL is required to obtain a licence for maintenance dredging in respect of its existing operation. This reflects the policy of the 1991 Transfer Scheme, which is that the commercial port should not have any of the regulatory functions that go with the PLA's separate status as a trust port, explained in sections 2.1 and 2.4 of these Written Representations. There is no justification for changing that existing position.
- 9.8** The PLA therefore invites the ExA to agree that the dDCO should be amended in line with established precedent to secure that maintenance dredging is regulated via the 1968 Act.
- 10. Byelaws relating to the extended port limits**
- 10.1** Article 45 of the dDCO provides for the byelaws set out in Schedule 7 to the dDCO to apply within the extended port limits. The PLA understands the Schedule 7 byelaws to be in the same terms as the byelaws that apply in the existing Port. Byelaws that are appropriate in the enclosed dock are not necessarily suitable for facilities in the River. The following issues must be addressed.,

⁴ The London Gateway Port Harbour Empowerment Order 2008, Schedule 8, paragraph 1 (the definition of "tidal work" (the works requiring approval under the protective provisions) expressly does not include maintenance dredging) and paragraph 21, expressly preserving the 1968 Act jurisdiction; and the same provision in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014, Schedule 16, Part 2, paragraphs 3 and 22.

- 10.2** Vessel movements between the River and the area within the extended port limits must be coordinated with the PLA and be subject to the PLA's overall control of vessels in the River. The proposed byelaws⁵ do not secure this as between PoTLL and users of the new facilities and the dDCO does not address the position as between PoTLL and the PLA.
- 10.3** The dDCO must provide for consultation regarding the operation of the byelaws, in particular byelaws 29 and 32.
- 10.4** The dDCO should be amended to provide that before any byelaw is amended or revoked under article 45(2) PoTLL will consult the PLA and in framing the changes will give effect to the PLA's reasonable requirements.

11. Transfer of benefit of DCO

- 11.1** Article 50 provides for the transfer of the benefit of the DCO, subject to the Secretary of State's written consent. Article 50(6) would give the Secretary of State unfettered discretion as to who might be appropriate parties to consult before giving consent. Consultation with the PLA will be a necessity, and PoTLL is understood to accept this. As the PLA must be a consultee, in accordance with standard legislative practice the obligation to consult the PLA should not be left as a matter of discretion but should be specified in the DCO.

12. Consents, agreements and approvals

- 12.1** Article 56 sets out a procedure for dealing with the giving of consents, agreements and approvals in relation to particular types of "applications" as defined in article 56(6). The PLA could potentially be affected by applications under article 18 (discharge of water) and article 20 (authority to survey and investigate land). In the absence of a decision within 28 (calendar) days of application being made article 56(2) provides for deemed consent./agreement/approval.
- 12.2** To the extent that this provision may be applicable to the PLA it ought not to be inconsistent with the PLA PPs. In particular, deemed consent is not acceptable or appropriate for applications made under or in connection with the PLA PPs. The principle of consistency has been accepted by PoTLL but the amendment proposed

⁵ See byelaw 29.

to the PLA does not achieve its purpose and the PLA is discussing a revised amendment in article 53 to address this.

13. Disapplication of PLA legislation

13.1 PoTLL seeks, through article 3(1)(a) of the dDCO, to disapply sections 66 to 75 of the 1968 Act in relation to any work or operation connected with the construction, operation or maintenance of the Scheme. That follows the formula in the draft Silvertown Tunnel Order, which is with the Secretary of State for decision. Unlike the equivalent provision in the Thames Tideway Order⁶, the disapplication operates whether or not there is equivalent provision in the dDCO. This is an incorrect approach as it results in a legal void in the case of control and change of the remaining RWE works (see section 7.3 above).

13.2 Silvertown is not the right precedent. The nature of the Silvertown works is such that they would not have a continuing effect on the exercise of the disappplied powers except in relation to the authorised development itself, which is to be legislated for in the Silvertown dDCO. The dDCO is quite different. It would establish a harbour within the PLA's jurisdiction and would affect third party and regulatory matters quite apart from the authorised development. These matters are not dealt with in the dDCO – and for the reasons explained below that is as it should be – but it means that the outright disapplication in article 3(1)(a) leaves no regulation when it is needed and there is nothing in the dDCO to replace it.

13.3 The Port of Tilbury is a purely commercial port which is why, when it was separated from the PLA, it inherited via the 1991 Transfer Scheme only the 1968 Act provisions that are relevant to an operator as distinct from a regulator. The absence of powers in the dDCO for PoTLL to license works and dredging within its extended port limits is consistent with this policy. It follows that where, as here, there will a continuing need for the regulation provided by sections 66 to 75, the answer is to follow the Thames Tideway formula by disapplying the powers only so far as they are inconsistent with the dDCO and making any necessary provision in the dDCO for their continued operation and enforcement.

13.4 The PLA has no in principle objection to replacing these provisions of the 1968 Act with the PLA PPs where they relate to the authorised development, and so are

⁶ Article 57(1).

provided for in the dDCO. This approach has been successfully applied in other comparable schemes and the PLA is in discussions with PoTLL regarding the specific wording of the PLA PPs. Although some progress has been made, the PLA PPs are not yet adequate. The PLA would expect the protective provisions within the Thames Tideway Order to represent an appropriate starting point for the protective provisions in this DCO.

14. Protective Provisions – Schedule 10, Part 3

- 14.1** In view of the discussions that are taking place and the progress made so far these Written Representations do not set out all the detailed objections. Details will be provided in the event that agreement with PoTLL cannot be reached. For the moment, these Written Representations flag up some issues that the PLA believes the ExA will find it helpful to know at this stage.
- 14.2** The scope of the PLA PPs as proposed in paragraph 17 is novel. The PLA PPs are necessary and relevant for operation and maintenance throughout the life of the extended port, but as currently worded they appear only to apply to construction and the subsequent 5 year maintenance periods. PoTLL has confirmed that this is not the intention and the PLA has proposed an amendment. There is the same point regarding references to “construction” as defined in paragraph 18.
- 14.3** The PLA PPs provide for the PLA to approve details of the exercise of “specified functions”, defined in paragraph 18 by reference only to functions under the Order (other than compulsory purchase). There are some functions for which the approach of including them in the definition of “specified functions” will be an adequate way of dealing with them, i.e. where they relate to “works” or comparable operations e.g. dredging. However this formula does not work for operational functions, where even the extended definition of “plans” would not be relevant. In these cases, approval of detailed design under para 19 would not work e.g. in relation to the removal of wrecks. The PLA PPs need to provide specific savings in relation to various functions. We have identified some of these already (see next paragraph). Further thought needs to be given to other provisions of the 1968 Act, including whether they have been transferred to PoTLL (which is not always clear).
- 14.4** Missing protective provisions for addition to the PLA PPs that have been identified so far to deal with cases where plan approval under paragraph 19 will not work are:

- provision for PoTLL to pay for, or carry out, remedial action to make good sedimentation, scouring or other changes in flow or river regime occurring within six years after completion of the works where wholly or partly attributable to the works or the exercise of a function under the DCO;
- provision expressly excluding maintenance dredging from the scope of the PLA PPs (most recent precedent Thames Tideway Order Sch. 16 para. 22) (see section 9.3 to 9.8 above);
- a requirement for PoTLL to pay the PLA compensation in respect of any dredged material that is sold, so that the PLA shares the profit being made from the sale of material dredged from the riverbed owned by the PLA (most recent precedent London Gateway Order Sch. 8 para. 22);
- provision requiring PoTLL to give the PLA Harbour Master advance notice of intention to raise a wreck or obstruction, to comply with the Harbour Master's directions and not to exercise the power at all unless the PLA consents;
- savings to ensure that PoTLL cannot use its powers to give a vessel special directions so as to conflict with a special direction to the same vessel given by the PLA Harbour Master;
- savings to secure that vessel movements and byelaw 29, vessel mooring and byelaw 32 and any changes to the proposed byelaws are coordinated and consulted upon with the PLA as outlined in section 10 above.

14.5 The PLA PPs also provide for PLA approval of details of “specified works” defined in paragraph 18 by reference to the authorised development. It is not clear how this might capture significant alterations to the Scheme that do not require additional statutory powers.

15. Conclusion

15.1 The PLA does not object to the general purpose of the Scheme and will continue liaison with PoTLL in an effort to make the proposals workable in relation to the PLA's functions. These Written Representations may be taken to indicate the PLA's opinion that the dDCO is not at the moment in a state that can properly be implemented so far as it affects the River. The PLA has been discussing the

The Port of Tilbury (Expansion) Order
Port of London Authority
Written Representations

Scheme details with PoTLL for some time and will continue to do so, but until its concerns have been met the PLA must continue to object to the DCO proposals.

**Winckworth Sherwood LLP
Solicitors and Parliamentary Agents
On behalf of the Port of London Authority**

20 March 2018