

INFRASTRUCTURE PLANNING

THE INFRASTRUCTURE PLANNING (EXAMINATIONS PROCEDURE) RULES 2010

THE PORT OF TILBURY (EXPANSION) ORDER

Summary of Representations submitted on behalf of the Port of London Authority at the ISH on the dDCO 21 February 2018

(Rule 8 letter 26 February 2018)

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TILBURY 2 –SUMMARY OF THE PORT OF LONDON AUTHORITY’S SUBMISSIONS AT THE ISSUE SPECIFIC HEARING- 20 February 2018

The following is a summary of the submissions that were made by the Port of London Authority (“**PLA**”) at the Issue Specific Hearing (“**ISH**”) on 20 February 2018 on the Applicant’s (Port of London Tilbury Limited (“**PoTLL**”)) draft Development Consent Order (“**dDCO**”). Some matters have progressed beyond the submissions made at the ISH and these are set out in the Statement of Common Ground.

Summary:

Most of the PLA’s concerns with the dDCO stem from the fact that:

- 1) the dDCO authorises works in the river, so the PLA requires protective provisions
- the proposed protective provisions in part 3 of schedule 10 are more limited than on other comparable schemes

- 2) the dDCO extends PoTLL’s existing powers in Tilbury docks to the river, where PLA has powers
- the overlap of the functions needs to be dealt with clearly and correctly. The dDCO only extends article 5AA from the 1992 Order regime to the POTLL’s existing powers as extended, not to any of the new functions under the dDCO.

The PLA is working with PoTLL to address these issues in the dDCO.

Article/Reference	Summary of provision	Issues
MAIN BODY OF ORDER		
PART 1 (PRELIMINARY)		
“Order limits” and limits of deviation		PoTLL and the PLA are in discussion as to the extent of the Order limits within the river, the limits of deviation and dredging depths. The PLA welcomes PoTLL’s commitment to provide revised plans showing the dredging depths.

Article/Reference	Summary of provision	Issues
<p>3(1)(a)</p> <p><i>(Disapplication of legislation)</i></p>	<p>Article 3(1) disapplies the PLA's existing licensing regime (sections 66 to 75 of 1968 Act) for the Tilbury 2 development</p>	<p>1) There is no exception in paragraph (1)(a) for maintenance dredging.</p> <p>Art. 3(1)(a) disapplies the PLA's licensing regime in relation to the Tilbury 2 works authorised under the Tilbury Order and instead applies protective provisions for the PLA. This is the approach that the PLA would usually expect, but it is unusual for the disapplication to apply to maintenance dredging (see e.g. Schedule 16, Part 2 of The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014, and the Thames Gateway Harbour Empowerment Order).</p> <p>Maintenance dredging is a routine matter carried out along the length of the river and should be subject to the PLA's normal, routine controls. There is no reason for Tilbury works to be excluded from the maintenance dredging that applies elsewhere on the river. PoTLL are required to obtain a licence for maintenance dredging in respect of their existing operation.</p>

Article/Reference	Summary of provision	Issues
<p>4(1)</p> <p><i>(Application of enactments relating to the Port of Tilbury)</i></p>	<p>Article extends the PoTLL's functions under the 1968 Act (transferred by the 1992 Order Transfer Scheme) to the extended port limits.</p>	<p>Overlapping jurisdiction: the PLA recognises the need for an extension of the PoTLL's functions from the docks to the river, but there is an issue with the way in which they overlap with the PLA's existing functions in the river.</p> <p>1) Section 5AA 1968 Act provides that the exercise of PoTLL's functions will be subject to "any enactment [...] relating to or made by the PLA". But the saving in s.5AA in the way proposed doesn't go far enough and would in some cases result in unclear situations:</p> <ul style="list-style-type: none"> • it's not entirely clear what "subject to" means; • the provision isn't of much use if PoTLL exercises its functions first; • and isn't much use if the PLA is doing anything under public Acts: not everything is in PLA's enactments, e.g. PoTLL exercising a power to raise wrecks would not be inconsistent with PLA's enactments. <p>The PLA has suggested to PoTLL a qualification of PoTLL's powers in the protective provisions, but the provisions are highly complex and further time is needed to identify what savings the PLA needs for the various powers PoTLL is extending to the river.</p> <p>2) New Article 4A only applies to PoTLL's existing functions as extended. It also needs to make it clear that this subordination applies to PoTLL's new functions under the proposed Order.</p> <p>3) The PLA has proposed a new Article 4(1)(c) making it clear that the extended PoTLL's functions are subject to the PLA's protective provisions, and has also proposed some minor technical amendments to reflect the wording of the PoTLL Transfer Scheme (see Art 4(1) includes "or may have been").</p> <p>In summary, the PLA has genuine concerns about the uncertainty this creates and is considering what can be done to clarify the exercise of the respective authorities' functions.</p>
<p>22 <i>(Works in the river Thames:</i></p>	<p>Article allows PoTLL to temporarily suspend public rights of navigation/close the river during</p>	<p>The PLA is for the most part content with this provision, save for two issues:</p> <p>1) Timing: paragraph (6): this is about when the PLA must issue notice to mariners of details</p>

Article/Reference	Summary of provision	Issues
<i>conditions)</i>	construction with PLA's written approval	<p>of the closure.</p> <p>This should be within 15 business days of the approval, not 10: this follows precedent in Thames Tideway DCO 2014 (Sch 16 Pt 2 para 6(6)).</p> <p>2) Deemed consent for approval to the closure: the PLA is considering the acceptability of this provision.</p>
PART 3 (POWERS OF ACQUISITION AND POSSESSION OF LAND)		
23 (<i>Compulsory acquisition of land</i>)	Gives PoTLL power to compulsorily acquire the river bed	<p>1) The PLA owns the riverbed, and strongly objects to compulsory acquisition of any part of it. The PLA is therefore in discussions with PoTLL to grant a lease over the river bed to enable the authorised development to go ahead without compromising the PLA's ownership of the river bed. Some parts of the riverbed further upriver are owned by the Crown, but they are limited and river users can be confident of the continued status of Crown bodies owning the riverbed. Splitting up the ownership of the riverbed between separate companies would lead to confusion; PoTLL may not be around forever, and the identity of any successor is not known.</p> <p>Whether or not the PLA will maintain its objection on this point will depend upon the lease being agreed.</p>
PART 4 (OPERATIONAL PROVISIONS)		
41 (<i>operation and maintenance of the authorised development</i>)	PoTLL may operate and maintain the authorised development (in Sch 1) and the existing structures (under art 3(3)).	If the protective provisions were to provide adequate protection, the PLA would be content with the article itself.
43 (<i>Power to dredge</i>)	Gives PoTLL power to dredge, scour, cleanse, alter and improve the river bed and foreshore etc. within the Order	1) The PLA may in time wish to comment on this. If, however, the protective provisions for the PLA are extended (as we will request) to cover all dredging – not just dredging in the

Article/Reference	Summary of provision	Issues
	limits	<p>maintenance period – the PLA should be content with Article 43.</p> <p>2) PoTLL must not commence construction of a specified work or a specified function until the plans are approved by the PLA.</p>
45 (<i>Byelaws</i>)	Applies the existing byelaws contained in Sch 7 to the extended port limits	The PLA needs to review these in detail to determine whether it is content with the geographical extension of these byelaws to the extended port limits.
PART 5 (MISCELLANEOUS AND GENERAL)		
50 (<i>Consent to transfer benefit of Order</i>)	Before giving consent for the transfer from PoTLL to another person of the benefit of the Order, the SoS must consult such parties as he considers appropriate	1) The PLA would want to be specified as a party that must be consulted. As the conservancy authority for the river and the authority that will have to deal with the overlap of functions with any successor to PoTLL, the PLA has a unique interest in the fitness of any successor to PoTLL and has a practical, day-to-day insight that would assist the SoS in making any decision determining that fitness.
56(2) (<i>Consents, agreements, and approvals</i>)	Deemed consent after 28 days for any application made under the Order	1) The PLA does not consider deemed consent acceptable for application made under or in connection with the protective provisions in Sch 10 and is discussing with PoTLL a new paragraph of the Article to address this
PROTECTIVE PROVISIONS, SCHEDULE 10, PART 3 (Paragraph references to dDCO as applied for)		
Paras. 17 and 18	The proactive provisions have effect for the PLA's protection in relation to construction of a specified work or specified function in a subsequent 5 year maintenance period (in Art. 33) only.	1) This scope of the protective provisions proposed is novel. The PPs are necessary and relevant for operation and maintenance throughout the life of the extended port, but as currently worded they only apply to construction and a subsequent 5 year maintenance period. The PPs, as with other similar schemes, are designed to operate in the long term and to a significant degree do not work properly unless that is the case. There is no justification for their ceasing to function at the end of the maintenance period.

Article/Reference	Summary of provision	Issues
	<p>“Construction” includes execution, placing, altering, replacing, relaying renewal and works of maintenance within a maintenance period defined in article 33”, i.e. 5 years</p>	<p>It may be a case of this provision being similar to article 56 (consents) where it is clear to the PLA what the drafting intends, but on further inspection this clause may be read differently.</p> <p>At best this drafting is unclear, at worst it limits the meaning of all construction to being within the 5 year maintenance period, severely limiting the protections for the PLA. We are trying to determine what the drafting is seeking to achieve and are considering our response to this.</p>
	<p>“Specified function” means any function of PoTLL under the Order (except Art. 23, 25 and 26)</p>	<p>1) The PPs for the PLA concern the exercise of specified functions by PoTLL. As drafted, these functions only include its functions under the Order, but they exclude its existing functions (under the Transfer Scheme) that will be extended by the Order to the extended port limits. That is not acceptable and the PLA has proposed that PoTLL’s existing functions that will be extended to the new limits be included.</p> <p>2) 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 are asking for “works” (para 19 provides a saving for PLA for these and allows PLA to approve them).</p> <p>The current definition of ‘functions’ works for functions such as dredging which are in the nature of works. But it doesn’t work for operational functions, where even an extension to “plans” would not be relevant. In these cases, approval of detailed design under para 19 would not be relevant (e.g. removal of wrecks). So we need specific provision in the PPs to provide for specific savings in relation to various functions; we need to identify the functions of PoTLL under the 1968 Act that are relevant so that they can be listed here, and are working through this.</p>
	<p>“Specified work” means any part of the authorised development</p>	<p>If PoTLL does a major revamp, it appears that it would not be a specified work and so is not subject to PLA approval under the protective provisions.</p>
<p>Paras. 23, 24, 26, 28 and other new provisions</p>	<p>Various provisions including navigational lights, buoys, etc.; directions as to lights; protective</p>	<p>The PLA has some concerns about the lighting requirements, specified functions, erosion, abandoned works and wrecks, and dredged material, which it is discussing with PoTLL</p>

Article/Reference	Summary of provision	Issues
proposed by the PLA (action; abandoned or decayed works; and consideration for dredged material	
Para 31 (<i>statutory functions</i>)	PoTLL's exercise of its functions is subject to PLA's enactments	As previously stated, the PLA is seeking to ensure that the overlap of functions is dealt with correctly and clearly, and further amendments are required to achieve this.