

PLANNING ACT 2008  
INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE)  
RULES 2010

PROPOSED PORT TERMINAL AT  
FORMER TILBURY POWER STATION

# TILBURY2

TR030003

EXPLANATION OF CHANGES TO DRAFT  
DEVELOPMENT CONSENT ORDER

TILBURY2 DOCUMENT REF: POTLL/T2/EX/37



## THE PORT OF TILBURY EXPANSION ORDER

### EXPLANATION OF AMENDMENTS MADE TO THE DRAFT DCO AT DEADLINE 1 (REV 1)

#### 1. INTRODUCTION

- 1.1 This document provides a commentary on changes made to the draft Development Consent Order ("dDCO") in the version submitted at Deadline 1 (20 March 2018) (DCO Revision 1), compared with the submission version of the draft DCO submitted with the application on 31 October 2017 (Examination Library document reference APP-016). The Applicant's revised draft DCO (Revision 1) is document 3.1 (Revision 1) [PoTLL/T2/EX/35], and an electronic .pdf comparison between the two versions has also been submitted [PoTLL/T2/EX/36].
- 1.2 In broad terms the changes made in the latest dDCO have been made for the following reasons:
- 1.2.1 changes arising from the issues raised by the Examining Authority (ExA) at DCO Issue Specific Hearing ("ISH") held on 21 February 2018;
  - 1.2.2 changes made to the Deemed Marine Licence arising from discussions with the Marine Management Organisation (MMO);
  - 1.2.3 changes arising from discussions with the Port of London Authority (PLA);
  - 1.2.4 changes to the Byelaws in Schedule 7 due to the practical requirements of the Applicant; and
  - 1.2.5 other points which the Applicant has identified as requiring amendment since the initial version of the draft DCO was submitted with the application.

#### 2. TABLE OF CHANGES TO THE DRAFT DCO REVISION 1

Provision in revised draft DCO and/or issue	Brief description and explanation
Preamble	This has been amended to reflect that the Examination is being carried out by a Panel as opposed to a single appointed person.
Article 2(1)	A definition of the "limits of dredging plan" has been added in response to the ExA's comments at point 41 of the ISH agenda requesting that such a plan is provided in order to show the maximum dredging depths in articles 7(e) and 43.
Article 2(1)	Definitions of "authorised officer", "the Company Harbour Master" and "the PLA Harbour Master" have been added. This is because "authorised officer" is used in relation to articles 45 and 46 and its definition includes the definitions of the two harbour masters.
Article 3(2) and (3)	This article has been amended to make it clear that the relevant structures are those within the extended port limits <u>and owned by the Company</u> at the date the Order comes in to force.
Article 4	An amendment has been made to this article to provide that the application of the functions under the 1968 Act (which were transferred to the Company by the 1991 Transfer Scheme) to the extended port

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	limits does not apply to functions covered by section 64 (use of Thames Water) of the 1968 Act in respect of the discharge of water to the river Thames.
Article 5	<p>This article has been amended in response to ExA's comments at point 14 of the ISH agenda:</p> <ul style="list-style-type: none"> <li>(a) summary headings in relation to each section to be incorporated have been amended to the heading for that section as set out in the Railway Clauses Consolidation Act 1845;</li> <li>(b) the definition of "prescribed" has been removed as matters in the DCO are not prescribed by the Order for the purpose of that provision; and</li> <li>(c) the definition of "the railway" has been amended and narrowed as the scope of "any other authorised works" is arguably broader than is strictly necessary.</li> </ul>
Article 7	This article has been amended to incorporate the limits of dredging plan showing the maximum dredging depths as per the amendment to article 2(1) above.
Article 10	<p>This article has been updated in response to point 19 of the ISH agenda in order to add the words "or other structure" at subsection 4 as requested by the ExA.</p> <p>A typographical error has been corrected in subsection 3.</p>
Article 10	The Applicant commented at point 21 of the ISH agenda that it would update the dDCO to ensure there is consistency between articles 10, 12 and Schedule 4. The Applicant is considering these points and will update the next version of the dDCO accordingly.
Article 25	Articles 25, 26, 30, 31 and Schedule 5 have been updated to take account of the position of the Department for Transport, following the passing of the Housing and Planning Act 2016, set out in the M20 Junction 10a Development Consent Order 2017 as suggested by the ExA at point 77 of the ISH agenda.
Article 26	As above.
Article 30	As above.
Article 31	As above.
Article 32	<p>This article has been amended to correct two typographical errors highlighted by the ExA at points 30 and 31 of the ISH agenda.</p> <p>This Article has been further amended so that the notice also states the period for which the authority is to take possession. This was suggested by the ExA at point 33 of the ISH agenda.</p>

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Article 33	Article 33(5) has been amended in response to the ExA's comments at point 34 of the ISH agenda in order to make it clear that there is a need to remove all temporary buildings that would have been constructed under article 33(1)(c).
Article 37	<p>Article 37(2)(a) has been amended to make it clear that the replacement land vests in the persons in whom the special category land was vested immediately before it was vested in the Company (<u>if the replacement land is not already vested in those persons</u>).</p> <p>This article has also been amended in response to the ExA's comments at point 36 of the ISH agenda in order to make it clear that there is more than one 'relevant order power'. An additional 'relevant order power' has also been added.</p>
Article 41	A minor amendment has been made to this article in order to correct a typographical error highlighted by the ExA in its comments at point 39 of the ISH agenda.
Article 43	<p>A new paragraph (4) has been added to this article following the Applicant's discussions with the MMO. This clarifies that the Order is 'legislation' falling within section 75(3) of the Marine and Coastal Access Act 2009 regarding exemptions for certain dredging activities. This means that the Company will get an exemption from the requirement to obtain a marine licence for maintenance dredging and will therefore benefit from the same exemption as other statutory harbour authorities.</p> <p>This article has also been updated to refer to the limits of dredging plan as above for article 7(e).</p>
Article 45	This article has been amended to make it clear who has the authority to enforce the port premises byelaws contained in Schedule 7 to the Order i.e. the Company and any authorised officer. Relevant definitions have therefore been added to Article 2(1) as set out above.
New Article 46	A new article has been added to provide fixed penalty notices for the port premises byelaws contained in Schedule 7 to the Order. This means that an authorised person can serve a person who has committed an offence under the byelaws with a fixed penalty notice. This article sets out the procedure for serving such a notice as well as how the deposit for such a fixed penalty is to be paid. Section 130 of the Local Government Act 2007 confers on the Secretary of State a power to make regulations prescribing classes of byelaw which could be enforced through fixed penalty notices and broad precedent for this article is found within the draft Order submitted with the application for development consent for the proposed Silvertown Tunnel.
Article 52 (formerly Article 51)	<p>Article 52 has been amended in response to the ExA's comments at points 45 and 46 of the ISH agenda:</p> <p>(a) 52(4) has been amended to refer to the opening of Work No.3 for operational use - i.e. the RoRo terminal, as this is the first aspect of operations expected to be opened on Tilbury2 - as indicated in paragraph 5.127 of the ES; and</p>

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	(b) 52(6)(a) has been amended to remove the words "as the case may be" as such words are not required.
Article 57 (formerly Article 56)	<p>Article 57(4) has been amended in response to the ExA's comments at point 51 of the ISH agenda in order to make it clearer.</p> <p>The Applicant has added a new subsection at 57(5) in order to make it clear that the deemed approval process under article 57(2) does not apply where an application is made to a relevant authority and the application includes submissions relating to the discharge of an obligation under Part 3 of Schedule 10 (protection for the Port of London Authority).</p>
Schedule 1	<p>The Applicant has amended Schedule 1:</p> <p>(a) in order to clarify which elements of the Works to be authorised by the Order form the Nationally Significant Infrastructure Project and which elements are Associated Development. The Applicant has made further submissions in this point within the CMAT Position Statement included as appendix B to the Applicant's Response to the Examining Authority's First Written Questions (Document Reference: PoTLL/T2/EX/49);</p> <p>(b) in response to the ExA's comments at point 53 of the ISH agenda in order to make it clear that Works (a) – (z) do not fall within Work 12, a new heading has been added for "Ancillary Works";</p> <p>(c) in response to the ExA'S comments at point 53 of the ISH agenda regarding duplication of works the Applicant has considered such works and has assessed that ancillary works (g) and (l) can be removed as these works duplicate articles 43 and 41(2)(c) respectively. The Applicant considers that the other ancillary works do not include duplication and should therefore remain in Schedule 1;</p> <p>(d) in response to the ExA's comments at point 54(i) of the ISH agenda regarding the caveat in subsidiary work (z) relating to ensuring those works should not cause significant adverse effect should apply to all such ancillary works. This caveat has now been added to the text preceding subsidiary work (a) in order to make it clear that this applies to subsidiary works (a) – (z); and</p>

Provision in revised draft DCO and/or issue	Brief description and explanation
	(e) in response to the ExA's comments at 74(e) of the ISH agenda in order to provide the heights of the noise barriers within the draft DCO.
Schedule 2, requirement 1	The interpretation section has been amended to include a definition of the level 3 flood risk assessment addendum which will be certified by the Secretary of State in accordance with article 58.
Schedule 2, requirement 3	Requirement 3 has been amended:  (a) in response to the ExA's comments at 63(b) of the ISH agenda to correct a typographical error and confirm that the correct work is 8D(iii); and  (b) in response to the ExA's comments at 58 of the ISH agenda to refer to a maximum diameter of 15m for the silo.
Schedule 2, requirement 5	In response to the ExA's comments at point 64 of the ISH agenda, the ecological mitigation and compensation plan (EMCP) will now be submitted at Deadline 2. The Applicant has therefore not made the changes to the DCO Revision 1 but proposes to update requirement 5 once the EMCP has been submitted.
Schedule 2, requirement 9	Requirement 9 has been amended in in response to the ExA's comments at point 66 of the ISH agenda to refer to 'public use' for Work No. 9A, and 'operational use' for Work Nos. 4 and 12.
Schedule 2, requirement 10	Requirement 10 has been amended:  (c) in response to the ExA's comments at point 67 of the ISH agenda to refer to 'commencement of first operational use' instead of 'the opening';  (d) in response to the ExA's comments at point 68 of the ISH agenda in order to include confirmation to the effect that the scheme of mitigation must negate the predicted significant effect; and  (e) in response to the ExA's comments at point 69 of the ISH agenda so that the agreed noise monitoring and mitigation scheme must be implemented.
Schedule 2, requirement 12	This requirement has been amended to remove the approval of the MMO regarding the lighting strategy following discussions with the MMO and in response to the ExA's comments at point 70 of the ISH agenda.
Schedule 2, requirement 16	Requirement 16(2)(e) has been amended in accordance with the ExA's comments at 72 of the ISH agenda in order to provide clarity over the

Provision in revised draft DCO and/or issue	Brief description and explanation
	appeal process.
Schedule 2, requirement 17	<p>Requirement 17 has been amended in accordance with the ExA's comments at 73 of the ISH agenda.</p> <p>Requirement 17(2) has been amended in order to refer to "significant adverse effects that have not been assessed in the environmental statement" as opposed to "materially new or materially different environmental effects to those assessed in the environmental statement" in order to be consistent with this same qualification elsewhere in the dDCO.</p>
Schedule 5, 3	This has been amended in order to correct a typographical error in Schedule 5, 3(2)
Schedule 5	<p>As above for articles 25, 26, 30, 31 this Schedule has been updated to take account of the position of the Department for Transport, following the passing of the Housing and Planning Act 2016, set out in the M20 Junction 10a Development Consent Order 2017.</p> <p>As a result of the changes made to Schedule 5 set out above, the changes suggested by the ExA at points 81 and 82 of the ISH agenda have been overridden and do not need to be made.</p>
Schedule 6	This Schedule has been updated in relation to the purpose for which plot 03/05 is proposed to be taken.
Schedule 7	The port premises byelaws have been amended in order to reflect a number of practical changes in order to ensure that they accord with the Applicant's requirements to regulate Tilbury2 following completion of construction. The level of fines to be levied under Byelaw 4 has been updated to reflect the powers under section 120 of the Planning Act 2008 which means that only fines of up to level 3 on the standard scale may be levied.
Schedule 9	The Deemed Marine Licence has been amended to reflect the most recent position agreed between the Applicant and the MMO. Further discussions with the MMO are still on-going.
Schedule 10, General	<p>Discussions regarding the various protective provisions have been and are continuing to be held.</p> <p>Discussions have been progressing with the undertakers for which it is intended to include protective provision in the Order. A very small number of issues are outstanding on the Network Rail and Cadent protective provisions. Good progress has been made in narrowing the issues between the Port of London Authority and the Applicant The Applicant has engaged with Highways England on the protective provisions and is awaiting its view on what modifications it might wish to see put in place. NGET has indicated that it will be seeking specific protective provision, but has yet to disclose what it is seeking that is not already covered in the general protection afforded to electricity undertakers under Part 1 of Schedule 10. There has been constructive engagement with Anglian Water on the protective provisions it is seeking.</p> <p>Further updates will be provided to the ExA as agreement is reached.</p>

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Schedule 10, Part 2	Part 2 of the protective provisions for the protection of operators of electronic communications code networks have been updated to reflect changes in the law.
Schedule 10, Part 3	Part 3 of the protective provisions for the protection of the Port of London Authority have been amended to reflect some of the discussions held and ongoing with the PLA. Other PLA-related changes are anticipated to be agreed soon.
Schedule 11	The list of Documents to be certified has been updated to reflect the latest set of drawings and documents and to show version numbers in order to aid the ExA.