



PORT OF
TILBURY
LONDON

PLANNING ACT 2008
INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE)
RULES 2010

PROPOSED PORT TERMINAL AT FORMER TILBURY POWER STATION

TILBURY2

TRO30003

SUMMARY OF CASE MADE AT DCO HEARING

DOCUMENT REF: PoTLL/T2/EX/48





Pinsent Masons

PORT OF TILBURY LONDON LIMITED – TILBURY2 - DEVELOPMENT CONSENT ORDER APPLICATION

ISSUE SPECIFIC HEARING ON THE DRAFT DEVELOPMENT CONSENT ORDER

21 FEBRUARY 2018

SUMMARY OF APPLICANT'S SUBMISSIONS

1. INTRODUCTION

2. This note summarises the submissions made by Port of Tilbury London Limited ("**PoTLL**") at the Development Consent Order Issue Specific Hearing held on 21 February 2018 ("**the hearing**") in relation to PoTLL's application for development consent for a Proposed Port Terminal at the Former Tilbury Power Station known as "Tilbury2" ("**the Scheme**").
3. Oral submissions by all parties attending the hearing were made pursuant to the agenda published by the Examining Authority ("**the ExA**") on 15 February 2018 ("**the agenda**"). In setting out PoTLL's position on the issues raised in the agenda, as submitted orally at the hearing, the format of this note follows that of the agenda. In addition, extra items have been added where interested parties or the ExA raised points not specifically mentioned in the agenda and in relation to which PoTLL made oral submissions. Where the ExA requested a written response to an agenda item, the Applicant has also responded as appropriate in the note below.
4. PoTLL's substantive oral submissions commenced at item 2 of the agenda, therefore this note does not cover item 1 on the agenda which was procedural and administrative in nature.

ExA's Agenda Item	Questions	Summary of PoTLL's Oral Submissions made in the hearing	Relevant document references
2. Brief explanation by the Applicant of the aims and objectives of the Draft Development Consent Order (dDCO), as currently drafted (maximum 10 minutes)			
<p>Robbie Owen of Pinsent Masons LLP set out the aims and objectives of the dDCO on behalf of the Applicant, as follows:</p> <ul style="list-style-type: none"> • The dDCO for Tilbury2 seeks consent for the construction, operation and maintenance of a new port facility and associated development in Tilbury, Essex. Tilbury2 is located on the north bank of the river Thames, very close to the existing Port of Tilbury. • The proposed main operational port uses on the site will be a Roll-on/Roll-off ("RoRo") terminal and a Construction Materials and Aggregates terminal ("the CMAT") and associated land facilities, and there was also proposed to be an infrastructure corridor linking the site to existing transport networks. Importantly, however, at its core, the DCO is authorising a new port facility. It therefore provides for flexibility for port uses within the parameters of the assessed masterplan. • As set out in the Explanatory Memorandum ("the EM"), the Scheme will require works including, but not limited to: <ul style="list-style-type: none"> • creation of hard surfaced pavements; • improvement of and extensions to the existing river jetty including creation of a new RoRo berth; • associated dredging of berth pockets around the proposed and extended jetty and dredging of the approaches to these berth pockets; • new conveyors and material handing; • erection of welfare and ancillary buildings; • erection of a single 10,200 sqm. warehouse; • a number of storage and production structures associated with the CMAT; • the construction of a new link road from Ferry Road to Fort Road; and 			

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		<ul style="list-style-type: none"> • formation of a rail spur and sidings. <ul style="list-style-type: none"> • The primary purpose of the dDCO is to authorise the Nationally Significant Infrastructure Project ("the NSIP") as well as Associated Development including: <ul style="list-style-type: none"> • the construction of warehousing; • the construction of new sections of highway; • the construction of a new section of railway; • diversion of utilities apparatus, including gas and water; • pipelines and electrical cables; and • environmental mitigation measures. <p>Robbie Owen stated that he would set out further information over what constitutes Associated Development in response to the Panel's question at no. 56 of the agenda. He set out further that:</p> <ul style="list-style-type: none"> • the dDCO provides the Applicant with powers of compulsory acquisition and temporary possession in order to facilitate the infrastructure corridor and works in the river, but also to ensure protection for the common land that is affected and to ensure that there is no unexpected impediment to implementation and operation; • the dDCO provides for revisions to the existing public highways, public rights of way, private means of access and public rights of navigation on a temporary and permanent basis in order to facilitate the delivery of the Scheme; and • finally, the dDCO includes a number of requirements, which secure the mitigation measures required through the EIA process, whether by reference to a document to be certified pursuant to the Order, such as the CEMP, or on the face of the Order itself, e.g. through restricting heights of certain aspects of the Scheme. <p>Robbie Owen made the general point that it should be understood that the purpose of the dDCO is not just the physical extension of the Port of Tilbury but it is also to authorise the operation and maintenance of a new port with all of the associated powers required. The dDCO (by operation of article 4) extends the</p>	

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<p>powers and duties of PoTLL as a harbour authority.</p> <p>The Port of Tilbury Transfer Scheme 1991 Confirmation Order 1992 (“the 1992 Order”) amended the Port of London Act 1968 to effect the transfer of functions to PoTLL. Article 4 of the dDCO simply incorporates the new harbour facilities into the language of the 1992 Order to extend the jurisdiction of PoTLL over the new harbour facilities in the manner of the jurisdiction it currently exercises over the Port of Tilbury. With regard to the river Thames, exercise of powers by PoTLL would be subject to those of the Port of London Authority (“the PLA”) which will maintain its control over the River. PoTLL would thus only maintain control over vessels at the extended jetty.</p>			
<p>3. Opportunity for the host Unitary Council and relevant Interested Parties and Affected Persons to comment on their main concerns regarding the current drafting of the dDCO.</p>			
<p>Comments were made at the Hearing by Thurrock Council, Gravesham Borough Council, the MMO, Historic England, the PLA, Highways England and RWE. These were responded to by the Applicant through the course of the Hearing in the agenda items discussed below, and any further points will follow in writing at Deadline 2, following the submission at Deadline 1 of the Interested Parties' summaries of their representations at the Hearing.</p>			
<p>4. The matters in Annex A to the Hearing Agenda</p>			

ExA's Agenda Item	Questions	Summary of PoTLL's Oral Submissions made in the hearing	Relevant document references
<p>1. Order Format and Tracking of Changes</p>	<p>The Applicant is asked to confirm that subsequent versions of the dDCO (dDCO) submitted after the application version will be:</p> <p>a) supplied in both .pdf and Word formats, the latter showing changes from the previous version in tracked changes, with Word comments outlining the reason for the change; and</p> <p>b) identified by a separate version number.</p> <p>The Applicant is also asked to confirm that its final dDCO will be supplied in both .pdf and Word formats, the latter showing in tracked changes all changes from the version supplied with the application documents [APP-016] to the final version submitted at the end of the Examination, with Word comments outlining the reasons for the changes.</p>	<p>Robbie Owen confirmed that the Applicant will provide each version of the dDCO as requested save that the version in tracked changes will be provided in pdf as opposed to Word format (due to previous issues encountered with the stability of dDCOs as Word documents showing changes as tracked changes).</p> <p>The Applicant will always supply a clean word version of the dDCO and in addition it will also provide a separate Word document providing summary explanations regarding each of the changes made.</p> <p>At the final deadline the Applicant will provide an updated EM as both a clean document and in .pdf format showing tracked changes from the application version of the EM.</p>	
<p>2. List of Plans/Documents to be Certified</p>	<p>The Applicant is asked to prepare and maintain a tabulated list of all plans and other documents that will require to be certified by the Secretary of State (SoS) under Art 57 (including all plan, drawing and</p>	<p>Robbie Owen confirmed that the Applicant will undertake this exercise throughout the Examination process, by updating Schedule 11 to the dDCO.</p> <p>Schedule 11, which sets out the documents to be certified by the Secretary of State, could be expanded in order to show version numbers of documents. The Schedule currently shows the correct documents but it was acknowledged that the description of such documents could be fuller and this will be addressed in</p>	

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	revision or document reference numbers), to be updated throughout the examination process, and supplied to the Examining authority at each relevant deadline and before the close of the Examination.	the next updated version and subsequent updates.	
3. Drawing and Revision Numbers	The Applicant is asked to ensure that all plans referred to in Art 2 and elsewhere are identified by Drawing and Revision Numbers in subsequent versions of the dDCO. Where revisions are prepared, these should be reflected in the latest version of the dDCO.	Robbie Owen confirmed that this approach will be taken forward with on-going iterations of Schedule 11 to the dDCO.	
4. Document Numbers	The Applicant is asked to ensure that all documents referred to in Art 2 and elsewhere are identified by their correct document numbers in subsequent versions of the dDCO. Where revisions are prepared and document numbers change, these should be reflected in the latest version of the dDCO.	Robbie Owen confirmed that this approach will be taken forward with on-going iterations of Schedule 11 to the dDCO.	
5. General: 'guillotine' provisions Art 56 makes provision that in	a) The Applicant is asked to justify why the proposed 'guillotine' provision is necessary and appropriate, having regard to the particular circumstances of	Robbie Owen stated, as explained in Chapter 3 of the Environmental Statement and the Outline Business Case submitted with the Application, that the Scheme has been brought forward as a result of the urgent need to expand the existing Port of Tilbury. Therefore a robust construction programme has been developed, with RoRo facilities anticipated to be brought in within a year of the DCO being	ES (APP-031/6.1) paragraph 3.17 – 3.21 and 5.126 -

ExA's Agenda Item	Questions	Summary of PoTLL's Oral Submissions made in the hearing	Relevant document references
<p>relation to applications for any consent, agreement, certification or approval, consent is deemed to be granted if the consultee does not respond within 28 days – a 'guillotine' provision.</p> <p>The Panel is aware that such provisions are included in a number of made DCOs: however, they have tended to be justified with reference to the particular characteristics of the development permitted in each DCO. This type of provision is not automatically appropriate to all NSIP development and has to be justified on a project-specific basis.</p>	<p>the development applied for.</p>	<p>granted. PoTLL had already commenced the procurement regime so that it could commence works as soon as possible if consent is granted.</p> <p>Robbie Owen outlined that, given the number of consents required under the DCO, this provision was considered to be appropriate to the objectives of the scheme - i.e. as set out above, to build an expanded port to service unmet need as quickly as possible.</p>	<p>5.127 (the latter AS-06/PoTLL/T2/EX/10)</p> <p>Outline Business Case (APP-166/7.1)</p>
	<p>b) Could any provisions other than 'guillotine' provisions address the Applicant's objective for their inclusion?</p>	<p>The ExA stated that this question could be addressed in writing and the Applicant responds as follows:</p> <p>The Applicant confirms in response that as the ExA notes, this is a well precedented provision, and is considered the most appropriate form of provision in the circumstances.</p> <p>Whilst the Applicant is willing to enter into side agreements with relevant bodies to control the discharge process if these bodies so desire, this article is considered the most suitable form of <u>DCO</u> provision.</p>	
	<p>c) What evidence does the Applicant have that they have consulted with and taken account of consultee's views about the appropriateness and operation of such provisions?</p>	<p>The ExA stated that this question could be addressed in writing and the Applicant responds as follows:</p> <p>The Applicant has been in on-going liaison with all relevant consultees throughout the pre-application process.</p> <p>Whilst this provision has not specifically formed an item of discussion, the Applicant has explained the nature of the DCO process and the role of local authorities within it, including at the implementation stage.</p> <p>The Applicant is happy to discuss the operation of such a provision with these bodies in more detail if necessary.</p>	

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<p>6. General: drafting approach to associated and ancillary development</p>	<p>Paragraphs 2.6- 2.9 of the Explanatory Memorandum (EM) [APP-017] identify the drafting approach taken in the dDCO to associated development. No distinction is made between the principal development of the Nationally Significant Infrastructure Project (NSIP) and associated development in Schedule 1 of the dDCO, other than sub headings above Works No 1 and Works No 2.</p> <p>The Applicant is requested to prepare a table, itemising all proposed works (Works Nos. 1 – 11 and items (a) – (z) listed in Works 12 of Schedule 1) and categorising each in the following terms:</p> <ul style="list-style-type: none"> • Principal development; • Associated development; • Ancillary development; or • Composite development, being works having the character of a composite of any two or all three of principal, associated or ancillary development at the same time. 	<p>Robbie Owen stated that the Applicant understands that the provision of the table requested would be helpful to the ExA and that it will therefore provide the table as requested.</p> <p>A more detailed response in relation to Associated Development is included at question 56 below regarding Schedule 1 Associated Development.</p> <p>Table:</p> <table border="1" data-bbox="958 603 1680 1311"> <thead> <tr> <th data-bbox="967 609 1317 667">Proposed Work</th> <th data-bbox="1323 609 1673 667">Development Category</th> </tr> </thead> <tbody> <tr> <td data-bbox="967 671 1317 729">Work No.1</td> <td data-bbox="1323 671 1673 729">NSIP</td> </tr> <tr> <td data-bbox="967 734 1317 791">Work No.2</td> <td data-bbox="1323 734 1673 791">NSIP</td> </tr> <tr> <td data-bbox="967 796 1317 853">Work No.3</td> <td data-bbox="1323 796 1673 853">Associated Development</td> </tr> <tr> <td data-bbox="967 858 1317 916">Work No.4</td> <td data-bbox="1323 858 1673 916">Associated Development</td> </tr> <tr> <td data-bbox="967 920 1317 978">Work No.5</td> <td data-bbox="1323 920 1673 978">Associated Development</td> </tr> <tr> <td data-bbox="967 983 1317 1040">Work No.6</td> <td data-bbox="1323 983 1673 1040">Associated Development</td> </tr> <tr> <td data-bbox="967 1045 1317 1102">Work No.7</td> <td data-bbox="1323 1045 1673 1102">Associated Development</td> </tr> <tr> <td data-bbox="967 1107 1317 1165">Work No.8</td> <td data-bbox="1323 1107 1673 1165">Associated Development</td> </tr> <tr> <td data-bbox="967 1169 1317 1227">Work No.9</td> <td data-bbox="1323 1169 1673 1227">Associated Development</td> </tr> <tr> <td data-bbox="967 1232 1317 1289">Work No.10</td> <td data-bbox="1323 1232 1673 1289">Associated Development</td> </tr> </tbody> </table>	Proposed Work	Development Category	Work No.1	NSIP	Work No.2	NSIP	Work No.3	Associated Development	Work No.4	Associated Development	Work No.5	Associated Development	Work No.6	Associated Development	Work No.7	Associated Development	Work No.8	Associated Development	Work No.9	Associated Development	Work No.10	Associated Development	<p>dDCO (APP-016/3.1)</p>
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		Work No.11	Associated Development	
		Work No.12	Associated Development	
		Works within highways (a) – (d)	Ancillary Development	
		Works within the river Thames situated within the Order limits (e)-(k)	Ancillary Development	
		Works within the parts of the river Thames situated within the extended port limits (l)	Ancillary Development	
		Other works and development (m) – (z)	Ancillary Development	
7. Preamble	<p>Preamble: the Examination process</p> <p>The Applicant is asked to draft the Preamble to the next version of the dDCO to reflect that the Examination is being carried out by a Panel.</p>	<p>Robbie Owen confirmed that this will be undertaken at Deadline 1.</p>		
<p>8. Art 2(1) Interpretation</p> <p>a) Definition of</p>	<p>The EM paragraph 5.5.1 refers to difficulties caused by deletion of definition in A160/A180 (Port of Immingham Improvement) DCO,</p>	<p>The ExA stated that this question could be addressed in writing and the Applicant responds as follows:</p> <ul style="list-style-type: none"> It was recognised by the Secretary of State in the Correction Notice for the Port of Immingham Improvement Development Consent Order 2015 that 		<p>Explanatory Memorandum to dDCO</p>

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<p>"commence"</p> <p><i>"commence" means beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised development other than operations consisting of environmental surveys and monitoring, investigations for the purpose of assessing ground conditions, receipt and erection of construction plant and equipment, erection of any temporary means of enclosure, the temporary display of site notices or advertisements, and "commencement" is to be construed accordingly;</i></p>	<p>without identifying what they were. If it is accepted that a degree of flexibility is required, why are the particular exclusions from the meaning of 'material operation' necessary and justified in the particular circumstances of this case?</p>	<p>the deletion of the definition of 'commence' had <i>'the unintended consequence of removing an acceptable degree of flexibility in the implementation of the project and that this is a correctable error for the purposes of Schedule 4 to the Planning Act 2008'</i>.</p> <ul style="list-style-type: none"> • The effect of the definition is that certain 'carved out' works can be carried out prior to the requirements contained in Schedule 2 to the DCO being discharged. • In the particular circumstances of the Application, the ability to carve out works is of critical importance to the Applicant in the context of its rapid construction programme. • The carve outs are all what can be considered as 'pre-construction' activities, required to get the relevant land in a position where construction can take place. • As such, the Applicant considers that the works that are 'carved out' would not have any impact on the effectiveness of the requirements from an environmental protection perspective. • Furthermore, notwithstanding this definition, investigations for assessing ground conditions that could cause environmental effects would be controlled through regulatory regimes such as the Water Resources Act 1991. 	<p>(APP-017/3.2)</p>
<p>9. Art (2) Interpretation</p> <p>b) Definition of "maintain"</p> <p><i>"maintain" and any of its derivatives include inspect, repair, adjust, alter, remove or reconstruct and any derivative</i></p>	<p>The EM paragraph 5.5.3 merely says that the Applicant considers the definition appropriate and has precedent.</p> <p>However particular inclusion of 'adjust', 'alter' and 'remove' appear to enable changes to such scheme as may be approved, under the</p>	<p>The ExA stated that this question could be addressed in writing and the Applicant responds as follows:</p> <ul style="list-style-type: none"> • The Applicant considers that the definition of "maintain" is entirely appropriate and has precedent in numerous made DCOs to date, such as the A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016 and, indeed, does not go as far as other DCOs such as the Norfolk County Council (Norwich Northern Distributor Road (A1067 to A47(T))) Order 2015 and the Thames Water Utilities Limited (Thames 	<p>Explanatory Memorandum to dDCO (APP-017/3.2)</p> <p>DDCO (APP-</p>

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<i>of "maintain" is to be construed accordingly;</i>	guise of maintenance works. Why is this justified in this particular case?	<p>Tideway Tunnel) Order 2014.</p> <ul style="list-style-type: none"> In the particular circumstances of this application, the Applicant considers the definition of "maintain" to be justified, proportionate and appropriate as the various elements of the definition ("inspect, repair, adjust, alter, remove or reconstruct") would bear their common-sense meanings and would allow the Applicant to undertake all types of works reasonably associated with and necessary for maintenance of the port facility authorised, as long as additional environmental effects were not triggered. This is all in the context of the DCO authorising an ongoing port operation as well as the initial construction works, as mentioned above. This is particularly relevant given the marine environment in which Tilbury2 will sit where the water effects may necessitate removal or readjustment. The definition does not give scope for works to change the scheme which are not maintenance-related or within the overall terms of the development consented. The ongoing restrictions that are an intrinsic part of the permitted development regime will act to provide appropriate limitations and constraints to contain this power to an appropriate level. The Applicant also notes Environmental Statement paragraph 5.117, which references repairs and resurfacing, and notes that maintenance in and of itself may be a mitigation measure. Aside from maintenance dredging (which is specifically considered in the Environmental Statement) maintenance operations would all fall within the environmental envelope related to the initial construction phase, as they would involve similar activities. They would also fall to be controlled by the Operational Management Plan (APP-165/6.10). 	016/3.1) ES (AS-06/PoTLL/T2/EX/10) para 5.128
10. Art 3	a) The EM paragraphs 5.11-	Robbie Owen explained that the disapplication of local legislation was a	Explanatory

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<i>Disapplication of legislation</i>	5.12 identify the organisations responsible for the local legislation disapplied by Article 3(1). Can the Applicant confirm the current state of discussions with each relevant body in relation to these provisions; and confirm that updates will be provided during the Examination by way of Statements of Common Ground	<p>technical area which would be best explained by the Applicant in a follow-up response in writing.</p> <p>The Applicant is currently in discussions with the relevant statutory bodies including the PLA and the EA however the Applicant does not consider the provision made in article 3(1) to be unusual. The rationale for the inclusion of such a provision is that the DCO should present all of the principal approvals and consents required for construction of the Scheme.</p> <p>The Applicant is satisfied that each of the provisions to be disapplied can lawfully be included in the DCO.</p> <p>Alex Dillistone on behalf of the PLA raised a concern regarding the disapplication of maintenance dredging consent ordinarily required under s73 of the 1968 Act and confirmed that such concern has already been raised with the Applicant. Robbie Owen confirmed that updates regarding such discussions will be provided during the Examination by way of Statements of Common Ground.</p> <p>Further to the Oral response at the hearing, the Applicant responds as follows:</p> <ul style="list-style-type: none"> • Through article 3(1) of the dDCO the Applicant proposes the disapplication of two pieces of local legislation: (a) sections 66 to 75 of the Port of London Act 1968; and (b) the Thames Barrier and Flood Prevention Act 1972. • As set out in the EM in the Table at 5.12, the organisations responsible for the local legislation are: in respect of (a) the Port of London Authority; and in respect of (b) the Environment Agency. • In respect of both (a) and (b) the dDCO contains protective provisions for the benefit of the organisations responsible. Such protective provisions will, in effect, replace the controls under the disapplied legislation. • Disapplying the enactments is considered proportionate in that context and, indeed, necessary - otherwise, third parties could hold up construction or impede the operation and maintenance of the Scheme. To provide 	<p>Memorandum to dDCO (APP-017/3.2)</p> <p>dDCO (APP-016/3.1)</p>

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	<p>b) Section 120(5)(a) PA2008 only enables the disapplication of legislation if it relates to a matter for which provision may be made in the order. Can the Applicant identify, in relation to each piece of legislation to be disapplied, the corresponding power within the dDCO?</p>	<p>comfort for those parties, there are appropriate safeguards in the Order via the requirements in Schedule 2 and the protective provisions in Schedule 10.</p> <p>In response, the Applicant has set out the summary in the table below showing each piece of disapplied legislation against the corresponding dDCO provision and legal basis for disapplication.</p> <table border="1" data-bbox="958 587 1912 1343"> <thead> <tr> <th data-bbox="958 587 1429 624">Provision</th> <th data-bbox="1429 587 1912 624">Corresponding power in the dDCO</th> </tr> </thead> <tbody> <tr> <td data-bbox="958 624 1429 1343">3(1)(a) sections 66 to 75 of the 1968 Act</td> <td data-bbox="1429 624 1912 1343"> <ul style="list-style-type: none"> The disapplied sections of the Act control the licensing of certain works and dredging on the river Thames. The corresponding powers within the dDCO are: article 52 (Deemed Marine Licence) and article 43 (Power to Dredge). The Order contains protective provisions for the benefit of the Port of London Authority which, in effect, replace the controls under the Act. There are structures in the river, particularly the existing jetty, which will remain yet be adapted and incorporated into the authorised development. As such, in line with the approach set out above, article 3(3) of the dDCO provides that those structures, in like manner to the </td> </tr> </tbody> </table>	Provision	Corresponding power in the dDCO	3(1)(a) sections 66 to 75 of the 1968 Act	<ul style="list-style-type: none"> The disapplied sections of the Act control the licensing of certain works and dredging on the river Thames. The corresponding powers within the dDCO are: article 52 (Deemed Marine Licence) and article 43 (Power to Dredge). The Order contains protective provisions for the benefit of the Port of London Authority which, in effect, replace the controls under the Act. There are structures in the river, particularly the existing jetty, which will remain yet be adapted and incorporated into the authorised development. As such, in line with the approach set out above, article 3(3) of the dDCO provides that those structures, in like manner to the 	<p>Explanatory Memorandum to dDCO (APP-017/3.2)</p> <p>dDCO (APP-016/3.1)</p>
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3(1)(a) sections 66 to 75 of the 1968 Act	<ul style="list-style-type: none"> The disapplied sections of the Act control the licensing of certain works and dredging on the river Thames. The corresponding powers within the dDCO are: article 52 (Deemed Marine Licence) and article 43 (Power to Dredge). The Order contains protective provisions for the benefit of the Port of London Authority which, in effect, replace the controls under the Act. There are structures in the river, particularly the existing jetty, which will remain yet be adapted and incorporated into the authorised development. As such, in line with the approach set out above, article 3(3) of the dDCO provides that those structures, in like manner to the 						

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			<p>authorised developed in the river, may remain in the river Thames and will be subject to the same authority and terms as the authorised development in the river. Consequently article 3(2) of the dDCO provides for the existing river works licences which have effect within the Order limits and apply to the structures referred to above to be extinguished, as the regime under the DCO would take effect instead.</p> <ul style="list-style-type: none"> Article 3(4) of the dDCO ensures the integrity of the new harbour facilities within the jurisdiction of PoTLL as harbour authority and their operation and use by ensuring that a river works licence cannot be granted by the PLA to third parties without the reasonable consent of PoTLL. These provisions are being discussed with the Port of London Authority, but the intention is to create largely a single river works regime under the Order in relation to the Scheme. 	
		3(1)(b) Thames Barrier and Flood	The Thames Barrier Flood Prevention	

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		Prevention Act 1972	Act 1972 gives powers to undertake various kinds of infrastructure work relating to the Thames Barrier. In particular this article disapplies the EA's powers under section 67 of that Act, to undertake works in relation to flood control, and section 70, which imposes a penalty on obstructing the execution of the Act. The controls contained in the protective provisions for the benefit of the Environment Agency ensure that the underlying purposes of the Act will be safeguarded.		
		3(1)(c) section 24 (restrictions on abstraction) of the Water Resources Act 1991	<ul style="list-style-type: none"> As noted in the EM, articles 3(1) (c), (d) and (g) provide for the disapplication of consents ordinarily required from the Environment Agency, under the Environmental Permitting (England and Wales) Regulations 2016 ("the EP Regulations") and the Water Resources Act 1991. Certain 'flood risk' consents that were required to be obtained under the Water Resources Act 1991 have only recently been removed and brought under the scope of the Environmental Permitting regime. Specifically, these are the requirements for consents in respect of a 'flood risk activity' under the EP 		
		3(1)(d) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 to the Water Resources Act 1991			
		3(1)(e) section 23 (prohibition of obstructions, etc. in watercourses) of the Land Drainage Act 1991			
		3(1)(f) the provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991			
		3(1)(g) regulation 12 (requirement for environmental permit) of the Environmental Permitting			

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		(England and Wales) Regulations 2016 in respect of a flood risk activity only	<p>Regulations and abstractions, together with the requirements for approval under flood defence byelaws made or deemed to have been made, under the Water Resources Act 1991.</p> <ul style="list-style-type: none"> • These are consents for activities which are a necessary part of constructing the authorised development, i.e. pursuant to article 6. • Articles 3(1)(e) and (f) provide for the disapplication of consents ordinarily required in respect of the prohibition on placing obstructions in waterways which are not main rivers under the Land Drainage Act 1991 and byelaws made under the Land Drainage Act 1991 regulating the use and obstruction of these watercourses. • Again, such obstructions form part of the authorised development, pursuant to article 6. • In both aspects, the protective provisions for the Environment Agency and Thurrock Council will enable both bodies to be involved in controlling the Applicant's activities. 	
		3(1)(h) the provisions of the Neighbourhood Planning Act 2017	This article disapplies provisions of the Neighbourhood Planning Act.	

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		<p>insofar as they relate to temporary possession of land under articles 32 and 33 of this Order</p>	<p>This disapplication would provide that the temporary possession provisions in that enactment would not take effect at the expense of the temporary possession provisions contained in the Order. The Applicant's rationale for this is that the provisions relating to temporary possession in the Neighbourhood Planning Act have not yet come into force and that regulations required to provide more detail on the operation of the regime have not yet been consulted upon, let alone made. As such, it is considered appropriate to apply the 'tried and tested' temporary possession regime which has been included in numerous DCOs and Orders made under the Transport and Works Act 1992 to date and to ensure that this endures throughout construction of the Scheme.</p>	
<p>11. Art 3(1)(h)</p>	<p>This paragraph disapplies the provisions of the Neighbourhood Planning Act (NPA) 2017 relating to</p>	<p>Robbie Owen acknowledged that the Neighbourhood Planning Act 2017 provisions relating to temporary possession begin to set out the "bare bones" for</p> <ul style="list-style-type: none"> • The relevant protective provisions currently included in the draft Order are not yet agreed, but discussions between the parties are on-going with an aim to agree the protective provisions (and therefore the proposed disapplications) before the end of the examination. The status of these discussions will be reported, as appropriate, during the course of the Examination. 		<p>Explanatory Memorandum to</p>

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	<p>temporary possession. The EM [APP-017] paragraph 5.19 indicates that this is because the NPA provisions are not yet in force, so the 'tried and tested' regime from previous DCOs and TWOs should be used. Given the parliamentary approval to the temporary possession regime under the NPA, could the 'tried and tested' regime be modified to more closely reflect the statutory regime where possible?</p>	<p>the structure of a new regime.</p> <p>Given that the regulations required to provide more detail on the operation of the regime have not yet been consulted upon, let alone made, the Applicant is of the view that it would be difficult to reflect accurately the temporary possession provisions as intended by Parliament at this stage. The Applicant therefore considers that it is appropriate to apply the temporary possession regime which has been included in numerous DCOs and Orders made under the Transport and Works Act 1992 to date.</p> <p>It would be difficult for the Applicant to second guess the detail of the new regime under the Neighbourhood Planning Act 2017 thus it cannot be applied to the dDCO in anticipation of what Minister and Parliament may or may not do in terms of the drafting and approval of the necessary Regulations respectively.</p>	<p>dDCO (APP-017/3.2)</p> <p>dDCO (APP-016/3.1)</p>
<p>12. Art 3(2)</p> <p><i>(2) On the date this Order comes into force, any works licences granted by the PLA to the Company, RWE Generation UK PLC and the Anglian Water Authority under section 66 of the 1968 Act in respect of the existing structures within the parts of the river Thames situated within the extended port limits are extinguished and no longer have effect.</i></p>	<p>Can the Applicant confirm and identify the dDCO provisions which will come into force with the order so as to provide a seamless authorisation for the works of RWE and Anglian Water Authority?</p>	<p>Robbie Owen explained that the relevant dDCO provision is article 3(3). This article provides that all structures within the parts of the river Thames situated within the extended port limits at the date the Order comes into force may remain and subsist in the river Thames under the authority of, and subject to the terms of, the Order and the requirement to obtain a works licence under section 66 of the 1968 Act does not apply to those structures.</p> <p>The effect of this article is that the consent granted by the DCO replaces the works licences already held by Anglian Water and RWE – as such the 'seamless transition' happens through the coming into force of the DCO – most specifically article 41(1) - which grants the Applicant the powers to operate and maintain the authorised development and the structures referenced in this article.</p> <p>It should also be noted that the dDCO consents the removal of the Anglian Water Jetty and the alteration, renovation and renewal of the RWE jetty (Work 1(g) and (i) respectively in Schedule 1).</p>	<p>dDCO (APP-016/3.1)</p>
<p>13. Art 4 Application of enactments</p>	<p>Is the Port of London Authority (PLA) content with the drafting of</p>	<p>Alex Dillistone on behalf of the PLA stated they recognise the need for the article and that the PLA considers the current drafting to be a useful starting</p>	

ExA's Agenda Item	Questions	Summary of PoTLL's Oral Submissions made in the hearing	Relevant document references
<i>relating to the Port of Tilbury</i>	this Article?	<p>point. The PLA does, however, consider there to be an issue in relation to the overlap with its functions. Accordingly, the PLA has suggested a number of amendments to the Applicant.</p> <p>Robbie Owen confirmed that the Applicant is in discussions with the PLA and will endeavour to produce revised drafting in due course which is satisfactory for all parties.</p>	
<p>14. Art 5 Incorporation of Railway Clauses Consolidation Act 1845</p> <p><i>“prescribed”, in relation to any such provision, means prescribed by this Order for the purposes of that provision</i></p> <p><i>“the railway” means any railway authorised to be constructed by this Order and, except where the context otherwise requires, any other authorised works</i></p>	<p>a) In the next iteration of the dDCO, can the summary headings in relation to each section to be incorporated be amended to the heading for that section as stated in the 1845 Act? E.g. the heading for section 24 should be “Penalty for obstructing construction of railway”</p>	<p>The ExA stated that this question could be addressed in writing and the Applicant responds as follows:</p> <p>The Applicant agrees with this observation and will amend the next revision of the dDCO accordingly.</p>	dDCO (APP-016/3.1)
	<p>b) In relation to the definition of “prescribed” in Art 5(2) please identify where in the DCO matters are “prescribed by this Order for the purposes of [a provision of the 1845 Act incorporated in the DCO]”</p>	<p>The ExA stated that this question could be addressed in writing and the Applicant responds as follows:</p> <p>The Applicant will amend the next revision of the dDCO in order to remove reference to 'prescribed' in this context.</p>	dDCO (APP-016/3.1)
	<p>c) In relation to the definition of “the railway” in Art 5(2), please explain:</p>	<p>The ExA stated that this question could be addressed in writing and the Applicant responds as follows:</p> <ul style="list-style-type: none"> • (i) It is necessary for the 1845 Act provisions to be applied to railway 	Explanatory Memorandum to dDCO

ExA's Agenda Item	Questions	Summary of PoTLL's Oral Submissions made in the hearing	Relevant document references
	<p>i. why it is appropriate to incorporate these provisions as regards works other than the railway;</p> <p>ii. why the draft refers to “any railway” - is the Applicant satisfied that this definition sufficiently encompasses the railway lines, rail sidings and associated rail infrastructure referred to in Schedule 1?</p>	<p>infrastructure generally and that is the purpose of including the words "any other authorised works" in the definition of "the railway". It is, however, acknowledged that the scope of "any other authorised works" is arguably broader than is strictly necessary and the Applicant therefore proposes to bring forward a modification limiting the scope of the catch-all provision to railway-associated works.</p> <ul style="list-style-type: none"> (ii) The modification suggested above will make it clear that all railway associated works are covered by the definition of "the railway". 	<p>(APP-017/3.2) dDCO (APP-016/3.1)</p>
<p>15. Art 7 Limits of Deviation</p>	<p>Since the linear works can be deviated downwards to any depth:</p> <p>a) What depths of works are envisaged?</p> <p>b) How have these works been assessed in the ES?</p> <p>c) What impact do the works have on the water table and other water-related matters?</p> <p>In Article 7(e) the maximum depth of dredging should be specified.</p>	<p>Robbie Owen explained that the most efficient way to address parts (a) and (b) of this question would be to involve the consulting engineers directly. Sarah Rouse of Atkins on behalf of the Applicant therefore set out that:</p> <ul style="list-style-type: none"> (a) The design of the infrastructure corridor was based on the aspiration to minimise any cut & fill and therefore follow as close to existing ground level where practicable. The proposed construction design would provide a consistent depth beneath finished level only increasing in depth where the route passed above or over any culverts or services. However, the presence of voids or areas of underlying strata weaker than anticipated beneath the proposed alignment may necessitate further excavation and reinstatement of improved fill to rectify. The construction depth (e.g. from top of rail to bottom of formation level) is anticipated (subject to the above) to be approximately 1m. (b) For the purposes of the DCO, the likely ‘reasonably likely worse case’ impact from the proposed development (the <i>Rochdale</i> envelope) has been assumed in the assessment and sought to be mitigated. 	<p>CEMP (Document Reference APP-164/6.9)</p>

ExA's Agenda Item	Questions	Summary of PoTLL's Oral Submissions made in the hearing	Relevant document references
		<p>Construction works may disturb and mobilise existing sources of contamination and introduce new pathways for migration of existing contamination, including the potential for creation of new pathways to groundwater, through the opening up of the ground temporarily and activities such as earthworks and piling.</p> <p>However, mitigation measures have been incorporated into the construction process, as set out in the CEMP (Document Reference APP-164, 6.9) to minimise impacts to groundwater.</p> <p>Robbie Owen responded to the third limb of the question (part (c)) explaining that the Applicant recognised that in relation to dredging article 7(e) could be made clearer. This will be actioned in the next draft of the DCO.</p> <p>The applicable limits are shown on the engineering drawings however they could be clearer regarding the maximum dredge depth. As such, they will be updated accordingly at Deadline 1. Articles 7(e) and 43(1) can therefore refer directly to the revised drawing.</p> <p>The MMO was invited to comment on this point and Jayne Burns stated that they were satisfied with the Applicant's position on the revised drawings.</p>	
<p>16. Art 8 Street Works</p> <p>The EM [APP-017] in paragraph 5.34 acknowledges that this article is widely drafted but "the scope is considered necessary in light of the early design stage the</p>	<p>a) Should the article be limited to streets within the Order limits?</p>	<p>Paul Kirkwood and John Pingstone on behalf of Highways England stated that they had a concern that this article should not be applied to existing highways.</p> <p>Robbie Owen explained that discussions with Highways England were ongoing.</p> <p>The ExA stated that this question could be addressed in more detail in writing and the Applicant responds as follows:</p> <ul style="list-style-type: none"> This article is not limited to the Order limits due to the discussions that are, and will be, on-going with statutory undertakers and the street authorities 	

ExA's Agenda Item	Questions	Summary of PoTLL's Oral Submissions made in the hearing	Relevant document references
Scheme is at as maximum construction flexibility is required”.		as to potentially wider apparatus diversions and highway signage.	
	b) Can the Applicant supply a table identifying the street authority for each street to which the article is intended to apply?	<p>The ExA stated that this question could be addressed in writing and the Applicant responds as follows:</p> <ul style="list-style-type: none"> As Thurrock Council is the unitary authority for the local area, the vast majority of streets which would be affected by this article fall under Thurrock's remit as Local Street Authority (LSA). The exception to this is St. Andrew's Road and Asda Roundabout, and Dock Road to the north of the roundabout, where Highways England is the street authority. 	
<p>17. Art 10 (1) Construction and maintenance of new, altered or diverted streets</p> <p><i>10.—(1) Subject to paragraph (4), any street constructed under this Order must be completed to the reasonable satisfaction of the street authority and, unless otherwise agreed in writing with the street authority, must be maintained by and at the expense of the Company for a period of 12 months from its completion and thereafter by the street authority.</i></p>	In respect of each new street to be constructed under the Order, who is to be the street authority that will become responsible for the street under this paragraph?	<p>The ExA stated that this question could be addressed in writing and the Applicant responds as follows:</p> <ul style="list-style-type: none"> The re-aligned Fort Road (and its bridge) will remain the responsibility of Thurrock Council. The new road that forms the infrastructure corridor will be the responsibility of Thurrock Council, up to the gate entrance to Tilbury2. PoTLL will be the street authority from the gate line into Tilbury2. Highways England will remain the street authority for the Asda Roundabout, as modified by the Scheme. 	
<p>18. Art 10 (3) Construction and maintenance of</p>	a) Please explain how this provision is to operate? How will the land “come to form part	Robbie Owen explained that no express dedication is required due to the DCO's effect as a statutory instrument; the dedication arises automatically from operation of the paragraph in question.	

ExA's Agenda Item	Questions	Summary of PoTLL's Oral Submissions made in the hearing	Relevant document references
<p>new, altered or diverted streets</p> <p><i>(3) Where land not previously part of the public highway comes to form part of the public highway by virtue of the construction, diversion or alteration of a street under this Order, unless otherwise agreed with the street authority the land is deemed to have been dedicated as public highway on the expiry of a period of 12 months from completion of the street that has been constructed, altered or diverted.</i></p>	<p>of the public highway” in the absence of dedication?</p> <p>b) If the highway authority is not the street authority under this provision, has the highway authority been consulted about its implications?</p>	<p>Julian Howes on behalf of Thurrock expressed a concern that they would usually expect to have a 12 month maintenance period under article 10. Robbie Owen responded pointing out that such period was accounted for under article 10(1) and 10(2).</p> <p>Robbie Owen explained that:</p> <ul style="list-style-type: none"> • Highways England and Thurrock Council are the street authority and highway authority for the streets within the Order limits; and • that both bodies have been consulted on PoTLL's plans for the highway network including who will be the highway and street authority for the streets created through the DCO. 	
<p>19. Art 10 (4) Construction and maintenance of new, altered or diverted streets</p> <p><i>(4) In the case of any bridge or any other structure constructed under this Order to carry a street, both the street surface and structure of the bridge must be maintained by and at the expense of the street authority from their completion.</i></p>	<p>a) Should this paragraph read “...both the street surface and structure of the bridge or other structure must be....</p> <p>b) Please identify the bridges or structures that will be subject to this paragraph, and the corresponding street authority</p>	<p>The ExA stated that this question could be addressed in writing and the Applicant responds as follows:</p> <p>This is agreed and the amendment will be made in the revision of the dDCO submitted at Deadline 1.</p> <p>The ExA stated that this question could be addressed in writing and the Applicant responds as follows:</p> <ul style="list-style-type: none"> • It is envisaged that where a public highway passes over a culvert or other structure then the culvert or structure will become the responsibility of the local highway authority. Where the railway passes over a culvert then this will become the responsibility of the Applicant. • With reference to the Culvert Location Plan (document reference POTLL/T2/EX/19) the following bridges and structures will be adopted by Thurrock under operation of the DCO's provisions: <ul style="list-style-type: none"> • Culvert 2 – adopted under road 	<p>Culvert Location Plan (AS-21/PoTLL/T2/EX/19)</p>

ExA's Agenda Item	Questions	Summary of PoTLL's Oral Submissions made in the hearing	Relevant document references
		<ul style="list-style-type: none"> • Culver 3a • Culvert 3b • Culvert 4a • Fort Road Bridge. 	
	c) Are any of these bridges or structures to carry a public highway?	<p>The ExA stated that this question could be addressed in writing and the Applicant responds as follows:</p> <ul style="list-style-type: none"> • Yes, all structures mentioned above will carry a public highway – as shown on the Classification of Roads Plans. 	Classification of Roads Plans (APP-012/2.6)
	d) Unlike other articles, this paragraph does not follow the precedent of, for example, the A19/A1058 Coast Road DCO, Art 9(3). Why?	<p>The ExA stated that this question could be addressed in writing and the Applicant responds as follows:</p> <ul style="list-style-type: none"> • The A19/A1058 DCO was developed in the context of a different scenario – Highways England was promoting the scheme as highway authority for the road that was the subject of the Scheme, and so would ordinarily be responsible for bridge structures. The local highway authority in that case was then responsible for the surface of the PRow that went over it - as it was responsible for that PRow. Similar logic was also applied on the Norwich NDR Scheme. • In this case, the highway that is on the bridge/culvert, will be the responsibility of Thurrock as local highway authority, and so the bridge/structure that supports it also should be. Suitable protection for Thurrock as local highway authority is found in its Protective Provisions (Part 7 of Schedule 10 to the dDCO.). 	DDCO (APP-016/3.1)
20. Art 11 Classification of	The EM [APP-017] indicates that this article is under discussion with the Highway Authority. Can the	Matthew Gallagher and Julian Howes on behalf of Thurrock Council submitted that preliminary discussions had been held with the Applicant over classification but no agreement had yet been reached. Robbie Owen confirmed that	

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<i>roads</i>	Applicant and the Highway Authority state whether the principles are now agreed?	discussions had been held and that it was anticipated agreement would be reached shortly.	
21. Art 12 Permanent stopping-up and restriction of use of highways and private means of access	a) This article refers to the stopping-up of highways, yet Article 12(2)(a) refers to new highways or private means of access being completed to the reasonable satisfaction of the street authority rather than the highway authority. Why is this? There are similar references to the street authority elsewhere in the article.	<p>Robbie Owen explained that the drafting of this article is widely preceded across made DCOs.</p> <p>He referred to section 49 of the New Roads and Street Works Act 1991 which defines "the street authority". Reference is made to the street authority as it is a street authority that has responsibility to check works to streets, and their reinstatement, which is analogous to the scenarios envisaged by this article. The phrase 'street authority' also covers private and public roads – as it can cover both highway authorities and 'street managers' of private roads.</p> <p>Matthew Gallagher and Julian Howes on behalf of Thurrock Council confirmed that for public highways in Thurrock it is the highway and street authority.</p> <p>Paul Kirkwood and John Pingstone on behalf of Highways England stated that they wished to discuss this provision further with the Applicant.</p>	
	b) Please explain why Part 1 of Schedule 4 includes “New highways which are otherwise to be provided” – i.e. where there is no corresponding stopping-up - which do not appear to be referred to in Article 12 or elsewhere. This is not explained or referred to in the EM.	Robbie Owen stated that the Applicant would reflect on this question and would update the dDCO to ensure there is consistency between articles 10, 12 and Schedule 4.	
22. Art 16 Use of private roads for	Can the Applicant identify the private roads within the Order limits	Robbie Owen stated that at the current preliminary stage of design, it is not currently known exactly which private roads will be used, however it was	

ExA's Agenda Item	Questions	Summary of PoTLL's Oral Submissions made in the hearing	Relevant document references
construction	to which this article would apply?	<p>considered likely that the roads to be used would be:</p> <ul style="list-style-type: none"> • existing PoTLL roads and accesses; • accesses to Mr Gothard's land (as identified in plot 3/10 of the Book of Reference); and • the existing access to the Tilbury2 site. 	
23. Art 18 Discharge of Water	a) In Article 18(7), the reference to “Homes and Communities Agency” should now be to “Homes England”.	<p>The ExA stated that this question could be addressed in writing and the Applicant responds as follows:</p> <ul style="list-style-type: none"> • Homes England is the operating name of the Homes and Communities Agency, not its legal name, therefore the reference should remain to the HCA. 	
	b) Should Homes England – and the Environment Agency (EA) – be defined in Art 2(1)?	<p>The ExA stated that this question could be addressed in writing and the Applicant responds as follows:</p> <ul style="list-style-type: none"> • It is not usual practice or necessary for such bodies to be defined. 	
	c) The EM [APP-017] in paragraph 5.57 says “This provision does not deal with the issue of damage to main rivers, as this would be captured by the protective provisions for the benefit of the Environment Agency contained in Schedule 10” Have the protective provisions been agreed by the EA?	<p>The Environment Agency (“EA”) was not present at the hearing.</p> <p>Robbie Owen outlined that the protective provisions in the dDCO for the Environment Agency are still under discussion. The Applicant will provide updates to the ExA on progress made in such discussions during the course of the Examination.</p>	
	d) This article should be amended	Robbie Owen stated that the Applicant was in discussions with the MMO but	MMO

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	to make provision for consultation/agreement with the Marine Management Organisation (MMO) on any discharge of water which may take place below mean high water springs.	such an amendment should not be necessary in the context of the engineering design for the Scheme. The MMO confirmed that this article was not relevant to it.	Relevant Representation (RR-023)
24. Art 19 Protective works to buildings	Article 19(2)(b) enables protective works to be carried out up to 5 years from the day on which that part of the authorised development is "first opened for use". Art 19(8)(b) also uses that phrase. The article appears to follow precedents from highways DCOs, e.g. the A19/A101058 Coast Road DCO, for which that phrase may be appropriate. However, what does it mean in the context of the development that would be authorised by this DCO?	<p>Robbie Owen stated that the Applicant had reflected on this provision and that it was not immediately convinced that the drafting in relation to "<i>first opened for use</i>" required any further clarification. In the context of the dDCO "<i>first opened for use</i>" should be given its ordinary meaning.</p> <p>In the context of the development that would be authorised by the dDCO this means the Applicant will be authorised under the DCO to carry out protective works to the relevant buildings in question and that the authority to do so under the DCO will remain for a period of 5 years from the date on which that part of the authorised development in the vicinity of the building in question is opened for use. This will allow the Applicant to carry out important protective works to buildings within the Order limits at its own expense and as it considers necessary and expedient, e.g. the infrastructure corridor road, the Fort Road Bridge.</p> <p>In response to the ExA's suggestion that the provision could be linked somehow to the infrastructure corridor, Robbie Owen responded that this would not be necessary as "<i>first opened for use</i>" would be easy to determine and the current drafting in article 19(8)(b) assists in this respect in that it refers to "<i>the day on which the part of the authorised development carried out in the vicinity of the building is first opened for use</i>".</p> <p>Wendy Lane on behalf of Gravesham Council expressed a concern that the protective works envisaged under article 19 would apply to noise reassessment works pursuant to Requirement 10 of the dDCO. Robbie Owen responded that the Applicant would be happy to discuss this point with Gravesham in more</p>	

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		detail but that article 19(12) clarified the meaning of protective works and this would not include the noise reassessment works pursuant to Requirement 10.	
<p>25. Art 20 <i>Authority to survey and investigate land</i></p>	<p>Article 20(1) would enable the Applicant to enter onto any land shown within the Order limits or which may be affected by the authorised development, to survey or investigate the land, with only a minimum of 14 days notice required. Whilst compensation for any loss or damage must be paid, is this Article proportionate and fair, given there being no indication of the extent of the land outside the Order limits that may be affected by the authorised development?</p>	<p>Paul Kirkwood and John Pingstone on behalf of Highways England expressed a concern that the 14 day period in the article may not be long enough given the relevant highways are subject to a Design, Build, Finance and Operation contract..</p> <p>Robbie Owen responded, confirming that article 20 gives PoTLL the power to enter certain land for the purpose of surveying and testing. It provides that PoTLL must give 14 days' notice before exercising the power of entry and that compensation is payable for any loss or damage caused.</p> <p>The Applicant is of the view, given that compensation is payable for any loss or damage arising by reason of exercise of the power conferred by the article, that the article is both proportionate and fair. Both the notice period of 14 days and the wording "<i>land which may be affected by the authorised development</i>" have precedent in respect of other major schemes, e.g. the A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016 and the A14 Cambridge to Huntingdon Improvement Scheme Order 2016.</p> <p>This wording also formed part of the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009, so has come directly from government and had support from the beginning of the DCO regime.</p> <p>In relation to highway and other statutory undertakers' land, the relevant protective provisions will apply as well, so conferring additional protection on the affected statutory undertaker.</p>	
<p>26. Art 22 <i>Works in the River Thames: conditions</i></p>	<p>Has the text of this article been agreed with the PLA?</p>	<p>Alex Dillistone on behalf of the PLA stated that the article was mostly agreed save for some final points under discussion. The PLA raised a concern regarding article 23 (Compulsory Acquisition of Land) and the ability of the Applicant to acquire the river bed.</p>	

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		<p>Robbie Owen confirmed that discussions were being held with the PLA in relation to both articles 22 and 23. Specifically in relation to article 23 there was the prospect that the PLA would grant a lease of the riverbed to the Applicant as an alternative to compulsory acquisition – discussions were on-going in this respect.</p>	
<p>27. Art 24 Time limit for exercise of powers to possess land temporarily or to acquire land compulsorily</p>	<p>Does Article 24(2), as drafted, give rise to the possibility of the Applicant remaining in temporary possession of land for a very long time scale after the end of the period defined in A24(1)? If so, why?</p>	<p>Robbie Owen stated that the Applicant did not believe that article 24(2), as drafted, gave rise to the possibility of the Applicant remaining in temporary possession of land for a very long time after the end of the period defined in article 24(1).</p> <p>The wording in article 24(2) simply ensures that the article does not prevent the Company from remaining in possession of land after the end of the 5 year period, if the land was entered and possession was taken before the end of that period – it is a clarification rather than an extension. The time period for the temporary possession of land would still be limited by the wording of article 32 (Temporary use of land for carrying out the authorised development).</p>	
<p>28. Art 29 Rights over or under streets</p>	<p>In what circumstances would this Article be used?</p>	<p>Robbie Owen stated that as set out in the EM the purpose of this article was to allow the Applicant to appropriate and use land above or below streets within the Order limits, without having to acquire the street or any right or easement in it. The exercise of this power without acquisition is prohibited in the circumstances set out in paragraph (3). Compensation is payable for any loss or damage caused to an owner or occupier of land affected by the power of appropriation where no acquisition has taken place.</p> <p>It is envisaged that this would particularly take place where works may be needed for statutory undertakers that are not currently anticipated, given they are often found within or close to streets.</p> <p>The Applicant notes that this has been included in most DCOs made to date and was contained in the Model Provisions. In response to the ExA's question regarding examples of when airspace may be required over streets, Robbie Owen cited telecommunications equipment.</p>	<p>Explanatory Memorandum to dDCO (APP-017/3.2)</p> <p>dDCO (APP-016, 3.1)</p>

ExA's Agenda Item	Questions	Summary of PoTLL's Oral Submissions made in the hearing	Relevant document references
		<p>The Applicant was asked to provide a further example in addition to telecommunications equipment for when airspace may be acquired over streets: an additional example is over-sailing rights.</p>	
<p>29. Art 31 Application of the Compulsory Purchase (Vesting Declarations) Act 1981</p>	<p>a) Article 31(5) omits s5A of the 1981 Act. That was added by the Housing and Planning Act 2016 and provided a 3 year time limit for making a vesting declaration (GVD). Whilst the omission of this section is consistent with the inclusion of a 5 year time limit for making a GVD in Article 24, why is a 5 year period needed in this case as opposed to the 3 year period considered appropriate in national legislation?</p>	<p>The ExA stated that this question could be addressed in writing. Robbie Owen and Francis Tyrrell on behalf of the Applicant provided an initial response stating that it has long been recognised by ministers and Parliament that the scale and nature of NSIPs requires a greater degree of flexibility than required for small schemes. Furthermore, it is also useful to recognise that a longer time limit for making a vesting declaration can reduce the amount of permanent land take which is desirable.</p> <p>Generally, the Applicant responds as follows:</p> <ul style="list-style-type: none"> • As was recognised by the Model Provisions and in all DCOs made to date (except where longer periods have been agreed), a five year period in which to utilise compulsory acquisition powers in the context of a nationally significant infrastructure project is considered appropriate. • This is because many different elements (including finance, procurement and project assembly) need to be brought together before compulsory acquisition can take place. It is also to enable the minimum use of compulsory acquisition by using temporary possession powers first and then once actual as-built parameters are established, full CA powers can be exercised for the minimum land area then needed. This two step process to minimise permanent land take requires the necessary time to undertake detailed design and implementation before taking land permanently. • Many DCOs would not be able to be implemented effectively whilst minimising permanent land take without the compulsory acquisition period being five years. 	

ExA's Agenda Item	Questions	Summary of PoTLL's Oral Submissions made in the hearing	Relevant document references
		<ul style="list-style-type: none"> Guidance from the Department for Communities and Local Government ("DCLG") – "<i>Planning Act 2008 – Guidance related to procedures for the compulsory acquisition of land</i>" - September 2013 at paragraph 44 states: <i>"Unless the order is subject to legal challenge, the applicant may then implement the compulsory acquisition provisions. Implementation of compulsory acquisition provisions may be by "notice to treat" or, if the order so provides, by "general vesting declaration". A notice to treat must be served within 5 years or within any other period specified in the order".</i> <p>The Applicant's approach is therefore in line with relevant guidance.</p>	
	b) The EM provides no explanation of the modifications to national legislation made by this article. Can the Applicant justify each modification in the circumstances of this case?	<p>The ExA stated that this question could be addressed in writing and the Applicant responds as follows:</p> <ul style="list-style-type: none"> The modifications to national legislation made by article 31 are based on precedent drafting. However, the drafting will be updated to take account of the position of the Department for Transport, following the coming into force of relevant provisions of the Housing and Planning Act 2016, set out in the M20 Junction 10a Development Consent Order 2017. Revision 1 of the dDCO (to be submitted at Deadline 1) will therefore be updated to reflect the position in article 28 of the M20 Junction 10a Development Consent Order 2017. It is noted that the Model Provisions also provided for modifications to this national legislation. 	
	c) In particular, please explain the omission in paragraph (8)	As above.	
	d) Is the reference to s125 PA2008 in paragraph (10) necessary, as it merely repeats what is in Article 30(1) which is	As above.	

ExA's Agenda Item	Questions	Summary of PoTLL's Oral Submissions made in the hearing	Relevant document references
	also referred to in paragraph (10)?		
<p>30. Art 32 Temporary use of land for carrying out the authorised development</p> <p><i>32(1)(a)(i) the land specified in columns (1) of Schedule 6 (land of which only temporary possession may be taken) for the purpose</i></p>	“...column (1)...”?	<p>The ExA stated that this question could be addressed in writing and the Applicant responds as follows:</p> <ul style="list-style-type: none"> The Applicant agrees and will amend Revision 1 of the dDCO to read: "column (1)" instead of "columns 1". 	
<p>31. Art 32</p> <p><i>32(1)(a)(ii) and no declaration has been made under section 4 (expectation of declaration) of the 1981 Act</i></p>	“...execution of declaration...”?	<p>The ExA stated that this question could be addressed in writing and the Applicant responds as follows:</p> <ul style="list-style-type: none"> The Applicant agrees and will amend Revision 1 of the dDCO to read "execution of declaration" instead of "expectation of declaration". 	
<p>32. Art 32</p> <p><i>32(1)(d) construct any works on that land as are mentioned in Schedule 1 (authorised development).</i></p>	The EM [APP-017] in paragraph 6.20 says in relation to this provision “The article provides for any of the authorised development listed in Schedule 1, in particular, to be built and left on land that has been temporarily occupied. The rationale for this is that it provides for flexibility in the construction programme and also reduces the extent of the compulsory acquisition of land.” Please clarify further the rationale for including a power to	<p>Robbie Owen confirmed that the effect of the article as set out in the EM was to allow the land set out in Schedule 6 to be occupied and used temporarily while the works are carried out. This is land which is required during construction of the authorised development but not required permanently.</p> <p>Importantly, however, article 32 also allows for the temporary occupation of any of the land intended for permanent acquisition, or for the acquisition of new rights, but which has, or which have, not yet been acquired. As such, permanent works will take place on that land, which will then be acquired as necessary. As explained above, this approach helps to keep the amount of compulsory acquisition to a minimum as well as affording some flexibility in the construction programme.</p>	Explanatory Memorandum to dDCO (APP-017/3.2)

ExA's Agenda Item	Questions	Summary of PoTLL's Oral Submissions made in the hearing	Relevant document references
	construct permanent works within an article dealing with temporary possession.	This power is also applicable to some permanent works in those plots which are for temporary possession only. This is where works will be undertaken by the Applicant, but will be owned and maintained by third parties after the works are complete. In this case, this relates to the works on Fort Road (03-05-03/07, 03/11, 03/13 and 03/15) and Ferry Road (plots 02/01 and 02/02), where the new/adjusted highway will be owned and maintained by Thurrock as local highway authority, and at the Asda Roundabout where the same would apply to Highways England (plots 01/01 - 01/07).	
<p>33. Art 32</p> <p><i>32(2) Not less than 14 days before entering on and taking temporary possession of land under this article the Company must serve notice of the intended entry...</i></p>	<p>As noted in Q11 above, the Neighbourhood Planning Act 2017 includes provisions relating to temporary possession that will apply nationally once brought into force. Those provisions were subject to consultation and debate before being enacted.</p> <p>a) The notice period that will be required under the 2017 Act is 3 months, substantially longer than the 14 days required under this article. Other than prior precedent, what is the justification for only requiring 14 days' notice in this case (it is noted that the notice period in Article 33 is 28 days)?</p> <p>b) Under the 2017 Act provisions, the notice would also have to</p>	<p>Robbie Owen referred back to the Applicant's previous comments in response to question 11 and article 3(1)(h) and reiterated that the relevant provisions of the Neighbourhood Planning Act 2017 were not yet in force and that it was hard for the Applicant to anticipate the approach which would be taken thus using the much precedented approach remained appropriate in the Applicant's view.</p> <p>Notwithstanding the previous precedent, the Applicant considers that the 14 day period required under the article is sufficient and justified in the case of this development. In light of the tight construction programme envisaged for the Scheme, a 3 month period could cause significant delays for the Applicant.</p> <p>The 14 day notice period gives the owners and occupiers of the land a sufficient period of notice, in the context of the Applicant's on-going negotiations with the affected land interests.</p> <p>Robbie Owen also emphasised that 14 days was a minimum notice period and that more notice would be given where possible.</p> <p>The Applicant also notes the limited amount of temporary possession required, which is limited to highways, the PLA's riverbed, and the common land, all of which have their own protections elsewhere in the Order.</p> <p>The Applicant responds as follows:</p>	

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	<p>state the period for which the authority is to take possession. Why should such a requirement not be included in this case?</p>	<p>The notice served gives notice of the intended entry on the owners and occupiers of the land and will state the works, facilities or other purpose for which the Company intends to take possession of the land.</p> <p>Article 32(3) is considered to provide sufficient protections in terms of the time for which the land can be taken. However, the Applicant is willing to consider amending article 32(2) in this regard and will make further submissions at Deadline 1.</p>	
	<p>c) Powers of temporary possession are sometimes said to be justified because they are in the interests of landowners, whose land would not then need to be acquired permanently. The 2017 Act provisions include the ability to serve a counter-notice objecting to the proposed temporary possession so that the landowner would have the option to choose whether temporary possession or permanent acquisition was desirable. Should this article make some such provision – whether or not in the form in the 2017 Act?</p>	<p>Robbie Owen confirmed that in the circumstances of this development, such provision was not considered necessary.</p> <p>First, the highway authority will not want the Applicant to take ownership of existing highway land.</p> <p>Secondly, as recognised by the complex set of provisions in respect of river works licences and the PLA's jurisdiction, it is highly unlikely that the PLA or the Crown Estate would want the Applicant to acquire more riverbed.</p> <p>Finally, in respect of the common land, the special category land regime (including in article 37 of the dDCO) is designed to encourage as little compulsory acquisition as possible of such land.</p> <p>It would therefore not be appropriate to include provision that would provide for more acquisition, without then having a number of other provisions providing that the land acquired would need to be replaced with land that passed the relevant statutory tests.</p> <p>It should also be noted that for land that is proposed to be compulsorily acquired as well as temporarily possessed, landowners will benefit from the material detriment regime, which effectively gives them a similar power as the counter-notice procedure envisaged here.</p>	
<p>34. Art 33 Temporary use of land for</p>	<p>a) The same questions arise as under Q33(a) above, albeit it is</p>	<p>Robbie Owen set out that for the same reasons as were outlined in the Applicant's response to question 33 (a) above, 28 days was considered</p>	

ExA's Agenda Item	Questions	Summary of PoTLL's Oral Submissions made in the hearing	Relevant document references
<p><i>maintaining the authorised development</i></p>	<p>28 days here.</p>	<p>appropriate. Mr Owen reiterated that 28 days was a tried and tested standard period.</p>	
	<p>b) The power of entry under Article 33 (unlike Article 32) is over all the land within the Order limits, not only the land identified as being subject to temporary possession in the Book of Reference (BoR) and shown as such on the land plans. Why is this appropriate/justified?</p>	<p>The Applicant responds as follows:</p> <p>Article 33 differs from article 32 in that it is used for maintenance of the authorised development as opposed to carrying out the authorised development. Conceivably, maintenance may need to be carried out on any of the land within the Order limits, whereas the works for carrying out the authorised development can be identified more accurately and prescribed at this stage in relation to land subject to temporary possession powers.</p> <p>Furthermore, in accordance with article 33(4) the Company may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.</p>	
	<p>c) In Article 33(5) should there also be a need to remove all temporary buildings that would have been constructed under Art 33(1)(c)?</p>	<p>Robbie Owen stated that article 33(5) requires that before giving up possession of land of which temporary possession has been taken, the Company must remove all temporary works and restore the land to the <u>reasonable satisfaction of the owners of the land</u>. The Applicant considers that the wording "<i>to the reasonable satisfaction of the owners of the land</i>" is sufficient in this respect and would include the removal of temporary buildings if the landowner required.</p> <p>However, Robbie Owen agreed in the interests of clarity, that this provision would be amended in the dDCO submitted at Deadline 1.</p>	
<p>35. Art 35 Apparatus and rights of statutory undertakers in stopped up streets</p>	<p>The definition of 'statutory utility' in the 1980 Act excludes some statutory undertakers that one would expect to be protected by this provision, e.g. electricity, water and gas undertakers which were</p>	<p>The ExA stated that this question could be addressed in writing and the Applicant responds as follows:</p> <ul style="list-style-type: none"> This wording is preceded in all made DCOs and the Model Provisions, and reflects the fact that those undertakers who are covered by the definition do not ordinarily have protective provisions in this regard unless 	

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35(8) "statutory utility" means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) of the Communications Act 2003	included in the 1980 Act definition as originally enacted. The EM does not address this. Why is this limited definition appropriate in the circumstances of this case?	they appear at Examination evidencing specific matters to be provided for. <ul style="list-style-type: none"> Electricity, water and gas undertakers are provided for by their specific protective provisions in the dDCO. 	
36. Art 37 Special category land: West Tilbury common land	a) As there are two alternative "relevant Order powers" as defined in 37(4), should 37(2) commence e.g. "On the exercise of any relevant Order power-..."	The ExA stated that this question could be addressed in writing and the Applicant responds as follows: <ul style="list-style-type: none"> The Applicant agrees. In article 37(4) either (a) or (b) could trigger the "relevant order powers being exercised". The Applicant will therefore amend article 37(2) in Revision 1 of the dDCO to read: "<i>On the exercise of either of the relevant Order powers by the Company</i>" instead of "<i>On the relevant Order powers being exercised by the Company</i>". 	
	b) For the same reason, should the definition in 37(4) read "...in respect of the special category land, and "relevant Order power" is to be interpreted accordingly"?	The Applicant responds as follows: <ul style="list-style-type: none"> Following the amendment made to 37(2) above to read "<i>either of the relevant Order powers being exercised by the Company</i>" the Applicant considers that no further amendment would be required to this article. 	
	c) Can the Applicant clarify in what circumstances it envisages the exercise of temporary possession as a "relevant Order power", given that under 37(1) that power cannot be exercised until the Company has (already) acquired the land?	The ExA stated that this question could be addressed in writing and the Applicant responds as follows: <ul style="list-style-type: none"> The power in 37(1) relates to the acquisition of replacement land, rather than the special category land itself. The consequence of 37(4) is that the Applicant cannot temporarily possess or acquire the special category land (as defined in that article) until it has acquired the replacement land. 	

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<p>37. Art 39 Set-off for enhancement in value of retained land</p> <p><i>(3) The 1961 Act has effect, subject to paragraphs (1) and (2), as if this Order were a local enactment for the purposes of that Act.</i></p>	<p>Although this paragraph follows the precedent in the Thames Tideway Tunnel DCO, it is not mentioned in the EM. Can the Applicant clarify its effect in this particular case, by reference to section 8 of the 1961 Act?</p>	<p>The ExA stated that this question could be addressed in writing and the Applicant responds as follows:</p> <ul style="list-style-type: none"> • This article has the effect of deeming the DCO to be a local enactment for the purposes of section 8(5) of the 1961 Act. • The consequence of that is that section 7 of the 1961 Act does not apply to the authorised development - paragraphs (a) and (b) of this article will apply instead. 	
<p>38. Art 40 No double recovery</p> <p><i>40. Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law, or under two or more different provisions of this Order.</i></p>	<p>As noted in the EM, compensation should not be payable under different compensation regimes. However, there are a number of provisions in the Order giving rise to a liability for compensation. It is conceivable that, for example, the Company could take temporary possession of land under Article 32 (with a consequent liability to compensation) but also subsequently seek to acquire the land compulsorily under Article 23. On the face of it, this provision would prevent compensation being paid for the compulsory acquisition because that would be proceeding under a different provision of the Order. Can the Applicant comment?</p>	<p>Robbie Owen stated that this was a very common provision which has been used in various types of Order authorising infrastructure development since the 1990s. The Applicant did not consider that this was a concern due to the words <i>'in respect of the same matter'</i>.</p> <p>A claim for compensation in relation to compulsory acquisition was not the same as a claim for compensation for temporary possession – they were different matters.</p> <p>An example of 'double counting' that this article covers is a claim for compensation under article 12(7) for loss caused by the suspension or extinguishment of a private right of way, and a claim under article 27(5) which refers to a loss by the extinguishment or suspension of any private right. If in the latter case, that right was a right of way, this article would prevent a claimant claiming compensation under both provisions.</p>	

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<p>39. Art 41 Operation and maintenance of the authorised development</p> <p>This article provides extraordinarily wide powers to carry out works and development in addition to the authorised development described in Schedule 1, which already itself includes a substantial number of items of 'ancillary or related development'. There is also some duplication e.g. item (y) in Schedule 1 includes a number of items referred to in this article. Article 46 also enables the land to be treated as operational land, with consequent ability to exercise PD rights which will no doubt include much of what is sought by this article.</p>	<p>a) Can the Applicant explain why these three avenues to achieving what appears to be the same objective are necessary and justified?</p>	<p>Robbie Owen stated that the Applicant did not agree that this article provides three avenues to achieving the same objective nor did the Applicant consider that this was an extraordinarily wide power.</p> <p>The purpose of article 41 is to give statutory authority for the ongoing operation (including maintenance) of the Scheme. This should not be confused with Schedule 1 authorised development, which identifies the works which are to be constructed initially.</p> <p>Article 46 of the dDCO is required to apply the port's existing permitted development ("PD") rights to the Tilbury2 site in the same way as other ports benefit from PD rights.</p> <p>Article 41 is not an extraordinary provision and it has been used in a number of HROs, HEOs, TWAOs and Port DCOs for statutory harbour undertakings. This is important in ensuring that a level playing field is created for all ports and this article therefore provides certainty that these activities, which as of themselves can be considered 'normal' port operations, are authorised. It will also enable the Port to balance the base asset of the extended port against the dues that will be payable for dealing with goods, and provides a statutory protection against nuisance claims. Both elements are protections enjoyed by all other ports in the UK, and are therefore required for Tilbury2 to be productive and competitive – a desire supported by the National Policy Statement for Ports (see, e.g., paras 3.3.3 and 3.5.1).</p> <p>Article 41 is not about conferring planning permission but is in place to ensure that Tilbury2 can operate on exactly the same basis as Tilbury1. The article is fundamental to the on-going operation and evolution of Tilbury2.</p> <p>Robbie Owen also pointed out that there was a safeguard provided in article 41(3), which clarifies that the article does not authorise any works (including maintenance) which are likely to give rise to any significant adverse effect that have not been assessed in the environmental statement. (Note that the drafting will be amended at Deadline 1 to read " <i>effects</i>" as opposed to " <i>effect</i>".)</p>	

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		<p>Martin Friend of behalf of the Applicant discussed the PD rights which the port currently has and how these are used. Martin Friend explained that the port has PD rights, however such rights are still limited by the Environmental Impact Assessment ("EIA") Regulations. In the event that PoTLL or any of its tenants wish to carry out works in reliance on PD rights, then they must first approach the local planning authority for a certificate of lawfulness or an EIA screening opinion. This ensures that PoTLL operates within the PD regime and the EIA Regulations and allows the Local Planning Authority (Thurrock Council) to control activity at the Port appropriately. The same regime would apply to Tilbury2.</p> <p>As such the restrictions in the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the GPDO") will apply – any development outside of the ES parameters would need full planning permission.</p> <p>This is essentially acknowledged by paragraph (3) of the article which makes it clear that this article does not authorise any works that will give rise to any new significant adverse effect that has not been assessed in the Environmental Statement - and this will be able to be tested through the operation of the PD regime.</p> <p>As explained in paragraph 5.80 - 5.86 of the ES, and then through the lateral limits of deviation on the Works Plans, the ES has been assessed on a parameters approach within the areas covered by the various CMAT, RoRo and storage operations – the elements suggested by this article would thus, taking account of the above, need to fit within those parameters, including the utilisation of the mitigation measures set out in the CEMP and OMP. They have therefore not been specifically assessed as individual items in the ES but are accounted for in the parameters set.</p> <p>By way of an example, any new buildings in the RoRo area would not be able to be taller than ‘the workshop, administrative and ancillary facilities’ indicated by the parameters stated in Chapter 9 of the ES.</p>	

ExA's Agenda Item	Questions	Summary of PoTLL's Oral Submissions made in the hearing	Relevant document references
		<p>Similarly, works in the marine environment would by their nature be controlled through the DML and the EA's protective provisions in any event.</p> <p>Matthew Gallagher on behalf Thurrock Council confirmed that Martin Friend's summary was an accurate reflection of the approach taken by PoTLL in relation to PD rights from the perspective of the local planning authority. Matthew Gallagher confirmed that Thurrock does not have any objection to article 41 and that the Applicant's general approach was to engage fully with the local planning authority.</p> <p>Wendy Lane on behalf of Gravesham Council expressed a concern that the article widened the scope of PD rights at the port.</p> <p>Francis Tyrrell on behalf of the Applicant reiterated that nothing which has a "significant effect" will be permitted under PD rights. The extent of the PD rights themselves is not dictated by the Applicant but the provision ensures that the Tilbury2 regime is the same as the Tilbury1 regime and is wholly consistent with other port operation powers.</p> <p>The Applicant is happy to discuss the operation of the PD rights regime with Gravesham Council in more detail if required.</p>	
	b) Is the cross reference to Art 3(2) in Art 41(1) correct?	<p>The Applicant responds as follows:</p> <ul style="list-style-type: none"> • Yes, the cross-reference is correct– this is the article that gives the Applicant the power to operate and maintain the existing RWE and Anglian Water structures that form part of the Scheme. 	
	c) Please can the Applicant provide confirmation that all of the activities that would be authorised have been assessed within the ES?	As above – see response to question 39(a).	ES (AS-006/PoTLL/T2/EX/10) paragraph 5.80-5.86

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<p>40. Art 42 Power to appropriate</p>	<p>The EM explains that this article provides wider powers than s85 of the Port of London Act 1968, and it is noted that Article 29 of the Able Marine Energy Park is a similar provision. Does the PLA have any comments?</p>	<p>Alex Dillistone on behalf of the PLA stated that the PLA had no comments on this article.</p>	
<p>41. Art 43 Power to dredge</p> <p>The EM explains that dredging would otherwise be subject to licensing, but that the relevant regulators' interests would be protected by the protective provisions.</p>	<p>a) Article 43(1) would control the depth of dredging to that specified in Article 7(e). However Article 7(e) does not provide any maximum depths, instead referring the reader to the limits shown on the "engineering sections and plans". The relevant errata document [AS-010] is titled "Engineering Drawings and Plans". Drawing PO5 within that document, entitled "Extent and Depth of Dredging Regulation 5(2)(o)" does not show a definitive maximum depth of dredging, but states "-18.1m OD Approx" and "Proposed Dredge Level". For clarity please provide the maximum dredge depth in Article 7(e).</p> <p>b) Please can the Applicant confirm its agreement (or</p>	<p>Robbie Owen referred to the response in relation to question 15 regarding article 7 and reiterated that the Applicant would be adding a clearer limit of dredging to the relevant engineering drawing.</p> <p>Robbie Owen confirmed that discussions with the MMO were on-going and that the Applicant had recently met with the MMO to discuss the matters raised in</p>	

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	<p>otherwise) to amend the wording of Article 43 (3) in accordance with the proposed wording of provided by the MMO [RR-023], paragraph 5.</p>	<p>their relevant representation. Although this wording had not yet been fully agreed, it was anticipated that an agreed position will be able to be reached by Deadline 1.</p> <p>Jayne Burns on behalf of the MMO stated that this point was under discussion There is an exemption for dredging under section 75 of the Marine and Coastal Access Act 2009 ("MACAA 2009") however this is not worded to include maintenance dredging powers under a DCO.</p> <p>Francis Tyrrell confirmed that the present draft of the Deemed Marine Licence (DML) reflects that a licence would be required for maintenance dredging but that the Applicant needed to give further consideration to section 75 of MACAA 2009 and that the parties would discuss an agreed position and report at Deadline 1.</p>	
	<p>c) Article 43 generally would give the Applicant powers to dredge anywhere within the Order limits for maintaining and operating activities –within the Limits of Deviation (LoDs) specified in Art 7(e). Art 7(e) relates only to dredging during construction, so does the Applicant intend there to be no LoDs for maintenance and operational dredging?</p>	<p>Robbie Owen referred back to the previous response in relation to question 15 regarding article 7 and reiterated that the Applicant would be adding vertical limits of dredging to the relevant engineering drawing.</p>	
	<p>d) Can the PLA provide its comments on this Article and the associated Protective</p>	<p>Alex Dillistone on behalf of the PLA stated that the PLA welcomed the Applicant's approach in relation to providing limits for dredging depths on the plans. If the relevant amendments were made then this should address the concerns of the PLA regarding the drafting of article 43 provided that the</p>	

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	Provisions?	Applicant also took account of comments in relation to the protective provisions for the PLA.	
42. Art 48 Defence to proceedings in statutory nuisance	Could the Applicant explain where and how in the dDCO there is provision for suitable and sufficient complaints procedures with timely publication of details of complaints that have arisen together with actions taken?	<p>Robbie Owen confirmed that:</p> <ul style="list-style-type: none"> • Construction complaints management was explained in the Construction Environmental Management Plan (see paragraphs 2.6, 3.14, and 11.2); and • Operational complaints management was explained in the Operational Community Engagement Plan (see section 4). <p>Robbie Owen confirmed that both of these documents were secured by DCO requirements.</p>	CEMP (APP-164/6.9) OCEP (APP-159/6.4)
43. Art 50 Consent to transfer benefit of Order	Why and under what circumstances would the deemed marine licence need to be transferred? Should the consent of the MMO also be required where a transfer or lease includes the deemed marine licence?	<p>Robbie Owen stated that it was not the DML but the benefit of the Order which would be transferred. Robbie Owen stated that the MMO had indicated in a meeting with the Applicant that it was no longer concerned with the drafting of this article.</p> <p>Jayne Burns on behalf of the MMO agreed that this article was no longer of concern to the MMO following discussions with the Applicant.</p> <p>Alex Dillistone on behalf of the PLA submitted that the PLA would wish to be specified as a party to be consulted on the suitability of a successor under article 50.</p> <p>The Applicant will consider the PLA's suggestion in future discussions and in the on-going development of the dDCO.</p>	
44. Art 51 Traffic regulation measures	Article 51(3) enables the Company to take various actions (with the consent of the traffic authority) in respect of "any road", which at face value is a very broad power.	<p>Robbie Owen stated that although it was anticipated that this article will be used for roads in the vicinity of the development, it may be that this power could be required to be used more widely as a consequence of current or future operations – for example requiring new weight limits.</p> <p>Robbie Owen pointed out, however, that this was a very well established article</p>	

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	Presumably the power is only intended to relate to roads in the vicinity of the development – can the Applicant elaborate?	<p>which had been used widely in many made Orders and that the article included appropriate consultation and consenting safeguards for affected traffic authorities and others.</p> <p>Paul Kirkwood and John Pingstone on behalf of Highways England stated that the consent required under article 51(3) was noted however they had more general concerns in relation to traffic regulation and queried whether the traffic authority could instead be responsible for the powers in 51(3). The precedent in this area was developing and this issue could be dealt with bilaterally with the Applicant.</p> <p>Robbie Owen emphasised that article 51 was in fact a well established and precedented article which would provide an effective and transparent "one stop shop" for any necessary traffic regulation changes to be implemented. Discussions with Highways England were on-going in this respect.</p>	
45. Art 51	Article 51(4) enables the Article 51(3) power to be exercised within 24 months from “the opening of the authorised development for operational use”. The authorised development contains a number of disparate uses. Can the start of the 24 month period be more precisely defined?	<p>Robbie Owen stated that the Applicant was considering article 51(4) further.</p> <p>This article would be amended at Deadline 1 to refer to the opening of Work No.3 for operational use - i.e. the RoRo terminal, as this was the first aspect of operations expected to be opened on Tilbury2 - as indicated in paragraph 5.127 of the ES.</p>	ES (AS-006/PoTLL/T2/EX/10) paragraph 5.127
46. Art 51 <i>(6) Any prohibition, restriction or other provision made by the Company under paragraph (1) or (3)—</i>	What is the purpose of the phrase “as the case may be” in this sub-paragraph, as there appears to be only one consequence (ie the prohibition restriction or other provision is deemed to be a traffic	<p>The ExA stated that this question could be addressed in writing and the Applicant responds as follows:</p> <ul style="list-style-type: none"> • These words will be removed from the dDCO at Deadline 1. 	

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<i>(b) is deemed to be a traffic order for the purposes of, as the case may be Schedule 7 (road traffic contraventions subject to civil enforcement) to the 2004 Act; and</i>	order for the purposes of Schedule 7 of the 2002 Act)?		
<p>47. Art 51</p> <p><i>(8) Before exercising the powers conferred by paragraphs (1) or (3) the Company must consult such persons as the Company considers necessary and appropriate and have regard to the representations made to the Company by any such person.</i></p>	Is it sufficient for the Company to be the sole arbiter of who should be consulted, and not additionally for example such persons as the traffic authority or the chief officer of police may require?	<p>Robbie Owen outlined that article 51(8) was a standard provision which had been used in many DCOs and other orders previously.</p> <p>Paragraph (5) sets out the consultation process that the Applicant must go through in order to exercise the power to make traffic regulation measures additional to those within the DCO.</p> <p>This includes publication (as directed by the traffic authority), and consultation with the chief officer of police and the traffic authority. This was in line with the procedure for making Traffic Regulation Orders under the Road Traffic Regulation Act 1984.</p> <p>Paragraph (8) was therefore additional to this, and allowed for the Applicant to decide to consult beyond that which was required under this article, and beyond what would ordinarily be required in a non-DCO environment.</p> <p>Matthew Gallagher and Julian Howes on behalf of Thurrock Council stated that for normal consultation they would usually expect other bodies to be notified in normal consultation.</p> <p>In response, Robbie Owen confirmed that this was already made possible through the operation of the article whereby other bodies could be consulted if appropriate.</p> <p>Paul Kirkwood and John Pingstone on behalf of Highways England reserved their position in relation to this provision.</p>	
<p>48. Art 52 Deemed marine licence</p>	Please can the Applicant and the MMO provide an update regarding	Francis Tyrrell confirmed that discussions between the Applicant and the MMO were on-going. The Applicant had met with the MMO on 15 February 2018	

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	discussions in respect of the revised wording proposed by the MMO for the deemed marine licence?	<p>when the MMO had made a number of comments in relation to the Deemed Marine Licence. The Applicant was currently considering those comments and would respond to the MMO before Deadline 1. The Deemed Marine Licence would be updated accordingly and submitted to the ExA with Revision 1 of the dDCO.</p> <p>Jayne Burns on behalf of the MMO confirmed the position outlined by Francis Tyrrell.</p>	
49. Art 53 Protective provisions	<p>Please can the Applicant and the Statutory Undertakers identified in the Protective Provisions provide an update regarding whether these have been agreed?</p> <p>Are there any further Protective Provisions that will be necessary in later drafts of the dDCO?</p>	<p>Robbie Owen stated that detailed discussions were on-going with the PLA, Network Rail, Highways England and Anglian Water.</p> <p>Discussions had commenced or were soon to commence with the EA, Thurrock Council (as LHA), Essex County Council (on behalf of Thurrock Council as Local Lead Flood Authority (LLFA)).</p> <p>At this point it was known that Protective Provisions would need to be added for Cadent and NGET. Protective Provisions for Cadent were likely to be submitted with Revision 1 of the dDCO.</p> <p>Discussions had been on-going with all statutory undertakers and telecoms parties affected (as noted in the Statement of Reasons), and it was anticipated that they would be satisfied by the provisions in Part 1 and Part 2 of the dDCO. However, it may be that Essex and Suffolk Water and UKPN would require separate protective provisions too.</p> <p>The Applicant would provide an update on the status of the protective provisions at Deadline 1.</p> <p>The relevant Statutory Undertakers present opted to discuss the protective provisions later in the agenda in relation to the specific Schedules to the dDCO.</p>	

ExA's Agenda Item	Questions	Summary of PoTLL's Oral Submissions made in the hearing	Relevant document references
<p>50. Art 55 Crown Rights</p>	<p>a) Please can the Applicant and the Crown Estate Commissioners provide an update regarding whether the relevant consents required in relation to Crown land have been agreed?</p>	<p>Robbie Owen confirmed that discussions were on-going with the Crown Estate to obtain its consent. The Crown Estate had not objected in principle to the land being within the Scheme in and of itself, but the parties were discussing the exact terms of the consent.</p> <p>It was noted by the ExA that there was no representative from the Crown Estate in attendance at the hearing.</p>	
	<p>b) Is the Crown Estate content with Article 55 (as drafted)?</p>	<p>No representative from the Crown Estate was in attendance at the hearing.</p>	
	<p>c) Does the Crown Estate envisage any other provisions for inclusion in the dDCO?</p>	<p>No representative from the Crown Estate was in attendance at the hearing.</p>	
<p>51. Art 56 Consents, Agreements and approvals</p> <p><i>(4) If before this Order comes into force the Company or any other person has taken any step in relation to an application to which this article applies, that step may be taken into account to determine whether the consent, agreement, certification or approval concerned has been obtained provided that step would have been a valid step for the purpose of the application if it has been taken after this Order came into force.</i></p>	<p>Can the Applicant please clarify how this provision is intended to work? The paragraph appears to assume the making of an application but if the relevant step is taken into account to determine whether the consent has (already) been obtained, why would an application be needed in the first place? Instead, should the step be taken into account in determining whether the consent should be given?</p>	<p>Robbie Owen stated that article 56(4) was intended to make clear that any steps taken by the Applicant prior to the Order being made could be taken into account in determining whether the consents, agreements and approvals to which article 56 applies should be granted – such consents could not be granted formally until the DCO was made.</p> <p>The Applicant agrees that the wording of the article could be amended in order to make this clearer. The Applicant will therefore amend Revision 1 of the dDCO to read:</p> <p><i>"56 (4) If before this Order comes into force the Company or any other person has taken any step in relation to an application to which this article applies, that step may be taken into account to determine whether the consent, agreement, certification or approval concerned <u>should be granted</u> provided that step would have been a valid step for the purpose of the application if it has been taken after this Order came into force."</i></p>	

ExA's Agenda Item	Questions	Summary of PoTLL's Oral Submissions made in the hearing	Relevant document references
52. Art 56	Article 56(5) indicates that the article applies to applications made under various articles for consent etc, including under Article 20 (authority to survey). Article 20 does not appear to include any requirement for consent, agreement, certification or approval to which article 56 could apply?	<p>The Applicant responds as follows:</p> <p>Article 20 (Authority to survey and investigate land) contains at paragraph (4) provision in relation to trial holes. The article states that:</p> <p><i>"No trial holes are to be made under this article— (a) in land located within the highway boundary without the consent of the highway authority; or (b) in a private street without the consent of the street authority."</i></p> <p>This is the consent which article 56(5) envisages.</p>	
53. Schedule 1 General	a) Each of the numbered works includes the words "to include" before the detailed list of items comprised within that work. That implies that other (unspecified) development is also included. Why are the numbered works not comprehensively described (of particular relevance given the substantial number of 'ancillary works' that are also proposed as part of the authorised development in any event)?	<p>The Applicant responds as follows:</p> <p>The works are labelled as 'to include' because of the existence of the ancillary works – these could take place within the areas shown on the Works Plans for these Works.</p>	
	b) As noted in an earlier question, there are a considerable number of ancillary works listed in the Schedule. Should the ancillary Works identified as (a) to (z) be included in Works 12, if not, then it should be clarified	<p>The Applicant responds as follows:</p> <p>These ancillary works are intended to relate to all Works.</p> <p>Although this style of formatting is common in made DCOs (e.g. the A14 Cambridge to Huntingdon Improvement Scheme Order 2016 and the Northumberland County Council (A1 – South East Northumberland Link Road</p>	

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	that they relate to all Works?	(Morpeth Northern Bypass)) Development Consent Order 2015), the Applicant will consider if this can be made clearer at Deadline 1.	
	c) Can the Applicant identify how the scope of each of these unspecified works has been considered in the ES so that the Secretary of State can be satisfied that the ES has considered the worst case scenario for the development proposed to be authorised?	<p>The Applicant responds as follows:</p> <p>The Applicant is not seeking authority in Schedule 1 to the DCO for anything unusual – it reflects a number of made DCOs to date (for example, the A14, Thames Tideway Tunnel, M4 and Hinkley Point C Connection DCOs). In addition, any works included in Schedule 1 would be subject to the protections within the DCO, such as the requirements and protective provisions. The same reasoning as was applied for Article 41, also applies here:</p> <ul style="list-style-type: none"> • The restrictions in the GPDO will apply – any development outwith the ES parameters (which could be tested through a screening opinion to Thurrock Council) would need full planning permission. • As explained in paragraph 5.80 - 5.86 of the ES, and then through the lateral limits of deviation on the Works Plans, the EIA has been undertaken on a parameters-based approach within the areas covered by the various operations – the elements suggested by this article would thus, taking account of the above, need to fit within those parameters. They have therefore not been specifically assessed as individual items in the ES – they are instead key to ensuring that Work Nos 1-12 can actually be built. • The description of works in the catch-all as drafted has been assembled in conjunction with the individually numbered Works, to reflect the full nature and scope of the works foreseen as necessary to safely and efficiently construct the entirety of the scheme. • Listed are elements of permanent works (those parts forming the final structures of the Scheme), temporary works (those parts and processes that do not form permanent works in themselves, but which are necessary to construct the permanent works), and plant and a variety of equipment necessary to be used to undertake various construction processes. 	

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		<ul style="list-style-type: none"> • Whilst the description of the permanent works, temporary works, plant and construction equipment is detailed, it clearly cannot be so comprehensive so as to include every fixture, fitting and small hand tool needed to construct a capital project of the size of Tilbury2. • Therefore following what the Applicant considers to be well established convention, the principal elements of permanent and temporary works are listed, along with the more significant generic types of plant and equipment which are needed to construct the Scheme. • In this way the Applicant has tried to strike a balance between a 'full' description of the works and processes necessary, whilst seeking not to encumber the reader with an attempt at drafting an exhaustive list, which in any event is unlikely to be possible at preliminary design stage. 	
	<p>d) There appear to be several instances where ancillary works duplicate powers already provided for in the articles (examples follow, not intended to be exhaustive). In the next iteration of the DCO, can the Applicant omit any unnecessary duplication and justify any apparent duplication that remains?</p>	<p>Robbie Owen stated that the Applicant would conduct a review of the ancillary works against the operative articles of the dDCO and delete or explain any apparent duplication at Deadline 1 where relevant.</p>	
<p>54. Schedule 1</p>	<p>e) The ancillary or related development includes works within highways, which appear to duplicate at least in part the various articles relating to street works. Why is the Applicant</p>	<p>See above.</p>	

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	unable to rely on those articles alone?		
	f) Similarly ancillary work (g) appears to largely duplicate the power in article 43?	See above.	
	g) Similarly ancillary work (l) appears to largely duplicate the power in article 41(2)(c)?	See above.	
	h) The unrestrained and unspecified scope of ancillary works (x) – (works for the benefit and protection of the authorised development) – and (z) – (works of whatever nature, as may be necessary or expedient for the purposes of, or for purposes associated with or ancillary to the construction of the authorised development) – is excessive, please review and modify accordingly.	<p>The Applicant responds as follows:</p> <ul style="list-style-type: none"> • The Applicant notes that paragraph (z) was included in amended form, and without reference to environmental effects, in the A14 Cambridge to Huntingdon Improvement Scheme Order 2016. • The broad drafting of these paragraphs is necessary to ensure that all works, even those not presently foreseen but ultimately required for implementing the scheme when the detailed design has been completed (none of which can result in more detrimental environmental effects from those assessed), are encompassed. • An example of such a work could be a safety-critical element of temporary works (e.g. a process to control groundwater in excavation works beneath the river perhaps), which is uniquely described or proprietary in nature, where a number of different temporary processes are available, and which the most appropriate can only be identified and optimised for safe construction through a future detailed design process. • It should also be noted that they are limited to the preliminary wording to the overall catch all, namely that such ancillary works should be '<i>for the purposes of, or in connection with the construction of any of the works and other developments mentioned above</i>'. 	

ExA's Agenda Item	Questions	Summary of PoTLL's Oral Submissions made in the hearing	Relevant document references
		<ul style="list-style-type: none"> There is nothing unusual about this. 	
	<p>i) The caveat in work (z) relating to ensuring those works should not cause significant adverse effect should apply to all such ancillary works. It is not clear that it does at present, seemingly being limited to work (z).</p>	<p>Robbie Owen confirmed that this was agreed and would be adjusted at Deadline 1. This is in line with the Applicant's approach to these powers as described above.</p>	
	<p>j) The radial conveyor mentioned in Errata ES chapter 5 [AS-006] paragraph 5.26, does not seem to have any further details including size, location, whether it would be covered or hours of operation, or which Works it would relate to. Why is it not identified in the dDCO?</p>	<p>Robbie Owen stated that the radial conveyor forms part of the 'conveying system' referenced in Work No.8C (iv), forming part of the CMAT terminal. It would therefore be located within the boundaries of that work, and has been assessed as part of the conveyor system as a whole.</p>	
	<p>k) Please identify which parts of the proposed Works would be carried out below mean high water springs and explain where in the deemed marine licence (DML) these are detailed.</p>	<p>Sarah Rouse on behalf of the Applicant set out that based on Schedule 1 the following proposed works will be below Mean High Water Springs (MHWS). These did not need to be specifically defined in the DML as the DML refers to licensable activities by reference to Schedule 1.</p> <p>Work No.1:</p> <ul style="list-style-type: none"> a) the construction of dolphins in the river bed with associated fenders and walkways; b) the construction of a floating pontoon with associated restraint structures; 	

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		<p>d) the construction of an approach bridge with abutments, with a roadway, footway and wind barrier on the surface of the bridge;</p> <p>f) the construction of a surface water outfall;</p> <p>g) the alteration, renovation and renewal of an existing jetty and its associated structures including fenders and piles;</p> <p>i) the removal of an existing jetty and associated structures;</p> <p>j) related dredging works within the river Thames for the above; and</p> <p>k) piling works and construction operations (including piling and scour preventative and remedial works) within the river Thames.</p> <p>Work No.2</p> <p>(a) the construction of dolphins in the river bed with associated fenders and walkways;</p> <p>(b) the construction of a conveyor hopper and supporting structures on the river bed;</p> <p>(d) the construction of a conveyor and supporting structures in the river bed;</p> <p>(e) the alteration, renovation and renewal of an existing jetty and its associated structures including fenders and piles;</p> <p>(f) related dredging works within the river Thames for the above; and</p> <p>(g) piling works and construction operations (including piling and scour preventative and remedial works) within the river Thames.</p> <p>The following works may require construction to be carried out below MHWS though the permanent works will be above MHWS:</p> <p>h) the alteration and renewal of an existing flood defence</p> <p>Jayne Burns for the MMO indicated that Work No.1(e) should be included in this list as it (the linkspan bridge) will pass 'over' the marine environment.</p>	

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		<p>Robbie Owen indicated that the Applicant would discuss this point with the MMO.</p>	
	<p>l) Are the references to the construction and operation of the railway in the dDCO suitable and sufficient?</p>	<p>The Applicant responds as follows:</p> <p>The Applicant considers that its references to 'railway' are sufficient within the dDCO. "Railway" is a broad term.</p>	
	<p>m) Does Works 9B cross the railway, if so is there any associated bridge construction necessary?</p>	<p>The Applicant responds as follows:</p> <p>Work 9B involves the realignment of Ferry Road over land currently used for Riverside sidings. No bridge will be required over these sidings as they are proposed to be removed as a consequence of the Scheme.</p>	
<p>55. Schedule 1 Works No. 1</p>	<p>a) This does not specify any particular piling method. How does the Applicant propose to restrict the methods of piling together with the types and dimensions of piles to those that were assessed in the ES?</p>	<p>Sarah Rouse on behalf of the Applicant stated that:</p> <ul style="list-style-type: none"> In the terrestrial environment, controls on piling are set out in the CEMP at paragraph 8.1.1, where it states that no piling may take place without a piling risk assessment first being undertaken and submitted to the EA for approval, in accordance with EA guidance. The Contractor must implement the piling techniques recommended by the piling risk assessment, which are deemed appropriate to manage the identified potential risks associated with creating pathways to groundwater. Such a risk assessment would be accompanied by method statements upon which the risks have been assessed. 	<p>CEMP (APP-164/6.9) paragraphs 7.3 and 8.1.1</p>

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	<p>b) This also includes the alteration and renewal of an existing flood defence. The Applicant's errata engineering drawings and plans [AS-010] included revised figures identifying the locations of the flood defences and necessary works, including a proposed flood gate. The proposed flood gate does not appear to be described in any of the Works in Schedule 1. Why not?</p>	<ul style="list-style-type: none"> In the marine environment, piling would be controlled through the operation of the method statement approvals in the DML, and the piling controls out within the penultimate bullet point of paragraph 7.3 of the CEMP. <p>Sarah Rouse on behalf of the Applicant stated that the existing flood defence at this location consists of a flood gate and concrete flood wall.</p> <p>Where the new bridge abutment is to form the flood defence the Applicant's proposals show a concrete structure with a flood gate on top. A flood gate is a type of flood defence structure and is dealt with in the DCO through Work No.1 (h), "the alteration and renewal of an existing flood defence".</p>	
<p>56. Schedule 1 Associated Development</p>	<p>Paragraph 6.38 of the ES [APP-031] states, "However, as set out in the Outline Business Case, the development of land in the form shown is crucial to the future success of the project and PoTLL's investment objectives". Explain how this justifies the breadth of associated development provided in works 2-8, especially that of Works 8D(iii) with specific reference to paragraph 5 and 6 of the DCLG guidance on associated development applications for major</p>	<p>Robbie Owen explained that the Applicant had given further consideration to the works set out in Schedule 1 to the dDCO and what constitutes the NSIP, Associated Development. Francis Tyrrell went on to set out the Applicant's detailed submissions accordingly, but he explained that a detailed explanation would be provided in writing and that his explanation was subject to that further detail.</p> <p>The Applicant considers that both the RoRo and the CMAT form the NSIP for the purpose of the Scheme, i.e. both Work Nos.1 and 2 in Schedule 1 to the dDCO. When the Application was submitted, only Work 1 was described as the NSIP. For the reasons set out below, the Applicant will therefore revise the dDCO at Deadline 1 to include Work Nos. 1 and 2 as the NSIP. This re-categorisation does not affect the assessments undertaken for the Application or the other Application documents which assessed the Scheme as a whole rather than</p>	

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	infrastructure projects.	<p>divided between 'the NSIP' and 'Associated Development'.</p> <p>Rationale:</p> <p>Section 24 of the Planning Act provides that the construction of harbour facilities is a NSIP (for the purpose of section 14(1)(j)) if the harbour facilities are expected to be capable of handling the embarkation or disembarkation of at least the "relevant quantity" of material per year.</p> <p>In order to determine which bit of the Scheme forms the 'harbour facilities' it is necessary to consider the definition. "<i>Harbour facilities</i>" is not defined however "<i>Harbour</i>" uses the definition in the Harbours Act 1964: "<i>harbour</i>", <i>except where used with reference to a local lighthouse authority, means any harbour, whether natural or artificial, and any port, haven, estuary, tidal or other river or inland waterway navigated by sea-going ships, and includes a dock, a wharf, and in Scotland a boatslip being a marine work, and, where used with reference to such an authority, has the same meaning as in the Merchant Shipping Act 1995</i>".</p> <p>The relevant DCLG guidance – "<i>Guidance on associated development applications for major infrastructure projects</i>" April 2013 ("the AD Guidance"), sets out in Annex B examples of harbour associated development:</p> <ul style="list-style-type: none"> • <i>Lights on tidal works during construction</i> • <i>Supplementary harbour works for the benefit of third parties or to assist the Environment Agency</i> • <i>Off-site facilities for vehicle safety or security controls</i> • <i>Provision of compensatory facilities for commercial or leisure fishing</i> • <i>Development required for the use or disposal on land of dredged arisings</i> <p>As associated development, the above list gave some clarity of things that were not harbour facilities. From the descriptions above, the CMAT does not fall within the typical description of Associated Development but does form part of the</p>	

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		<p>'harbour facilities'.</p> <p>Section 24(3) of the Planning Act 2008 provides that <i>"the relevant quantity"</i> of materials per year which the harbour facilities must be capable of handling in order to be an NSIP is:</p> <p><i>(a) in the case of facilities for container ships, 500,000 TEU;</i></p> <p><i>(b) in the case of facilities for ro-ro ships, 250,000 units;</i></p> <p><i>(c) in the case of facilities for cargo ships of any other description, 5 million tonnes;</i></p> <p><i>(d) in the case of facilities for more than one of the types of ships mentioned in paragraphs (a) to (c), an equivalent quantity of material.</i></p> <p>The Ro-Ro facilities clearly fall within the description in (a) and are therefore already considered an NSIP. However, the harbour facilities, particularly the jetty, will be constructed "for more than one type of ships mentioned", i.e. both Ro-Ro and cargo as described in section 24(3)(d). It is therefore necessary to consider the formula calculation in section 24(4) and (b). Doing those sums, we get a relevant fraction sum of 1.82, which is over the threshold of 1 set out in section 24(4).</p> <p>Specific Works and how they constitute Associated Development for the purpose of the Scheme</p> <ul style="list-style-type: none"> • Work Nos. 3 (RoRo terminal), 4 (access road), 5, (operational compound), 6 (storage areas), 7 (warehouse), 9 (infrastructure corridor road), 10 (Fort Road bridge works to facilitate infrastructure corridor road), 11 (Asda roundabout) and 12 (infrastructure corridor rail) are all various facilities which can be quite clearly associated with the RoRo berth. 	

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		<ul style="list-style-type: none"> • Work No.8 is associated with the CMAT berth. <p>Francis Tyrrell set out that it would be helpful to take the ExA through the AD Guidance and in particular paragraphs 5 and 6 which set out the 'Associated Development Principles'. In summary the principles at paragraph 5 require that Associated Development:</p> <ul style="list-style-type: none"> (i) has <i>"a direct relationship between associated development and the principal development"</i>; (ii) must <i>"not be an aim in itself but should be subordinate to the principal development"</i>; (iii) <i>"should not be treated as associated development if it is only necessary as a source of additional revenue for the applicant, in order to cross-subsidise the cost of the principal development"</i>; and (iv) <i>"should be proportionate to the nature and scale of the principal development"</i>. <p>Further, paragraph 6 requires that such Associated Development will, in most cases, be typical of development brought forward alongside the relevant type of principal development or of a kind that is usually necessary to support a particular type of project.</p> <p>The Associated Development works all have a direct relationship with Work Nos 1 and 2 as set out above, and are subordinate to the principal development itself. The works are necessary in order to make the port function and are certainly not proposed simply as a stand-alone source of revenue. A port cannot function without associated infrastructure and once goods land at the port then something needs to be done with them in an onward direction to make them ready for market and use and to move them to the end destination. This requires transportation in and out, storage, processing and warehousing such as is accounted for in the Associated Development for the Scheme in the dDCO. Without such things Tilbury2 will not function as a port.</p> <p>This is typical of what would be expected at a port, as can be seen in</p>	

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		numerous examples nationwide and also from the way that ports' permitted development rights are expressed. More detail on this is contained in the <i>CMAT Position Statement</i> being submitted at Deadline 1.	
57. Schedule 1 The Built Development Platform (the filling of land)	How would the assumed maximum level of the built development platform (a maximum height of 4m AOD) be secured through the dDCO?	The Applicant responds as follows: <ul style="list-style-type: none"> The heights given in Requirement 3 already account for the 4m high AOD – as can be seen when comparing the table set out in the Requirement to Table 9.1 of the ES (at paragraph 9.2). 	ES Table 9.1 (APP-031/6.1)
58. Schedule 1 The proposed silo Works no 8A	How is the maximum diameter of the proposed silo (15m, as stated in the Errata version of ES chapter 5 [AS-006, paragraph 5.30]) to be secured in the dDCO.	Following the hearing, the Applicant has considered this matter and proposes to amend Requirement 3 of the dDCO at Deadline 1 to refer to a maximum diameter of 15m.	
59. Schedule 1 Works No 8D The Errata version of the ES, Chapter 5 [APP-006] paragraph 5.26 states, “ <i>This area (Works No. 8D) will comprise the storage of aggregates, pigments and cementitious materials in silos and in the open air...</i> ”	a) How many silos are proposed, where exactly will they be located and how big will they be?	The Applicant responds as follows: <ul style="list-style-type: none"> The form, nature and extent of the silos within the assessed envelope is currently not confirmed and will depend on the needs and operational requirements of the final CMAT tenant and the processing/storage it intends to undertake. 	
	b) If more than one is proposed, how does this accord with the ES assessments that considered one silo for storage of cementitious material? (understood to be the silo in Works Area 8A)?	The Applicant responds as follows: <ul style="list-style-type: none"> These are not envisaged as ‘feature’ silos such as that which is associated with the CMAT vessels at the riverside, but part and parcel of the storage and processing facilities. As such, they do not need to be specifically assessed in the same way as the riverside silo facilities, and would be covered by the 34m high parameter set out in Schedule 2 to the dDCO for processing facilities in 	

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	c) The dDCO, in Schedule 1, Works No 8D does not include any silos, please explain the discrepancy.	the CMAT. Robbie Owen explained that this was because the silos form part of the 'associated buildings and infrastructure' mentioned alongside the CMAT processing facilities in paragraph (iii) of Work No.8D.	
60. Schedule 1 Works No 8D	When the Applicant's consultants were assessing the environmental effects of the various proposed CMAT processing facilities including the block and pre-cast manufacture facility; the ready-mixed concrete batching plant; and the asphalt manufacturing plant, as well as the maximum height of 30m (above the maximum ground level of 4mAOD), what assumptions were made about the maximum dimensions and locations relative to the site boundary of these processing facilities? How would these dimensions and locations be secured? PINS advice note on the Rochdale Envelope2 requires "clearly defined parameters within which the framework of development must take place".	The Applicant responds as follows: The ES assessed the CMAT on the basis of worst case scenarios in all disciplines. In relation to the most sensitive receptors, it is noted that: <ul style="list-style-type: none"> • The LVIA assessed the processing facilities at their maximum dimensions as expressed in Chapter 9 of the ES, and at the boundary - this can be seen in the Visual Effects Schedules at Appendix 9.E (APP-039/6.2.9.E). • The noise chapter, as seen at paragraph 17.5 and 17.6 also made the same assumptions: <i>The assessment assumes a worst-case scenario that all plant would operate at a given location within the Site close to receptors, which is a conservative assessment as plant would typically be distributed over a wider work area. The operational noise predictions have assumed a worst-case scenario with all plant and activities in the CMAT and RoRo operating continuously, 24 hours a day, seven days a week. In practice, there will be periods where equipment is not in use which would result in a lower specific level and a correspondingly smaller impact.</i> • The air quality chapter (see table 18.2 adjacent to paragraph 18.9) assumed CMAT operations occurring anywhere within the Site Boundary, including adjacent to the boundary (and thus requiring the suggested mitigation measures). 	ES (APP-031/6.1) paragraphs 17.5 and 17.6 and table 18.0. ES Appendix 9E (APP-039/6.3.9.E)

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<p>61. Schedule 1 Works 9(a)</p>	<p>The proposed highway is described in ES paragraph 5.40 [AS-006] as being “approximately 1450m in length” however the dDCO states it would be approximately 1250m in length. Which is correct?</p>	<p>Robbie Owen stated that the extent of physical works will be approximately 1,250m. However, scope for resurfacing of existing carriageway on approaches to new highway at the western end have been considered (Work 9A iv) and account for the increased figure provided in the ES chapter of 1,450m.</p>	
<p>62. R1 Interpretation</p>	<p>“AOD” is defined in R1 merely as “above ordnance datum”. Should ‘ordnance datum’ itself also be defined as in, for example, the Hinkley Point Harbour Empowerment Order 2012 and the Poole Harbour (Works) Revision Order 2015?</p>	<p>The Applicant responds as follows:</p> <p>The Applicant notes that, although it is a fixed reference point, it will vary at different points across the country. Universal practice is not to define ordnance datum.</p>	
<p>63. R3 External appearance and height of the authorised development</p> <p>Subsequent detailed approval is only required under this article in respect of:</p> <ul style="list-style-type: none"> Silo facilities constructed as part of Work 8A(i) – construction of silo facilities and associated piping and pumping infrastructure and road tanker loading facilities; 	<p>a) Why are other elements of the authorised development not subject to detailed approval?</p>	<p>Robbie Owen stated that the controls in Requirement 3 were a reflection of the embedded and suggested mitigation measures set out in the LVIA in Chapter 9 of the ES. Controls are not proposed outside of this.</p> <p>Martin Friend explained that as with all Requirements, this Requirement would need to meet the tests for planning conditions set out in the National Planning Policy Framework, i.e. they must be: (1) necessary; (2) relevant to planning; (3) relevant to the development to be permitted; (4) enforceable; (5) precise; and (6) reasonable in all other respects.</p> <p>Matthew Gallagher and Julian Howes on behalf of Thurrock Council stated that they wished for other elements to be subject to detailed approval too, e.g. warehouses and buildings but that their draft Local Impact Report would be going to Committee next month and that they would therefore defer their position until then.</p> <p>Christopher Pater and Deborah Priddy on behalf of Historic England</p>	

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<ul style="list-style-type: none"> Processing facilities constructed as part of Work 8C(iii) – construction of a railway line, rail sidings and associated rail infrastructure; and Fencing as part of Works 9 - new highway – and 12 – rail line		<p>submitted that given the impact on Tilbury Fort they will wish to be involved in the approval process in order to try and ensure that visual impact was minimised. They wished to have an input in relation to this requirement as far as possible, e.g. in relation to the external materials to be used for a bridge.</p> <p>In response Robbie Owen confirmed that the Scheme was designed in order to minimise the impact on Tilbury Fort. The Applicant would continue its discussions with Historic England in relation to this requirement. It would assist the Applicant to receive some more details from Thurrock and Historic England in relation to the evidence base which they wished to put forward and the reasoning for their position, in order to justify additional Requirements in line with government policy.</p> <p>The ExA confirmed that these issues would be considered at an appropriate issue-specific hearing if not resolved in advance.</p>	
	b) Is the reference to Work 8C(iii) correct, as the description does not include processing facilities?	<p>The ExA stated that this question could be addressed in writing and the Applicant responds as follows:</p> <ul style="list-style-type: none"> This should read Work No.8D - this will be updated at Deadline 1. 	
	c) The table in R3 should include the maximum dimensions of the marine elements of the Proposed Development, as well as the flood gate, the radial conveyor and Fort Road Bridge. It should also define the maximum dimensions of the CMAT processing facilities and the warehouse.	<p>The ExA stated that this question could be addressed in writing and the Applicant responds as follows:</p> <ul style="list-style-type: none"> The Applicant considers this is not necessary for the following reasons: <ul style="list-style-type: none"> Fort Road Bridge is controlled through the lateral and vertical limits of deviation set out in article 7. As indicated above, the radial conveyor does not have a fixed position – its effects have been assessed as part of the wider conveyor system, so parameters would not be appropriate. The CMAT and warehouse are controlled through the works boundaries shown on the Works Plans and Requirement 3.The 	Engineering Sections and Plans (AS-010/PoTLL/T2/EX/6.

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		<p>marine elements will be subject to on-going design and the flood gate sits on top of them. As such it would not be possible to set parameters for it at this stage, although indicative measures are shown on the Engineering Sections and Plans (AS-010/PoTLL/T2/EX/6). The detail design of this element would in any event be approved by the Environment Agency pursuant to its protective provisions in the dDCO.</p>	
<p>64. R5 Off-site mitigation</p> <p><i>(2) The details submitted under sub-paragraph (1) must include a commitment that any habitat provided as part of the off-site ecological mitigation will be managed and maintained for a minimum period of 25 years.</i></p>	<p>a) Requirement 5 requires the “written details of the proposed off-site mitigation” to be submitted and approved. However, the ES discusses the Ecological Management and Compensation Plan (EMCP), which is to be submitted to the Examination. Should this Requirement therefore be linked to the contents of the EMCP?</p> <p>b) Would this off-site ecological mitigation include any land below mean high water springs? If so, the MMO should</p>	<p>The Applicant intends to submit the draft Ecological Mitigation and Compensation Plan (EMCP) at Deadline 2:</p> <ul style="list-style-type: none"> • The EMCP would be a high-level document that Requirement 5 could link to once the EMCP had been drafted and would include: <ul style="list-style-type: none"> ○ strategies and proposed techniques for the intended on-and off-site compensatory habitat creation; ○ heads of terms for off-site habitat management (cross-referencing the LEMP for on-site habitat management); and ○ an outline of the mitigation strategies for protected species (cross-referencing to the full method statements that would need to be produced for Natural England in respect of licensable actions). • Requirement 5 would then be rewritten to account for the content of the EMCP, but in the latter’s absence, it secures that off-site ecological compensation details must be provided and approved before commencement of the authorised development can take place. <p>The Applicant responds as follows:</p> <ul style="list-style-type: none"> • No land below MHWS is being considered for off-site ecological mitigation and compensation. 	

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	also be consulted.		
	c) How does the Applicant intend to secure the delivery of the off-site ecological compensation?	Robbie Owen stated that a legal agreement would be entered into with the landowner of the compensation site which will be 'back to backed' with the DCO requirement to maintain the mitigation land for a minimum period of 25 years. Ultimate responsibility would lie with the Applicant under the DCO, but would be managed through that legal agreement.	
	d) It is understood that the ECMP would also provide further details of construction of further habitat and mitigation measures on-site. The updated LEMP makes reference to the EMCP, but it is not evident how these aspects of the ECMP would be secured in the dDCO. Please explain how these aspects of the ecological mitigation would be secured.	The Applicant responds as follows: The LEMP is itself secured by Requirement 11. As that then relates to the EMCP (whether it is submitted during the Examination or after the Examination)), the approval of the EMCP through Requirement 5 will ensure that the measures within it are secured. For the sake of clarity, the Applicant can confirm that the EMCP will include strategies/ outline methods for both on- and off-site compensatory habitat.	
	e) Should this paragraph also require the submitted details to identify how the obligation to maintain for 25 years will be secured?	This paragraph will be amended once the EMCP has been submitted in order to identify how the obligation to maintain for 25 years will be secured. The ExA queried why the period of 25 years was considered appropriate and Robbie Owen responded that it was standard practice to consider that after 25 years, the ecological environment will have become fully established.	
		Christopher Pater and Deborah Priddy , on behalf of Historic England, raised a concern in relation to terrestrial and marine written schemes of investigation and how they were to be completed and secured (noting Requirement 6 and the DML), noting that it was usual for DCO applications to be accompanied by a	Terrestrial WSI (PoTLL/T2/

ExA's Agenda Item	Questions	Summary of PoTLL's Oral Submissions made in the hearing	Relevant document references
		<p>draft WSI that is then finalised pursuant to a DCO requirement.</p> <p>Robbie Owen stated that for Tilbury2, the Applicant had produced 'final' terrestrial and marine WSIs intended to be certified under the DCO. There would therefore be no post-DCO decision finalisation of the WSIs. As such, Historic England would need to be satisfied with the WSIs that formed part of the Application, as tweaked in the errata submission and as may be further revised during the Examination.</p>	EX/15) Marine WSI (PoTLL/T2/ EX/17)
65. <i>R7 Highway works</i>	Should any works other than the RoRo and CMAT be dependent on the opening of the remodelled ASDA roundabout?	<p>Robbie Owen stated that the Applicant considered that the Asda Roundabout works were required because of the changes to HGV movements brought about through the opening of the CMAT and RoRo terminals. There was therefore no need for a broader requirement than what was already included in Requirement 7.</p> <p>If, for example, the infrastructure corridor (and associated Fort Road works) opened prior to the CMAT and RoRo, this would not cause an issue at the Asda Roundabout as it would, in the worst case, just be moving existing traffic flows from Fort Road to the infrastructure corridor.</p>	
66. <i>R9 Noise Mitigation</i>	Requirement 9 of the dDCO states that Work Nos 4, 9A and 12 must not be opened for public use until the noise barriers have been constructed. What does 'public use' mean as the rail link and the main Tilbury2 site would not be 'public'? Should this terminology be reconsidered?	<p>Robbie Owen confirmed that the Applicant had reconsidered this provision and that this wording would be amended at Deadline 1 to refer to 'public use' for Work 9A, and 'operational use' for Work Nos. 4 and 12.</p>	
67. <i>R10 Noise monitoring and</i>	Can the Applicant clarify what is meant by the 'opening' of each of these works? Can the requirement	<p>Robbie Owen stated that this wording would be amended at Deadline 1 to refer to 'the commencement of operational use' rather than 'opening'.</p>	

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<p>mitigation</p> <p>10.—(1) Prior to the opening of any of Work Nos. 1 to 8 the Company must carry out a re-assessment of the predicted noise impacts arising from the finalised detail design and operational procedures to be implemented for those works.</p>	<p>be made more specific?</p>		
<p>68. R10</p> <p>(2) Following the assessment carried out under sub-paragraph (1), if a significant effect is predicted for any receptor, the Company must offer that receptor a scheme of mitigation that must include the installation of noise insulation or triple glazing at that receptor</p>	<p>Should the requirement include confirmation to the effect that the scheme of mitigation must negate the predicted significant effect and that it would be provided at the Applicant's cost?</p>	<p>Robbie Owen stated that the Applicant agreed that this could be added to the requirement and appropriate wording would be included in the revised dDCO to be submitted at Deadline 1.</p> <p>Wendy Lane on behalf of Gravesham Council raised a concern regarding a strategic site allocated in the local plan and that Requirement 10 could prevent this site from coming forward as there was currently no physical receptor for noise.</p> <p>Robbie Owen stated that this issue would be dealt with by Requirement 10(3) which states that: "No part of Work Nos. 1 to 8 can be opened for public use until a noise monitoring and mitigation scheme for the operation of those works based on the results of the re-assessment carried out under sub-paragraph (1) is agreed with the relevant planning authority and Gravesham Borough Council."</p> <p>The Applicant had anticipated Gravesham's concern in the drafting of Requirement 10 and in accordance with Requirement 10(4) the noise monitoring and mitigation scheme must make provision for a number of matters, most particularly the 'nature and temporal length' of monitoring.</p>	
<p>69. R10</p>	<p>The requirement should include a provision requiring the agreed noise monitoring and mitigation scheme to be implemented. If the noise monitoring and mitigation scheme</p>	<p>Robbie Owen stated that the Applicant agreed that the requirement could be amended as indicated, and appropriate wording would be included in the revised dDCO to be submitted at Deadline 1.</p> <p>As the ES identified no significant noise impact to ecology, it was not envisaged that this scheme would refer to ecology receptors, so no change would be made</p>	

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	addresses impacts upon ecological receptors or marine receptors, then it should also be agreed with NE and/or MMO.	in respect of NE and/or MMO. Jayne Burns on behalf of the MMO stated that the matter would be discussed with the Applicant.	
<p>70. R12 Lighting strategy</p> <p><i>12.—(1) No part of the authorised development may be brought into operational use until a written scheme of the proposed operational lighting to be provided for that part of the authorised development has been submitted to and approved in writing by....</i></p>	a) What distinction is sought to be drawn in this requirement between 'operational use' and mere 'use'?	Robbie Owen stated that 'operational use' was proposed to be the term applied consistently across the DCO to development on the Tilbury2 site. This was the private equivalent of the commonly used phrase 'public use' in respect of highways schemes – denoting when development is used for its intended operation.	
	b) Please remove the MMO from this requirement, as the Panel understands that lighting is not within their remit.	Robbie Owen confirmed that the MMO would be removed from this requirement in the revised dDCO submitted at Deadline 1.	CEMP (Document Reference APP-164/6.9) paragraph 7.4
	c) Please could Trinity House confirm their remit in any lighting strategy as far as it may impact upon the marine environment?	There was no representative of Trinity House in attendance at the hearing. The Applicant noted that Trinity House's remit is in relation to navigation rather than marine ecology. Its powers are unaffected by the DCO, as per article 54.	
71. R13 Interpretation	Does Thurrock Council have a view as to the inclusion of its functions under s60 and 61 of the Control of Pollution Act 1974 in this procedure instead of the mechanism in that Act? The Applicant cites precedent	Matthew Gallagher and Julian Howes on behalf of Thurrock Council explained that the Environmental Health Officer (" EHO ") from their team was unable to attend the hearing but that they were prepared to submit comments in writing. Generally the EHO would not have an objection if Thurrock could ensure that noise controls are developed in order to protect the amenity of local residents. Robbie Owen confirmed that the CEMP commits to the s.61 process. The	ES (AS-006/PoTLL/T2/EX/10) paragraph 5.127

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	<p>of the Thames Tideway Tunnel, but there was an urgency for that development which is not present here.</p>	<p>purpose of the provision is not to take away from the local authority but to provide an expedited appeals process. Robbie Owen explained that this was justified in the particular set of circumstances and that the Applicant would respectfully disagree with the ExA's assertion that the urgency present in the Thames Tideway scheme was not present in relation to the Scheme.</p> <p>Peter Ward, Commercial Director of PoTLL, explained the urgency of the Scheme. The construction programme for Tilbury2 was competitive in order to meet the needs of its customers and so the 'urgency' suggested for Thames Tideway Tunnel was considered just as relevant here.</p> <p>Peter Ward set out that the existing port was at capacity and in urgent need of expansion. There was growth in both current and potential new customers. He cited the representations made by both London First and the Essex Chamber of Commerce at the Open Floor Hearings held on 20 February 2018, which highlighted the pressing need to facilitate the supply of construction materials for other construction and development projects in London.</p>	
<p>72. R16 Appeals <i>2.-(e)the appeal parties must make any counter-submissions to the appointed person within 10 business days of receipt of written representations pursuant to sub-paragraph (c) above....</i></p>	<p>Although the paragraph refers to the 'appeal parties' having the opportunity to provided counter submissions to written representations (WRs), since WRs are only made by the authority and any consultee, only the Applicant would be given the opportunity to make counter-submissions, and so sub-paragraph (e) should refer to the Applicant not the appeal parties. Also, should the reference to sub-para (c) be to (d) since (c) only refers to the appointment by the SoS?</p>	<p>The ExA stated that this question could be addressed in writing and the Applicant responds as follows:</p> <ul style="list-style-type: none"> The Applicant agrees with both points and will therefore amend Revision 1 of the dDCO to read: <i>"16(2)(e) <u>the applicant</u> must make any counter- submissions to the appointed person within 10 business days of receipt of written representations pursuant to sub- paragraph (d) above"</i> 	

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<p>73. R17 Amendments to approved details</p> <p><i>17.—(1) With respect to the parameters specified in paragraph 3(3), the documents specified in paragraph 11 and any other plans, details or schemes which require approval</i></p>	<p>This sub-paragraph should refer to Requirement 3(3) and Requirement 11?</p>	<p>Robbie Owen stated that the Applicant agreed with both points and would therefore amend Revision 1 of the dDCO to read:</p> <p><i>"17(1) With respect to the parameters specified in Requirement 3(3), the documents specified in Requirement 11"</i></p>	
<p>74. Requirements Generally</p> <p><i>Proposed New Requirements</i></p> <p>Please can the Applicant and the EA provide an update on whether there is agreement regarding additional requirements in (a)-(c) as follows:-</p>	<p>a) The EA's draft requirement on ecological matters (paragraph 8 of their RR [RR-017];</p> <p>The developer should undertake a survey to confirm that the development will not impact upon eels. If eels are found to be present at the site, they should produce a plan which we will need to agree showing how eels and their habitat will be protected during the development of the site.</p> <ul style="list-style-type: none"> • The applicant should clearly demonstrate how mitigation for any loss of habitat will be achieved both on and off site. This should include the phasing of new habitat creation to ensure there is no loss of habitat during development. • The applicant should provide cross sections of watercourses to demonstrate that the biodiversity function of ditches is maximised. • The applicant should produce a detailed plan showing how they will deal with invasive species at the site during development and following construction during the operational period. 	<p>Robbie Owen suggested that as there was no representative from the Environment Agency in attendance it would be preferable to address 74 (a) to (c) in writing. The ExA agreed with the suggested approach and the Applicant responds as follows:</p> <ul style="list-style-type: none"> • Eels: The potential presence of eels has been addressed by suitable mitigation within the CEMP, including the need for re-surveys of channels before in-channel works take place and translocation where necessary. The desire for 'eel-friendly' structures will be able to be considered by the EA through the operation of its protective provisions. Additional eel surveys at this time would be attendant with a high risk of false negatives, and would therefore be of limited value given that even if a positive result was obtained (i.e. some degree of presence confirmed) this would not change the above avoidance and mitigation measures in any event. • Habitat mitigation: On-site compensatory habitat provision is shown at Figure 10.13 and quantified at ES Table 10.49 (with minor revision on page 8 of the Errata table), and secured through the LEMP. Off-site compensatory habitat provision and further details of the on-site compensatory habitat provision will be described and quantified within the EMCP. The EMCP will also include a phasing plan. • Indicative cross-sections have been provided to the EA. Final details will be 	<p>CEMP (Document Reference APP-164/6.9) paragraph 6.7</p> <p>ES Figure 10.13 (AS-022/PoTLL/T2/EX/23)</p> <p>Errata Explanation Table (AS-005/PoTLL/T2/EX/4) page 8</p> <p>LEMP (AS-007/PoTLL/</p>

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		<p>approved pursuant to its protective provisions.</p> <ul style="list-style-type: none"> Invasive non-native species (INNS): Provisions to identify and treat INNS are set out within the CEMP (Chapter 6), and the LEMP (paras 4.15 and 5.4), and will also be addressed within the EMCP. This matter was being further addressed via ongoing discussion with the EA. 	T2/EX/13)
	<p>b) The EA's draft requirement on contaminated land (paragraph 2.3 of their RR); and</p> <p>Following the grant of the DCO no development shall take place until a scheme that includes the following components to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the Environment Agency</p> <ul style="list-style-type: none"> A preliminary risk assessment (1) which has identified all previous uses, potential contaminants associated with those uses and a conceptual model of the site indicating sources, pathways and receptors of potentially unacceptable risks arising from contamination at the site. A site investigation scheme (2), based on (1) to provide information for a detailed assessment of the risk to all receptors, including those off site that may be affected. The results of the site investigation and detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy (3) giving full details of the remediation measures required and how they are to be undertaken. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and 	<ul style="list-style-type: none"> Such a requirement was not considered necessary as all of the elements of it were already accounted for in the Applicant's ES and mitigation measures, as follows: <p><u>Preliminary Risk Assessment</u></p> <ul style="list-style-type: none"> A preliminary risk assessment is included in the Hydrogeology and Ground Conditions Chapter of the ES in the following sections: <ul style="list-style-type: none"> Section 15.32 – Topography Section 15.34 – Site walkover Section 15.35 – Site history Section 15.40 – Geology Section 15.54 – Hydrogeology Section 15.61 – Hydrology Section 15.68 – Historical and ecologically important sites Section 15.72 – Waste management sites Section 15.73 – Industrial and other potentially contaminative land uses Section 15.78 – Summary of previous investigations Section 15.111 and Appendix 15.F – Preliminary Conceptual Site Model <p><u>Site Investigation, Remediation and Validation</u></p> <ul style="list-style-type: none"> The requirement to undertake additional site investigation and further 	<p>ES (APP-031/6.1) Chapter 15</p> <p>CEMP (Document Reference APP-164/6.9) Section 8</p>

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	<p>identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action. The scheme shall be implemented as approved.</p> <p>With respect to piles and ground improvement techniques, a foundation works risk assessment will be required. This should consider the impacts of possible detriment to water quality via infiltration</p>	<p>assessment of the ground conditions including remediation if required, are included in the CEMP (Document Reference 6.9) in the following sections:</p> <ul style="list-style-type: none"> ○ Section 8.1 bullet 2.1 – requirement to undertake additional ground investigation with the scope agreed with Thurrock Council's Contaminated Land Officer and the Environment Agency prior to the works being undertaken. ○ Section 8.1 bullet 2.2 – requirement to undertake Generic Quantitative Risk Assessment (GQRA) following the ground investigation, with the findings submitted to Thurrock Council's Contaminated Land Officer and Environment Agency for approval. ○ Section 8.1 bullet 2.3 – requirement to undertake a Detailed Quantitative Risk Assessment, if determined to be required from the findings of the GQRA. To be submitted to Thurrock Council's Contaminated Land Officer and Environment Agency for approval. ○ Section 8.1 bullet 2.3, Sections 8.4 and 8.8 – requirement to complete a remediation strategy and verification report, if required. To be submitted to Thurrock Council's Contaminated Land Officer and Environment Agency for approval. ○ Sections 8.5, 8.6 and 8.7 – requirement to implement the remediation <i>strategy as approved</i>. <p><u>Piling/Foundations Risk Assessment</u></p> <ul style="list-style-type: none"> • The requirement to provide a piling risk assessment for the works is included in Section 8.11 in the CEMP • The piling/foundation works risk assessment is to be agreed with the Environment Agency prior to works being undertaken. 	
	<p>c) The EA's draft requirement (or protective provision) in respect of flood defences with the need</p>	<p>The approval of such details by the EA will be possible through the protective provisions as it falls within the definition of 'specified work' under those provisions, being a work which would affect an existing flood defence.</p>	

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	to raise the river wall to a future height of 8m AOD.		
	d) ES [APP-031] paragraph 17.47 makes assumptions about pile diameter and estimates of blow energy. There are limited restrictions within the DCO/DML. Either maximum hammer blow energies should be stipulated within the DCO/DML, and/or a piling method statement is to be provided as an additional requirement and/or within the DML, to be approved by the MMO and/or the LPA accordingly.	<p>Robbie Owen stated that piling in the marine environment would be controlled pursuant to the operation of the DML, as piling would form part of the construction methodology approved as part of the 'construction method statement' required by the DML (condition 6).</p> <p>Jayne Burns on behalf of the MMO confirmed that the MMO was happy with this response.</p>	
	e) The heights of the noise barriers are not specified in the dDCO. It is also not clear from the works plans where the noise barriers would be located. Noise barriers are depicted on Sheets 2 and 3 of the General Arrangement Plans (which are stated to be illustrative); however, there are no references to these plans within the dDCO. Can the Applicant update the dDCO so that it	<p>Robbie Owen said that the Applicant agreed that the heights of the noise barriers could be provided for in the DCO, as they form part of the assumptions made about embedded mitigation in the ES. Appropriate amendments would therefore be made to the dDCO at Deadline 1.</p> <p>However, the Applicant did not agree that the location of the noise barriers should be prescribed through the DCO, reflecting the fact that the ES does not do so either.</p> <p>The ES (at paragraph 17.137) states that there will be noise barriers associated with the infrastructure corridor road and rail aspects, and the access road to the Tilbury2 site, but does not give specific locations.</p> <p>This is reflected by their inclusion with the relevant works (Work Nos. 4, 9A and</p>	

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	secures the design and location of the noise barriers through a requirement?	<p>12) in Schedule 1.</p> <p>However, the Applicant will need the flexibility to locate these barriers where they will be the most effective in relation to those Works. This includes taking account of the limits of deviation for those works.</p> <p>Prescribing the locations of noise barriers will prevent the operation of those limits and could mean that the noise barriers are not placed in the most appropriate or effective position.</p>	
75. Schedule 3 Classification of Roads etc	Are the Local Highway Authority (LHA) and Local Street Authority (LSA) content with Schedule 3, as drafted?	<p>Matthew Gallagher and Julian Howes on behalf of Thurrock Council stated that Schedule 3 was not formally agreed yet.</p> <p>Discussions are on-going on this point between the Applicant and Thurrock.</p>	
76. Schedule 4 Permanent Stopping up of Highways and Private Means of Access and Provision of New Highways and Private Means of Access	Are the LHA and LSA content with Schedule 4, as drafted?	<p>Matthew Gallagher and Julian Howes on behalf of Thurrock Council stated that Schedule 4 was agreed in part only and that they had a concern regarding the proposed toucan crossing that forms part of the Active Travel Study.</p> <p>Robbie Owen stated that it would be preferable to discuss this issue bi-laterally with Thurrock as part of the wider discussions on the Active Travel Study. The Schedule was also being discussed with Highways England.</p>	
77. Schedule 5 Modification of compensation and compulsory purchase enactments for	The Panel notes that the SoS made amendments to Schedule 6 of the recommended M20 Junction 10A DCO in terms similar to but not the same as Schedule 5 of this dDCO. The Applicant may wish to consider	<p>The ExA stated that this question could be addressed in writing and the Applicant responds as follows:</p> <ul style="list-style-type: none"> As noted in response to question 29 regarding article 31 (above), the Applicant intends to update Revision 1 of the dDCO to reflect the changes made to the M20 Junction 10a Development Consent Order 2017. 	

creation of new rights	whether any amendments to Schedule 5 should be made in the next iteration of the dDCO? The following questions relate to the current dDCO.	Schedule 5 (Modification of compensation and compulsory purchase enactments for creation of new rights) will be amended in order to bring it in to line with the drafting in the M20 Junction 10a Development Consent Order 2017. <ul style="list-style-type: none"> The Applicant does not therefore propose to discuss the detail of the drafting of the Schedule until these amendments have been made. 	
78. Schedule 5	The heading of this Schedule should also refer to the imposition of restrictive covenants?	The Applicant responds as follows: This is not agreed – this has not been the approach on other DCOs to date, including the M20 J10A.	
79. Schedule 5	Paragraph 3(2) refers to Schedule 2A of the 1965 Act as substituted by paragraph 10. That substituted schedule provides a procedure whereby an owner served with a notice to treat in respect of a right over or restrictive covenant affecting the whole of his land can serve a counter notice requiring the purchase of his interest instead. If the tribunal agrees, the DCO and notice to treat are to have effect as if they included the owner's interest. Paragraph 3(2) substitutes section 5A of the 1965 Act to the effect that the relevant valuation date is when the authority enters the land to exercise a right. It appears to be silent as to the relevant valuation date where an owner serves a counter-notice in relation to the imposition of a covenant. What (if any) provision should be included to address this?	The Applicant responds as follows: The provision is not silent in this case - it is covered by sub-paragraph (b), which, taken with the end part of paragraph 3(2), means that in that circumstance the valuation date will be the original date upon which the land was entered on to exercise the right.	

<p>80. Schedule 5</p> <p>3. (2)</p> <p>.....</p> <p><i>the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right.</i>"</p>	<p>This should read "...when it entered on that land...."?</p>	<p>The Applicant confirms that this change will be made at Deadline 1.</p>	
<p>81. Schedule 5</p> <p>4.—(1) <i>The 1965 Act has effect so that, in appropriate contexts, references in that Act to land must be read (according to the Requirements of the particular context) as referring to, or as including references to—</i></p>	<p>To avoid confusion with the Requirements in Schedule 2, should this read "... (according to the particular context)...."</p>	<p>The Applicant agrees that some confusion may be caused, and will make appropriate revisions at Deadline 1.</p>	
<p>82. Schedule 5</p> <p>4.(2) <i>Without limitation on the scope of sub-paragraph (1), Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right or, in relation to the imposition of a restriction, with the modifications specified in the following provisions of this schedule</i></p>	<p>As drafted, because of the comma after 'or', this implies that the subsequent modifications only apply "in relation to the imposition of a restriction"?</p>	<p>The Applicant confirms that this comma will be removed from the dDCO at Deadline 1.</p>	
<p>83. Schedule 5</p> <p><i>[Paragraph 7 (modifying s11 of the 1965 Act)]</i></p>	<p>The Applicant is referred to the modifications made by the SoS to the equivalent paragraph in the M20 J10A DCO. Should this paragraph of the dDCO be in the</p>	<p>See response to question 77 above.</p>	

	same terms? If not, why not?		
84. Schedule 5 <i>[Paragraph 9 (modifying s22 of the 1965 Act)]</i>	The Applicant is referred to the modifications made by the SoS to the equivalent paragraph in the M20 J10A DCO. Should this paragraph of the dDCO be in the equivalent terms? If not, why not?	See response to question 77 above.	
85. Schedule 5 <i>[In Schedule 2A as substituted by paragraph10:]</i> <i>11(c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.</i>	Can the Applicant explain the operation of this criterion which the tribunal is intended to take into account? Should it read “the effect of the whole of the works on the other land”?	The Applicant responds as follows: <ul style="list-style-type: none"> • This is drafted in terms consistent with made DCOs. • Its operation is intended to provide for the Tribunal to take into account the effect of the whole of the works on the other land, but also what that other land is used for, i.e. taking everything together in its full context. 	
86. Schedule 6 Land of which only temporary possession may be taken	Please explain which of the plots listed in this schedule would be subject to permanent works and in each case explain what that permanent work would be and why these plots are not the subject of compulsory acquisition, rather than temporary possession, in view of the permanent nature of the works proposed.	The ExA stated that this question could be addressed in writing and the Applicant responds as follows: <ul style="list-style-type: none"> • As discussed in the response to question 32 regarding article 32, some permanent works may also be constructed on those plots which are for temporary possession only. This is where works will be undertaken by the Applicant, but will be owned and maintained by third parties after the works are complete. • In this case, this relates to the works on Fort Road (03-05-03/07, 03/11, 03/13 and 03/15 and Ferry Road (plots 02/01 and 02/02), where the new/adjusted highway will be owned and maintained by Thurrock Council as local highway authority, and at Asda Roundabout where the same would apply to Highways England (plots 01/01 - 01/07). 	
87. Schedule 7 Port Premises By Laws	a) Please explain how the “extended port limits” would be defined, given the concern of	Francis Tyrrell explained that the Applicant was in on-going discussions with the MMO. In relation to the Port Premises Byelaws, they are to apply to “ <i>the extended port</i> ”	

	the MMO in its RR [RR-023, paragraph 4].	<p><i>limits</i>" which is defined with reference to the area shown on the harbour limits plan. Set out on the relevant plan is a blue box and that is where the Byelaws apply. The MMO has not yet provided detailed comments in relation to the Byelaws however the Applicant welcomes any comments and would be happy to deal with them as appropriate.</p> <p>The Applicant intends to make a number of minor revisions to the Byelaws in Revision 1 of the dDCO.</p>	
	b) Please explain where the by-laws quoted in paragraph 4 are derived from.	<p>Francis Tyrrell explained that Byelaw 4 relates to Offences and Defences. The Byelaws are derived from byelaws in force at operational ports across the UK, including Bristol, Southampton and London Gateway Port. Existing levels of offence have been replicated because as a matter of policy the Department for Transport does not agree that all Byelaws should carry the same punishment.</p> <p>The current fine levels in Byelaw 4 will have to be amended as the Planning Act 2008 only allows for fines up to Level 3 on the standard scale.</p> <p>The revised Byelaws are to be submitted as part of Revision 1 of the dDCO.</p>	
	c) Is PLA content with Schedule 7, as drafted?	<p>Alex Dillistone on behalf of the PLA stated that the PLA was largely content with what was included but needed to review it in more detail as the overlap was quite detailed.</p>	
88. Schedule 8 Traffic Regulation Measures etc	Is Thurrock Council content with Schedule 8, as drafted?	<p>Matthew Gallagher and Julian Howes on behalf of Thurrock Council stated that they were not entirely content with Schedule 8 as drafted and had queries in relation to speed limits and lighting.</p> <p>Paul Kirkwood and John Pingstone on behalf of Highways England stated that some traffic regulation measures would need to be changed in relation to the Asda roundabout.</p> <p>Robbie Owen confirmed that this would be covered in on-going discussions with Thurrock and Highways England.</p>	
89. Schedule 9 Deemed Marine	a) Please could the Applicant confirm (or otherwise) that all of the suggested changes to the	<p>Robbie Owen explained that as set out in response to question 48 regarding the DML, the Applicant was in discussions with the MMO and held a meeting with the MMO on 15 February 2018. The Applicant was currently considering the MMO's comments and would respond to the MMO shortly. The DML would be</p>	

Licence	DML that the MMO has suggested in its RR [RR-023] are accepted, and whether these will be included within the dDML in the next version of the dDCO submitted at D1?	updated accordingly and submitted to the ExA as part of Revision 1 of the dDCO.	
	b) Please could the MMO and the Applicant provide an update regarding whether these matters have now been agreed, and if so, provide the agreed text?	As stated above, the DML will be updated and submitted to the ExA as part of Revision 1 of the dDCO.	
90. Schedule 10 Protective Provisions	Could the Applicant and other parties to the Protective Provisions state their current positions?	<p>Part 3 – for the protection of the Port of London Authority</p> <ul style="list-style-type: none"> • Alex Dillistone on behalf of the PLA stated that the PLA had a number of concerns regarding the protective provisions as drafted. These included concerns regarding erosion, dredging and the construction and maintenance period. • Robbie Owen said that the Applicant had noted all of the PLA's points and he confirmed that the Applicant would work with the PLA to amend and tailor the draft protective provisions as appropriate. <p>Part 4 – for the protection of the Environment Agency</p> <ul style="list-style-type: none"> • There was no representative from the EA in attendance at the hearing. <p>Part 5 – for the protection of Thurrock Council (as drainage board)</p> <ul style="list-style-type: none"> • Matthew Gallagher and Julian Howes on behalf of Thurrock Council stated that they were in discussions with the Applicant and Robbie Owen confirmed this to be the case. <p>Part 6 – for the protection of railway interests</p>	

		<p>There was no representative from Network Rail in attendance at the hearing.</p> <p>Part 7– for the protection of Thurrock Council and Highways England</p> <ul style="list-style-type: none"> • Matthew Gallagher and Julian Howes on behalf of Thurrock Council stated that they still needed to consider the protective provisions. • Paul Kirkwood and John Pingstone on behalf of Highways England stated that they had concerns in relation to the protective provisions as drafted. • Robbie Owen confirmed that the Applicant was ready and willing to discuss the protective provisions with both Thurrock and Highways England. <p>Part 8 – for the protection of Anglian Water</p> <ul style="list-style-type: none"> • There was no representative from Anglian Water in attendance at the hearing. • Robbie Owen confirmed that the protective provisions were being negotiated and were different from those in Part 1 of Schedule 10. <p>RWE</p> <p>Paul Maile on behalf of RWE stated that discussions were being held with the Applicant regarding protective provisions with RWE as an electricity undertaker.</p> <p>Robbie Owen noted that the Applicant did not agree that RWE should have protective provisions within the Order given that Tilbury Power Station was no longer operational.</p> <p>Cadent</p> <p>The Applicant can now confirm that Cadent is asking for separate protective provision from those in Part 1 – for the protection of electricity, gas, water and sewerage undertakers. Discussions are underway with Cadent about their form.</p>	
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91. General Active Travel Study	How is this documents secured within the dDCO?	Robbie Owen stated that it was intended to be secured through the proposed section 106 agreement with Thurrock Council, as could be seen by the Heads of Terms for that agreement submitted with the application.	HoTs for 106 Appendix B (APP-029/5.3)
92. General JNCC Protocol for Piling	How are the measures contained within this document secured within the dDCO?	Robbie Owen stated that the relevant measures were secured through the CEMP at the final bullet point of paragraph 7.3.	CEMP (APP-164/6.9)
93. General Regarding RWE Generation UK plc's RR	a) With regard to RWE's assertion that it does not consider that its interests are adequately protected by the terms of the dDCO submitted as part of the application, what specifically does RWE wish to propose by way of amendments to the dDCO?	Paul Maile on behalf of RWE stated that discussions were ongoing. If an agreement was not possible then changes to the draft Order would be sought including amendments to articles 3 and 4 so far as they affect river works licences within extended port limits. Robbie Owen confirmed that commercial discussions were on-going between the Applicant and RWE. The Applicant's current position was that a commercial agreement was the best way forward and he highlighted that at present there was clearly no operational power station in place. As was set out by the Applicant in the Preliminary Meeting, it was for RWE in developing its proposals for the new power station to take account of the Applicant's proposals (as set out in more detail in the Applicant's written summary of the Preliminary Meeting).	Response to Relevant Representations (PoTLL/T2/EX/32) section 2.
	b) What is the Applicant's position on this matter?	As above.	
	c) With regard to RWE's intention to submit a DCO application for the Tilbury Energy Centre (TEC) on the Tilbury Power Station site in Q4 2018, and RWE's statement that the Order Limits of the two projects are likely to overlap, construction periods may be concurrent, and operational	Robbie Owen highlighted that the application for the Tilbury Energy Centre, as presented in RWE's latest published material, was now scheduled for Q2 of 2019 as opposed to Q4 of 2018. The Applicant's position on this is set out in its written summary of its case at the Preliminary Meeting. Francis Tyrrell added that neither the Applicant's scheme nor the Tilbury Energy Centre could assume that the other project would go ahead. It would therefore not be appropriate at this stage to legislate in the Applicant's DCO for works forming part of RWE's scheme.	

	elements of the Tilbury 2 project have the potential to affect RWE proposals, what is the Applicant's response to this situation and to RWE's statement that the dDCO should contain provisions to address the requirements of both parties in delivering their respective projects?		
	d) What are RWE's specific drafting proposals for the Tilbury2 dDCO to address the needs of the forthcoming TEC application?	This was discussed by RWE as part of its response to (a) above.	
	e) With regard to protective provisions for RWE in the dDCO [APP-016] in relation to jetty improvements, access and services, and the construction materials and aggregates terminal (CMAT), what specific drafting would RWE wish to propose that is not already included in Part 1 of Schedule 10?	This was discussed by RWE as part of its response to (a) above.	
	f) With regard to protective provisions for RWE in the dDCO [APP-016] in relation to jetty improvements, access and services, and the construction materials and aggregates terminal (CMAT), what specific	This was discussed by RWE as part of its response to (a) above.	

	drafting would RWE wish to propose that is not already included in Part 1 of Schedule 10?		
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Pinsent Masons

PORT OF TILBURY LONDON LIMITED – TILBURY2 - DEVELOPMENT CONSENT ORDER APPLICATION

ISSUE SPECIFIC HEARING ON THE DRAFT DEVELOPMENT CONSENT ORDER

21 FEBRUARY 2018

SUMMARY OF APPLICANT'S SUBMISSIONS

1. INTRODUCTION

2. This note summarises the submissions made by Port of Tilbury London Limited ("**PoTLL**") at the Development Consent Order Issue Specific Hearing held on 21 February 2018 ("**the hearing**") in relation to PoTLL's application for development consent for a Proposed Port Terminal at the Former Tilbury Power Station known as "Tilbury2" ("**the Scheme**").
3. Oral submissions by all parties attending the hearing were made pursuant to the agenda published by the Examining Authority ("**the ExA**") on 15 February 2018 ("**the agenda**"). In setting out PoTLL's position on the issues raised in the agenda, as submitted orally at the hearing, the format of this note follows that of the agenda. In addition, extra items have been added where interested parties or the ExA raised points not specifically mentioned in the agenda and in relation to which PoTLL made oral submissions. Where the ExA requested a written response to an agenda item, the Applicant has also responded as appropriate in the note below.
4. PoTLL's substantive oral submissions commenced at item 2 of the agenda, therefore this note does not cover item 1 on the agenda which was procedural and administrative in nature.