

INFRASTRUCTURE PLANNING

THE INFRASTRUCTURE PLANNING (EXAMINATIONS PROCEDURE) RULES 2010

THE PORT OF TILBURY (EXPANSION) ORDER

ExA's First Written Questions and Requests for Information – PLA's Comments on Responses

Environmental Statement, Revised dDCO and other Deadline 1 material submitted by the Applicant – PLA Comments

(Rule 8 letter 26 February 2018)

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

Comments on Responses to FWQs			
Question	Response By	Response Summary/Extract	PLA Comments
General Cross topic Questions			
1.0.7 – Would the off-site movement of this material be by river? Details of ship movements/barges etc.	Applicant – Contained within Appendix B: CHAT Positions Statement:	3.16: This assessment also assumes that the product will be delivered by road tanker. This is the expected means of transportation. There are no proposed movements of materials from the silo by river and no facilities for loading powder product to barge have been included within the plans. Therefore this has not been assessed within the ES.	<p>The response is consistent with what PoTLL has indicated to the PLA, as follows:</p> <p>PoTLL considers that any such obligation [as to transport by River] needs to be proportionate: it has indicated to the PLA that for marine works PoTLL would use the river and that for landside works it would use road transport.</p> <p>If the waste disposal point is a river / sea-based facility then PoTLL will consider using the river but from Tilbury 1.</p> <p>This needs to have sufficient flexibility so that PoTLL is not committed to putting infrastructure in to remove waste from land by means of the river.</p> <p>The PLA considers that there should be provision to ensure that PoTLL maximises the use of the River Thames for the transport of waste and materials during the construction stage of the development (should consent be granted).</p>

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<p>1.0.10 – Range and size of vessels associated with the RoRo and CMAT</p>	<p>Applicant</p>	<p>As set out in para. 5.10 of the ES, the dimensions of the vessels assumed for the purpose of the visual impact assessment are as follows: RoRo vessels 200m in length with a draft of 7.5m, and aggregate vessels of 250m in length with a draft of 15m.</p> <p>The Applicant provided photographic examples and an extract of the Table set out within the referenced section of the ES.</p>	<p>The PLA considers that what the Applicant has shown is a fair reflection of what is happening now and what was simulated within the Navigational Risk Assessment.</p>
<p>Air Quality</p>			
<p>1.1.1 and 1.1.3 – Air Quality</p>	<p>Applicant and Gravesham Borough Council</p>	<p>POTLL has said it will provide the infrastructure to ensure that shore power can be accommodated at the Tilbury 2 site in the future should the vessel profile change. There is a commitment to this within the Operational Management Plan.</p> <p>At the current time there are</p>	<p>The PLA has been developing an Air Quality Strategy as part of the Thames Vision. As part of this the PLA has been undertaking research to understand the feasibility of installing shore power for shipping at sites that the PLA controls as one of many options available to reduce emissions during the growth of the Port. The PLA's own fleet already has access to shore power along the estuary. We are not aware of another operator on the estuary looking into this or installing any infrastructure for shipping, although it is common in mainland Europe.</p>

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		<p>few vessels able to receive shore power and technology on ships is not currently suitable for shore power to be utilised at Tilbury 2. A further constraint at the moment is that the electrical capacity is limited.</p>	<p>Shore power from shipping has gone through a number of changes recently, including standardisation of technology to ensure compatibility worldwide. Of the vessels qualifying for the Green Tariff discount on the Thames in 2017 87% have the ability to plug in. With more ships being provided with the technology to use shore power, the PLA is seeking to encourage terminals along the estuary to provide this power and assist in reducing marine sourced emissions as the port grows.</p> <p>The up-take of shore power in mainland Europe and America provides the perfect opportunity to learn from best practice from across the world to reduce diesel emissions from all commercial vessels that use the river. River transport can play a huge part in reducing CO2 emissions and removing harmful emissions from sensitive receptors such as schools. With this in mind there is a role for us all in exploring how to encourage the move to greener vessels and practices especially where activity will increase.</p>
Biodiversity, Ecology & Natural Environment			
1.2.27 – Removal of Anglian Jetty	Applicant	The Applicant has been in negotiation with AW for some months and has reached in principle agreement to take	The PLA understands that PoTLL hopes to demolish the AW jetty at an early stage which, if it occurs before the DCO is made, would be covered by a River Works Licence granted by the PLA. The PLA

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		over the ownership of the jetty. The specific proposal for the jetty' is set out within Work 1 of the DCO.	has yet to receive any formal approach regarding such a licence. It would be helpful if PoTLL could confirm that demolition under the DCO is item (i) of Work No. 1.
1.2.31 – Impacts from Piling	Applicant	MMO response to this question advises that piling could be conditioned to be undertaken outside of the seasonal restriction period.	The PLA concurs with the MMO. Piling would be a specified work subject to the PLA's PPs, enabling the PLA's approval (paragraph 18 of Schedule 10) to be made subject to conditions, including conditions to protect the PLA's environmental protection functions. The environmental effects of piling are within the scope of the PLA's environmental functions. The PLA would therefore expect its approval to be conditioned regarding these timing restrictions. Conditions should also include the method of piling.
Compulsory Acquisition			
1.3.1 - Compulsory Acquisition.	Applicant	The Applicant advised in response to sub-paragraph (a) that 'in the scenario where there have been successful negotiations for land, the Applicant would most likely seek to exercise compulsory	For the reasons explained in the PLA's response to the FWQs at Deadline 1, the PLA objects to the compulsory acquisition of its interests within the river. POTLL has in principle accepted that a lease of the existing jetty to be used for Works Nos. 1 and 2 is sufficient and POTLL and the PLA are discussing terms. This should meet the aim of both parties to

		<p>purchase powers by agreement to ensure that the Applicant would take the title to the land in question clean of any defect.</p> <p>The land is required in order for the project to proceed...</p>	<p>find a mutually satisfactory solution whereby the PLA retains the freehold of the riverbed and foreshore and enables POTLL to deliver the Tilbury 2 scheme. This has not been reflected in the Applicant's response to sub-paragraph (a).</p> <p>PoTLL has indicated to the PLA its concern to 'clean the title' by removing any third part rights that may exist. The PLA believes it is perfectly possible for the compulsory powers to be used so that this takes place, while at the same time ensuring that the PLA retains the freehold, and that the DCO can be appropriately amended to achieve this. PoTLL and the PLA are discussing how this outcome can best be achieved.</p>
Construction			
1.5.2 – When would Piling within the Marine Environment take Place	Applicant	<p>The time of year that piling in the marine environment will take place will depend on appointment of an appropriate contractor and final construction programme. The River Thames is used year round by fish/mammals and so there are implications of piling throughout the year. Rather than restricting to a particular season, a more effective</p>	<p>There are various piling techniques from percussive to vibro piling and mitigation for specific piling should be clearly identified, including type of piling and seasonal restrictions. As indicated in the comment on FWQ 1.2.31, the PLA anticipates such necessary mitigation being the subject of conditions on its approval under the PPs.</p> <p>Following discussions with PoTLL the PLA also expects this to be among the matters that will be the subject of consultation with PoTLL in advance if details being formally submitted for approval.</p>

		mitigation approach for underwater noise caused by piling is considered to be the establishment of a daily non-piling window of at least 14 hours....	
Dredging & Navigation			
1.9.1 – Dredging & Navigation	Applicant and the MMO	Discussions are on-going as to how to best include these within the DCO and/or DML. The MMO’s position in relation to powers to dredge, is that this should be included as maintenance dredge activities in the DML only and not as a power under the DCO.	<p>The PLA agrees that power to carry out maintenance dredging should not be dealt with as part of the DCO. However, the PLA believes it to be wrong for maintenance dredging to be dealt with only as maintenance dredge activities within the DML.</p> <p>Detailed reasons for the PLA’s view are in its Comments on WRs (PLA4), paragraphs 3(d)-(f). The essential point is that maintenance dredging requires to be regulated for the purposes of two functions, namely marine conservation, which is the MMO’s responsibility, and the conservancy of the River Thames as a public navigation, which is the statutory responsibility of the PLA.¹</p> <p>The PLA therefore seeks provision to secure that maintenance dredging by PoTLL should remain subject to regulation by the PLA under section 73 of the Port of London Act 1968 (“the 1968 Act”). This</p>

¹ This is a function that is quite separate from nature conservation and for very different purposes. As the ExA may find it helpful the PLA will provide a full explanation of its functions.

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			<p>will enable the PLA to address all issues arising from maintenance dredging proposals. This comment therefore relates to all responses to FWQs regarding maintenance dredging.</p> <p>The DCO proposes that the PLA’s approval function in relation to maintenance dredging will be under the PPs. The PLA believes this would not allow for the same degree of supervision and provision of environmental and other information as is possible using the PLA’s licensing powers under section 73 of the 1968 Act.</p> <p>It should be noted that the PLA, being local and acknowledged as expert, is in the best place to regulate and control maintenance dredging.</p> <p>The position has not yet been discussed with the MMO but a meeting between the PLA and the MMO is in course of being planned.</p>
1.9.2	Applicant	In explaining the 1991 Transfer Scheme PoTLL says “The scheme under the 1992 Order is that as regards the river Thames, the exercise by PoTLL of any functions is subject to any PLA powers, byelaws or functions (see	Section 4 of the PLA’s WRs explains why (i) section 5AA of the 1968 Act is essential to the proper working of PoTLL’s transferred powers alongside the PLA’s powers under the 1968 Act and (ii) this would become even more important of PoTLL’s harbour and harbour powers are in the River so that its jurisdiction overlaps the PLA’s.

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		s.5AA read in to the 1968 Act by virtue of paragraph 6 of Schedule 4 to the 1992 Order).”	<p>The response quoted suggests that PoTLL considers section 5AA will be fully effective within the extended port limits without further provision in the DCO. The PLA welcomes any acceptance that section 5AA will apply but has yet to be persuaded that the DCO achieves this at the moment. It continues to discuss the point with PoTLL.</p> <p>The PLA is also discussing with PoTLL the related but separate issue if the further provision required to allow for the practical exercise of the PLA’s functions within the extended port.</p>
1.9.3	EA and Applicant	The EA explains the reasons for not conducting the dredge between the period June and August as justifying a condition on the DML	The problem identified results from low dissolved oxygen levels in warm water caused by elevated volumes of suspended sediment. The timing restrictions will therefore only be relevant if PoTLL uses dispersive dredging techniques. In addition, such restrictions are applicable upstream of Northfleet and therefore would not normally be applied to a dredge at the Tilbury 2 site. This means that a longer dredging window appears to be feasible.
1.9.4 – Further comments on ES	MMO	In section 5.12 of the ES it is stated that ‘Maintenance dredging will be needed, which has assumed to require the	The PLA draws attention to the additional references mentioned in paragraph 9.3 of its WRs (dealing with the same point), which indicate that this is indeed intended to be an annual figure.

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		removal of up to 100,000 cubic metres per day'. The MMO assumes that this should be per annum but it should be clarified.	
1.9.7	Applicant MMO	PoTLL refers to its discussions with the MMO	<p>The PLA will have an approval function in relation to dredging, whether under the DCO PPs or (as it wants in relation to maintenance dredging only) under the 1968 Act. In discussion PoTLL has accepted in principle that without early consultations in advance of formal applications for approval the PLA will be unable to meet the timetable proposed in the PPs.</p> <p>No such consultation has yet taken place and the PLA's discussions with PoTLL have not touched on the issues referred to in the question. In view of the role the PLA will have it would be sensible and desirable for the PLA to be party to the discussions with the MMO.</p>
1.9.17 – How & when you propose to notify the UK Hydrographic Office	Applicant	MMO has responded and has requested that this be added as a condition to the DML.	Section 1.2 of the <u>Harbour Masters Guide to Hydrographic and Maritime Information Exchange</u> . ² extracted below, summarises the responsibilities of a

² United Kingdom Hydrographic Office and the UK Harbour Masters' Association, Version 3 May 2016, https://www.admiralty.co.uk/AdmiraltyDownloadMedia/UKHO/UKHO_Harbour_Masters_Guide.pdf

<p>regarding changes to existing jetties, for their consideration in terms of updates to nautical charts/publications?</p>		<p>The Applicant has not responded as such in response to this question but the MMO has also stated the following:</p> <p>“The Applicant has advised that this is within the responsibilities of the PLA but as this is not detailed anywhere in the DCO this condition is still considered to be required”.</p>	<p>Port Authority and its Harbour Master. The PLA fulfils this duty as the statutory harbour authority for the whole of the tidal Thames, including the area proposed to be within the extended port limits, a statutory position which will not be altered by the DCO. The PLA has a detailed agreement with the UKHO relating to data transfer between the two organisations. This has worked very well for a number of years to the benefit of both parties and continues to do so.</p> <p>Since the advent of Marine Licensing the MMO (with input from the MCA) is believed to have imposed the notification condition on nearly all marine licences, irrespective of whether the works are inside or outside a Port Authority’s jurisdiction. In the present case the DCO would only dis-apply the 1968 Act controls of works and dredging and would not alter the PLA’s other responsibilities within the proposed new harbour area or its position as harbour authority. POTLL’s Deadline 1 submission is therefore right that the PLA will continue to provide such notifications to the UKHO. The MMO’s proposed requirement would accordingly be unnecessary duplication based on a mistaken premise.</p> <p><i>“In keeping with the Port Marine Safety Code and under existing legislation, Harbour Masters have a</i></p>
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			<p><i>duty in law to take all reasonable steps to inform masters of visiting ships of any changes affecting navigation, where a lack of knowledge might endanger their ships. Port Authorities have therefore committed to undertake regular surveys and to ensure that hydrographic information is published in a timely manner. The preferred way of ensuring that masters of visiting ships know of such changes is for Harbour Masters to inform the UKHO about them. The types of information that are useful are covered in the sections below. Because of the time taken between the UKHO being informed and a change appearing in relevant charts and publications, Harbour Masters need other means of distributing significant data. These typically involve communicating via pilots, Vessel Traffic Services (VTS), Local Radio Navigational Warnings and Local Notices to Mariners. Such alternative means may also be needed for very short-term events, such as a sailing regatta, the planned movement of an especially large vessel or works on a quay, as the UKHO does not usually update its products or use RNWs in such cases” Taken from section 1.2 of the Harbour Masters Guide to Hydrographic and Maritime Information Exchange.</i></p>
Planning Policy			
1.14.5 – Marine Dredged Aggregate	Crown Estates	Crown Estates has provided no response to the request for information regarding	Note the PLA’s response to this question in its FWQ response submitted at Deadline 1.

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		quantities of dredged marine aggregates	
1.16.1 – Noise impact from dredging	Applicant	The Applicant has sought to address why a detailed assessment regarding the noise impacts of dredging is not required.	For the reasons given in relation to FWQ 1.9.1 The PLA considers that maintenance dredging should not remain subject to regulation under the 1968 Act. Within that licensing process the PLA would expect ecological impacts such as noise to be fully assessed.
Traffic & Transportation			
1.18.6 – Framework Travel Plan and Transport Assessment	Thurrock Council/Highways England	<p>TC has areas of concern with the Transport Assessment.</p> <p>TC states that generally the Framework Travel Plan is acceptable but offers suggestions including:</p> <p>(i) that the Travel Plan be extended across the whole of the port development;</p> <p>(ii) that the purpose of a Travel Plan is to promote and manage sustainable travel.</p>	<p>The PLA would like to suggest, along-side the suggestions made by TC, that the Framework Travel Plan and Transport Assessment consider the use of the River, particular for the transportation of freight associated with the construction phase. Examples include CDE arisings (FWQ 1.6.11).</p> <p>This could be incorporated within the Construction Logistics Plan.</p>

Comment on the Environmental Statement (“ES”)

Paragraph 11.431 of the ES states that no disposal licences relating to North Edinburgh Channel have been granted since 2008 and conclusions are drawn on that basis. This is incorrect. The PLA holds a licence from the MMO for the placement of material in the North Edinburgh Channel. The licence is valid from February 2018 for a period of 10 years (MMO Ref: MLA/2016/00145).

Comments on revised dDCO

The PLA’s WRs draw attention to issues on the DCO that are of especial importance to the PLA. Some of these and other issues are sought to be addressed in the revised dDCO submitted by PoTLL at Deadline 1. These and other amendments to the dDCO continue to be the subject of discussion between the PLA and PoTLL and the PLA believes agreement should be reached on most of them. Comment by the PLA on the Deadline 1 version of the dDCO would therefore be premature. The PLA will comment on any outstanding issues when the discussions with PoTLL have progressed further.

Other Deadline 1 materials

The PLA is continuing its consideration of revised environmental and other documents submitted by PoTLL at Deadline 1. Examples are the Construction Environment Management Plan and the Operational Management Plan. If further PLA comment is called for it will make further submissions as soon as possible.