

**INFRASTRUCTURE PLANNING**

**THE INFRASTRUCTURE PLANNING(EXAMINATIONS PROCEDURE) RULES 2010**

**THE PORT OF TILBURY (EXPANSION) ORDER**

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**Comments on Written Representations**  
**submitted on behalf of the Port of London Authority**  
(Rule 8 letter 26 February 2018)

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## 1. Introduction

- (a) The following comments on Written Representations (“WRs”) are submitted on behalf of the Port of London Authority (“the PLA”) in respect of an application for Development Consent submitted by Port of Tilbury London Limited (“PoTLL”) for the Port of Tilbury (Expansion) Order (“the DCO”).

## 2. RWE Generation (“RWE”)

### *Issue*

- (a) At paragraph 4.1 of the WRs RWE has advised that the ‘*Order Limits of the site of the proposed Tilbury Energy Centre (TEC) and Tilbury 2 are almost certain to overlap*’.
- (b) In paragraph 4.6.9, RWE refers to its existing River Works Licence granted by the PLA under the Port of London Act 1968 (“the 1968 Act”) authorising the cold water intake and other infrastructure under the jetty and says (paragraph 4.6.10) that ‘*suitable protection must be afforded within the Tilbury 2 DCO to ensure that the intake for the proposed TEC can encompass and make use of the existing infrastructure if required. It is also essential that RWE is not prevented from obtaining a further River Works Licence for new intake infrastructure within the Applicant’s proposed extended harbour limits if needed*’. The PLA notes that paragraph 4.7 states RWE’s significant concerns that the development of Tilbury 2 could frustrate the TEC project and prevent it from coming forward. Finally, paragraphs 5.4 to 5.9 express RWE’s concerns that the effect of article 3(2) of the DCO would be to ‘*revoke ... existing River Works Licences in respect of the cold water intake infrastructure ... serving the existing Tilbury B power station*’ without allowing for alteration of any part of those existing works or the termination of the statutory authority relating to them in the absence of a transfer of ownership or removal of the works. Concern is also expressed that the retention of the existing works would be subject to the DCO (article 3(3)) and that article 3 (4) would give PoTLL a right of veto over the PLA’s grant of any future river works licence that might be required to bring forward RWE’s TEC project where new infrastructure within the river is required.

### *PLA Comment*

- (c) The PLA notes that RWE’s concerns reflect the issues raised in section 7 (pages 8 to 10) of the PLA’s WRs. In terms of context, the PLA’s document ‘The Vision for the

Tidal Thames' (2016)<sup>1</sup> ("the Vision") is about planning for the River's future, so as to make the most of its potential, for the benefit of all. The Vision seeks to consider all Thames users together: trade, travel, leisure and pleasure. The PLA encourages the promotion of the River in a comparable way, setting a growing river use in its context as a great natural asset, which must be conserved and improved. With this in mind, the PLA's functions are exercisable for the benefit of all its stakeholders, whether River users or others in and around the River, and therefore in support of appropriate development abutting the River, which would accord with the Vision's goals and objectives. This includes not only the DCO proposals but also development which is likely to be source of supply for other stakeholders, as is the case with a utility such as TEC. The PLA's aim is accordingly to secure that the DCO will allow it to exercise its powers and to do so even-handedly as between PoTLL and the PLA's other stakeholders.

- (d) The PLA shares RWE's concern about the maintenance of the cooling water intake infrastructure and the ability to issue river works licences should that be necessary in the future to authorise the construction operation and maintenance of RWE's intake.
- (e) Essentially, additional provision must be made within the DCO to enable the PLA to operate and enforce its licensing regime within the extended port limits in relation to the remaining RWE works. Discussions with PoTLL on this subject are continuing.

### **3. Marine Management Organisation ("MMO")**

#### ***Issue***

- (a) In relation to maintenance dredging paragraph 1.3 of the MMO's Deadline 1 submission states in relation to the PLA's RRs:

*1.3.1 The MMO note the PLA's comments on the proposed Harbour Powers. The MMO is working with the Applicant to ensure that the transfer of any powers is undertaken appropriately and any new powers being sought are included where it is appropriate to do so. In terms of dredging, the MMO understands that article 43 of the DCO is for 'Powers to Dredge' which, as mentioned, are currently under the control of the PLA. It is the position of the MMO that the powers to undertake maintenance dredging are not appropriately placed in the DCO and instead should be removed as a 'power' and solely cited within the DML as a licensable activity.*

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<sup>1</sup> <http://www.pla.co.uk/assets/thevisionforthetidalthames.pdf>

*The MMO welcomes engagement with the PLA if this approach does not alleviate their concerns.*

- (b) A similar point is made in the MMO's WRs (submission paragraph 3.4).
- (c) As a separate point, in paragraph 1.5 of the submission commenting on the RRs of the Maritime & Coastguard Agency, the MMO refers to the MCA's request for notification to the UK Hydrographic Office and HM Coastguard of updates to nautical charts for information. The MMO is of the opinion that the DCO should transfer powers and responsibilities for these notifications from the PLA to the POTLL, as the statutory authority for the proposed port limits.

***PLA Comment***

- (d) The PLA agrees that maintenance dredging should not form part of the DCO but does not agree that it should solely be subject to a DML. The MMO's functions in relation to marine licensing under the Marine and Coastal Access Act 2009 are separate and distinct from those of the PLA in licensing dredging under the 1968 Act. In regulating the DML the MMO's general objective is concerned with achieving sustainable development (2009 Act section 2(1)) and the principal issues to which it has regard are the need to protect the environment, the need to protect human health and the need to prevent interference with legitimate uses of the sea (2009 Act section 69(1)). The PLA's power to regulate dredging in the River forms part of its function as the only body responsible for the conservancy of the River as a public navigation.
- (e) The conservancy function is essential for the protection and operation of the River as a navigable waterway, a vital transport asset for the public, and the DCO does not purport to remove the need for this function in the River. In exercise of this function the PLA is statutorily obliged to, and does, take full account of the potential environmental impacts of any (in this case dredging) proposals.
- (f) Conservancy, regulated by the PLA, and marine conservation, the MMO's responsibility, can and should co-exist. The PLA does not believe this would necessarily call for MMO input into maintenance dredging proposals, but even if it that were considered appropriate the operation of the DML could not properly be at the expense of the PLA's current powers in respect to maintenance dredging. It should also be noted that the PLA, being local and acknowledged as expert, is in the best

place to regulate and control maintenance dredging. The PLA will be meeting with the MMO to discuss this and other issues germane to the DCO.

- (g) As regards paragraph 1.5 and notification to UKHO, the powers sought by PoTLL will make it a harbour authority for the extended port whose jurisdiction overlaps that of the PLA but does not remove it: the extended port will be within the PLA's area of jurisdiction. This means that the PLA will still have an obligation to inform mariners of significant changes within the port area and it already has an established process for information exchange with the UKHO. The PLA concurs with PoTLL's view that to deal with this in the DML would be duplication of existing obligations.

#### **4. Natural England ("NE")**

##### ***Issue***

- (a) Referring to paragraph 5.2.5 of the Habitats Regulations Assessment, the WRs mention maintenance dredging and the potential harm it would cause to the marine environment, particularly with European Protected Sites (Thames Estuary SPA and Ramsar Sites).

##### ***PLA Comment***

- (b) In response to 5.2.5, the PLA's position (see in this document comments on the MMO's WRs) is that it must continue to have overall control of dredging that may affect the River of any PLA function. The PLA is of the view that maintenance dredging should remain subject to PLA licensing. Matters relating to environmental and marine ecology impact (including intertidal habitat, salt marshes, mudflats and shingle/cobble beach habitats) would continue to be addressed through that licensing process.