

PROPOSED PORT TERMINAL AT  
FORMER TILBURY POWER STATION

# TILBURY2

TRO30003

## RESPONSE TO THE EXAMINING AUTHORITY'S SECOND WRITTEN QUESTIONS

TILBURY 2 DOCUMENT REF: POTLL/T2/EX/101



**Response to the Examining Authority's Second Written Questions and requests for information**

**Application by Port of Tilbury London Limited for an Order Granting Development Consent for a Proposed Port Terminal at the Former Tilbury Power Station ('Tilbury2')**

**Issued on 22<sup>nd</sup> May 2018**

- 0.1 This document outlines the Applicant's responses to the Examining Authority's (ExA) Second Written Questions and requests for information (SWQs).
- 0.2 The Applicant's responses to the ExA's SWQs are divided into individual tables by the topic chapters provided by the ExA.
- 0.3 In some cases the SWQs have been answered through appended documents. References to these papers will be indicated in the individual SWQ responses.

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## 2.0 GENERAL AND CROSS-TOPIC QUESTIONS

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SWQ	Question to:	Question:	Response:
2.0	<b>General and Cross-topic Questions</b>		
2.0.1	No questions were asked on this topic.		

## 2.1 AIR QUALITY

SWQ	Question to:	Question:	Response:
2.1	<b>Air Quality</b>		
2.1.1	Applicant, Gravesham Borough Council	<p>In the SoCG between the Applicant and GBC at deadline 3 [REP3-028], the SoCG identifies various matters that are under discussion including site survey work for NO<sub>x</sub> and PM<sub>10</sub>, and shipping emissions.</p> <p>i. Would the Applicant and GBC update the Examination on the status of their discussions?</p>	<p>The Applicant submitted further material in relation to the matters raised by GBC prior to and during the ISH in their Written Submission of Case at ISH of 19th April [Document reference PoTLL/T2/EX/95] [REP3-030] in response to the ExA's question 1.1 "Air quality common ground" (specifically study area, baseline, methodology, assessment of effects and mitigation measures).</p> <p>The material submitted in PoTLL/T2/EX/95 [REP3-030] included:</p> <ul style="list-style-type: none"> <li>• a summary of supporting documentation including information contained in reports published by the UK Air Quality Expert Group (AQEG) on particulate matter, noting its sources, distribution and trends in concentrations</li> <li>• a document entitled Appendix 3: Shipping Emissions from Tilbury2 which describes a supplementary assessment undertaken by the Applicant to quantify shipping emissions of both NO<sub>x</sub> and PM<sub>2.5</sub>, based on information contained within the recently available Port of London Authority emission inventory.</li> </ul> <p>This information was provided to GBC on 1<sup>st</sup> May 2018. A telephone conference was held on Tuesday 15<sup>th</sup> May 2018, attended by the Applicant, Wendy Lane (GBC Assistant Director (Planning)) and Deborah Wilders (GBC Senior Environmental Health Officer).</p> <p>The Applicant understands from this telephone conversation that the following matters are agreed between the Applicant and GBC:</p> <ul style="list-style-type: none"> <li>• GBC accept that the additional monitoring carried out by the Applicant was intended to fill gaps in present knowledge in relation to the potential significant air quality impacts of the proposals, i.e. traffic/rail NO<sub>x</sub> emissions from the infrastructure corridor, close to sensitive receptors in Tilbury. GBC accepts that the ES has used the air quality information currently available in Gravesham and these data (including continuous monitoring data for NO<sub>2</sub> and PM<sub>10</sub>) were used appropriately within the ES and that further air quality survey work is not required for the consideration of this DCO.</li> <li>• GBC has reviewed the information submitted at Deadline 3 [REP3-030], specifically, Appendix 3 to PoTLL's Summary of Case at ISH of 19th April which included a detailed modelling assessment of shipping emissions of NO<sub>x</sub> and PM<sub>2.5</sub> associated with Tilbury2. The Applicant understands that GBC agrees with the conclusion of the report which is that the effect of shipping emissions on receptors in Gravesham is negligible and that the assessment considered a "reasonable worst case scenario".</li> <li>• GBC considers that the measures in the CEMP are appropriate but further discussions are required regarding the wording of the OMP, including the potential need for local air quality monitoring to be undertaken in GBC's administrative area once the facility is operational.</li> </ul> <p>As set out in the Updated SoCG with GBC [REP3-028], each party has made representations on the issue of Shore Power at the ISH on 19<sup>th</sup> April 2018 and no further discussion is considered necessary.</p> <p>The Applicant and GBC agree that the measures in the OMP will need to be consistent with the Government's Clean Air Strategy, a consultation version of which was released on 22<sup>nd</sup> May 2018.</p> <p>It is therefore the Applicant's understanding that the only areas of concern to GBC are the wording in the OMP and</p>

SWQ	Question to:	Question:	Response:
			<p>need for monitoring once operational. PoTLL will consider these points further.</p> <p>It is the Applicant and GBC's intention to submit an updated Statement of Common Ground with GBC one week before the June Issue Specific Hearings.</p> <p>With regard to the consultation draft Clean Air Strategy, the measures for reducing emissions from ships, over the short to medium term, are set out in Section 5.4 of the consultation document. The Applicant notes that the measures for shipping are consistent with, and make specific reference to, the approach already being taken forward by the Port of London Authority including development of an air quality strategy, which will assist in delivering emissions reductions. The continued reductions in emissions from shipping should ensure a continued downward trend in concentrations in the Tilbury/Gravesham area. Further measures may be introduced at a national level, such as emission standards which would need to be adhered to by the shipping operators visiting the port.</p>

## 2.2 BIODIVERSITY, ECOLOGY AND NATURAL ENVIRONMENT

SWQ	Question to:	Question:	Response:
2.2	<b>Biodiversity, Ecology and Natural Environment</b>		
2.2.1	Applicant	Would the Applicant state what impact the extended Tilbury Power Station Local Wildlife Site has on the environmental statement for Tilbury2?	<p>The answer is: none.</p> <p>The boundary of the draft Tilbury Power Station Local Wildlife Site (LoWS) is shown at ES Figure 10.1: Site location and relevant ecological designations (document reference 6.3 [APP-031]). This extended draft boundary was evaluated and assessed within the environmental statement (ES) from the outset (document reference 6.1 [APP-121]).</p> <p>Furthermore, the extended draft LoWS boundary (which encompasses land beyond the Order Limits) has been fully considered as part of the cumulative assessment, including within the Qualitative Cumulative Effects Assessment (CEA) of Tilbury2 with the Tilbury Energy Centre (TEC) and Lower Thames Crossing (LTC) (document reference PoTLL/T2/EX/92 [REP3-027]) submitted at Deadline 3.</p>
2.2.2	Applicant	The Applicant is requested to provide an updated version of the Environmental Management and Compensation Plan (EMCP) a week before the hearings scheduled for the end of June 2018, setting out in particular onsite and offsite mitigation and compensation for open mosaic [habitat] on previously developed land, and how such sites are expected to be maintained beyond the commitment to 25 years.	<p>The Applicant confirms that an updated version of the Environmental Management and Compensation Plan (EMCP) will be provided to the Examining Authority w/c 18th June 2018.</p> <p><i>Open Mosaic Habitat.</i> The updated EMCP will set out details of onsite and offsite mitigation and compensation for open mosaic habitat on previously developed land, and as far as possible, how such brownfield creation site/s are expected to be maintained beyond the commitment to 25 years (albeit for off-site locations the answer will be determined by the unique circumstances relating to the individual site/s).</p> <p><i>Coastal &amp; Floodplain Grazing Marsh.</i> The updated EMCP will also set out revised details of offsite compensation for coastal and floodplain grazing marsh. The Environment Agency proposed in its deadline 3 submission [REP3-034] at para 6.4 that application of green hay be considered as a means to introduce local seed, and this option will be explored further by the Applicant. The EA has also requested at para 6.5 that a management plan should be produced for the Paglesham compensation site, which considers the potential future invertebrate interest, especially in view of its proximity to the Paglesham Seawall LoWS (managed by the EA). The Applicant has therefore requested details of the Paglesham Seawall LoWS management plan from the EA so that this information can be considered in preparing the future management plan for the Paglesham compensation site. The EA goes on to state at para 6.6 that it welcomes inclusion of a 25 year agreement to manage the site, but queries whether there is any intention to designate the site as a Local Wildlife Site once it has been established. In response, the Applicant confirms that subsequent versions of the EMCP will include details of management, including measurable management objectives. However, whether or not the compensation site/s could be designated as a Local Wildlife Site would depend on whether the relevant selection criteria<sup>1</sup> were met, and that decision would be made by the Essex Local Wildlife Site Review Panel and not the Applicant.</p>

<sup>1</sup> Essex Local Wildlife Sites Partnership (January 2016). *Local Wildlife Site Selection Criteria*. Available from: <http://www.essexwtrecords.org.uk/sites/default/files/LOCALWILDLIFESITSELECTIONCRITERIA2016.pdf>

## 2.3 COMPULSORY ACQUISITION

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SWQ	Question to:	Question:	Response:
2.3	<b>Compulsory Acquisition</b>		
2.3.1	Applicant	Can the Applicant please confirm the costs of constructing Tilbury2 as £136m of which the estimated costs of land acquisition and compensation are estimated at £12.4m as set out in the Funding Statement [APP-019]?	The costs of constructing Tilbury2 will be £136million, including £11.2million for Part 1 Claims Compensation and £1.2million for Land. This has been confirmed most recently in the Letter from Forth Ports' Director of Finance submitted at Deadline 3 (REP3-025).

## 2.4 CONSIDERATION OF ALTERNATIVES

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SWQ	Question to:	Question:	Response:
2.4	<b>Consideration of Alternatives</b>		
2.4.1	No questions were asked on this topic.		



## 2.5 CONSTRUCTION

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SWQ	Question to:	Question:	Response:
2.5	<b>Construction</b>		
2.5.1		No questions were asked on this topic.	

## 2.6 CONTAMINATED LAND AND WASTE

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SWQ	Question to:	Question:	Response:
2.6		<b>Contaminated Land and Waste</b>	
2.6.1		No questions were asked on this topic.	

## 2.7 CUMULATIVE AND COMBINED IMPACTS

SWQ	Question to:	Question:	Response:
2.7	<b>Cumulative and Combined Impacts</b>		
2.7.1	Natural England (NE), Highways England (HE) and Historic England (Hist E)	NE, HE and Hist E are requested to provide their views on the Qualitative Cumulative Effects Analysis submitted by the Applicant at deadline 3 [REP3-027] a week before the hearings scheduled for the end of June 2018.	This question is not directed at the Applicant.

## 2.8 DRAFT DEVELOPMENT CONSENT ORDER (DDCO) MATTERS

SWQ	Question To	Question	Response
2.8 Draft Development Consent Order Matters			
2.8.1	Applicant	<p><i>Art 2: Interpretation.</i> The Applicant clarified its position in the summary of the case made at the DCO hearing on 21 February 2018 [REP1-015].</p> <p>i. Re the statement that all maintenance operations would fall within the environmental envelope related to the initial construction phase, this may perhaps be the case in the ordinary sense of "maintain", but is it true with the extended meaning?</p> <p>ii. If the "extended port limits" are the same as the harbour limits (as shown on the harbour limits plan), why not adopt a single term to cover both?</p>	<p>i. Maintain is defined as including inspection, repair, adjustment, alteration, removal and reconstruction. Paragraph 5.128 of the errata Chapter 5 (AS-008) refers to repair and resurfacing as examples of measures that will be required as part of routine maintenance.</p> <p>It is considered that the article 2 definition only covers such routine maintenance or would not in any event create or involve new significant environmental effects or activities that are not already controlled through the OMP:</p> <ul style="list-style-type: none"> <li>• An inspection cannot be considered to create significant environmental effects.</li> <li>• Repair is explained in Chapter 5 so is already included within the assessment.</li> <li>• Adjustment or alteration is by definition a lesser extent of work than actually installing a part of the authorised development. As installation is already assessed in the ES, these lesser activities can be considered to fall within that envelope.</li> <li>• Removal is essentially the reverse of constructing a part of the authorised development, and so would have the same effects (and would be controlled through the mitigation measures in the OMP).</li> <li>• Reconstruction involves repeating work already undertaken to construct, and would be the same effects again, and so has already been assessed.</li> </ul> <p>The Applicant also notes in any event that the powers to maintain are also described further in article 41 of the DCO, and are subject to the control set out in article 41(3) that maintenance works are not authorised where they are likely to give rise to any significant adverse effects.</p> <p>ii. This is provisionally accepted and we will consider it further in preparing the next version of the dDCO to be submitted.</p>
2.8.2	RWE Generation UK (RWE), Anglian Water Authority (AWA)	<p><i>Art 3: Disapplication of legislation, etc.</i> In its summary of the case made at the DCO hearing on 21 February 2018 [REP1-015], the Applicant explains the need to disapply works licences in favour of RWE and AWA. Art 3 has been amended in revision 2 of the dDCO at deadline 3 [REP3-002].</p> <p>i. <i>Art 3(2):</i> Are RWE and AWA content with the proposals for the disapplication of works licences granted by PLA to them?</p>	<p>This question is not directed to the Applicant.</p>
2.8.3	Applicant, Port of London Authority (PLA)	<p><i>Art 4: Application of enactments relating to the Port of Tilbury.</i></p> <p>i. Would the Applicant explain the disapplications at Art 4(2)?</p> <p>ii. Does "undertaking" at 4(3)(c) need a definition in Art 2?</p> <p>iii. Insert "Port of" before "Tilbury" at</p>	<p>i. Please see the PLA's response.</p> <p>ii. Likewise.</p> <p>iii. Agreed.</p> <p>iv. A definition is not required as the term is only used here but we will provide a website link to them in the next version of the dDCO to be submitted.</p>

SWQ	Question To	Question	Response
		4(3)(c)? iv. Provide a definition of "The General Trading Regulations" at 4(5) in Art 2?	
2.8.4	Applicant	<i>Art 5: Incorporation of the 1845 Act.</i> At 5(2) line 2 – should "the company" be upper case?	No. References to "the company" in the relevant provisions of the 1845 Act are presented in lower case in modern transcriptions of the legislation.
2.8.5	Applicant	<i>Art 6: Development Consent granted by the Order.</i> Permitted development rights apply only to planning permissions granted under the 1990 Act and not to development authorised by a DCO. However, the dDCO makes the whole site within the Order limits operational land and thus capable of supporting PD rights. i. Can the Applicant please provide a table identifying which elements of the authorised development are considered to be outside the scope of PD rights and thus would require specific planning permission or development consent?	Article 6(2) seeks to ensure that PD rights are able to be utilised within the Order limits. It does not seek to relate to the initial authorised development in Schedule 1 – it is referring instead to future development at the site, and making clear that such development does not need to be subject to the various pre-commencement controls in the Order, but is still subject to article 3(10) of the GPDO - i.e. requiring a screening opinion where it is Schedule 1 or Schedule 2 development under the relevant EIA Regulations.  The requested table is therefore not provided here, as the article does not seek to apply PD rights to the development incorporated within Schedule 1.
2.8.6	Applicant	<i>Art 7: Limits of deviation.</i> i. Art 7(b), (c) and (d) - linear and non-linear works are shown on the works plans, and it would be clearer if they are specified as well in this article; ii. Art 7(d)(ii) - delete "as may be found to be necessary or convenient"? iii. Art 7(e) - line 2 - delete "up".	i. It is proposed that an additional paragraph will be added to this article to define what is meant by a linear work and what is meant by a non-linear work, with reference to the markings on the Works Plans. An example of such wording can be seen at article 5 of the Silvertown Tunnel Order 2018. This will be reflected in the next iteration of the DCO (to be submitted a week before the June hearings). ii. This wording will be deleted in the next iteration of the DCO (to be submitted a week before the June hearings). iii. This wording will be deleted in the next iteration of the DCO (to be submitted a week before the June hearings).
2.8.7	Applicant	<i>Art 8: Street works.</i> i. In its summary of the case made at the DCO hearing on 21 February 2018 [REP1-015], the Applicant identifies the street authority for each street that would be affected by the Order. Can the Applicant confirm that there are no other streets affected, ie private streets not the responsibility of Thurrock Council or Highways England? ii. Art 8(1) - in the light of paragraph 3.2 of the Applicant's paper concerning the Asda Roundabout DCO powers (PoTLL/T2/EX/85), in addition to	i. The only other street affected would be the private means of access owned by PoTLL to the Tilbury2 site. The access to Mr. Gothard's land will also be affected, but is in any event proposed to be compulsorily acquired (plot 03/08).  ii. The powers within articles 8 (1), 13 and 15 are constrained by the fact that they each require the consent of the relevant street authority (see articles 8(3) and 13(4)), who can attach reasonable conditions to any consent or agreement required pursuant to those articles. This means that they will be able to control the extent of such works. There are no other constraints on these articles and the Applicant submits that they are not necessary in the context of the Tilbury2 scheme - as set out in the Asda Roundabout works document [REP3-021] the extent of street works for the project are, and even will be at detailed design, limited in scope.

SWQ	Question To	Question	Response
		consideration of adverse effects not assessed in the environmental statement, can the Applicant say what constraints apply to this article beyond the Order limits?	
2.8.8	Thurrock Council (TC), Applicant	<p><i>Art 10: Construction and maintenance of new, altered or diverted streets.</i></p> <p>i. Art 10(4) - in its summary of the case made at the DCO hearing on 21 February 2018 [REP1-015], the Applicant states the responsibilities for the streets and associated structures, including the fact that suitable protection for TC as local highway authority is found in the protective provisions. Is TC content with this position?</p> <p>ii. Art 10(6) - would the Applicant explain why it is appropriate for an Order to specify what matters a court should have regard to?</p>	<p>ii. The effect of paragraphs (5) and (6) of article 10 is that in any action for damages against PoTLL alleging failure to maintain a street, PoTLL will have the defence that it had taken such care as was reasonably required in the circumstances to secure that the street was not dangerous for traffic. This article and the format of the subsection is very well precedented, for example see the recently made Silvertown Tunnel Order 2018. It is noted that the wording does not prescribe an exhaustive list of matters which the court should have regard to but instead directs that the court must <u>in particular</u> have regard to the matters listed.</p> <p>For the reasons set out above the Applicant therefore considers the wording in article 10 to be appropriate.</p>
2.8.9	Applicant, Thurrock Council (TC)	<p><i>Art 11: Classification of roads.</i></p> <p>i. In its summary of the case made at the DCO hearing on 21 February 2018 [REP1-015], the Applicant states that preliminary discussions have been held with TC, but no agreement has yet been reached. Would the Applicant and TC update the Examination on the status of their discussions?</p> <p>ii. Art 11(5) - insert "or other similar media" after Thurrock Gazette to safeguard against the future demise of this newspaper.</p>	<p>i. The Applicant and TC have had a productive discussion as to classification of roads, and the Applicant understands that TC is in the main content with the proposed classifications, but has raised a query as to the interaction of the proposed classifications and the powers of the police in the local area. The Applicant is awaiting further information from TC and will then determine whether any changes need to be made.</p> <p>ii. The Applicant agrees with the ExA's suggestion and will amend Revision 3 of the Draft DCO to refer to "the Thurrock Gazette <u>or any other local newspaper circulating in the area.</u>"</p>
2.8.10	Applicant, Highways England (HE)	<p><i>Art 12: Permanent stopping up and restriction of use of highways and private means of access.</i></p> <p>i. Further to their deadline 3 submissions, would the Applicant and HE update the Examination on the status of their discussions?</p> <p>ii. Art 12(1), line 4 - "private means of access" is given an abbreviation (PMAs,</p>	<p>i. The Applicant understands that HE is generally content with the powers granted by this article and the details set out in Schedule 4, subject to its concerns as to having sufficient controls over the approval of the detailed design of replacement routes pursuant to its protective provisions (as discussed in the response to question 2.8.48 below). The Applicant will keep this provision under review as discussions continue with stakeholders.</p> <p>ii. The Applicant will remove the "s" after PMA and will use the abbreviation in the rest of the article in Revision 3 of the Draft DCO.</p>

SWQ	Question To	Question	Response
		and delete "s") which is not then used in the rest of this article.	
2.8.11	Applicant	<i>Art 13: Temporary stopping up and restriction of use of streets.</i> As Art 8(1) above.	See response to 2.8.7(ii) above.
2.8.12	Applicant	<i>Art 15: Agreements with street authorities.</i> As Art 8(1) above.	See response to 2.8.7(ii) above.
2.8.13	Applicant	<i>Art 17: Level crossings.</i> Is this article needed?	Article 17 is required on the basis that it explicitly states that the level crossing forming part of Footpath 144 is closed and discontinued. Articles of this nature are commonly included in Orders for this purpose. Although article 12 (6) could operate to extinguish the rights of way that are present at the level crossing, that article does not formally remove the statutory authority for interference to be caused to the railway at the point of this level crossing or the for the existence of the level crossing more generally. It is article 17 that is necessary for that.
2.8.14	Applicant, Environment Agency (EA)	<i>Art 18: Discharge of water.</i> i. In its summary of the case made at the DCO hearing on 21 February 2018 [REP1-015], the Applicant states that discussions are ongoing with EA on protective provisions. Would the Applicant and EA update the Examination on the status of their discussions? ii. Art 18(7)(a) – would the Applicant confirm whether references to the Homes and Communities Agency, a joint planning board or an urban development corporation are needed?	i. Discussions with the EA regarding its protective provisions have taken place and will be ongoing. The Applicant considers that the protective provisions suggested by the EA are not substantially different to those proposed by the Applicant thus it is hoped that agreement on them can be reached swiftly. ii. The Applicant considers that the references to the Homes and Communities Agency, a joint planning board or an urban development corporation are required. Although no ownerships have been shown in the Applicant's land referencing, the article is not confined to the Order Limits thus ownerships of public sewers or drains could conceivably fall within the ownership of these bodies.
2.8.15	Applicant	<i>Art 19: Protective works to buildings.</i> There is no limit as to how far from the Order limits such protective works could be carried out. Is a boundary of say 250 m appropriate?	The Applicant considers that it would be detrimental to third parties to limit the geographical scope of protective works in respect of buildings which may be affected by the authorised development under article 19. The Applicant would not wish to be restricted in its ability to carry out protective works in the event that it was necessary to do so to a building 300m, as an example, from the Order limits. It should be noted that the Applicant does not have an absolute right to carry out protective works under this article. It is limited to undertaking such works "as the Company considers necessary or expedient". In determining what is necessary or expedient, the Company is bound by the principles of public law to act reasonably. This is a more appropriate means of regulating the extent of the protective works as opposed to inserting an arbitrary geographical limit. On that basis, the Applicant considers that the drafting, which is well precedented, should remain as it is.
2.8.16	Applicant	<i>Art 20: Authority to survey and investigate land.</i> As Art 19.	For similar reasoning to the response to question 2.8.15 above, the Applicant does not consider it appropriate to insert a geographical limit on this article. Doing so would potentially arbitrarily restrict the Applicant's ability to survey and investigate land where necessary. This would be to the detriment of both neighbouring landowners and the authorised development itself. The notice (paragraph 3) and compensation (paragraph 5) obligations under this article serve as a disincentive for the

SWQ	Question To	Question	Response
			Applicant to survey and investigate where it is not necessary. In addition, the Applicant will at all times have to act reasonably when considering which land to survey and investigate.
2.8.17	Applicant, Port of London Authority (PLA)	<p><i>Art 22: Works in the River Thames – conditions, and Art 23: Compulsory acquisition of land.</i></p> <p>i. In its summary of the case made at the DCO hearing on 21 February 2018 [REP1-015], the Applicant states that Art 22 is mostly agreed, save for some final points under discussion, and that discussions are also ongoing on Art 23 with regard to the Applicant acquiring the river bed. Would the Applicant and PLA update the Examination on these matters?</p> <p>ii. Art 22 - uppercase "River" as elsewhere in the Order and Schedule 1 for example?</p> <p>iii. Art 22(8) - can this be simplified, as its meaning is difficult to understand?</p>	<p>i. Please refer to the PLA's response to this question and also to the joint statement contained in the updated Appendix F to the Statement of Reasons submitted at Deadline 4.</p> <p>ii. No. The way the river Thames is described in the dDCO should be consistent with the way it is described in the Port of London Act 1968. The description in the PLA Act 1968 is "river Thames". The revised dDCO will adopt that description throughout.</p> <p>iii. Please refer to the PLA's response to this question. Article 22(8) precludes the operation of deemed approval under this article where the PLA is obliged to consult a body before it may give its approval. The Applicant notes the observation that it is complicated and will give further consideration to its drafting.</p>
2.8.18	Applicant	<p><i>Art 24: Time limit for exercise of powers to possess land temporarily or to acquire land compulsorily.</i> Re-order heading as "Time limit for exercise of powers to acquire land compulsorily or to possess land temporarily"?</p>	The Applicant agrees to the change and will amend Revision 3 of the draft DCO accordingly.
2.8.19	Applicant	<p><i>Art 25: Compulsory acquisition of rights and imposition of restrictive covenants, Art 26: Acquisition of subsoil or airspace only, Art 30: Application of Part 1 of Compulsory Purchase Act 1965, and Art 31: Application of Compulsory Purchase (Vetting Declarations) Act 1981.</i> In the Applicant's Explanation of Changes to the DCO at deadline 1 [REP1-005], the Applicant states that Arts 25, 26, 30 and 31 and Schedule 5 have been updated to take account of the position of the Department for Transport, following the passing of the Housing and Planning Act 2016, set out in the M20 J10a DCO Order. However, the updates do not seem to reflect the corresponding articles in the M20 J10a Order, with general references being used instead of specific plot references.</p> <p>i. Would the Applicant explain why this is?</p>	The Applicant will reconsider the position in the M20 J10a DCO Order as well as the position in the recently-made Silvertown Tunnel Order 2018 and will revise the drafting accordingly in Revision 3 of the draft DCO.



SWQ	Question To	Question	Response
2.8.20	Applicant	<p><i>Art 32: Temporary use of land for carrying out the authorised development.</i> In its summary of the case made at the DCO hearing on 21 February 2018 [REP1-015], the Applicant clarifies the intention of A32(1)(d).: Art 32 allows the temporary occupation of any of the land intended for permanent acquisition before the land is acquired. Permanent works will take place on the land, which will then be acquired 'as necessary'.</p> <ul style="list-style-type: none"> <li>i. Would the Applicant state what ensures the triggering of compulsory acquisition – and the attendant rights of compensation for CA – where the permanent works could just be left in situ under temporary possession powers?</li> <li>ii. Compensation under Art 32(5) is payable in respect of “loss or damage arising from the exercise” of TP powers. If permanent works are left on the land without acquisition, would such compensation differ from that payable under the compensation code in respect of compulsory acquisition?</li> <li>iii. Re the statement that “<i>where works will be undertaken by the Applicant, but will be owned and maintained by third parties after the works are complete</i>”, how will ownership transfer to third parties without intervening CA by the Applicant?</li> </ul>	<p>i and ii. The reference to compulsory acquisition taking place 'as necessary' was referring to where such works are necessary for the Tilbury2 project - the point being that PoTLL would not want, nor could it justify, acquiring land that is not needed for the project. The land that is not acquired would therefore be returned to the landowners, and would not have any permanent works upon it, as such works would only be installed for the purposes of the project.</p> <p>The point is that article 32 is able to be used to allow construction to commence as soon as possible, and not having to wait for the full compulsory acquisition to take place. It also means that more land is not acquired than is necessary for the project - if a promoter was required to acquire first, it would have surplus land, and it would have deprived the landowners of their land unnecessarily.</p> <p>If the Applicant did decide to use temporary possession powers and then compulsory acquisition powers it would be liable to pay double compensation - 'loss or damage' during temporary possession (both for land to be retained by PoTLL, and land returned to the landowner), and then compulsory acquisition compensation once the land is acquired.</p> <p>iii. Intervening compulsory acquisition would not be required as the land would only be temporarily possessed by the Applicant. 'Third parties' in that context refers to the original owners of the land – i.e. the PLA, Highways England and Thurrock Council as highway authority.</p>
2.8.21	Thurrock Council (TC), Highways England (HE), Port of London Authority (PLA)	<p><i>Art 32(2): Temporary use of land for carrying out the authorised development - Notice Period.</i> In its summary of the case made at the DCO hearing on 21 February 2018 [REP1-015], the Applicant states that a 14-day notice period is necessary because of the tight construction programme.</p> <ul style="list-style-type: none"> <li>i. Would TC, HE and PLA state their positions on this matter?</li> <li>ii. Re the statement regarding material detriment, would the Applicant clarify why material detriment will apply to temporary possession? If that is the case, why would national legislation</li> </ul>	<p>ii. Material detriment does not apply to temporary possession. The point that was sought to be made in item 33(c) of REP1-015 was that the temporary possession land that forms part of the Tilbury2 scheme is all subject to special circumstances and so counter-notices would not be served.</p> <p>However, as noted above, it is possible that the Applicant may wish to access land through its temporary possession powers first before then compulsorily acquiring the land. In that scenario, if the landowner was able to serve a counter notice, all they would be doing is expediting the compulsory acquisition that would otherwise take place – and as expressed above, could end up in more land being acquired than would otherwise be required for the Scheme.</p> <p>If the landowner did not serve a counter notice, it could then utilise the material detriment regime on the subsequent compulsory acquisition.</p>

SWQ	Question To	Question	Response
		providing for counter notice be necessary?	
2.8.22	Thurrock Council (TC), Highways England (HE), Port of London Authority (PLA)	<p><i>Art 33: Temporary use of land for maintaining the authorised development.</i> The Applicant states in the summary of the case made at the DCO hearing on 21 February 2018 [REP1-015] that a 28-day notice period is a “tried and tested” standard period.</p> <ul style="list-style-type: none"> <li>i. Would TC, HE and PLA state their positions on this matter?</li> <li>ii. Would the Applicant state where it has been tested in practice?</li> <li>iii. Art 33(3) - insert the period of temporary possession as in Art 32(2)?</li> <li>iv. Art 33(4) - insert “temporary” before “possession”;</li> <li>v. Art 33(9) – as above.</li> </ul>	<ul style="list-style-type: none"> <li>ii. Given the very few DCOs that have managed to reach such a 'maintenance period', the Applicant can not give a practical example of this. 'Tried and tested' in this context was referring to the fact that the provision had been tested through the Planning Act 2008 provisions many times – with the three most recent DCOs - East Anglia Three, the M20 Junction 10A and Silvertown Tunnel, both including 28 days as the relevant time period.</li> <li>iii. This is not needed due to article 33(4). It also differs from article 32 where a specific activity will be known at the time the notice is served.</li> <li>iv and v. This change will be made in the next iteration of the DCO.</li> </ul>
2.8.23	Applicant	<i>Art 34: Statutory undertakers.</i> Would the Applicant state how this article deals with temporary possession and maintenance requirements?	Article 34 does not apply to temporary possession and maintenance requirements. Aspects of the Protective Provisions for the benefit of statutory undertakers apply in these cases.
2.8.24	Applicant	<p><i>Art 35: Apparatus and rights of statutory undertakers in stopped-up streets.</i> The Applicant states in the summary of the case made at the DCO hearing on 21 February 2018 [REP1-015] that the wording with regard to “statutory utility” is preceded in all made DCOs.</p> <ul style="list-style-type: none"> <li>i. Would the Applicant please note that the definition of “statutory undertaker” in the Wrexham Energy Centre DCO was not so limited?</li> <li>ii. Should the heading be “statutory utilities” rather than “statutory undertakers” in view of the definition in subparagraph (8)?</li> </ul>	<ul style="list-style-type: none"> <li>i. The Applicant acknowledges that the definition of "statutory undertaker" in the Wrexham Energy Centre DCO is not as limited as the dDCO. It is considered that adopting this approach in the dDCO would cause undesirable overlap between article 35 and Schedule 10 Part 1.</li> <li>ii. The Applicant will update the heading of article 35 of the dDCO to refer to "statutory utilities" as opposed to "statutory undertakers".</li> </ul>
2.8.25	Applicant	<p><i>Art 36: Recovery of costs of new connection.</i></p> <ul style="list-style-type: none"> <li>i. Art 36(1) and (4) - should “public utility undertaker” be “statutory undertaker”; alternatively, the first line to refer to</li> </ul>	The wording as drafted in the dDCO is correct and well preceded. This article is to apply, and be limited, to public utility undertakers and public communications providers (as defined) rather than extend to the wider definitions as proposed.

SWQ	Question To	Question	Response
		"statutory utility"?	
2.8.26	Applicant	<p><i>Art 37: Special category land: West Tilbury Common Land.</i></p> <p>Art 37(4)(a) - why is Art 20 excluded?</p>	<p>Article 20 is excluded because it was considered that initial survey and investigation work should be able to take place before the exchange land provisions operate, given the limited nature of those works and so their effect on the land.</p>
2.8.27	Applicant	<p><i>Art 39: Set-off for enhancement in value of retained land.</i> The Applicant states, in the summary of the case made at the DCO hearing on 21 February 2018 [REP1-015], that Section 7 of the 1961 Act does not apply to the authorised development and paragraphs (a) and (b) of Art 39 will apply instead.</p> <p>i. Would the Applicant explain why it is necessary or appropriate to apply the simplified provisions in the DCO instead of the national legislation?</p>	<p>The Applicant notes that this provision is extremely well precedented over many decades, having been included in Acts and TWAOs for Crossrail related projects; all DLR extensions; the Jubilee Line extension; Environment Agency flood barriers; recent tube station improvements such as Bank; tram extensions in Manchester, Nottingham, Croydon Leeds and Birmingham; the Barking Riverside London Overground extensions; and the Chiltern, Thameslink and Croxley rail projects.</p> <p>It was also included in the Thames Tideway, Preesall and River Humber Gas Pipeline DCOs and in the Transport and Works (Model Clauses for Railways and Tramways) Order 2006/1954. It can therefore be seen that the Government has felt it appropriate on numerous occasions that in the context of large infrastructure schemes, these simplified provisions are the most appropriate to ensure that such schemes can be built with certainty as to compensation.</p>
2.8.28	Applicant	<p><i>Art 41: Operation and maintenance of the authorised development.</i> The Applicant states, in the summary of the case made at the DCO hearing on 21 February 2018 [REP1-015], that Art 41 is not an extraordinary provision and has been used in a number of port DCOs.</p> <p>i. Would the Applicant provide examples and explain the rationale for the extensive permitted development (PD) rights given to ports?</p> <p>ii. Can the Applicant also identify which of the Art 41 works would not benefit from PD rights?</p> <p>iii. Although this article deals with operation and maintenance it appears to cover similar matters to ancillary works in Schedule 1 relating to construction works. Indeed, subparagraph 2 refers to construction as well as maintenance, whilst item (g) of the ancillary works refers to operation and maintenance. Given the definition of maintain in article 2, why is subparagraph 2 needed?</p>	<p>i. Successive Governments have seen fit to provide for permitted development (PD) rights to be available to ports. Most recently, the principle has been reaffirmed in Part 8 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015, which provides in Class B, PD rights for "<i>dock, pier, harbour, water transport, canal or inland navigation undertakings</i>". It is not for the Applicant to justify the policy behind the long standing principle that harbour undertakings should have PD rights. However, that said, the Applicant understands that the rationale for this long-standing policy flows from the desire within Government to ensure that harbour, dock etc undertakings are able to carry out the undertaking with which they have been entrusted pursuant to statute. The legislation that authorises a harbour (whether Act, harbour order or development consent order) authorises the existence of a harbour and harbour authority in the relevant location; it does not merely authorise a collection of structures and buildings that may be constructed at the outset. Harbours are ordinarily permanent creations with no contemplated lifespan or end-date. The harbour undertaking is empowered and intended to provide harbour facilities to meet demands; the nature of which and the use and trade that will flow through a harbour will change over time. The PD rights recognise that change and the evolutionary nature of a harbour undertaking and seek to accommodate it to a limited extent by providing PD rights for activities falling squarely within the nature of a harbour undertaking.</p> <p>ii. There is a slightly mistaken premise behind this question. The Part 8 PD rights referred to above attach to a harbour undertaking and are applicable to its operational land. As such there is no distinction between works powers in the DCO which have the benefit of PD rights and works powers which do not - the specification of works within the DCO is not relevant to the availability of Part 8 PD rights - all that is relevant is that a harbour undertaking has been created by the DCO.</p> <p>This would not put Tilbury2 in any different position to other harbour authorities - as the Applicant has already stated, provisions such as article 41 are common in harbour orders.</p> <p>It is also useful to reiterate the distinction between providing <i>statutory authority</i> for the carrying out and use of works or operations on the one hand and the need for planning permission for development on the other. Article 41 is only concerned with the former. The Part 8 PD rights will provide planning permission for harbour development undertaken by use of these powers, within certain parameters.</p>

SWQ	Question To	Question	Response
			<p>If the rationale set out in the context of PD rights in answer (i) above is accepted, i.e. that there is a need for harbours to evolve to meet the demand for a harbour in that location over time, then there is a on-going need for statutory authorisation for the activities listed in article 41. The need for this statutory authority is founded in various different aspects, for example: (a) the need to provide authority for interference with the public right of navigation that certain works or operations could present; (b) the need to ensure that PoTLL's open access duty does not frustrate the carrying out and maintaining of necessary works and operations; and (c) the need for PoTLL to be able to demonstrate that in carrying out and maintaining necessary works and operations, those works and operations are clearly part of the harbour undertaking and accordingly the cost of which may be recovered by way of the ship, passenger and goods dues which PoTLL will be authorised to levy.</p> <p>iii. Schedule 1 authorises the construction of the authorised development. The Ancillary Works in Schedule 1 are for purposes of or in connection with the <i>construction</i> of any of the works and other development mentioned listed in Schedule 1 only. Article 41(1) then provides for the operation and maintenance of the authorised development. Article 41(2) is to provide for the construction of works or carrying out of operations that are necessary to the operation of the harbour undertaking <i>on an on-going basis</i> but which are not necessarily for purposes of or in connection with the <i>construction</i> of the works listed in Schedule 1. To clarify further, we proposed to amend article 41(2) to read "For the purposes of operating its harbour undertaking within the extended port limits, the Company may from time to time..."</p>
2.8.29	Applicant	<p><i>Art 42: Power to appropriate.</i></p> <p>i. Art 42(2) - line 1 - "of" not "or"?</p>	The Applicant agrees and will revise the drafting accordingly in Revision 3 of the draft DCO.
2.8.30	Applicant	<p><i>Art 45: Byelaws relating to the extended port limits.</i></p> <p>i. Art 45(1) - who is the "confirming authority"?</p>	The confirming authority is the Secretary of State. The Applicant will consider whether this can be made clearer on the face of the Order in the drafting in Revision 3 of the draft DCO.
2.8.31	Applicant	<p><i>Art 46: Fixed penalty notices.</i></p> <p>i. As the justification for this article is the Silvertown Tunnel DCO, this has not yet been decided. The reference should be to the Local Government and Public Involvement in Health Act 2007, s130 of which inserts a new section into the Local Government Act 1972 concerning the abilities of local authorities to make byelaws. On what basis does the Applicant consider that the Secretary of State's powers extend to byelaws made other than by local authorities?</p> <p>ii. A46(7) and (10) - refer simply to payment being made by electronic means rather than definitions of app, credit and debit cards?</p>	<p>(i) The Silvertown Tunnel DCO has now been made with provision for fixed penalties. This is sufficient precedent for the powers which the Applicant is seeking.</p> <p>(ii) The references to the different forms of payment are based on The Road Safety (Financial Penalty Deposit) Order 2009 and the now made Silvertown DCO. The use of a credit card defers payment so it at least would not necessarily be captured by a reference to a payment by electronic means.</p>
2.8.32	Applicant	<p><i>Art 51: Consent to transfer benefit of Order.</i></p> <p>i. Art 51(6) - suggest delete. The</p>	Please refer to the PLA's response to these questions. We would be happy to add the EA to article 51(7).

SWQ	Question To	Question	Response
		<p>Secretary of State is unlikely to be directed as to whom he should consult;</p> <p>ii. Art 51(7) - also PLA and EA to be notified as well as MMO?</p>	
2.8.33	Applicant, Thurrock Council (TC), Highways England (HE)	<p><i>Art 52: Traffic regulation measures.</i></p> <p>i. Art 52 - in its summary of the case made at the DCO hearing on 21 February 2018 [REP1-015], the Applicant signposts where in the dDCO traffic regulation consultation is provided, stating also that TC would normally expect other bodies to be notified in consultation, and that HE reserves its position. Art 52 has been amended in revision 2 of the dDCO at deadline 3 [REP3-002]. Would the Applicant, TC and HE update the Examination on their positions with regard to Art 52?</p> <p>ii. Art 52(1)(b) - line 2 - "other" rather than "others"?</p> <p>iii. Art 52(3) - within the Order limits only?</p> <p>iv. Art 52(4) - would the Applicant confirm that it is the power to make traffic regulations not the continuing operation of regulations which is subject to the time limit?</p>	<p>i. The Applicant's position remains as set out in its Summary of Case of the February DCO hearing (REP1-015).</p> <p>ii. This change will be made in the next iteration of the DCO.</p> <p>iii. To restrict this power to the Order limits would mean that the power would not be able to be used for its intended purpose - i.e. to regulate traffic that could be affected by the construction of Tilbury2 in ways that could not be accounted for until detailed design. For example, it may be that during construction of the Fort Road bridge, a temporary weight limit will need to be applied whilst works to the bridge are completed. This would need to be applied to a northern section of Fort Road that stretches beyond the Order limits to then enable heavy goods vehicles to divert down an appropriate route. If the weight limit was only applied to the bridge itself, traffic would get to the bridge and then be stuck.</p> <p>iv. This is confirmed.</p>
2.8.34	Applicant, Thurrock Council, Gravesham Borough Council, Environment Agency, Port of London Authority, Marine Management Organisation (MMO)	<p><i>Art 57: Consents, agreements and approvals.</i></p> <p>The Applicant states, in the summary of the case made at the DCO hearing on 21 February 2018 [REP1-015], that an amendment would be made to A57(4) for clarity. The Applicant also seeks a guillotine period of 28 days for responses for consents, etc,</p> <p>i. Art 57(2) - do consenting bodies have any comments on the guillotine proposal - ie is 28 days sufficient for the local planning authority for example to carry out consultations?</p> <p>ii. Art 57(4) - should the last part of the revised text read "if it <i>had</i> been taken after this Order came into force"?</p>	<p>ii. This change will be made in the next iteration of the DCO.</p>
2.8.35	Applicant	<i>Schedule 1: Authorised Development -</i>	<p>i. There is deliberately no limit of the extent of the ancillary works except to the Order limits. This is because, as also</p>

SWQ	Question To	Question	Response
		<p><i>General.</i></p> <p>i. The Applicant states, in the summary of the case made at the DCO hearing on 21 February 2018 [REP1-015], that <i>'the works are labelled "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'</i>. There is nothing in the description of the ancillary works to limit their extent, and the Works Plans only delineate the areas within which the Works will take place. Would the Applicant explain why Schedule 1 does not define what may take place within those areas?</p> <p>ii. Several Works refer to "port facilities". This is imprecise and therefore can a more accurate description be provided of what these cover?</p> <p>iii. Work No. 5 - use CMAT abbreviation?</p> <p>iv. Work No. 8 (a) (i) - are "silo facilities" more than just a single silo and if so what do they contain? See also requirement 3 (3);</p> <p>v. Work No. 9(a) (ii) - should the reference be either to sheet 2 of the rights of way and access plans, or sheet 1 of the works plans?</p> <p>vi. Work No. 9(c) (i) and (ii) - "carries" not "carried"?</p> <p>vii. Work No. 10(a) - insert "and" between "highway" and "new"?</p> <p>viii. Ancillary Works (a) to (d) - why are these needed given Arts 8 and 10?</p> <p>ix. Ancillary works (v) and (x) (previously (x) and (z) respectively) still seem excessive despite the Applicant's explanation. Are they necessary, and if they are, can they not be more tightly constrained?</p>	<p>explained in REP1-015, these works could be needed across the site - the alternative would be to list the same ancillary works after every individual work, which is unnecessary and not in accordance with precedent (such as the Silvertown Tunnel Order 2018). As such each individual work will include the specified lettered paragraphs and also any of the ancillary works.</p> <p>ii. The term 'port facilities' is used as these Works involve the construction of the 'base' upon which the operational port will sit. This will include those elements set out in Schedule 1, but also future activities permitted through article 41 and the use of permitted development rights. As such, it would not be appropriate to change the wording to say that the 'base' is only for one specific use. The Applicant has grouped such ancillary works at the end of Schedule 1 in order to avoid including repeated mention of them within the descriptions of all or many of the individually numbered works. For instance, it would be necessary to include reference to ancillary works to 'place, alter, remove or maintain statutory undertakers' apparatus' (and/or street furniture) in the majority of the individually numbered works, if such ancillary works were not simply identified once, in the list of ancillary works. The Applicant's twin aims of keeping the descriptions of the main numbered works clear and simple, and avoiding unnecessary repetition in the drafting of Schedule 1, have driven its approach to the scoping of these ancillary works. In addition, the Applicant considers this approach to be prudent, in so far as it assists in providing the necessary flexibility to enable an implementable consent to be secured for a project which has not yet reached the detailed design stage.</p> <p>iii. This change will be made in the next iteration of the DCO.</p> <p>iv. See response to question 2.8.37 below.</p> <p>v. The reference should be to sheet 2 of the rights of way and access plans. This change will be made in the next iteration of the DCO.</p> <p>vi. This change will be made in the next iteration of the DCO.</p> <p>vii. A change will be made in the next iteration of the DCO so that (a) reads: 'the construction of a new bridge over new highway and new railway (Work No. 9A and Work No. 12)' tying into the existing bridge over the London to Tilbury railway line'.</p> <p>viii. These powers are needed to ensure that the full scope of the street powers available to the Applicant are understood. In particular paragraphs (a), (c) and (d) go much further than the drafting in articles 8 and 10.</p> <p>ix. The Applicant considers that being limited to the Order limits and not leading to significant adverse effects that have not been assessed in the ES are the only controls that could be placed on these controls, which are designed to provide flexibility. It should be noted that as they appear in Schedule 1, they are also limited to the construction phase. The wording proposed here has been recently approved by the Secretary of State in the Silvertown Tunnel Order 2018, a project which involved a large scale tunnelling project in an urban environment - the Applicant submits that if such wording can be approved in that context, it can be accepted for Tilbury2.</p>
2.8.36	Applicant	Schedule 2: <i>Part 1, Requirements - R1: Interpretation.</i> The Applicant states, in the summary of the case made at the DCO hearing on 21 February 2018 [REP1-015], that <i>"ordnance datum will vary at different points</i>	The Applicant will update the definition of AOD in Schedule 2 Part 1 to the dDCO to <i>"means above ordnance datum (Newlyn)"</i> . The reference to Newlyn ensures that there is a single reference datum which allows levels to be checked against a national horizontal plane. This accords with the chart datum used by the Port of London Authority.

SWQ	Question To	Question	Response
		<p><i>across the country, and universal practice is not to define it". However, in the examples given, ordnance datum is defined as "ordnance datum means the datum line or mean sea level to which all heights are referred in the Ordnance Survey".</i></p> <p>i. Would the Applicant explain why such a definition has not been included?</p>	
2.8.37	Applicant, Thurrock Council (TC), Historic England (Hist E)	<p><i>Schedule 2: Part 1, Requirements - R3: External appearance and height of authorised development.</i> In its summary of the case made at the DCO hearing on 21 February 2018 [REP1-015], the Applicant states its position on why other elements of the authorised development are not subject to detailed approval. TC defers its position, and Hist E wishes to be involved in the approval process. R3 has been amended at deadline 3.</p> <p>i. Would the Applicant, TC and Hist E state their current positions on this matter?</p> <p>ii. At 3(1) line 2 following (f) - "works have" rather than "works has".</p> <p>iii. At 3(1)(d) and (e) - reference to "facilities" is imprecise.</p>	<p>i. The Applicant notes that changes were made to this requirement at Deadline 3 to include ancillary buildings and the proposed warehouse. Since then, the Applicant has shared suggested palletes and material specifications with Historic England and TC with the intention that this requirement would be linked to them. Comments from these parties are awaited, and an update on this will be set out in the updated SoCG to be submitted prior to the June hearings.</p> <p>ii. This change will be made in the next iteration of the DCO.</p> <p>iii. The 'facilities' here are the same as those indicated in Schedule 1. As set out in the response to agenda item 59 of the February DCO hearing (REP1-015), the silo facilities here are connected to the processing facilities. The detailed design of these is not known at this stage, and so the number and precise location of silo facilities is also not known. The appearance of both of these sets of facilities is otherwise controlled through the operation of the limits of deviation and other requirements in the DCO. 'Facilities' is felt to be appropriate as this means that the requirement will bite on all types of silo and processing facilities that could be constructed at the CMAT.</p>
2.8.38	Applicant	<p><i>Schedule 2: Part 1, Requirements - R5: Offsite mitigation.</i> The Applicant states, in the summary of the case made at the DCO hearing on 21 February 2018 [REP1-015], that R5 would be re-written to account for the content of the Ecological Management and Compensation Plan (EMCP).</p> <p>i. Would the Applicant insert a reference to Ecological Management and Compensation Plan (EMCP) at 5(1).</p> <p>ii. Rather than "provided and implemented", should R5(3) say "provided, managed and maintained" for consistency and certainty?</p>	<p>i. Paragraphs 2.5. and 2.6 of the Ecology Note submitted at Deadline 3 [REP3-017) explain the interaction of this requirement and the EMCP. Until the EMCP is finalised, it cannot be a certified document to which this requirement can relate. As such, the wording cannot change until it is finalised. If it not able to be finalised before the end of the Examination, 'written details' will still need to be approved and so the protection secured through the DCO is not lost.</p> <p>ii. This change will be made to the next iteration of the DCO.</p>
2.8.39	Applicant	<p><i>Schedule 2: Part 1, Requirements - R6: Terrestrial written scheme of archaeological investigation.</i> Does the Applicant agree with Historic England's proposed expansion of this</p>	<p>The draft Terrestrial WSI submitted at Deadline 3 is a robust document which addresses all the requirements set out in Historic England's recommended wording of the DCO submitted at Deadline 3. Consequently the Applicant still considers it would be unnecessary duplication if the wording within the draft WSI was also used in the DCO.</p> <p>The following table shows Historic England's recommended wording and where this is duplicated in the draft WSI:</p>

SWQ	Question To	Question	Response								
		requirement to cover terrestrial archaeology set out in its submission at deadline 3 [REP3-044]?	<table border="1"> <thead> <tr> <th>Historic England's recommended wording</th> <th>Draft WSI</th> </tr> </thead> <tbody> <tr> <td>No archaeological investigations shall be carried out until a method statement, which shall accord with the approved Archaeological Scheme of Investigation (WSI), is submitted to and approved by the relevant planning authority in consultation with the HBMCE.</td> <td>The due process relating to the approval of the individual method statements by the relevant authorities is set out in paragraph 1.4 and 1.5</td> </tr> <tr> <td>The authorised investigations shall be carried out in accordance with the approved details by a suitably qualified person or persons.</td> <td>There is requirement in the WSI that the archaeological contractor will be the same throughout the project (paragraph 1.6). The WSI also highlights that the works will be undertaken by suitably qualified persons (paragraph 8.1)</td> </tr> <tr> <td>No ground works which are subject to a requirement for archaeological investigations can commence until the archaeological mitigation measures have been implemented in accordance with the approved method statement.</td> <td>The WSI makes it clear that no package of construction can commence until the archaeological mitigation measures for that package have been implemented in accordance with the approved archaeological method statements (paragraph 1.2).</td> </tr> </tbody> </table>	Historic England's recommended wording	Draft WSI	No archaeological investigations shall be carried out until a method statement, which shall accord with the approved Archaeological Scheme of Investigation (WSI), is submitted to and approved by the relevant planning authority in consultation with the HBMCE.	The due process relating to the approval of the individual method statements by the relevant authorities is set out in paragraph 1.4 and 1.5	The authorised investigations shall be carried out in accordance with the approved details by a suitably qualified person or persons.	There is requirement in the WSI that the archaeological contractor will be the same throughout the project (paragraph 1.6). The WSI also highlights that the works will be undertaken by suitably qualified persons (paragraph 8.1)	No ground works which are subject to a requirement for archaeological investigations can commence until the archaeological mitigation measures have been implemented in accordance with the approved method statement.	The WSI makes it clear that no package of construction can commence until the archaeological mitigation measures for that package have been implemented in accordance with the approved archaeological method statements (paragraph 1.2).
Historic England's recommended wording	Draft WSI										
No archaeological investigations shall be carried out until a method statement, which shall accord with the approved Archaeological Scheme of Investigation (WSI), is submitted to and approved by the relevant planning authority in consultation with the HBMCE.	The due process relating to the approval of the individual method statements by the relevant authorities is set out in paragraph 1.4 and 1.5										
The authorised investigations shall be carried out in accordance with the approved details by a suitably qualified person or persons.	There is requirement in the WSI that the archaeological contractor will be the same throughout the project (paragraph 1.6). The WSI also highlights that the works will be undertaken by suitably qualified persons (paragraph 8.1)										
No ground works which are subject to a requirement for archaeological investigations can commence until the archaeological mitigation measures have been implemented in accordance with the approved method statement.	The WSI makes it clear that no package of construction can commence until the archaeological mitigation measures for that package have been implemented in accordance with the approved archaeological method statements (paragraph 1.2).										
2.8.40	Applicant	<p><i>Schedule 2: Part 1, Requirements - R10: Noise monitoring and mitigation.</i> This requirement [REP3-002] refers to the first operational use of Works 1 to 8.</p> <ul style="list-style-type: none"> <li>i. Would the Applicant explain why Works 9 to 12 are not also included?</li> <li>ii. Add "inclusive" after "Work Nos. 1 to 8" at 10(1) and (3)?</li> <li>iii. Should 10(3) read "in consultation with Gravesham Borough Council" rather than "and Gravesham Borough Council"?</li> </ul>	<ul style="list-style-type: none"> <li>i. Works 9 to 12 (the infrastructure corridor and the Asda roundabout) are not included in this requirement as no significant impacts were assessed to result from these works (as set out in the ES) such that the regime created by this requirement is needed. In any event, noise from the infrastructure corridor is mitigated through the noise barriers required by requirement 9.</li> <li>ii. This change will be made to the next iteration of the DCO.</li> <li>iii. Given that the ES identifies significant impacts it was felt appropriate for Gravesham to approve this scheme as well as Thurrock, rather than to just be consulted by Thurrock.</li> </ul>								
2.8.41	Thurrock Council (TC)	<p><i>Schedule 2: Part 1, Requirements - R13: Interpretation (re procedure for discharge of requirements).</i> In its summary of the case made at the DCO hearing on 21 February 2018 [REP1-015], the Applicant states its rationale for employing s60 and s61 of the Control of Pollution Act 1974, and TC states that it will respond in writing via its Environmental Health Officer.</p> <ul style="list-style-type: none"> <li>i. Would TC state its current position on this matter?</li> </ul>	This question is not directed at the Applicant.								
2.8.42	Applicant	<i>Schedule 2 Part 2, Paragraph 16 (2)</i> – would the Applicant state the justification for a bespoke appeals process, rather than simply importing articles 78 and 79 of the Town and Country Planning Act 1990?	<p>The appeal process set out in Schedule 2 Part 2, Paragraph 16 (2) has been used previously in a number of DCOs, including in the recent Silvertown Tunnel Order 2018. This appeal process seeks to reflect the nature of the DCO regime. It is designed to promote efficiency and to resolve the issue in hand in an expeditious manner.</p> <p>In light of the above, the Applicant considers that this appeal process is more appropriate than the Town and Country Planning Act 1990 process.</p>								
2.8.43	Applicant,	<i>Schedule 3: Classification of roads, etc.</i> The	i. The Applicant and TC have had a productive discussion as to classification of roads, and the Applicant understands that								



SWQ	Question To	Question	Response
	Thurrock Council (TC)	<p>Applicant states, in the summary of the case made at the DCO hearing on 21 February 2018 [REP1-015], that discussions are ongoing with TC.</p> <ul style="list-style-type: none"> <li>i. Would the Applicant and TC state the current position on the status of Schedule 3?</li> <li>ii. Why are the subheadings uppercase?</li> </ul>	<p>TC is in the main content with the proposed classifications, but has raised a query as to the interaction of the proposed classifications and the powers of the police in the local area. The Applicant is awaiting further information from TC and will then determine whether any changes need to be made.</p> <ul style="list-style-type: none"> <li>ii. The DCO will be amended to change this to lowercase in the revised DCO to be submitted a week before the June hearings.</li> </ul>
2.8.44	Applicant, Thurrock Council (TC), Highways England (HE)	<p><i>Schedule 4: Permanent stopping up of highways and private means of access &amp; provision of new highways and private means of access.</i> The Applicant states, in the summary of the case made at the DCO hearing on 21 February 2018 [REP1-015], that it would be preferable to discuss this with TC as part of the wider discussions on the Active Transport Study, and that the schedule was also being discussed with HE.</p> <ul style="list-style-type: none"> <li>i. Would the Applicant, TC and HE state the current position on the status of Schedule 4?</li> <li>ii. Private means of access – as comment relating to Art 12;</li> <li>iii. Line 1 - delete "In--- plans".</li> </ul>	<ul style="list-style-type: none"> <li>i. and ii – See response to question 2.8.10</li> <li>iii. The DCO will be amended to remove the superfluous wording in the revised DCO to be submitted a week before the June hearings.</li> </ul>
2.8.45	Applicant, Port of London Authority (PLA)	<p><i>Schedule 7: Port premises byelaws.</i> The Applicant states, in the summary of the case made at the DCO hearing on 21 February 2018 [REP1-015], that PLA was largely content with what was included but needed to review it in more detail.</p> <ul style="list-style-type: none"> <li>i. Would the Applicant and PLA update the Examination on the status of their discussions on Schedule 7?</li> <li>ii. Would the Applicant state whether these byelaws simply replicate the existing port byelaws? If not, how do they relate to them operationally?</li> <li>iii. As with Art 45, Would the Applicant state who is the confirming authority?</li> </ul>	<ul style="list-style-type: none"> <li>(i) Please refer to the PLA's response.</li> <li>(ii) The byelaws have been drafted specifically in respect of Tilbury2. They are wholly different to the byelaws applying to the docks system comprising Tilbury 1, reflecting the different location and nature of the Tilbury 2 facility.</li> <li>(iii) The confirming authority is the Minister (i.e. the Secretary of State for Transport). The Applicant acknowledges that this is not clear on the face of article 45 and therefore proposes to add a definition at the end of the article.</li> </ul>
2.8.46	Applicant, Thurrock Council	<p><i>Schedule 8: Traffic Regulation Measures, etc.</i> The Applicant states, in the summary of the case made at the DCO hearing on 21 February</p>	<p>i. A meeting will be held on 24 May with the relevant TC officer to discuss the details of this Schedule and the accompanying plan. The results of this meeting will be noted in the SoCG to be submitted a week prior to the hearings, and any revisions that prove to be necessary to the DCO will be made at Deadline 4.5.</p>

SWQ	Question To	Question	Response
	(TC), Highways England (HE)	<p>2018 [REP1-015], that TC was not entirely content with Schedule 8 as drafted, and that HE stated that some traffic regulation measures would need to be changed in relation to the Asda roundabout.</p> <ul style="list-style-type: none"> <li>i. Would the Applicant, TC and HE update the Examination on the status of their discussions on Schedule 8?</li> <li>ii. Delete "speed limit to be imposed" from each entry in column 2.</li> </ul>	<ul style="list-style-type: none"> <li>ii. This change will be made to the next iteration of the DCO.</li> </ul>
2.8.47	Applicant, Marine Managem ent Organisati on (MMO)	<p><i>Schedule 9: Deemed marine licence (DML).</i> The Applicant states, in the summary of the case made at the DCO hearing on 21 February 2018 [REP1-15], that discussions are ongoing with MMO on the DML. Submissions at deadline 3 relate.</p> <ul style="list-style-type: none"> <li>i. Would the Applicant and MMO update the Examination on the status of their discussions on Schedule 9?</li> <li>ii. The heading above Part 1 paragraph 2 should be bold;</li> <li>iii. Removal of maintenance dredging from Part 1 paragraph 3(1)(a) of the DML as a marine licensable activity is explained by the Applicant as reflecting the agreed position with the MMO. However, the deadline 3 submission from the MMO [REP3-043] says that both the MMO and the PLA agree maritime dredging should be controlled within the protective provisions for the PLA and the DML. Can the Applicant and MMO please clarify the position?</li> <li>iv. Part 2 paragraphs 11 and 12 - insert "construction" before several references to "method statement";</li> <li>v. The draft SoCG between the Applicant and MMO [REP3-028] states that the 14-hour non-piling window has been added to the draft Deemed Marine Licence (DML). ExA cannot locate reference to the 14-hour non-piling window in Part 2 paragraph 13 of the DML. Would the Applicant and MMO state whether it is to be explicitly referenced or just controlled through the piling method statement?</li> </ul>	<ul style="list-style-type: none"> <li>i. The Applicant and the MMO continue to discuss the provisions of the DML. The Applicant has read the MMO's Deadline 3 submission [REP3-043] and considers that there are issues which require further discussion between the parties. It was therefore suggested by the Applicant to the MMO that a further call or meeting is set up between the parties including the MMO and its legal advisers in order to make progress on the remaining issues and in particular the position in relation to maintenance dredging, the exemption under section 75(3) of the Marine and Coastal Access Act 2009 and the background legislation and the 1992 Transfer Scheme. The Applicant is hoping that such discussions will be held shortly and that it will therefore be in a position to make agreed amendments to the DML in Revision 3 of the draft DCO following the outcome of such discussions.</li> <li>ii. Agreed - the Applicant agrees and will amend Revision 3 of the draft DCO accordingly.</li> <li>iii. As set out at (i) above, the Applicant is still in discussions with the MMO in relation to this point. The Applicant had understood that the position was agreed following a previous meeting between the parties however it is now understood that this was a miscommunication and the MMO does not accept this position. The Applicant is eager to reach an agreed position soon. The PLA is content that maintenance dredging should be controlled through the DCO's protective provisions with a number of amendments that have been agreed, rather than under the 1968 Act.</li> <li>iv. Agreed - the Applicant will amend Revision 3 of the draft DCO accordingly.</li> <li>v. Condition 13(2) refers to: "No piling which is a licensed activity may be carried out between the hours of [time-night]." A placeholder has been left for the specific hours to be inserted which have been agreed as 18:00 to 08:00 i.e. the 14 hour restriction that has been suggested. The Applicant will amend Revision 3 of the draft DCO to include such hours.</li> <li>vi. Please see the response above at (v) in relation to the proposed restriction.</li> <li>vii. The Applicant considers that the limits to the hours of working requested by the MMO (i.e. marine piling only to take place during 08.00-18.00h), are acceptable and will be reflected in the CEMP[REP3-011] and DML as set out at (v) above. This ensures that there will be a non-piling window of at least 14 hours per day.</li> </ul> <p>In addition to these daily piling restrictions, Natural England has proposed additional seasonal piling restrictions to avoid disturbance to overwintering birds during the September – end March period [REP1-074, REP3-042]. Natural England has made reference to disturbance of birds having arisen as a result of piling works at Goshem's Farm Jetty [REP-042], and it is understood that this experience has informed Natural England's recommendation to employ seasonal timing restrictions for Tilbury2. However, no data has been presented by Natural England to support this recommendation, and it is the Applicant's view that seasonal timing of piling is unnecessary: the HRA Stage 1 screening assessment undertaken by the Applicant concluded no likely significant effect on overwintering birds even without seasonal piling restrictions (in respect of Thames Estuary and Marshes SPA / Ramsar Site citation species, including those using functionally linked land outside</p>

SWQ	Question To	Question	Response				
		<p>vi. The MMO has requested that Part 2 paragraph 13 should be updated to reference hours of week/weekend during which piling will not take place. Would the Applicant please advise when this will be done?</p> <p>vii. Part 2 paragraph 13 – what are the Applicant’s views about restricting piling between September and March to avoid disturbance to overwintering birds as identified by Natural England, and limits to hours of working as requested by the MMO?</p> <p>viii. Part 2 paragraph 14 – should there be additional references to boundaries and WID for example?</p> <p>ix. Part 2 paragraph 14 - what are the Applicant’s views about restricting maintenance dredging between September and March and capital dredging between July and April, to allow sediment to settle and so avoid disturbance to overwintering birds as identified by Natural England in its Written Representation [REP1-074]?</p> <p>x. Part 2 paragraph 14 – the maximum dredging depth should be referred to here as determined on the basis of sediment sampling to be carried out every 3 years under paragraph 12;</p> <p>xi. Part 2, paragraph 15, would the Applicant please provide revisions to the marine Written Scheme of Investigation to meet the request of Historic England set out in its submissions at deadline 3 [REP3-044];</p> <p>xii. Part 3, paragraph 28 (1) and (2), would the Applicant state why it has inserted “as reasonably practicable after” rather than a time limit as originally drafted?</p>	<p>of the Site) [APP-060]; and a conclusion of no adverse effect on integrity of the Site was reached during HRA Stage 2 (appropriate assessment) (document reference PoTLL/T2/EX/99). Therefore, in regards to the seasonal piling restriction, it is the PoTLL’s view, that such a restriction should not be applied. The piling programme requires to be broad to accommodate the construction programme, with a possible piling envelope of up to a year. Nonetheless, so as to offer additional security and reassurance to Natural England, and in view of NE’s request for ongoing monitoring of overwintering birds, the PoTLL has committed to undertake regular monitoring of the site through a forthcoming ‘Bird Monitoring and Action Plan’ (BMAP; further details to be provided at deadline 5).</p> <p>viii. Condition 14 is currently being reviewed by the Applicant and this point will be discussed in more detail with the MMO.</p> <p>ix. It is PoTLL's view that such a restriction will not be necessary or appropriate, as the HR Wallingford report on sediment modelling [APP-089] evidences that:</p> <p style="padding-left: 40px;"><i>‘A consequence of the WID methodology is that the sediment plume is predicted to mostly be confined to the subtidal areas with limited increase in suspended sediment concentration or sediment accumulation on the intertidal areas [the area functionally linked to the overwintering birds]’, and that:</i></p> <p style="padding-left: 40px;"><i>‘The simulations have shown that the landward extent of any influence of the dredging can be significantly limited by dredging being restricted to the ebb tide’.</i></p> <p>Natural England has confirmed that the HR Wallingford report has been considered in drawing up its Written Representations [e.g. REP1-074] in relation to the Applicant’s Stage 1 HRA report, but has volunteered (in correspondence dated 30 April 2018) to re-examine this information and confirm its view.</p> <p>x. The Applicant will consider this suggestion in conjunction with the MMO.</p> <p>xi. See below.</p> <p>xii. The Applicant amended the time limit in response to comments from the MMO at a meeting between the parties in February 2018. The MMO stated that it cannot accept the restricted time periods included. The Applicant pointed out that if the time periods are not met then this would lead to a deemed refusal as opposed to a deemed approval however the MMO stated that this was not a satisfactory situation as it wishes to be given the opportunity to work with the Applicant and to approve as far as possible.</p> <p><u>Response to xi</u></p> <p>The revised Marine Written Scheme of Investigation is being submitted at Deadline 4 following detailed comments received from Historic England ahead of Deadline 3.</p> <p>The draft WSI is a robust document which addresses all the requirements set out in Historic England’s recommended wording of the DML submitted at Deadline 3. Consequently the Applicant still considers it would be unnecessary duplication if the wording within the draft WSI was also used in the DML.</p> <p>The following table shows Historic England’s recommended wording and where this is duplicated in the draft WSI:</p> <table border="1" data-bbox="1190 1829 2893 1892"> <thead> <tr> <th data-bbox="1190 1829 1941 1864">Historic England’s recommended wording</th> <th data-bbox="1949 1829 2893 1864">Draft WSI</th> </tr> </thead> <tbody> <tr> <td data-bbox="1190 1864 1941 1892">A written scheme of archaeological investigation in</td> <td data-bbox="1949 1864 2893 1892">The draft Written Scheme of Investigation covers the Order Limits</td> </tr> </tbody> </table>	Historic England’s recommended wording	Draft WSI	A written scheme of archaeological investigation in	The draft Written Scheme of Investigation covers the Order Limits
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SWQ	Question To	Question	Response
			<p>relation to the Order limits seaward of mean low water, which must be submitted at least six months prior to commencement of the licensed activities and should accord with the draft written scheme of investigation and industry good practice, in consultation with Historic England and the relevant planning authority to include</p>
			<p>seaward of mean high water (intertidal and marine zone within order limits) and it is intended for the WSI to be approved by the MMO in consultation with Historic England in their role as Historic Environment advisor to the MMO ahead of provision of the DCO. The WSI will therefore form a certified document within the DCO. Subsequent task specific archaeological method statements will be prepared in advance of licensed activities. Method Statements will be submitted to Historic England for initial approval before submitting to the MMO. Approval by Historic England will be assumed if no contrary response is received within 15 working days of submission (paragraph 9.3.2). Method Statements will be submitted to MMO 6 weeks in advance of works commencing (paragraph 8.1.2). This is the timescale that MMO has advised for submission of a method statement and turning around an approval. The method statements will accord with the WSI.</p>
			<p>(i) details of responsibilities of the undertaker, archaeological consultant and contractor;</p>
			<p>The WSI confirms at section 4 the roles and responsibilities of the applicant, the curator, the environmental consultant, the contractor and the Retained Archaeologist</p>
			<p>(ii) a methodology for further site investigation including any specifications for geophysical, geotechnical and diver or remotely operated vehicle investigations;</p>
			<p>General methodologies for each mitigation measure are included in the draft WSI in section 7 and section 9, 10, 11 and 12. Ahead of each package of work a separate method statement will define in more detail the specification of the works to be undertaken as set out in section 8.</p>
			<p>(iii) archaeological analysis of survey data, and timetable for reporting, which is to be submitted to the MMO within three months of any survey being completed;</p>
			<p>The WSI includes provision for analysis of survey data and a timescale for submitting reports. After each phase of fieldwork the report will be submitted to Historic England within 4 weeks of completion of fieldwork and approval by Historic England will be assumed if no contrary response is received within 15 working days of submission (paragraph 9.5.8) Once approved the report will be submitted to the MMO on completion of each phase of fieldwork (paragraph 9.5.8). Following all phases of work an overarching report will be prepared which will set out the timetable for final analysis and publication of results (paragraphs 9.5.9 – 9.5.15).</p>
			<p>(iv) any archaeological reports produced in accordance with these conditions are to be agreed with the Historic England and the relevant planning authority.</p>
			<p>The WSI states that archaeological reports will need to be approved by Historic England and the MMO in paragraph 9.5.8.</p>
			<p>(v) delivery of any mitigation including, where necessary, identification and modification of archaeological exclusion zones;</p>
			<p>General methodologies for each mitigation measure are included in the draft WSI in section 7 and section 9, 10, 11 and 12. Ahead of each package of work a separate method statement will define in more detail the specification of the works to be undertaken as set out in section 8. Reference to identification of Archaeologic Exclusion zones is in Table 4 of the WSI and 9.13.18.</p>
			<p>(vi) monitoring of archaeological exclusion zones during and post construction;</p>
			<p>Reference to identification and monitoring of Archaeologic Exclusion zones is in Table 4, 9.6.3 and 9.13.18. of the WSI</p>
			<p>(vii) a requirement for the undertaker to ensure that a copy of any agreed archaeological report is deposited with the National Record of the Historic Environment, by submitting a Historic England OASIS (Online Access to the Index of archaeological investigations) form with a</p>
			<p>The archiving of future reports in the NRHE is included in paragraph 9.5.18 of the WSI</p>

SWQ	Question To	Question	Response
			digital copy of the report within six months of completion of construction of the authorised scheme, and to notify the MMO and the relevant planning authority that the OASIS form has been submitted to the National Record of the Historic Environment within two weeks of submission;
			(viii) a reporting and recording protocol, including reporting of any wreck or wreck material during construction and operation of the authorised scheme;
			(ix) a timetable for all further site investigations, which must allow sufficient opportunity to establish a full understanding of the historic environment within the Order Limits and the approval of any necessary mitigation required as a result of the further site investigations prior to commencement of licensed activities. The Consent Holder shall not commence construction of a relevant work until the Consent Holder has appointed the Retained Archaeologist to ensure the delivery of the Scheme; and carried out the pre-construction archaeological work applicable to that relevant work. During construction of a relevant work, the Consent Holder will secure the implementation of the measures on its part set out in or from time to time agreed pursuant to the Scheme applicable to that relevant work (other than the pre-construction and the post-construction archaeological work).
			x) Following the completion of construction of a relevant work, the Consent Holder will secure the implementation of all the post-construction archaeological work applicable to that relevant work; and
			(xi) Any work executed or undertaken by or on behalf of the Consent Holder in accordance with the Scheme approved or deemed to be approved by MMO shall not relieve the Consent Holder of any liability
			2.2.5 Plans and documentation (i) Pre-construction archaeological investigations and pre-commencement material operations which involve intrusive seabed works must only take place in accordance with a specific written scheme of investigation which has been submitted to and approved by the MMO.
			(ii) Each programme, statement, plan, protocol or scheme required to be approved under Condition 2 must be submitted for approval at least four months prior to

SWQ	Question To	Question	Response								
			<p>the intended commencement of licensed activities, except where otherwise stated or unless otherwise agreed in writing by the MMO.</p> <p>days of submission (paragraph 9.3.2). Method Statements will be submitted to MMO 6 weeks in advance of works commencing (paragraph 8.1.2). This is the timescale that MMO has advised for submission of a method statement and turning around an approval. The method statements will accord with the WSI.</p> <p>After each phase of fieldwork the assessment report will be submitted to Historic England within 4 weeks of completion of fieldwork and approval by Historic England will be assumed if no contrary response is received within 15 working days of submission (paragraph 9.5.8) Once approved the report will be submitted to the MMO (paragraph 9.5.8). Following all phases of work an overarching report will be prepared which will set out the timetable for final analysis and publication of results (paragraphs 9.5.9 – 9.5.15).</p>								
			<p>The Applicant notes that Historic England has made other comments on the marine WSI in their Deadline 3 responses which we respond to as follows:</p> <table border="1"> <thead> <tr> <th data-bbox="1202 898 1941 930">Historic England Comment</th> <th data-bbox="1941 898 2890 930">Response</th> </tr> </thead> <tbody> <tr> <td data-bbox="1202 930 1941 1266"> <p>Para 2.2.2</p> <p>We also add that in every Nationally Significant Infrastructure Project to date, the applicant has prepared, in advance of examination, a draft or outline marine WSI that reflects the design envelope approach for how the project might be delivered and that the draft deemed Marine Licence includes specific provision for the production of a WSI, post-consent, to be prepared in consultation with Historic England and agreed with the MMO.</p> </td> <td data-bbox="1941 930 2890 1266"> <p>The WSI in this instance also reflects the design envelope approach and the draft DML sets out the provision for all works to be undertaken in accordance with this document. 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<p>Para 2.2.7</p> <p>We acknowledge the response offered by the consultant acting on behalf of the Applicant in response to this question. However, it is not apparent to us how the</p>	<p>HR Wallingford’s report (APP-089) demonstrates that there are no hydrodynamic or sedimentation effects shown in this area of the Tilbury Fort foreshore, so any effects will be small and probably not detectable</p>										

SWQ	Question To	Question	Response
			<p>technical report entitled Hydrodynamic Sediment Modelling (ES Appendix 16.D, Ref: 6.2 16.D) has considered the effects that with some elements of the capital dredge programme conducted by Water Injection Dredging on the ebb tide might influence foreshore levels adjacent to Tilbury Fort. We therefore recommend that provision should be made to include a monitoring programme that establishes foreshore elevation levels at Tilbury Fort against which any changes can be measured before, during and after completion of the proposed capital dredge programme. An appropriate cross reference should also be included within the draft Construction Environmental Management Plan (Ref: Ref: POTLL/T2/EX/39).</p> <p>in natural variation. The modelling does show some changes towards erosion close to the eastern end of the fort foreshore (see Fig 3.11 of the Wallingford report) which may be associated with very local changes to slopes in the dredged berth but after a small adjustment of slopes this should reach a new equilibrium. Currently the model says there is a mix of erosion on the low water line but accretion further up the foreshore. If the area is eroding naturally overall then a proportion of that eroded material will contribute to the infill of the dredging berths, however there is plenty of sediment movement in this area so this contribution will be very small. The Water Injection Dredge will retain material in the sediment system and therefore will not result in any loss of sediment from the area round the foreshore.</p> <p>Based on this evidence it is not considered that a monitoring programme is needed along the Tilbury Fort foreshore.</p>
2.8.48	Applicant, Port of London Authority (PLA), Environment Agency (EA), Thurrock Council (TC), Network Rail (NR), Highways England (HE), RWE Engineering (RWE), Anglian Water (AW), Cadent	<p><i>Schedule 10: Protective provisions.</i> The Applicant summarises, in the summary of the case made at the DCO hearing on 21 February 2018 [REP1-015], the position with regard to the protective provisions with PLA, EA, TC (drainage interests), NR, HE &amp; TC (highway interests), RWE, AW and Cadent. Revision 2 of the dDCO at deadline 3 [REP3-002] contains amendments to Schedule 10 Parts 3 (PLA) and 7 (TC&amp;HE).</p> <ol style="list-style-type: none"> <li>i. Would the Applicant and other parties state their positions regarding the protective provisions?</li> <li>ii. The Applicant is requested to provide a revised version of the dDCO to include all the protective provisions in Schedule 10 a week before the hearings scheduled for the end of June 2018;</li> <li>iii. With regard to Part 1 of Schedule 10, several of the protective provisions contain a provision similar to paragraph 5 which has the effect of neutralising the compulsory acquisition and temporary possession powers. What is the justification for such a provision in the light of the powers included in Part 3 <i>Powers of acquisition and possession of land</i> of the Order?</li> </ol>	<p>(i)</p> <p><b>PLA:</b> Discussions have progressed very effectively. Only minor issues remain outstanding on the DCO including the Protective Provisions and both parties believe that by the time a revised version of the dDCO is submitted the PLA Protective Provisions will be in an agreed form.</p> <p><b>EA:</b> Please see the Applicant's response to SWQ 2.8.14(i).</p> <p><b>Thurrock Council (drainage interests):</b> Protective Provisions in the dDCO. The Applicant understands that Thurrock Council will shortly confirm to what extent they are agreed.</p> <p><b>NR:</b> the form of the Protective Provisions is largely agreed with only a handful of issues still under discussion.</p> <p><b>Highways England and Thurrock Council (highway interests):</b> discussions have been held with both highway authorities and are ongoing. In the case of Highways England, we await detail on the amendments that it wishes to be incorporated in the Protective Provisions. Thurrock Council has put forward amendments to the Protective Provisions and these are now the subject of negotiation.</p> <p><b>RWE:</b> Draft Protective Provisions have been prepared and are the subject of discussions between the parties.</p> <p><b>Anglian Water:</b> Draft Protective Provisions have been included in the dDCO. The Applicant is not aware of any concerns Anglian Water has regarding them.</p> <p><b>Cadent:</b> Excellent progress has been made in negotiating the Protective Provisions and only minor points of detail remain outstanding.</p> <p>(ii) Noted and agreed.</p> <p>(iii) Protective Provisions have traditionally operated to afford statutory undertakers protection from the threat of compulsory acquisition. The constraints they impose reflect the privileged status that statutory undertakers enjoy as delivers of vital public services which they are authorised by statute to provide. The privileged status enjoyed by statutory undertakers is underlined by the fact that specific provision is made for the acquisition of their land and rights in land in article 34 (which is also amply precedented) and the PPs themselves. The powers to acquire and to extinguish rights (and remove essential apparatus) in article 34 are made subject to constraints afforded in the Protective Provisions. There is</p>

SWQ	Question To	Question	Response
			nothing novel, unusual or unjustified in the approach that the Applicant has adopted.
2.8.49	Highways England (HE)	Unless agreement has been reached between the Applicant and HE, HE is requested to set out what specific changes it is seeking to the dDCO a week before the hearings scheduled for the end of June 2018.	This question is not directed to the Applicant.
2.8.50	Applicant	Further to the Applicant's Note on Protective Provisions for the Benefit of Highways England submitted at deadline 3 [REP3-022], why is a s278 agreement for works to the Asda roundabout (and any other works which may be needed pursuant to the Order) unacceptable to the Applicant?	The purpose in applying for the Order is to wrap up all necessary authorisations without the need for involving other consents and statutory processes. The policy intention of the Planning Act was to provide, as much as possible, a one-stop shop for all construction-related consents. It is, however, possible for a highway authority to replicate relevant provisions in agreements made under the authority of section 278 in its conditions imposed under the Protective Provisions. The Applicant, however, regards it as of paramount importance that the Asda roundabout works are given statutory authority by the Order and so can be undertaken without a further primary consent, such as a s278 Agreement. Again, this approach is far from novel.
2.8.51	Highways England (HE)	Which other parts of the SRN is HE concerned about in relation to Tilbury 2, other than the Asda Roundabout and M25 J30?	This question is not directed to the Applicant.



## 2.9 DREDGING AND NAVIGATION

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SWQ	Question to:	Question:	Response:
2.9	<b>Dredging and Navigation</b>		
2.9.1	No questions were asked on this topic.		

## 2.10 ENGINEERING AND DESIGN

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SWQ	Question to:	Question:	Response:
2.10	<b>Engineering and Design</b>		
2.10.1	No questions were asked on this topic.		

## 2.11 HABITATS REGULATION ASSESSMENT

SWQ	Question to:	Question:	Response:
2.11	<b>Habitat Regulations Assessment</b>		
2.11.1	Applicant	<p><i>Updated HRA at Deadline 4</i></p> <p>The Applicant is requested to include in its updated HRA report to be submitted at deadline 4:</p> <ul style="list-style-type: none"> <li>• the implications of the CJEU judgement;</li> <li>• whether habitat provision for lost functionally-linked habitat (ie saltmarsh and intertidal habitat) is relied on to reach the conclusions of the HRA;</li> <li>• updated screening matrices, and</li> <li>• where relevant, integrity matrices.</li> </ul>	<p>The Applicant has provided an updated HRA report for submission at deadline 4 (document reference PoTLL/T2/EX/99), which takes the form of a Stage 2 (Appropriate Assessment) report.</p> <p>The updated HRA report addresses the following matters:</p> <ul style="list-style-type: none"> <li>• <i>the implications of the CJEU judgement</i> - The recent Court of Justice of the European Union (CJEU) judgement on the interpretation of the Habitats Directive in the case of <i>People Over Wind and Sweetman vs Coillte Teoranta</i> (Case C-323/17) concluded that: “the Habitats Directive must be interpreted as meaning that, in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, <u>it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site</u>” [emphasis added].</li> </ul> <p>The Court found:</p> <p><i>35 ...the fact that... measures intended to avoid or reduce the harmful effects of a plan or project on the site concerned are taken into consideration when determining whether it is necessary to carry out an appropriate assessment presupposes that it is likely that the site is affected significantly and that, consequently, such an assessment should be carried out.</i></p> <p><i>36 That conclusion is supported by the fact that a full and precise analysis of the measures capable of avoiding or reducing any significant effects on the site concerned must be carried out not at the screening stage, but specifically at the stage of the appropriate assessment.</i></p> <p><i>37 Taking account of such measures at the screening stage would be liable to compromise the practical effect of the Habitats Directive in general, and the assessment stage in particular, as the latter stage would be deprived of its purpose and there would be a risk of circumvention of that stage, which constitutes, however, an essential safeguard provided for by the directive.</i></p> <p><i>38 In that regard, the Court’s case-law emphasises the fact that the assessment carried out under Article 6(3) of the Habitats Directive may not have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the proposed works on the protected site concerned...</i></p> <p><i>39 It is, moreover, from Article 6(3) of the Habitats Directive that persons such as the applicants in the main proceedings derive in particular a right to participate in a procedure for the adoption of a decision relating to an application for authorisation of a plan or project likely to have a significant effect on the environment...”</i></p> <p>The CJEU’s judgment appears inconsistent with well-established case law such as <i>R (Hart DC) v SSCLG</i> [2008] 2 P. &amp; C.R. 16, where Sullivan J found that mitigation measures should be taken into account in screening proposals under the Habitats Regulations and Directive (notwithstanding an indication to the contrary in the EC’s Methodological Guidance). He said: “As a matter of common sense, anything which encourages the proponents of plans and projects to incorporate mitigation measures at the earliest possible stage in the evolution of their plan or project is surely to be encouraged. What would be the point, from the proponents’ point of view, of going to the time, trouble and expense of devising specific mitigation measures designed to avoid or mitigate any effect on an SPA, and incorporating those proposals into the project, if the competent authority was then required to ignore them when considering whether an appropriate assessment was necessary?”</p> <p>Nonetheless, in view of Natural England’s position “that we cannot rule out that significant effects are likely, possibly alone, but also in-combination” [REP-042], and taking into account the precautionary principle, the Applicant has undertaken to provide information in accordance with a Stage 2 Appropriate Assessment. The mitigation measures proposed will therefore be considered in that context and the implications arising from the</p>

SWQ	Question to:	Question:	Response:
			<p>CJEU are thus moot.</p> <ul style="list-style-type: none"> <li>• <i>whether habitat provision for lost functionally-linked habitat (i.e. saltmarsh and intertidal habitat) is relied on to reach the conclusions of the HRA</i>; - The updated HRA report confirms that, no, habitat provision is not relied upon to reach this conclusion. There is not anticipated to be any adverse effect on integrity of the SPA/Ramsar Site arising from the small-scale and/or temporary effects on functionally linked land. That notwithstanding, the Applicant is exploring proposals to mitigate impacts on intertidal habitats onsite (in discussion with the Environment Agency) in pursuit of 'no net loss' of priority habitats.</li> <li>• <i>updated screening matrices</i>; and</li> <li>• <i>integrity matrices</i> - The updated HRA report contains integrity matrices in line with PINS guidance on HRA Stage 2 reporting<sup>2</sup>.</li> </ul>
2.11.2	Applicant	<p><i>Habitat Creation Offsite.</i> What is the Applicant's response to the case law stated by the MMO at deadline 2 [REP2-012] that habitat creation offsite, prior to the proposed works removing the protected habitat, is seen as compensation and not mitigation?</p>	<p>The MMO stated within its submission at deadline 2 [REP2-012]: "<i>1.2.1 As the MMO understand it, there are no planned mitigation or compensatory habitat works below Mean High Water Springs (MHWS). The MMO wish to advise on this aspect, with reference to <i>Briels v Minister van Infrastructuur en Milieu (Case C-521/12) [2014]</i>, that habitat creation offsite, prior to the proposed works removing the protected habitat, is seen as compensation and not mitigation. Proposals identified in this way must show that they have considered the alternatives and should no suitable alternatives be identified then the proposal must pass the Imperative Reasons of Overriding Public Interest (IROPI) test contained in Article 6(4) of the Habitats Directive. The MMO advises that the Applicant discuss any potential net habitat loss with Natural England, as a Statutory Nature Conservation Body (SNCB).</i>"</p> <p>In response to this the Applicant confirms, for the avoidance of doubt, that there is no removal of protected habitat from the Thames Estuary and Marshes SPA or Ramsar Site, and thus the cited case law is not relevant to proposed habitat creation offsite. As set out in response to SWQ 1.11.1 above, there is a small-scale and/or temporary impact on intertidal habitat, which has a tenuous functional linkage. This has been considered by the Applicant in the HRA report, and Natural England (as the Statutory Nature Conservation Body) has been consulted. The decision-making steps proposed by the MMO above simply do not apply to this <i>de minimis</i> impact on intertidal habitat, as the land is entirely outside of the boundary of the SPA and Ramsar Site.</p> <p>The functional linkage, to the extent that there is one, is a matter to be assessed in considering whether there are adverse effects on the integrity of the Site in view of its conservation objectives. Furthermore, it is proposed that the <i>de minimis</i> temporary impact on intertidal habitat be mitigated onsite (a matter which remains in discussion with the Environment Agency): there are no proposals for offsite intertidal habitat compensation. This matter (i.e. consideration of functionally linked habitat) is addressed within the Stage 2 HRA report, which concludes that the project will not adversely affect the integrity of any European site, alone or in combination with other plans or projects.</p>
2.11.3	Natural England	<p><i>Functionally-linked Land.</i> NE states in its deadline 3 submission [REP3-042] that case law establishes that functionally-linked land should receive equivalent protection. Would NE state the case law to which it is referring?</p>	<p>Natural England stated within its submission [REP3-042] at deadline 3 in response to question 2.7 (i.e. Can the Applicant explain how the functionally-linked habitat has been valued in the Environmental Impact Assessment (EIA) [APP-031] and the Habitats Regulations Assessment (HRA) [APP-060] report?): "<i>Natural England notes that this question is addressed to the Applicant, and did not provide a response at the hearing session. We noted that the Applicant regarded functionally-linked habitat as being intrinsically less</i></p>

<sup>2</sup> The Planning Inspectorate (November 2017) Advice Note 10: Habitats Regulations Assessment relevant to nationally significant infrastructure projects (version 8).

SWQ	Question to:	Question:	Response:
			<p><i>valuable than the SPA itself, nevertheless it is appropriate for us to point out the case law establishes that functionally-linked land should receive equivalent protection."</i></p> <p>Whilst the ExA's question is directed to Natural England, the Applicant notes that the research report<sup>3</sup> provided by Natural England at Annex D to the Written Representations submitted at Deadline 1 [REP1-074], states that: "the relevance of functionally linked land (FLL) to the Habitats Regulations Assessment process is encapsulated in the following quote from paragraph 27 of the High Court judgment in RSPB and others v Secretary of State and London Ashford Airport Ltd [2014 EWHC 1523 Admin]:-</p> <p><i>"There is no authority on the significance of the non-statutory status of the FLL. However, the fact that the FLL was not within a protected site does not mean that the effect which a deterioration in its quality or function could have on a protected site is to be ignored. The indirect effect was still protected. Although the question of its legal status was mooted, I am satisfied ... that while no particular legal status attaches to FLL, the fact that land is functionally linked to protected land means that the indirectly adverse effects on a protected site, produced by effects on FLL, are scrutinised in the same legal framework just as are the direct effects of acts carried out on the protected site itself. That is the only sensible and purposive approach where a species or effect is not confined by a line on a map or boundary fence. This is particularly important where the boundaries of designated sites are drawn tightly as may be the UK practice."</i></p> <p>Consideration of functionally-linked features has been central to the Applicant's approach to HRA. From the outset, wintering bird surveys were undertaken in view of the potential for impacts on birds using land outside of the SPA/Ramsar Site boundaries, as documented in the ES [APP-031] and latterly the 'bird note' (provided at Appendix 1 to Written Submission of Case at ISH of 18th April [REP3-029]). Functional linkage is considered at sections 5.2 and 7.2 of the Stage 1 HRA Report (document reference 6.2, 10.O [APP-060]), and also within the 'Qualitative Cumulative Effects Assessment' of Tilbury2 with TEC and LTC (document reference PoTLL/T2/EX/92 [REP3-027]), and again within the Stage 2 HRA report (document reference PoTLL/T2/EX/99).</p> <p>The Applicant therefore confirms that potential effects on functionally-linked land have been fully considered during the HRA process, despite that land not being afforded particular legal status.</p>

<sup>3</sup> C Chapman & D Tyldesley (June 2015). *Functional linkage: how areas that are functionally linked to European sites have been considered when they may be affected by plans and projects – a review of authoritative decisions.* Natural England Research Report.

## 2.12 HEALTH

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SWQ	Question to:	Question:	Response:
2.12	<b>Health</b>		
2.12.1	No questions were asked on this topic..		

## 2.13 HISTORIC ENVIRONMENT

SWQ	Question to:	Question:	Response:
2.13	<b>Historic Environment</b>		
2.13.1	Applicant, Thurrock Council	<p><i>Status of Discussions.</i> In the SoCG between the Applicant and TC at deadline 3 [REP3-028], the SoCG identifies various matters that are under discussion: approval of external materials, maximum heights of buildings and other structures, the approval of the written scheme of the proposed operational lighting, the proposed landscape mitigation along the infrastructure corridor, and cumulative effects assessment</p> <p>i. Would the Applicant and TC update the Examination on the status of their discussions?</p>	<p>Discussions have continued between TC and the applicant regarding built heritage issues. More specifically</p> <ul style="list-style-type: none"> <li>approval of external materials :- a specification of colours has been provided to TC that would guide the finishes of future buildings that are not subject to the approval process governed by Requirement 3. TC have accepted that this provides additional mitigation and discussions regarding its exact implementation remain on-going.</li> <li>maximum heights of buildings and other structures : further discussions will take place on this point.</li> <li>the approval of the written scheme of the proposed operational lighting : TC have provided no further comments and we understand that TC accept that this is part of the proposed mitigation and is acceptable.</li> <li>the proposed landscape mitigation along the infrastructure corridor : TC have confirmed that this is acceptable as mitigation for the effect of the IC on the setting of the Fort.</li> </ul> <p>Cumulative effects assessment : we understand that TC consider the cumulative effects of all three projects (Tilbury2, TEC, LTC) is likely to result in a 'High Adverse' effect on the setting of Tilbury Fort, as opposed to the Medium Adverse cumulative effect as assessed by the applicant. However, it is agreed that this still results in the significance of effects being 'Major' and does not therefore change the outcome of the CEA</p>
2.13.2	Applicant, Historic England	<p><i>A Separate SoCG.</i> In the SoCG between the Applicant and Hist E at deadline 3 [REP3-028], under matters agreed, the SoCG cites Tilbury Fort as a visitor attraction, which "will be secured under a separate SoCG".</p> <p>i. Would the Applicant and Hist E state what is envisaged with this separate SoCG?</p>	<p>The reference to "a separate SoCG" is a reference to the SoCG with English Heritage (SoCG015), the content of which deals with the impact of Tilbury2 on Tilbury Fort as a visitor attraction.</p> <p>The sub-title of SoCG15 was revised at the request of English Heritage to refer to 'Commercial Operation of Tilbury Fort'.</p>
2.13.3	Applicant, Historic England	<p><i>Significance.</i> In the SoCG between the Applicant and Hist E at deadline 3 [REP3-028], under matters not agreed, the SoCG states that the magnitude of impact and significance of effect are not agreed, and nor is it agreed that the assessment of impact has been undertaken with appropriate consideration of the future baseline where Tilbury B and its twin chimneys are no longer extant.</p> <p>i. Would the Applicant and Hist E state whether these matters are now closed as not agreed?</p>	<p>The Built Heritage Assessment acknowledges the presence of Tilbury B and assesses a future baseline where the power station is removed. The future baseline is evidenced with the deletion of Tilbury B from the wireline images which form part of the visual assessment.</p> <p>These matters can be closed as not agreed.</p>
2.13.4	Applicant, English Heritage	<p><i>Mitigation and compensation measures.</i> In EH's submission at deadline 3 [REP3-039], EH presents a range of mitigation and compensation measures.</p> <p>i. Would the Applicant and EH update the Examination on how they see the s106 agreement being finalised given the latest</p>	<p>PoTLL have analysed EH's submission at deadline 3 [REP3-039] regarding their proposed mitigation and compensation measures. PoTLL do not agree that all of these measures meet the tests set out in para. 204 of the NPPF and given statutory force by Regulation 122 of the Community Infrastructure Levy Regulations 2010. PoTLL are also mindful that to carry weight as mitigation or compensation for the environmental effects arising from Tilbury2 there must (a) be a reasonable prospect of these measures being carried out given the need for other consents to allow for delivery and (b) not give rise to significant environmental effects that have not been assessed as part of the environmental assessment of the Tilbury2 proposals.</p>

SWQ	Question to:	Question:	Response:
		draft?	<p>A telephone conference was held on Monday 14<sup>th</sup> May 2018 with English Heritage to explain the Port's approach and the following was explained.</p> <p><b>Tests of reasonableness in National Planning Policy Framework for any obligation</b></p> <ol style="list-style-type: none"> <li>1. Para 204. Of the NPPF states as follows :  <i>"Planning obligations should only be sought where they meet all of the following tests:</i> <ul style="list-style-type: none"> <li>• <i>necessary to make the development acceptable in planning terms;</i></li> <li>• <i>directly related to the development; and</i></li> <li>• <i>fairly and reasonably related in scale and kind to the development."</i></li> </ul> </li> </ol> <p>All three tests must be passed.</p> <ol style="list-style-type: none"> <li>2. This policy guidance is given statutory force by the Community Infrastructure Levy Regulations 2010.</li> <li>3. The EH approach to this the application of this guidance appears to suggest that the benefit to Tilbury Fort as a heritage asset (as embraced in their proposed list of planning obligations) should outweigh the harm to that asset, rather than any such harm being considered in the wider planning balance against the economic or other benefits of the proposal. This is clearly central to applying these tests to the suggested English Heritage mitigation and compensation package. PoTLL do not subscribe to this formulation and consider that it misinterprets the NPSP for the purpose of seeking unreasonable levels of compensation.</li> <li>4. Further PoTLL dispute the level of harm to Tilbury Fort as a tourist attraction suggested by English Heritage. For example, the impact on filming revenue is disputed (see PoTLL's D3 submission REP3-023), which in any event, is not revenue which is directly ring fenced to Tilbury Fort but goes to the central funding of EH.</li> </ol> <p><b>Deliverability</b></p> <ol style="list-style-type: none"> <li>5. The ExA must consider the DCO Obligation as presented to them and have no power to direct it to be changed. However, to carry any weight, the decision-maker must, we would suggest, consider there to be a reasonable prospect that whatever consents are required for the obligation to be implemented are achievable. In the context of works to or within the immediate setting of a Scheduled Ancient Monument, this matter needs careful consideration in relation to each potential obligation. If there is a reasonable risk that consent may not be obtained, the obligation cannot carry weight; this in turn would mean that such an obligation cannot be promoted as necessary to make the development acceptable, thus failing the NPPF/CIL Regs tests.</li> </ol> <p><b>Environmental Impact Assessment</b></p> <ol style="list-style-type: none"> <li>6. Equally, any obligation which involves necessary physical works (but outwith the direct proposals) must be considered as part of the overall scheme and therefore subject to assessment for significant environmental effects. If there is a risk that such significant environmental effects might arise and they have not been assessed (for example the dredging of the moats and the potential impact on ecology) there is no certainty that any consequential environmental harm from the proposals are outweighed by any heritage considerations.</li> </ol>



SWQ	Question to:	Question:	Response:															
			<p>7. Each of the EH suggested EH planning obligations have been assessed on this basis in Table 1 below.</p> <p>PoTLL disputes the justification for the proposed obligations with the exception of a contribution towards improved heritage enhancement within the Fort itself – which could complement the proposed way marking and interpretation proposals already within the Active Travel Study – and improvements to the existing vehicular access to the entrance to the Fort for pedestrians and vehicles from the Worlds End car park (the resurfacing of which is also in the ATS). PoTLL further consider that these measures can reasonably be expected to be deliverable and subject to detailed design, not to raise significant adverse environmental effects in themselves. PoTLL have asked English Heritage to provide further details of the costing on these items.</p> <table border="1"> <thead> <tr> <th data-bbox="1219 682 1478 751">Item</th> <th data-bbox="1478 682 1703 751">EH Estimate of costs</th> <th data-bbox="1703 682 2783 751">Comment on compliance of proposal with guidance and CIL Regs.</th> </tr> </thead> <tbody> <tr> <td data-bbox="1219 751 1478 989"><b>Signage and Interpretation Scheme within the Fort</b></td> <td data-bbox="1478 751 1703 989">£110 - £150,000</td> <td data-bbox="1703 751 2783 989">In principle, PoTLL accept that this could be considered mitigation in a form that would comply with the NPPF and Regulation 122 tests. The scheme could complement enhanced interpretation and way marking outside of the Fort that will form part of the Active Travel Study proposals.  Further details on the costing have been requested.</td> </tr> <tr> <td data-bbox="1219 989 1478 1226"><b>Driveway</b></td> <td data-bbox="1478 989 1703 1226">£75,000</td> <td data-bbox="1703 989 2783 1226">In principle, PoTLL accept that this could be considered mitigation in a form that would comply with the NPPF and Regulation 122 tests as part of the wider ATS strategy to encourage access to the Fort for visitors and improve both parking and the sense of arrival for visitors.  Further details on the costing have been requested</td> </tr> <tr> <td data-bbox="1219 1226 1478 1486"><b>Traffic Calming on Fort Road and addressing HGVs parked along the access road to the Fort.</b></td> <td data-bbox="1478 1226 1703 1486">n/a</td> <td data-bbox="1703 1226 2783 1486">PoTLL’s assessment of harm includes the benefit of less traffic (particularly HGVs) using Fort Road to the north of the Fort but ‘traffic calming’ by way of slowing vehicles down <i>per se</i> is not considered necessary. However, the exact future treatment of that road is a matter for Thurrock Council. HGV parking on the road leading to the Worlds End pub is also a matter for Thurrock Council as the Tilbury2 scheme has no direct impact on this issue.</td> </tr> <tr> <td data-bbox="1219 1486 1478 1885"><b>Surfacing of the original car park to the North of the site</b></td> <td data-bbox="1478 1486 1703 1885">£110,000</td> <td data-bbox="1703 1486 2783 1885">PoTLL do not support this proposal as we do not consider it necessary to make Tilbury2 acceptable. It may not be deliverable and has potential negative heritage consequences in its own right and may not benefit visitors.  Indeed, the Alan Baxter report questions whether this is a good idea from the perspective of visitor experience in any event. <i>“Whilst the landward approach has the benefit of drawing visitors across the outworks, so they can experience this design and setting, it is taking them in the secondary entrance to the Fort. For all of its [life] until 1982, the main entrance was the Water Gate, initially because the river was the primary means of communication, and latterly because of the road from the station to the</i></td> </tr> </tbody> </table>	Item	EH Estimate of costs	Comment on compliance of proposal with guidance and CIL Regs.	<b>Signage and Interpretation Scheme within the Fort</b>	£110 - £150,000	In principle, PoTLL accept that this could be considered mitigation in a form that would comply with the NPPF and Regulation 122 tests. The scheme could complement enhanced interpretation and way marking outside of the Fort that will form part of the Active Travel Study proposals.  Further details on the costing have been requested.	<b>Driveway</b>	£75,000	In principle, PoTLL accept that this could be considered mitigation in a form that would comply with the NPPF and Regulation 122 tests as part of the wider ATS strategy to encourage access to the Fort for visitors and improve both parking and the sense of arrival for visitors.  Further details on the costing have been requested	<b>Traffic Calming on Fort Road and addressing HGVs parked along the access road to the Fort.</b>	n/a	PoTLL’s assessment of harm includes the benefit of less traffic (particularly HGVs) using Fort Road to the north of the Fort but ‘traffic calming’ by way of slowing vehicles down <i>per se</i> is not considered necessary. However, the exact future treatment of that road is a matter for Thurrock Council. HGV parking on the road leading to the Worlds End pub is also a matter for Thurrock Council as the Tilbury2 scheme has no direct impact on this issue.	<b>Surfacing of the original car park to the North of the site</b>	£110,000	PoTLL do not support this proposal as we do not consider it necessary to make Tilbury2 acceptable. It may not be deliverable and has potential negative heritage consequences in its own right and may not benefit visitors.  Indeed, the Alan Baxter report questions whether this is a good idea from the perspective of visitor experience in any event. <i>“Whilst the landward approach has the benefit of drawing visitors across the outworks, so they can experience this design and setting, it is taking them in the secondary entrance to the Fort. For all of its [life] until 1982, the main entrance was the Water Gate, initially because the river was the primary means of communication, and latterly because of the road from the station to the</i>
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SWQ	Question to:	Question:	Response:						
			<p><i>ferry . This is unambiguously clear in its architectural treatment. Therefore there is a compelling logic in bringing visitors into the site by its main entrance, as it was designed.</i></p> <p>It is possible that there could be flexibility in the S106 such that the £75,000 contribution to resurfacing the driveway could, if the northern car park option was eventually brought forward say within 5 years, the money could be used by EH for that purpose. The drafting of the S106 in this regard will be discussed with EH further.</p> <table border="1" data-bbox="1219 646 2781 1318"> <tr> <td data-bbox="1219 646 1478 716"><b>Inner and outer bridge</b></td> <td data-bbox="1486 646 1694 716">£783,000</td> <td data-bbox="1703 646 2781 1083"> <p>For the above reasons, the access strategy using these bridges is clearly not overwhelmingly a positive solution and therefore cannot be considered a positive improvement in the visitor experience. It is not therefore considered as mitigation or compensation to make the Tilbury2 scheme acceptable in planning terms, nor is it considered directly related to the development; and fairly and reasonably related in scale and kind to the Tilbury2 development. The failure of English Heritage to maintain these bridges is not something that Tilbury2 should remedy.</p> <p>Repair or reconstruction of the bridges is not considered to address the changes to the setting of the Fort 'in scale and kind'. The proposed development does not physically affect the fabric of Tilbury Fort and it is considered disproportionate to undertake specialist conservation works to the historic fabric.</p> </td> </tr> <tr> <td data-bbox="1219 1089 1478 1184"><b>Inner and Outer Moat repairs</b></td> <td data-bbox="1486 1089 1694 1184">Compensation</td> <td data-bbox="1703 1089 2781 1318"> <p>The proposal to dredge the moats fails all three NPPF and Regulation 122 tests. It is clearly not necessary to make the Tilbury2 proposals acceptable in planning terms; it has no direct relationship to the proposals; and it is clearly <i>not</i> fairly and reasonably related in scale and kind to the development. Added to which significant environmental effects could result which have not been assessed, as explained in PoTLL's response to English Heritage's written representation (REP2—007).</p> </td> </tr> </table> <p>The S106, as drafted, has been submitted to the Examination by PoTLL (Document reference PoTLL/T2/EX/83) and PoTLL will continue discussions with EH prior to completion of the S106 with Thurrock Council.</p>	<b>Inner and outer bridge</b>	£783,000	<p>For the above reasons, the access strategy using these bridges is clearly not overwhelmingly a positive solution and therefore cannot be considered a positive improvement in the visitor experience. It is not therefore considered as mitigation or compensation to make the Tilbury2 scheme acceptable in planning terms, nor is it considered directly related to the development; and fairly and reasonably related in scale and kind to the Tilbury2 development. The failure of English Heritage to maintain these bridges is not something that Tilbury2 should remedy.</p> <p>Repair or reconstruction of the bridges is not considered to address the changes to the setting of the Fort 'in scale and kind'. The proposed development does not physically affect the fabric of Tilbury Fort and it is considered disproportionate to undertake specialist conservation works to the historic fabric.</p>	<b>Inner and Outer Moat repairs</b>	Compensation	<p>The proposal to dredge the moats fails all three NPPF and Regulation 122 tests. It is clearly not necessary to make the Tilbury2 proposals acceptable in planning terms; it has no direct relationship to the proposals; and it is clearly <i>not</i> fairly and reasonably related in scale and kind to the development. Added to which significant environmental effects could result which have not been assessed, as explained in PoTLL's response to English Heritage's written representation (REP2—007).</p>
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2.13.5	Applicant, English Heritage	<p><i>Tilbury Fort.</i> In the SoCG between the Applicant and EH at deadline 3 [REP3-028], matters under discussion are the degree of impact of the Proposed Development on the setting, the visitor experience, residential letting, filming at Tilbury Fort, the potential impact on the commercial operation of Tilbury Fort, and whether the moats have been appropriately factored into the flood risk assessment.</p> <p>i. Would the Applicant and HE update the Examination on these matters?</p>	<p>English Heritage have advised that the information supplied by the Applicant has satisfied their queries in relation to Flood Risk Assessment and that no further discussion is necessary.</p> <p>The Applicant considers that the changes to the setting of Tilbury Fort, in its capacity as a Commercial Operation, are not so substantial as to affect the various revenue streams associated to the Fort. The Applicant has taken specialist advice regarding the desirability of filming at the Fort, set out in the note submitted at Deadline 3 [REP3-025). As set out in the note, the changes to the setting associated to the proposed development are largely visual and do not make the Fort less attractive as a location for filming. The industrial character of the setting of the Fort already necessitates specialist techniques to 'paint out' the interceding industrial development and ADR would be standard practice for a location such as Tilbury Fort.</p> <p>The ES has taken into account the residential use in terms of noise and air quality receptors and has demonstrated no significant impact arises to them.</p>						

SWQ	Question to:	Question:	Response:
			<p>English Heritage and the Applicant agree that there are opportunities to enhance the visitor experience. The Applicant considers that these opportunities will be delivered through the Active Travel Study which has been developed with Thurrock Council at an area scale and has invited English Heritage to input on the wayfinding and interpretation components of the Study. The ATS also upgrades access routes to the Fort and improves the connection between Tilbury Fort and Coalhouse Fort with upgrades to the route and enhances interpretation material.</p> <p>The Applicant has agreed in principle that wayfinding and exhibition material would enhance the visitor experience at the Fort. English Heritage are preparing a specification and costings related to a scheme for the Fort for the Applicant's consideration.</p>

## 2.14 PLANNING POLICY

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SWQ	Question to:	Question:	Response:
2.14	<b>Planning Policy</b>		
2.14.1	No questions were asked on this topic..		

## 2.15 LANDSCAPE AND VISUAL IMPACTS

SWQ	Question to:	Question:	Response:
2.15	<b>Landscape and Visual Impacts</b>		
2.15.1	Applicant, Thurrock Council (TC)	<p><i>Mitigation Proposals.</i> In the SoCG between the Applicant and TC at deadline 3 [REP3-028], under matters under discussion, the SoCG states that TC considers that it may be possible to achieve wider landscape improvements as mitigation for the proposals, although TC accepts that land ownership issues will arise.</p> <p>i. Would the Applicant and TC update the Examination on the status of their discussions?</p>	Shortly before Deadline 4, TC made suggestions as to possible landscape improvements and the Applicant is considering them in respect of compliance with the tests for S106 obligations, deliverability and environmental implications
2.15.2	Applicant, Historic England	<p><i>Visual Impacts on Tilbury Fort.</i> In Hist E's submission at deadline 3 [REP3-044], Hist E states a number of points relating to the visual impact of the Proposed Development on Tilbury Fort.</p> <p>i. Would the Applicant and Hist E update the Examination on the status of their discussions on these matters?</p>	See answer to 2.13.4

## 2.16 NOISE AND VIBRATION

SWQ	Question to:	Question:	Response:																																																																																												
2.16	<b>Noise and Vibration</b>																																																																																														
2.16.1	Gravesham Borough Council	<p><i>Monitoring at Mark Lane.</i> The ExA notes that the Applicant agrees that further monitoring at Mark Lane (under Requirement 10) will be undertaken.</p> <p>i. Does GBC require any additional information at this stage, and if so what specifically?</p>	The Applicant is currently arranging to undertake noise monitoring at Mark Lane as requested by GBC.																																																																																												
2.16.2	Applicant	<p><i>Noise Sensitive Receptors.</i> The discrepancy has not been resolved. Table 17.37 in the ES names Kimberley House as NSR 2,3,4, and 5.</p> <p>i. Would the Applicant state whether this is a typographical error?</p> <p>ii. Are the names on Tables 17.38-40 correct?</p>	<p>The Applicant can confirm that there is an error in Table 17.37, which does not provide all the required details on the proxy location information for the daytime and nighttime. Table 17.37 is updated with the correct proxy locations which are based on the measurement locations for short-term and long-term.</p> <p>Updated - Table 17.37 BS4142:2014 – Assessment</p> <table border="1"> <thead> <tr> <th>NSR Name</th> <th>Background location (proxy)</th> <th>Period</th> <th>Background Noise Level, L<sub>A90,T</sub> dB</th> <th>Specific Noise Level, L<sub>Aeq</sub> dB</th> <th>Rating Level, dB</th> <th>Difference</th> </tr> </thead> <tbody> <tr> <td rowspan="2">NSR 1</td> <td>Byrons Close, Tilbury</td> <td>Daytime</td> <td>40</td> <td>55</td> <td>61</td> <td>21</td> </tr> <tr> <td>Byrons Close, Tilbury</td> <td>Nighttime</td> <td>35</td> <td>50</td> <td>56</td> <td>21</td> </tr> <tr> <td rowspan="2">NSR 2</td> <td>Sandhurst Road, Tilbury</td> <td>Daytime</td> <td>44</td> <td>55</td> <td>61</td> <td>17</td> </tr> <tr> <td>Kimberley House, Tilbury</td> <td>Nighttime</td> <td>39</td> <td>51</td> <td>57</td> <td>18</td> </tr> <tr> <td rowspan="2">NSR 3</td> <td>Kimberley House, Tilbury</td> <td>Daytime</td> <td>43</td> <td>55</td> <td>61</td> <td>18</td> </tr> <tr> <td>Kimberley House, Tilbury</td> <td>Nighttime</td> <td>39</td> <td>52</td> <td>58</td> <td>19</td> </tr> <tr> <td rowspan="2">NSR 4</td> <td>Tilbury Fort vehicle storage area</td> <td>Daytime</td> <td>46</td> <td>52</td> <td>58</td> <td>12</td> </tr> <tr> <td>Tilbury Fort vehicle storage area</td> <td>Nighttime</td> <td>43</td> <td>50</td> <td>56</td> <td>13</td> </tr> <tr> <td rowspan="2">NSR 5</td> <td>Hume Ave, Tilbury</td> <td>Daytime</td> <td>49</td> <td>49</td> <td>55</td> <td>6</td> </tr> <tr> <td>Tilbury Fort vehicle storage area</td> <td>Nighttime</td> <td>43</td> <td>48</td> <td>54</td> <td>11</td> </tr> <tr> <td rowspan="2">NSR 6</td> <td>Tilbury Fort</td> <td>Daytime</td> <td>46</td> <td>48</td> <td>54</td> <td>8</td> </tr> <tr> <td>-</td> <td>Nighttime</td> <td>-</td> <td>-</td> <td>-</td> <td>-</td> </tr> <tr> <td>NSR7</td> <td>Venture</td> <td>Daytime</td> <td>49</td> <td>49</td> <td>55</td> <td>6</td> </tr> </tbody> </table>	NSR Name	Background location (proxy)	Period	Background Noise Level, L <sub>A90,T</sub> dB	Specific Noise Level, L <sub>Aeq</sub> dB	Rating Level, dB	Difference	NSR 1	Byrons Close, Tilbury	Daytime	40	55	61	21	Byrons Close, Tilbury	Nighttime	35	50	56	21	NSR 2	Sandhurst Road, Tilbury	Daytime	44	55	61	17	Kimberley House, Tilbury	Nighttime	39	51	57	18	NSR 3	Kimberley House, Tilbury	Daytime	43	55	61	18	Kimberley House, Tilbury	Nighttime	39	52	58	19	NSR 4	Tilbury Fort vehicle storage area	Daytime	46	52	58	12	Tilbury Fort vehicle storage area	Nighttime	43	50	56	13	NSR 5	Hume Ave, Tilbury	Daytime	49	49	55	6	Tilbury Fort vehicle storage area	Nighttime	43	48	54	11	NSR 6	Tilbury Fort	Daytime	46	48	54	8	-	Nighttime	-	-	-	-	NSR7	Venture	Daytime	49	49	55	6
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2.16.3	Gravesham Borough Council	<p><i>Adequacy of OMP.</i> Ref GBC responses to the ISH on 18 April 2018 [REP3-040], page 4 hierarchy of avoidance and mitigation, the second row refers to adding attenuators, controlling speed of conveyors etc. These specific measures are not detailed in the Operations Management Plan (OMP).</p> <p>i. Is GBC suggesting that the OMP is inadequate and needs refining?</p>	This question is not directed at the Applicant.																												
2.16.4	Applicant	<p><i>GBC concerns about sound between LOAEL and SOAEL.</i> With regard to the GBC responses to the ISH on 18 April 2018, page 5, GBC cites the Noise Policy Statement for England (NPSE) and states: <i>"In the tracked changes DCO published by the PoTLL (REP1-004), the PoTLL is only proposing that the mitigation package will be provided to any receptor above the SOAEL. GBC is concerned that this won't address the impacts on receptors who could be suffering impacts above between LOAEL (Lowest Observed Adverse Effect Level) but below the SOAEL (Significant Observed Adverse Effect Level). Changes in noise levels of less than 3 dBA are not perceptible under normal conditions whilst changes of 10dBA are equivalent to a doubling of loudness. GBC considers that LOAEL + 5dBA would be a more acceptable level".</i></p> <p>i. What is the Applicant's response to this proposal?</p>	<p>Definitions:</p> <p>In answering this question the terms used are defined as follows:</p> <p>"Mitigation" means measures taken to reduce the effect of noise applied at the source, and/or in the path from source to receiver, and/or at the receiver.</p> <p>"Noise Insulation" refers to a package of measures applied at the receiver which include sound insulated glazing and alternative ventilation.</p> <p>Noise insulation may be part of a mitigation package, but it is only one of the options included in the term "mitigation" which does not refer solely to noise insulation.</p> <p>The NPSE requires mitigation and minimisation where LOAEL is exceeded, and as explained at the ISH on 18 April, this process follows the established hierarchy where mitigation/minimisation is first considered at the source, then in the path and finally at the receiver.</p> <p>If, after considering all options with regard to source and path there is predicted to be noise at a receptor above SOAEL for reasons of practicability and sustainable development policy then it is necessary to give effect to the NPSE requirement to avoid SOAEL, and it has been established in previous DCO decisions that the SoS considers that provision of noise insulation avoids SOAEL. This position aligns the treatment of noise from port activity with policy regarding sources of noise where there is statutory provision of noise insulation, namely highways and railway, and with well-established non-statutory provision in the case of construction. The package of noise insulation measures has been labelled a "noise mitigation package" in these proceedings, but</p>																												
2.16.5	Applicant, Gravesham Borough	<p><i>Criteria for Noise Mitigation.</i> Regarding discussions between the Applicant and GBC, GBC responses to the ISH on 18 April 2018,</p>																													

SWQ	Question to:	Question:	Response:
	Council	question 16.1 (iii) [REP3-040] on which criteria to use for noise mitigation: <ol style="list-style-type: none"> <li>i. If the requirements of the NPSE are to be used can the parties suggest a revised condition which would satisfy GBC's concerns?</li> <li>ii. The DCO does not specify criteria for defining significant effects. Can the parties agree a criterion to include in the DCO requirement that will ensure these criteria are used?</li> </ol>	it is actually a "noise insulation package". In line with the established position in this regard, noise insulation is not an appropriate measure to offer for noise levels less than SOAEL. LOAEL and SOAEL are not dependent on noise change, since they relate to effects on health and quality of life which are linked to long-term noise exposure in terms of absolute levels. Noise change is considered in EIA practice as with all other environmental topics, but is not the primary indicator used by the NPSE and the NPS for Ports.
2.16.6	Applicant	<i>Railway Movements.</i> With regard to the number of railway movements that would be required to meet the LOAEL: <ol style="list-style-type: none"> <li>i. Would the Applicant please confirm this number?</li> <li>ii. Would the Applicant please confirm that these are higher than the deadline 1 example calculation assumption of double the number of passenger and freight trains given in the Response to the ExA's First Written Questions [REP1-016]?</li> </ol>	<p>Table 17.43 of the ES provides the assumed existing and proposed train movements. The existing movements are taken to be:</p> <ul style="list-style-type: none"> <li>• 108 during the day (92 passenger and 16 freight), and</li> <li>• 14 during the night (8 passenger and 6 freight).</li> </ul> <p>The scheme proposes to add five freight trains during the day and two freight trains during the night, giving a total number of movements as:</p> <ul style="list-style-type: none"> <li>• 113 during the day (92 passenger and 21 freight), and</li> <li>• 16 during the night (8 passenger and 8 freight).</li> </ul> <p>The highest measured VDV during the baseline survey was 0.05 during the day, as shown in Table 17.28 for 6<sup>th</sup> September 2017, and 0.04 during the night, on five out of seven nights.</p> <p>Vibration from additional train movements would increase the VDV values. Multiplication factors have been determined to assess the number of train movements for vibration levels to meet LOAEL of 0.2 during the day and 0.1 at night:</p> <ul style="list-style-type: none"> <li>• the total number of daytime train movements would need to be multiplied by a factor of 256 to give a VDV of 0.2, and</li> <li>• the total number of night time train movements would need to be multiplied by a factor of 40 to give a VDV of 0.1.</li> </ul> <p>To give a worst case assessment it has been assumed that;</p> <ul style="list-style-type: none"> <li>• the highest measured VDV levels include just one freight train in the measurement, and</li> <li>• the vibration from the single freight train dominates the VDV measurement such that the vibration from passenger trains was negligible.</li> </ul> <p>This represents a worst case as it assumes that all of the daytime 0.05 VDV is from one freight train, and all of the night time 0.04 VDV is from one freight train. It also assumes that the passenger trains play no part in the measured vibration levels.</p>



SWQ	Question to:	Question:	Response:											
			<p>In practice the measured VDV levels will include a contribution from passenger trains and from other freight trains passing in the period, and therefore the actual vibration from one freight train will be lower than these worst case levels.</p> <p>The worst case evaluation of the number of freight trains needed to reach the vibration LOAEL multiplies these flows by the factors identified above. This is shown in the following table:</p> <table border="1"> <thead> <tr> <th rowspan="2">Train type</th> <th colspan="2">No. of trains to equal vibration LOAEL</th> </tr> <tr> <th>Daytime 16hrs (07:00-23:00)</th> <th>Night-time 8hrs (23:00-07:00)</th> </tr> </thead> <tbody> <tr> <td>Total Passenger</td> <td>92</td> <td>8</td> </tr> <tr> <td>Total Freight (existing and proposed)</td> <td>1 x 256 = <b>256</b></td> <td>1 x 40 = <b>40</b></td> </tr> </tbody> </table> <p>Given that there are sixteen existing freight paths during the day and six existing freight paths during the night, the worst case assessment shows that the vibration LOAEL would be reached if there were:</p> <ul style="list-style-type: none"> <li>• an additional 240 freight trains during the day, and</li> <li>• an additional 34 freight movements during the night.</li> </ul> <p>As noted, the proposal is for an additional five freight trains during the day and an additional two freight trains during the night, demonstrating that even under these worst case assumptions the vibration from the proposed freight trains would be below the LOAEL values.</p> <p>This confirms that the number of movements to meet the vibration LOAEL will be much higher than the deadline 1 example calculation assumption of double the number of passenger and freight trains given in the Response to the ExA's First Written Questions [REP1-016].</p>	Train type	No. of trains to equal vibration LOAEL		Daytime 16hrs (07:00-23:00)	Night-time 8hrs (23:00-07:00)	Total Passenger	92	8	Total Freight (existing and proposed)	1 x 256 = <b>256</b>	1 x 40 = <b>40</b>
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Total Passenger	92	8												
Total Freight (existing and proposed)	1 x 256 = <b>256</b>	1 x 40 = <b>40</b>												
2.16.7	Thurrock Council	<p><i>Noise barriers.</i> The dDCO [REP3-002] states the noise barrier heights but not the locations. The dDCO requirement 9 does not require sign off of noise barrier design.</p> <p>i. Would TC state whether this should be signed off, or is TC content with the dDCO approach?</p>	<p>This question is not directed at the Applicant.</p>											
2.16.8	Applicant, MMO	<p><i>Underwater noise assessment.</i> With regard to the Applicant's written summary of case at the ISH of 18 April 2018 [REP3-029], Appendix 1 (update to underwater noise assessment in Appendix 17.A of the ES):</p> <p>i. Does the MMO have any comments on the changes?</p>	<p>ii and iii. This appendix will form part of the ES, as a replacement for the previous version of that appendix. The definition of the ES in the DCO in the certification schedule will be amended to reflect this.</p>											

SWQ	Question to:	Question:	Response:
		ii. Does the Applicant intend for the Appendix to form part of the ES? iii. If so, how does the Applicant intend to reflect this in terms of the certification of documents within the dDCO?	

## 2.17 SOCIO-ECONOMIC EFFECTS

SWQ	Question to:	Question:	Response:
2.17	<b>Socio-economic effects</b>		
2.17.1	Applicant, Essex County Council	<p><i>Skills and Employment Strategy</i>. In the SoCG between the Applicant and GBC at deadline 3 [REP3-028], the SoCG identifies the Skills and Employment Strategy as a document that is under discussion.</p> <p>i. Would the Applicant and ECC update the Examination on the status of their discussions?</p>	<p>The Applicant submitted a revised version of the Skills and Employment Strategy (SES) [Document reference APP-029 Appendix A] to ECC on the 25<sup>th</sup> April in relation to matters raised by ECC during the SoCG at deadline 3 [REP3-028].</p> <p>This revised SES included the addition of cross-referencing to the Active Transport Strategy and the Framework Travel Plan, along with providing further detail around the proposed shared formed between PoTLL, Port tenants and customers and the public sector. In addition, examples of the types of initiatives that could be undertaken were also included.</p> <p>On the 26<sup>th</sup> April, the Applicant received comments from ECC on the revised SES, suggesting further amendments. These included:</p> <ul style="list-style-type: none"> <li>- SES to take account of the potential of wider South Essex partnerships, including expanding existing programmes to working with schools across South Essex.</li> <li>- Further reference to supporting traineeships</li> <li>- Reference to partnership working with Prospects College of Advanced Engineering, and liaison with schools in neighbouring Districts.</li> <li>- Future tenants of the Port to become disability confident employers</li> </ul> <p>The applicant is in ongoing discussions with ECC to discuss these changes further. An update on this position will be submitted with an update to the SoCG a week before the June hearings.</p>

## 2.18 TRAFFIC AND TRANSPORTATION

SWQ	Question to:	Question:	Response:
2.18	<b>Traffic and Transportation</b>		
2.18.1	Applicant, Thurrock Council	<p><i>Lower Thames Crossing.</i> In the SoCG between the Applicant and TC at deadline 3 [REP3-028], under matters agreed, the parties state that "...it would be impossible for PoTLL to model the impact of Tilbury2 on traffic in Thurrock were the LTC be constructed, and it is therefore appropriate for this not to have been included within the ES and for it not to be carried out during the Examination process". However, a cumulative effects assessment has been submitted at deadline 3 [REP3-027].</p> <p>i. Would the Applicant and TC agree that the wording in the SoCG needs to be amended to reflect this circumstance?</p>	<p>The comment in this regard within the SoCG was agreed within the context of specific discussions on transport and traffic modelling issues. The comment was agreed on the basis that both parties accept that any quantitative cumulative modelling of highways impacts of LTC with T2 is impossible at this stage</p> <p>This agreement is clearly consistent with the position of Highways England as set out in their Deadline 3 response to the comments by Essex County Council in respect of FWQ 1.18.6, :-  <i>"HE is currently revising the traffic model for the LTC, and is incorporating the latest proposals for the design of LTC. If the Applicant used the current assumptions for LTC in a cumulative assessment of the Proposed Development with LTC, that assessment may be unrealistic. Furthermore providing further detailed information on the traffic model and on the route of LTC prior to a formal consultation would compromise the integrity of the planned consultation. HE accepts responsibility for assessing the cumulative traffic impacts from the Proposed Development and LTC that will be presented in HE's application for LTC."</i> [REP2-003]</p> <p>To give more clarity it is proposed to amend the SoCG as follows :-</p> <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"> <p>It is agreed that Tilbury2 does not rely on the delivery of the Lower Thames Crossing. It is agreed that the cumulative impact of the proposals with the LTC within Thurrock requires impacts to be <b>quantitatively</b> modelled and mitigated for and responsibility for this <b>quantitative</b> assessment should not fall between the two projects. It is agreed that as LTC has identified Tilbury2 as a cumulative project within its scoping report, this means that the LTC project will carry out this exercise.</p> <p>It is further agreed that as there is no traffic modelling for the LTC available at present it would be impossible for PoTLL to model the impact of Tilbury2 on traffic in Thurrock were the LTC be constructed, and it is therefore appropriate for this not to have been included within the ES and for it not to be carried out during the Examination process.</p> </div> <p>The SoCG with Thurrock Council also refers to the wider principle of cumulative assessment of both LTC and TEC at 4.15.3 and 4.15.4. It is accepted that these paragraphs need to be updated in the light of the submission of the Qualitative Cumulative Effects Assessment at Deadline 3 [REP2-027] and this will be undertaken for the next iteration of the SoCG.</p>
2.18.2	Applicant, Thurrock Council	<p><i>Local Traffic Network.</i> In the SoCG between the Applicant and TC at deadline 3 [REP3-028], under matters under discussion, the parties state that TC remains concerned about the impact of the proposals on the ASDA roundabout and how the mitigation measures proposed impact the local road network. Discussions are continuing with TC and HE.</p> <p>i. Would the Applicant, TC and HE update the Examination on the status of these</p>	<p>The Applicant continues to discuss the ASDA roundabout impact and mitigation measures with HE (see update at 2.18.3). The Applicant is aware of TC concerns as is HE. However, as TC acknowledge the ASDA roundabout is part of the SRN (ISH 19.04.18, 1.18.1v) and TC will take the lead from HE (TC response to FWQ 1.18.10b) on suitable mitigation measures.</p>

SWQ	Question to:	Question:	Response:
2.18.3	Applicant, Highways England	<p>discussions?</p> <p><i>Strategic Road Network</i>. In the SoCG between the Applicant and HE at deadline 3 [REP3-028], under matters under discussion, the parties state that traffic generation, traffic modelling and its impact, mitigation on the strategic road network, and details in the dDCO are not yet agreed, and that ways of resolving the lack of agreement are under discussion between PoTLL and HE.</p> <p>i. Would the Applicant and HE update the Examination on the status of these discussions?</p>	<p>Since the submission of the SOCG at Deadline 3, discussions have continued with HE. Progress has been made notably with traffic generation now agreed and the impact of the development on the A1089/A13 and A1089/Marshfoot Road interchanges also agreed. This is reflected in the next version of the SoCG submitted at Deadline 4.</p> <p>Discussions continue between the applicant and HE. As reflected in the SOCG, discussions on technical transport matters relate to two areas:</p> <ul style="list-style-type: none"> <li>• the impact at M25 Junction 30; and</li> <li>• impact and mitigation at the Asda roundabout.</li> </ul> <p><u>M25 Junction 30:</u></p> <p>With traffic generation now agreed the predicted increases in traffic through M25 Junction 30 (M25 J30) are agreed. The method of assessment at M25 J30 was agreed as part of the TA Scoping (Appendix A, TA). There is no clear explanation as to the concerns asserted by HE regarding the impact of Tilbury2 traffic at M25 J30. However, HE noted in their response at Deadline 2 to the Applicants FWQ response (1.18.3 (a) Ref: REP2-001) that they would be able to form a view on impact at M25 J30 once trip generation had been agreed, which it now has. Further, clarification of the impact at M25 J30 and supporting information was provided to HE by the Applicant on 8 May 2018. Recently completed improvements provided substantial additional capacity and the junction is currently operating satisfactorily. The TA has demonstrated that increases in traffic through M25 J30 would be de minimus (less than 2%) and have no measurable impact on the operation of the junction.</p> <p><u>ASDA Roundabout:</u></p> <p>The method of assessment at ASDA roundabout was agreed as part of the TA Scoping (Appendix A, TA). HE note in their Deadline 3 response (REP3-046) 1.18.1iv that resolution of traffic generation would be a significant step forward in terms of providing confidence in the modelling. The proposed mitigation measures at ASDA roundabout are subject to ongoing discussion. However, the Applicant has made clear in discussion with HE and demonstrated in the ASDA roundabout Note (REP3-021) submitted at Deadline 3 that alternative measures are feasible. The Applicant has clearly demonstrated that suitable mitigation measures can be delivered at ASDA roundabout and will confirm this with HE through continued dialogue.</p> <p>Separate discussions between the respective legal teams are continuing in respect of the drafting of the DCO.</p> <p>An update on all of these matters will be reflected in a revised SoCG to be submitted prior to the June hearings.</p>
2.18.4	Applicant, Highways England	<p><i>Strategic Road Network – Overall Position</i>. HE’s submission at deadline 3 [REP3-046] states:</p> <p>a. that discussions with the Applicant are</p>	<p>i. The applicant is also concerned that discussions have not proceeded quickly enough to date, as noted in its previous correspondence with the Examining Authority. Since Deadline 3, ongoing discussions have continued with additional high-level discussions between the Applicant and HE.</p>

SWQ	Question to:	Question:	Response:
		<p>not proceeding sufficiently quickly to ensure agreement by the end of the Examination;</p> <p>b. that there is a fundamental disagreement between HE and the Applicant in terms of how the works to the Strategic Road Network (SRN) should be carried out;</p> <p>c. that the dDCO should be amended to make it mandatory for the Applicant to enter into an agreement with HE prior to the commencement of works on the SRN;</p> <p>d. that the extent of powers sought by the Applicant to take temporary possession and for stopping up in relation to the works to be undertaken on the SRN are not justified.</p> <p>i. As a matter of urgency, would the Applicant give the Examination its response to these matters?</p> <p>ii. Re point c, would HE state why the draft protective provisions in its favour are not sufficient to satisfy this point?</p> <p>iii. Would HE inform the Examination of its response to the Applicant's Note on protective provisions for the Benefit of Highways England [REP3-022]?</p>	<p>As noted in response to 2.18.3 progress has been made since the ISH on 19 April and this is confirmed in the next version of the SoCG submitted at Deadline 4.</p> <p>To assist progress the Applicant has prepared a timetable for ongoing discussions with HE.</p> <p>The timetable provides a clear structure to progress discussion on the two outstanding technical matters and the DCO, allowing time for exchange of information, review by HE, discussion, meetings and contingency. The timetable seeks to enable an agreed position to be reached on the outstanding issues prior to the ISH in June. It is proposed that subsequent to this, further procedural tasks can be completed to enable a SOCG to be finalised by Deadline 5, with a contingency of Deadline 6 if this is not possible.</p> <p>The timetable was provided to HE on 10 May 2018 and feedback is awaited.</p>
2.18.5	Applicant, Highways England	<p><i>Strategic Road Network – Transport Assessment.</i> In HE's submission at deadline 3 [REP3-046], HE states that it still has concerns in relation to the SRN, particularly the Asda roundabout (Work No. 11) and M25 J30, but also potentially at other points. HE further states that <i>"the onus is on the Applicant to bring forward sufficient information and modelling and propose appropriate mitigation. If the Applicant has insufficient time to do this within the examination period then HE will continue to seek refusal of the Application"</i>. HE also cites concerns regarding the trip generation calculations, the resultant traffic modelling and its impact, and the necessary mitigation.</p> <p>i. Would the Applicant provide its response to the Examination, clearly</p>	<p>i. Please refer to response at 2.18.4i.</p> <p>The Applicant notes that HE has confirmed that the only outstanding concerns relate to M25 J30 and ASDA roundabout.</p>


SWQ	Question to:	Question:	Response:
		stating its proposed route for resolving HE's concerns, including a timetable allowing HE sufficient review time?	
2.18.6	Applicant, Highways	<p><i>Strategic Road Network – Roles and Responsibilities.</i> In HE's submission at deadline 3 [REP3-046], HE states its current position with regard to securing its SRN interests.</p> <p>i. Would the Applicant update the Examination on its current position, and matters yet to be agreed?</p>	The Applicant remains in dialogue with HE on the drafting of the DCO and will submit an updated draft one week prior to the ISH in June as requested. Currently, the Applicant awaits suggested amendment to the draft DCO from HE.
2.18.7	Applicant, Highways England, Thurrock Council	<p><i>Asda Roundabout.</i> At deadline 3, the Applicant submitted a document "Asda Roundabout DCO Powers and Potential Scope of Works" [REP3-021].</p> <p>Would HE and TC comment on the proposals in this document, and in particular the design supplied with the application, the potential alternatives, and the proposed amendments to the dDCO?</p>	This question is not directed at the Applicant.
2.18.8	Applicant, Network Rail	<p><i>Rail.</i> In the SoCG between the Applicant and NR at deadline 3 [REP3-028], under matters agreed in principle, the parties state a number of areas that need to be agreed. NR's submission at deadline 3 [REP3-035] also relates.</p> <p>Would the Applicant and NR update the Examination on the status of their discussions on the matters agreed in principle</p>	Please see response to 2.8.48.
2.18.9	Applicant, Kent County Council	<p><i>KCC Local Road Network.</i> In the SoCG between the Applicant and KCC at deadline 3 [REP3-028], under matters under discussion, the SoCG states that KCC considers that there will be an impact on the highway network and requests that further information is provided as to the forecast number of HGVs on the KCC highway network. Also, the Applicant awaits a response from KCC on the additional information that it has provided regarding the availability of train paths.</p> <p>i. Would the Applicant and KCC update the Examination on the status of their discussions on these matters?</p>	<p>KCC have confirmed following further discussions that they agree that there will not be a significant impact on Kent's road network. This agreement has now been included in next iteration of the Statement of Common Ground that PoTLL intend to submit as part of the SoCG Update Report a week before the June hearings.</p> <p>PoTLL have provided peak hour flows travelling along the M25 into Kent that can be directly linked back to the network diagrams within the TA and then distributed based on the location of industry accessible from each of the M25 junctions to routes within KCC's jurisdiction, with a proportion continuing further along the M25 to destinations beyond (and outside Kent). This demonstrated that the impact on KCC roads is indiscernible from daily traffic flow variations. This analysis has been accepted by KCC.</p> <p>Discussions on the SoCG with KCC have also confirmed that they have no outstanding concerns regarding HGV parking.</p> <p>Indeed, the SoCG will be record that all matters with KCC are now concluded and agreed and no further matters are under discussion with that stakeholder.</p>

SWQ	Question to:	Question:	Response:
2.18.10	Applicant, Amazon	<p><i>Amazon</i>. In Amazon's submission at deadline 3 [REP3-045], Amazon concludes that insufficient traffic impact information for the Asda roundabout is available to allow a comprehensive transport review to take place. In particular, Amazon states that it is not yet satisfied that the permitted level of Amazon traffic has been fully taken into consideration, especially in the morning peak hour of 07.00-08.00 and the evening peak hour of 18.00-19.00.</p> <ul style="list-style-type: none"> <li>i. Would the Applicant and Amazon update the Examination on these matters?</li> </ul>	<p>The Applicant has submitted further information to Amazon's consultants and the discussions have continued since Deadline 3. The Applicant currently is awaiting feedback from Amazon's consultants, and will update on these matters if this is possible prior to the June hearings.</p>



## 2.19 WATER QUALITY, FLOOD RISK AND WATER FRAMEWORK DIRECTIVE

SWQ	Question to:	Question:	Response:
2.19	<b>Water Quality, Flood Risk and Water Framework Directive</b>		
2.19.1	Applicant	<i>Fluvial flood risk.</i> What is the Applicant's assessment of the consequences of Tilbury 2 for fluvial flood risk?	<p>Detail of the assessment of the consequences of Tilbury2 for fluvial flood risk is contained within the Drainage Strategy [APP-090, sections 4.3, 4.5, 4.7 and 8.1], Level 2 FRA [APP-086, sections 4.5, 4.11 and 5.3] and the Level 3 FRA [APP-087, section 3.3]. Compliance with all of these documents is secured through the DCO.</p> <p>Fluvial flood risk is considered to be low/moderate given that the streams in the area have a small catchment such that no flood zones have been designated by the Environment Agency (EA). Moreover, there have been no historical fluvial incidents within the proposals or surrounding land.</p> <p>However, as a consequence of the Tilbury2 development the infrastructure corridor will create structures passing over main rivers and ordinary watercourses, which have the potential to cause a constriction of flows and thus increase flood risk from fluvial sources. The Applicant will continue to liaise with the Environment Agency and Lead Local Flood Authority (LLFA) during the detailed design phase to ensure that any new culverts maintain the capacity of the existing watercourses so that they do not increase offsite flood risk. Detailed design of such culverts will be approved by the EA and LLFA pursuant to their protective provisions within the DCO.</p> <p>With respect to surface water drainage of the site and its impact on fluvial flood risk, local legislation stipulates that surface water discharges from new developments is restricted to the greenfield rate of runoff wherever possible, unless it is discharged to a large water body (such as the River Thames). The Drainage Strategy limits flows to Q1 Greenfield run-off levels when discharging to existing watercourses and as such does not affect flood risk. It has been agreed with the LLFA and EA that should the Applicant wish, further studies may be undertaken at detailed design stage to determine if a greater flow could be discharged without affecting flood risk.</p> <p>All discharges directly to the River Thames are proposed to be unattenuated in line with UK legislation that allows unrestricted peak flow discharges to large tidal water bodies.</p> <p>It should be noted that a small proportion of the western end of the proposed infrastructure corridor will drain to the Tilbury East Dock Sewer (to the west of the site). The Drainage Strategy [APP-090, section 7.4.1] proposes to discharge unrestricted flows to this sewer, as a portion of the existing Ferry Road will be removed. The overall catchment drained to this sewer will not be increased and as such there will be no change in fluvial flood risk.</p>
2.19.2	Applicant	<i>Flood risk levels.</i> Would the Applicant state whether the levels contained in the Flood Risk Assessment Addendum [REP1-014] are finished floor levels or site levels?	The proposed development levels contained in the FRA addendum [REP1-014] in Table 6-1 column 3 and Table 6-2 column 2 are proposed site levels.
2.19.3	Applicant	<i>East Dock Sewer.</i> Given the condition and capacity of the East Dock Sewer explained in the Environment Agency's deadline 3 submission [REP3-034], what are the Applicant's proposals to remedy these	The Environment Agency stated in their submission that the retaining wall of East Dock Sewer adjacent to the Dock Road is in poor condition and disturbance caused by construction may result in its collapse with the potential to cause blockages, increasing flood risk to Tilbury Town. The condition of the retaining wall is also preventing desilting of this section of the East Dock Sewer meaning that capacity cannot be increased.

		<p>constraints?</p>	<p>In terms of the condition of the existing retaining wall, the Applicant is aware of the constraints which need to be taken into account in the final design. The works proposed within the vicinity of the East Dock Sewer retaining wall known to be in poor condition are between chainage 0m and 50m of Work No.9B, where the proposed new Ferry Road ties into the existing Ferry Road. Once the design has been finalised and technical solutions have been determined the impact of the proposals on the sewer will be able to be fully assessed and a solution agreed with the Environment Agency via their protective provisions. Depending on the final design solution, the proposals to remedy any impact may range from monitoring of the existing retaining wall during construction through to replacement of the existing retaining wall over the affected length. The design of any replacement retaining wall would most likely be a simple embedded structure such as a sheet pile cantilevered wall, similar to the c85m length of existing sewer adjacent to Riverside Sidings / Network Rail Gates (see photograph below).</p>  <p>In relation to the capacity of the sewer it is not proposed to change the overall catchment that currently flows into the sewer as part of the Tilbury2 development and as such there will be no impact on capacity.</p>
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