

PLANNING ACT 2008
INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE)
RULES 2010

PROPOSED PORT TERMINAL AT
FORMER TILBURY POWER STATION

TILBURY2

TR030003

HIGHWAYS ENGLAND PAPER

TILBURY2 DOCUMENT REF: PoTLL/T2/EX/116



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1.0 INTRODUCTION

- 1.1 This Note provides a summary of discussions with Highways England (HE) on traffic matters to date and sets out the status of discussions on the key remaining issues. It explains how HE's assertion that there is insufficient time to conclude discussions prior to the close of the examination is unfounded. It demonstrates that significant progress has been made since the ISH on April 20 2018 and that discussions are on track to conclude in advance of the close of the examination.
- 1.2 It is demonstrated that HE have not clearly expressed their position in respect of M25 Junction 30 in pre-application or until recently in examination.
- 1.3 Since these concerns have been made clear, the Applicant has swiftly responded in providing the requested information beyond the scope of that agreed with HE at the scoping stage. This information has confirmed that the conclusion in section 7.7 of the Transport Assessment (TA) (APP-072) that Tilbury2 would not impact on the safe and efficient operation of this junction remains valid.
- 1.4 In respect of the ASDA roundabout, HE again requested information beyond the scope of that agreed during the pre-application stage. This has been provided and confirms that the TA accurately demonstrates the impact of Tilbury2.
- 1.5 At the time of submission of this Note, discussions were continuing on the details of the mitigation (within the limits of deviation and highway land as indicated would be possible in POTLL's Asda roundabout note (REP03-027)), with a round table discussion programmed for 20 June 2018 between the Applicant, HE and Thurrock Council.
- 1.6 Finally, the Note explains HE's assertion that the alternative to concluding discussions is the imposition of a Requirement restricting traffic movements at Tilbury2. This is wholly unnecessary and unjustified. It is also contrary to timely engagement within the pre-application and examination processes, the planning tests for the acceptability of requirements and the NPS for Ports.

2.0 TIMING

Overview

- 2.1 HE have on numerous occasions stated that there is insufficient time prior to the close of the examination to reach an agreed position with the Applicant. During Examination it has become clearer that there have been three key issues of concern to HE:
- Traffic Generation from Tilbury2;
 - Impact at M25 Junction 30; and
 - Impact at ASDA roundabout.
- 2.2 For each of the above issues:
- the scope of assessments was agreed between the Applicant and HE during pre-application discussions;
 - all assessments were submitted to HE for comment prior to submission of the DCO application; and
 - the TA re-presented the previously submitted assessments.
- 2.3 Therefore, HE had considerable time and opportunity to raise concerns or queries on the assessments in the TA prior to submission of the DCO but failed to do so.

Pre-Application Discussions

- 2.4 As set out in the SoCG [REF: REP4-019] considerable pre-application discussions were held between the Applicant and HE as summarised below:

Table 2.1 - Pre-application Discussions

Date	Activity
21 February 2017	Meeting between PoTLL and HE to present the proposals and discuss the DCO process
6 April 2017	PoTLL issued Transport Assessment Scoping Note to HE
19 April 2017	Meeting between PoTLL and HE to review the submitted TA Scoping report
9 May 2017	PoTLL issued updated Transport Assessment Scoping Note to HE
16 May 2017	Meeting between PoTLL and HE to review revised TA Scoping report and agree parameters.
11 May 2017	PoTLL issued final Transport Assessment Scoping Note to HE
14 June 2017	Meeting between PoTLL and TC Highways, Essex Highways, and HE to discuss proposals, baseline and modelling methodology
30 June 2017	PoTLL issued Baseline Traffic Conditions and Modelling Note to HE

	detailing assessment year traffic and base traffic modelling.
14 July 2017	PoTLL issued Development Traffic Profiles Note to HE providing details of traffic generation across the day.
18 July 2017	Follow up meeting between PoTLL, TC Highways and HE to discuss proposals, baseline traffic conditions and development traffic profiles.
1 August 2017	PoTLL issued Baseline Traffic Conditions and Modelling Addendum to HE.
10 August 2017	PoTLL issued Development Scenario Note to HE detailing modelling of the development impact within study network.
24 August 2017	Follow up meeting between PoTLL, TC Highways and HE to discuss proposals, offsite traffic impact and Active Travel measures.
30 August 2017	PoTLL issued draft Framework Travel Plan to HE.
13 September 2017	Meeting between PoTLL and TC Highways, and HE to discuss development traffic impact; ASDA roundabout mitigation; Travel Plan (Sustainable Distribution); Link Road; and Active Travel Measures;
22 September 2017	PoTLL issued to HE: <ul style="list-style-type: none"> • Draft CTMP; • Updated M25 J30 forecasts with HGV's; • Assessment of Marshfoot Interchange; • Summary of ASDA roundabout modelling;
25 September 2017	PoTLL issued to HE draft of Landside Transport Chapter of ES.
29 September 2017	PoTLL issued to HE draft of Sustainable Distribution Plan.
12 October 2017	Meeting between PoTLL and TC Highways and Highways England to discuss impact at A126 Marshfoot Road Interchange; ASDA roundabout; Link Road; and Active Travel Measures;

2.5 The TA submitted with the application contained no new information which hadn't already been provided to HE. Despite this HE have raised queries on matters which were agreed during the scoping stage.

2.6 Post Application Discussions

2.7 As noted above there have been three key issues of concern to the HE:

- Traffic Generation from Tilbury2;
- Impact at M25 Junction 30; and
- Impact at ASDA roundabout.

2.8 It was agreed with HE that it was not possible to move forward with discussions on M25 Junction 30 or ASDA roundabout until traffic generation was agreed (as set out in HE's comments following the 18-20 April hearings (REP3-046)).

- 2.9 Since the ISH in April agreement has now been reached on Traffic Generation. HE have accepted that the traffic generation analysis presented and discussed during the pre-application stage and provided in the TA is a 'robust assessment of trip generation' – this was reflected in the SoCG submitted at Deadline 4.
- 2.10 HE confirmed their agreement on 11 May 2018. Following which a programme for progression on the technical discussions for M25 Junction 30 and ASDA roundabout was provided to HE by the Applicant. This programme has been updated and re-issued to HE weekly, tracking progress of discussions. An extract of the latest version is shown below:

T2 HE programme 11.6.18

	07/05/2018	14/05/2018	21/05/2018	28/05/2018	04/06/2018	11/06/2018	18/06/2018	25/06/2018	02/07/2018	09/07/2018	16/07/2018	23/07/2018	30/07/2018	06/08/2018	13/08/2018
Rule 8 Timetable and Requirements			22-May Deadline 4					28-Jun Issue Specific Hearing Traffic	06-Jul Deadline 5 SoCG Final				03-Aug Deadline 6		16-Aug Deadline 7 Final Deadline
Traffic Generation															
Agree position/SoCG															
M25 J30															
HE review Tech Note															
i-T Respond Queries															
HE review & Discussion															
Meet to agree position															
i-T provide modelling															
HE Review modelling															
Confirm position for ISH															
Contingency															
ASDA Roundabout															
HE Confirm Queries															
i-T prepare Tech Note															
HE review Tech Note															
Meet to agree position															
i-T update modelling															
Meet to agree mitigation															
Confirm position for ISH															
Contingency															
RSA															
Audit Team submission															
RSA Brief															
HE review RSA Brief															
Brief/Team Confirmed															
RSA Completed															
HE review RSA															
RSA sign off															
Contingency															

- 2.11 The green bars show tasks that have been completed with the grey those yet to be completed. The red vertical line is the programme issue date. To date all tasks have been completed in accordance with this programme which provides for confirmation of the position of HE and the Applicant at the ISH on 28 June and a contingency period to conclude discussions subsequently.
- 2.12 Further details are provided in the remainder of this Note on the status of individual discussions. However, the above shows there is a clear and achievable programme to enable all matters to be concluded prior to the close of the examination and demonstrates that progress in accordance with the programme is on schedule.
- 2.13 Accordingly, the Applicant strongly refutes HE's assertion that there is insufficient time to reach an agreed position prior to the close of the examination, even when seeking to deal with the post application and new examination matters raised by HE.

3.0 M25 JUNCTION 30

Pre-Application Discussions

- 3.1 The methodology for assessing the impact of Tilbury2 on the operation of J30 was set out in the agreed Scoping Note (Appendix A of the TA). The methodology was confirmed in a meeting with Highways England on 10 May 2017.
- 3.2 Assessments were presented in Technical Note 20 'Development Scenario' which was submitted to HE on 10 August 2017. HE response was received on 25 August 2017, with a request for clarification of HGV numbers. No comments or concerns were raised by HE on the methodology of the J30 assessments.

Transport Assessment

- 3.3 The assessments set out in that technical note were re-presented in the TA at section 7.7.
- 3.4 HE requested further clarification of the HGV numbers in their initial response dated 26 January 2018.
- 3.5 No further queries were raised in their detailed response dated 1 February 2018.

Deadline 1 Submissions

- 3.6 HE stated that "*in the absence of evidence to the contrary from the Applicant it appears likely to Highways England that the traffic generated by the Proposed Development will trigger the need for improvements at M25 Junction 30*". [REF: A1.9 HE submission]
- 3.7 HE have not provided any evidence to justify their assertion.

Deadline 2 Submissions

- 3.8 HE stated [REP2-001, 1.18.3 & 9] that once trip generation is agreed they will be able to form a view on impact on M25 J30.
- 3.9 Trip generation has now been agreed. However, HE have not formed a view on the impact of Tilbury2 on M25 Junction 30.

ISH 20 April/Deadline 3

- 3.10 Under their heading of "Traffic Modelling and Impacts" HE noted in response to the Examining Authority's Question 18.1 that they were concerned to prevent queuing back on to high speed links due to safety concerns.

Further Technical Discussions

- 3.11 Following Deadline 3, further technical analysis was provided to HE on 8 May 2018. Table 3.1 below summarises the increases in traffic flow through Junction 30 as a consequence of Tilbury2 in accordance with the agreed traffic generation figures.

Table 3.1 – Tilbury2 Traffic Generation M25 J30

	AM Peak (07:00-08:00)	AM Peak (08:00-09:00)	PM Peak (17:00-18:00)
	Traffic Generation		
M25 Southbound off-slip	25	29	18
A13 Westbound off-slip	53	48	30
M25 Northbound off-slip	13	14	9
A13 Eastbound off-slip	0	0	0
	Sensitivity Traffic Generation		
M25 Southbound off-slip	31	35	21
A13 Westbound off-slip	62	56	40
M25 Northbound off-slip	16	17	10
A13 Eastbound off-slip	0	0	0

Source: Consultants Calculations

- 1.1.1 The associated proportionate increase in comparison with existing traffic movements is set out in Table 3.2.

Table 3.2 – Tilbury2 Traffic Percentage Increase at M25 J30

	AM Peak (07:00-08:00)	AM Peak (08:00-09:00)	PM Peak (17:00-18:00)
	Traffic Generation		
M25 Southbound off-slip	1.7%	1.9%	1.1%
A13 Westbound off-slip	3.2%	2.8%	1.6%
M25 Northbound off-slip	0.8%	0.9%	0.5%
A13 Eastbound off-slip	0.0%	0.0%	0.0%
	Sensitivity Traffic Generation		
M25 Southbound off-slip	2.1%	2.3%	1.3%
A13 Westbound off-slip	3.8%	3.3%	2.1%
M25 Northbound off-slip	0.9%	1.0%	0.5%
A13 Eastbound off-slip	0.0%	0.0%	0.0%

Source: Consultants Calculations

- 3.12 It can be seen from the above tables that the predicted increases in traffic flows through M25 J30 are very small in both absolute and percentage terms.

- The increases in traffic through M25 J30 arising from Tilbury2 are small in comparison with existing traffic flows;
- Traffic increases on the M25 southbound approach would not affect the operation of the junction as the movement to the A13 eastbound now operates as a free flowing slip road;
- No increases would occur through the junction between the A13 eastbound approach and M25 northbound;
- The increases on the A13 westbound approach and M25 northbound approach would have no measurable effect on the operation of the M25 J30;
- The latest predictions of future year traffic flows with Tilbury2 are considerably lower than previous predictions without Tilbury2 which HE found acceptable (when assessing the London Gateway Logistics Park LDO); and
- Major improvements at M25 J30 have recently been completed which provide substantial improvements in capacity.

3.13 In conclusion, Tilbury2 would not impact on the continued safe and efficient operation of the M25 J30.

3.14 In response HE agreed only that Tilbury2 would not impact on the M25 southbound approach to the junction or the A13 eastbound approach to the junction.

Deadline 4 Submissions

3.15 HE contend that the information provided on the impact at Junction 30 is inadequate, although provide no explanation as to why it is inadequate when it is in accordance with the methodology agreed with HE during the scoping stage. HE go on to state that based on that same information *“there is evidence that the proposed development will result in severe adverse impacts on the A13 westbound and M25 northbound approaches”*.

3.16 HE have provided no evidence to support this assertion, given the data above. In their submission HE claim that Google Maps and Traffic England CCTV provides ‘evidence’ that there is an existing issue of queuing on the main carriageway. Information from these sources has not been provided to support their claims.

Further Modelling

3.17 At a meeting on 6 June it was agreed that the Applicant would undertake modelling of the M25 J30 to ascertain the impact on the A13 westbound and M25 northbound approach to the junction. This modelling is beyond the scope of that agreed with HE during the pre-application stage.

3.18 The parameters for the modelling were agreed at a meeting on 7 June and the modelling was completed and submitted to HE on 14 June.

3.19 The modelling demonstrates that Tilbury 2 would result in small increases in queuing on both the A13 westbound and M25 northbound approach to Junction 30 during the weekday peak hour periods. However, the increase in queues could be accommodated within the existing dedicated approach lanes and would not

extend onto the mainline carriageway of either the A13 or M25. Accordingly, there would be no adverse impact on safe free flow of traffic on these links.

- 3.20 The Applicant is awaiting feedback from HE on the modelling and will update the Examining Authority at the ISH on 28 June.

Conclusion

- 3.21 This section of the Note has provided a history of discussions and assessments provided to HE on the impact of Tilbury2 on M25 Junction 30. In summary:

- Assessment methodology was agreed with HE at pre-application stage;
- Assessments were provided prior to application and no concerns were raised by HE;
- Assessments were again provided in the submitted TA;
- HE's initial comments on TA raised no issue with the assessment methodology;
- HE did not clearly state their concerns with Junction 30 and provided no evidence in support of their assertions;
- HE did not request additional modelling beyond that agreed at scoping stage until 17 May 2018;
- The Applicant agreed to further modelling and has swiftly provided it;
- Additional modelling does not alter the conclusions of the TA; and
- The impact of Tilbury2 on the M25 J30 would not adversely affect the safe operation of the road network.

- 3.22 The above demonstrates that HE's contention that there is insufficient time to agree matters prior to close of the examination is unfounded. The Applicant has demonstrated that with clear statements of HE's position matters can be progressed and resolved very quickly.

- 3.23 Thus, there is no reason to doubt that all matters can be agreed prior to close of the examination and therefore there is no justification for a Requirement to limit traffic arising from Tilbury2.

4.0 ASDA ROUNDABOUT

Pre-Application Discussions

- 4.1 The method of assessment was agreed as part of the scoping exercise as set out in the agreed Scoping Note (TA Appendix A). The base modelling of the ASDA roundabout was provided to HE as follows:
- 30 June 2017 – Technical Note 015 Baseline Traffic Conditions & Modelling; and
 - 1 August 2017 – Technical Note 018 Update Baseline Traffic Conditions & Modelling Addendum
- 4.2 The approach to modelling was agreed as noted in the minutes of a meeting between the Applicant, HE and Thurrock Council on 13 September 2017.
- 4.3 Subsequently, future year modelling was provided to HE on 22 September 2017 with full modelling and CAD files provided on 28 September 2017. No further response was received from HE.

Transport Assessment

- 4.4 The same modelling assessments provided during pre-application were re-presented in the TA.
- 4.5 Comments were received from HE on 1 February 2018.
- 4.6 The principal comments received from HE are summarised below along with an explanatory response:

- New traffic surveys should be carried out to update the base model using data collected over a 3 day period.

The survey data was agreed with HE at the pre-application stage (REF: TA Scoping Note)

- Modelling is not representing observations at junction. Junction to be re-calibrated using new survey data.

Approach to calibration agreed with HE at pre-application stage.

- Assessments should include trips generated by the Amazon site.

Amazon is included in assessments in the TA as agreed at the scoping stage

- Assessments should include the Amazon shift change peak hours

Peak hours assessed were agreed at scoping stage. Amazon shift change are restricted by planning condition and cannot occur in traditional weekday peak hours. Supplementary analysis considering the Amazon shift change peak hours have been undertaken as explained at Section 4.7.

- The proposed mitigation at the Asda Roundabout is completely inadequate for a development the size of Tilbury2.

The mitigation is commensurate with the impact of the development

- 4.7 The above demonstrates the HE's queries were all matters that had been previously covered during pre-application discussions and should have been raised at that time.

Deadline 1 Submission

- 4.8 HE stated in their submission they "*have concerns that the proposed mitigation is insufficient to mitigate the additional traffic from the Proposed Development and does not provide suitable safe facilities for pedestrians and cyclists. Highways England also believes that a change to the speed limit at the roundabout may be necessary*".

- 4.9 No evidence in support of those concerns has been provided.

- 4.10 As noted at paragraph 2.3.1 above it was agreed with HE that discussion on ASDA roundabout could not sensibly move forward until traffic generation was agreed, which it was following Deadline 3.

Deadline 2 Submission

- 4.11 Reasserted their concern in respect of walking and cycling facilities [FWQ 1.18.10 response (REP1-062)]

Deadline 3 Submission

- 4.12 Re-state the comments raised on the TA as noted above (paragraph 4.3.1).

Deadline 4 Submission

- 4.13 HE refer to the Amazon development suggesting it has not been included within the TA.
- 4.14 As noted above (paragraph 4.3.3) the TA (paragraph 6.4.1) included Amazon as a committed development. This was agreed at the scoping stage as noted in the agreed Scoping Note.
- 4.15 The assessments in the TA were undertaken for the peak hour periods (08.15-09.15; 13.00-14.00; 17.00-18.00) in accordance with the Scoping Note agreed with HE. These peak hours were confirmed in Technical Note 015 and 018 (paragraph 4.1.1 above) and agreed by HE (paragraph 4.1.2 above).
- 4.16 Amazon have subsequently requested assessments covering the hourly period 18.00-19.00. Assessments have been provided to Amazon which demonstrate the impact of Tilbury2 during this period would be within acceptable limits. Amazon have confirmed to PoTLL that the impact would be acceptable on the basis of the proposed mitigation.

Revised Modelling

- 4.17 Revised 'base' traffic models using more recent traffic data and covering additional time periods (including those requested by Amazon) were submitted to HE as follows:
- Technical Note 034 ASDA Roundabout Traffic Surveys and Growth dated 23 May 2018; and
 - Technical Note 035 ASDA Roundabout Base Modelling dated 30 May 2018.
- 4.18 HE have confirmed (6 June 2018) that the revised base models are acceptable.
- 4.19 Revised future year models were provided to HE on the 12 June 2018 and the Applicant is currently awaiting feedback.
- 4.20 The updated assessments show very similar results to the original assessments of the impact at ASDA roundabout presented in the TA (section 7.4). Thus, confirming that the impact on the ASDA roundabout is limited and with modest mitigation would be acceptable. The conclusions of the TA on the ASDA roundabout therefore remain unchanged.
- 4.21 With reference to the comments received from HE on the TA (paragraph 4.3.3 above):

- New traffic surveys should be carried out to update the base model using data collected over a 3 day period.

New survey data provided and agreed with HE.

- Modelling is not representing observations at junction. Junction to be re-calibrated using new survey data.

Revised 'base' modelling represents existing conditions agreed with HE

- Assessments should include trips generated by the Amazon site.

Assessments include Amazon traffic agreed with HE.

- Assessments should include the Amazon shift change peak hours.

Additional assessment periods agreed with HE (and Amazon).

- The proposed mitigation at the Asda Roundabout is completely inadequate for a development the size of Tilbury2.

A round table discussion has been arranged on 20 June with both HE and Thurrock Council to agree the mitigation measures at ASDA roundabout.

4.22 Thus, the only matter of ongoing discussion is the detail of the mitigation. As demonstrated in the Deadline 3 submission Asda Roundabout: DCO Powers and Potential Scope of Works document (REF:REP3-021) there are various alternative mitigation measures which could be provided consistent with the DCO and level of mitigation proportionate to the agreed assessment outcomes.

4.23 PoTLL have put forward mitigation which PoTLL (on the advice of its consultants) is certain is adequate and appropriate to mitigate the impacts identified. REP3-021 has shown that other mitigation options are also possible within the scheme of the DCO powers.

4.24 If HE are of the view that such other options would be better, there is no reason to doubt that those mitigation measures can be agreed in advance of the close of the examination. However, PoTLL remains of the view that its proposals are adequate and appropriate. Accordingly, in any event, there is no justification for a Requirement to limit traffic generation from Tilbury2.

5.0 TRAFFIC LIMITS

Background

- 5.1 HE have suggested that it would be appropriate to implement a suitably worded Requirement on the operation of the proposed development [REP4-002]]. The Requirement would “limit use of the proposed development so as to not materially exacerbate peak traffic on this junction” [D4 HE response to 2.18.3 (REP4-002)].
- 5.2 Requirements in a DCO must meet the same tests as planning conditions which are set out in paragraph 206 of the National Planning Policy Framework. The Requirement suggested by HE would therefore need to meet all of these tests:
- Necessary – consent would need to be refused without the Requirement;
 - Relevant to planning – it must relate to planning objectives and is within the scope of the consent;
 - Relevant to the development – fairly and reasonable relate to development;
 - Enforceable – can be practically enforced;
 - Precise – is clear to the Applicant and others what is required to comply; and
 - Reasonable in all other respects – does not place unjustifiable and disproportionate burdens on the Applicant.
- 5.3 There are no details provided on the proposed Requirement suggested by HE in their D4 submission and none have been provided in discussion with the HE to date. However, their D4 submission refers to an agreement on restrictions on traffic generation at the Howbury Strategic Rail Freight Interchange between 07.00-10.00 and 16.00-19.00. Thus, it is assumed HE would be seeking to restrict operations at T2 to limit traffic generation between these hours. On this basis such a Requirement has been considered against the above tests.

Necessary

- 5.4 The impact of traffic arising from Tilbury2 on the operation of the M25 Junction 30 was set out in Section 7.7 of the TA at Table 7.24. The assessment method was agreed with HE at the scoping stage (as noted at paragraph 3.1.1). Further, analysis was provided as set out in Section 3.6 of this Note.
- 5.5 In summary, the analysis demonstrates that the increases in traffic through M25 Junction 30 arising from Tilbury2 in the peak periods would have no measurable effect upon its operation, and consequently the impact would be considerably less than severe. Thus, in accordance with Circular 02/13 there is no transport grounds to refuse the development. Hence, there is no planning reason for a Requirement limiting traffic arising from Tilbury2. Such a Requirement would not meet the ‘necessary’ test.

Relevant to Planning

- 5.6 Clearly, in general terms, a condition placing temporal limitations on the operation of a development to address highways issues that cannot otherwise be appropriately mitigated may meet the tests of ‘relevant to planning.’ However, in this case there is appropriate mitigation for the identified level of potential impacts.

Relevant to Development

- 5.7 A Requirement must be fairly and reasonably related to the development and cannot be imposed to remedy a pre-existing issue not created by the development.
- 5.8 HE have recently indicated (see paragraph 3.5.1) that their concern with regard to impact at J30 relates to existing queues, which detrimentally effect the safety of the approaches, as queueing vehicles extend back onto the mainline carriageway of the A13 and M25 to the east and south respectively.
- 5.9 As set out in this Note, modelling demonstrates that Tilbury 2 would result in small increases in queuing on both the A13 westbound and M25 northbound approach to Junction 30 during the weekday peak hour periods. However, the increase in queues could be accommodated within the existing dedicated approach lanes and would not extend onto the mainline carriageway of either the A13 or M25. Accordingly, there would be no adverse impact on safe free flow of traffic on these links.
- 5.10 Thus, restricting traffic generation at Tilbury2 when the agreed increases would not adversely impact on the Strategic Road Network would not be fairly and reasonably related to the development.

Enforceable

- 5.11 The Applicant for Tilbury2 is PoTLL. PoTLL operate the current Port of Tilbury. PoTLL control the overall port operation but do not control the detailed operation of the individual tenants who occupy the port. Similarly, Tilbury2 would be occupied by a number of tenants and PoTLL would not control the day to day operation of these tenants.
- 5.12 In respect of demand management measures the NPS for Ports states these should be “feasible and operationally reasonable” [NPSP para 5.4.11]. It would not be feasible for PoTLL to enforce measures which restricted the movement of vehicles during peak periods. Even if PoTLL could control the individual tenants, these tenants each have numerous customers and it would not be ‘operationally reasonable’ for PoTLL to control such a large numbers of individual organisations.
- 5.13 Vessel times will vary and will relate directly to the traffic leaving the Tilbury2. It would be impossible for PoTLL to control the whole of the process of goods throughput to avoid vehicle movements during peak hours.
- 5.14 PoTLL has indicated the operational and economic reasons why 24/7 working of the Port is required in a noise context (Appendix 2 to its Response to Relevant Representations (AS-049). These same reasons will also apply in this traffic context – imposing a requirement will restrict the ability of the Port to meet the demands of the ‘just in time’ supply chain that exists in the UK.

5.15 Precise

- 5.16 No details have been presented by HE as to the terms of their suggested Requirement. It is therefore not possible to confirm whether such a Requirement would meet the 'precise' test. Although, it should be noted that discussion on the wording would require time and include both HE's and the Applicant's legal representatives. Such time would be better spent working towards agreeing technical matters in accordance with the programme of discussions as noted at paragraph 2.3.3.

Reasonable in all other Respects

- 5.17 PoTLL are also clear that it is entirely unreasonable to impose such a limitation on a proposed port terminal. Key to the successful operation of any port is the ability to move goods through the port as quickly as possible, minimising dwell times and thereby maximising throughput, as explained further in Appendix 2 to its Response to Relevant Representations.
- 5.18 This is particularly the case with RoRo operations which rely on carefully honed logistics systems. To suggest that the PoTLL could simply prevent goods leaving Tilbury2 at certain times of the day fails to appreciate the sensitivity of these operations to any form of disruption. HE's suggestion would almost certainly lead to major congestion issues, would reduce throughput and would undermine productivity of Tilbury2.
- 5.19 It is also clear that HE have simply not thought through the practical ramifications of seeking to limit peak traffic at a port such as this. Even if vehicles could be prevented from leaving the port, there is no practical way or legal authority for PoTLL to prevent vehicles that are seeking to enter the port at peak times from entering the vicinity of the Port.
- 5.20 Lastly, HE concerns do not understand the operation of the proposed port terminal. Vessels dock and they are unloaded. The unloading takes a certain period of time over which time vehicles will be leaving the port at a relatively uniform rate. Neither the vessels' schedules nor the method of unloading aligns to traditional peak / off-peak tidal flows; they are completely independent of them. As such, the Requirement would be aimed at an effect which it is not reasonable to conceive will occur.

Summary

- 5.21 The above appraisal demonstrates that a Requirement limiting the traffic generation arising from Tilbury2 would not satisfy the six tests in the National Planning Policy Framework, all of which must be met if a condition (and hence a requirement) is to be imposed. Therefore such a requirement would not be appropriate. Equally, such a Requirement would be contrary to the NPS.

6.0 DCO POWERS

- 6.1 PoTLL is continuing to work with Highways England in respect of the drafting of the DCO and a positive meeting was held on 18 June in this respect following an exchange of revised drafting.
- 6.2 It is considered that progress may be able to be made on issues of principle relating to drafting by the 28 June hearing, but both parties will be able to report on this at the hearing.
- 6.3 The version of the DCO submitted prior to the Hearings retains PoTLL's application drafting but the parties will be working towards submitting suggested wording for Deadline 5.
- 6.4 However, PoTLL considers that the powers included within the DCO are fully justified, supported and reasonable:
- Whilst it acknowledges, as set out in the Asda Roundabout note (REP3-027), that the DCO contains broad street works powers, these powers are required to give a promoter the flexibility to carry out street works above and beyond those specifically authorised through Schedule 1 to the DCO to ensure the scheme is capable of implementation and operation without the need for a DCO change application to be sought at the detailed implementation stage.
 - This street works power is constrained by the fact that it can only be exercised with the consent of the relevant street authority.
 - However, the works at the Asda roundabout are authorised by Schedule 1, and common to all works authorised by that Schedule, such powers cannot be seen in isolation – they can only be exercised if the applicant has access to the land required to carry out the works. As such land powers are required to access highway land. This is clearly necessary for the delivery of the NSIP.
 - This same approach has been taken in other DCOs – the recent Silvertown Tunnel DCO and Highways England's DCOs for the A14 Cambridge to Huntingdon Improvement and M4 J3-12 schemes include powers of temporary possession over highways as well as a general power to carry out street works.
 - In the absence of a detailed final scheme for the works (which would not be expected at this stage in the development consent process), the DCO includes a 'basket' of powers to ensure that necessary mitigation works can be delivered, and to take account of the fact that at the detailed design stage a combination of powers may be necessary at different times and potentially on different parts of the highway.
 - Specifically in relation to temporary stopping ups and temporary traffic regulation measures (TRMs), PoTLL notes that Highways England could potentially require PoTLL to implement stopping ups or put TRMs in place as part of its plan approval process under protective provisions. Without the DCO power to do so, PoTLL would be reliant on Highways England undertaking these activities themselves. This would risk causing unacceptable delay and additional cost to the Scheme.

- The important point is that this basket of powers is all subject to the Protective Provisions and the need for the detail of the works to be approved by Highways England. As such, whilst PoTLL cannot say now precisely which powers it will end up using, Highways England will be able to impose conditions on the use of such powers to enable the process of PoTLL coming on and off highway land, and it carrying out the works, to fit with Highways England's standards and contractual arrangements.
- The use of the DCO powers will therefore be a collaborative effort between Highways England and PoTLL to determine which will be the most appropriate blend to suit the detailed design of the works.
- Finally, PoTLL recognises Highways England's concerns in relation to the timing of approvals within the DCO, given its contractual arrangements. An appropriate way forward on this matter continues to be a topic of discussion between the parties.

7.0 SUMMARY AND CONCLUSIONS

- 7.1 HE have on numerous occasions stated that there is insufficient time prior to the close of the examination to reach an agreed position with the Applicant. There have been three key issues of concern to HE during examination:
- Traffic Generation from Tilbury2;
 - Impact at M25 Junction 30; and
 - Impact at ASDA roundabout.
- 7.2 All of these matters were discussed at length and agreed with HE prior to submission of the application. Therefore, HE has had considerable time and opportunity to raise concerns or queries on the assessments in the TA prior to submission of the DCO but failed to do so.
- 7.3 Traffic Generation has been agreed, and this Note has shown there is a clear and achievable programme to enable the remaining matters to be concluded prior to the close of the examination and demonstrates that progress in accordance with the programme is on schedule.
- 7.4 In relation to the M25 Junction 30, the following discussions have taken place and assessments have been provided to HE on the impact of Tilbury2 on M25 Junction 30:
- Assessment methodology was agreed with HE at pre-application stage;
 - Assessments were provided prior to application and no concerns were raised by HE;
 - Assessments were again provided in the submitted TA;
 - HE comments on TA raised no issue with assessment methodology;
 - HE did not clearly state their concerns with Junction 30 and provided no evidence in support of their assertions;
 - HE did not request additional modelling beyond that agreed at scoping stage until 17 May 2018;
 - Applicant agreed to further modelling and has swiftly provided;
 - Additional modelling does not alter the conclusions of TA; and
 - The impact of Tilbury2 on the M25 J30 would not adversely affect the safe operation of the road network.
- 7.5 In light of the above, there is no reason to doubt that all matters can be agreed prior to close of the examination and therefore no justification for a Requirement to limit traffic arising from Tilbury2.

- 7.6 All the queries raised since the start of the Examination by HE in respect of the ASDA roundabout have been responded to and the only matter of ongoing discussion is the detail of the mitigation. As demonstrated in the Deadline 3 submission Asda Roundabout: DCO Powers and Potential Scope of Works document (REP3-021) there are various alternative mitigation measures which could be provided consistent with the DCO.
- 7.7 There is no reason to doubt that the mitigation measures can be agreed in advance of the close of the examination. Accordingly, there is no justification for a Requirement to limit traffic generation from Tilbury2.
- 7.8 HE have suggested that it would be appropriate to implement a suitably worded Requirement that would “limit use of the proposed development so as to not materially exacerbate peak traffic on this junction”.
- 7.9 An appraisal has demonstrated that a Requirement limiting the traffic generation arising from Tilbury2 would not satisfy the relevant tests of planning policy and therefore would not be appropriate. Equally, such a Requirement would be contrary to the NPS.
- 7.10 In conclusion, HE’s assertion that there is insufficient time to conclude discussions prior to the close of the examination is unfounded. Further, HE’s assertion that the alternative to concluding discussions is the imposition of a Requirement restricting traffic movements at Tilbury2 is unjustified, unnecessary and not consistent with HE conducting itself in an acceptable way and following good practice in examination. It would also not be compatible with the NPS for Ports.