



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')

Issue Specific Hearing on the Applicant's Draft Development
Consent Order (dDCO)

28 June 2018, 10.00am

Thurrock Hotel, Ship Lane, Aveley, RM19 1YN

Issued 19 June 2018

Agenda

1. Welcome, introductions, purpose and arrangements for this Issue Specific Hearing.
2. Brief explanation by the Applicant of the status of the dDCO, as currently drafted (maximum 10 minutes).
3. Opportunity for the host Unitary Council and relevant Interested Parties and Affected Persons to comment on their main concerns regarding the current drafting of the dDCO.

4. The matters in Annex A, which contains specific questions from the Examining Authority (ExA) Panel. The Panel will go systematically through the dDCO, allowing comment from Interested Parties and Affected Persons item by item.
5. Action Points Arising from this Issue Specific Hearing.
6. Any other business.

The Applicant, all Interested Parties, and Affected Persons are invited to attend. In particular, the Panel would welcome the attendance and participation of Anglian Water, Cadent Gas, the Environment Agency, Highways England, Historic England, Marine Management Organisation, National Grid Electricity Transmission, Natural England, Network Rail, Port of London Authority, RWE Generation, and Thurrock Council.

Questions in Annex A

The questions in Annex A indicate to which party or parties each item is directed. The Panel would be grateful if all named parties would prepare themselves to respond to all agenda items directed to them or indicate that the agenda item is not relevant to them for a reason. This does not prevent a response being provided to an agenda item by a party to which it is not directed, should the agenda item be relevant to their interests.

Each agenda item has a unique reference number in which the first part of the number indicates the hearing round (round 3), the second part indicates the topic (which for consistency follows the topic numbers from the first written questions [PD-007]), and the third part is the question number. So, for example, the second question on the dDCO is 3.8.2.

When you follow-up your oral response to an agenda item at the hearings by your subsequent written response, please start your response by quoting the unique reference number.

If you are responding to a small number of agenda items, responses in a letter will suffice. If you are responding to a larger number of agenda items, it will assist the Panel if you use a table based on the one in Annex A to set out your responses. An editable version of this table in Microsoft Word is available on request from the case team: please contact Tilbury2@pins.gsi.gov.uk and include 'Tilbury2 ExA Hearings Round 3 Agendas' in the subject line of your email.

Written responses are due by Deadline 5 – Friday 6 July 2018

The Examination Library

In the questions in Annex A, references in square brackets (for example [REP4-020]) are to documents catalogued in the Examination Library, which can be obtained from the following link:

<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR030003/TR030003-000523-Tilbury%20%20Examination%20Library.pdf>

The Examination Library is being updated as the Examination progresses.

Abbreviations used

AW	Anglian Water	NE	Natural England
CGL	Cadent Gas Limited	NG	National Grid
DCO	Development Consent Order	NSIP	Nationally Significant Infrastructure Project
dDCO	draft Development Consent Order	PD	Permitted Development
DML	Deemed Marine Licence	PLA	Port of London Authority
EA	Environment Agency	RWE	RWE Generation UK
ExA	Examining Authority	SWQ	Second Written Questions
HE	Highways England	TC	Thurrock Council
Hist E	Historic England	TP	Temporary Possession
MMO	Marine Management Organisation	WSI	Written Scheme of Investigation

Annex A: Specific questions from the Examining Authority (ExA) Panel (relates to agenda item 4)

Q No.	Part of DCO	Directed to	Question
3.8.1.	Art 3: Disapplication of legislation, etc	<i>Applicant</i>	With reference to RWE Generation’s response at deadline 4 [REP4-004] to ExA’s SWQs [PD-010], Q2.8.2 ... i. What is the Applicant’s response to RWE’s deadline 4 response?
3.8.2.	Art 4: Application of enactments relating to the Port of Tilbury	<i>Applicant</i>	With reference to the Applicant’s and Port of London Authority (PLA)’s responses at deadline 4 [REP4-020, REP4-007] to ExA’s SWQs [PD-010], Q2.8.3: i. Would the Applicant give its response to the PLA’s deadline 4 response? ii. Re item iv, would the Applicant please note that a weblink is unsuitable for inclusion in a DCO, since it may change or be removed; iii. Re item iv, under what power are the General Trading Regulations made, and should this be stated in the DCO? iv. Re item iv, would the Applicant state whether provision should be made for variation of the Regulations, eg “as varied from time to time by the Company ...”? v. Can the Applicant explain the position with regard to s85 of the 1968 Act (the Applicant’s response [REP4 020] to SWQ 2.8.3(i) merely refers to the PLA response, but that does not deal with s85)?

Q No.	Part of DCO	Directed to	Question
3.8.3.	Art 6: Development consent granted by the Order	<i>Applicant</i>	<p>With reference to the Applicant's response at deadline 4 [REP4-020] to ExA's SWQs [PD-010], Q2.8.5, the Applicant states the intention of Art 6(2), but ...</p> <ul style="list-style-type: none"> i. While this may be the intention, this is not the apparent effect of the article. Art 6(2) applies as soon as the Order comes into force, not on completion of the authorised development; ii. There is still doubt as to why the wide ranging maintenance powers in Art 41 (Operation and maintenance of the authorised development) are needed as well as the permitted development rights as a consequence of the site being port operational land.
3.8.4.	Art 10: Construction and maintenance of new, altered or diverted streets	<i>Applicant, Thurrock Council (TC)</i>	<p>With reference to the Applicant's and TC's response at deadline 4 [REP4-020, REP4-005] to ExA's SWQs [PD-010], Q2.8.8 ...</p> <ul style="list-style-type: none"> i. Would the Applicant and TC update the Examination on their discussions with regard to Art 10, highlighting any areas still to be resolved?
3.8.5.	Art 11: Classification of roads	<i>Applicant, Thurrock Council (TC)</i>	<p>With reference to the Applicant's and TC's responses at deadline 4 [REP4-020, REP4-005] to ExA's SWQs [PD-010], Q2.8.9 ...</p> <ul style="list-style-type: none"> ii. Would the Applicant and TC update the Examination on their discussions with regard to the classification of roads, highlighting any areas still to be resolved?

Q No.	Part of DCO	Directed to	Question
3.8.6.	Art 12: Permanent stopping up and restriction of use of highways and private means of access	<i>Applicant/ Highways England (HE)</i>	With reference to the Applicant's and HE's responses at deadline 4 [REP4-020, REP4-002] to ExA's SWQs [PD-010], Q2.8.10 ... i. Would the Applicant and HE update the Examination on the status of their discussions with regard to Art 12, highlighting any areas still to be resolved?
3.8.7.	Art 17: Level crossings	<i>Applicant</i>	With reference to the Applicant's response at deadline 4 [REP4-020] to ExA's SWQs [PD-010], Q2.8.13, the Applicant's response is noted, but ... i. Is there not a tautology in Art 17, since it only applies once Footpath 144 has been stopped up under Art 12(1), so by the time it comes into effect the Public Right of Way will already have been extinguished?
3.8.8.	Art 18: Discharge of water	<i>Applicant, Environment Agency (EA)</i>	With reference to the Applicant's and EA's responses at deadline 4 [REP4-020, REP4-001] to ExA's SWQs [PD-010], Q2.8.14 ... i. Would the Applicant and EA update the Examination on the status of their discussions with regard to the discharge of water, highlighting any areas still to be resolved?
3.8.9.	Art 22: Works in the river Thames - conditions	<i>Applicant</i>	With reference to the Port of London Authority (PLA)'s response at deadline 4 [REP4-007] to ExA's SWQs [PD-010], Q2.8.17 ... i. What is the Applicant's response to PLA's deadline 4 response? ii. The point is simply to be consistent throughout the Order.

Q No.	Part of DCO	Directed to	Question
3.8.10.	Art 32: Temporary use of land for carrying out the authorised development	<i>Applicant</i>	<p>With reference to the Applicant's response at deadline 4 [REP4-020] to ExA's SWQs [PD-010], Q2.8.20, the Applicant's response is noted, but ...</p> <ul style="list-style-type: none"> i. Re items i and ii, double recovery is expressly precluded by Art 40: <i>No double recovery</i>; questions (i) and (ii) are repeated as the answers given do not fully address them; ii. Re item iii, the explanation given is fine for the works taking place on land of the owners mentioned, but the article is not limited to those areas but is of general application, including the ancillary works in Schedule 1 which may take place anywhere within the site. Instead of "... construct any works on that land as are mentioned in Schedule 1..." in Art 32(1)(d), should this subparagraph of this article be limited to specific works in Schedule 1?
3.8.11.	Art 32(2): Temporary use of land for carrying out the authorised development - Notice Period	<i>Applicant, Thurrock Council (TC), Highways England (HE)</i>	<p>With reference to the Applicant's, TC's, HE's and PLA's responses at deadline 4 [REP4-020, REP4-005, REP4-002, REP4-007] to ExA's SWQs [PD-010], Q2.8.21 ...</p> <ul style="list-style-type: none"> i. Re item i, would the Applicant, TC and HE update the Examination on their positions on the notice period and related matters? ii. Re item ii, the Applicant's response is noted, but would the Applicant clarify the special circumstances cited here? Does this mean that Temporary Possession (TP) is only required of land owned by a highway authority, the Port of London Authority, the Crown Estate or of special category land as noted in REP1-015, who would not want the option of Compulsory Acquisition (CA) instead of TP? It is noted that A32(1)(a) enables TP of any Order land, not only that specified in Schedule 6 (TP only).
3.8.12.	Art 33: Temporary	<i>Applicant,</i>	With reference to the Applicant's, TC's, HE's and PLA's responses at

Q No.	Part of DCO	Directed to	Question
	use of land for maintaining the authorised development	<i>Thurrock Council (TC), Highways England (HE)</i>	deadline 4 [REP4-020, REP4-005, REP4-002, REP4-007] to ExA's SWQs [PD-010], Q2.8.22 ... <ul style="list-style-type: none"> i. Re item i, would the Applicant, TC and HE update the Examination on their positions on this matter? ii. Re item ii, can the Applicant give a logical justification for a 14 day notice period for construction but a 28 day period for maintenance? Just because it has appeared in previous DCOs does not necessarily justify it on the merits in this particular case. Also, although TP for construction may be limited to specific owners, the TP power for maintenance applies to any Order land; iii. Re item iii, an owner would no doubt prefer to have some idea of how long he was to be excluded from his land, otherwise he would not be able to plan for its future. Can the Applicant justify why such an indication should not be given?
3.8.13.	Art 35: Apparatus and rights of statutory undertakers in stopped-up streets	<i>Applicant</i>	With reference to the Applicant's response at deadline 4 [REP4-020] to ExA's SWQs [PD-010], Q2.8.24, the Applicant's response is noted, as is the Applicant's <i>Summary of Case Given at DCO Hearing</i> [REP1-015] in which the Applicant states why certain undertakers were excluded from this provision (due to the limited definition of "statutory utility") and draws a distinction between undertakers that would be protected by Protective Provisions in the DCO and "statutory utilities" that would not. <ul style="list-style-type: none"> i. However, "statutory utility" as defined includes a public communications provider", but it is noted that Schedule 10 does include Protective Provisions for the protection of electronic communications code networks. Is there not a degree of overlap here? ii. Similarly the definition of "statutory utility" includes a railway undertaking but there are Protective Provisions for Network Rail.

Q No.	Part of DCO	Directed to	Question
			<p>Should the Applicant revisit the necessity for Art 35 given the existence of these PPs and the potential "undesirable overlap"? Are there any other "statutory utilities" as defined that would require the protection of Art 35?</p>
3.8.14.	<p>Art 41: Operation and maintenance of the authorised development</p>	<p><i>Applicant</i></p>	<p>With reference to the Applicant's response at deadline 4 [REP4-020] to ExA's SWQs [PD-010], Q2.8.28, the Applicant's response is noted.</p> <p>The DCO provides statutory authority for the works that it authorises. Insofar as development consent is required for those works, s33(1) PA 2008 states that planning permission is not required for them (Permitted Development (PD) rights are of course a form of planning permission). It may be that the works/development referred to in A41 are wholly considered to be 'associated development' and therefore not within s33(1) (if they are not 'required' for the NSIP development) but if that is the case the Applicant should make that clear.</p> <p>Similar considerations apply to the extensive works at the end of Schedule 1. There does seem to be considerable overlap between the development that could be brought forward under the PD rights of a harbour undertaking and the specific powers available under Schedule 1. Art 6 of the dDCO grants development consent for the authorised development which is defined in A2(1) as not only the Schedule 1 development (itself very widely defined) but also "any other development within the meaning of the 2008 Act authorised by this Order". Art 41(2) includes various activities which are clearly development within that definition.</p> <p>i. In that context, noting that Art 41(1) provides general statutory authority to operate and maintain the authorised development, the Panel asks the Applicant to identify which of the works in Art 42(2) would not benefit from PD rights and therefore need to be specifically provided for in the dDCO?</p>

Q No.	Part of DCO	Directed to	Question
			ii. If the reference to Art 3(2) in Art 41(1) is correct (Art 3(2) refers to the extinguishment of licences for existing structures), why should this dDCO authorise their operation and maintenance?
3.8.15.	Art 51: Consent to transfer benefit of Order	<i>Applicant</i>	With reference to PLA's response at deadline 4 [REP4-007] to ExA's SWQs [PD-010], Q2.8.32 ... i. What is the Applicant's response to PLA's deadline 4 response?
3.8.16.	Art 52: Traffic Regulation Measures	<i>Applicant, Highways England (HE), Thurrock Council (TC)</i>	With reference to TC's and HE's responses at deadline 4 [REP4-005, REP4-002] to ExA's SWQs [PD-010], Q2.8.33 ... i. Would the Applicant, TC and HE update the Examination on their positions re traffic regulation measures?
3.8.17.	Art 57: Consents, agreements and approvals	<i>Applicant</i>	With reference to Thurrock Council (TC)'s, Port of London Authority's, Marine Management Organisation's and the Environment Agency (EA)'s responses at deadline 4 [REP4-005, REP4-007, REP4-003, REP4-001] to ExA's SWQs [PD-010], Q2.8.34 ... i. Would the Applicant state whether TC's response requires any amendment to Art 57? ii. Would the Applicant state whether it concurs with EA's comment that it does not consider Art 18 and 57 to cover Environmental Permits under the Environmental Permitting (England and Wales) Regulation 2016?
3.8.18.	Schedule 1: Authorised	<i>Applicant, Thurrock</i>	With reference to the Applicant's response at deadline 4 [REP4-020] to ExA's SWQs [PD-010], Q2.8.35, the Applicant's response is noted, but ...

Q No.	Part of DCO	Directed to	Question
	development	<i>Council (TC), Highways England (HE)</i>	<p>i. Re items i and ii, the Panel is not convinced by the Applicant's statement that "to include" (merely) relates to the ancillary works. Insofar as the extent of the ancillary works is undefined - and as the Applicant says, they can take place within the numbered Works, would the Applicant state why the definitions of the numbered Works are open-ended? Also, if "port facilities" is intended to be as all-encompassing as the Applicant suggests, what is the significance of "port surfacing" and "port infrastructure" as well in various Works, and in the context of the ancillary works?</p> <p>ii. Can the Applicant explain why the use of the term "to include" here and in the Works descriptions does not give excessive flexibility?</p> <p>iii. Re item viii, which asked why Ancillary Works (a) to (d) are needed given Arts 8 and 10, would TC and HE state their positions on this point?</p> <p>iv. Re item ix, the Panel notes that the issue of ancillary works was only briefly referred to in the recommendation report for the Silvertown Tunnel Order 2018 (paragraph 2.1.26) and not at all in the decision letter, and so was not raised as an issue in relation to that decision. It would in any case relate to the circumstances of that particular case. The Panel repeats its question – are works (v) and (x) necessary in this case, and if they are, can they not be more tightly constrained?</p>
3.8.19.	Schedule 2: Requirements R1 Interpretation	<i>Applicant</i>	<p>With reference to the Applicant's response at deadline 4 [REP4-020] to ExA's SWQs [PD-010], Q2.8.36, the Applicant's response, including its reference to paragraphs 2.5 and 2.6 of the Ecology Note [REP3-017], is noted, but ...</p> <p>i. There is no reference to the Ecological Mitigation and Compensation Plan in the dDCO except in the definitions in R1, so how is it</p>

Q No.	Part of DCO	Directed to	Question
			intended to be 'finalised' and what is it intended to do, as it is not mentioned in any article or other requirement?
3.8.20.	Schedule 2: Requirements R3 External appearance and height of authorised development	<i>Applicant, Historic England</i>	With reference to Historic England's response at deadline 4 [REP4-009] to ExA's SWQs [PD-010], Q2.8.37 ... i. Would the Applicant and Historic England update the Examination on progress with their discussions?
3.8.21.	Schedule 2: Requirements R6 Terrestrial written scheme of archaeological investigation	<i>Historic England</i>	With reference to the revised Terrestrial Written Scheme of Investigation (WSI) submitted by the Applicant at Deadline 4 [REP4-023] ... i. Would Hist E confirm that it is content with the revised WSI?
3.8.22.	Schedule 2: Requirements R13 Interpretation and R14 Applications made under requirements	<i>Thurrock Council (TC)</i>	With reference to Schedule 2 Part 2, Procedure for discharge of requirements ... i. Is TC content that appeals against s61 notices should be dealt with by the bespoke procedure in Requirements 13 and 14 in the dDCO, rather than the way in which they would normally be dealt with?
3.8.23.	Schedule 3: Classification of Roads etc	<i>Applicant, Thurrock Council (TC)</i>	With reference to the Applicant's and TC's responses at deadline 4 [REP4-020, REP4-005] to ExA's SWQs [PD-010], Q2.8.43 ... i. Would the Applicant and TC update the Examination on the status of

Q No.	Part of DCO	Directed to	Question
			Schedule 3, highlighting any areas still to be resolved?
3.8.24.	Schedule 4: Permanent Stopping up of Highways and Private Means of Access and Provision of New Highways and Private Means of Access	<i>Applicant, Thurrock Council (TC), Highways England (HE)</i>	With reference to the Applicant's, TC's and HE's responses at deadline 4 [REP4-020, REP4-005, REP4-002] to ExA's SWQs [PD-010], Q2.8.44 ... <ul style="list-style-type: none"> i. Would the Applicant, TC and HE update the Examination on the status of Schedule 4, highlighting any areas still to be resolved?
3.8.25.	Schedule 7: Port premises byelaws	<i>Applicant, Thurrock Council (TC)</i>	With reference to the Applicant's and Port of London Authority (PLA)'s responses at deadline 4 [REP4-020, REP4-007] to ExA's SWQs [PD-010], Q2.8.45 ... <ul style="list-style-type: none"> i. Does the Applicant have any comment on PLA's deadline 4 response? ii. Under item ii, the Applicant states that the byelaws have been drafted specifically in relation to Tilbury2. Does TC have any comment?
3.8.26.	Schedule 8: Traffic Regulation Measures etc	<i>Applicant, Thurrock Council (TC), Highways England (HE)</i>	With reference to the Applicant's, TC's and HE's responses at deadline 4 [REP4-020, REP4-005, REP4-002] to ExA's SWQs [PD-010], Q2.8.46 ... <ul style="list-style-type: none"> i. Would the Applicant, TC and HE update the Examination on the status of Schedule 8, highlighting any areas still to be resolved?

Q No.	Part of DCO	Directed to	Question
3.8.27.	Schedule 9: Deemed Marine Licence (DML)	<i>Applicant, Environment Agency (EA), Historic England (Hist E), Marine Management Organisation (MMO), Natural England (NE), Port of London Authority (PLA)</i>	<p>With reference to the Applicant's, MMO's and Hist E's responses at deadline 4 [REP4-020, REP4-003, REP4-009] to ExA's SWQs [PD-010], Q2.8.47 ...</p> <ul style="list-style-type: none"> i. Would the Applicant and MMO update the Examination on the status of Schedule 9, highlighting any areas still to be resolved? ii. In particular, would the Applicant and MMO state whether agreement has now been reached on maintenance dredging (item iii), the 14-hour non-piling window (item v), piling at weekends (item vi), boundaries for water injection dredging (item viii), and maximum dredging depths (item x)? iii. Re item xi, would Hist E state whether it is content with the Marine Written Scheme of Investigation (WSI) submitted by the Applicant at Deadline 4 [REP4-021]? iv. Would PLA, NE, MMO, Hist E and EA in particular give their views on the DML to be included in the Applicant's updated version of the dDCO requested to be submitted by 20 June 2018?
3.8.28.	Schedule 10: Protective Provisions	<i>Applicant, Anglian Water (AW), Cadent Gas Ltd (CGL), Environment Agency (EA), Highways England (HE), National Grid (NG),</i>	<p>With reference to the Applicant's, CGL's, EA's, HE's, NG's, NR's, PLA's, RWE's and TC's responses at deadline 4 [REP4-020, REP4-010, REP4-001, REP4-002, REP4-012, REP4-006, REP4-007, REP4-004, REP4-005] to ExA's SWQs [PD-010] ...</p> <ul style="list-style-type: none"> i. Re Q2.8.48, would the Applicant, AW, CGL, EA, HE, NG, NR, PLA, RWE and TC state their positions regarding the protective provisions? ii. Re Q2.8.50, in which the Panel asks the Applicant for its position on HE's proposal regarding a s278 agreement for works to the Asda roundabout, and the Applicant states that its approach is "far from novel", would the Applicant supply example precedents?

Q No.	Part of DCO	Directed to	Question
		<p><i>Network Rail (NR), Port of London Authority (PLA), RWE Generation UK (RWE), Thurrock Council (TC)</i></p>	
<p>3.8.29.</p>	<p><i>Updated dDCO at 20 June 2018</i></p>	<p><i>Environment Agency (EA), Highways England (HE), Historic England (Hist E), Marine Management Organisation (MMO), Natural England (NE), Port of London Authority (PLA)</i></p>	<p>With reference to the Applicant's updated version of the draft DCO requested by ExA to be submitted by 20 June 2018 ...</p> <p>i. Would EA, HE, Hist E, MMO, NE, and PLA in particular give their initial views of the updated dDCO?</p>