



PORT OF  
TILBURY  
LONDON

PLANNING ACT 2008  
INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE)  
RULES 2010

PROPOSED PORT TERMINAL AT  
FORMER TILBURY POWER STATION  
**TILBURY2**

TRO30003

Written Submission of Case at Issue Specific Hearing on the DCO on 28th June

DOCUMENT REF: PoTLL/T2/EX/136





## Pinsent Masons

### PORT OF TILBURY LONDON LIMITED – TILBURY2 – DEVELOPMENT CONSENT ORDER APPLICATION

#### ISSUE SPECIFIC HEARING ON THE DRAFT DEVELOPMENT CONSENT ORDER (dDCO)

28 JUNE 2018

#### SUMMARY OF APPLICANT'S SUBMISSIONS

##### 1. INTRODUCTION

- 1.1 This note summarises the submissions made by Port of Tilbury London Limited ("PoTLL") ("the Applicant") at the Development Consent Order Issue Specific Hearing held on 28 June 2018 ("the hearing") in relation to PoTLL's application for development consent for a Proposed Port Terminal at the Former Tilbury Power Station known as "Tilbury2" ("the Scheme").
- 1.2 Oral submissions by all parties attending the hearing were made pursuant to the agenda published by the Examining Authority ("the ExA") on 19 June 2018 ("the agenda").
- 1.3 In setting out PoTLL's position on the issues raised in the agenda, as submitted orally at the hearing, the format of this note follows that of the agenda. In addition, extra items have been added where interested parties or the ExA raised points not specifically mentioned in the agenda and in relation to which PoTLL made oral submissions. Where the ExA requested a written response to an agenda item, the Applicant has also responded as appropriate in the note below.
- 1.4 PoTLL's substantive oral submissions commenced at item 2 of the agenda, therefore this note does not cover item 1 on the agenda which was procedural and administrative in nature.

##### 2. AGENDA ITEM 2 - 'BRIEF EXPLANATION BY THE APPLICANT OF THE STATUS OF THE DDCO, AS CURRENTLY DRAFTED'

- 2.1 **Robbie Owen** on behalf of PoTLL set out that version 3 of the dDCO was submitted at deadline 4.5 on 19 June 2018 [ref: PoTLL/T2/EX/109] along with an explanatory note describing why the changes made were necessary [ref: PoTLL/T2/EX/111] and a comparison against version 2 [ref:

PoTLL/T2/EX/110]. PoTLL continues to discuss aspects of the dDCO, in particular the protective provisions contained in Schedule 10, and will submit a further updated revision at deadline 5 on 6 July 2018.

2.2 The ExA confirmed its intention to provide a schedule of proposed changes to the dDCO (revision 4) to be submitted at deadline 5 as opposed to providing a revised or marked up dDCO.

3. **AGENDA ITEM 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’**

3.1 The ExA invited the interested parties in attendance at the hearing to set out any general concerns in respect of the dDCO and the following submissions were made:

3.1.1 **Wendy Lane** on behalf of Gravesham Borough Council (“GBC”) set out that GBC was considering Requirement 10 (noise monitoring and mitigation) and would provide comments to PoTLL on this requirement soon.

3.1.2 **Alison Gorlov** on behalf of the Port of London Authority (“the PLA”) explained that the PLA and PoTLL were nearing agreement in respect of the drafting of the dDCO and that good progress had been made. There were, however, two outstanding points to be agreed in respect of articles 3 and 4 of the dDCO. Alison Gorlov explained that the PLA and PoTLL had not submitted a statement of common ground (“SoCG”) at deadline 4.5 because the parties were in the process of reaching agreement. Agreement should be reached soon and a SoCG could be provided in the interim if necessary. .

3.1.3 **Jamie Melvin** on behalf Natural England (“NE”) stated that NE had some concerns in respect of the removal of the Ecological Mitigation and Compensation Plan from the dDCO however he agreed that this should be addressed later in the agenda as intended.

3.2 **AGENDA ITEM 4 – ‘THE MATTERS IN ANNEX A OF THE AGENDA’**

3.3 Annex A of the agenda contained specific questions posed by the ExA which are set out in Table 1 below. The questions are set out in the order in which they appear in the dDCO and as well as addressing the specific questions, the ExA also carried out a systematic page turn of the dDCO allowing third parties to raise any issues in respect of the drafting. Table 1 therefore also notes specific points raised at the hearing by interested parties.

**TABLE 1**

ExA's Agenda Item/ Issue raised	Summary of PoTLL's Oral Submissions made in the hearing Relevant document references
<b>Article 2</b>	
<p>The ExA raised a concern in respect of <b>article 2</b> and the extended port limits plan asking about the boundaries of the plan and the two areas in which the limits extended beyond the Order Limits and what powers were covered in those areas.</p>	<ul style="list-style-type: none"> <li>• <b>Robbie Owen</b> on behalf of PoTLL gave a general explanation of the intention in respect of the two areas which are not within the Order Limits. Mr Owen set out that there is no intention to carry out works as part of the initial construction authorised by Schedule 1 to the dDCO within these areas. The intention is that the powers of a harbour authority and that the powers in article 41 (maintenance of the authorised development and the operation of the Company's harbour undertaking) should apply in those areas just as they would apply elsewhere in the extended port limits. The powers of the harbour authority deriving from the Port of Tilbury Transfer Scheme 1991 (the 1991 Transfer Scheme) as confirmed by the Port of Tilbury Transfer Scheme 1991 Confirmation Order 1992, which is applied to the extended port limits by article 4(1), will apply to the two areas and in particular the proposed Byelaws in Schedule 7 to the dDCO will apply to these areas. Mr Owen explained that this issue had been discussed with the PLA and it was considered that if the two areas in question were not within the extended port limits then it would potentially result in an undesirable situation in which areas of water enclosed by the extended jetty would not be in the control of the harbour authority which would not be good for safety or navigation.</li> <li>• <b>Peter Ward</b> on behalf of PoTLL confirmed that the rationale set out by Mr Owen was correct and that safety and navigation controls were the key concern. Mr Owen explained that the controls would also ensure that the Applicant would have a say over third party works in respect of those areas which may be constructed pursuant to river works licences granted by the PLA.</li> </ul> <p><b>The ExA</b> queried whether the powers discussed were ones which already existed or if they were 'fresh, new powers'.</p> <ul style="list-style-type: none"> <li>• <b>Mr Owen</b> set out in summary that the PLA exercises the powers contained in the Port of London Act 1968. The 1991 Transfer Scheme applies those powers to Tilbury1 (with some tweaks and changes) and the intention is that such powers will be applied to Tilbury2. This would not include conservancy functions as the PLA is and will remain the conservancy authority with PoTLL as the Harbour Authority. The PLA would therefore retain the power to grant river works licences and dredging licences for the two areas in question. It is, however, considered necessary that such areas should be under the jurisdiction of the harbour authority and it would be invidious for a harbour authority to have areas in which it could not control the safety of navigation and operations in its area. Specifically in relation to</li> </ul>

	<p>the ExA's question, Mr Owen explained therefore that there were existing harbour-related powers over these two areas vested in the PLA.</p> <p><b>The ExA</b> raised a query in respect of article 41 and asked how extensive the powers in this article are.</p> <ul style="list-style-type: none"> <li>• <b>Robbie Owen</b> confirmed on behalf of PoTLL that the powers in article 41 were indeed extensive but that they were necessary and were the usual powers which would be expected of a harbour authority. Mr Owen explained that the purpose of the DCO was not just to authorise the initial Scheme but also to provide the necessary powers of the harbour authority which would be required over the operational life of the port - at least for the next 80 years or more.</li> <li>• <b>Francis Tyrrell</b> on behalf of PoTLL emphasised that it is only article 41(2)(c) of the dDCO which would apply to the two areas beyond the Order Limits which had been identified by the ExA . The other powers at (a) and (b) are not within the river Thames as they are on land. Article 41(2)(a) contains a carve out which states “<i>other than those parts of the river Thames situated within the extended port limits</i>” and article 41(2)(b) cross-refers to 41(2)(a).</li> <li>• <b>Alison Gorlov</b> on behalf of the PLA set out the PLA’s position. Ms Gorlov explained that what had been set out on behalf of PoTLL was correct and entirely sensible. Ms Gorlov did, however, query whether the two areas identified in the extended port limits plan had been discussed with the Harbour Master. As to the powers exercisable, Ms Gorlov set out that there were existing PLA powers in place (as explained by Mr Owen above) and that the DCO proposes that the areas are regulated by PoTLL thus they are fresh powers for PoTLL which will overlap with the PLA powers. PoTLL will therefore exercise its powers subject to the PLA.</li> <li>• In response, <b>Robbie Owen</b> explained that the position in respect of overlapping powers is normal and this exists at London Gateway Port as well as a number of other ports around the country. Generally it is common for there to be an overlap between conservancy and harbour authorities. Mr Owen emphasised that the extended port limits plan had not been amended and that the proposed port limits had always been the same and that the PLA was made aware of this before the application was submitted. <b>Peter Ward</b> confirmed that and the discussions regarding the plan that had been held with the PLA's harbour master.</li> </ul>
<p><b>Article 3</b></p>	
<p><b>Carol Bolt</b> on behalf of the Environment Agency ("the EA") raised a concern in respect of this article. Ms Bolt</p>	<ul style="list-style-type: none"> <li>• <b>Robbie Owen</b> on behalf of PoTLL explained that in general terms the disapplications referred to are for construction purposes so that the DCO was as all encompassing as possible. Mr Owen explained that the disapplications outlined</li> </ul>

<p>set out that the parties were in discussion and that the EA wished for clarification over why PoTLL wished to disapply: (1) the provisions of the Thames Barrier and Flood Prevention Act 1972; and (2) section 24 (restrictions on abstraction) of the Water Resources Act 1991.</p>	<p>by Ms Bolt are commonplace and that as there is a very tight programme for the construction of the Scheme, it is desirable for there to be fewer 'downstream' consents required for construction purposes.</p> <ul style="list-style-type: none"> <li>• In respect of the Thames Barrier and Flood Prevention Act 1972 the issue is that as well as the provisions in respect of constructing the Thames Barrier this Act also contains general powers in respect of flood prevention issues in the Thames estuary including works requiring consent. A disapplication has therefore been sought to ensure that PoTLL does not have to apply for such consents. This Act was disapplied for the same reasons in the recently-made Silvertown Tunnel Order 2018.</li> <li>• In relation to the restrictions on abstraction, there are other DCOs which disapply this provision (for example the Silvertown Tunnel Order 2018). The intention is that this is disapplied but the EA maintains any necessary control through the protective provisions.</li> <li>• <b>Mr Owen</b> confirmed that PoTLL and the EA were still in discussion regarding the protective provisions.</li> </ul>
<p><b>3.8.1 Art 3: Disapplication of legislation, etc - With reference to RWE Generation's response at deadline 4 [REP4-004] to ExA's SWQs [PD-010], Q2.8.2 ...</b></p>	
<p><b><i>i. What is the Applicant's response to RWE's deadline 4 response?</i></b></p>	<ul style="list-style-type: none"> <li>• <b>Robbie Owen</b> on behalf of PoTLL set out that a set of protective provisions for the benefit of RWE are now included within revision 3 of the dDCO submitted at deadline 4.5. Good progress has been made with RWE on the form of the DCO and the focus is now on the form of protective provisions which should deal with RWE's concerns in respect of article 3. Changes to the dDCO had previously been made in respect of the landside property issues which had been previously raised by RWE.</li> <li>• <b>Mr Owen</b> reported that, in general terms, PoTLL has been trying hard to reflect in the drafting of the DCO the position reflected in the arrangements between PoTLL and RWE relating to the transfer of the land and the jetty asset in 2017. PoTLL was working hard to reach agreement with RWE through the protective provisions. The slight sticking point between the parties is the extent to which PoTLL can and should anticipate RWE's proposed DCO for the energy centre. PoTLL considers that it is appropriate for the dDCO not to obstruct the RWE scheme from being brought forward however this is the full extent of what can reasonably be included within the DCO. PoTLL cannot include provisions (for example indemnities) within the DCO on the basis that the energy centre will be built. It is considered that such things should be dealt with in the context of the energy centre DCO if and when it is made. PoTLL considers that it is faithfully representing what was agreed at the time of the sale of the land when it was clearly known by RWE that the land was being sold for a port. Mr Owen explained that if PoTLL and RWE cannot reach an agreed position then the ExA may be asked to consider appropriate protective provisions. In doing so, the ExA would need to consider whether RWE's concerns were in fact only being promoted to try and protect its future commercial interests as opposed to a statutory undertaking.</li> </ul>

- **Peter Ward** on behalf of PoTLL stated that the summary by Mr Owen was fair and that the jetty transfer reserves certain rights for RWE which PoTLL believes will be protected under the protective provisions.
- **Paul Maile** on behalf of RWE echoed that discussions over article 3 and the draft protective provisions were ongoing. In respect of article 3, RWE's previous concerns related to the disapplication of the existing river works licence. RWE is now broadly happy with the drafting of article 3 subject to adequate protection being provided in the protective provisions for the continuation of the associated rights. There are provisions in the protective provisions contained in the dDCO submitted at deadline 4.5 to take account of this and RWE has suggested some additions and amendments to these in order to fully protect RWE's position.
- **Alison Gorlov** on behalf of the PLA set out that the PLA is not entirely content with the application of the PLA's licensing powers which it considers is being looked at only in the context of RWE. The PLA has to look further forward and therefore there is the possibility that over the next 100 years or so there will be parties other than RWE who will need to be considered. The PLA's concerns are with how the licensing operates in articles 3(7) and 3(8) and the PLA needs to be assured that PoTLL recognises that such functions are statutory functions as opposed to commercial functions. Ms Gorlov set out that at present the provisions state that RWE's licences cannot be varied by the PLA except with the consent of the Company, however it is proposed that this should also say for the avoidance of doubt that such consent should be given by the Company "*in exercise of its statutory functions*" (as opposed to its commercial functions). Ms Gorlov explained that article 3(8) states that the grant or variation by the PLA of a river works licence in relation to the parts of the river Thames situated within the extended port limits belonging to the PLA and in respect of which the Company has a proprietary interest is not, unless otherwise agreed by the Company, to be deemed to confer on the holder of the licence such rights in, under or over the land as are necessary to enable the holder of the licence to enjoy the benefit of the licence. The PLA does not have an issue with this in principle however the capacity in which PoTLL is agreeing to someone carrying out the works needs to be considered. The PLA's concern is that this provision could be used in order to see off a rival if commercial considerations could be taken into account.
- **Robbie Owen** explained that PoTLL was considering the changes which had been proposed by the PLA (they had only been sent in an email received the day before the hearing and so PoTLL had not yet had chance to consider them). Article 3(7) sets out that the PLA cannot grant or vary a river works or dredging licence without the consent of the Company acting in respect of its statutory functions. Mr Owen confirmed that PoTLL would revise the drafting of the DCO in order to make the point raised by Ms Gorlov in respect of statutory functions clear. Article 3(9) sets out that the Company must not unreasonably withhold or delay its consent and that in considering whether to grant consent it may only have regard to the matters listed in paragraph 10. Discussions between the PLA and PoTLL are on-going regarding the wording of paragraph 10. PoTLL needs to be sure that such works licences would not disrupt its position as statutory harbour authority.

	<ul style="list-style-type: none"> <li>• <b>Alison Gorlov</b> on behalf of the PLA added that the PLA had some concerns in respect of article 3(9) and that it wants an express provision to make clear that the Company will also be exercising its statutory functions in this context as well.</li> </ul> <p>The ExA queried the location of the structures mentioned in article 3.</p> <ul style="list-style-type: none"> <li>• <b>Robbie Owen</b> referred to the deadline 4 version of sheet 3 of the works plans which shows the locations clearly.</li> </ul>
<p><b>3.8.2. Art 4: Application of enactments relating to the Port of Tilbury - 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:</b></p>	
<p><i>i. Would the Applicant give its response to the PLA's deadline 4 response?</i></p>	<ul style="list-style-type: none"> <li>• <b>Robbie Owen</b> on behalf of PoTLL stated that the changes to article 4 in revision 3 of the dDCO are all agreed save for the wording in respect of the insertion of the new proposed section 5AA(2). Precise wording is being agreed with the PLA in respect of this one outstanding issue.</li> <li>• <b>Alison Gorlov</b> on behalf of the PLA set out that the PLA had some further proposals on this article which had been sent to PoTLL in an email the day before the hearing.</li> </ul>
<p><i>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;</i></p>	<ul style="list-style-type: none"> <li>• <b>Robbie Owen</b> on behalf of PoTLL said that the footnote will be removed in the next revision of the DCO and that the General Trading Regulations will be referred to as regulations made under section 22 of the Port of London Act 1968 (as set out in more detail below).</li> </ul>
<p><i>iii. Re item iv, under what power are the General Trading Regulations made, and should this be stated in the DCO?</i></p>	<ul style="list-style-type: none"> <li>• <b>Robbie Owen</b> explained on behalf of PoTLL that the General Trading Regulations are made under section 22 of the Port of London Act 1968. Section 22 is exercisable by the Applicant by virtue of paragraph 3 of Schedule 1 to the Port of Tilbury Transfer Scheme 1991 Confirmation Order 1992.</li> </ul>
<p><i>iv. Re item iv, would the Applicant state whether provision should be made for variation of the Regulations, eg "as varied</i></p>	<ul style="list-style-type: none"> <li>• As set out above, PoTLL will refer to the General Trading Regulations as regulations made under section 22 of the Port of London Act 1968.</li> </ul>



<i>from time to time by the Company ...”?</i>	
<i>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)?</i>	<ul style="list-style-type: none"> <li>• <b>Robbie Owen</b> on behalf of PoTLL explained that paragraph 2 of article 4 sets out that there are some exceptions to the functions which will have effect in respect of the extended port limits. One such exception is section 85 (agreements about calling at landing places) of the Port of London Act 1968. This provision qualifies the open port duty (which essentially means that the harbour authority has an obligation to keep the port open for public access on payment of dues), which is commonplace in local legislation so that certain parts of the harbour could be set aside for particular uses. The application (article 42 (power to appropriate)) is essentially replacing section 85 with a more modern equivalent. This is very well precedented, for example in the Able Marine Energy Park Development Consent Order 2014 and numerous orders made under the Harbours Act 1964. This gives the port flexibility in how the harbour is run and how certain berths are utilised.</li> </ul>
<b>3.8.3 Art 6: Development consent granted by the Order - 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 ...</b>	
<i>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;</i>	<ul style="list-style-type: none"> <li>• <b>Robbie Owen</b> on behalf of PoTLL explained that PoTLL considers that the drafting of article 6(2) is correct. This provision does not seek to relate to the initial authorised development in Schedule 1 to the DCO. A particular focus of the provision was preserving the permitted development rights which should apply in the extended port limits. No amendment was required to the drafting of this article itself.</li> <li>• As set out in more detail at item 3.8.3 (ii) below, the Applicant subsequently agreed to move paragraph 2 of article 6 to article 47 as it is more appropriately placed within that article.</li> </ul>
<i>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</i>	<p><b>The ExA</b> set out that it is still troubled by the apparent overlap of powers which article 41 conveys in respect of operational activities and port permitted development rights. The ExA queried why both are required.</p> <ul style="list-style-type: none"> <li>• <b>Robbie Owen</b> on behalf of PoTLL explained that this was a vitally important issue which boiled down to the question of statutory powers, which were a separate concept to planning permission for 'development'. Mr Owen explained that PoTLL had tried to clarify the intention of article 41 in revision 3 of the dDCO submitted at deadline 4.5.</li> <li>• Mr Owen explained that paragraph 2 of article 41 sets out a very standard list of on-going statutory powers which the Company needs to be given for the purpose of managing the harbour undertaking. In PoTLL’s response to the ExA’s second written questions [REP4-020], PoTLL did seek to clarify the difference between the need for planning permission and the need for statutory authority. These are very different concepts which should not be confused.</li> </ul>

<p><b><i>the site being port operational land.</i></b></p>	<p>This is essentially the position which every harbour authority in England and Wales is in so this should also be the case for Tilbury2. PoTLL considers that article 41 should not be looked at through a “<i>permitted development rights lense</i>” as that is not the point of the article – it is there to confer a broad range of ongoing statutory powers once Tilbury is up and running as a functioning port. Should PoTLL wish to construct works in the future then planning permission will be required which could either be through permitted development regime or expressly through the local planning authority.</p> <p><b>The ExA</b> queried whether in the absence of permitted development rights, article 41(2)(b) would provide PoTLL with the power to construct new development within the framework of the DCO subject to the environmental statement.</p> <ul style="list-style-type: none"> <li>• <b>Mr Owen</b> explained that all of the works in article 41(2) (a) to (d) are necessary powers for the statutory harbour authority. This does not override the planning regime under the Town and Country Planning Act 1990 and planning permission would be required in the normal way should works be constructed. Mr Owen explained that PoTLL would consider whether it could be made clearer on the face of the DCO in the next revision that despite the wide range of powers in article 41 it does not replace the requirement for planning permission. [<i>Afternote: This consideration is ongoing and the Applicant intends to submit a more detailed response on these issues at Deadline 6 and in doing so will take into account any further points put forward by the ExA after Deadline 5 in light of this discussion at the hearing.</i>]</li> <li>• <b>Francis Tyrrell</b> behalf of PoTLL added in respect of article 6(2) that this purely clarifies that there is an element of flexibility in the tight regime within the Planning Act 2008 which is required for an operational port with a lifespan of 100 years or more. If things are done which are permitted in the future whether by planning permission or permitted development rights then this would not be a breach of the terms of the DCO. In respect of the wide ranging maintenance powers as well as article 41 this does need to be in the DCO but permitted development rights are a separate issue which have been given to ports by successive governments. If, for example, PoTLL put things in the river then we would need a defence of statutory authority to do so. A harbour authority has a concept of its undertaking and it is not the case that what it has planning permission or permitted development rights for is the only consideration.</li> <li>• <b>Mr Owen</b> added that permitted development rights are not powers but are a reference to the General Permitted Development Order which grants permission for classes of developments as set out within the Order. These are therefore exceptions to the rule requiring express planning permission. Article 41 does not, therefore, give planning powers but gives the port statutory powers for things it will need to do in the future. Mr Owen agreed that article 6(2) would be better placed within article 47 and confirmed that PoTLL would consider this change in the next revision of the DCO to be submitted at deadline 5.</li> <li>• <b>Wendy Lane</b> on behalf of GBC stated that GBC had previously raised a query in respect of permitted development rights. Ms Lane was concerned in respect of the ability to construct lighting columns. GBC wished to know how this would relate to the requirement to discuss lighting strategy with GBC in accordance with Requirement 12 (lighting strategy).</li> </ul>
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|  | <ul style="list-style-type: none"><li>• <b>Robbie Owen</b> on behalf of PoTLL explained that Requirement 12 would need to be approved before the Scheme starts operating. That approved scheme will have continuing effect and would need to be adhered to. This is separate to the statutory powers to provide lighting which would not displace the continuing operation of the lighting strategy. The lighting strategy would apply to the Schedule 1 works.</li></ul> |
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<b>3.8.4 Art 10: Construction and maintenance of new, altered or diverted streets - 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 ...</b>	
<b><i>i. Would the Applicant and TC update the Examination on their discussions with regard to Art 10, highlighting any areas still to be resolved?</i></b>	<ul style="list-style-type: none"> <li>• <b>Matthew Ford</b> on behalf of Thurrock Council set out that the parties are broadly in agreement in respect of article 10. The only area of disagreement is regarding paragraph 4 which Thurrock Council would like to be amended regarding bridges and structures in order to state that once completed these are “<i>deemed to have been dedicated as public highways on the expiry of a period of 24 months from completion</i>” .</li> <li>• <b>Robbie Owen</b> on behalf of PoTLL stated that Thurrock Council's position was noted and would be considered further.</li> </ul>
<b>3.8.5 Art 11: Classification of roads - 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 ...</b>	
<b><i>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?</i></b>	<ul style="list-style-type: none"> <li>• <b>Matthew Ford</b> on behalf of Thurrock Council stated that discussions in respect of this article are ongoing and that there was no further update to be provided to the ExA at this stage.</li> <li>• <b>Matthew Fox</b> on behalf of PoTLL suggested that this question was answered alongside items 3.8.16, 3.8.23 and 3.8.26 as the answer applies equally to those items. Mr Fox set out that a meeting was held on these specific issues, and that it is understood that Thurrock Council's concerns on classification and traffic regulation measures are interlinked as they relate to Thurrock Council's powers in relation to HGVs on the infrastructure corridor. PoTLL has agreed to make the relevant changes to deal with this issue, and others, to the TRM plans and schedule. It is understood that no changes will be necessary to the classification roads article or Schedule. An updated version of the plans has not yet been circulated to Thurrock Council as it awaits the finalisation of the in principle mitigation scheme for the Asda Roundabout, which now includes a change in speed limits that the Applicant will seek to reflect in updated plans and Schedule.</li> </ul>
<b>3.8.6 Art 12: Permanent stopping up and restriction of use of highways and private means of access – 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...</b>	
<b><i>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?</i></b>	<ul style="list-style-type: none"> <li>• <b>Paul Harwood</b> on behalf of Highways England stated that he was not aware of any permanent stopping up affecting the interests of Highways England</li> <li>• <b>Matthew Fox</b> on behalf of PoTLL confirmed that this was correct and that it was understood that Thurrock Council was content in this respect. A related point is the active travel study which is believed to be fully agreed. Part of this article and corresponding Schedule will provide part of the active travel study.</li> </ul>

<b>3.8.7 Art 17: Level crossings - 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 ...</b>	
<b><i>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?</i></b>	<ul style="list-style-type: none"> <li>• <b>Robbie Owen</b> on behalf of PoTLL stated that this point can easily be dealt with in the next revision of the dDCO. It is correct to state that the Public Right of Way will have been extinguished by the time article 17 comes into effect. For this reason, the Applicant will amend the dDCO by removing the text in the final sentence of article 17: "<i>and any right of way over it extinguished</i>". The rest of this article is retained for the reasons set out in the Applicant's response to the Second Written Questions [REP4-020].</li> </ul>
<b>3.8.8 Art 18: Discharge of water - 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 ...</b>	
<b><i>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?</i></b>	<ul style="list-style-type: none"> <li>• <b>Robbie Owen</b> on behalf of PoTLL explained that discussions with the EA regarding its protective provisions are ongoing. As stated previously, PoTLL considers that the protective provisions suggested by the EA are not substantially different to those proposed by PoTLL. PoTLL notes that although this question is under the heading of article 18, it does not refer directly to that article and is directed in respect of the protective provisions.</li> <li>• <b>Carol Bolt</b> on behalf of the EA confirmed that this was the case and confirmed that the EA has no issue in respect of article 18 itself.</li> </ul>
<b>3.8.9 Art 22: Works in the river Thames – conditions – 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 ...</b>	
<b><i>i. What is the Applicant's response to PLA's deadline 4 response?</i></b>	<ul style="list-style-type: none"> <li>• <b>Robbie Owen</b> on behalf of PoTLL stated that the Applicant agrees with the PLA and has updated Revision 3 of the dDCO submitted at deadline 4.5 accordingly.</li> <li>• <b>Alison Gorlov</b> on behalf of the PLA confirmed that the PLA was content with this amendment.</li> </ul>

<p><b>ii. The point is simply to be consistent throughout the Order.</b></p>	<ul style="list-style-type: none"> <li>• <b>Robbie Owen</b> on behalf of PoTLL explained that the updated revision 3 of the dDCO submitted at deadline 4.5 has been amended to refer to: “<i>the river Thames</i>”. This was agreed at paragraph 2.8.17ii of the Applicant’s Response to the ExA’s Second Written Questions.</li> </ul>
<p><b>Compulsory purchase articles</b></p>	
<p><b>Changes made to articles 23 to 31</b></p>	<ul style="list-style-type: none"> <li>• <b>Robbie Owen</b> on behalf of PoTLL explained that quite a few changes had been made to these articles due to the Housing and Planning Act 2016 changes and in order to bring the drafting into line with recently made development consent orders.</li> </ul>
<p><b>3.8.10 Art 32: Temporary use of land for carrying out the authorised development - 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 ...</b></p>	
<p><b>i. Re items i and ii, double recovery is expressly precluded by Art 40: No double recovery; questions (i) and (ii) are repeated as the answers given do not fully address them;</b></p>	<ul style="list-style-type: none"> <li>• <b>Robbie Owen</b> on behalf of PoTLL asked the ExA for clarification in respect of its concerns regarding articles 32 and 33. He confirmed that these articles were well precedented in made orders.</li> <li>• <b>The ExA</b> agreed to take the point away and confirm what points required further thought.</li> <li>• However, PoTLL can respond as follows in writing to the question as written:</li> <li>• As the Applicant sought to indicate in the answer to this SWQ – compensation due pursuant to use of temporary possession powers is not the same as compensation due pursuant to use of compulsory acquisition powers. As such the exclusion in article 40 (no double recovery) does not apply. Thus if permanent works were installed in temporary land, the landowner would receive compensation for the loss or damage caused by the construction of that permanent work, and then could also claim compensation for acquisition of the land.</li> <li>• However, the Applicant would emphasise again that temporary possession-only powers are sought by the Applicant over only the following land: <ul style="list-style-type: none"> <li>Highways land – where without this power the roads could not be built; and the relevant highway authorities have controls through their PPs;</li> <li>River Thames – controlled through the PLA’s PPs;</li> <li>Anglian Water – only being taken to remove the jetty and subject to AW PPs as part of their operational land;</li> </ul> </li> </ul>

	<p>NR level crossing –subject to NR PPs; and</p> <p>Common land adjacent to Fort Road – this is for working space only as the embankment for this highway is covered by plot 03/11. No permanent works can be installed due to its status.</p>
<p><b><i>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?</i></b></p>	<ul style="list-style-type: none"> <li>• See response to 3.8.10 (i) above.</li> <li>• The Applicant responds as follows in writing:</li> <li>• Under the Order, the Applicant has the power to compulsorily acquire the land it requires to complete the works set out in Schedule 1 (and retain that land). Alternatively, the Applicant may enter on and take temporary possession of the land, complete the necessary works before giving up possession of any land no longer required. It would serve no purpose to be prescriptive in terms of which specific works in Schedule 1 article 32 (1)(d) should apply to. The approach as drafted will serve to identify necessary permanent land take when the detail of the as built scheme and final related operational areas are known. This is also a well precedented approach in DCOs.</li> </ul>
<p><b><i>3.8.11 Art 32(2): Temporary use of land for carrying out the authorised development - Notice Period - 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 ...</i></b></p>	
<p><b><i>i. Re item i, would the Applicant, TC and HE update the Examination on their positions on the notice period and related matters?</i></b></p>	<ul style="list-style-type: none"> <li>• <b>Matthew Ford</b> on behalf of Thurrock Council set out that discussions with PoTLL in respect of this article are on-going. Thurrock Council does not consider that the 14 day notice period in article 32(2) is sufficient and that a 3 month period would be more appropriate.</li> <li>• <b>Robbie Owen</b> on behalf of PoTLL set out that the time period within the article is the base position and that a longer time period can be provided for in the protective provisions. The protective provisions override the more general position under article 32.</li> </ul>

	<ul style="list-style-type: none"> <li>• <b>Paul Harwood</b> on behalf of Highways England stated that where highways are concerned, temporary possession cannot be taken unless the relevant highways are temporarily stopped up first. Highways England considers the temporary possession route is not viable for the A1089.</li> <li>• <b>Robbie Owen</b> responded stating that until PoTLL has a final design it does not know how it will work in practice. Mr Owen referred to the note submitted at deadline 4.5 by PoTLL– “Highways England Paper” [PoTLL/T2/EX/116] and reaffirmed that PoTLL understands the need to continue discussions with Highways England. Mr Owen explained that in revision 3 of the dDCO, the protective provisions for Thurrock Council and Highways England have been separated as different protective revisions would be required for each party. The Highways England provisions are not yet agreed but are under discussion.</li> </ul>
<p><i>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).</i></p>	<ul style="list-style-type: none"> <li>• See response to 3.8.10 (i) above.</li> <li>• The Applicant responds as follows in writing:</li> <li>• As mentioned previously all of the proposed TP only land is on land covered by PPs or is special category land. The Applicant therefore considers that the counter-notice process created by the NPA 2017 is unnecessary, as protections already exist for the affected parties.</li> <li>• In respect of land that may be TP’d and then compulsorily acquired, importing the counter notice provisions would be unnecessary - this would just mean that the Applicant would have to acquire the land sooner than expected, but would also mean that the affected party would lose the opportunity for the amount of land lost to be reduced through the detailed design process.</li> </ul>
<p><b>3.8.12 Art 33: Temporary use of land for maintaining the authorised development - 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], Q2.8.22 ...</b></p>	



<p><b><i>i. Re item i, would the Applicant, TC and HE update the Examination on their positions on this matter?</i></b></p>	<ul style="list-style-type: none"> <li>• <b>Matthew Ford</b> on behalf of Thurrock Council stated that Thurrock Council is now content with this article although further clarification is sought in respect of item (ii) below.</li> <li>• <b>Paul Harwood</b> on behalf of Highways England set out that its position was the same as stated above for article 32 and that this would need to be dealt with through the protective provisions.</li> </ul>
<p><b><i>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;</i></b></p>	<ul style="list-style-type: none"> <li>• PoTLL considers that the different periods are justified in the context of the types of works envisaged. It is likely that PoTLL will have more visibility in respect of planned maintenance works and that a longer period can therefore be justified.</li> <li>• As previously indicated, PoTLL intends to build the Scheme as soon as possible following consent, and as such a shorter notice period is required.</li> <li>• PoTLL also emphasises that the notice periods stated are "not less than" thus there is the possibility that more notice will be given. PoTLL will endeavour to give as much notice as possible to owners and occupiers.</li> </ul>
<p><b><i>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?</i></b></p>	<ul style="list-style-type: none"> <li>• Article 33(4) provides that the Company may only remain in temporary possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which temporary possession of the land was taken.</li> <li>• The reason that this article differs from the requirement in article 32(2) is that for construction activities the specific activity will be known and therefore the timeframe would be more foreseeable than for a maintenance activity. The Applicant would work with the owners and occupiers of land to the fullest extent possible.</li> <li>• However, the Applicant has reflected on this and will make a change with the next revision of the DCO so that notice of temporary possession under this article must indicate for how long temporary possession is required.</li> </ul>
<p><b>Article 34</b></p>	

<p>The ExA asked for an update in respect of the position regarding statutory undertakers.</p>	<ul style="list-style-type: none"> <li>• <b>Robbie Owen</b> on behalf of PoTLL stated that the overall position is progressing well: <ul style="list-style-type: none"> <li>(a) provisions are largely agreed with Cadent Gas and National Grid as electricity undertaker;</li> <li>(b) the provisions for the protection of Anglian Water are fully agreed; and</li> <li>(c) in respect of railway interests – further discussions have been held with Network Rail and the protective provision are nearly agreed.</li> </ul> </li> </ul>
<p><b>3.8.13 Art 35: Apparatus and rights of statutory undertakers in stopped-up streets - 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 Summary of Case Given at DCO Hearing [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.</b></p>	
<p><i><b>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?</b></i></p>	<ul style="list-style-type: none"> <li>• <b>Robbie Owen</b> on behalf of PoTLL explained that this was a technical issue which will be set out in more detail in this note. PoTLL therefore responds as follows:</li> <li>• The protective provisions for operators of electronic communications code networks in Part 2 of Schedule 10 to the dDCO are general. Article 35 is specifically concerned with stopped up streets. Neither the protective provisions themselves nor the communications code (applied by the protective provisions) provide the protection afforded by article 35(1) which provides a communications operator with the same rights and powers in respect of its apparatus as it enjoyed before the stopping up of a street (subject to the remaining powers of the article). It is therefore not considered that there is an overlap between article 35 and the protective provisions.</li> </ul>
<p><i><b>ii. Similarly the definition of "statutory utility" includes a railway undertaking but there are Protective Provisions for Network Rail. Should the Applicant revisit the necessity for Art 35 given the existence of these PPs and the potential "undesirable overlap"? Are</b></i></p>	<ul style="list-style-type: none"> <li>• Article 35 operates for the benefit of statutory utilities with apparatus in stopped up streets for which there is no specific provision in the protective provisions. The Network Rail protective provisions do not make specific provision for such a situation. By contrast, the National Grid and Cadent protective provisions do so. Article 35 is a very standard and well precedented provision and statutory utilities would not welcome the removal of this article.</li> </ul>

<b><i>there any other "statutory utilities" as defined that would require the protection of Art 35?</i></b>	
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**3.8.14 Art 41: Operation and maintenance of the authorised development - 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.**

**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.**

**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.**

***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?***

- See responses in respect of articles 2 and 6 above.

***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?***

- This reference has been removed in revision 3 of the dDCO submitted at deadline 4.5.

<b>Article 43</b>	
	<ul style="list-style-type: none"> <li>• <b>Francis Tyrrell</b> behalf of PoTLL stated that discussions had been held in respect of this article with the MMO. Amendments will therefore be made to this article in the next revision of the dDCO.</li> <li>• <b>Alison Gorlov</b> on behalf of the PLA stated that the wording was acceptable as agreed.</li> <li>• <b>Jayne Burns</b> on behalf of the MMO stated that proposed changes had been agreed.</li> </ul>
<b>3.8.15 Art 51: Consent to transfer benefit of Order - With reference to PLA's response at deadline 4 [REP4-007] to ExA's SWQs [PD-010], Q2.8.32 ...</b>	
<b><i>i. What is the Applicant's response to PLA's deadline 4 response?</i></b>	<ul style="list-style-type: none"> <li>• <b>Robbie Owen</b> on behalf of PoTLL set out that PoTLL agrees with the PLA. The direction that before giving consent under the article, the Secretary of State must consult the PLA is not a question of PoTLL directing the Secretary of State but of legislation specifying an action that should definitely occur.</li> <li>• Mr Owen stated that the ExA should also note that the updated dDCO revision 3 submitted at deadline 4.5 now contains an obligation for the Secretary of State to consult National Grid as well as the PLA. This was agreed between PoTLL and National Grid.</li> </ul>
<b>3.8.16 Art 52: Traffic Regulation Measures – 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,</b>	
<b><i>i. Would the Applicant, TC and HE update the Examination on their positions re traffic regulation measures?</i></b>	<ul style="list-style-type: none"> <li>• Generally - see response to item 3.8.5 above.</li> <li>• <b>Paul Harwood</b> on behalf of Highways England stated that it is becoming increasingly likely that there will be a need to introduce speed limits in the area of Asda roundabout of the A1089. Highways England maintains that in order to give consent the order should be published in accordance with the Secretary of State's Traffic Orders (Procedure) (England and Wales) Regulations 1990.</li> <li>• <b>Robbie Owen</b> on behalf of PoTLL explained that the whole purpose of article 52 is to avoid having to go through the separate traffic regulation order process. It is entirely prudent to have a general power under 52(3) to put in place such TRMs which are required within the 2 year time period. This power is subject to the consent of the traffic authority but does not need to go through the separate traffic regulation order process as this would be pointless. The notification provisions can mimic what is standard practice. Having separate public inquiries for traffic regulation orders would just be postponing the process instead of hearing this under the DCO process now. Mr Owen added that what is proposed is standard in DCOs for construction or operation. Mr Owen stated that PoTLL would continue to discuss the point with Highways England and Thurrock Council.</li> </ul>

	<ul style="list-style-type: none"> <li>• <b>Matthew Fox</b> on behalf of PoTLL added that it was anticipated that updates to the TRM plans which will be submitted at deadline 5 will seek to include the revised speed limits, however this will depend on the progress of discussions with all parties.</li> </ul>
<p><b>3.8.17 Art 57: Consents, agreements and approvals - 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 ...</b></p>	
<p><b><i>i. Would the Applicant state whether TC's response requires any amendment to Art 57?</i></b></p>	<ul style="list-style-type: none"> <li>• <b>Robbie Owen</b> on behalf of PoTLL stated that PoTLL does not consider that any amendments are required to this article. The consents to which article 57 applies are listed at the end of article 57 and further planning approvals are dealt with in Schedule 2. The provision at article 57 is standard in recently made DCOs.</li> <li>• <b>Matthew Gallagher</b> on behalf of Thurrock Council stated that its response was for information purposes only and that no change is required to the article.</li> </ul>
<p><b><i>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?</i></b></p>	<ul style="list-style-type: none"> <li>• <b>Robbie Owen</b> on behalf of PoTLL confirmed that PoTLL agrees with the EA. Article 18 explicitly sets out at (6) that: "Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016". Article 57 refers to Article 18.</li> </ul>
<p><b>3.8.18 Schedule 1: Authorised development - 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 ...</b></p>	
<p><b><i>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</i></b></p>	<ul style="list-style-type: none"> <li>• <b>Matthew Ford</b> on behalf of Thurrock Council stated that Thurrock Council is happy with Schedule 1 to the dDCO. Thurrock Council is satisfied that the ancillary works should be included. <b>Paul Harwood</b> on behalf of Highways England stated that it also agreed with this position.</li> <li>• <b>Robbie Owen</b> on behalf of PoTLL stated that further thought had been given to the wording in Schedule 1 due to the ExA's concern. On reflection, PoTLL considers that where the works set out are described using the term "to include" that would be more appropriate for such works to be described as: "comprising". This change will be made in the next revision of the dDCO to be submitted at deadline 5.</li> </ul>

<p><b><i>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?</i></b></p>	<ul style="list-style-type: none"> <li>• In respect of “port surfacing” and “port infrastructure”, <b>Francis Tyrrell</b> on behalf of PoTLL explained that these terms are used in works 3, 5, and 7 and that PoTLL considers that there is a difference between 'facilities', 'surfacing' and 'infrastructure', and all could be installed on top of the filling of land sought to be authorised. PoTLL would not want it said that the placing of lighting columns or the installation of a heavy load bearing surface did not constitute a 'facility'. Mr Tyrrell explained that “facilities” is a term used by the Planning Act 2008 and it is quite traditional in harbour legislation. This can be seen for example in the London Gateway Port Harbour Empowerment Order 2008.</li> </ul>
<p><b><i>ii. Can the Applicant explain why the use of the term “to include” here and in the Works descriptions does not give excessive flexibility?</i></b></p>	<ul style="list-style-type: none"> <li>• Please see item 3.8.18(i) above.</li> </ul>
<p><b><i>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?</i></b></p>	<ul style="list-style-type: none"> <li>• Please see item 3.8.18(i) above.</li> </ul>
<p><b><i>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</i></b></p>	<ul style="list-style-type: none"> <li>• <b>Robbie Owen</b> on behalf of PoTLL stated that this point can be addressed further in this note. Mr Owen outlined that ancillary works have many examples in DCOs where they are expressed in this way. Such works are within the Order Limits and cannot create further significant effects. It is not possible at this stage for the DCO to envisage all minor works required and therefore this is reasonable and justifiable flexibility for the Scheme.</li> <li>• An example of such ancillary works is provided in the A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016. The wording proposed here has also been recently approved by the Secretary of State in the</li> </ul>

<p><b><i>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?</i></b></p>	<p>Silvertown Tunnel Order 2018, a project which involved a large scale tunnelling project in an urban environment on the Thames - PoTLL submits that if such wording can be approved in that context, it can be accepted for Tilbury2. PoTLL would note that this point was raised in at least one ExAQ and one hearing on Silvertown which indicates that this was a matter clearly and specifically examined and that the ExA were satisfied.</p> <p>As set out in response to the ExA's second written questions: PoTLL considers that being limited to the Order limits and not leading to significant adverse effects that have not been assessed in the environmental statement are appropriate controls, which are designed to provide necessary and appropriate flexibility. It should be noted that as they appear in Schedule 1, they are also limited to the construction phase.</p>
<p><b><i>3.8.19 - Schedule 2: Requirements R1 Interpretation - 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 ...</i></b></p>	
<p><b><i>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 intended to be 'finalised' and what is it intended to do, as it is not mentioned in any article or other requirement?</i></b></p>	<ul style="list-style-type: none"> <li>• The definition of Ecological Mitigation and Compensation Plan (EMCP) has been removed from the dDCO revision 3 submitted at deadline 4.5</li> <li>• <b>Robbie Owen</b> on behalf of PoTLL explained that the reason that the EMCP has been taken out of the dDCO is because it is not yet agreed or finalised. PoTLL hopes it will be agreed by the end of the examination so it can be certified. Until this document is certified, Requirement 5 needs to be expressed in more general terms. PoTLL will keep this under review and will add it as soon as it is finalised. If the EMCP is not agreed then Requirement 5 will remain unchanged.</li> <li>• <b>Carol Bolt</b> on behalf of the EA expressed that the matters in the EMCP were of importance to it thus it would like to see the EMCP as a certified document and if this is not possible then it would like to be added as a body to be consulted in accordance with 5(1). Mr Owen confirmed that this was noted and could be added to the requirement should the EMCP not be agreed.</li> </ul>
<p><b><i>3.8.20 Schedule 2: Requirements R3 External appearance and height of authorised development - With reference to Historic England's response at deadline 4 [REP4-009] to ExA's SWQs [PD-010], Q2.8.37 ...</i></b></p>	
<p><b><i>i. Would the Applicant and Historic England update the Examination on progress with their discussions?</i></b></p>	<ul style="list-style-type: none"> <li>• As explained in the Environmental hearing held on 27 June 2018, if agreement is reached regarding external finishes and the colour palette approach to controlling the colour of buildings on the site it is envisaged that Requirement 3 will be modified to indicate that other structures not specifically identified in 3(1) (a)-(f) must comply with the 'Colour Palette (with this document being a certified document).</li> </ul>



	<ul style="list-style-type: none"> <li>This has now been agreed, and the dDCO has been amended for deadline 5 to refer to the agreed palette.</li> </ul>
<b>3.8.21 Schedule 2: Requirements R6 Terrestrial written scheme of archaeological investigation - With reference to the revised Terrestrial Written Scheme of Investigation (WSI) submitted by the Applicant at Deadline 4 [REP4-023] ...</b>	
<b><i>i. Would Hist E confirm that it is content with the revised WSI?</i></b>	<ul style="list-style-type: none"> <li><b>Christopher Bater</b> on behalf of Historic England stated that Historic England is content with the revised WSI however it would like to comment further in respect of item 3.8.29.</li> </ul>
<b>Schedule 2: Requirements R10 - Noise monitoring and mitigation</b>	
	<ul style="list-style-type: none"> <li><b>Robbie Owen</b> on behalf of PoTLL reiterated that Requirement 10 was still a work in progress and that PoTLL welcomed further detailed discussions with GBC in respect of this Requirement.</li> <li><b>Matthew Gallagher</b> on behalf of Thurrock Council agreed to consider the requirement alongside Thurrock Council's environmental health team.</li> </ul>
<b>3.8.22 Schedule 2: Requirements R13 Interpretation and R14 Applications made under requirements - With reference to Schedule 2 Part 2, Procedure for discharge of requirements ...</b>	
<b><i>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?</i></b>	<p><b>Matthew Ford</b> on behalf of Thurrock Council stated that the environmental health officer at Thurrock Council had stated that it was content with the procedures.</p>
<b>Schedule 2: Requirements R16- Interpretation</b>	
<p><b>The ExA</b> raised a query in respect of the bespoke appeal mechanism provided for under Requirement 16 and asked</p>	<ul style="list-style-type: none"> <li>Robbie Owen stated that PoTLL would respond in this note and now does so as follows:</li> <li>The process is primarily in place as it streamlines the appeals process, thus minimising the risk to timely delivery of the Scheme. As set out on a number of occasions, the Scheme is working to a very tight construction timeline thus the bespoke process allows the programme to progress in the time frames required.</li> </ul>

<p>why it is appropriate in this case in particular.</p>	<ul style="list-style-type: none"> <li>It is noted that the drafting is in line with a number of DCOs made to date, including the Hinkley Point C (Nuclear Generating Station) Order 2013, the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 and the Silvertown Tunnel Order 2018. There have been no objections to it.</li> </ul>
<p><b>3.8.23 Schedule 3: Classification of Roads etc - 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 ...</b></p>	
<p><i><b>i. Would the Applicant and TC update the Examination on the status of Schedule 3, highlighting any areas still to be resolved?</b></i></p>	<ul style="list-style-type: none"> <li>See response to 3.8.5</li> </ul>
<p><b>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- 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 ...//</b></p>	
<p><i><b>i. Would the Applicant, TC and HE update the Examination on the status of Schedule 4, highlighting any areas still to be resolved?</b></i></p>	<ul style="list-style-type: none"> <li>See response to 3.8.6.</li> </ul>
<p><b>3.8.25 Schedule 7: Port premises byelaws - 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 ...</b></p>	
<p><i><b>i. Does the Applicant have any comment on PLA's deadline 4 response?</b></i></p>	<ul style="list-style-type: none"> <li><b>Robbie Owen</b> on behalf of PoTLL set out that it confirms that PoTLL is in agreement with the PLA on the amendments to article 45 and to Part 5 of Schedule 7. These amendments are reflected in the dDCO submitted at deadline 4.5. Given the point made above at 3.8.2 (ii) PoTLL may have to reconsider the web links provided within the Byelaws in the next revision of the dDCO alongside the PLA.</li> <li><b>Alison Gorlov</b> on behalf of the PLA stated that the PLA was happy with the changes made in revision 3 of the dDCO.</li> </ul>

<p><i>ii. Under item ii, the Applicant states that the byelaws have been drafted specifically in relation to Tilbury2. Does TC have any comment?</i></p>	<ul style="list-style-type: none"> <li>• <b>Matthew Gallagher</b> on behalf of Thurrock Council confirmed that Thurrock Council has no issues with the proposed Byelaws.</li> </ul>
<p><b>3.8.26 Schedule 8: Traffic Regulation Measures etc - 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 ...</b></p>	
<p><i>i. Would the Applicant, TC and HE update the Examination on the status of Schedule 8, highlighting any areas still to be resolved?</i></p>	<ul style="list-style-type: none"> <li>• See response to 3.8.5.</li> </ul>
<p><b>3.8.27 Schedule 9: Deemed Marine Licence (DML) - 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 ...</b></p>	
<p><i>i. Would the Applicant and MMO update the Examination on the status of Schedule 9, highlighting any areas still to be resolved?</i></p>	<ul style="list-style-type: none"> <li>• The Applicant has updated the dDCO revision 3 submitted at Deadline 4.5 to include a revised Deemed Marine Licence to reflect agreement with the MMO.</li> </ul>
<p><i>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</i></p>	<ul style="list-style-type: none"> <li>• <b>Carol Bolt</b> on behalf of the EA stated that the EA is happy with the content of the Deemed Marine Licence (DML).</li> <li>• <b>Christopher Bater</b> on behalf of Historic England stated that regarding the detail of what is presently provided, Historic England considers that there should be adequate provision for the production of the marine archaeological WSI. There should be clear detail within that element which would adequately cover the timeframes on production and would therefore deliver mitigation measures.</li> </ul>

<p><b><i>injection dredging (item viii), and maximum dredging depths (item x)?</i></b></p>	<ul style="list-style-type: none"> <li>• <b>Jayne Burns</b> on behalf of the MMO stated that it had discussed some amendments to be made to the DML with PoTLL which would be made to the next revision of the dDCO to be submitted at deadline 5.</li> <li>• <b>Jamie Melvin</b> on behalf of Natural England stated that NE does not have any concerns in respect of the DML.</li> <li>• <b>Alison Gorlov</b> on behalf of the PLA stated that the PLA had stepped back from the drafting of the DML and did not have any comments.</li> <li>• <b>Francis Tyrrell</b> on behalf of PoTLL stated that PoTLL was pleased to note the agreements of third parties stated above. Some amendments had been recently discussed with the MMO and had now been agreed. In respect of the WSI, Mr Tyrrell set out that the DML has a very clear approach to what the WSI is and what it contains. It is noted that Historic England had made submissions in respect of the DML and PoTLL responded to such submissions in the ExA's second written questions at item 2.8.47. Mr Tyrrell confirmed that PoTLL and the MMO had now reached an agreed position in respect of maintenance dredging (i.e. that it will not be included in the DML and that Tilbury2 would therefore benefit from the same exemption as other harbour authorities for maintenance dredging). <b>Jayne Burns</b> on behalf of the MMO confirmed that the position set out by PoTLL in respect of maintenance dredging was correct.</li> </ul>
<p><b><i>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]?</i></b></p>	<ul style="list-style-type: none"> <li>• See 3.8.27(ii) above.</li> </ul>
<p><b><i>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?</i></b></p>	<ul style="list-style-type: none"> <li>• See 3.8.27(ii) above.</li> </ul>
<p><b><i>3.8.28 Schedule 10: Protective Provisions – 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] ...</i></b></p>	

<p><b><i>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?</i></b></p>	<ul style="list-style-type: none"> <li>• <b>Robbie Owen</b> on behalf of PoTLL gave the following update in respect of the protective provisions:</li> <li>• <b>PART 3:</b> Port of London Authority: the protective provisions are agreed.</li> <li>• <b>PART 4:</b> Environment Agency: the EA and PoTLL are close to agreement and should soon reach a final position.</li> <li>• <b>PART 5:</b> Thurrock Council as drainage board: there are a number of issues still to be discussed as PoTLL is currently considering comments sent by Thurrock Council in respect of these provisions.</li> <li>• <b>PART 6:</b> Network Rail: the wording of the protective provisions is virtually agreed. The only matter which PoTLL considers is not agreed is Network Rail's wish to prevent the Company from exercising the power to appropriate (article 42) without NR's consent. PoTLL does not consider this to be justified: article 42 is intended to operate to counter the effect of the open port duty.</li> <li>• <b>PART 7:</b> Thurrock Council as highway authority: Thurrock Council has offered comments on the protective provisions. Negotiations on the highways protective provisions are ongoing. PoTLL does not consider there to be a very substantial gap between what Thurrock is seeking and the position of PoTLL.</li> <li>• <b>PART 8:</b> Anglian Water: the protective provisions are agreed.</li> <li>• <b>PART 9:</b> Highways England: there has been ongoing discussion with Highways England on the protective provisions. PoTLL received from Highways England its preferred protective provisions on 15th June and discussions on them are ongoing.</li> <li>• <b>PART 10:</b> RWE: PoTLL is in discussions with RWE and good progress has been made. PoTLL cannot indicate agreement will definitely be reached however it will endeavour to progress the protective provisions as far as possible.</li> <li>• <b>PART 11:</b> Cadent Gas Limited: the wording of the protective provisions is virtually agreed. PoTLL does not consider there to be any significant issues of substance between the parties. Issues have now been resolved regarding the diversion of apparatus.</li> <li>• <b>PART 12:</b> National Grid Electricity: the wording of the protective provisions is virtually agreed. PoTLL does not believe there to be any significant issues of substance between the parties.</li> </ul>
<p><b><i>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</i></b></p>	<ul style="list-style-type: none"> <li>• This item was not covered at the hearing however PoTLL responds as follows:</li> <li>• As highlighted in PoTLL's Highways England Paper" [PoTLL/T2/EX/116], the M1 J10A and East Midlands SFRI DCOs involved protective provisions for Highways England (and in the latter case, also for the local highway authority) rather than a section 278 agreement.</li> </ul>

<p><b><i>Applicant states that its approach is “far from novel”, would the Applicant supply example precedents?</i></b></p>	<ul style="list-style-type: none"> <li>• Other DCOs which have included PPs for highway authorities include the Hinkley Connection, Richborough Connection, North London Line (Reinforcement) and Silvertown Tunnel projects.</li> <li>• PoTLL reiterates that it is the purpose of the Planning Act 2008 to avoid the need for additional consents. The dDCO contains Protective Provisions for the benefit of Highways England. It would be unnecessary duplication for a section 278 Highways Act agreement to be required as well. All the protection which Highways England needs is afforded by the protective provisions. The approach of PoTLL affording protective provisions to Highways England - thereby avoiding any need to engage section 278 – is reflected in a number of development consent orders, including the Able Marine Energy Park Order 2014 and the M1 Junction 10a (Grade Separation) Order 2013.</li> </ul>
<p><b><i>3.8.29 Updated dDCO at 20 June 2018 - With reference to the Applicant’s updated version of the draft DCO requested by ExA to be submitted by 20 June 2018 ...</i></b></p>	
<p><b><i>i. Would EA, HE, Hist E, MMO, NE, and PLA in particular give their initial views of the updated dDCO?</i></b></p>	<p>No further issues were raised at the hearing.</p>

**4. AGENDA ITEM 5 – ‘ACTION POINTS ARISING FROM THIS ISSUE SPECIFIC HEARING AND ANY OTHER BUSINESS’**

4.1 **Robbie Owen** on behalf of PoTLL undertook to make the changes to the dDCO which had been indicated above and to provide a comparison against the previous revision as well as an explanation of the changes made.