

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 Ecology, Habitats Regulations Assessment, and Traffic and Transportation – Highways England Response

Overview

1. Highways England has been in discussion with the Applicant and its advisors since Deadline 4 and has made further progress in progressing outstanding issues. HE has entered into an updated SoCG (which has been presented to the Panel) to reflect the status of progress.
2. The updated SoCG records that a scheme of measures to mitigate the impact of the development on Asda roundabout has been agreed in principle. Subsequently the Applicant has provided an outline design and traffic modelling both of which are being assessed by Highways England.
3. Discussions continue in respect of J30 M25. Some progress has been made and HE remains willing to work with the Applicant whilst the Applicant seeks to satisfy the requirement to demonstrate that its proposals will not result in a material exacerbation of queuing impacts on the approach to this junction. HE keeps an open mind and will work with the Applicant on its further demonstration of the extent of impact. HE is open to any proposals from the Applicant to resolve any impasse in respect of reaching agreement by the end of the Examination.

Abbreviations used

AEOI	Adverse Effect On Integrity	SPA	Special Protection Area
BMAP DCO	Bird Monitoring and Action Plan	SWQ	Second Written Questions
EA	Development Consent Order	TC	Thurrock Council
EMCP	Environment Agency	TEC	Tilbury Energy Centre
ExA HE	Environmental Mitigation and Compensation Plan Examining Authority		
HRA MMO	Highways England		
NE	Habitats Regulations Assessment		
RWE	Marine Management Organisation Natural England RWE Generation UK plc		

Annex A: Specific questions from the Examining Authority (ExA) Panel (relates to agenda item 3)

Biodiversity, Ecology and Natural Environment – Terrestrial and Marine Ecology

3.2.1.	Natural England (NE), Marine Management Organisation (MMO), Environment Agency (EA)	<i>Environmental Mitigation and Compensation Plan (EMCP)</i> . With reference to the Applicant’s updated version of the EMCP, requested by ExA to be submitted by 20 June 2018 ... i. What are the views of NE, MMO and EA in particular on the updated EMCP? <i>Note: since the agendas for the hearings will have been issued before the updated EMCP is received, this question does not apply if it is not received.</i>
--------	---	--

Habitats Regulations Assessment (HRA)

3.11.1.	Natural England (NE)	Overall, what are NE’s views on the conclusions of the HRA Stage 2 Report [REP4018] that the proposed Tilbury2 project will not adversely affect the integrity of the Thames Estuary and Marshes Special Protection Area (SPA)/Ramsar site, alone or in combination with other plans or projects?
3.11.2.	Natural England (NE)	Is NE content with the explanation of zone of influence of disturbance to birds set out in paragraph 4.1.3 of the HRA Stage 2 Report [REP4-018]?
3.11.3.	Applicant	Table 3 of the HRA Stage 2 Report [REP4-018] refers to a maximum extent of impacts from air quality changes to be ‘250m from navigable channel’. Would the Applicant state how this fits with Table 1, which states that the maximum extent of the air quality study areas for ecological receptors is 1km?
3.11.4.	Applicant	The HRA Stage 2 Report [REP4-018] includes as potential impacts in paragraphs 5.1.9 to 5.1.11 the specific amendments raised by NE at Deadline 1, such as invasive non-native species, construction and operational waste and pollutants. However, construction and operational waste pollutants do not appear to have been considered within the screening and integrity matrices in Appendices 5 and 11. In the light of this, would the Applicant state how construction and operational waste pollutants have been assessed within the HRA Stage 2 Report?
3.11.5.	Natural England (NE)	The HRA Stage 2 Report [REP4-018] includes a revised assessment of air quality impacts on designated ecological sites (Appendix 7). This explains that the original assessment (Appendix 6 of the HRA Stage 1 Report [APP-060]) underestimated the concentrations and deposition rates as a result of the model setup. It confirms that the updated numbers, while larger than presented in the 2017 report, are still extremely small and so do not materially change the conclusions of the HRA. Is NE content with the revised air quality assessment?

3.11.6.	Natural England (NE)	Paragraph 8.3.2 [REP4-018] sets out an intention to regularly monitor disturbance during the construction phase through a Bird Monitoring and Action Plan (BMAP). It is noted that this is not required for mitigation nor is relied upon to reach a conclusion of no adverse effect on integrity (AEOI). Does NE agree with this conclusion?
3.11.7.	Applicant	<p>In Appendix 5 of the HRA Stage 2 Report [REP4-018] in relation to the Ramsar site, it appears there is an error in the use of footnotes (i) and (j):</p> <ul style="list-style-type: none"> • The screening matrix excludes a likely significant effect for 'Damage or loss (non-bird species)' for all features of the site, referring to footnote (i) which concludes 'not applicable'. However, the table of potential effects preceding the screening matrices suggests this effect is only applicable to Criterion 2; • Should footnote (j) apply to 'Damage or loss (non-bird species)' in the screening matrix in Appendix 5 of the HRA Stage 2 Report, and that as a consequence these effects should be screened in? • In Appendix 11 of the HRA Stage 2 Report the potential for 'Damage or loss (non-bird species)' has been screened in to the integrity matrix for all features of the Ramsar site. <p>Would the Applicant review the screening matrix in Appendix 5 of the HRA Stage 2 Report and confirm to which elements footnotes (i) and (j) should apply?</p>
3.11.8.	Applicant	<p>Can the Applicant clarify whether the direct loss of functionally-linked habitat is screened in for both the SPA and the Ramsar site in Appendix 5 of the HRA Stage 2 Report [REP4-018]?</p> <p>If so, would there be an adverse effect on integrity?</p>
3.11.9.	Applicant	<p>Footnote (j) of the screening matrices of Appendix 5 of the HRA Stage 2 Report [REP4-018] refers to compensation of Thames Estuary grazing marsh habitats and associated ditch systems.</p> <p>Can the Applicant explain how this is relevant to the direct loss of any functionally linked land which has previously been stated to comprise intertidal mudflats and saltmarsh?</p>

3.11.10.	Applicant	<p>The potential effects table in Appendix 5 of the HRA Stage 2 Report [REP4-018] states that disturbance from shipping to qualifying features within the SPA/Ramsar site will be considered under the headings of 'Disturbance (within SPA)' and 'Disturbance (within Ramsar site)'. Footnote (a) does not provide any justification for screening out a likely significant effect of disturbance from shipping during construction.</p> <p>Please can the Applicant provide justification for screening out this matter?</p>
3.11.11.	Applicant	<p>The potential effects table in Appendix 5 of the HRA Stage 2 Report [REP4-018] states that disturbance from human movement and activity within the SPA/Ramsar site will be considered under the headings of 'Disturbance (within SPA)' and 'Disturbance (within Ramsar site)'. Footnote (b) does not provide any justification for screening out a likely significant effect of disturbance during operation. Please can the Applicant provide justification for screening out this matter?</p>
3.11.12.	Applicant	<p>Footnote (f) of the screening matrices in Appendix 5 of the HRA Stage 2 Report [REP4-018] screens out a likely significant effect to birds outside the SPA/Ramsar site from operational disturbance. However, birds outside the SPA/Ramsar site (ie using functionally-linked land), could potentially be closer to the application site and therefore closer to sources of light, noise, human movement and activity.</p> <p>As such, can the Applicant justify why disturbance from these potential impacts has been screened out?</p>
3.11.13.	Applicant	<p>Footnote (g) of the screening matrices in Appendix 5 of the HRA Stage 2 Report [REP4-018] implies a very low risk to water and/or sediment quality. However, the potential for damage to functionally-linked land has been screened in. It is unclear why this is the case.</p> <p>Can the Applicant please clarify?</p>

3.11.14.	Applicant	<p>The potential effects table in Appendix 5 of the HRA Stage 2 Report [REP4-018] details the potential effects on Ramsar Criterion 2 plant/invertebrate species to be considered as 'Damage or loss (non-bird Ramsar species)'. As noted above, it is assumed that footnote (j) is applicable to this feature. Footnote (j) does not refer to invasive non-native species, water and sediment quality or sediment circulation and deposition pattern. However, these matters are included in the potential effects table preceding the integrity matrices in Appendix 11 of the HRA Stage 2 Report.</p> <p>Please can the Applicant confirm the basis upon which these matters have been screened in?</p>
3.11.15.	Applicant	<p>Footnote (j) in Appendix 5 of the HRA Stage 2 Report [REP4-018] infers that a likely significant effect for habitat loss has been excluded. However, this is identified in the table of potential effects in Appendix 11 of the HRA Stage 2, yet it is then not referred to in footnote (b) to the integrity matrices.</p> <p>i. Can the Applicant clarify whether habitat loss for Criterion 2 species should be screened in? ii. If so, can the Applicant provide a justified conclusion for the Stage 2 assessment?</p>
3.11.16.	Applicant	<p>Footnote (k) in Appendix 5 of the HRA Stage 2 Report [REP4-018] identifies a potential likely significant effect for additive risks from invasive non-native species. This does not appear to have been addressed in the integrity matrices in Appendix 11. Can the Applicant confirm whether there would be an AEOI to the SPA/Ramsar site?</p>
3.11.17.	Applicant	<p>In relation to habitat damage from air quality impacts, footnote (g) in Appendix 5 of the HRA Stage 2 Report [REP4-018] summarises the air quality assessment and appears to conclude no likely significant effects for habitats within the SPA/Ramsar site. However, this impact is subsequently screened in to the integrity matrices in Appendix 11 of the HRA Stage 2 Report. No additional information is then provided to support a conclusion of no adverse effect on integrity.</p> <p>Can the Applicant explain why it has therefore been screened in?</p>

3.11.18.	Applicant	<p>The table identifying the potential adverse effects considered within the integrity matrices in Appendix 11 of the HRA Stage 2 Report [REP4-018] identifies noise, lighting, human movement and activity as potential disturbance to bird species using functionally-linked land. Footnote (a) does not explicitly address all of these disturbance effects; rather, conclusions are drawn in relation to 'disturbance' in the round and at a high level with limited technical justification.</p> <p>Can the Applicant justify these conclusions for each type of disturbance effect?</p>
3.11.19.	Applicant	<p>The HRA Stage 2 Report [REP4-018] screening matrices (Appendix 5, footnote (k)) and integrity matrices (Appendix 11, footnote (c)) both include consideration of incombination effects. However, these are not covered within the tables which precede the matrices.</p> <p>How have in-combination effects have been considered in the potential effects tables in Appendices 5 and 11 of the HRA Stage 2 Report?</p>
3.11.20.	Applicant	<p>Paragraph 6.2.3 of the HRA Stage 2 Report [REP4-018] suggests that the following potential impacts inter alia from the Tilbury Energy Centre (TEC) may give rise to incombination effects:</p> <ul style="list-style-type: none"> • potential temporary loss of functionally linked habitat (paragraph 6.2.9); • impacts on functionally-linked habitat including removal of benthos, release of chemicals and thermal plume (paragraphs 6.2.10). <p>Can the Applicant state whether there would be an adverse effect on integrity (AEOI) resulting from these potential in-combination effects?</p>

Traffic and Transportation

<p>3.18.1</p>	<p>Applicant, Highways England (HE)</p>	<p><i>Towards Reaching Agreement on Strategic Road Network (SRN) Issues by the end of the Examination.</i> With reference to the Applicant's and HE's responses at deadline 4 [REP4-020, REP4-002] to ExA's SWQs [PD-010], HE's General Position from page 3, and the Applicant's response to Q2.18.4 ...</p> <ul style="list-style-type: none"> i. What is the Applicant's response to HE's overall position on reaching agreement by the end of the Examination? ii. Would the Applicant and HE update the Examination on these matters, in particular: <ul style="list-style-type: none"> a) Reaching agreement on the dDCO? b) Reaching agreement on the M25 J30? c) Reaching agreement on the Asda roundabout? 	<ul style="list-style-type: none"> i. Although this part of the question is directed at the Applicant HE remains concerned the remaining time left within the examination is not extensive relative to the amount of work the Applicant must complete. However, progress is being made on the outstanding issues. HE notes that the Applicant is more optimistic in being able to demonstrate its position and HE strives to work collaboratively with the Applicant to reach at an agreement by the end of the Examination. In an abundance of caution, HE has put forward suggestions in the form a requirement that would provide a contingency approach. This is not favoured by the Applicant. ii. Taking each point in turn: <ul style="list-style-type: none"> a) This has been addressed in the context of earlier discussion in the dDCO ISH. It is expected that agreement will be reached on a form of protective provisions for HE with some exceptions. It appears unlikely that HE will be able to reach agreement with the Applicant in respect of the need to provide public liability insurance and a performance bond. On other matters HE
---------------	---	---	--

			<p>submitted its preferred alternative form of Protective Provisions to PoTLL on Friday 15th June. These are currently being discussed and we are hopeful of agreement being reached.</p> <p>b) The Applicant has prepared a LinSig model of M25 Junction 30. HE has reviewed and provided comments to the Applicant on the base model of the existing layout, which contains the existing traffic flows. The Applicant has amended the model in accordance with the comments. HE advises the panel that our original concerns regarding queueing on the M25 northbound off-slip and the A13 Westbound off-slip to Junction 30 have been confirmed by the base year models for both slip roads.</p> <p>HE has agreed future year scenarios. The Applicant has provided HE with models and their results for the 2017, 2020 and 2027 scenarios including the PoT2 development impact. The scenarios include a committed improvement to the layout of the A282 northbound slip road. HE has provided comments on the future model. Our initial observations are that the junction is</p>
--	--	--	--

			<p>congested by 2020 with queues on the M25 northbound off-slip and the A13 Westbound off-slip significantly greater than the 2017 base year. The addition of the PoT2 traffic results in an additional 5-20 vehicles queuing on the M25 Northbound off-slip and the A13 Westbound offslip. Since the LinSig model demonstrates that these queues extend back to the mainline carriageway, HE is concerned that this will pose a risk to safety. A meeting was held on Thursday 5th July between HE and the Applicant to discuss the results and the need for mitigation measures. The outcome of that meeting was that the Applicant needs to make further amendments to their models and another meeting to discuss the updates has been diarised for the 17th July. HE considers that if mitigation to M25 Junction 30 is needed there is little prospect of reaching agreement on the detail of this mitigation by the end of the Examination. However HE is open to any proposals from the Applicant to resolve this potential impasse.</p> <p>c) HE, TC and the Applicant had a site visit and meeting on the 20th June</p>
--	--	--	--

			<p>2018 to collaboratively review and amend the proposed mitigation measures at the Asda Roundabout. A scheme of measures to mitigate the impact of the development was agreed in principle. An outline design of the mitigation required at ASDA roundabout has been drawn up by the Applicant and the draft layout has been agreed (by TC and HE) as what is required, subject to the outcomes of HE's design checks and an independent Road Safety Audit. The Applicant has provided traffic modelling results of the revised proposed mitigation. These show operational improvements at the junction and are subject to checking by HE.</p> <p>A significant amount of work is needed before an outline design is agreed and signed off but it may be possible to achieve this by the end of the Examination subject to the design adequately addressing additional traffic from the proposed development. A WCHAR update and as previously mentioned a Stage 1 RSA will also be required to ensure that the proposed mitigation measures meet the required DMRB standards.</p>
--	--	--	--

			<p>On 26 June 2018 Amazon UK Services wrote to the Examination [AS-075] expressing concern at the mitigation proposed by the Applicant to Asda Roundabout. Amazon UK Services were not involved in the discussions of 20 June so it is not possible to say whether the principles agreed then address the concerns of Amazon. However, HE have made direct contact with Amazon's Transport Consultant. Following a telephone conversation with them on the 6th July 2018 HE has sent Amazon the proposed mitigation drawing for the Asda Roundabout and the supporting modelling results summary tables. Amazon's Consultant has agreed to provide HE with flow diagrams showing the changes in flows that they have identified within their representation [AS-075] together with their junction models, subject to agreement with Amazon. Any need to review the principles will further delay agreement on mitigation.</p>
		<p>d) Limiting the traffic entering and leaving the Tilbury2 site during peak periods?</p>	<p>d) The Applicant has rejected any restrictions on traffic entering and leaving the proposed development. It is now for the Applicant to propose a way forward in the event</p>

			that any necessary physical mitigation cannot be agreed by the end of the Examination, otherwise HE will be left needing maintain its objection and will ask that the DCO should be rejected.
3.18.2	Applicant, Highways England (HE), Thurrock Council (TC)	<p><i>Asda Roundabout.</i> With reference to Applicant's, HE's and TC's responses at deadline 4 [PEP4-020, REP4-002, REP4-005] to ExA's SWQs [PD-010], Q2.18.2, 2.18.3, 2.18.7 and 2.18.10, would the Applicant and HE, as well as TC where relevant, update the Examination on the progress of their discussions on the impact of the Proposed Development on the Asda roundabout, specifically with regard to ...</p> <ul style="list-style-type: none"> i. The traffic modelling? ii. Appropriate treatment of Amazon traffic at the roundabout during peak periods? iii. Mitigation proposals, including: <ul style="list-style-type: none"> a) The robustness of the engineering design? b) Provisions for non-motorised users? c) HE's proposal for a reduced speed limit? d) HE's proposal for a possible DCO requirement limiting the use of the Tilbury2 site, if authorised, so as not to materially exacerbate peak traffic on this junction? 	<ul style="list-style-type: none"> i. In terms of the modelling of the Asda Roundabout, HE advises the panel that the Applicant has updated their base and future models of the junction and that although the models are not completely representative of the onsite observations we consider that they provide a sufficiently reliable tool for assessing the impacts of the traffic from PoT2. The results of the modelling from the most recent 3 day surveys have identified that, in the AM Peak (07:15-08:15, the A1089-Dock Road approach has an RFC greater than 0.9 in all of the future year scenarios. The addition of the PoT2 traffic, results in an increase in the RFC from 0.92 (queue of 9 vehicles and delay of 19 seconds) in the 2020 base with committed development scenario to a RFC of 0.99 (queue of 22 vehicles and delay of 41 seconds). ii. The summaries of the modelling results of the Amazon AM and PM peak shift change overs with and without PoT2 traffic have now been provided to HE.

			<p>iii. Responses to Mitigation proposals:</p> <ul style="list-style-type: none">a) Revised mitigation proposals have been drawn up by the Applicant following the site visit and meeting on the 20th June 2018 and have been agreed subject to design checks, an updated WCHAR and a Stage 1 Road Safety Audit. Therefore we are unable to advise the panel on the robustness of the engineering design at this time.b) The design principles agreed on 20th June 2018 provide for maintaining the existing crossings of the A1089 at Asda roundabout and improved lighting and CCTV of the shared pedestrian/cycleway through the underpass to the south of the Asda Roundabout. Signing will be changed to encourage the use of the underpass rather than crossing carriageways.c) Subject to comments from the police and completion of the outline design The Applicant has agreed to reduce the speed limit between the Marshfoot Road Interchange and the A1089 St Andrews Road approach. This will need to be secured as a commitment by the Applicant. These speed restrictions are in
--	--	--	---

			<p>addition to those in Schedule 8 Part 1 of the dDCO. HE will expect any restrictions not within Schedule 8 of the dDCO as consulted on to be advertised and to be otherwise in accordance with normal practice for the determination of applications for changes to speed limits. HE would require this as a reasonable condition of its approval to the exercise by the Applicant of its power in Article 52(3) for such purposes. If the Applicant is not content with that approach, HE seeks proposals from the Applicant to reflect this requirement.</p> <p>d) The Applicant has rejected any restrictions on traffic entering and leaving the proposed development. See Response 3.18.1(d).</p>
--	--	--	--

<p>3.18.3</p>	<p>Applicant, Highways England (HE)</p>	<p><i>Legal Framework.</i> With reference to the Applicant's and HE's responses at deadline 4 [REP4-020, REP4-002] to ExA's SWQs [PD-010], Q2.18.4, the Applicant provides a timetable and structure for reaching agreement. HE states what it sees to be the necessary legal framework governing the relationship between HE and the Applicant, which HE asserts to be best practice and widely used elsewhere, and which HE sees to be essential for it to be able to undertake its role as statutory authority for the strategic road network ...</p> <p>i. Would the Applicant and HE update the Examination on the progress of their discussions on these matters, clearly highlighting matters yet to be agreed and matters not agreed?</p>	<p>i. It may be that HE will be unable to reach agreement with the Applicant in respect of the need to provide public liability insurance and security (a bond). On other matters HE submitted its preferred alternative form of Protective Provisions to PoTLL on Friday 15th June 2018. These are currently being discussed and we are hopeful of agreement being reached. HE will require further demonstration from the Applicant in due course that the proposed use of temporary possession/ stopping up is a workable approach in preference for other reasonable alternatives and use of the "basket" of powers that the Applicant is seeking. The Applicant has explained that it is content for this to be addressed at detailed design stage and that HE will have the ability to address this through its approval of design and construction methodology as part of protective provisions and any other consent required by the Articles of the dDCO. HE has explained to the Applicant that each change of traffic management would require an amendment to the DBFO contract and therefore take a number of months to implement. A more realistic scenario would be for the Applicant to take over the A1089</p>
---------------	---	---	---

			<p>between Marshfoot and the Docks Entrance as a private road for a period of 4-5 years if it requires possession in this way. The reasonableness of any such request and the conditions upon which that could be permitted will be a matter for HE's consideration at the approval of detailed design. In the absence of detailed design, we would need to assess the implications of any proposal from the Applicant before deciding the terms upon which we could agree to it.</p>
3.18.4	Applicant, Highways England (HE)	<p><i>M25 J30</i>. With reference to the Applicant's, HE's and Essex County Council (ECC)'s responses at deadline 4 [REP4-020, REP4-002, REP4-015] to ExA's SWQs [PD-010], Q2.18.3, 2.18.4 and 2.18.5, the Applicant states its case regarding the M25 J30. HE states that it is still concerned that information is insufficient to conclude that there is no likely severe impact on the M25 J30, but is willing to consider the Applicant's case for mitigation required due to Tilbury2, failing which HE is looking for the imposition of a dDCO Requirement to limit use of the Proposed Development so as not to materially exacerbate peak traffic on this junction. ECC states that it has concerns over progress on the impact of the Proposed Development on M25 J30 ...</p> <p>i. Would the Applicant and HE update the</p>	<p>i. The Applicant is progressing a LinSig model of the M25 Junction 30, as per 3.18.1 ii b) above. This will inform a decision as to whether mitigation is needed at the Junction. If mitigation is needed there is little prospect of agreeing it before the end of the Examination. HE has put forward a contingency approach to dealing with such scenario (restriction on traffic secured as a requirement in the dDCO) which is not accepted by the Applicant. HE is open to any proposals from the Applicant to resolve this potential impasse.</p>

		Examination on these matters?	
3.18.5	Applicant	<p><i>Rail.</i> With reference to the Applicant's and Essex County Council's (ECC)'s responses at deadline 4 [REP4-020, REP4-015] to ExA's SWQs [PD-010], Q2.18.8 ...</p> <p>i. Would the Applicant update the Examination by stating its response to ECC's request for an update on matters agreed in principle between the Applicant and Network Rail?</p>	<i>No Response by HE required.</i>
3.18.6	Applicant, RWE Generation UK plc (RWE)	<p><i>Fort Road Overbridge.</i> With reference to RWE's response at deadline 4 [REP4-004] to ExA's SWQs [PD-010], paragraphs 2.1-2.2, citing concerns over the impact of the height restriction of the overbridge at Fort Road on RWE's ability to transport equipment and material to the Tilbury Energy Centre (TEC) site</p> <p>i. Would the Applicant and RWE update the Examination on this matter?</p>	<i>No Response by HE required.</i>
3.18.7	Applicant, RWE Generation UK plc (RWE)	<p><i>Rail Spur.</i> With reference to RWE's response at deadline 4 [REP4-004] to ExA's SWQs [PD-010], paragraphs 2.3, citing concerns over the impact of the proposed rail spur on RWE's access to the TEC site ...</p> <p>i. Would the Applicant and RWE update the Examination on this matter?</p>	<i>No Response by HE required.</i>