



## 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')

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# Examining Authority's Response to the Applicant's Draft Development Consent Order (dDCO) Revision 4

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The Examining Authority (ExA) Panel has reviewed revision 4 of the Applicant's draft Development Consent Order (dDCO) [REP5-044], together with the various other submissions at deadline 5 (6 July 2018) [REP5-001 to REP5-064] following the issue specific hearing on the dDCO (28 June 2108) [EV-018].

A number of discussions are clearly still ongoing between the Applicant and other parties, notably in relation to Article 54: *protective provisions* and the associated schedule, Schedule 10.

The ExA's focus in this response is therefore upon providing comments, questions and expectations arising from the current dDCO. This response is at Annex A of this document.

**The ExA requests responses to this document by deadline 6, Friday 3 August 2018.**

In Annex A, the various items are numbered x.y.z, where x is 5 (relating to deadline 5), y is the common number for questions relating to the dDCO (8) and z is the item number – thus for example 5.8.2.

References in square brackets (for example [REP5-001]) are to documents catalogued in the Examination Library, which can be seen via the following link:

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

The Examination Library is being updated as the Examination progresses.

### Abbreviations used

<b>DCO</b>	Development Consent Order	<b>NE</b>	Natural England
<b>dDCO</b>	draft Development Consent Order	<b>PLA</b>	Port of London Authority
<b>DML</b>	Deemed Marine Licence	<b>RWE</b>	RWE Generation UK
<b>EA</b>	Environment Agency	<b>TC</b>	Thurrock Council
<b>ExA</b>	Examining Authority	<b>WSI</b>	Written Scheme of Investigation
<b>GBC</b>	Gravesham Borough Council		
<b>HE</b>	Highways England		
<b>Hist E</b>	Historic England		
<b>MMO</b>	Marine Management Organisation		

**Annex A: ExA's Comments, Questions and Expectations arising from dDCO Revision 4**

<b>Item No.</b>	<b>Part of DCO</b>	<b>Directed to</b>	<b>Comments, Question, Expectations</b>
<b>5.8.1</b>	<b>Art 2: Interpretation</b>	<i>Applicant</i>	<p>Re "the authorised development" means the development described in Schedule 1 (authorised development) <i>and any other development within the meaning of the 2008 Act authorised by this Order.</i></p> <p><b>Is it the intention that this should include the works set out in Art 41(2) and (3)?</b></p> <p><b>Would the Applicant state what the difference is between "the Company Harbour Master" and "the harbour master", and then "the Company's dockmaster" as set out in the Port of London Authority's protective provisions in Schedule 10?</b></p>
<b>5.8.2</b>	<b>Art 3: Disapplication of legislation, etc</b>	<i>Applicant, Port of London Authority (PLA)</i>	<p>ExA notes PLA's submission at deadline 5 [REP5-062] in which PLA states its position on Art 3, including proposed amendments to paragraphs (7)-(10), with reference to revision 3 of the dDCO and correspondence between the Applicant and PLA. Some of these proposed amendments may have been addressed in revision 4 of the dDCO [REP5-044].</p> <p><b>Would the Applicant and PLA state their current positions, and would PLA state in particular whether it is content with the drafting of revision 4 of the dDCO.</b></p> <p>ExA notes RWE's submission at deadline 5 [REP5-055] in which RWE states its position on Art 3, including some proposed amendments at Annex A to that document, and an explanation of the proposed</p>

<b>Item No.</b>	<b>Part of DCO</b>	<b>Directed to</b>	<b>Comments, Question, Expectations</b>
			<p>amendments in the main text.</p> <p><b>What is the Applicant's response?</b></p>
<b>5.8.3</b>	<b>Art 4: Application of enactments relating to the Port of Tilbury</b>	<i>Applicant, Port of London Authority (PLA)</i>	<p>ExA notes PLA's submission at deadline 5 [REP5-062] in which PLA states its position on Art 4, and cites discussions between the Applicant and PLA over the practical treatment and operation of overlapping statutory functions. PLA states that "The Applicant has agreed most of the PLA's proposed amendments to deal with this issue but discussions with the Applicant are continuing as to the precise detail of some of the necessary amendments".</p> <p><b>Would the Applicant and PLA state their current positions, and would PLA state in particular whether it is content with the drafting of revision 4 of the dDCO.</b></p> <p><b>Re Art 4(6)(c), accepting that this insertion relates to other legislation, the terms "Port Authority" and "Company" could do with definition in the article.</b></p>
<b>5.8.4</b>	<b>Art 10: Construction and maintenance of new, altered or diverted streets</b>	<i>Applicant</i>	<p>ExA notes TC's submission at deadline 5 [REP5-051] in which TC states that Art 10 is still under discussion, and that TC recommends an amendment to Art 10 to include a maintenance period for structures of not less than 24 months from completion.</p> <p><b>What is the Applicant's response?</b></p>

<b>Item No.</b>	<b>Part of DCO</b>	<b>Directed to</b>	<b>Comments, Question, Expectations</b>
<b>5.8.5</b>	<b>Art 11: Classification of roads</b>	<i>Applicant, Thurrock Council (TC)</i>	<p>ExA notes TC's submission at deadline 5 [REP5-051] in which TC states that this matter is still under review in light of the updated information within the dDCO (revision 3).</p> <p><b>Would the Applicant and TC update the Examination on their discussions on this matter.</b></p>
<b>5.8.6</b>	<b>Art 12: Permanent stopping up..., and Art 13: Temporary stopping up ...</b>	<i>Applicant</i>	<p>Re Arts 12 and 13 for example, the term "carrying out the authorised development" is used, as distinct from "constructing the authorised development" in Art 16, or "carrying out, maintenance and use" in Art 19 (12) for example.</p> <p><b>Should "carrying out" be replaced in applicable articles with "constructing" for consistency?</b></p>
<b>5.8.7</b>	<b>Art 14: Access to works</b>	<i>Applicant</i>	<p>In Art 14 for example, and elsewhere, does "for the purposes of the authorised development" include operations as well as construction?</p>
<b>5.8.8</b>	<b>Art 32: Temporary use of land for carrying out the authorised development - Notice Period</b>	<i>Applicant</i>	<p>Re Art 32 paragraph (2), which states: "Not less than 14 days before entering on and taking temporary possession of land under this article the Company must serve notice of the intended entry on the owners and occupiers of the land and that notice must state the period for which temporary possession will be taken and the works, facilities or other purpose for which the Company intends to take possession of the land."</p> <p><b>ExA inclines to 28 days, because we are not yet persuaded by the arguments made by the Applicant in its summary of the last DCO</b></p>

<b>Item No.</b>	<b>Part of DCO</b>	<b>Directed to</b>	<b>Comments, Question, Expectations</b>
			<p><b>hearing [REP5-015] at 3.8.12.</b></p> <p>ExA notes HE's submission at deadline 5 [REP5-058] in which HE states its position on temporary possession.</p> <p><b>What is the Applicant's response?</b></p> <p>ExA notes TC's submission at deadline 5 [REP5-051] in which TC states that this matter is still under discussion. TC queries whether the protective provisions override Art 32, and TC also seeks clarification with regard to timescales of highways works.</p> <p><b>What is the Applicant's response?</b></p>
<b>5.8.9</b>	<b>Art 33: Temporary use of land for maintaining the authorised development</b>	<i>Applicant</i>	<p>The Panel notes Highways England (HE)'s submission at deadline 5 [REP5-058] in which HE states its position on temporary possession.</p> <p><b>Would the Applicant state its position on this matter and propose amendments to the article if necessary.</b></p> <p>ExA notes TC's submission at deadline 5 [REP5-051] in which TC states that it is content with Art 33 as drafted, although TC seeks clarification regarding protective provisions and timescales of highways works.</p> <p><b>What is the Applicant's response?</b></p>
<b>5.8.10</b>	<b>Art 43: Power to</b>	<i>Applicant,</i>	The Panel notes MMO's submission at deadline 5 [REP5-056], and in

<b>Item No.</b>	<b>Part of DCO</b>	<b>Directed to</b>	<b>Comments, Question, Expectations</b>
	<b>Dredge</b>	<i>Marine Management Organisation (MMO)</i>	particular MMO's proposed amendments to Art 43, with which the Panel concurs. <b>What is the Applicant's response?</b>
<b>5.8.11</b>	<b>Art 47: Operational land for the purposes of the 1990 Act</b>	<i>Applicant</i>	Re Art 47 paragraph (2), as the purpose is to deal with potential breaches under s161 of PA2008, arising from the grant of <u>any</u> form of planning permission under the 1990 Act ... <b>Why is the specific mention of permitted development in brackets needed?</b>
<b>5.8.12</b>	<b>Art 51: Consent to transfer benefit of Order</b>	<i>Applicant</i>	<b>Re Art 51 paragraph (6), what is the justification in relation to this particular DCO for the increasing list of bodies the Secretary of State must consult?</b> <b>Re Art 51 paragraph (7), why has the reference to Art 53 in revision 3 been removed in revision 4?</b>
<b>5.8.13</b>	<b>Art 52: Traffic Regulation Measures</b>	<i>Applicant, Thurrock Council (TC)</i>	The Panel notes Highways England (HE)'s submission at deadline 5 [REP5-058] in which HE states its position on traffic regulation measures. <b>Would the Applicant please state its position on this matter, and propose amendments to the article if necessary.</b>  ExA notes TC's submission at deadline 5 [REP5-051] in which TC states that this matter is still under discussion, and TC echoes the concerns

<b>Item No.</b>	<b>Part of DCO</b>	<b>Directed to</b>	<b>Comments, Question, Expectations</b>
			made by HE at the hearing. <b>Would the Applicant and TC update the Examination on their discussions on this matter.</b>
<b>5.8.14</b>	<b>Schedule 1: Authorised Development</b>	<i>Applicant</i>	The Panel notes Highways England (HE)'s submission at deadline 5 [REP5-058] in which HE states that it "agrees that the powers in Ancillary Works (a) to (d) are required for the Company to be able carry out works on the Strategic Road Network. However in respect of Work No 11 (ASDA Roundabout) highway works are fundamental to Work 11 not ancillary to it". <b>Would the Applicant state its position on this matter.</b>  <b>Re Work No. 9, "St Andrew's Road" is spelt variously with and without an apostrophe.</b> <b>Re Ancillary Works – Why does this section start with "And"?</b> <b>Re Ancillary Works (v) – Why is this element necessary given (x), and as it is more of a justification for the ancillary works as a whole?</b>
<b>5.8.15</b>	<b>Schedule 2: Requirements R3 External Appearance and height of authorised</b>	<i>Applicant, Historic England</i>	ExA notes Historic England's submission at deadline 5 [REP5-047] in which Historic England states that the Applicant has consulted Historic England on a draft General Specification for Finishes within the Permitted Development of Tilbury2. There have been no further discussions to date, but Historic England expects further discussions regarding this matter will

<b>Item No.</b>	<b>Part of DCO</b>	<b>Directed to</b>	<b>Comments, Question, Expectations</b>
	<b>development.</b>		<p>be forthcoming.</p> <p><b>Would the Applicant and Historic England update the Examination?</b></p> <p><b>Re R3 paragraph (5), would the Applicant please provide an indicative plan showing the location of container storage and stacking arrangements.</b></p>
<b>5.8.16</b>	<b>Schedule 2: Requirements R5 Off-site mitigation</b>	<i>Applicant, Environment Agency (EA), Natural England (NE)</i>	<p>The Panel notes EA's position on the draft Environment Mitigation and Compensation Plan (EMCP) in its deadline 5 submission [REP5-052], in which EA states that it has reviewed the previous version of the EMCP and its comments still remain valid. Re the latest version of the EMCP at deadline 5, EA expresses its satisfaction with a number of mitigation proposals and states that discussions are ongoing. EA further states that, as there are matters of importance to EA in the EMCP which must be secured in the DCO, EA would like to see a version of the EMCP produced before the end of the Examination which can be certified by the Secretary of State. If this is not possible, EA would like to be one of the statutory bodies to be consulted on any changes to the draft EMCP.</p> <p><b>ExA welcomes the progress made between the Applicant and EA on the EMCP, and requests an update on progress at deadline 6.</b></p> <p>The Panel notes NE's position on the draft EMCP in its deadline 5 submission [REP5-061], in particular its concerns over the adequacy of the site layout of the Proposed Development for minimising the impact on the most sensitive ecological areas, and the suitability of the</p>

<b>Item No.</b>	<b>Part of DCO</b>	<b>Directed to</b>	<b>Comments, Question, Expectations</b>
			<p>compensation site.</p> <p><b>ExA welcomes the progress made between the Applicant and NE on the EMCP, but also notes the extent of the areas still to be discussed and agreed, and requests an update on progress.</b></p> <p><b>ExA expects an agreed EMCP by the end of the Examination to be secured by R5.</b></p>
<b>5.8.17</b>	<b>Schedule 2: Requirements</b> <b>R6 Terrestrial Written Scheme of Archaeological Investigation (WSI)</b>	<i>Applicant</i>	<p>ExA notes Historic England's position on the Terrestrial WSI in its deadline 5 submission [REP5-047], in which Historic England states that it "continues to advise that the implementation of the Terrestrial written scheme of investigation should be secured by more detailed requirements than that currently in the dDCO", and provides draft text for these more detailed requirements.</p> <p><b>What is the Applicant's response?</b></p>
<b>5.8.18</b>	<b>Schedule 2: Requirements</b> <b>R7 Highway works</b>	<i>Applicant</i>	<p>ExA notes TC's submission at deadline 5 [REP5-051] in which TC states that at the hearing TC requested a change to Requirement 7 to include provision for the Port access road to be completed prior to the opening for use of Work nos. 3 and 8.</p> <p><b>What is the Applicant's response?</b></p> <p><b>Would the Applicant add Work No 9 to Work No 11.</b></p>

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5.8.19	<b>Schedule 2: Requirements</b>  <b>R10 Noise monitoring and mitigation</b>	<i>Applicant, Thurrock Council (TC), Gravesham Borough Council (GBC)</i>	<p>ExA notes TC's submission at deadline 5 [REP5-051] in which TC confirms that it is satisfied with Requirement 10, subject to TC sign-off of the re-assessment (as detailed in the TC response to question ref. 3.16.5 of the issue specific hearing agenda on outstanding environmental, planning policy and socio-economic issues 27th June 2018).</p> <p><b>Would the Applicant and TC confirm that this position is secured in the dDCO to their satisfaction.</b></p> <p>ExA notes GBC's submission at deadline 5 [REP5-063] in which GBC states that it continues to maintain its view that noise limit levels should be set in requirement 10 of the dDCO. GBC includes references for where GBC asserts that noise levels have been used elsewhere, and proposals for how noise levels might be included for Tilbury2.</p> <p>ExA acknowledges the amendments made in dDCO revision 4 - adding a clause for providing re-assessment results to GBC and the planning authority, and providing further definition of noise levels to trigger mitigation measures.</p> <p>Having reviewed the arguments submitted, ExA is of the view that noise limits should also be set once further monitoring has been undertaken. It is recommended therefore that the sub-section of Requirement 10 entitled 'Ongoing noise monitoring and mitigation scheme' should make reference to noise limits being agreed at monitoring locations.</p> <p><b>Would the Applicant and GBC state their positions on ExA's proposal above.</b></p>

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<b>5.8.20</b>	<b>Schedule 2: Requirements R16 Appeals</b>	<i>Applicant</i>	As most large developments, whether consented through a DCO or planning permission, are working to tight construction programmes, the question remains ...  <b>What are the particular circumstances of this proposed development that require a bespoke appeals process?</b>
<b>5.8.21</b>	<b>Schedule 2: Requirements R17 Amendments to approved details</b>	<i>Applicant</i>	<b>Would the Applicant check for consistency in the use of upper and lower case requirements.</b>
<b>5.8.23</b>	<b>Schedule 3: Classification of roads</b>	<i>Applicant, Thurrock Council (TC)</i>	ExA notes TC's submission at deadline 5 [REP5-051] in which TC states that this matter is still under review in light of the updated information within the dDCO (revision 3).  <b>Would the Applicant and TC state their positions with regard to dDCO revision 4.</b>  <b>Would the Applicant note that Ferry Road should be capitalised in the subheadings.</b>
<b>5.8.23</b>	<b>Schedule 4: Permanent stopping up of highways ...</b>	<i>Applicant</i>	Delete "Borough" from "Thurrock Borough Council".

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<b>5.8.24</b>	<b>Schedule 8: Traffic regulation measures, etc</b>	<i>Applicant, Thurrock Council (TC)</i>	<p>ExA notes TC's submission at deadline 5 [REP5-051] in which TC states that this matter is still under review in light of the updated information within the draft DCO (revision 3, and TC notes that the proposed changes to the ASDA roundabout will need to be included in this Schedule 8.</p> <p><b>Would the Applicant and TC state their positions with regard to dDCO revision 4.</b></p>
<b>5.8.25</b>	<b>Schedule 9: Deemed Marine Licence (DML)</b>	<i>Applicant, Historic England, Marine Management Organisation (MMO)</i>	<p>The Panel notes the Environment Agency's position on the DML in its deadline 5 submission [REP5-052], in which EA states that it is content with the conditions included in the DML which will address its concerns in relation to dredging and water quality that it raised in its "letter dated 20 March 2018, referenced AE/2018/122594".</p> <p>The Panel notes Historic England's position on the DML in its deadline 5 submission [REP5-047], in particular its position regarding a draft or certified Marine Written Scheme of Investigation (WSI) and its representation in the DML through the proposed detailed drafting provided by Historic England.</p> <p><b>What is the Applicant's response?</b></p> <p>The Panel notes MMO's position on the DML in its deadline 5 submission [REP5-056], and in particular MMO's comments on the DML at paragraph 2.4 of its submission, which MMO states should be reflected in the next version of the DML.</p> <p><b>What is the Applicant's response?</b></p>

<b>Item No.</b>	<b>Part of DCO</b>	<b>Directed to</b>	<b>Comments, Question, Expectations</b>
<b>5.8.26</b>	<b>Schedule 10 Part 3: For the Protection of Port of London Authority</b>	<i>Applicant, Port of London Authority (PLA)</i>	<p>The Panel notes the PLA's position in its submission at deadline 5 [REP5-062], in which PLA states that its main area of concern stems from the fact that "the DCO would extend PoTLL's existing powers in Tilbury docks to the river, where PLA has powers and it is vital that the overlap of the functions should be dealt with clearly and correctly", and that this "remains the subject of discussions on substantive issues".</p> <p><b>Would the Applicant and PLA update the Examination on progress on this matter.</b></p>
<b>5.8.27</b>	<b>Schedule 10 Part 4: For the Protection of the Environment Agency</b>	<i>Applicant, Environment Agency (EA)</i>	<p>The Panel notes the EA's position in its submission at deadline 5 [REP5-052], in which EA states that it is content in principle to disapply certain legislation within the EA's remit subject to satisfactory protective provisions being agreed, and that this issue was discussed further with the Applicant after the hearing on 28 June. EA states that it was agreed that to try to resolve this issue EA would amend the draft provisions in the dDCO to bring them in line with the EA's preferred form of protective provisions. EA returned a marked-up version of the draft protective provisions currently in the draft DCO to the Applicant on 3 July 2018.</p> <p><b>What is the Applicant's response?</b></p>
<b>5.8.28</b>	<b>Schedule 10</b>	<i>Applicant, Thurrock</i>	<p>ExA notes TC's submission at deadline 5 [REP5-051] in which TC states that it shared comments and suggestions on the draft wording with the</p>

<b>Item No.</b>	<b>Part of DCO</b>	<b>Directed to</b>	<b>Comments, Question, Expectations</b>
	<b>Part 5: For the Protection of Thurrock Council (as drainage board)</b>	<i>Council (TC)</i>	<p>Applicant on 22 May 2018. TC further states that revision 3 of the dDCO does not incorporate changes to Schedule 10 Part 5 in relation to any of TC's comments, and TC would like to be informed that the Applicant has noted these comments and provided clarification or acknowledgement as appropriate.</p> <p><b>Would the Applicant and TC state their positions on Schedule 10 Part 5 with reference to dDCO revision 4.</b></p>
<b>5.8.29</b>	<b>Schedule 10 Part 6: For the Protection of Railway Interests</b>	<i>Applicant</i>	<p>The Panel notes NR's position as stated in its submission at deadline 5 [REP5-057], in which NR highlights the fact that the parties have not yet reached agreement as to the application of both Article 41 <i>Maintenance of the authorised development and operation of the Company's harbour undertaking</i> and Article 42 <i>Power to appropriate</i>. NR requests that powers be included in the protective provisions so that NR's consent is required with regard to these two articles in so far as NR's property is affected.</p> <p><b>What is the Applicant's response?</b></p>
<b>5.8.30</b>	<b>Schedule 10 Part 7: For the Protection of Thurrock Council (as highway authority)</b>	<i>Applicant</i>	<p>ExA notes TC's submission at deadline 5 [REP5-051] in which TC states that it provided comments on the drafting to the Applicant on 11 May 2018, and that as for Part 5 above, this matter is still under review.</p> <p><b>What is the Applicant's response?</b></p>
<b>5.8.31</b>	<b>Schedule 10 Part 9: For the protection of Highways</b>	<i>Applicant, Highways England (HE)</i>	<p>ExA notes HE's position as stated in its overview to its submission at deadline 5 [REP5-058], in which HE states that it welcomes the inclusion of protective provisions solely for HE's benefit in the latest version of the</p>

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	<b>England</b>		<p>dDCO, and HE is reviewing these amendments.</p> <p>HE has been in discussion with the Applicant since deadline 4 and has made further progress in progressing outstanding issues. HE has entered into an updated SoCG to reflect the status of progress. "Those discussions also suggest that the Applicant now expects to reach some agreement with HE on the wording of replacement protective provisions (PPs) to appear in the dDCO. By agreement with the Applicant, details of the wording of those PPs has not been submitted to the Examination at this time as it is expected that the Parties will very shortly be in a position to present a common ground position on the replacement wording".</p> <p><b>ExA welcomes the progress made with the PPs and notes HE's statement that not all elements of the PPs are likely to be agreed. The Panel also notes the agreement on the application of powers at the Asda roundabout, as well as the status with regard to M25 J30.</b></p> <p><b>ExA requests an update on progress on all of these matters from both parties.</b></p>
<b>5.8.32</b>	<b>Schedule 10</b> <b>Part 10: For the protection of RWE Generation PLC</b>	<i>Applicant</i>	<p>ExA notes RWE's submission at deadline 5 [REP5-055] in which RWE states its position on Schedule 10 Part 10, including a mark-up of Part 10 at Annex B of RWE's submission, and an explanation of the proposed amendments in the main text.</p> <p><b>What is the Applicant's response?</b></p>