

PROPOSED PORT TERMINAL AT
FORMER TILBURY POWER STATION

TILBURY2

TRO30003

RESPONSES TO INTERESTED PARTIES' DEADLINE 5
SUBMISSIONS

TILBURY 2 DOCUMENT REF: POTLL/T2/EX/194



Response to Interested Parties' Deadline 5 Submissions

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')

Issued for Deadline 6 on 3rd August 2018

- 1.1 This document outlines the Applicant's Response to those parts of the Deadline 5 Submissions of Interested Parties which are not dealt with as a consequence of the Examining Authority comments on version 4 of the draft DCO.

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1.0. APPLICANT'S RESPONSE TO HISTORIC ENGLAND'S DEADLINE 5 SUBMISSIONS

Interested Party	Source Reference	Interested Party Comment	PoTLL Response
Historic England	Response to agenda item 3.13.4 (ii)	<p><i>With reference to Section 6 of the Marine Archaeological WSI, which considers potential impacts on the marine archaeology, and Section 7 which considers mitigation, as Historic England and MMO satisfied with these proposed mitigation measures?</i></p> <p>1) Table 4 (mitigation measures), we are not satisfied inasmuch that the following text requires amendment because there are no "...remaining medium and low potential geophysical anomalies" as no AEZ have yet been identified for any in-situ archaeological remains of high archaeological potential. Therefore, all (potential) geophysical anomalies should be investigated as part of any seabed investigation campaign, for example, as might be associated with UXO investigation and clearance. Furthermore, the statements made in 5.4.22 regarding geophysical anomalies already identified requires more attention as part of this draft Marine WSI to address matters highlighted in section 5.3 regarding variable survey data quality.</p> <p>2) We also direct your attention to statements regarding "archaeological assessment of the footage..." which implies visual inspection although given zero visibility conditions, attention should be on geophysical interpretation and any audio recording of archaeological divers as they might examine identified anomalies. We add that a proposed "...sampling strategy and methodology..." is likely to be defined and outlined in a task specific Method Statement, post consent (should approval be obtained) and must be clear about what is to be targeted as identified from geophysical survey or ROV/diver survey or even selected at "random or systematic sample points across the dredge area." We add that such action should be completed before capital dredging starts.</p> <p>3) Reference is made to a watching brief to be conducted during "...any and all backhoe dredging work close to identified receptors of archaeological potential attended by a suitably qualified archaeologist." However, we must again question the viability of this approach, especially in areas of identified high sediment contamination whereby a closed bucket on the backhoe dredger will be used with dumping occurring into a covered barge for secure disposal onshore.</p> <p>4) Table 3 (Impact Zone of Influence) states that dredging may cause "indirect changes to sedimentary regimes due to removal of sediment" which is considered by HR Wallingford (in ES Appendix 16.D: Hydrodynamic Sediment Modelling; Document Ref: 6.2 16.D), to be "minor and localised". In reference to draft Marine WSI Figure 6 (LiDAR survey of intertidal zone of MSA and bathymetry of subtidal zone of MSA), while this provides an illustration, it is not immediately apparent how this provides a measured elevation (or gradient) baseline against which any change might be measured.</p> <p>6) The draft Marine WSI, paragraph 6.4.2, contains important statements regarding indirect and direct construction effects linked to sediment mobilisation and that it is anticipated, by HR Wallingford, that there will be minimal changes in either accretion or erosion within the foreshore, intertidal or riverbed zones within the Study Area. However, the Study Area is of considerable spatial extent whereby such a statement regarding "minimal changes" might be considered proportionate. It still remains an important matter to highlight that specific attention should be given to adjacent</p>	<p>1) The updated version of the WSI submitted at Deadline 5 removed reference to 'remaining' anomalies to address Historic England's concerns. The text at 5.4.22 has been updated in the WSI submitted at Deadline 6 (PoTLL/T2/EX/150) following subsequent comments from HE received 25th July 2018.</p> <p>2) This comment was addressed in Table 4 and Table 5 and section 9.4 and 9.10 of the WSI submitted at Deadline 5 (REP5-025).</p> <p>3) The WSI considers all dredging options eg WID, Backhoe including backhoe with a closed bucket and a combination. The mitigation strategy to address these options was included in Table 5, Section 9.4, 9.10 and 9.11 of the WSI submitted at Deadline 5 (REP5-025).</p> <p>4) As discussed at the two previous ISH and the Applicant's submissions response to agenda item 3.13.4 (ii) in the Written Summary of Case of the Issue Specific Hearing on Outstanding Environmental Matters (REP5-014), the movement of sediment as a result of the dredge will be limited leading to minimal change to accretion or erosion on the foreshore or riverbed. Consequently there will be a negligible effect on the archaeological receptors along the fort's foreshore and consequently the applicant does not consider monitoring during or post dredge would be appropriate mitigation. The figure included in the WSI (Figure 6) is to illustrate the current baseline conditions</p> <p>5) The model in the HR Wallingford report (Technical appendix 16D) did not identify any significant changes to the Tilbury fort foreshore as a result of the capital dredge and consequently the Applicant does not consider further mitigation to be justified in this instance based on the results of their specialist report. See also the response to agenda item 3.13.4 (ii) in the Written Summary of Case of the Issue Specific Hearing on Outstanding Environmental Matters (REP5-014).</p>

		foreshore levels, especially to the west of the proposed development area. We also supplied comments regarding this matter in our Written Representation, which the Applicant has declared is not a relevant matter and one not requiring further attention in terms of a mitigation package. We do not agree with their position.	
Historic England	Response to agenda item 3.13.4 (iii)	<p><i>iii. In the event of an Archaeological Exclusion Zone (Section 7, Table 4) or Temporary Exclusion Zone (Section 9, paragraphs 9.13.18 and 9.13.27) being implemented within the dredging zones, would the Applicant State what its plans are for completing dredging to the necessary depths and completing subsequent works for the Proposed Development, with impacts on the timetable?</i></p> <p>We appreciate that this question is directed to the Applicant, but we offer the following advice that more anomalies of possible archaeological interest might exist within the proposed development area. For example, paragraph 5.4.22 identifies 116 anomalies of archaeological potential, which merit further investigation. However, this assessment requires revision in consideration of the wider area identified for capital dredging as illustrated by <i>Revised Limits of Dredging Plan Tilbury 2</i> (Document Ref: POTLL/T2/EX/45), in particular see transect B. We suggest that Coordination with UXO assessment is clearly relevant given the statement made in the desk-based report <i>Detailed UXO Risk Assessment</i> (ES Appendix 15.E; Document Ref: 6.2.15.E) regarding German UXB risk, in the Executive Summary of this report, third bullet point, it states that: “It should be noted that of significant concern is the open stretch of water at the southern end of site.”</p> <p>Draft Marine WSI, Section 9.8 (Awareness Training), it is apparent to us that any awareness training for any dredging contractors must occur prior to any activity conducted to clear obstructions or any other identified anomalies, as necessary to facilitate any capital dredging works employing Water Injection Dredging or Backhoe dredging. This matter is briefly mentioned in paragraph 9.8.8 and this entire section should be revised to reflect the reality of the proposed pre-dredging clearance operations and the likelihood of any capital dredging phase to effectively implement any reporting protocol. Paragraph 9.8.12 should therefore be revised to equally capture periodic visits to any pre-dredge clearance operations</p>	<p>1) As advised in the Applicant’s submission at Deadline 5 it is believed that the transect Historic England were concerned with was most likely Transect C rather than B and these concerns relate to an earlier version of the plan. The latest plan submitted at Deadline 4 (REP4-026)) clearly shows that the dredge does not extend across the Order limits and Transect C of this plan shows that there is a gap between the capital dredge and the dredge approach. Consequently there is no gap in the anomalies identified in this area and so the WSI does not need updating in this regard (although the figures have been updated to show this information). Consideration of future UXO clearance in combination with archaeological mitigation is referred to in Table 4, 9.4, 9.9.5, 9.9.10 of the WSI submitted at Deadline 5 (REP5-025).</p> <p>2) Section 9.8 was updated in the version of the WSI submitted at Deadline 5 in order to reflect Historic England’s concerns in particular at 9.8.1 and 9.8.13 (REP5-025).</p>
Historic England	Response to agenda item 3.13.4 (iv)	<p><i>iv. Would the Applicant state the measures that it proposes to put in place with regard to UXO during piling and dredging operations?</i></p> <p>1) We appreciate that this question is directed to the Applicant, but we offer the advice that re-survey and analysis should be introduced at set dredge levels during the overall programme of bed lowering; this is an approach effectively implemented for other harbour capital dredging works. The UXO risk assessment report (Appendix 15.E) is desk-based and states that “the exact scope of intrusive works is not known.</p>	<p>1) Reference to systematic sampling at set dredge levels during the overall programme of bed lowering was addressed in the version of the WSI submitted at Deadline 5 (REP5-025) at Table 4, Table 5, section 9.4, and section 9.10.</p>

1.1. APPLICANT’S RESPONSE TO HISTORIC ENGLANDS LETTER DATED 25TH JULY AND SUBMITTED AT DEADLINE 6 (This should be read in conjunction with the draft WSI which has been updated following Historic England’s recent comments and submitted at Deadline 6)

Interested Party	Source Reference – Marine Archaeological WSI submitted at Deadline 5 (Interested Party Comment	PoTLL Response
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	POTLL/T2/EX/150)		
Historic England	Chapter 1 (Introduction)	Paragraph 1.2.9 –We have no further comment to offer regarding this matter as we stand by our advice to you as set out in our letters of 27th April 2018 and 25th June 2018. In your explanatory email of 5th July 2018 you explain that the WSI is a high level document containing mitigation strategies for each possible capital dredging technique and that following consent whichever dredging option is chosen will be addressed in the WSI with a subsequent detailed method statement prepared in accordance with this document. We therefore appreciate the clarity provided that this draft “high level” WSI will be revised post-consent, should permission be obtained, and that the necessary provision for its production and delivery should be directly specified within the Conditions of any deemed Marine Licence, as might be obtained.	<p>There has been a level of misunderstanding with regards to the comments made in the 5th July 2018 email referenced. In that email the Applicant’s archaeological consultant stated that ‘This section has been updated to reflect the three potential dredging scenarios. As discussed the WSI is a high level WSI and task specific method statements will be produced. If we are able to agree the mitigation strategy for each scenario then following consent whatever option is chosen will be covered off in the WSI and a subsequent detailed method statement can then be prepared in accordance with this document.’</p> <p>The Applicant retains its position that the draft WSI is a high level document that will be certified at the close of the examination. The mitigation strategy for each scenario has been covered off in this document and therefore there is no justification for requiring the preparation of a separate document post consent. Instead detailed method statements will be prepared in accordance with this document.</p>
Historic England	1.2.10	It would appear that the methodological approach explained in this paragraph vis. “closed bucket excavation” would not be permissible as explained within Table 4.	Table 4 states that it may be possible to conduct artefact recovery from excavated material depending on further tests and adequate risk assessment. Therefore the scenario discussed at paragraph 1.2.10 is valid
Historic England	1.2.11	We are prepared to concur that the document provided to us is “high level” and should therefore be considered as an outline (or draft) WSI, which follows established practice employed by other National Significant Infrastructure Projects through the examination process.	As discussed at the ISH and in our responses to 3.13.4 above and 3.8.27 iii and iv in the Applicant’s response to the Examining Authority’s comments on the DCO (PoTLL/T2/EX/193), the Applicant’s position remains unchanged and it is the intention for the WSI to be certified at the close of the examination.
Historic England	Chapter 3 (Aims and Objectives) 3.2.1	The objectives should also include all necessary liaison with the local curatorial authority and also should be added to the figure under 4.1.1.	Reference to the local authority’s curatorial team (Essex County Council Historic Environment Team at Place Services) has been included in the updated version of the WSI submitted at Deadline 6 (PoTLL/T2/EX/199), at section 3.2.1 and to the figure at 4.1.1.
	4.3.2	first bullet point – To say “enough warning” does not provide sufficient clarity and a time period should be offered.	A time period of a minimum of two weeks has been included in the Deadline 6 version of the WSI at 4.3.2
	4.3.3	We note the amendment made to the second bullet point regarding participation of staff in briefings etc. However, other statements in this paragraph e.g. familiarisation with generic requirements of the WSI remain somewhat vague	Section 4.3.3 has been updated in the Deadline 6 version of the WSI accordingly
	4.4.2	fifth bullet point – We acknowledge amendment to reference a reporting protocol. However, any reference to “approval” can only be made through the regulatory authority in accordance with the Conditions of the dML. The preparation of Method Statements, derived from any finalised WSI, are to be done in consultation with curatorial bodies, national and local, prior to agreement with the MMO.	Section 4.4.2 of the WSI has been updated at Deadline 6 to clarify that approval will be sought from Historic England and the local authority’s archaeological advisors (as appropriate) in advance of submission to the MMO for approval
	4.5.1	This paragraph is incomplete given our previous request and should be amended to: “The Historic England is the Archaeological Curator providing advice for the historic environment within the English Inshore and offshore marine planning areas. In consideration of this project within the tidal Thames, Historic England will coordinate advice with the relevant local authority regarding the activities to be undertaken in the delivery of a WSI produced as a condition of any deemed Marine Licence secured for this proposed development.”	As discussed above and elsewhere it is not the intention to produce an additional WSI as a condition of any deemed Marine licence. The draft WSI currently being sought for approval will form the only WSI to be certified at the close of the examination, instead task specific method statements will be prepared in accordance with the WSI. We therefore do not propose to update the text in this paragraph
	4.5.2	The identification of specific staff is no longer considered relevant; this paragraph should be revised to acknowledge the relevant local planning authority.	This paragraph has been updated to remove reference to specific staff and make reference to the local authority’s archaeological advisor (Essex County Council Historic

		The same matter regarding identification of staff members is not necessary.	Environment Team)
	4.5.6	If the requirement is for “agreement” then this can only be done through the regulatory authority and any timeframe suggested should be agreed with the MMO.	Paragraph 4.5.6 has been updated at Deadline 6 to confirm that agreement will be sought from the archaeological curators before seeking approval from the MMO. The timescale for MMO to approve documents has been included in this paragraph and also at paragraph 8.1.2
	4.6.2	8th bullet point mentions a draft programme and timescales for site investigations. However, paragraph 4.4.2, 4th bullet point mentions a Construction Method Statement, which should be referenced accordingly in paragraph 4.6.2. 8th bullet point explains that “...a draft programme and timescale for site investigations which must allow sufficient time to complete fieldwork in accordance with the WSI.” These are matters which should be detailed within any dML as might be secured for this proposed project as only the MMO can offer “agreement”.	Paragraph 4.6.2 has been updated to include reference to a method statement. 8th bullet point – as discussed above it is the Applicant’s position that the wording of the DCO already provides the necessary controls and the wording of WSI will be certified to enforce this and ensure that a programme is provided post consent as stated in the WSI.
	Chapter 5 (Archaeological Baseline summary) Section 5.3 (data limitations) 5.3.1	Mention is made of a “criteria table” which does not appear to be included in this version of the draft “high level” marine WSI	Reference to the criteria table was an error and so has been removed.
	5.4.9	Describes how foreshore timbers were encountered to the south of Tilbury Fort, but that it was unlikely that any similar material would be located within the proposed development area located to the east. We acknowledge your comments regarding this matter in your email (dated 5th July 2018). However, the issue here is whether the proposed development programme might have a wider influence on foreshore gradient, such as immediately adjacent to Tilbury Fort. This detail is not expanded on in reference to a baseline foreshore elevation model	This paragraph lies in the baseline section of the WSI and so this particular section is providing baseline evidence for the site and study area and confirms that timbers were found on the fort’s foreshore but that none can be anticipated within the Order limits. It is not the requirement of this section of the WSI to discuss mitigation, which is addressed in later paragraphs.
	Chapter 6 (Potential Impacts) Table 3 (impact zone of influence)	As we noted previously, dredging that may cause “indirect changes to sedimentary regimes...” uses the conclusions of the HR Wallingford report (20172) as “minor and localised”. However, we stand by our previous advice that the illustration of the foreshore and adjacent tidal riverbed (vis. LiDAR survey of intertidal zone of MSA and bathymetry of subtidal zone of MSA), should inform the production of a pre-construction elevation model against which any change might be measured. In this regard we concur with the statement made in paragraph 6.3.1 to 6.3.3 and as we advised previously, we consider it important that specific attention is given to establishing adjacent foreshore levels prior to any commencement of dredging, should consent be obtained, especially to the west of the proposed order limits and immediately adjacent to Tilbury Fort.	Paragraphs 6.3.1-6.3.3 discuss <i>potential</i> indirect impacts to be considered in any development, however paragraph 6.4.2 discusses the significance of the indirect impacts assessed for this port development which in this instance is (as previously discussed above) considered to be limited. The movement of sediment as a result of the dredge will be limited leading to minimal change to accretion or erosion on the foreshore or riverbed. Consequently there will be a negligible effect on the archaeological receptors along the fort’s foreshore and consequently the applicant does not consider monitoring during or post dredge would be appropriate mitigation. The figure included in the WSI (Figure 6) is to illustrate the current baseline conditions.
	Chapter 7 (Mitigation) Table 4 (mitigation measures)	Box 1 - Describes a protocol system that will be similar to ones employed by different seabed industries, we therefore appreciate that as this document functions as an outline high level WSI for supporting the examination of this application, we require a specific set of Conditions to be included within the draft dML that will support the production of a protocol as a separate document to the marine WSI. Box 2 – We note the amendment to text and we add that formal agreement of any	Table 4 has been updated in the latest version of the WSI submitted at Deadline 6 in response to Historic England’s requirements for inclusion of repeat geophysical survey at agreed phases of dredging. The Applicant’s responses below refer to the box number in the updated WSI whilst the box number relating to the previous version of the WSI is in brackets: Box 1 (Box 1) - the text has been updated to confirm that the Protocol will be prepared as a separate task specific document in accordance with the WSI. As discussed above

		<p>Method Statement can only be obtained from the MMO.</p> <p>Box 5 – Contains amended text and describes a “systematic programme of sampling of alluvial riverbed sediments and their buried archaeological potential...” prior to any dispersal dredging. However, we acknowledge that our previous advice requires reconsideration as it is now apparent to us that by definition a “task specific Method statement” cannot both define and outline. It is important that clarity is provided about the role of a WSI and the purpose of a Method Statement. We must therefore refer you to our position set out in our letter of 25th June, that geophysical anomalies should be investigated as part of any seabed investigation campaign, for example, as might be associated with UXO clearance. Box 5 also appears to explain the application of a Watching Brief should “Minor and Intermediate Archaeological Finds” or “Major Archaeological Finds” be recovered during a programme of “sampling” which is to be repeated following the removal of an agreed depth of sediment e.g. 0.75m and repeated thereafter until the required capital dredge depth is achieved or river terrace deposits are encountered. It is our advice, as explained at the Issue Specific Hearing on 27th June and in our response to Deadline 5, that the investigation strategy should focus on repeat geophysical survey at agreed phases of dredging. We offer this approach based on our experience of survey data acquisition that satisfied UXO risk assessment and archaeological investigation criteria.</p> <p>Box 6 – We note the amended text, but we again question the viability of the approach set out to conduct artefact recovery from sediments dredged within contamination areas. It does not appear to be practical or feasible given the explanation that any decontamination is likely to remove any archaeological analysis potential.</p> <p>Box 7 – The term “safe areas” is used here which we suggest should be removed as it would be inappropriate for confusion to occur between matters as relevant to determining the presence or absence of archaeological materials and any other assessment as necessary to determine “safety” as relevant to any other applicable Health and Safety matters (such as described within Chapter 14 of this draft WSI).</p> <p>Box 8 and 9 – There are matters explained here which require further clarity. For example, Box 8 describes how an archaeological watching brief will be used during “...all open bucket backhoe dredging work close to identified receptors of archaeological potential...” which is not the same as any grab/targeted backhoe excavation sampling strategy.</p> <p>It is also not entirely clear why this should occur prior to the establishment of a Protocol for Reporting Archaeological Discoveries as tailored to this project. The explanation of the intertidal Watching brief should also be produced in conjunction with advice obtained from the relevant local authority in reference to the actual design and practicalities of conducting any intertidal watching brief during the proposed construction of the Ro-Ro ramp and outfall.</p> <p>Box 10 – The second sentence of this proposed mitigation measure should come first including any employment of Temporary Exclusion Zone (TEZ).</p> <p>Box 11 – It would seem that the application of a second protocol to be established for the operation and maintenance phase of this proposed project should be predicated on completion of the capital dredge phase and if any Archaeological Exclusion Zones (AEZs) are identified and agreed.</p>	<p>and elsewhere it is the applicants intention for the WSI to be certified at the close of the examination and it remains the applicants position that additional wording within the draft condition at Schedule 9 is not required as the wording within the WSI itself provides the necessary controls.</p> <p>Box 3 (Box 2) has been updated to clarify that the method statements will require formal approval from the MMO</p> <p>Box 2, 3, 6 and 7 (Box 5) has been updated to set out a systematic programme of assessment of geophysical survey data both ahead of and during dredge as part of the proposed mitigation strategy</p> <p>Box 8 (Box 6) states that it may be possible to conduct artefact recovery from excavated material depending on further tests and adequate risk assessment. Therefore where it is feasible this approach will be undertaken.</p> <p>Box 9 (Box 7) has been updated to remove the term ‘safe areas’</p> <p>Box 10 (Box 8) has been updated to clarify that the watching brief will be undertaken in those areas close to receptors of archaeological potential that have not previously been investigated. This work will take place following the establishment of a Protocol.</p> <p>Box 11 (Box 9) confirms that the watching brief in the intertidal zone will be undertaken in accordance with a task specific method statement which will need to be approved by both Historic England and the local authority’s archaeological advisor at Essex County Council Historic Environment Team</p> <p>Box 12 (Box 10) has been updated to confirm that a final post –dredge survey will be undertaken to ensure that any archaeological receptors will be identified ahead of the future maintenance dredge and any AEZs identified as appropriate.</p> <p>Box 13 (Box 11) has been updated to confirm that if archaeological receptors are identified during the final post-dredge survey than a second Protocol will established for the operation and maintenance dredge</p>
	Table 5 (mitigation measures for different dredging	<p>All use of the term “safe areas” should be removed, as per the explanation provided above.</p> <p>We do not concur with the mitigation measures proposed vis. systematic grab</p>	<p>The WSI has been updated at Table 4, Table 5, sections 9.4 and 9.6 at Deadline 6 to reflect Historic England’s requirements for repeat geophysical survey. It is now proposed in the first instance to undertake a programme of archaeological re-assessment of the</p>

	scenarios)	sampling or targeted backhoe excavation sampling of alluvial sediments at up to 30 sampling points after an agreed depth of dredging (e.g. 0.5-0.75m). We have explained the experience gained to date with the port sector and capital dredging programmes, whereby the primary investigation technique is repeat geophysical survey at agreed dredge depth levels prior to each phase of capital dredge. The interpreted results of these data should inform any subsequent programme of recovery of items of possible archaeological interest. This table also appears to describe mitigation measures, such as investigation of contaminated sediments that have previously been discounted as impractical.	re-processed 3D Chirp data to identify any further anomalies of archaeological potential buried in the river bed. Subsequent geophysical surveys will also be undertaken during the dredge following each dredge run using MBES until the required depth of the dredge pocket is met or the gravel deposits are reached, whichever is encountered first. The interpreted results of the data will inform any subsequent programme of recovery of times of possible archaeological interest. The feasibility for undertaking mitigation within the contaminated area is discussed in Table 4 and 5
	Chapter 8 (Method Statements)	The information provided to us appears to merge the role of a WSI and the role of task specific and detailed Method Statements. We have explained the effective procedures which should be adopted in reference to our experience with the port sector and our published guidance. In particular, the statement made in paragraph 8.1.7 appears to undermine the central principle that archaeological advice directly utilises survey data acquired to support delivery of this proposed project.	At Deadline 6: Paragraph 8.1.2 has been updated to clarify the role of the method statement Paragraph 8.1.7 has been deleted
	Chapter 9 (Scheme of Investigations)	We are not satisfied by the contents of this (draft) high level WSI whereby it states in a text box prior to this chapter that the "Scheme of Investigations provides a structure for implementing any additional mitigation that may subsequently be required in response to unexpected discoveries..." It appears that this conflates the separate roles of a WSI and a reporting protocol for finds of possible archaeological interest. All methodological information as necessary to support archaeological investigations should be set within a WSI and the protocol deals with emergency action if materials of possible archaeological interest are encountered during project delivery	The text box has been deleted
	Section 9.3 (Overview)	The measures described in this section are inadequate to allow regulatory enforcement by the MMO.	The measures described in this section are enforced through the nature of the WSI and the requirements of the DCO to undertake all the work in accordance with the WSI.
	Section 9.4 (structure of proposed investigations)	In our advice to you, dated 25th June 2018, we stated that the high level nature of this document could be considered sufficient for the purposes of this examination. We acknowledge that some edits have been made, but we must stand by our advice – as detailed within the draft Statement of Common Ground – that the marine WSI produced during examination should be considered as "draft" (or "outline") as appropriate to inform the examination of this proposed development project. For example, it seems that our advice to you regarding a phased programme of geophysical survey as might help inform the deployment of any watching brief is not accepted. You appear to favour a watching brief, based on a sampling strategy, with its associated limitations, during a continual programme of capital dredging. We must add that the proposal to implement a watching brief during intertidal works (section 9.12) should be referred to the relevant local authority, especially in reference to any associated practicalities of implementation, especially if it is hoped to be able to identify archaeological deposits of Mesolithic date as highlighted.	The Applicant retains their position that the draft WSI is a high level document that will be certified at the close of the examination. The mitigation strategy for each scenario has been covered off in this document and therefore there is no justification for the preparation of a separate document post consent, instead detailed method statements will be prepared in accordance with this document. As discussed above the WSI has been updated in Table 4, Table 5 , sections 9.4 and 9.6 in response to Historic England's advice regarding a phased programme of geophysical survey and consequently should now be considered a robust document ready to be certified at the close of the examination Section 9.11 now details the proposed watching brief in the intertidal zone and confirms that the local authority's archaeological advisor at Essex County Council Historic Environment Team (Place Services) will be consulted. Reference to the Mesolithic is misleading and so has been removed
	Conclusion	We acknowledge that this draft or outline high level WSI now includes a number of possible mitigation strategies which could be employed depending on the dredging scenario(s) adopted. However, overall document clarity is required and It is therefore our advice that delivery of a marine WSI should be made subject to Conditions within a deemed Marine Licence, such as offered previously. This regulatory mechanism will steer timely production and implementation of a project	The WSI has been updated in response to Historic England's comments dated 25 th July 2018. It is a robust document that should now be considered suitable to enforce all necessary mitigation measures that will be required. Consequently there is no justification for a separate additional WSI to be prepared post consent. It remains the Applicant's position that additional wording within the draft condition at Schedule 9 is not required as the wording within the WSI itself provides the necessary controls.

		specific marine WSI post consent, in consultation with national and local curatorial bodies and in agreement with the MMO as the regulatory authority.	
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2.0. APPLICANT'S RESPONSE TO ENGLISH HERITAGE'S DEADLINE 5 SUBMISSIONS

Interested Party	Source Reference	Interested Party Comment	PoTLL Response
English Heritage	Paragraph 3.2	Historic England and English Heritage are two very closely linked organisations. It would be perverse to consider the concerns of each as separate matters when considering the Fort and its heritage importance. Therefore, the shared opinion is that the impacts of the proposal are severe and will have a radical and harmful effect on the setting of a Scheduled Monument.	<p>Whilst their interests are linked, the Applicant considers that the parties should be treated differently for the purposes of the Examination:</p> <ul style="list-style-type: none"> • EH are being consulted on effects to their commercial operation, not on impact to significance. • Harm to significance (determined by HE) is assessed differently to changes to commercial operations. • The Applicant considers that the magnitude of change to the setting is based on the future baseline. • This is not relevant in the consideration of effects on the commercial operations as Tilbury B has previously been evident in the setting of Tilbury Fort.
English Heritage	Paragraph 3.3	English Heritage and Historic England's overall argument is that the level of harm to the setting of the Fort is greater than that identified by the applicant. Reasonable attempts have been made by the applicant to mitigate the adverse impact of the scheme but this does not, and cannot, reduce the overall residual harm to the setting of the Fort. We agree that the design (appropriate colour palette), active travel plan, and interpretive signage are all necessary to include in the proposals but these will not balance the harm caused to the Fort, therefore it is reasonable to seek further compensation for this <u>loss of setting</u>	<p>The Applicant disagrees that any further compensation is required for the effects of the Tilbury2 proposals on the setting of the Fort.</p> <p>Please see the Applicant's response to agenda items 13.3.2 and 13.3.3 of the June 2018 Issue Specific Hearing (REP5-014) and its response to SWQ 2.13.4 (REP4-020).</p>
English Heritage	Paragraphs 3.5-3.9	<p>3.5 English Heritage note that the applicant has assessed a level of effect on the setting of the Fort and agreed to an obligation to pay for signage and the resurfacing of the road to the Watergate. If the Inspectors find that the effect to the setting of the Fort is greater than that assessed by the applicant, English Heritage would expect the scale of the obligation to increase.</p> <p>3.6 Given that the setting of the Fort will be permanently affected and there is no more that can be done to mitigate this, it is reasonable to consider all aspects of the setting and the significance of the Fort in order to compensate for the initial loss of significance. In short, when the wider significance of setting is lost, then better revealing another aspect of the localised significance in setting is an appropriate compensation.</p> <p>3.7 Therefore, the significance of the De Gomme fortifications – the moats and landward defensive systems – to the setting, and people's understanding of these systems – by using the paths and particularly the bridges to cross them, is both proportional and related to the port scheme. The improvement of the moats and the bridges is a direct heritage enhancement and would better reveal their significance.</p> <p>3.8 The northern car park is additional access improvement and would also help to reveal the significance of the landward fortifications should people enter the site from that direction. For clarity, English Heritage has stated that the car park reinstatement is only of value when coupled with the bridges, however, the bridges can be of value</p>	<p>Works to the moats are not within the scope of the Tilbury2 project and have not been environmentally assessed and are therefore undeliverable. As indicated in the Applicant's response to EH's written representation is highly likely that dredging of the moats would be ecologically damaging (REP2-007).</p> <p>The Tilbury2 proposals have effect on the setting only, not on the fabric of the Fort. Therefore the Applicant's proposed mitigation, in scale and kind, is appropriately focussed on facilitating the experiences of the Fort and not specialist conservation repairs to historic fabric.</p> <p>There are differing specialist opinions that have been presented to the Examination regarding the appropriate approach for visitors to the Fort and it is the Applicant's position that improvements to the bridges to the north are not appropriate.</p> <p>SM consent processes, notwithstanding, the principal of these suggested enhancements is flawed and renders it potentially undeliverable. In particular the Applicant notes that views to the north <u>from</u> the Fort would be affected by the construction of a northern car park.</p>

		<p>without the car park.</p> <p>3.9 The deliverability of the mitigation and compensation measures has been questioned by the applicant, particularly that consent might not be secured for each of the elements. However, the delivery of each of the elements in the mitigation and compensation package can be managed through the Standing Scheduled Monuments consent protocol between Historic England and English Heritage. Specifically in the protocol is the provision for “Tier Two” consents that allow for minor works, maintenance and/or repair, and Historic England have confirmed this would cover the impact of the proposed mitigation and compensation package.</p>	
English Heritage	Paragraph 4.0	<p>4.0 FILMING</p> <p>4.1 English Heritage does not seek to contest the ‘filming evidence’ presented by the applicant given that the loss of earning is not what we are pursuing but it is the loss of landscape and setting. Whilst the setting of the Fort could be managed through film making processes, as suggested during the second ISH, the very fact that the setting will be adversely effected is likely to influence decisions to choose certain filming locations.</p> <p>4.2 However the filming report commissioned by PoTLL from Georgette Turner of ‘On the QT’ has been read by Kat Parker, the Head of Filming at English Heritage, and as such the English Heritage makes the following assessment:</p> <p>Ms Turner is not known to us and she has not formally contacted us to ascertain any details regarding our use of the Fort as a filming location, though we did receive reports of someone attempting to gain access to take photographs of the site in relation to this examination.</p> <p>The report details reasons why its author believes that Tilbury Fort is not a favourable filming location and details travel time and insurance rates amongst other reason as to why this is the case. English Heritage has provided the Examining Authority with the data which relates to filming revenue at the Fort over the past 10 years but it is most particularly of note since 2015. Certainly English Heritage’s experience, and the actual income generated, does not correlate with the views listed in this report.</p> <p>English Heritage has not detailed any forward projections beyond 2017/18 in the written responses – it is accepted that filming revenue can be hard to predict. However, English Heritage continues to receive interest in Tilbury from Location Managers and continue to prioritise the conversion of enquiries as a key revenue stream. The funds shown under “forecast” in –</p>	<p>The Applicant does not consider that the filming conditions will be substantially changed from the present condition which includes the extant Tilbury B power station.</p> <p>Filming revenues, as submitted by EH, have all been achieved with Tilbury B and a strongly industrialised setting in situ.</p> <p>'Painting out' & ADR are already considerations for location managers at Tilbury Fort as set out in the Filming Note (REP3-023). This consideration will not change with the proposals for Tilbury2</p> <p>The Applicant agrees that the revenue streams for the Fort are critical to its conservation. The scope of the enhancements to be delivered under the s106 with Thurrock Council are considered to be appropriate in scale and kind.</p> <p>The s106 offers enhancement to the visitor experience and improves wayfinding to and around the site.</p> <p>The impact on filming revenue is not considered to change with the development of the T2 proposals and expert industry evidence has been submitted by the Applicant to support this position (REP3-023).</p>

		<p>Appendix E of our written submission of March 2018 – were a projection for the financial year and in fact Tilbury Fort completed 2017/18 with a total of £402k from facilities income, of which £335k was generated through filming.</p> <p>Item 4.6 of English Heritage’s written submission of March 2018 lays out the reasons that Tilbury Fort is chosen by Location Managers as we understand them. We recognise the author of this report does not share these opinions, but we are not aware of Ms Turner working at the Fort previously or sharing her feedback with the Filming team. Anything that adversely effects these attractors – such as visually intrusive or noisy neighbouring activities – will make it harder for English Heritage to promote the location for filming and while it is true that there is technology available to film companies to remove ‘distractions’ these will still be an additional challenge noted by Location Managers.</p>	
	4.3	<p>The key issue remains that the historic setting of the Fort is the starting point for the generation of income across our revenue streams: Visitation, Membership, Secondary spend, Tenancy and Filming. English Heritage’s position with regards to the impact of Tilbury2 on the setting of the Fort is clear from our written submissions and we do not consider the filming report gives any foundation for that position to be altered.</p>	

3.0. APPLICANT'S RESPONSE TO BUGLIFE'S DEADLINE 5 SUBMISSIONS

Interested Party	Source Reference	Interested Party Comment	PoTLL Response
Buglife	Deadline Submission [REP5-054]	<p>5 Buglife maintains its previous positions outlined in previous submissions dated 16th March and 30 April 2018.</p> <p>The site is a unique and irreplaceable example of Open mosaic habitat on previously developed land (OMHPDL), a habitat of conservation priority listed under Section 41 of the Natural Environment and Rural Communities (NERC) Act 2006.</p> <p>The site supports an outstanding invertebrate assemblage of a quality sufficient for the site to be of Site of Special Scientific Interest (SSSI) value. This position and Buglife's submissions have the support of the Royal Society for the Protection of Birds (RSPB), Essex Wildlife Trust, Bumblebee Conservation Trust and Essex Field Club. The national significance of the site has also been supported by Natural England's Invertebrate Specialist, David Heaver, and the expert opinion of the entomologists commissioned by the applicant, Colin Plant Associates and Mark Telfer. The 2016 and 2017 surveys yielded a species list of 1,397, an incredibly high number which includes 159 species of conservation concern. Modern records for this site since 2007 include 15 species listed in Section 41 of the NERC Act, including: Sea aster mining bee (<i>Colletes halophilus</i>); Shrill carder bee (<i>Bombus sylvarum</i>); Brown-banded carder bee (<i>Bombus humilis</i>); Five-banded weevil wasp (<i>Cerceris quinquefasciata</i>); Wall butterfly (<i>Lasiommata megera</i>); Saltmarsh shortspur beetle (<i>Anisodactylus poeciloides</i>); Hornet robberfly (<i>Asilus crabroniformis</i>); Red-shanked carder bee (<i>Bombus rudarius</i>); Black-headed mason wasp (<i>Odynerus melanocephalus</i>); and Four-banded weevil wasp (<i>Cerceris quadricincta</i>).</p> <p>The Tilbury Power Station site in its entirety, including the Lytag Local Wildlife Site (LoWS), is comparable to Canvey Wick SSSI and West Thurrock Marshes SSSI/LoWS, which are widely acknowledged to be among the country's best invertebrate sites. This is widely evidenced by the ecological submissions associated with the application and is supported by Natural England's suggestion that the site is in the SSSI designation pipeline, regardless of its current status.</p>	<p>The Applicant notes that this representation essentially makes the same points as those set out in Buglife's earlier submissions [REP1-030; REP3-032].</p> <p>As set out in the Applicant's earlier response [REP2-007], "it is not disputed that the Thames Gateway brownfield invertebrate assemblage is of national importance, nor that the invertebrate assemblage on the site is of national significance as defined by comparison with available datasets and evaluation tools. What is unclear is how the Tilbury2 assemblage relates in qualitative terms to other brownfield sites in the Thames Gateway region, including those that have not been subject to equivalent levels of study".</p> <p>To seek to clarify the position as regards other sites with comparable recording effort to the three rounds of intensive survey undertaken at Tilbury2, the Applicant has asked Natural England in correspondence and in the April and June 2018 ISH's to advise where the Tilbury2 site sits in 'league-table' terms, i.e. when compared with equivalent-effort datasets for other brownfield sites in the Thames Estuary. , but it is understood from NE that "some further work is needed to place this into a better and more complete context" and this information has not been made available and is still awaited.</p>
Buglife	Deadline Submission [REP5-054]	<p>5 Buglife reject any suggestions that the site is in some way degraded or at risk of losing interest. The site remains of national importance, as documented by the recent invertebrate surveys, regardless of some recent subtle vegetation changes. This is supported by the invertebrate survey reports of Colin Plant Associates, which state that "More detailed comparison with the results of a survey conducted on the Lytag Brownfield nine years ago shows that whilst there are small changes to the actual composition of the species list, the overall inventory is more or less unchanged". It also states "There is very little difference, and perhaps none of ecological consequence, between the 2008 and 2016 species lists".</p>	<p>The Applicant concurs with the 2016 CPA report conclusion [APP-056], and made the same point in the ES [APP-031], i.e. that the open mosaic / brownfield areas of the former Tilbury power station appear to have overall retained their value for invertebrates; albeit the subsequent (2017) survey work [APP-057] indicates that the distribution of that interest appears to be changing as a consequence of successional processes, and with that an element of decline in condition. The balance of evidence is that both the Lytag and TEEC sites have reached a tipping point in the successional process. It is the Applicant's view that these processes can be expected to accelerate further, leading in a relatively short timescale (perhaps as little as 5-10 years) to significant suppression of the particular biodiversity interests associated with early successional and open ground habitats. See also the SoCG with Buglife [document reference PoTLL/T2/EX/115].</p> <p>As set out in the Applicant's earlier response [REP2-007], Buglife's rejection of successional decline "appears to contrast with Natural England's acceptance of slight decline in the Lytag Site assemblage (agreeing with the ES), and their acceptance that</p>

			successional processes will result in decline unless management intervention is secured. Indeed this appears to be accepted by Buglife elsewhere in their written representation.”	
Buglife	Deadline Submission [REP5-054]	5	<p>The national importance of invertebrate populations in the Thames Gateway area has been increasingly recognised in recent years, including through Buglife’s ‘All of a Buzz in the Thames Gateway’ project which identified 40% of brownfields being of medium to high potential for nationally rare or scarce invertebrates. The highest quality wildlife-rich brownfield sites are among the UK’s most important invertebrate sites and include species with diverse and specialist habitat requirements, many of which have declined drastically across the wider Thames Estuary landscape. However, despite wider recognition of their biodiversity value, brownfields in the Thames Estuary have consistently been lost to development and the current resource in the region is declining. For example, in 2013 Buglife re-visited the 198 sites identified as medium or high potential in the ‘All of a Buzz in the Thames Gateway’ project, which revealed that 51% had been identified as either lost, destroyed, damaged or had an outstanding planning permission which would remove the site’s interest, within only a six-year period. South Essex in particular seems to be under increasing pressure, following progressive loss of OMHPDL. The Thurrock corridor along the estuary, which includes the Tilbury Power Station site and surrounding land, now represents the largest stretch of high quality brownfields in the Thames Gateway and is crucial to the long-term survival of the region’s nationally important invertebrate interest. Species such as the Shrill carder bee depend on a network of brownfield sites to support metapopulations in the Thames Gateway, but the progressive loss of resources across the landscape threatens their long-term persistence. Protection of these remnant sites is all the more important due to the impact of modern planning decisions, which more often than not lead to sites being restored to agricultural or grazing use. This makes the limited number of remaining brownfields of utmost importance to invertebrate conservation in the region. Unique and diverse sites such as the Tilbury Power Station need to be recognised both due to their own intrinsic value but also due to their importance within the wider network of sites supporting a nationally important assemblage of invertebrates.</p>	<p>The spatial relationship between the network of brownfield sites within the Thames Gateway is noted, and by reference to draft EMCP Figure 5 [REP5-042], it can be seen that the proposed off-site compensation site at Mucking Landfill is well placed within a network of ecological sites including those identified in the ‘All of a Buzz’ project that have brownfield and wider ecological interests. The closest of these brownfield sites is the existing London Distribution Park (LDP) compensation area¹, which lies adjacent to the proposed compensation site. This is in the first year of monitoring studies since its creation and in accordance with the S106 obligations pertaining to that development. Full results are not yet available (it is hoped that they may be by Deadline 7) but early indications are encouraging with (for example) shrill carder-bee already recorded using the LDP compensation site earlier this year.</p>
Buglife	Deadline Submission [REP5-054]	5	<p>The proposed off-site compensation methods outlined in the updated Ecological Management and Compensation Plan (CMCP) from June 2018 (TILBURY 2 DOCUMENT REF: PoTLL/T2/EX/113) are unproven and lack sufficient evidence for any confidence in their potential success. There have been no previous examples of successful large-scale brownfield habitat recreation. The applicant’s examples from the last ten years suggest some limited value, but do not in any way demonstrate that the complicated suite of habitats at Tilbury Power Station can be replicated. Brownfield sites such as those at Tilbury Power Stations have complex mosaics of substrates, topography and hydrology, creating subtle and intricate landscapes of microscale features which are central to the underlying value of brownfields. These are formed through a history of different industrial activities and processes across the entire site and at different points in time, effectively creating a range of subtle</p>	<p>As set out in the Applicant’s earlier response [REP2-007], the Applicant’s position is that this argument (the suggestion that brownfield habitats of equivalent value cannot be recreated) is not a logical construct having regard to the anthropogenic processes that cause such sites to come about, and the restricted timescales over which such interest develops in the wake of cessation of industrial use. The Lytag Site itself is an example of fairly rapid development of invertebrate interest, given that the Lytag manufacturing plant was only decommissioned and demolished in the 1980’s.</p> <p>The Applicant has also previously responded to queries about open mosaic habitat creation being an un-tried and untested methodology – for example in verbal and follow up written submissions at the June Hearing [REP5-036]. The Applicant noted that whilst there were only limited examples of intentional brownfield habitat creation, sites with significant</p>

¹ London Distribution Park (LDP) planning reference 10/50157/TTGOUT and related applications. Creation of the invertebrate compensation site was a planning obligation under Section 106 of the Town and Country Planning Act 1990, as agreed between Thurrock Thames Gateway Development Corporation (now Thurrock Council) and Port of Tilbury London Limited on 27 March 2012, and its creation is documented in a Ecological Compensation and Mitigation Strategy (ECMS) associated with that scheme.

			<p>features so complex that we do not yet know how to replicate them with any confidence. The only evidence provided is from short-term monitoring of small-scale habitat creation of PFA habitats, with no indication that a nationally important invertebrate site can be recreated to support a diverse assemblage with multiple habitat requirements and specific niches. This leaves very significant unknowns and a high level of risk.</p> <p>The current plan for OMHPDL mitigation and compensation is for 0.3ha to be retained and 10 hectares to be created ex-situ, using existing aggregates where possible. Reliance on the retention of a 0.3ha fragment of habitat and entirely unproven habitat creation methods, as compensation for the loss of an irreplaceable habitat of SSSI quality is simply unacceptable.</p>	<p>brownfield interest occur sufficiently routinely in a serendipitous manner where there has been anthropogenic intervention/ development and then subsequent neglect, to suggest that it must be possible to replicate the mechanisms required to achieve high quality habitat outcomes.</p>
Buglife	Deadline Submission [REP5-054]	5	<p>The updated EMCP is an improvement on previous versions, in that a potential site has been identified, which is within a reasonable proximity and is Thameside habitat. However, in addition to queries over the potential success, it lacks any significant detail over how the habitats will be created.</p>	<p>The full details of the habitat creation at Mucking are in the closing stages of discussion and technical investigation in collaboration with the landowners and will be provided within the final version of the EMCP, intended to be submitted at Deadline 7. The Applicant has invited Buglife to visit the existing LDP compensation site at Mucking Landfill [see most recent SoCG with Buglife; document reference PoTLL/T2/EX/115]. Buglife has also been invited to contribute to and comment on the detailed design of the scheme on a 'without prejudice' basis and it is the Applicant's intention for this to occur in advance of Deadline 7.</p>
Buglife	Deadline Submission [REP5-054]	5	<p>Buglife would also like to query the selection of compensation site as it appears to only be enhancing a site over 10 ha rather than creating a new resource. The Mucking landfill site is largely due to be capped with low nutrient aggregates and restored to low fertility grasslands which will be taken into the stewardship of the Essex Wildlife Trust, as part of a fully funded operation. Effectively what is proposed is enhancing a site already destined to be of nature conservation value- which is insufficient for the loss of a site of such interest. The EMCP does review the current state of the Mucking Landfill area through a brief Phase 1 assessment, but identifies it as high fertility. However, Buglife would suggest that the species identified are actually more indicative of a site which has recently been disturbed rather than indicating high fertility. Many of the species identified are for example found in both high fertility disturbed habitats (e.g. arable field edges) but also in low nutrient disturbed habitats (e.g. brownfields). The site is also currently unrestored, making any baseline assessment misleading as it does not yet represent the low nutrient grasslands which were due to be part of the restoration scheme as far as Buglife is aware. In summary, Buglife maintains its previous positions as outlined on 16th March and 30th April 2018 and remains opposed to the application.</p>	<p>The comment that "The Mucking landfill site is largely due to be capped with low nutrient aggregates and restored to low fertility grasslands" suggests that the existing restoration proposals might generate new grassland without application of topsoil. However, as set out in the draft EMCP [REP5-042], the approved scheme is for application of topsoil over the capping layer, in to which grassland is to be seeded. The relatively high fertility nature of the soil materials used is noted in the Phase 1 survey reported upon in the EMCP and will result in a species-poor grassland outcome under the existing restoration proposals, akin to the species-poor grassland in evidence elsewhere within TTNP (and noted in surveys of the site by others such as Essex Field Club/Peter Harvey). In this context the Applicant's proposals represent clear uplift over and above what will otherwise be delivered on the same parcel of land. It remains the intention to provide a quantitative appreciation of the extent of such uplift via use of the Essex biodiversity calculator once the final detailed design is settled. The intention and expectation remains that all of this information will be provided in a final EMCP iteration at Deadline 7.</p>

4.0. APPLICANT'S RESPONSE TO RWE'S DEADLINE 5 SUBMISSIONS

Interested Party	Source Reference	Interested Party Comment	PoTLL Response
RWE	Paragraph 2.2	RWE's concerns regarding the Applicant's ability to veto, by virtue of the provisions of Article 3 (7)(a), any future application for a new or variation of an existing RWL are still pertinent. RWE believes that there needs to be clarity as to the scope of considerations which the Applicant can rely upon pursuant to Article 3 (10) in giving its consent to any future RWL application. RWE is therefore supportive of the PLA's comments at the DCO Hearing on 28 June that the ability for the Applicant to comment on or to seek to modify the works etc. which are the subject of any RWL application should be limited to the Applicant's statutory function as Harbour Authority and not as a commercial operator of the Port.	The Applicant's version of article 3 in the DCO submitted at Deadline 5 included explicit reference to the need for PoTLL to act in exercise of its statutory functions in exercising its power to consent or not to consent in what is now article 3(9). As such, no further changes are necessary following this in relation to adding the word 'reasonably' in this article, as RWE have suggested at Deadline 5.
RWE	Paragraph 2.3	Notwithstanding the above, RWE has proposed minor amendments to clarify the extent of the "B station" intake structures, and too make it expressly clear that the jetty superstructure does not include any of the existing 'B station' intake structures, and to clarify that any RWL for the 'B station' intake structures can be terminated in part. The ExA is referred to Annex A of this submission where these proposed changes are highlighted as tracked changes to the current Article 3	These amends have been incorporated in the DCO submitted at Deadline 5.
RWE	Paragraph 2.5	Removal of the words within the definition of 'alternative apparatus' avoids the identification of an area within the extended port limits within which RWE could place alternative apparatus and enjoy the benefit of the protection related to it in the protective provision. RWE considers it would be unnecessarily restrictive to its TEC proposals to require it to identify this area at this stage. The absence of such a restriction will not prejudice the Applicant since the Applicant still retains the ability to object to any application for a future RWL (on the basis set out in Article 3) or a future DCO for alternative apparatus. The purpose of paragraphs 9 to 11 of the draft protective provision is to provide certainty for RWE in respect of the construction, use and maintenance of any alternative apparatus, and to provide for the necessary rights to be granted to RWE in the event RWE obtains a licence for alternative apparatus from the PLA without being subject to a landowner ransom from the Applicant.	The inclusion of this zone has been agreed between the parties and is included in the dDCO and Works Plans sheet 3 submitted at Deadline 6.
RWE	Paragraph 2.6	The amendment to paragraph 5 (6) provides for a 14 day period within which RWE must communicate any requirements for the purposes of protecting RWE's access to the existing apparatus during maintenance of Tilbury 2	This is agreed in the Applicant's version of the Protective Provisions submitted at Deadline 5.
RWE	Paragraph 2.7	The insertion of Paragraph 5 (9) is to provide RWE with protection to ensure that any interference with RWE's access to its existing apparatus under the terms of the Jetty Asset Transfer or through powers under the existing RWL, is exercised with due regard to RWE's requirements from June 2021; the earliest anticipated start date for construction of TEC. This is considered proportionate and reasonable protection of RWE rights and interests granted pursuant to a transfer which was drafted in contemplation of the delivery of a power station on RWE's retained land, and to ensure consistency with the existing RWL.	Whilst the principle of this point is accepted by the Applicant, the wording of it has been amended in the Applicant's version of the Protective Provisions submitted at Deadline 5 to ensure that the protections offered by it apply only to the development of the Tilbury Energy Centre as opposed to RWE interests in general; and to ensure that PoTLL's duty as a statutory harbour authority to ensure that vessels can load and unload is not affected. Both amends have been made to ensure that the Applicant can operate its port, whilst still allowing RWE to build out its power station.
RWE	Paragraph 2.8	Paragraph 5 (10) is self-explanatory and requires the Port to act reasonably in the exercise	This has been replaced with a general provision at the end of the Applicant's version of the Protective Provisions to ensure that both parties must act reasonably in connection with the implementation of all of the protective provisions between RWE and the Applicant,

		of powers granted to it as referred to in sub paragraphs (1) - (9)	rather than just this paragraph.
RWE	Paragraph 2.9	<p>In paragraph 7, RWE is seeking an indemnity in the same terms offered to other statutory undertakers within Schedule 10 (paragraph 10 of Part 1 of Schedule 10). Whilst there is a dispute between RWE and the Applicant as to whether RWE are currently a statutory undertaker, as a matter of practicality it is not disputed that RWE will be a statutory undertaker once they are operating a power station on their retained land. Given that this is acknowledged by the Applicant and indeed was the purpose underlying the rights reserved to RWE in the Jetty Asset Transfer, RWE does not believe that there is any reasonable basis for not extending the same protection to RWE's existing apparatus if it is used for that purpose. The Applicant has sought to argue that it is not appropriate to protect RWE's future project in the Tilbury 2 DCO but that argument overlooks the reality that the provision is for the protection of existing apparatus being used for a purpose expressly contemplated by an existing arrangement which the Applicant is seeking to interfere with using powers under its DCO</p>	<p>This is not accepted by PoTLL – the role of all protective provisions in a DCO is to protect the assets and operations of third parties that currently exist, not to try and deal with matters that are not yet consented or for which detail is not known.</p> <p>Whilst the dDCO can legitimately ensure that it that does not obstruct the RWE scheme from being brought forward, this is the full extent of what can reasonably be included within the DCO. PoTLL cannot include provisions (for example indemnities) within the dDCO 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 and jetty when it was clearly known by RWE that the land was being sold for a port.</p>
RWE	Paragraph 2.10	The protection provided to RWE in paragraph 8 is two-fold: it provides reassurance to RWE in that it can exercise rights it already has under the existing RWL and, in the event the Applicant acquires a proprietary interest in the River Thames, that the Applicant will grant such rights to RWE as necessary to ensure it is in the same position with regard to the existing RWL engaging with the provision of Article 3(8) and 3(9).	The revised draft DCO submitted at Deadline 6 includes drafting to address these points.
RWE	Paragraph 2.11	The amendments to paragraphs 10 are self-explanatory and seek to ensure an element of reasonableness to any costs incurred as a result of RWE requirements being accommodated. The deletion of 'Work No. 2' can be ignored as the amendment was made in error	This is agreed in the Applicant's version of the Protective Provisions submitted at Deadline 5.
RWE	Paragraph 2.12	The amendments to paragraph 11 are also self-explanatory and allow for the possibility of the Applicant acquiring a proprietary interest in the River at a future point in time and adds clarification that rights granted to RWE as a result of this will relate to the alternative apparatus	This is agreed in principle but at Deadline 6 the drafting has been altered so that it accords with the Applicant's and the PLA's jointly shared understanding as to how property rights work under s66 of the Port of London Act 1968 in the context of river works licences.
RWE	<p>Paragraph 2.13</p> <p>Response to Agenda Item</p>	<p>The Applicant has confirmed that it is not seeking powers to interfere with RWE's rights and interests through the DCO that do not relate to the Order Land. One of those rights provides RWE with a right of way to the proposed TEC site via Fort Road "at all times and for all purposes". Whilst those rights are granted subject to "lift and shift" provisions in the related land transfer, the powers contained within Article 12 of the draft DCO and shown on Sheet of the Rights of Way and Access Plan propose a stopping up of RWE's existing private means of access and its replacement with an access which passes under the proposed Fort Road bridge (Work No.10) to a point joining the proposed A1089 St Andrews Road as described in Part 3 of Schedule 4 of the dDCO. The Applicant has agreed to construct Work No. 10 to allow clearance of at least 6m, but this would still act as a constraint on the ability of RWE to move abnormal loads to its land having landed them at the Port of Tilbury, and which RWE would seek to utilise on as part of its TEC development. RWE's position is that this is an interference with their rights which is not authorised by the dDCO and in order to avoid any future dispute, RWE are requiring that alternative provision is secured via the protective provisions</p>	<p>The Applicant's proposed Protective Provisions provide that Work Nos. 4 and 10 (i.e. the access to the Tilbury2 site, and the Fort Road overbridge) must be constructed to provide for a clearance of 6 metres. The Applicant cannot accept anything more than this for the following reasons:</p> <ul style="list-style-type: none"> • Standard highway clearance is 5.3 metres, so the Applicant is already providing more than standard. • However, because of this, RWE would not be able to utilise the existing highway network (for example there are a number of bridges over the A1089) to reach this junction with over height vehicles. To do so, they would therefore be required to unload vehicles at the existing Port of Tilbury, or Tilbury2 once built. The ability for them to do so is therefore in the control of RWE. • As explained at the Issue Specific Hearing on traffic and transportation issues on 28 June 2018 and in the written submission of case (REP5-016) from an engineering perspective, it is not possible to fit a bridge of the dimensions suggested by RWE within the Order limits (and associated impact on, for example,

			<p>common land to the south of the bridge).</p> <p>It is unreasonable to expect that a bridge should be designed to provide access to extra high abnormal loads when such loads will be required for very few vehicles and only for the construction period for the Tilbury Energy Centre (TEC) should it be consented and implemented. This is therefore a matter that RWE should address in its own TEC DCO.</p>
RWE	<p>Paragraph 2.14</p> <p>Response to Agenda item 3.1.2</p>	<p>RWE remains concerned with regard to potential for dust emissions from the Tilbury 2 development impacting upon the future operation of the TEC. RWE can design its TEC scheme to address this concern provided the Applicant complies with the monitoring provisions as set out in section 7 of the Applicant's Operational Management Plan; paragraph 14 of the protective provision has been included to protect RWE's position in this regard.</p> <p>RWE acknowledges the Applicant's submission at the Issue Specific Hearing that the Applicant intends to provide RWE with something in writing which looks in more detail at the potential sensitivities of a gas fired power station close by to the Applicant's proposals. RWE reserves its position at this stage to comment further on this once received</p>	<p>The Applicant would particularly note the changes made to the Operational Management Plan at Deadline 5 in the section titled 'Monitoring Locations' (REP5-023), which seek to further demonstrate, as the Applicant has consistently stated in the Examination, that dust monitoring and mitigation will be adaptive to the on-going operations of the Port and its surroundings.</p> <p>As the Applicant has previously stated, it would be pre-emptive for a monitoring location to be <u>required</u> for a power station that may not be consented or built.</p>
RWE	Paragraph 2.15	<p>Paragraph 16 has been inserted to clarify that the Applicant will not interfere with RWE's rights under the Jetty Asset Transfer other than as set out in the protective provision. It is RWE's position that such rights and interests should be set out in the protective provisions to the extent that any interference with them will be required, with an express provision that no other interference would then be authorised.</p>	<p>The Applicant has inserted a clause in the protective provisions which provide that both parties' rights and interests under the jetty asset transfer continue to subsist, which ensures that the protections within it are not affected by the activities authorised by the Order.</p>
RWE	Response to Agenda Item 3.18.7	<p>RWE remains concerned with the implications of the Applicant's proposed Rail Spur (Work No. 8C), which will cross the access to the TEC site, and in particular how the Applicant will ensure, in the context of the Rail Spur, that RWE's right of access at all times and for all purposes will be upheld.</p> <p>However, RWE acknowledges that the Applicant is not seeking powers under the DCO to interfere with or acquire such rights</p>	<p>RWE's acknowledgement that the DCO does not seek to interfere with such rights is noted. This issue will be able to be dealt with through the provisions of the existing legal agreements between RWE and PoTLL.</p>
RWE	Paragraph 3.3.4	<p>RWE confirms that the Protective Provisions (if they can be agreed) will overcome its objection to the operation of Articles 27 and 28 of the Order by ensuring that any interference with RWE's rights under those provisions of the Order is subject to a degree of control by RWE as provided for by the proposed Protective Provisions.</p> <p>However, RWE notes that it has still not been agreed by the Applicant that RWE's interests in Plot 6/10 of the Order should be noted in the Book of Reference. The Applicant's continued resistance to a procedural matter of this nature is rather surprising. As explained in RWE's deadline 4 submissions, Articles 27 and 28 of the Order will authorise the Applicant to interfere with private rights belonging to RWE. Annex D to Planning Act 2008 guidance (related to procedures for compulsory acquisition of land) (September 2013)) provides that:</p> <p style="padding-left: 40px;">Part 3 of the Book of Reference should contain the names of all those entitled to enjoy easements or other private rights over land (including private rights of navigation over water) where these would be extinguished, suspended or interfered with as a result of the provisions in the development consent order for which an application is being made.</p> <p>The fact that the interference with RWE's private rights in Plot 6/10 may be subject to the terms of the proposed Protective Provisions is nothing to the point and does not mean that RWE's interests should not still be noted in the Book of Reference in any</p>	<p>As was noted by the Applicant at the Compulsory Acquisition Hearing (and in its written submission of case after that hearing (REP5-013)), RWE's rights with respect to the jetty are contractual not proprietary. This is because the transfer of the jetty from RWE to PoTLL was a transfer of a chattel (i.e. the jetty) rather than of land. As such, RWE's reserved rights under that transfer are also contractual. These rights do not therefore need to be listed in the Book of Reference.</p>

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5.0. APPLICANT'S RESPONSE TO THE MMO'S DEADLINE 5 SUBMISSIONS

Interested Party	Source Reference	Interested Party Comment	PoTLL Response
MMO	Deadline 5 Submission [REP5-056] Page 3, para 2.5 Response to ExA question 3.2.29	<p>The MMO confirmed the Applicants statement that discussions have been had on the DCO outside of the DML and the points of discussion are below for the benefit of the Panel:</p> <p>2.5.1. Art43 -</p> <p>2.5.1.1. Para 3 - "on the bed of the river Thames" must be changed to "within the UK marine area" to avoid deposit of dredged material anywhere at sea without a marine licence. This is in line with the current wording of similar provisions within HEO/HROs and to keep Tilbury2 in line with other harbour authorities the same wording needs to be used.</p> <p>2.5.2. Extended port limits plan – the difference in harbour limits and order limits was queried as the Applicant is looking to have powers to dredge within their limits of jurisdiction and the approach dredge area is not currently covered within the extended port limits. The MMO asked for clarification on whether the port limits were just for operational/charging purposes or whether these needed to be extended to cover the dredge areas that the port would be maintaining</p>	<p>The Applicant and the MMO have discussed article 43(3) and the Applicant has amended this to refer to the "UK marine licensing area".</p> <p>The Applicant and the MMO have discussed the difference in harbour limits and order limits within the context of these plots and the Applicant understands that the MMO is now comfortable with the position. The Applicant also supports the PLA's Deadline 6 submissions on this issue, which it has seen.</p>
MMO	Deadline 5 Submission [REP5-056] Page 3, para 2.6 Response to ExA question 3.2.1	<p>Whilst the MMO does not have a direct input into the methods to be used it should be noted that the installation of timber groynes to make new intertidal habitat for mud and saltmarsh, suggests that they will be installed below MHWS and as such will be a licensable activity. As the groynes are not required for the authorised development or associated ancillary works, then they would not be classed as activities authorised by the DCO/DML, and as such a separate marine licence would be required. In this respect, the MMO advise that they be contacted with regards to a licence application as soon as proposals are known so that the marine licence application process can commence and consultation with wider consultees can occur.</p>	<p>The Applicant considers that these mitigation works would comprise 'Ancillary Works' as at Schedule 1 to the DCO, specifically (q) 'works associated with the provision of ecological mitigation'; and in the DML would fall under conditions 3(2)(e)(ii) and 3(2)(f). As such, the Applicant considers that a separate marine licence would not be required.</p>

6.0. APPLICANT'S RESPONSE TO NETWORK RAIL'S DEADLINE 5 SUBMISSIONS

Interested Party	Source Reference	Interested Party Comment	PoTLL Response
Network Rail	Representation	<p>Planning Permission and Statutory Authority</p> <p>16. Network Rail notes from the recording of the hearing that there was some discussion about the need, as a matter of principle, for the inclusion of Article 41 in the Order. A view was expressed at the hearing that Article 41, which provides statutory authority for the operation and maintenance of the authorised works, may not be needed when planning permission is provided for works either expressly or by virtue of permitted development rights.</p> <p>17. There is a significant difference between planning permission and statutory authority. Planning permission provides consent for built development but does not provide statutory authority for the operation of that development that affords the undertaker the immunity from nuisance actions which is essential to enable an infrastructure project to be operated. Accordingly, Network Rail submits that, as a general principle, operation and maintenance powers and planning permission must both be granted or, where permitted development rights are available, relied on.</p> <p>18. This principle is important to Network Rail when it is the promoter of new rail infrastructure and it would not wish to see a precedent established that excluded statutory authority for the operation and maintenance of works from a development consent order.</p>	<p>The Applicant agrees that article 41 should be included in the Order for the reasons that Network Rail advances. It is only because of the statutory authority to maintain and operate the works that the Applicant will be afforded the essential immunity from nuisance actions.</p>

7.0. APPLICANT'S RESPONSE TO NATURAL ENGLAND'S DEADLINE 5 SUBMISSIONS

Interested Party	Source Reference	Interested Party Comment	PoTLL Response
Natural England	Deadline 5 Submission [REP5-061] Response to ExA question 3.2.1	<p>ExA Question 3.2.1: <i>Environmental Mitigation and Compensation Plan (EMCP). 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 ... on the updated EMCP?</i></p> <p>In providing comments on the proposed off-site compensation site for invertebrates, the Examining Authority is reminded that Natural England's overall position on the adherence to the mitigation hierarchy is unchanged. We do not consider that sufficient regard has been had to the avoidance of the areas of most significant habitats within the Order limits. Whilst some limited retention of the most important substrates is proposed, large areas will be translocated offsite, away from the important node for invertebrate conservation (as evidenced by the recent Cumulative Environmental Assessment) centred around the wider Tilbury Power Station. Natural England has previously emphasised this point, and although we have sought to engage with the Port to discuss alternative site layouts (e.g. 16th March 2018 meeting, minute, paragraph 10), no alternative on-site layout which retains the most important habitats in-situ has been proposed as far as we are aware. Whilst some adjustment to the overall hierarchy of nature conservation impacts has been discussed this has not extended to alternative layouts which avoid landtake of the most sensitive areas (centred on the Lytag site).</p> <p>Our comments here focus on the general suitability of the site. We will provide more technical comments on the EMCP as further details emerge</p>	<p>The Applicant set out its position in reference to the mitigation hierarchy, in response to the ExA's question 1.2.3 [REP1-016].</p> <p>At the initial meeting with NE on 22 March 2017 it had been agreed that appropriate justifications would be required to justify the fairly comprehensive use of the Tilbury2 site for development purposes. During the meetings of 11 December 2017 and subsequently, and in particular the meeting of 16 March 2018, the Applicant set out to NE that the full extent of the site was required to fulfil the scheme requirements, including c.7ha of mitigation provision for species subject to statutory protection within land east of the Ro-Ro and CMAT. NE was asked by the Applicant whether their preference was for invertebrate compensation to be delivered within the Order Limits in place of the areas allocated for water vole habitat provision (this option having been discounted during scheme development on the basis that water voles are subject to statutory protection, whereas the designations conferred on the invertebrate/brownfield communities were non-statutory, and thus water voles were necessarily prioritised for on-site retention). NE were asked whether this order of priority could be reversed, and NE advised that if an alternative water vole translocation site were secured off-site then that would be acceptable to NE. In response, the Applicant proposed that the water vole population be relocated to the receptor site in Paglesham (within which new ditches could be dug) to enable brownfield translocation to be delivered in its place within the on-site compensation area. NE responded with apparent concerns about incompatibility with existing water vole populations. The Applicant thus requested a clear and unambiguous steer from NE that this would be acceptable (and licensable), at the earliest opportunity and prior to the advance water vole habitat creation commencing, but no such assurances have been received from NE.</p> <p>A summary of the NE correspondence timeline is presented in the SoCG Update Report (document reference PoTLL/T2/EX/188).</p> <p>The Applicant has since reassessed and re-explored the capacity of areas within the Order Limits to be used for receipt of translocated brownfield interests, and whilst a small number of 'windfall locations' have been identified, there is no alternative on-site layout which would allow the brownfield interests to be retained <i>in situ</i> or relocated in large proportion within the site.</p> <p>The Applicant has thus necessarily adhered to the original proposals, i.e. water vole compensation within the Order Limits (for which a LoNI has been granted by NE) and brownfield/invertebrate compensation largely off-site.</p>
Natural England	Deadline 5 Submission [REP5-061] Response to ExA question 3.2.1	<p><u>Compensation Site Search Criteria</u></p> <p>Natural England's ability to engage meaningfully on off-site compensation options has also been hindered by the Port's unwillingness (for reasons of commercial sensitivity) to disclose the particulars of off-site options. Requirements to enter non-disclosure agreements for this purpose are unusual in our experience, and the very recent submission of off-site details, has delayed the consideration of this item until late into the Examination period. Some agreement was however reached with the Port's ecologists over search criteria for compensation sites, which were proposed by the Port in an email to us (dated 17th April 2018, and our reply dated 30th April 2018). Whilst agreement in principle was reached (with some caveats) on most of</p>	<p>It is correct that prior to the Paglesham option being settled upon, the Applicant was previously unable to provide NE with details of its original preferred compensation site due to external constraints on release of that information (including a legal Non-Disclosure Agreement). However, once the Paglesham site became the preferred option, details were presented direct to NE the day following the signing of the landowner agreement. Similarly, details of the Mucking Landfill site were released direct to NE at the earliest possible opportunity, prior to which NE were engaged in discussions about the search criteria, as early as 22 March 2017.</p> <p>The search criteria to which NE refer are most recently set out in the Applicant's written</p>

		<p>these seven criteria, Natural England considered that an eighth criterion was appropriate to be added as follows: “<i>Sites without any existing nature conservation or environmental outcomes have already been agreed as part of permitted schemes (whether these have been implemented or not). Several sites already have permissions for agreed ecology / environment-led restoration or landscaping schemes, but for which implementation has not yet commenced (or only partially completed). It is important that any background checks are made to ensure that any compensation scheme can demonstrate genuine uplift in quality, accounting for any previously agreed outcomes already permitted.</i>”</p> <p>On this eighth criterion Natural England can advise that it has been engaged in discussions with both the operator (Corys) [formerly Cory Environmental, now Enover South Ltd] and tenant (Essex Wildlife Trust) of the Mucking landfill site for some years, having been consulted on the planning permissions required to operate and restore the site (see appendix 1).</p> <p>Overall, we understand that the wider landfill site already benefits from long-term and funded security for nature conservation afteruses, as part of extant planning permissions. A management plan for the site exists, which covers the area proposed for receipt of translocated substrates and subsequent management by a conservation organisation. This makes it a sub-optimal choice for compensation site selection, which preferably should seek to secure land which can be brought into favourable additionally funded conservation management, which would not otherwise be realised, under any current permissions. Therefore whilst the Mucking landfill site has some ecological features in its favour, (see below) it is not clear to us that existing permissions for restoration to nature conservation afteruses have been factored into its selection.</p>	<p>submission of case following the most recent Issue Specific Hearing on ecology issues in June [REP5-036] response to question 3.2.1. NE proposed an eighth criterion, i.e. that the compensation site should not already be subject to existing commitments to deliver ecological enhancements which would preclude deliverability of uplift in quality. The Applicant agrees that the principle of this criterion is appropriate and has given due consideration to it in selecting and assessing the preferred solution. In the case of Mucking Landfill, the restoration commitments are to deliver fertile grassland, i.e. a habitat which will inevitably be species-poor and is already abundant within the Thurrock Thames Nature Park (TTNP).</p> <p>It is thus considered that while an existing scheme is in place for the compensation area, it will deliver demonstrably and significantly reduced ecological benefits compared with the PoTLL compensation proposals and thus the genuine and significant uplift in quality recognised in the criterion outlined by NE would be secured.</p>
Natural England	<p>Deadline 5 Submission [REP5-061]</p> <p>Response to ExA question 3.2.1</p>	<p><u>Demonstrating Uplift in Scale & Quality</u></p> <p>In view of the above, it is necessary in our view for the Port to demonstrate that the site selected has sufficient headroom above the permitted afteruses to be able to demonstrate that the required outcomes can be achieved, in scale and quality. The Examining Authority will also be aware that the proposed compensation scheme is hindered by multiple layers of uncertainty as to the outcomes sought, including factors such as: the distance from the donor site; the timelag to achieve required national significant quality, the experimental nature of the exercise, and the replicability of local site circumstances. These factors each require degrees of upscaling to account for such uncertainty, and it is not clear to us that this has been sufficiently audited in the ECMP. We note that the EMCP intends to use 10ha of restoration phase landfill for this purpose, compensating for 9ha of open-mosaic habitats to be translocated (EMCP paragraph 8.5, accounting for 0.3ha to be retained in-situ, and some of the remainder to be translocated within the Order limits. The balance of on- and off-site translocations is not clear within the EMCP, and so currently we cannot reach a view as to whether the off-site compensation area is adequate in scale and quality to achieve the stated objectives.</p> <p>On the question of uplift in quality, this also should consider that some areas of otherwise lower value habitats can be important for supporting notable species (e.g. tussocky grassland as a nesting habitat for certain carder bees, which are s41 species). It should also consider that there are non-invertebrate objectives at the</p>	<p><i>Quality.</i> Baseline survey information is available for the off-site compensation site(s), and is documented within the EMCP [PoTLL/T2/EX/189] at section 9. This confirms that the baseline ecological value of the Mucking Landfill site is low. Furthermore, as the permitted² afteruses are for this area to be ‘restored’ to fertile grassland, even taking this as a future baseline there is considerable ‘headroom’ and scope for uplift.</p> <p><i>Scale.</i> Following the June 2018 Issue Specific Hearing, the Applicant has updated the EMCP [PoTLL/T2/EX/189] at paragraphs 8.5 and 8.6 to clarify the balance of on- and off-site brownfield translocations. It is intended that a minimum of 10ha of off-site open mosaic habitat would be created, in addition to the 0.3ha open mosaic habitat retained on site, and further on-site ‘windfall’ delivery of open mosaic habitat where it is practical and achievable to do so. This provision extends beyond parity to deliver ‘net gain’ in quantum of this habitat.</p> <p><i>Consideration of non-invertebrate objectives at Mucking.</i> The Applicant either sees no inherent incompatibility with the proposed provision for ground-nesting species of rough grassland (noting that species such as meadow pipit use the donor site at Tilbury2); or such incompatibility that it is a) not significant in view of the large expanse of suitable habitats already created for such species at Mucking, and which will be delivered in other future phases and b) likely to ameliorated in time in any event. Indeed, during surveys of the LDP compensation site, wheatear were noted apparently nesting within heaped PFA spoil, and meadow pipit and skylark were also noted within the LDP area. There is very ample provision for skylark, meadow pipit and scrub nesting birds at Mucking, both now</p>

² Thurrock Council planning reference 06/00663/TTGCND and subsequent related permissions.

		Mucking landfill site, such as provision for ground nesting birds in otherwise lower quality grassland areas, in particular skylark, meadow pipit, and scrub habitats for scrub-nesting birds. Natural England respectfully suggests that unpicking these existing funded commitments to accommodate additional invertebrate objectives of the scale and quality required is both challenging and undesirable.	and as a consequence of future restoration phases. The invertebrate/brownfield compensation seeks to diversify this situation and is thus more likely to enhance the wider benefit of biodiversity at the site, not denude it. As regards S41 bees, the scarce shrill carder-bee has already been recorded at the LDP compensation site. Existing funded commitments are merely being adapted to greater gain rather than unpicked and somehow discarded.
Natural England	Deadline 5 Submission [REP5-061] Response to ExA question 3.2.1	<p><u>Planning History</u></p> <p>Natural England understands that restoration of the Mucking landfill site is governed by planning permission 06/00663/TTGCND, and associated management plans. These documents and agreed outcomes should be referenced within the ECMP, to explore whether or to what degree headroom exists above existing permitted outcomes. Plans and figures associated with the 2006 permission (e.g. Figure 4 restoration and afteruses masterplan) indicate extensive areas of species rich grassland were proposed. It is not immediate clear from the plans supplied how the target area for receipt of substrates aligns with areas of species rich or amenity grassland respectively.</p> <p>We appreciate that subsequent amendments to the restoration plan have been made during the interim period, including the 13/01014/NMA to allow the import of substrates linked to the London Distribution Park, and we commented along similar lines for that application (see our letter dated 11th November 2013 attached as appendix 2). Our request that changes to the restoration scheme can be clearly audited to demonstrate the necessary headroom in quality its off-site compensation is therefore not without precedent for the Mucking landfill site.</p>	<p>Under the extant restoration scheme, Figure 4 of the Restoration and Afteruses Masterplan (to which NE refer) indicates that a number of grassland types are proposed. The land which is proposed by the Applicant for receipt of brownfield substrates was intended to be largely restored to “amenity grassland” under the consented scheme, i.e. species-poor fertile grassland. As such, there is considerable 'headroom' to deliver ecological enhancement and uplift over the consented scheme.</p> <p>NE's comments that compensation site delivery should not compromise the outcomes of the approved restoration scheme are noted, and the Applicant has already set out its response to this in this table, two rows above.</p>
Natural England	Deadline 5 Submission [REP5-061] Response to ExA question 3.2.1	<p><u>Baseline Survey & Monitoring Data</u></p> <p>In seeking to demonstrate the adequacies of the proposed site for the intended purpose, Natural England understands that some baseline survey information exists which the Examination would benefit from, including a Peter Harvey invertebrate report, and any monitoring available from the LDP compensation site. The analysis of headroom should also consider any existing management plan(s) for the areas affected.</p>	<p>Baseline survey information is available for the off-site compensation site(s), and is documented within the EMCP [REP5-041] at section 9. This confirms that the baseline ecological value of the Mucking Landfill site is low, and offers considerable 'headroom' and scope for enhancement. The existing restoration plan(s) for the areas affected (see row above) indicate that this area would be 'restored' to fertile grassland, i.e. a habitat which is already abundant within the Thurrock Thames Nature Park (TTNP).</p> <p>The 2014 TTNP invertebrate survey report by Peter Harvey³ investigated the more long-established part of the site >500m to the north of the proposed Tilbury2 compensation site. It highlights where there are habitats of interest for invertebrates, such as the creek and adjacent saltmarsh, reedbed, ponds, the grassland in 'field 4' to the south-east of the visitor centre; and smaller features such as mounded reptile hibernacula, seasonally wet patches, a tree-line, banked path edges, old wheel ruts, patches of cracked clay, chalky banks, and sparsely vegetated stony patches. However, it also confirms the Applicant's view that the species poor grassland which <i>"is typical of large areas of the Nature Park... offers rather little to invertebrate diversity or scarce species, either floristically or to invertebrate assemblages."</i> It is into this latter category of habitat into which the proposed compensation area is committed under the approved scheme of restoration.</p> <p>The London Distribution Park (LDP) compensation area has been subject to its first year of invertebrate monitoring in 2018. However, the results of the laboratory-based invertebrate identification and analysis are awaited; once this is available the findings will be presented, pursuant to post-construction commitments associated with the LDP planning consent (planning reference 10/50157/TTGOUT and related applications). At this stage, early</p>

³ P Harvey, (December 2014). *Thurrock Thameside Nature Park 2014 Invertebrate Survey Report*. Available from: <https://www.buglife.org.uk/sites/default/files/Thurrock%20Thameside%20Nature%20Park%20surveys%202014.pdf>

			indications are encouraging with (for example) S41 species such as shrill carder bee having already been recorded.
Natural England	Deadline 5 Submission [REP5-061] Response to ExA question 3.2.1	<u>Ecological Criteria</u> It would be helpful for the applicant to provide a commentary around how well the proposed off-site compensation site aligns with the eight criteria described in our email exchange on this point.	The Applicant has set this out within the written submission of case following the most recent Issue Specific Hearing on ecology issues held on 28 June 2018 [REP5-036] in response to question 3.2.1.
Natural England	Deadline 5 Submission [REP5-061] Response to ExA question 3.2.1	<u>Paglesham Site</u> We have not provided particular comment on the Paglesham site (not having made representations on either reptiles or coastal grazing marsh), but other interested parties may wish to.	The Applicant notes that whilst NE have not made specific comments at deadline 5 in relation to Paglesham, the EA has provided constructive comments in relation to coastal and floodplain grazing marsh provision (at deadline 3 [REP3-034]); and those comments are being considered and discussed further with the EA in drawing up management prescriptions for the Paglesham site.
Natural England	Deadline 5 Submission [REP5-061] Response to ExA question 3.11.1	<i>ExA Question 3.11.1: Overall, what are NE's views on the conclusions of the HRA Stage 2 Report [REP4-018] 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?</i> Natural England is not yet able to agree with the conclusion that there will not be an adverse effect on integrity. The Cumulative Effects Assessment identifies a number of potential in combination impacts which need to be considered further through the Habitats Regulations Assessment ('HRA'). Natural England remains unconvinced by the applicant's position that further more detail Cumulative Effect Assessment is not possible at this time due to lack of information and considers that further consideration is required to address uncertainties relating to the significance of habitat value, sedimentation and pollution risk and disturbance of SPA birds. Natural England remains of the view that significant information is available for this development and adjacent sites and that some level of quantitative assessment should be possible. It appears unlikely that common ground will be reached on the question of which projects should be scoped into the in-combination assessment. Natural England understands that the Examining Authority has commissioned its own REIS study, as a means to reach an independent opinion on this issue, respecting its view as the competent authority under the Habitats Regulations. Natural England is required to be consulted as part of this process, and we will be pleased to comment on this study when requested to do so.	The Applicant has prepared a response to the ExA's Report on the Implications for European Sites (RIES) document for submission at Deadline 6 ('Response to the ExA's REIS', document reference PoTLL/T2/EX/192). The Applicant's position, i.e. that a more detailed and quantitative Cumulative Effects Assessment cannot feasibly be undertaken by the Applicant in the absence of detailed proposals for the Tilbury Energy Centre (TEC) and the Lower Thames Crossing (LTC), is set out in the Response to the ExA's REIS (document reference PoTLL/T2/EX/192); and in the Updated Cumulative Effects Assessment (document reference PoTLL/T2/EX/173). The Applicant has been in regular communication with the relevant parties (i.e. the promoters of the TEC and LTC schemes) prior to and throughout the Examination process; however, detailed design information that would enable a quantitative assessment to be undertaken has not been made available to the Applicant.
Natural England	Deadline 5 Submission [REP5-061] Response to ExA question 3.11.2	<i>ExA Question 3.11.2: 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]?</i> We have already indicated that we do not consider that the identified Zone of Influence is sufficiently evidenced or sufficiently precautionary. Table 17.30 Predicted Construction Noise Levels at Incremental Distances of the ES identifies that at a distance of 300m some construction activities will remain above 60 decibels which according to the Waterbird Disturbance Mitigation Toolkit would still fall within the highest risk category for bird disturbance. At the hearing further information was requested regarding the Goshem's Farm application (Thurrock Planning ref: 17/00224/FUL) where bird disturbance was noted	The Applicant's position is set out in the Response to the ExA's REIS (document reference PoTLL/T2/EX/192) at section 2, under paragraph numbers 3.9 - 3.19; and in the written submission of case following the most recent ISH [REP5-036] in response to question 3.11.1. The anecdotal observations in relation to Goshem's Farm are noted; however, in the absence of dB readings or any written records detailing which bird species responded to the piling activity and at what distances, it remains difficult for the Applicant to incorporate this into the HRA report in any meaningful way. A 2011 report for redevelopment works at the wider Tilbury Power Station site ('Assessment of Potential Impacts on the Thames Estuary and Marshes SPA and Ramsar

		<p>at a distance considerably greater than 300 metres on the mud flats near Coalhouse Point. Natural England acknowledge that this is based on field observation by an experienced professional rather than a scientific study and therefore details such as decibel readings are not available.</p> <p>It is, however, significant because it relates to the specific environment in which this development is to take place and an activity that will be required during port construction (i.e. piling). Wind conditions, for example, were considered to be a contributing factor along with the open nature of the estuary. The test of Likely Significant Effect is considered to be a 'low bar' and that the precautionary principle applies to HRA. This area is considered to be environmentally sensitive and the development is proposed for a site with contiguous habits to the SPA. A clear pathway exists for noise disturbance and this therefore needs to be considered in greater detail through an appropriate assessment.</p> <p>In addition, previous impact assessment work associated with redevelopment works at the wider Tilbury Power Station site have used a 500m zone of influence, such as the White Young Green report, dated March 2011. This report was commissioned by RWE, for the then proposed replacement power station, known as Tilbury C, and will presumably be available from RWE, could be supplied by Natural England, or may already be available to the Port.</p> <p>It is noted that emphasis is placed upon the Waterbird Disturbance Mitigation Toolkit (IECS, 2013) – the TIDE toolkit – when defining zones of influence. We note that on page 15 of the toolkit, it is stated that "it is emphasised that the above are only 'rules of thumb' and will often require additional detailed assessment on a site per site basis, selecting a range of modifying parameters such as species assemblage detail, time of year, intertidal morphology, flood protection bank details, adjacent habitat, background activity etc. This information is designed for initial high level planning not detailed impact assessment." With this in mind, we respectfully suggest that all available data sources are used to inform the impact assessment process, and we have elsewhere referenced additional sources which provide contextual data and observations to inform this aspect of the HRA.</p> <p>We note that the use of a 300m disturbance zone of influence is carried into the in-combination assessment of the project with both Tilbury Energy Centre and Lower Thames Crossing. Our concerns about its use therefore also apply to the in-combination assessment.</p> <p>It is further noted that the in-combination assessment limits its scope to overlapping impacts (e.g. paragraph 6.3.2). In preparing its assessment via the RIES process, the Examining Authority is invited to confirm current project timetables for the projects in scope for in-combination assessment. This should allow for project timetable slippage and a margin for error. Nevertheless it is important also – perhaps within the context of the Cumulative Environmental Assessment – to consider the prolonged disturbance of functionally linked land caused by progressive development of adjacent areas whether these technically overlap or not. We suggest that the displacement effects (amounting to a loss of resource) caused by successive projects should be scoped into the HRA process, in order to establish clear parameters from the outset around how these projects might proceed, in order to maintain their function as supporting habitat to the SPA / Ramsar site.</p>	<p>Site', March 2011) has since been sourced from WYG, and this does reference a 500m zone of influence, stating "500m is taken as the maximum distance within which disturbance is likely to occur in accordance with previous studies on the Thames, e.g. RPS (2006) and is considered to represent a highly precautionary value for most site activities." However, it does not state how the figure of 500m was arrived at, other than to say that is consistent with earlier studies by RPS (which were not provided to the Applicant⁴).</p> <p>To attempt to resolve this matter, the Applicant has conducted an assessment of whether use of a 500m zone of influence for noise disturbance would alter the conclusions of the HRA, and this is set out in the in the Applicant's Response to the ExA's REIS. This exercise concluded that no likely significant effect on any qualifying bird species or bird assemblage is indicated by use of a 500m zone of influence, with the recorded numbers of individual species that could potentially be displaced all still falling below 1% of the SPA and/or Ramsar Site totals, and the collective waterfowl numbers similarly falling below 1% of the respective SPA and/or Ramsar Site totals. The HRA conclusions are not therefore altered by adoption of a 500m zone of influence for noise impacts, notwithstanding that the Applicant maintains its position that this is not necessary.</p>
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⁴ The document cited by WYG is: RPS (2006). *Conservation (Natural Habitats &c.) Regulations 1994. Appropriate Assessment: Proposed LNG Terminal, Calor Gas, Canvey Island*. It is understood that the relevant report relates to planning permissions 06/00640/TTGFUL (Thurrock Council) and CPT/413/06/FUL (Castlepoint). Various ecology documents available online were reviewed, but the Appropriate Assessment could not be located.

		We acknowledge that development has, and will continue to take place within this setting, but careful planning and programming is required and this should be informed by comprehensive consideration through HRA frameworks.	
Natural England	Deadline 5 Submission [REP5-061] Response to ExA question 3.11.5	<p>ExA Question 3.11.5: <i>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?</i></p> <p>Natural England notes that the concentrations and deposition rates identified are relatively small. However given that the Cumulative Effects Assessment ('CEA') identifies air quality as the most likely impact on SPA/Ramsar habitats the HRA needs to consider its contribution in light of the Wealdon [sic] Judgement.</p>	<p>The Applicant's position is set out in the Response to the ExA's RIES (document reference PoTLL/T2/EX/192) under the responses to Annex 1 and 'sticky note' 8.</p> <p>The Wealden Judgement of Mr Justice Jay (Case CO/3943/2016 dated 20 March 2017) was related to the argument by Wealden District Council (WDC) that Lewes District Council (LDC) should take account of the impact of the additional traffic related to the LDC Local Plan on the Ashdown Forest SAC in combination with that of WDC's Local Plan. Had this been done then the 1000 AADT threshold for triggering further assessment of potentially significant effects would have been exceeded and an Appropriate Assessment would have been required. In the case of Tilbury2, a Stage 2 Appropriate Assessment has already been carried out [REP5-032], so this aspect of the Wealden Judgement is not relevant. This is clear in Para 128, which says: <i>"In my judgment, the contributions (of the WDC and LDC Local Plans) must be aggregated; and, if the total figure indicates a likely significant effect, it is incumbent on the plan-maker to proceed to the next stage in the assessment process (an Appropriate Assessment)."</i></p> <p>In the Wealden Judgement it was ruled that the LDC road traffic contribution should be added to that of WDC because both contributions had been modelled and were therefore known. This is clear in Para 92 of the judgment: <i>"Yet, in a case where the relevant AADT levels referable to two plans are known, the logic of the final sentence (about assessing on a case-by-case basis) indicates that these should be considered in tandem."</i></p> <p>In this context an argument was put to Mr Justice Jay that WDC should have considered traffic from LDC's Local Plan, but this was rejected, as made clear in Para 70 of the judgment: <i>"... my reading of the WCS [Wealden Core Strategy] is that in-combination effects could not be considered because the JCS [Joint Core Strategy] the subject-matter of these proceedings was not sufficiently developed to enable any sensible AADT data from over-the-border plans to be accommodated."</i></p> <p>The position in relation to the WCS is analogous with that for Tilbury2, where the LTC and the RWE TEC proposals are insufficiently developed to be considered quantitatively in combination with Tilbury2. In turn, the context set by the Wealden Judgement is that the LTC and TEC proponents will need to consider the in-combination impacts on the SPA and Ramsar site with Tilbury2, as these are already established.</p> <p>In summary the position taken by the Tilbury2 Applicant does not conflict with the Wealden judgment.</p>
Natural England	Deadline 5 Submission [REP5-061] Response to ExA question 3.11.6	In principle Natural England does not consider that monitoring can be considered mitigation compliant with HRA since it can only assist in addressing an impact which has already occurred. Monitoring can, however, be useful as an added precaution where no adverse impact is anticipated securing an iterative evaluation during construction and operational phases and has value when linked to mitigation measures	<p>The Applicant's position is set out in the Response to the ExA's REIS (document reference PoTLL/T2/EX/192) under paragraph numbers 4.27 and 4.7.</p> <p>The Applicant's case remains that for piling, adverse effects on integrity (and arguably LSE) can be excluded on the basis of the low levels of use of land within the zone of influence of piling noise impacts by cited bird species, the worst case approach taken to assessment and the time-limited nature of the piling. Furthermore, the table at 3.19 and the associated figures at Appendix 1 of that document demonstrate that this assessment stands if the zone of influence of piling disturbance is extended to 500m as a sensitivity testing exercise.</p> <p>Nonetheless, the monitoring secured by the BMAP, although not relied on in order to reach the no LSE/no AEOI conclusion, provides an added safeguard/precaution. The BMAP would be secured as a DCO requirement in the same way as the CEMP, LEMP and EMCP.</p>

8.0. APPLICANT'S RESPONSE TO PLA'S DEADLINE 5 SUBMISSIONS

Interested Party	Source Reference	Interested Party Comment	PoTLL Response
PLA	Paragraphs 4.1 - 4.6	<p>ARTICLES 6(2) AND 41</p> <p>4.1 At the ISH there was lengthy discussion about the planning permission that article 6 would give for among other things, ancillary works similar to some of the things that article 41 would authorise in relation to the operation of PoTLL's harbour undertaking. The Applicant was asked to explain whether this amounted to duplication.</p> <p>4.2 The PLA has a direct interest in this matter being dealt with correctly because the legal treatment of works and dredging in the river will be determined by the way the DCO works. There would otherwise be a risk of the PLA finding that its decisions, whether under the DCO or the 1968 Act, were vulnerable to challenge.</p> <p>4.3 Article 6 of the DCO will give development consent for the development consisting of the authorised development as defined in the DCO. This not only removes the need for planning permission (Planning Act 2008, section 33(1)(a)), so that the DCO will operate as a grant of planning permission. It also replaces (in the present case) an order under the Harbours Act 1964 (section 33(2)(a)) with provision in the DCO (see 2008 Act section 120(4)) and Schedule 5 e.g. paragraphs 14, 15, 30A, 31 and 32). This gives the DCO the separate function of also authorising (i.e. legalising) the stated activities. Planning permission does not by itself give such authorisation.</p> <p>4.4 Statutory authorisation will enable the construction of works and the exercise of functions which would otherwise be illegal e.g. as obstructing the public navigation or otherwise constituting a public nuisance. The PLA's protective provisions in Part 3 of Schedule 10 set out procedures for, amongst other things, approval of the detailed plans of the works as they are to be built. If the authorised development were not authorised in the DCO in this way the PLA would be obliged either to require the works and dredging to be licensed under the 1968 Act or to remove unlicensed works and take steps to prevent other unauthorised, and therefore unlawful, activities in the river.</p> <p>4.5 The position is the same as regards the continuing operation of PoTLL's harbour undertaking. The PLA recognises that works and activities of the sort described in section 41 may from time to time be required as part of the operation of the harbour undertaking of which the authorised development will form part. This, too, requires statutory authorisation on the same basis as outlined in paragraph 4.4.</p> <p>4.6 The PLA has no difficulties with the article 6/41 proposals. However, it would be concerned if that standard regime for infrastructure works were in any way disrupted because of the resulting impacts on the PLA's exercise of its statutory functions as outlined in paragraphs 4.2 and 4.4</p>	<p>The Applicant shares and endorses the comments made by the PLA.</p> <p>See, too, the related note on article 41 and permitted development rights that the Applicant has submitted at Deadline 6 (appended to its response to the ExA's DCO points (PoTLL/T2/EX/193)).</p>