

PLANNING ACT 2008  
INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE)  
RULES 2010

PROPOSED PORT TERMINAL AT  
FORMER TILBURY POWER STATION

# TILBURY2

TR030003

CLOSING STATEMENT

TILBURY2 DOCUMENT REF:  
PoTLL/T2/EX/225



## 1.0 INTRODUCTION

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- 1.1 The Applicant seeks development consent for a new port terminal on the north bank of the River Thames, in close proximity to the existing Port of Tilbury. This Closing Statement is intended to conclude and summarise the Applicant's case for the Tilbury2 scheme, as made in the application and through the examination process. This Statement is not a comprehensive summary of each and every issue in the application documents, nor a rebuttal of every point made in representations. Rather, it is intended to draw together the key themes and clearly demonstrate the case for granting development consent.
- 1.2 The underlying case for the new port terminal is strongly supported in policy. That case has been comprehensively evidenced by the Applicant, and not materially disputed in any representation. The National Policy Statement for Ports ("NPSP") establishes a presumption in favour of port development. That presumption is itself only to be displaced through application of the NPSP and the legal tests in the Planning Act 2008. However, the Applicant's case does not rest solely on that presumption. It has demonstrated through unchallenged evidence the very significant need for, and benefits of, the new port terminal, described for instance in the Outline Business Case [APP-166].
- 1.3 With the existing port achieving full capacity and the new port terminal being operational, the GVA contribution of the Port of Tilbury will grow from £394 million to £562 million. The construction of the new Tilbury2 will support 220 to 270 FTE jobs, and over 500 FTEs will be supported once it is operational. It will meet a need for port capacity to support economic development in the region, and a particular need for the handling of construction materials and aggregates close to their markets in London and the South East, where many existing wharves cannot accommodate deep sea vessels, and are under pressure to be developed to alternative uses (CMAT Position Statement, 1.13-1.18 [REP1-016]). The case for the scheme is more than compelling: it is overwhelming.
- 1.4 The Site comprises the western part of the former Tilbury Power Station site. It is previously developed land, with a history of industrial and river served activity, and its close proximity to the existing Port makes it ideally suited for a new port terminal.
- 1.5 This Closing Statement is structured as follows:
  - a. Summary of the case for the proposals and its strong policy support in national, regional and local policy;
  - b. Environmental considerations;
  - c. Compulsory acquisition;
  - d. The DCO;
  - e. Concluding statement.

## 2.0 THE CASE FOR THE PROPOSALS

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- 2.1 The NPSP establishes a clear cut case for new port capacity, identifying the “essential role of ports in the UK economy” (3.1) and noting the provision of sufficient port capacity as “an essential element in ensuring sustainable growth in the UK economy” (3.1.2).
- 2.2 The policy articulated in the NPSP is to encourage sustainable port development to contribute to long-term economic growth and prosperity, driven by judgments made by port operators as to when and where new developments might be proposed (3.3.1). The present proposals do exactly that: they are a response of an established port operator to identified market needs for capacity close to its existing operation.
- 2.3 The identified need for new port capacity extends across the various roles that ports may play, including the movement of freight (as provided for in the RoRo terminal) and bulk goods (as provided for in the CMAT). A particular feature of these proposals is that they will meet that identified need close to, and in conjunction with, the existing Port of Tilbury, unlocking the potential of that port infrastructure to better meet needs (including, for instance, in enhancing the existing cruise terminal).
- 2.4 The wider potential benefits of port development are set out in the NPSP and clearly delivered in this case. The proposals will, for instance, make a real and significant contribution to the local economy not least through the vast number of new jobs – hence the strong support from Thurrock Council (“TC”), seen, for example, in its written representation [REP1-090].
- 2.5 In terms of the location of the proposals, the NPSP does not limit the locations where new port facilities might be provided but rather notes that capacity needs to be provided at a wide range of facilities and locations, to provide flexibility to match the changing demands of the market (3.4.11) and being responsive to changing commercial demands (3.4.12). Again, these are demand led proposals being advanced by an existing operator close to its existing port, and the NPSP requires nothing more than that in justifying the location. However, there are further significant benefits of the particular location proposed for Tilbury2. It is close to the market, minimising road miles. It is readily rail-linked, maximising onward movement by rail. It is close to an existing port, calling on economies of scale and existing landward infrastructure. Importantly, it is on previously developed land which will be brought back into productive use without the material loss of greenfield land.
- 2.6 The overall case for the proposals is set out in the Outline Business Case (“OBC”) [AS-016] which highlights that the proposals provide an holistic fit with local, regional and national policies and objectives; a compelling economic case – noting that the proposed development does not require public funding – and that the scheme is deliverable in commercial, financial and management terms [as summarised at Table 1 of AS-016].
- 2.7 The Masterplanning Statement [APP-034] describes the proposals in full, and explains the proposed layout and function of the facilities to be provided. The need for, and specific role of, the two new terminals is explained more fully in the CMAT Position Statement [REP1-016] and the 24/7 Working Paper [Appendix B

to PoTLL's Response to Relevant Representations [AS-049]]. Although some representations questioned the role of the CMAT and in particular the need for the co-location of the landward facilities with the jetty, there has been no material challenge to the analysis in the CMAT Paper.

- 2.8 In short, the ExA can report that the case for the development has been firmly established both as a matter of policy and specifically with respect to the Tilbury2 proposals, and that the limited challenge to that case in the Examination (with respect to the CMAT) has been comprehensively addressed through the Applicant's submissions in the CMAT Position Statement [Appendix B to REP1-016], the 24/7 Working Paper [Appendix B to PoTLL's Response to Relevant Representations [AS-049]] and the responses to the written representations of Natural England and Historic England [REP2-007].

## 3.0 PLANNING POLICY

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### General

- 3.1 The Tilbury2 proposals are consistent with, and supported by, policy set out in the NPSP, the Marine Policy Statement, local plan documents for the host authority and neighbouring authorities, including the Thurrock Core Strategy; and the National Planning Policy Framework and its associated guidance.
- 3.2 The Applicant deals comprehensively with consistency of the Tilbury2 proposals with this policy framework, most particularly in the Planning Policy Compliance Statement, with the final iteration of this (v4) submitted at Deadline 7 in order to provide a final update to consider the consistency of Tilbury2 with the recently published National Planning Policy Framework (2018). The Planning Policy Compliance Statement [PoTLL/T2/EX/210] provides at Appendix 6 a Schedule of Compliance with the NPSP and Marine Policy Statement.

### Consistency with National Policy Statement for Ports and the principle of development

- 3.3 The NPSP specifically indicates that the decision-maker should accept the need for port capacity for a number of reasons, including: to meet forecast growth, provide a wide range of facilities, ensure competition and provide resilience. The need for port infrastructure is considered to be 'urgent' and on this basis, the decision-maker:-

*"...should start with a presumption in favour of granting consent to applications for ports development. That presumption applies unless any more specific and relevant policies set out in this or another NPS clearly indicate that consent should be refused. The presumption is also subject to the provisions of the Planning Act 2008."*

- 3.4 The essential point made in the NPSP is that demand for capacity will, over time, inevitably increase. A policy of sustainable economic growth leads to an increase in trade and, given the limited alternatives, an increase in the demand for port capacity. Moreover, Chapter 3 of the NPS highlights that most goods now arrive in the UK in trucks and trailers which roll on and off ('RoRo'), or in large containers from container vessels. The growth in RoRo traffic, recognised in the NPSP, is a key driver for the Tilbury2 proposals.
- 3.5 As set out in paras. 1.15 to 1.17 of the OBC [AS-016], forecast growth trends across the aggregates and Ro-Ro industries form part of the strategic need for Tilbury2 proposals. The proposals will accommodate the need for expansion by existing customers and tenants of the Port. They will also help to cater for longer term growth trends, and will provide greater operational capacity to respond to challenges and opportunities surrounding Brexit. Investment in port related infrastructure will accommodate this anticipated growth, driving local and regional job creation both at the Port and throughout the wider supply chain.
- 3.6 Crucially, Government policy is for each port to take its own commercial view and its own risks on its particular traffic forecasts and to decide on whether new capacity is required. The approach taken by the Applicant to proposing new

capacity follows assessment of latent demand, discussions with tenants and assessment of the trends in future demand in the markets that it serves. More detail on this is set out in the OBC [AS-016] which explains that the Applicant forecast, consistent with national trends described in the NPSP, that RoRo throughput and the demand for bulk and aggregate capacity will continue on an upward trajectory.

- 3.7 Specific justification for the CMAT at Tilbury2 is provided in the CMAT Position Statement, Appendix B to PoTLL's response to First Written Questions [REP1-016]. This explains that the CMAT is an integral part of the Tilbury2 NSIP and benefits from the strong policy and need support set out in the NPSP to the same depth and extent as the proposed RoRo terminal. The need and benefits of the CMAT derive from a number of inter-related matters, including:
- 3.8 The need to serve significant infrastructure projects and the proposed significant increase in housebuilding in London;
- The depletion of land won reserves of minerals;
  - The depletion of operational wharves for such a facility closer to the centre of London;
  - The opportunity to co-locate import and production on a site of sufficient size in a multi-modal location.
- 3.9 The justification for the CMAT as part of the overall Tilbury2 proposals is beyond doubt.
- 3.10 Just as the Government does not want to define the amount of capacity to be provided, nor is it Government policy to say where port capacity should be provided. The NPSP advises that "capacity needs to be provided at a wide range of facilities and locations, to provide the flexibility to match the changing demands of the market, possibly with traffic moving from existing ports to new facilities generating surplus capacity."
- 3.11 That said, the Examination considered the potential overlap in markets between Tilbury2 and the container terminal at London Gateway which lies approximately 8km downstream from Tilbury. Arguably, given Government policy, this is not material to the decision-maker. However, the Applicant explained that the Port of Tilbury and London Gateway are in large part complementary facilities (as London Gateway provides facilities for deep sea containerised shipping compared to Tilbury2 which is to provide for short sea RoRo and aggregates) and both will grow in future years (Planning Policy Compliance Statement (v4) [PoTLL/T2/EX/210 para. 3.15) Moreover, the NPSP points out that resilience generated by any spare capacity created is important to cater for short term peaks in demand, the impact of adverse weather conditions, accidents, deliberate disruptive acts and other operational difficulties, without causing economic disruption through impediments to the flow of imports and exports. London Gateway Port Limited, in responding to FWQ 1.14.10 confirmed that there would be no immediate overlap between developments as London Gateway does not handle RoRo vessels [REP1-069] and nor is there an existing CMAT at that facility.
- 3.12 The Tilbury2 proposals are therefore consonant with and perform strongly against the principal themes and objectives of the NPSP. The need for

additional port capacity in locations identified by the port industry – and as such a presumption in favour of sustainable port development – are such that the need for the proposals has been established in principle, particularly given the demonstrable lack of capacity at the existing Port of Tilbury (as evidenced in Chapter 3 of the Environmental Statement [APP-031], Figure 3.3 of the Environmental Statement [APP-100] and the Outline Business Case [AS-016]) and the track record of the Applicant in growing and adapting to change and hence the continued success of the Port.

- 3.13 The importance of growth at Tilbury is witnessed by the support of a range of key stakeholders who have actively participated in the Examination. Essex Chambers of Commerce [RR-009 and REP1-049] and London First [REP1-068] both emphasised the importance of Tilbury2 in the wider economic context, with the latter in particular emphasising that the focus on construction materials is of particular significance to London's future economy stating that Tilbury2's "contribution to London's construction capacity is an important piece of the jigsaw of getting more homes built in London."
- 3.14 All of the local authorities support the development in principle, as set out in their Statements of Common Ground [PoTLL/T2/EX/209]. TC, the host authority, agree that the proposals are of "crucial importance in securing on-going economic growth of Thurrock and will contribute significantly to sub-regional and regional economic success" [SoCG001 para. 4.1.1]. Essex County Council agree that the proposals are "of paramount importance for securing on-going growth in the London and south east and eastern regions, of which Essex is a part" [SoCG003, para. 4.1.1]. Gravesham Borough Council (GBC), whilst separated from the proposals by the river Thames itself, agree that the proposals "will bring benefits in terms of sustainable transport and employment" [SoCG002, para. 4.1.1] whilst Kent County Council [SoCG013] agree that there are "benefits in providing enhanced aggregate import capacity in Essex to reduce importation of land-won reserves from Kent, thus reducing the reliance of Essex on the Kent reserves" [SoCG 013, para. 4.2.1]. In their written representation, KCC highlighted that it "recognises that the future is likely to see an increase in the importance of marine aggregates and the Tilbury2 proposals will also help satisfy demands in the eastern region in this regard." [REP1-066].

#### Marine Policy Statement

- 3.15 The compliance of the proposals with the Marine Policy Statement (MPS) is set out in the PPCS [PoTLL/T2/EX/210] at Chapter 5 and at Appendix 6. During the Examination, on 10 June 2018, a consultation on the Third Tranche of Marine Conservation Zones commenced. Of the 41 sites identified, one, the Swanscombe recommended MCZ lies close to Tilbury2. The proposed eastern boundary of the rMCZ lies approximately 6km west of the Tilbury2 site. The MCZ assessment undertaken for the purposes of the application [APP-063] included the proposed Swanscombe Bay rMCZ, which for the purpose of the assessment was considered as if it was designated. Consequently, the relevant mitigation measures within the proposals have been proposed taking full account of the recommended designation of this MCZ.

### Local planning policy

- 3.16 The compliance of the proposals with regional and local economic and planning policy is considered in the Applicant's Planning Policy Compliance Statement [PoTLL/T2/EX/210].
- 3.17 TC, the host authority, set out their support for the proposals in their Written Representation [REP1-090]. As set out at paragraph 2.2 they state that "In reaching this view, TC has taken into account the strong support for further growth and development at the Port of Tilbury, which is set out on the adopted Development Plan for the Thurrock. In particular, and as set out at section 4.1.1 and 4.2.1 of the Statement of Common Ground, Tilbury is identified as a Key Strategic Employment Hub by the adopted Core Strategy containing the key economic sectors of port and riverside industries."
- 3.18 PoTLL's own analysis agrees with this synopsis [PPCS [PoTLL/T2/EX/210] para. 2.18 – 2.55]. Development plan policies clearly reference the economic contribution of the Port of Tilbury to the local and wider economy and support the principle of further employment and economic growth at Tilbury.
- 3.19 The land use designations of the Tilbury2 site have been fully considered. Appendix 1 to the PPCS [PoTLL/T2/EX/210] provides an extract from the development plan proposals map. Parts of the main Tilbury2 site are 'white land,' absent any site-specific designation. The northern parts of the site are partly identified as land designated as 'primary employment' whilst other areas are defined as being of nature conservation importance either as Local Wildlife Sites (LoWS) or green corridors.
- 3.20 The Examination considered the extent and case for intrusion into a small area of Green Belt in the north-east corner of the Tilbury2 site. The exact extent of this area is identified in Appendix 5 to the PPCS [PoTLL/T2/EX/210] which shows that 0.733ha of land designated as Green Belt would become part of the developed area of the CMAT, which would represent inappropriate development within the Green Belt, without the very special circumstances that apply to Tilbury2 (as set out below). The proposed rail sidings will cover a further area of Green Belt amounting to 0.277ha in area although in the terms of paragraph 146 of the NPPF (2018) this would not be inappropriate as being local transport infrastructure which can demonstrate a requirement for a Green Belt location. The justification for the routing of the rail sidings is set out in the Masterplanning Statement [APP-034]. The remaining area of Green Belt within the Order (7.744ha.) will remain outside of the developed area of the proposals and used for ecological mitigation (primarily water vole habitat creation, for which planning permission has recently been granted) and landscape planting.
- 3.21 The very special circumstances for the loss of 0.733ha of Green Belt was explained in the PPCS [PoTLL/T2/EX/210] namely, the need to make efficient use of the site generally; to maximise throughput and meet demand for aggregate importation in accordance with the objectives of the NPS to meet rising demand; to maximise the socio-economic benefits of the proposals; and, given the alignment of the rail line, no reasonable use could be made of the land to the south west of this corridor segregated from the wider Green Belt and lying between the rail line and the current Green Belt boundary; this land would perform no Green Belt purpose. The loss to the Green Belt causes no harm in practice.

- 3.22 TC agree that the combination of the overall need for a port development of national significance combined with the engineering, operational and socio-economic considerations, as well as the limited harm to the Green Belt, are factors which clearly outweigh the harm such that it is considered that very special circumstances exist for development to take place in the Green Belt [SoCG001. para. 4.2.3]. The position of TC in the SoCG complied with the Authority's stated position in its Local Impact Report [REP1-101], approved by the Council's Planning Committee, that the factors set out in the Planning Policy Compliance Statement clearly outweigh the harm to the Green Belt.
- 3.23 The adopted and emerging policies of GBC have also been fully considered – including land use changes that might arise on the south side of the river – and relevant policies are examined in the PPCS [PoTLL/T2/EX/210] paras. 2.45 – 2.50.
- 3.24 In addressing FWQ 1.6.6, the Applicant explained how, once operational, the CMAT would also support local mineral plans such as the adopted Essex Mineral Local Plan (2014) and the Greater Essex Local Aggregate Assessment (2016). This analysis is provided at paragraph 6.16 – 6.24 of CMAT Position Statement, Appendix B to PoTLL's response to First Written Questions [REP1-016].
- 3.25 The Essex Mineral Local Plan emphasises the importance of minerals transshipment to Essex but the difficulties of finding sites within the County – hence the value of Tilbury2 in this regard. The data presented in the Greater Essex Local Aggregate Assessment (2017) highlights the importance of the whole range of imported aggregates to Greater Essex – including marine aggregates - allied to increasing demand. The data provides evidence to support and weight to the value and benefits of a CMAT at Tilbury2.

#### Sub-Regional Policy

- 3.26 During the Examination, the Panel requested to be informed as to any sub-regional policy and its relevance. The Applicant updated the PPCS accordingly [PoTLL/T2/EX/210].
- 3.27 It highlights that Tilbury2 was historically located in the Thurrock Thames Gateway, where the former Development Corporation encouraged significant growth. These ambitions have now been translated into the Thames Estuary 2050 Growth Commission, established in March 2016, which published its vision for Kent, Essex and London, setting out an ambitious vision for delivery over the next 30 years. It identifies that over the past few decades the Thames Estuary has consistently been unable to deliver the same levels of economic growth as other parts of the UK and highlights the need to overcome barriers to growth. The role of the Port in providing a high concentration of jobs in both Tilbury and Grays is noted in this vision, not only as a large employer itself, but also its role in supporting other related and attracted businesses in the vicinity. Tilbury2 is therefore consonant with and supported by this growth strategy.

#### National Planning Policy Framework

- 3.28 In July 2018 the Government published a new revised National Planning Policy Framework. An analysis of changes to the NPPF relevant to the Tilbury2 proposals is provided in Appendix 4 to the PPCS [PoTLL/T2/EX/210]. Having undertaken this exercise the Applicant has concluded that the changes do not

materially alter the policy framework upon which the environmental assessment and planning policy compliance assessment already undertaken in respect of the Tilbury2 application has been based, and therefore the conclusions of that exercise remain the same.

Conclusion on policy matters

- 3.29 For the reasons set out above the proposals are in accordance with the NPSP and therefore benefit from the statutory presumption in favour of the grant of development consent in s104(3) Planning Act 2008. The proposals are also in general accordance with other local, regional and national policies. Subject to the consideration of the impacts of the proposed development, as addressed below, the planning policy case for the grant of development consent is compelling.

## 4.0 ENVIRONMENTAL IMPACTS

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### Introduction

- 4.1 The NPSP sets out (in Chapter 4) the assessment principles for new port development. The Applicant has sought to follow these principles, and has set out its full methodology in the Environmental Statement (“ES”). The NPSP identifies, in Chapter 5, the generic impacts which fall to be assessed in applications for development consent. These are addressed in turn below.

### Environmental controls and mitigation

- 4.2 The Applicant proposes a comprehensive suite of environmental controls and mitigation measures which ensure that the environmental effects of the proposed development, both in the construction and operation phases, are acceptable. These are summarised in the Mitigation Route Map [REP5-034].

### Construction

- 4.3 Assumptions regarding the construction methodology are included in sections 5.87 to 5.125 of the Environmental Statement [AS-006]. These paragraphs set out the various construction methods and options that exist for the Tilbury2 proposals in each case adopting a worst case of these methods for assessment purposes (e.g. the type of piling to be used). These worst case assumptions were used to undertake assessments of construction effects of the proposals and develop the mitigation measures relating to construction. Sensitive receptors are identified for each environmental topic, including residential properties as well as environmental assets such as the terrestrial and marine ecological environments and heritage assets including Tilbury Fort.
- 4.4 These mitigation measures are set out in the Construction Environmental Management Plan (CEMP) [REP6-008] compliance with which is secured by a requirement in Schedule 2 to the DCO [PoTLL/T2/EX/203]. Once a Contractor has been appointed their methodology will need to take account of the CEMP and other controls set out within the DCO. This will ensure that the final construction methodology cannot cause any impacts environmentally worse than those assessed in the Environmental Statement. Importantly, the CEMP sets out engagement protocols with the local community and other key stakeholders.
- 4.5 The draft Construction Traffic Management Plan (CTMP) is an appendix of the CEMP [REP6-008]. The CTMP sets out measures for the management of construction traffic and proposed lorry routes that have been developed in consultation with TC and Highways England to minimise the impacts on the road network, local communities and tourism receptors. The final CTMP will be approved by TC and will include the use of appropriate and approved routes for larger construction vehicles, deliveries and for staff, including an approved routing plan. The CTMP will also include the management of working hours and delivery times to minimise disturbance caused by traffic (e.g. avoiding deliveries during peak hours).
- 4.6 The CEMP and CTMP were amended during the Examination, in response to comments from stakeholders.

- 4.7 At Deadline 1, following discussions with Natural England, the CEMP was updated to require an Ecological Clerk of Works (ECoW), specialist ecologist, or similarly competent person to be employed by the Applicant to be responsible for overseeing on-site ecological mitigation and ensuring that measures are implemented as set out in the CEMP. 'Biodiversity protection zones' will be identified on the ground by the ECoW, in accordance with licensed method statements for protected species agreed with Natural England.
- 4.8 The Examination gave detailed consideration to (i) piling in relation to sensitive receptors in the marine environment and (ii) piling in relation to potential impacts on Tilbury Fort.
- 4.9 In relation to (i), in response to FWQ 1.5.2 [REP1-016] the Applicant has explained that the time of year that piling in the marine environment will take place will depend on appointment of an appropriate contractor and the final construction programme. The River Thames is used year-round by fish and marine mammals, and so there are environmental implications of piling throughout the year. Rather than restricting piling to a particular season, a more effective mitigation approach for underwater noise caused by piling (which is the main concern with marine piling), is considered to be the establishment of a daily non-piling window of at least 14 hours; an approach which has been supported by the MMO. Other mitigation secured through the CEMP includes soft start for percussive piling; pre-piling search for marine mammals; no night time piling; delaying the commencement of percussive piling if marine mammals are detected; and breaks in piling activity. The conditions of the DML within the DCO (PoTLL/T2/EX/203) also impose appropriate controls on piling.
- 4.10 Further controls on the construction taking place in the marine environment are secured in the DML (Sch.9 art 10 of the DCO), which requires the Applicant to consult with the Environment Agency and Natural England before submitting a construction method statement to the MMO for their approval. The construction method statement will include details of timings, durations, methods of delivery, type of material, construction plant, and location of the works among other aspects; as well as any results from further sampling if required. Additional controls to dredging during construction are described in the Dredging and Navigation section of this document below.
- 4.11 The CEMP [REP6-008] was in particular updated following discussions with English Heritage and Historic England. In its response to FWQ 1.13.20, English Heritage highlighted that they were particularly concerned about the potential impacts of vibration during construction and requested the consideration of a laser scan survey and vibration monitoring during construction [REP1-047].
- 4.12 The CEMP was accordingly updated and now specifically requires that prior to the commencement of any piling activities and for the entire duration of piling works (either terrestrial or marine), the Contractor will commission a non-intrusive pre commencement condition survey of Tilbury Fort and associated structures. On the basis of the results of the survey, the contractor will develop and implement a monitoring and mitigation regime in consultation with English Heritage and Historic England to monitor and mitigate the vibration effects of piling on Tilbury Fort and its associated structures (para. 10.2 – 10.3 of the CEMP).
- 4.13 TC, the host authority, agrees that the CEMP covers the necessary environmental issues that need to be controlled as part of the mitigation of

environmental impacts during construction (SoCG001 para. 4.18) with particular reference to noise (4.4.10), air quality (4.5.5), ecology (4.9.8) and contamination (4.12.6). GBC agree that the noise and vibration section of the CEMP is sufficient and contains best practice methods to limit noise impacts during construction (SoCG002 para. 4.3.10) and will adequately control air quality impacts during construction (SoCG002 para. 4.4.6). No other stakeholder has remaining objections to the CEMP which will ensure that environmental impacts during construction are mitigated in accordance with the assessment in the ES.

### Operation

- 4.14 Once Tilbury2 becomes operational, the port will be managed in accordance with the DCO requirements (addressed further below) and the Operational Management Plan (“OMP”) [REP6-026]. The objectives of the OMP are to set out the Applicant’s commitment to the management and minimisation of operational impacts on the local community and environment; identify how those impacts will be managed; provide a framework for the monitoring of impacts; and establish a framework for community input into the management of those impacts. It also establishes a process for handling complaints. It is grounded in the mitigation hierarchy through seeking to avoid adverse effects through management at source. It will provide an important and ongoing source of control over the operational impacts of the new port.

### **Cumulative effects**

- 4.15 The DCO application for Tilbury2 is supported by an ES produced in accordance with the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended by the Infrastructure Planning (Environmental Impact Assessment) (Amendment) Regulations 2012), which require a description of the likely significant effects of the development on the environment, including any cumulative effects (Schedule 4 Part 1, para 20).
- 4.16 The need to consider cumulative effects in planning and decision making is also set out in the National Policy Statement for Ports (NPSP) which states at paragraph 4.7.3 that:
- 4.17 “When considering cumulative effects, the ES should provide information on how the effects of the applicant’s proposal would combine and interact with the effects of other development (including projects for which consent has been sought or granted, as well as those already in existence).”
- 4.18 NPSP paragraph 4.7.4 states that the Secretary of State should consider how the “accumulation of, and interrelationship between, effects might affect the environment, economy or community as a whole, even though they may be acceptable when considered on an individual basis with mitigation measures in place.”
- 4.19 The Environmental Statement submitted with the application [APP-031] undertook a cumulative effects assessment and identified a list of projects in this regard. These projects had been the subject of consultation with stakeholders and the local community prior to the submission of the application. No participant in the Examination has challenged those projects which were scoped into the EIA process and set out at Table 2.1 of the Environmental Statement [APP-031]. The Examination focussed, however, on the potential for cumulative effects to arise between Tilbury2 and the Lower Thames Crossing (LTC) and

between Tilbury2 and Tilbury Energy Centre (TEC) and between all three projects in combination. These two projects are identified as Nationally Significant Infrastructure Projects under the PA2008 and, as presently drafted, the draft Order Limits of both cross the Tilbury2 site.

- 4.20 At the time of compiling the ES, neither of these projects had been subject to either statutory consultation or Scoping. They were not included in the CEA that formed part of the application and the Applicant considered that the approach taken presented no conflict with the law of environmental impact assessment (and Habitats Regulations Assessment), policy, guidance, advice or best practice. PoTLL set out its position in detail in a number of documents, including in the Response to Written Representations document [AS-049]; Response to Relevant Representations document [REP2-007] and in the Summary of the Port of Tilbury London Limited's Submissions to the Preliminary Meeting [REP1-001]. These submissions provided clear reasoning and justification as to why CEA of these projects was neither necessary nor justified.
- 4.21 The Applicant continued to constantly review available information against all relevant guidance, advice and best practice in order to seek to assist the ExA and IPs on the potential for cumulative effects of Tilbury2 with LTC and TEC. Following the commencement of RWE's non-statutory consultation, and in its response to First Written Question 1.13.18, at Appendix C, the Applicant submitted a high level CEA of the TEC [REP1-016]. Following consideration at the Issue Specific Hearings, the Applicant provided a high level proportionate and qualitative CEA of the TEC and LTC [REP3-027] which reflects the significant limitations of the CEA process where this is constrained by the availability of information on the options and extent of the likely scheme and the absence of reliable quantitative data. Given these constraints, the assessment provided is necessarily high level and qualitative, albeit based upon a consistent set of assumptions where possible and professional judgement.
- 4.22 The CEA with the TEC and LTC was updated between Deadline 5 and Deadline 6 following discussions at the ISH on 27th June at which the ExA asked that PoTLL provide a concluding chapter to the assessment [REP6-006].
- 4.23 In preparing this further iteration of the CEA, the Applicant sought a peer review of the document by respected academics at Oxford Brookes University which has been submitted to the Examination [REO6-010]. The findings of the peer review are that the documentation evaluated is overall graded as B\*/C (i.e. borderline B/C but leaning towards a B) i.e. as generally satisfactory despite some omissions and inadequacies. A number of these inadequacies were remedied by errata submitted by the Applicant, as explained in the Response to Oxford Brookes University Independent Review of Tilbury2 Cumulative Impact Assessment [REP6-019]. On the basis of the review and subsequent updates, the ExA can be satisfied that the CEA is adequate.
- 4.24 An updated CEA has also been provided addressing as appropriate both the peer review and the request of the ExA noted above. This document [PoTLL/T2/EX/147] concludes that in broad terms if all three proposals were indeed permitted they would potentially interact and cumulative effects may arise in particular in respect of the effect on terrestrial ecology, built heritage, and landscape and visual effects. In addition, it is also possible that some cumulative effects may arise in respect of operational noise, depending on the traffic volumes on any link from the LTC to Tilbury. There may also be some effect on

local communities as a result of the prolonged construction period that could result if each of the schemes progress to implementation as presently forecast.

- 4.25 However, the extent of such cumulative effects will depend on both the final designs of the TEC and LTC (which will clearly need to be designed to avoid and minimise their environmental effects) and any mitigation proposed by the promoters of those schemes both during construction and operation.
- 4.26 Indeed, whilst the high-level qualitative CEA has identified potential cumulative effects, there is uncertainty as to the LTC and TEC proposals themselves and whether or when these proposals will be brought forward, as neither are the subject of submitted applications at the time of writing. It is not the responsibility of the Tilbury2 project to mitigate these potential cumulative effects, and it would not be possible to design such mitigation before the detail of those schemes is known. Requiring any additional mitigation as part of Tilbury2 to pre-empt these future schemes would be unnecessary and unreasonable, and is not required as a matter of law or policy.
- 4.27 Both LTC and TEC require development consent, and would undoubtedly be EIA development. Accordingly, the environmental impacts of those schemes will fall to be assessed and considered by the relevant decision-makers as and when applications are progressed. Both the LTC and TEC Scoping Reports have identified Tilbury2 as a cumulative project that will be assessed as part of their Environmental Assessment process. By the time these applications are considered through the DCO process, the Tilbury2 DCO may well have been made; if the decision was still to be made, all necessary detail of the Tilbury2 proposals will in any event be available to the promoters of those schemes. This will allow these future proposals to fully take account of the detailed design of Tilbury2, any on-going monitoring, and the associated proposed mitigation. This will ensure that the potential cumulative effects which have been identified as part of the Tilbury2 CEA exercise will be quantified at the appropriate point, and will allow for appropriate design and mitigation strategies (in the following projects) to address cumulative effects if these are indeed identified once the detail of these future proposals is known.
- 4.28 Accordingly, whilst this qualitative CEA has allowed the identification of environmental topics where cumulative effects may arise in the future if these schemes are brought forward, it is not considered that any additional mitigation is necessary or appropriate as part of the Tilbury2 DCO.
- 4.29 Two particular issues have been raised by the promoters of LTC and TEC with regard to CEA.
- 4.30 In respect of LTC, Highways England have raised concerns regarding the potential conflict between the Tilbury2 on-site ecological mitigation set out in the LEMP [REP06-041] and the LTC proposals in this area. The CEA undertaken above was done on the basis of the LTC Scoping Report which indicated a link road through the Tilbury2 site. The submissions by Highways England at Deadline 6 indicate that:-

*“the preferred route [of LTC] .... does not currently show a link spur through the works area of concern. However... the link spur is included as part of the scoping area. At this stage no final decision has been made on the case or otherwise for a new link to the port of Tilbury. HE is also considering options that include the potential use of this area as a construction haul route for*

*LTC.....There is therefore a prospect of conflict between use by the Tilbury2 port if utilised for the translocation of species in this area and the delivery of the LTC project.”*

- 4.31 HE sought an addition to the protective provisions in the DCO (schedule 10, part 9) requiring consent of HE for the use of this area prior to the seeking of any license for the translocation of species into this area. This issue has however now been addressed by the parties with the position explained in SoCG009 [PoTLL/T2/EX/209]. PoTLL and HE have committed to working together as the LTC proposals are brought forward such that the design of any link road or haulage route can be brought forward cognisant of the detailed design of T2 ecological area. No element of the Tilbury2 proposals would prevent LTC from taking place and no additional protective provisions in this regard are required.
- 4.32 The second issue relates to the impact of Tilbury2 on a potential future TEC on a number of matters but in particular air quality.
- 4.33 RWE's response at deadline 4 [REP4-004] to ExA's SWQs [PD-010], paragraphs 2.8-2.10, cited concerns with regard to the potential for dust from Tilbury 2 to impact on the future operation of the TEC.
- 4.34 As explained at the Issue Specific Hearing on 27 June [REP5-014] RWE were seeking protective provisions to control dust from the Tilbury2 development, which the Applicant does not consider to be necessary given the dust control/monitoring measures included in the OMP and that both TC and GBC have found to be appropriate (see SoCG001 and 002). RWE were aware, when undertaking the land deal with the Applicant, of the future use as a port. It would therefore be reasonable to expect RWE to anticipate and understand and plan the use and development of their retained land accordingly. RWE have not provided any evidence to support their concerns (REP3-048 and REP4-004), beyond noting proximity to Tilbury2, and were not present at the hearing to discuss their concerns with the Applicant and their air quality specialist despite the item appearing on the agenda for the 27 June hearing.
- 4.35 The ES includes a risk assessment for operational dust and that this considered known receptors at the time. The subsequent cumulative impact assessment [REP3-027] considered TEC (RWE item 2.12.1) and concluded that the OMP as proposed would be appropriate. The ES and OMP describe the mitigation inherent in design and regulation of the proposals (RWE item 2.12.2). The OMP Section 7 sets out the dust monitoring proposals (RWE item 2.12.3). The mechanism for dealing with complaints (RWE item 2.12.4) and review of effectiveness (RWE item 2.12.5), all of which have been agreed with local planning authorities, are also set out in the OMP.
- 4.36 Indeed, changes made to the OMP at Deadline 5 in the section titled 'Monitoring Locations' (REP5-023) demonstrate that dust monitoring and mitigation will be adaptive to the on-going operations of the Port and its surroundings. It would be premature for a monitoring location to be required for a power station that may not be consented or built.
- 4.37 In the last week of the Examination, another DCO project adjacent to the Tilbury2 site submitted a scoping report to the SoS through the Planning Inspectorate. This is for the 'Thurrock Flexible Generation Plant'. The Applicant has submitted a report at Deadline 7 [PoTLL/T2/EX/225] which considers this project and explains that there is insufficient detail in the scoping report to be

able carry out any form of cumulative assessment; and that the time scales for its development do not overlap with the construction period of Tilbury2. It concludes that, as with the TEC and LTC, it is not for Tilbury2 to mitigate the impacts of this project, but for that project to do so as and when it develops further.

### **Air quality**

- 4.38 The impacts of Tilbury2 on air quality were reported in Chapter 18 of the ES [APP-031]. The assessment covered relevant matters identified in the NPSP and the Secretary of State's Scoping Opinion for Tilbury2 [APP-033]. The air quality assessment considered all relevant emission sources, including road traffic during construction and operation, dust during construction and operation, and rail and shipping emissions during operation (NPSP, paragraph 5.7.5). Those sources with the potential for significant impacts were assessed in accordance with industry good practice, using a detailed model where appropriate, and the residual impacts after mitigation were considered (NPSP, paragraph 5.8.4).
- 4.39 The air quality assessment for the ES [APP-031] included a detailed modelling study of construction and operational traffic emissions and operational rail emissions. The SoS agreed [Scoping Opinion para 3.36, APP-033] that shipping emissions could be excluded from the scope of assessment for the ES. As such, a qualitative statement which described the expected change in shipping movements in the context of the existing number of vessels using the River Thames and proximity to sensitive receptors was included in the ES [APP-031]. Operational dust emissions were assessed in the ES, which informed the proposed mitigation for operation of Tilbury2.
- 4.40 Details of the assessment methodologies are provided in the ES [APP-031] (and in the case of supplementary assessments requested by third parties, the Examining Authority and following the release of updated DfT traffic figures and a new version of the Emissions Factor Toolkit, in Appendices 2 and 3 to the Applicant's Written Summary of Case at Issue Specific Hearing of 19 April at Deadline 3) [REP3-030].
- 4.41 The assessments followed relevant guidance and used the most up-to-date procedures and data available at the time of undertaking. The assessment was robust and used a realistic worst-case scenario. The Applicant verified the detailed model findings against real-world monitoring data for the local area and the modelled values were uplifted appropriately. The assessment presented concentrations at the sensitive receptors closest to the road-rail network (paragraph 18.313 and Table 18.32 in Appendix 18.C [APP-095] and Figure 18.4 [APP-158]). To address uncertainties in the assessment process, several conservative assumptions were applied. For instance, the assumption that the maximum possible HGV and rail movements would coincide (ES paragraph 18.8) and the assumption of full operational capacity in the earliest year of operation. All assumptions are laid out in ES [APP-031] Table 18.2. As explained in detail through consultation with TC Public Health team, such a situation, in practice, would not arise (paragraph 1.29, Appendix A, Response to the Written Representations, Local Impact Reports and Interested Parties Responses to First Written Questions) [REP2-007].
- 4.42 With regard to road and rail emissions, none of the pollutant concentrations at the most sensitive locations were found to exceed the relevant air quality criteria, including the EU limit value for nitrogen dioxide as an annual mean. There would

be no deterioration in air quality in an existing or new area, where the air quality is above national air quality limits (NPSP, paragraph 5.7.6 and 5.7.7). Only one moderate increase in annual mean nitrogen dioxide was modelled to occur, at a worst-case receptor location in the worst-case scenario; concentrations will remain well below the air quality criterion in future with or without Tilbury2. Overall, given the robust nature of the approach to assessment, including the worst-case parameters and the selection of worst-case receptors, the effect of the proposals on local air quality was concluded to be not significant.

- 4.43 Following application of the proposed mitigation set out in the ES [APP-031] Chapter 8 (paragraph 18.332 to 18.352), residual effects of all construction and operational emissions were assessed as not significant. These findings were shared with and discussed with the relevant local authorities, TC and GBC. The local authorities agreed that the methodologies applied and the findings so obtained are appropriate; that is, that the operation of the proposals will not have significant adverse long-term effects on air quality at sensitive receptors: see SoCG Update [REP5-017] and LIRs for TC and GBC (REP1-101, Section 7.12 and REP1-056, page 17 respectively). Highways England has also confirmed that it is content that the air quality assessment in the ES and that suitable mitigation has been proposed [REP2-001].
- 4.44 Revised vehicle emissions factors and associated air quality assessment tools, published by DEFRA after the ES was submitted, did not alter the findings of the ES. This was demonstrated through sensitivity testing, the results of which were shared with the local authorities, TC and GBC, and submitted by the Applicant at Deadline 3 as Appendix 2 to the Written Summary of Case at Issue Specific Hearing of 19 April [REP3-030]. It was further noted by the Applicant, in the Written Summary of Case at Issue Specific Hearing of 19 April submitted at Deadline 3 in response to questions by the Examining Authority [REP3-030] that the fleet projections incorporated into the assessment (from DfT 2015) would not have accounted for the most recent policy and market conditions which have come to light in the past year and thus are likely to be conservative.
- 4.45 The CEMP [REP6-008] and OMP [REP6-026] have been developed by the Applicant to control, through design, management at source, and monitoring, the dust and air pollutant emissions that may arise during the construction and operational phases of Tilbury2. As well as control measures, the plans include procedures for monitoring to assist the Applicant in ensuring the efficacy of the controls, the means of addressing complaints, and the sharing of data. The measures in these documents, as well as the Framework Travel Plan (FTP) [REP5-018] and Sustainable Distribution Plan [REP5-020], are secured through the DCO. TC and GBC have agreed that the measures in each document are appropriate (Statements of Common Ground Update Report for Deadline 5) [REP5-017].

#### Dust emissions

- 4.46 GBC raised concerns, both in writing and during the Issue Specific Hearings, regarding particulate matter and dust emissions from the handling of materials during the operation of the CMAT at Tilbury2. The wider concerns regarding fine particulate (PM<sub>2.5</sub>) were addressed in the Applicant's Written Summary of Case at Issue Specific Hearing of 19 April at Deadline 3 [REP3-030]. The outstanding matters concerning operational dust were discussed directly with GBC. The overriding concern for GBC was ensuring that the OMP adequately addresses the mitigation of dust from the handling of dusty materials during the operation of

the CMAT, due to the potential future presence of sensitive receptors at Canal Basin. The concerns focused upon GBC's desire to input to the process of agreeing locations, the timing and duration of dust monitoring, and the sharing of data.

- 4.47 An agreed means of addressing these concerns was achieved through text amendments to the OMP [REP5-022]. The current position is that the Applicant understands GBC is satisfied with the proposed wording, as confirmed in their Post Hearing Written Submission at Deadline 5 [REP5-063]. The Applicant has incorporated the agreed text in the revised OMP [REP5-022] which now includes the clarification of the text in relation to consultation with GBC, data quality and data sharing, and a commitment to dust monitoring for three years following commencement of operation at Tilbury 2.
- 4.48 RWE also raised concerns in writing regarding the potential for dust impacts from Tilbury2 on the proposed Tilbury Energy Centre (TEC), on land adjacent to the east of Tilbury2 [REP2-015, REP3-048, REP4-004]. An application has yet to be submitted for this development and limited details are available. The Applicant considers the reference to construction dust impacts [REP4-004] to be erroneous given the construction programme would not overlap. RWE did not attend the Issue Specific Hearings in June when this matter was to be discussed.
- 4.49 The Applicant's position is set out at Deadline 5, in the Written Submission of Case at Issue Specific Hearing on 27th June [REP5-014]. The Applicant has made explicit in the latest version of the OMP [REP5-022] that dust monitoring will be undertaken along the Tilbury2 eastern site boundary that is the boundary adjacent to the RWE land in question. The Applicant considers this to address RWE's concern relating to the proposed gas fired power station element of the development expressed in its Written Submission Deadline 5 [REP5-055], specifically, the need for dust monitoring during operation (paragraph 2.14). The Applicant has approached RWE for a specific meeting to discuss this matter but has not received a response.
- 4.50 Dust monitoring is secured through the DCO [PoTLL/T2/EX/203], since the OMP is a certified document. As such, the Applicant is committed to undertaking the monitoring set out within the OMP [REP6-026]. The Applicant does not consider that RWE's addition to Protective Provision in the DCO, set out in RWE's submission at Deadline 5 [Annex B paragraph 14], that the Applicant should provide dust monitoring results directly to RWE, is appropriate. The Applicant will share the results with the local authorities, as the appropriate regulatory authorities for such matters.

#### Shipping emissions and local air quality impacts

- 4.51 GBC raised concerns, both in writing and during the Issue Specific Hearings, over the potential for shipping emissions, notably particulate matter, to affect local air quality in Gravesend to the south of Tilbury2. To address GBC's concerns, the Applicant undertook additional assessment to quantify the impact of shipping emissions (nitrogen dioxide and particulate matter) on local air quality within Gravesend by means of a detailed modelling study. This assessment was shared with GBC and submitted to the Examining Authority at Deadline 3 in its Written Summary of Case at the Issue Specific Hearing of 19 April (Appendix 3) [REP3-030].

- 4.52 The assessment showed that the impact on air quality at the worst-case receptor location within Gravesend would be a negligible increase in both nitrogen dioxide and particulate matter and thus effects were concluded not to be significant. The assessment confirmed that the screening out of shipping as a potential significant source of pollution at ES stage was appropriate and robust. GBC has since accepted the conclusions of this assessment, which is that the effect of shipping emissions on receptors in Gravesham is negligible [SoCG - PoTLL/T2/EX/209].

#### Shore power

- 4.53 During the Examination process, both in writing and at hearings, GBC raised the potential for use of fixed electrical shore power for ships at berth and application of a trigger for its introduction. The Applicant set out its reasoning in relation to the use of fixed electrical power in its response to FWQ 1.1.1 [REP1-016] and again at Deadline 2 in its Response to the Written Representations, Local Impact Reports and Interested Parties Responses to First Written Questions to GBC [REP2-007]. The Applicant clarified its position given at the hearing at Deadline 3, in its Written Summary of Case at Issue Specific Hearing of 19 April [REP3-030] and again at Deadline 5, in its Written Submission of Case at the Issue Specific Hearing on 27th June [REP5-014].
- 4.54 The Applicant maintains that its proposals comply with the requirements of the NPSP (paragraphs 5.7.13 to 5.7.15) which requires that all proposals include reasonable advance provisions (such as ducting and spaces for sub-stations) to allow the possibility of future provision of cold ironing infrastructure. Cable connections to ensure shore power can be facilitated in the future will be provided. This provision is secured through Section 7.4 of the OMP [REP5-022]. The Applicant does not consider that GBC's request for a trigger relating to shore power meets the test for requirements as it is not necessary to make the proposals acceptable; nor is it needed to ensure compliance with the NPSP. TC agrees with the Applicant, as recorded in the Statement of Common Ground [PoTLL/T2/EX/209], that it would not be reasonable to impose any further controls in this regard through the DCO.
- 4.55 The PLA has confirmed (see Applicant's response to Question 1.2 in Written Summary of Case at Issue Specific Hearing of 19 April) [REP3-030] that it is undertaking measures to promote the use of shore power, but it was not yet in widespread use. This is in line with the PLA's recently published Air Quality Strategy, from which the Applicant highlighted key elements in its Written Submission of Case at the Issue Specific Hearing on 27th June at Deadline 5 [REP5-014]. The Government's Clean Air Strategy and Maritime Vision 2050, consultation documents which set targets and aspirations for reductions in emissions and controls on shipping emissions, do not specifically state the need to develop shore power now as further research and development is needed. The Applicant is committed to maintaining a regular dialogue and engagement with GBC on the initiatives, including shore power, that the Applicant and the industry is more widely pushing forward.

#### Conclusion

- 4.56 In summary, the Applicant has addressed all the matters set out in the NPSP with regard to local air quality and shore power. No exceedances of air quality criteria have been identified and the effects were concluded to be not significant.

No concerns have been identified that should lead to a decision to refuse consent on air quality grounds.

### **Biodiversity, Ecology and Natural Environment**

- 4.57 The impacts on the natural environment have been the subject of detailed assessment by the Applicant, and scrutiny by statutory consultees and others.
- 4.58 The Environmental Statement [APP-031, Chapter 10] identifies the key ecological receptors requiring to be considered in relation to the Tilbury2 project. They include European Sites (the Thames Estuary and Marshes Special Protection Area (SPA) and the Thames Estuary and Marshes Ramsar Site), local non-statutory designated sites (the Lytag Brownfield, Tilbury Centre, and Tilbury Marshes Local Wildlife Sites (LoWS); and Tilbury Power Station draft Local Wildlife Site), protected species (bats, water voles, badgers, reptiles and nesting birds), 'Priority' habitats (including Open Mosaic Habitats on Previously Developed Land (OMHPDL)) and Coastal and Floodplain Grazing Marsh) and individual species that are rare or scarce in a local or national context (in particular invertebrates, including a number of 'Priority' species).
- 4.59 It is a matter of common ground with Natural England (NE) and Thurrock Council (TC) that the key receptors have been appropriately identified and valued (Statement of Common Ground Update Report for Deadline 7 [PoTLL/T2/EX/209]; TC LiR [REP1-101] para 7.6.1, SoCG reference SOCG001, agreed matter 4.9).

#### European sites

- 4.60 Potential effects on European Sites are addressed in the Habitats Regulations Assessment (HRA) Report [APP-060] and subsequent iterations. An updated, and final, HRA is provided at Deadline 7 [PoTLL/T2/EX/214]. In summary, the conclusion of the HRA is that the Secretary of State can be satisfied that there are no adverse effects on the integrity of European sites, and accordingly that development consent may be granted in accordance with regulation 63(5) Conservation of Habitats and Species Regulations 2017/1012.
- 4.61 As to the scope of the Appropriate Assessment, NE has indicated in its Written Representation [REP1-074] that the only European Sites requiring to be considered in both the ES and the HRA are the Thames Estuary and Marshes Special Protection Area (SPA) and the Thames Estuary and Marshes Ramsar Site. TC also agree that no other statutory sites require assessment (LiR [REP1-101] para 7.6.4). These designations cover large and broadly coterminous areas on both the Essex and Kent shores of the Thames Estuary downstream of Tilbury2 and extending, at their closest, to 1.5km from the proposed Order Limits. A range of potential effects that could reach these designations indirectly (including via functionally linked features) have been assessed.
- 4.62 The HRA Report has been revised via a number of iterations to respond to the procedural implications arising from the CJEU judgments in People Over Wind and Sweetman in April 2018 [C-323/17] and July 2018 [C-164/17] (specifically to discount mitigation measures at screening stage) and to provide additional information and accommodate sensitivity testing in response to residual uncertainties expressed by NE. The final HRA report [PoTLL/T2/EX/ 214] concludes that certain potential effects can be screened out at Stage 1 (no likely significant effect), and for all those that cannot, Stage 2 Appropriate Assessment

concludes that there is no threat of adverse effect on the integrity of these European designations.

- 4.63 NE's stated final position in its Deadline 6 response [REP6-007] and the SoCG is that there is no need for the HRA process to be taken beyond the Stage 2 Appropriate Assessment stage. Therefore, while NE state that they have some residual uncertainty on specific issues of assessment, they do not dispute the conclusion that it can be ascertained that there would be no adverse effect on the integrity of the European sites. Accordingly the ExA, and the Secretary of State, has no reason to depart from the reasoned conclusions of the Applicant's assessment.

#### Other ecological interests

- 4.64 With regard to non-statutory designations, the Tilbury2 project will result in wholesale loss of the Tilbury Centre LoWS, loss of 94% of the Lytag Brownfield LoWS, and loss of 6% of the Tilbury Marshes LoWS. Attendant with these impacts are temporary or permanent losses of habitat for protected species (water voles, four species of reptiles, bats, badgers and nesting birds), losses of priority habitat (9.0ha of OMHPDL, including associated scarce plants and lichens, 3.4 ha of Coastal and Floodplain Grazing Marsh, and smaller-scale losses of the Priority habitats Reedbed, Saltmarsh, Lowland Mixed Deciduous Woodland and Hedgerow) and significant impacts on a brownfield invertebrate assemblage agreed to be of national significance. It is a matter of agreement with NE and other ecology stakeholders (NE SOCG005 [PoTLL/T2/EX/209]) that these impacts are significant at various geographical scales up to and including the national level.
- 4.65 The Applicant's case is that these impacts are an unavoidable consequence of delivery of the nationally significant infrastructure project and that they are rendered acceptable in policy terms by both the overriding national economic need for the Tilbury2 project, as set out in the Outline Business Case (AS-016) and, in particular for ecological impacts, the CMAT Position Statement [REP1-016, Appendix B] and in consideration of the significant mitigation and (in particular) compensatory measures that the Applicant has committed to.
- 4.66 These mitigation and compensatory measures are as set out in the CEMP [REP6-008] and OMP [REP6-026], Landscape and Ecological Management Plan (LEMP [REP6-041]) and most particularly the Ecological Mitigation and Compensation Plan (EMCP [PoTLL/T2/EX/212]) which are all certified documents intended to be secured by the DCO. The CEMP details protective and precautionary measures that will be taken to minimise impacts on ecological resources on the site during the construction phase and the OMP does the same for the operational phase. The LEMP details how habitats retained, restored or created within the Order Limits will be managed in the operational phase. The EMCP details the mitigation measures that will be taken, under licence where applicable, to ensure legal compliance as regards protected species, including details of translocations and other mitigation and compensation measures to be adopted in respect of bats, water voles, badgers, nesting birds (including Schedule 1 species) eels and reptiles.
- 4.67 Letters of No Impediment have been issued by NE in respect of bats, water voles and badgers as appended to the EMCP [PoTLL/T2/EX/ 212, Appendix 4]. Importantly, the EMCP also details the ambitious and large-scale compensatory habitat creation measures that are proposed both on-site (a minimum of 5ha

within the proposed Order Limits) and at two off-site locations (10ha at Mucking Landfill, and 48ha at Paglesham) totalling 63ha of compensatory habitat enhancement. The Applicant has commenced, at risk, advance habitat enhancement works both on land under its control within the proposed Order Limits (pursuant to an advance planning permission) and off-site on third party land by agreement with the respective landowner in order to ensure optimum habitat conditions are created to receive translocated reptiles and water voles at these locations and to provide an alternative artificial sett for badgers. This is welcomed by TC (LiR [REP1-101] para 7.6.10 which also agrees with the conclusions of the ES as regards protected water voles, badgers, bats and reptiles (LiR [REP1-101] para 7.6.9-7.6.11). Natural England have confirmed in the SoCG that the Mucking site is appropriate in terms of its specific location and its position within the wider landscape, and that the Pagelsham receptor site is adequate in respect of the quantum of off-site compensatory provision it will provide..

- 4.68 The Applicant accepts, as set out in the ES [APP-031], that despite such measures there is still likely to be a net negative residual effect on ecology during construction, in large part due to there not being suitably mature habitats to act in compensation for some of the key features that will be removed - in particular OMHPDL with an equivalent suite of rare plants, lichens and invertebrates to those currently resident in the Lytag Brownfield LoWS and the Tilbury Centre LoWS (and to a greater or lesser extent, also elsewhere within the Tilbury2 site). Considered cumulatively, the short to medium term impact on terrestrial ecology from construction will be adverse and significant at a National level, primarily because of the site's accepted national significance for rare brownfield invertebrates. However, during operation the magnitude and significance of residual adverse effects (including those deriving from habitat lost as a result of construction) will gradually diminish as the on and off-site compensation measures mature and become of enhanced value for target species. The Applicant's case is that in view of the substantial mitigation and compensation measures committed to and their security and practicality of delivery, the negative ecological impacts arising from the project could be reduced to an approximate net neutral effect on Local, Regional and National biodiversity in perhaps ten or fifteen years from the commencement of construction.
- 4.69 The Tilbury2 application complies with the NPSP in fully considering relevant designations in the ES and in the HRA Report (NPS paragraph 5.1.4) and in demonstrating (via the ES [APP-031], CEMP [REP6-008], OMP [REP6-026] LEMP [REP6-041] and EMCP [PoTLL/T2/EX/ 212]) how likely significant ecological impacts arising from the proposals have been identified during the design process and through consultation and how measures to mitigate and/or compensate for such impacts have been explored and where possible pursued in line with the mitigation hierarchy having regard to the weight of need for the project and the lack of reasonable alternatives to the final design (as set out in the Statement of Reasons [APP-018, REP3-105/16, REP5-009/010], Outline Business Case [APP-166] and the CMAT Position Statement [REP1-016, Appendix B]). The Applicant's case is that having regard to such considerations, the project is compliant with the NPSP objective of reducing overall biodiversity loss, supporting healthy well-functioning ecosystems and establishing coherent ecological networks (NPS paras 5.1.5 and 5.1.8).

## **Contaminated land**

- 4.71 The likely significance of effects on and from the development associated with land contamination has been assessed in Chapter 15 of the Environmental Statement [APP-031]. The assessment complies with the requirements of the NPSP (paragraphs 4.15, 5.151 and 5.168) and has assumed and sought to mitigate reasonably likely worse case impacts from the proposed development. As detailed in the Statements of Common Ground (PoTLL/T2/EX/209)], the assessment including the methodology, has been accepted by the Local Authority Contaminated Land Officer (SOCG001, Sections 4.11 and 5.9) and the Environment Agency (SOCG004, Section 4.3).
- 4.72 Proposed mitigation measures are provided in Section 8 of the CEMP [REP6-008] and OMP [REP6-026] which are secured through the DCO.
- 4.73 The CEMP includes specific provisions to undertake additional site investigation and assessment of the ground conditions at the site including undertaking remediation measures (if required). The scope of the proposed ground investigation and assessment together with any remediation measures will be agreed with the Local Authority Contaminated Land Officer and Environment Agency prior to the works being undertaken. Piling/foundation works risk assessments will also be undertaken in accordance with relevant Environment Agency guidance as required and submitted to the Environment Agency for approval prior to works being undertaken as per the CEMP.
- 4.74 It is considered that no significant adverse impacts associated with land contamination will be present during the construction and operation of the development after the implementation of mitigation measures.

## **Health**

- 4.75 The Health Assessment was conducted following the NPSP guidance to assess the direct and indirect effects of the Port on health in the local population on a range of outcomes, as well as the synergistic effects on health and to identify measures to avoid, reduce or compensate for any adverse health effects. The Health Assessment was conducted following current best practice guidance to judge the potential health effects of the Scheme on the health of the population, including effects on vulnerable populations within the local area, by reference to a number of determinants of health [Chapter 8 Health, ES, APP-031].
- 4.76 TC agreed that the methodology underlying the Health Assessment is satisfactory and that the key health effects of Tilbury2 have been identified [item 4.20.1. PoTLL/T2/EX 209].
- 4.77 The assessment identified adverse health effects of the construction and/or operation of Tilbury2 associated with noise and vibration; neighbourhood quality; open space/active travel; transport, traffic and connectivity; and lighting. [Chapter 8 Health, ES, APP-031]. A beneficial health effect of Tilbury2 was identified for employment.
- 4.78 It was agreed with TC that the mitigation for lighting impacts [PoTLL/T2/EX/209] and for physical activity (open space/active travel/transport) impacts on health are acceptable [SoCG].

- 4.79 In terms of the potential for residual health effects from noise and vibration, TC has agreed with PoTLL that the noise monitoring and mitigation scheme, through which TC will identify a trigger point at which the Applicant will be required to make an offer of mitigation to an affected receptor if after all of the measures in the OMP [REP6-026] designed to reduce noise are not completely effective, then this fall-back extra precautionary safeguard will address any residual health effects [SoCG].
- 4.80 In terms of the potential for residual health effects on neighbourhood quality associated with the visual impact of the scheme, TC has agreed that the Applicant will continue to positively engage with local initiatives of TC and others to improve the local environment and will work with TC in the future in this regard [SoCG].

## **Historic environment**

### Built heritage

- 4.81 The impact of the proposals on built heritage assets has been carefully considered and scrutinised through the Applicant's assessment [APP-068] and the examination, reflecting the statutory duty on the Secretary of State to have regard to the desirability of preserving the scheduled monument or its setting (Infrastructure Planning (Decisions) Regulations 2010/305, regulation 3(3)).
- 4.82 A particular issue relates to the impacts on Tilbury Fort. As is explained in the Tilbury Fort Paper appended to the Applicant's response to First Written Questions (REP1-016 Appendix D), the nature of the setting at this location is principally characterised by river activity and the associated trade and passage of goods in which the fort has previously participated.
- 4.83 During the course of the examination, the parties have discussed section 106 contributions which have now been settled (see final section 106 DCO obligation at [PoTLL/T2/EX/216]) and include contributions towards enhancing the experience of heritage assets in Thurrock and in Gravesham, aspects which are closely interrelated as part of a historic and surviving defence system.
- 4.84 The assessment methodology for Built Heritage takes into account a future baseline with the Tilbury B Power Station removed from the setting of the Fort and other designated heritage assets.
- 4.85 The assessment methodology was designed to assess the worst case scenario for the avoidance of doubt in relation to the historic environment. The Rochdale envelope was adopted to describe the limits of potential development and to ensure the assessment process was as robust as possible. The adoption of the future baseline has produced a robust and precautionary assessment of the historic environment. This approach has been adopted to give the statutory consultees, decision makers and the Applicant the greatest surety around the potential for impact on the irreplaceable resources of the historic environment.
- 4.86 The Applicant has assessed the heritage assets in relation to the future baseline and concluded that the setting of Tilbury Fort in particular is distinctly industrialised in character. This means that the land uses and associated built form, activity, noise and air quality are mostly related to industry. Therefore the changes to setting brought about by the proposed development are deemed to be a considerable change but do not represent a 'radical transformation'

because of the presence of existing industrial activity including Anglian Water, the RWE pylons, Stobarts wood chip site and the existing Port of Tilbury.

- 4.87 During the examination period, the Applicant has demonstrated how the historic environment has been understood and considered during all phases of the design process. The preparation of the Tilbury Fort Paper (REP1-016 Appendix D) and the Minimisation Statement (AS-049 Appendix 6) illustrate how the important qualities of place have been prioritised and protected in the final development proposals.
- 4.88 This has been achieved through the inherent minimisation of impacts to the historic environment such as the positioning of specific berths, the selection of dolphins, site layout and the utilisation of existing marine structures.
- 4.89 In presenting its proposals the Applicant has set out indicative stacking arrangements which demonstrate that the “Rochdale envelope” of one single blocked mass of stacking is unlikely to occur [REP5-028 General Arrangement Plans v2 Sheet 3]. The western edge of the site, facing the Fort, is indicatively shown on this plan to present the short end of containers towards the Fort. This reduces the sense of mass because it comprises smaller components and serves to fracture the impression of mass with the shadow play created on the foremost elevation to the Fort (although this is also visually separated by the Anglian Water operations). This indicative arrangement of containers will also have less signage visible from parts of the Fort.
- 4.90 TC’s Local Impact Report [REP1-101] concurred with the Applicant’s identification of potential adverse effects on designated assets. The LIR also acknowledged that the mitigation offered would be effective to some degree. The Applicant has included further controls regarding appearance and colour within the DCO (particularly Requirement 3) to ensure effective mitigation is delivered. Through the s106 DCO obligation, which secures the Active Travel Study, measures are in place to enhance and improve access and appreciation of the Fort within the broader Tilbury area.
- 4.91 The Applicant has also progressed a Colour Palette [REP5-037] in consultation with Historic England and TC to ensure all structures within the development will comply with principles of good design, as supported in Historic England’s guidance on settings in GPA3. This is delivered through the provisions of Requirement 3 in Schedule 2 to the DCO. Both Historic England and TC have been receptive to the additional opportunities for mitigation presented by the Applicant as indicated in their Deadline 5 submissions [REP5-049 and REP5-047].
- 4.92 Historic England ([REP1-065]) accept that any harm to the significance of the Fort (and other heritage assets) is considered less than substantial. It was also identified that there was little scope for complete mitigation but that additional opportunities should be explored and implemented wherever possible. The indicative container stacking layout shown on General Arrangement Sheet 3 and the Colour Palette for built form are two tools which have been agreed with the relevant stakeholders in order to minimise and mitigate the potential for visual effects within the historic environment.
- 4.93 Historic England and English Heritage are closely aligned organisations but have been consulted by the Applicant on separate matters during the course of the examination.

- 4.94 English Heritage has been consulted as the commercial operator of Tilbury Fort. The organisation is responsible for the operation and physical conservation of the Scheduled Monument and its remit is to allow people to experience history in the places where it happened. To this end the engagement with English Heritage has been focussed on enhancing access to, and the quality of environment at, the Fort, drawing a stronger connection with Coalhouse Fort, and implementing an Active Travel Study to improve wayfinding and routes into the Fort from Tilbury town.
- 4.95 English Heritage have accepted and adopted Historic England's assessment and position in relation to planning policy. They have also accepted that the port development is a significant benefit to the national economy, but have claimed that the changes to the setting of the Fort puts their ability to generate income, from a variety of streams, at risk.
- 4.96 In this regard, the presence of Tilbury A and Tilbury B power stations in the setting of the Fort in recent years has not been demonstrated to affect their ability to generate income. The Applicant considers the proposed port development to be of a similar scale, and therefore impact, to the previously extant built form and there is no proper basis for concluding that there will be any material effect on the ability of the asset to generate income.
- 4.97 In light of English Heritage's specific concern about the impact on income from filming, the Applicant commissioned industry experts to advise on the potential for impacts on the suitability of Tilbury Fort for filming. That expert report was presented at Deadline 3 [REP3-023] to demonstrate how the proposed development would not increase the post-production processes associated with "painting out" industrialised character or addressing sound effects. These are routine features of modern film and television production and do not reduce the desirability of location filming at Tilbury Fort. English Heritage did not produce any evidence, expert or otherwise, to contradict this expert input, and there is no basis for departing from it. It is also noted that film income is inherently unpredictable, as demonstrated by the figures provided in the English Heritage submission [REP1-047 Appendix E].
- 4.98 It is accepted by all parties that the Tilbury 2 proposals do not directly affect the fabric of the Fort (excepting the potential for vibration effects which can be directly mitigated through monitoring and active measures secured through the CEMP). It is also accepted by all parties that the minimal opportunities for direct mitigation of effects on the setting of the Fort, insofar as they affect the commercial operation (and not the significance of the Fort) can be appropriately addressed through enhancement of the visitor experience at the Fort, including environmental upgrades to access at the Fort and interpretation material within the Fort. This has been secured through a section 106 DCO obligation with TC [PoTLL/T2/EX/216].

#### *Contributions to Tilbury Fort*

- 4.99 The proposed enhancements at Tilbury Fort are intended to be 'fairly and reasonably related in kind and scale to the development'. To this end it is noted that the Tilbury 2 proposals do not affect the fabric of the Fort nor do they entirely remove opportunities to experience or appreciate the Fort and its historic setting.

- 4.100 The Applicant's proposals for enhancement and mitigation are therefore appropriately focussed on facilitating the experiences of the Fort and not specialist conservation repairs to historic fabric.
- 4.101 The Active Travel Strategy (appended to the section 106 DCO obligation) will improve the pedestrian route between Tilbury town to the river and Tilbury Fort through wayfinding signage and the upgrade of the existing walking track which passes World's End Tavern on the west side. The enhanced access to the Fort will also improve connection from Tilbury town and rail station to Coalhouse Fort along the river, thus emphasising a series of strategically and physically related river defences. The joined up pedestrian routes and enhanced built environment are expected to increase visitor accessibility and desirability of the Fort as a destination, with benefits for ticket sales. This is considered to have a direct benefit to the upkeep and active conservation works to the historic fabric of Tilbury Fort on a sustainable basis.
- 4.102 GBC has acknowledged that comments on harm to significance of Tilbury Fort and assets on the north side of the river are matters for TC and Historic England [REP1-054]. GBC agree with the Applicant that the impacts on the Gravesham assets are on the lower end of the spectrum of less than substantial harm to significance. The GBC Local Impact Report [REP1-056 p12] expressed some concern for the interrelated significance of the defence systems on both sides of the river. The Applicant has worked with GBC to identify appropriate enhancements to the experience of Gravesham's heritage assets, which includes key components of the legibility of the historic river defence system, to be delivered under the section 106 DCO obligation.
- 4.103 The Applicant, TC, GBC and Historic England are agreed that there are no impacts or effects on the fabric of any designated or non-designated heritage assets [SoCG - PoTLL/T2/EX/209] and that potential for impact or effect is limited to changes to the setting of some of the identified assets.
- 4.104 The Applicant, TC and Historic England are agreed that the development proposals have been considered with respect to historic environment and that minimisation has been considered and demonstrated as inherent to the development of proposals presented for examination [SoCG - PoTLL/T2/EX/209]. They are also agreed that any identified harm is less than substantial as described in NPSP and can be lessened to some degree by appropriate, management, mitigation or enhancement.

#### Archaeology

- 4.105 There are no objections from any heritage interested party on archaeological grounds to the proposed development as long as a suitable programme of mitigation measures are implemented in accordance with approved Archaeological Written Schemes of Investigation (WSI). The Terrestrial Archaeological WSI (REP4-023) which contains the agreed approach to mitigate against the effects of the proposed development on the terrestrial archaeological resource has been agreed by all heritage parties (see SoCGs with Historic England and TC in [PoTLL/T2/EX/209]). The Marine Archaeological WSI [PoTLL/T2/EX/228] which contains the approach to mitigate against the effects of the proposed development on the marine archaeological resource has been agreed by Historic England [Statement of Common Ground]. Consequently, both documents can be certified at the close of the examination.

- 4.106 The archaeological baseline conditions were established through the findings of an Archaeological Desk Based Assessment, Geo-archaeological Deposit Model, Marine Archaeological Desk Based Assessment, Archaeological Watching Brief and Marine Geophysical Survey incorporated into an Archaeological Statement which formed Technical Appendix 12A (AS-011) and Marine Geoarchaeological Assessment which formed Technical Appendix 12C (APP-069) to the ES Chapter 12 (Archaeology and Cultural Heritage APP-031).
- 4.107 The assessment was undertaken in accordance with the relevant key components of the NPSP in relation to the historic environment by:
- considering the effect on known and potential heritage assets [in chapter 12 of the ES chapter [APP-031 paras 12.5-12.13, 12.155-12.171 and Table 12.11a,b,c and 12.15a,b,c] and supporting Technical Appendix 12A [AS-011 sections 1.4 and 1.5, AS1 section 5.3 and 6, AS2 section 7, AS3 Table 4 and Section 5.2 and AS5 Section 4]
  - considering the direct and indirect impacts of the port development on underwater buried features in Chapter 12 [APP-031 paras 12.9-12.13, 12.165-12.71 and Table 12.11c and Table 12.15c] and Technical Appendix 12A [AS-011 Section 1.4.3, 1.5.6-1.5.10, AS3 Table 4 and 5.2 and AS5 Section 4]
  - describing a proportionate level of detail on significance of the known and potential heritage assets affected by the proposal in Chapter 12 [APP-031 paras 12.78-12.98 and Table 12.8a,b,c] and supporting Technical Appendix 12A [AS-011 Section 1.3, AS1 section 4, AS2 section 1,5,6 and 7, AS3 section 4 and Table 4, AS4 section 6, AS5 section 3 and 4] and Technical Appendix 12C [APP-069 section 5]
  - consulting the relevant Historic Environment Record, undertaking desk based and field investigation in Chapter 12 [APP-031 paras 12.34-12.38 and 12.43] and supporting Technical Appendix 12A [AS-011 AS1 – AS5] and Technical Appendix 12C [APP-069]
  - providing a suitable programme of archaeological mitigation measures undertaken in accordance with a Written Scheme of Investigation in Chapter 12 [APP-031 12.217-12.227] and Terrestrial WSI [REP4-023] and Marine WSI [PoTLL/T2/EX/228].
- 4.108 The baseline assessments confirmed that there are known and potential non-designated archaeological assets of a local to regional importance [ES Chapter 12 APP-031 paras 12.87-12.98 and Table 12.8a, b, c and Technical Appendix 12A AS-011 Section 1.3, AS1 Section 4, AS2 Section 1, 5, 6 and 7, AS3 Section 4, Table 4, AS4 Section 3 and 4 and Technical Appendix 12C APP-069 Section 5]. Given that the detailed design will not be finalised until post consent, the worst case effect from the proposed development was considered in the assessment and the residual significance of effect during construction and operation on the archaeological resource has been assessed as neutral assuming that the mitigation measures set out in the Terrestrial WSI [REP4-023] and Marine WSI [PoTLL/T2/EX/228] are implemented.
- 4.109 During the examination Historic England provided recommended wording for the DCO to secure the Terrestrial Archaeological Mitigation Strategy. The Applicant in its response at Deadline 4 [REP04-020] (SWQ 2.8.39) and 6 [REP6-036] indicated where in the draft Terrestrial WSI the requested DCO wording provided

by HE was duplicated, and accordingly why the proposed changes are unnecessary. As such the WSI contains all the necessary controls that have been raised by Historic England and these controls will be implemented by the WSI and enforced by the current wording in the DCO. TC notes that the proposed mitigation measures will be secured by the wording in Schedule 2 Part 6 of the DCO and the Terrestrial Archaeology WSI (para 7.7.3 of LIR TC March 2018) and thus supports the Applicant's position.

4.110 The residual points relating to the Marine archaeology WSI at Deadline 7 are:

Monitoring of the effects of sedimentation on the foreshore of Tilbury Fort. During the examination Historic England have raised concerns regarding the potential secondary effect of erosion on Tilbury fort foreshore caused by the proposed capital dredge. The Applicant's response is based on their specialist HR Wallingford's Hydrodynamic and Sedimentation model submitted as a Technical Appendix to the ES [APP-089]. As discussed throughout the examination (REP2-007 Response to HisE Written Reps, REP04-020 SWQ 2.8.47 xi and the Applicants 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] and the Applicant's Responses to Interested Parties Deadline 5 Submissions 1.0 Response to agenda item 3.13.4 (ii) POTLL Response 4 and 5 [REP6-015]) the HR Wallingford modelling identified that 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 considers that further mitigation comprising monitoring sediment change during and post dredge is not justified in this instance. The Marine WSI proposed to be certified therefore does not include any provision for monitoring of the foreshore.

4.111 Suggested changes to the DCO. Historic England and the MMO expressed a desire for the DML to include a condition relating to the need for PoTLL to submit archaeological method statements to the MMO [e.g. REP6-039]. Following discussions between the parties revisions have been made to the WSI [PoTLL/T2/EX/228] and the DML at Deadline 7 [PoTLL/T2/EX/228], leading to a mutually agreed position expressed in both documents.

#### **Landscape and visual impacts**

4.112 Potential landscape and visual impacts associated with the construction and operation of the scheme have been assessed in Chapter 9.0 of the Environmental Statement [APP-031]. TC considers that the submitted assessment has been undertaken using appropriate methodology and provides a thorough analysis of predicted landscape and visual impacts [REP1-101 paragraph 7.5.2].

4.113 The methodology used is in compliance with the NPSP paragraph 5.11, relevant planning policy and professional guidance. The methodology was accepted by the local planning authority at the draft scoping stage. Predicted landscape and visual effects are based on the maximum development parameters, during the construction and operational stages and in the context of the future baseline scenario. This represents the 'worst-case' basis for assessment.

4.114 Embedded and further mitigation measures were identified during the assessment process. Where operationally practicable, the measures were

incorporated into a landscape strategy for development, forming part of the LEMP [REP6-041].

- 4.115 Following submission, a single additional viewpoint was requested by TC. As the requested location was not publically accessible, the information was provided in the form of a visibility cross-section (presented to the Examination as an appendix to the Applicant's response to IP D1 submissions [REP2-007], which has been accepted by Thurrock [REP1-101 section 7.5].
- 4.116 During the consultation process a more robust mitigation package was sought by TC, including wider landscape improvements outside the DCO boundary. Additional mitigation details were supplied in the form of a Technical Note, submitted as Appendix E to the Applicant's response to FWQs [REP1-016] and then incorporated in the LEMP, [REP6-041]. It is agreed with the Authority that the proposals can provide an effective visual screen and through additional detailed design this can be achieved whilst respecting the local landscape character and minimising adverse effects on the setting of Tilbury Fort.
- 4.117 There are no residual issues in respect of landscape character and visual amenity as recorded in the Statements of Common Ground with TC [PoTLL/T2/EX/209].
- 4.118 Wider landscape improvements have been considered by the Applicant and TC, but have not been considered to be necessary or reasonable having regard to the actual impacts of the scheme. TC has accepted this position [SoCG - PoTLL/T2/E/209].

## **Noise and vibration**

### The noise assessment

- 4.119 The noise associated with the construction and operation of the Scheme have been assessed and reported in the Environmental Statement, Chapter 17 of the ES [APP-31] sets out the assessment methodology that has been applied. The assessment follows relevant policy and standards, including the Noise Policy Statement for England (NPSE) and NPSP which seek to avoid significant adverse impacts and seek to mitigate and minimise other adverse noise impacts from new development and, where possible, contribute to improvements to health and quality of life through the effective management and control of noise (NPSP, 5.10.9).
- 4.120 The Applicant in the [REP1-016, 1.14.22] set out how the Proposed Development accords with the part of the NPSP on how the decision maker should be satisfied that the proposals will meet it aims.
- 4.121 The ES concludes that during construction, there will be short-term impacts at nearby noise sensitive receptors. The operational noise assessment has concluded that, without mitigation there would be major impacts during the night-time period on noise sensitive receptors in Gravesend. Further mitigation of sound insulation and mechanical ventilation is therefore required to mitigate these impacts.
- 4.122 The Applicant considers that the Proposed Development accords with this part of the NPSP as significant impacts have been avoided with embedded mitigation and further mitigation provided for on a precautionary basis in the form of sound insulation and mechanical ventilation. The mitigation proposed will avoid significant impacts and minimise adverse impacts. The identification of these impacts led to additional consideration of avoidance and mitigation.
- 4.123 In line with common practice, the assessment uses a range of worst case assumptions to ensure that any impacts are not under-reported, with the consequence that the ES assessment is likely to overstate the residual noise effects. The worst case assumptions used include:
- 4.124 All plant/equipment runs 24/7;
- All general storage areas are assumed to be bulk storage rather than some used for vehicles;
  - Acoustic character corrections applied to all sources;
  - Noisier engine/wagon assumptions for rail link;
  - Construction equipment assumed to always operate close to receptors.
- 4.125 Baseline noise levels were measured at representative locations in Tilbury, in Gravesend and underwater. Appropriate thresholds for significance have been determined, setting out thresholds for adverse effects and significant effects. The overall design of the scheme includes embedded elements to mitigate both construction and operational noise. A mitigation strategy describes when additional measures would be considered – when Major impacts are identified

and noise levels are above LOAEL, and when Minor impacts are identified and noise levels are above SOAEL.

- 4.126 TC and GBC each agree that the method for the assessment, thresholds for significance, construction noise assessment, road traffic noise assessment, rail traffic noise assessment and operational noise assessment are appropriate and sufficient.
- 4.127 TC agree that the baseline noise data is representative and the proposed mitigation measures will minimise the impacts to within acceptable levels.
- 4.128 GBC had concerns that large aggregate vessels when moored at Tilbury2 would have a noise impact on residents in Gravesend and that additional vessel noise measurements were required to assess the noise impact. The Applicant provided in response to GBC's concerns as Appendix 3 to PoTLL's Response to Relevant Representations document [AS-049]. GBC reviewed this and agreed in the SoCG [PoTLL/T2/EX/209] that the ES and the information provided gives a robust assessment of the likely effect of vessel noise on Gravesend. The conclusions of the assessment that noise generated during the stay of an aggregate vessel at Tilbury2 will have a low noise impact on the amenity of residential properties in Gravesend were also agreed with GBC in the SoCG.
- 4.129 GBC were also concerned that properties at Mark Lane may have different background noise levels to the location monitored in the ES in Gravesend and further work was required [REP4-020]. The Applicant undertook monitoring at Mark Lane during the examination period and produced a technical note with the results that showed noise levels at Mark Lane were similar to those measured at Venture Court, Gravesend [REP5-30]. The results of this note were agreed by GBC orally at the second Issue Specific Hearing and in the SoCG and accordingly GBC's concerns on the noise assessment have been addressed in full.
- 4.130 The Applicant will undertake a reassessment of the proposed Scheme once customers take up the parts of the project and details of likely plant, equipment and layout are known. The reassessment will follow the same methodology as set out in the ES and this reassessment will enable the Applicant to have the benefit of the most up-to-date data in identifying and implementing any mitigation measures that are necessary before the Scheme opens, pursuant to requirement 10 of the DCO.
- 4.131 Noise modelling would be updated in parallel with updates to transport modelling and any measures identified as required to mitigate residual noise impacts and will be submitted for the approval of the local planning authority in accordance with Requirement 10 of the DCO (see below).

#### Mitigation of noise effects

- 4.132 The proposals include noise mitigation embedded in the design including:
- Best Practical Means to control construction impacts described in the CEMP [REP6-008]
  - Noise barriers for road traffic and railway traffic required by DCO Requirement 9. Details of the noise barriers are given in the response to FWQ 1.16.19 [REP1-016].

4.133 In addition, the Applicant's OMP [REP6-026], secured by the DCO, employs management measures to reduce noise arising from day to day operation of the site and reflects the measures set out in the ES Paragraphs 17.135-17.137. The OMP sets out:

- Noise management goals;
- Roles and responsibilities for noise control;
- Procedures for purchase and use of equipment to minimise noise;
- Definitions of noise barriers;
- Process for managing noise complaints;
- Focussing in daytime operations to minimise night time disturbance;
- Maintaining internal roads and surfaces to limit noise; and
- Locating equipment away from properties

4.134 TC and GBC each agree that the approach to mitigation and the controls for noise and vibration in the OMP are sufficient for the management of noise in the Statement of Common Ground (SoCG) [REP5-017], although GBC has residual noise concerns about potential impacts to Gravesham residents.

#### Operational noise limits

4.135 The Applicant's clear view is that the imposition of operational noise limits is unnecessary and it has set out its reasons for this in its Noise Resume Papers at Deadline 5 [REP5-030], Deadline 6 (in response to the ExA's request for consideration to rewording of Requirement 10) [REP6-031] and Deadline 7. These views are supported by expert evidence from Rupert Thornely-Taylor, given orally at the ISH and summarised in writing at Deadline 7 [PoTLL/T2/EX/224].

4.136 The short point is that the only expert evidence before the examination is that noise limits at receptors in Gravesend are simply not achievable. GBC has not produced any contrary expert opinion, but rather has relied on a series of examples which can be (and have been) distinguished. The imposition of noise limits may in any event not result in better noise mitigation: rather the operator may work to the limit, rather than seeking to minimise at source.

4.137 The issue of enforcing noise limit at monitoring locations in Gravesend is their distance from Tilbury2, approximately 1km, and the surrounding noise environment. The setting of those receptors is such that any noise monitoring would include noise contributions from Tilbury2, other nearby industrial and commercial activities, vessels using the river and traffic on the road network. It would be very difficult to be identify which of the noise sources audible at the receptor were giving rise to any measured level. Noise limits in a condition would only apply to noise sources specific to Tilbury2. Measurements at receptors would be materially increased by the inevitable inclusion of non-Tilbury2 noise sources, which cannot be assessed against limits in a condition. This would make enforcement of such a noise limit very difficult. GBC's contention that the method of assessment in the ES identifies a basis for imposing noise limits at

receptors is misconceived, for the reasons explained by the Applicant's expert witness.

- 4.138 The imposition of such a requirement would therefore not only be contrary to the policy requirements for the imposition of requirements, but also achieve little or nothing and impose an unnecessary burden on the Applicant. Whilst GBC's instinctive reaction to ask for the imposition of noise limits is understandable, it demonstrably fails in the face of expert evidence. It is noted for completeness that TC's expert Environmental Health Officer confirmed his satisfaction with the Applicant's approach and TC has made clear that it supports the Applicant's proposed requirement 10 [REP6-021].
- 4.139 The Applicant's approach includes a reassessment using the criteria used in the ES to identify predictions of effects on noise sensitive receptors. These predicted levels would be used to ensure that mitigation is sufficient to prevent significant impacts and minimise adverse impacts. TC has agreed that this approach is suitable for noise control [REP1-101]. GBC also acknowledged the need for such reassessment [REP1-056]. Should residual significant adverse effects be predicted or experienced, noise mitigation measures at the receptor will be provided (in accordance with NPSP paragraph 5.10.13).
- 4.140 Whilst the Applicant's approach will achieve the policy aims (preventing significant impacts and minimising adverse impacts), in light of the ExA's request an alternative source-based noise limit has been put forward [REP6-031, p 2-4] which aims to verify the reassessment by undertaking noise measurements in different work areas of Tilbury2 once operational. Such a requirement would be enforceable (unlike a noise limit at Gravesend receptors), but it would still fail the policy test since it would be unnecessary (since other measures are already proposed and capable of achieving a satisfactory noise outcome) in the face of the other mitigation measures, which fall within the range of measures identified in the NPSP (5.10.12).

#### Conclusions on noise

- 4.141 It is accepted that the Applicant's approach to noise assessment is appropriate and that the proposed means of addressing noise impacts are suitable. The sole outstanding issue relates to GBC's request for the imposition of noise limits. The Applicant's position is entirely compliant with the NPSP and a further requirement cannot be justified.

## **Socio-economic**

- 4.143 The socio-economic impact assessment sets out the likely effects of Tilbury2 on socio-economic characteristics during both the construction and operational phases. The assessment was undertaken in line with the NPSP, notably paragraph 5.14 in identifying the appropriate scope and methodology to assess the direct and indirect effects of the proposals.
- 4.144 To inform the assessment, a comprehensive baseline was undertaken to understand the existing socio-economic conditions in the areas surrounding the proposed development. A policy review was also undertaken to identify how the development's socio-economic impacts correlate with local planning policies. The baseline assessment identified a number of local issues, including the underperformance of Thurrock in terms of skills and qualification achievement compared to the wider region, lower economic activity rates than elsewhere, high rates of long-term unemployment, low social grades, and pockets of high deprivation. TC agrees with the approach to assessment and that Tilbury2 is likely to have a positive socio-economic effect for Thurrock, and across different geographic scales [PoTLL/T2/EX/209].
- 4.145 Tilbury2 is anticipated to provide a range of benefits, helping to address some of the challenges identified in the baseline assessment. The assessment identified that the operation phase could support 527 net additional jobs in the regional economy (including supply chain opportunities), and contribute approximately £35.8 million to the regional economy. The assessment predicted effects on a number of socio-economic characteristics, including increased total capacity for the Port of up to 18.6 million tonnes in the Tilbury2 scenario, delivering more goods to the UK and generating economic activity locally and beyond the study area. Additional regional and local employment is expected to have a modest effect on qualification levels and sectoral employment characteristics in the study area. A number of wider regenerative impacts were also identified, supporting development opportunities and job creation locally, and extending to Gravesham. The proposals were also identified as having a positive effect on both levels of deprivation and social grade classifications.
- 4.146 The assessment identified a number of minor, indirect negative impacts identified for Gravesend Sailing Club and Gravesend Rowing Club, which are particularly sensitive to increased shipping. However these effects would reduce over time as the businesses adapt to changing levels of shipping movements to the River Thames. As part of further mitigation identified in the assessment, PoTLL has committed to engaging with the Sailing Club and Rowing club to discuss 'good neighbour' operation principles, and to try and better manage the interface between Port traffic and sailing activities [Operational Community Engagement Plan [REP5-004]. Similarly, minor, indirect negative impacts were also identified for Tilbury Fort due to indirect amenity impacts, and London Thamesport which could experience some loss of potential container-related activity.
- 4.147 The Applicant currently supports an extensive range of initiatives to support education and training, both in Thurrock and across South Essex, which has measurably benefitted the local community. The Port has recruited three full time graduates from the local area, has nine employees which are governors or trustees members of local schools, managed over 100 apprenticeships since 2014, and have hired over 50 employees directly from the pre-employment training program.

- 4.148 The Skills and Employment Strategy (SES) is appended to and secured through the section 106 DCO obligation with TC [PoTLL/T2/EX/209] and provides further detail on the opportunities to maximise local employment, and contribute to the 'up skilling' of the local population. The Applicant is committed to ensuring that as much as possible of the economic benefit of the Tilbury2 investment is felt in Tilbury. In doing so it sets out the labour market context in which the Tilbury2 development will take place, details the extensive involvement the applicant already has in local skills and employment initiatives and sets out the commitments to improve skill levels locally. The Applicant has committed to engaging proactively with tenants, contractors and other relevant organisations to promote and support their involvement in local employment and training initiatives, facilitate contractors in taking on employees locally and using local businesses, and in supporting local young people in accessing careers in the logistics industry.
- 4.149 The SES further details the Applicant's commitment to facilitate a shared forum with TC, GBC, the Essex Employment and Skills Board and Port tenants and customers to encourage a joined up approach with wider skills and employment initiatives across the authority.

## **Transportation and traffic**

- 4.151 Through the examination process, all transport and traffic matters have been agreed with Highways England as the Strategic Highway Authority and TC as the Local Highway Authority as reflected in the final submitted SoCG [PoTLL/T2/EX/209] Accordingly, the ExA can report that there are no outstanding transport and traffic issues and that there are no impediments in this regard to the grant of development consent.

### Construction traffic

- 4.152 Based on the proposed construction programme and in accordance with the methodology set out in the Transport Assessment [APP-072] during a typical weekday construction traffic would total 778 two movements. The majority of these would occur outside the traditional peak hour periods. The volumes of traffic associated with the construction period are considerably lower than those predicted once Tilbury2 becomes operational.
- 4.153 All construction vehicles (other than workers arriving and departing) would be managed and required to follow a pre-determined route. The primary aim would be to ensure construction vehicles remain on the strategic and primary highway network, for as long as practically possible. The routing would be controlled through the CTMP, Appendix 1 of the CEMP [REP6-008], which is agreed with TC and Highways England as set out in the final SoCG [PoTLL/T2/EX/209].

### Operational traffic

- 4.154 The methodology for assessing operational traffic impacts is set out in the Transport Assessment [APP-072] and Highways England agree that the TA has been prepared in accordance with DfT Planning Practice Guidance Travel Plans, Transport Assessments and Statements which supersedes the previous DfT WebTAG methodology in the "Guidance on TA" (NPSP, 5.4.4).
- 4.155 The traffic impacts of Tilbury2 were assessed based on the following worst case assumptions:
- No reduction in traffic to account for existing on site uses;
  - Inclusion of traffic associated with the Island site which no longer has a valid planning consent;
  - Worst case estimates of traffic generation with below average vehicle payloads;
  - Assumption that 100% of staff travel in single occupancy vehicles;
  - No allowance for the effect of the Active Travel Measure and Travel Plan;
  - No allowance for the effect of the Sustainable Distribution Plan; and
  - A sensitivity test which assumes all goods transported by road providing a 17% uplift in the total traffic generation estimates.
- 4.156 Both TC and Highways England have agreed the methodology, traffic generation and traffic modelling (TC at Deadline 1 in the updated SoCG [REP1-021]; and

Highways England in the same SoCG, with the exception of traffic generation, which was subsequently agreed on 10 May 2018 as noted in SoCG submitted at Deadline 4 [REP4-019]).

- 4.157 In terms of the effects on the highways network, two key junctions have been the subject of particular scrutiny:
- 4.158 The ASDA roundabout. Highways England and TC confirmed that the modelling of the impact of Tilbury2 on the operation of the ASDA roundabout was acceptable [REP4-019] and [REP1-021]. The agreed assessments demonstrate that the Tilbury2 proposals would result in an increase in traffic through this junction which is likely to have an impact upon its operation, particularly on A1089 St Andrew's Road and Thurrock Park Way. A review of road safety highlighted that managing vehicle speeds and improving pedestrian and cyclist facilities would have a beneficial effect. Accordingly a scheme of improvements has been agreed with HE and TC (as set out in the Statements of Common Ground with both parties [PoTLL/T2/EX/209] to improve the safe and efficient operation of ASDA roundabout comprising:
- changes in junction geometry to improve capacity and safety;
  - enhanced facilities for pedestrians and cyclists (including improved signage); and
  - changes to the speed limits on the approaches to and on the roundabout itself.
- 4.159 The agreed scheme of improvements is a modification of that submitted with the Transport Assessment [APP-072], which is consistent with the request of TC in their Local Impact Report [REP1-101, paragraph 7.8.8]. Amazon UK Services have made representation to the Examination [REP1-024, REP3-045 and AS-075] outlining concerns with the transport assessments, principally related to ASDA roundabout. The Applicant has engaged with Amazon's representatives to respond to all of their concerns. At Deadline 7, Amazon set out their continued concerns about queueing at the A0189 Dock Road approach to the Asda Roundabout, but have not set out any evidence to substantiate this concern. As their letter notes, Highways England and Thurrock Council have accepted the level of impact envisaged at the roundabout.
- 4.160 M25 J30. The chronology and approach of Highways England was set out in the Highway England Paper [AS-072] and the Highways England Paper Addendum [REP5-043]. On 17 May 2018 it was agreed that Tilbury2 would have no impact on two approaches to the junction: M25 Southbound and A13 Eastbound. The agreed traffic modelling demonstrates that the impact of Tilbury2 would be confined to the M25/A282 Northbound approach and the A13 Westbound approach. The Applicant maintains that the impact would be within acceptable levels. However, in agreement with HE minor changes to the road markings on each of these have been identified which in the Applicant's view provides enhancement. HE have agreed these improvements which in their view provide appropriate mitigation at M25 J30 [PoTLL/T2/EX/209]. These improvements are agreed in principle with HE and secured through Requirement 7 of the DCO.

#### Rail network

- 4.161 The Tilbury2 terminal is expected, based on robust assumptions, to receive up to three trains per day each way in aggregates (six movements in total), one train per day (two movements) for the RoRo terminal and a further rail movement in and out of the Tilbury2 site would be needed in association with the “Maritime” steel product interchange. The proposals are therefore assumed to generate a maximum of five trains per day (ten movements in total) entering and leaving the site.
- 4.162 The rail connection to Tilbury2 would use an existing siding, which would be extended to access Tilbury2. The existing siding already benefits from allotted freight pathways on the mainline rail network. Further, it has been confirmed by Network Rail [Appendix 1 to the Response to Relevant Representations [AS-049] that there are sufficient available pathways to accommodate up to 150 additional freight movements per day. Thus, the rail demand generated by Tilbury2 could be accommodated satisfactorily by the existing rail network with the ability to accommodate further growth in the use of this mode of transport.

#### Non-motorised travel

- 4.163 The effects arising from increased traffic from Tilbury2 are set out in the Landside Transport chapter of the Environmental Statement [APP-031]. The environmental impacts can be summarised as follows:
- 4.164 Construction: negligible residual impacts;
- Link Road: slight adverse residual impact upon severance, with all other effects at negligible levels; and
  - Operation: after mitigation, moderate residual beneficial effects upon pedestrian amenity and accidents and safety, with all other effects at negligible levels.
  - Overall, the residual environmental effects in terms of transport are not significant allowing for the mitigation measures embedded and associated with the proposals.
- 4.165 The construction of the proposed link road will result in the closure of the existing rail crossing along Footpath 144, which is supported by TC [REP1-101, 7.8.19]. Alternative routes for the pedestrians displaced as part of the closure have been identified, and it is proposed to improve these routes to enhance their attractiveness for pedestrians and cyclists as part of a wider package of improvements for pedestrians and cyclists which deliver net benefits for users. The measures have been developed in consultation with TC which supports them in principle [REP1-101, paragraph 7.8.18]. The measures are secured through the Active Travel Plan obliged to be delivered pursuant to the s106 with TC (PoTLL/T2/EX/216] and include:
- Provision of a shared footway/cycleway along infrastructure corridor;
  - New toucan crossing across Ferry Road at a location agreed with TC in response to LIR [REP1-101, paragraph 7.8.20];
  - Improved cyclist facilities from Brennan Road to Fort Road overbridge (provided in response to TC’s LIR [REP1-101, paragraph 7.8.24]);

- Improvements to Thames Estuary Path towards East Tilbury (details agreed in response to comments of TC in LIR [REP1-101, paragraph 7.8.22]);
- Resurfacing of Footpath 144 and Footpath 146;
- Diversion of Footpath 146 to achieve 2.0m headroom clearance at the proposed RoRo bridge;
- Enhancement of existing cycle crossing on Ferry Road;
- Provision of Wayfinding signs along main pedestrian and cycle routes; and
- Improvements to cyclist and pedestrian facilities at the Asda Roundabout.

4.166 In addition, the FTP [REP5-018] and SDP [REP5-020] will enable the demand generated by the proposals to be managed to maximise the use of sustainable modes of transport and make optimum use of existing and proposed transport infrastructure.

#### Conclusion

4.167 The Tilbury2 development will deliver improvements to the continued safe and efficient operation of the local and strategic highway network which will more than mitigate its impact. The Applicant has agreed to provide these improvements through appropriate requirements and obligations.

4.168 Thus, in accordance with the NPSP, (paragraph 5.4.10) development consent should not be withheld and limited weight should be applied to residual effects on the surrounding transport infrastructure.

## Waste

- 4.170 The ES assessed the potential impacts of waste arisings during the construction, demolition and excavation (CD&E) and operational phases on a set of defined receptors. For the purposes of the assessment the receptors were defined as:
- The waste arisings within the study area; and
  - The capacity of waste infrastructure within the study area.
- 4.171 With regards to waste, the study area was considered to extend outside of the area of the Scheme proposals to include CD&E (non-hazardous and inert waste) and operational (commercial and industrial (C&I)) waste arisings and waste infrastructure within Essex and hazardous waste arisings and waste infrastructure nationally (i.e. within England).
- 4.172 During the consultation process ECC and TC identified concerns regarding the use of Essex data as a proxy for the capacity baseline for Thurrock, and an alternative approach to deriving a baseline capacity for Thurrock for use in the impact assessment was agreed with TC and accepted by ECC: see Statement of Common Ground [REP3-28], TC - written submission following the Issue Specific Hearing on Socio-economic, Technical and other Environmental Matters of 19th April 2018 [REP3-038] and Essex County Council – Deadline 4 submission [REP4-015].
- 4.173 The potential impact of the scheme was then reassessed, as a sensitivity and validation exercise, using the criteria detailed in the ES and compared against the original impact assessment using an Essex baseline: see table below. The impact is considered of moderate significance when compared against the Thurrock baseline, which is a higher impact than when compared against Essex due to a smaller number of waste facilities in Thurrock compared to Essex. TC agrees that the impact of CD&E waste will be of moderate significance as detailed in TC’s Local Impact Report, March 2018 TR030003.

### Revised impact assessment

Region	Estimated Waste Arisings from Scheme (tonnes)	Waste 'Arisings' Baseline (tpa)	Percentage Change	Waste Infrastructure Baseline (tpa)	Percentage Change
Thurrock	185,375	2,400,000	7.7%	2,582,487	7.2%
Essex	185,375	3,620,000	5.1%	10,024,957	1.8%

## **Water quality, flood risk and WFD compliance**

- 4.175 The likely significance of effects on and from the development associated with water resources and flood risk has been assessed in Chapter 16 of the Environmental Statement [APP-031]. The assessment complies with the requirements of NPSP (para 5.25, 5.35 and 5.64).
- 4.176 Following the Environment Agency's Deadline 1 response [REP1-044 para 4.2 to 4.23], which was referenced by GBC in their LIR [REP-056 page 14], the Applicant produced an addendum to the FRA, which was submitted to the Examination at Deadline 1 [REP1-014], to supplement the Level 2 and Level 3 FRA that formed part of the initial submission (APP-086 and APP-087 respectively). These FRAs meet the requirements of the NPSP (para 5.2.5).
- 4.177 The proposed development is classified as a 'Water Compatible Development' in line with the Planning Practice Guidance and NPSP. The proposals can demonstrate satisfaction of the Sequential Test (NPSP para 5.2.13) as an appropriate location in a flood risk zone and would not necessarily need to consider the Exception Test. The satisfaction of the Sequential Test and there not being a requirement to undertake the Exception Test is agreed by TC [REP1-056 para 7.10.4]. However, even if not formally required, it is considered that the proposals would also pass the Exception Test [APP-086 section 4.2].
- 4.178 Residual risk from tidal flooding should a breach in the flood defences occur already exists for the Tilbury area and the Tilbury2 project will not alter the chance of this being experienced now or in the future. For the majority of the site, and offsite, the impact on flood risk is positive (i.e. a reduction in flood depth). Where there is an increase in flood depth, namely fields and a small area to the east of Tilbury Water Recycling Centre [REP1-014 Section 4], this was presented to the Environment Agency and the Applicant wrote to the affected landowners to notify them of the impact [as indicated in response to FWQ 1.19.20 [REP1-016]. The Applicant did not receive any objections (NPS para 5.2.11).
- 4.179 It is understood that the EA are content with the FRA and with flood risk issues generally and that any minor outstanding issues, such as culvert design and finished levels, can be dealt with through the protective provisions [SoCG004 sections 4.4 and 4.5 PoTLL/T2/EX/209]. This is also the position of TC who are satisfied that flood risk matters have been properly assessed by the submission (REP1-090 section 3.9, REP1-056 para 7.10.7 and SoCG001 para 4.14.1 and 4.14.2).
- 4.180 The Examination considered how the scheme will impact on the existing flood defence and the Applicant provided detail on how the Tilbury2 scheme will interact with the River Thames Flood Defences at Deadline 3 [REP3-024]. The Environment Agency are in agreement with the content of this report, as set out in the SoCG [PoTLL/T2/EX/209].
- 4.181 A drainage strategy has been developed for the site [APP-090] and secured through the DCO which includes the adoption of SuDS techniques to mitigate the impact on the current run-off regime (4.4 and 6.3). The strategy limits flows to Greenfield run-off levels when discharging to existing watercourses excluding large tidal water bodies (4.7, 6.2 and 6.4) and also takes into account climate change (3.1).

- 4.182 Consideration for potential contamination of the watercourses via run-off generated on site has been made in the assessment with the inclusion of potential mitigation measures and recommendations. Pollution prevention and mitigation measures to be implemented have been provided in the CEMP [REP6-008] and agreed with the Environment Agency (SoCG004 para 4.5.6) and TC (REP1-056 7.10.8 and subsequently SoCG001 paras 4.14.3 to 4.14.7).
- 4.183 A Water Framework Directive assessment of potential impacts on the River Thames marine environment has been prepared and is presented in Appendix 16C of the ES [APP-088]. Reasoning for not including priority and priority hazardous substances was explained at ISH of 19th April 2018 (REP3-030 item 19.6). It is agreed with the Environment Agency that the WFD assessment is acceptable (SoCG004 para 4.1.2 and 4.1.3). The Applicant and Environment Agency also agreed that cumulative effects of Tilbury2 and the proposed Tilbury Energy Centre (including potential effects to water quality) have been considered within this stage of consultation, as far as possible with the existing information (SoCG004 para 4.7.2). Accordingly the proposals have been shown to be consistent with the requirements of the Water Framework Directive.
- 4.184 The Applicant undertook a hydrodynamic sediment modelling [APP-089] to assess the impact on coastal change (NPS para 5.3.5) and this demonstrates that the effect will be negligible.
- 4.185 Proposed mitigation measures are provided in Section 9 of the Construction and Environment Management Plan (CEMP) [REP6-008] and Section 9 and 10 of the Operational Management Plan (OMP) (RE6-0262) which are secured through Schedule 2 of the DCO (PoTLL/T2/EX/203). This includes compliance with the recommendations set out in the FRA. Further controls to protect water quality are secured in the DML through the establishment of an exclusion zone for capital dredging during construction around the area of higher concentration of contaminants.
- 4.186 The assessment concluded that provided the mitigation measures discussed above are implemented, potential impacts on water quality, flood risk, coastal change and water resources are likely to be minor or negligible and thus no further mitigation or compensation is deemed to be required. No residual impacts are identified by the assessment.

## **Dredging and navigation**

- 4.187 Chapter 11 of the ES assesses the effects upon the marine environment from the proposed dredging including the release of contaminants [Environmental Statement, APP-031]. For this assessment a baseline was established through a combination of research methods including desk-based analysis, numerical modelling [Hydrodynamic Sediment Modelling, APP-089], and physical sampling [Benthic Survey Report, APP064; Sediment Contamination Results; APP-065].
- 4.188 The baseline study identified the presence of contaminants in the sediments to be dredged, and a recommended Marine Conservation Zone (MCZ) located 5km upstream of the proposed development, being recommended for the presence tentacled lagoon worm - a benthic species of conservation importance. Additionally, the study found that the section of the River Thames where the proposed development would take place is used by fish species of international importance (i.e. Atlantic salmon/smelt, allis shad, river lamprey) as well as by some marine mammals.
- 4.189 Discussions with NE, the EA, and the MMO resulted in the agreement for the Applicant to adopt a set of mitigation measures specifically designed for the protection of each marine ecology against potential effects from dredging. The main mitigation measures are set out in the following paragraphs.
- 4.190 To mitigate against dredged sediments potentially smothering tentacled lagoon worms in the MCZ upstream, water injection dredging - the worst-case scenario contemplated for capital or maintenance dredging in terms of suspended sediments- will be undertaken during ebb tide only; this is secured in the CEMP [REP6-008] and OMP REP6- 026].
- 4.191 To mitigate against suspended sediments from dredging affecting marine species during the summer months, when water levels are lower and there is less oxygen availability in the water, water injection dredging will not take place during the months of June to August inclusive; this is secured in the DML [PoTLL/T2/EX/203].
- 4.192 The capital dredging was assessed against each marine receptor in the different sections of Chapter 11 of the ES [Environmental Statement, APP-031] and in the WFD assessment [ES-Appendix 16:C, APP-088]. Furthermore, dredging was assessed against effects on protected European sites and species, particularly, sedimentation in the intertidal habitats within or functionally related to the European/Ramsar Site designations [Update HRA Stage 2 Report PoTLL/T2/EX/214].
- 4.193 Where higher levels of contaminants were found in the sediments (above CEFAS Action level 1, but below Action level 2), an exclusion zone was established, in which no hydrodynamic dredging can take place; this is secured in the DML [PoTLL/T2/EX/203]. The sediments within the exclusion zone will not be removed by hydrodynamic dredging methods but by other methods instead, such as backhoe dredging, and the material will be disposed at a suitable disposal site informing the MMO of the location and quantities of material disposed of each month.
- 4.194 During the examination, Historic England expressed concerns that dredging could cause changes to the foreshore of Tilbury Fort in the form of erosion or accretion [REP3-044]. The predominant dredging method to be used is water

injection dredging, which would retain sediments within the estuary system and thus benefit the natural coastal processes as supported by the EA [Recording of ISH, EA expert, time 4:00:40-04:01:21, EV-011]. The hydrodynamic modelling showed that dredging would not result in noticeable coastal change. A consequence of the water injection dredging methodology is that the sediment plume is predicted to mostly be confined to the subtidal areas with limited increase in suspended sediment concentration or sediment accumulation on the intertidal areas. The simulations have shown that the landward extent of any influence of the dredging can be significantly limited by dredging being restricted to the ebb tide [Hydrodynamic Sediment Modelling, Summary (page 6 of the pdf), APP-089]. The sediment modelling results show that there will be no perceivable changes to the foreshore of Tilbury Fort nor to the rest of the River Thames.

- 4.195 During the examination, CEFAS requested further assessment of potential effects to marine receptors (fish, invertebrates, plankton) [MMO Deadline 1 Submission, paragraph 3.6 and Annex I FWQ1.9.4, REP1-073]. The Applicant provided responses, and CEFAS stated that they are largely satisfied that their comments have been addressed [MMO Deadline 2 Submission, paragraph 4.1.3, REP2-012; MMO Deadline 5 Submission, paragraph 2.3, REP5-056].
- 4.196 The Thames Maintenance Dredging Protocol was used to inform the ES, and the proposed maintenance dredging of Tilbury2 will be added to the next iteration of this document. For the specific protection against sedimentation, scouring or other changes in the flow regime of the River Thames caused by the construction works (such as capital dredging), the PLA holds protective provisions for effective remediation.
- 4.197 As noted above, Water Framework Directive Assessment - which included the assessment of effects from dredging - was included in the ES [WFD Assessment - Appendix 16:C, APP-088], and the EA agreed this was acceptable [PoTLL/T2/EX/209].
- 4.198 The South East Marine Plan is under development, but the Applicant considered the Marine Policy Statement in the PPCS [PoTLL/T2/EX/210], the overarching policy document for marine planning, which is the MMO's advised approach where marine plans have not yet been adopted. The careful consideration taken in the ES in regard to MCZs, sampling protocols, effects from capital and maintenance dredging, suitable disposal of dredged material, WFD, and the consultation with the MMO, EA and PLA as competent authorities, are in line with the requirements of the UK Marine Policy Statement, and supports its high-level objectives.
- 4.199 Similarly, the above-mentioned considerations taken in the ES and the mitigations measures developed in partnership with the relevant Government regulating bodies, are in line with the NPSP and specifically satisfy the NPSP requirements 5.1.13, 5.1.22 to 5.1.25, and the requirement 5.3 on coastal change, implications on coastal plans and strategies, and effects on marine ecology, biodiversity and protected sites [PoTLL/T2/EX/210].
- 4.200 The limited scope for negative effects to arise from dredging, is a result of selection of best dredging methods, continuous dialog with relevant stakeholders and the consequent careful consideration and establishment of appropriate mitigation measures secured in through the ES, CEMP, OMP, and DML.

- 4.201 Tilbury2 works are located outside the main navigational channel and as such, the assessment of impacts to marine navigation in respect of the Tilbury2 development is limited to that on the navigable River Thames, in the immediate vicinity of the proposed works.
- 4.202 The increase in vessel traffic from the operation of Tilbury2 is anticipated to be approximately 10.5%. A Navigation Risk Assessment (NRA) of vessel operating at the proposed new Port was produced in cooperation with the PLA [ES - Appendix 14: A, APP-075]. The NRA methodology followed is the process preferred and used extensively by the PLA themselves, which is based on guidance published by the International Maritime Organisation (IMO) in MSC/Circ.1180-MEPC/Circ.474 and MSC-MEPC.2/Circ.5.
- 4.203 The main stakeholders for navigation matters were consulted: PLA, Maritime and Coastguard Agency, Trinity House, MMO, and GBC.
- 4.204 The ES included an assessment of the impact from the new Port and the resultant additional navigation matters on tourism. Consideration of the impact of the proposals on users of footpaths and Tilbury Fort is primarily contained within Chapter 9: Landscape and visual amenity, within the ES. The Navigational Risk Assessment concluded that the proposals will have no bearing on the Tilbury-Gravesend ferry operations as the ferry jetty is upstream of Tilbury2 and approaching RoRo and aggregate vessels will turn downstream and adjacent to the berth, thus there will be no interface with the Tilbury-Gravesend ferry brought about by berthing or unberthing operations. The s106 DCO obligation with TC includes a contribution to improving real time information at the Ferry Terminal. Further implications from the Port to tourism are addressed in the Socio-economics section and Historic Environment section (Tilbury Fort).
- 4.205 The Applicant has proposed to actively engage with the affected recreational sailing and rowing clubs to keep them advised of the Tilbury2 developments [Operational Community Engagement Plan, REP5-004].
- 4.206 Navigation has been submitted to a rigorous Navigational Risk Assessment undertaken with the PLA and in line with the IMO guidelines, and is not expected to result in detrimental effects to other users of the River Thames. The proposal is in line with the NPSP requirement in paragraph 4.6.
- 4.207 The ExA can also be satisfied that in light of the Applicant's assessment of the proposals for dredging and the impacts on navigation, the need to prevent interference with legitimate uses of the sea has been adequately addressed (Infrastructure Planning (Decisions) Regulations 2010/305, reg. 3A).

## 5.0 COMPULSORY ACQUISITION

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- 5.1 The Scheme involves a limited amount of proposed compulsory acquisition and temporary possession of land. Part of the land proposed to be compulsorily acquired is common land, and some of the land is owned by statutory undertakers, and is therefore subject to special protection under the Planning Act 2008.
- 5.2 The Statement of Reasons [PoTLL/T2/EX/217] explains the case for the powers of compulsory acquisition of land to be granted to the Applicant explaining that, with reference to the tests set out under the Planning Act 2008 and MHCLG Guidance:
- there is a compelling case in the public interest for the Scheme as explained in the Outline Business Case and summarised in the second section of this Closing Statement;
  - the land proposed for acquisition is required for the Scheme, for the reasons given in Appendix A to the Statement of Reasons;
  - an options assessment has been carried out for the design of those aspects of scheme which necessitate the compulsory acquisition and temporary possession proposals, namely the infrastructure corridor and works in the river;
  - negotiations had, at the time of application, been taking place with landowners such that the use of compulsory acquisition powers would be the 'last resort';
  - there is no 'serious detriment' caused to the land owned by statutory undertakers affected by the Scheme; and
  - sufficient 'replacement land' is included within the Scheme proposals to replace the common land to be lost as a result of the Scheme.
- 5.3 Following on from this, the Funding Statement [APP-019] and [AS-014] demonstrates that sufficient funds are in place to compensate persons affected by the use of compulsory acquisition powers. Following queries raised by the Examining Authority at the 20 April Compulsory Acquisition hearing, the Applicant's Director of Finance submitted a letter to the Examination [REP3-025] confirming the arrangements which would be put in place within the Forth Ports Group (parent company of the Applicant) to support this.
- 5.4 Notwithstanding the Applicant's view that the case for temporary possession and compulsory acquisition powers is made out, it has continued to proactively negotiate with land interests to attempt to reach a voluntary agreement for the transfer of land and the withdrawal of objections to the powers where they have been raised.
- 5.5 The Applicant has submitted trackers at Deadlines 3, 4, 5 and 6 of the Examination to keep the Examining Authority up to date with these negotiations. At Deadline 7, the Applicant can confirm that the position with the parties it has been negotiating with is as follows:

- Following representations by Buglife, Natural England and Historic England, temporary possession plot 03/05 was removed from the Scheme (see revised Land Plans [REP5-006], and Book of Reference [PoTLL/T2/EX/219]).
- Highways England's objection to the use of temporary possession powers has now fallen away (see their SoCG – [PoTLL/T2/EX/209]).
- The Applicant has made it clear that it does not intend to acquire any of RWE's existing proprietary interests at Tilbury2 [REP2-007, REP3-031, REP5-013, REP6-015]. RWE's contractual rights to access the jetty are maintained, and RWE will have additional protection through the protective provisions included in the DCO.
- Cole Family: Negotiations have been concluded with the Coles (Diana Finnis (nee Cole) and James Andrew Cole, the owners of the common land and C H Cole & Sons Mill House who claim ownership to the common rights) (the **Coles**) and an option was exchanged on 9 July 2018 to acquire the permanent land (03/08 and 03/11) and to take a 6 year lease of the temporary land (03/07) which is to be used as a works compound. The option is exercisable by the Applicant upon the making of the Order and consideration has already been paid. The Coles have issued a letter withdrawing their objection to the Order (appended to the Applicant's response to the Examining Authority's Rule 17 request [PoTLL/T2/EX/222]).
- Anglian Water: Negotiations with Anglian Water Services Limited have been concluded and the terms of an agreement have been settled for the Applicant to acquire the jetty owned by Anglian Water Services Limited (**Anglian jetty**) which is within the Order limits. The documents have been engrossed and signed by the Applicant. The counterpart documents are currently with Anglian for execution and are going through their signing processes. Once exchanged the Applicant takes over responsibility for the Anglian jetty and is obliged to apply to the Port of London Authority for the river works licence for the Anglian jetty to be transferred into the name of the Applicant. Anglian Water Services Limited have issued a letter withdrawing their objection to the Order (appended to the Applicant's response to the Examining Authority's Rule 17 request [PoTLL/T2/EX/222]).
- NGET and Cadent: Sufficient progress has been made on the protective provisions for both parties to enable them to withdraw their objections to the Scheme. Copies of these withdrawals are appended to the Applicant's response to the Examining Authority's Rule 17 request [PoTLL/T2/EX/222].
- Mr.Gothard: terms are now agreed with Mr Gothard for the acquisition of Mr Gothard's land within the Order limits (03/10) and solicitors have been instructed and have acknowledged their instructions. Solicitors are instructed to draft the documentation to deal with the grant of an option to

the Applicant for the purchase of this land once the Order has been made. The documents will not be finalised by Deadline 7 but will be completed as soon as possible thereafter and DfT will be informed once agreement is reached. Mr Gothard's agent Strutt & Partner wrote to the Planning Inspectorate on 10 August 2018 confirming that all objections by Mr Gothard and his company to the Order will be withdrawn to the DfT when the contracts for the acquisition are exchanged. This letter is also appended to the Applicant's response to the Examining Authority's Rule 17 request [PoTLL/T2/EX/222].

- Vodafone: The Applicant is in dialogue with Vodafone and has agreed the location to which the Vodafone mast is to be relocated. Vodafone will be able to access their mast from the newly created highway linking Fort Road and the infrastructure corridor - the DCO provides for a private means of access to their apparatus from the new highway.
- Thurrock Council: negotiations are well advanced with the Council for the acquisition of their land within the Order limits (03/04 and 03/04a) and part of this land 03/04a is to be used as the replacement land to take the transfer of the common rights when the common land is purchased from the Coles. The document will not be finalised by Deadline 7 but will be completed as soon as possible thereafter and DfT will be informed once agreement is reached. The Applicant would also note that the Council has not submitted an objection to the Applicant's compulsory acquisition proposals.
- The Crown: terms are agreed with the Crown for the leasing of this area for the siting of part of the new Tilbury2 Jetty. The Crown have instructed solicitors and work is underway on the form of Agreement and Lease which will also enable the Crown to issue a section 135 consent. These documents will not be finalised by Deadline 7 but will be completed as soon as possible thereafter and DfT will be informed once agreement is reached.
- Network Rail: As set out in the shared position statement at Deadline 7 (included within the SoCG report: [PoTLL/T2/EX209]), protective provisions and DCO drafting generally have been agreed by the parties. Drafting is well advanced in relation to a framework agreement and draft transfer, and it is anticipated that whilst the paperwork will not be finalised by Deadline 7 to enable Network Rail to withdraw their objection, it will be completed as soon as possible thereafter and DfT will be informed (and objections withdrawn) once agreement is reached.
- PLA: The Applicant has agreed an Agreement for Lease and Lease with the Port of London Authority to lease areas of the bed and foreshore of the River Thames which are within the Order limits (06/05a, 06/06, 06/08, 06/10, 06/11 and 06/12), and these documents are out for signature with all parties and are anticipated to be complete by the end of the Examination. A Tripartite agreement involving PoTLL, the PLA and RWE is also agreed in principle at

Deadline 7. It is not likely that this agreement will be signed by all parties prior to the end of Examination, however, but the Applicant will keep the DfT informed as to progress with its completion.

- 5.6 It is therefore the case that all objections to the compulsory acquisition proposals within the DCO should be able to be withdrawn prior to the Secretary of State's decision on the DCO application. So far as there are outstanding objections, the case for compulsory acquisition is firmly made and the ExA can report that the conditions in s 122(2) and (3) Planning Act 2008 are met.

## 6.0 DCO

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- 6.1 The Applicant's Deadline 7 submissions include, as requested, a number of documents which explain how the DCO has changed over the course of the Examination. As such, this section of this statement highlights the Examination submissions that are relevant to issues that have been the subject of discussion consistently throughout the Examination.
- 6.2 Articles 3 and 4 have been the subject of discussion at all DCO hearings and in the submissions of PoTLL, RWE and the PLA as they have dealt with complex issues of overlapping legal regimes. However, the Applicant can confirm that the drafting of these articles, and the associated Works Plan (sheet 3) [PoTLL/T2/EX/224] is now fully agreed between the parties at Deadline 7.
- 6.3 Highways England and TC have queried the use of the streets and highways powers in Part 2 of the DCO (and their associated Schedules) and article 52 (traffic regulation measures) and the interaction of these powers with their protective provisions and usual duties as highways authority:
- It is now reported in the SoCG with Highways England [PoTLL/T2/EX/209] that both parties understand that the use of these powers by PoTLL is subject to Highways England's protective provisions. The use of Traffic Regulation powers is also agreed, with the consequential potential need for speed cameras agreed to be a matter for detailed design.
  - For TC, its comments at Deadline 5 and 6 [REP5-051 and REP6-021] indicate that it either agrees with these provisions, or the change requested has been made by the Applicant in the DCO since that submission (e.g. bridge maintenance period of 24 months in article 10).
- 6.4 The MMO has raised concerns as to the power to undertake dredging granted by article 43 of the DCO, and in particular paragraph (5) which provides that such activities are excluded from the definition of licensed activities (and therefore not controlled through the DCO). The Applicant's explanation for this is set out in the Explanation of Changes to the DCO submitted to the June hearings [AS-067]. The MMO have agreed with this explanation in their SoCG [PoTLL/T2/EX/209].
- 6.5 The Examining Authority and interested parties have raised a number of queries as to the appropriateness in ES terms of the DCO providing the Applicant with permitted development powers, and relatedly, why article 41 is additionally needed if permitted development powers exist. These issues were fully dealt by the Applicant in the two Issue Specific Hearings on the DCO, where at both hearings TC also confirmed that PD rights at the existing port do not lead to the creation of unassessed environmental effects [REP1-015, REP4-020 (in response to question 2.8.28) and REP5-015). Further detail on the second issue was also provided at Appendix 6 of REP6-036.
- 6.6 The Examining Authority raised a number of queries as to the structure and content of Schedule 1, and the Applicant has made a number of changes to reflect the queries raised. The one major change that the Applicant has and continues to resist is in relation to paragraphs (v) and (x) of the 'catch-all' at the end of the Schedule, which the Examining Authority has suggested for removal.

The Applicant's position is that these should be retained in line with recent precedents such as the Silvertown Tunnel Order 2017 and to ensure that the authorised development can be built in the face of unexpected obstacles. The Applicant's case on this point is made in [REP1-015], [REP4-020], [REP5-015] and [REP6-031].

### *Requirements*

6.7 The wording of particular (but not all) requirements in Schedule 2 to the DCO have been the topic of submissions within the Examination; however it is considered by the Applicant that the wording of all of the requirements can be considered to be acceptable and agreed (where relevant) with stakeholders. Of particular note are the following:

- Requirement 3: Thurrock, Historic England and the Examining Authority requested that more items of development be added to this requirement, to which the Applicant agreed. In its response to Thurrock's Written Representation [REP2-007], the Applicant explained that it would not be suitable for the requirement to refer to 'design' or 'external' appearance of the buildings controlled by this requirement as the design of the buildings on site will predominantly be dictated by functional operation (for instance a concrete manufacturing plant needs to have specific features to operate). The LVIA for the proposals has already assessed a worst case of a solid block across the site, and so the detailed design will be an improvement on this. This was accepted by Thurrock in their Deadline 4 response (REP4-005). Further discussion with Historic England also led to the development of the colour palette referred to in this requirement.
- Requirement 5: Both Natural England and the Environment Agency wanted the Ecological Mitigation and Compensation Plan to be in a position to be certified at the end of Examination. This has been achieved and the requirement now refers to that document.
- Requirement 7: It has always been accepted that works to Asda roundabout would need to be undertaken prior to opening of the CMAT and RoRo terminals. Following comments from Thurrock at the June hearings, this has been extended to also include the main elements of the infrastructure corridor. The requirement has also been extended to cover M25 J30 works that the Applicant has now agreed with Highways England it will pay the cost of. The wording of this is agreed between the Applicant and Highways England save for the provision of a cap for the costs involved. The need for this cap is explained in the Applicant's response to the Examining Authority's Rule 17 request [PoTLL/T2/EX/222].
- Requirement 9 (noise barriers): The Examining Authority queried whether this requirement should be adapted to specify exactly where the noise barriers should be located. The Applicant gave its reasons in [REP1-015 (response to 74(e))] and [REP3-029] why this would not be appropriate in design and

environmental terms. TC indicated its support for the approach set out in the DCO in its response to SWQ 2.16.7 [REP4-005].

- Requirement 10 (noise mitigation): This requirement has developed over the course of the Examination to take into account the comments of TC and GBC in hearings and written submissions. The Applicant's submissions on the appropriateness of this requirement and the associated compliance with the OMP secured by requirement 11 as the suitable method of controlling noise at Tilbury2, rather than any further requirements, is set out in the Deadline 5 [REP5-030], 6 [REP6-031] and 7 [PoTLL/T2/EX/224] Noise Resume Papers.

### *DML*

- 6.8 The deemed marine licence has been the subject of on-going discussion between the Applicant and the MMO. As set out above at paragraph 6.4 the MMO has raised concerns as to the power to undertake dredging granted by article 43 of the DCO, however this has now been agreed between the parties and as a result it was agreed that maintenance dredging is not included as a licensable activity in the DML (SoCG [PoTLL/T2/EX/209]). A number of points in the DML have been tweaked during the course of examination as agreed between the parties. The details of licensable activities in condition 3 now include a list of activities which form the authorised development primarily for the ease of reference of a reader of the DML and in order to reflect the MMO's preferred practice. A sweep is also included which states: "and any other element of the authorised development as defined by article 2 of the Order" in order to ensure that no activity is missed.
- 6.9 The Applicant and the MMO are agreed on all provisions of the DML save for the arbitration clause. That clause is a procedural rather than substantive matter. The MMO maintains that this should not be included however the Applicant disagrees. It is important to note that, should the Order be made, it will be because the Secretary of State deems it in the public interest that the development should occur. The Order will contain a deemed marine licence put in place by the Secretary of State, not a marine licence granted by the MMO in the ordinary course. As such, any questions of interpretation should not be left to the MMO's sole discretion as might be the case with other marine licences, with the only remedy for the Applicant in circumstances where there is disagreement being for it to seek judicial review of the MMO (with the limitations of judicial review meaning that there would be no consideration of any substantive questions). Instead it is appropriate that any disputes be referred to the arbitration provided as that will allow for any disagreements as to interpretation to be considered in the round in the context of the Order (and its underlying public interest) as a whole. The MMO position in general is not prejudiced; the proposed clause makes it clear that it is not to be taken, or to operate so as to, fetter or prejudice the statutory rights, powers, discretions or responsibilities of the MMO

### *Protective Provisions*

- 6.10 At Deadline 7, the Applicant can confirm that the position on each set of Protective Provisions as set out in the Deadline 7 DCO is as follows:

<b>Protective Provisions</b>	<b>Status</b>
Part 1: Electricity, Gas, Water and Sewerage Undertakers	Agreed
Part 2: Electronic Communications Code Networks Operators	Agreed
Part 3: PLA	Agreed
Part 4: Environment Agency	Agreed
Part 5: Thurrock Council as Drainage Board	Not yet fully agreed. Discussions between the parties are on-going with the aim of reaching an agreed position by the close of Examination.
Part 6: Network Rail	Agreed
Part 7: Thurrock Council as Highways Authority	Not yet fully agreed. Discussions between the parties are on-going with the aim of reaching an agreed position by the close of Examination.
Part 8: Anglian Water	Agreed
Part 9: Highways England	Not yet fully agreed. This is fully explained in the Applicant's response to the Examining Authority's Rule 17 request [PoTLL/T2/EX/222].
Part 10: RWE	Wording agreed as in DCO but RWE is also seeking additional wording. This is fully explained in the Applicant's response to the Examining Authority's Rule 17 request [PoTLL/T2/EX/222].
Part 11: Cadent	Agreed
Part 12: NGET	Agreed

## 7.0 CONCLUSION

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- 7.1 These proposals are firmly in accordance with the NPSP and accordingly benefit from the presumption in favour of the grant of development consent in s104(3) Planning Act 2008. There is nothing in s104(4) to (8) to suggest that development consent should not be granted.
- 7.2 By providing new port infrastructure they will meet the general need for such development as identified in the NPSP. They will also meet specific identified needs for this type of port facility, in this location. They will do so on previously developed land, close to the existing Port of Tilbury. The proposals will deliver significant economic benefits at a local, regional and national level. There will be over 500 new jobs and much greater benefits to the wider economy.
- 7.3 It is unsurprising that the proposals benefit from extensive support from local people and statutory bodies, including the local planning authority. It is notable that the level of objection for a proposal of this scale is low.
- 7.4 The impacts of the proposal have been carefully assessed in accordance with the principles in the NPSP and the relevant statutory requirements. The Applicant's assessment is mostly unchallenged, and most of the challenges have been resolved. For instance, through thorough negotiation and agreed mitigation measures, there are no material outstanding issues regarding traffic and transport. Where questions as to the adequacy of the Applicant's assessment have been raised (e.g. in respect of cumulative effects) the criticisms have been proportionately addressed through submissions.
- 7.5 Those areas where there are outstanding issues do not approach justifying the withholding of development consent. Where there are adverse impacts, they are substantially outweighed by the benefits of the proposals:
- a. The negative effects on the brownfield ecological interests of the site are largely offset by a comprehensive mitigation and compensation programme, which is now fully secured and shown to be deliverable;
  - b. Despite some residual assessment concerns, Natural England is satisfied that any impacts on European sites do not result in adverse effects on site integrity. The Applicant's HRA is not disputed on any evidenced basis;
  - c. Whilst having regard to the desirability of preserving the setting of Tilbury Fort, the harm to its setting is agreed to be less than substantial, is reduced by the heritage benefits secured by way of mitigation, and is outweighed by the very significant benefits of the scheme;
  - d. The noise impacts of the scheme are not suggested to give rise to a reason for withholding consent. The Applicant's undisputed expert view is that its noise management proposals are suitable and appropriate, and that those advanced by GBC are un-evidenced, unenforceable and unreasonable. If the contrary view is adopted, that is a matter addressed through the terms of the DCO, and not through the refusal of development consent; and

- e. the limited amount of compulsory acquisition proposed is justified by the compelling case in the public interest as identified in the Statement of Reasons [PoTLL/T2/EX/217], and the conditions for compulsory acquisition in s 122 PA 2008 are met. In any event PoTLL has reached at least Heads of Terms stage with all affected owners of land proposed to be acquired, such that all compulsory acquisition objections will be able to be withdrawn prior to the Secretary of State's decision on the application.

7.6 No statutory consultee asks for development consent to be refused. Many support the scheme. Development consent should very clearly be granted in the terms sought.