

PLANNING ACT 2008
INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE)
RULES 2010

PROPOSED PORT TERMINAL AT
FORMER TILBURY POWER STATION

TILBURY2

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EXPLANATORY MEMORANDUM - TRACK
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**INFRASTRUCTURE PLANNING
PLANNING ACT 2008
THE INFRASTRUCTURE PLANNING
(APPLICATIONS: PRESCRIBED FORMS AND
PROCEDURE) REGULATIONS 2009
THE PORT OF TILBURY (EXPANSION) ORDER**

EXPLANATORY MEMORANDUM

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1. **SUMMARY**

- 1.1 This memorandum explains the purpose and effect of each article of, and Schedules to, the draft Port of Tilbury (Expansion) Order ("the Order"), as required by Regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009¹.

2. **PURPOSE OF ORDER**

- 2.1 Port of Tilbury London Limited ("PoTLL") is applying to the Secretary of State for Communities and Local Government for an Order to authorise the construction, operation and maintenance of a new port terminal and associated facilities in Tilbury, Essex known as 'Tilbury2' ("the Scheme").

- 2.2 The Scheme comprises a new port terminal and associated facilities on the north bank of the River Thames at Tilbury in Essex, a short distance to the east of the existing Port of Tilbury.

- 2.3 The proposed main uses on the site will be a Roll-on/Roll-off ("RoRo") terminal and a Construction Materials and Aggregates terminal ("the CMAT"), and associated infrastructure including rail and road facilities and modifications to the existing marine infrastructure. An 'infrastructure corridor' is proposed that will accommodate road and rail links to the existing rail and road network. The CMAT will include stockpiling of construction materials and some processing of aggregates for the production of asphalt and concrete products.

- 2.4 The Scheme will require works including, but not limited to:

- 2.4.1 creation of hard surfaced pavements;
- 2.4.2 improvement of and extensions to the existing river jetty including creation of a new RoRo berth;
- 2.4.3 associated dredging of berth pockets around the proposed and extended jetty and dredging of the approaches to these berth pockets;
- 2.4.4 new conveyors and material handing;
- 2.4.5 erection of welfare and ancillary buildings;
- 2.4.6 erection of a single 10,200 sqm. warehouse;
- 2.4.7 a number of storage and production structures associated with the CMAT;
- 2.4.8 the construction of a new link road from Ferry Road to Fort Road; and

¹ S.I. 2009/2264

2.4.9 formation of a rail spur and sidings.

- 2.5 The proposed volumes of import/export of RoRo units and aggregate through the CMAT (which together form the harbour facilities) for the Scheme exceed the ~~threshold of 250,000 units~~ thresholds stated in section 24 of the Planning Act 2008 ("the Act") for throughput per annum. The RoRo would be an NSIP alone as it exceeds the quantity test of 250,000 units stated in section 24(3) of the Act. The throughput capacity of the CMAT is classed as cargo as opposed to container or RoRo and as such the harbour facilities, being facilities for more than one type of ship mentioned in section 24(3)(a) to (c) of the Act exceed the required 'equivalent quantity'. The harbour facilities elements of the Scheme therefore constitute a Nationally Significant Infrastructure Project ("NSIP") for the purposes of sections 14(1)(j) and 24 of the Act and must be consented by way of a Development Consent Order ("DCO").

Associated development

- 2.6 The Order also specifically authorises development which is associated with the NSIP. The Secretary of State may, under the provisions of section 115 of the Act, grant consent for development that is associated with the NSIP.
- 2.7 Guidance on associated development has been issued by the Secretary of State for Communities and Local Government². In this guidance, associated development is described as being “*typical of development brought forward alongside the relevant type of principal development or of a kind that is usually necessary to support a particular type of project*” and “*requires a direct relationship between associated development and the principal development. Associated development should therefore either support the construction or operation of the principal development, or help address its impacts. Associated development should not be an aim in itself but should be subordinate to the principal development.*”
- 2.8 The Order seeks consent for development which would constitute associated development. This includes:

~~2.8.1~~ — ~~the construction of the CMAT;~~

2.8.1 ~~2.8.2~~ the construction of warehousing;

2.8.2 ~~2.8.3~~ the construction of new sections of highway;

2.8.3 ~~2.8.4~~ the construction of a new section of railway;

2.8.4 ~~2.8.5~~ diversion of utilities apparatus, including gas and water pipelines and electrical cables; and

² “Guidance on associated development applications for major infrastructure projects” (Department for Communities and Local Government) (April 2013).

2.8.5 ~~2.8.6~~ environmental mitigation measures.

2.9 In some cases there may be some overlap between associated development and the works which form part of the NSIP. All elements of the Scheme either constitute part of the NSIP or are “associated development” within the meaning of section 115(2) of the Act, and so can properly be authorised by the Order.

3. **SUPPLEMENTAL POWERS**

3.1 The Order also contains provision for a wide range of powers to support the Scheme but which would not in themselves constitute development.

3.2 It seeks to apply and modify statutory provisions in relation to the compulsory acquisition of land. It is for this reason that under sections 117 and 120(5) of the Act the Order is made by Statutory Instrument.

3.3 The Order also includes a number of provisions relating to the operation of the Scheme in the context of the regimes under the Port of London Act 1968 applying to the existing Port of Tilbury. This is to ensure operational consistency between the Scheme and the existing Port.

3.4 Other powers for which the Order makes provision include the diversion and stopping up of lengths of existing highways in the vicinity of the Scheme, the designation of highways, the stopping up of private means of access and the creation of new private means of access, and the application and disapplication of legislation relating to the Scheme.

4. **DRAFT ORDER**

4.1 The purpose and effect of the provisions of the Order are now explained in sequence. Whilst the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009³ has lapsed, the Order is broadly based on those model provisions (general and railway), as well as precedents in DCOs and relevant Orders under the Transport and Works Act 1992 and the Harbours Act 1964 that have been made to date.

5. **PART 1 – PRELIMINARY**

Article 1 – Citation and commencement

5.1 Article 1 sets out the name of the Order.

Article 2 – Interpretation

5.2 The purpose of article 2(1) is to define terms used in the Order.

5.3 The definition of “authorised development” encompasses the development authorised by the Order and should be read in that context

³ S.I. 2009/2265

in this memorandum. This includes not just the development listed in Schedule 1 to the Order, but also any other development or operations authorised by the Order (e.g. certain surveys, depending on their nature, could constitute development) by applying the relevant definition in the Act.

5.4 The following definitions in particular have been included due to the nature of the Scheme:

5.4.1 “the 1984 Act”;

5.4.2 “the 1991 Transfer Scheme”;

5.4.3 “the Port of Tilbury”; and

5.4.4 “vessel”.

5.5 Other definitions to note include:

5.5.1 “commence” which makes clear that a number of works that would constitute a "material operation" under the Town and Country Planning Act 1990 do not mean that the authorised development has been "commenced". The effect of the definition is that certain 'carved out' works (including non-intrusive investigations for the purpose of assessing ground conditions) can be carried out prior to the requirements contained in Schedule 2 to the DCO being discharged. The ability to do this is of critical importance to PoTLL in the context of the envisaged construction programme. It is considered that the works that are 'carved out' would not have any impact on the effectiveness of the requirements from an environmental protection perspective. PoTLL is particularly keen to draw the Examining Authority's attention to the importance of retaining this definition in the context of the definition of 'commence' deleted by the Secretary of State when the A160/A180 (Port of Immingham Improvement) Development Consent Order 2015 was made. Highways England (the promoter of that scheme) drew the Secretary of State's attention to the consequences of this and a Correction Order was made, amending some of the requirements, and it was recognised by the Secretary of State in the Correction Notice that the deletion of the definition of 'commence' had *'the unintended consequence of removing an acceptable degree of flexibility in the implementation of the project and that this is a correctable error for the purposes of Schedule 4 to the Planning Act 2008'*;

5.5.2 “extended port limits” introduces the area (by reference to the [harbour extended port](#) limits plan) within which PoTLL would be able to exercise certain operational powers;

- 5.5.3 “maintain” which includes the power to “inspect, repair, adjust, alter, remove or reconstruct”. PoTLL considers this is entirely appropriate and has precedent in made DCOs to date, such as the A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016 and, indeed, does not go as far as other DCOs such as the Norfolk County Council (Norwich Northern Distributor Road (A1067 to A47(T))) Order 2015 and the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014;
- 5.5.4 “the Order land” refers to land which is coloured pink and yellow on the land plans, which comprises the land which PoTLL can permanently acquire or land in which PoTLL can permanently acquire new rights if the Order is made; and
- 5.5.5 “the Order limits” references the Order limits as shown on the works plans - the extent of the area within which the authorised development may be carried out.
- 5.6 Article 2(2) expands the definition of rights over land and clarifies the purpose of the power within the Order to impose restrictive covenants.
- 5.7 Article 2(3) defines measurements ~~as approximate~~ to be construed as if the words “or thereabouts” were inserted after each such distance, direction and length. The purpose of this is to ensure that if, upon construction of the works, it transpires that the distances are marginally different to those listed in the Order, there is no issue over whether the works are permitted by the Order. The provision allows for a small tolerance with respect to any distances and points, although all works will take place within the limits of deviation. It is commonplace to include such provision (or a similar provision deeming such measurements to be ‘approximate’) in legislation authorising significant infrastructure which includes linear elements – see, for example, the M1 Junction 10a (Grade Separation) Order 2013 at article 2(3), the Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) Order 2013 at article 2(3) and the A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016 at article 2(3).
- 5.8 Article 2(4) provides that areas given in the book of reference are ~~approximate,~~ to be construed as if the words “or thereabouts” were inserted after each such area since these are not covered by article 2(3). This is intended to clarify the position of the area measurements in the book of reference, and the purpose and effect is the same as set out in the previous paragraph. The term 'approximately' is used before all plot area measurements in the book of reference, as these measurements are given in square metres, and each measurement is rounded up to the nearest whole square metre. Such approximation relates only to land within the limits of land already identified within the Order.

- 5.9 Articles 2(5) and (6) tie references to lettered/numbered plots and reference points and numbered works in the Order to the relevant plans.

Article 3 – Disapplication of legislation, etc.

- 5.10 This article provides (in reliance on section 120(5)(a) of the Act (what may be included in order granting development consent)) for the disapplication of certain requirements which would otherwise apply under public general legislation, as well local legislation. Section 120(5)(a) provides that an order granting development consent may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order.

Local legislation

- 5.11 Articles 3(1)(a) and (b) disapply two local enactments. The effect of the disapplications is explained in the table below. Throughout the table, it will be noted that the predominant reason for disapplying such enactments is to 'ensure consistency with the terms of the Order'. In short, this means that, without the disapplication, (a) certain third parties would have powers that could conflict with PoTLL's powers to construct, operate and maintain the Scheme; (b) PoTLL would need to obtain consent from third parties to undertake such works, or be at risk of being in breach of an enactment; or (c) PoTLL's ability to carry out necessary works is generally restricted.
- 5.12 It is considered by PoTLL that, in the context of the Scheme being of national significance, the Order should be the predominant authorising instrument for the works. The purpose of the regime created by the Act is to ensure DCOs are a single, unified consent for significant schemes - the local legislation could threaten this. As a result, disapplying the below enactments is considered proportionate in that context and, indeed, necessary - otherwise, third parties could hold up construction or impede the operation and maintenance of the Scheme. To provide comfort for those parties, there are appropriate safeguards in the Order via the requirements in Schedule 2 and the protective provisions in Schedule 10.

Title of legislation	Effect of disapplication
Sections 66 to 75 (control of works and dredging) of the Port of London Act 1968	<p>These provisions of the Act control certain works and dredging in the river Thames.</p> <p>These controls will not apply so as ensure consistency with the terms of the Order.</p> <p>The Order contains protective provisions for the benefit of the Port of London Authority which, in effect, replace the controls under</p>

the Act.

There are structures in the river, ~~particularly the existing jetty~~ which will remain yet be adapted and incorporated into the authorised development. As such, in line with the approach set out above, article ~~3(3)(4)~~ provides that those structures, in like manner to the authorised developed in the river, may remain in the river Thames and will be subject to the same authority and terms as the authorised development in the river.

Consequently ~~article 3(2) provides paragraphs 2 and 3 provide~~ for the existing river works licences which have effect within the Order limits and apply to the structures referred to above to be extinguished, as the regime under the DCO would take effect instead.

~~Article 3(4) ensures Paragraphs 5 and 6 pertain to the "B station" intake structures and the event that such structures come in to the ownership of the Company. The paragraphs provide the process under which any works licence granted by the PLA in respect of such structure will be extinguished and the terms under which it may remain in the river Thames.~~

Paragraphs 7 to 10 ensure the integrity of the new harbour facilities within the jurisdiction of PoTLL and their operation and use by ensuring that a river works licence cannot be granted to third parties without the reasonable consent of PoTLL.

Paragraphs 11 and 12 make it clear that nothing in the Order constitutes the Company as a local lighthouse authority or a port health authority respectively.

The relevant terms used in article 3 are set out in more detail in paragraph 13 for ease of reference.

These provisions ~~are being were~~ discussed and agreed with the Port of London Authority, ~~but the intention is in order~~ to create a single river works regime under the Order in relation

	to the Scheme.
Thames Barrier and Flood Prevention Act 1972	<p>Powers to undertake various kinds of infrastructure work will not apply so as to ensure consistency with the terms of the Order.</p> <p>The controls contained in the protective provisions for the benefit of the Environment Agency ensure that the underlying purposes of the Act will be safeguarded.</p>

Consents

- 5.13 The article also provides for the disapplication of various additional consents or permits, which would otherwise be required.
- 5.14 Articles 3(1)(c), (d) and (g) provide for the disapplication of consents ordinarily required from the Environment Agency, under the Environmental Permitting (England and Wales) Regulations 2016 ("the EPR Regulations") and the Water Resources Act 1991⁴.
- 5.15 Specifically, these are the requirements for consents in respect of a 'flood risk activity' under the EPR Regulations and abstractions, together with the requirements for approval under flood defence byelaws made or deemed to have been made, under the Water Resources Act 1991. These are consents for activities which may be a necessary part of constructing the authorised development.
- 5.16 In addition to the above, article 3(1)(e) and (f) provide for the disapplication of consents ordinarily required in respect of the prohibition on placing obstructions in waterways which are not main rivers under the Land Drainage Act 1991 and byelaws made under the Land Drainage Act 1991 regulating the use and obstruction of these watercourses.
- 5.17 To provide certainty that the Scheme can proceed, the Order disapplies the requirement for these separate statutory consents in relation to these activities. The requirement for a separate consent is replaced by the protective provisions for the protection of the Environment Agency and the other relevant consenting bodies in Schedule 10 which require certain works which could affect flood defences to be approved by the relevant body before they are carried out. [PoTLL remains in discussions with the Environment Agency in respect of the proposed disapplication of section 24 of the Water Resources Act 1991.](#)

⁴ Certain 'flood risk' consents that were required to be obtained under the Water Resources Act 1991 have only recently been removed and brought under the scope of the Environmental Permitting regime.

~~5.18~~As these provisions (aside from byelaws made under the Land Drainage Act 1991 cited in article 3(1)(f)) are prescribed under section 150 of the Planning Act 2008, the consent of the relevant consenting bodies to the inclusion of these provisions in the Order will be needed. The status of the relevant draft protective provisions currently included in the Order are not yet agreed, but discussions between the parties are on-going with an aim to agree to the protective provisions (and therefore the proposed disapplications) before the end of the examination. The status of these discussions will be reported, as appropriate, in the relevant Statements of Common Ground to be submitted by PoTLL during the examination is set out in the table at 8.11 below.

Neighbourhood Planning Act 2017

5.18 ~~5.19~~Article 3(1)(h) disapplies provisions of the Neighbourhood Planning Act. This disapplication would provide that the temporary possession provisions in that enactment would not take effect at the expense of the temporary possession provisions contained in the Order. PoTLL's rationale for this is that the provisions relating to temporary possession in the Neighbourhood Planning Act have not yet come into force and that regulations required to provide more detail on the operation of the regime have not yet been made. As such, it is considered appropriate to apply the 'tried and tested' temporary possession regime which has been included in numerous DCOs and Orders made under the Transport and Works Act 1992 to date.

Article 4 – Application of existing enactments applicable to the Port of Tilbury

5.19 ~~5.20~~Article 4 provides that the relevant functions which PoTLL exercises over its existing port facilities (by virtue of the Port of Tilbury Transfer Scheme 1991 Confirmation Order 1992 (“the 1991 Transfer Scheme”) which transferred certain property and functions to the PoTLL from the Port of London Authority) extend to the Scheme (as defined by a geographical area in this context – “the extended port limits”). This is to ensure that PoTLL can operate all its port facilities in the area 'as one' ~~;~~ to achieve operational efficiencies and to ensure that there is in place a sufficient regime for the safety and security of the new harbour facilities. Provision such as this which extends the powers and duties of PoTLL as a harbour authority may be included in the Order pursuant to s.145(2) of the Planning Act 2008 as the requirements in s.145(2) are met (harbour facilities are being constructed and altered and the relevant harbour authority is the applicant for the Order).

5.20 ~~5.21~~The 1991 Transfer Scheme amended the Port of London Act 1968 to effect the transfer of functions to PoTLL – article 4 paragraphs (1) and (3) of the Order simply incorporate the new harbour facilities into the language of the 1991 Transfer Scheme to extend the jurisdiction of PoTLL over the new harbour facilities in like manner to the jurisdiction it currently exercises over the Port of Tilbury. This is with ~~one exception~~ the exceptions (as set out in paragraph (2)) ~~as specific provision is made in article 42 in relation to the appropriation of harbour facilities~~ (a)

which provide that paragraph 1 does not apply to certain functions of the Port of London Act 1968.

5.21 Paragraph 2(b) provides that paragraph 1 applies to the functions exercisable under section 5AA (company's functions subordinate to Port Authority's functions) of the 1968 Act, subject to the amendments which are set out in paragraph 6. Paragraph 2(c) applies the functions of paragraph 1 to the provisions for the protection of the Port of London Authority contained in Schedule 10 of the Order.

5.22 Paragraph (4) deems the area of the 'extended port limits' within the river Thames to have been designated under section 112 (special directions to vessels in the Thames) of the Port of London Act 1968 – this means that special directions will be able to be given under that provision to vessels in that area.

5.23 Paragraph (5) provides that PoTLL's current General Trading Regulations (together with any changes to them) apply to the new harbour facilities unless otherwise notified.

Article 5 - Incorporation of the 1845 Act

5.24 Article 5 incorporates, subject to modifications, certain provisions of the Railways Clauses Consolidation Act 1845 (c.20), given that the Scheme includes the construction of a new section of railway. The article amends those provisions referred to in the model clauses to make them relevant to the Scheme and this Order.

PART 2 – WORKS PROVISIONS - PRINCIPAL POWERS

Article 6 – Development consent granted by the Order

5.25 Article 6 confers the principal power to construct the authorised development – the development consent. Schedule 1 describes the main elements of the authorised development, which also comprises other operations and development authorised by the Order (e.g. surveys). ~~Article 6(1)~~ The article grants development consent to PoTLL to carry out the authorised development.

5.26 Development consent is subject in particular to the requirements set out in Schedule 2 ~~(see paragraph 9)~~.

~~5.27 Article 6(2) provides that any development carried out by PoTLL within the Order limits in accordance with a planning permission granted under the Town and Country Planning Act 1990 is not a breach of the Order. This includes a permission under the Town and Country Planning (General Permitted Development) (England) Order 2015. This is in recognition of PoTLL's permitted development rights, as a statutory undertaker, under that enactment.~~

~~5.28 Without this provision, PoTLL would not be able to build out port-related development within the Order limits as it does at its existing port~~

~~facilities as a matter of course, except in accordance with the Order (which could be overly constraining). This is important to allow operational flexibility into the future.~~

~~5.29 It should be noted of course that any development which meets the EIA thresholds would not benefit from permitted development rights and therefore would generally be subject to full planning consent, including the relevant EIA requirements (article 3(10) of the Town and Country Planning (General Permitted Development) (England) Order 2015).~~

Article 7 - Limits of deviation

5.27 ~~5.30~~ Article 7 provides for the limits of deviation for the Scheme. In terms of lateral deviation for 'non-linear works', this means that a part of the Scheme shown on the works plans can be constructed within the relevant individual work boundary shown on those plans. For 'linear works' (as defined in paragraph 2), the centre line may move 1 metre either side of the centre line shown on the works plans (with a slightly different regime applying to Work Nos. 9A and 12, given the constraints in that area).

5.28 ~~5.31~~ The vertical limits of deviation of the linear works allowed by the Order are a maximum deviation of 0.5 metres upwards and any deviation downwards. In respect of 'non-linear works', the parameters in the requirements contained in Schedule 2 to the Order will apply. The depth of dredging is controlled by reference to the ~~engineering sections and plans~~ limits of dredging plan.

5.29 ~~5.32~~ The purpose of this provision is to provide PoTLL with a necessary but proportionate degree of flexibility when constructing the authorised development, reducing the risk that the authorised development as approved cannot later be implemented for unforeseen reasons.

Article 8 – Street works

5.30 ~~5.33~~ This article would confer authority on PoTLL to interfere with and execute works in or under any streets for the purposes of the authorised development. This is subject to the consent of the street authority.

5.31 ~~5.34~~ Whilst widely drafted, the scope is considered necessary in light of the early design stage the Scheme is at as maximum construction flexibility is required.

5.32 ~~5.35~~ The authority given by this article is a statutory right for the purposes of the 1991 Act.

Article 9 – Application of the 1991 Act

5.33 ~~5.36~~ Article 9 provides for the application of the 1991 Act. There is precedent for these provisions in respect of other major schemes, e.g. the Nottingham Express Transit System Order 2009 (article 4), the M1 Junction 10a (Grade Separation) Order 2013, the A556 (Knutsford to

Bowdon Improvement) Development Consent Order 2014 and the A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016.

[5.34](#) ~~5.37~~ Paragraphs (1) and (2) provide that certain works carried out under the authority of the Order are to be "major highway works" for the purposes of the 1991 Act. The effect of this is to clarify that the cost-sharing provisions relevant to the diversion of utility apparatus (which would apply to such works under the 1991 Act if carried out by the highway authority) will apply in respect of the works authorised by the Order, irrespective of who, in fact, carries them out.

[5.35](#) ~~5.38~~ Paragraph (3) provides that certain provisions of the 1991 Act listed in that paragraph will not apply. The disapplication of these provisions (which are designed primarily to regulate the carrying out of street works by utility companies in respect of their apparatus) is appropriate given the scale of works proposed under the Order, the specific authorisation given for those works by the Order (particularly article 6 and Schedule 1), and the specific provisions in the Order which would regulate the carrying out of the Order works.

[5.36](#) ~~5.39~~ Paragraphs (4) to (6) apply certain provisions of the 1991 Act (listed in paragraph (5)) to streets which are to be temporarily stopped up under the Order. This is for two reasons: first, it prevents any confusion as to whether works in respect of a temporarily stopped-up street are "street works" for the purposes of the 1991 Act; and secondly, it simplifies the implementation of the works by providing for a single process in respect of streets which are stopped up and those which are not.

[5.37](#) ~~5.40~~ Paragraph (7)(a) provides that nothing in article 10 of the Order (which provides that the streets constructed, altered or diverted under the Order are to be maintained by the highway authority) affects the ability of the local highway authority (under s.87 of the 1991 Act) to apply Part 3 of the 1991 Act to such streets in advance of those streets becoming publicly maintainable. Paragraph (7)(b) restricts the operation of article 10 to off-street works.

[5.38](#) [Paragraph 8 confirms that a provision contained in Part 3 \(street works in England and Wales\) of the New Roads and Street Works Act 1991 does not apply to the Company or to the street authority in any case where the protective provisions for Thurrock Council \(as highway authority\) or for Highways England contain either an equivalent provision or a provision which conflicts with the provision in Part 3.](#)

Article 10 – Construction and maintenance of new, altered or diverted streets

[5.39](#) ~~5.41~~ The purpose and effect of article 10 is as follows:

[5.39.1](#) ~~5.41.1~~ For any streets constructed, altered or diverted, paragraphs (1), (2) and (3) specify the body that will be liable

for maintenance, namely PoTLL for the first 12 months following completion of the street and, following that, the street authority (this would be the local highway authority in the case of a public highway). These paragraphs allow PoTLL to make contrary agreements with the local highway (or street) authority concerned. Paragraph (4) applies in the case of a bridge or other structure carrying a street, whereby the street authority is liable from the bridge's completion and provides that such bridge or other structure is to be maintained by and at the expense of the Company for a period of 24 months from its completion and thereafter by the street authority.

5.39.2 ~~5.41.2~~ The effect of paragraphs (5) and (6) is that in any action for damages against PoTLL alleging failure to maintain a street, PoTLL will have the defence that it had taken such care as was reasonably required in the circumstances to secure that the street was not dangerous for traffic.

Article 11 – Classification of roads

5.40 ~~5.42~~ The designation and classification of highways is an ancillary matter which may be included in a DCO⁵. Designation and classification is addressed by this article, mainly by reference to Schedule 3, which is integral to the implementation of the Scheme.

5.41 ~~5.43~~ This article provides that certain existing lengths of highway are to be re-classified (in respect of road numbering). The article also applies to new lengths of highway to be constructed. PoTLL ~~is discussing~~ has discussed and agreed this provision with the relevant highway authority and considers the changes brought about under this article are necessary and appropriate to ensure the effective operation of the highway network in this area given that the Scheme includes the construction and alteration of stretches of public highway to facilitate the operation of the proposed harbour facilities.

Article 12 - Permanent stopping up and restriction of use of highways and private means of access

5.42 ~~5.44~~ This article allows highways and private means of access named in Parts 1, 2 and 3 of Schedule 4 to be stopped up (i.e. the legal right of way along them to be extinguished).

5.43 ~~5.45~~ For the highways and private means of access to be stopped up as specified in Parts 1 and 3 of the Schedule, a substitute highway is to be provided. The existing highway or private means of access cannot be stopped up until the street authority is satisfied that the new highway or private means of access is fit for purpose, or a temporary highway or private means of access is made available while the existing is stopped up and before the new highway or private means of access is ready.

⁵ Planning Act 2008 section 120(5) and Schedule 5, paragraphs 19 and 20

[5.44](#) ~~5.46~~ For the highways to be stopped up as specified in Part 2 of Schedule 4, no substitute highway or private means of access is to be provided. Such a highway or private means of access may not be stopped up unless the conditions referred to in paragraph (4) of article 12 are met in relation to all the land which abuts either side of the street to be stopped up.

[5.45](#) ~~5.47~~ Paragraph (5) of article 12 makes clear that site notices must be erected before the highways are stopped up and the rights of way are extinguished.

Article 13 – Temporary stopping up and restriction of use of streets

[5.46](#) ~~5.48~~ This article allows for the temporary stopping up, alteration, diversion or restriction of streets for the purposes of the authorised development, whilst ensuring that pedestrian access is provided. The power is drafted widely due to the early design stage the Scheme is at as maximum construction flexibility is required.

[5.47](#) ~~5.49~~ Paragraph (4) provides that streets cannot be temporarily stopped up without the consent of the street authority.

[5.48](#) ~~5.50~~ Paragraph (2) confers a power on PoTLL where the use of a street has been temporarily stopped up under this article to use it as a temporary working site. This provision has precedent in recent orders made under the Transport and Works Act 1992 and the Act; for example the Network Rail (North Doncaster Chord) Order 2012, the Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) Order 2013, the A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014 and the A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016.

Article 14 – Access to works

[5.49](#) ~~5.51~~ This article allows works accesses to public highways to be created. It gives PoTLL a general power to form means of access with the consent of the street authority.

Article 15 – Agreements with street authorities

[5.50](#) ~~5.52~~ This article allows a street authority and PoTLL to enter into agreements with respect to the construction of new streets, the strengthening, improving or maintenance of streets, the stopping up, alteration or diversion of streets, the execution of any street works as listed in article 8 and Schedule 1 and any other works which the parties may agree.

[5.51](#) ~~5.53~~ Such agreement would provide the street authority with the power to carry out any function under the Order which relates to the street in question. The agreement may set out a reasonable time for completion of the works, provide for the dedication of any new street as public

highway and contain terms as to payment and otherwise as the parties consider appropriate.

Article 16 – Use of private roads for construction

[5.52](#) ~~5.54~~ This article authorises the temporary passage of persons or vehicles along private roads situated within Order limits for the purpose of, or in connection with, the construction of the authorised development without the necessity for PoTLL to acquire an easement over that land. Provision is made for compensation.

Article 17 – Level crossings

[5.53](#) ~~5.55~~ This article provides statutory authority for the closure of the level crossing described in paragraph (1) upon the exercise of the powers in article 12 in respect of the footpath which uses this level crossing.

Article 18 – Discharge of water

[5.54](#) ~~5.56~~ This article sets out the circumstances in which PoTLL is entitled to discharge water into a sewer, watercourse or drain, and its purpose is to establish statutory authority for doing so.

[5.55](#) ~~5.57~~ This provision does not deal with the issue of damage to main rivers, as this would be captured by the protective provisions for the benefit of the Environment Agency contained in Schedule 10 - duplication of this protection is not necessary.

[5.56](#) ~~5.58~~ The effect of article 18 is that discharge can only be done with the consent of the owner of the sewer, watercourse or drain.

Article 19 – Protective works to buildings

[5.57](#) ~~5.59~~ The purpose of this article is to allow PoTLL to undertake protective works such as underpinning to buildings affected by the authorised development and to set out the procedure that will apply in those circumstances.

[5.58](#) ~~5.60~~ Paragraph (11) applies section 13 of the Compulsory Purchase Act 1965, thereby providing an enforcement mechanism (by way of a warrant) where entry onto, or possession of, land under the article is refused.

[5.59](#) [The drafting of this article has been brought in line with recently made orders in particular the Silvertown Tunnel Order 2018.](#)

Article 20 – Authority to survey and investigate land

[5.60](#) ~~5.61~~ This article gives PoTLL the power to enter certain land for the purpose of surveying and testing. It provides that PoTLL must give 14 days' notice before exercising the power of entry, and that compensation is payable for any loss or damage caused.

[5.61](#) ~~5.62~~ Paragraph (6) applies section 13 of the Compulsory Purchase Act 1965, thereby providing an enforcement mechanism (by way of a warrant) where entry onto land under the article is refused.

[5.62](#) [The drafting of this article has been brought in line with recently made orders in particular the Silvertown Tunnel Order 2018.](#)

Article 21 – Felling or lopping of trees and removal of hedgerows

5.63 This article allows any tree or shrub that is near the authorised development to be felled or lopped, or have its roots cut back, if it is considered to obstruct the construction, operation or maintenance of the authorised development or endanger anyone using it. The article also authorises the removal of hedgerows as required.

5.64 Compensation is payable for any loss or damage caused.

Article 22 – Works in the river Thames: conditions

5.65 This article provides for suspension of the public right of navigation over the river Thames situated within the Order limits where necessary to construct the Scheme.

5.66 Paragraphs (2) to (8) deal with the mechanics of suspending the public right of navigation. This involves giving notice to the PLA, getting PLA approval and the PLA then issuing a notice to mariners.

6. PART 3 – POWERS OF ACQUISITION AND POSSESSION OF LAND

[6.1](#) [A general update has been made to this Part of the Order in order to take account of the position of the Department for Transport, following the passing of the Housing and Planning Act 2016, set out in the M20 Junction 10a Development Consent Order 2017 and the Silvertown Tunnel Order 2018.](#)

Article 23 - Compulsory acquisition of land

[6.2](#) ~~6.1~~ This article authorises the compulsory acquisition of the Order land. It grants the power to acquire such land as is required for the authorised development. This is subject to article 25 (*Compulsory acquisition of rights and imposition of restrictive covenants*), which is explained below.

[6.3](#) ~~6.2~~ The drafting of this provision broadly follows the approach taken in the ~~Network Rail (North Doncaster Chord) Order 2012, the Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) Order 2013 and the A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014~~ [Silvertown Tunnel Order 2018.](#)

Article 24 – Time limit for exercise of powers to ~~possess land temporarily or to acquire land compulsorily~~ [or to possess land temporarily](#)

6.4 ~~6.3~~ This article gives PoTLL five years to serve 'notices to treat' or to execute 'general vesting declarations' to acquire the land that is subject to the power of compulsory acquisition. These are the two main procedural methods by which the process of compulsorily acquiring land may be undertaken should the Order be made. The article also provides that land subject to the power of temporary possession for the carrying out the authorised development - under article 32 (*Temporary use of land for ~~carrying out~~ constructing the authorised development*) - may not be occupied after the end of that same period unless the land is already being occupied by PoTLL in exercise of the powers of the Order.

Article 25 – Compulsory acquisition of rights ~~and imposition of restrictive covenants~~

~~6.4~~ This article allows for rights over land to be acquired instead of the land itself, and also for new rights to be created over land.

6.5 It provides for such rights as may be required to be acquired by PoTLL over land which it is authorised to acquire under article 23. The public benefit of this is that it would allow PoTLL, if possible, to reduce the area of outright acquisition and rely on rights instead. A provision of this kind is usual in Transport and Works Act Orders and Hybrid Bills, and has been followed in a number of development consent orders, for example the Network Rail (North Doncaster Chord) Order 2012, the Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) Order 2013 and the A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014.

6.6 ~~Paragraph~~ Paragraphs (2) ~~provides (a) and (b) provide~~ that, for specific plots, PoTLL's powers of compulsory acquisition are limited to the acquisition of such rights, and the imposition of such restrictive covenants, as may be required.

6.7 The power to impose restrictive covenants allows for the possibility of reducing the area of outright acquisition and therefore enables a more proportionate exercise of compulsory acquisition powers. It is in the public interest and has precedent in Transport and Works Act Orders⁶.

6.8 Paragraph (3) provides that, where PoTLL needs only to acquire rights over land, it shall not be obliged to acquire any greater interest in that land.

6.9 Paragraph (4) applies Schedule 5 ~~for the purpose of imposing modifications to the~~ (modification of compensation and compulsory purchase and compensation provisions under general legislation. They enactments for the creation of new rights). The modifications to that Schedule do not affect the entitlement to compensation, but generally ensure that the compensation code applies equally to the additional categories of acquisition covered by the Order – the creation of new

⁶ See the Docklands Light Railway (Stratford International Extension) Order 2006 S.I. 2006/2905.

rights and the imposition of restrictive covenants in particular. This is a consequence of the extension of land acquisition powers to these categories and is commonplace in Transport and Works Act Orders. For the purpose of section 126(2) of the Act, the relevant compensation provisions are modified only to the extent necessary to ensure that they apply properly to the acquisition of rights, and not to affect the amount of compensation to which landowners would be entitled.

Article 26 – Acquisition of subsoil or airspace only

- 6.10 This article allows PoTLL to acquire land below the surface or above the surface, rather than having to acquire all of the land.
- 6.11 The purpose of article 26 is to give PoTLL the flexibility to minimise so far as is possible the extent of interests to be acquired, with consequently less impact on landowners and lower payments of compensation. It is considered to be in the public interest to provide this flexibility at the point at which PoTLL begins to acquire the necessary land. [This draws on the approach taken in the Silvertown Order 2018.](#)

Article 27 – Private rights over land

- 6.12 This article applies to private rights generally and not just to rights of way. It also provides for the extinguishment of private rights on Order land already owned by PoTLL, when any activity authorised by the Order interferes with or breaches those rights. This draws on the approach taken in article 17 of the Rookery South (Resource Recovery Facility) Order 2011, article 23 of the Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) Order 2013, article 21 of the A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014 and article 22 of the A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016.

Article 28 – Power to override easements and other rights

- 6.13 This article provides a power to override easements and other rights and reflects the terms of section 120(3) and (4), and paragraphs 2 and 3 of Part 1 of Schedule 5 to the Planning Act 2008. This article has precedent in, for example, article 32 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014.
- 6.14 It provides that, in carrying out or using the authorised development within the Order limits and doing anything else authorised by the Order, PoTLL may interfere with any easement, liberty, privilege, right or advantage annexed to land and affecting other land, including any natural right to support, or breach any restriction as to use of land arising by virtue of contract. It also provides that compensation may be payable for any such interference or breach.

Article 29 – Rights under or over streets

- 6.15 The purpose of this article is to allow PoTLL to appropriate and use land above or below streets within the Order limits, without having to acquire the street or any right or easement in it. The exercise of this power without acquisition is prohibited in the circumstances set out in paragraph (3). Compensation is payable for any loss or damage caused to an owner or occupier of land affected by the power of appropriation where no acquisition has taken place.

Article 30 – ~~Application~~ Modification of Part 1 of the Compulsory Purchase Act 1965

- 6.16 This article modifies the provisions of Part 1 of the Compulsory Purchase Act 1965 as applied to the Order by section 125 of the Planning Act 2008.

- 6.17 This provision reflects recent changes introduced by the Housing and Planning Act 2016 ~~– Paragraphs (1) to (3) amend the provisions of the Compulsory Purchase Act 1965 so they are consistent with the terms of the Order and paragraph (4) and the approach taken in the Silvertown Order 2018.~~

- 6.18 ~~6.17.~~ Paragraphs (1) to (5) amend the provisions of the Compulsory Purchase Act 1965 so they are consistent with the terms of the Order and paragraph (5) makes it clear that the notice periods introduced by the Housing and Planning Act 2016 do not apply to the temporary possession or use of land under articles 32 and 33 of this Order. These modifications have broad precedent in Schedule 14 to the High Speed Rail (London – West Midlands) Act 2017 and are reflected in the Wrexham Gas Fired Generating Station Order 2017.

Article 31 – Application of the Compulsory Purchase (Vesting Declarations) Act 1981

- 6.19 ~~6.18~~ This article applies the provisions of the 1981 Act to compulsory acquisition under the Order. Vesting declarations are one of two ways of acquiring land that is subject to compulsory purchase (the other being by means of serving a notice to treat). They allow title in the land concerned to pass to the acquirer more quickly than using the notice to treat method. They also enable several parcels of land to be acquired at the same time and therefore more efficiently than under the notice to treat procedure.

- 6.20 This article follows the approach taken in the Silvertown Order 2018.

Article 32 – Temporary use of land for ~~carrying out~~ constructing the authorised development

- 6.21 ~~6.19~~ The purpose of this article is to allow the land set out in Schedule 6 to be occupied and used temporarily while the works are carried out. This is land which is required during construction of the authorised development but not required permanently. Article 32 also allows for the

temporary occupation of any of the land intended for permanent acquisition, or for the acquisition of new rights, but which has, or which have, not yet been acquired.

[6.22](#) ~~6.20~~ The article provides for any of the authorised development listed in Schedule 1, in particular, to be built and left on land that has been temporarily occupied. The rationale for this is that it provides for flexibility in the construction programme and also reduces the extent of the compulsory acquisition of land.

[6.23](#) ~~6.21~~ The time limits set out in article 24 (*Time limit for exercise of powers to ~~possess land temporarily or to~~ acquire land compulsorily or to possess land temporarily*) apply to this article.

Article 33 – Temporary use of land for maintaining the authorised development

[6.24](#) ~~6.22~~ This article provides that PoTLL may take temporary possession of land within the Order limits required for the purpose of maintaining the authorised development and to construct such temporary works as may be reasonably necessary for that purpose. Owners and occupiers of the land must be given 28 days' notice and that notice must include details of the purpose for which PoTLL requires the land. They are also entitled to compensation. The power is exercisable within a period of 5 years from the time the particular infrastructure brought into operational use.

[6.25](#) ~~6.23~~ This power does not apply with respect to houses, gardens belonging to a house or any other buildings for the time being occupied.

Article 34 – Statutory undertakers

[6.26](#) ~~6.24~~ This article allows PoTLL to extinguish rights of statutory ~~undertakers~~ utilities (i.e. utilities such as electricity and gas companies), and remove and reposition their apparatus. Reference is made to the Order land so that this power is not restricted to apparatus which has been specifically shown on the land plans and described in the book of reference. In practice it is impracticable to show and describe all such apparatus and so a general power for the extinguishment of rights and the removal or relocation of apparatus belonging to statutory undertakers over or within any of the Order land is required.

[6.27](#) ~~6.25~~ As the land where this power may be exercised is shown on the land, special category land and crown land plans, and the beneficiaries of such rights are identified in the book of reference, the requirements of regulations 5(2)(i)(iii) and 7(1)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 are satisfied.

Article 35 - Apparatus and rights of statutory ~~undertakers~~ utilities in stopped up streets

[6.28](#) ~~6.26~~ This article governs what happens to statutory utilities' apparatus (pipes, cables, etc.) under streets that are stopped up by the Order.

Without the article, the statutory utility would not have access to the apparatus, since there would no longer be a right of way along the street. PoTLL may require such a statutory utility to relocate the apparatus elsewhere, although it will compensate the statutory utility for doing so. Paragraph (6) discounts from this compensation the increase in value to the statutory utility of having new rather than old (i.e. older than ~~7½~~ 7 years and 6 months) apparatus.

6.29 ~~6.27~~ Paragraph (7) provides that in certain cases the cost of relocating apparatus will be subject to alternative cost sharing arrangements between PoTLL and the statutory utility which are provided for in regulations made under section 85 (sharing of cost of necessary measures) of the 1991 Act.

Article 36 – Recovery of costs of new connections

6.30 ~~6.28~~ This article provides that if a gas, water, electricity or sewerage undertaker's or public communications provider's apparatus is removed thereby interrupting the service to owners or occupiers of premises, their costs in obtaining a new service can be recovered from PoTLL.

Article 37 – Special category land: West Tilbury common land

6.31 ~~6.29~~ Under section 131 of the 2008 Act an order granting development consent is subject to Special Parliamentary Procedure when it authorises the compulsory acquisition of land to which section 131 applies (i.e. a common, open space or fuel or field garden allotment). The exception is if the Secretary of State is satisfied that certain tests under section 131(4) to (5) are met, including if the Secretary of State is satisfied that the replacement land is to be given for the land to be acquired and that replacement land is to be subject to the same rights, trusts and incidents as the land to be acquired.

6.32 ~~6.30~~ The Order grants compulsory acquisition rights over part of a registered common, and PoTLL proposes to provide replacement land. As such, PoTLL submits that the test described above is met in respect of the Scheme, for the reasons set out in the Chapter 11 of the Statement of Reasons.

6.33 ~~6.31~~ Article 37 provides that the exercise of relevant Order powers (i.e. the powers of compulsory acquisition or temporary possession in respect of the common land) cannot be exercised until PoTLL has acquired the replacement land (for its benefit or for the benefit of the person in whom the relevant common land vests). Upon the exercise of those powers, the replacement land is vested in the same person as is the owner of the existing common land, and is also burdened with the same rights, trusts and incidents as that existing common land, and at the same time the existing common land is discharged from those rights, trusts and incidents. Paragraph (3) provides that PoTLL must then, as soon as reasonably practicable, apply (in accordance with the

procedure under the Commons Act 2006) to amend the relevant register of common land accordingly.

Article 38 - Disregard of certain interests and improvements

[6.34](#) ~~6.32~~ This article provides for the Tribunal to disregard certain interests in and enhancements to the value of land for the purposes of assessing compensation with respect to its compulsory acquisition where the creation of the interest or the making of the enhancement was designed with a view to obtaining compensation or increased compensation.

[6.35](#) ~~6.33~~ It complies with section 126 of the 2008 Act as it does not have the effect of modifying or excluding the application of an existing provision relating to compulsory purchase compensation. The article has precedent in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (article 37).

[6.36](#) ~~6.34~~ The wording of this article mirrors section 4 (*Assessment of compensation*) of the Acquisition of Land Act 1981 (in this paragraph "the 1981 Act"). It is necessary to specifically apply the effect of section 4 of the 1981 Act in the Order. This is because the 1981 Act only applies to a compulsory purchase to which any other statutory instrument has applied its provisions and the Act (nor standard Order provisions) does not apply these. Sections 120(3) and 120(5)(a) and Schedule 5 (by virtue of section 120(3)) of the Act allow the application in a DCO of statutory provisions which relate to the payment of compensation.

Article 39 - Set-off for enhancement in value of retained land

[6.37](#) ~~6.35~~ This article provides that in assessing the compensation payable to any person in respect of the acquisition of any land, the Tribunal shall set off against the value of the land any increase in value of any contiguous or adjacent land belonging to that person arising out of construction of the authorised development.

[6.38](#) ~~6.36~~ This article complies with section 126(2) of the 2008 Act as it does not have the effect of modifying the application of an existing provision relating to compulsory purchase compensation. The article has precedent in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (article 38), demonstrating that the Secretary of State agrees with this.

[6.39](#) ~~6.37~~ The principle in this article is established in section 7 of the Land Compensation Act 1961 (*effect of certain actual or prospective development of adjacent land in same ownership*), which needs to be applied. Sections 120(3) and 120(5)(a) of and Schedule 5 (by virtue of section 120(3)) to the Act allow the application in a DCO of statutory provisions which relate to the payment of compensation.

Article 40 – No double recovery

6.40 ~~6.38~~ This article provides that compensation is not payable both under this Order and other compensation regimes for the same loss or damage. In addition, the article provides that there is not to be double recovery under two or more different provisions of this Order.

6.41 ~~6.39~~ The principle of equivalence, namely that a claimant in a compulsory purchase matter shall be compensated for no more than and no less than his loss, is long established and no part of the compensation code conflicts with this principle.

7. PART 4 – OPERATIONAL PROVISIONS

Article 41 – Operation and maintenance of the authorised development

7.1 ~~Paragraph~~ Paragraphs (1) ~~sets and (2) set~~ out the scope within which PoTLL may operate and maintain the authorised development ~~—~~ and operate it as part of its harbour undertaking within the extended port limits

7.2 The definition of “maintain” is contained in article 2(1) and reflects that which was approved by the Secretary of State in the M1 Junction 10a (Grade Separation) Order 2013, the A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014 and the A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016. It is therefore considered to be appropriate and acceptable to adopt the same definition for this harbour facilities scheme, given these precedents. The various elements of the definition (“inspect, repair, adjust, alter, remove or reconstruct”) would bear their common sense meanings and would allow PoTLL to undertake all types of works reasonably associated with maintenance.

7.3 It should be noted that powers of maintenance are subject to other provisions in the Order, in particular article 10, which makes provision in relation to maintenance by highway authorities.

7.4 Paragraph (2) provides PoTLL with powers to carry out certain works associated with the operation of the Scheme, to reflect ‘business as usual’ ~~—~~ operations for ports. Such a provision has precedent in a number of Orders made under the Harbours Act 1964.

7.5 It should be noted that paragraph (3) does not allow any works to be undertaken under this article which would give rise to any significant adverse effects that have not been assessed in the environmental statement

Article 42 – Power to appropriate

7.6 This article provides PoTLL with the power to set aside any part of the authorised development for exclusive or preferential use by particular persons.

- 7.7 Without this provision, section 6 of the Port of London Act 1968 would mean that PoTLL would need to make the port fully open to public access and use, which could have detrimental commercial consequences.
- 7.8 It should be noted that section 6 is subject to section 85 of that Act (in that PoTLL may make agreements with persons in respect of the use of landing places), but the operations proposed at the Scheme are different in nature from those carried out at the existing Port of Tilbury (where these powers currently apply). Therefore a more flexible appropriation power is required to allow the Scheme to be operated. It is for this reason that the functions under section 85 of the Port of London Act 1968 are not proposed to apply to the Scheme (by virtue of article 4(2)) and this article is applicable instead.
- 7.9 There is precedent for this type of power in, for example, the Able Marine Energy Park Development Consent Order 2014 and numerous orders made under the Harbours Act 1964.

Article 43 – Power to dredge

7.10 This article provides PoTLL with the power to dredge the river Thames (that is situated within the Order limits) for the purpose of maintaining and operating the Scheme. Without this, the normal dredging licence requirements would apply, which goes against the intention of the DCO forming a single operational regime. The protections in the protective provisions for the benefit of the Port of London Authority and the deemed marine licence would apply to this power, so the relevant regulators would have oversight in that way.

[7.11 Paragraph 3 provides that materials dredged under the powers of this Order may not be disposed of in the UK marine licensing area except in accordance with an approval from: the MMO \(under the deemed marine licence\); and the Port of London Authority \(under the provisions for the protection of the PLA\) where such disposal is on the bed of the river Thames.](#)

[7.12 Paragraph 5 deems the Order is legislation falling within section 75\(3\) of the Marine and Coastal Access Act 2009 for the purpose of dredging activities falling within paragraph 1. This means that the exemption from the need to obtain a licence for dredging is applied to the Order and as a result maintenance dredging does not need to be listed as a licensable activity in the deemed marine licence.](#)

Article 44 – Power to operate and use railways

[7.13](#) ~~7.11~~ Given the Scheme includes a new private railway line, this article gives PoTLL the statutory authority to operate it.

Article 45 – Byelaws relating to the extended port limits

[7.14](#) ~~7.12~~ Section 161 of the Port of London Act 1968 permits PoTLL to make byelaws in respect of the existing Port of Tilbury. This power is proposed to be applied to the Scheme under article 4.

[7.15](#) ~~7.13~~ To ensure that the Scheme is adequately regulated as soon as possible following completion of construction, this article provides that the set of byelaws contained in Schedule 7 is deemed to have been made by PoTLL and confirmed by the confirming authority (i.e. the Minister) in accordance with section 168 of the Port of London Act 1968.

[7.16](#) ~~7.14~~ The byelaws are proposed to regulate matters relating to the 'Port Premises', which is defined as the 'extended port limits' as shown on the ~~harbour~~ [extended port](#) limits plan.

Article 46 – ~~Operational land for purposes of the 1990 Act~~ [Fixed penalty notices](#)

[7.17](#) [Article 46 provides fixed penalty notices for the port premises byelaws contained in Schedule 7 to the Order and made under section 161 of the Port of London Act 1968. This means that an authorised person can serve a person who has committed an offence under the byelaws with a fixed penalty notice. Paragraphs 2 to 9 set out the procedure under which a fixed penalty notice may be served and paragraph 10 provides relevant definitions used in the article.](#)

[7.18](#) [Section 130 of the Local Government Act 2007 confers on the Secretary of State a power to make regulations prescribing classes of byelaw which could be enforced through fixed penalty notices and broad precedent for this article is found within the Silvertown Tunnel Order 2018.](#)

[Article 47 – Planning Legislation](#)

[7.19](#) ~~7.15~~ [This Paragraph 1 of this](#) article declares that the land within the Order limits is to be treated as the operational land of a statutory undertaker for the purposes of the Town and Country Planning Act 1990.

[7.20](#) [Paragraph 2 provides that any development carried out by PoTLL within the Order limits in accordance with a planning permission granted under the Town and Country Planning Act 1990 is not a breach of the Order. This includes a permission under the Town and Country Planning \(General Permitted Development\) \(England\) Order 2015. This is in recognition of PoTLL's permitted development rights, as a statutory undertaker, under that enactment.](#)

[7.21](#) [Without this provision, PoTLL would not be able to build out port-related development within the Order limits as it does at its existing port facilities as a matter of course, except in accordance with the Order \(which could be overly constraining\). This is important to allow](#)

operational flexibility into the future and consistency with other port facilities.

7.22 It should be noted of course that any development which meets the EIA thresholds would not benefit from permitted development rights and therefore would generally be subject to full planning consent, including the relevant EIA requirements (article 3(10) of the Town and Country Planning (General Permitted Development) (England) Order 2015).

Article ~~47~~48 – Application of landlord and tenant law

7.23 ~~7.16~~ This article provides that landlord and tenant law will be overridden so as not to prejudice the operation of any agreement entered into under article ~~50~~51.

Article ~~48~~49 – Defence to proceedings in respect of statutory nuisance

7.24 ~~7.17~~ This article provides a defence to statutory nuisance proceedings brought under the Environmental Protection Act 1990 in respect of noise emitted from premises. The defence is only available if:

7.24.1 ~~7.17.1~~ the noise is created in the course of carrying out or maintenance of the works authorised by the Order in accordance with a notice given under section 60 or 61 of the Control of Pollution Act 1974; or

7.24.2 ~~7.17.2~~ is a consequence of the construction, maintenance or use of the authorised development and that it cannot be reasonably be avoided.

7.25 ~~7.18~~ Section 61(9) of the Control of Pollution Act 1974 does not apply if the consent relates to the use of premises by PoTLL for the purposes of or in connection with the construction or maintenance of the authorised development.

8. **PART 5 – MISCELLANEOUS AND GENERAL**

Article ~~49~~50 – Benefit of order

8.1 Article ~~49~~50 overrides section 156(1) of the Act (as permitted by section 156(2)) to give the benefit of the Order to PoTLL only, rather than to simply those persons with an interest in the land. Whilst PoTLL already owns the majority of the land proposed to be affected by the Order, there are some parcels of land that are currently in the possession of third parties. As such, it would be impracticable for this variety of landowners to implement parts of the Order in an uncoordinated manner, which might be the case if section 156(1) were to apply.

Article ~~50~~51 – Consent to transfer benefit of Order.

8.2 This article allows powers under the Order to be transferred to (or leased) by PoTLL with the consent of the Secretary of State.

8.3 Paragraph 6 of the article provides that before giving consent under this article, the Secretary of State must consult the Port of London Authority, National Grid, Cadent and such other parties as the Secretary of State considers appropriate. This paragraph has been agreed with the consultees listed.

8.4 Paragraph 7 provides that in respect of the transfer of the benefit of the deemed marine licence, the Company must notify the Port of London Authority, the Environment Agency and the Marine Management Organisation within 10 business days after entering into an agreement under paragraph 1 of the article to transfer the benefit of the provisions of the Order to another party.

Article ~~51~~52 – Traffic regulation measures

8.5 ~~8.3~~ The purpose of this article is to provide PoTLL with powers to make deemed traffic regulation orders, so that it can implement traffic management measures (e.g. restrictions on the use of roads) in connection with the construction or operation of authorised development.

8.6 ~~8.4~~ It includes a number of specific traffic regulation measures set out in Schedule 8 (which is brought into effect by paragraph (1)), as well as more general powers by virtue of paragraph (3).

8.7 ~~8.5~~ Implementation in certain circumstances is subject to the prior approval of the traffic authority in whose area the roads are situated and consultation with the relevant chief officer of police.

Article ~~52~~53 – Deemed marine licence

8.8 ~~8.6~~ This article constitutes deemed consent (as provided for under 149A of the Act) under section 65 of the 2009 Act, the successor provision to section 34 of the Coast Protection Act 1949. Schedule 9 sets out the terms on which the licence would be granted. The overall structure of this licence reflects that found in Schedule 15 to the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014.

8.9 ~~8.7~~ PoTLL and the MMO are continuing their dialogue with a view to settling the deemed marine licence at the earliest opportunity.

Article ~~53~~54 – Protective provisions

8.10 ~~8.8~~ This article introduces Schedule 10, which contains provisions protecting the interests of third parties.

8.11 ~~8.9~~ Schedule 10 contains protective provisions for the benefit of the ~~following parties:~~ parties listed in column 1 of the table below with the status of the agreement reached between PoTLL and the relevant parties as at Deadline 7 (16 August 2018) of the examination as set out in column 2.

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

~~8.9.1—electricity, gas, water and sewerage undertakers;~~

~~8.9.2—operators of electronic communications code networks;~~

~~8.9.3—the PLA;~~

~~8.9.4—the Environment Agency;~~

~~8.9.5 Thurrock Council (as drainage board);~~

~~8.9.6 Network Rail;~~

~~8.9.7 Thurrock Council and Highways England as highway authorities; and~~

~~8.9.8 Anglian Water.~~

~~8.10 All of these protective provisions are in draft and not yet agreed with the relevant parties but are and will be the subject of discussions.~~

~~Article 54~~ [Article 55](#) – *Saving for Trinity House*

[8.12](#) ~~8.11~~ [Article 54-55](#) protects the interests of Trinity House, the general lighthouse authority for England.

~~Article 55-56~~ - *Crown Rights*

[8.13](#) ~~8.12~~ [Article 55-56](#) includes provisions safeguarding the rights of the Crown in relation to the Crown Estate land within the estuary. PoTLL ~~has not yet discussed the terms of this article with~~ [understands that](#) the Crown Estate [is satisfied with the wording of this article](#).

~~Article 56-57~~ – *Consents, agreements and approvals*

[8.14](#) ~~8.13~~ This article provides for the mechanics of certain consents, agreements and approvals that need to be obtained by PoTLL under the Order. In summary, it ensures that any consents, agreements or approvals (a) cannot be unreasonably withheld or delayed; and (b) are deemed to be granted after a period of 28 days if no decision is made, beginning with the day any application for a consent, agreement or approval is made.

[8.15](#) ~~8.14~~ Any application for a consent, agreement or approval must include a written statement that the 28 day ‘guillotine’ provision is in force. [Paragraph 5 provides that the guillotine provision does not relate to the discharge of an obligation under Part 3 of Schedule 10 \(protective provisions\)](#).

[8.16](#) ~~8.15~~ The purpose of the article is to draw together the usual provisions for consents, agreements and approvals under the Order, rather than including them for each consent, agreement or approval required under the Order, which PoTLL considers would be repetitive.

[8.17](#) ~~8.16~~ This article also includes a provision, at paragraph (4), to make clear that any steps taken by PoTLL prior to the Order being made can be taken into account in determining whether the consents, agreements and approvals to which this article applies ~~have been obtained~~ [should be granted](#).

~~Article 57-58~~ – *Certification of documents*

8.18 ~~8.17~~ This article provides for various plans and other documents to be submitted by PoTLL to the Secretary of State for certification as true copies of those documents referred to in the Order. The documents in question (with their reference numbers) are listed in Schedule 11.

Article ~~58-59~~ – Service of notices

8.19 ~~8.18~~ This article governs how any notices that may be served under the Order are deemed to have been served properly. In particular it allows service by email with the consent of the recipient, and deals with the situation of service on an unknown landowner. The provision is necessary because the service of notice provisions under sections 229 and 230 of the Act do not apply to notices served under the Order.

8.20 ~~8.19~~ An article governing the service of documents is common in development consent orders and has numerous precedents.

Article ~~59-60~~ – Arbitration

8.21 ~~8.20~~ This article governs what happens when two parties disagree in the implementation of any provision of the Order. A dispute will be settled by arbitration, and if the parties cannot agree on an arbitrator the appointment will be decided by the President of the Institution of Civil Engineers.

9. REQUIREMENTS

9.1 The requirements in Part 1 of Schedule 2 are the equivalent of planning conditions. ~~Whilst some themes relating to the~~ The requirements have been discussed and agreed with Thurrock Council, the relevant local planning authority, ~~at a high level, it is PoTLL's intention to discuss the requirements in detail (and to seek agreement) with the Council and also as well as~~ with neighbouring authorities ~~following submission of the application~~ and relevant bodies from whom approvals will be sought.

9.2 Most approvals will be sought from the local planning authority, being, Thurrock Council.

9.3 Turning to the purpose and effect of the requirements:

9.3.1 Requirement 1 contains a number of definitions used in Part 1 of Schedule 2.

9.3.2 Requirement 2 provides that the proposed development must not commence later than 5 years from the date of the Order coming into force.

9.3.3 Requirement 3 provides that the external materials of specific parts of the Scheme must be approved by the relevant planning authority, prior to construction. In addition, this requirement also sets out the maximum heights of particular parts of the Scheme (including certain aspects of operation).

- 9.3.4 Requirement 4 requires construction to be carried out in accordance with the Construction Environmental Management Plan, a document which sets out construction-related controls, and is certified under the Order.
- 9.3.5 Requirement 5 provides that ~~written details of the proposed off-site mitigation must be submitted to the planning authority for approval and subsequently followed. Those written details must include a commitment that the habitat provided as part of this mitigation must be managed and maintained for a minimum period of 25 years~~no part of the authorised development may be commenced until certain method statements which form part of the ecological mitigation compensation plan are approved by the relevant body. Paragraph 3 provides that the authorised development must be constructed and maintained in accordance with the ecological mitigation and compensation plan. This requirement therefore, for the avoidance of doubt, secures the provision of the off-site mitigation as part of the Scheme, albeit that the precise details are to be agreed under this requirement at a later stage.
- 9.3.6 ~~9.3.7~~ Requirement 6 provides that the ~~Terrestrial Written Scheme of Investigation must be complied with, a certified document under the Order and which contains archaeological mitigation measures~~authorised development must be constructed in accordance with the terrestrial written scheme of investigation. Requirement 7 requires that the works to the 'Asda roundabout' must be completed before ~~certain parts of the Scheme are available for use by the public.;~~
- (a) certain parts of the Scheme are available for use by the public; and
- (b) the Company has entered into an agreement with Highways England under article 15(1) for the carrying out by Highways England of a package of alterations to the existing road marking on the A13 westbound and A282 northbound approaches to Junction 30 of the M25.
- 9.3.7 ~~9.3.8~~ Requirement 8 requires that the Scheme is ~~carried out~~constructed in accordance with the flood risk assessments, certified documents under the Order.
- 9.3.8 ~~9.3.9~~ Requirement 9 provides that certain elements of the Scheme must not be opened for ~~public~~operational use until noise barriers (detailed in the Environmental Statement) have been constructed.
- 9.3.9 ~~9.3.10~~ Requirement 10 sets out a scheme of operational noise monitoring and mitigation.

9.3.10 ~~9.3.11~~ Requirement 11 provides that the Scheme must be operated in accordance with a number of 'plans' and other documents, which are certified under the Order.

9.3.11 ~~9.3.12~~ Requirement 12 provides that a written scheme of the proposed operational lighting for the Scheme must be submitted for approval to the relevant planning authority prior to the Scheme being opened for operational use. This scheme must be in general accordance with the Preliminary Lighting Strategy and Impact Assessment and must be complied with, once approved.

9.4 Part 2 of Schedule 2 provides a clear procedure for the discharge of requirements by the relevant body that is discharging a requirement. It sets out clear time limits for decisions to be made and makes provision for circumstances where the discharging body requires further information to be provided in relation to an application for the discharge of a requirement. It is also made clear that any steps PoTLL takes to comply with the requirements before the Order is made will be treated as effective in complying with the requirements once the Order is made, thereby avoiding the need to repeat such steps.

9.5 Part 2 of Schedule 2 also includes an appeals process in respect of discharge, broadly in line with a number of DCOs made to date, including the Hinkley Point C (Nuclear Generating Station) Order 2013 and the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014. The process also applies in the circumstances where a notice under s.60 or 61 of the Control of Pollution Act 1974 is issued. This reflects provisions in Schedule 17 to the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 and streamlines the appeals process, thus minimising the risk to timely delivery of the Scheme.