

PLANNING ACT 2008
INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE)
RULES 2010

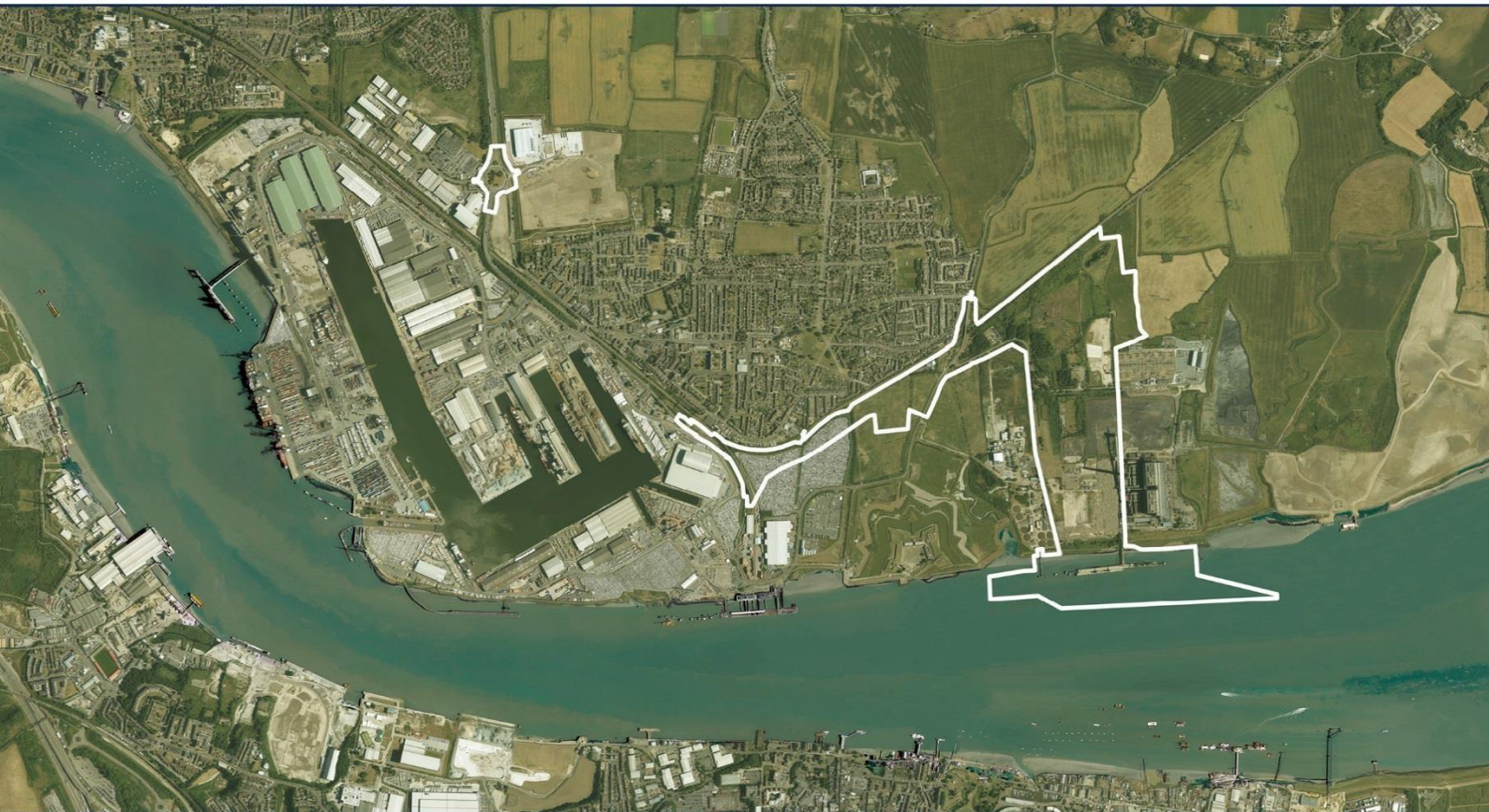
PROPOSED PORT TERMINAL AT
FORMER TILBURY POWER STATION

TILBURY2

TR030003

DEADLINE 7 NOISE RESUME PAPER -
CLEAN

TILBURY2 DOCUMENT REF:
POTLL/T2/EX/224



1.0 INTRODUCTION

- 1.1 This document sets out the Applicant's position on the noise issues that are currently outstanding within the Tilbury2 Examination.
- 1.2 It deals first with the Examining Authority's request that the Applicant considers a new DCO requirement dealing with the setting of noise limits, and explains the Applicant's submission and evidenced reasoning in regard to this, including cross-references to the Applicant's previous application and Examination submissions where appropriate.
- 1.3 Secondly, and for ease of referencing and bringing together consideration in one document, it rebuts directly the submissions of Gravesham Borough Council (GBC) made at Deadline 5, Deadline 6 and Deadline 7.

2.0 RESPONSE TO EXAMINING AUTHORITY

- 2.1 PoTLL notes the ExA's view, at page 11 of its Response to the dDCO v 4, in respect of Requirement 10, that "noise limits should also be set once further monitoring has been undertaken" and the recommendation that the requirement should be modified to make reference to noise limits being agreed at monitoring locations.
- 2.2 In carefully seeking to understand and respond effectively to the concerns of the ExA the Applicant wants to make sure that:
- the evidence and likely risk of noise effects are fully understood from the evidence submitted;
 - matters arising from concerns that are genuinely expressed but are not based on assessed likely significant effects or supported by professional evidence; and
 - appropriate monitoring and control that is necessary and effective is secured.
- 2.3 The Environmental Statement and additional sensitivity assessment has all been undertaken on a precautionary basis and there is no evidence that there is a need for limitation or control beyond that already proposed by the Applicant, as confirmed and supported by the host authority Thurrock Council and their expert Environmental Health Officer.
- 2.4 The only continuing representations not in agreement with the Applicant's expert evidence and submissions are those put forward by planning representatives of GBC. These submissions were not informed by any expert evidence, but rather from a number of references to other developments which are not on closer analysis comparable to the application proposals.
- 2.5 The Applicant made full written submissions and called oral expert evidence at the issue specific hearings to enable the proper exploration and testing of the noise evidence and considerations. To assist the ExA is referred to Mr Thornely-Taylor's oral evidence and to the written summary of it (see the Noise Resume Paper (REP5-030)). This was also supported by Thurrock Council. In the absence of any contrary expert evidence, the ExA is invited to accept the Applicant's case.
- 2.6 Noise limits on the port operations as requested by GBC are unnecessary since they are not required to deliver acceptable noise conditions for any sensitive receptor. The proposed scheme (i.e. the Operational Management Plan (PoTLL/T2/EX/181) and Requirement 10) by which noise is proposed to be fully addressed is comprehensive, and reflects good practice. There will be ongoing monitoring, together with a management plan which addresses the actual operations at the site. Were there to be any significant effects at receptors arising from the scheme, mitigation will be provided. There will be significant control by the local authorities in relation to both the management and mitigation of noise. This builds on the existing position for the operation of the Port of Tilbury.
- 2.7 GBC has not identified a comparable precedent (either in a Port DCO or Harbour Order) for its proposed "at receptor" noise limits in respect of English (UK) port

operations that replicate the circumstances and nature of the proposed Tilbury2 and surrounds. It is likely that “at receptor” noise limits will run the significant risk of unreasonably restricting port operations as a result of un-attributable noise. This could lead to the stopping or restriction of port activities which will reduce productivity and mean that it will not be able to properly serve the needs of its customers or fulfil its functions as a port of serving the just in time economy. The concerns expressed in relation to a proposed time limit on operations in the 24/7 Working Note (Appendix B to PoTLL’s Response to Relevant Representations (AS-049)) would equally apply to such a restriction.

- 2.8 Further, and importantly, noise limits at receptors are not enforceable when there are many and varied intervening activities and features that contribute to the noise environment. In the specific circumstances, geographic location and setting of Tilbury2 the identified potential receptors concerned here are subject to noise from a large variety of sources and ongoing change in sources that is out of the control or management of PoTLL.
- 2.9 GBC has not provided any professional expert or substantive relevant evidence to counter the Applicant’s evidence that it will not, in practice, be possible to dissociate noise from the proposed CMAT from the existing or future noise environment at receptor locations. There are a number of current and proposed important noise sources: river traffic; aggregates and similar operations in and around Gravesend; and the existing Port of Tilbury in many cases in closer proximity to the identified potential receptors. Mr Thornely-Taylor’s evidence was that in such an environment, a noise limit relating to the new port operations was simply not enforceable in practice. There is no contrary evidence from a suitably qualified expert. Mr Thornely-Taylor has supplemented this oral evidence with a note submitted at Appendix 2 setting out the problems with an at-receptor noise limit restriction.
- 2.10 PoTLL has responded to the non-comparable examples given in Gravesham’s Deadline 6 and 7 submissions in Part 3 of this paper below.
- 2.11 The Examining Authority will also be fully aware of the site context, from accompanied and unaccompanied site visits and as set out in the Noise Resume Paper, and as had been previously stated orally by Mr Ward at the April 2018 hearings. There have been no records of upheld and attributable noise complaints from Gravesham for the existing Port of Tilbury, although PoTLL acknowledges that some complaints have been received from within Thurrock. Furthermore, there are a number of similar operations on the Gravesham side of the river with vessels discharging aggregates that have been permitted to operate 24 hours a day, 7 days a week, with no noise limit requirements imposed upon them. GBC have not submitted any documentary evidence to indicate that any upheld and attributable complaints have been received in respect of those operations.
- 2.12 The Applicant also notes that the position adopted by GBC is entirely contradicted by Thurrock Council, through their EHO, both in the oral submissions given at the Issue Specific Hearings in April and June 2018, but also as recorded in their SoCG where at item 4.4.9 it is confirmed that 'the approach to operational mitigation set out in the noise ES chapter is agreed' (REP5-017). The agreed position from the host authority is of particular importance and weight.
- 2.13 If a requirement in the form suggested by GBC were to be imposed, requiring agreement at a later stage, it is evident from the engagement during the examination that it is unlikely that agreement could be reached on suitable noise limits at receptors. That is reflected in the position adopted by GBC to date, where

no agreement has been reached on these issues, and where suggested wording has only been provided at the last deadline to the Examination. The requirement would therefore not be practicable as it would lead to an impasse and the likely use of the DCO dispute resolution procedures. This is unprecedented under the Planning Act 2008 regime and would delay the implementation of this nationally significant infrastructure project. By way of demonstration of this, appended at **Appendix 1** is the email correspondence between the parties since Deadline 5 to Deadline 7.

- 2.14 If noise limits are to be imposed, the only enforceable way to do so would be to impose those limits at a suitable location on site or at an appropriate representative site boundary location, where the proposed port could be determined to be the identifiable dominant noise source. Such limits would not be reasonable for the reasons already articulated, but they might be enforceable in practice.
- 2.15 On that basis, and without prejudice to its position that such a requirement is unnecessary and therefore fails the planning condition/requirement tests, the Applicant has proposed wording for a requirement at Deadline 6 which would result in the imposition of source-based noise limits. This requirement, the wording of which follows this paragraph, would sit alongside requirement 10 and the Operational Management Plan. For the avoidance of doubt, however, the imposition of such a requirement is considered unnecessary and so is firmly resisted by the Applicant.
- 2.16 It is noted that in their Deadline 7 submission GBC, in responding to this potential requirement, have queried the role of the Port of London Health Authority in respect of noise, how this fits alongside the role of Thurrock Council in enforcing noise issues; and whether this should affect the drafting of this potential requirement.
- 2.17 In responding to this point in considering which is the appropriate authority to enforce the potential requirement, it is helpful to consider the roles of these authorities under the non-DCO planning and environmental regime.
- 2.18 In the non-DCO planning and environmental regime, the relevant Act for the control of operational noise (rather than construction) is the Environmental Protection Act 1990 ('the 1990 Act'), and in particular section 79 of that Act.
- 2.19 Section 79(1) of the 1990 Act establishes that it is the duty of a local authority to cause its area to be inspected from time to time to detect any statutory nuisances and, where a complaint of a statutory nuisance is **made to it by a person** living within its area, to take such steps as are reasonably practicable to investigate the complaint.
- 2.20 By a complicated interaction of that Act, the London Port Health Authority Order 1965, the Noise Abatement Act 1960, the Environmental Protection Act 1990 and the draft DCO, it is indeed the case that the geographical extent of Tilbury2 will be in the 'jurisdiction' of the Port of London Health Authority, as explained in the table below.
- 2.21 However, in relation to noise issues that may be caused by Port operations, it is Thurrock Council that is still the relevant authority for enforcement purposes. This is because the noise impact would be affecting a person living in its area, pursuant to section 79 of the 1990 Act. As such, Thurrock can then take the relevant steps to deal with the complaints, including inspecting the site (as can be seen to occur in the FOI response provided by GBC).

- 2.22 An example of this interaction playing out in practice can be seen in the Tilbury Green Power station example given by GBC in their Deadline 7 submissions (which is not comparable in terms of DCO drafting for the reasons given in section 3). That power station, being within the existing port limits, is located in a geographical area which falls under the 'jurisdiction' of the Port of London Health Authority; however, the noise restrictions included within its planning consent fall to be dealt with by Thurrock Council.
- 2.23 To assist the Examining Authority, set out below is a table indicating the responsibilities of the relevant authorities in dealing with noise at the existing Port of Tilbury, which also demonstrates how well in practice Tilbury2 will be monitored and regulated through statutory duties in addition to the Applicant's on-going monitoring, management procedures and controls.

Body	Responsibility	Relevant Statutes/Regulations
<p>Port of London Health Authority</p>	<p>It is considered a 'local authority' for the purposes of s.79 of the 1990 Act for any area forming 'any wharf and of the area within the gates of any dock and the buildings thereon respectively, forming part of or abutting upon the Port of London'.</p> <p>It is therefore able to action any complaints made 'in dock' by any person about any other aspect of Port operation. In practice this rarely occurs, and instead it works with Thurrock Council in the exercise of the latter's powers – as seen in the FOI request provided by GBC.</p> <p>The Port Health Authority is also responsible for a number of other port health aspects including food and infectious disease control.</p>	<p>London Port Health Authority Order 1965</p> <p>Noise Abatement Act 1960</p> <p>Environmental Protection Act 1990</p>
<p>Thurrock Council</p>	<p>Able to enforce and deal with complaints made by people external to the Port.</p> <p>The provision in section 79 that an authority must take all reasonably practicable steps to deal with a nuisance means that Thurrock has the ability to deal with issues in other areas such as the Port.</p> <p>It can be seen from the FOI request provided by GBC that Thurrock Council and the Port Health Authority frequently work together to respond, investigate and deal with noise issues.</p>	<p>Environmental Protection Act 1990</p>
<p>Environment Agency</p>	<p>Enforcement of the noise conditions of an Environmental Permit where specific Port operations require one. This includes working with operators to resolve issues raised by complaints.</p> <p>This can include requiring limits and the development of noise management plans.</p>	<p>Pollution Prevention and Control Act 1999</p> <p>Environmental Permitting (England and Wales) 2016</p>

Draft Requirement 9A

Operational noise limits and management (source-based)

Setting operational noise limits

9A.—(1) No later than two months after first commencing operation of any of Work Nos 1 to 8, the Company must—

- (a) submit to the relevant planning authority the results of noise monitoring relating to the operation of those works, which must have been carried out—
 - (i) at any time between the periods set out in columns (1) and (2) of Table 1 below for the length of time set out in column (3) of Table 1—

Table 1

<i>Days on which monitoring is to be carried out</i> (1)	<i>Period within which monitoring is to be carried out</i> (2)	<i>Length of time for monitoring to be carried out</i> (3)
Monday to Friday	07.00 to 19.00	Continuous one hour period
Monday to Friday	19.00 to 07.00	Continuous 15 minute period
Saturday or Sunday	07.00 to 19.00	Continuous one hour period
Saturday or Sunday	19.00 to 07.00	Continuous 15 minute period

- (ii) and at the following locations—

Table 2

<i>Work number(s)</i> (1)	<i>Noise monitoring location</i> (2)
8D (iii)	Within each processing facility that is constructed
1, 2, 8B (iv)	A reasonably practicable location adjacent to the final location of each work
3, 6, 8C (ii), 8D (ii)	A reasonably practicable location where the measured noise level is reasonably representative of the combined contribution of the sources located within each work

and

- (b) having regard to these results, propose for agreement by the relevant planning authority, in consultation with Gravesham Borough Council, source-based noise limits relating to the operation of Work Nos 1 to 8 at each of the monitoring locations set out in Table 2 above (or at any additional or substituted monitoring locations agreed between the Company and the relevant planning authority) for the following time periods—
 - (i) 07.00 – 19.00; and
 - (ii) 19.00 – 07.00.
- (2) The noise limits agreed under sub-paragraph (1)(b)—
- (a) must be capable of being achieved by operating plant, machinery and apparatus, and by carrying out activities, of the same nature as the plant, machinery, apparatus and activities and their associated source noise levels set out in Table 17.13 of the environmental statement; and
 - (b) must relate to the periods set out in column (3) of Table 1 above.

Management of noise limit exceedances

(3) In the event that the operation of any of Work Nos 1 to 8 results in any of the noise limits agreed under sub-paragraph (1)(b) being exceeded at any noise monitoring location set out in Table 2 above, the Company must investigate the source of the exceedance.

(4) Following the investigation carried out under sub-paragraph (3), if the Company determines that the source of the exceedance is plant, machinery, apparatus or any other activity under the Company's control, the Company must, as soon as reasonably practicable—

- (a) take remedial action to reduce noise emissions from that plant, machinery, apparatus or activity to a level within the applicable limit agreed under sub-paragraph (1)(b); and
- (b) take all reasonable action to prevent any further exceedance of that limit by the plant, machinery, apparatus or activity that has caused the exceedance.

Continuing noise monitoring

(5) If the final locations of the works referred to in column (1) of Table 2 above are adjusted as a result of on-going detailed design or changes in operational procedures, then the Company must move the noise monitoring locations mentioned in column (2) of Table 2 accordingly.

(6) Following submission of the monitoring results under sub-paragraph (1)(a), the Company must regularly carry out noise monitoring relating to the operation of Work Nos 1 to 8 in accordance with the requirements of sub-paragraph (1)(a).

Noise monitoring reports

(7) On (or as close as is reasonably practicable to) each anniversary of the date when the Company submitted to the relevant planning authority under sub-paragraph (1)(a) the results of noise monitoring relating to the operation of Work Nos 1 to 8, and until the fifth anniversary of that date, the Company must make available a report to the relevant planning authority which—

- (a) gives the results of monitoring undertaken by the Company under sub-paragraph (6) for the immediately preceding period of 12 months; and
- (b) explains, if any of the noise limits agreed under sub-paragraph (1)(b) were exceeded during that period, the actions that were carried out by the Company under sub-paragraph (4) and the results of those actions.

3.0 RESPONSE TO GRAVESHAM BOROUGH COUNCIL SUBMISSIONS

GBC Submission	PoTLL Response
GBC Post Hearing Submissions on Issue Specific Hearing on draft DCO	
<p>GBC view on 'options' for noise limit levels</p>	<p>Option one refers to national/international standards, highlighting the night time 40dB L_{Aeq} LOAEL value from the WHO guidelines that is already within the ES (described in Tables 17.2 and 17.16). It is noted that the night time baseline noise levels at all receptors exceeds 40dB L_{Aeq} (Table 17.27, where the lowest night time noise level is 46dB L_{Aeq} at receptors NSR7 and NSR8). This demonstrates that existing night time noise levels in Tilbury and Gravesend already give rise to some health effects for people living in this area, and that people already have to adapt their lives to live with noise at night.</p> <p>It is noted that LOAEL is the level above which observable health effects occur. It is the onset point for any adverse effect. Setting noise from the port at 40dB would be inappropriate because it is significantly lower than the existing ambient noise climate, and the aim of a condition should aim to prevent significant effects rather than prevent any effects.</p> <p>GBC note that 55dB is included in the WHO guidelines as an interim target, and this has been set for SOAEL in the ES and used as a limit value in the draft requirement 10. The WHO guidance notes that 55db is recommended in situations where 40db cannot be achieved, which includes this area. Although the WHO guidance notes that 55dB is not a health-based limit by itself, we are using it as SOAEL to avoid likely annoyance and sleep disturbance and preventing the increased risk of cardiovascular problems.</p> <p>Noise levels between LOAEL and SOAEL are accepted as being adverse effects, and the overall mitigation strategy ensures that noise levels are minimised and adverse effects are mitigated.</p> <p>Option 2 suggests that <i>noise limits would be set once further modelling</i></p>

	<p><i>and assessment has been undertaken or the equipment specification and operational procedures are known, and an ongoing noise management plan adopted. It is suggested that should the re-evaluation show that significant adverse effects are shown further design measures will be investigated and implemented where practical to prevent those significant impacts. If those mitigation measures are shown not to reduce levels below SOAEL then at receptor mitigation would be implemented.</i></p> <p>In response to this, PoTLL would indicate that the second half of this option is required by the current proposed draft Requirement 10.</p> <p>However this suggestion suffers from the same fundamental problem of setting noise limits at receptors that are some distance from the noise creating location and subject to intervening noise sources – it is unenforceable as background noise and distance will change the noise levels in a way that would mean that there is no direct attributable connection between the port operations and the noise experienced at receptor and the limit that is sought to be imposed at that location.</p>
<p>Reference to potential use of Woodeaton Quarry condition as an example that could be used for Tilbury2</p>	<p>This example is not applicable to Tilbury2. Notwithstanding that it is referring to a quarry which is a specific type of aggregates operation and is in no way similar to an operational port, it is also not technically comparable.</p> <p>Appendix B of the OMP for that project identifies that ambient noise levels were measured in the range 38-49dB (Para 5), and that noise limits are set around the MPS2 guidance:</p> <ul style="list-style-type: none"> • Maximum 55dB L_{Aeq} • Site level should not exceed L_{A90} by more than 10 • Maximum can be increase to 70dB for 8 weeks. <p>It is noted that the limit where action is taken to minimise noise from the site is set at 55dB at the monitoring locations (Para 24).</p>

	<p>Applying the MPS guidance to Tilbury2 would remove the BS4142 acoustic feature correction of 6dB (ES Table 17.14).</p> <p>In this case the assessment already shows that the noise from Tilbury2 is less than 55dB and less than 10dB above background at receptors in Gravesend (but not in Tilbury). As such, the situations are not comparable.</p>
<p>Reference to NoMEPorts Good Practice Guide</p>	<p>It is noted that this guide was developed to aid in the production of strategic noise maps and action plans under the EC Environmental Noise Directive, and therefore deals with the assessment of existing ports rather than the planning of new ports.</p> <p>The good practice guide only deals in L_{Aeq} based metrics. The guidelines do not use L_{A90} background levels or the BS4142 approach.</p> <p>A reference is made to a “spot 4” from the port of Livorno, where predicted noise impacts are due to a combination of berthed ships and road traffic noise. The document does not offer solutions for situations where multiple sources are present. It is noted that the UK does not have the referred to Italian noise limits in legislation.</p> <p>The good practice guide contains in its section 4 many examples of noise mitigation, and outlines a preferred approach which has been followed for Tilbury2 – noise mapping to identify the issue, defining appropriate mitigation, and using an action plan to control.</p> <p>The selective extracts set out in Gravesham’s representation submissions are simply a matter of fact and are not relevant to (and nor have they been applied by Gravesham to Tilbury 2.</p>
<p>Reference to New Zealand Napier Port</p>	<p>The approach at this port in Gravesham's submission is similar to the current Tilbury2 approach of monitoring and management.</p> <p>It should be noted that the approach at Napier Port does not refer to a noise limit save that noise insulation would be provided when noise levels</p>

	<p>exceed 65dB L_{DN,5day}, which although referring to a different figure is a similar approach to Requirement 10.</p> <p>It is also noted that the 65dB limit referred to applies to all sources except transport (see District plan chapter 57.9 https://www.napier.govt.nz/assets/Document-Library/District-Plan/Part-8-District-Wide/ch57.pdf) so it is not clear how this noise level requirement would transfer to an area such as Thurrock and Gravesham where road traffic noise is an important existing contributor.</p>
Reference to River Humber Project	The requirement referred to relates to construction not operational noise limits. Construction noise is assessed and is dealt with in policy and statutory terms in a different manner to operational noise (e.g. section 61 consents), so this can not be considered applicable to Tilbury2.
GBC Post Hearing Submissions on Issue Specific Hearing on Outstanding Environmental Matters	
Response to 3.16.2: Amendments to Operational Management Plan	<p>The Applicant would refer the ExA particularly to its submissions in the Noise Resume Paper on this question but also note that the OMP was updated at Deadline 5 (latest version PoTLL/T2/EX/181) for information to be shared with GBC as to the detail of the measures required by the OMP that are being put in place to reduce noise through management – GBC will therefore be able to directly see whether there has been compliance with the OMP.</p> <p>The references to ‘where practicable’ do not refer to a choice made by PoTLL but in recognition of the fact that operation of the port will change on a day to day basis, and that in some cases low noise equipment may just not be available. It should also be seen in the context of the reference to ‘Best Practicable Means’ in section 6.4 of the OMP - PoTLL’s compliance with the OMP will therefore be judged to that standard.</p>
<p>Response to 3.16.4: Use of BS4142:</p> <p>1. Concern that there is an inability to directly attribute noise level to the port, noting that that it appears PoTLL did this for the Canal Basin development.</p>	<p>1. The Applicant would refer the ExA particularly to its submissions in the Noise Resume Paper on this question as to the inappropriateness of BS4142 at Tilbury2. In respect of the Canal Basin, it should be noted that the baseline noise levels measured at Canal Basin were slightly higher in 2018 than in 2016, and the increase in noise has been attributed to the Serato drill ship which was present and audible in</p>

<p>2. Reference to Newhaven Port</p>	<p>2018 and which was not present in 2016. Other noise sources were noted as being similar.</p> <p>The noise levels measured in Canal Basin are ambient noise levels which include all noise sources which were present during the measurements, they do not report the noise level solely of the Serato drill ship.</p> <p>It is not possible to determine from these measurements if the noise solely from the Serato drillship exceeded any particular noise level within the overall range of measured values.</p> <p>2. This is a selective quote from the 'scope of the noise assessment'. The reference to a noise limit in that document is about setting limits within an assessment methodology by way of reference to the relevant British Standards; not the development of limits for that port itself. It is noted that the mitigation proposed in the conclusions of the noise assessment for that development do not include the imposition of a noise limit.</p> <p>In any event, this location is of limited relevance as it refers to one use within an operational port, rather than an operational port in totality.</p>
<p>GBC Deadline 7 Submission (which repeated the point made in GBC's Deadline 6 submission)</p>	
<p><u>Number of Complaints</u></p> <p>Whilst many of the complaints on investigation proved to be associated with construction rather than port operational matters, it does indicate that the level of complaint has been higher than suggested at the examination.</p>	<p>PoTLL has consistently set out in its oral submissions to the Examination that it has received no complaints from the Gravesham side of the river to the current operational port activities. However, from the start of the Examination (e.g. the relevant representation of Mr Colin Elliott (RR-001)) it has been apparent that complaints have been received from the Thurrock side of the river. However, given that Tilbury1 is a fully operational industrial and commercial port it should be noted that the log in the FOI request provided by Gravesham shows that it has prompted an average of only 1 complaint a month and at no point has this led to summary proceedings or the possibility of noise abatement zones being introduced.</p>

	<p>PoTLL would also note that many of the complaints set out in the FOI response provided by GBC relate to the EMR plant that has been openly and honestly discussed at Examination (see, for example, the response to Colin Elliot’s written representation (REP2-007)) as having now been actively managed in consultation with the Environment Agency (as that facility has an environmental permit).</p>
<p><u>Potential Comparators</u></p> <p>As set out in previous comments, it is normal practice that controls are based on noise limits at <u>receptors</u> rather than at source. This is the approach that informed The Associated Ports (Hull) Harbour Revision Order 2006 and the requirement to submit measures for approval to limit noise under Schedule 6 to the London Gateway Harbour Empowerment Order 2008. The relevant Orders are available on line. See https://www.legislation.gov.uk/uksi/2006/1135/contents/made and https://www.legislation.gov.uk/uksi/2008/1261/schedule/6/made. GBC therefore remains to be convinced that an alternative approach is necessary in this case and considers that a decision would need to be made on the basis of further monitoring as per the ExA’s suggestion.</p>	<p>PoTLL considers that these examples indicated by GBC are not comparable to Tilbury2 or the wording suggested by PoTLL for the potential requirement, for the following reasons:</p> <p>For London Gateway, the locations named in their GBC referenced equivalent requirement are isolated properties located closest to that port in a free field situation. There are no intervening sources between that port and those properties save for adjacent roads, and it is noted that London Gateway itself is located away from other noise sources. It should also be noted that the wording of the requirement equivalent does not set a limit on the face of the Order, but instead requires the operator to work with Thurrock to agree the measures that will be taken to limit noises at those locations. It is therefore not comparable to what either PoTLL or GBC have proposed.</p> <p>For Hull, that Revision Order provided authorisation for the reclamation of riverbed to aid in the creation of a renewable energy centre at the Port of Hull – see http://www.abports.co.uk/newsarticle/6/. This reclamation would take place right next to a nearby community on the same bank of the estuary which because of its proximity to the quay area would receive port noise with very few contributions from non-port sources. The condition wording applies to the operation of <u>that bed</u> once reclaimed - it does not relate to the operation of the Port of Hull (and PoTLL notes that the wording does not explicitly refer to ships berthed on that reclaimed bed). As can be seen from the Google Earth extract below (the area in red being the approximate area of reclamation, and the ‘r’ in Approximate being the location of the monitor), the proximity of the community to the quay area meant that it received port noise with very few contributions from non-port</p>

sources.

As is made clear in paragraph 8 of Schedule 1 of the HRO, the influence of background noise plays a key role in the use of the stated noise limits in this condition. The wording requires that background noise levels be monitored at a remote location where site-related noise is at least 7 dB lower than at the location to which the limit applies. It would not be possible to find such a location in Gravesham where the background has been shown in the ES to be close to the predicted site-related noise, and unlike the environment of the Hull site, moving away from the Port Site does not lead to a materially lower background noise level.

At Hull the wording sets out that measurements shall be disregarded if the measured noise level is within 3 dB of the background noise level. At Tilbury this would mean that most Tilbury2 noise measurements would have to be disregarded, and a Hull-type condition would be of no practical value. It should also be noted that the word “background” in the Hull HRO has the meaning of “Baseline” in the Tilbury2 ES where the word “Background” refers only to the level exceeded for 90% of the time.



The 'need' for at-receptor limits

The requirement must pass the normal tests – i.e. it must be:

- Necessary;
- Relevant to planning and to the development to be permitted:
- Enforceable:
- Precise; and
- Reasonable in all other respects.

The fact that noise arising from Tilbury 2 may exceed acceptable levels at sensitive receptors in Gravesham means that such a

As set out in section 2 of this Noise Resume Paper, and in PoTLL's oral and written submissions throughout the Examination (especially the Deadline 5 Noise Resume Paper (REP5-030), an at-receptor noise limit restriction is impracticable and unenforceable, which as GBC rightly point out, are part of the tests that a requirement must meet to be able to be included within a DCO.

PoTLL considers that further monitoring is not required to show that this is the case - as the Examining Authority would have seen on the Accompanied Site Inspection; the Thames at the location of Tilbury2 is a busy thoroughfare adjacent to the busy towns of Tilbury and Gravesham which have a number of industrial uses, with a large number of existing noise sources which would be added to any noise emitted from Tilbury2.

The letter from Mr Thornley-Taylor set out at Appendix 2 to this paper explains further why at-receptor noise limits are not suitable.

<p>requirement is necessary.</p> <p>For a requirement based on noise at source it would need to be shown that the limit was a close surrogate for an acceptable noise limit at the receptor itself for it to pass the above tests – the default position should always be measurement at the receptor because that is where the potential problem to be addressed arises. GBC would not concede therefore that the limit should not be set at the receptor until such time as further monitoring shows that this is impracticable or would lead to issues in relation to precision and enforceability.</p>	<p>It is also noted that the 'potential problem to be addressed' referred to by GBC is dealt with in Requirement 10 which provides for mitigation to be provided at receptors - i.e. to <u>fix</u> any issues that do arise.</p>
<p><u>Comments on PoTLL's suggested Requirement 9A</u></p> <p>In terms of 9A(1) it is stated that operational noise limits would be set following noise monitoring carried out '<u>no later than two months after first commencing operation of any Work Nos 1 to 8</u>'. This means that the baseline against which any operational noise limit would be set would be construction noise and not the actual 'without scheme' noise level. This is unacceptable for obvious reasons.</p>	<p>The reference to 'operation' is to the operation of those Works not to the commencement of their construction. Noise arising from the construction of the authorised development is therefore not caught by PoTLL's suggested wording.</p> <p>The noise limits would therefore be proposed on the basis of the first two months of operation of Tilbury2.</p>
<p><u>Comments on PoTLL's suggested Requirement 9A</u></p> <p>In terms of 9A(1)(b) the source based noise limits would only relate to 'the operation of Work Nos 1 to 8'. There is no mention of noise which may arise from moored vessels only the operation of the of the land-side component of the port. As stated during the examination, moored vessels are themselves a potential source of noise and these would be closer to Gravesham than the works themselves. The schedule of complaints relating to Tilbury 1 mentioned above clearly shows that noise from moored vessels</p>	<p>It is PoTLL's submission that explicit reference to the ships is not required (which, as is noted above, was also the case with the Hull example given by GBC). Works No.1 and No.2 are the RoRo and CMAT berths – their operation would include the mooring of vessels at them, as that is part of the operation of a berth - i.e. allowing vessels to rest against them.</p>

<p>can be a problem. It is necessary therefore that the requirement explicitly refers to the ships themselves as being included in the interests of precision. If they are not, it is likely that the requirement would be unenforceable anyway because there would be a potential noise source between the works and the receptors on the southern shore.</p>	
<p><u>Comments on PoTLL's suggested Requirement 9A</u> 9A(2) is a cause for concern in that it states the agreed noise limits:</p> <p>“must be capable of being achieved by operating plant, machinery and apparatus, and carrying out activities, of the same nature as the plant, machinery, apparatus and activities and their associated source noise levels set out in Table 17.3 of the environmental statement”</p> <p>This seems to imply that noise limits can be set higher to meet the operational requirements of the port irrespective of impact on sensitive receptors where the port considers it necessary. GBC would argue that proper planning should seek to ensure that the impact of the development is appropriate to its context through the imposition of the requirement and not provide a ‘get out’ clause. If it is not possible to control unacceptable adverse impacts then the ExA should be considering the alternatives. It would then be for the applicant to determine whether it wishes to implement the scheme should additional constraints be applied</p>	<p>The wording in sub-paragraph (2)(a) of the potential requirement has been created to tie its workings to the ES - i.e. by ensuring that the source levels in the ES upon which the assessment has been based are the starting point of discussions with Thurrock Council on the applicable noise limit.</p> <p>The wording of the potential requirement does not enable PoTLL to set limits itself to solely meet 'operational requirements'.</p> <p>Paragraph (2)(b) makes clear that the noise limits to be set pursuant to the requirement must be agreed by Thurrock Council in consultation with GBC. As such Thurrock Council will be able to ensure that limits are set which are appropriate, fit for purpose and reasonable in all other respects in proper planning terms.</p>
<p><u>Comments on PoTLL's suggested Requirement 9A</u> 9A(3) deals with management of noise limit exceedances. This requires that the ‘Company’ (defined in the draft DCO at the POTLL) should investigate any exceedance of noise limits</p>	<p>PoTLL responds to each point as follows:</p> <ul style="list-style-type: none"> • The term 'Company' does need to be defined to refer to any other party. Compliance with requirements of the DCO is the responsibility of PoTLL as the body obtaining the benefit of the DCO - enforcement

A few points on this:

- Presumably the term ‘Company’ should extend to any other third party should POTLL dispose of their interest in the land because the permission and requirement runs with the land – this may require an adjustment within the definitions in the DCO. It may already be covered but worth checking. The PoTLL has been clear that they will not be operating the CMAT – they have an interested party in mind for this – therefore the wording is a concern.
- The requirement only extends to ‘plant, machinery, apparatus or any other activity under the Company’s control’ – presumably most noise generating activities taking place at Tilbury 2 is capable of being under the Company’s control under the Port Byelaws (see Schedule 7 to draft DCO). Because of the potential for noise nuisance arising from moored ships / leased land and properties, it would be useful if any requirement makes it explicit that the POTLL is responsible for addressing noise nuisance arising from such sources.
- The wording of the requirement depends on the POTLL determining that the source of any exceedance is plant, machinery, apparatus or any other activity under its control. In other words, the POTLL becomes the responsible body for

of the requirement would therefore be against PoTLL also. It is for PoTLL's internal arrangements with its customers and tenants to determine how this happens 'on the ground'. PoTLL notes that the same position also applies in relation to the controls in the OMP. Any transfer of the benefit of the DCO (including its requirements) can only occur with the consent of the Secretary of State (article 51 of the draft DCO).

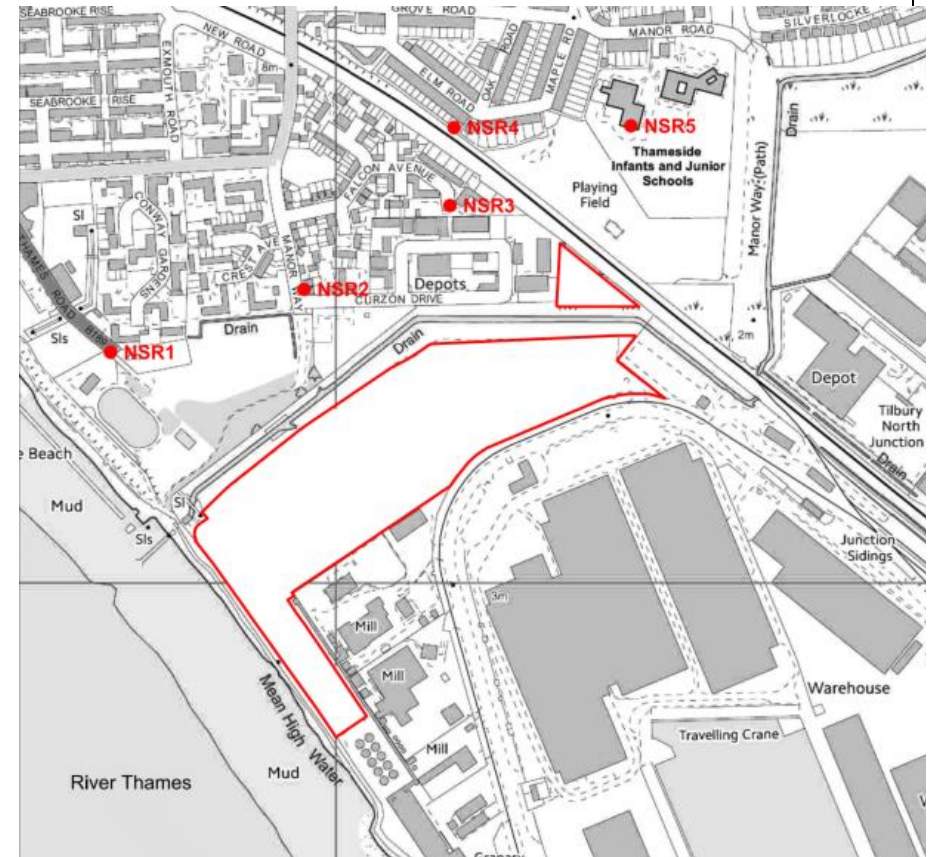
- The same point also applies to GBC’s second query. PoTLL is responsible for compliance with the requirement - the plant machinery, apparatus or any other activity may be owned by customers or tenants, however their use is ultimately under PoTLL's control pursuant to the Byelaws and the fact that they are only on site due to the internal arrangements that PoTLL has reached with them. This also applies to ships at berth.
- The potential requirement is drafted to provide for PoTLL to determine the source of an exceedance for practical reasons - there will be many noise sources operating at the port and it should be able to quickly determine what is causing the issue from within the site. The requirement is able to be enforced because if no action is taken, and a genuine complaint is raised, Thurrock Council will be able to rely on this requirement to ask PoTLL to prove that it has complied with sub-paragraph (3). Having this requirement (with the threat of a criminal offence being created), will in fact give Thurrock Council more 'teeth' than they have currently to act on and ultimately enforce noise breaches.

<p>enforcing the requirement against itself – there does not appear to be any explicit fall-back position whereby either the London Port Health Authority or Thurrock Council can serve notice requiring steps to be taken to remediate should this mechanism fail. In other words, the requirement may be unenforceable and fail the necessary tests. Is there something else in the DCO that would cover this or should the requirement include something in addition to deal with such an eventuality?</p>	
<p><u>Tilbury Green Power Station</u></p> <p>GBC supports the Tilbury 2 application in principle subject to a proper consideration of impacts and their control where necessary through the imposition of appropriately worded requirements.</p> <p>The ExA has clearly indicated that it anticipates maximum noise levels to be set following further monitoring and therefore not at this stage. It has not expressed an opinion on whether those noise limits should be defined at receptor or at source but it is logical that this itself should be addressed once such further monitoring (prior to the commencement of construction activity) has taken place.</p> <p>We would suggest therefore that the DCO contain a simpler requirement that establishes next steps and a means by which a scheme of operational noise control can be enforced by the relevant authority. On this, the conditions imposed by Thurrock Council on the Tilbury Green Power scheme might be a suitable model.</p>	<p>As noted above, PoTLL does not accept that receptor based limits are enforceable or practicable.</p> <p>Tilbury Green Power Station is not a comparable example for the following reasons:</p> <ul style="list-style-type: none"> • The monitoring locations named within the noise and vibration management plan are located close to TGP, with no intervening major noise sources save for a railway line. The location map below shows the relationship between the TGP site and the identified NSRs. • Given the close proximity of the NSR’s and lack of intervening other noise sources and a facility designed to operate continuously, it is possible in this case to take measurements which can be compared against the noise limits. The condition in this case is therefore enforceable. • It should also be noted that facilities of this kind can also be turned on and off to establish the noise level contributed by the site, and also the appropriate correction for other contributing noise sources. • By comparison, the operations/activities at Tilbury2, the distance to

For information, the report outlining the monitoring and proposed noise and vibration management plan for Tilbury Green Power is available on-line at <https://regs.thurrock.gov.uk/online-applications/applicationDetails.do?keyVal=ORWENWQGLIS00&activeTab=summary> .

Interestingly, this is a situation where the installation actually lies on the edge of the Tilbury 1 site and there is considerable potential for background noise arising from existing port activity etc. Monitoring and baseline were assessed at locations of sensitive receptors, with maximum permissible noise limits for day and night set accordingly.

NSRs in Gravesend and other multiple and changing contributing sources make it extremely difficult to try to establish a noise level definitively from Tilbury2.



GBC Suggested Requirement

We have drafted the following alternative for inclusion in requirement 10 for you to consider, which includes a provision that would allow the noise management plan to be reviewed should there be a change in the noise environment. A number of terms would need to be defined in the DCO for the purposes of interpretation – i.e. who would be the relevant authority for the purposes of approving the noise management plan etc. and what would constitute an ‘Emergency’:

Operational noise control

The development shall not come into operation until such time as there has been submitted to, approved by, and deposited with the relevant authority a noise management plan including provision for the on-going monitoring of noise generated by its commercial operation. In approving the said noise management plan, the relevant authority shall consult and have regard to comments provided by neighbouring local authorities within which potentially affected sensitive receptors are located.

The noise management plan shall specify:

- (i) The locations from which baseline noise and subsequent noise levels will be monitored;
- (ii) The method of noise measurement;
- (iii) The maximum permissible levels of noise at each such monitoring location for both daytime (07:00 – 23:00) and night time (23:00 – 07:00) periods; and
- (iv) The arrangements for making noise monitoring

Noting PoTLL's general position that such a requirement is not in any event necessary, PoTLL comments as follows specifically on this draft requirement:

- PoTLL's current proposed potential requirement already provides for the setting of permissible levels, the reporting of monitoring, the locations of monitoring locations and the method of noise measurement. It also provides a role for Gravesham. A separate plan is therefore not required.
- The actions suggested by the non-emergency action wording is already included within PoTLL's proposed potential requirement.
- The OMP and Operational Community Engagement Plan already set out a complaints mechanism and would also provide for the forewarning of upcoming noisy activities. Existing complaints mechanisms through the Environment Protection Act 1990 would also still exist and are not overridden by the DCO.
- The locations suggested by Gravesham are not appropriate, for the reasons given above (i.e. they are receptor based with intervening activities and noise sources.)

As such, many of the aspects of GBC's suggested wording are dealt with either through existing mechanisms secured through the DCO, in the wording proposed by PoTLL in the event that a requirement was imposed, or are otherwise evidenced and demonstrated by PoTLL to be inappropriate.

Other issues are dealt with in the response to GBC's comments on sub-paragraph (3) of PoTLL's suggested wording above.

results available to the relevant authority and for notifying local residents affected by an Emergency (as provided for in Requirement X below).

Commercial operation of the site shall not commence until such time as all noise monitoring equipment required under the approved noise management plan is installed and operational. Thereafter it shall be maintained in a fully operational condition at all times.

The plan shall make provision for noise measurements to be taken as soon as possible following a request by the relevant authority and such measurements shall be given to the relevant authority within 2 working days. At the approved monitoring locations, noise levels during operation of the development (including noise arising from moored vessels) shall be controlled so as not to exceed the levels specified in the approved plan, unless otherwise agreed in writing in advance with the relevant authority or in an Emergency.

Situations where maximum permissible levels of noise are exceeded other than in an Emergency

Where on-going monitoring indicates that the maximum permissible levels of noise agreed within the noise management plan have been exceeded, the Company shall seek to identify the cause of such breach and take any necessary steps to remedy such breach and notify the relevant authority in writing within 2 days of such breach

and the actions taken to remediate it.

Noise complaints procedure

In any instance where a third party makes a complaint about noise generated by the operation of the development or such complaint is passed on either by the relevant authority or the local authority whose area is affected, the Company shall carry out investigations to establish whether there has been a breach of the agreed maximum permissible levels of noise set out in the noise management plan, its likely cause and possible remedial measures. Thereafter, the Company shall take the necessary steps to remedy any identified breach and send a written report to the complainant as soon as reasonably practicable setting out the findings of the investigation and the actions taken. All such reports shall be kept in an appropriate location on site for a minimum period of 5 years and be made available to the relevant authority and/or the local authority whose area is affected upon request free of charge.

Exception in the case of Emergencies

In any instance where a maximum permissible noise level set out in the approved noise management plan is exceeded because of an Emergency, the relevant authority shall be provided within 2 working days with a written statement detailing the nature of the Emergency and the reason why the noise level could not be observed. If the Emergency is expected to persist for more than 24 hours then the relevant authority, together with the

relevant local authority and residents and businesses within the affected area shall be informed of the reasons for the Emergency and its expected duration.

Review of the noise management plan

In the event of there being a change in the noise environment within the area likely to be affected by noise arising from the development, the Company is hereby allowed to submit a revised noise management plan for the approval of the relevant authority. Such approval shall only be given following consultation with neighbouring local authorities within which potentially affected sensitive receptors are located and their comments being taken into consideration. Upon approval, the revised noise management plan shall supersede that originally approved and the remaining provisions of this Development Consent Order apply.

For the sake of completeness, in terms of monitoring points to be agreed under (i) above, GBC's deadline 6 response anticipated that these would be in the same short-term and long-term locations as set out in the ES. It is also assumed by GBC at that stage this would include locations identified for the measurement of background noise for a period of not less than 6 months ending not later than the time when construction on site commences.

Appendix 1

Correspondence with GBC since June ISH

Set out below are the email exchanges with Gravesham that have taken place since Deadline 5, as summarised in the table below. This has been presented in reverse chronological order as it has involved one email chain.

Date	Content
11 July 2018	Email from Martin Friend (V&G for PoTLL) to Wendy Lane (GBC) at requesting a meeting to discuss D5 noise submissions
17 July 2018	Email from Peter Ward (PoTLL) chasing for potential dates for a meeting
20 July 2018	Email from Wendy Lane (GBC) to Martin Friend (V&G for PoTLL) setting out her views and suggesting that meeting is not needed
24 July 2018	Email from Martin Friend (V&G for PoTLL) to Wendy Lane (GBC) suggesting a meeting with the EHO present would still be useful.
27 July 2018	Email from Martin Friend (V&G for PoTLL) to Wendy Lane (GBC) chasing for meeting
30 July 2018	Email from Wendy Lane (GBC) to Martin Friend (V&G for PoTLL) indicating that EHO was unavailable and then on leave and setting out her views as to the form of a requirement to control noise "used for other ports"
31 July 2018	Email from Martin Friend (V&G for PoTLL) to Wendy Lane (GBC) requesting more information as to which Ports have this restriction
3 August 2018	Email from Peter Ward (PoTLL) to Wendy Lane (GBC) setting out PoTLL approach to Deadline 6.
8 August 2018	Email from Martin Friend (V&G for PoTLL) to Wendy Lane (GBC) asking for comments on PoTLL's Deadline 6 submissions.
10 August 2018	Email exchanges between Martin Friend and Wendy Lane in relation to SoCG and indicating that GBC would be sending the ExA and PoTLL a letter in the coming days.
13 August 2018	Email from Geoff Baker (GBC) to Martin Friend appending GBC's Deadline 7 submission (set out in the table in section 3 above).

From: Baker, Geoff <geoff.baker@gravesham.gov.uk>
Sent: 13 August 2018 14:27
To: Martin Friend <martin.friend@vincent-gorbing.co.uk>
Cc: 'Tilbury2@pins.gsi.gov.uk' <Tilbury2@pins.gsi.gov.uk>; Lane, Wendy <wendy.lane@gravesham.gov.uk>; Chadwick, Tony <tony.chadwick@gravesham.gov.uk>; Butler, Chris <chris.butler@gravesham.gov.uk>; Glasson, Allan <allan.glasson@gravesham.gov.uk>; Wilders, Debbie <deborah.wilders@gravesham.gov.uk>; Ghani, Shazad <shazad.ghani@gravesham.gov.uk>
Subject: RE: Tilbury2

Martin,

Wendy asked that I finish off the attached letter and send to you early this week, setting out GBC's response to your suggested requirement on noise.

In looking at this, we have become aware that the London Port Health Authority is responsible for dealing with noise complaints at the existing Tilbury Docks (Tilbury 1 – see attached document, an appendix to a Thurrock Council FOI request.

As per our letter, we would appreciate some clarification on who will be responsible for dealing with noise complaints at Tilbury 2 – we have e-mailed the London Port Health Authority too and when it responds we will forward a copy.

Geoff Baker
Senior Planner (Planning Policy)
Planning and Regeneration
Gravesham Borough Council
Tel: 01474 33 75 62
Email: geoff.baker@gravesham.gov.uk

Gravesham Borough Council - Delivering for the Community

From: Martin Friend [<mailto:martin.friend@vincent-gorbing.co.uk>]
Sent: 10 August 2018 17:46
To: Lane, Wendy
Cc: Peter Ward; John Speakman; Glasson, Allan; Baker, Geoff; Butler, Chris
Subject: RE: Tilbury2 - SoCG

That's fine thanks.

Regards

Martin Friend

Director

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M: +44 (0) 7900 000 060
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vincent-gorbing.co.uk

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From: Lane, Wendy [mailto:wendy.lane@gravesham.gov.uk]
Sent: 10 August 2018 17:44
To: Martin Friend
Cc: Peter Ward; John Speakman; Glasson, Allan; Baker, Geoff; Butler, Chris
Subject: RE: Tilbury2 - SoCG

Dear Martin,

On the basis of the response I have just sent, I suggest that the wording for 6.1.2 in red below:

6.1.2	Operational Management Plan – noise	<p>Each party has made representations to the ExA regarding operational noise monitoring and limits. The last representations made at Deadline 7 reflect their respective positions.</p> <p>GBC consider that noise limits following further monitoring should be imposed. PoTLL do not agree with this view considering that such a requirement would fail the relevant tests, since it would be unreasonable and unenforceable.</p> <p>Entirely without prejudice to its position that such a requirement is unreasonable and unnecessary, PoTLL has proposed wording for a requirement which would result in the imposition of source-based noise limits.</p> <p>GBC don't support the wording proposed</p>
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And I am agreeable that my signature – as previously provided - can be added to the draft SoCG with this wording added.

Equally, I recognise that revised wording might be agreed as a result of next week's letter and so, via this email, I am giving Geoff the ability to agree revised wording, on my behalf, in 6.1.2 if he deems that it is compatible with our recent discussions on noise limit conditions.

Regards

Wendy

Wendy Lane (BSc Hons, MSc, MA, MRTPI)
 Assistant Director (Planning)

Gravesham Borough Council
Tel: 01474 33 74 01
email: wendy.lane@gravesham.gov.uk
Gravesham Borough Council - Delivering for the Community

From: Martin Friend [mailto:martin.friend@vincent-gorbing.co.uk]
Sent: 10 August 2018 17:31
To: Lane, Wendy
Cc: Peter Ward; John Speakman; Glasson, Allan; Baker, Geoff
Subject: RE: Tilbury2 - SoCG

Thanks Wendy, and have a good break !

We'll await to see the letter and see if there is any way forward that is mutually acceptable. Whilst desirable, if not possible we can record as not agreed. I assume Geoff will be authorised to sign off the final SoCG ?

Regards

Martin Friend

Director

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From: Lane, Wendy <wendy.lane@gravesham.gov.uk>
Sent: 10 August 2018 17:27
To: Martin Friend <martin.friend@vincent-gorbing.co.uk>
Cc: Peter Ward <Peter.Ward@potll.com>; John Speakman <John.Speakman@potll.com>; Glasson, Allan <allan.glasson@gravesham.gov.uk>; Baker, Geoff <geoff.baker@gravesham.gov.uk>
Subject: RE: Tilbury2 - SoCG

Dear Martin,

Agreeable to:

Engagement table : notes we have corresponded on additional requirement on noise limits;

4.2.9 : notes the Heritage contribution sum of £29,000 was agreed
4.4.8 : notes that you are happy with the OMP as it relates to AQ

Re: 6.1.2 We have looked at the wording suggested by Peter last Friday and we don't support the wording proposed.

Given the desirability of finding a way forward in advance of the closure of the examination, I was hoping to send you a letter this week but it isn't finished. As today is my last day until 4 September, my colleague Geoff Baker will now need to send this to you early next week.

Regards

Wendy

Wendy Lane (BSc Hons, MSc, MA, MRTPI)
Assistant Director (Planning)
Gravesham Borough Council
Tel: 01474 33 74 01
email: wendy.lane@gravesham.gov.uk
Gravesham Borough Council - Delivering for the Community

From: Martin Friend [<mailto:martin.friend@vincent-gorbing.co.uk>]
Sent: 10 August 2018 15:37
To: Lane, Wendy
Cc: Peter Ward; John Speakman
Subject: Tilbury2 - SoCG

Afternoon Wendy

As you are aware from the ExA's Rule 17 letter we need to submit a full suite of final SoCGs next Thursday. I attach the final version with changes since the D5 submission as follows :

Engagement table : notes we have corresponded on additional requirement on noise limits;

4.2.9 : notes the Heritage contribution sum of £29,000 was agreed

4.4.8 : notes that you are happy with the OMP as it relates to AQ

6.1.2 Operational Management Plan - noise : I have updated this to reflect our respective D6 reps and to note that without prejudice to our position as to necessity, we have suggested a noise requirement as provided to you by Peter last Friday. I note from your D6 reps that you state *inter alia* that you "would want to go back to the PoTLL in advance of deadline 7 as they have requested."

Could you let me know your views on this last point please so we can agree the wording for the SoCG. The opportunity to discuss our 'fall back' requirement still exists although I appreciate Allan is now on leave. As you will see from our D6 reps we have agreed it with Thurrock. I suspect that the principal difference between us may well remain so this final para. will remain in 'not agreed' but it would no doubt be helpful to the ExA if you are agreeable to the requirement we have suggested on a without prejudice basis and that could be recorded here.

I look forward to hearing from you.

Have a good weekend.

Regards

Martin Friend
Director

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From: Peter Ward
Sent: 03 August 2018 14:59
To: 'wendy.lane@gravesham.gov.uk' <wendy.lane@gravesham.gov.uk>; 'martin.friend@vincent-gorbing.co.uk' <martin.friend@vincent-gorbing.co.uk>
Subject: Suggested Requirement 9A.PDF

Dear Wendy,

Thank you for your email of the 30th, and I know Martin has responded with a question regarding your reference to other UK ports to which we still await your response. As you know, we had hoped that we could have met and discussed along with yourself and Alan this week but clearly this has not been possible from your side.

As you will likely appreciate, PoTLL will at Deadline 6 be making submissions by way of an update to the Noise Resumé Paper submitted at Deadline 5 to re-state that:

- the controls in the Operational Management Plan and Requirements 9 and 10 are considered sufficient to deal with the noise impacts of Tilbury2 and that it would be unnecessary in planning terms to impose another requirement;
- a requirement which provides for the setting of noise limits at receptors would be unenforceable due to the likelihood of background noise levels distorting noise arising from Tilbury2, and the technical difficulties of assigning the breaching of such noise limits to Tilbury2;
- no evidence has been submitted that could lead to a conclusion that 'on the evidence' a receptor noise limit should be imposed;
- on the contrary, we have submitted oral and written evidence to demonstrate why it should not be imposed and fails the relevant planning tests; and that
- as such we object in the strongest terms to an additional requirement being imposed, which would be completely contrary to established national planning policy.

However, in an acknowledgement of the ExA's currently-stated position, we will at Deadline 6 be putting forward a draft additional requirement on the basis that if the ExA and Secretary of State still consider that a noise limit requirement is necessary as well, this would be our preferred wording. As you will appreciate this has taken some thought within our team to develop.

This draft requirement is attached, and is, you will note, a requirement based on source based noise limits, as these are measurable and enforceable. We believe that this requirement meets the objectives you wish to achieve. I have below this email set out the relevant cross-references within this requirement to enable you to easily consider it.

It has been discussed and in principle agreed with Thurrock Council, given their status as host authority responsible for enforcement. Their status as host authority for the works which will be interacting with the noise limits is also why the requirement refers to approval of matters by them in consultation with you, rather than approval by both Gravesham Borough Council and Thurrock Council. The circumstances are different to those in Requirement 10, where approval by both local authorities is considered appropriate.

We hope that the wording of this possible additional requirement is an acceptable way forward to you in the event that the ExA and Secretary of State determine that a noise limit requirement is necessary in addition to Requirements 9 and 10, but if you have any comments on it before Deadline 6 or in reasonable time before Deadline 7, we will gladly consider them.

Many thanks

Peter

Works References

- 1 and 2: the RoRo and CMAT berths
- 3: the Ro-Ro terminal
- 6: the general storage areas
- 8B(iv): conveyor
- 8C(ii) and 8D(ii): aggregate storage yard
- 8D(iii): aggregates processing buildings

Tables 17.13 of the ES

Table 17.13 Noise Source Levels Site Activity	Number of plant	Source level	Source of information
Reach stacker & tug	10	80 dB LAeq,T at 10m	On site measurement
RoRo loading activities	-	80 dB LAeq,T at 10m	On site measurement
Wheeled loader (CMAT)	10	82 dB LAeq,T at 10m	On site measurement
Wheeled loader (General Storage Area - Daytime only)	2	82 dB LAeq,T at 10m	On site measurement
Aggregates conveyor	1	87 dB LWa/m	Assumed level
Aggregate screeners	2	90 dB LAeq,T at 10m	Assumed level based on BS5228-1 source levels
Aggregate process buildings	-	Internal level of 85 dB LAeq,T	Assumed level based on similar developments ³⁹²
RoRo workshop building	-	Internal level of 85 dB LAeq,T	Assumed level based on
Vessel in-berth – Generator	1	66 dB LAeq,T at 2m	On site measurement

Peter Ward
 Commercial Director
 Port Of Tilbury London Limited

From: Martin Friend [mailto:martin.friend@vincent-gorbing.co.uk]
Sent: 31 July 2018 13:41
To: Lane, Wendy
Cc: Glasson, Allan; 'Rupert Thornely-Taylor'; 'Peter Ward'
Subject: RE: Tilbury2

Wendy

Thanks for this. You mention that the table you have inserted is used for Ports elsewhere in the UK. Could you advise which ports have this restriction in place ?

Regards

Martin Friend

Director

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From: Lane, Wendy <wendy.lane@gravesham.gov.uk>
Sent: 30 July 2018 18:23
To: Martin Friend <martin.friend@vincent-gorbing.co.uk>
Cc: Glasson, Allan <allan.glasson@gravesham.gov.uk>; 'Rupert Thornely-Taylor' <rmtt@ruperttaylor.com>; 'Peter Ward' <Peter.Ward@potll.com>
Subject: RE: Tilbury2

Dear Martin,

Allan is on leave from next week and is therefore having to focus on tasks that need to be completed before then and wouldn't be available this week. I am in the midst of trying to recruit some additional staff whilst covering for other staff who are on leave, and so my time is also limited.

I notice that you haven't advised if you are or are not now minded to accept that ExA's changes to R10.

On the basis that you are minded to accept the ExA's changes, we would be happy to propose the following:

- The ExA has advised that noise limits should also be set once further monitoring has been undertaken. GBC recognises the advantage of setting levels in this way as all parties will have the advantage of knowing what the CMAT operations and equipment will be thereby allowing the noise model to be more accurate. Noise levels cannot be defined now – apart from potential LAmax
- The detailed noise monitoring scheme will cover:
 - the supply, installation and maintenance of a monitoring system at the specified noise monitoring locations – in the first instance we would anticipate these being the same short-term and long-term locations as set in the ES. We assume that this will include locations identified for the measurement of background noise for a period of not less than six months ending not later than the time when construction at the site commences
 - noise limits at those locations – we would expect these to be set for day, evening and night with agreement on what time periods these relate to. Our suggestion would be that used for ports elsewhere in the UK in respect to time periods as indicated below

Table 1 Limits for Operating Noise

<i>(1) Period</i>	<i>(2) Time</i>	<i>(3) Noise Limit</i>	
Daytime: Monday—Friday Saturday	0700–1900 0900–1900	53 dB LAeq (1 hour)	
Evening: Monday—Saturday Daytime: Sunday and bank holidays	1900–2300 0900–1900	46 dB LAeq (1 hour)	
Night-time: Monday—Friday Friday—Sunday Sunday—Monday	2300–0700 2300–0900 1900–0700	44 dB LAeq (1 hour)	48 dB LAmax

- the method and frequency of noise monitoring – ideally monitoring should be continuous and available in a location that GBC, Thurrock and the PoTLL can view at any point if it isn't going to be publicly accessible. In respect to the method, our suggestion would be that as used for ports elsewhere in the UK i.e. LAeq (1 hour) / LAmax. This will also cover issues such as wind speed.
- Once approved, the scheme shall be implemented in accordance with its terms
- Recognise that might require additional caveats such as:

In the event that noise levels at the specified locations exceed the limits in Table Y, subject to the provisos in Table Y on wind speed and background noise, the Port of Tilbury Limited shall undertake further measurements to investigate and such further measures as may be necessary to identify the cause, and insofar as the source of the noise is under their control, take remedial action to reduce noise emission from the site to within the limits in Table Y and take all reasonable action to prevent any repetition of a breach of the limits.

Is this the type of discussion you were anticipating?

Regards

Wendy

Wendy Lane (BSc Hons, MSc, MA, MRTPI)
 Assistant Director (Planning)
 Gravesham Borough Council
 Tel: 01474 33 74 01
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Gravesham Borough Council - Delivering for the Community

From: Martin Friend [<mailto:martin.friend@vincent-gorbing.co.uk>]
Sent: 27 July 2018 16:10
To: Lane, Wendy; 'Peter Ward'
Cc: Glasson, Allan; 'Rupert Thornely-Taylor'
Subject: RE: Tilbury2

Hi Wendy

Have you given any more thought to the possibility of a meeting ?

Have a good weekend.

Regards

Martin Friend

Director

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From: Martin Friend
Sent: 24 July 2018 09:03
To: 'Lane, Wendy' <wendy.lane@gravesham.gov.uk>; 'Peter Ward' <Peter.Ward@potll.com>
Cc: Glasson, Allan <allan.glasson@gravesham.gov.uk>; 'Rupert Thornely-Taylor' <rmtt@ruperttaylor.com>
Subject: RE: Tilbury2

Good morning Wendy

Having discussed both your email and the response of the ExA we still feel it would be useful to meet with yourself and Allan to discuss the noise issue face to face in order seek a further degree of understanding of our mutual positions on this issue. I believe the meeting we held on air quality with our respective experts present was very helpful and we have not had such an opportunity on the noise issue.

If you are agreeable we can seek a mutually convenient time before deadline 6 in order to reflect any discussions in an updated SoCG.

Regards

Martin Friend

Director

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From: Lane, Wendy <wendy.lane@gravesham.gov.uk>
Sent: 20 July 2018 17:49
To: 'Peter Ward' <Peter.Ward@potll.com>; Martin Friend <martin.friend@vincent-gorbing.co.uk>
Cc: Glasson, Allan <allan.glasson@gravesham.gov.uk>; 'Rupert Thornely-Taylor' <rmtt@ruperttaylor.com>; Baker, Geoff <geoff.baker@gravesham.gov.uk>
Subject: RE: Tilbury2

Dear Peter and Martin,

From our reading of the Examining Authority's Response to Revision 4 of the draft Development Consent Order 13 July 2018 statements on R10 Noise Monitoring and Mitigation, the ExA is minded to agree with GBC that noise limit levels should be set in the DCO. In our deadline 5 response, we suggested 2 options and the ExA is looking at the second option, namely that the DCO should be explicit that noise limits will be set once further modelling has been undertaken. Our suggested wording was:

- No development shall commence until a detailed noise monitoring scheme has been agreed with the relevant planning Authority and Gravesham Borough Council.
- The scheme shall include details of noise monitoring locations, noise limits at those locations, the method and frequency of noise monitoring and provisions for keeping records of noise monitoring and supplying these to the relevant planning Authority and Gravesham Borough Council.
- Any scheme that is approved shall be implemented in full for the duration of the development.
- Noise levels shall not exceed those specified in the approved scheme.

The ExA concludes this section by asking that, for deadline 6, would the Applicant and GBC state their positions on ExA's proposal above.

I have just spoken to Allan and we aren't sure that a meeting is needed:

1. If you are now minded to accept that ExA's changes to R10, some wording could hopefully be agreed via email exchange
2. If you are not minded to accept that ExA's changes to R10, the ExA expects you to explain why in your deadline 6 response. We, of course, will be supporting the ExA's proposed revisions.

On the S106, I have spoken to colleagues and they understand why the PoTLL would want to exclude the guided walk element. In relation to the fort repair, they still believe that this should be included because the works identified, which are a fraction of the total works required, explicitly relate to the upper level of the fort where – as you saw from the ExA visit – the views to Tilbury Fort are the most focused. Tilbury2 is impacting on the setting of Tilbury Fort and so being able to move around safely on that part of the fort does help to mitigate that change and without the repairs, that ability might be reduced.

Regards

Wendy

Wendy Lane (BSc Hons, MSc, MA, MRTPI)
Assistant Director (Planning)
Gravesham Borough Council
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From: Peter Ward [<mailto:Peter.Ward@potll.com>]
Sent: 17 July 2018 17:34
To: Martin Friend; Lane, Wendy
Cc: Glasson, Allan; 'Rupert Thornely-Taylor'
Subject: RE: Tilbury2

Hi Wendy

Further to martins email of last week can you advise some potential dates as martin has suggested so we can have a further discussion on noise

Also keen to close of the S106 so any update on clarification would be useful

Regards

Peter

From: Martin Friend [<mailto:martin.friend@vincent-gorbing.co.uk>]
Sent: 11 July 2018 13:00
To: 'wendy.lane@gravesham.gov.uk' <wendy.lane@gravesham.gov.uk>
Cc: Peter Ward <Peter.Ward@potll.com>; Glasson, Allan (allan.glasson@gravesham.gov.uk) <allan.glasson@gravesham.gov.uk>
Subject: Tilbury2

Hi Wendy

We have reviewed your D5 submissions and no doubt you will be doing likewise with ours. I feel like it would still be useful to meet again with our respective noise experts in order to see whether in a more collaborative environment we can't get to a more (if not completely) agreed position on noise. If you are willing please could you and Allan offer some dates through Peter, as I am away on leave from today until 23 July.

Also could you possibly come back on the S106 contribution clarification as soon as you are able, again copy Peter in please.

Many thanks.

Regards

Martin Friend

Director

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Appendix 2

Letter from Mr. Thornley-Taylor

Peter Ward
Commercial Director
Port of Tilbury London Ltd

15 August 2018
By email

Dear Peter

Application by Port of Tilbury London Limited for an Order Granting Development Consent for a Proposed Port Terminal at the Former Tilbury Power Station ('Tilbury2').

I am writing to provide my professional advice concerning the matter of the control of noise through the provisions of the Development Consent Order, sought through the application made by Port of Tilbury of London Limited for Tilbury2.

First, it may assist if I summarise my own qualifications and experience with regard to noise. I am a Fellow of the Institute of Acoustics, from whom I received in 2016 the Rayleigh Medal for outstanding contributions to acoustics. I am a Past President of the Association of Noise Consultants from whom I received their Outstanding Contribution Award. I am a Member and Officer of the International Institute of Acoustics and Vibration, a Member of the Institute of Noise Control Engineering of the USA, a Member of the Acoustical Society of America and a Member of the Institute of Noise Control Engineering of the USA. I have practised as a noise consultant for the past 50 years, during which I have advised the promoters of, and objectors to, many major infrastructure projects. I was author of the Pelican Book "NOISE" and joint author of a number of publications and International Standards on the subject. Most recently I have been expert witness on behalf of the Secretary of State for Transport in the two HS2 Bills that have to date been before Select Committees in Parliament. I was expert witness on behalf of objectors and the London Borough of Southwark in the Thames Tideway Tunnel DCO process. Among the port development projects I have advised on I was expert witness for Associated British Ports in the Dibden Bay public Inquiry, and particularly in the public inquiry into the Associated British Ports (Hull) Harbour Revision Order 2006 referred to by Gravesham in their Deadline 6 response. I have been expert witness in several High Court trials of noise nuisance cases in several jurisdictions, including a recent case concerning port noise, and in other tribunals around the world. I have been responsible for devising complex noise control conditions for infrastructure developments, including the system of noise controls in the sequence of planning permissions relating to London City Airport since its inception. I currently advise the

London Borough of Newham on noise matters relating thereto. I was recently a member of the external review panel for the forthcoming WHO Environmental Noise Guidelines for the European Region.

The National Policy Statement for Ports (NPSP) includes the requirement that “5.10.10 when preparing the development consent order the decision-maker should consider including measurable requirements or specifying the mitigation measures to be put in place to ensure that actual noise levels from the project do not exceed those described in the assessment or any other estimates on which the decision-maker’s decision was based.”

The essential starting point is that noise predictions are reported in the ES, along with a mitigation approach, which conform to national noise policy. What is required through the DCO process is a means of ensuring that actual operational noise levels do not exceed those predicted.

There are explicitly two alternatives in the requirement given in the NPSP, one based on measurement and the other based on specification of mitigation measures. The measurement alternative may be the most straightforward in cases where the port is the main source of noise for a community in relatively close proximity. However, it is clearly true that measurement and the use of limits for measured noise can only be a valid approach where it is physically possible to measure noise from the port, uncorrupted by the inclusion of ambient noise from other sources.

Mitigation measures proposed for Tilbury2 are of three kinds. There are proposals for noise reducing features particularly noise barriers which can be specified at this time as the relevant physical conditions are known and will not materially change. This kind of mitigation includes the link road and access noise barriers. Secondly there is a set of mitigation measures set out in the Operational Management Plan and, thirdly, Requirement 10 provides details of mitigation at the receiver in the form of noise insulation should this be necessary.

Ports share many of the characteristics of other major infrastructure developments such as airports, highways and railways, in that noise sources may not be capable of direct control through conditions. The noise emission characteristics of vehicles on a highway cannot in general be controlled by condition with limited exceptions such as the requirement to provide low noise road surfaces. The noise emission of aircraft can only be controlled indirectly by schemes that have the effect of limiting the numbers or types of aircraft that may operate. The noise emission of railways can only be controlled indirectly. In the case of ports, the noise emission of vessels is outside the control of port operators, except in extreme cases where it might be possible to exclude specific vessels. Likewise activities such as RoRo include noise characteristics which cannot be directly controlled. The noise sources proposed for the CMAT site have opportunities for noise control associated with them, although at this stage they cannot be specified in detail and the appropriate approach is set out in the Operational Management Plan.

At face value, it might be thought the means of giving effect to the NPSP requirement is to measure eventual operational noise levels, compare them with the figures in the ES, and require that action be taken should they be found to have been exceeded. However, the ES uses a method of noise assessment which is not based solely on measurable physical noise levels. As is standard practice notional corrections are added to predicted measurable noise levels to allow for characteristics of the noise which affect its potential impact on residential receptors. These corrected levels, called rating levels are not real physical noise levels, and all that can be measured are the lower uncorrected physical noise levels. Were they to be controlled by condition, the control could only apply to noise originating from within the Tilbury2 site operating under DCO powers. Distinguishing noise from a specific source is possible when its noise level protrudes sufficiently above the noise due to extraneous sources, or when there is a measurable difference if all the source can be switched on and off and the noise level measured with and without them. Switching a port on and off is not practicable.

Gravesham have quoted a noise condition from the Associated British Ports (Hull) Harbour Revision Order 2006 on the basis that a condition of this kind could be applied at Tilbury2. I participated in the drafting of the noise requirement in that Order. There was a community immediately adjacent to the port site which because of its proximity to the quay area would receive port noise with very few contributions from non-port sources. As is made clear in paragraph 8 of Schedule 1 of the HRO, the influence of background noise plays a key role in the use of the stated noise limits. Firstly it is required that background noise levels be monitored at a remote location where site-related noise is at least 7 dB lower than at the location to which the limit applies, but noise from other sources is similar to that at the specified location which is on an area of open ground adjacent to the port site and the residential area. It would not be possible to find such a location in Gravesham and to find a location where port noise was 7 dB above the baseline noise it would be necessary to cross to the Tilbury bank of the river where the baseline would be influenced by sources different from those in Gravesham. At Hull measurements shall be disregarded if the measured noise level is within 3 dB of the background noise level. At Tilbury this would mean that the great majority of Tilbury2 noise measurements would have to be disregarded, and a Hull-type condition would be of no practical value. It should be noted that the word "background" in the Hull HRO has the meaning of "Baseline" in the Tilbury2 ES where the word "Background" refers only to the level exceeded for 90% of the time.

The outstanding feature of the Tilbury2 noise predictions is that as far as predictions of the measurable noise levels are concerned (not to be confused with rating levels that include notional penalties that are for assessment purposes and are not measurable with a sound level meter) noise from the CMAT is equal to or lower than the baseline in all cases except one where it is only 2 dB above the baseline. In the case of RoRo noise the predicted measurable noise level is lower than the baseline in all cases except one where it is only 1 dB above the baseline. When CMAT and RoRo noise are combined only in one case is there a difference between predicted

noise measurement and present day baseline of between 3 and 4 dB. Other coming developments will cause the baseline to rise, and that one case would no longer exist. If other port sources were added in, such as vessel noise, there might be cases where the measurable noise level was more than 3 dB above baseline, but noise from vessels is not under the control of the port operator, and in the Hull case noise not under the control of AB Ports is excluded from the limits. Thus to use a Hull-type condition would be ineffectual, unless the noise limits were raised significantly above those in the ES. That would conflict with the requirements of the NPSP and have the effect of discouraging avoidance and mitigation at source and providing higher operational noise limits.

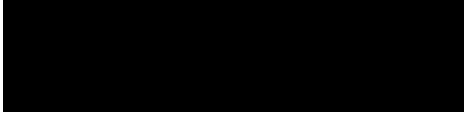
A receptor-based measurement control cannot therefore be achieved with regard to Tilbury2 due for example to the site, setting and other contributory development in the locality. A method of employing measurable requirements in a control would be to measure source-based noise levels rather than receptor-based noise levels. Subject to the variation which results from changes in atmospheric conditions (in respect of which the worst case is assumed in the ES) if the noise output of the sources on the site can be limited at or close to the source, receptor noise levels will automatically be controlled. The measurement of the sound power output of individual source is not practicable, but noise monitoring at locations relatively close to groups of sources can be achieved, and separate noise limits assigned to those individual locations. The precise locations and the assigned noise limits cannot be determined at this stage and would have to be agreed once sufficient detail was known. Draft requirement 9A sets out an approach of this kind.

When there are conditions involving specific noise limits, remedial action is triggered by monitoring results which indicate an exceedance of the limits. However, in practice, the regime associated with the Operational Management Plan brings about a requirement for noise reduction approaches which is not dependent on exceedance of measurable limits. To that extent, the presence of measurable noise limits has the opposite effect to that intended, in that if noise does not exceed the limits, an operator on the port site can with some legitimacy say that there is no obligation to do better in terms of noise emission. While the law might provide for seeking remedial action even when the noise limits are not exceeded, the enforcement position is much more straightforward if all that has to be demonstrated is that the CMAT operator, for example, has not taken or is not taking action to minimise noise emissions. The ES does not assume any mitigation approaches which are impracticable, and therefore securing the implementation of all reasonably practicable mitigation approaches through the Operational Management Plan has the effect of ensuring that the predicted noise levels in the ES are not exceeded, fulfilling the requirements of the NPSP and ensuring good practice and operation.

In the light of the above facts, it has been, and continues to be my advice to the Port of Tilbury London Ltd that the approach to noise control in the dDCO and associated documents, particularly the Operational Management Plan, is the best approach which achieves the aims of national noise policy and ensures good practice and operation. However, if after considering and weighing the evidence and professional

advice the decision-maker is of the opinion that measurable noise limits are nevertheless necessary, then draft requirement 9A would meet that need.

Yours sincerely,



Rupert Thornely-Taylor F.I.O.A.