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Dear Sirs,

**PLANNING ACT 2008
APPLICATION FOR THE PROPOSED PORT OF TILBURY (EXPANSION)
DEVELOPMENT CONSENT ORDER**

1. I am directed by the Secretary of State for Transport (“the Secretary of State”) to say that consideration has been given to:
 - the report dated 20 November 2018 of the Examining Authority, a panel of three members consisting of Dr Mike Ebert, Paul Hudson, and Max Wilshire (“the Panel”) who conducted an examination into the application made by Port of Tilbury London Limited (“the Applicant”) for the Port of Tilbury (Expansion) Development Consent Order (“the DCO”) under section 37 of the Planning Act 2008 as amended (“the 2008 Act”); and
 - the responses to the further consultation undertaken by the Secretary of State in respect of the application.
2. The application was accepted for examination on 21 November 2017 and the examination was completed on 20 August 2018. The examination was conducted on the basis of written and oral submissions submitted to the Panel and by a series of meetings held in the location of the Development. The Panel also undertook one unaccompanied and two accompanied site inspections.
3. The DCO as applied for would grant development consent for the construction, operation and maintenance of a new port terminal and associated facilities (“the Development”) in Tilbury on the site of the former Tilbury Power Station on the north

bank of the River Thames. The Development would include a Roll-on/Roll-off (“Ro-Ro”) terminal and a Construction Materials and Aggregates Terminal (“CMAT”), and associated infrastructure including rail and road facilities that would link to the existing network, including modifications to the existing marine infrastructure. The CMAT would include stockpiling of construction materials and some processing of aggregates for the production of asphalt and concrete products. The proposed development would require works including, but not limited to:

- creation of hard-surfaced pavements;
 - improvement of, and extensions to, the existing river jetty including creation of a new Ro-Ro berth;
 - associated dredging of berth pockets around the proposed and extended jetty and dredging of the approaches to these berth pockets;
 - new conveyors and material handling;
 - erection of welfare and ancillary buildings;
 - erection of a single 10,200 sqm warehouse;
 - a number of storage and production structures associated with the CMAT;
 - construction of a new link road from Ferry Road to Fort Road; and
 - formation of a rail spur and sidings.
4. The effect of these proposals would be to provide a new deep-sea jetty and increase the size of the port of Tilbury from a land area of around 383 hectares (“ha”) to some 445ha.
5. Published alongside this letter on the Planning Inspectorate’s website is a copy of the Panel’s Report of Findings and Conclusions and Recommendation to the Secretary of State (“the Panel’s Report”). The main features of the proposal and the site are set out in Chapter 2 of the Panel’s Report, the Panel’s findings and conclusions are set out in Chapters 4 to 8, and the Panel’s overall conclusions and recommendation are in Chapter 9.

Summary of the Panel’s Report and Recommendation

6. The principal issues considered during the Examination on which the Panel has reached conclusions on the case for development consent are set out in the Panel’s Report under the following broad headings:
- Legal and Policy Context (Chapter 3);
 - Finding and Conclusions in relation to policy and factual issues, which includes consideration of: policy justification; dredging; navigation; design; land-side transport; land use; landscape and visual impacts; historic environment; noise and vibration; biodiversity, ecology and nature conservation; climate change adaptation; flood risk and hydrology; water quality and resources; socio-economic impacts; construction and piling; ground conditions and contamination; waste management; air quality; pollution control and other regulatory regimes; health; utilities; cumulative impacts with other development proposals (Chapter 4);
 - Findings and conclusions in relation to Habitats Regulations Assessment (Chapter 5);
 - Conclusion on the case for Development Consent (Chapter 6);

- Compulsory Acquisition and Related Matters (Chapter 7); and
 - Draft Development Consent Order and Related Matters, including the Deemed Marine Licence (“DML”) and other Legal Agreements and related documents (Chapter 8).
7. For the reasons set out in the Summary of Findings and Conclusions (Chapter 9) of the Panel’s Report, the Panel recommends that the Order be made, as set out in Appendix D to the Panel’s Report.

Summary of Secretary of State’s decision

8. **The Secretary of State has decided under section 114 of the 2008 Act to make with modifications an Order granting development consent for the proposals in the application.** This letter is the statement of reasons for the Secretary of State’s decision for the purposes of section 116 of the 2008 Act and regulation 23(2)(d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (“the 2009 Regulations”) – which apply to this application by operation of regulation 37(2)(a)(ii) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

Secretary of State's Consideration of the application

9. The Secretary of State's consideration of the Panel's Report, and all other material considerations including the further representations received after the close of the Panel’s examination in response to the Secretary of State’s consultation letters of 7 December 2018 and 7 January 2019 are summarised in the following paragraphs. Where not stated in this letter the Secretary of State can be taken to agree with the Panel’s findings, conclusions and recommendation as set out in the Panel’s Report, and the reasons for the Secretary of State’s decision are those given by the Panel in support of the conclusions and recommendations. All “PR” references are to the specified paragraph in the Panel’s Report and references to “requirements” are to those in Schedule 2 to the DCO as recommended by the Panel at Appendix D of the Report.

Legal and Policy Context

10. The Secretary of State notes that under section 104 of the 2008 Act he must decide this application in accordance with the National Policy Statement for Ports (“NPSP”) designated on 26 January 2012, subject to certain exceptions which are not relevant in this case. He also notes that consideration must also be given to the appropriate marine policy documents, determined as such in accordance with section 59 of the Marine and Coastal Access Act 2009, as the proposed development affects tidal waters. The Secretary of State notes that he must also have regard to any Local Impact Report submitted within the statutory timetable and any other matters that he thinks are both important and relevant to his decision (PR 3.1.2). He also notes the Panel’s assessment at Chapter 3 of the other legal provisions and agrees these are relevant and important matters to be considered in deciding this application.
11. The Secretary of State notes that consideration was given as to what constituted the Nationally Significant Infrastructure Project (“NSIP”) in accordance with the 2008 Act

and what elements of the Development should be considered associated development (PR 2.3). The Secretary of State notes that the NSIP was initially described as Work No. 1 being the construction of a Ro-Ro berth on the River Thames but that this was amended to include Work No. 2, the CMAT berth and that the examination of the application proceeded on this basis. The Secretary of State agrees with the Panel that the application as a whole meets the policy justification required by the NPSP and with the explanation and justification for the change of approach to treating the CMAT as part of the NSIP (PR 4.2.49).

12. The Secretary of State confirms that, in considering the application, he has had regard to all the legislation and policy identified by the Panel, including the UK Marine Policy Statement and consultation on the third tranche of Marine Conservation Zones, the two Local Impact Reports from Thurrock Council ("TC") and Gravesham Borough Council ("GBC") referred to at PR 3.9 and all relevant development plan policies.
13. It is the view of the Secretary of State that the requirements of the 2009 Regulations have been fully met by the environmental statement ("ES"). He confirms that, in coming to his decision to make the DCO, he has taken into consideration all the environmental information in accordance with regulation 3(2) of the 2009 Regulations. For the purposes of regulation 23(2)(d)(iii) of the 2009 Regulations, the Secretary of State considers that the main measures to avoid, reduce and, if possible, offset the major adverse environmental impacts of development are those specified in the requirements and the DML.

Dredging

14. The Secretary of State notes that proposals for capital and maintenance dredging for the Development formed a substantial part of the examination (PR 4.3.39) and consideration of this matter is set out at PR 4.3.
15. The Secretary of State notes that discussion took place between the Applicant and the Port of London Authority ("PLA"), Environment Agency ("EA") and the Marine Management Organisation ("MMO") regarding the proposals for capital and maintenance dredging and how these powers were expressed in the DCO and DML. Discussion also took place with Historic England ("Hist E") about the impact of dredging on the marine environment, archaeology and Tilbury Fort (considered further below). The Secretary of State is content that by the end of the Examination the MMO, PLA, EA and Hist E were all content with the final form of article 43 of the DCO (powers to dredge), the DML and the associated relevant plans and protective provisions which requires the Applicant to consult these bodies as appropriate before applying for dredging consent (PR 4.3.39, 6.2.13).
16. The Secretary of State notes that Natural England ("NE") raised and maintained concerns about the potential impact of dredging activities on the Thames Estuary and Marshes Special Protection Area ("SPA") and Ramsar site and functionally linked habitats (PR 4.3.28). This is a matter considered in the Secretary of State's Habitats Regulation Assessment and is covered in paragraphs 56-76 below. The Secretary of State also notes that paragraph 10 of the DML requires the Applicant to consult with NE (and the EA) before submitting a construction method statement to the MMO. He

therefore agrees with the Panel that this requirement provides sufficient safeguards with regard to NE's concerns (PR 6.2.14).

17. The Secretary of State agrees with the Panel that the dredging proposals have been properly assessed in accordance with the NPSP, are adequately provided for in the appropriate articles in the DCO and the DML and that dredging is not a matter that weighs against the grant of development consent (PR 4.3.41).

Green Belt

18. The Secretary of State notes that the proposed Development would intrude into the designated Green Belt (PR 4.7.12). This intrusion amounts to 8.75ha of designated Green Belt land made up of former agricultural land; for the purposes of the rail corridor and access road which would run into the Development site (0.28ha of Green Belt land); part of the CMAT for aggregate stockpiles (0.73ha of Green Belt land); and landscaping and ecological mitigation (7.74ha of Green Belt land) (PR 4.7.12).
19. The Secretary of State has considered the National Planning Policy Framework ("NPPF") and agrees with the Panel that the alignment of the rail corridor through Green Belt does not conflict with the purposes of the Green Belt, as it qualifies as necessary local transport infrastructure and does therefore not constitute inappropriate development in Green Belt land which is compatible with paragraph 146 of the NPPF (PR 4.7.15 and 4.7.28). With regard to delivery of part of the CMAT site on a small area of Green Belt land, the Secretary of State agrees with the Panel that this would constitute inappropriate development. The Secretary of State notes that the Panel agreed with the Applicant that if the alignment of the new railway is accepted, that this area of land will not serve any credible Green Belt purpose given that it would be 'enclosed' by the alignment. The Secretary of State therefore agrees with the Panel's view that the need and the function of the proposed CMAT outweighs the limited harm to the Green Belt and provides for very special circumstances to warrant this inappropriate development (PR 4.7.19 and 4.7.28). With regard to the remaining Green Belt land to be used for the Development (which constitutes about 90% of the total Green Belt land proposed to be taken) the Secretary of State notes that this will continue its essential Green Belt purpose as it would remain as open space used for landscaping and ecological mitigation and would therefore not constitute inappropriate development (PR 4.7.20 and 4.7.28). Overall, the Secretary of State agrees with the Panel's conclusion that the use of the 8.75ha of Green Belt land for the Development meets the tests of the NPPF and does not conflict with Green Belt policy (PR 4.7.28).

Landscape and Visual Impacts

20. The Secretary of State notes the Panel's consideration of this matter at PR 4.8 and that the main issues that arose were impacts of the Development on the surroundings overall, on receptors in Gravesend and on residents in Tilbury as well as of the lighting proposals.
21. The Panel concluded that the Development would have an adverse impact on the overall surroundings from a landscape and visual perspective (PR 4.8.47). The Panel however considered that appropriate and proportionate mitigation, including for the

residents of Tilbury, would be provided through the Landscape and Ecological Management Plan and the lighting strategy, both of which are secured in the DCO (PR 6.2.28). Following measures proposed by GBC to protect the outlook from Gravesend looking towards the Development, consideration was given to further visual mitigation in the form of trees on both the Tilbury and Gravesend sides of the river. The Panel however concluded that this would not be possible to deliver (PR 4.8.40).

22. The Panel noted that even after mitigation measures have been implemented, some element of harm would be caused by the proposed Development and that landscape and visual impacts of the Development weigh marginally against granting development consent (PR 4.8.51, 6.2.29). However, the Secretary of State notes the Panel's assessment that the element of harm would be limited and is content that this does not outweigh the advantages of the Development.

Tilbury Fort

23. The Secretary of State notes that the impact on Tilbury Fort, a scheduled monument, was one of the most significant issues of the examination (PR 4.9.48-4.9.50).
24. Hist E and English Heritage ("EH") raised concerns about the impact of construction of the Development on the Tilbury Fort, particularly in relation to vibrations from piling and construction traffic. The Applicant highlighted that mitigation relating to the construction phase was secured in the DCO via the Construction Environmental Management Plan ("CEMP") (secured through requirement 4) which included developing and implementing a monitoring and mitigation regime in consultation with Hist E and EH to monitor and mitigate the vibration effects of piling on Tilbury Fort and its associated structures. The Panel set out that this approach was not challenged and that they considered it appropriate (PR 4.9.61). The Secretary of State notes that overall the Panel was content that mitigation measures secured in the DCO would minimise negative impacts of the Development on the Fort and that the s106 agreement between the Applicant and TC included monies to mitigate the residual impacts of the Development, improve access and enhance visitor experience to Tilbury Fort in line with paragraph 3.3.3 of the NPSP (PR 4.9.64, 4.9.72 and 4.9.85). The Secretary of State notes that whilst the s106 agreement was not signed at the end of the examination, and that the Panel therefore placed no weight on it when making their recommendation, that it has since been signed.
25. With regard to the setting of the Fort, the Panel considered that the impact of the Development on it should be seen in the context of the current industrial landscape (PR 4.9.66). The Panel noted that whilst paragraph 5.12.12 of the NPSP encouraged preservation of the setting of the Fort, they concluded that this would not be possible with the Development (PR 4.9.68).
26. Concern was also raised by Hist E about the impact of capital dredging on foreshore elevations at Tilbury Fort, including a request for a requirement in the DCO to measure these impacts. The Applicant considered that this was not necessary as modelling had demonstrated that there would be no hydrodynamic or sedimentation effects in the area of the Tilbury Fort arising from the Development (PR 4.3.37). The Panel considered that in light of the conditions in the DML, such a requirement was not

necessary (PR 4.3.38). The Secretary of State agrees that this requirement is not necessary and the Panel's view that concerns in relation to Tilbury Fort foreshore have been appropriately addressed and mitigated against and modelling has shown that there will be no hydrodynamic or sedimentation effects on the Tilbury Fort's foreshore (PR 4.9.63).

27. The Secretary of State has also had regard to the concerns raised about the impact of the Development on the wider network of forts and the line of sight between them, noting this was integral to their design as a functional network to intercept river-borne threats (PR 4.9.74). The Secretary of State agrees with the Panel's conclusion that there would be a low adverse impact on the combined setting and lines of sight of the network of forts, particularly when vessels are moored at the Ro-Ro terminal but that moorings by their nature are temporary and would affect few lines of sight (PR 4.9.78, 6.2.31).
28. The Secretary of State has had regard to paragraph 5.12.14 of the NPSP which sets out that consent should be refused if it will result in substantial harm to the significance of a designated heritage asset. The Secretary of State notes that the heritage organisations assessed the harm to the significance of Tilbury Fort as severe, but considered it to be less than substantial (PR 4.9.69). Therefore, with regard to the degree of harm that would be caused to the Tilbury Fort, the Secretary of State is content with the Panel's conclusion that the Development would result in an increased level of harm to the significance of Tilbury Fort, but that this would be less than substantial (PR 4.9.73).
29. The Secretary of State has had regard to regulation 3(3) of the Infrastructure Planning (Decisions) Regulations 2010, and the desirability of preserving a scheduled monument or its setting (PR 4.9.67). Overall, The Secretary of State agrees with the Panel that with regard to the desirability of preserving Tilbury Fort as a scheduled monument and its setting, that its setting cannot be preserved unchanged and that this weighs against granting development consent (PR 4.9.90). The Secretary of State is however content that this impact does not outweigh the benefits of the Development.

Noise

30. The Secretary of State notes the discussion and concerns raised around the impacts of noise from the construction and operation of the Development at PR 4.10.
31. The Secretary of State has had particular regard to the concerns raised by GBC that operational noise limits should be set in order to safeguard the amenity of affected properties in Gravesham as well as not to prejudice future delivery of residential development at Gravesend Canal basin (PR 4.10.42). The Applicant highlighted that this would be difficult to enforce given the need to attribute any change in noise level to the Development and considered that it was more appropriate to address noise limits through the Operational Management Plan ("OMP") and also proposed amendments to requirement 10 of the DCO to meet the Council's concerns (PR 4.10.41). The Secretary of State notes that TC were content with the wording of requirement 10 and did not consider operational noise limits were necessary to make the Development acceptable (PR 4.10.44).

32. The Secretary of State notes that although the Applicant did not consider that a noise limit was reasonable or necessary, they suggested a new requirement to impose source based noise limits that would sit alongside requirement 10 of the DCO and the OMP (PR 4.10.43). This was not agreed between the Applicant and GBC at the close of Examination (PR 4.10.45). The Secretary of State agrees with the Panel that for the reasons set out in PR 4.10.47 the additional requirement would be unnecessary given the other proposed mitigation measures secured in the DCO (PR 4.10.75).
33. The Secretary of State is content that overall, noise and vibration matters have been satisfactorily explored and that these are not matters that weigh against the DCO being granted (PR 4.10.76).

Biodiversity, Ecology and Nature Conservation

34. The Secretary of State has considered the Panel's assessment of the impact of the proposed Development on biodiversity, ecology and nature conservation at PR 4.11.
35. The Secretary of State notes that the Applicant considered that negative impacts to ecology on the Development site are an unavoidable consequence in delivering the project (PR 4.11.65) but that they had committed to significant mitigation and compensatory measures secured in the DCO and set out in the CEMP, the OMP, the Landscape and Ecological Management Plan and the Ecological Management and Compensation Plan (PR 4.11.66).
36. The Secretary of State however notes that like the Applicant, the Panel considered that even with the significant mitigation and compensatory measures put in place the construction of the Development will still likely cause a net negative residual effect on ecology, but that this should diminish during operation as the compensation measures matured and became of enhanced value for target species (PR 4.11.66, 6.2.40).
37. The Secretary of State notes that particular concerns were raised by parties including NE about the loss of the Lytag Brownfield Local Wildlife Site ("LoWS") which is notable for being 'open mosaic' brownfield habitat (PR 4.11.37-4.11.38) and the suitability of Mucking Landfill site, proposed as compensation, as a receptor for open mosaic habitat on previously developed land ("OMHPDL") (PR 4.11.30). The Panel considered that there was no dispute that the OMHPDL centred on the Lytag Brownfield LoWS is of national importance and that its loss would be a significant adverse consequence of the Development (PR 6.2.41). The Secretary of State notes NE's intention to designate the Lytag Brownfield LoWS as a SSSI in due course, however he accepts the Panel's view that the site remained a LoWS (PR 4.11.67). The Panel acknowledged that there was doubt about the likely success of recreating significant areas of OMHPDL at Mucking Landfill but considered that it offered a reasonable prospect of doing so (PR 4.11.69).
38. The Panel's assessment of the NPSP was that loss of OMHPDL centred on the LoWS is not a reason by itself to refuse the application (PR 6.2.41). The Secretary of State agrees with the Panel that loss of the OMHPDL does weigh against the proposed Development due to its national importance but that when considering the offsite compensation proposals, the impact on biodiversity, ecology and nature conservation

interests is not something that would weigh against development consent being granted (PR 6.2.44).

Flood Risk

39. The Secretary of State notes that consideration was given to flood risk in PR 4.13. At the close of examination, the EA were content that the Flood Risk Assessments carried out by the Applicant were acceptable and that provisions secured in the DCO require the Development to be constructed and operated in line with these Assessments (PR 6.2.47).
40. The Secretary of State notes that one area not agreed between the Applicant and the EA was in relation to the disapplication of section 24 of the Water Resources Act 1991. The Secretary of State notes that this matter was unresolved at the close of examination and that the Panel recommended that the disapplication of this provision was removed unless the Applicant and the EA reached agreement during the decision period (PR 4.14.32, Table 1 following PR 8.3.7).
41. Following the Secretary of State's consultation letter of 7 January 2019, the EA confirmed on 15 January 2019 that it maintained their disagreement with the disapplication of section 24 of the Water Resources Act 1991, the Applicant however confirmed on 15 January that it continued to seek for it to be retained. Given that, section 150 of 2008 Act requires the EA's consent to such disapplication, the Secretary of State has retained the amended article 3 of the draft DCO as recommended by the Panel.
42. The Secretary of State also notes that at the end of the Examination, protective provisions for TC in its capacity as Local Lead Flood Authority were substantially, but not fully, agreed between TC and the Applicant (PR 4.13.35). However, following the close of Examination, the Applicant wrote to the Secretary of State on 21 December 2018 providing a revised set of protective provisions. TC and the Applicant confirmed on 10 January 2019 and 15 January 2019 respectively that the protective provisions were now agreed. The Secretary of State is content with these and has amended Part 5 of Schedule 10 accordingly to adopt these revised protective provisions.
43. Overall, the Secretary of State agrees with the Panel that the requirements of the NPSP have been met in relation to the assessment of flood risk and hydrology and that these are not matters that weigh against the DCO being made (PR 4.13.37, 6.2.49).

Water Quality and Resources

44. The Secretary of State notes the mitigation measures that have been secured through the DCO and DML to address potential impacts on water quality (PR 4.14.27). The Secretary of State accepts the Panel's views that with the use of appropriate requirements and mitigation, the Development would be Water Framework Directive compliant (PR 4.14.27). He also agrees with the Panel that there are mechanisms secured in the DCO to ensure no deterioration of the water body status as well as pollution prevention and mitigation measures to protect water quality (PR 4.14.27-4.14.30, 6.2.50).

45. The Secretary of State notes that it has been agreed that no piling should take place without approval of the EA following a risk assessment, that the Applicant must consult with the EA before applying for dredging consent from the PLA and that approval from the EA is required for drainage works (PR 6.2.52), and that these measures have been secured in the DCO and DML.
46. The Secretary of State notes that at the end of Examination, the one area of disagreement between the Applicant and the EA was the disapplication of section 24 of the Water Resources Act 1991 (PR 4.13.30, 6.2.49) which has been considered at paragraph 40.
47. The Secretary of State is content with the Panel's conclusion that with the implementation of the mitigation measures secured in the DCO and DML, potential impacts on water quality and resources are likely to be minor or negligible and that these matters do not weigh against the DCO being made (PR 4.14.33, 6.2.53).

Air Quality

48. The Secretary of State has considered the Panel's conclusion that all air quality matters had been properly assessed. He notes that the Panel concluded that the air quality objective of levels not exceeding 40µg/m³ for annual mean NO₂ would be met at all locations and that PM₁₀ and PM_{2.5} impacts would be negligible at all receptors and that the operation of the Development would not have significant adverse long-term effects on air quality at the closest residential receptors (PR 4.19.67). The Secretary of State has no reason to disagree with this conclusion.
49. The Secretary of State notes that discussion took place around the provision of shore power for powering moored vessels (PR 4.19.60-4.16.66). The Secretary of State notes the Panel considered the Applicant's position on Defra's Clean Air Strategy published in May 2018, and in particular the Maritime Vision 2050 and the first UK Maritime Plan, and how the Applicant's proposals for shore power infrastructure would be impacted. The Secretary of State notes the Applicant's comments on these documents at PR 4.19.6, and also notes that whilst the Maritime Vision 2050 was at consultation stage during examination the *'Maritime Vision 2050 Navigating the Future'* was published in January 2019.
50. The Secretary of State is content that the Applicant proposes to provide the infrastructure to facilitate shore power in the future, should vessels become equipped to use it and electrical power capacity become available, and that this is compliant with paragraph 5.7.13 of the NPSP (PR 4.19.66, 6.2.66).
51. Overall, the Secretary of State agrees with the Panel that there are no matters relating to air quality that weigh against the DCO being made (PR 4.19.69, 6.2.67).

Cumulative Impacts with Other Regulatory Regimes

52. The NPSP sets out a general requirement to consider cumulative effects as part of the ES, showing how the effects of the proposed Development would combine and

interact with the effects of other developments, either in existence or where consent has been sought or granted (PR 4.23.1).

53. The Secretary of State notes that following a request from a number of interested parties, the Applicant included the proposed Lower Thames Crossing (“LTC”) and Tilbury Energy Centre (“TEC”) in their Cumulative Effects Assessment (PR 4.23.7). The Panel acknowledged that there are substantial limitations in undertaking a meaningful cumulative assessment which includes the TEC and LTC as both projects are in early stages of proposed development.
54. The Secretary of State notes the results of the Applicant’s post application cumulative effects assessment demonstrates that the potential effects of the Development together with the TEC and LTC could be significant in due course, and that there is a possibility of a third project coming forward for ‘Thurrock Flexible Generation Plant’ which could increase these effects further (PR 4.23.33, 4.23.31). However, the Secretary of State agrees with the Panel’s view that future development consent applications for TEC and LTC are still sometime away and may not materialise and agrees that the impacts are too uncertain to attract significant weight now (PR 6.2.75—6.2.76). This is further supported by the letter from RWE Generation UK plc of 19 November 2018 and published on the TEC project page of the Planning Inspectorate’s website after the close of Examination which confirms that development of TEC has been frozen. The Secretary of State also agrees with the Panel that it is not for the application of this Development to mitigate against the potential impacts of LTC and TEC (PR 4.23.34).
55. The Secretary of State agrees with the Panel that the Applicant has carried out a proportionate assessment of the cumulative and in combination effects of other surrounding developments and that this is not a matter that weighs against the DCO being made (PR 4.23.34, 6.2.77).

Habitats Regulations Assessment

56. Under regulation 63 of the Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”), the Secretary of State is required to consider whether the Development would be likely, either alone or in-combination with other plans and projects, to have a significant effect on a European Site¹. The Development is not directly connected with or necessary to the management of any European Site (PR 5.2.1) and therefore, if Likely Significant Effects (“LSEs”) cannot be ruled out, the Secretary of State must undertake an Appropriate Assessment (“AA”) addressing the implications for the European Site in view of its conservation objectives. In light of any such assessment, the Secretary of State may grant development consent only if it has been ascertained that the Development will not, either on its own or in-combination with other plans and projects, have an adverse effect on the integrity (“AEOI”) of such a site, unless there is no feasible alternative or imperative reasons of overriding public interest apply. The complete process of assessment is commonly referred to as a Habitats Regulations Assessment (“HRA”).

¹ The term “European Site” in the PR and in this decision letter includes Ramsar Sites.

57. A shadow Stage 1 HRA report² was submitted, by the Applicant as an Annex to their Environmental Statement (“ES”) (“Applicant’s Shadow HRA”) for the application, which assessed the potential impacts of the Development on European Sites. It concluded that the Development would not be likely to result in significant effects on the integrity of the identified European Sites either alone or in-combination with other projects and that no further assessment was needed (PR 5.3.1, 6.2.79). However, NE did not agree with this conclusion. In response, the Applicant provided a Stage 2 Appropriate Assessment¹ (“the Applicant’s Shadow HRA Stage 2 Report”) which was updated throughout the examination with the final version of the HRA Stage 2 Report incorporating the Applicant’s conclusions on the matters discussed throughout the examination (PR 5.3.4) including assessment of additional impacts, adopting a precautionary approach in light of the *People Over Wind and Sweetman v Coillte Teoranta*³ judgment and addressing NE’s and the Panel’s comments that a LSE assessment had not been carried out on functionally linked land or on potential projects in-combination with the Development (PR 5.3.2-5.3.3). The Panel’s overall findings and conclusions in relation to the Habitats Regulations are found in section 5.6 of the PR.
58. In the Secretary of State’s view, the material provided during the examination contains sufficient information to inform consideration under regulation 63 of the Habitats Regulations as to the likely impact on the European Sites, or other sites to which the same protection is applied as a matter of policy.
59. In undertaking the HRA, the Secretary of State considered the following European Sites:
- Thames Estuary and Marshes Special Protection Area (“SPA”)
 - Thames Estuary and Marshes Ramsar Site (“Ramsar Site”); and
 - functionally linked habitats outside the SPA and Ramsar Site.

Likely Significant Effect Test

60. Having given consideration to the assessment material submitted during the Examination and the PR, the Secretary of State considers that the LSE in relation to construction and/or operations could not be ruled out at these sites in relation to the impact from the Development alone (PR 5.3.5) for:
- damage to habitats within the SPA and/or Ramsar Site from:
 - temporary or permanent minor changes in estuarine processes;
 - temporary changes in water quality;
 - temporary or permanent changes in air pollution (construction or operational phase);
 - construction/operational waste and pollutants; and
 - risk of introduction of Invasive Non-Native Species (“INNS”);

² The Applicants “shadow” HRA is aligned to the Planning Inspectorate Commissions Advice Note 10, whereby the Applicant is to “shadow” the HRA process by providing a shadow HRA to the competent authority (Secretary of State) within the DCO application. The REIS and the Panel Report refers to the “Applicants Shadow HRA Stage 1 Report” as the “initial” report and the “Applicants Shadow HRA Stage 2 Report” is referred to in the REIS and Panel Report as Stage 2 report.

³ C-323/17, EU:C:2018:244.

- direct loss or damage to functionally linked habitats outside the SPA and Ramsar Site and more proximal to the Development site from the same sources, with possible consequences for bird populations associated with the SPA, and bird, flora and invertebrate fauna (light impact) associated with the Ramsar Site.
61. The Secretary of State also considered that LSEs could not be ruled out in relation to in-combination, cumulative effects resulting from the construction and or operation of the Development and TEC and LTC. The in-combination effect impacts from these proposed developments included:
- disturbance during operation from increased shipping movements;
 - displacement of birds from intertidal habitats;
 - changes to air quality from shipping emissions;
 - effects on estuarine processes;
 - effects from INNS; and
 - loss of functionally linked habitat.

Appropriate Assessment

62. As the LSEs identified could not be ruled out (alone or in-combination), the Secretary of State has undertaken an AA to assess the implications for the European Sites in view of their conservation objectives. The AA has considered the conclusions and recommendation of the Panel. The AA has also taken account of the advice of the Statutory Nature Conservation Body, which in this case is Natural England (“NE”) and the views of other interested parties.
63. Whilst the Applicant concluded that with mitigation measures in place there would be no AEOI from the project alone or in-combination with other plans or projects, NE stated that it could not agree to no AEOI from the Development alone, resulting from the following (PR 5.5.3):
- direct loss or damage to functionally linked habitats (outside the SPA and Ramsar Site) noise disturbance and loss of functionally linked habitat (outside the SPA/Ramsar Site);
 - damage to habitats and species (within and outside the SPA/Ramsar Site):
 - temporary or permanent minor changes in estuarine processes (sediment circulation or deposition patterns);
 - temporary changes in water quality (water and/or sediment quality).
64. Having regard to loss of functionally linked habitat (which is located outside the Thames Estuary and Marshes SPA/Ramsar Site), the Secretary of State agrees with the Panel and NE that the anticipated loss of 0.0355ha of functionally linked intertidal habitat, which is not located within the European Site itself, is of such a small scale that the conservation objectives of the Thames Estuary and Marshes SPA would not be undermined (PR 5.5.24, 5.5.27). The Secretary of State does not consider that any further evidence has been presented to suggest that a disturbance impact of this scale would have a discernible effect on the overall population and distribution of the qualifying features of the SPA. Therefore, the Secretary of State concludes that there

would be no AEIOI to the designated site resulting from a loss of functionally linked habitat outside the Thames Estuary and Marshes SPA.

65. With regard to noise disturbance outside the SPA and Ramsar Site, the Secretary of State notes that NE was unable to agree that disturbance to birds utilising functionally linked habitat would not result in AEIOI because there was no consensus as to the value of the functionally linked land and the extent of the zone of influence from noise impact (PR 5.5.17). The Secretary of State agrees with the Panel that no persuasive evidence has been provided to demonstrate that the value of functionally linked land is any higher than that suggested by the Applicant (PR 5.5.20). The Secretary of State also notes that the Applicant carried out the additional sensitivity test to respond to NE's concerns about the zone of influence and that no comments were received from NE in relation to this (PR 5.5.19). The Secretary of State notes that the Panel concluded that the area most likely to experience construction or operational noise impacts emanating from the Development would support significantly less than 1% of the bird populations relevant to the Thames Estuary and Marshes SPA/Ramsar Site (PR 5.5.20) and has no reason to disagree with this conclusion. The Secretary of State agrees with the Panel that no evidence has been presented to suggest that a disturbance impact of this scale would have a discernible effect on the overall population and distribution of the qualifying features of the Thames Estuary and Marshes SPA or Ramsar site (PR 5.5.20). The Secretary of State is therefore satisfied that with the embedded mitigation measures, as provided via the OMP and the CEMP, secured through requirements 4 and 11 within the DCO, together with conditions within the DML (Schedule 9 to the DCO) there will be no AEIOI with regard to disturbance to birds utilising functionally-linked habitat. The Secretary of State therefore agrees with the Panel that the additional piling restrictions requested by NE are not necessary (PR 5.5.21).
66. With regard to the potential damage to habitats and species from temporary or permanent minor changes in estuarine processes and temporary changes in water quality, the Secretary of State notes that the Applicant predicted that capital and maintenance dredging would give rise to localised and temporary increases in sediment deposition which would be within the range of annual fluctuations in this part of the river Thames and that they predicted a low risk of significant effects from the mobilisation of potential contaminants (PR 5.5.39). The Secretary of State notes that NE disagreed with the Applicant's findings, stating that they were based on "models which are best predictions and should be ground-truthed" (PR 5.5.34). However, the Secretary of State does not consider that any evidence has been provided to dispute the Applicant's conclusion, a view supported by the fact that the MMO had not received any concerns about water quality from the EA (PR 5.5.38). The Secretary of State agrees with the Panel that specific concerns have not been raised that would undermine the Applicant's approach to assessment, to indicate that the conclusions are inaccurate or to suggest that the capital dredging restrictions advised by NE are necessary (PR 5.5.30, 5.5.39). The Secretary of State therefore considers that with the embedded mitigations secured through the DCO, including the DML, there would be no AEIOI from sediment circulation or deposition patterns & water/sediment quality on the SPA and Ramsar Site.

67. The Applicant's Shadow HRA Stage 2 Report considered in-combination effects with the proposed LTC and TEC and concluded that there would be no AEOI resulting from the Development in-combination with other plans or projects.
68. The Secretary of State notes that since the close of Examination, RWE have advised that development of TEC has been frozen (as set out above at paragraph 54). However, as this project has not been withdrawn and in line with the precautionary principle, the Secretary of State considers that the LSEs from this project cannot be ruled out and therefore considered it as part of the AA.
69. In response to the RIES, NE stated that it could not agree to no AEOI from the following in-combination effects (PR 5.5.3 (final bullet)):
- displacement of birds from the intertidal area;
 - on estuarine processes (including sediment circulation) that support intertidal habitats and related designations, and on water and sediment quality within designated areas or associated with functionally linked habitats; and
 - loss of functionally linked habitat.
70. In regard to the displacement of birds from the intertidal area, the Secretary of State notes that the Applicant concluded that there would be no AEOI on the Thames Estuary and Marshes SPA/Ramsar site from in-combination displacement effects to birds using intertidal habitats (PR 5.5.50). NE considered that this assessment was limited to overlapping impacts and that consideration should be given to prolonged disturbance from concurrent successive development (PR 5.5.51). Therefore, whilst the Secretary of State agrees with the Panel that there is some potential for prolonged noise disturbance, he is satisfied that the Applicant's in-combination assessment is based on the most currently available information and that no evidence has been provided to refute the Applicant's conclusion that in-combination effects resulting from noise disturbance will not lead to AEOI on the Thames Estuary and Marshes SPA and/or Ramsar Site (PR 5.5.65).
71. With regard to the estuarine processes (including sediment circulation) that support intertidal habitats and related designations, and on water and sediment quality within designated areas or associated with functionally linked habitats, the Applicant concluded that the potential influence of the proposed development alone would be negligible and therefore significant in-combination effects were not likely, regardless of the magnitude of effects arising elsewhere (PR 5.5.55). The Secretary of State agrees with the Panel that no evidence has been provided to refute the findings of the Applicant's assessment, and the Secretary of State is satisfied that the assessment is based on currently available information that can be relied upon and that its findings are sufficiently supported (PR 5.5.66).
72. The Secretary of State notes that the Panel considered that there is a potential for loss of functionally linked land from in-combination effects, but that with the level of information currently available for the other projects, the quantum of habitat loss could not be determined. The Secretary of State agrees with the Panel that the direct loss to functionally-linked land within the Order limits of the Development is very small (0.0355ha) and any in-combination contribution would therefore be minimal (PR 5.5.64).

73. The Secretary of State notes that NE maintained that the Applicant should have made additional attempts to quantify impacts further using available information but agrees with the Panel that it is not clear what additional information might be reasonably available to the Applicant to facilitate a more detailed in-combination assessment and whether this would affect the findings of the assessment (PR 5.5.63). The Secretary of State agrees with the Panel that as other projects come forward and greater detail is known, it will be for the applicants of those schemes and the decision maker at the time to assess the in-combination effects (PR 5.5.69). Based on currently available information and assessments conducted to date and with the embedded mitigations in place, the Secretary of State considers the proposed development would have no AEOI from in-combination effects.

Conclusion

74. Whilst the Secretary of State notes that NE was not able to agree to no AEOI without additional mitigation measures in place it did state that "...Natural England advises that there should not be a need to proceed to Stage 3 or 4 as we are not pursuing what we consider to be an insurmountable objection with regards to impacts on European Sites. We consider that the Stage 2 assessment should identify appropriate works, timings and mitigation options to ensure that there are no Adverse Effects on Integrity ('AEOI') particularly during the construction period" (PR 5.6.4).
75. The Secretary of State is content that the construction and operation of the Development, as proposed, with all the avoidance and mitigation measures secured in the DCO and DML being implemented in full (and as identified by the Secretary of State in the AA), will not adversely affect the integrity of the Thames Estuary & Marshes SPA or Ramsar Site, or the functionally-linked land associated with these sites, either alone or in-combination with any other project or plans (PR 5.6.7). The Secretary of State does not consider that any evidence has been provided to dispute this conclusion or the need for additional mitigation measures, beyond those already secured in the DCO and DML.
76. In this circumstance, the Secretary of State agrees with the Panel that there is no requirement to progress to stages 3 and 4 of the HRA process (PR 5.6.7).

Conclusions on the case for Development Consent

77. The Secretary of State notes, that in reaching its overall recommendation for the granting of development consent, the Panel has taken regard of the NPSP, the development plan, the NPPF and LIRs and all other matters which it considers to be both important and relevant.
78. The Secretary of State notes that paragraph 3.4.16 of NPSP recognises a compelling need for substantial additional port capacity and that paragraph 3.5.2 sets out a presumption in favour of granting consent to applications for port development (PR 4.2.4). The Secretary of State is content that the matters set out at paragraph 3.3.3 of the NPSP 'in order to help meet the requirements of the Government policies on sustainable development' have been adequately considered. The Secretary of State

has considered the Panel's views on the policy justification for the Development as set out at PR 6.2.2-6.2.12 and notes that the Development:

- is from an established port operator in response to an identified market need for capacity close to its existing operation, the Port of Tilbury;
- will be close to the Port of Tilbury's markets minimising roads miles;
- be readily rail linked;
- will be delivered on previously developed land; and
- will make a significant contribution to the local economy through the creation of jobs.

79. The Secretary of State therefore agrees with the Panel that in the absence of any adverse effects which are unacceptable in planning terms, there is a compelling case for granting development consent and that the Development as a whole meets policy justification for port development and is consistent with the NPSP (PR 6.2.12).
80. The Secretary of State agrees with the Panel that none of the matters weighing against the proposed Development set out in the paragraphs above are sufficient to outweigh the advantages of the proposed Development in relation to the policy, transport and socio-economic benefits (PR 6.3.10).
81. The Secretary of State notes that the Panel considered that the s106 Agreement between the Applicant and TC would bring additional benefits to the local area but that this had not been signed at the end of the examination. He also notes that as a result the Panel have not given any weight to this agreement when coming to a decision as to whether matters weigh against granting development consent (PR 6.3.9). However, the Secretary of State notes that TC and the Applicant confirmed on 10 January 2019 that this agreement was signed on 16 October 2018 and a copy was provided to the Secretary of State.
82. The Secretary of State agrees that for all the reasons given by the Panel, development consent should be granted, subject to the changes which the Panel has incorporated in the Order at Appendix D to the PR, and to the further changes referred to in this letter.

Compulsory Acquisition and related matters

83. The Secretary of State has considered the compulsory acquisition ("CA") powers sought by the Applicant in accordance with sections 122, 123, 127, 131, 132 and 138 of the 2008 Act, the Human Rights Act 1998 and relevant guidance. In doing so he has taken into account the cases of the Applicant and the affected persons as set out in PR 7.2, 7.3 and 7.4.
84. The Secretary of State notes the Panel's consideration of CA and related matters at Chapter 7 of the PR and that some issues relating to CA and temporary possession ("TP") and/or protective provisions for statutory undertakers were unresolved at the close of the Examination.

Crown Land

85. The Secretary of State notes that one plot of land where rights are to be CA (plot 06/02) and one plot proposed to be TP (plot 06/01) are owned by the Crown managed by the Crown Estate Commissioners and as such is 'Crown Land' (PR 7.3.15). By virtue of section 135 of the 2008 Act, these powers cannot be granted without consent from the Crown Estate (PR 7.3.16). This consent had not been granted at the close of the examination. However, following the Secretary of State's consultation letter of 7 December 2018, the Crown Estate Commissioners confirmed on 20 December 2018 that they "continue to make good progress with the Applicant to agree a position". The Crown Estate Commissioners and the Applicant confirmed on 17 January 2019 that it had reached an agreement which provided the Commissioners with sufficient assurance as to the way in which CA powers may be exercised. As a result, the Commissioners confirmed their consent to the compulsory acquisition of third party interests in the relevant plots of land. This was subject to the inclusion of revised wording agreed between the parties in relation to article 56 of the DCO presented at Examination, dealing with Crown Rights. The Secretary of State has included this wording in the DCO with minor amendments. The Secretary of State is satisfied that the requirements in relation to section 135(1) and (2) of the 2008 Act are met.

Special Category Land

86. The Secretary of State notes two plots of land fall within in the definition of common land for which section 131 of the 2008 Act applies, requiring the DCO to be subject to special parliamentary procedure unless replacement land is provided (PR 7.5.7). These plots are in ownership of the Cole family and are plots 03/08 and 03/11. The Secretary of State notes that whilst at the close of the Examination, plot 03/04a owned by TC was to form replacement land for these two plots (PR 7.4.28), formal agreement regarding transfer of plot 03/04a from TC to the Applicant had not been reached (PR 7.4.42). However, the Secretary of State notes that following the letter from TC of 20 December 2018 and the Applicant of 21 December 2018 plot 03/04a is now owned by the Applicant. The Secretary of State is therefore content that plot 03/04a could be used as replacement land for the CA of the two common land plots 03/08 and 03/11, therefore satisfying section 131(4) of the 2008 Act, meaning that the DCO does not need to be subject to special parliamentary procedure. The Secretary of State has removed reference to the "Book of Reference" in the definition of "the replacement land" in article 37 of the DCO as the Secretary of State notes that CP powers are no longer required in relation to plot 03/04a and that this plot of land can therefore be removed from the Book of Reference.

Statutory Undertaker Land

Network Rail

87. The Secretary of State notes that at the close of the Examination Network Rail's objection to CA powers over its land remained outstanding and that the Panel recommended removing plot 02/03 from the DCO to comply with section 127(6)(a) of the 2008 Act (PR 7.4.8 and 7.4.9). Following the Secretary of State's consultation letter of 7 January 2019, Network Rail confirmed on 15 January 2019 that they

withdraw their objection. The Secretary of State is therefore content for CA powers relating to plot 02/03 to be granted and is satisfied that there is no conflict with section 127 of the 2008 Act.

Port of London Authority

88. The Secretary of State notes the PLA own nearly all the river bed required for the construction of the proposed new jetty, and that PLA submitted an objection against CA and TP powers proposed by the Applicant (PR 7.4.10). He also notes that at the end of the Examination an agreement had been reached between the Applicant and PLA regarding its protective provisions in Part 3 of Schedule 10 to the draft DCO, including an accompanying lease but that formal withdrawal of PLA's objection had not been received (PR 7.4.11). The Panel therefore recommended that CA powers for plots 06/05a, 06/06, 06/10, 06/11 and 06/12 should not be granted if this was not withdrawn (PR 7.4.12). However, following the close of the Examination and the Secretary of State's consultation letter of 7 December 2018 PLA confirmed on 18 December 2018 that an agreement between the Applicant and PLA had been reached and that their objection was formally withdrawn. The Secretary of State is therefore content for CA powers for plots 06/05a, 06/06, 06/10, 06/11, and 06/12 to be granted and is satisfied that there is no conflict with section 127 of the 2008 Act.

RWE

89. The Secretary of State has considered RWE's retained property rights within the Order limits of the Development application and notes these rights are primarily for the purposes of access, services and cooling water infrastructure. The Secretary of State also notes that RWE is a statutory undertaker under the 2008 Act as it holds an electricity generation licence under section 6(1)(a) of the Electricity Act 1989 (PR 7.4.32).

90. RWE asserted that its rights relating to its statutory undertaking and its proposals for the new gas fired power station (TEC) would be affected by the CA provisions (PR 7.4.32). However, the Secretary of State notes the Applicants view that whilst RWE is a statutory undertaker in general terms, it is not relevant in the particular circumstances of this application as they have no operational power station on the site nor an immediate prospect of one and that the protections afforded to statutory undertakers through the 2008 Act are not applicable to RWE in this case (PR 7.4.35). The Panel agreed with this and the Applicant's view that therefore no CA proposals are included in the draft DCO in relation to RWE operational land or concerning RWE's reserved rights. The Secretary of State agrees with the Panel that in relation to RWE's objection, the draft DCO does not contain CA proposals that would affect RWE's interests (PR 7.4.39).

91. The Secretary of State does however note that towards the end of the Examination discussion between the Applicant and RWE focussed on protective provisions set out in Part 10 of Schedule 10 to the draft DCO but that these were not agreed at the close of Examination (PR 7.4.38). As a result, the Secretary of State requested an update on the protective provisions from the Applicant and RWE on 7 December 2018. The Applicant and RWE responded on 21 December 2018 and 20 December 2018

respectively clarifying that the outstanding issues at the close of Examination remain outstanding.

92. The Secretary of State has considered the Applicant and RWE's representations following the close of Examination and the Panel's view of the outstanding matters relating to the protective provisions as set out in Table 1 at PR 8.3.7 and agrees with the Panel that for the reasons set out in that table, the changes requested by RWE have not been adopted.
93. The Secretary of State agrees with the Panel's conclusion that the grant of CA and TP powers would not result in a conflict with the requirements of sections 127 and 138 of the 2008 Act (PR 7.4.39).

Overall conclusion

94. The Secretary of State agrees with the Panel's conclusions on the case for granting CA powers for the reasons given by the Panel, both generally and in relation to specific objections (PR 7.4). The Secretary of State notes PR 7.6.7 and is content that there is no impediment to CA and TP powers proposed in the DCO. The Secretary of State agrees with the Panel that:
 - by concluding that development consent should be granted (as set out above), delivery would be jeopardised in the absence of the CA and TP powers sought in the DCO (PR 7.6.8) and that interference with affected persons and land interests is proportionate to the benefits that would be brought about by the Development (PR 7.6.8);
 - that there is a compelling case in the public interest for the grant of CA and TP powers (PR 7.6.8);
 - that the land for which CA powers are sought is required for either the Development, or to facilitate it or incidental to it (PR 7.6.2);
 - that the requirements of the Human Rights Act 1998 in relation to interference with individual rights are satisfied (PR 7.5.18);
 - that the Applicant will have the ability to raise the financial resources necessary to implement the scheme (PR 7.5.13).
 - that sufficient funding for the purpose of meeting the CA obligations will be available at the appropriate time (PR 7.5.14).
95. The Secretary of State accordingly agrees with the Panel that there is a compelling case in the public interest to grant the CA powers sought by the applicant (PR 9.4.4).

General Considerations

Equality Act 2010

96. With regard to the public sector equality duty referred to at PR 3.5.5 the Secretary of State has had due regard to the need to achieve the statutory objectives referred to in section 149 of the Equality Act 2010. He has concluded in light of the Panel's findings and conclusion as detailed in the PR that the proposed Development is not

likely to prevent achieving the objectives referred to in section 149 of the Equality Act 2010 and therefore agrees with the Panel that there is no conflict with the Equality Act 2010 (PR 9.4.5).

Natural Environment and Rural Communities Act 2006

97. The Secretary of State has also had regard to his duty in section 40(1) of the Natural Environment and Rural Communities Act 2006 (“2006 Act”) to have regard to conserving biodiversity and in particular to the United Nations Environmental Programme on Biological Diversity of 1992 when making a decision on whether to grant development consent (PR 3.5.2). In reaching a decision to grant development consent, the Secretary of State has had due regard to conserving biodiversity and agrees with the Panel that there is no conflict with the requirements of the 2006 Act (PR 9.4.5).

Draft DCO and Related Matters

98. The Secretary of State has considered the Panel’s assessment of the DCO in Chapter 8 of the Panel’s Report, in particular, the issues outstanding at the end of Examination and the Panel’s recommended changes to the DCO to address these (PR, 8.3, table 1). He is satisfied that, subject to the qualifications referred to in this letter, and the changes made by the Secretary of State in the paragraph below, the DCO as set out at Appendix D to the Panel’s Report is appropriate and acceptable for the purposes of the Development. (References to article numbers in the following paragraphs are to the articles as numbered in the Order as made.)

99. The main modifications which the Secretary of State has decided to make to the DCO are as follows:

- inclusion of relevant paragraphs in Part 1 of Schedule 5 to the 2008 Act in the preamble;
- amendment to “business day” so that it is consistent with the provisions of the Banking and Financial Dealings Act 1971;
- the definition of “UK marine area” has been moved from Part 1 of Schedule 9 to article 2 to reflect the use of that term in article 43;
- removal of the term “approximately” when referring to any measurements of distances, directions or lengths as this is already provided for in article 2(3) (which has also been clarified);
- parts of article 4 have been re-drafted for clarity and so that the provisions are consistent with current statutory instrument drafting practice (these amendments do not affect the content or effect of the article);
- in article 4(4), clarification that special directions under section 112 of the Port of London Authority Act 1968 are given in respect of the river Thames, and therefore it is any part of the river Thames situated within the extended port limits that can be treated as having been designated, and not vice versa (this is also consistent with other, similar references in the DCO);
- paragraph (v) of article 20(1)(b) has been omitted as it is unnecessary given the power in paragraph (1) is to “enter on” the land;

- the definition of “hedgerow” in article 21(5) has been amended as the Hedgerow Regulations 1997 do not provide a specific meaning;
- deletion of “instead of acquiring the whole of the land” from article 25(1) as this is provided for in article 25(3);
- article 26(1) and (2) have been amended as the use of the term “Order land” was inconsistent with the rest of article 26(1) which refers to “land that may be acquired under that provision”;
- in article 41(3) the words “significant adverse” have been substituted with “material new or materially different” which is the Secretary of State’s preferred drafting and ensure a consistency of approach across transport development consent orders;
- a new sub-paragraph (c) has been inserted in article 52(1) to bring Part 3 of Schedule 8 into force (the table at Part 3 of Schedule 8 has been omitted as the direction to revoke the order is now provided at article 52(1)(c);
- an amendment has been made to requirement 11 in Part 1 of Schedule 2 to reference the construction environmental management plan;
- Schedule 3 has been re-drafted for clarity, although the effect of the schedule has been retained;
- Schedule 4 has been amended to comply with statutory instrument drafting practice (whereby text cannot appear before “Part 1”), however the content and effect of the schedule has been retained;
- update of the reference to the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996 in paragraph 2 of Schedule 7;
- “road vehicle” has been substituted for “motor vehicle” in paragraph 26(1) of Part 4 of Schedule 7 as “motor vehicle” is the defined term;
- the defined term for the Water Industry Act 1991 in Part 8 of Schedule 10 has been changed from “the 1991 Act” to “the WIA” it avoid confusion with the use of the term “the 1991 Act” elsewhere in the Order which refers to the New Roads and Street Works Act 1991;
- the defined term “1991 Act” has been removed from paragraph 164 of Part 12 of Schedule 10 as the term is defined in article 2 and therefore already applies to that Part of that Schedule;
- the Protective Provisions at Part 5 of Schedule 10, relating to the protection of TC (as the Lead Local Flood Authority) have been replaced with the Protective Provisions provided by the Applicant on 21 December 2018 and agreed by TC on 10 January 2019.

100. The Secretary of State is making a number of other minor textual amendments to the DCO set out in Appendix D to the Panel’s Report in the interests of clarity, consistency and precision. He considers that none of these changes, nor the changes set out in paragraph 99, either individually or taken together, materially alter the effect of the DCO.

Secretary of State’s overall conclusion and decision

101. For all the reasons given in this letter, the Secretary of State considers that there is a clear justification for authorising the proposed Development and accepts the Panel’s recommendation at PR 9.4.6 and is today making the Port of Tilbury (Expansion) Development Consent Order, subject to the changes referred to above. He is satisfied

that none of these changes constitute a material change. He is therefore satisfied that it is within the powers of section 114 of the 2008 Act for him to make the DCO as now proposed.

Challenge to decision

102. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at the Annex to this letter.

Publicity for decision

103. The Secretary of State's decision on this application is being publicised as required by section 116 of the 2008 Act and regulation 23 of the 2009 Regulations.

Yours faithfully,

Natasha Kopala

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks beginning with the day after the day on which the Order is published. Please also copy any claim that is made to the High Court to the address at the top of this letter.

The Port of Tilbury (Expansion) Order 2019 (as made) is being published on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/south-east/tilbury2/>

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (020 7947 6655).