



The Planning Inspectorate
Yr Arolygiaeth Gynllunio

The Planning Act 2008

Proposed Port Terminal at Former Tilbury Power Station

Tilbury2

Examining Authority's Report
of Findings and Conclusions

and

Recommendation to the Secretary of State for
Transport

Examining Authority

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20 November 2018



ERRATA SHEET – Tilbury2 - Ref TR03003

**Examining authority's Report of Findings and Conclusions and
Recommendation to the Secretary of State for Transport, dated 20
November 2018**

**Corrections agreed by the Examining Authority prior to a decision
being made**

Page No.	Paragraph	Error	Correction
3	1.4.7	(USI:	(USI):
A10	2.1.1	450m	450 metres (m)
10	2.1.1	9km	9 kilometres (km)
37	4.3.12	"I" at end of paragraph	Delete "I"
69	4.7.26	"hive"	"give"
85	4.9.42	Delete underscore after the word is	To read "is satisfied"
206	7.1.20	Delete underscore after article	To read "Article 24"
236	Provision Schedule 10	Formatting error in final paragraph	To read "Paragraph 133 (140) which deals with consents..." etc

Insert in Appendix C

Abbreviations or usage	Reference
Km	Kilometre
m	metre
N-deposition	Nitrogen compounds deposition
PPV	Peak Particle Velocity

OVERVIEW

File Ref: TR030003

The application, dated 31 October 2017, was made under s37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on 31 October 2017.

The applicant is Port of Tilbury London Limited.

The application was accepted for examination on 21 November 2017.

The examination of the application began on 20 February 2018 and was completed on 20 August 2018.

The proposed development includes a new roll-on/roll-off (Ro-Ro) port terminal with an estimated throughput in excess of 250,000 units per annum and a Construction Materials and Aggregates Terminal (CMAT), and is therefore a Nationally Significant Infrastructure Project (NSIP) as defined by s14(1)(j) and s24 of the Planning Act 2008 (PA2008).

The proposed development also includes infrastructure associated with the two terminals, including:

- creation of hard surfaced pavements;
- associated dredging of berth pockets around the proposed and extended jetty and dredging of the approaches to these berth pockets;
- new and improved conveyors;
- erection of welfare buildings;
- erection of a single 10,000 sqm warehouse;
- a number of storage and production structures associated with the CMAT;
- the construction of a new link road from Ferry Road to Fort Road; and
- formation of a rail spur and sidings.

Summary of Recommendation:

The Examining Authority recommends that the Secretary of State should make the Order in the form attached.

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1. INTRODUCTION

1.1. INTRODUCTION TO THE EXAMINATION

- 1.1.1. The existing port of Tilbury, to the east of London, has a total land area of some 383 hectares (ha). It is the third largest container port in the UK, and the largest paper handling port [[APP-166](#)].
- 1.1.2. The Port of Tilbury London Limited ('the Applicant') submitted an application for an Order to authorise the construction, operation and maintenance of a new port terminal and associated facilities in Tilbury, Essex known as 'Tilbury2' [[APP-001](#) to [APP-169](#)]. It was received in full by the Planning Inspectorate on 31 October 2017 under s37 of the Planning Act 2008 (PA2008) and was accepted for examination under s55 of the PA2008 on 21 November 2017 [[PD-001](#)].
- 1.1.3. As described in the Explanatory Memorandum [[REP7-027](#)] the main elements of the proposed development would be a Roll-on/Roll-off (Ro-Ro) terminal and a Construction Materials and Aggregates Terminal (CMAT), and associated infrastructure including rail and road facilities and modifications to the existing marine infrastructure. An 'infrastructure corridor' is proposed that would accommodate road and rail links to the existing rail and road networks. The CMAT would include stockpiling of construction materials and some processing of aggregates for the production of asphalt and concrete products.
- 1.1.4. 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.
- 1.1.5. The effect of these proposals would be to provide a new deep-sea jetty and increase the size of the port of Tilbury to some 445 ha [[APP-166](#)].
- 1.1.6. The location of the proposed development is shown in the Environmental Statement (ES) [[APP-031](#)] and Land Plans, final updated versions of which were received at Deadline 5 [[REP5-006](#)]. The site lies within the administrative unitary council area of Thurrock and is wholly in England/Wales.

- 1.1.7. The legislative tests for whether the proposed development is a NSIP were considered by the Secretary of State (SoS) for the Department of Communities and Local Government (DCLG) in the decision to accept the application for examination in accordance with s55 of PA2008 [[PD-001](#)].
- 1.1.8. On this basis, the SoS agreed with the Applicant's view stated in the application form [[APP-002](#)] that the proposed development is an NSIP as it comprises a new harbour facility in England with Ro-Ro facilities exceeding a throughput of 250,000 units per annum, and so requires development consent in accordance with s31 of PA2008.

1.2. APPOINTMENT OF THE EXAMINING AUTHORITY

- 1.2.1. Dr Mike Ebert, Paul Hudson and Max Wiltshire, were appointed as the Examining Authority (ExA, the Panel) under s65 and s67 of PA2008.
- 1.2.2. Dr Mike Ebert and Max Wiltshire were appointed on 21 December 2017. Paul Hudson was appointed on 22 March 2018.
- 1.2.3. Dr Lillian Harrison was appointed lead member of the Panel on 21 December 2017, and resigned from the Panel on 22 March 2018. Dr Mike Ebert was appointed lead member of the Panel under s69 of PA2008 on 22 March 2018.
- 1.2.4. As the ExA comprises a Panel, both of these terms are used.

1.3. THE PERSONS INVOLVED IN THE EXAMINATION

- 1.3.1. The persons involved in the examination were:
- Persons who were entitled to be Interested Parties (IPs) because they had made a relevant representation (RR) or were a statutory party who requested to become an IP;
 - Affected Persons (APs) who were affected by a compulsory acquisition (CA) and / or temporary possession (TP) proposal made as part of the application and objected to it at any stage in the examination;
 - Other Persons, who were invited to participate in the examination by the ExA because they were either affected by it in some other relevant way or because they had particular expertise or evidence that the ExA considered to be necessary to inform the examination.

1.4. THE EXAMINATION AND PROCEDURAL DECISIONS

- 1.4.1. The examination began on 20 February 2018 and concluded on 20 August 2018.

- 1.4.2. The principal components of, and events around, the examination are summarised below. A fuller description, timescales and dates can be found in Appendix A.

The Preliminary Meeting

- 1.4.3. On 22 January 2018, the Panel wrote to all IPs, Statutory Parties and Other Persons under Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR) (the Rule 6 Letter) inviting them to the Preliminary Meeting (PM), two Open Floor Hearings (OFHs) and an Issue Specific Hearing (ISH) on the draft Development Consent Order (draft DCO) [[PD-005](#)], outlining:
- the arrangements and agenda for the PM;
 - notification of hearings to be held in the early stage of the examination;
 - an Initial Assessment of the Principal Issues (IAPI);
 - the draft examination timetable;
 - availability of RRs and application documents; and
 - the ExA's procedural decisions.
- 1.4.4. The PM took place on 20 February 2018 at the Thurrock Hotel, Ship Lane, RM19 1YN. An audio recording [[EV-003](#)] and a note of the meeting [[EV-002](#)] were published on the Planning Inspectorate's National Infrastructure website¹.
- 1.4.5. The ExA's procedural decisions and the examination timetable took full account of matters raised at the PM. They were provided in the Rule 8 Letter [[PD-006](#)], dated 26 February 2018.

Key Procedural Decisions

- 1.4.6. The procedural decisions set out in the Rule 8 Letter related to matters that were confined to the procedure of the examination and did not bear on the Panel's consideration of the merits of the proposed development. Further, they were generally complied with by the Applicant and relevant IPs. The decisions can be obtained from the Rule 8 Letter [[PD-006](#)] and there is no need to reiterate them here.

Site Inspections

- 1.4.7. The Panel held an Unaccompanied Site Inspection (USI):
- USI1, 19 February 2018.
- 1.4.8. A site note providing a procedural record of the USI can be found in the Examination Library [[EV-001](#)].
- 1.4.9. The Panel held the following Accompanied Site Inspections (ASIs):

¹ <https://infrastructure.planninginspectorate.gov.uk/projects/south-east/tilbury2/>

- ASI1, 16 April 2018, to view the application site and nearby locations and viewpoints in Thurrock; and
- ASI2, 17 April 2018, to view relevant locations and viewpoints in Gravesham.

1.4.10. The itinerary for the ASIs can be found in the Examination Library [[PD-009](#)].

1.4.11. The Panel has had regard to the information and impressions obtained during the site inspections in all relevant sections of this report.

Hearing Processes

1.4.12. Hearings are held in PA2008 examinations in two main circumstances:

- To respond to specific requests from persons who have a right to be heard - in summary terms:
 - where persons affected by compulsory acquisition (CA) and/or temporary possession (TP) proposals (APs) object and request to be heard at a Compulsory Acquisition Hearing (CAH); and/or
 - where IPs request to be heard at an OFH.
- To address matters where the ExA considers that a hearing is necessary to inquire orally into matters under examination, typically because they are complex, there is an element of contention or disagreement, or the application of relevant law or policy is not clear.

1.4.13. The Panel held a number of hearings to ensure the thorough examination of the issues raised by the application.

1.4.14. ISHs under s91 of PA2008 were held at the Thurrock Hotel, Ship Lane, Aveley, a location reasonably accessible by public transport from Tilbury and the locality of the site. In addition, the Applicant provided dedicated transport from Tilbury to the venue of the hearings on the date of each event.

1.4.15. ISHs were held on the subject matter of the draft DCO on:

- ISH1, 21 February 2018 [[EV-007](#)];
- ISH5, 28 June 2018 [[EV-018a](#)].

1.4.16. ISHs were held on other matters on:

- ISH2, 18 April 2018, on Planning Policy and Environmental Matters [[EV-010](#) and [EV-011](#)];
- ISH3, 19 April 2018, on Socio-economic, Technical and Other Environmental Matters [[EV-012](#) and [EV-013](#)];
- ISH4, 27 June 2018, on outstanding Environmental, Planning Policy and Socio-economic issues [[EV-017a](#)];
- ISH6, 28 June 2018, on Traffic and Terrestrial Ecology [[EV-019a](#)].

1.4.17. CAHs were held under s92 of PA2008 at the Thurrock Hotel, Ship Lane, Aveley on:

- CAH1, 20 April 2018 [[EV-015](#)]; and
- CAH2, 27 June 2018 [[EV-016a](#)].

1.4.18. All persons affected by CA and/or TP proposals (IPs or APs) were provided with an opportunity to be heard. The Panel also used these hearings to examine the Applicant's case for CA and/or TP in the round.

1.4.19. OFHs were held under s93 of PA2008 at the Thurrock Hotel, Ship Lane, Aveley during the afternoon and the evening of 20 February 2018 [[EV-005](#) and [EV-006](#)]. All IPs were provided with an opportunity to be heard on any important and relevant subject matter that they wished to raise.

Written Processes

1.4.20. Examination under PA2008 is primarily a written process, in which the ExA has regard to written material forming the application and arising from the examination. All of this material is recorded in the Examination Library (Appendix B) and published online. Individual document references to the Examination Library in this report are enclosed in square brackets [] and hyperlinked to the original document held online. For this reason, this report does not contain extensive summaries of all documents and representations, although full regard has been had to them in the Panel's conclusions. The Panel has considered all important and relevant matters arising from them.

Relevant Representations

1.4.21. A total of 32 relevant representations (RRs) were received by the Planning Inspectorate [RR-001 to RR-032]. All makers of RRs received the Rule 6 Letter and were provided with an opportunity to become involved in the examination as IPs. All RRs have been fully considered by the Panel. The issues that they raised are considered in Chapters 4 to 8 of this report.

Written Representations and Other Examination Documents

1.4.22. The Applicant, IPs and Other Persons were provided with opportunities to:

- make written representations (WRs) (Deadline 1);
- comment on WRs made by the Applicant and other IPs (Deadline 2)
- summarise their oral submissions at hearings in writing (Deadline 1, Deadline 3 and Deadline 5);
- make other written submissions requested or accepted by the ExA; and
- comment on documents issued for consultation by the ExA including:
 - A Report on Implications for European Sites (RIES) [[PD-012](#)] published on 13 July 2018 by Deadline 6; and
 - A response to revision 4 of the draft DCO [[PD-014](#)] published on 13 July 2018 by Deadline 6.

- 1.4.23. All WRs and other examination documents have been fully considered by the Panel and the issues that they raise are considered in Chapters 4 to 8 of this report.

Local Impact Reports

- 1.4.24. A Local Impact Report (LIR) is a report made by a relevant local authority giving details of the likely impact of the proposed development on the authority's area (or any part of that area) that has been invited and submitted to the Panel under s60 PA2008.
- 1.4.25. LIRs have been received by the ExA from the following relevant local authorities:
- Thurrock Council (TC) [[REP1-101](#)], and
 - Gravesham Borough Council (GBC) [[REP1-056](#)].
- 1.4.26. The LIRs have been taken fully into account by the Panel in all relevant chapters of this report.

Statements of Common Ground

- 1.4.27. A Statement of Common Ground (SoCG) is a statement agreed between the Applicant and one or more IPs, recording matters that are agreed and not agreed between them.
- 1.4.28. The Applicant has agreed SoCGs [[REP7-012](#)] with:
- Buglife;
 - Cadent Gas Limited;
 - English Heritage;
 - Environment Agency;
 - Essex County Council;
 - Gravesham Borough Council;
 - Highways England;
 - Historic England;
 - Kent County Council;
 - London Gateway Port Limited;
 - London Resort Company Holdings;
 - Marine Management Organisation;
 - National Grid Electricity Transmission plc;
 - Natural England;
 - Network Rail;
 - Public Health England; and
 - Thurrock Council.

- 1.4.29. The Panel has taken the SoCG(s) fully into account in all relevant chapters of this report.

Written Questions

- 1.4.30. The ExA asked two round(s) of written questions:

- First written questions (FWQ) [[PD-007](#)] and procedural decisions were set out in the Rule 8 letter [[PD-006](#)], dated 26 February 2018;
- Second written questions (SWQ) [[PD-010](#)] were issued on 8 May 2018.

1.4.31. The following request(s) for further information and comments under Rule 17 of the EPR were issued on:

- 7 August 2018 [[PD-013](#)].

1.4.32. All responses to the ExAs written questions have been fully considered and taken into account in all relevant chapters of this report.

Requests to Join and Leave the Examination

1.4.33. No requests to join the examination under s102A and s102B of PA2008 were received, but one party, Currie and Brown, requested not to be notified further [[AS-041](#)].

1.5. ENVIRONMENTAL IMPACT ASSESSMENT

1.5.1. The proposed development is development for which an Environmental Impact Assessment (EIA) is required (EIA development).

1.5.2. On 27 March 2017, the Applicant submitted a Scoping Report to the SoS under Regulation 8 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) (the EIA Regulations) in order to request an opinion about the scope of the Environmental Statement to be prepared. It follows that the Applicant is deemed to have notified the SoS under Regulation 6(1)(b) of the EIA Regulations that it proposes to provide an ES in respect of the Project.

1.5.3. On 5 May 2017 the Planning Inspectorate provided a Scoping Opinion [[APP-033](#)]. Therefore, in accordance with Regulation 4(2)(a) of the EIA Regulations, the proposed development was determined to be EIA development, and the application was accompanied by an ES.

1.5.4. On 12 January 2018 the Applicant provided the Planning Inspectorate with certificates confirming that s56 and s59 of PA2008 and Regulation 13 of the EIA Regulations had been complied with [[OD-003](#)].

1.5.5. Consideration is given to the adequacy of the ES and matters arising from it in Chapter 4 of this Report.

1.6. HABITATS REGULATIONS ASSESSMENT

1.6.1. The European sites of relevance to the application are the Thames Estuary and Marshes Special Protection Area (SPA) and the Thames Estuary and Marshes Ramsar site. A Stage 1 Habitats Regulations Assessment (HRA) report was undertaken by the Applicant [[APP-060](#)]

which concluded that the proposed development is not likely to result in significant effects on the integrity of these sites, nor any of their qualifying features and that no further assessment is required.

- 1.6.2. However, Natural England (NE) did not agree with this conclusion [[REP1-074](#)], and accordingly, a Stage 2 appropriate assessment was carried out by the Applicant and submitted as a revised HRA at Deadline 4 [[REP4-018](#)]. In the light of this, the Panel decided to carry out a Report on the Implications for European Sites. The detailed discussion of HRA matters and the Panel's conclusions are set out in Chapter 5 of this report.

1.7. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS

- 1.7.1. Heads of Terms for a draft Development Consent Obligation (DCOb) made pursuant to s106 of the Town and Country Planning Act (TCPA) 1990 between the Applicant and TC were submitted with the application [[APP-029](#)]. Updated draft agreements were submitted at Deadline 3 [[REP3-019](#)], Deadline 5 [[REP5-003](#)] and Deadline 7 [[REP7-025](#)]. A final DCOb [[AS-098](#)] and an accompanying explanatory note [[AS-083](#)] were submitted at the end of the examination.
- 1.7.2. The principal obligations are:
- an Active Travel Plan;
 - a Skills and Employment Strategy;
 - contributions relating to Tilbury Fort;
 - contributions towards the Tilbury to Gravesend Ferry; and
 - a heritage contribution in relation to Gravesend.
- 1.7.3. Whilst this agreement is not in any case for approval by the SoS, the final version submitted at the end of the examination remained unsigned, so the Panel accords it no weight, though no impediments appeared to exist to prevent it from being executed.

1.8. OTHER CONSENTS

- 1.8.1. In addition to consent required under PA2008 (the subject of this report and recommendation), the proposed development may require other consents and permits for its construction and operation. These are set out in the Consent and Agreements Position Statement [[APP-167](#)] and include:
- Environmental Permits under the Environmental Permitting (England and Wales) Regulations 2010 (as amended);
 - Protected Species Licences under the Wildlife and Countryside Act 1981, the Conservation of Habitats and Species Regulations 2010 and other legalisation;
 - any consents required under the Highways Act 1980 in respect of construction works;

- any s61 consents under the Control of Pollution Act 1974 for works outside of hours specified or which exceed permitted noise thresholds.

1.8.2. In relation to this range of possible consents, the Panel has considered the available information bearing on these matters and, without prejudice to the exercise of discretion by future decision-makers, has concluded that there are no apparent impediments to the implementation of the proposed development, should the SoS grant development consent for the application.

1.9. STRUCTURE OF THIS REPORT

1.9.1. The structure of this report is as follows:

- **Chapter 1** introduces the reader to the application, the processes used to carry out the examination and make this report.
- **Chapter 2** describes the site and its surroundings, the proposed development, its planning history and that of related projects.
- **Chapter 3** records the legal and policy context for the SoS' decision.
- **Chapter 4** sets out the main issues that arose from the application and during the examination.
- **Chapter 5** considers effects on European Sites and Habitat Regulations Assessment (HRA).
- **Chapter 6** sets out the overall conclusion on the case for development consent arising from Chapters 4 and 5, in the light of the factual, legal and policy information in Chapters 1 to 3.
- **Chapter 7** sets out the ExA's examination of CA and TP proposals.
- **Chapter 8** considers the implications of the matters arising from the preceding chapters for the draft DCO.
- **Chapter 9** summarises all relevant considerations and sets out the ExA's conclusions and recommendation to the SoS.

1.9.2. This report is supported by the following Appendices:

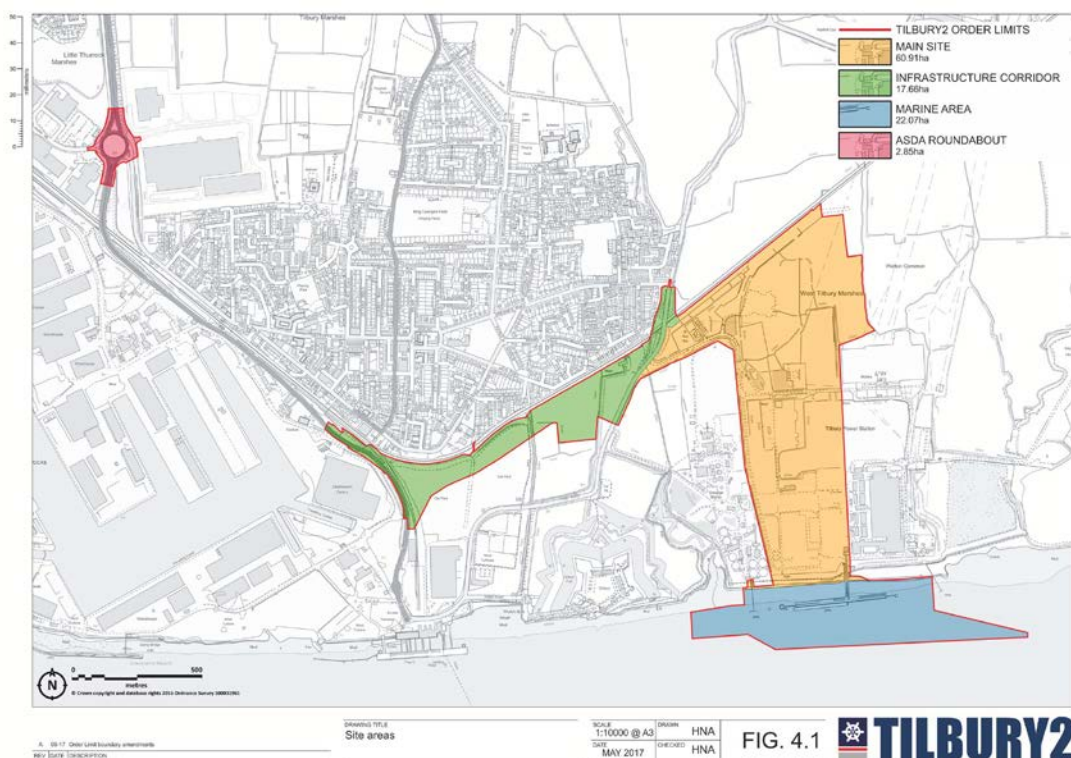
- **Appendix A** – The Examination Events;
- **Appendix B** – The Examination Library;
- **Appendix C** – List of Abbreviations;
- **Appendix D** – The Recommended DCO.

2. THE SITE AND THE PROPOSAL

2.1. DESCRIPTION OF THE SITE

- 2.1.1. The application relates to a site of 61ha, south east of the town of Tilbury in the unitary authority of Thurrock in Essex. The site is on the north bank of the river Thames, opposite the town of Gravesend in Kent to the south of the river, and lies approximately 450m to the east of the Tilbury Fort scheduled monument at its closest point. The operational area of the existing port lies some 820m to the west at its closest point, and the proposed development is some 9km to the east of the Dartford Crossing.
- 2.1.2. The northern boundary of the Tilbury2 site is defined by the Tilbury loop of the London-Southend railway line. The southern boundary is defined by the river Thames, and including the deep water jetty previously used for the importation of coal and wood products to feed the power station which occupied both the application site and adjacent land. The river Thames directly south of the application site comprises the navigation channel of the river which serves a variety of shipping and leisure traffic, much of which is associated with the Port of Tilbury itself. The river is approximately 1.03km wide at this location.
- 2.1.3. To the east, the site is bounded in part by agricultural land, in part by the Tilbury 400kv electricity substation operated by National Grid, and in part by the remainder of the power station complex which is in the process of being demolished.
- 2.1.4. Immediately to the west, the Tilbury2 site is bounded by the Anglian Water Tilbury Water Recycling Centre (formerly known as Tilbury Sewage Treatment Works). The southern part of this site is used for sewage treatment, whereas the northern part is operated by Stobarts Biomass Products Limited for waste wood storage and as a fuel processing plant to manufacture and supply the Tilbury Green Power Station located within the existing port. To the west of the Water Recycling Centre is Bill Melroy Creek, a small tidal tributary of the Thames, and beyond that Tilbury Marshes surrounding Tilbury Fort.
- 2.1.5. Chapter 4 of the ES [[APP-031](#)] describes the land bound by the Order limits which comprises four areas, namely:
- the main Tilbury2 site on the former Tilbury 'A' Power Station land;
 - the infrastructure corridor to the main site between Ferry Road and Fort Road;
 - land around the ASDA roundabout to the north of the Port where highway improvements would be required; and
 - sections of the tidal river Thames required for the construction of expanded berthing capacity and associated dredging.
- 2.1.6. Figure 2.1 below shows the four component areas of the application (source: Fig 4.1 from the ES [[APP-101](#)]):

Figure 2.1 Component areas of the application



The Main Tilbury2 Site

- 2.1.7. The main Tilbury2 site had been cleared of most of the structures related to its use as a power station by the previous owner, RWE Generation UK plc (RWE), prior to the Port of Tilbury obtaining vacant possession of the entire site at the end of March 2017. There are remnant hard standings of a number of buildings and evidence of former uses such as areas previously used for the storage of coal. The main Tilbury2 site is divided by an access road which runs east-west, known as Substation Road (as it provides access through the site from Fort Road to the substation referred to above).
- 2.1.8. To the north of Substation Road is land used in part for the open storage of new motor vehicles by Hyundai, for which the Port of Tilbury was granted temporary planning permission for 5 years in September 2016. The remainder of the land north of Substation Road is largely brownfield land. Parts of the northern area were formerly used to manufacture 'Lytag' blocks as a by-product of fuel ash from the power station, and this is a designated Local Wildlife Site, considered further in section 4.11 of this report.
- 2.1.9. To the north-east of this area is land formerly used for agriculture, but more recently used by RWE for advance habitat creation to provide compensatory habitat for water voles, reptiles and other species. This was in anticipation of a proposed power station development that was subsequently shelved.

- 2.1.10. In the north-west corner of the site, close to the main site access, is an operational electricity substation (Tilbury Town Substation) which is leased to UK Power Networks (UKPN). No works are proposed to be undertaken in this area, and the facility would therefore remain operational throughout construction and operation of Tilbury2. This area is consequently excluded from the Tilbury2 Order limits.
- 2.1.11. To the south of Substation Road, the site comprises land that formerly accommodated the Tilbury 'A' Power Station and areas previously used for coal storage and ancillary buildings. Apart from a number of small structures all buildings and operational structures have now been demolished. An area of just under 5ha is the subject of a further temporary planning permission for the storage of new motor vehicles for five years, granted in June 2017.
- 2.1.12. The Tilbury2 site is accessed directly using Substation Road from Fort Road immediately south of a road bridge where Fort Road crosses the railway line. The access to the site forms a simple priority junction with Fort Road. The access road links to Substation Road within the site and a network of other internal roads.
- 2.1.13. Vegetation on the site comprises areas of skeletal grassland on hard-standings or artificial substrates, established grassland, areas of scrub and plantation woodland and smaller areas of swamp and wetland habitat. A number of drainage channels pass across the site and along its boundaries. There is little variation in the topography of the site, which is presently between 1.5 and 3.5m above ordnance datum (AOD).

The Infrastructure Corridor

- 2.1.14. The infrastructure corridor comprises a number of different land uses immediately adjoining the existing railway corridor. At its eastern end, the land includes Fort Road itself. Immediately to the west of Fort Road is an area of scrub, beyond which is a small industrial/depot site containing a number of small single storey storage buildings and an area of external vehicle and plant storage.
- 2.1.15. At its western end, the corridor includes part of Ferry Road and its environs, land occupied by an existing rail siding, operational land known as the 'Fortland' site used by the existing Port of Tilbury for external storage (presently for imported new motor vehicles), and a narrow corridor of landscaping between this and the railway itself.
- 2.1.16. Between these two developed areas at either end of the corridor is an area of land typically used for fly grazing of horses (albeit not on a legal basis). The eastern end is open and unfenced whereas the remainder is largely fenced, preventing access to the land for any form of recreation.

The ASDA Roundabout

- 2.1.17. The Order limits include land at and around the roundabout immediately to the north of the Port adjoining the ASDA supermarket. This is a five-arm roundabout that links the A1089(T) to the Port via St Andrews Road.

It also provides access to London Distribution Park to the east and the town of Tilbury to the south. To the west, the roundabout provides access to Thurrock Parkway, an industrial area that also accommodates the ASDA supermarket. Modification to the geometry of this roundabout is proposed to mitigate the impact of additional traffic generated by Tilbury2 on the highway network, and is considered in section 4.6 of this report.

The Marine Area

- 2.1.18. That part of the tidal river Thames within the Order limits includes a substantial existing jetty used until recently for the importation of coal and other fuels for the power stations. There is also a separate smaller jetty associated with the Anglian Water Tilbury Water Recycling Centre, but which is also redundant and proposed to be incorporated into the extended jetty as part of the proposed development. There is an area of inter-tidal habitat along the site frontage itself and an extent of the river. The riverbed slopes from the frontage of the site to a depth of circa 10m at the southern boundary.

2.2. THE APPLICATION AS SUBMITTED

- 2.2.1. The proposed development would be a Ro-Ro terminal, a CMAT, and associated infrastructure including rail and road facilities and modifications to the existing marine infrastructure. The infrastructure corridor would accommodate road and rail links to the existing rail and road network. The CMAT would include stockpiling of construction materials and some processing of aggregates for the production of asphalt and concrete products.
- 2.2.2. The proposed Ro-Ro berth would include:
- the alteration, renovation and renewal of an existing jetty and its associated structures including fenders and piles;
 - the removal of an existing jetty and associated structures;
 - the alteration and renewal of an existing flood defence;
 - the construction of dolphins in the river bed with associated fenders and walkways;
 - the construction of a floating pontoon with associated structures and buildings;
 - the construction of an approach bridge with abutments, with a roadway, footway and wind barrier on the surface of the bridge;
 - the construction of a linkspan bridge between the floating pontoon and the approach bridge, with a roadway, footway and wind barrier on the surface of the bridge; and
 - the construction of a surface water outfall.
- 2.2.3. The CMAT berth would include:
- the alteration, renovation and renewal of an existing jetty and its associated structures including fenders and piles;

- the construction of dolphins in the river bed with associated fenders and walkways;
- the construction of a conveyor hopper and supporting structures on the river bed;
- the installation of pipework on the jetty and connections to the proposed silo facilities; and
- the construction of a conveyor and supporting structures in the river bed.

2.2.4. Related dredging works within the river Thames, piling works and construction operations (including piling and scour preventative and remedial works) within the river Thames would be needed for the extended jetty providing the two new berths.

2.2.5. The land side development would include:

- a Ro-Ro terminal, including the construction of rail sidings and rail infrastructure, and ancillary buildings;
- access to the Ro-Ro terminal;
- an operational compound to serve the Ro-Ro terminal;
- the construction and layout of storage areas and a warehouse;
- a CMAT, including silo facilities, a railway line and associated infrastructure, a conveyor, an aggregate storage yard, and access;
- a new highway to serve the proposed development, including a new overbridge;
- a new railway line to serve the proposed development; and
- road improvements at the ASDA Roundabout.

2.2.6. The extent and location of the proposed site can be seen on the location plan [[APP-007](#)].

2.3. THE APPLICATION AS EXAMINED

The NSIP

2.3.1. In the submitted application, the NSIP was described as Work No. 1 being the construction of a Ro-Ro berth on the river Thames. All other elements of the proposed development were described as associated or ancillary or related development. At the beginning of the examination in the FWQ [[PD-007](#)], the Panel posed a number of questions about the elements of the application and exactly what would constitute the NSIP and associated development.

2.3.2. The Applicant set out a detailed response in a document called the CMAT Position Statement [[REP1-016](#) Appendix B]. Section 24(1) of the PA2008 provides that it is the construction of harbour facilities which constitute a NSIP provided they are expected to be capable of handling the embarkation or disembarkation of at least the "relevant quantity" of material per year set out in s24(3).

- 2.3.3. Tilbury2 once fully developed and operational would provide for an initial expected throughput of 360,000 Ro-Ro units per annum with a maximum expected operational capacity of 500,000 units. This is well above the threshold of 250,000 units set in s24(3)(b).
- 2.3.4. The CMAT would be likely to have a throughput of circa 1.9 million metric tonnes per annum of bulk product and would qualify as 'cargo' (as opposed to container or Ro-Ro) for the purposes of s24(3).
- 2.3.5. The harbour facilities at Tilbury2 would therefore be designed to handle more than one class of material and in this situation s24(5) provides formulae to calculate whether the relevant quantities when added together to form what is termed the "equivalent quantity" of material handled meet the defined threshold. The Applicant's calculations demonstrate that the Ro-Ro berth does so on its own, as is apparent from paragraph 2.3.3, while the CMAT berth does not, but when the two quantities are combined, they exceed the threshold for an NSIP under s24 PA2008.
- 2.3.6. When the application was submitted, only Work 1 was described as the NSIP in the draft DCO [[APP-016](#)] and Explanatory Memorandum [[APP-017](#)]. In the light of the reconsideration in the CMAT Position Statement, the Applicant concluded that this was an error and that instead both the Ro-Ro berth (Work No.1) and the CMAT berth (Work No.2) of Schedule 1 of the draft DCO form the NSIP for the purpose of the application.
- 2.3.7. Accordingly, the Applicant revised the draft DCO at Deadline 1 to include Work Nos. 1 and 2 as the NSIP [[REP1-003](#)]. The associated development, being works associated with Works Nos. 3 to 12, would then comprise:
- Work No. 3 construction of the Ro-Ro terminal;
 - Work No. 4 construction and laying out of the access road;
 - Work No. 5 construction of the operational compound;
 - Work No. 6 construction and laying out of storage areas;
 - Work No. 7 construction of the warehouse;
 - Work No. 8 construction of a construction materials aggregates terminal;
 - Work No. 9 construction of the infrastructure corridor road;
 - Work No. 10 construction of the road overbridge at Fort Road bridge to facilitate the infrastructure corridor road;
 - Work No. 11 improvement of the ASDA roundabout; and
 - Work No. 12 construction of the infrastructure corridor rail line.
- 2.3.8. The application would also authorise ancillary works, so long as such works do not give rise to any significant adverse effects that have not been assessed in the ES. This is except within the river Thames or highways, where ancillary works would be limited to those described in Schedule 1 to the draft DCO.
- 2.3.9. The Applicant argued that such correction of the draft DCO does not impact the assessments undertaken for the application nor the other application documents which assessed the proposed development, as it

was assessed as a whole rather than divided between the NSIP and associated development.

- 2.3.10. The Panel agreed with the Applicant's conclusions about the composition of the NSIP and associated development as set out above and accepted these amendments to the draft DCO. The examination of the application then proceeded on this basis.
- 2.3.11. No other material changes were made to the proposals during the course of the examination. However, several changes were made to plans and documents, such as the Construction Environmental Management Plan (CEMP), the Book of Reference (BoR), the Landscape and Ecological Management Plan (LEMP) and the Ecological Mitigation and Compensation Plan (EMCP) to reflect ongoing discussions between the Applicant and other parties, including the Panel.
- 2.3.12. The current status of each document at the close of the examination can be seen in the Application and Examination Document Tracker submitted at Deadline 7 [[REP7-052](#)].
- 2.3.13. A final version of the draft DCO (Revision 7) was submitted at the close of the examination [[AS-089](#)].

2.4. RELEVANT PLANNING HISTORY

- 2.4.1. A detailed list of recent planning applications in and around the proposed development site is contained in TC's LIR [[REP1-101](#)]. These include existing consents dating from 2013 related to conversion of the adjacent Tilbury 'B' Power station (now being demolished) to a biomass power station. There is also a certificate of immunity from listing for the Tilbury 'A' and 'B' power stations issued in 2014.
- 2.4.2. The area to the north of Substation Road is currently being used for the storage of motor vehicles, under a temporary permission 16/00848/FUL. Another temporary permission (17/00560/FUL) for the storage of motor vehicles to the south of Substation Road has yet to be implemented.
- 2.4.3. Permission exists within the site for a new wet drainage ditch habitat and an artificial badger set (18/00448/FUL). This forms part of the mitigation works proposed for this scheme and is explained in more detail in section 4.11 of this report.

3. LEGAL AND POLICY CONTEXT

3.1. THE PLANNING ACT 2008

3.1.1. The Planning Act 2008 (as amended) (PA2008) is the principal legislation governing the examination of an application for a NSIP and the decision whether or not to grant development consent. The proposed Tilbury2 application qualifies as a NSIP as the volumes of import/export of goods exceed the thresholds stated in s24 PA2008 for throughput per annum. The harbour facilities elements of the proposed development constitute a NSIP for the purposes of s14(1)(j) and s24 PA2008.

3.1.2. As there is the National Policy Statement for Ports (NPSP) designated on 26 January 2012, the application falls to be decided under s104 PA2008, in which circumstance the matters that the SoS must have regard to are:

- any national policy statement which has effect in relation to development of the description to which the application relates (a “relevant national policy statement”);
- the appropriate marine policy documents (if any), determined in accordance with s59 of the Marine and Coastal Access Act 2009;
- any local impact report (within the meaning given by s60(3) PA2008) submitted to the SoS before the specified deadline for submission;
- any matters prescribed in relation to development of the description to which the application relates; and
- any other matters which the SoS thinks are both important and relevant to the decision.

3.1.3. S104(3) PA2008 requires the SoS to decide the application in accordance with any relevant national policy statement, except to the extent that one or more of the exceptions in subsections (4) to (8) applies, creating a presumption in favour of NPS compliant development. The exceptions are that the SoS is satisfied that:

- deciding the application in accordance with any relevant national policy statement would lead to the United Kingdom being in breach of any of its international obligations;
- deciding the application in accordance with any relevant national policy statement would lead to the SoS being in breach of any duty imposed on her/him by or under any enactment;
- deciding the application in accordance with any relevant national policy statement would be unlawful by virtue of any enactment;
- the adverse impact of the proposed development would outweigh its benefits; and/ or
- any condition prescribed for deciding an application otherwise than in accordance with a national policy statement is met.

3.2. NATIONAL POLICY STATEMENTS

- 3.2.1. The NPSP is the primary NPS for decision making purposes concerning the Tilbury2 application. In addition, the NPS for National Networks (NPSNN), designated on 14 January 2015 bears on the proposed infrastructure improvements insofar as they affect the strategic road network.

3.3. MARINE AND COASTAL ACCESS ACT 2009

- 3.3.1. Since the proposed development affects tidal waters, it is subject to the Marine and Coastal Access Act (MACAA2009). This provides for the preparation of the Marine Policy Statement and of Inshore and Offshore Marine Plans (similar to a Development Plan for marine areas).
- 3.3.2. In a case decided under s104 PA2008, subsection (2)(aa) requires the SoS to have regard to the appropriate marine policy documents determined in accordance with s59 MACAA2009.
- 3.3.3. The UK Marine Policy Statement (MPS) was published by Defra on 30 September 2011. Tilbury2 sits within the south east marine plan area, for which a marine plan has not yet been produced. It is therefore only the MPS that falls to be considered here.
- 3.3.4. However, the MACAA2009 also provides for designation of Marine Conservation Zones (MCZs). During the examination, on 10 June 2018, a consultation on the third tranche of MCZ commenced, one of which, the Swanscombe recommended MCZ, lies approximately 6km west of the Tilbury2 site. The MCZ assessment undertaken for the application [[APP-063](#)] did already include the proposed Swanscombe Bay recommended MCZ, which was considered as if it was designated.
- 3.3.5. The draft DCO submitted as part of the application also contains at Schedule 9 a deemed Marine Licence (DML) under part 4 of the MACAA2009.

3.4. EUROPEAN LAW AND RELATED UK REGULATIONS

The Habitats Directive

- 3.4.1. The European Habitats Directive (92/43/EEC) provides for a network of protected sites and a system of species protection. Habitat types requiring the designation of Special Areas of Conservation (SACs) are listed in Annex I of the directive. Animal and plant species of interest whose conservation requires the designation of SACs are listed in Annex II. SACs form part of the Natura 2000 ecological network of protected sites. Annex IV lists animal and plants species of interest in need of legal protection. All species listed in these annexes are identified as European Protected Species (EPS).

The Birds Directive

- 3.4.2. The European Birds Directive (2009/147/EC) requires classification of areas as Special Protection Areas (SPAs) comprising all the most suitable territories for these species. All SPAs form part of the Natura 2000 ecological network.

The Habitats Regulations

- 3.4.3. The Conservation of Habitats and Species Regulations 2017 are the principal means by which the Habitats Directive and the Birds Directive are transposed into the law of England and Wales. Assessment processes taking place pursuant to these regulations are referred to as Habitats Regulations Assessment (HRA). It should also be noted that whilst the Ramsar convention² is a UK treaty obligation and not part of the body of European Law, HRA is the primary UK process that gives effect to the UK's obligations under the Ramsar convention.

The Water Framework Directive

- 3.4.4. The Water Framework Directive (WFD) is transposed into law in England and Wales by The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017.

The Air Quality Directive

- 3.4.5. The Air Quality Directive (AQD) 2008 sets limit values for compliance and establishes control actions where the limit values are exceeded for ambient air quality with respect to sulphur dioxide (SO₂), nitrogen dioxide (NO₂) and mono-nitrogen oxides (NO_x), particulate matter (PM₁₀ and PM_{2.5}), lead, benzene and carbon monoxide. The Air Quality Standards Regulations 2010 give direct statutory effect to the AQD.

The UK Air Quality Strategy

- 3.4.6. The UK Air Quality Strategy establishes the UK framework for air quality improvements³. The UK Air Quality Strategy establishes a long-term vision for improving air quality in the UK and offers options to reduce the risk to health and the environment from air pollution. Individual plans prepared beneath its framework provide more detailed actions to address limit value exceedances for individual pollutants. In turn, these plans set the framework for action in specific local settings where limit value exceedances are found, including the designation of Clean Air Zones and more localised Air Quality Management Areas (AQMAs) where Air Quality Management Plans are prepared by local authorities.

² The Convention on Wetlands of International Importance especially as Waterfowl Habitat signed in Ramsar, Iran, 1971.

³ The Air Quality Strategy for England, Scotland, Wales and Northern Ireland (Defra, 2007)

3.5. OTHER LEGAL PROVISIONS

The Wildlife and Countryside Act 1981

- 3.5.1. The Wildlife and Countryside Act 1981 (as amended) is the primary legislation which protects certain species and habitats in the UK. The Act provides for the notification and confirmation of Sites of Special Scientific Interest (SSSIs) by NE. The Countryside and Rights of Way Act 2000 (as amended) (referred to as the CROW Act) brought in improved provisions for the protection and management of SSSIs and other designations under the Wildlife and Countryside Act 1981.

Natural Environment and Rural Communities Act 2006

- 3.5.2. The Natural Environment and Rural Communities Act 2006 (as amended) (referred to as the NERC Act) makes provision for bodies concerned with the natural environment and rural communities, in connection with *inter alia* wildlife sites and SSSIs. Section 40(1) includes a duty that every public body must have regard, so far as is consistent with the proper exercising of its functions⁴, to the purpose of conserving biodiversity.

Environmental Permitting and Related Policy

- 3.5.3. Development proposals that could:

- pollute air, water or land;
- increase flood risk; or
- adversely affect land drainage

may need an Environmental Permit (EP) from the Environment Agency (EA) under the Environmental Permitting (England and Wales) Regulations 2016.

Climate Change

- 3.5.4. The Climate Change Act 2008 establishes statutory climate change projections and carbon budgets.

The Public Sector Equality Duty (PSED)

- 3.5.5. Section 149 of the Equality Act 2010 establishes a public sector equality duty (PSED) to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not⁵. The PSED is applicable to the proposed development, the conduct of the examination and reporting, and to the SoS in decision-making.

⁴ In the case of the PA2008, Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010.

⁵ Guidance on equalities considerations and protected characteristics under the Equality Act 2010 has been provided by the Government Equalities Office and the Equality and Human Rights Commission (EHRC).

The Historic Built Environment

- 3.5.6. As required by regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010, the ExA must have regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses, and the SoS must also have regard to this in making the decision.

Navigation

- 3.5.7. As required by regulation 4 of the Infrastructure Planning (Decisions) Regulations 2010, the ExA must have regard to the whether the proposed development is likely to cause a danger to navigation.

Other Legislation

- 3.5.8. The Port of Tilbury Transfer Scheme 1991 amended the Port of London Act 1968 in order to transfer certain property and functions from the Port of London Authority to the Port of Tilbury London Ltd. The draft DCO for Tilbury2 includes a number of provisions to extend these functions to the proposed development as defined by a geographical area called “the extended port limits”, and shown on a specific plan [[REP5-029](#)].
- 3.5.9. The draft DCO also provides for the creation of byelaws by the Applicant under the Port of London Act 1968 to extend the port premises of the proposed development.
- 3.5.10. The Thames Barrier and Flood Prevention Act 1972 is proposed to be amended such that powers to undertake various kinds of infrastructure work would not apply so as to ensure consistency with the terms of the Order.

3.6. MADE DEVELOPMENT CONSENT ORDERS

- 3.6.1. Only two DCOs have been made involving the expansion or development of harbour facilities which might therefore be considered of relevance to the Tilbury2 application:

- Able Marine Energy Park Development Consent Order 2014; and
- The York Potash Harbour Facilities Order 2016.

though several other recently made orders are cited by the Applicant in the Explanatory Memorandum [[REP7-027](#)] as providing precedents in the drafting of the DCO.

3.7. TRANSBOUNDARY EFFECTS

- 3.7.1. Transboundary screening was undertaken under the EIA Regulations⁶ by the Planning Inspectorate on behalf of the SoS on two occasions. The first screening was in June 2017 following the Applicant's request for a Scoping Opinion, the second in February 2018 following submission of the application documents. On neither occasion was any European Economic Area (EEA) state identified for notification.

3.8. THE NATIONAL PLANNING POLICY FRAMEWORK

- 3.8.1. The revised National Planning Policy Framework (NPPF) published in July 2018 and its accompanying Planning Practice Guidance (PPG) set out the Government's planning policies for England and how these are expected to be applied. This is for the particular purposes of making development plans and deciding applications for planning permission and related determinations under the Town and Country Planning Act 1990 (as amended) (TCPA1990). Paragraph 5 of the NPPF makes clear that it is not a source of individual or project-specific policy for NSIP decision-making.
- 3.8.2. However, the Applicant has taken the NPPF into account as relevant in preparing the application for Tilbury2 and this is recorded particularly in the ES [[APP-031](#)]. The application was prepared on the basis of the NPPF that was extant at the time of submission; the consistency of the Tilbury2 proposals with the revised Framework is provided in Appendix 4 to the Planning Policy Compliance Statement [[REP7-014](#)].

3.9. LOCAL IMPACT REPORTS

- 3.9.1. The Panel's Rule 8 letter [[PD-006](#)] contained its formal request under s60(2) PA2008 to eligible local authorities to submit LIRs. Two LIRs have been submitted in accordance with s60(3): from TC [[REP1-101](#)] and GBC [[REP1-056](#)].

3.10. THE DEVELOPMENT PLAN

- 3.10.1. The Development Plan is not a statutory consideration required by s104 of the PA2008. However, in the case of this application the Panel agrees with the Applicant that the Development Plans of TC and GBC are important and relevant.
- 3.10.2. The statutory Development Plan for TC's area is the Thurrock Core Strategy and Policies for Management of Development Plan Document (DPD), adopted in December 2011 and subsequently updated in January 2015. The preparation of a new Local Plan for Thurrock is underway, but until this has been adopted, the Core Strategy will remain the statutory local planning policy document for Thurrock.

⁶ Infrastructure Planning (Environmental Impact Assessment) Regulations 2017
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- 3.10.3. GBC lies immediately south of the river Thames opposite the Tilbury2 site. The relevant Development Plan in this regard is the Gravesham Local Plan Core Strategy and Policies Map which was adopted in September 2014.

OTHER RELEVANT REGIONAL AND LOCAL POLICY STATEMENTS

Thames Gateway

- 3.10.4. Tilbury is within the Thames Gateway, an area of land stretching from inner east London along the river Thames and Thames Estuary, covering 16 local authorities across east London, south Essex and north Kent. The Government spearheaded a strategic development and implementation approach to this area in the late 1990s/early 2000s, including establishing in 2005 the Thurrock Thames Gateway Development Corporation (TTGDC) which covered the entire borough of Thurrock. Before it was wound up in 2012 it prepared a number of strategies, including a masterplan for Tilbury with a focus on the growth at the Port. During this time, TTGDC through its development management function, approved plans promoted by the Applicant for port-centric warehousing immediately to the north of Tilbury at what has now become London Distribution Park.
- 3.10.5. A number of sub-regional plans cover parts of the Thames Estuary area. Most relevant for Tilbury2 are the South East Local Economic Partnership Growth Deal and Strategic Economic Plan (2014), Opportunity South Essex, Thames Gateway Kent Partnership Plan for Growth 2014-2020 (2014), the London Plan and Draft London Plan (2017), and the Economic Plan for Essex (2014). These strategies share a number of key themes, including improving connectivity for road and rail, developing the role of ports and related sectors, the challenge of over-reliance on certain sectors, the need for enhanced skills and training, improved housing delivery and quality of the built environment.
- 3.10.6. Most recently, the Thames Estuary 2050 Growth Commission, established in March 2016, published its vision for Kent, Essex and London⁷ setting out an ambitious vision for delivery over the next 30 years. The role of the Tilbury port in providing a high concentration of jobs in both Tilbury and Grays is noted in this vision, not only as a large employer itself, but also its role in supporting other related and attracted businesses in the vicinity.

⁷ Thames Estuary 2050 Growth Commission report: 2050 vision and accompanying technical report, May 2018

4. FINDINGS AND CONCLUSIONS IN RELATION TO THE MAIN ISSUES

Introduction

- 4.1.1. This chapter contains a number of sections, each of which deals with a significant topic that was assessed during the examination.
- 4.1.2. The sections all follow a common structure:
- *Policy Background* – which identifies the main policy against which the topic has been examined, principally from the National Policy Statement for Ports (NPSP);
 - *Applicant's Approach* – which summarises the main features of the approach that the Applicant has undertaken, as described in the application documents;
 - *Issues Arising During the Examination* – which identifies matters that arose in the course of the examination and the Panel's position on them;
 - *Conclusions* – which distils the Panel's conclusions on the topic for carrying forward to Chapter 6.
- 4.1.3. The position between the Applicant and each main party was updated through the course of the examination in the Statements of Common Ground (SoCGs) [in chronological order: [AS-050](#), [REP1-021](#), [REP3-028](#), [AS-055](#), [REP4-019](#), [AS-071](#), [AS-073](#), [REP5-017](#), [REP6-012](#) and [REP7-012](#)].
- 4.1.4. To facilitate navigation, the Applicant has used formatting and colour coding in the versions of SoCGs to indicate changes in matters agreed, under discussion and not agreed as the examination progressed. The position at the close of the examination at Deadline 7 in relation to the SoCGs is set out in [[REP7-012](#)] and the application documents as a whole in the Application and Examination Document Tracker [[REP7-052](#)].

4.2. POLICY JUSTIFICATION FOR THE PROPOSED DEVELOPMENT

Policy Background

- 4.2.1. The essential policy justification for the proposed Tilbury2 development is contained in the NPSP. Paragraph 3.3.1 states:

“the Government seeks to:

- *encourage sustainable port development to cater for long-term forecast growth in volumes of imports and exports by sea with a competitive and efficient port industry capable of meeting the needs of importers and exporters cost effectively and in a timely manner, thus contributing to long-term economic growth and prosperity;*

- *allow judgments about when and where new developments might be proposed to be made on the basis of commercial factors by the port industry or port developers operating within a free market environment; and*
- *ensure all proposed developments satisfy the relevant legal, environmental and social constraints and objectives, including those in the relevant European Directives and corresponding national regulations.”*

4.2.2. In addition, paragraph 3.3.3 sets out that “*in order to help meet the requirements of the Government’s policies on sustainable development, new port infrastructure should also:*

- *contribute to local employment, regeneration and development;*
- *ensure competition and security of supply;*
- *preserve, protect and where possible improve marine and terrestrial biodiversity;*
- *minimise emissions of greenhouse gases from port related development;*
- *be well designed, functionally and environmentally;*
- *be adapted to the impacts of climate change;*
- *minimise use of greenfield land;*
- *provide high standards of protection for the natural environment;*
- *ensure that access to and condition of heritage assets are maintained and improved where necessary; and*
- *enhance access to ports and the jobs, services and social networks they create, including for the most disadvantaged.”*

4.2.3. The Government’s policy is therefore that it is for each port to take its own commercial view and its own risks on its particular traffic forecasts. For the same reason, the Government does not wish to dictate where port development should occur. Port development must be responsive to changing commercial demands, and the Government considers that the market is the best mechanism for getting this right, with developers bringing forward applications for port developments where they consider them to be commercially viable, in the light of competition between them.

4.2.4. Against this background, and despite the recent recession, the Government believes that there is a compelling need for substantial additional port capacity over the next 20–30 years, to be met by a combination of development already consented and developments for which applications have yet to be received (paragraph 3.4.16). Given the level and urgency of need for infrastructure of the types covered as set out above, paragraph 3.5.2 concludes that the SoS⁸ should start with a presumption in favour of granting consent to applications for ports development.

4.2.5. Regulation 6 (3) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 states that:

⁸ Originally the Infrastructure Planning Commission
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“If the application is for the construction or alteration of harbour facilities, it must be accompanied by a statement setting out why the making of the order is desirable in the interests of –

a. Securing the improvement, maintenance or management of the harbour in an efficient and economical manner; or

b. Facilitating the efficient and economic transport of goods or passengers by sea or in the interests of the recreational use of sea-going ships.”

4.2.6. The Applicant has set out the justification for the proposed Tilbury2 development to meet the requirements of regulation 6 (3) in various application documents, principally Chapter 3 of the ES [[APP-031](#)] and the Outline Business Case (OBC) [[APP-166](#)]. The main current port services and facilities at the existing Port of Tilbury are:

- containers: the Port's London Container Terminal is the only UK facility serving both deep sea and short sea customers and has the capability to handle over 500,000 containers (over 900,000 TEU (twenty foot equivalent units)) per year operating 24/7;
- grain and dry bulks: there are six bulk handling berths and 3ha of bulk handling operations plus covered and open storage to handle 120,000 tonnes;
- paper: Tilbury is the UK's leading port for importing paper products and a dedicated paper distribution centre was opened in 2014 on a 14.5ha site;
- forest products: Tilbury has over 10ha of dedicated storage, transit, treatment and distribution facilities, and is able to deal with a full range of commodities from sheet materials to specialist timber;
- roll-on/roll-off: the Ro-Ro berths deal with a wide range of cargos including cars, ferry services and tracked and agricultural plant;
- recycling: Tilbury is the UK's largest recycling and waste export facility, receiving, processing and exporting a wide range of waste products from the UK and overseas; and
- cruises: the London International Cruise Terminal is London's only purpose-built deep water cruise facility.

Applicant's Approach

4.2.7. Tilbury2 would cover 61.5ha of land and contain the following main land use elements, of which the Ro-Ro and CMAT are much the largest and are therefore considered in more detail in the next sections:

- new Ro-Ro facilities to be located at the southern part of the site south of Substation Road and used for operating container and trailer ferries to Europe;
- a new CMAT north of Substation Road to provide additional capacity for the import of aggregates and construction products, including ready mix, block plant and asphalt plant processes;
- a concrete handling silo on the riverside;

- an infrastructure corridor to improve access to the site and enable minerals, aggregates and construction materials to be transported by rail, and road; and
- an existing deep water jetty on the river frontage in the Thames to be extended upstream and downstream to allow one berth for Ro-Ro and another for aggregate ships.

Ro-Ro

- 4.2.8. The Port of Tilbury currently operates two Ro-Ro sailings per day from within the main impounded dock. However, the additional sailing time required to bring vessels through the lock reduces the time available in any 24 hour period to load and unload vessels at the quay (typically 4 hours). Coupled with the limited quayside space within the existing Port, this places a limitation on the size of vessels that can be used. The benefit of the proposed new Ro-Ro terminal within the river at Tilbury2 is that the length of time on berth can be increased. The Applicant foresees an increase in the size of vessels from the current 2,400 lane metres per vessel to 2,900 lane metres. Coupled with the increased space for loading and unloading, this would allow for the demand for an increase in throughput to be met.
- 4.2.9. More broadly across the industry, there has been a growth in intra-European Ro-Ro trade via unaccompanied trailer traffic. Both Rotterdam and Dunkirk offer extensive multimodal transport links through Europe. Rotterdam experienced a 10% increase in Ro-Ro volume in 2015, and Dunkirk experienced a 15.6% increase the previous year. New ferry routes from the UK to Rotterdam and Dunkirk are planned to be operational by 2019. These would support larger vessels than those currently used at the Port of Tilbury.
- 4.2.10. In the Applicant's view, the Tilbury2 proposals would accommodate a greater required dwell time associated with larger vessels, help to meet existing capacity constraints, improve surface access to the Port, meet changing trends and industry requirements, increase resilience of the wider supply chain, and enhance the overall UK offer.

CMAT

- 4.2.11. There is currently no large scale aggregate facility on the north bank of the Thames capable of handling large deep sea aggregate vessels. There is also a gap in the market in relation to asphalt production and for ready mix products and concrete production in London and the South East. This is due to shortages in the availability of blast furnace and power station bottom ash and other bulk powder raw materials.
- 4.2.12. Studies carried out by the Minerals Planning Association quoted in the OBC [\[APP-166\]](#) highlight ongoing strong demand for construction aggregates material processing and storage facilities. Potential tenants for the proposed CMAT at Tilbury2 have indicated to the Applicant that it could handle 1.6m tonnes of aggregates per year. This demonstrates the growth potential of the aggregates markets, and an urgent demand for

increased infrastructure capacity and connectivity to maximise economic benefits.

Outline Business Case (OBC)

- 4.2.13. The OBC [\[APP-166\]](#) sets out the need for the Tilbury2 proposals and the reasons why the Applicant believes expansion is necessary, and these are highlighted briefly in the following sections.

Strategic case

- 4.2.14. The existing Port of Tilbury covers 383ha and handles 16 million tonnes of cargo per annum, including paper and forest products, containers, Ro-Ro, grain, bulk commodities, construction and building materials. Growth potential is likely to be constrained by land availability as well as berth capacity. Tilbury2 would expand the Port's Ro-Ro and CMAT capacity to allow the Port to increase its total cargo handling to 18 million tonnes per annum. The proposals fit strategically with local, regional and national economic policy, including transport, housing, and regeneration, and they comply with the NPSP.
- 4.2.15. With growing demand for just-in-time deliveries, the pressure on companies to move goods through the Port more quickly has increased. There are therefore greater requirements for the Port of Tilbury to expand its logistics business.

Economic case

- 4.2.16. Noting that the proposed development does not require public funding, it nonetheless represents best public value at local, regional and national levels in terms of economic (employment and Gross Value Added (GVA)) benefits. The Port of Tilbury currently contributes GVA of £394 million which could rise to £492 million when the Port reaches full capacity at the existing site, extending to £562 million with the expansion of Tilbury2. The Port of Tilbury currently supports 8,600 Full Time Equivalent (FTE) jobs, which could rise to 10,800 FTEs when it reaches full capacity, increasing to 11,300 FTEs with the expansion of Tilbury2. Employment levels and economic activity are expected to increase locally, whilst some businesses on the river Thames would benefit from increased shipping movements and ferry passengers.

Commercial case

- 4.2.17. The proposal is attractive to the market place, can be procured, and is commercially viable.

Financial case

- 4.2.18. The capital cost of Tilbury2 is expected to be around £120 million with maintenance costs expected to be around £115 million over the 15 years following completion of the proposed development.

Management case

- 4.2.19. The Port of Tilbury has a track record of delivering successful projects which safeguard the Port's position, further the economic 'punch' of Tilbury, create employment and business opportunities and provide a wide range of local training and apprenticeship opportunities.

Policy Compliance

- 4.2.20. A Planning Policy Compliance Statement (PPCS) was submitted with the application and was subsequently updated at Deadlines 3, 5 and 7 to take into account the consultation draft of the revised NPPF [[REP7-014](#)]. It assesses the Tilbury2 proposal against the NPSP, the UK Marine Policy Statement (as a marine plan for the south east area has not yet been produced), the NPPF and the Development Plan policies in Thurrock and Gravesham.

NPSP

- 4.2.21. The NPS for Ports was designated in January 2012. It provides the framework for decisions on nationally significant port infrastructure and applies, wherever relevant, to associated development such as road and rail links for which consent is sought alongside that for the principal development, as is the case for the Tilbury2 proposals.
- 4.2.22. The PPCS states that the Tilbury2 proposals have an important role in meeting the demand for increased throughput that is clearly set out in the NPSP. The CMAT would provide a sustainable multi-modal facility for the importation and processing of aggregates to meet the demands of the construction industry in close proximity to markets, particularly London. Mitigation measures have been embedded or proposed to address assessed impacts of the proposed development.

NPPF

- 4.2.23. The NPPF does not contain specific policies for NSIPs, but nevertheless this document has played an important role in the development of the Tilbury2 project and the assessment of its environmental impact. As a consequence the Panel considers the NPPF to be 'important and relevant' to the SoS's decision under s104(2)(d) of the PA2008.
- 4.2.24. The Government has undertaken a review of the adopted NPPF and a revised document was published for consultation between March and May 2018. Following this, a final version of the revised NPPF was adopted in July 2018, before the close of the examination. Accordingly, the Panel has taken the revised NPPF into account.

Marine Policy Statement (MPS)

- 4.2.25. The MPS reflects the NPSP in balancing the national, regional or more local need for the infrastructure against expected adverse effects including cumulative impacts. In the case of Tilbury2, Chapter 11 of the

ES [APP-031] concludes that with appropriate mitigation measures in place there would be no significant adverse effects.

- 4.2.26. Dredging and the disposal of dredged material are assessed for potential adverse effects in Chapter 14 of the ES [APP-031], supported by the Water Framework Directive assessment (Appendix 16.C) [APP-088] and the Hydrodynamic Sediment Modelling study, Appendix 16.D of the ES [APP-089].

Development Plan

- 4.2.27. The Thurrock Core Strategy provides policy support for the expansion of international port and logistic related facilities at Tilbury, multi-modal access by river, rail and road, consistent with the Council's objectives in relation to the strategic movement of freight, and provides for protection and enhancement of an existing jetty on the river for river borne transportation. There are also a number of policies protecting and enhancing heritage assets, landscape and nature conservation, reflecting the assessment topics set out in the NPSP.
- 4.2.28. The Policies Map indicates that parts of the main Tilbury2 site have no site-specific designation and are shown as 'white land'. However, a small part of the Tilbury2 site is located within the Green Belt, of which 1.01ha would be developed as part of the proposals. Land to the north of the Tilbury2 site is partly identified as land designated as 'primary employment' whilst other areas are defined as being of nature conservation importance, either as Local Wildlife Sites (LoWS) or green corridors. The land within the infrastructure corridor has no specific designation at its eastern end whilst at its western end the land is designated as 'primary employment' as it is in current port operational use. Fort Road is shown as a 'Road Improvement Scheme.'
- 4.2.29. The SoCG between the Applicant and TC [REP7-012 Appendix 1] states that it is agreed that the proposals are of crucial importance in securing on-going economic growth of Thurrock and will contribute significantly to sub-regional and regional economic success. The adopted Development Plan notes that an expanded Port of Tilbury will be one of the UK's leading ports, providing employment, investment and facilities that benefit Thurrock as well as the sub-region. It is also agreed that the proposals accord with the economic and regeneration objectives of the Development Plan. These echo the submissions made by the Council in its LIR [REP1-101] that the economic benefits of the proposals are considered compatible with the strategic objectives of the Development Plan and the proposed land uses are considered to be consistent with the core sectors for Tilbury described as port logistics, transport and construction.
- 4.2.30. The Gravesham Local Plan Core Strategy includes policies protecting and enhancing river related leisure and commercial activities and heritage assets. The Canal Basin Regeneration Area lies on the southern shore of the river Thames opposite the Tilbury2 site, and is proposed for mixed use regeneration including about 650 dwellings. Planning permission was

granted for the redevelopment of this site but this permission has now lapsed. Further west along the river (partly opposite the existing Port of Tilbury) is Northfleet Embankment and Swanscombe Peninsula which the Core Strategy sees as a substantial opportunity for major riverside regeneration in Gravesham.

- 4.2.31. The SoCG between the Applicant and GBC [[REP7-012](#) Appendix 2] and the Council's LIR [[REP1-056](#)] state that it is agreed that the Tilbury2 proposals are acceptable and would bring benefits in terms of sustainable transport and employment; it is further agreed that the heritage of Gravesend is best appreciated in the context of a working and evolving river.

Location of Land Uses on the Site

- 4.2.32. The Masterplanning Statement [[APP-034](#)] provides a description of the process in determining the size and distribution of proposed new land uses on the site, principally the Ro-Ro and CMAT, in the context of meeting the requirements of the NPSP, OBC, and Development Plan policies.
- 4.2.33. Given the operational land requirements and the definition of the potential developable area of the site, the masterplanning process has explored whether it is possible to avoid any resulting on-site environmental effects, in particular the development of parts of land designated as Local Wildlife Sites (LoWS). As explained in detail in section 4.11, the option of retaining the Lytag LoWS has been considered but ruled out by the Applicant, because it would sterilise about 16ha representing some 33% of the total site area and would leave little space to accommodate the CMAT to the north of Sub-Station Road. There are no other sites within the Port that could accommodate an aggregates terminal given that the Port is at capacity and the CMAT needs to be in reasonably close proximity to the quay-side with direct conveyor links.
- 4.2.34. The masterplan does allow for retention and creation of some drainage channels and enhancement of vegetation along the western and northern boundaries of the site, together with enhancement of the land outside of the rail sidings to the north east for ecological mitigation.

Issues Arising During the Examination

- 4.2.35. Whilst the Applicant has set out a thorough policy justification for the Tilbury2 proposals in the light of the NPSP and other relevant policies, the Panel recognised early in the examination that the CMAT proposals in particular could have adverse environmental effects. Consequently, the Panel decided to explore thoroughly the justification for the CMAT at Tilbury2, its location within the site, the absence of reasonable alternatives, and how the CMAT sits with minerals planning policy.
- 4.2.36. Accordingly, the Panel posed a number of questions to understand the nature of the marine dredged aggregate and crushed rock elements, the likely types of vessels which would use the new berth, the handling of

cementitious materials, the silo and conveyor proposals, and the storage, processing proposals and transport off site [[PD-007](#)]. Because of the interrelationships between many of these questions, the Applicant prepared a comprehensive response to the FWQ, termed the CMAT Position Statement [[REP1-016](#) Appendix B], and the following paragraphs summarise the main outcomes.

Meeting demand and competition

- 4.2.37. The Essex and Kent minerals local plans (prepared by the respective county councils) underline the increasing demand for aggregates and construction materials as a result of growth within Essex and Kent, the finite supply of land won minerals and therefore the on-going importance of imported aggregates. The plans seek to protect minerals infrastructure and especially wharves with connected rail infrastructure that allow for this importation. The limited locations for such importation are highlighted on the Essex side of the river Thames in particular.
- 4.2.38. The Essex CC response to FWQ [[REP1-050](#)] states that Essex has no active marine-won aggregate wharves; all marine dredged material used in Essex is landed outside of the county and is transported in via rail or road. The SoCG between the Applicant and Essex CC confirms that Tilbury2 would assist in this objective [[REP7-012](#) Appendix 3].
- 4.2.39. The SoCG between the Applicant and Kent CC [[REP7-012](#) Appendix 10] agrees that there are benefits in providing enhanced aggregate import capacity in Essex to reduce importation of land-won reserves from Kent.
- 4.2.40. The availability of locations for large scale aggregate berths on the river Thames is limited and becoming more so as their value for residential development continues to increase. The deepest vessels cannot get past the Thames Barrier at Silvertown, nor can they manoeuvre easily. Tilbury is therefore the effective upriver limit on the river Thames for such deep sea aggregate vessels.
- 4.2.41. As well as the need to import aggregates and crushed rock to meet a significant forecast increase in demand to 2030, there is also a large market in London, the South East and East of England areas for associated products such as concrete and asphalt. It is proposed that the CMAT at Tilbury2 would have the ability to manufacture all such products to meet the needs of the construction sector. It should enable cost savings as all the processing facilities would be in one place together with full multimodal access to the strategic road network, river transport and rail.
- 4.2.42. The CMAT would have a number of landside facilities as permanent uses and structures, the exact composition of which is not known in detail at this stage:
- aggregates storage yard, fed by a conveyor system from the riverside; the maximum level of stored material at this facility would

be 17m high (above a ground level of a maximum of 4m above ordnance datum (AOD));

- processing facilities, to include block and precast manufacturing, a cement facility and an asphalt manufacturing plant; these structures and buildings would be a maximum of 30m high above a ground level of 4m AOD;
- a silo on land close to the river, to include associated piping and pumping infrastructure and road tanker loading, a weighbridge, access roads, and surfacing; the silo has been assessed on a likely worst case of up to approximately 100m high (above a ground level of 4m AOD) and a diameter of 15m; and
- CMAT conveyor and supporting structures close to the eastern boundary of the site linking the CMAT berth to the aggregates storage yard.

4.2.43. The proposed CMAT terminal would handle the following raw materials and finished products, with the actual amounts likely to fluctuate according to market demand:

- marine dredged, crushed rock and secondary/recycled aggregates to be used on site in manufacture and/or delivered out by rail, road or barge;
- cementitious powder products to be used on site in manufacture or delivered out by tanker vehicle;
- finished asphalt product manufactured on site and delivered out by road;
- finished concrete blocks manufactured on site and delivered out by road on flat-bed trailer vehicles; and
- ready-mixed cement manufactured on site and delivered out by road in tankers.

4.2.44. Having concluded that there are very few opportunities for deep sea aggregate handling wharves on the river Thames and the need to co-locate production capacity, the CMAT Position Statement then considers alternatives to the proposed location of the CMAT plant within the Tilbury2 site. It concludes that there is no land within the existing Port, and there are no other nearby areas of industrial land that could be reasonable alternatives for the location of the CMAT, given the need for access to deep water berthing and a rail connection.

4.2.45. The conveyor system at Tilbury2 would be approximately 800m – 900m in length, transporting material from the berth to areas of stockpiling and processing. This is achievable and economic at Tilbury2, as the conveyor system would be planned from the outset, and would not need to cross any public highways. However, this conveyor would be likely to be one of the longest runs for a CMAT in the UK. Even if alternative industrial land was available in the area a longer conveyor would not be reasonably contemplated. Such further distance would generate more difficulties and impediments including the need to traverse railways and public roads.

4.2.46. The Masterplanning Statement [[APP-034](#)] deals with the layout of land uses within the site, and reinforces the conclusion of the CMAT Position

Statement that ultimately the ecologically important area of the Lytag LoWS is significant, regardless of the location of the CMAT.

The CMAT as part of the NSIP

- 4.2.47. As noted in Chapter 2, when the application was submitted, only the construction of the Ro-Ro berth (Work 1) was described as the NSIP in the draft DCO [[APP-016](#)] and Explanatory Memorandum [[APP-017](#)]. In response to the Panel's FWQ [[PD-007](#)], the Applicant reconsidered the position and concluded that for the purposes of the application, both the construction of the Ro-Ro berth (Work No.1) and construction of the CMAT berth (Work No.2) of Schedule 1 of the draft DCO form the NSIP [[REP1-016](#) Appendix B]. The associated development then comprises construction of the Ro-Ro and construction materials aggregates terminals, internal and external infrastructure. The draft DCO was revised accordingly at Deadline 1 to include Work Nos. 1 and 2 as the NSIP [[REP1-003](#)].

Conclusions

- 4.2.48. In conclusion, there have been very few representations about the policy compliance of the Ro-Ro proposals for Tilbury2 with the NPSP and relevant policy documents. The importation of aggregates or construction materials falls within the category of 'bulk movements' and such importation is already a key part of the existing Port of Tilbury. In this context, the CMAT would help to meet forecast demand for aggregates and production related facilities for London and the Southeast and Eastern regions. The Panel agrees that there are very few opportunities for deep sea aggregates wharves on the river Thames and that the case is made for the location of the CMAT on the particular part of the Tilbury2 site.
- 4.2.49. The Panel therefore agrees that the application as a whole meets the policy justification required by the NPSP. Finally, the Panel agrees with the explanation and justification for the change of approach treating the CMAT as part of the NSIP itself as set out in Chapter 2 of the CMAT Position Statement [[REP1-016](#) Appendix B] and that the associated development constituting Works Nos 3 to 12 meet the tests of guidance⁹.

4.3. DREDGING

Policy Background

- 4.3.1. Dredging issues are considered in section 5.1 of the NPSP as part of biodiversity and geological conservation. For example, adverse impacts can arise through dredging to maintain declared depths and to deepen

⁹ DCLG: "Guidance on associated development applications for major infrastructure projects", April 2013

waters to accommodate large ships. This can have implications for sediment transport, which can in turn affect marine wildlife.

- 4.3.2. Where capital dredging is required as part of the proposed development, the NPSP advises this will need to be subject to full environmental impact assessment, including the likely effects on protected European sites or species, and tested under the Water Framework Directive (WFD). Maintenance dredging once the port is operational, including the disposal of arisings whether on land or at sea, should also be considered as part of the ES for the development as a whole.

Applicant's Approach

- 4.3.3. In the case of the Tilbury2 proposal, there is already a substantial existing jetty constructed to serve the Tilbury power stations when operational, and a small adjacent jetty used in connection with the Anglian Water treatment works. The main existing jetty is proposed to be extended both upstream requiring removal of the Anglian Water jetty, and downstream together with a range of improvements including new pontoons and dolphins. The berthing pockets associated with the main jetty were previously dredged annually by RWE until 2011, but the proposed development would require capital dredging and also of the approach channel to increase water depth. This would vary between 3.8m in the Ro-Ro berthing pocket, 6.8m in the CMAT berthing pocket, and 1m in the approach channel.
- 4.3.4. The main impact of dredging is the potential to increase levels of suspended sediments within the Thames Estuary which in turn can cause changes in a range of water quality parameters and impacts on marine ecology. There are two main dredging techniques proposed for Tilbury2. Backhoe dredging is an engineering approach involving a bucket digging into the river bed with material being directly removed from the riverbed and raised through and above the water to deposit the material into a barge. Water injection dredging (WID) aims not to remove material but rather to move sediments from one area to another. It requires large amounts of water to be injected at low pressure into riverbed sediments.
- 4.3.5. However, a disadvantage of WID is uncertainty over the risks to water quality and potential contamination which stem from the fact that chemicals present in the sediment would be disturbed by the act of dredging. The amounts transferring from sediment to the overlying water column are hard to determine, and this requires in-depth understanding of the behaviour and fate of each chemical within the waterbody under study.
- 4.3.6. On the whole, for the Tilbury2 proposal WID would be the preferred method of dredging, with backhoe dredging proposed where this is not possible, for example to dredge clays and gravels found under the silts.

- 4.3.7. The likely magnitude, duration and extent of the dredge plume for both backhoe and WID dredging for Tilbury2 have been modelled by HR Wallingford¹⁰, with the results set out in Chapter 16 of the ES [APP-031] and Appendix 16.D [APP-089]. The modelling shows that dredging on the ebb tide only would significantly reduce both the spread of the dredge plume, and therefore sediment accumulation on the riverbed upriver.
- 4.3.8. The total volume of sediment to be removed by the capital dredge is forecast to be approximately 110,000m³. As a worst case, it has been assumed in the ES [APP-031 Chapter 9] that up to 70,000m³ of this could be removed using WID with the rest being removed using backhoe dredging. The maintenance dredging within the berth pockets and approach channel to maintain the required operational depth would amount to approximately 100,000m³ of material per year, i.e. very similar to the capital dredge in terms of total volume.
- 4.3.9. The parameters used in the ES to define the worst case for the marine ecology assessment are:
- | | |
|---|-----------------------|
| Total capital dredge volume | 110,000m ³ |
| Capital dredge volume to be removed by Water Injection Dredging (WID) | 70,000m ³ |
| Maintenance dredging volume per annum | 100,000m ³ |
| Maintenance dredging volume to be removed by WID in any one dredging campaign | 70,000m ³ |
| Size of dredge area | 0.063km ² |
- 4.3.10. Where and how the material removed by backhoe dredging would be disposed of is yet to be determined and would be decided once sediment sampling has been conducted. If the dredged material was not suitable for re-use within the Tilbury2 development it might require disposal on land elsewhere or at sea.
- 4.3.11. A marine licence would be required from the Marine Management Organisation (MMO) for the Tilbury2 proposal, as works would be undertaken within the tidal river Thames. The dredging proposals and disposal of any arisings at sea are therefore included in the Deemed Marine Licence (DML) as part of the draft DCO at Schedule 9. In addition, as well as its ownership of part of the riverbed to be used in connection with the Tilbury2 development, the PLA would issue licences to control dredging as part of its responsibilities under the Port of London Act 1968 to maintain and improve the conservancy of the river and estuary.

¹⁰ Port of Tilbury Expansion Hydrodynamic and Sediment Study, HR Wallingford, October 2017

- 4.3.12. Maintenance dredging would continue to be carried out during the construction and operation of Tilbury2 at several other nearby existing wharves and operations on the Thames, including of course the entrance to the existing port of Tilbury. It would therefore be the responsibility of the PLA to control construction and maintenance dredging proposed as part of Tilbury2 with other dredging operations to reduce the potential cumulative effects. I

Impacts of the Tilbury2 Proposal

- 4.3.13. The proposed Tilbury2 development is located approximately 5km downstream of the Swanscombe recommended MCZ. The 'recommended' status of this designation means that an MCZ assessment was not required at the time of the preparation of the application. However, the MMO urged that an MCZ assessment be carried out for Tilbury2 as the Swanscombe recommended MCZ is on Defra's list for consideration under tranche 3 of the MCZ project, about which public consultation took place in June and July 2018. It could therefore conceivably become a proposed MCZ (pMCZ) while the Tilbury2 DCO application is under determination.
- 4.3.14. Based on this advice, the Applicant undertook an MCZ assessment which is presented in Appendix 11.A of the ES [[APP-063](#)]. The main conclusion is that it is highly unlikely that construction of Tilbury2 would impact on the features of the recommended designation or the 'maintain favourable condition' conservation status. This is supported by NE [[RR-025](#)].
- 4.3.15. The effects of the capital and maintenance dredging proposals upon water quality are assessed for compliance with the WFD in Appendix 16.C of the ES [[APP-088](#)]. This concludes that the scheme is compliant with the WFD, as construction of Tilbury2 would not reduce the status of any water quality elements or the implementation of planned mitigation measures.
- 4.3.16. Chapter 11 of the ES assesses the likely significant impacts of the marine elements of the proposals including dredging on marine ecology. These include:
- benthic ecology (i.e. species and habitat associated with the bed of the river Thames);
 - fish and shellfish;
 - plankton;
 - marine mammals;
 - changes in water quality from sediment disturbance due to dredging, piling and removal of obsolete structures, and run-off/discharges from land;
 - increased levels of contamination in the water column from sediment disturbance due to dredging, piling and removal of obsolete structures, and accidental spillages;

- piling and vessel movements causing increased underwater noise and vibration;
- direct loss of non-mobile benthic species due to dredging;
- increased vessel movements causing a collision risk for marine mammals;
- vessels and equipment transporting Invasive Non-Native Species (INNS);
- increased lighting causing disturbance to fish and marine mammals;
- changes in hydrodynamics influencing patterns of erosion and accretion due to changes in the footprint of the structure; and
- shading of intertidal area causing a net loss of intertidal habitat.

4.3.17. Mitigation measures are set out in the ES and would be secured in the Construction Environment Management Plan (CEMP) [REP6-008], OMP [REP6-026] or through approval under conditions of the DML as appropriate, and include:

- WID (not backhoe dredging) during both the capital and maintenance dredging would be restricted to the ebb tide only; this would limit upstream penetration of any mobilised sediments disturbed by the dredge, and avoid sediment deposit in the berths of nearby wharves and operations upstream;
- WID would not be carried out between June and August; this would avoid periods when freshwater flows tend to be lower (and lower potential dilution is available), and when water temperatures are usually higher (leading to lower oxygen carrying capacity);
- sediment with elevated levels of contaminants within the approach channel would be backhoe dredged to create minimal disturbance of the sediment;
- material extracted from backhoe dredging would not be disposed of at sea; and
- no WID would be undertaken within an exclusion zone in the approach channel.

4.3.18. Subject to the embedded mitigation and further mitigation being implemented, the ES considers that the construction and operation of Tilbury2 would not result in any significant residual effects on marine ecology.

Issues Arising During the Examination

Powers

4.3.19. The Applicant's powers to dredge are contained in article 43 of the draft DCO, subject to the DML in Schedule 9 of the draft DCO and approval of the PLA pursuant to its protective provisions contained in Part 3 of Schedule 10 of the draft DCO. The dredging proposals are shown on the Revised Limits of Dredging Plan version 3 [REP5-002]. This contains plans and sections indicating the extent and depth of dredging for the berth pockets, and the extent of dredging to the downstream approach to the jetty. Within the approach dredging there is the exclusion zone

within which no WID would be permitted to take place. This is shown on sheet 3 of the Works Plans [[REP7-050](#)] and secured by the DML.

- 4.3.20. The PLA set out its responsibilities as the statutory harbour authority for the tidal river Thames contained in the Port of London Act 1968. Approval for the construction of any works in, on, under or over the river requires a licence from the PLA under s66, and for dredging under s73 [[REP1-080](#)]. Maintenance dredging within the Thames Estuary is carried out under the management and direction of the PLA, which has a responsibility to maintain depths within navigation channels. However, the maintenance dredging of non-harbour authority berths and approaches is the responsibility of third party organisations, but under the regulation of the PLA.
- 4.3.21. The intention is that maintenance dredging required at Tilbury2 should be included in the next revision of the PLA maintenance dredge baseline document [[REP1-083](#)], which is updated every 3 to 4 years ([[REP1-082](#)]). The aim is to collate relevant information to assist operators and regulators seeking or giving approval for maintenance dredging activities that could potentially affect European designated sites (Thames Estuary and Marshes SPA and Ramsar site in the case of Tilbury2). This document provides:
- third parties wishing to carry out maintenance dredging within the study area with the relevant baseline information;
 - the information needed to inform the preparation of WFD assessments; and
 - information to assist competent authorities in identifying 'likely significant effects' in respect of future maintenance dredging applications or proposals.
- 4.3.22. The PLA also expressed concern about the interface between the Port of Tilbury London Ltd and the PLA, overlapping harbour authority jurisdictions, existing and future licensed works and use of the river Thames during construction [[REP1-080](#)]. The PLA scrutinised articles 3 and 4 of the draft DCO which seek to disapply legislation including the PLA Act 1968 insofar as it would apply to the proposed development, but with corresponding safeguards for the PLA's powers set out in its protective provisions [[REP5-062](#) and [REP6-013](#)]. Eventually, agreement was reached between the Applicant and the PLA concerning the dredging articles in the draft DCO and the protective provisions for the PLA contained in Part 3 of Schedule 10 of the draft DCO [[REP7-017](#)]. Considerable discussion took place with the MMO both in written submissions and at the hearings about the powers to dredge contained in article 43 of the draft DCO, and the structure and detailed content of the DML contained in Schedule 9 of the draft DCO.
- 4.3.23. The MMO's position at the beginning of the examination was that the powers to undertake maintenance dredging should not derive from article 43 of the draft DCO but should be solely expressed within the DML as a licensable activity. The MMO argued that both capital and maintenance dredging should be contained within the DML so that the MMO's

regulatory functions can apply. At present, the PLA retains jurisdiction to carry out dredging activities in the area of river within the Order limits. This power was not transferred to the Port of Tilbury in the 1991 transfer order and, as such, the exemption under s75 of the Marine and Coastal Access Act 2009 for certain dredging activities cannot be applied [[REP1-073](#)].

- 4.3.24. This discussion continued throughout the examination with the Applicant wishing maintenance dredging to be empowered through article 43 of the draft DCO, and the MMO arguing it should be a licensable activity under the DML. In the final SoCG between the Applicant and the MMO, the interaction between the draft DCO and DML and relevant harbour powers, and all provisions of the DML with the exception of the arbitration clause (which is considered further in Chapter 8 of this report) were agreed. It was also agreed that embedded mitigation proposed in the ES and contained in the CEMP and through the operation of the DML would deal satisfactorily with impacts of dredging on marine ecology and that no further mitigation was required [[REP7-012](#) Appendix 7].

Water Framework Directive (WFD)

- 4.3.25. The EA's main concerns were around the methodology for both capital and maintenance dredging to ensure compliance with the WFD [[RR-017](#)]. The EA accepted the capital dredge works are likely to be WFD compliant. In the event that there remained uncertainty over the risks to water quality whilst undertaking WID techniques, the EA recommended some additional water sampling for WFD pollutants to provide confidence of no deterioration. The EA argued that it would be appropriate for the Applicant to provide an updated WFD assessment once dredge methodologies and timings were decided for the EA to review and agree [[RR-017](#)].
- 4.3.26. Tilbury2 would have to maintenance dredge large volumes of sediments every year. As section 4.23 of this report notes, there is the prospect of the TEC being built adjacent to the proposed development. The CEA carried out by the Applicant [[REP1-016](#)] identifies the possibility of thermal uplifts from the power station outfall could affect the solubility of contaminants, and could make dredging riskier for chemical compliance. However, in its representations at Deadline 3, the EA indicated that the impact of cooling water discharges from the TEC on water quality may be minimal [[REP3-034](#)].

Marine Environment

- 4.3.27. At the beginning of the examination, the MMO noted it had carried out consultation with its scientific advisers CEFAS about the potential impacts on the marine environment [[RR-023](#)]. We asked the MMO to table the results of that consultation which it did in response to FWQ [[PD-007](#)] at Deadline 1 [[REP1-073](#)].
- 4.3.28. NE's main concern during the examination was the potential impact from dredging activities on water quality and sediment disturbance, and how

these might affect habitats within the Thames Estuary and Marshes SPA and Ramsar site and functionally linked habitats, if undertaken without additional mitigation [REP1-074]. These matters were considered in the stage 2 HRA report [REP5-033] and are covered in Chapter 5 of this report.

- 4.3.29. Until the detailed design and methodology for dredging operations is available (as provided for in the DML) NE advised on a precautionary basis that any initial dredging should not be undertaken during the 10 month period between July and April to allow for sediment to settle and disperse, before overwintering and autumn passage birds visit the area in significant numbers. Monitoring of this initial dredging would then help to inform the maintenance dredging programme [REP3-042 and REP6-007].
- 4.3.30. The Applicant rejected this advice on the basis of the HR Wallingford report [APP-089] showing that the landward extent of dredging effects would be significantly limited by dredging being restricted to the ebb tide [REP4-020]. It was supported in this view by the MMO, as such restrictions would leave a limited operational window. Any unforeseen delays could lead to the activities being delayed by a year if the operational window was missed. NE had yet to approach the MMO to discuss how these timing restrictions could be framed as conditions in the DML [REP6-039].
- 4.3.31. NE was also one of the bodies which argued strongly for a CEA embracing both the TEC and the LTC, as set out in section 4.23 above. NE's comments on the qualitative CEA carried out by the Applicant [REP6-006] underlined in its view that the potential interaction of dredging for Tilbury2 and discharge of heated water from the TEC, may have potential impacts on marine ecology, and therefore indirectly upon the SPA [AS-074].

Impact on Tilbury Fort

- 4.3.32. One of Hist E's main concerns was about the possible impact of dredging the western berth pocket on the foreshore of Tilbury Fort, challenging the Applicant's assertion set out in the HR Wallingford report [APP-089] that there would be a negligible effect. The Applicant's response was that restricting WID to the ebb tide only would significantly limit any adverse effects, and drew attention to the process whereby MMO would consult with Hist E concerning the marine written scheme of archaeological investigation (WSI), as part of the controls imposed under the DML about dredging methods [REP3-029].

Marine Archaeology

- 4.3.33. More broadly, Hist E highlighted throughout the examination the potential impact of dredging proposals on marine archaeological assets, even though it concurred that the likelihood of such assets existing is low to medium [REP1-064]. The Applicant's response was that the mitigation strategy would be contained in the marine WSI, and this led Hist E to express strong concerns about how this should be given effect in the

DML. A draft marine WSI was submitted as part of the application [[APP-071](#)] and revised during the examination, with the intention there should be a certified document pursuant to paragraph 14 of the DML which requires the authorised development to be carried out in accordance with it [[REP6-035](#)].

- 4.3.34. Hist E regarded the marine WSI as an outline or draft, which would need to be further developed during implementation post consent, and therefore should be governed by condition 14 of the DML. Hist E emphasised that this had been the practice in every comparable DCO to date [[REP3-044](#)]. The Applicant argued that this was unnecessary as the marine WSI contained all other matters that conditions would need to cover, and there was no need therefore to repeat them in the DML. The MMO accepted that if the marine WSI was a certified document in Schedule 12 of the draft DCO then condition 14 of the DML would be acceptable, providing that the marine WSI clearly stated the mechanisms and timescales for documents to be submitted to the MMO in order for approval to be granted [[REP6-039](#)].
- 4.3.35. At the end of the examination, Hist E acknowledged the changes made by the Applicant to the marine WSI as submitted at Deadline 6 [[REP6-035](#)], and was consequently prepared to accept this version of the marine WSI, subject to adequate provision for delivery of Method Statements through the DML [[REP7-028](#)].
- 4.3.36. In the light of both the MMO's and Hist E's comments, the Applicant submitted a final revised marine WSI at Deadline 7 which would be a certified document and secured by condition 14 of the DML [[REP7-010](#)]. The Panel considers that this a satisfactory outcome and that the issues surrounding the production of archaeological method statements and the carrying out of the authorised development in accordance with a marine WSI can be regarded as settled.
- 4.3.37. The one outstanding matter was Hist E's request that measures should be taken to establish foreshore elevations at Tilbury Fort as baseline conditions against which any changes could be measured before, during and after completion of the proposed capital dredge programme [[REP3-044](#)]. The Applicant's arguments were that the HR Wallingford report [[APP-089](#)] demonstrated that there were no hydrodynamic or sedimentation effects shown in this area of the Tilbury Fort foreshore arising from Tilbury2. As such, any effects would be small and probably not detectable in natural variation. Consequently, there was no evidential basis upon which to base and impose any form of requirement in the draft DCO [[REP4-020](#), [REP5-029](#) and [REP6-015](#)].
- 4.3.38. However the Applicant did offer a proposed requirement which could be included in Schedule 2 of the draft DCO [[AS-086](#)]. The Panel considers that in the light of the agreement over the marine WSI, a method statement could be sought under conditions 11 or 14 of the DML to deliver a foreshore elevation monitoring programme. For this reason the Panel concludes that such a requirement is unnecessary.

Conclusions

- 4.3.39. The proposals for capital and maintenance dredging for Tilbury2 are complex and formed a substantial part of the examination, particularly concerning how the powers the Applicant is seeking are expressed in the draft DCO and the DML in Schedule 9. However, by the end of the examination, the MMO, PLA, and EA were all content with the final form of article 43 and the DML provided for under article 53, together with the final versions of Works Plans [[REP7-050](#)], Limits of Dredging Plan [[REP5-002](#)], and the protective provisions in Schedule 10 requiring the Applicant to consult with these bodies before applying for dredging consent.
- 4.3.40. NE maintained its concerns about potential impacts on the Thames Estuary and Marshes SPA and Ramsar site and functionally linked habitats. However, the Panel considers that paragraph 10 of the DML requiring the Applicant to consult with NE (and the EA) before submitting a construction method statement to the MMO would provide sufficient safeguards. Hist E, the MMO and the Applicant agreed the mechanics of the marine WSI and condition 14 of the DML.
- 4.3.41. The Panel considers that the dredging proposals have been properly assessed in accordance with the NPSP and would be sufficiently well provided for and controlled in the appropriate articles in the draft DCO and the DML. The Panel concludes therefore that dredging is not a matter which weighs against the Order being made.

4.4. NAVIGATION

Policy Background

- 4.4.1. The NPSP does not include any policy statements on navigation.

Applicant's Approach

- 4.4.2. The ES [[APP-031](#)] considers in Chapter 14 the likely significant effects with respect to marine navigation as a result of the construction and operation of the proposed Tilbury2 development. The total number of Ro-Ro and aggregate vessels to and from the proposed development is expected to be 1492 per annum. This compares to a maximum number of 78 vessels calling at the berth when the power stations were in operation in the peak years of 2012 and 2013 [[REP7-011](#)].
- 4.4.3. The proposed Tilbury2 works are located outside the main navigational channel on the northern shore of the river Thames. Navigation to the proposed development would be via the Thames Estuary using existing navigational aids and river pilot knowledge and expertise as appropriate. A Navigation Risk Assessment (NRA) has been produced in cooperation with the PLA and submitted as part of the application [[APP-075](#)]. The NRA assesses the impacts on marine navigation and sets out the

mitigation measures required, bearing in mind the operation of the existing jetty until recently.

- 4.4.4. By virtue of the Port of Tilbury Transfer Scheme 1992, Port of Tilbury London Ltd is the statutory harbour authority for the existing port. Article 4 of the draft DCO provides for the Port of Tilbury to extend these powers to become the statutory harbour authority for the new port facilities (and give these effect under article 45 providing for detailed port premises byelaws in Schedule 7). As a statutory harbour authority it has a responsibility to comply with the Port Marine Safety Code (PMSC) developed by the Maritime and Coastguard Agency (MCA). Part of the development of the NRA therefore involved a series of ship manoeuvring simulations to demonstrate the operational practicality and safety of the proposed berths, and any additional aids to navigation which may be necessary.
- 4.4.5. The ES states that no impacts to navigation from the movement and positioning of vessels associated with construction works are anticipated, given the marine construction methodology and timing would be prepared and agreed in advance with the PLA pursuant to its protective provisions in the draft DCO (Part 3 of Schedule 10). In the event any impacts do occur, they are likely to be minor, in the immediate vicinity of the Tilbury2 development and temporary.
- 4.4.6. The Tilbury to Gravesend ferry is located approximately 1km upstream of the proposed development. Once Tilbury2 is operational, approaching Ro-Ro and aggregate vessels would turn downstream and adjacent to the berth, and therefore there would be no interface with the Gravesend ferry brought about by berthing or unberthing operations. When maintenance dredging is required, timing of the works would be coordinated to minimise impacts with other port operations as well as other river users.
- 4.4.7. However, it is anticipated that some barges exporting aggregate (with an upper limit of 300 movements per annum) would transit upstream from Tilbury2 and would therefore pass the Gravesend ferry. This level of increased vessel movements should pose no problem for the management of marine operations of the ferry, or indeed any other existing operations upstream of the proposed Tilbury2 development. With the proposed additional temporary and permanent navigation aids and lighting installed in accordance with PLA requirements, no residual effects are predicted in relation to navigation and vessel movements.

Issues Arising During the Examination

- 4.4.8. Representations were made by existing nearby wharf operators (Purfleet Real Estate Limited [[RR-028](#)], Northfleet Property LLP [[RR-014](#)] and Tarmac Limited [[RR-016](#)]) and potential new operations (London Resort Company Holdings Limited [[RR-010](#)]) seeking to ensure the continued effective use of the river by all operators. The Applicant's response was to highlight the NRA document and responsibilities to comply with the PMSC [[AS-049](#) and [REP7-012](#) Appendix 15].

- 4.4.9. The main organisations with an interest in navigation matters are the PLA, Trinity House, MCA and the MMO. The MMO deferred to the other organizations on the suitability of the scope of the assessment with regards to navigation of vessels. The MCA stated that as the proposal is an expansion of the existing Port of Tilbury and involving the extension of existing jetty facilities, it is content that any navigation safety concerns can be addressed by suitably worded conditions at the marine licence stage. In addition, the MCA drew attention to the PMSC concerning navigational safety in particular [AS-052]. Trinity House did not comment directly on navigation matters beyond registering its interest [RR-030].
- 4.4.10. The PLA's overriding concern was to remove any doubt in the draft DCO about overlapping harbour authority jurisdictions between the Port of Tilbury and the PLA relating to the proposed development of Tilbury2, arising particularly from articles 4 and 45. Other concerns related to the operation of article 22 concerning works in the river and suspension of navigation rights [REP1-080]. Negotiations continued between the PLA and the Applicant during the course of the examination, and at Deadline 6 the Applicant reported that agreement had been reached concerning the drafting of relevant articles in the draft DCO, and the protective provisions for the PLA contained in Schedule 10 Part 3 [REP6-036].

Conclusions

- 4.4.11. In the light of this, the Panel concludes that navigation matters have been satisfactorily explored in the application. As required by regulation 4 of the Infrastructure Planning (Decisions) Regulations 2010, the ExA must have regard to whether the proposed development is likely to cause a danger to navigation. The Panel is satisfied there are no issues outstanding which would be likely to cause such navigational dangers and therefore there is nothing that weighs against the Order being made.

4.5. DESIGN

Policy Background

- 4.5.1. The NPSP sets out the criteria for good design for ports in section 4.10. Design is to be dealt with as an integral consideration from the outset of a proposal, in which visual appearance should be a key factor in considering the design of new infrastructure, as well as functionality, fitness for purpose and sustainability.
- 4.5.2. Good design is also a means by which many policy objectives in the NPSP can be met, for example the impact sections show how good design and use of appropriate technologies can help mitigate adverse impacts such as noise.
- 4.5.3. The Applicant should take into account:

- functionality (including fitness for purpose and sustainability);

- aesthetics (including the scheme's contribution to the quality of the area in which it would be located); and
- opportunities to demonstrate good design relative to existing landscape character, landform and vegetation.

4.5.4. The decision-maker should take into account the ultimate purpose of the infrastructure and bear in mind the operational, safety and security requirements which the design has to satisfy.

Applicant's Approach

4.5.5. The principal document detailing the design of the proposed development is ES Chapter 5: Description of the Proposals [[APP-031](#)]. The main elements of the proposed development are listed in Chapter 2 of this report and in terms of design include:

- stock piles associated with the CMAT aggregates storage yard up to 17m high;
- concrete silo up to 100m high;
- concrete and asphalt related buildings up to 30m high;
- containers stacked up to 6 high with a maximum height of 18m;
- RoRo workshop, administrative and ancillary facilities;
- linkspan and approach bridge from the Ro-Ro berth up to approximately 6m high;
- Ro-Ro and CMAT berths, jetty and associated structures; and
- 8m, 12m, 15m, 25m, 40m and 50m high column mounted and high mast luminaires.

4.5.6. The proposals for which consent is sought have been established by a master planning process. The proposals are shown on the General Arrangement Plans which show the infrastructure corridor, CMAT, Ro-Ro Terminal, Ro-Ro and CMAT Berths and ASDA roundabout [[REP5-028](#)], and the Engineering Drawings and Plans [[AS-010](#)]. The proposed works are described in detail in Schedule 1 of the draft DCO [[REP7-005](#)].

4.5.7. The external appearance and height of the authorised development would be controlled by Schedule 2, requirement 3 of the draft DCO [[REP7-005](#)]. This provides that the external materials of specific parts of the scheme must be approved by TC as the relevant planning authority in consultation with GBC and Hist E as appropriate, prior to construction. The Rochdale envelope principle has been adopted in requirement 2 to control the maximum parameters of potential development of named buildings, structures and operations. These include setting a maximum diameter of the silo at 15m and its height at 104m, the stockpiles in the CMAT up to 21m high and the height of container storage at 22m, i.e. in excess of those limits described in the ES.

4.5.8. Other chapters of the ES consider the design impacts of each environmental topic [[APP-031](#)].

Method of assessment

- 4.5.9. The Applicant considers design options in ES Chapter 6: Consideration of Alternatives [[APP-031](#)]. This section describes the need and objectives for the proposed development, and provides a history of the proposed development from 1995 including the options considered. It provides an outline of the main alternatives to the proposals that have been considered in developing the proposals. It also outlines the main reasons for the selection of the Tilbury2 site, the infrastructure corridor, and the masterplan proposed. It explains how economic, environmental and other factors have influenced the decisions taken in respect of the proposals and how consultation and engagement has also shaped the process and decision making.
- 4.5.10. More detail in respect of the options which were considered during the design process is described in ES Appendix 5.A Masterplanning Statement [[APP-034](#)], from which the scheme which forms the proposed development was identified.
- 4.5.11. The Applicant undertook public consultation regarding the proposed development as described in the Consultation Report [[APP-021](#)]. For example this included consultation on aspects of design such as ecology, lighting, traffic, rail, navigation, drainage, noise, and visual impact.
- 4.5.12. The OBC [[AS-016](#)] describes in further detail the need for the proposals, how this need has informed the objectives of the project. It also sets out the strategic alternatives that have been considered as part of the scheme development, in determining whether these alternatives would be able to provide the same capacity in the same timescale as the proposed development.

Issues Arising During the Examination

- 4.5.13. The three main design issues identified in the NPSP are assessed below:
- functionality;
 - aesthetics; and
 - good design relative to the existing landscape.
- 4.5.14. There were no other significant issues raised in submissions to the examination.

Functionality: Fitness for purpose and sustainability

- 4.5.15. The objectives of the proposed development are stated in various application documents, such as the Non-Technical Summary [[REP6-027](#)], Sustainability Statement [[APP-163](#)] and the OBC [[AS-016](#)].
- 4.5.16. The Port of Tilbury has experienced significant growth in throughput and all indications are that this will continue. It has made, and continues to make, the best use of its landholding and has gradually expanded the land occupied by the Port.
- 4.5.17. The primary driver for the Tilbury2 proposals is customer demand for greater port capacity and throughput. This includes demand both from

existing Ro-Ro customers needing areas for expansion, and demand from a number of aggregate companies to expand businesses and associated production facilities.

- 4.5.18. These objectives all make a contribution towards improved sustainability of the port.
- 4.5.19. The current scheme is the result of community consultation and options assessments since early 2017. The Panel is satisfied that it a reasonable solution for addressing the identified need and therefore satisfies the requirements of NPSP section 4.10 in relation to functionality.

Aesthetics: The proposed development's contribution to the quality of the area in which it would be located

- 4.5.20. In terms of aesthetics the main representations raised during the examination were by the heritage organisations in connection with Tilbury Fort; these issues are covered in detail in section 4.8 of this chapter, and are summarised below.
- 4.5.21. Hist E made representations throughout the examination regarding aesthetics which are covered in detail in section 4.9. At the end of the examination it was agreed that a suitable palette of materials and finishes would contribute towards mitigation [[REP5-037](#)], and this would be secured by requirement 3 [[REP7-012](#) Appendix 6].
- 4.5.22. GBC made representations concerning the colour and surfacing of the silo and other tall structures. It was agreed that the mitigation measures would be finalised and approved by TC in consultation with GBC [[REP7-012](#) Appendices 1 and 2].
- 4.5.23. TC made representations [[REP1-101](#), paragraphs 8.1-5] with regard to the draft DCO Schedule 2, Part 1 (3) regarding the external appearance and height of the authorised development. These issues are covered in section 4.9 of this report.
- 4.5.24. With regard to aesthetics the proposed development would include a number of visually dominant features, particularly a large warehouse, the silo, conveyor hopper, areas for container storage and stockpiling of materials and tall lighting columns necessary for a 24 hour operation. Moreover, some of these elements such as container storage areas would present changing appearances as operations themselves change.
- 4.5.25. There is a limit to which such adverse impacts can be ameliorated through design. The NPSP at paragraph 4.10.1 acknowledges that, given the nature of much port infrastructure development, there will often be a limit of the extent to which it can contribute to the enhancement of the quality of the area. The Panel is satisfied that the proposed design meets the expectation of NPSP section 4.10 to produce sustainable infrastructure sensitive to place, efficient in the use of natural resources and energy used in their construction and operation, matched by an appearance that demonstrates good aesthetic as far as possible.

Good design relative to existing landscape

- 4.5.26. The NPSP at paragraph 4.10.3 seeks demonstration of good design relative to existing landscape character, landform and vegetation. These topics are addressed in Chapter 9 of the ES [[APP-031](#)], and the Panel has assessed them in section 4.8 of this report.
- 4.5.27. The main representations relating to landscape were from EH and Hist E, as well as the LAs. These related to impacts on: Tilbury Fort; the wider fort network; wider surroundings; receptors in Gravesend; local residents in Tilbury; and the lighting proposals. Lighting proposals are examined in section 4.8 of this chapter.
- 4.5.28. The Panel is satisfied that the Applicant has taken sufficient regard of the impact on Tilbury Fort, as well as the surrounding area and concludes that landscape and visual matters have been satisfactorily explored in the application. The environmental effects of the design such as noise, lighting, the loss of existing ecology and visual impact, are considered in other sections of this chapter.

Conclusions

- 4.5.29. The Panel concludes that design matters have been satisfactorily explored in the application and subsequently during the examination. Several elements of the proposed development on the main site would be visually dominant, and as the NPSP acknowledges there are limits to how far adverse impacts of port infrastructure can be ameliorated through design.
- 4.5.30. The Panel concludes therefore that the proposed development meets the objectives of good design set out in section 4.10 of the NPSP as far as possible.
- 4.5.31. Requirement 3 of the draft DCO contains measures to both control the maximum height of key buildings, structures and operations and the approval of details of their external appearance.
- 4.5.32. Taking all these matters into consideration the Panel concludes that design matters do not weigh against the Order being made.

4.6. LAND-SIDE TRANSPORT

Policy Background

- 4.6.1. The NPSP addresses transport impacts in section 5.4. In paragraph 5.4.4, it states that, if a project is likely to have significant transport implications, the applicant's ES should include a transport assessment, using the methodology stipulated in DfT guidance. Applicants should consult the Highways Agency (now HE) and/or the relevant highway authority, as appropriate, on the assessment and mitigation.

- 4.6.2. According to NPSP paragraph 5.4.5, where appropriate the applicant should prepare a travel plan, including demand management measures to mitigate transport impacts. The applicant should also provide details of proposed measures to improve access by public transport, walking and cycling, to reduce the need for parking associated with the proposal and to mitigate transport impacts.
- 4.6.3. In paragraph 5.4.9, the NPSP states that, since a new NSIP may give rise to substantial impacts on the surrounding transport infrastructure, the applicant should seek to mitigate these impacts, during both construction and operation. Where the proposed mitigation measures are insufficient to reduce the impact on the transport infrastructure to acceptable levels, conditions may be necessary to mitigate adverse impacts on transport networks arising from the development.
- 4.6.4. In paragraph 5.4.10, the NPSP states that, provided the applicant is willing to enter into planning or transport obligations, or conditions can be imposed to mitigate transport impacts identified in the transport assessment, then development consent should not be withheld and appropriately limited weight should be applied to residual effects on the surrounding transport infrastructure. Where mitigation is needed, NPSP paragraph 5.4.11 states that possible demand management measures must be considered, if feasible and operationally reasonable.
- 4.6.5. NPSP paragraph 5.4.14 states that the modal share of traffic entering and leaving the port – road, rail and shipping - should be considered objectively in the context of external congestion and environmental costs. Target modal shares for rail or coastal shipping may sometimes be appropriate, but are not mandatory, and the main emphasis should be on incentive mechanisms rather than rigid target-setting.
- 4.6.6. According to NPSP paragraph 5.4.22, where a development, including any container or Ro-Ro development, is likely to generate or attract substantial HGV traffic, the decision-maker may attach requirements to a consent, for example to control numbers of HGV movements to and from the site in a specified period, and ensure satisfactory arrangements for dealing with reasonably foreseeable abnormal disruption.
- 4.6.7. According to NPSP paragraph 5.4.24, where development would worsen accessibility, such impacts should be mitigated so far as reasonably possible. Employee travel assessment should be undertaken for all major port development.

Applicant's Approach

- 4.6.8. The Applicant addressed land-side transport matters in the ES [[APP-031](#)] Chapter 13 *Land-side Transport*. The transport proposals include a new road and rail infrastructure corridor to the north of the main proposed development site, changes to access to the site and adjacent land to the east, and a rail connection to the north and east of the proposed development site to service the Ro-Ro terminal and CMAT.

- 4.6.9. Chapter 13 was supported by a full Transport Assessment (TA) [[APP-072](#)]. The TA was in turn supported by a Framework Travel Plan (FTP) [[APP-073](#), [REP5-018](#)], Sustainable Distribution Plan (SDP) [[APP-074](#), [REP5-020](#)], Construction Traffic Management Plan (CTMP) appended to the Construction Environmental Management Plan (CEMP) [[APP-164](#), [REP6-008](#)], and an Active Travel Plan (ATP) to be secured as part of a Town and Country Planning Act 1990 s106 Development Consent Obligation Agreement with TC [[APP-019](#), [AS-098](#)]).
- 4.6.10. The Applicant summarised what it identified as the relevant regulatory and planning policy in Table 13.1 of the ES [[APP-031](#)]. These are the NPSP (which encourages sustainable port development, including transport links), the NPPF (which stresses the importance of sustainable transport modes), the National Planning Policy Guidance (which provides guidance on transport plans), and the Thurrock Core Strategy (which provides policy on the scale and distribution of development and the provision of supporting infrastructure throughout Thurrock to 2026).

Methodology

- 4.6.11. The Applicant stated that the assessments have been carried out in accordance with the *Guidelines for the Environmental Assessment of Road Traffic*¹¹ for existing infrastructure and *Assessment and Management of Environmental Effect*¹² for new infrastructure.
- 4.6.12. The consultation undertaken was summarised in Table 13-2 of the ES [[APP-031](#)], and consultation responses to the Preliminary Environmental Impact Report are summarised in Table 13-3. HE, TC, ECC and NR submitted points which they later submitted in relevant responses and written responses and are dealt with later.
- 4.6.13. The sensitivity criteria were identified in Table 13-4, the magnitude criteria in Table 13-5, and the criteria for the determination of significance effects in Table 13-6.
- 4.6.14. The Applicant described the baseline circumstances with regard to walking, public rights of way, cycling, bus, rail, ferry and the local highway network. Existing traffic flows were described in terms of the traffic surveys undertaken, and other sources of baseline traffic information. The baseline traffic flows in 2016, including the percentage of HGVs, were summarised for various locations close to the site and the approaches to it in Table 13-9.
- 4.6.15. The Applicant stated in the ES [[APP-031](#)] that personal injury accident (PIA) data was obtained from Essex Highways for the strategic road network (SRN) (the responsibility of HE) and the local road network (LRN) (the responsibility of TC). The baseline effects of traffic were described with reference to severance, driver delay, pedestrian delay, pedestrian amenity, accidents & safety, hazardous loads, and dust & dirt.

¹¹ Institute of Environmental Assessment (IEA, 93)

¹² Design Manual for Roads and Bridges (DMRB) Volume 11
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The future baseline included the impact of committed developments, including the London Gateway Port and the Amazon Distribution Warehouse.

Scheme Design and Embedded Mitigation

- 4.6.16. For the construction period, the Applicant stated in the ES [[APP-031](#)] that the construction methodology and programme have been developed having regard to the likely environmental impacts associated with construction traffic. The Code of Construction Practice, the CTMP, the CEMP, and the hours of construction are all intended to control and minimise the environmental effects.
- 4.6.17. For the operational period, the Applicant stated that the proposed infrastructure corridor would provide embedded mitigation for road safety, driver delay, severance and pedestrian amenity. The new rail link would accommodate a substantial proportion of the goods and materials exported (up to 50%). The new shipping berth for the CMAT terminal would enable a proportion of the material from the CMAT to be exported by barge along the river, which would similarly reduce the volume of traffic and hence impact of the development¹³.

Potential Impacts

- 4.6.18. For the construction period, Table 13-10 in the ES [[APP-031](#)] main construction tasks, showing a total of 777 two-way vehicle movements. Table 13-11 summarises the forecast traffic flows on the road links within the study area during the peak construction period. The IEA Guidelines for the Environmental Assessment of Road Traffic stipulate increases in traffic flow of more than 10% as a threshold for the assessment of road links. According to the Applicant, the proposed construction traffic would result in traffic volume increases greater than the 10% threshold only on Fort Road (south of the development site). The Applicant also concluded that the impact on severance, driver delay, pedestrian delay, pedestrian amenity, accidents & safety would be negligible in all cases.
- 4.6.19. During operation of the proposed development, the Applicant assessed the impact of the access to the site via the new infrastructure corridor link road, and concluded that the closure of footpath 144 would result in a moderate adverse severance impact, while on driver delay there would be a moderate beneficial impact. In terms of pedestrian delay, pedestrian amenity, and accidents & safety, there would be negligible impact.
- 4.6.20. With regard to traffic flows, Table 13-13 summarises the expected weekday operational vehicle trips generated by the major components of the proposed development, and Table 13-14 summarises the changes in traffic flow on local road links within the study area as a result of the completed development. The Applicant assessed the impact on

¹³ See *Impact on Rail Network* below for more detail.

severance, driver delay, pedestrian delay, pedestrian amenity, accidents and safety to be negligible and mostly beneficial.

Potential Further Mitigation or Compensation

- 4.6.21. For the construction period, the Applicant stated that management of demolition and construction traffic would be undertaken through:
- the use of appropriate and approved routes for larger construction vehicles, deliveries and staff including approved routing plans;
 - the management of working hours and delivery times;
 - covering loads to and from the development;
 - wheel washing; and
 - inspection of the local highway network and cleaning as necessary.
- 4.6.22. These measures would be included within the CTMP, the final version of which would be agreed with TC at detailed design stage, at Appendix 1 to the CEMP [[REP6-008](#)], to deliver the required mitigation measures during construction.
- 4.6.23. During operation of the proposed development, the Applicant stated that to mitigate the transport related effects of the completed development, a sustainable transport strategy was proposed as set out in the TA [[APP-072](#)], FTP [[REP5-018](#)] and SDP [[REP5-020](#)], secured through the draft DCO requirement 11. The Applicant asserted that this strategy complied with the aims of national, regional and local transport policy guidance to deliver sustainable new development, whilst providing assistance in resolving existing transport issues in the area.
- 4.6.24. The strategy includes measures for off-site walking and cycling improvements, part of the FTP, and would be secured in the draft DCO through requirement 11.
- 4.6.25. The purpose of the FTP was to identify opportunities for the effective promotion and delivery of sustainable transport initiatives, for example walking, cycling and public transport, in connection with the proposed development, and through this to reduce the demand for travel by less sustainable modes. The SDP aimed to ensure that HGV movements that could be avoided on the network were investigated and measures were promoted to reduce HGV impact on the network.
- 4.6.26. Alongside the measures within the sustainable transport strategy, the Applicant proposes to implement a number of highway improvements to mitigate the impact of the proposed development (Work No 9):
- construction of a link road from A1089 Ferry Road to the existing site access;
 - downgrading of Fort Road south of the site access to reduce traffic on this link; and
 - minor improvements to the capacity and safety at the ASDA roundabout.

Applicant's assessment of impacts

- 4.6.27. The Applicant's assessment of the potential impacts of the proposed development on receptors, mitigation measures proposed and the predicted effects are summarised in the ES [[APP-031](#)] Table 13-18.
- 4.6.28. During construction, the residual effects on – severance, driver delay, pedestrian delay, pedestrian amenity, accidents & safety, hazardous loads and dirt on the highway – are all assessed as negligible. For the link road, the residual effects on the same seven parameters range between slight adverse, through negligible, to moderate beneficial. During operation, the residual effects on the same seven parameters range between negligible and moderate beneficial.

Issues Arising During the Examination

- 4.6.29. A range of issues arose during the examination from the written representations of the various IPs, the Panel's FWQ and SWQ and the ISHs, including the ATP, FTP and SDP and impacts on:
- the SRN, including the M25 J30 and the ASDA roundabout;
 - the LRN – Thurrock;
 - the LRN – Gravesham;
 - the LRNs – Kent and Essex;
 - non-motorised users;
 - the rail network;
 - NGET;
 - RWE.
- 4.6.30. HE [[RR-020](#)] was concerned about the impact of the proposed development on the SRN and its ability to undertake its statutory business on the SRN, while the local authorities were likewise concerned about the impact on the LRNs. NR [[REP3-035](#)] was concerned to ensure that its railway interests would not be prejudiced. These matters are addressed in the sub-sections below.
- 4.6.31. In addition, in the FWQ [[PD-007](#)], the Panel examined Royal Mail's concerns [[RR-029](#)] regarding ongoing access to all properties for deliveries, and Purfleet Real Estate's concerns [[RR-028](#)] regarding continued efficient and effective operation of its terminals. The Panel is satisfied with the Applicant's response at Deadline 1 [[REP1-016](#)] on these matters, and Royal Mail and Purfleet Real Estate made no further submissions.

Impact on the SRN, including the M25 J30 and the ASDA roundabout

- 4.6.32. In the FWQ [[PD-007](#)], the Panel examined HE's concerns [[RR-020](#)] regarding the TA [[APP-072](#)], mitigation works at key junctions, the impact on the SRN, and compliance with the Design Manual for Roads and Bridges (DMRB). The Panel also took account of ECC's concerns [[RR-018](#)] regarding extra congestion at the M25 J30. The Applicant responded to all of these points at Deadline 1 [[REP1-016](#)].

- 4.6.33. At the ISH on 19 April 2018 [[EV-009](#)] and in the SWQ on 8 May 2018 [[PD-010](#)], the Panel examined the TA with regard to the impact on the SRN in terms of traffic modelling, the design and mitigation for the ASDA roundabout and the M25 J30, as well as the roles and responsibilities with regard to the SRN, a key concern of HE. The necessary changes to the ASDA roundabout and the M25 J30 would be relatively minor and would relate to junction geometry for the purpose of ensuring traffic flow and safety.
- 4.6.34. HE [[REP3-046](#)] also had other concerns:
- disagreement with the Applicant on how the works to the SRN should be carried out;
 - a belief that the draft DCO should be amended to require the Applicant to enter into an agreement with HE governing the relationship of the two parties prior to the commencement of works on the SRN; and
 - the justification for the powers sought by the Applicant to take temporary possession and for stopping up in relation to the works to be undertaken on the SRN.
- 4.6.35. The Panel also examined traffic flows at the ASDA roundabout, following Amazon's concerns [[REP3-045](#)] on the treatment of Amazon's traffic entering and leaving its site to the east of the ASDA roundabout, especially in the morning and evening peak periods. The Applicant submitted its written response at Deadline 4 [[REP4-020](#)].
- 4.6.36. At the ISH on 28 June 2018 [[EV-019](#)], the Panel continued its examination of the above matters, as well as the legal framework governing the relationship between HE and the Applicant. The Applicant further developed its proposals at Deadlines 5, 6 and 7 [[REP5-015](#), [REP6-015](#), [REP7-011](#)] and in its response to Deadline 7 submissions on the last day of the examination [[AS-086](#)].
- 4.6.37. At the close of the examination, agreement was reached between the Applicant and HE on the mitigation measures to be provided for the M25 J30 and the ASDA roundabout, and the protective provisions for HE in Schedule 10 Part 9 of the draft DCO were agreed. The final SoCG between the Applicant and HE [[REP7-012](#) Appendix 8], as well as the Applicant's final submissions [[REP7-011](#), [AS-086](#)] and HE's final submission [[REP7-030](#), [AS-081](#)] all relate.
- 4.6.38. With regard to the M25 J30, HE agreed that the southbound and eastbound approaches would not be affected. HE also agreed that, subject to improvements to road markings on the westbound and northbound approaches to the junction, secured through inclusion in requirement 7 of the DCO, the impact of Tilbury2 would be within acceptable levels.
- 4.6.39. With regard to the ASDA roundabout, an outline scheme of measures to mitigate the impact has been agreed. These would include detailed design assessments and audits to be carried out after the grant of

development consent, Essex Police to be notified as a consequence of article 52 (5) Traffic Regulation Measures, and the installation of appropriate speed limit enforcement measures, if the detailed design shows these as being necessary.

- 4.6.40. With regard to street works overall, these are addressed in the draft DCO in articles 8-17 and 52, Schedule 2 Requirement 7, and Schedules 3 and 4. The amendments to these provisions through the course of the examination are recorded in the document *Explanation of Changes to the DCO* [REP7-031]. Many of the amendments were made to ensure accuracy. Two provisions – article 52 *Traffic regulation* and Requirement 7 *Highway Works* were the subject of significant amendment after much questioning by the Panel and discussion between the Applicant, HE and the local authorities during the examination.
- 4.6.41. In the final version of the draft DCO, Requirement 7 contains provisions for how the highway works would be carried out to the satisfaction of HE, the payments that would apply, and an agreement with HE under article 15(1) *Agreements with street authorities* for the carrying out by HE of a package of alterations to the existing road marking on the A13 westbound and A282 northbound approaches to Junction 30 of the M25.
- 4.6.42. The final SoCGs between the Applicant and TC, GBC and ECC [REP7-012 Appendices 1, 2 and 3] state that all these parties were content with the final position with regard to street works including the M25 J30 and the ASDA roundabout. Amazon in its submission at Deadline 7 [REP7-034] stated that it was not objecting to the proposals in principle, but that the proposed mitigation measures put forward for the ASDA roundabout were unlikely to adequately mitigate the impact of increased vehicles in the morning peak period. Amazon noted [REP7-034] that HE and TC had accepted the level of impact at the ASDA roundabout, and was keen to remain in contact with all parties so that if predicted queuing did occur in the future as a result of Tilbury2, that the highway authorities considered further mitigation works at that time.
- 4.6.43. The Panel believes that all matters have been satisfactorily resolved and mitigated, since the strategic highway authority and local highway authorities have all stated their agreement with the mitigation measures. Having given careful consideration to the evidence provided by Amazon [REP3-045, REP7-034], the Panel concludes that it has not been established that there would be insufficient mitigation of adverse traffic impacts at the ASDA roundabout.

Impact on the LRN - Thurrock

- 4.6.44. In the FWQ [PD-007], the ISH on 19 April 2018 [EV-009], and the SWQ on 8 May 2018 [PD-010], the Panel examined TC's concerns regarding its LRN [RR-031]. Key issues were:
- the traffic assessment;
 - design plans for the ASDA roundabout;
 - vehicle movements on the LRN;

- the design of the proposed infrastructure corridor;
- the impact on local residents;
- traffic movements associated with the removal of demolition material [[APP-031](#), Table 4.1]; and
- adequacy of mitigation measures.

4.6.45. The Applicant developed its proposals at Deadlines 1, 3, 4, 5 and 7 [[REP1-016](#), [REP3-030](#), [REP4-020](#), [REP5-016](#) and [REP7-011](#)], the outcomes of which were contained in the final version of the SoCG between the Applicant and TC [[REP7-012](#) Appendix 1]. All matters were shown as agreed – including the assessment of traffic generation, distribution and monitoring - apart from finalising the drafting of the protective provisions for TC in the draft DCO [Schedule 10 Part 7]. However, in its final correspondence after Deadline 7 [[AS-094](#), [AS-090](#)], TC stated that it could confirm that the protective provisions for the Council as highways authority were now agreed.

4.6.46. The Panel's conclusion is that all matters relating to TC's LRN have been satisfactorily resolved and mitigated, and would be secured through Works 9, 10 and 11 and the protective provisions for TC [Schedule 10 Part 7].

Impact on the LRN - Gravesham

4.6.47. In the FWQ [[PD-007](#)], the Panel examined GBC's concerns regarding the impact on traffic in the vicinity of Gravesham [[RR-019](#)].

4.6.48. GBC's concerns related to the cumulative effects of the proposed development with the LTC, and its impact on the LRN in the Gravesham area. If built, the LTC would cross the river Thames around 1.5km north east of the proposed development, and the issue for GBC was the cumulative impact of the LTC with the proposed development for Tilbury2. The LTC proposals, which have not yet been submitted as an application, include a possible new link road running from a new junction just north of the LTC to connect with the proposed Tilbury2 infrastructure corridor and Port of Tilbury. See section 4.23 of this report for the Panel's conclusion on the cumulative impact.

4.6.49. As detailed in section 4.23, the Applicant stated [[REP1-016](#)] that there was insufficient information on the LTC to undertake a meaningful cumulative effects assessment (CEA), and that the promoters of the LTC would have to undertake a CEA of Tilbury2 with the LTC. Nevertheless, the Applicant did undertake a qualitative CEA [[REP3-027](#), [REP6-006](#)], which the Panel concludes is as far as the Applicant could take the CEA with the information currently available.

4.6.50. GBC accepted [[REP1-055](#)] that the modelling for the LTC itself would need to deal with quantified cumulative impacts, including, as appropriate, from Tilbury2 as and when the LTC proposals were developed.

- 4.6.51. In the final version of the SoCG between the Applicant and GBC [[REP7-012](#) Appendix 2], it was agreed that as HE had identified Tilbury2 as a cumulative project within its Scoping Report for the LTC, this meant that the LTC project would carry out this quantitative exercise.
- 4.6.52. The Panel's conclusion is that all matters relating to GBC's LRN have been satisfactorily resolved. Mitigation, if required, for the cumulative impact of the LTC with Tilbury2 would be the responsibility of the LTC applicant.

Impact on the LRNs – Kent and Essex

- 4.6.53. In the FWQ [[PD-007](#)], the ISH on 19 April 2018 [[EV-009](#)], and the SWQ on 8 May [PD-010], the Panel examined Kent County Council (KCC)'s concerns [[RR-021](#), [REP3-028](#)] and ECC's concerns [[RR-018](#)] regarding their LRNs.
- 4.6.54. Both councils expressed concern regarding the TA [[APP-072](#)]. KCC's key concerns were to do with modal shift, as well as HGV movements and parking, while ECC was concerned about sustainable travel modes.
- 4.6.55. The Applicant developed its proposals at Deadlines 1, 3 and 4 [[REP1-016](#), [REP3-030](#) and [REP4-020](#)] and successively clarified its traffic modelling, particularly with regard to the volume of HGVs on the KCC LRN.
- 4.6.56. In the final version of the SoCG between the Applicant and KCC [[REP7-012](#) Appendix 10], the parties agreed that, following the provision of traffic impact clarifications, there would not be a significant impact on Kent's LRN as a result of the Tilbury2 proposals.
- 4.6.57. In the final version of the SoCG between the Applicant and ECC [[REP7-012](#) Appendix 3], the parties agreed that detailed assessments of junctions that form part of the ECC LRN were not required as they lie outside of the scope of the TA due to the expected number of trips related to the proposed development. ECC also understood that the outcome of the further modelling undertaken for the M25 J30 was that, subject to some mitigation works, HE now raised no objection to the Tilbury2 proposals and the impact of them on this junction, and ECC was content with this position.
- 4.6.58. The Panel's conclusion is that all matters relating to KCC's and ECC's LRNs have been satisfactorily resolved and mitigated, with the matters relating to modal shift and sustainable travel modes to be secured by the FTP and SDP through the draft DCO requirement 11.

Impact on non-motorised users

- 4.6.59. In the FWQ [[PD-007](#)], the Panel examined TC's concerns [[RR-031](#)] regarding the needs of non-motorised users (local walking and cycle network, including public rights of way).
- 4.6.60. There are public rights of way (PRoWs) within and close to the Order limits, as shown on Fig 4.4 of the ES [[APP-104](#)]. FP144 runs south from

the built up area of Tilbury across the existing railway at an unmanned (pedestrian only) level crossing and runs toward Fort Road and the riverside. FP146 runs east-west within the Order limits along the river front to the north of the existing jetty, access to which crosses over it. Proposed changes are in the Rights of Way and Access Plans [[REP5-011](#)].

- 4.6.61. In its response at Deadline 1 [[REP1-016](#)], the Applicant highlighted the TA [[APP-072](#) Appendix 13.A] and FTP [[APP-073](#)] (secured through requirement 11 in the draft DCO) and ATP (to be part of the s106 Agreement between the Applicant and TC) for details of its proposals for non-motorised users.
- 4.6.62. According to the TA, the proposed infrastructure corridor would include a dedicated footway/cycleway which would connect to the existing footway and cycle network as mitigation for a footpath that would be severed as a result of the proposed development (footpath 144). Tilbury2 would also deliver wider benefits to non-motorised users through implementation of measures contained in the FTP, which outlines measures to encourage the use of these modes by staff travelling to and from Tilbury2.
- 4.6.63. In the final version of the SoCG between the Applicant and TC [[REP7-012](#) Appendix 1], the parties stated that the active travel measures included in the s106 Agreement [[AS-098](#)] were agreed, as well as mitigation at the ASDA roundabout, changes to the infrastructure corridor link road, and the FTP [[REP5-018](#)].
- 4.6.64. The Panel concludes that most matters relating to non-motorised users have been satisfactorily resolved. However, the Applicant stated in its cover letter of 20 August 2018 at the end of the examination [[AS-084](#)] that *“the s106 Agreement has been unable to be signed in time for the end of examination”*, although *“it can be considered to be the agreed form of agreement between the parties”*. The Panel's position is that it cannot afford any weight to the s106 Agreement [[AS-098](#)] since it had not been executed at the end of the examination, but the Panel does not regard the compensation provided within the s106 Agreement as a determining factor in its recommendation.

Impact on the rail network

- 4.6.65. Within the proposed development, an infrastructure corridor would be included that would accommodate road and rail links to the existing rail and road network to the north of the proposed development site. Alongside a new link road, a new dedicated rail link between the Tilbury2 site and the existing siding connection would be provided enabling a substantial proportion of materials to be transported by rail.
- 4.6.66. According to the TA [[APP-072](#)], it was estimated that the CMAT would generate a total import and export of 1,600,000 tonnes per year of which 700,000 tonnes would be exported by rail, with 750,000 tonnes exported by road and 150,000 tonnes exported by river.

- 4.6.67. In the FWQ [PD-007], the Panel examined the impact on the rail network, and in particular:
- London Gateway Port Limited (LGPL)'s assertion [RR-022] that the Tilbury2 proposals did not appear to have considered available capacity on the regional/national rail network to accommodate the predicted rail movements;
 - KCC's concerns [RR-021] regarding rail capacity.
- 4.6.68. In its response at Deadline 1 [REP1-075], NR stated that: *"Subject to sufficient protection being put in place for the railway ... NR does not believe there will be any significant impact on capacity, connectivity or network resilience caused by the proposed development and that there is sufficient capacity in the relevant lines so that the envisaged level of traffic could be accommodated through better path utilisation and where required departures managed to avoid peak times"*. The Applicant stated [REP1-016] that there were in excess of 50 rail freight paths available, and Tilbury2 would generate up to 5 freight trains per day.
- 4.6.69. At the ISH on 19 April 2018 [EV-009] and in the SWQ on 8 May 2018 [PD-010], the Panel examined road-rail freight matters, including NR's concerns to ensure that there were agreements in place to safeguard NR's interests and the safety and integrity of the operational railway [REP3-035]. At the ISH on 28 June 2018 [EV-019], the Panel again examined rail issues, with reference to the Applicant's and ECC's responses at Deadline 4 [REP4-020, REP4-015].
- 4.6.70. In its submission at Deadline 5 [REP5-016], the Applicant stated that ECC was content with the response of NR to FWQ 1.18.3 to the effect that there were no significant capacity, connectivity or resilience issues caused by the proposed development, and that discussions with NR were ongoing regarding the detailed wording of the draft DCO and land interests.
- 4.6.71. In the final version of the SoCG between the Applicant and NR [REP7-012 Appendix 9], NR confirmed that it had agreed protective provisions for the railway interests in the draft DCO (Schedule 10 Part 6) submitted by the Applicant at Deadline 6 [REP6-033]. No matters were shown as under discussion or not agreed.
- 4.6.72. The Panel's conclusion is that all matters relating to NR's interests have been satisfactorily resolved and mitigated. The Panel is satisfied that NR has the necessary protective provisions through draft DCO Schedule 10 Part 6 to cover the railway interests. The Panel is also satisfied that LGPL's and KCC's concerns regarding capacity have been addressed through NR's response [REP1-075], and that there is sufficient capacity on the network to handle the number of extra freight trains estimated to be generated by Tilbury2.

Impact on NGET

- 4.6.73. At the ISH on 19 April 2018 [EV-009], the Panel examined the impact on NGET, specifically NGET's concern relating to its ability to access its asset Tilbury2 – Proposed Port Terminal at Former Tilbury Power Station
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on the site immediately to the east of the proposed development site, namely a substation, during and following the implementation of the proposals.

- 4.6.74. In the final version of the SoCG between the Applicant and NGET [[REP7-012](#) Appendix 17], the parties stated that NGET had no objection in principle to Tilbury2 subject to the provision of 24 hour vehicular and pedestrian access to and from NGET's substation, and that the Applicant and NGET had reached agreement on the form of the protective provisions to be included in the draft DCO (Schedule 10 Part 12). NGET confirmed this position in its submission at Deadline 7 [[REP7-029](#)], in which it also stated that it had withdrawn its objection to the Order.
- 4.6.75. The Applicant also agreed [[REP7-012](#) Appendix 17] that the Fort Road overbridge would be constructed with a headroom clearance of not less than 6 metres in order to maintain access to the NGET substation by abnormal indivisible load vehicles including girded frame trailers and flat top trailers. This could be achieved within the current limits of deviation in the draft DCO. This commitment, along with others, would be included in a side agreement (outside the DCO and therefore not before the Panel), the text of which the Panel understands to be agreed.

Impact on RWE

- 4.6.76. At the ISH on 28 June 2018 [[EV-019](#)], the Panel examined RWE's concerns regarding the impact of the 6m height restriction of the overbridge at Fort Road on RWE's ability to transport equipment and material to the TEC site to the east of the proposed development site. With reference to RWE's response at Deadline 4 [[REP4-004](#)], RWE also expressed concerns regarding the impact of the proposed rail spur on RWE's access to the TEC site.
- 4.6.77. With regard to RWE's concerns over the height restriction, the Applicant stated in its response at Deadline 4 [[REP4-016](#)] that the protective provisions for RWE's benefit in the draft DCO (Schedule 10 Part 10), once agreed, would deal with this matter. The Applicant further stated that it could not provide more than 6m clearance due to design limitations, but that standard highway clearance is 5.3 metres, which therefore provided a limit on what could be transported over the highway network.
- 4.6.78. With regard to RWE's concerns over the proposed rail spur, the Applicant stated [[REP4-016](#)] that RWE had the protection of a right of continued access to its site using Substation Road.
- 4.6.79. There is no SoCG between the Applicant and RWE. In a submission at Deadline 7 [[REP7-044](#)], RWE stated that it was content with the form of protective provisions included at Part 10 of Schedule 10 of the Applicant's Revision 5 of the draft DCO [[REP6-033](#)] with the exception of the further amendments set out in the tracked changes version of the protective provisions attached at Appendix 1 to its submission at Deadline 7 [[REP7-008](#)]. RWE went on to state that it was essential for the protection of

RWE and its statutory undertaking that the amendments were incorporated in the final version of the Order.

- 4.6.80. In the Applicant's post Deadline 7 submission on 20 August 2018 [[AS-086](#)], the Applicant responded to RWE's Deadline 7 submission on a number of points: article 28, the Jetty Transfer Agreement, and the protective provisions, including RWE's seeking of an indemnity.
- 4.6.81. In Chapter 8 Table 1, the Panel has carefully assessed RWE's submission at Deadline 7 and the Applicant's response on 20 August 2018 and made recommendations for how to deal with each point. The Panel has concluded that there is no justification for the amendments requested by RWE [[REP7-008](#)] for the reasons given there.

Active Travel Plan

- 4.6.82. In the FWQ [[PD-007](#)], the Panel examined the ATP, which would be included as Schedule 1 of the s106 Agreement between the Applicant and TC, for which the Applicant submitted five drafts during the course of the examination [[APP-029](#), [REP3-019](#), [REP5-003](#), [REP7-025](#), [AS-098](#)].
- 4.6.83. The purpose of the ATP would be to specify improvements to highways and other transport infrastructure, to include pedestrian and cycle facilities, outside of the Order limits, for the purpose of providing enhanced access from both Tilbury Railway Station and Tilbury Town to Tilbury Fort and the Tilbury riverside.
- 4.6.84. At the end of the examination, the s106 Agreement – while stated by the Applicant in its end of examination cover letter to be the agreed form of agreement between the parties [[AS-098](#)] - had not been signed by the Applicant and TC, so no weight can be given to it or the ATP. The Panel does not regard the compensation that would be provided through the s106 Agreement as a determining factor in its recommendation.

Framework Travel Plan and Sustainable Distribution Plan

- 4.6.85. At the ISH on 19 April 2018 [[EV-009](#)], the Panel examined the FTP and SDP. A draft of the FTP was provided with the application, and subsequently revised twice [[APP-073](#), [REP3-007](#), [REP5-018](#)], and likewise for the SDP [[APP-074](#), [REP3-009](#), [REP5-020](#)].
- 4.6.86. The purpose of the FTP would be to provide travel arrangements for staff at Tilbury2, and also visitors to the site, while the purpose of the SDP would be to specify sustainable travel arrangements for freight.
- 4.6.87. In the final version of the SoCG between the Applicant and TC [[REP7-012](#) Appendix 1], it was agreed that the FTP submitted at Deadline 5 [[REP5-018](#)] provided a suitable framework for the preparation of future full travel plans in consultation with TC, and that the SDP submitted at Deadline 5 [[REP5-020](#)] provided a suitable framework for the preparation of future full SDPs in consultation with TC.

- 4.6.88. The Panel's conclusion is that all matters relating to the FTP and SDP, both proposed to be secured through requirement 11 in the draft DCO and certified documents in the draft DCO Schedule 11, have been satisfactorily addressed.

Conclusions

- 4.6.89. The Panel concludes that all matters relating to the SRN, including the M25 J30 and the ASDA roundabout, have been satisfactorily resolved and mitigated. HE is content with the mitigation works at these two locations [[REP7-012](#) Appendix 8], and that the protective provisions in its favour, secured through the draft DCO Schedule 10 Part 9, would ensure that it is not impeded in its statutory role with regard to the SRN. The Panel is satisfied that Amazon's concerns regarding the ASDA roundabout have been met by the mitigation measures proposed.
- 4.6.90. The Panel concludes that all matters relating to the LRNs within the responsibility of TC, ECC and KCC have been satisfactorily resolved and mitigated [[REP7-012](#) Appendices 1, 3 and 10]. The local authorities are content that all necessary steps have been taken to ensure the traffic flow and safety at the ASDA roundabout and other locations.
- 4.6.91. The Panel concludes that all matters relating to non-motorised users have been satisfactorily resolved and would be provided through Works Nos 6, 7, 8, 9 and 10. The ATP (Schedule 1 of the s106 Agreement) would include pedestrian and cycle facilities, outside of the Order limits, from Tilbury Town to Tilbury Fort and the riverside. The s106 Agreement [[AS-098](#)] was not signed by the end of examination, so no weight can be given to it. The Panel concludes that the compensation that would be provided through the s106 Agreement provisions for transport is not a determining factor in its recommendation.
- 4.6.92. The Panel concludes that all matters relating to NR's interests have been satisfactorily resolved and mitigated through protective provisions, secured through the draft DCO Schedule 10 Part 6, thus ensuring that NR can continue to discharge its statutory role with regard to the railway network.
- 4.6.93. The Panel concludes that all matters between the Applicant and NGET have been satisfactorily resolved through protective provisions, secured through the draft DCO Schedule 10 Part 12, ensuring that NGET would continue to have access to its substation on land to the east of the proposed development, and NGET has withdrawn its objection to the Order [[REP7-029](#)].
- 4.6.94. The Panel concludes that there is no justification for the amendments to the protective provisions proposed by RWE at the end of the examination [[REP7-008](#)]. The Panel's detailed recommendations on each proposed amendment are detailed in Chapter 8 Table 1.
- 4.6.95. The Panel concludes that all matters relating to the FTP (which would provide travel arrangements for staff at Tilbury2 and visitors to the site)

and SDP (which would specify sustainable travel arrangements for freight), both secured through the draft DCO requirement 11, have been satisfactorily addressed and agreed with TC [[REP7-012](#) Appendix 1] as the relevant local authority.

- 4.6.96. The Panel's overall conclusion in relation to the transport matters is that they weigh in favour of the Order being made.

4.7. LAND USE

Policy Background

- 4.7.1. The NPSP notes in section 5.13 that a port infrastructure project will of course have direct effects on the existing use of the proposed site. Applicants should therefore identify such existing uses, and how the proposed development sits in relation to Development Plan policy, taking into account factors such as minimising impacts on the best and most versatile agricultural land, and whether the proposal, or any part of it, is within an established Green Belt. If it is, it may be inappropriate development within the meaning of Green Belt policy and consideration will be needed as to whether there are very special circumstances to justify it. The application should also identify existing and proposed land uses near the project, as well as any effects of preventing a development or use on a neighbouring site from continuing.

Applicant's Approach

- 4.7.2. Chapter 4 of the ES [[APP-031](#)] describes the land bound by the Order limits which comprises four areas, namely:
- the main Tilbury2 site on the former Tilbury Power Station land;
 - the infrastructure corridor to the main site between Ferry Road and Fort Road;
 - land around the ASDA roundabout to the north of the Port where highway improvements would be required; and
 - sections of the tidal river Thames required for the construction of expanded berthing capacity and associated dredging.
- 4.7.3. These are described in detail in Chapter 2 of this report.

Issues Arising during the Examination

Open Space

- 4.7.4. Paragraph 5.13.1 of the NPSP accepts that, given the likely locations of port infrastructure projects, there may be particular effects on open space including green infrastructure. Open space should be taken to mean *"all open space of public value, including not just land, but also*

areas of water such as rivers, canals, lakes and reservoirs which offer important opportunities for sport and recreation and can also act as a visual amenity.” The proposals for Tilbury 2 would result in the loss of undeveloped land primarily within the infrastructure corridor. A small area in the north-east corner of the main site is former agricultural land and a part of that is designated Green Belt.

- 4.7.5. Parts of the infrastructure corridor cross land which is undeveloped and therefore open in character. The land is currently used primarily for fly-grazing of horses. As this grazing is not associated with recreational riding it is likely to be considered an ‘agricultural use’ in land use planning terms, but the land is poor quality and is not identified as being in agricultural use on Agricultural Land Classification maps.
- 4.7.6. None of the open land within the Order limits is designated as ‘public open space’ in the Development Plan, unlike the land to the south of the infrastructure corridor which is specifically shown as ‘additional open space’. By implication, none of the land within the Order limits was ‘open space’ at the time the Development Plan was adopted despite it being of the same character as the central field (i.e. open land, used for horse grazing with no lawful or informal public access).
- 4.7.7. Map 3 – Location of Greengrid in the Thurrock Core Strategy [[REP7-014](#) Appendix 3] does show the eastern field as ‘Existing Open Space’ but it is not defined as public open space on the Policies Map. However, this field (which coincides with the area of common land) is used on an informal basis for dog walking. It is also used for unauthorised off-road motorcycling which may be considered of recreational value, but is likely to be unwelcomed and anti-social.
- 4.7.8. The Applicant notes that provision for replacement common land as proposed in the DCO (see Chapter 7 of this report) would offer the opportunity for allowing informal access in a similar manner and extent, and for the same purposes, as that presently enjoyed over the existing common land.
- 4.7.9. The footpath corridor immediately to the north of Fortland site clearly has recreational value for walkers, albeit it traverses a green corridor of limited width between two developed areas. As part of the proposed Development Consent Obligation (s106 Agreement) with TC, the Applicant proposes a comprehensive Active Travel Strategy aimed at compensating for the closure of this footpath and enhancing opportunities for walking and cycling in the wider area generally [[AS-098](#)]. The Panel does not take this into account as the s106 Agreement was unsigned at the close of the examination.
- 4.7.10. Based on the above analysis, the Applicant concludes that the impact on open land and recreation more generally is negligible, both in terms of conflict with actual everyday use of the land and also in relation to planning policy set out in the Development Plan. The Panel agrees.

Green Belt

- 4.7.11. Most of the north and east of the Thurrock Council area is covered by Green Belt. The Green Belt boundary tightly embraces the northern edge of Tilbury and the primary purpose of the Green Belt in this location is judged to be to prevent the substantial outward expansion of the town. However, the Proposals Map of the Thurrock Core Strategy [[REP7-014](#) Appendix 1] shows a major employment development site within the Green Belt to the northwest of Tilbury and east of the A1089 at the ASDA roundabout (which is itself within the designated Green Belt), essentially the London Distribution Park now occupied by the Amazon and Travis Perkins warehouses.
- 4.7.12. The proposed development would intrude into the designated Green Belt in two places: in the extreme north-east corner of the main Tilbury2 site and the ASDA roundabout. The incursion at the Tilbury2 site land is shown in detail on a plan in the Planning Policy Compliance Statement [[REP7-014](#) Appendix 5]. It involves a total of 8.75ha of designated Green Belt land and is former agricultural land immediately adjoining the previously developed parts of the site. As shown on General Arrangement Plan 2 [[REP5-028](#)] the rail corridor and access road which run into the Tilbury2 site along its northern boundary before aligning south along the eastern edge of the site would take 0.28ha of Green Belt land. A further 0.73ha of the designated Green Belt is shown as “inside” the new railway line where part of the CMAT facilities would be located. The rest of the Green Belt land comprising 7.74ha would be on the “outside” of the new railway line and is to be used for landscaping and ecological mitigation. Different circumstances apply to each of these three areas of land proposed to be used within the Green Belt and are considered in turn.

The Rail Corridor

- 4.7.13. The reason for the alignment of the rail line is explained in the Masterplanning Statement [[APP-034](#)]. The radii are based on engineering requirements to appropriately link the corridor along the northern and eastern boundaries of the site; this has made some intrusion into the Green Belt unavoidable. The new railway line would in effect define the outer limit of the operational area of the site.
- 4.7.14. The rail line itself is not considered by the Applicant to constitute inappropriate development in the terms of the NPPF. This stipulates at paragraph 146 that local transport infrastructure which can demonstrate a requirement for a Green Belt location is not inappropriate development provided the openness of the Green Belt is preserved and the proposed development does not conflict with the purposes of including land in the Green Belt as set out in paragraph 134 of the NPPF.
- 4.7.15. The Panel agrees that the alignment of the new rail line is largely determined by the point at which it would leave the existing rail line and the curve it would have to make to enter the main Tilbury2 site. The engineering drawings show the new rail line on a modest embankment of between 1 and 2 metres above existing ground level, and so the Panel

accepts that the impact on the openness of the Green Belt at this point would be limited [[APP-015](#)]. Less straightforward is whether this new rail line qualifies as local transport infrastructure, but in view of the fact that it would be essentially a branch line serving just the Tilbury2 site the Panel agrees with the Applicant on this point. Overall, the Panel accepts that the construction of the proposed new rail line would not conflict with the purposes of the Green Belt, and does not constitute inappropriate development.

Land inside the Rail Corridor

- 4.7.16. The small area of land 'enclosed' by the alignment of the railway line (0.73ha) would be used as part of the CMAT for aggregate stockpiles. This use is accepted by the Applicant as inappropriate development, and therefore requires a case of very special circumstances to justify the loss of Green Belt. This is both the harm in principle by inappropriate development and the harm in practice due to the adverse impact on openness.
- 4.7.17. Very special circumstances (VSC) are considered to exist by the Applicant given:-
- the need to make efficient use of the site generally;
 - the need to maximise throughput and meet demand for aggregate importation in accordance with the objectives of the NPSP to meet rising demand;
 - the need to maximise the socio-economic benefits of the proposals as set out in the ES [[APP-031](#)] and the OBC [[APP-166](#)] which would be restricted by a limitation on the available operational land area;
 - given the alignment of the railway line, no reasonable use could be made of the land to the south west of this corridor segregated from the wider Green Belt and lying between the railway line and the current Green Belt boundary; and
 - this land would perform no Green Belt purpose, and its loss to the Green Belt would therefore cause no harm in practice.
- 4.7.18. Thus the combination of the overall need for a port development of national significance combined with the engineering, operational and socio-economic considerations, as well as the limited harm to the Green Belt are such that it is considered by the Applicant that very special circumstances exist [[REP7-014](#)].
- 4.7.19. The Panel agrees with the Applicant's analysis of the physical characteristics of this land and its absence of serving any credible Green Belt purpose if the alignment of the new rail line is accepted. However, the main argument in the minds of the Panel is that the need and function of the proposed CMAT itself set out particularly in the OBC [[APP-166](#)] outweigh the limited harm to the Green Belt. This therefore provides the VSC to warrant this inappropriate development taking place on Green Belt land, albeit a very small plot in the context of the scheme as a whole.

Land outside the Rail Corridor

- 4.7.20. Turning thirdly to the much larger area 'outside' the railway, this is not proposed for any built development but is for landscaping and ecological mitigation works. In the Panel's view, these do not constitute inappropriate development and would not be harmful to openness, especially considering the former grazing marsh characteristics of the area. Indeed, the mitigation works in this area have been the subject of a recent planning permission granted by TC where these considerations were held not to represent a conflict with Green Belt policy. The Panel agrees therefore that this conclusion applies to all of this land outside the railway chord.
- 4.7.21. Finally, in relation to the ASDA roundabout, the junction and adjacent road approaches are designated as Green Belt. However, TC in its LIR [[REP1-101](#)] states it is not considered that the development described by Work No. 11 and shown on the General Arrangement Plan 5 [[APP-008](#)] would cause any material conflict with Green Belt policies. Given that the proposed improvement works as Work No.11 are confined to minor improvements to the existing highway infrastructure the Panel agrees with the Council's conclusion that they do not constitute inappropriate development in the Green Belt.
- 4.7.22. More broadly, the Applicant argues that the proposals would not lead to unrestricted urban sprawl, given the defining boundary formed by the railway corridor. The proposals would not lead to development being any closer to the nearest settlement to the east (East Tilbury) given the current alignment of the Green Belt boundary and would not therefore result in a risk of neighbouring settlements merging. The intrusion into the Green Belt would have no impact on the character of any historic town, and no effect either way on urban regeneration. These conclusions are supported by TC in its LIR [[REP1-101](#)] and its SoCG with the Applicant [[REP7-012](#) Appendix 1]. The Panel agrees.

Agricultural Land

- 4.7.23. The proposal would result in no loss of high grade agricultural land. The land within the infrastructure corridor is not defined as agricultural, whilst the land within the Green Belt is former agricultural land but is not in agricultural use at present and forms no part of an agricultural land holding.

The Development Plan

- 4.7.24. As highlighted above, the proposals have taken account of the effects on the land use policies in the existing and emerging Development Plans for Thurrock and Gravesham. The Development Plan position is set out in the Policy Justification in section 4.2 above. The central and southern parts of the Tilbury2 site have no specific policy designation. Land at the north-western part of the Tilbury2 site forms part of the 'Lytag Brownfield' LoWS. The proposals would result in the loss of this non-statutory site, and a conflict with the sequential approach of avoidance, mitigation and compensation set out in the Thurrock Core Strategy could

be taken to apply. The north-eastern part of the main site is allocated as Primary Industrial and Commercial Area on the Core Strategy Proposals Map and the Tilbury2 proposals do not, in principle, raise a conflict with relevant Development Plan policies for employment.

- 4.7.25. In terms of the infrastructure corridor, land south of the existing railway line is for the most part allocated as comprising Primary Industrial and Commercial Area on the Core Strategy Proposals Map [[REP7-014](#) Appendix 1]. Land forming the western part of the infrastructure corridor and land between Fort Road and public footpath 144 has no specific policy designation.
- 4.7.26. The northern side of Fort Road is designated as a linear feature where Development Plan policy seeks to restore, protect, enhance and, where appropriate, create green assets. The Active Travel Plan, if realised, could enhance footpath and cycle connections in the area in compliance with the policy, although it had not been signed at the end of the examination, so the Panel can give it no weight. Finally, the Proposals Map designates Fort Road, south of its junction with the Substation Road, as a road improvement scheme where similarly the Active Travel Plan could contribute towards the achievement of Development Plan policies.
- 4.7.27. There are no immediate proposed changes in land use within the vicinity of the site proposed in the Development Plan in Thurrock. In respect of the regeneration proposals on the south side of the river in Gravesham, it is not considered by the Applicant that the proposals would have any adverse impacts on the prospects of development proposals coming forward, given the mitigation proposals (particularly in respect of noise). In view of the limited developer interest in the Canal Basin site in Gravesend the Panel agrees.

Conclusions

- 4.7.28. The Panel concludes that the alignment of the proposed railway line through part of the Green Belt would comprise necessary transport infrastructure which would be compatible with paragraph 146 of the NPPF. Although intrusion of part of the CMAT site into a small area of the Green Belt would comprise inappropriate development there are factors set out above which in the Panel's view would provide very special circumstances to outweigh limited harm to the Green Belt. The rest of the land within the Order limits in the Green Belt (about 90% of the total Green Belt land "take") is intended for landscaping and ecological mitigation, so its essential Green Belt purpose of remaining as open land would not change. The Panel concludes therefore that the use of an area comprising 8.75ha of Green Belt land for the proposed development meets the tests of the NPPF, and as a whole the Panel finds no conflict with Green Belt policy.
- 4.7.29. The proposals for Tilbury2 accord with the policies of the NPSP regarding land use matters. They promote the re-use of previously-developed land and there would be no adverse impacts on open spaces. There would be a limited and justifiable intrusion into the Green Belt, and no loss of

agricultural land. The proposals would cause no displacement of existing uses.

- 4.7.30. These conclusions are supported by TC in its SoCG with the Applicant [[REP7-012](#) Appendix 1] which states:

'it is agreed that the site is covered by a number of designations including 'white land' (absent any site specific designation), primary employment, and local wildlife sites. A small area in the northeast corner of the main site is designated as Green Belt. It is agreed that none of the land within the Order limits is designated as proposed or existing Open Space or Public Open Space within the development plan'.

- 4.7.31. No other representations have been made about land use policy specifically. The Panel concludes therefore that the only land use reason weighing against the application is the 0.73ha of inappropriate development in the Green Belt. The Panel concludes that VSC exist to outweigh limited harm to the purposes of the Green Belt arising from the proposed development.

4.8. LANDSCAPE AND VISUAL IMPACTS

Policy Background

- 4.8.1. The NPSP addresses landscape and visual impacts in section 5.11. At paragraph 5.11.1, the NPSP points out that port development can sometimes have a negative impact on the characteristics and visual amenity of the landscape, which can be a particular problem where the local area is dependent on an acknowledged tourist activity destination and/or is important for recreation. The impact can be the result of the physical character of the port development as well as its introduction of light pollution and noise to areas that may otherwise have been tranquil.
- 4.8.2. NPSP paragraph 5.11.3 states that the applicant should carry out a landscape and visual assessment and report it in the ES. The assessment should include the visibility and conspicuousness of the project during construction and of the presence and operation of the project and potential impacts on views and visual amenity. This should include any light pollution effects including on local amenity, rural tranquillity and nature conservation.
- 4.8.3. At paragraph 5.11.6 the NPSP states that the existing character of the local landscape, its current quality, how highly it is valued and its capacity to accommodate change, all need to be considered in judging the impact of a project on landscape. Projects need to be designed carefully, taking account of the potential impact on the landscape. The aim should be to minimise harm to the landscape, providing reasonable mitigation where possible and appropriate.

- 4.8.4. NPSP paragraph 5.11.13 requires the decision-maker to consider whether the project has been designed carefully, taking account of environmental effects on the landscape and siting, operational and other relevant constraints, to minimise harm to the landscape. The decision-maker will have to judge whether the visual effects on sensitive receptors outweigh the benefits of the development.
- 4.8.5. When considering possible mitigation within a defined site, NPSP paragraph 5.11.17 states that adverse landscape and visual effects may be minimised through appropriate siting of infrastructure within that site, design including colours and materials, and landscaping schemes, depending on the size and type of proposed project. Materials and designs of buildings should always be given careful consideration.
- 4.8.6. NPSP paragraph 5.11.18 states that, depending on the topography of the surrounding terrain and areas of population, it may be appropriate to undertake landscaping off site. For example, filling in gaps in existing tree and hedge lines would mitigate the impact when viewed from a more distant point.

Applicant's Approach

- 4.8.7. The Applicant addressed landscape and visual impacts in the ES [[APP-031](#)] Chapter 9: *Landscape Character and Visual Amenity*.
- 4.8.8. With reference to Figure 2.1, the landscape is flat, and dominated by the existing infrastructure of the Port of Tilbury to the west of the proposed development site, with Tilbury Fort and the Anglian Water treatment works between the port and the site. Overhead powerlines from a nearby substation are a prominent feature to the east. The river Thames is immediately to the south with Gravesend on the south side of the river, and Tilbury town to the north-west. There is some tree screening from mature Monterrey pines at the west of the main Tilbury2 site.
- 4.8.9. The parameters defining what the Applicant identified as the realistic worst case are listed in the ES Table 9.1, which include a storage silo up to 104m tall, CMAT processing facilities up to 34m high, warehousing up to 26m high, shipping container storage (up to 6 containers high) up to 22m, lighting up to 50m high, Ro-Ro vessels up to 200m long and CMAT vessels up to 250m long. The Ro-Ro berth would accommodate up to 2 vessel movements per day, while the CMAT berth would accommodate 40 import vessel movements per annum and up to 300 export movements per annum, and the two berths could be operating simultaneously.

Methodology

- 4.8.10. The Applicant stated that its assessment had been prepared in accordance with the published guidance provided by the Institute of

Environmental Management and Assessment and the Landscape Institute (IEMA/LI)¹⁴ and the Countryside Agency¹⁵.

- 4.8.11. The core study area identified by the Applicant is shown on Figure 9.2. It covers an area of approximately 53km² and represents the maximum predicted potential extent of significant landscape and visual effects brought about by the proposed development.
- 4.8.12. The Applicant stated that the methodology used followed that defined at the scoping and preliminary environmental impact assessment stages and agreed with consultees.
- 4.8.13. Desktop and field surveys were carried out to record and analyse the existing landscape characteristics, the value of the landscape and visual resources in the vicinity of the proposed development, and to identify sensitive landscape and visual receptors.

Identification of Potential Impacts

- 4.8.14. According to the Applicant, the broad design parameters of the proposed development have been established through the development of the masterplan as described in Chapter 5 of the ES [[APP-031](#)]. This has provided sufficient information to identify the likely scale and nature of changes to landscape characteristics and landscape value, and changes affecting visual amenity.
- 4.8.15. An assessment has been made of the sensitivity of the landscape (its ability to accommodate changes in character and value), and its capacity (its ability to accommodate change of the type proposed without significant effects on its character, or overall change of landscape character type). Matrices of sensitivity ranging from negligible to very high and significance thresholds ranging from not significant to very substantial are presented in the ES [[APP-031](#)] Table 9.7.

Mitigation Measures

- 4.8.16. These would be of two types: embedded mitigation (within the iterative design) and secondary mitigation (designed to address adverse effects of the development).
- 4.8.17. The assessments above were used to develop a landscape strategy [[AS-027](#)], which identifies those mitigation measures that have been adopted in the proposals as well as potential additional primary and secondary landscape mitigation measures. The mitigation includes additional screening along the infrastructure corridor, maintenance of existing mature Monterrey pines to the west of the main Tilbury2 site, location of the elements of construction on the site with minimisation of visual intrusion in mind, and a lighting strategy that would minimise light

¹⁴ Institute of Environmental Management and Assessment and the Landscape Institute – 'Guidelines for Landscape and Visual Impact Assessment' Third Edition 2013.

¹⁵ Countryside Agency and Scottish Natural Heritage – 'Landscape Character Assessment' 2002 and Topic Paper 6: Techniques and Criteria for Judging Capacity and Sensitivity (2004).

pollution. The strategy also includes reference to proposed enhancement measures that lie outside of the Order limits. These relate to a series of walking and cycling improvements which were the subject of discussions between the Applicant and TC with the aim of securing them through the s106 Agreement.

Baseline Conditions

- 4.8.18. These were founded on published landscape character assessments, and summarised the relevant features of the national, regional and local character areas. From these sources, the Applicant identified the key qualities cited as desirable to safeguard, and the key landscape conditions and options for sustainable development.
- 4.8.19. The Applicant went on to identify the visually prominent features in the vicinity of the proposed development, in terms of attractors, neutral features and detractors.
- 4.8.20. The attractive features were a church spire in the village of West Tilbury, a series of small woodland copses set on the rising slopes of the Chadwell escarpment, and on the south side of the river the hilltop Shorne woodlands and Windmill Hill in Gravesend. The Applicant asserted that for some, though not all, the industrial cranes located within the existing Port of Tilbury were also considered attractive and interesting features that strengthen local character.
- 4.8.21. According to the Applicant, neutral features included four recently-constructed large wind turbines within the Port of Tilbury. While these turbines could be said to have been designed sympathetically and there is generally a positive association with 'clean' energy, the Panel regards them as detracting features. They are in fact the most dominant immediate visual features from the existing main Tilbury2 site.
- 4.8.22. Detracting features identified by the Applicant included:
- the treatment works immediately to the west of the proposed development site;
 - the existing Port of Tilbury to the west of the treatment works, which dominates the immediate landscape;
 - the part-demolished boiler house and associated structures of Tilbury 'B' power station on the land immediately to the east of the proposed development site;
 - vehicles using the A1089;
 - the three 16-storey residential tower blocks in Tilbury;
 - the dense network of overhead electricity pylons leading broadly northwards from the Tilbury 'B' power station site;
 - port buildings close to the southern edge of Tilbury and off Crete Hall Road in Gravesend; and
 - mineral stockpiles at Cliffe Fort.
- 4.8.23. The Panel concurs with these detracting features. The Applicant assessed the landscape value with reference to IEMA/LI guidance that identifies a number of reasons why a landscape may be valued –
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landscape condition, scenic quality, rarity, representativeness, conservation interests, recreation value, perceptual aspects, and associations.

- 4.8.24. The ES [[APP-031](#)] Chapter 9 Tables 9-10 and 9-11 respectively summarised statutory nature conservation designations, and scheduled monuments. There are no grade listed buildings within the proposed development site, and few within the vicinity, the closest being the Grade II* Officers' Barracks within Tilbury Fort, itself a scheduled monument, approximately 1km away.

Scheme Design and Embedded Mitigation

- 4.8.25. According to the Applicant, the development proposals have been adjusted during the iterative design process to incorporate, where operational parameters permit, a range of mitigation measures. These include those associated with landscape and visual mitigation, as summarised in the ES [[APP-031](#)] Table 9.15. In outline, these measures would be:

- the lowest elements of the proposed development would be located close to the waterside to the south and closest to Tilbury Fort to the west;
- structural landscaping around the proposed infrastructure corridor;
- installation of barriers and structural landscaping within the main site immediately north of proposed rail chord;
- artificial lighting design to minimise light pollution; and
- implementation of an Active Travel Strategy/Plan.

Potential Impacts

- 4.8.26. The Applicant has identified predicted landscape and visual impacts in relation to the construction period (22 months), at completion of the built development, and after 25 years following completion.
- 4.8.27. During construction, the Applicant has stated that predicted significant impacts are likely to be associated with the site preparation stage (residual clearance, access, reclamation, demolition, crushing and stockpiling, dredging, river wall works and major earthworks), and site development stage (the phased construction of roads, yards, new railway infrastructure, drains, bridge crossing, aggregate processing related structures and silo, jetty modification/construction and other built development).
- 4.8.28. During operation, the Applicant has asserted that the proposed development would be broadly consistent with the established and recent pattern of industrial and port-related activity in the locality. It would however represent an intensification of these uses over a wider area. The predicted effects on visual amenity immediately following construction completion are summarised in the ES [[APP-031](#)] Table 9.16.
- 4.8.29. These predicted effects would be:

- users of public rights of way - moderate or moderate-slight significance at footpath 146 and the Saxon Shore Way (in Kent);
- residential areas - substantial-moderate significance at some roads in Tilbury east and south;
- users of recreational and/or tourism facilities - substantial-moderate significance at Tilbury Fort; moderate at locations in Gravesend;
- users of local roads - moderate significance around Fort Road;
- users of the London to Southend mainline railway - moderate significance when passing the site; and
- users of the river Thames: recreational traffic and ferry - moderate to slight significance for cruise ships and the Gravesend ferry.

4.8.30. Similarly, the predicted effects on visual amenity 25 years following construction completion are summarised in the ES [\[APP-031\]](#) Table 9.17. The significances would then be moderate or moderate-slight, following the maturity of structural planting

Potential Further Mitigation or Compensation

4.8.31. The Applicant's proposed further mitigation measures were summarised in the ES [\[APP-031\]](#) Table 9.18, and would be secured in the long term by a Landscape and Ecological Management Plan (LEMP), secured in the draft DCO through requirement 11 and as a proposed certified document in Schedule 11. These measures would include:

- the retention of existing mature Monterrey Pine trees on the western boundary of the main Tilbury2 site and other trees and scrubs where possible;
- scrub planting around the infrastructure corridor;
- phasing of works to retain screening and vegetation to the north for as long as possible;
- locating structures in the southern part of site where practicable;
- colouring structures light grey, and
- the use of low key lighting to illuminate waterside features.

Applicant's Summary of Predicted Impacts

4.8.32. The Applicant provided a summary of the significance of predicted impacts on landscape and visual amenity, following completion and excluding additional mitigation, in the ES [\[APP-031\]](#) Chapter 9 Table 9.22: *Landscape and visual assessment - summary table of predicted effects*.

4.8.33. The predicted impacts on all receptors would be permanent and cumulative. With regard to effects on landscape character, the significance of the effects on receptors at Tilbury Marshes, Chadwell Escarpment and Tilbury Docks Urban Area would vary between not significant through slight to moderate-slight.

4.8.34. The significance for scenic quality, tranquillity, cultural interests/ecology and associations would range from moderate or moderate-slight to slight. For effects on visual amenity, the significance for the various receptors would vary between slight (users of the London-Southend railway) and

substantial/moderate-slight (users of Public Rights of Way). The effects of artificial lighting would be of moderate significance.

Issues Arising During the Examination

4.8.35. The main issues that arose during the examination were impacts:

- on the surroundings overall;
- on receptors in Gravesend;
- on residents in Tilbury;
- of the lighting proposals.

Impact on the surroundings overall

4.8.36. In the FWQ [[PD-007](#)], the SWQ [[PD-010](#)] and the ISH on 27 June 2018 [[EV-017](#)], the Panel examined:

- ECC's assertion [[RR-018](#)] that that the majority of proposed landscape mitigation failed to adequately address wider significant adverse visual impacts on the wider surroundings including East and West Tilbury;
- TC's assertion [[REP3-028](#)] that it considered it might be possible to achieve wider landscape improvements as mitigation for the proposals (although TC accepted that land ownership issues would arise);
- possible wider landscape improvements, with regard to potential s106 obligations, deliverability, etc – new planting along the infrastructure corridor, enhancements to the area around Tilbury Fort, and landscape enhancement measures within the wider area of Tilbury - with reference to the Applicant's and TC's responses at Deadline 4 [[REP4-020](#), [REP4-005](#)].

4.8.37. The Panel accepts that the proposed development would have an adverse impact on the wider surroundings from a landscape and visual point of view, as summarised above under the *Applicant's summary of predicted impacts*. The Panel concludes that reasonable mitigation, as summarised under *Potential Further Mitigation or Compensation* above, has been proposed for landscape and visual impacts within the LEMP, secured through the draft DCO requirement 11 and as a proposed certified document in Schedule 11.

Impact on receptors in Gravesend

4.8.38. GBC proposed [[RR-032](#)] measures to protect the outlook from Gravesend looking towards the application site by planting large trees on both the Tilbury and Gravesend sides of the river.

4.8.39. The Panel examined this proposal in the FWQ [[PD-007](#)]. In its response [[REP1-016](#)], the Applicant stated that the scheme would allow for the retention of mature Monterrey Pine trees along the western boundary of the main site as part of the LEMP [[REP6-030](#)], but there would be very little suitable available space along the Tilbury2 site river frontage to

accommodate trees. Having examined the site layout, the Panel concurs with the Applicant. GBC made no further submission on the matter.

- 4.8.40. The Panel concludes that receptors in Gravesend have been appropriately assessed, and that no further tree planting along the river frontage is possible by way of visual mitigation.

Impact on local residents in Tilbury

- 4.8.41. In the FWQ [[PD-007](#)], the Panel examined the landscape and visual impact on local residents in Tilbury, specifically residents at London Road, Elizabeth Close, Edinburgh Mews, The Beeches and Bown Close at the southern margins of Tilbury and close to the proposed infrastructure corridor. For these receptors, the Applicant identified a range of levels of significance from substantial-moderate to slight-imperceptible in the ES [[APP-031](#)] Table 9.22. The impact on these residents would be to introduce a more industrial view to the south of their premises.
- 4.8.42. The Applicant responded at Deadline 1 [[REP1-016](#)] by stating that the loss of visual amenity would be mitigated by the use of the proposed acoustic screening and planting along the infrastructure corridor, via the LEMP [[REP6-030](#)] (secured through requirement 11 in the draft DCO). The Applicant asserted that this was a conventional level of mitigation in relation to roads and was considered appropriate, as the view at maturity would be to vegetation. The Panel concurs with this mitigation. There were no responses from the residents during the examination.
- 4.8.43. Having viewed the site of the proposed development from the position of the local residents during the ASV [[PD-009](#)], the Panel concludes that the level of significance has been correctly assessed and the proposed mitigation of acoustic screening and planting via the LEMP would be appropriate.

Impact of the lighting proposals

- 4.8.44. In the FWQ [[PD-007](#)], the Panel examined the lighting proposals. In its response at Deadline 1 [[REP1-016](#)], the Applicant referred to its Preliminary Lighting Strategy and Impact Assessment, ES Appendix 9J [[APP-044](#)] and the Clean Neighbourhoods and Environment Act 2005 (s102), and stated that the net effect of the proposed lighting would be, according to its assessment, acceptable.
- 4.8.45. In the final SoCG between the Applicant and TC at Deadline 7 [[REP7-012 Appendix 1](#)], the parties agreed that the preliminary lighting strategy and requirement 12 *Lighting strategy* in the draft DCO would provide the necessary mechanism for approval by TC, Hist E and GBC before the proposed development could become operational. Similarly, in the final SoCG between the Applicant and GBC at Deadline 7 [[REP7-012 Appendix 2](#)], the parties agreed that the waterside lighting strategy would be finalised and approved by TC in consultation with GBC, and that this would provide appropriate mitigation.

- 4.8.46. The Panel concludes that the level of significance has been correctly assessed and the proposed mitigation through requirement 12 *Lighting Strategy* in the draft DCO is appropriate.

Conclusions

- 4.8.47. The Panel concludes that the proposed development would have an adverse impact on the surroundings overall from a landscape and visual perspective, as stated by the Applicant in the ES [[APP-031](#)] Chapter 9 Table 9.22 and summarised above. The Panel finds that appropriate and proportionate mitigation would be provided through the LEMP [[REP6-030](#)] which is secured through requirement 11 of the draft DCO and is proposed to be a certified document at Schedule 11.
- 4.8.48. The Panel concludes that receptors in Gravesend have been appropriately assessed and mitigated by the Applicant [[APP-031](#), [REP1-016](#) and [REP6-030](#)], and that no further tree planting along the north or south river frontages would be possible by way of visual mitigation.
- 4.8.49. The Panel concludes that the level of impact has been correctly assessed for the local residents in Tilbury [[APP-031](#)] and the proposed mitigation of acoustic screening and planting via the LEMP [[REP6-030](#)] secured through requirement 11 in the draft DCO would be appropriate.
- 4.8.50. The Panel concludes that the level of significance of lighting has been correctly assessed [[APP-031](#)] and the proposed mitigation through requirement 12 *Lighting Strategy* in the draft DCO would be appropriate.
- 4.8.51. Overall, the Panel concludes that landscape and visual matters have been satisfactorily explored in the application. The Applicant's mitigation measures proposed to be delivered through the LEMP [[REP6-030](#)], secured through requirement 11 *Operational plans and documents*, and the Lighting Strategy [[APP-044](#)], secured through requirement 12 *Lighting strategy*, would be appropriate and proportional. However, after these various mitigation measures proposed by the Applicant, some element of harm would be caused by the proposed development, though this would be limited. Overall, the Panel concludes that the landscape and visual impact of the proposed development weighs marginally against the granting of development consent.

4.9. HISTORIC ENVIRONMENT

Policy Background

- 4.9.1. The NPSP addresses the historic environment in section 5.12. At 5.12.1, it states that the construction, operation and decommissioning of port infrastructure has the potential to result in adverse impacts on the

historic environment. The decision maker should consider both designated and non-designated heritage assets.

- 4.9.2. The NPSP states that the applicant should provide as part of the ES, a description of the significance of the heritage assets affected by the proposed development and the contribution of their setting to that significance.
- 4.9.3. NPSP paragraph 15.12.7 states that, where a development site includes, or the available evidence suggests it has potential to include, heritage assets with an archaeological interest, the applicant should carry out appropriate desk-based assessment and, where such desk-based research is insufficient to properly assess the interest, a field evaluation.
- 4.9.4. According to paragraph 5.12.12, the decision-maker should take into account the desirability of sustaining and, where appropriate, enhancing the significance of heritage assets, the contribution of their settings and the positive contribution they can make to sustainable communities and economic vitality.
- 4.9.5. NPSP paragraph 5.12.13 states that there should be a presumption in favour of the conservation of designated heritage assets. Substantial harm to, or loss of, designated assets of the highest significance, including scheduled monuments, should be wholly exceptional. Any harmful impact on the significance of a designated heritage asset should be weighed against the public benefit of development. Where the application will lead to substantial harm to or total loss of significance of a designated heritage asset, the decision-maker should refuse consent unless it can be demonstrated that the substantial harm to or loss of significance is necessary in order to deliver substantial public benefits that outweigh that loss or harm.
- 4.9.6. According to NPSP paragraph 5.12.16, when considering applications for development affecting the setting of a heritage asset, the decision-maker should treat favourably applications that preserve those elements of the setting that make a positive contribution to, or that better reveal the significance of, the asset.

Applicant's Approach

- 4.9.7. The Applicant addressed the historic environment in the ES [[APP-031](#)] Chapter 12 *Archaeology and Cultural Heritage*.
- 4.9.8. In common with other areas of the ES, the Applicant used a “Rochdale envelope” approach to assess the likely worst case for archaeology. Table 12.1 summarises the Applicant's worst case assessment for terrestrial archaeology (piling methodology, piling improvement and ground improvement works), and marine archaeology (dredging depths, dredging methodology, secondary effects, piling methodology and piling impact).

- 4.9.9. Table 12.2 similarly summarises the Applicant's worst case assessment for the built heritage covering construction activities, building dimensions, container storage dimensions, stockpiles, processing facilities, road and rail movements, Ro-Ro and CMAT vessel dimensions and movements, lighting, and retained and proposed planting.

Methodology

- 4.9.10. The Applicant undertook a suite of baseline desk-based assessments - Archaeological Desk Based Assessment, Geoarchaeological Deposit Model, Marine Desk Based Assessment, Archaeological Watching Brief, Marine and Geophysical Survey (ES Appendix 12A [[APP-067](#)]). A Built Heritage Assessment was also prepared (ES Appendix 12.B [[APP-068](#)]). Desk-based research was further informed by a number of site visits and study area inspections undertaken between September 2016 and May 2017.
- 4.9.11. Between November 2016 and September 2017, the Applicant undertook consultation with relevant parties (ECC, GBC, Hist E, KCC, SoS and TC) as summarised in Table 12.4, which includes the Applicant's response to the various points raised by the consultees.
- 4.9.12. The Applicant's determination of the importance of heritage/ archaeological assets is based on statutory designation and/or professional judgement, and draws on four values identified in Hist E's Conservation Principles, Policies and Guidance¹⁶ – evidential, aesthetic, historic and communal values.
- 4.9.13. The Applicant has assessed the setting of the heritage assets using Hist E's five-step approach in its Historic Environment Good Practice advice in Planning¹⁷.
- 4.9.14. In assessing the significance of the effects of the proposed development on heritage and archaeological assets, the Applicant set out in Tables 12.5-12.7 how the importance of a heritage asset, the magnitude of impact and the significance of effect had been determined.

Baseline Conditions

- 4.9.15. The main text of the ES [[APP-031](#)] Chapter 12 outlines the baseline conditions, while the technical appendices (12.A Archaeological Statement [[APP-067](#)], 12.B Built Heritage Assessment [[APP-068](#)] and 12.C Geoarchaeological Assessment [[APP-069](#)]) identifies the baseline conditions at the site in detail.
- 4.9.16. There are no designated heritage assets within the application site, but a large number lie within the identified 2km study area, including: 5 scheduled monuments; 128 listed buildings (of which 12 are Grade II*

¹⁶ Conservation Principles, Policies and Guidance, April 2008

¹⁷ Historic England, GPA3: Setting of heritage assets
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and 116 are Grade II); and 12 conservation areas. There is also a range of known and potential non-designated heritage assets within the vicinity of the site, both terrestrial and marine. These are summarised in Tables 12.8 a-c.

- 4.9.17. The designated built heritage assets that, according to the Applicant, have the potential to experience significant effects are summarised in Table 12.9 *Built Heritage Assets Sensitivity*. The Applicant concluded that Tilbury Fort and Coalhouse Fort (both scheduled monuments) have a very high sensitivity/value. Numerous other assets have a high sensitivity, including Gravesend Blockhouse, New Tavern Fort, Cliffe Fort, the Officers' Barracks at Tilbury Fort, Riverside Station, Town Pier, Milton Chantry, the Church of St George and World's End Inn. Also of high sensitivity are the Royal Terrace Pier, HM Customs and Immigration Office and its Gazebo, St Andrew's Art Centre, the Mission House, the Royal Clarendon Hotel, Thames House and the Three Daws Public House. Other assets were accorded a medium level of sensitivity.
- 4.9.18. The Applicant summarised the sensitivity of the non-designated built heritage assets in Table 12.10, recording just one asset - Shornemead Fort which was assigned high sensitivity.
- 4.9.19. The future baseline conditions relevant to the assessment of potential significant effects upon built heritage assets principally relate to the demolition of the Tilbury 'B' Power Station which lies immediately to the east of the proposed development site.
- 4.9.20. The removal of Tilbury 'B' will fundamentally alter the appearance of the northern bank of the river. As its demolition would occur prior to the construction of the proposed development, the assessment of likely potential effects within the ES, during both construction and operation, on the surrounding built heritage assets has been assessed in the context of this future baseline, rather than the existing baseline at the time of writing of the ES.
- 4.9.21. In July 2017 RWE Generation UK plc (RWE), the owner of the Tilbury 'B' Power Station site, wrote to the Applicant to advise that it was proposing the TEC project, essentially a gas-fired power station, on the site. The Panel has assessed the significance of this in section 4.23.

Scheme Design and Mitigation

- 4.9.22. The Applicant outlined the main components of the proposed development, as detailed in the ES [[APP-031](#)] Chapter 5. As summarised in Chapter 2 of this report, these components are a Ro-Ro berth and a CMAT berth on the river Thames (the NSIP), together with associated development comprising Ro-Ro and CMAT terminals and associated road and rail infrastructure. With regard to embedded mitigation, the Applicant stated that the CEMP and DML contained (or would facilitate) construction restrictions which would indirectly minimise impacts on the archaeological resource.

- 4.9.23. Written Schemes of Investigation (WSIs) setting out the overarching terrestrial and marine archaeological mitigation strategy would be secured by the DCO (see Technical Appendices 12.D and 12.E [[APP-070](#), [APP-071](#); later REP4-023, [REP7-010](#)]). No construction would commence unless it was in accordance with the relevant WSI.
- 4.9.24. The lower height elements of the proposals (container and trailer storage) would be located within the southern section of the site, in closest proximity to the waterside and Tilbury Fort. Within the constraints of existing infrastructure/settlements, the proposed infrastructure corridor would be located as far north as possible, in proximity to the existing railway line. Structural landscaping, including retention and planting of vegetation, would be implemented in accordance with the LEMP [[REP6-030](#)]. Noise barriers and artificial lighting would also be implemented. A CEMP [[REP6-008](#)] including a Construction Transport Management Plan (CTMP), and a Framework Travel Plan [[APP-073](#), [REP5-018](#)] would be secured in the draft DCO. Piling and construction dust would be controlled through the CEMP. Operational dust and air quality monitoring would be controlled through an OMP [[APP-165](#), [REP6-026](#)].

Potential Impacts During Construction

- 4.9.25. In the ES [[APP-031](#)] Chapter 12 Table 12.11, the Applicant summarised the significance of the effects on the archaeological assets – paleo-environmental alluvial sequence, Second World War defences, prehistoric artefacts, Mesolithic human remains, Roman occupation artefacts, and Saxon/Medieval artefacts - during construction, based on the criteria set out in Tables 12.5, 12.6 and 12.7. All effects would be direct, permanent and irreversible.
- 4.9.26. Similarly, Table 12.12 summarised the potential likely significance of effects on built heritage assets during construction. This includes Tilbury Fort, for which the likely significance was shown as moderate to major adverse. The significance for most other assets ranged from neutral to minor/moderate adverse.
- 4.9.27. Potential impacts during the construction phase would include:
- impacts to onshore archaeological assets from piling, ground improvement works and the cutting or creating of new services/drainage;
 - impacts to the palaeo-environmental sequence and unknown archaeological assets in the marine area from piling and dredging; and
 - impacts on the setting of designated and non-designated built heritage assets from noise, vibration, dust, lighting, traffic and visibility of construction activities.

Potential Impacts During Operation

- 4.9.28. The Applicant summarised the likely potential significance of the effects during operation on built heritage assets in Table 12.13. All effects would be direct effects upon their settings and would be of a permanent nature.

The likely significance of effects would be similar to the construction period, with Tilbury Fort again showing a moderate to major adverse significance.

4.9.29. Potential impacts during the operational phase would include:

- impacts to offshore archaeological assets from maintenance dredging sediment build up; and
- impacts on the settings of built heritage assets from noise, vibration, dust, lighting, traffic and visibility of permanent structures and operational activities.

4.9.30. With regard to Tilbury Fort specifically, the Applicant stated that *“overall the proposals will represent an alteration to the wider setting of Tilbury Fort through increasing the industrial character and activity within its setting. However, this will be experienced as an extension of the existing industrial character surrounding Tilbury Fort and therefore will not fundamentally change the existing wider context in which the heritage asset is experienced.”*

Further Mitigation or Compensation

4.9.31. Mitigation measures for archaeological assets would be through the implementation of the terrestrial and marine WSIs, to be secured as certified documents through the DCO, and the marine WSI also secured through the DML in Schedule 9 of the draft DCO.

4.9.32. For built heritage assets during the construction phase, the CEMP would require piling to be the subject of consultation with the relevant agencies prior to commencement. For built heritage assets during the operation phase, potential mitigation would include: retention and augmentation of vegetation especially along the western and northern site boundaries, appropriate colouring and surface treatments of the silo chimney and other tall structures, and low key lighting, all secured through the requirements 11, 3 and 12 in the draft DCO.

4.9.33. Potential heritage enhancements were also envisaged, secured through a s106 Agreement between the Applicant and TC [[AS-098](#)], including improvements to access, wayfinding, car parking and visitor experience to Tilbury Fort, as well as new heritage interpretation boards at New Tavern Fort and Tilbury Fort to visually map and explain the historic crossfire and relationship between the two defences in further detail. However, the s106 Agreement was not signed by the end of the examination, so it cannot be given any weight.

Applicant's summary of residual effects

4.9.34. In the ES Chapter 12 Table 12.15, the Applicant summarised the residual impacts identified for archaeological assets after envisaged mitigation measures had been taken into account. In the case of known archaeological assets, potential terrestrial archaeological assets, and potential marine archaeological assets, the residual effect on all assets is shown as neutral.

- 4.9.35. In the ES Table 12.16, the residual effect for built heritage assets is shown as neutral or neutral/minor adverse, with the exception of Tilbury Fort where the residual effect was predicted to be moderate adverse.
- 4.9.36. Operationally, impacts are expected to the setting due to moored ships, interruption of sight lines to other forts, the 100m tall CMAT silo and noise.

Issues Arising During the Examination

- 4.9.37. The main issues that arose during the examination were impacts on:
- archaeological assets - terrestrial and marine; and
 - built heritage assets - Tilbury Fort, the wider network of forts and other assets.

Impact on archaeological assets

Impact on terrestrial archaeological assets

- 4.9.38. The examination of the impact of the proposed development on the terrestrial archaeology principally took place through the examination of the Terrestrial Archaeological WSI, which was submitted as an application document and revised through the course of the examination [[APP-070](#), [AS-012](#), [AS-029](#), [REP1-022](#), [REP3-013](#) and [REP4-023](#)].
- 4.9.39. At the ISH on 27 June 2018 [[EV-017](#), Q3.13.5], the Panel examined the fitness for purpose of the WSI, with reference to the WSI submitted by the Applicant at Deadline 4 [[REP4-023](#)]. In this document, the Applicant framed its approach to the terrestrial archaeology, including the methods to be used and the approach to ensuring appropriate mitigation, with the commencement of work being dependent on approval by TC and Hist E. The Applicant, Hist E and TC responded at Deadline 5 [[REP5-014](#), [REP5-047](#) and [REP5-049](#)]. Hist E and TC wanted to ensure that the WSI would be complete enough to be a certified document in the draft DCO and the Applicant undertook to ensure that this was the case.
- 4.9.40. In the final SoCG between the Applicant and TC [[REP7-012](#) Appendix 1], it was agreed that details of specific mitigation measures and their implementation, initially summarised in the ES [[APP-031](#)] Chapter 12, were set out in the WSI. No matters were shown as under discussion or not agreed where terrestrial archaeological assets were concerned.
- 4.9.41. In the final SoCG between the Applicant and Hist E [[REP7-012](#) Appendix 6], it was agreed that the impacts on terrestrial archaeology during construction and operation were unlikely to be significant, provided the mitigation strategy was implemented in accordance with the WSI, which would be a certified document in the draft DCO (Schedule 11) at the end of the examination, secured through requirement 6 *Terrestrial written scheme of archaeological investigation*.

- 4.9.42. Given this position, the Panel is satisfied that all matters relating to terrestrial archaeological assets have been resolved with appropriate mitigation.

Impact on marine archaeological assets

- 4.9.43. The examination of the impact of the proposed development on the marine archaeology mainly took place through the examination of the Marine Archaeological WSI, which was submitted as an application document and revised through the course of the examination [[APP-071](#), [AS-009](#), [AS-030](#), [REP4-021](#), [REP5-025](#), [REP6-035](#) and [REP7-010](#)].
- 4.9.44. At the ISH on 27 June 2018 [[EV-017](#)], the Panel examined the fitness for purpose of the Marine Archaeological WSI, with reference to the Marine Archaeological WSI submitted by the Applicant at Deadline 4 [[REP4-021](#)]. In this document, the Applicant stated its approach to the marine archaeology, including the methods to be used, the investigations to be made, and the approach to ensuring appropriate mitigation, with the commencement of work being dependent on approval by the MMO and Hist E.
- 4.9.45. The Applicant, Hist E and MMO responded at Deadline 5 [[REP5-014](#), [REP5-047](#), [REP5-056](#)]. Hist E was emphatic throughout the examination that the Marine WSI needed to be robust enough to guarantee the marine archaeological environment, while the MMO was keen to ensure a tight relationship between the DML and the WSI, with the WSI as a certified document in the draft DCO.
- 4.9.46. In the final SoCG between the Applicant and Hist E [[REP7-012](#), Appendix 6], it was agreed that the impacts on marine archaeology during construction and operation were unlikely to be significant, provided the mitigation strategy was implemented in accordance with the Marine Archaeological WSI. The Marine Archaeological WSI was proposed to be a certified document in the draft DCO (Schedule 11) secured through requirement 14. This requires that archaeological method statements together with a report on any consultation carried out in their preparation must be submitted to the MMO for approval in accordance with the provisions of the Marine Archaeological WSI six weeks before any works.
- 4.9.47. Given the above position, the Panel is satisfied that all matters relating to marine archaeological assets were resolved with appropriate mitigation, and that residual impacts are unlikely to be significant.

Impact on Built Heritage Assets

Impact on Tilbury Fort

- 4.9.48. The impact of the proposed development on Tilbury Fort was one of the most significant issues of the examination.
- 4.9.49. In the relevant representations before the start of the examination, ECC asserted [[RR-018](#)] that harm would be caused to the setting of Tilbury Fort, and that the effectiveness of proposed mitigation/ enhancement

appeared limited.¹⁸ Hist E asserted [RR-002] that Tilbury Fort is of exceptional significance, that the impact of the proposed development on its setting would cause harm to its significance, and that piling activities would also harm the Fort.

- 4.9.50. TC asserted [RR-031] that harm would be caused to Tilbury Fort due to the impact of the extended jetty, while there would also be an impact due to the new infrastructure corridor with movement and lighting being closer to the Fort. TC also questioned the extent to which the proposals could contribute to the policy objective of enhancing public access to the Fort and riverside, stating that the proposed mitigation/ enhancement measures lacked clarity and detail, and the overall effectiveness of the proposed mitigation/enhancement appeared limited.
- 4.9.51. In the FWQ [PD-007], the Panel examined these matters, and at the ISH on 18 April 2018 [EV-008], the Panel examined the impact on Tilbury Fort with regard to monitoring and mitigation for piling activities and the impact on commercial operations at the Fort (residential letting, and filming at the Fort). In the SWQ on 8 May 2018 [PD-010] and the ISH on 27 June 2018 [EV-017], the Panel further examined these matters, as well as the range of mitigation and compensation measures proposed in EH's submission at Deadline 3 [REP3-039], and Schedule 2 of the s106 Agreement which included contributions to EH for use at the Fort, with reference to the Applicant's and EH's responses at Deadline 4 [REP4-020, REP4-014].
- 4.9.52. The Applicant responded to the various questions on Tilbury Fort in the FWQ [PD-007] in a Tilbury Fort paper [REP1-016 Appendix D]. In this paper, the Applicant outlines its approach to the design of the proposed development with Tilbury Fort in mind, summarising the historical development of the Fort and its significance for present and future generations. The Applicant outlines its approach towards ensuring that appropriate embedded mitigation would be inherent within the design of the Tilbury2 proposals, and its understanding of the concerns of the heritage organisations with regard to the harm that would be caused to the Fort.
- 4.9.53. As a scheduled monument, the Fort is clearly of national and international importance, the preservation of which is important. A key principle of the design of the proposed development was the minimisation of harm to the Fort, in the layout of the proposed transport routes, the positioning of the various industrial components on the site, the options for the jetty configuration, and the proposed acoustic and visual screening as further described in the master planning document [APP-034].

¹⁸ The SoCG between the Applicant and ECC [REP7-012 Appendix 3] states that ECC has a service level agreement with TC for advice on the historic environment, so ECC did not make any further representations on this topic
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- 4.9.54. The Applicant asserts that there are places within the Fort where the significance of the asset remains entirely appreciable within its setting, despite the peripheral presence of later development. The Applicant concludes its Tilbury Fort report by stating that its understanding of the existing context, including the historic landscape and its opportunities, needs and constraints, has layered into a set of proposals for Tilbury2 which have been considered according to function, sensitivity and commitment to feasible improvements in the wider environment.

Thurrock Council

- 4.9.55. In the final SoCG between the Applicant and TC [[REP7-012](#) Appendix 1], the magnitude of the residual impacts on the settings of the identified assets in the built heritage assessment were agreed. This ascribed moderate adverse impact on both Tilbury Fort and the Officers Barracks. It was also agreed that the embedded mitigation measures presented in the ES [[APP-031](#)] Chapter 12 would assist in minimising or reducing the impact of the proposals on the setting of the Fort, as would the landscaping mitigation measures in the LEMP [[REP6-030](#)], a palette of external finishes for the main components on the Tilbury2 site (secured in draft DCO requirement 3), and the operational lighting strategy (secured in requirement 12 in the draft DCO).
- 4.9.56. With the proposed mitigation, the Applicant and TC agreed [[REP7-012](#) Appendix 1] that the proposals would result in less than substantial harm to heritage significance. TC's concerns in its relevant representation were all resolved through mitigation measures via the LEMP. Furthermore, TC's planning committee supported the Tilbury2 proposals without a suggested requirement to reduce stacking heights below the Rochdale envelope proposed in the application (i.e. six containers high across the Ro-Ro terminal as a worst case) [[REP7-012](#) Appendix 1].

Historic England

- 4.9.57. In the SoCG between the Applicant and Hist E [[REP7-012](#) Appendix 6], the study area, methodology, baseline environment and impact were all shown as agreed. It was also agreed that the harm which the proposed development would cause to the significance of the Fort would be less than substantial. Hist E considered the impact of construction on Tilbury Fort and its significance would be major adverse, while the Applicant considered them to be moderate adverse.
- 4.9.58. Hist E subsequently discussed and agreed measures with the Applicant which seek to minimise the impacts of the proposed development [[REP7-028](#)], namely the landscaping measures described in the LEMP [[REP6-030](#)] and the measures specified in the s106 Agreement [[AS-098](#)] between the Applicant and TC (not signed at the end of the examination and therefore assigned no weight by the Panel). Hist E reaffirmed its advice that the proposed development would cause severe, but less than substantial, harm to the significance of Tilbury Fort.

- 4.9.59. Concerns regarding the impacts on Tilbury Fort from piling vibration were raised by both EH and Hist E [[REP1-047](#), [REP1-064](#)]. In the FWQ [[PD-007](#)], the Panel examined the specific proposed construction restrictions which would minimise effects on archaeology and cultural heritage assets.
- 4.9.60. The Applicant responded at Deadline 1 [[REP1-016](#)] by referring to a monitoring and mitigation regime for the construction phase which would be secured by paragraph 10.2 of the CEMP [[REP6-008](#)], which in turn would be secured by requirement 4 in the draft DCO.
- 4.9.61. Under paragraph 10.2 of the CEMP, the Contractor would be required to conduct a non-intrusive survey prior to undertaking any piling, and develop and implement a monitoring and mitigation regime in consultation with EH and Hist E to monitor and mitigate the vibration effects of piling on Tilbury Fort and its associated structures. The heritage organisations have not challenged this approach and the Panel concludes that is appropriate. These matters are discussed further in section 4.16.
- 4.9.62. As discussed in section 4.3, Hist E also raised concerns about impacts from the capital dredge on foreshore levels adjacent to Tilbury Fort, including a suggested monitoring programme. This matter was not agreed in the SoCG between the Applicant and Hist E [[REP7-012 Appendix 6](#)]. The Applicant referred to HR Wallingford's model in the ES Appendix 16D [[APP-089](#)], which showed that there would be no hydrodynamic or sedimentation effects on Tilbury Fort's foreshore, with any effects being small and probably not detectable. Based on this evidence the Applicant did not consider that a monitoring programme was needed along the Tilbury Fort foreshore. No counter evidence was provided to the examination. The Panel concurs that a monitoring programme is not necessary, since analysis shows no significant hydrodynamic or sedimentation effects.
- 4.9.63. The Panel concludes that the impact of construction on archaeology and cultural heritage due to the monitoring and mitigation regime that would be secured through the CEMP, and that concerns in relation to Tilbury Fort's foreshore have been appropriately addressed and mitigated, because modelling has shown that there would be no hydrodynamic or sedimentation effects on Tilbury Fort's foreshore.

English Heritage

- 4.9.64. In the final SoCG between the Applicant and EH [[REP7-012 Appendix 12](#)], the study area, methodology, baseline environment and impact were all shown as agreed. With regard to the impact, EH's position was similar to that of Hist E. The parties have agreed that £112,000 would be secured through a s106 Agreement between the Applicant and TC to mitigate the residual impacts of the development, which would include an obligation for monies to be passed to EH for costs associated with interpretation signage at the Fort and repairs to the Fort driveway. The s106 Agreement would also include improved access to the Fort and the riverside. The parties also agreed that there were also opportunities for

improved access and increased visitor numbers resulting from the Active Travel Plan, with EH contributing to wayfinding and the heritage interpretation content of the Active Travel Plan. However, the s106 Agreement [[AS-098](#)] had not been signed by the end of the examination, so no weight can be assigned to it.

- 4.9.65. A number of matters remained not agreed between the Applicant and EH at the end of the examination. These were the impact on the Fort's setting (including the proper engagement of paragraph 134 of the NPPF, which refers to the Green Belt (addressed in section 4.7 of this report), in the context of the NPSP); the impact of traffic during construction and operation on access to the Fort; and the potential effect on the residents, filming, and the Fort as a tourism receptor.

The Panel's position on Tilbury Fort

- 4.9.66. The Panel's position on the impact of the proposed development on the Fort is that it should be seen in the context of the current industrial landscape. The existing Port of Tilbury lies immediately to the west of the Fort, with Tilbury town and the industrial park to the north, the water treatment works immediately to the east (with the former Tilbury power station site further to the east), and other industrial sites on the south side of the river Thames in the vicinity of Gravesend. The Fort's setting is therefore within a heavily industrialised area.
- 4.9.67. As required by regulation 3(3) of the Infrastructure Planning (Decisions) Regulations 2010, the ExA must have regard to the desirability of preserving a scheduled monument or its setting. In the Panel's view, the points not agreed between the Applicant, Hist E and EH (summarised above) are all relevant in reaching a conclusion about the severity of harm.
- 4.9.68. There would be additional harm to the setting of the Fort due to the mooring of vessels along the extended jetty, as well as the use of the various industrial components on the application site. Whilst paragraph 5.12.12 of the NPSP encourages preservation of the setting of the Fort, the Panel concludes that this would not be possible with the proposed development.
- 4.9.69. The Applicant's Built Heritage Assessment [[APP-068](#)], concluded that the proposed development would result in a "*medium level of less than substantial harm to the significance of Tilbury Fort through further industrialising its setting*". The heritage organisations assess the harm, though severe, to be less than substantial, which is important since NPSP paragraph 5.12.14 states that consent should be refused if the harm is substantial.
- 4.9.70. There could be an impact on the access to the Fort due to traffic during construction, and the ES [[APP-031](#)] Chapter 12 paragraph 12.177 acknowledges that there would be impacts from construction traffic. No evidence contesting the Applicant's assessment that the impact would not be significant was provided to the examination, and the Panel

concludes that construction phase impacts on Tilbury Fort would be acceptable as they are short term.

- 4.9.71. There could also be an impact on the commercial operation of the Fort, although the Panel is not persuaded that this will be the case. One of EH's main concerns [REP1-047] was the impact on filming at the Fort (and therefore the finances), with EH citing a number of cases where the Fort had been used for this purpose. The Applicant addressed this in its document on filming at the Fort [REP3-023] in which it asserted that there would be minimal impact on filming activities as a result of the visual background of the proposed development, since film producers routinely deleted unwanted background effects, which they already had to do in relation to the existing landscape.
- 4.9.72. The s106 Agreement would provide a number of enhancements, such as signage and access, which would improve the visitor experience. With regard to compensation through the s106 Agreement, £112,000 would be included for heritage-specific matters, as well as a range of measures for improving access. This would be in accordance with paragraph 3.3.3 of the NPSP to "*ensure that access to and condition of heritage assets are maintained and improved where necessary*". The s106 Agreement had not been signed by the end of the examination, so no weight can be given to it [AS-098]. The compensation provided within it would not affect the harm experienced by the Fort and the Panel does not regard the s106 Agreement as a determining factor in its recommendation.
- 4.9.73. In the light of these considerations, the Panel's conclusion on the degree of harm to Tilbury Fort is to concur with the Applicant and the heritage organisations that there would be an increased level of harm to the significance of Tilbury Fort, but that this would be less than substantial.

Impact on the wider network of forts and other built heritage assets

- 4.9.74. The main issue in relation to the wider network of Forts is the lines of sight between them, since this was an integral part of their design as a functional network to intercept river-borne threats.
- 4.9.75. In the FWQ [PD-007], the Panel examined ECC's assertion [RR-018] that the proposed mitigation failed to adequately address significant adverse visual impacts on the wider Fort network, and GBC's assertion [RR-019] that the operation of the proposed development would be likely to have a potential impact upon the settings of the scheduled monuments of New Tavern Fort and Gravesend Blockhouse and the non-designated but nationally important Shornemead Fort. The main impact on lines of sight would be between Tilbury Fort and the forts on the south side of the river Thames when ships are moored at the extended jetty. Given the proposed size of the ships, some of these lines of sight would be completely obscured while ships were berthed.
- 4.9.76. In its response at Deadline 1 [REP1-016], the Applicant referred to the ES [APP-031] Chapter 12 paragraphs 12.211 – 12.216 and Table 12.13

and Section 5.3 of the Built Heritage Assessment [[APP-068](#)] for the potential impact on each of these heritage assets. The impact on New Tavern Fort, Coal House Fort and the Blockhouse at Gravesend was assessed as low adverse.

- 4.9.77. The Panel's assessment, from the site visits to Tilbury Fort and Gravesend, was to concur with the Applicant that the Tilbury2 proposals would be likely to have a low adverse impact upon the setting of New Tavern Fort, Coal House Fort and the Blockhouse through further industrialising the northern river bank and partially disrupting the wider crossfire sightlines between these Forts and Tilbury Fort.
- 4.9.78. The Panel therefore accepts that there would be an adverse impact on the combined setting and lines of sight of the network of Forts, particularly when vessels are moored at the proposed Ro-Ro terminal. However, the moorings would by their nature be temporary and affect few lines of sight. Overall, the Panel concurs with the Applicant ES [[APP-031](#), Chapter 12] that the impact would be low adverse and lead to less than substantial harm.
- 4.9.79. At the ISH on 18 April 2018 [[EV-008](#), Q13.6], the Panel examined the impact on the settings of built heritage assets south of the river in Gravesend. The main issues were the impact on the setting of built heritage assets due to the external appearance of the structures on the site of the proposed development, the colours used, and the impact of the waterside lighting. These matters were all discussed extensively during the examination.
- 4.9.80. In the final SoCG between the Applicant and GBC [[REP7-012](#), Appendix 2], the study area, methodology and baseline environment were all shown as agreed. With regard to the impact on built heritage assets south of the river, GBC agreed that the harm would not be significant. It was also agreed that the proposed mitigation measures were appropriate, including the detailed design of the colour and surfacing of the silo and other tall structures (secured by requirement 3 in the draft DCO), and the waterside lighting strategy which would be finalised and approved by TC in consultation with Hist E and GBC (secured by requirement 12).
- 4.9.81. GBC and the Applicant have agreed that the s106 Agreement between TC and the Applicant would include a financial contribution to heritage enhancements at Gravesend. A sum of £29,000 has been agreed between the parties and this would be reflected in the completed s106 Agreement. This would be used by GBC to enhance audio/visual interpretation at and close to New Tavern Fort. However, as noted elsewhere, the s106 Agreement [[AS-098](#)] was not signed at the end of the examination, so no weight can be assigned to it. The Panel does not regard it as a determining factor in its recommendation.
- 4.9.82. The Panel finds that all heritage matters between the Applicant and GBC, apart from the s106 Agreement, have been satisfactorily resolved and agreed. The Panel finds that the proposed mitigation measures - the

detailed design of the colour and surfacing of the silo and other tall structures, and the waterside lighting strategy, secured through requirements 3 and 12 – would be appropriate.

Conclusions

- 4.9.83. *Terrestrial and marine archaeological environments.* The impact on the terrestrial and marine archaeological environments would be appropriately addressed and mitigated through the Terrestrial and Marine Archaeological WSIs, which would be certified documents in the draft DCO, secured through requirement 6 (terrestrial), and paragraph 14 of the DML at Schedule 9 (marine).
- 4.9.84. *Built heritage.* NPSP paragraph 5.12.11 (the fact that a proposed project will be visible from within a designated area should not in itself be a reason for refusing consent), NPSP paragraph 5.12.12 (developments to make a positive contribution to the character and local distinctiveness of the historic environment) and NPSP paragraph 5.12.16 (to preserve elements of the setting that make a positive contribution to, or better reveal, the significance of the asset), are all relevant to the decision.
- 4.9.85. The Panel notes paragraph 5.12.11, but concludes that the proposed development would not make a positive contribution towards NPSP paragraphs 5.12.12 or 5.12.16 per se. Mitigation secured through the draft DCO – the design of Works 1-12 and the LEMP, secured through requirement 11 - would help to minimise the negative impact. The mitigation measures proposed to be secured through the s106 Agreement with TC could well enhance the visitor experience, although this Agreement was unsigned at the end of the examination so no weight can be placed on it. As stated at paragraph 4.9.72, the Panel's conclusion is that the compensation provided within the s106 Agreement [[AS-098](#)] would not affect the harm experienced by the Fort and the Panel does not regard it as a determining factor in its recommendation.
- 4.9.86. *Built heritage - Tilbury Fort.* Although the Fort is already set within the context of an industrial landscape, the Applicant and the heritage organisations are agreed that the proposed development would cause additional harm to the Fort in terms of its setting. However, the extent of harm in relation to the Fort remained not agreed between them at the end of the examination [[REP7-012](#) Appendix 6].
- 4.9.87. NPSP paragraph 5.12.13 cites a presumption in favour of the conservation of designated heritage assets. The NPSP also states that *substantial* harm should be wholly exceptional and the heritage organisations have agreed that the degree of harm would be less than substantial in the case of the proposed development.
- 4.9.88. As required by regulation 3(3) of the Infrastructure Planning (Decisions) Regulations 2010, the ExA must have regard to the desirability of

preserving Tilbury Fort as a scheduled monument or its setting. The Panel's conclusion is that the Applicant's assessment of a moderate adverse impact on Tilbury Fort is not unreasonable. The Panel also agrees with the heritage organisations that, while additional harm to the setting of the Fort as a scheduled monument would occur as a result of the proposed development, it would be less than substantial. The impact of construction on archaeology and cultural heritage has been appropriately addressed and mitigated through the monitoring and mitigation regime for the construction phase which would be secured through the CEMP, requirement 4 in the draft DCO.

- 4.9.89. *Built heritage - the south bank of the river.* The impact on built heritage assets on the south bank of the river - in terms of design of the colour and surfacing of the silo and other tall structures and the waterside lighting strategy - has been agreed and mitigated between the Applicant and GBC [[REP7-012](#) Appendix 2]. These matters would be secured in the draft DCO through requirements 3 and 12. The Panel concludes that these matters have been appropriately addressed and mitigated. Compensation would be secured through the s106 Agreement, but it had not been signed by the end of the examination, so no weight has been assigned to it [[AS-098](#)].
- 4.9.90. In conclusion the Panel has had regard to the desirability of preserving Tilbury Fort as a scheduled monument and its setting, but has concluded that the setting cannot be preserved unchanged with the proposed development. The Panel concludes therefore that the impact of the proposed development on the historic environment weighs against granting development consent.

4.10. NOISE AND VIBRATION

Policy Background

- 4.10.1. The NPSP addresses noise and vibration at section 5.10 and refers to Government policy as set out in the Noise Policy Statement for England¹⁹ (NPSE), which promotes good health and good quality of life through effective noise management. The NPSE refers to three thresholds of noise - No Observed Adverse Effect Level (NOAEL), Lowest Observable Adverse Effect Level (LOAEL), and Significant Observed Adverse Effect Level (SOAEL).
- 4.10.2. The World Health Organisation's Night Noise Guidelines for Europe²⁰ define the LOAEL as 40 dB equivalent continuous sound level over 8 hours (LAeq,8h) (free field), necessary to protect the public including most of the vulnerable groups from the adverse health effects of night noise. However, it is recognised in the guidelines that many people are

¹⁹ Noise Policy Statement for England (NPSE); March 2010

²⁰ Night Noise Guidelines for Europe; World Health Organisation; 2009.

exposed to noise levels above this value and the guidelines therefore recommend an interim target of 55 dB LAeq,8h (free field).

4.10.3. Factors that will determine the likely noise impact include:

- the inherent operational noise from the proposed development, and its characteristics;
- the proximity of the proposed development to noise-sensitive premises (including residential properties, schools and hospitals) and noise-sensitive areas (including certain parks and open spaces);
- the proximity of the proposed development to quiet or tranquil places and other areas that are particularly valued for their acoustic environment or landscape quality; and
- the proximity of the proposed development to designated sites where noise may have an adverse impact on protected species or other wildlife.

4.10.4. With regard to decision making, due regard must be given to the relevant sections of the NPSE, NPPF and the Government's associated planning guidance on noise²¹.

4.10.5. The NPSP at paragraph 5.10.8 states that the project should demonstrate good design through selection of:

- the quietest cost-effective plant available;
- containment of noise within buildings wherever possible;
- optimisation of plant layout to minimise noise emissions; and
- where possible, the use of landscaping, bunds or noise barriers or other mechanisms to reduce noise transmission.

4.10.6. The NPSP at paragraph 5.10.9 states that the decision-maker should be satisfied that the proposals will meet the following aims:

- avoid significant adverse impacts on the environment, human health and quality of life from noise;
- mitigate and minimise other adverse impacts on health and quality of life from noise; and
- where possible, contribute to improvements to health and quality of life through the effective management and control of noise.

4.10.7. The NPSP at paragraph 5.10.10 states that when preparing the DCO, 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.

4.10.8. The NPSP at paragraph 5.10.11 states that the decision-maker should consider whether mitigation measures are needed both for operational

²¹ Regulations: noise emissions from outdoor equipment; From: Department for Business, Energy & Industrial Strategy and Office for Product Safety and Standards.

and construction noise over and above any which may form part of the project application.

- 4.10.9. At paragraph 5.10.12 the NPSP states that mitigation measures for the project should be proportionate and reasonable and may include one or more of the following:
- engineering: reduction of noise at point of generation and containment of noise generated;
 - lay-out: adequate distance between source and noise-sensitive receptors; incorporating good design to minimise noise transmission through screening by natural barriers or other buildings; and
 - administrative: limiting operating times of source; restricting activities allowed on the site; specifying acceptable noise limits; and taking into account seasonality of wildlife in nearby designated sites.

Applicant's Approach

- 4.10.10. The Applicant's assessment of the effects of the proposed development in terms of noise and vibration is set out in ES [[APP-031](#)] Chapter 17: Noise and Vibration. This is supported by appendices containing further technical details on the method of assessment, baseline survey information and modelling assumptions for the construction noise assessment including underwater impacts (Appendices 17 A-D) [[APP-091](#), [092](#), [093](#), [094](#)].

Method of assessment

- 4.10.11. The ES sets out the method of assessment as a result of construction and operation proposals. This includes assessment of airborne noise and vibration, as well as underwater noise modelling to estimate noise levels likely to arise from developing the jetty and possible impact on marine fauna.
- 4.10.12. Reference is made to the main technical guidance documents listed in the footnotes.^{22 23 24 25 26 27}
- 4.10.13. The ES describes the methods of assessment, which have been undertaken in accordance with the technical guidance documents

²² British Standard 5228 (BS 5228) Code of Practice for Noise and Vibration Control on Construction and Open Sites (parts 1 and 2) in terms of assessment of construction impacts.

²³ BS 6472-1:2008 Guide to evaluation of human exposure to vibration in buildings – Part 1: Vibration sources other than blasting (BS6472-1) in terms of assessing human response to building vibration.

²⁴ British Standard (BS) 4142:2014 in terms of assessing commercial operation and fixed building services plant noise.

²⁵ Calculation of Road Traffic Noise (CRTN), Department for Transport and Welsh Office, 1988 for calculating road traffic noise.

²⁶ Calculation of Railway Noise, 1995 (CRN) for calculating railway noise.

²⁷ Design Manual for Roads and Bridges (DMRB). Volume 11, Section 3, Part 7 sets out a methodology for assessing the impacts of noise and vibration.

referenced above. These identify typical classes of receptor, the criteria to be used in determining the sensitivity of a receptor, and the magnitude of impacts (permanent and temporary) [[APP-031](#)].

- 4.10.14. The ES then goes on to describe the assumptions, constraints and baseline, as well as the proposed mitigation and compensation measures [[APP-031](#)].

Mitigation and compensation measures

- 4.10.15. During the construction phase of the proposed development, the best practicable means of mitigation as defined by the Control of Pollution Act 1974 would be adopted, including: limiting noisy construction activities to daytime hours, adoption of low noise or vibration techniques, locating plant away from noise and vibration receptors, use of well-maintained vehicles, and turning off plant and equipment when not in use [[APP-031](#)].
- 4.10.16. The measures described above would be controlled through the CEMP which would be secured by the draft DCO requirement 4. The CEMP is proposed to be a certified document [[REP7-005](#)].
- 4.10.17. During the operational phase, the following measures have been included within the design: a 3m high noise barrier adjacent to the proposed link road within the infrastructure corridor, a 1.5m high noise barrier adjacent to the proposed rail spur, a 3m high noise barrier adjacent to the proposed access road within the Tilbury2 site boundary as stated in the ES [[APP-031](#)]. Delivery of the noise barriers would be secured through draft DCO requirement 9.
- 4.10.18. In addition an OMP [[REP6-026](#)], secured by requirement 11(g) in the draft DCO [[REP7-005](#)], would include a number of management measures to reduce noise arising from day to day operation of the site. This would include the use, where practicable, of low noise plant and equipment, including conveyor systems and aggregate screeners; and locating doors on the aggregates processing buildings such that noise breakout in the direction of the nearest Noise Sensitive Receptor (NSR) would be limited [[APP-031](#)].
- 4.10.19. Proposed noise mitigation measures are summarised in the updated versions of the CEMP (in particular Section 10.0 Noise and Vibration [[REP6-008](#)]).
- 4.10.20. Further mitigation measures are described the ES [[APP-031](#)]. During construction, this would include temporary noise screening, restrictions on working hours and the implementation of a community awareness campaign (secured through the CEMP). For the operational phase, a reassessment of noise impacts would be required before the opening of the CMAT and Ro-Ro terminal and any receptor where a significant effect is predicted must be offered mitigation. There would also be an on-going monitoring and mitigation regime to be agreed with TC and GBC (secured through DCO requirement 10).

Assessment of residual effects

- 4.10.21. According to the Applicant, the assessments indicate that with mitigation there would be no significant effects in relation to both construction and operational noise [[APP-031](#)].

Assessment of cumulative impacts

- 4.10.22. According to the Applicant, there are not expected to be direct cumulative noise or vibration impacts during the construction and operation phase based on the committed developments in the area [[APP-031](#)].

Issues Arising During the Examination

- 4.10.23. During the examination the Panel requested the Applicant to provide revised versions of ES Tables 17.38-39 (relating to CMAT and Ro-Ro operational noise predictions) as the Panel was unclear how some conclusions had been drawn. The Applicant provided revised tables to include more detail i.e. background noise levels and rating levels, along with an explanation of how to interpret them [[REP1-016](#)]. The main issues arising during the examination were:

- noise sensitive receptors;
- noise barriers;
- draft DCO requirement 10 and the OMP;
- shore power;
- 24 hour working;
- vibration effects;
- piling dimensions;
- piling impact on fish; and
- piling control in the DCO.

Noise sensitive receptors

- 4.10.24. Baseline noise monitoring was undertaken in order to establish the existing noise levels at the selected NSRs [[APP-031](#); table 17.17]. Whilst TC confirmed that the receptors were both representative and satisfactory [[REP1-092](#), FWQ 1.16.6], GBC stated that it was not asked for potential locations or consulted on locations for either the monitoring or noise assessment and that it would have highlighted additional dwellings [[REP1-055](#)]. In particular, GBC considered that residences at Mark Lane needed further work to understand if the noise climate there was sufficiently different from other Gravesham receptors, particularly at night [[REP3-040](#)].
- 4.10.25. Although the Applicant did not consider the inclusion of Mark Lane would alter the conclusions of the ES [[REP3-028](#)], it undertook noise monitoring at Mark Lane during the examination and shared the results with GBC. GBC agreed that the assessment demonstrated that noise levels at this receptor were no greater than those at other Gravesham receptors in the ES. Nevertheless, it was agreed that the monitoring regime that must be

agreed by GBC pursuant to requirement 10 would include monitoring in Mark Lane once Tilbury2 was operational [[REP5-017](#), [REP7-012](#)].

- 4.10.26. The Panel's observation is that in response to GBC's concerns regarding noise monitoring at sensitive receptors, the Applicant undertook furthering monitoring and agreed operational monitoring to the satisfaction of GBC. The Panel's conclusion is that the Applicant has satisfactorily concluded matters relating to noise sensitive receptors.

Noise barriers

- 4.10.27. As noted above in this chapter, noise barriers were included within the proposed development design. However, their locations were not identified in the application documents and the draft DCO did not refer to their heights or locations.
- 4.10.28. In response to the FWQ [[PD-007](#), 1.16.19], the Applicant revised Work Nos 4(d), 9 (v) and 12(b) of the draft DCO to include the noise barrier heights [[REP1-004](#)]. The Applicant also commented that the detailed design of the proposed noise barriers would not be known until the detailed design stage as the dimensions and foundations of the barriers would be determined by the ground conditions, the needs of the surrounding ecological and landscape mitigation, and the need for them to be located where they would be most effective (within the limits of deviation of the work in which they are prescribed by the draft DCO) [[REP1-016](#)]. However, it was confirmed that the noise barriers would be designed in accordance with BS EN 1793-2 2012, with a minimum surface density of 15 kg/m² [[REP3-029](#), question 16.4 (ii)].
- 4.10.29. TC confirmed that it would expect the reassessment of noise impacts under requirement 10 of the draft DCO to be based on the finalised operational design at that stage, including the noise barriers [[REP4-005](#), SWQ 2.16.7]. TC also stated that it would need to see the reassessment in order to audit and confirm the findings of the reassessment before agreeing mitigation measures that may be required [[REP5-049](#), 3.16.5 (ii)].
- 4.10.30. The Applicant subsequently amended requirement 10 of the draft DCO to require the re-assessment to be provided to TC for consideration [[REP5-017](#)], which TC confirmed was satisfactory [[REP7-012](#)].
- 4.10.31. The Panel's observation is that the Applicant revised the draft DCO to include details of noise barrier heights, and amended requirement 10 of the draft DCO to require re-assessment of noise impacts based on the final design to the satisfaction of the LA. The Panel's conclusion is that the Applicant has satisfactorily dealt with this matter.

Draft DCO requirement 10 and the OMP

- 4.10.32. The operational noise assessment within the ES [APP-031] was based on a worst case scenario of CMAT operations; however, the Applicant explained that this was not necessarily the final layout of the CMAT [REP3-029]. As noted above in this chapter, requirement 10 of the submitted draft DCO [REP7-005] therefore detailed the need for the re-assessment of predicted noise impacts arising from the finalised detail design and operational procedures prior to the opening of the CMAT and the Ro-Ro. Should a significant effect be identified at any receptor, the Applicant would be required to offer mitigation such as noise insulation or triple glazing.
- 4.10.33. Requirement 10 also stipulated that a noise monitoring and mitigation scheme for the operational phase must be agreed with TC and GBC. The scheme must be based on the result of the pre-operational re-assessment and include trigger points at which the Applicant would be required to offer mitigation.
- 4.10.34. TC commented that it was not defined who would become eligible for a scheme of mitigation [REP1-021] and highlighted that control at source would be preferable where possible [REP1-092]. GBC also considered that it was not defined who would become eligible for mitigation [REP1-021] and queried how acceptable noise levels would be agreed [REP1-056].
- 4.10.35. Following the first ISH [EV-010], the Applicant made amendments to requirement 10 of the draft DCO at Deadline 1 [REP1-004] to confirm that receptors must be offered a package of mitigation if external noise was predicted to be above the SOAEL.
- 4.10.36. However, GBC explained that it had investigated how this issue was controlled in operations with similar impacts and suggested a requirement to control noise from mechanical plant so that the rating level did not exceed a defined level. It also provided its hierarchy of avoidance and mitigation for noise and vibration which notes that as well as requiring low noise plant to be installed, that post-installation there can be opportunities to make equipment even quieter by adding attenuators, controlling speed of conveyors etc [REP3-040].
- 4.10.37. GBC also questioned what steps the Applicant would take to minimise adverse effects on receptors with noise levels between LOAEL & SOAEL (in line with NPSE). GBC was concerned that requirement 10 only addressed impacts above SOAEL, and considered that LOAEL + 5dBA would be an acceptable noise level [REP3-040].
- 4.10.38. The Applicant confirmed that no artificial boundary to the geographical extent of potential receptors would be set [REP7-012] and that receptors would be eligible for mitigation if the reassessment showed that there would be a significant effect, going on to define the criteria leading to significant effects [REP3-029]. The Applicant [REP3-029] considered that that it would not be beneficial for the receptors to work on the basis of a noise limit imposed through the DCO, because that would be in place of the mitigation framework including noise insulation and alternative

ventilation, which could lead to potentially worse noise effects. It explained that proposals for control of noise at source were detailed in the OMP [[REP5-022](#)] and did not consider further changes to requirement 10 were needed.

- 4.10.39. GBC continued to have concerns over the Applicant's approach and considered that the CMAT was a minerals operation and drawing upon minerals guidance and examples of decisions elsewhere, suggested that defined noise limits should be applied [[REP4-013](#)]. GBC suggested the method described in BS4142 should be used to determine the level of noise of an industrial nature and assess whether the noise was likely to give rise to complaints from persons living in the vicinity; this would use the difference between the measured background sound level (without the influence of industrial noise) and the 'rating level' of the industrial noise at the receiver location [[REP4-013](#), SWQ 2.16.5].
- 4.10.40. In response to GBC's concerns the Panel tabled questions at the second ISH [[EV-017](#)] on environmental matters regarding:
- the adequacy of the OMP and suggestions put forward by GBC to limit noise (question 3.16.2);
 - GBC's concerns regarding mitigation between LOAEL and SOAEL and specifying measurable noise limits (question 3.16.3); and
 - GBC's proposed standard for limiting noise (question 3.16.4).
- 4.10.41. During the ISH, further to GBC's concerns, the Panel also encouraged the parties to suggest measurable and enforceable noise limits for further consideration. The Applicant's response to these questions was contained in a separate Noise Resume Paper [[REP6-031](#)]. In summary, the Applicant considered that the focus should be on minimising noise at source through the OMP and believed that imposing noise limits at external receptors would be difficult to enforce because of difficulties in directly attributing a change in noise level to Tilbury2. Furthermore, the Applicant considered that requirement 10 would be more appropriate and provided revised drafting of the requirement to include SOAELs for day and night, above which mitigation would be implemented [[REP5-045](#)].
- 4.10.42. These amendments were supported by TC [[REP5-051](#), [REP6-021](#)]. However, GBC maintained its view that noise limit levels should be set for day, evening and night in the approved monitoring scheme once further monitoring had been undertaken. GBC's response included examples of planning consents where it asserted that noise levels had been used [[REP5-063](#), [REP5-064](#)]. It considered that a noise limit was required to safeguard the amenity of affected properties in Gravesham and so as not to prejudice the future delivery of residential development at Gravesend Canal Basin [[REP6-001](#)].
- 4.10.43. Although the Applicant maintained that a noise limit would be unreasonable and unnecessary, it proposed draft wording for the imposition of source-based noise limits should it be deemed necessary; this would form requirement 9A and would sit alongside requirement 10 and the OMP [[REP7-021](#)]. It aimed to verify the reassessment of the ES

predictions, by undertaking noise measurements in different work areas of Tilbury2 once operational.

- 4.10.44. TC confirmed that the wording of requirement 10 of the draft DCO (Revision 4) was acceptable [REP6-021] and did not consider that operational noise limits would be necessary to make the development acceptable [REP3-037].
- 4.10.45. Although the Applicant and GBC subsequently worked together to agree the proposed wording [REP7-001], agreement was not reached by Deadline 7. GBC provided comments on the Applicant's draft requirement and suggested an alternative simpler requirement [REP7-001]. The Applicant maintained that operational noise limits were unnecessary since they were not required to deliver acceptable noise conditions for any sensitive receptor [REP7-021].
- 4.10.46. The Panel's view is that the Applicant has attempted to respond to GBC's concerns regarding requirement 10 of the draft DCO and made a number of appropriate modifications during the course of the examination. The Applicant has included measurable requirements and specified mitigation measures to provide a noise monitoring and mitigation scheme which satisfies the requirements of NPSP paragraph 5.10.10.
- 4.10.47. The Panel's conclusion regarding GBC's contention that noise limits should be specified is:
- that this requirement would be unnecessary considering the other proposed mitigation measures;
 - that having encouraged the parties to suggest measurable and enforceable noise limits for consideration, the Panel is persuaded by the Applicant's contention that the focus should be on minimising noise through the OMP, and application of requirement 10;
 - that furthermore the Panel is not persuaded that it would be reasonable to impose a noise limit so as not to prejudice the prospective residential development at Gravesend Canal Basin where the planning permission has expired;
 - that TC confirmed that the wording of requirement 10 was acceptable and did not consider that operational noise limits would be necessary to make the development acceptable; and
 - that the examples of planning consents of similar operations, and alternative requirements, provided by GBC, did not make a sufficiently compelling argument for the imposition of noise limits, when weighed against the proposed mitigation measures.

Shore power

- 4.10.48. TC [RR-031] provided comments on the OMP, specifically noting that the existing Port has been subject to noise complaints from ship generators operating overnight and the suggestion to provide shore power. GBC noted that the PLA was developing an air quality strategy that looks into shore power [RR-019]. The Applicant responded [REP1-016] that existing

technology on ships is not suitable and electrical capacity is limited due to National Grid infrastructure. The Applicant has undertaken to provide the infrastructure to ensure that shore power can be accommodated at the Tilbury2 site (in effect shore power ready) in the future should the vessel profile change. There is a commitment to this effect in the OMP (section 6.3) [[REP6-026](#)].

- 4.10.49. The Panel's conclusion is that the Applicant has made proportionate and reasonable provision to accommodate shore power at a time in the future when National Grid infrastructure and technology on ships make this possible.

24 hour working

- 4.10.50. GBC highlighted and maintained concerns over the proposed 24 hour operation of the CMAT [[RR-019](#), [REP1-055](#)]. The Applicant provided a detailed response explaining that such operating hours are in line with other UK commercial ports and are required to respond to market demands [[AS-049](#) Appendix 2; [REP2-007](#)]. It also confirmed that the noise assessment was undertaken on a worst case basis [[REP3-029](#)].
- 4.10.51. The Panel's conclusion is that it is reasonable that Tilbury2 is operated on a 24 hour basis, and that noise concerns are adequately dealt with through the proposed mitigation measures.

Other operational noise sources

- 4.10.52. The ES at paragraph 17.63 [[APP-031](#)] defines the maximum line speed (maximum permitted train speed) used to inform the noise assessment. In response to the FWQ [[PD-007](#), 1.16.4] regarding how this would be controlled the Applicant confirmed that the design speed would be controlled by speed boards [[REP1-016](#)]. The Panel considers that this is acceptable.
- 4.10.53. The ES at paragraph 17.213 concludes that the changes in operational noise from future vessel movements would be imperceptible and the impact not significant. However no calculations were provided with the application [[APP-031](#)]. In response to the FWQ [[PD-007](#), 1.16.5] the Applicant provided details of the assessment made leading to the conclusion that the change in noise would have a negligible impact [[REP1-016](#)].
- 4.10.54. The Panel's conclusion is that the Applicant has satisfactorily concluded matters relating to other operational noise sources.

Vibration effects

- 4.10.55. The ES [[APP-031](#)] assessed the effects of vibration on buildings. The Applicant confirmed that BS5228 part 2 was used, whereby the probability of damage to buildings tends to zero at vibration levels of 12.5mm/s PPV. It stated that the predicted 1.9 mm/s is significantly

below this level [[REP1-016](#)]. The Panel considers that the vibration assessment carried out has been proportionate to the likely vibration effects as required by paragraph 5.10.4 of the NPSP.

- 4.10.56. According to the ES [[APP-031](#)] the contractor would develop and implement a monitoring and mitigation regime for vibration effects of piling on historic assets, in consultation with EH and Hist E. Vibration monitoring and mitigation through the construction phase at Tilbury Fort is set out in the CEMP. This process would be undertaken in consultation with both Hist E and EH, as agreed by Hist E [[REP7-012](#)].
- 4.10.57. The Applicant provided qualitative assessment of vibration levels from the proposed rail link in ES [[APP-031](#)]. In response to the FWQ requesting supporting calculations [[PD-007](#), 1.16.14) the Applicant confirmed that the estimated vibration dose value (VDV) was significantly less than the LOAEL and therefore it was not necessary to limit the number of railway movements in the draft DCO [[REP1-016](#)].
- 4.10.58. Although the response at Deadline 1 appeared reasonable it was not clear what number of railway movements would be required to meet the LOAEL. In response to the SWQ [[PD-010](#), 2.16.6] the Applicant provided calculations to confirm that the number of movements to meet the vibration LOAEL would be much higher than the Deadline 1 example calculation assumption [[REP4-020](#)].

Piling dimensions

- 4.10.59. The Applicant was requested to clarify pile dimension discrepancies contained in Chapter 5 of the ES at the ISH on 18 April 2018 [[PD-007](#)]. In response, the Applicant provided an update to the underwater noise assessment as Appendix 1 of the ISH summary [[REP3-029](#)].
- 4.10.60. The MMO confirmed that it was satisfied with the information and that the worst case scenario for piling had been fully assessed [[REP5-056](#)]. The certification Schedule 11 of the draft DCO was updated to include the updated assessment as Appendix 17a of the ES [[REP5-044](#)].
- 4.10.61. The Panel's conclusion is that the Applicant has satisfactorily dealt with matters relating to piling dimensions.

Piling impact on fish

- 4.10.62. The ES [[APP-031](#)] Table 11.29 concluded that the effects of underwater noise on fish would be negligible. However, the MMO raised concerns that underwater noise could result in an acoustic barrier during piling activities and cause temporary behavioural effects on fish [[REP1-021](#)].
- 4.10.63. In response, the Applicant reviewed the assessment [[REP1-016](#)] and concluded that the effects on fish could be minor rather than negligible. The modelling results showed that this could result in recoverable injury within 250m of the noise source and temporary hearing loss of fish up to 3,600m from the noise source. The width of the Thames at Tilbury2 is approximately 900m, which means that it would be sufficiently wide for

fish to passage up and down the river during piling, although they would still be subject to potential temporary hearing loss and behavioural effects. The Applicant highlighted that a daily 14 hour non-piling window would allow fish to migrate past Tilbury2 without being subject to any noise effects. It also highlighted that embedded mitigation included adherence to the Joint Nature Conservation Committee (JNCC) piling protocol including soft start procedures, secured through the CEMP [REP6-008], and concluded that residual impacts would be minor and therefore not significant.

4.10.64. In reply the MMO confirmed that the Applicant's clarification [REP2-012, Annex 1] had addressed its concerns and that the approach and assessment methodology for fish ecology and underwater noise was appropriate [REP7-012 Appendix 7].

4.10.65. The Panel's conclusion is that the Applicant has satisfactorily assessed the effects on fish of piling, and included sufficient mitigation within its proposals to protect fish from the effects of piling.

Piling control in DCO

4.10.66. At the DCO ISH on 21 February 2018 [EV-004] the Applicant was asked to clarify how the piling would be restricted to the types and dimensions of piles that were assessed in the ES. The Applicant explained that the proposed mitigation measures were set out in Chapter 7 of the CEMP, which was secured by requirement 4 of the draft DCO, or would be able to be imposed through the operation of the conditions of the DML [REP1-015].

4.10.67. The 14 hour non-piling window referred to by the Applicant and supported by the MMO [REP1-016, REP7-012] was not initially secured. However, further to discussion during the examination [PD-010], the Applicant amended Condition 12 of the draft DML to include the 14-hour non-piling window (between 18:00-08:00) [REP7-005].

4.10.68. The number of minutes of the use of soft-start piling techniques was incomplete in the draft DCO submitted with the application [APP-016]. At Deadline 5 the Applicant amended Condition 12 (1) of the draft DML to include soft-start timings [REP7-005], which were agreed with the MMO [REP5-056].

4.10.69. At the DCO hearing on 28 June 2018 [EV-018] the EA confirmed that it was happy with the content of DML and NE confirmed that it had no concerns in respect of the DML [REP5-015]. MMO subsequently confirmed it was satisfied with the mitigation secured through the CEMP and the operation of the DML [REP7-012 Appendix 7].

4.10.70. The Panel is satisfied that the draft DCO coupled with the DML effectively secures the Applicant's proposed mitigation with regard to piling control.

Conclusions

- 4.10.71. The Panel finds that the Applicant has adopted a robust, consistent, reasonable and proportionate approach to assess the noise and vibration characteristics of the proposed development, and makes appropriate proposals for mitigation in compliance with NPSP section 5.10. The Applicant has refined its mitigation proposals during the examination.
- 4.10.72. Mitigation would include noise attenuation barriers secured through requirement 9 of the draft DCO [[REP7-005](#)].
- 4.10.73. Further mitigation in the form of triple glazing, or another form of noise insulation or ventilation would be offered to properties where a re-assessment of the noise impacts arising from the final design of the works was predicted to be above the SOAEL. This measure would be secured through requirement 10 in the draft DCO.
- 4.10.74. Further measures to control noise and vibration would be achieved through the OMP, CEMP and the DML.
- 4.10.75. In response to GBC's requests, the Applicant provided proposed drafting for a requirement which would result in the imposition of source-based noise limits [[REP7-021](#), pages 2-7 and 2-8]. This requirement would sit alongside requirement 10 and the OMP. However, the Panel agrees with the Applicant that this would be unnecessary considering the other proposed mitigation measures.
- 4.10.76. In the light of this, the Panel concludes that noise and vibration matters have been satisfactorily explored in the application and subsequently during the examination, and that noise and vibration are not matters which weigh against the Order being made.

4.11. BIODIVERSITY, ECOLOGY AND NATURE CONSERVATION

Policy Background

- 4.11.1. The NPSP sets out the requirements for assessing biodiversity and related matters in section 5.1. The NPSP advises that the ES should set out any effects on internationally, nationally and locally designated sites of ecological or geological conservation importance, on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity. As a general principle, development should aim to avoid significant harm to biodiversity and geological conservation interests, including through mitigation and consideration of reasonable alternatives. Where significant harm cannot be avoided, then appropriate compensation measures should be sought. Similar considerations are set out in paragraphs 174 – 177 of the NPPF.

Applicant's Approach

Site History

- 4.11.2. The Tilbury2 main site was historically grazing marsh, and the nature and character of the vegetation present today reflects the later uses, particularly the Tilbury power stations, which are now in the process of being removed. A large area in the central part of the Tilbury2 site was appropriated for coal storage in connection with the power station, introducing new surface substrates over the top of the pre-existing marshland. West and north of here, land was used for the storage and in some instances processing of Pulverised Fuel Ash (PFA) from the power station. This included the establishment in 1966 of an area for manufacturing Lytag (lightweight aggregate) pellets. This operated until the 1980's and was then abandoned, leaving a complex mixture of compacted substrates, fly ash, discarded Lytag pellets, hard standing areas and pockets of relict grazing marsh and ditches, which has since developed a distinct mosaic of vegetation.
- 4.11.3. Similar substrates were purposely introduced for study and education purposes to land around the former Tilbury Energy and Environment Centre (TEEC). The Centre was set up by the then National Power in the central part of the Tilbury2 site in the late 1980s and run in partnership with the Essex Wildlife Trust. As well as showcasing examples of brownfield habitat focused on artificial substrates, a pond and reedbed area with boardwalks and dipping platforms, and various areas of scrub and woodland planting were created. Some other areas of land in the northern part of the site were subject to woodland planting around this time.
- 4.11.4. Along the river frontage, the present sea defences were constructed in the 1980's, leaving a narrow strip of coastal habitat. This includes relict saltmarsh and intertidal mud at Bill Meroy Creek, as well as additional areas of more recently developed saltmarsh vegetation growing over the top of rock armour installed along the river frontage behind the deep water jetty.
- 4.11.5. The final phase of change since 2000 has seen former grazing marsh land at Ferry Fields, north of the cruise terminal and at the western end of the infrastructure corridor, being developed for expanded port-related uses. Areas within the Tilbury2 site have more recently been taken over for imported car-storage uses.

The ES - Designations

- 4.11.6. Figure 10.1 [[APP-121](#)] of the ES [[APP-031](#)] shows the relevant ecological designations. There are no international and national statutory designations applying to the Tilbury2 site. The closest is the Thames Estuary & Marshes Special Area of Conservation (SPA) and Ramsar site which is approximately 1.5km from the Tilbury2 Order limits. The SPA/Ramsar site extends for about 15 miles (24km) along the south side of the Thames estuary, where it is also designated as the South Thames Estuary and Marshes Site of Special Scientific Interest (SSSI). On the north side of the estuary, the SPA/Ramsar site includes a smaller area of intertidal and other habitat which forms the Mucking Flats and Marshes SSSI.

- 4.11.7. The value of these sites is in supporting internationally important populations of wading birds and waterfowl, as well as nationally significant populations of scarce plants and invertebrates. Potential impacts from the proposed development on European (SPA and Ramsar) sites are considered principally in the HRA assessment in Chapter 5 of this report, but also referred to briefly in this section in terms of functionally linked land in order to provide a comprehensive analysis.
- 4.11.8. There are two non-statutory Local Wildlife Sites (LoWS) located within the main Tilbury2 site. The Lytag Brownfield and Tilbury Centre LoWS are notable for 'open mosaic' brownfield habitats with an equivalent suite of rare plants, lichens and invertebrates. The infrastructure corridor crosses the northern part of the Tilbury Marshes LoWS of which grazing marsh is the main feature.
- 4.11.9. *Lytag Brownfield LoWS*. This encompasses post-industrial habitats that have developed over the site of the former Lytag production site. When operational, the Lytag plant received PFA from the power station and converted it to lightweight aggregate and cement. The land has since developed a mosaic of habitats over parched substrates, particularly lichen flora of high conservation significance. In turn, this has led to the site becoming very important for invertebrate fauna including all four common reptiles (common lizard, grass snake, adder and slow-worm).
- 4.11.10. *Tilbury Centre LoWS*. This encompasses the site of the former TEEC from when the power station was operational, and is in the centre of the main site. It contains a complex mosaic of grassland, flower-rich early successional/pioneer vegetation, ditches, a small reedbed and a pond.
- 4.11.11. *Tilbury Marshes LoWS*. This is a large (c.40ha) site, of which approximately 4ha lies within the Order limits. It comprises relict grazing-marsh, brackish ditches and the outer moats and grasslands of Tilbury Fort.
- 4.11.12. There are no sites of geological importance on or close to the application site (Table 10.46 of the ES).

The ES - Ecology

- 4.11.13. Chapter 10 of the ES [[APP-031](#)] sets out a detailed assessment of biodiversity and ecology matters, supported by a large number of appendices [APP-046 to 062]. The assessment drew upon a substantial base of extant information gained from desk based studies, supported by a field ecology survey programme undertaken in 2016 and 2017 including s41 habitats²⁸, protected species, birds and invertebrates.
- 4.11.14. There is a variety of habitat types on the site shown on Figures 10.2a and 2b of the ES [[APP-122](#) and [APP-123](#)] including:

²⁸ Habitats of 'Principal Importance' further to s41 of the Natural Environment and Rural Communities (NERC) Act 2006

- coarse neutral, grazed and mown grassland;
- ephemeral/short perennial and skeletal grassland;
- scrub and hedgerow;
- plantation;
- salt marsh and maritime grassland;
- intertidal mudflats;
- drainage ditches; and
- ponds, reedbed and other water bodies.

4.11.15. In terms of fauna, the surveys reported in Chapter 10 of the ES indicated no or limited evidence of badgers, bats, dormouse, water vole and great crested newt on the site. Species of reptiles (common lizard, adder, grass snake and slow worm) were found in greater numbers. The Tilbury2 site and its environs, including the intertidal area, have been subject to several bird survey studies over the past 12 years, with a wide variety and high numbers for some species recorded. The assemblage as a whole, particularly the coastal strip, is of high national importance for invertebrates.

4.11.16. The ES notes that the Lytag Brownfield and Tilbury Centre LoWS appear to have lost some of their former interest through habitat succession. It argues that other parts of the main site are now arguably more important than these areas, including fragmented representations of brownfield habitat at the margins of demolition areas and associated with the former rail corridors crossing the site. Taken as a whole, the ES concludes that the infrastructure corridor is of middle-ranking importance compared to the other parts of the application site but still probably of national importance in its own right. Existing processes that maintain current habitat conditions, such as grazing, are likely to continue, and as such there is likely to be relatively little change here in the near future.

4.11.17. The conclusion drawn in the ES from the invertebrate and lichen surveys is that successional processes are denuding the interest of the Lytag Brownfield and Tilbury Centre LoWS and also ancillary habitats around these. Birch and willow scrub is already occluding the amount of open mosaic habitat in the Lytag Brownfield LoWS, with an increase in shade and soil fertility likely to continue to denude such interests. Observations over the last two years of survey indicate that this is a process that is accelerating in these areas and may now be exponential.

4.11.18. One possible cause put forward by the Applicant to explain the acceleration of succession and the apparent changes in the composition of lichen communities is emissions from the adjoining Anglian Water Tilbury Water Recycling Centre. Since 2005 a combined heat and power (CHP) plant has been operating on the Anglian Water site with a relatively low flue height. The ES suggests that deposition of acidifying NO_x and SO₂ may be at least partially responsible, possibly acting in concert with underlying nitrifying processes driven by ammonia and methane emissions.

4.11.19. The ES concludes that the balance of evidence is that both the Lytag Brownfield and Tilbury Centre LoWS have reached a tipping point in the

successional process. This can now be expected to accelerate further, leading in a relatively short timescale (perhaps as little as 5-10 years) to significant suppression of the particular biodiversity interests associated with early successional and open ground habitats. If no development takes place on the site, this might arrest the loss of habitats from the site, possibly by as much as several decades.

Impacts of the Proposed development

- 4.11.20. The ES [[APP-031](#)] Chapter 10 sets out the likely impacts on habitats and species. The proposed Ro-Ro terminal would require the near comprehensive removal of the existing habitats in the southern part of the Tilbury2 site, including the Tilbury Centre LoWS. A residual area of existing established boundary vegetation along the western edge of the site would be retained.
- 4.11.21. Construction of the CMAT and the railhead in the northern part of the site would similarly lead to the almost complete loss of the Lytag Brownfield LoWS, although the existing mitigation/compensation habitat feature constructed during the operational phase of the power station on land at the north-eastern edge of the Tilbury2 site would be retained.
- 4.11.22. Habitats on the riverward side of the flood wall, including the areas of coastal saltmarsh vegetation and intertidal mudflats, would be subject to effects arising from marine works such as piling to extend the jetty and dredging to serve the Ro-Ro and CMAT. The vast majority of these habitats would be retained *in-situ*, although potential indirect effects from disruption to their supporting processes are possible.
- 4.11.23. Within the infrastructure corridor, impacts would include permanent losses of coastal and floodplain grazing marsh habitat, including a partial loss of the Tilbury Marshes LoWS. Proposed minor improvements to the ASDA roundabout would have very little ecological impact.

Mitigation

- 4.11.24. Mitigation measures are described in Chapter 10 of the ES and are proposed to be implemented through the CEMP, OMP and LEMP, compliance with which would be secured through requirements 4 and 11 of the draft DCO.
- 4.11.25. The purpose of the CEMP [[REP6-008](#)] is to define the minimum standards that contractors must adhere to, and the relevant mitigation measures that must be undertaken both before and during construction, for example to minimise impacts on the nesting birds in the spring and early summer months. An Ecological Clerk of Works or similarly competent person would be responsible for overseeing on-site ecological mitigation and ensuring that mitigation measures such as translocations of species and habitats are implemented, in accordance with method statements agreed with NE, EA and TC as appropriate.

- 4.11.26. The OMP [\[REP6-026\]](#) explains how the potential impacts once operational would be assessed and mitigated and how complaints and corrective actions would be dealt with.
- 4.11.27. The EMCP [\[REP7-051\]](#) details the mitigation measures that have been embedded within the design, as distinct from the LEMP [\[REP6-041\]](#) which deals with management and/or monitoring of both existing and terrestrial habitats and retained and established planting once the proposed development would be operational. These measures would include retained habitats such as tree planting screens and wet ditches, and the creation of new habitats on land in the north east corner of the application site as a receptor for water voles and reptiles translocated from the main site. Planning permission for this has already been obtained to enable this work to start as soon as possible in advance of the approval of the DCO. Letters of No Impediment have been obtained from NE concerning proposals for dealing with badgers, bats and water voles, for which licences will be required.

Compensation

- 4.11.28. In addition to these on-site mitigation measures, offsite compensation is required to fully meet impacts on terrestrial ecology, and this would be secured through the EMCP as part of requirement 5 of the draft DCO. Two locations have been identified in the EMCP for off-site compensation.
- 4.11.29. The first location is a 48ha site at Paglesham in south Essex, about 30 miles from Tilbury2. Until recently this land comprised a mixture of heavily sheep grazed coastal grassland and arable land. An area of 10ha would be used for translocation of reptiles to a new receptor (in addition to the translocation of reptile species to new habitats in the north-eastern corner of the Tilbury2 site mentioned above). Some 30-37ha of coastal grazing marsh is also proposed to be created, to compensate for around 3.4ha which would be permanently lost, and about 0.1ha which would be temporarily lost during the construction phase. The balance of the site would be used to create 5-6ha of scrub habitat. Management of the Paglesham site would continue for a 30 year term by means of an agreement between the Applicant and the respective landowners.
- 4.11.30. The second location is much closer to the application site at Mucking Landfill, about 5 miles from the application site, where waste operations ceased at the end of 2010 and the site is currently being restored. Two land parcels totalling 10ha which would otherwise be largely restored to amenity grassland have been secured by the Applicant as a receptor for open mosaic habitat on previously developed land (OMHPDL). About 5ha of material would be translocated from the Tilbury2 main site, with the remaining 5ha of the site proposed to receive virgin or recovered brownfield substrates from other sources (e.g. recovered PFA and other substrates) or existing brownfield habitat at Mucking Landfill that would otherwise be lost to restoration activities.
- 4.11.31. This would result in potentially 10ha of compensatory invertebrate, plant and lichen habitats, exceeding in quantitative terms the amount of

OMHPDL lost to development on the Tilbury2 site. Following the creation of the open mosaic habitat and restoration of the surrounding areas, the intention is that the land would become part of the Thurrock Thames Nature Park and be managed by the Park as part of an existing 99 year lease arrangement.

- 4.11.32. The Applicant anticipates that the magnitude and significance of residual adverse effects during the operational stages will gradually diminish as the on- and off-site compensation measures mature and become of enhanced value for target species. In an optimistic scenario, this may lead to something close to a net neutral effect on local and regional biodiversity in approximately 10 to 15 years from the commencement of construction [[REP7-036](#)].

Representations

- 4.11.33. The main concerns about biodiversity, ecology and nature conservation were expressed by TC, the EA, NE and Buglife – the invertebrate conservation trust.

Thurrock Council

- 4.11.34. TC agreed in its SoCG that the principles of the on-site mitigation as set out within the CEMP, LEMP and draft EMCP were appropriate, and that off-site compensation was also necessary given the scale of the proposals. The aim was for off-site compensation to be located as close to Tilbury2 as practicable. However, options for a compensation site within Thurrock were limited and thus if a site was secured outside of the Borough it should be located in an ecologically compatible area of similar ecological/geographical character (i.e. coastal fringe if possible) [[REP7-012](#) Appendix 1].

The EA

- 4.11.35. The EA agreed that the off-site compensation proposed in the EMCP for Paglesham would provide suitable mitigation/compensation for coastal floodplain grazing marsh, scrub and reptiles [[REP7-012](#) Appendix 4].

NE

- 4.11.36. NE set out its views in detail in its relevant and written representations, and essentially maintained these views throughout the examination [[RR-025](#), [REP1-074](#) and [REP7-022](#)].

Terrestrial Invertebrates

- 4.11.37. NE noted that the 2017 invertebrate report which underpins the ES [[APP-057](#)] identified that the area that would be lost to development is '*of high conservation importance for invertebrates in a national context*'. Ten species listed under s41 of the NERC Act 2006²⁹ were identified in the

²⁹ A list of the living organisms and types of habitat which in the Secretary of State's opinion are of principal importance for the purpose of conserving Tilbury2 – Proposed Port Terminal at Former Tilbury Power Station
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2016 and 2017 surveys. The Lytag Brownfield LoWS in particular was regarded as almost unique in England, and was arguably irreplaceable. In NE's opinion, the overall assemblage could be considered to be of sufficient quality to meet the designation requirements of a SSSI. NE advised that it would consider this as one of a number of options in seeking to achieve a sustainable development solution. At Deadline 3, NE advised that the Tilbury2 site is to be considered for formal notification as a SSSI in due course [[REP3-042](#)].

- 4.11.38. The ES relies heavily on the provision of off-site compensation in order to form its conclusions about impacts on ecological receptors, including terrestrial invertebrates. NE however advised at the end of the examination that the proposed site at Mucking Landfill was sub-optimal [[REP7-022](#)].

Lichen

- 4.11.39. NE noted that the lichen assemblages at the site were collectively considered of at least regional importance, with the most important component being the Lytag Brownfield site.
- 4.11.40. NE maintained that the timescale of succession was uncertain and that succession in the absence of management was a feature of many of the UK's most important environmental sites [[REP7-012](#) Appendix 5]. NE also remained of the view that successional processes could be interrupted and even reversed through basic on site management. These comments were made however without the benefit of having seen the site, and the change in character which the Applicant maintained had taken place even in the last two years.
- 4.11.41. NE's advice was that it was hard to conclude whether OMHPDL is likely to deteriorate in value if left in an undeveloped condition but that the lichen communities may be more easily replicable offsite than the invertebrates.

Impacts on the Intertidal Area

- 4.11.42. NE's view was that the intertidal area does provide some valuable function as supporting habitat for wintering and passage birds using the Thames Estuary and Marshes Special Protection Area (SPA), particularly in extreme weather events. It did not agree with the screening conclusion reached in the Applicant's HRA [[APP-060](#)] of no likely significant effect either alone or in combination at this stage. The Applicant provided a stage 2 integrity test HRA report taking into account additional assessments NE had proposed, eg INNS, construction and operational waste and pollutants [[REP7-018](#)], but NE did not agree to no

biodiversity, for which steps should be taken as appear to the Secretary of State to be reasonably practicable to further the conservation of the living organisms and types of habitat included.

adverse effects on integrity (AEOI) as a result of the proposed development, without the mitigation steps it advised [[REP7-022](#)].

EIA cumulative assessment

- 4.11.43. The Applicant submitted a qualitative CEA embracing the TEC and LTC in response to several representations [[REP6-006](#)], but NE maintained that cumulative effects had not been adequately assessed. It remained of the opinion that sufficient detail may be available (either in the public domain or currently held by these relevant projects) to enable some level of quantitative assessment in order to determine a joint strategy for mitigation.
- 4.11.44. As an overview of its position, NE stated in its written representations that it could not support the proposed development as currently submitted as it did not represent sustainable development [[REP1-074](#)]. The Panel invited NE to confirm its final position on this and other matters at Deadline 7 [[PD-013](#)] but it did not do so specifically in relation to this statement [[REP7-022](#)], so the Panel concludes that in the absence of a withdrawal this remains NE's view.

Buglife

- 4.11.45. Buglife argued that the assemblage of invertebrates on the Tilbury2 site is of national importance and that the proposed translocation of OMHPDL was entirely unproven [[RR-005](#)]. Despite wider recognition of their biodiversity value, brownfields in the Thames Estuary have consistently been lost to development and the current resource in the region is declining. In its view, the amount of OMHPDL has been under estimated and was greater than the 9.3ha recorded in the ES [[RR-005](#)]. Buglife maintained its view throughout the examination that the site was not diminishing in value, albeit that this judgment was also made without the benefit of a site visit and solely drawing on the submitted information [[REP7-012 Appendix 11](#)].
- 4.11.46. The Essex Field Club shared these views, stressing that the Lytag Brownfield LoWS provided an irreplaceable substrate which supported nationally important invertebrate assemblages and important lichen communities that could not simply be recreated or moved elsewhere. The loss of the Lytag Brownfield and Tilbury Centre LoWS would almost certainly be catastrophic for the regional biodiversity of the south east region and its national importance [[RR-006](#)].
- 4.11.47. These points were developed further in the WR from Buglife [[REP1-030](#)], which was supported by the RSPB [[REP3-033](#)], and a petition signed by 74,300 people opposing the application because of the impact it would have on nationally important populations of invertebrates [[REP1-031 to 038](#)]. The Applicant was criticised for not following the mitigation hierarchy in preparing the application, and not designing the scheme to

avoid the LoWS for example rather than seeking mitigation and compensation for adverse impacts once the scheme design had been fixed. The opinion put forward by NE that the Lytag Brownfield LoWS could be considered of sufficient quality to meet the designation requirements of an SSSI was strongly endorsed by Buglife. It argued this supported its conclusion that development consent should be refused because the application would lead to significant net losses of biodiversity and the loss of irreplaceable habitats.

- 4.11.48. The proposed off-site compensation proposals as set out in the EMCP were not established until late in the examination, and therefore little detail of proposed mitigation on-site and compensation off-site was available before then. In commenting on the emerging EMCP, Buglife noted that the Applicant's examples from the last 10 years suggested some limited value, but did not in any way demonstrate that the complicated suite of habitats at the Tilbury2 site could be replicated. The only evidence provided is from short-term monitoring of small-scale habitat creation of PFA habitats, with no indication that a nationally important invertebrate site could be recreated to support a diverse assemblage with multiple habitat requirements and specific niches. This left very significant unknowns and a high level of risk [[REP5-054](#)].
- 4.11.49. However, in its SoCG Buglife generally agreed the criteria used in selecting Mucking Landfill as a receptor for brownfield substrates and invertebrates. In addition, without prejudice to Buglife's position on adherence to the mitigation hierarchy, it agreed that the proposals for the off-site brownfield receptor site as presented within the June 2018 version of the EMCP [[AS-069](#)] are appropriate, subject to refinement of the details [[REP7-012](#) Appendix 11].

Issues Arising During the Examination

Translocation of species

- 4.11.50. The Applicant's view was that successful creation of brownfield habitats off-site was essential in order to achieve no net loss and/or net gain in biodiversity. The EMCP details the compensatory habitat creation measures that are proposed both on-site (a minimum of 5ha within the proposed Order limits) and at the two off-site locations (10ha at Mucking Landfill, and 48ha at Paglesham) totalling 63ha of compensatory habitat enhancement.
- 4.11.51. The Applicant has commenced, at risk, advance habitat enhancement works both on land under its control within the proposed Order limits (pursuant to an advance planning permission), and off-site on third party land by agreement with the respective landowner. This is in order to ensure optimum habitat conditions are created to receive translocated reptiles and water voles at these locations and to provide an alternative artificial sett for badgers.
- 4.11.52. There was agreement at the end of the examination between the Applicant, the EA and NE that the off-site proposals at Paglesham

provided suitable mitigation/compensation for coastal floodplain grazing marsh, scrub and reptiles [[REP7-012](#), Appendices 4 and 5]. The Panel endorses this agreement.

- 4.11.53. However, much discussion took place around the possibility of recreating the conditions on another site that have allowed the invertebrates and plant characteristics of the Lytag site, and the suitability of the Mucking Landfill site for that purpose, and this therefore was the main issue.
- 4.11.54. Whether or not the approximately 9.3ha of OMHPDL³⁰ present within the Order limits recorded by the Applicant in the ES is an underestimate as claimed by Buglife, there was agreement between the Applicant, NE and Buglife that the invertebrate assemblage of the Tilbury2 site was measurable as of national importance on the basis of the 2007, 2016 and 2017 data sets [[REP7-012](#), Appendices 5 and 11].
- 4.11.55. The Applicant maintained that successful creation of OMHPDL habitat is achievable in principle on the basis that brownfield sites were themselves habitats of anthropogenic origin. They have developed over comparatively short timescales (decades), as opposed to irreplaceable habitats such as ancient woodland which have developed over centuries. It is a logical proposition that putting in place the same processes, substrates and environmental context that have created Thames Estuary brownfields must be possible in other parts of the Thames Estuary. It must also be the case that translocation of brownfield substrates to such locations must carry with it the possibility of transfer of at least a proportion of the associated plant, invertebrate and lichen species. This would then assist in the establishment of new communities of such species at the receptor location [[REP6-015](#)].
- 4.11.56. However, NE stated that the site conditions, comprising artificial substrates such as sands, gravels, dredging, PFA, former quarries, former railway sidings, as well as remnants of more natural habitats such as grazing marsh, and coastal borrow-dykes combined with the application site being in one of the driest and warmest parts of the country meant that such circumstances were now very rare in “natural” situations. Key substrates on which this habitat develops, such as PFA and Lytag, were no longer being generated as waste products, and thus the chance of equivalent habitat being unintentionally created in future was extremely unlikely. NE considered that the habitats present would be very difficult to recreate with confidence on a compensation site given the large number of variables. No successful examples yet exist of translocating invertebrates (but much better chances appear possible for lichen) [[REP1-074](#)].
- 4.11.57. The off-site compensation site at Mucking Landfill complied with the search criteria and design objectives discussed with NE, as referred to in its representations [[REP5-061](#)] and as discussed at the ISH in June 2018 [[EV-011](#)]; and item 3.2.1 within [REP5-036](#)]. NE asked for an additional

³⁰ Of which 9ha would be permanently lost to development [REP2-007, Table 1]
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criterion to be added to the search requirements, namely to secure land which would not otherwise be brought into conservation management. It considered the Mucking Landfill site did not meet this measure because a management plan which covered the area proposed for receipt of translocated substrates was already being implemented by a conservation organisation under a current planning permission.

- 4.11.58. The Applicant considered that while an existing scheme was indeed in place for the compensation area at Mucking Landfill, it would deliver demonstrably and significantly reduced ecological benefits compared with the compensation proposals put forward in relation to Tilbury2. Thus the requirements of the criterion proposed by NE would be secured [[REP6-015](#)].
- 4.11.59. NE maintained its views about the appropriateness of the proposed site at Mucking Landfill at the end of the examination [[REP7-022](#)]. However in its SoCG, NE agreed that given there is no alternative to the construction footprint presented in the ES documents, some off-site compensatory provision of replacement terrestrial habitats would be required if the project was to achieve no net loss of biodiversity interests. It agreed that the proposed compensation site at Mucking Landfill met the Applicant's own criteria and was appropriate in terms of its specific location and its position within the wider landscape [[REP7-012](#), Appendix 5].

Significance of the River Frontage

- 4.11.60. There is 4.4ha of intertidal mudflat and coastal saltmarsh within the Order limits which forms part of such a feature extending on both sides of the application site [[APP-031](#), Table 10.49]. Very little vegetation is present, and the proposed loss of habitat from the foreshore within the Order limits would amount to 0.0355ha³¹, arising from piling to construct the jetty and other marine engineering operations. The Panel does not consider this to be significant.
- 4.11.61. However, the habitat value of this river frontage lies mainly in the biomass of benthic macroinvertebrates, on which wading birds may forage. NE's view was that this resource is potentially functionally linked land to the Thames Estuary and Marshes SPA/Ramsar site. As is explained in detail in considering HRA matters in Chapter 5 of this report, NE was unable to agree that an adverse effect on integrity can be ruled out in terms of effects from noise, dredging and water quality, and in combination effects. Provided suitable mitigation works were identified by the Applicant though, NE advised it was not pursuing an insurmountable objection with regards to impacts on European sites and that there should not be a need to proceed to stage 3 or 4 of HRA [[REP6-007](#)].

³¹ 0.0315ha lost permanently, and 0.004ha taken temporarily during construction [[REP2-007](#), Table 1]

Cumulative Effects

- 4.11.62. The consideration of the cumulative impacts of the proposed development together with other projects in the vicinity, including TEC and LTC, is set out in section 4.23. NE's view was that the cumulative effect of these projects presents a significant threat to the remaining invertebrate resource of the Tilbury area. It maintained throughout the examination that the Applicant could do more to assess the cumulative impacts, particularly quantitatively, by accessing other sources of data [[REP5-061](#)].
- 4.11.63. For reasons explained in section 4.23, the Panel considers the Applicant has adopted a reasonable approach to assessing cumulative impacts in using material available from other projects on a reliable basis. Keeping future projects under review is an important element of the Applicant's approach, and the monitoring arrangements in the OMP [[REP6-026](#)], secured through requirement 11, would therefore be essential to provide this assurance.

Conclusions

- 4.11.64. Avoidance of impacts is the first principle of the mitigation hierarchy and despite representations that insufficient regard had been taken by the Applicant to the areas of most significant habitats within the Order limits, the Panel considers it is difficult to see how the development proposals for the port on the Tilbury2 site could be laid out in any other way.
- 4.11.65. Paragraphs 5.1.9 to 5.1.15 of the NPSP set out the need to ensure appropriate weight is attached to sites of international, national and local importance, as well as to protected species, habitats and species of 'principal importance' (further to the NERC Act) and to biodiversity and geological interests in the wider environment. The Applicant's case is that impacts on biodiversity, ecology and nature conservation interests on the Tilbury2 site are an unavoidable consequence of delivery of the nationally significant infrastructure project. They are rendered acceptable in policy terms by the overriding national economic need for the Tilbury2 project as set out in the OBC [[AS-016](#)] and the CMAT Position Statement [[REP1-016](#) Appendix B].
- 4.11.66. Where significant harm cannot be avoided, then the NPSP expects appropriate compensation measures should be sought. The Applicant has committed to significant mitigation and compensatory measures as set out in the CEMP [[REP6-008](#)], OMP [[REP6-026](#)], LEMP [[REP6-041](#)] and the EMCP [[REP6-011](#)], all of which would be secured as certified documents in Schedule 11 of the draft DCO. The Applicant accepted, as set out in the ES [[APP-031](#)], that despite such measures there would still likely be a net negative residual effect on ecology during construction. However, during operation the magnitude and significance of residual adverse effects (including those deriving from habitat lost as a result of construction) would gradually diminish as the on and off-site compensation measures matured and became of enhanced value for target species.

- 4.11.67. In most circumstances, planning policy encourages the reuse of previously developed or brownfield land (for example paragraph 117 of the NPPF) of which historically the Thames Gateway has had a considerable stock. Unfortunately, what is a brownfield redevelopment opportunity in one respect is also a resource for biodiversity in another. In the Panel's view, there is no dispute about the national importance of the OMHPDL, centred on the Lytag Brownfield LoWS. In the case of locally designated sites such as non-statutory LoWS, the NPSP states that while decision-makers should give these due consideration, "*such designations should not be used in themselves to refuse development consent*". The Panel notes the intention stated by NE to designate the Lytag Brownfield LoWS as a SSSI in due course, but the factual position is that at the close of the examination this site remained a LoWS.
- 4.11.68. Even without the steps taken by the Applicant to provide for off-site compensation for the loss of OMHPDL centred on the Lytag Brownfield LoWS, the NPSP leads to a conclusion that the loss of the LoWS in itself would not be a reason to refuse the application for development consent at Tilbury2.
- 4.11.69. However, the Applicant has taken the steps required by paragraph 5.1.8 of the NPSP to provide appropriate compensation measures. The Panel concludes that the off-site proposals at Paglesham would provide suitable compensation for coastal floodplain grazing marsh, scrub and reptiles. Whilst there is acknowledged doubt about the likely success of recreating significant areas of OMHPDL off-site at the Mucking Landfill, in the Panel's view this site offers a reasonable prospect of doing so.
- 4.11.70. In relation to the intertidal mudflat, the actual loss of habitat within the Order limits would be de minimus in the Panel's view, though the Panel understands the view of NE that on a precautionary basis it considers an AEOI cannot be ruled out at this stage as considered in detail in Chapter 5 of this report.
- 4.11.71. For these reasons, the Panel concludes that the loss of OMHPDL from the centre of the application site would weigh against the proposed development, but that the requirements of the NPSP on the Applicant to put forward proposals to mitigate adverse impacts arising from the Tilbury2 application on biodiversity, ecology and nature conservation interests have been met. The Panel concludes therefore that overall biodiversity, ecology and nature conservation are not matters which should weigh against the Order being made.

4.12. CLIMATE CHANGE ADAPTATION

Policy Background

- 4.12.1. The NPSP section 4.13 sets out how the potential impacts of climate change should be taken into account using the latest available UK

Climate Projections. It then states that appropriate mitigation or adaptation measures should be included in the ES.

- 4.12.2. At paragraph 4.13.6 the NPSP states that *"New port infrastructure will typically be long-term investments which will need to remain in operation over many decades, in the face of a changing climate. Consequently, applicants must consider the impacts of climate change when planning the location, design, build and operation of new port infrastructure."*
- 4.12.3. The NPSP at paragraph 4.13.11 states that *"The decision-maker should satisfy itself that there are not critical features of the design of new ports infrastructure which may be seriously affected by more radical changes to the climate beyond that projected in the latest set of UK Climate Projections, taking account of the latest credible scientific evidence on, for example, sea level rise (e.g. by referring to additional maximum credible scenarios from the Intergovernmental Panel on Climate Change or EA) and that necessary action can be taken to ensure the operation of the infrastructure over its estimated lifetime."*

Applicant's Approach

- 4.12.4. The method of assessment, mitigation, compensation measures and predicted effects relevant to climate change adaptation are summarised in section 4.13 dealing with Flood Risk and Hydrology, and are not repeated here.

Issues Arising During the Examination

- 4.12.5. In its LIR GBC highlighted the need for designs to be resilient to the effects of climate change through providing protection against flood risk, where relevant [[REP1-056](#)].
- 4.12.6. TC only referred to climate change more generally in relation to biodiversity interests [[REP1-101](#)].
- 4.12.7. The EA raised the matter of climate change allowance in both its relevant and written representations [[RR-017](#) and [REP1-044](#)] in relation to breach modelling within the flood risk assessment (FRA). The Panel has assessed this matter in detail in the Flood Risk and Hydrology section of this chapter, and summarise the main points relating to climate change here.
- 4.12.8. The flood defences bordering the river Thames in the Tilbury2 site are currently considered to be in very poor condition. Following a discussion at the ISH on 19 April 2018, the Applicant submitted a note on the interaction of Tilbury2 and river Thames flood defences [[REP3-024](#)]. Where the proposed works directly impact on the flood defence and it requires replacement, this would be raised to meet the current climate change predictions, mitigating the need for the EA to undertake further raising works in the short term at this location.
- 4.12.9. The EA considered the submitted Level 3 FRA [[APP-083](#)] did not provide a suitable basis for assessment of the flood risks arising from the

proposed development. In the EA's view alternative climate change allowances should be considered to ensure that the correct flood risk impacts over the lifetime of the proposed development are known.

- 4.12.10. In response, the Applicant submitted an addendum to the Level 2 FRA at Deadline 1 [[REP1-014](#)]. The EA stated that: "... We are also satisfied with the approach taken regarding climate change allowances" [[REP2-014](#)].
- 4.12.11. As a statement of the position at the end of the examination in the SoCG between the Applicant and the EA at Deadline 7, the EA confirmed acceptance of the FRAs, and also stated "...that Tilbury2 is not considered 'Safety Critical Infrastructure' and therefore it is not appropriate to apply the NPSP H++ climate change guidance to this scheme. This has been clarified in the addendum to the FRA." [[REP7-012](#) Appendix 4].

Conclusions

- 4.12.12. The Panel considers that the Applicant has considered climate change adaptation through the design and construction of the proposed development. The main issue relevant to climate change is the potential for increased flood risk, particularly given the water environment in the vicinity of the proposed development.
- 4.12.13. As discussed in section 4.13, by the close of the examination the Applicant had satisfied the EA that appropriate mitigation of flood risk would be possible on this site, with the caveat that the agreed protective provisions were included in the DCO (Schedule 10 Part 3).
- 4.12.14. The Panel concludes that the risks of flooding and climate change adaptation have been adequately addressed and considered by the Applicant in accordance with section 4.13 of the NPSP.
- 4.12.15. In the light of this, the Panel concludes that climate change is not a matter which weighs against the Order being made.

4.13. FLOOD RISK AND HYDROLOGY

Policy Background

- 4.13.1. Section 5.2 of the NPSP requires that all applications for port development of 1ha or greater in Flood Zone 1 and all proposals for projects located in Flood Zones 2 and 3 should be accompanied by a flood risk assessment (FRA). This should identify and assess the risks of all forms of flooding to and from the project and demonstrate how these flood risks will be managed, taking climate change into account.
- 4.13.2. In determining an application for development consent, the decision-maker should be satisfied that, where relevant:

- the application is supported by an appropriate FRA;

- the Sequential Test has been applied as part of site-selection, as appropriate;
- the proposal is in line with any relevant national and local flood risk management strategy;
- a sequential approach has been applied at the site level to minimise risk by directing the most vulnerable uses to areas of lowest flood risk;
- priority has been given to the use of sustainable drainage systems (SuDS) and the requirements of applicable national standards have been met; and
- in flood risk areas the project is appropriately flood resilient and resistant, including safe access and escape routes where required, and that any residual risk can be safely managed over the lifetime of the development.

Applicant's Approach

- 4.13.3. Chapter 16 of the ES deals with Water Resources and Flood Risk and therefore covers this NPSP assessment topic [[APP-031](#)].
- 4.13.4. The assessment is based on a detailed review of the relevant baseline data which includes existing surface water features, surface and groundwater quality and abstractions, groundwater sensitivity and vulnerability. This has been supplemented by the results of a topographical survey and a number of technical assessments. The nature of the proposed development means that it would interact with the hydrodynamic and sedimentological regime of the river Thames to some degree. Hence, a modelling study has been undertaken by HR Wallingford to investigate the effects of the proposed development on the physical processes of the estuary regime [[APP-089](#)].
- 4.13.5. All of the land within the proposed Order limits (including the ASDA roundabout junction and the infrastructure corridor) is within the high risk Flood Zone 3(a) defined as having a 1 in 200 or greater chance of flooding each year from the sea. However, the site benefits from existing tidal defences adjacent to the north bank of the river Thames which provide protection to a minimum 1 in 1000 year tidal event.
- 4.13.6. Assessed against the Flood Risk Vulnerability Classification in Table 2 of Planning Practice Guidance, the proposed uses and operations would be defined as 'water-compatible development'. Applying the proposals against the Flood Risk Vulnerability and Flood Zone Compatibility matrix in Table 3 the proposed development would be 'appropriate' to the flood zone, and the Sequential Test is also required.

Level 2 Flood Risk Assessment

- 4.13.7. A scoping Level 2 FRA identified that a risk exists for the proposals with regard to tidal, groundwater, fluvial and pluvial flooding. In addition, climate change has been considered to have significant influence on the future flood risk at the Tilbury2 site if defences were breached. There is also an interaction with the existing foul water system [[APP-086](#)].

- 4.13.8. Risk of groundwater flooding is considered to be moderate during the construction phase and low during the operational phase of the proposed development. This is because a shallow perched water table is present at the Tilbury2 site and thus there is the potential for water ingress during excavation works. It is proposed that any groundwater abstraction required would be addressed through the EA's protective provisions in the draft DCO, as the DCO itself seeks to disapply the need to obtain an abstraction licence.
- 4.13.9. Fluvial flood risk is considered to be low/moderate given that the streams in the area have a small catchment such that no flood zones have been designated by the EA. Moreover, there have been no historical fluvial incidents within the proposals or surrounding land.
- 4.13.10. Pluvial flood risk is considered to be moderate since the proposals would be mainly covered by hardstanding in addition to road and railway links. This would cause an increase in run-off and an increase in the associated flooding risk. Surface water attenuation and storage in the form of SuDS have therefore been included as part of the Drainage Strategy [[APP-090](#)].
- 4.13.11. The risk of flooding caused by overwhelmed sewer systems is considered to be low. Nevertheless, Anglian Water requested that a number of actions should be taken to ensure that the existing foul water system would not be negatively impacted by the proposals. This would be managed through Anglian Water's protective provisions in the draft DCO.
- 4.13.12. Tidal flooding risk is recognised to be high. Although the proposals are protected by tidal defences for events of up to 1:1,000 years probability of occurrence, a residual risk of breach and/or overtop of the defence walls might still occur.

Level 3 Flood Risk Assessment

- 4.13.13. Since the scoping Level 2 FRA identified that tidal flooding is considered to be high, the Applicant proceeded to carry out a site specific quantitative Level 3 FRA. This considers both the impacts of flood risk on the proposals, and the impacts of the proposed development on flood risk to third party land arising from a failure of flood defences during an extreme tidal event. This is referred to as a breach assessment and is informed through hydraulic modelling of the depths, speed and duration of flooding that could result from a breach in the existing flood defences located along the river Thames frontage. The FRA also considers the implications for surface water flooding as well as flood risk from groundwater [[APP-087](#)].
- 4.13.14. In order to determine the changes in the flood risk associated with the proposed development, the FRA considers two scenarios: existing (baseline) and post development breach. For both scenarios the following simulations have been considered of tidal flood events with return periods of:

- 1 in 200 years (present day 2017);
- 1 in 200 years (with a climate change allowance to 2117);
- 1 in 1,000 years (present day 2017); and
- 1 in 1,000 years (with a climate change allowance to 2117).

- 4.13.15. For the majority of the Tilbury2 site, the results indicate that change to the residual risk on-site as a result of the proposed development would be positive. This would be a reduction in flood depth, which is reflective of the proposed increase in site levels compared to the existing levels, or neutral where there would be no change in flood depth from a future breach. Some localised areas within the proposed CMAT and Ro-Ro storage areas of the Tilbury2 site are shown to have a slight increase in flood depth as a result of the proposed development. However, these small parts of the site which are shown to have an increase in flood risk are classed as either 'less vulnerable' or 'water compatible' which is an appropriate land use for Flood Zone 3.
- 4.13.16. To manage the residual risk to the site itself, the Applicant would develop a Flood Emergency Plan. This would establish a procedure to reduce the potential for future users of the site being exposed to the flood hazard as a result of a potential breach on the site.
- 4.13.17. The model results for the areas off-site indicate that there might be a change to the residual risk as a result of the proposed development. For the large majority of these areas (Tilbury town and the flood storage areas) the change would be positive with a slight reduction in flood depth, or neutral with no change in flood depth.
- 4.13.18. The exception is a field located to the east of Fort Road which is shown to experience a minor increase in flood depth (up to 140 mm). Nevertheless, the potential increase in flood depth within this field is not considered significant due to the land use and pre-development flood levels. Given the very localised nature of the minor increase, the predicted change may be a result of residual uncertainty in the model. The Applicant therefore does not consider mitigation measures to be necessary for any off-site areas.

Issues Arising During the Examination

- 4.13.19. The most significant issues were raised by the EA in both its relevant and written representations [[RR-017](#) and [REP1-044](#)].

Flood defences

- 4.13.20. The flood defences bordering the river Thames in the Tilbury2 site are currently considered to be in very poor condition. This means that part or all of the defences have ceased to function effectively, and the EA's Thames Estuary 2100 Plan (an aspirational document rather than definitive policy), has assessed these defences as requiring significant remedial works or replacement within 3 years. Whether the defences are raised in the future will be dependent on a cost benefit analysis and the required funding becoming available. If the defences are able to be

raised, the proposed development would be protected from flooding during the 1 in 1000 annual probability event in line with climate change.

- 4.13.21. Following a discussion at the ISH on 19 April 2018, the Applicant submitted a note on the interaction of Tilbury2 and river Thames flood defences [\[REP3-024\]](#). Where the proposed works directly impact on the flood defence which requires replacement, the defence would be raised to meet the current climate change predictions, mitigating the need for the EA to undertake further raising works in the short term at this location. Any agreed maintenance for the remaining length of flood defence that is not affected by the Tilbury2 proposal would be undertaken between the EA and the Applicant in its role as landowner, and not as the proposed developer of the Tilbury2 site, and would be secured through the EA's protective provisions in the draft DCO, Schedule 10 Part 4 [\[REP7-012 Appendix 4\]](#).
- 4.13.22. Another option for managing this risk in the future is to replace the existing Thames Barrier and the Tilbury area is identified in the TE2100 Plan as a potential location for a new barrier. It would require at least 6ha of land on the north bank and could potentially have an impact on the future operations at the port. However, it appears that a final decision on the location of a future barrier will not be taken until 2050, and in the meantime a memorandum of understanding has been agreed between the Applicant and the EA [\[REP7-012 Appendix 4\]](#).

Flood Risk Modelling

- 4.13.23. The EA considered that the submitted Level 3 FRA [\[APP-083\]](#) did not comply with the requirements set out in the Flood Risk and Coastal Change section of Planning Practice Guidance³² and did not therefore provide a suitable basis for assessment of the flood risks arising from the proposed development. The main deficiencies in the EA's view were:
- breach flood modelling has been undertaken to determine the flood levels on the site and the rest of the Tilbury flood compartment, both for the existing baseline scenario and the proposed development; the use of the EA's new flood levels and breach modelling guidance might result in different breach modelling outputs;
 - alterations to the flood depths of less than 100mm deep as a result of the proposed works have been discounted and should be shown;
 - the modelling shows that the proposed works would reduce the flood depths in Tilbury town but would increase the flood depths in two fields, one to the east of Fort Road and one to the north west of Tilbury Fort; specific flood levels and flood depths are required;
 - the Tilbury East and West flood storage area embankments should be included within the breach model;
 - the proposed new and replacement culverts should be clearly represented in the modelling in order to accurately assess the flood risk to Tilbury and other offsite areas;

³² Gov.uk website

- final culvert sizes should be determined at this stage, designed for both fluvial and tidal flood risk to show that they are the largest possible diameter of culverts that will fit the watercourse;
- alternative climate change allowances should be considered to ensure the correct flood risk impacts over the lifetime of the proposed development are known;
- site levels, finished floor levels and flood depths in relation to each of the proposed buildings are required; and
- the Flood Emergency Plan has not been provided, and nor have the location or details of the proposed refuge area in the upper levels of ancillary buildings in the event that a full evacuation cannot take place.

4.13.24. In response, the Applicant submitted an addendum to the Level 2 FRA at Deadline 1 [\[REP1-014\]](#). The EA stated that: *“we believe from our initial assessment of the documentation that many of the outstanding issues in relation to flood risk have been addressed by this document. We believe that the applicant has now demonstrated they have undertaken appropriate flood risk modelling and shown the impact of the offsite flooding from the development. The breach modelling has included the Tilbury Flood Storage Area Embankments as we requested. We are also satisfied with the approach taken regarding climate change allowances”* [\[REP2-014\]](#).

4.13.25. Where matters were not specifically addressed in the addendum, such as the Flood Emergency Plan, they would be secured satisfactorily in the Panel’s view by requirement 8 of the draft DCO which requires construction and operation of the authorised development in accordance with the FRAs and in the protective provisions for the EA in Part 4 of Schedule 10 of the draft DCO.

Flood Risk Management

4.13.26. Drainage from the proposed infrastructure corridor would be to the East Tilbury Dock Sewer. However, this is considered inadequate to accommodate additional flows because of the poor footing conditions of a retaining wall along Ferry Road. Improvement works would need to be included within the permit applications to the EA for the works to the main rivers.

4.13.27. The application proposes a link bridge from the new jetty over existing flood defences. The design would need to allow for sufficient space for future maintenance and upgrades of the defences, ensuring they continue to provide sufficient protection to the site. In addition three crossings of main rivers on the site are proposed.

4.13.28. The EA suggested a requirement could be included in the DCO in relation to flood defences and watercourses for the submission and approval of detailed construction plans. This has been met however by the agreed protective provisions for the EA at Part 4 of Schedule 10 of the draft DCO [\[REP7-012 Appendix 4\]](#)

Disapplication of legislation

- 4.13.29. In article 3 of the draft DCO the Applicant is seeking disapplication of certain legislation within the EA's remit:
- the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 and 6a of Schedule 25 of the Water Resources Act 1991;
 - Regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016 in relation to the need for flood risk activity permits;
 - the Thames Barrier and Flood Prevention Act 1972, which relates mainly to the construction of the existing Thames Barrier;
 - the provisions of any byelaws made under s66 (powers to make byelaws) of the Land Drainage Act 1991; and
 - s24 of the Water Resources Act 1991 (abstraction licensing).
- 4.13.30. Disapplication of this legislation can only take place with consent from the EA under s150 PA2008. The EA is content with this having agreed satisfactory protective provisions at Part 4 of Schedule 10 of the draft DCO [[REP7-012](#) Appendix 4]. The exception is the disapplication of s24 Water Resources Act 1991 for reasons which are explained in section 4.14 of this report dealing with water quality and resources.

Conclusions

- 4.13.31. Flood Risk Assessments have been carried out for the proposed development, and with the addendum to the Level 3 FRA, are acceptable to the EA.
- 4.13.32. Requirement 8 of the draft DCO requires that authorised development must be constructed and operated in accordance with the FRAs which include the addendum to the Level 3 assessment submitted at Deadline 1 and which is itself intended to be a certified document.
- 4.13.33. TC stated in its LIR that the Tilbury2 development cannot be located elsewhere on a reasonably alternative site at a lower risk of flooding. The proposed use is a water-compatible development functionally required to be located next to the river Thames and its associated shipping channel. The Council therefore considered the proposals satisfy the Sequential Test. As the development proposals are water-compatible development located in flood zone 3 the Exception Test is not applicable. All elements relating to surface water flood risk have now been addressed [[REP1-101](#)].
- 4.13.34. The agreed protective provisions for the EA at Part 4 of Schedule 10 of the draft DCO would provide for the EA's approval to plans of specified works such as flood defences and watercourses prior to construction.
- 4.13.35. Similarly, Part 5 of Schedule 10 of the draft DCO would provide protective provisions for TC in its capacity as Local Lead Flood Authority to approve plans of specified works such as culverts and bridges in relation to ordinary watercourses. At the end of the examination, the Council confirmed that the protective provisions were now substantially

agreed with the Applicant, although some minor differences over largely drafting issues remained [[AS-087](#)]. The Panel sees no need to propose any further changes to these protective provisions contained in Part 5 of Schedule 10 of the draft DCO.

- 4.13.36. At the end of the examination, the EA's position was that the agreed protective provisions contained in Part 4 of Schedule 10 of the draft DCO would enable it to give consent under s150 PA2008 in relation to legislation within its remit referred to in article 3 of the draft DCO, apart from the restrictions on abstractions under the Water Resources Act 1991. Accordingly, the Panel proposes to amend article 3 of the draft DCO to remove the disapplication of s24 of the Water Resources Act. Of course it may be that agreement has been reached between the Applicant and the EA on a revised form of protective provisions and notified to the SoS following the close of the examination which would enable the EA to agree to this disapplication, in which case these provisions would take precedence.
- 4.13.37. Apart from this outstanding matter, the Panel concludes 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 which weigh against the Order being made.

4.14. WATER QUALITY AND RESOURCES

Policy Background

- 4.14.1. Section 5.6 of the NPSP requires that where the project is likely to have effects on the water environment, the applicant should undertake an assessment of the existing status of, and impacts of, the proposed project on water quality, water resources and physical characteristics of the water environment. Activities that discharge to the water environment are subject to pollution control.
- 4.14.2. The decision-maker will generally need to give impacts on the water environment more weight where a project would have adverse effects on the achievement of the environmental objectives established under the Water Framework Directive (WFD). Where such adverse impacts are likely to arise, they should be mitigated through attaching appropriate requirements to any development consent.

Applicant's Approach

- 4.14.3. Chapter 16 of the ES deals with Water Resources and Flood Risk and therefore covers this NPSP assessment topic [[APP-031](#)].
- 4.14.4. The Tilbury2 site is relatively flat with elevations between approximately 2.5m and 3.0m AOD. The topography of the infrastructure corridor is influenced by the presence of the mainline railway. Specifically, the western portion of this area is characterised by a ridge which forms the

southern boundary of the railway with elevations ranging between approximately 3.5m AOD and 4m AOD.

- 4.14.5. The superficial deposits at the main Tilbury2 application site and surrounding land are mainly alluvium, and are defined as a secondary aquifer. The bedrock geology underneath the application site and surrounding land comprises Seaford Chalk Formation and Newhaven Chalk Formation (undifferentiated) classified as a principal aquifer. Under the WFD, this was defined in 2015 as having a 'Good' chemical and quantitative status which should be maintained until 2027. Thanet Sand Formation and a small area of Lambeth Group are located approximately 1.5km to the north of the proposals.
- 4.14.6. There are no Source Protection Zones or groundwater abstractions within 1km of the application site, but there are three licensed groundwater abstractions within the application site relating to the same borehole.
- 4.14.7. The main hydrological feature in the area is of course the river Thames and the section of it which flows adjacent to the application site (named as Gravesend Reach) is strongly affected by the prevailing tides. All the drains and watercourses present in the area are likely to ultimately discharge into the river Thames. The land drainage around the application site is comprised of two systems, split into eastern and western components by the A126:
- the eastern side of Tilbury, including the application site, drains into the Chadwell Cross Sewer, whilst the Pincocks Trough Sewer drains the upper catchment; they discharge into the river Thames via gravity and pumping at Worlds End;
 - water levels in these watercourses are heavily affected by the tide, with tide locked conditions preventing gravity outflow, and resulting in dependency on pumping capacity; and
 - land to the west of the application site is drained via the East Tilbury Dock Sewer and discharges into the river Thames via gravity at Hotel Gardens (also known as Chadwell Sluice).
- 4.14.8. Construction activities have the potential to impact on the water environment through the addition of new contaminant sources and the creation of new pathways. Dredging and piling works proposed to be undertaken in the river Thames for the installation and operation of the new Ro-Ro berth might cause deterioration of the river water quality by increasing sedimentation and turbidity of the river and mobilising contaminants, if present. Given that the river Thames is a sensitive receptor, as discussed in section 4.3 a WFD compliance assessment has been undertaken to determine the extent of any such deterioration.
- 4.14.9. It is anticipated that there would be negligible change and thus impact on the groundwater recharge during the construction works in the southern part of the Tilbury2 site. Within the northern part of the site and at the infrastructure corridor, where no or only minimal hardcover is currently present, compaction caused by vehicles used during the construction phase may reduce the infiltration ability of the natural ground materials

and cause a reduction in the recharge to groundwater. However, again it is likely that the construction works would cause negligible impact on the recharge.

- 4.14.10. It is likely that a proportion of the on-site drains discharge into the off-site drainage network. During the operational phase, this could therefore potentially increase the flow in those drains and streams which are downstream of the proposed development. However, given that any additional flow would likely discharge into the river Thames, such additional flows are likely to cause only a minor adverse impact on the off-site drainage network flow.

WFD assessment

- 4.14.11. A WFD assessment is presented in Appendix 16.C to the ES [[APP-088](#)]. Under the WFD, activities and schemes must not cause deterioration in water body status or prevent a water body from meeting good ecological or potential status. Fifteen watercourses were identified on site, three of which were 'main' river and the rest were part of a wider ditch network. Three ponds were also located within the scheme boundaries. All these watercourses and ponds were considered in the WFD assessment.
- 4.14.12. Impacts of the proposed development on the various water elements were identified and appropriate mitigation measures developed. The construction of the new linkspan from the jetty to the main site would impact a small area of the sensitive habitat saltmarsh. The assessment of the hydrodynamic modelling, sediment sampling, underwater noise modelling, site survey, and desk study all suggest that the proposed activities would have negligible to minor impact on the waterbody quality elements. They would not reduce the status of any quality elements, and thus do not pose a risk for status deterioration.
- 4.14.13. However, negative impacts would be offset by the removal of the Anglian Water jetty and are therefore not considered significant. In the unlikely case that extensive maintenance dredging takes place at all, or at most, locations on the Thames at the same time, and within peak fish migration season, this could result in minor impacts to fish and water quality. This scenario is considered highly unlikely by the Applicant, partly because of dredging vessel availability. Routine coordination with the PLA should militate against this risk. Cumulative impacts are unlikely to result in water body status deterioration.
- 4.14.14. As a consequence of the mitigation measures proposed, there would be an increase in pond area and ditch length which would more than compensate for any loss from the proposed development. A number of channel realignments are proposed as a part of the infrastructure corridor, but the additional length of channel would exceed that lost. Some culverts in the infrastructure corridor would be replacements or extensions, but new culverts associated with road or rail crossings are also proposed. No deterioration of the quantitative or qualitative elements of groundwater is anticipated.

- 4.14.15. Overall, the impacts on terrestrial, transitional and groundwater bodies from the proposed development are considered not to cause deterioration in water body status or critical habitats which are not able to be mitigated, and thus the Tilbury2 development is considered to be WFD compliant.

Construction Phase Mitigation

- 4.14.16. Mitigation measures to reduce potential impacts to the groundwater/surface water quality would include:
- implementation of the recommendations of the WFD assessment;
 - dredging to be controlled through provisions of the draft DCO (the DML and protective provisions);
 - implementation of the recommendations of the Level 2 and Level 3 FRAs secured by the draft DCO; and
 - inclusion of measures in the CEMP, compliance with which would be secured by requirement 4 of the draft DCO.
- 4.14.17. On the basis of these considerations and the importance of the hydrological receptors, the ES concludes a potential negligible impact on all hydrological receptors.

Operational Phase Mitigation

- 4.14.18. In addition to those listed for the construction phase, mitigation measures to reduce potential impacts to the groundwater/surface water quality would include:
- implementation of a range of SuDS techniques set out in the Drainage Strategy [[APP-090](#)] which can include ponds, attenuation tanks, bio-retention systems, filter drains, swales & ditches, trees and green roofs;
 - designing the infrastructure corridor with swales to improve water quality through filtration, absorption, sedimentation and biological treatment of contaminants; and
 - compliance with the OMP which would be secured by requirement 11 of the DCO.
- 4.14.19. Based on the importance of the hydrological receptors, the ES concludes that potential impacts would be negligible, except for the river Thames where the impact is considered to be minor.

Issues Arising During the Examination

- 4.14.20. The most significant issues were raised by the EA in both its relevant and written representations [[RR-017](#) and [REP1-044](#)].
- 4.14.21. Potential contamination of the site and identifying sources, pathways and receptors of potentially unacceptable risks to water quality needed to be properly investigated. The EA suggested a possible requirement for this covering a site investigation, risk assessments, an options appraisal and remediation strategy, to be followed up with a verification plan to

demonstrate that the works set out in the remediation strategy were complete and identifying any requirements for longer-term monitoring. In the event, these matters would be secured by requirement 4 in the draft DCO, to ensure that the authorised development must be constructed in accordance with the CEMP, together with the protective provisions for the EA at Part 4 of Schedule 10.

- 4.14.22. The EA identified a number of shortcomings with the WFD assessment such as:
- priority and priority hazardous substances are not considered;
 - the need for additional water sampling for WFD pollutants in the event that there are risks to water quality whilst undertaking dispersive dredge techniques; and
 - if a new power station is built adjacent to the proposed Tilbury2 development there would be cooling water effluents in close proximity to the port's maintenance dredging operations, with possible thermal uplifts.
- 4.14.23. The Applicant explained the reasoning for not including priority and priority hazardous substances at the ISH on 19 April 2018 [[REP3-030](#)]. The DML would include provisions for a construction method statement, with additional sediment sampling if necessary, which would cover hazardous substances if appropriate, to be submitted for approval of the MMO, following consultation with the EA. The EA accepted that cumulative effects of Tilbury2 and the proposed TEC, including potential effects to water quality, have been considered as far as possible with the existing information at this stage. In the light of these reassurances, the EA agreed that the WFD assessment was acceptable and that the proposals have been shown to be consistent with the requirements of the WFD [[REP7-012](#) Appendix 4].
- 4.14.24. In article 3 of the draft DCO the Applicant is seeking disapplication of certain legislation within the EA's remit which under s150 PA2008 can only take place with consent from the EA. The EA was content with this, having agreed satisfactory protective provisions at Part 4 of Schedule 10 of the draft DCO [[REP7-012](#) Appendix 4]. The exception was the disapplication of s24 Water Resources Act 1991 concerning water abstraction licences issued by the EA [[REP7-041](#)]. The EA's reasons included that:
- it had insufficient information about the proposed abstractions required at the site, and whether there would be a requirement for new consumptive abstraction and/or dewatering activities to enable construction activities to take place;
 - there was no assessment in the WFD assessment of the potential impact to the quantitative status of the groundwater body from abstraction, only comments on remedial measures to prevent deterioration of water quality from the impact of piling and surface water contaminant runoff;

- the current status of the chalk groundwater body is poor, based on a fully licenced scenario within the groundwater body being 150% of annual recharge; on this basis no new consumptive groundwater would currently be available for licencing; and
- abstraction is currently being reduced to return the status to good in accordance with WFD legislation; disapplying s.24 would therefore mean that the WFD status and legislation could potentially be ignored, resulting in further deterioration of the groundwater body [[REP6-041](#)].

4.14.25. The Panel's conclusions on this matter are set out in paragraph 4.14.32 below.

4.14.26. Although generally content with the handling of water resources matters in the application, TC did have a number of outstanding points in relation to water quality, particularly with regard to the proposed Ro-Ro terminal and the access road [[REP1-101](#)]. The Applicant's review of pollution controls available for use in the Ro-Ro area ruled out the majority of treatment methods as not being deliverable based on technical limitations. The Council generally agreed with this assessment and on balance did not maintain an objection to the scheme on this basis [[REP7-012](#) Appendix 1].

Conclusions

4.14.27. The assessments provided suggest that the proposed development would be WFD compliant. The Panel agrees that with the use of appropriate requirements and mitigation the proposed development at Tilbury2 should not cause deterioration to water body status and that there would be mechanisms in the draft DCO through the OMP in requirement 11 and the DML in Schedule 9 to secure this. A Drainage Strategy has been developed for the site [[APP-090](#)] and secured by requirement 4 of the draft DCO. It includes the adoption of SuDS techniques to mitigate the impact on the current run-off regime and would limit flows to greenfield run-off levels when discharging to existing watercourses, excluding large tidal water bodies, and also takes into account climate change.

4.14.28. Pollution prevention and mitigation measures to be implemented are provided in the CEMP [[REP6-008](#)] and OMP [[REP6-026](#)] which are secured through requirements 4 and 11 of the draft DCO. These were agreed with the EA [[REP7-012](#) Appendix 4] and TC [[REP7-012](#) Appendix 1].

4.14.29. Further controls to protect water quality would be secured through condition 3 in the DML through the establishment of an exclusion zone for capital dredging during construction around the area of higher concentration of contaminants.

4.14.30. The CEMP would provide for assessment of the ground conditions to be undertaken in agreement with the EA and TC, with risk assessments, a remediation strategy and verification reports again for their approval. Similarly, no piling may take place without a piling risk assessment first being undertaken and submitted to the EA for approval.

- 4.14.31. Part 4 of Schedule 10 of the draft DCO would require the Applicant to consult the EA before applying to the PLA for dredging consent, and seeking written approval for *inter-alia* drainage works, works affecting the flow, purity or quality of water in any main river or other surface waters or groundwater.
- 4.14.32. As noted in section 4.13 dealing with flood risk, at the end of the examination, the EA's position was that the agreed protective provisions would enable it to give consent under s150 PA2008 in relation to legislation within its remit referred to in article 3 of the draft DCO, apart from s24 of the Water Resources Act 1991 concerning water abstraction licences. The Panel proposes to amend article 3 of the draft DCO to remove the disapplication of s24 of the Water Resources Act. It may be that agreement has been reached between the Applicant and the EA on a revised form of protective provisions and notified to the SoS following the close of the examination which would enable the EA to agree to this disapplication, in which case these provisions would take precedence.
- 4.14.33. The Panel concludes that, provided the mitigation measures discussed above are implemented, potential impacts on water quality and resources are likely to be minor or negligible and thus the Panel judges that these matters would not weigh against the Order being made.

4.15. SOCIO-ECONOMIC IMPACTS

Policy Background

- 4.15.1. The NPSP gives an overview of economic impacts in section 4.3, pointing out that ports enable international trade, including essential imports, and so contribute to enhancing gross national product. They provide opportunities for foreign direct investment. They generate tax revenues for the Exchequer and for local government.
- 4.15.2. At regional and local level, economic benefits from port developments include regeneration and employment opportunities. As commercial developments, ports can also generate agglomeration effects by bringing together businesses, with varying degrees of mutual interaction, and producing economic benefits over and above those reflected in the value of transactions among those businesses.
- 4.15.3. The decision-maker should give substantial weight to the positive impacts associated with economic development, in line with the policy set out in the NPSP.
- 4.15.4. The NPSP in section 5.14 states that the Applicant should consider all relevant socio-economic impacts, which may include:
- the creation of jobs and training opportunities;
 - the provision of additional local services and improvements to local infrastructure, including the provision of educational and visitor facilities;

- effects on tourism;
- the impact of a changing influx of workers during the different construction, operation and decommissioning phases of the infrastructure; and
- cumulative effects – if development consent were to be granted for a number of projects within a region and these were developed in a similar timeframe.

- 4.15.5. The Applicant should consider the existing socio-economic conditions in the areas surrounding the proposed development and how the proposed development's socio-economic impacts correlate with local planning policies.
- 4.15.6. The decision-maker should consider any positive provisions the developer has made through developer contributions and any legacy benefits that may arise, as well as considering any options for phasing development in relation to the socio-economic impacts.
- 4.15.7. The decision-maker should also consider whether mitigation measures are necessary to mitigate any adverse socio-economic impacts of the development.

Applicant's Approach

- 4.15.8. The Applicant addressed socio-economic impacts in the ES [[APP-031](#)] Chapter 7: *Socio-economics*. This chapter states that it should be read in conjunction with the Equalities Impact Assessment [[APP-161](#)].
- 4.15.9. The chapter starts by summarising the regulatory and policy context, both national and local, identifying those regulations and policies that impact on socio-economics.
- 4.15.10. The methodology section outlines the overall approach used, both qualitative and quantitative, the consultation that has taken place, and the study area, together with a more detailed statement of methodology used for assessing impacts.
- 4.15.11. The baseline conditions section describes the existing baseline in terms of: population statistics, gender, ethnicity, country of birth, religion, health, qualifications, skills, economic activity, social grade, deprivation, housing, job seekers and claimants, crime, tourism and business, business and community facilities, open space and Green Belt.
- 4.15.12. The section on scheme design and embedded mitigation states that the proposed development includes a range of embedded environmental measures. Those relating to the effects on socio-economic receptors – business and community, tourism and landowners - are summarised in ES [[APP-031](#)] Table 7.18.

Potential Impacts

- 4.15.13. For the construction period, the Applicant states that predicted significant socio-economic effects would be likely to be associated with employment

impacts and associated gross value added (GVA) impacts in the regional economy, and local skills, training and employment programmes. The Applicant highlighted Tilbury Fort as a specific tourism receptor that would be expected to be affected by the construction phase, most likely by indirect amenity impacts.

- 4.15.14. The Applicant assessed the predicted effects on employment and GVA (in both cases: direct, positive, temporary and moderate effect), and tourism (indirect, negative, temporary and minor/moderate effect).
- 4.15.15. For the operation phase, quantitative predicted socio-economic effects are assessed for one year after initial operation of the development, which is stated to be a 'snapshot' of operational effects of the Port of Tilbury. Qualitative socio-economic effects, such as those impacting on local socio-economic characteristics and receptors outside of the Port itself, are assessed over a period of 15 years after initial operation of the development.
- 4.15.16. The Applicant assesses the predicted effects on:
- GVA (direct, positive, temporary and moderate effect);
 - port volumes and employment (in both cases: direct, positive, permanent, moderate);
 - demographics, deprivation, housing, school capacity and crime (in all cases: indirect, positive, permanent, but negligible).
- 4.15.17. The predicted effects on key tourism and business socio-economic receptors during the operation phase would vary:
- Gravesend Sailing Club, Gravesend Rowing Club and London Thamesport (in all cases: indirect, negative, permanent, and minor);
 - Gravesend-Tilbury ferry service (indirect, positive, permanent, and minor);
 - Tilbury Fort, commercial fishing activity and Thames Ship Repair Service (in all cases: indirect, negative, permanent, but negligible).

Further Mitigation or Compensation

- 4.15.18. The Applicant stated that a range of potential socio-economic mitigation measures have been identified during consultation with specific receptors as summarised in ES [[APP-031](#)] Chapter 7 Table 7.22. These comprise retention of a strip of land along the western boundary to reduce visual impacts on Tilbury Fort, and engagement with the sailing and rowing clubs to agree "good neighbour" operation principles.
- 4.15.19. The Applicant also stated that a Skills and Employment Strategy containing best practice approaches to secure local advertisement of employment and tendering opportunities would be developed. This would be secured through the proposed s106 Agreement with TC [[AS-098](#)], and would include details on the mechanisms the Applicant would use to support local employment, outreach and inclusion [[REP7-025](#)].

Cumulative Impacts

- 4.15.20. The Applicant stated that there would be cumulative socio-economic impacts at a regional level relating to the proposed development and other developments, and these have been assessed qualitatively (ES [[APP-031](#)] Table 7.23).

Applicant's summary of its approach

- 4.15.21. The Applicant provided a summary of its approach in the ES [[APP-031](#)] Table 7.25: Assessment Summary Table. For the construction period, the Applicant assessed the impact on employment and GVA to be direct, positive and temporary, while significance is moderate. The impact on Tilbury Fort is assessed as indirect, negative and temporary, with minor/moderate significance. The impact on other receptors is mostly rated as of negligible or zero significance.
- 4.15.22. For the operation period, the impact on employment, GVA and port volumes is rated as direct, positive and permanent, with moderate significance. The impacts on most other receptors are rated as either indirect, positive or negative and permanent, and with minor or negligible significance.

Issues Arising During the Examination

- 4.15.23. The main issues that arose during the examination were:

- opportunities and benefits; and
- the Skills and Employment Strategy.

Opportunities and benefits

- 4.15.24. In the FWQ [[PD-007](#)], the Panel referred to relevant representations from:
- Essex Chambers of Commerce [[RR-009](#)], which asserted that the proposed development would be of major benefit to exporters and importers after Britain leaves the European Union and would bring major economic benefits to Thurrock and the wider area in terms of job creation and security;
 - ECC [[RR-018](#)], which sought clarification on how the benefits and use of the local supply chain and economy would be realised; and
 - TC [[RR-031](#)], which referred to the opportunities/ benefits arising from the proposed development during construction and operation.
- 4.15.25. At the ISH on 19 April 2018 [[EV-009](#)], the Panel examined:
- opportunities and benefits in Thurrock; and
 - wider opportunities (including the use of the local supply chain and economy and the role of the Essex Employment and Skills Board in shaping local educational offers to meet employers' requirements.
- 4.15.26. During construction, opportunities would derive from a range of skilled and unskilled jobs on site, as well as in the supply chain and local businesses. During operation, there would be job opportunities for running Tilbury2, as well as opportunities for local shops and business

and a wide supply chain. Overall, the GVA impact on the local and wider area would be positive.

- 4.15.27. In the final SoCG between the Applicant and TC [REP7-012 Appendix 1], the policy, methodology, baseline, impacts and mitigation were all shown as agreed. It was also agreed that Tilbury2 was likely to have a positive socio-economic effect for Thurrock, forming a clear narrative across different geographic scales.
- 4.15.28. In the final SoCGs between the Applicant and GBC [REP7-012 Appendix 2] and the Applicant and KCC [REP7-012 Appendix 10], the parties agreed that the proposed development would secure, through both the construction and operational stages, on-going socio-economic benefits and should contribute to sub-regional and regional economic success.

Outline Business Case (OBC)

- 4.15.29. As set out in section 4.2, the OBC [AS-016] follows HM Treasury's Green Book appraisal guidance³³ and is structured against the Treasury's five-case model (strategic, economic, commercial, financial and management). In the strategic case, it outlines the business need for expansion of the existing Port of Tilbury in terms of the need for space in the existing Tilbury port, the need for an expansion in Ro-Ro capacity and the need for expansion in handling capacity for construction material and aggregates in support of an expanding construction market.
- 4.15.30. The OBC sets out an economic case for the proposals, asserting that they do not require public funding, and represent best public value at local, in regional and national levels in terms of investment and socio-economic (employment and GVA) benefits. The economic case also states the contribution the proposed development would make to achieving the objectives set out in the NPSP, and the fact that it would also deliver substantial economic and other benefits.
- 4.15.31. In summary, the economic case is based on the following:
- the existing Port of Tilbury currently contributes GVA of £394 million. This figure would be expected to rise to £492 million when the Port reaches full capacity at the existing site, extending to £562 million with the expansion to Tilbury2;
 - the construction of Tilbury2 would be expected to support between 220 and 270 full time equivalent (FTE) personnel, and over 500 FTEs once operational;
 - the existing Port of Tilbury currently supports 8,600 FTE jobs, which would be expected to rise to 10,800 FTEs when the Port reaches full capacity at the existing site, extending to 11,300 FTEs with the expansion at Tilbury2;
 - Tilbury2 would see total annual cargo increased from 16 million tonnes to more than 18 million tonnes;

³³ HM Treasury, The Green Book: appraisal and evaluation in central government, April 2013.

- employment levels and economic activity would be expected to increase locally, with levels of qualifications and incomes also expected to rise. The Port of Tilbury currently supports a range of training and educational programmes, which would continue to be built upon as part of the Tilbury2 proposals; and
- businesses in Tilbury Town would benefit from increased economic activity, whilst some businesses on the river Thames would benefit from increased shipping movements and ferry passengers.

4.15.32. The Panel finds that the proposed development would secure significant employment opportunities both during construction and operation, as well as wider socio-economic benefits in Tilbury, Essex and Kent.

Skills and Employment Strategy

4.15.33. At the ISH on 19 April 2018 [[EV-009](#)] and in the SWQ on 8 May 2018 [[PD-010](#)], the Panel examined the Skills and Employment Strategy (SES) as a mechanism for maximising the job and skills opportunities to the area.

4.15.34. The Applicant and ECC submitted responses at Deadline 4 [[REP4-020](#), [REP4-015](#)], and at the ISH on 27 June 2018 [[EV-017](#)], the Panel again examined the status of the SES.

4.15.35. In the final SoCG between the Applicant and TC [[REP7-012](#) Appendix 1], the parties agreed that the key principles and overall approach to the SES were robust, proportionate and appropriate to the development proposals. The content and wording of the SES were also agreed between TC and the Applicant. It would be part of the s106 Agreement between the Applicant and TC [[AS-098](#)] as explained in the Applicant's explanatory note [[AS-083](#)].

4.15.36. In the final SoCG between the Applicant and GBC [[REP7-012](#) Appendix 2], the parties have agreed the SES following changes to drafting to make clear that the initiatives in the strategy would include Gravesham and that GBC would participate in the proposed Skills and Employment Forum.

4.15.37. In the final SoCG between the Applicant and ECC [[REP7-012](#) Appendix 3], the parties agreed the SES following a number of revisions to the SES to ensure that the initiatives taken would apply to the wider South Essex area, thus maximising the benefits of the proposed development to skills and employment in south Essex.

4.15.38. The SES would be aimed at maximising the socio-economic benefits of the Tilbury2 proposals by a range of initiatives regarding employment and skills. It would include details on the mechanisms that the Applicant would use to support local employment and inclusion. The strategy accords with paragraph 56 of the NPPF in seeking to ensure that the Applicant and its tenants work with local stakeholders to best realise and maximise the predicted positive impacts of the proposals.

- 4.15.39. The Panel notes that the SES agreed between TC, ECC and GBC would provide a sound strategy for maximising the opportunities from the proposed Tilbury2 development.

Conclusions

- 4.15.40. In conclusion, the Panel finds that the proposed development would secure significant employment opportunities both during construction and operation, as well as bringing wider socio-economic benefits to Tilbury, Essex and Kent. The proposed development would make a strong contribution to the NPSP 3.3.1 *“to encourage sustainable port development to cater for long-term forecast growth in volumes of imports and exports by sea with a competitive and efficient port industry capable of meeting the needs of importers and exporters cost effectively and in a timely manner, thus contributing to long-term economic growth and prosperity”* and *“allow judgments about when and where new developments might be proposed to be made on the basis of commercial factors by the port industry or port developers operating within a free market environment”*.
- 4.15.41. It would also support NPSP 3.3.3: *“to help meet the requirements of the Government’s policies on sustainable development, new port infrastructure should also:*
- *contribute to local employment, regeneration and development;*
 - *ensure competition and security of supply;*
 - *preserve, protect and where possible improve marine and terrestrial biodiversity;*
 - *minimise emissions of greenhouse gases from port related development;*
 - *be well designed, functionally and environmentally;*
 - *be adapted to the impacts of climate change;*
 - *minimise use of greenfield land;*
 - *provide high standards of protection for the natural environment;*
 - *ensure that access to and condition of heritage assets are maintained and improved where necessary; and*
 - *enhance access to ports and the jobs, services and social networks they create, including for the most disadvantaged.”*
- 4.15.42. The Skills and Employment Strategy agreed between TC, ECC and GBC would provide a sound strategy for maximising the opportunities from the proposed Tilbury2 development. However, the SES is part of the s106 Agreement with TC [\[AS-098\]](#), which had not been signed at the end of the examination, so it cannot be accorded any weight. In any event, the Panel concludes that it is not essential to make the proposed development acceptable.
- 4.15.43. Even without the SES, the Panel concludes that the socio-economic benefits would weigh strongly in favour of the proposed development. This is because of the significant number of jobs that would be created during both construction and operation of the proposed development, the enhanced capacity of Ro-Ro and construction aggregates processing and

their support for the economy, the opportunities for local businesses, and the range of other benefits for the local and wider communities.

4.16. CONSTRUCTION AND PILING

Policy Background

- 4.16.1. The NPSP refers to construction within the criteria for good design for port infrastructure at section 4.10. The particular emphasis here is that 'good design' should produce sustainable infrastructure, efficient in the use of natural resources and energy used in its construction and operation.
- 4.16.2. Construction is also referenced within the generic impacts topics of the NPSP.
- 4.16.3. Piling is not specifically referenced in the NPSP, but by association must be considered within the construction phase of the works.

Applicant's Approach

- 4.16.4. Topic specific chapters of the ES [[APP-031](#)] set out the environmental impact assessments of the construction and operation effects of the proposals.
- 4.16.5. The Applicant's assessment of the effects of the proposed development in terms of construction is contained within ES Chapter 5: Description of the Proposals [[APP-031](#)]. The effects are considered in terms of the Construction Methodology; Overview of Construction Activities; Construction Programme; and Maintenance.

Method of assessment

Construction methodology

- 4.16.6. The Applicant outlined the construction methodology and assumptions in paragraphs 5.79 – 5.98 of the ES [[APP-031](#)] including working hours, access arrangements during construction, construction compounds and lighting. These paragraphs set out the various construction methods and options that exist for the Tilbury2 proposals, in each case adopting a worst case of these methods for assessment purposes (e.g. the type of piling to be used). These worst case assumptions were used to undertake assessments of the construction effects of the proposals and develop the mitigation measures relating to construction. Sensitive receptors are identified for each environmental topic, including residential properties as well as environmental assets such as the terrestrial and marine ecological environments and heritage assets including Tilbury Fort.

- 4.16.7. The mitigation measures are detailed in the CEMP with a Construction Traffic Management Plan (CTMP) as an appendix to the CEMP [[REP6-008](#)].
- 4.16.8. The CEMP [[REP6-008](#)] would be a proposed certified document, compliance with which would be secured by requirement 4 in Schedule 2 to the draft DCO [[REP7-005](#)]. Once a Contractor has been appointed its methodology would need to take account of the CEMP and other controls set out within the DCO. The CEMP would ensure that any construction methodologies employed were consistent with the assessments and mitigation measures set out in the ES. Also, the CEMP would set out engagement protocols with the local community and other key stakeholders.

Overview of construction activities

- 4.16.9. The Applicant provided an overview of construction activities in paragraphs 5.99 – 5.114 of the ES [[APP-031](#)] and detailed the following main areas: marine construction, the CMAT and Ro-Ro terminal, highway construction and rail construction. The construction programme is summarised in paragraphs 5.115 – 5.116 of the ES [[APP-031](#)].

Maintenance

- 4.16.10. In paragraphs 5.115 – 5.116 of the ES [[APP-031](#)] the Applicant states that maintenance operations would be controlled by the OMP [[REP6-026](#)]. This is a proposed certified document, compliance with which would be secured through requirement 11 of the draft DCO [[REP7-005](#)].

Issues Arising During the Examination

- 4.16.11. The main issues arising during the examination were:

- piling in relation to Tilbury Fort;
- piling in relation to sensitive marine receptors; and
- mitigation measures to be secured in the CEMP.

Piling in relation to Tilbury Fort

- 4.16.12. In its response to FWQ 1.13.20 [[PD-007](#)], EH highlighted that it was particularly concerned about the potential vibration impacts in relation to Tilbury Fort during construction and requested the consideration of a laser scan survey and vibration monitoring during construction [[REP1-047](#)].
- 4.16.13. The CEMP [[REP6-008](#)] was accordingly updated by the Applicant and would now specifically require that prior to the commencement of any piling activities and for the entire duration of piling works (either terrestrial or marine), the contractor would commission a non-intrusive pre commencement condition survey of Tilbury Fort and associated structures. On the basis of the results of the survey, the contractor would develop and implement a monitoring and mitigation regime in consultation with EH and HE to monitor and mitigate the vibration effects

of piling on Tilbury Fort and its associated structures (paragraph 10.2 – 10.3 of the CEMP).

Piling in relation to sensitive marine receptors

- 4.16.14. In response to FWQ 1.5.2 [PD-007], the Applicant explained [REP1-016] that the time of year that piling in the marine environment would take place will depend on the final construction programme. The river Thames is used all year by fish and marine mammals, and so there are environmental implications of piling throughout the year. Rather than restricting piling to a particular season, the Applicant's view is that a more effective mitigation approach for underwater noise caused by piling (which is the main concern with marine piling), would be the establishment of a daily non-piling window of at least 14 hours; an approach which is supported by the MMO [REP7-012]. Other mitigation secured though the CEMP would include a soft start for percussive piling, pre-piling search for marine mammals, no night time piling, delaying the commencement of percussive piling if marine mammals are detected, and breaks in piling activity.
- 4.16.15. Further controls on construction in the marine environment would be secured in the DML within the draft DCO [REP7-005], which would require the Applicant to consult with the EA and NE before submitting a construction method statement to the MMO for its approval. The construction method statement would include details of timings, durations, methods of delivery, types of material, construction plant, and location of the works among other aspects, as well as any results from further sampling if required. Additional controls to dredging during construction are described in the Dredging section of this chapter (section 4.3).

Mitigation measures secured in the CEMP

- 4.16.16. Mitigation measures to be secured in the CEMP have been discussed during the examination in relation to the following topics:
- biodiversity, ecology and natural environment;
 - contaminated land and waste;
 - dredging;
 - navigation;
 - habitat regulations assessment;
 - historic environment; and
 - traffic and transportation.
- 4.16.17. These issues are considered where necessary elsewhere in this report under the topic headings to which they are relevant.

Conclusions

- 4.16.18. The construction and piling methods to be employed in the proposed development are well-understood and established.

- 4.16.19. In relation to monitoring and mitigating the vibration effects of piling on Tilbury Fort, the Applicant has defined a pre-commencement survey, followed by a monitoring and mitigation regime within the CEMP. The Panel is satisfied that these measures would be sufficient and secured in the draft DCO through requirement 4.
- 4.16.20. In relation to mitigation of underwater noise caused by piling on sensitive receptors in the marine environment, the Applicant has proposed the establishment of a daily non-piling window which would be secured through the DML, Schedule 9 in the draft DCO. Further controls on construction in the marine environment would also be secured in the DML. Other mitigation in relation to sensitive marine receptors would be secured through the CEMP. The Panel is satisfied that these measures would be sufficient and secured in the draft DCO.
- 4.16.21. The CEMP is a key document which would ensure that any construction methodologies employed were consistent with the assessments and mitigation measures set out in the ES. The CEMP would be a certified document, compliance with which would be secured by requirement 4 in the draft DCO.
- 4.16.22. As a result the Panel concludes that the proposed development meets the requirements set out in the NPSP, in particular section 4.10. Construction and piling matters have been satisfactorily explored in the application and subsequently during the examination, and do not weigh against the Order being made.

4.17. GROUND CONDITIONS AND CONTAMINATION

Policy Background

- 4.17.1. Paragraph 5.1.4 of the NPSP states that the applicant should ensure that any effects on internationally, nationally and locally designated sites of geological conservation importance are assessed. The NPSP highlights the need to demonstrate, where possible, that opportunities have been taken to conserve and enhance geological conservation interests.
- 4.17.2. Paragraph 5.1.5 of the NPSP highlights the need to demonstrate how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests.
- 4.17.3. For developments on previously developed land, paragraph 5.13.8 of the NPSP requires applicants to consider the risk posed by land contamination.
- 4.17.4. The NPPF in paragraph 120 explains that when a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner. Paragraph 121 requires planning decisions to ensure that the site is suitable for its new use including land remediation or impacts on the natural environment arising from that remediation. It also states that adequate site

investigation information, prepared by a competent person, should be presented.

Applicant's Approach

- 4.17.5. Chapter 15 of the ES [[APP-031](#)] identifies the likely significant effects with respect to hydrogeology and ground conditions as a result of the construction and operation (including maintenance) of the proposed development.
- 4.17.6. The Applicant's methodology for assessing impacts has considered the potential environmental effects for ground conditions of:
- physical effects of the development;
 - effects on geology as a valuable resource;
 - effects associated with ground contamination; and
 - effects associated with re-use of soils and generation of waste soils.

Physical Effects and Effects on Geology as a Valuable Resource

- 4.17.7. The assessment of the potential effects of the proposals on ground conditions and geology as a valuable resource has been undertaken using a qualitative approach considering the effects on topography, soil compaction, soil erosion and ground stability, and loss, destruction or sterilisation of a valuable geological resource.

Effects Associated with Ground Contamination and Soil Re-use / Waste

- 4.17.8. The assessment of the potential impacts of the proposals on ground contamination, soils reuse and soil waste is undertaken over two stages:
- Stage 1 – a land contamination risk assessment; and
 - Stage 2 – a land contamination impact assessment.
- 4.17.9. The CEMP [[REP6-008](#)] requires that mitigation measures are incorporated into the scheme design process. With the incorporated primary mitigation, negligible effects are generally predicted during the construction phase. These are considered to be not significant. The effect on ground stability and compaction during construction is considered to be a significant permanent beneficial effect.
- 4.17.10. A Site Waste Management Plan (SWMP) was included as an appendix to the draft CEMP version 2 [[REP3-011](#)], providing construction phase waste forecasts and types of waste management facilities that would be needed for the receipt of the various waste streams that would arise during construction. However, the SWMP was not included in the final CEMP [[REP6-008](#)].
- 4.17.11. Section 11 of the OMP [[REP6-026](#)] details the procedure for dealing with contaminated land and ground conditions.

Issues Arising During the Examination

- 4.17.12. The main issue arising during the examination was achieving EA and TC acceptance of mitigation proposals.
- 4.17.13. The EA submitted a representation highlighting the potential for contamination across the development site, given its previous uses [[REP1-045](#)]. The EA also set out the work the Applicant would be required to undertake to prevent pollution of groundwater.
- 4.17.14. In its written representation TC [[REP1-090](#)] confirmed that this topic had been properly assessed by the application.
- 4.17.15. The assessment including the methodology has been accepted by the Local Authority Contaminated Land Officer [[REP7-012](#) Appendix 1] and the EA [[REP7-012](#) Appendix 4].
- 4.17.16. Proposed mitigation measures would be provided in Section 8 of the CEMP [[REP6-008](#)] and OMP [[REP6-026](#)] which would be secured through requirements 4 and 11 in the draft DCO.
- 4.17.17. The CEMP would include specific provisions to undertake additional site investigation and assessment of the ground conditions at the site including undertaking remediation measures (if required). The scope of the proposed ground investigation and assessment together with any remediation measures would be agreed with the Local Authority Contaminated Land Officer and the EA prior to the works being undertaken.

Conclusions

- 4.17.18. The Panel concludes that no significant adverse impacts associated with land contamination would occur during the construction and operation of the development after the implementation of mitigation measures.
- 4.17.19. As a result, the Panel is satisfied that the proposals accord with paragraphs 5.1.4, 5.1.5 and 5.13.8 of the NPSP, and paragraphs 120 and 121 of the NPPF. Ground conditions and contamination matters have been satisfactorily explored in the application and subsequently during the examination, and do not weigh against the Order being made.
- 4.17.20. Finally, as noted above, a SWMP was not included in the final CEMP [[REP6-008](#)]. As the CEMP is intended to be a certified document, the Applicant should be required to submit a fully developed SWMP as part of this.

4.18. WASTE MANAGEMENT

Policy Background

- 4.18.1. The NPSP addresses waste management in section 5.5. In line with the Waste (England and Wales) Regulations 2011, developments are expected to ensure that sustainable waste management is implemented through the waste hierarchy as follows:
- prevention;
 - preparing for reuse;
 - recycling;
 - other recovery, including energy recovery; and
 - disposal, only as a last resort.
- 4.18.2. The Applicant should set out the arrangements that are proposed for managing any waste produced and prepare a Site Waste Management Plan (SWMP). The Applicant should seek to minimise the volume of waste produced and the volume of waste sent for disposal unless it can be demonstrated that the alternative is the best overall environmental outcome.
- 4.18.3. The Applicant should propose an effective system for managing hazardous and non-hazardous waste arising from the construction, operation and decommissioning of the proposed development.

Applicant's Approach

- 4.18.4. The Applicant addressed the management of waste and materials in ES Chapter 19 [[APP-031](#)].
- 4.18.5. The ES assessed the potential impacts of waste arisings during the construction, demolition and excavation (CD&E) and operational phases on a set of defined receptors. For the purposes of the assessment the receptors were defined as:
- the waste arisings within the study area;
 - the capacity of waste infrastructure within the study area; and
 - the demand for key construction materials, which would be used as part of the proposals.
- 4.18.6. The Applicant noted that in addition to the receptors identified above, once operational, the proposals would have a positive impact on the availability of key construction materials.
- 4.18.7. The waste study area was considered to extend outside of the area of the application to include CD&E (non-hazardous and inert waste) and operational (commercial and industrial (C&I)) waste arisings and waste infrastructure within Essex and hazardous waste arisings and waste infrastructure nationally (i.e. within England).

Issues Arising During the Examination

- 4.18.8. The main issue arising during the examination was the adequacy of the assessment for waste arisings and waste infrastructure.

- 4.18.9. During the consultation process ECC and TC identified concerns regarding the use of Essex data as a proxy for the capacity baseline for Thurrock. An alternative approach to deriving a baseline capacity for Thurrock for use in the impact assessment was agreed with TC and accepted by ECC: see SoCG [[REP7-012](#) Appendix 3] and TC written submission following the ISH on 19 April 2018 [[REP3-038](#)].
- 4.18.10. The potential impact of the scheme was then reassessed, as a sensitivity and validation exercise, using the criteria detailed in the ES and compared against the original impact assessment using an Essex baseline, as set out in the table below. The reassessed impact is considered of moderate significance when compared against the Thurrock baseline. This has a higher impact when compared with Essex due to a smaller number of waste facilities in Thurrock than Essex. TC agreed that the impact of CD&E waste would be of moderate significance as detailed in TC's LIR [[REP1-101](#)].

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

- 4.18.11. TC also noted in its LIR that appropriate mitigation measures could be secured through a Site Waste Management Plan and Materials Management Plan which formed elements of the CEMP. TC also noted that the OMP would contain provisions for the management of operational waste [[REP1-101](#)].
- 4.18.12. As noted above, the SWMP was not included in the final CEMP [[REP6-008](#)].

Conclusions

- 4.18.13. The Panel is satisfied that the ES has adequately assessed the potential impacts of waste arisings during the construction, demolition and excavation and operational phases.
- 4.18.14. The proposed measures for the management of waste for the construction, demolition and excavation phases were set out in the SWMP, and the OMP would require that this SWMP be developed for the operational phase. The SWMP would be delivered as a management plan through the CEMP, which itself would be secured through requirement 4 in the draft DCO. Through the CEMP the local authorities and EA would be actively involved as consultees in plans for the management of waste, taking account of available facilities.

- 4.18.15. However, the SWMP was not included in the final CEMP [[REP6-008](#)]. As the CEMP is intended to be a certified document, the Applicant should be required to submit a fully developed SWMP as part of this.
- 4.18.16. The Panel is satisfied that hazardous and non-hazardous waste arising from the construction and operation of the proposed development would be able to be properly managed, that all necessary controls would be in place through the draft DCO, and that the proposed development would comply with NPSP section 5.5 in this respect.
- 4.18.17. In the light of this, the Panel concludes that waste management matters do not weigh against the Order being made.

4.19. AIR QUALITY

Policy Background

- 4.19.1. The NPSP addresses air quality and emissions in section 5.7.
- 4.19.2. The NPSP at 5.7.2 states that infrastructure development can have adverse effects on air quality, and that the construction, operation and decommissioning phases can involve emissions to air, which could lead to adverse impacts on human health, on protected species and habitats, or on the wider countryside.
- 4.19.3. Where the project is likely to have adverse effects on air quality, NPSP 5.7.4 states that the applicant should undertake an assessment of the impacts of the proposed project as part of the ES.
- 4.19.4. According to NPSP 5.7.6, the decision-maker should generally give air quality considerations substantial weight where a project would lead to deterioration in air quality in an area, or would lead to a new area where the air quality breaches any national air quality limits. Air quality considerations will also be important where substantial changes in air quality are expected, even if this does not lead to any breaches of any national air quality limits.
- 4.19.5. In all cases NPSP 5.7.7 stipulates that the decision-maker must take account of relevant statutory air quality limits. Where a project is likely to lead to a breach of such limits, the applicant should work with the relevant authorities to secure appropriate mitigation measures to allow the proposal to proceed. In the event that a project will lead to non-compliance with a statutory limit, the decision-maker should refuse consent.
- 4.19.6. The decision-maker should consider whether mitigation measures are needed both for operational and construction emissions over and above any that may form part of the project application.

- 4.19.7. Under paragraph 5.7.11, the decision-maker should consider the extent to which the applicant intends to influence the modal share of inland connections to/from the ports and the robustness of these proposals.
- 4.19.8. All proposals should either include reasonable advance provisions to allow the possibility of future provision of shore-side power infrastructure (NPSP 5.7.13 and 14), or give reasons as to why it would not be economically and environmentally worthwhile to make such provision. The decision-maker should consider each case objectively to determine whether provision of shore-side power infrastructure (rather than provisions to allow this in the future) should be included in the development.

Applicant's Approach

- 4.19.9. The Applicant addressed air quality in Chapter 18 of the ES [[APP-031](#)]. The pollutants affecting local air quality that are of primary concern to human health are nitrogen dioxide (NO₂), particulate matter (the size categories PM₁₀ and PM_{2.5}) and sulphur dioxide (SO₂); these derive from exhaust emissions from fuel combustion in transport. The pollutants of relevance to sensitive ecosystems are oxides of nitrogen (NO_x) and SO₂, as well as deposited dust, nitrogen and sulphur; these derive from exhaust emissions from fuel combustion in transport and in the case of dust, the handling of dusty materials. Dust and odour are also associated with loss of amenity. The Applicant summarised the potential effects of pollutants in the ES [[APP-031](#)] Table 18.1.
- 4.19.10. In common with all other environmental topics, the Applicant took a worst-case Rochdale envelope approach. For dust emissions during construction, it was assumed that the dust could be generated anywhere within the Order limits, while for the construction vehicle emissions the peak construction flow was assumed to apply for the whole year. In assessing the situation during operations, the Applicant summarised in Chapter 18 Table 18.2 of the ES the parameters defining the “reasonably likely worst case scenario” for seven components – the CMAT berth, CMAT processing facilities, aggregates storage yard, general storage, highway provision, rail provision, and vessel movements.
- 4.19.11. In Table 18.3, the Applicant summarised the air quality legislation in England and in Table 18.4 the UK Statutory Air Quality Criteria with limit values for the various pollutants.

Methodology

- 4.19.12. The Applicant stated the core guidance used in the development of the air quality assessment methodology:
- Defra Technical Guidance for Local Air Quality Management³⁴
 - Highways England DMRB³⁵

³⁴ DEFRA (2016) Local Air Quality Management Technical Guidance (TG16)
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- Environmental Protection UK (EPUK) and Institute of Air Quality Management (IAQM) Planning and Development Control Guidance³⁶
 - IAQM Guidance on the assessment of dust from demolition and construction³⁷
 - IAQM Guidance on the assessment of mineral dust impacts for planning³⁸
 - IAQM Guidance on the assessment of odour for planning³⁹
 - Department for Transport (DfT) Transport Analysis Guidance (TAG) Unit A3 – Environmental Impact Appraisal⁴⁰
- 4.19.13. In the ES [[APP-031](#)] Chapter 18 Tables 18.5-7, the Applicant summarised the consultation undertaken, the points raised, and where these points have been addressed in the ES.
- 4.19.14. The study area varied for each topic – construction dust, operational dust, road traffic, rail, shipping and odour – and has been derived from the guidance listed above.
- 4.19.15. For baseline air quality information, and to address gaps in the information available from existing sources of baseline conditions, the Applicant undertook a site-specific baseline air quality monitoring survey using NO₂ diffusion tubes. Table 18.8 records the survey locations.
- 4.19.16. For construction phase dust emissions, the Applicant applied Steps 1-4 of the IAQM Construction Dust Guidance cited above.
- 4.19.17. For construction phase transport emissions, the Applicant used the DMRB (HA2017/07) as cited above and Table 18.9 identifies screening criteria relevant to the proposed development. For construction phase plant emissions, engine emission limits would be established in consultation with the local authority, as required by the CEMP [[APP-164](#), [REP6-008](#)].
- 4.19.18. For operational phase dust emissions, the Applicant has developed a range of dust management and monitoring measures. These would be reviewed once further details of the proposed facilities were available and the monitoring regime would be agreed with the relevant local authority, TC, pursuant to the OMP [[APP-165](#)], which would be secured a certified document through Schedule 11 of the DCO.
- 4.19.19. For operational phase odour emissions, the approach followed the IAQM odour planning guidance cited above.

³⁵ Highways England (2007) Design Manual for Roads and Bridges. Volume 11, Section 3, Part 1 'Air Quality' (HA 2017/07)

³⁶ IAQM/EPUK (2017) Land-Use Planning & Development Control: Planning for Air Quality (v1.2)

³⁷ IAQM (2014) Guidance on the assessment of dust from demolition and construction Version 1.1 (as amended in 2016)

³⁸ IAQM (2016) Guidance on the Assessment of Mineral Dust Impacts for Planning (v1.1)

³⁹ IAQM (2014) Guidance on the assessment of odour for planning

⁴⁰ Department for Transport (2015) Transport Analysis Guidance TAG UNIT A3 - Environmental Impact Appraisal

- 4.19.20. For operational phase transport emissions (road and rail), the assessment used a dispersion model with updated traffic data provided by the Land-Site Transport Assessment (ES [APP-031] Chapter 13) for a worst-case scenario. This was based on estimates of the maximum volumes of materials handled by the port and transported off-site by road, as opposed to rail and shipping, and also includes estimates of rail movements along the infrastructure corridor.
- 4.19.21. For operational phase shipping emissions, the Applicant applied Defra's LAQM TG16 cited above.
- 4.19.22. With regard to significance of effects, Table 18.11 summarises air quality impact descriptors for individual receptors, and Table 18.12 provides descriptors for the magnitude of dust effects.

Baseline Conditions

- 4.19.23. TC has declared 16 Air Quality Management Areas (AQMA), which are located throughout Thurrock along the busiest roads [APP-157, Figure 18.3]. The closest AQMA to the proposed development is in Tilbury, approximately 30m to the north east of the site boundary. The AQMA was declared due to exceedances of the annual mean objective for NO₂. TC undertakes monitoring of local air quality in its administrative area, using continuous monitoring stations (CMSs). Within the area of TC, there are four CMS sites, which continuously monitor concentrations of NO₂, PM₁₀, PM_{2.5} and SO₂.
- 4.19.24. The data gathered at the CMS sites in Thurrock for the six year period, 2011 to 2016 indicated:
- NO₂ concentrations exceeded the Air Quality Strategy (AQS) annual mean objective at Purfleet (TK8) roadside site in all years, but the objective was met at all other sites in all years;
 - the hourly mean NO₂ AQS objective was met at all CMS sites in all years;
 - annual mean PM₁₀ concentrations were within the AQS objective at all sites in all years;
 - no exceedances of the daily mean PM₁₀ AQS objective were recorded at any site in any year;
 - annual mean PM_{2.5} concentrations were around half of the AQS objective at Stanford le Hope Manorway (TK3); and
 - concentrations of SO₂ met all short-term AQS objectives in Thurrock (including Tilbury, where the analyser was recently redeployed).
- 4.19.25. Based on the available monitoring data, the Applicant concluded that exceedances of the annual mean NO₂ AQS objective had the potential to occur in the air quality study area without the proposed development in the opening year at some roadside locations, but that all other AQS objectives for PM₁₀, PM_{2.5} and SO₂ were likely to be achieved.
- 4.19.26. The Applicant has undertaken a site specific baseline monitoring survey for NO₂, with the aim of filling gaps in the available survey data relative to the proposed development. The data indicated that annual mean NO₂

concentrations on Sandhurst Road and London Road (representing properties closest to the proposed infrastructure corridor) were below 30 $\mu\text{g}/\text{m}^3$; those at properties east of the A1089 were in the range 30 to 35 $\mu\text{g}/\text{m}^3$ and those closest to the A13 (adjacent to/within the AQMA) were in the range 35 to 39 $\mu\text{g}/\text{m}^3$.

- 4.19.27. The ES [[APP-031](#)] Table 18.13 provides a summary of ecological sites with sensitive features within air quality study area.

Scheme Design and Embedded Mitigation

- 4.19.28. For construction phase dust emissions, the Applicant stated that a Materials Management Plan (MMP) and SWMP would be embedded as mitigation as required by the CEMP [[REP6-008](#)].
- 4.19.29. For operational phase dust emissions, the mitigation measures stated in the OMP [[APP-165](#)] would be applied. The FTP, ES Appendix 13.B [[APP-073](#)], and SDP, ES Appendix 13.B [[APP-074](#)], would provide the basis for promoting sustainable travel modes for on-site staff and during operation.

Potential Impacts

- 4.19.30. For construction phase dust impacts, the Applicant summarised the sensitivity of the area to dust impacts from the proposed development in the ES [[APP-031](#)] Table 18.15, and the dust risks (due to dust soiling, human health and ecology) in Table 18.16, concluding that the site should be classified as a high risk site, for which mitigation measures were included in the CEMP [[APP-164](#)].
- 4.19.31. For construction phase transport emissions, Table 18.17 lists changes in traffic flow at 25 key road links, split by light delivery vehicles (LDVs) and heavy goods vehicles (HGVs), and identifying whether each link is within or adjacent to an AQMA. According to the Applicant, the maximum modelled increment of annual mean NO_2 at a human health receptor (requirement 10), representing the change at residential dwellings close to Fort Road, was 0.3 $\mu\text{g}/\text{m}^3$. The future year annual mean concentration at this receptor was less than 30 $\mu\text{g}/\text{m}^3$ (based on the results for 2020) ES Appendix 18.E [[APP-095](#), Table 18.44]. This increment is negligible in accordance with EPUK/IAQM planning guidance (2017). Similarly, the changes to PM_{10} and $\text{PM}_{2.5}$ concentrations during construction were found to be negligible.
- 4.19.32. For operational phase dust impacts, the Applicant followed IAQM guidance by applying a step-by-step screening approach, and summarised its assessment of the residual dust emission sources for the main components of the proposed development – the CMAT facilities, aggregates storage, general storage, aggregates berth, conveyor and infrastructure corridor - in Table 18.18. The Applicant summarised the operational dust emissions and the magnitude of their effect – which range from negligible to slight adverse - in Table 18.19. Overall, the Applicant concluded that the proposed development was not considered

to have a significant effect on the surrounding area in terms of potential dust deposition.

- 4.19.33. For operational phase transport emissions, the Applicant listed the expected changes in traffic flow, split by LDV and HGV, for 25 key road links. The results from the detailed modelling of land-side transport emissions for human health receptors for annual mean NO₂ indicate in ES Appendix 18.E [APP-095, Table 18.44] that concentrations of NO₂ were expected to be below the annual mean AQS objective of 40 µg/m³ at all locations, both with and without the proposed development in the opening year 2020. The impact on annual mean NO₂ concentrations at individual receptors was expected to be negligible at the majority of locations, slight adverse at four receptors and moderate adverse (4.4 µg/m³) at R10, a receptor to the north of the new link road and rail line, where concentrations would increase with the scheme but still remain well below the objective, at 30.6 µg/m³.
- 4.19.34. The results from the detailed modelling of land-side transport emissions for human health receptors for PM₁₀ and PM_{2.5} in the ES Appendix 18.E [APP-095, Tables 18.45 and 18.46] show that annual mean concentrations of PM₁₀ were expected to be below the AQS objective at all locations in the opening year with negligible changes of less than 0.2 µg/m³ at all receptors. Annual mean concentrations of PM_{2.5} were expected to be below the AQS objective at all locations in the opening year with negligible changes of less than 0.1 µg/m³ at all receptors.
- 4.19.35. The Applicant concludes that overall, given there would be no exceedances of any AQS objective with the proposed development in place, despite the conservative assumptions applied, and given that at the majority of receptors there would be negligible or slight increases in concentrations, the effect of the proposed development on local air quality was considered not to be significant.
- 4.19.36. For operational phase shipping emissions, the Applicant stated that due to the distance between emissions from shipping and sensitive areas of exposure in Tilbury and Gravesend, the prevailing wind direction, the total number of shipping movements being below the Defra threshold, the absence of short-term exceedances of either NO₂ or SO₂ concentrations recorded at relevant sites in Thurrock, and the controls in place on fuel sulphur content, the potential impact on local air quality from vessels either in transit or at berth was considered not to be significant.

Potential Further Mitigation of Compensation

- 4.19.37. For construction phase dust emissions, and as stated in the CEMP, the Applicant proposed to implement measures recommended in IAQM guidance for communications, dust monitoring, preparing and maintaining the site, construction operations, measures specific to earthworks and construction, and measures specific to the track-out of vehicles onto the highway network.

- 4.19.38. For construction phase transport emissions, the Applicant again followed IAQM guidance, notably the development of a CTMP (secured through the CEMP) to manage the delivery of goods and materials in a sustainable manner. The Applicant concluded that the assessment of construction traffic emissions had shown that there would be a negligible impact on local air quality.
- 4.19.39. For operational phase dust emissions, the Applicant followed IAQM Minerals Planning Guidance with mitigation secured through the OMP.
- 4.19.40. For operational phase transport emissions, the Applicant stated that the assessment of operational traffic emissions had found no exceedances of air quality objectives, with slight to negligible impacts at all but one receptor. The FTP [APP-073] and SDP [APP-074] are intended to promote sustainable travel modes for on-site staff and during operation, such that a modal shift to rail and shipping would be encouraged.

Applicant's summary of its approach

- 4.19.41. The Applicant summarised its assessment of the significance of overall residual air quality impacts, after envisaged mitigation measures had been taken into account, in the ES [APP-031] Table 18.23. The Applicant concluded that the residual impact was not significant for all seven areas – construction (dust and traffic) and operations (traffic, rail, dust, odour and shipping).

Issues Arising During the Examination

- 4.19.42. The main issues that arose during the examination were:
- air quality impacts of NO₂, PM₁₀ and PM_{2.5}; and
 - use of shore power for powering moored vessels.

Air quality impacts of NO₂, PM₁₀ and PM_{2.5}

Air Quality Directive and UK Air Quality Plan

- 4.19.43. The Ambient Air Quality Directive⁴¹ (AQD) sets limit values for the protection of human health for NO₂ (nitrogen dioxide) and PM₁₀ (particulate matter 10 micrometres or less in diameter). These are that:
- annual mean concentration levels of NO₂ do not exceed 40µg/m³;
 - hourly mean concentration levels of NO₂ do not exceed 200µg/m³ of NO₂ more than 18 times a calendar year; and
 - 24-hour average of 50µg/m³ of PM₁₀ not to be exceeded more than 35 times a year.
- 4.19.44. The UK Government has been subject to infraction proceedings by ClientEarth three times for breaching the AQD with regard to NO₂ levels, and for failing to produce a credible Air Quality Plan (AQP) consistent with the AQD. ClientEarth has been successful in all three challenges.

⁴¹ Ambient Air Quality Directive (2008/50/EC)

- 4.19.45. The Government published its latest AQP in July 2017⁴². Following the requirements of the judgment resulting from the third ClientEarth challenge⁴³, the Government is required to produce a supplementary AQP by October 2018. The latest judgment states that the current AQP (July 2017) remains in force whilst the supplement is produced. The judgment upheld ClientEarth's claim that the Government's AQP was inadequate in terms of its timescales and targets.
- 4.19.46. The significance for this examination is that the Panel needs to be sure that no air quality exceedances in areas that are currently compliant would occur as a result of the proposed development, and that any areas that are currently non-compliant would not be made worse by the proposed development.

Air quality examined

- 4.19.47. In the FWQ [PD-007], the Panel examined various points on air quality, with regard to relevant representations from:
- GBC, which stated that it was not convinced that Tilbury2 was fulfilling its potential as a strategically important infrastructure project (relates to shore power) [RR-019];
 - resident Mr Colin Elliott, who cited concerns regarding air quality, particularly with regard to the ASDA roundabout [RR-001]; and
 - TC, which raised concerns over respiratory diseases and deaths in the Tilbury area [RR-031].
- 4.19.48. In its response at Deadline 1 [REP1-016], the Applicant summarised its approach to air quality. In response to GBC, the Applicant addressed the situation regarding the provision of shore power, which the Panel considers below. The Applicant gave a comprehensive response to Mr Elliott, asserting that the proposed mitigation measures would ensure negligible impact, to which Mr Elliott made no further response during the examination. In response to TC, the Applicant acknowledged TC's concerns, and pointed to the chapters in the ES where these were addressed, whilst noting that the population profile showed high levels of deprivation in the borough, which were related to poorer health. The Panel notes that the proposed development would help to ease deprivation through the provision of jobs and skills-based training.
- 4.19.49. At the ISH on 19 April 2018 [EV-009] and in the SWQ on 8 May [PD-010], the Panel again examined the air quality impacts for NO₂, PM₁₀, and PM_{2.5} during construction and operation, to which the Applicant provided a comprehensive written response at Deadline 3 [REP3-030].
- 4.19.50. NO₂, PM₁₀, and PM_{2.5} would be managed and controlled during construction through the CEMP [REP6-008] and during operation through the OMP [REP6-026], both of which are intended to be certified

⁴² Air Quality Plan for Nitrogen Dioxide (NO₂) for UK (2017), 26 July 2017

⁴³ Judgment on ClientEarth vs Secretary of State for Environment Food and Rural Affairs, High Court of Justice, 21 February 2018

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documents at Schedule 11 in the draft DCO that would be secured through requirements 4 and 10. TC stated at the hearing that it was satisfied that the CEMP and OMP measures were appropriate and would be enforceable.

- 4.19.51. The Applicant stated that dust control measures in the OMP were based on the outcome of an assessment using the IAQM minerals planning guidance (2016). There would be Environmental Permits in place for the CMAT processing facilities, and requirements for regular visible observations and dust deposition monitoring would be secured through the OMP. There would also be a complaints mechanism in place and a requirement to take action to address any unacceptable dust emissions, as secured through requirement 11 and the Operational Community Engagement Plan [[APP-030](#)] a proposed certified document in Schedule 11 of the draft DCO.
- 4.19.52. At the ISH on 27 June 2018 [[EV-017](#)], the Panel examined the OMP [[REP1-008](#)], as well as potential air quality monitoring to be undertaken in GBC's administrative area once the proposed development was operational, with reference to the Applicant's and GBC's submissions at Deadline 4 [[REP4-020](#) and [REP4-013](#)]. GBC's concerns were shipping emissions and fugitive emissions of dust, particulate matter and odour from the CMAT facilities and aggregate handling areas once operational.
- 4.19.53. In the final SoCG between the Applicant and GBC [[REP7-012](#) Appendix 2], GBC has agreed that the effect of shipping emissions on receptors in Gravesham would be negligible. GBC also welcomed the monitoring that would be proposed in the OMP within Thurrock and the parties agreed that this would need to encompass seasonality and ensure that a robust three month data set was collected for review purposes pre and post operation of Tilbury2. It was also agreed that the monitoring proposed in the OMP would be repeated 3 years after first operation or earlier if there was a significant change in CMAT facilities, and the OMP would reflect this. The Panel accepts that these proposals are reasonable and proportionate and would be secured through the draft DCO through requirement 11.
- 4.19.54. The Panel also examined RWE's submission at Deadline 4 [[REP4-004](#)], which cited concerns with regard to the potential for dust from the Tilbury2 proposed development to impact on the future operation of the proposed Tilbury Energy Centre.
- 4.19.55. RWE was not present at the hearing to make its case, but the Applicant responded then and in writing at Deadline 5 [[REP5-014](#)]. The Applicant stated that RWE was seeking protective provisions to control dust from the Tilbury2 development, which the Applicant did not consider to be necessary given the dust control/monitoring measures in the OMP and with which TC and GBC were content. The Panel concurs with this position and has commented further on it in Table 1 in Chapter 8.
- 4.19.56. In the final SoCG between the Applicant and TC [[REP7-012](#) Appendix 1], the study area, baseline and methodology are all agreed, as well as the

fact that all the modelled results fall either below or well below the relevant air quality objectives for NO₂, PM₁₀, and PM_{2.5}.

- 4.19.57. While slight to moderate impacts were modelled for NO₂ at some “worst case” receptor locations, TC agreed that these results were not significant, as the air quality objective of 40 µg/m³ for annual mean NO₂ was met at all locations. TC also agreed that the PM₁₀ and PM_{2.5} impacts were negligible at all receptors, that concentrations were all below the air quality objectives, and that the operation of the proposed development would not have significant adverse long-term effects on air quality at the closest residential receptors.
- 4.19.58. With regard to mitigation, TC agreed that the CEMP [REP6-008] covered the necessary environmental issues that would need to be controlled as part of the mitigation of environmental impacts during construction and that the OMP [REP6-026] set an appropriate basis for control of the future operation of the Port.

- 4.19.59. The Panel concurs with this assessment.

Use of shore power for powering moored vessels

- 4.19.60. At the ISH on 19 April 2018 [EV-009], the Panel examined the use of shore power for powering moored vessels, and in the SWQ [PD-010], the Panel examined various matters identified in the SoCG between the Applicant and GBC at Deadline 3 [REP3-028] as under discussion, including shipping emissions.
- 4.19.61. This was followed-up at the ISH on 27 June 2018 [EV-017], in which the Panel examined the Applicant’s position on Defra’s Clean Air Strategy, published in May 2018, and in particular the Maritime 2050 Vision and the first UK Clean Maritime Plan, and how the Applicant’s proposals for shore power infrastructure would be impacted by the Clean Air Strategy.
- 4.19.62. The Applicant pointed out [REP5-014] that the Government’s Clean Air Strategy and Maritime Vision 2050 documents were at consultation stage only and the UK Clean Maritime Plan was a plan proposed by the Clean Air Strategy, but it had not yet been developed. All of the documents set targets and aspirations for reductions in emissions and controls on shipping emissions, but there was no specific mention of the need to develop shore power now. All documents acknowledged that further work, innovation, development and funding was required before these aspirations could be reached.
- 4.19.63. The Applicant has agreed [REP5-014] to provide cable connections to ensure that shore power can be facilitated in the future, as secured through the OMP [REP6-026]. Both UKPN and NGET will need to provide additional capacity in the local area before shore power can be facilitated, alongside the other constraints due to ships’ inability to receive and utilise shore power.

- 4.19.64. In the final SoCG between the Applicant and TC [[REP7-012](#), Appendix 1], the parties agreed that the approach of the proposals to providing the infrastructure to facilitate the future use of shore power, should vessels become equipped to use this and should electrical power capacity become available, would future proof the site in this regard. TC also agreed that it would not be reasonable to impose any further controls in this regard through the DCO. Paragraph 7.4 of the OMP [[REP6-026](#)] refers to this matter and the OMP would be secured through requirement 11 and as an intended certified document in Schedule 11 of the draft DCO.
- 4.19.65. In the final SoCG between the Applicant and GBC [[REP7-012](#) Appendix 2], the same position was stated.
- 4.19.66. The Panel concludes that this approach complies with paragraph 5.7.13 of the NPSP, which requires that all proposals should include reasonable advance provisions to allow the possibility of future provision of shore power as and when ships are equipped to handle it.

Conclusions

- 4.19.67. The Panel concludes that air quality matters have been appropriately assessed. With regard to NO₂, PM₁₀, and PM_{2.5}, the air quality objective of levels not exceeding 40 µg/m³ for annual mean NO₂ would be met at all locations. The PM₁₀ and PM_{2.5} impacts would be negligible at all receptors, with concentrations all below the air quality objectives, and the operation of the proposed development would not have significant adverse long-term effects on air quality at the closest residential receptors.
- 4.19.68. Concerning shore power, the Panel concludes that the Applicant's proposals to provide the infrastructure to facilitate the future use of shore power, should vessels become equipped to use it and should electrical power capacity become available, would future proof the site in this regard.
- 4.19.69. The Panel therefore concludes that there are no matters relating to air quality that weigh against the Order being made.

4.20. POLLUTION CONTROL AND OTHER REGULATORY REGIMES

Policy Background

- 4.20.1. The NPSP addresses pollution control and other regulatory regimes in section 4.11, in which it states that issues relating to discharges or emissions from a proposed project may be subject to separate regulation under the pollution control framework or other consenting and licensing regimes.

- 4.20.2. The NPSP goes on to state that the decision-maker should focus on whether the development itself is an acceptable use of the land and on the impacts of that use, rather than the control of processes, emissions or discharges themselves. The decision-maker should work on the assumption that the relevant pollution control regime, other environmental regulatory regimes, including those on land drainage, water abstraction and biodiversity will be properly applied and enforced by the relevant regulator. It should act to complement but not seek to duplicate it.
- 4.20.3. The decision-maker should not refuse consent on the basis of regulated impacts unless it has good reason to believe that any relevant necessary operational pollution control permits or licences or other consents will not subsequently be granted.

Applicant's Approach

- 4.20.4. The Applicant addressed various sources of pollution throughout the ES, notably Chapter 15: Hydrogeology and Ground Conditions, Chapter 16: Water Resources and flood Risk, Chapter 17: Noise and Vibration, Chapter 18: Air Quality, and Chapter 19: Waste and Materials [[APP-031](#)].
- 4.20.5. The Applicant stated proposed mitigation and compensation measures in each chapter of the ES. Pollution impacts and their mitigation have been considered under each environmental topic within this chapter.
- 4.20.6. The Applicant submitted a Mitigation Route Map [[APP-168](#)], which included details of the significance of residual effects after implementation of the mitigation measures and how each measure would be secured through the draft DCO. Following the Panel's request this was updated at Deadline 5 [[REP5-034](#)].
- 4.20.7. The identified construction pollution sources and mitigations would primarily be due to:
- construction traffic;
 - noise and vibration;
 - dust created during construction;
 - dredging and impact on marine ecology; and
 - contamination of ground and surface water.
- 4.20.8. The identified operational pollution sources and mitigations would primarily be due to:
- noise;
 - dredging and impact on marine ecology; and
 - material resources and waste handled in a manner which posed a risk of harm to human health.
- 4.20.9. The impacts of forecast pollution and proposed mitigation measures are assessed in detail in the following sections of this chapter:
- 4.3 Dredging – water quality;

- 4.8 Landscape – light pollution;
- 4.10 Noise and vibration – noise;
- 4.14 Water quality and resources – water pollution;
- 4.17 Ground conditions and contamination – groundwater pollution;
and
- 4.19 Air quality – air pollution.

4.20.10. With regard to the method of securing the delivery of the mitigations, the Applicant refers to:

- the CEMP [[REP6-008](#)] which would be secured through requirement 4 of the draft DCO;
- the OMP [[REP6-026](#)] which would be secured through requirement 11 of the draft DCO;
- the DML which would be secured through Schedule 9 of the draft DCO; and
- PLA's protective provisions which would be secured through Schedule 10 Part 3 of the draft DCO.

Other consents

4.20.11. The Applicant identified its overall approach to consents and agreements in its Consent and Agreements Position Statement [[APP-167](#)]. Under this approach, the Applicant envisaged that the majority of consents would be secured through the DCO, and agreements through SoCGs. The Applicant recognised that "Some consents, if required, will be sought separately from the DCO", and provided four instances:

- Environmental Permits under the Environmental Permitting (England and Wales) Regulations 2010 (as amended);
- Protected Species Licences under the Wildlife and Countryside Act 1981, the Conservation of Habitats and Species Regulations 2010 and other legislation;
- any consents required under the Highways Act 1980 in respect of construction works; and
- any s61 consents under the Control of Pollution Act 1974 for works outside of hours specified or which would exceed permitted noise thresholds.

4.20.12. Appendices 1- 3 of the Ecological Mitigation and Compensation Plan [[REP7-016](#)], provide Licence Method Statements for licences that would need to be obtained by the principal contractor, which cover:

- water vole translocation;
- badger sett interference; and
- loss of bat roost.

Issues Arising During the Examination

4.20.13. The required licences and consents, and the purposes for which they would be required, are identified in the EMCP [[REP7-016](#)]. The delivery of an EMCP would be secured through the requirement 11 in the draft DCO. The Panel is satisfied that these matters would be adequately secured through this mechanism.

Conclusions

- 4.20.14. The Panel finds that pollution and environmental impacts would be subject to control through the draft DCO and the relevant pollution and environmental regulations, in accordance with NPSP section 4.11.
- 4.20.15. In the light of this, the Panel concludes that pollution control and other environmental regulatory regime matters do not weigh against the Order being made.

4.21. HEALTH

Policy Background

- 4.21.1. The impacts on health from new port developments are addressed in the NPSP at section 4.16. These can arise from increasing traffic, air pollution, dust, odour, polluting water, hazardous waste and pests. New port developments may also affect the composition, size and proximity of the local population, and in doing so may have indirect health impacts – for example if they affect access to key public services, transport or the use of open space for recreation and physical activity. These impacts may affect people simultaneously, so the applicant and the decision-maker should consider the cumulative impact on health. The applicant should identify any adverse health impacts and identify measures to avoid, reduce or compensate for these impacts as appropriate.
- 4.21.2. The NPPF sets out the Government's plans and states that developers should mitigate and reduce to a minimum any adverse impacts on health and quality of life arising from noise from new developments.

Applicant's Approach

- 4.21.3. Health impacts are addressed in Chapter 8 of the ES. In addition the potential impacts of the proposed development on the issues identified in the NPSP are considered within the individual chapters of the ES. A standalone Health Impact Assessment (HIA) was not provided with the application.
- 4.21.4. Public Health England (PHE) concluded that the submitted reports did not identify any significant risks to public health, whilst noting that the modelled concentrations of nitrogen dioxide indicated the potential for impacts on air quality at a small proportion of receptors without exceeding air quality standards [[RR-027](#)].

Method of assessment

- 4.21.5. Because there is no definitive guidance for assessing the health effects of development projects, the assessment was undertaken in accordance with the IMPACT Urban Health Impact Assessment (UrHIA)

methodology⁴⁴ and the Rapid Health Impact Assessment Tool and guidance produced by the NHS London Healthy Urban Development Unit⁴⁵.

- 4.21.6. TC agreed that the methodology underlying the Health Assessment was satisfactory and that the key health effects of Tilbury2 have been identified [[REP7-012](#) Appendix 1].

Predicted effects and mitigation

- 4.21.7. The assessment identified adverse health effects of the construction and/or operation of Tilbury2 associated with noise and vibration; neighbourhood quality; open space/active travel; transport, traffic and connectivity; and lighting. A beneficial health effect of Tilbury2 was identified for employment [[APP-031](#)].

Issues Arising During the Examination

- 4.21.8. The main issues arising during the examination were:
- lighting impacts;
 - promoting physical activity;
 - noise and vibration; and
 - neighbourhood quality – visual impact/landscape.
- 4.21.9. The Applicant agreed with TC that the mitigation for lighting impacts on health were acceptable [[REP7-012](#) Appendix 1].
- 4.21.10. The Applicant also agreed with TC that the mitigation for physical activity (open space/active travel/transport) impacts through the Active Travel Plan were acceptable [[REP7-012](#) Appendix 1]. The Panel notes that the ATP would be contained within the s106 Agreement which was unsigned at the conclusion of the examination, so no weight can be assigned to it.
- 4.21.11. In terms of the potential for residual health effects from noise and vibration, TC agreed with the Applicant that there would be a process for a written noise monitoring and mitigation scheme, based on the results of a noise reassessment. Through this scheme TC would be required to approve the nature and temporal length of monitoring and the trigger point at which the Applicant would be required to make an offer of mitigation to an affected receptor during such monitoring if, after all of the measures in the OMP [[REP6-026](#)] designed to reduce noise, there remained a residual effect [[REP7-012](#) Appendix 1].
- 4.21.12. In terms of the potential for residual health effects on neighbourhood quality associated with the visual impact of the scheme, TC has agreed that outside of the DCO process the Applicant would continue to positively engage with local initiatives of TC and others to improve the

⁴⁴ Urban Health Impact Assessment Methodology (UrHIA), Impact, University of Liverpool, 2015.

⁴⁵ HUDU Planning for Health. Rapid Health Impact Assessment Tool. London: NHS, London Healthy Urban Development Unit, 2013.

local environment and would work with TC in the future in this regard [[REP7-012](#) Appendix 1].

Conclusions

- 4.21.13. At the start of the examination PHE concluded that there were no significant risks to public health associated with the proposed development. The Applicant has reached agreement with TC as summarised above.
- 4.21.14. The Panel is satisfied that the mitigation measures for lighting impacts would be acceptable, and those to control noise and vibration described in the OMP would be sufficient and secured in the draft DCO.
- 4.21.15. Proposed mitigation measures for physical activity through the Active Travel Plan would be subject to the execution of the s106 Agreement with TC, which remained unsigned at the end of the examination [[AS-098](#)]. As noted in section 4.6 above, the Panel concludes that the s106 provisions would be beneficial but are not a critical element of the transport provisions.
- 4.21.16. Overall the Panel considers that the health impacts of the proposed development have been assessed and that sufficient mitigation measures (excluding those in the ATP) would be proposed. The application therefore meets the tests set out in the NPSP, in particular in section 4.16.
- 4.21.17. In the light of this, the Panel concludes that health matters do not weigh against the Order being made.

4.22. UTILITIES

- 4.22.1. There are no utility constraints on the proposed development.
- 4.22.2. Representations from CGL, RWE and NGET in relation to CA and TP matters are covered in Chapter 7.

4.23. CUMULATIVE IMPACTS WITH OTHER DEVELOPMENT PROPOSALS

Policy Background

- 4.23.1. The NPSP sets out a general requirement to consider cumulative effects as part of the ES, showing how the proposed project would combine and interact with the effects of other developments (including projects for which consent has been sought or granted, as well as those already in existence (paragraph 4.7.3).

Applicant's Approach

- 4.23.2. Accordingly, the ES [[APP-031](#)] Chapter 2 sets out the environmental effects of the Tilbury2 proposals in combination with the effects of the following projects as part of the EIA process, where relevant information is available (paragraphs 2.40 to 2.64 and summarised in Chapter 20):
- Thames Enterprise Park, south east of Corringham;
 - Oikos Storage Proposals, Canvey Island;
 - Goshems Farm Jetty, East Tilbury;
 - Ash Fields to the east of Tilbury B Power Station;
 - Land at Fiddlers Reach, Grays; and
 - West Thurrock Biomass OHP plant.
- 4.23.3. Each project is considered in relation to the following topics for the construction and operational stages:
- socio-economic effects;
 - health;
 - landscape character and visual amenity;
 - terrestrial ecology;
 - marine ecology;
 - archaeology and cultural heritage;
 - transport;
 - navigation;
 - hydrogeology and ground conditions;
 - water resources and flood risk;
 - noise and vibration;
 - air quality; and
 - waste and materials.
- 4.23.4. In combination, landscape and visual effects during the construction phase at specific receptor points are considered in the ES to be of moderate adverse significance. The assessment of noise levels at residential receptors during construction did not identify any long term significant effects, and the air quality assessment concluded that the effect on receptors would not be significant.
- 4.23.5. During operation, in combination effects of noise without further mitigation and loss of visual amenity to properties closest to the entrance to the site and adjoining the infrastructure corridor could be of moderate significance. A slight adverse magnitude of impact on air quality is possible, taking into account mitigation and monitoring included in the Operational Management Plan (OMP) [[APP-165](#)] secured through requirement 11 in the draft DCO.
- 4.23.6. In addition to the projects listed above, various river Thames dredging and maintenance works within a 15km radius of Tilbury2 were considered in the cumulative assessments for the Marine Ecology, Terrestrial Ecology, Navigation and Water Resources and Flood Risk topics in the ES.
- 4.23.7. The ES explains why three other projects suggested during the consultation to be included within the cumulative impact assessment for
- Tilbury2 – Proposed Port Terminal at Former Tilbury Power Station
REPORT: TO THE SECRETARY OF STATE: 20 November 2018
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Tilbury2 were screened out of this assessment: London Resort, the redevelopment of the Tilbury 'B' Power Station with a new power station to be called the Tilbury Energy Centre (TEC), and the Lower Thames Crossing (LTC). In addition, as part of the EA's Thames Estuary 2100 (TE2100) project, consideration is being given by the EA to a new Thames Barrier to increase the level of flood protection after 2070 in response to rising sea levels. Early feasibility work is being undertaken and whilst the preferred final location has not been identified, an option remains for a new barrier in the vicinity of Tilbury2. No decision is expected to be made on this until 2050 following monitoring of climate change impacts between now and that time. Given the timescales involved this project is not therefore included in the assessment.

Issues Arising During the Examination

Extent of cumulative effects assessment (CEA)

- 4.23.8. Several IPs⁴⁶ as well as ourselves as the ExA in the Rule 6 letter [PD-005], expressed the view that the cumulative assessment of the Tilbury2 project should include the TEC⁴⁷ and LTC⁴⁸ proposals. The Applicant's consistent view was that insufficient information exists, particularly concerning traffic data, in relation to the TEC and LTC to carry out a CEA.

⁴⁶ Thurrock Council, Kent County Council, Essex County Council, Gravesham Borough Council, Public Health England, RWE Generation UK, Highways England, Natural England, Environment Agency, Marine Management Organisation

⁴⁷ The Tilbury Energy Centre at the former Tilbury B Power Station site would consist of a 2,500MW Combined Cycle Gas Turbine plant, a 299MW peaking plant, and a 100MW energy storage facility. Tilbury2 would become operational around the opening of the Ro-Ro terminal in Q1 2020. Construction on-site for the remainder of the terrestrial works including the CMAT would continue for another 12 months (i.e. Q1 2021). Assuming construction of the TEC would commence at the earliest Q2 or Q3 2021, all of the main construction activities related to the Tilbury2 proposals (in particular the new lengths of highway and rail line, all maritime infrastructure, and the grading and laying of appropriate pavements across the site) would be complete and the Ro-Ro terminal, and quite possibly the full extent of the CMAT, would be operational.

⁴⁸ The Lower Thames Crossing of the river Thames east of London would be a new 31km road connecting the A2 east of Gravesend in Kent with Junction 29 of the M25 in Essex. It would include a new junction approximately 1.5km north east of the proposed Tilbury2 development with a possible new link road running from the new junction in a broadly south west direction to connect with the proposed Tilbury2 infrastructure corridor and Port of Tilbury. This would provide improved access to the motorway network, with traffic diverting to this route from the A1089/A13 depending on its origin/destination, with differential benefits/dis-benefits to residences in Tilbury in terms of noise, air quality and visual amenity. The LTC route as currently assumed would require land take within the Tilbury2 site being lost to the CMAT, areas of general storage and part of the ecological mitigation area in the northeast corner of the site. An estimated opening date of 2026 is assumed, meaning that construction would not commence until after the currently estimated first operation of Tilbury2 following completion of all infrastructure early in 2021.

Given the relatively early stage of preparation of these two projects the Applicant argued strongly that there was no legal requirement on them to do so, and it was for the promoters of these potential NSIPs to carry out CEAs in due course taking the Tilbury2 application into account [[AS-049](#)]. Nonetheless, in response to the Panel's FWQ [[PD-007](#)] requesting an assessment proportionate to the information available, the Applicant did carry out an assessment of Tilbury2 with the TEC, submitted at Deadline 2 [[REP1-016](#)].

- 4.23.9. In view of the subsequent availability of Scoping Reports for both projects during the course of the examination, the Applicant then carried out a high level, qualitative and proportionate CEA of the proposed Tilbury2 development with the TEC and LTC, both separately and in combination, embracing the earlier work assessing the TEC only [[REP3-027](#)]. This work was based upon a consistent set of assumptions where possible and professional judgement, and covered the same range of topics listed in paragraph 4.23.3 above. The main conclusions from this work are set out below.

Content of the Qualitative CEA

- 4.23.10. From the information available to date, there would be only limited, if any, potential overlap in the construction period of Tilbury2 with the TEC and LTC. The Tilbury2 infrastructure corridor, the laying out of the Ro-Ro Terminal and all marine works would be completed by the end of 2020, prior to the earliest anticipated construction commencing on either the TEC or LTC. Whilst construction of the CMAT would continue through 2021 and would potentially overlap with the earliest commencement of LTC and TEC on site, the extent of engineering works at Tilbury2 would be reducing during this period.
- 4.23.11. The TEC and LTC with the Tilbury2 proposals would create a sustained period of construction. This would have both positive and adverse effects on socio-economic outcomes, in terms of job creation, skills and training opportunities, but potential stresses on existing infrastructure and community networks.
- 4.23.12. The combined sight and sound of the three projects would have an overall effect of moderate significance on scenic quality and tranquillity. The area where this effect would likely be most marked is broadly defined by the rural extents of the West and East Tilbury Marshes, including the north bank of the Thames as well as the eastern reaches of the Chadwell Escarpment.
- 4.23.13. The combined Tilbury2 and TEC developments would affect cultural heritage value associated with the scheduled monuments of Tilbury Fort, New Tavern Fort and Coalhouse Fort. In respect of Tilbury Fort the LTC could add to the cumulative effects of the other two, although given the overall context the cumulative effect on the cultural heritage value of Tilbury Fort would remain largely unchanged to that reported for Tilbury2.

- 4.23.14. In terms of visual amenity, the combined effects of all three projects would be experienced in views from the east and north-east that take in the TEC site, the possible LTC link road and main junction north of the LTC tunnel portal, the introduction of high levels of associated road traffic, the northernmost extent of buildings and stockpiles on Tilbury2 and, to a lesser extent, the southern half of the port as well as associated shipping. From the south (when viewed from Gravesend), the cumulative effects of all three schemes would be little different to only the Tilbury2 and TEC schemes together. The LTC is likely to become a minor element visually to views from the south due to its relatively low profile, subject to the scale and design of the north shore tunnel portal and visibility of road traffic.
- 4.23.15. The cumulative effect of artificial lighting would increase when all three schemes are operational. The TEC would represent a relatively minor extension of lighting within Tilbury2 which would extend over a greater area. Lighting associated with the LTC is assumed to be most evident at the link road junction and tunnel portal locations, as is the movement of road traffic along the corridor.
- 4.23.16. The combination of increases in road traffic from the LTC and energy generation emissions from the TEC could lead to a significant overall increase in atmospheric NO_x, and in corresponding N-deposition, which could in turn lead to a change in the quality, condition or extent of habitats comprising special interest features of the Thames Estuary and Marshes SPA and Ramsar Site.
- 4.23.17. Potential changes in the nature of coastal habitats could also lead to a decline in suitability for foraging waders. When considered in combination with possible LTC and TEC construction or operational phase disturbance of wading birds, this could potentially lead to significant impacts on qualifying species of the SPA.
- 4.23.18. The Lytag Brownfield LoWS, Tilbury Centre LoWS and a portion of the Tilbury Marshes LoWS would be lost to the construction of Tilbury2. Taken in combination with potential losses of Low Street Pit LoWS and parts of the proposed Tilbury Power Station LoWS (which includes the surviving section of the Goshems Farm LoWS and the A1 ashfields) to the LTC and TEC, this would represent a significant diminution of the quantum of non-statutory designated sites from this part of Thurrock. Furthermore, those remaining LoWS would be subject to potential N-deposition effects that could result in deterioration in habitat quality (i.e. in particular the retained sections of Goshems Farm, proposed Tilbury Power Station LoWS, and to a lesser degree Tilbury Marshes).
- 4.23.19. Taken cumulatively, the potential losses of s41 Open Mosaic Habitat on Previously Developed Land (OMHPDL explained in section 4.11) from the three projects would be considerable. These include:
- recent losses from Goshems Farm to capping and 'restoration';
 - the future loss of 9ha brownfield habitat arising from the construction of Tilbury2;

- potential future impacts on the surviving section of Goshems Farm LoWS;
- potential future impacts on the former power station ashfields (including the A1 ash mound) arising from construction of the TEC; and
- potential future impacts on Low Pit LoWS arising from construction of the LTC.

- 4.23.20. The potential cumulative losses of brownfield invertebrate communities would be considerable, with potential losses of habitat from the Tilbury2 site, Goshems Farm and the former power station ashfields (and the Low Street Pit invertebrate site), potentially leading to near total elimination of the existing brownfield resource from this part of Thurrock. The significance of the effect would be dependent on the success of any proposed restoration and the provision of compensatory habitat, and also the timeframes over which habitat loss and recreation may occur (staggered losses being likely to facilitate retention of residual/isolated populations until restored/created habitat becomes available).
- 4.23.21. Loss of habitat for reptiles and water vole would be generated by all three projects, and dependent on the detailed design of the LTC, there could be impacts on the on-site compensatory habitat provision of the Tilbury2 scheme, resulting in additional disturbance (double-handling) of retained populations of water voles and reptiles. Cumulative habitat loss and fragmentation could also give rise to significant effects on local populations of scarce breeding birds and bats.
- 4.23.22. The combined noise effects of the operation of TEC and LTC with Tilbury2 would increase noise levels in Tilbury and Gravesham due to increased road traffic movements on the transport corridor and the operation of plant and equipment from the developments.

Responses to the Qualitative CEA

- 4.23.23. The Panel sought the views of Natural England (NE), Highways England (HE) and Historic England (Hist E) on the Applicant's Qualitative CEA [REP3-027]. Both NE and Hist E provided a detailed response [AS-074 and AS-063]; no response was received on the combined CEA matter from HE.
- 4.23.24. NE remained of the view that significant additional information was available for the proposed development and adjacent sites and that some level of quantitative assessment should be possible. Although noting that the CEA anticipates that there is unlikely to be any overlap between construction of Tilbury2 and the TEC and LTC, the local estuarine environment could be subject to many successive years of construction over the sensitive overwintering period. One of the main issues identified in the CEA is that all three proposals could require land take of OMHPDL. Given that the document identifies that the cumulative effects of the projects discussed '*could be near total elimination of the existing brownfield resource from this part of Thurrock*', NE stressed it is important that the schemes collectively deliver mitigation [AS-074].

- 4.23.25. Hist E's view of the combined CEA unsurprisingly concludes that in most respects the combination of effects on built heritage and archaeology from Tilbury2, TEC and LTC would be greater than any of the individual projects. Cumulatively, the significance of residual effect from Tilbury2 would continue to be major and the degree of harm severe, but exacerbated further by the additional height and massing of the proposed TEC development within its landscape setting of the Fort in views to the east. This would also increase the cumulative impact on the settings of heritage assets on the south bank of the Thames in Gravesham [[AS-063](#)].
- 4.23.26. The Applicant also commissioned Oxford Brookes University to undertake an independent peer review of the CEA, including the relevant chapters of the ES and associated documents [[REP6-010](#)]. The CEA was graded overall as generally satisfactory despite some omissions and inadequacies. The narrative suggested the Applicant's CEA had been satisfactorily undertaken largely in line with the guidance set out in the Planning Inspectorate Advice Notes⁴⁹ which are considered to represent best practice for cumulative effects assessments in relation to DCO projects. The reasoning for the grade appeared to be based on relatively simple errors in the application documents which the Applicant easily corrected in an updated version of the CEA [[REP6-006](#)] and an accompanying response [[REP6-019](#)].
- 4.23.27. In respect of just the LTC, HE raised concerns regarding potential conflict between the on-site ecological mitigation for Tilbury2 [[REP6-041](#)] and the LTC proposals in this area. The assessment which gave rise to this concern was based on the LTC Scoping Report which indicated a possible link road through the Tilbury2 site. However, the submissions by HE at Deadline 6 indicated that: *"the preferred route [of LTC] does not currently show a link spur through the works area of concern. However... the link spur is included as part of the scoping area. At this stage no final decision has been made on the case or otherwise for a new link to the port of Tilbury. HE is also considering options that include the potential use of this area as a construction haul route for LTC.....There is therefore a prospect of conflict between use by the Tilbury2 port if utilised for the translocation of species in this area and the delivery of the LTC project"*.
- 4.23.28. HE sought an addition to its protective provisions in Part 9, Schedule 10 of the draft DCO requiring its consent for the use of this area prior to the seeking of any licence for the translocation of species into this area. This issue was resolved between the Applicant and HE as recorded in the SoCG. No element of the Tilbury2 proposals would prevent LTC from taking place and no additional protective provisions in this regard are required [[REP7-012](#) Appendix 8].
- 4.23.29. The evolution of the LTC proposal rather underlines the practical difficulties in undertaking a detailed CEA involving projects which are at

⁴⁹ Advice Note 17: Cumulative Effects Assessment (Planning Inspectorate 2015) and Advice Note 9: Rochdale Envelope (Planning Inspectorate, 2012)
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the consultation stage and before the application elements are fixed. Indeed, the statutory consultation for the LTC began on 10 October 2018, after the close of the Tilbury2 examination.

- 4.23.30. In respect of just the TEC, RWE raised air quality as a particular impact of Tilbury2 on a potential future project [REP4-004]. At the ISH on 27 June [REP5-014] RWE sought protective provisions to control dust from the Tilbury2 development. The Applicant did not consider this necessary given that RWE have not provided any evidence to support its concerns, and in view of the dust control/monitoring measures included in the OMP [REP3-048 and REP4-004]. The Panel agrees that it would be premature for a monitoring location to be required for this power station proposal in advance of it obtaining development consent.
- 4.23.31. Finally, in the last week of the examination, another DCO project adjacent to the Tilbury2 site, the 'Thurrock Flexible Generation Plant', submitted a Scoping Report to the SoS through the Planning Inspectorate. The Applicant submitted a report at Deadline 7 which explained that there was insufficient detail in the Scoping Report to enable any form of cumulative assessment, and that even on the optimistic programme for constructing the project in 2021 the time scales for its development did not overlap with the construction period of Tilbury2. It concluded that, as with the TEC and LTC, it was not for Tilbury2 to mitigate the impacts of this project, but for that project to do so as and when it developed further [REP7-024].

Conclusions

- 4.23.32. The Panel and indeed many IPs urged the Applicant to include the TEC and LTC proposals in the list of projects assessed for cumulative effects and carry out further work. However, the Panel acknowledges that there are substantial limitations on the nature of a meaningful cumulative assessment that could be carried out in view of the different stages of preparation these proposals have reached. The Panel also agrees that it is for the proponents of these schemes to carry out the assessments of their projects in due course taking the proposed Tilbury2 into account as appropriate.
- 4.23.33. Nonetheless, the Applicant has carried out a post application CEA together with the TEC and LTC to the best of its ability using the information available to date. From that it is apparent that the potential effects of the proposed Tilbury2 development together with the TEC and LTC could be significant in due course. The possibility of an application for a third project adjacent to the proposed Tilbury2 development could increase these effects even further.
- 4.23.34. However, because applications for development consent for these projects are some way off, and of course there is no guarantee they may materialise at all, these are potential effects. The Panel agrees with the Applicant that it is not for the application for Tilbury2 to mitigate the potential impacts of these projects.

- 4.23.35. The Panel concludes that the Applicant has carried out a proportionate assessment of cumulative and in combination effects of other surrounding developments with the proposed Tilbury2 development as part of the submitted application, and this is not a matter which weighs against the Order being made.

5. FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT

5.1. INTRODUCTION, POLICY AND LEGISLATIVE CONTEXT

- 5.1.1. This chapter sets out our analysis and conclusions relevant to the Habitats Regulations Assessment. This will assist the SoS for Transport, as the competent authority, in performing his duties under the Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (as codified) (the Habitats Directive) and the Council Directive 79/409/EEC on the conservation of wild birds (2009/147/EC), as transposed in the UK through the Habitats Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations').
- 5.1.2. Consent for the proposed development may only be granted if, having assessed the potential adverse effects the proposed development could have on European sites⁵⁰, the competent authority considers it meets the requirements stipulated in the Habitats Regulations.
- 5.1.3. The Panel has been mindful throughout the examination of the need to ensure that the SoS has such information as may reasonably be required to carry out his duties as the competent authority. The Panel has sought evidence from the Applicant and the relevant IPs, including Natural England (NE) as the Statutory Nature Conservation Body, through written questions and ISHs.
- 5.1.4. The Panel produced a Report on the Implications for European Sites (RIES) which compiled, documented and signposted HRA-relevant

⁵⁰ The term European sites in this context includes Special Areas of Conservation (SACs), Sites of Community Importance (SCIs), candidate SACs (cSACs), possible SACs (pSACs), Special Protection Areas (SPAs), potential SPAs (pSPAs), Ramsar sites and proposed Ramsar sites. For a full description of the designations to which the Habitats Regulations apply, and/ or are applied as a matter of Government policy, see the Planning Inspectorate's Advice Note 10.

information provided in the DCO application and submitted throughout the examination by both the Applicant and IPs up to Deadline 5 [[PD-012](#)]. The RIES was issued to ensure that the Panel had correctly understood HRA-relevant factual information and the position of the various parties in relation to the effects of the proposed development on European Sites. It was published on the Tilbury2 project page of the Planning Inspectorate's National Infrastructure Planning webpage and a link was circulated to IPs, including NE, on 13 July 2018. Consultation on the RIES took place between 13 July 2018 and 3 August 2018.

- 5.1.5. The Applicant [[REP6-020](#)], NE [[REP6-007](#)] and the MMO [[REP6-039](#)] all provided comments on the RIES. These comments have been taken into account in the drafting of this Chapter.

5.2. PROJECT LOCATION IN RELATION TO RELEVANT EUROPEAN SITES

- 5.2.1. The proposed development is not connected with, or necessary to, the management for nature conservation of any of the European sites considered within the Applicant's assessment.
- 5.2.2. The Order limits of the proposed development do not overlap directly with any European site. However, the Applicant's Stage 2 HRA Report identified the Thames Estuary and Marshes SPA and the Thames Estuary and Marshes Ramsar site for inclusion within the assessment [[REP7-020](#)].
- 5.2.3. The relationship between the proposed Order limits and the Thames Estuary and Marshes SPA and Ramsar site is shown on Figure 1 of the Stage 2 HRA Report [[REP7-020](#)]. The SPA and Ramsar sites cover the same area on the north (Essex) bank of the river Thames, but the Ramsar site is larger than the SPA on the south (Kent) bank.
- 5.2.4. At its closest point, within the navigational approach channel in the river Thames, the Order limits are approximately 1.5km from the SPA and Ramsar site. The nearest area of land within the Order limits (the jetty structures) is approximately 2km from the SPA and Ramsar site. Intertidal habitat which is functionally linked to the SPA and Ramsar site is located within the Order limits between the main site and the jetty and is around 2.1km from the SPA and Ramsar site [[REP6-020](#)].
- 5.2.5. NE confirmed that all relevant sites and qualifying features had been identified and considered by the Applicant [[REP1-074](#)].
- 5.2.6. The Applicant did not identify any potential impacts on European sites in any other European Economic Area (EEA) State. No comments relating to European sites within another EEA State were received during the examination.
- 5.2.7. The Panel is satisfied that the Applicant has correctly identified all of the relevant European sites and the relevant qualifying features/interests for consideration within the HRA. These are the Thames Estuary and

Marshes SPA, the Thames Estuary and Marshes Ramsar site, along with the areas of saltmarsh and intertidal mudflats between the application site and the European sites which are regarded as functionally linked land.

5.3. ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS (LSE)

- 5.3.1. The Applicant's screening assessment in the initial HRA Report submitted with the application (ES Appendix 10.O) concluded that the proposed development would have no LSE, either alone or in-combination with other projects or plans, on the qualifying features of the Thames Estuary and Marshes SPA and Ramsar site [[APP-060](#)].
- 5.3.2. However, early on in the examination, NE stated that it was unable to agree to the conclusion of no LSE alone or in-combination with other plans or projects (response to FWQ 1.11.8 [[REP1-074](#)] and [[REP3-042](#)]). NE had a number of concerns over the Applicant's assessment, including a lack of an assessment of effects from invasive non-native species (INNS) and from construction and operational waste and pollutants. NE also noted the ruling by the Court of Justice of the European Union (the CJEU) on the interpretation of the Habitats Directive in the case of People Over Wind and Sweetman vs Coillte Teoranta (2018) ('the Sweetman judgement') and that the "*the ruling signals a presumption in favour of Appropriate Assessment, and that mitigation measures require further scrutiny*" [[REP3-042](#)].
- 5.3.3. At Deadline 4, the Applicant provided a HRA Stage 2 Report' [[REP4-018](#)] (22 May 2018) which superseded the screening assessment and which adopted a more precautionary approach in light of the Sweetman judgement. It acknowledged LSEs for some features of the European sites; however this Stage 2 Report ultimately concluded no adverse effect on the integrity (AEOI) of any of the European sites screened into the assessment, either alone or when considered in-combination with any other plans or projects (see section 5.5 of this report).
- 5.3.4. The HRA Stage 2 Report was subsequently superseded at Deadline 5 by an updated version [[REP5-032](#)] and again at Deadline 7 [[REP7-020](#)]. This final version of the HRA Stage 2 Report incorporated the Applicant's conclusions on matters discussed throughout the examination, including the RIES and responses to it.

Potential impacts

- 5.3.5. Chapter 5 of the Applicant's Stage 2 HRA Report identified impact sources from the proposed development on the European sites and on functionally linked features. These included:

- changes to air quality – from road, non-road and shipping emissions;
- changes to existing coastal and estuarine processes (sediment circulation and deposition patterns) – from construction of marine structures, capital and maintenance dredging;

- changes to water and/or sediment quality within the Thames - from construction of marine structures, capital and maintenance dredging;
- disturbance from increased shipping, noise, lighting and human activity;
- INNS;
- construction waste and pollutants;
- operational waste and pollutants; and
- habitat loss or damage to habitat which is functionally linked to the European sites.

5.3.6. The Panel is content that all relevant potential impacts have been assessed by the Applicant in the Stage 2 HRA Report.

5.3.7. Sections 5.3 and 7.3 of the initial HRA report [[APP-060](#)] addressed potential in-combination effects with the following projects (listed in Table 2.2 of the ES [[APP-031](#)]):

- Thames Enterprise Park;
- Oikos Storage Proposals;
- Goshems Farm Jetty;
- Land adjacent to Tilbury Power Station Fort Road; and
- West Thurrock Biomass CHP.

5.3.8. The assessment presented in the initial HRA Report was deleted from the Deadline 7 HRA Stage 2 Report and replaced by an assessment of potential in-combination effects with the proposed LTC and the TEC [[REP7-020](#)].

5.3.9. For the purposes of producing the screening and integrity matrices, the Applicant grouped the potential impact sources into broad effect categories of disturbance, habitat loss or damage, loss or damage to Criterion 2 plants/invertebrates and in-combination effects; as shown in Table 5.1 below.

5.3.10. The Applicant's final Stage 2 HRA Report [[REP7-020](#)] considered potential effects during construction and operation. It stated that "*The Tilbury2 project is for a permanent form of development and no decommissioning is envisaged. Potential impacts arising from decommissioning have not therefore been considered in this HRA report*".

Screening conclusion

5.3.11. The screening matrices in Annex 2 of the RIES [[PD-012](#)] detailed the Panel's understanding of the Applicant's screening exercise and the views from NE, where relevant up to Deadline 5 of the examination and is summarised in the table below. No mitigation measures have been relied upon in the screening exercise.

Table 5.1: Summary of the HRA screening exercise

Potential effect	Screened in or out?	
	Thames Estuary and Marshes SPA	Thames Estuary and Marshes Ramsar site
Disturbance to cited bird species within the European site during construction and operation	Out	Out
Disturbance to avocet, ringed plover, grey plover, black-tailed godwit and redshank using functionally linked habitats during construction	<i>In</i>	<i>In</i>
Disturbance to avocet, ringed plover, grey plover, black-tailed godwit and redshank using functionally linked habitats during operation	Out	Out
Disturbance to hen harrier or knot using functionally linked habitats during construction and operation	Out	Out
Habitat damage within European site during construction and operation	<i>In</i>	<i>In</i>
Loss or damage to functionally linked habitats during construction and operation	<i>In</i>	<i>In</i>
Loss or damage to Criterion 2 plant/invertebrate species during construction and operation	n/a	<i>In</i>
In-combination effects during construction and operation	<i>In</i>	<i>In</i>

5.3.12. In response to the consultation on the RIES, NE confirmed it agreed with the position reached regarding features and potential impacts screened in or out within the RIES [REP6-007].

5.3.13. In drafting the RIES, the Panel inferred from footnote h of the Applicant's screening matrix in the Deadline 5 version of the HRA Stage 2 Report [REP5-032] that a LSE should be screened in for the direct loss or damage to functionally linked land. However, the Applicant subsequently disputed that direct loss or damage to functionally linked land should be screened in [REP6-020]. It stated that there is no LSE as the intertidal

and mudflat habitat loss is *de minimis* and temporary (although the Panel notes from [Table 1 of [REP2-007](#)] that it is in fact nearly all permanent).

5.3.14. The Panel is of the view that the anticipated loss of or damage to this functionally linked land should be considered to present a LSE. The Panel also notes NE's agreement [[REP6-007](#)] to screen in a LSE for this potential impact and that a LSE remains screened in to footnote h of the Applicant's screening matrix in the Deadline 7 version of the HRA Report [[REP7-020](#)].

5.3.15. The Panel therefore recommends to the SoS that the correct potential impacts and relevant features for which there is a LSE are those presented within the screening matrices of the RIES [[PD-012](#)] and summarised in Table 5.1 above.

5.4. CONSERVATION OBJECTIVES

5.4.1. The conservation objectives for the Thames Estuary and Marshes SPA were provided in Appendix 3 of the final HRA Stage 2 Report [[REP7-020](#)] and are as follows:

“Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring:

- *The extent and distribution of the habitats of the qualifying features;*
- *The structure and function of the habitats of the qualifying features;*
- *The supporting processes on which the habitats of the qualifying features rely;*
- *The population of each of the qualifying features; and,*
- *The distribution of the qualifying features within the site.”*

5.5. FINDINGS IN RELATION TO ADVERSE EFFECTS ON INTEGRITY (AEOI)

5.5.1. The Applicant's final HRA Stage 2 Report concluded that the project would not adversely affect the integrity of the Thames Estuary and Marshes SPA or the Thames Estuary and Marshes Ramsar site (or the functionally linked land).

5.5.2. The Applicant's conclusion of no AEOI has relied upon mitigation measures detailed in Table 5 of the HRA Stage 2 Report. The Panel is satisfied that these measures would be appropriately secured through the OMP [[REP6-026](#)] and the CEMP [[REP6-008](#)] through requirements 11 and 4 within the draft DCO, together with conditions within the draft DML (Schedule 9 in the draft DCO).

5.5.3. In response to the consultation on the RIES, NE stated that it could not agree to no AEOI for the following:

- noise disturbance (outside the SPA/Ramsar site);
- damage to habitats and species (within and outside the SPA/Ramsar site):
 - o sediment circulation or deposition patterns;
 - o water and/or sediment quality;
- in-combination effects:
 - o displacement of birds from the intertidal area;
 - o 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
 - o loss of functionally linked habitat [[REP6-007](#)].

5.5.4. These matters are discussed below.

Noise disturbance

5.5.5. Throughout the examination, NE raised concerns over noise disturbance to cited bird species outside of the SPA/Ramsar site. NE stated that it did not agree there would be no AEOI from the project alone because of its views over the value of functionally linked land, and the zones of influence from noise disturbance [[REP6-007](#)].

Importance of functionally-linked intertidal habitat

5.5.6. The Applicant stated that based on survey information, impacts from construction or operation of Tilbury2 to the intertidal habitat would result in disturbance to substantially less than 1% of the bird species populations relevant to the SPA/Ramsar Site [[APP-031](#) and [APP-060](#)].

5.5.7. NE considered that the mild winter weather at the time of the Applicant's wintering bird survey may have led to under-recording of bird numbers and species using the intertidal area and that the initial HRA Report undervalued (ecologically) functionally-linked habitat (response to FWQ 1.11.8 [[REP1-074](#)]). NE therefore suggested that the Applicant should commit to annual bird surveys between 1 September and 31 March during both construction and operation of the proposed development [[RR-025](#) and [REP3-042](#)].

5.5.8. In response, the Applicant undertook additional wintering bird surveys in February and March 2018 to provide further data (the 'bird note' in Appendix 2 of [[REP3-029](#)]) and to corroborate the initial survey results. However, NE stated that it did not agree with the Applicant's conclusion. This was because it considered that additional data exists (from sources other than the Applicant), which indicates that the area of foreshore contiguous with the Thames Estuary and Marshes SPA has supported significantly higher numbers of over-wintering (and/ or passage) bird species than is presented in the Applicant's data. However, NE did not provide any additional data to support this view. NE also contended that other recent development has resulted in a reduction of bird usage of inter-tidal areas in proximity of the Tilbury2 project [[REP3-042](#)].

- 5.5.9. NE further suggested that piling activity should be avoided between September and the end of March in order to mitigate noise impacts on SPA and Ramsar bird features (response to FWQ 1.11.10 [[REP1-074](#) and [REP3-042](#)]).
- 5.5.10. The Applicant considered the principal disturbance risk to be from piling and subsequently concluded that there would be no AEOI resulting from such disturbance. It based its conclusion on:
- piling being time-limited within any 24 hour period (condition 12 (2) of the draft DML would restrict piling to the hours of 08:00-18:00);
 - the extent of functionally linked habitat available to temporarily displaced birds; and
 - a worst-case approach had been assessed which assumed that all birds would be displaced from within the 300m zone of influence [[REP7-020](#)].
- 5.5.11. The Applicant concluded that it was unlikely that displacement due to disturbance emanating from the Tilbury2 site could have consequences for the SPA or Ramsar site populations, or indeed significant physiological consequences for any individual birds or collective assemblages of individuals or mixed species agglomerations.
- 5.5.12. The Applicant also disputed the need for a seasonal timing restriction for piling activities on the basis that NE had not provided any data to support the recommendation. It explained that piling may be required for up to a year and the piling programme needed to be broad to accommodate the construction programme [[REP4-020](#)].
- 5.5.13. However, to provide reassurance on the issue of construction noise, the Applicant committed to a programme of continuing wintering and passage bird surveys (between September and April). These surveys were described within a Bird Monitoring and Action Plan (BMAP) [[REP5-031](#)] which would include trigger levels dictating the need for more intense monitoring followed by key stakeholder notification if such levels were breached. A breach would also require the Applicant to cease temporarily any activities deemed to be disturbing relevant features and resulting in significant effects. The BMAP would be secured through requirement 11(a) of the draft DCO [[REP7-005](#)]. The Applicant stressed its view that the monitoring proposed in this requirement was not necessary to support a conclusion of no AEOI and should be considered akin to a routine post-construction monitoring for verification purposes [[REP5-032](#) and [REP5-036](#)].
- 5.5.14. NE stated however that monitoring can be useful to provide added precaution where no adverse impact is anticipated but remained of the opinion that appropriate mitigation (i.e. a piling restriction) was required. As a conclusion, it did not agree to no AEOI from noise disturbance [[REP5-061](#) and [REP6-007](#)].

Zone of influence

- 5.5.15. The initial HRA Report [[APP-060](#)] assessed potential noise impacts within a 300m zone of influence extending from the proposed development, which was based on the TIDE toolkit⁵¹. NE did not consider the zone of influence to be sufficiently precautionary (response to FWQ 1.11.8 [[REP1-074](#), [REP3-042](#) and [REP5-061](#)]) and indicated that a 500m zone of influence would be more appropriate [[REP5-061](#)].
- 5.5.16. The Applicant argued that the zone of influence applied to assess disturbance to birds drew upon widely accepted and adopted research [[REP2-007](#)]. NE confirmed that its request for a wider zone of influence was based on a field observation rather than a scientific study [[REP5-061](#)]. Nonetheless, the Applicant presented sensitivity testing within a zone of influence out to 500m [[REP7-020](#) Appendix 12]. The Applicant stated that the “*HRA conclusions are not therefore altered by adoption of a 500m zone of influence for noise impacts*” [[REP6-020](#)].

The Panel's conclusion

- 5.5.17. NE explained that it was unable to agree that disturbance to birds utilising functionally linked habitat would not result in an AEOI because there was no consensus as to the value assigned to functionally linked land and the extent of zones of influence from noise impact [[REP6-007](#)].
- 5.5.18. With regards to the value of functionally linked land, the Applicant undertook additional surveys to corroborate its initial surveys. Despite NE's disagreement over the contents of the 'bird note' during the examination [[REP3-042](#)], the Panel notes that the SoCG between the Applicant and NE agrees “*that the package of contextual detail on the use of the intertidal areas by wintering birds (the “bird note”) adequately addresses any perceived shortfall, and as part of the environmental information before the examination, provides an adequate basis for determination. It also provides an adequate basis from which to assess the potential for ‘adverse effect on integrity’ in relation to bird populations using habitats functionally linked to the Thames Estuary and Marshes SPA/Ramsar*” [[REP7-012](#) Appendix 5].
- 5.5.19. The Applicant has also responded to NE's concerns regarding the zone of influence through provision of the additional sensitivity testing, but NE had not commented on this by the close of examination.
- 5.5.20. The Panel does not consider that NE has provided any persuasive evidence to demonstrate that the value of the functionally linked land is any higher than that suggested by the Applicant. On this basis, the Panel concludes that the area most likely to experience construction or operational noise impacts emanating from the Tilbury2 site would support significantly less than 1% of the bird populations relevant to the SPA/Ramsar Site. The Panel does not consider that any evidence has been presented to suggest that a disturbance impact on this scale would have a discernible effect on the overall population and distribution of the

⁵¹ Waterbird Disturbance Mitigation Toolkit (Institute of Estuarine & Coastal Studies (IECS) University of Hull, 2013)

qualifying features. Having regard to the relevant conservation objectives of the Thames Estuary and Marshes SPA, the Panel does not consider that the integrity of the site would be adversely affected.

- 5.5.21. The Panel has not been persuaded by NE that there would be an AEOI of the European sites from the project alone and therefore does not agree that additional piling restrictions are necessary.
- 5.5.22. The final SoCG between the Applicant and NE stated that the provision of the BMAP was welcomed by NE and would provide additional reassurance in relation to potential construction phase disturbance issues [[REP7-012](#) Appendix 5]. The Panel is aware of the need for the SoS to make an appropriate assessment of the implications of the project *before* granting development consent⁵² and for there to be certainty with the conclusions reached. The Panel has not therefore attached any weight to the monitoring proposed within the BMAP in reaching these conclusions.

Damage to habitats and species (within and outside the SPA/Ramsar site)

Loss of functionally linked habitat

- 5.5.23. As noted in section 5.3 of this chapter, it is the Panel's view that impacts from loss or damage to functionally linked land should be considered to present a LSE. The actual loss of habitat on the functionally linked land within the Order limits would amount to 0.0355ha⁵³ and results from the inclusion of piles necessary to construct the jetty and other marine engineering operations.
- 5.5.24. NE advised that loss of functionally linked habitat from the project alone was likely to be relatively small [[REP6-007](#)], a position with which the Panel agrees. However, the Panel observes that there have been shifting positions during the examination as to whether habitat provision proposed by the Applicant would be required to conclude no AEOI, and consider that this should be highlighted in this report.
- 5.5.25. During the examination, the Applicant in its response to FWQ 1.2.10 [[REP2-008](#)) stated that there would be on-site provision for saltmarsh and intertidal habitats which would be provided for in the EMCP 'to off-set the minor losses' [[REP7-016](#)]. The MMO highlighted that the creation of new saltmarsh habitat would be compensation and as such the Applicant could not conclude no AEOI [[REP7-033](#)].
- 5.5.26. In response, the Applicant confirmed that the proposed habitat reinstatement and compensation was not required to reach the conclusion of no AEOI [[REP6-020](#)]. The Panel notes however, that the integrity matrices within the Deadline 7 version of the Stage 2 HRA

⁵² Regulation 63(1) of the Habitats Regulations

⁵³ 0.0315ha lost permanently and 0.004ha taken temporarily during construction [[REP2-007](#) Table 1].

Report refer to 'reinstatement and restoration measures' for saltmarsh and intertidal mud habitats [[REP7-020](#)].

- 5.5.27. The conservation objective for the Thames Estuary and Marshes SPA includes maintaining or restoring the extent and distribution of the habitats of the qualifying features. For the avoidance of doubt, the Panel considers 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. The Panel concludes that there would be no AEOI irrespective of the proposed on-site provision for saltmarsh and intertidal habitat.
- 5.5.28. The Panel also notes that the Applicant's application documents and examination submissions appeared to include coastal and floodplain grazing marsh as a functionally linked habitat to the European sites. However, the Applicant has subsequently confirmed that there would be no functional linkage between the European sites and this land, so therefore the Panel has not considered this further [[REP6-020](#)].

Water and / or sediment quality

- 5.5.29. The HRA Stage 2 Report concluded that the adoption of non-dispersive capital dredge methods for contaminated areas of the approach channel (secured through paragraph 3(4) of the draft DML) would obviate impacts leading to AEOI from changes to water and/or sediment quality (footnote b of [[REP7-020](#)]).
- 5.5.30. However, NE disagreed with this conclusion and stated that dredging operations would require careful programme timing to avoid increasing the presence of contaminated sediments to invertebrate prey and birds foraging during the autumn to end March period (including ringed plover autumn passage) [[REP6-007](#)]. NE advised that without more information about the dredging methodology and taking a precautionary position, any initial capital dredging should not be undertaken during the ten month period of July to April. This would allow disturbed sediment to settle and to disperse, before overwintering and autumn passage birds visit the area in significant numbers.
- 5.5.31. The Applicant stated that the "*the logistical and financial implications of adopting such measures without clear justification for doing so are wholly disproportionate to their rationale, are in some cases impracticable, and are therefore prohibitive*" [[AS-086](#)]. However, the Applicant did explain that "*On dredging, the Applicant maintains the position that if the MMO in its role as competent authority and taking advice from NE and PLA deems restrictions to be necessary to prevent adverse effects on the European and/or Ramsar Site from dredging operations it will be able to impose any necessary and appropriate controls through the conditions of the DML*" [[REP6-020](#)].
- 5.5.32. NE further considered that a sediment monitoring programme should be undertaken to establish the sediment movement, accretion and

contamination levels to supporting habitats arising from initial dredging. This would then help to inform any additional mitigation and impact-offsetting for the maintenance dredging programme [REP6-007].

Sediment circulation or deposition patterns

5.5.33. The HRA Stage 2 Report concluded no AEOI from the sediment plumes from capital and maintenance dredging (footnote b of [REP7-020]). This conclusion was based on the hydrodynamic sediment modelling carried out by HR Wallingford [APP-089] and a stipulated limitation on WID to ebb tide periods outside of the months of June to August (as secured through condition 13 of the draft DML).

5.5.34. However, NE disagreed with the Applicant's findings and stated that the *"models are best predictions and should be ground-truthed"* [REP6-007].

The Panel's conclusion

5.5.35. The Panel has had regard to the points raised by NE and the position it advocates in regards to specific activities of the proposed development. NE has requested a number of restrictions on initial dredging and inclusion of a proposed sediment monitoring regime.

5.5.36. The Panel considers that NE's proposed restrictions on dredging would be prohibitive to the proposed development, a view that MMO shares (REP6-039). For the avoidance of doubt, the Panel recognises that a position centred around viability is not a legitimate reason to overcome the requirements of the Habitats Regulations. This factor has not therefore been considered in reaching the Panel's conclusion.

5.5.37. The Panel does not accept the Applicant's suggested position that there is sufficient security to the findings of the AEOI because the MMO can impose restrictions on dredging to prevent adverse effects on European sites through the DML. As noted above, the Panel is conscious of the duty placed on the competent authority where necessary to make an appropriate assessment of the implications of the project *before* granting development consent and for there to be certainty with the conclusions of that assessment. The Panel is concerned that (unspecified) restrictions which may be imposed at a later date would not provide sufficient certainty.

5.5.38. With regard to the modelling and assessment work undertaken by the Applicant, the Panel acknowledges and agrees with the Applicant's assertion that the modelling is of a predictive nature [AS-086]. However, neither NE nor the MMO have raised any specific concerns that would undermine the Applicant's approach to the assessment or indicate that the conclusions reached are inaccurate. The Panel also notes that the MMO has not received any concerns regarding water quality from the EA [REP7-033]. The Panel is therefore satisfied that the Applicant has provided a sufficiently robust analysis of the likely consequences from the proposed dredging activities to potential contamination, sediment disturbance and dispersal. The Panel also notes that the SoCG between the Applicant and NE [REP7-012 Appendix 5] states that *"It is also*

agreed that the methodology, coverage and structure of the HRA reports are appropriate”.

- 5.5.39. The Applicant has 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 Thames. It also predicts a low risk of significant effects from the mobilisation of potential contaminants [[REP7-020](#)]. For these reasons, the Panel is not persuaded that a restriction on dredging activities between July and April is necessary.
- 5.5.40. Giving consideration to the conservation objectives of the Thames Estuary and Marshes SPA, the Panel has not been persuaded that the structure and function of the habitats of the qualifying features and the supporting processes on which they rely would be affected. The Panel therefore advises the SoS that there would be no AEOI from water and/or sediment quality and sediment circulation or deposition patterns.
- 5.5.41. The Panel also considers that submission of the construction method statements to the MMO, which would be secured through condition 10 of the draft DML (and to be drafted by the Applicant in consultation with the EA and NE prior to submission), should provide confidence to NE that it would be involved in agreeing the programme of works to further reduce or avoid impacts where possible.
- 5.5.42. Although NE has proposed sediment monitoring to be undertaken during and after initial dredging activities, the Panel notes NE's comment in an earlier representation that *“In principle Natural England does not consider that monitoring can be considered mitigation compliant with HRA since it can only assist in addressing an impact which has already occurred”* [[REP5-061](#)]. The Panel agrees with this position and, as noted above, is satisfied with the Applicant's assessment; the Panel therefore does not agree that the proposed monitoring is necessary.

In-combination effects

Lower Thames Crossing and Tilbury Energy Centre

- 5.5.43. At the time the application for the proposed development was made, a Scoping Request had not been submitted for either the proposed LTC or the proposed TEC; as such these projects were not included in the Applicant's in-combination assessment [[APP-060](#)]. As explained in section 4.23 the Applicant submitted a high level assessment of cumulative effects with the TEC [[REP1-016](#) Appendix C]. This was followed by a largely qualitative assessment of in-combination effects with both the TEC and the LTC [[REP3-027](#)].
- 5.5.44. The Applicant maintained throughout the examination that there was limited information available for the LTC and TEC to complete a detailed in-combination assessment [[AS-049](#), [REP1-016](#) and [REP3-029](#)] and suggested that the onus was in fact on the applicants for future

developments to undertake a thorough in-combination assessment. The Panel agrees with this.

- 5.5.45. Nevertheless, the Applicant's integrity matrices within the HRA Stage 2 Report assessed the following in-combination effects:
- 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.
- 5.5.46. The Applicant's integrity matrices concluded that there would be "*no credible risks of significant in-combination effects having adverse consequences for the integrity of the European/Ramsar Site*" [[REP7-020](#)].
- 5.5.47. NE remained of the view that a more detailed and quantitative in-combination effect assessment was possible [[REP5-061](#) and [REP6-007](#)] and as noted previously, confirmed in its response to the consultation on the RIES [[REP6-007](#)] that it could not agree to a finding of no AEOI for the following in-combination effects:
- displacement of birds from intertidal area;
 - effects 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.

Thurrock Flexible Generation Plant (TFGP)

- 5.5.48. A Scoping Request for the Thurrock Flexible Generation Plant (TFGP) was submitted to the Planning Inspectorate on 9 August 2018, shortly before the close of the examination. The Applicant provided a note considering the potential interactions of the TFGP with Tilbury2 [[REP7-024](#)] which stated that undertaking a high level qualitative cumulative effects assessment was not possible given the limited time available until the close of examination and the level of information within the Scoping Report. However, it did acknowledge that impacts to the Thames Estuary and Marshes SPA and Ramsar site would need to be considered to a relevant level of detail by the TFGP applicant.

Displacement of birds from intertidal area

- 5.5.49. The HRA Stage 2 Report [[REP7-020](#)] concluded that additive disturbance impacts would be significantly ameliorated by:
- the relatively limited number of projects that are likely to have overlapping construction phases (by reference to the Qualitative Cumulative Effects Assessment of Tilbury2 with the TEC and LTC [[REP3-027](#)]);

- anticipated construction periods of 2019 - early 2021 for Tilbury2, mid-2021 - 2025 for TEC, and 2021 - 2026 for LTC);
- the low number of construction activities likely to involve particularly disturbing activities such as piling; and
- the limited zone of influence of noise impacts, relative to the amount of intertidal habitat available.

5.5.50. The Applicant concluded there would not be an AEOI on the Thames Estuary and Marshes SPA and Ramsar site from in-combination displacement effects to birds using intertidal habitats.

5.5.51. NE noted that the HRA Stage 2 Report in-combination assessment was limited to overlapping impacts and that consideration should be given to prolonged disturbance to functionally linked land caused by concurrent or successive development activities [[REP5-061](#) and [REP6-007](#)]. NE also considered that timing the works that have the potential to cause bird disturbance to avoid the sensitive over-wintering period would negate an impact both alone and in-combination [[REP7-022](#)].

5.5.52. The Applicant considered that instances of prolonged disturbance was a matter which should be addressed by future applicants [[REP6-020](#)].

Estuarine processes

5.5.53. The Applicant's ES concluded that increases in suspended sediments from other projects in the vicinity would generally be small scale, although dredging of the approach channel was noted as having the potential to result in increased levels of suspended sediment [[APP-031](#) Table 11.57]. The ES considered that co-ordination of dredging activities could reduce potential effects.

5.5.54. The Applicant also acknowledged the potential for in-combination impacts from dredging activities between the proposed development of the LTC and TEC and from the discharge of cooling water at the TEC. The impacts would be to water and/or sediment quality, but these impacts were not quantified as there was a lack of detailed information regarding the other developments [[REP3-027](#)]. The Applicant also highlighted that dredging was a routine activity carried out in relation to the power station previously located at Tilbury [[REP3-027](#)].

5.5.55. The HRA Stage 2 Report concluded that the potential influence of the proposed development on estuarine processes would be negligible and therefore significant in-combination effects were not likely, regardless of the magnitude of effects arising elsewhere.

5.5.56. It further stated that the adoption of measures to prevent significant mobilisation of polluted sediments, the controls imposed by dredging regulators, and the ability of the PLA to control other dredging in the estuary through marine licensing, would mean a negligible potential contribution to any cumulative water quality effects arising from other marine works projects and dredging activities. The Applicant concluded that adverse in-combination effects on estuarine processes and the

integrity of the Thames Estuary and Marshes SPA and Ramsar site were unlikely [[REP7-020](#)].

- 5.5.57. However, NE did not agree to no AEOI and stated that further consideration was required to address uncertainties relating to sedimentation and pollution risk [[REP5-061](#) and [REP6-007](#)].
- 5.5.58. The Applicant considered that these issues have been addressed as far as possible given the lack of full detail on other future projects [[REP6-020](#)].

Loss of functionally linked habitat

- 5.5.59. The Applicant explained that the extent of loss to functionally linked habitat cannot be properly defined for either the TEC or LTC at this stage and that the extent of potential impacts from the TEC on functionally linked coastal habitat, including displacement/ removal of benthos, release of chemicals and thermal plume is yet to be fully quantified for the TEC [[REP5-036](#)]. For both the LTC and the TEC schemes, the extent of any such potential impacts may be reduced via avoidance, minimisation, mitigation and compensation where appropriate.
- 5.5.60. However, the Applicant considered that because the details of those proposals were not yet available, a full assessment of these matters could not reasonably fall to be undertaken by the Applicant for Tilbury2, and must logically fall to the promoters of the TEC and LTC in due course.
- 5.5.61. Although NE agreed that no AEOI for loss of functionally linked land for the project alone could be concluded, it considered there to be a potential for in-combination effects. It concluded that based on the information provided, an AEOI in-combination could not be ruled out although it did not provide specific reasons relating to loss of functionally linked habitat [[REP6-007](#)].

The Panel's conclusion

- 5.5.62. There is a clearly expressed need in the Habitats Regulations for an assessment of in-combination effects with other plans and projects. The Panel does not therefore agree with the Applicant's argument that *"It is no part of the Habitats Directive or Regulations that consent should be withheld for a project which does not have an adverse effect on site integrity by reference to other potential projects which have not yet been consented, and which will themselves be the subject of consideration for their effects on European Sites"* [[REP6-020](#)].
- 5.5.63. In the Panel's view, the Applicant has made efforts to address the concerns raised by NE. However, NE remained of the position that the Applicant should make additional attempts to quantify impacts further using available information [[REP6-007](#)]. The Panel is not clear as to what additional information alluded to by NE was reasonably available to the Applicant at this time to facilitate a more detailed in-combination assessment, and whether this would ultimately affect the findings of the assessment.

- 5.5.64. The Panel acknowledges the potential for in-combination loss of functionally linked habitat; the Panel also acknowledges that with the information currently available regarding the other projects the quantum of habitat loss cannot be determined at this stage. The Panel has established that direct loss to functionally-linked land within the Order limits of Tilbury2 is very small (0.0355ha) and as such would constitute a minimal contribution to any in-combination loss.
- 5.5.65. The Panel accepts NE's position that there would be some potential for prolonged noise disturbance at functionally linked habitat resulting from successive developments. However, the Panel is persuaded by the Applicant's position that having regard to the currently available information, a quantitative assessment would not be possible.
- 5.5.66. NE's concern in relation to in-combination impacts from dredging are noted but at no time during the examination did NE provide any particular evidence that would refute the findings of the assessment. On that basis the Panel is satisfied that the Applicant's assessment of the effects can be relied upon and its findings are sufficiently supported. The Panel is also satisfied that the Applicant's assessment of in-combination impacts has been based on the currently available information and therefore concludes that the in-combination effects would not result in AEOI.
- 5.5.67. Furthermore, the Panel is aware that all dredging works would require approval from the PLA under its protective provisions in Part 4 of Schedule 10 of the draft DCO. The Applicant and the PLA have acknowledged the potential for suspended sediment from maintenance dredging at Tilbury2 and the London Gateway Port to act in-combination. However, the PLA has confirmed that it could impose restrictions as necessary [[REP7-012](#)]. The Panel takes comfort that the PLA would be involved in the approval of detailed design for the authorised development as it would have oversight of other applications and could provide input to the MMO on co-ordinating activities. The Panel also notes that the MMO has confirmed that it agrees with all provisions of the DML, save for the arbitration clause [[REP7-012](#) Appendix 7].
- 5.5.68. It is important to confirm that the Panel has concerned itself with the application for Tilbury2, and not on other projects which may or may not materialise. However, the Panel is mindful of the potential number of forthcoming projects in the vicinity of the proposed development at Tilbury2 and considers that there is potential for in-combination impacts to arise at some point in the future.
- 5.5.69. As set out in section 4.23, the Panel accepts the Applicant's position that as other projects come forward and greater detail is known, it will be for applicants of those schemes and the decision maker at the time to assess in-combination effects.

5.6. CONCLUSIONS

- 5.6.1. NE was the only IP to actively engage with HRA matters during the examination. Nevertheless, the following SoCGs [\[REP7-012\]](#) demonstrate agreement with the conclusions of the Applicant's HRA Report:
- TC (Appendix 1);
 - ECC (Appendix 3); and
 - KCC (Appendix 10).
- 5.6.2. The SoCG between the Applicant and NE [\[REP7-012\]](#) Appendix 5] provides more optimism in agreeing a way forward than NE's Deadline 6 and Deadline 7 representations. At each stage of the Panel's deliberation the Panel has taken into account all views expressed by NE.
- 5.6.3. The Panel concludes that sufficient information has been provided by the Applicant to enable the SoS to undertake an appropriate assessment. Whilst drafting the RIES, it became apparent that there remained disagreement regarding the effects of the proposed development on integrity of the European Sites. The Panel therefore posed questions within the RIES to ask what consideration had been given to stages of the HRA assessment process beyond those addressed within the HRA Stage 2 report ie alternative solutions (Stage 3) and imperative reasons of overriding public interest (Stage 4)⁵⁴.
- 5.6.4. NE advised 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"* [\[REP6-007\]](#). This position was also set out in its SoCG with the Applicant [\[REP7-012\]](#) Appendix 5].
- 5.6.5. The Applicant interpreted this response to mean that NE must therefore logically conclude there to be no AEOI [\[AS-086\]](#). However, NE's final representation in the examination confirmed it was not able to agree to no AEOI without the additional mitigation it put forward for the reasons described above [\[REP7-022\]](#).
- 5.6.6. The fact that NE as the Statutory Nature Conservation Body has not been able to agree to no AEOI is a serious issue in relation to the Tilbury2 application. However, the Panel has considered very carefully the representations and reasoning put forward by NE in this regard and the responses by the Applicant to address these, and these are set out in paragraphs 5.5.17 to 5.5.22, 5.5.35 to 5.5.42 and 5.5.62 to 5.5.69 above. The Panel is not convinced that there is any additional evidence put forward by NE to outweigh the Applicant's conclusions drawn in the final version of the HRA Stage 2 Report at Deadline 7 [\[REP7-020\]](#).

⁵⁴ These stages are described in Planning Inspectorate Advice note ten: Habitats Regulations Assessment relevant to nationally significant infrastructure projects Tilbury2 – Proposed Port Terminal at Former Tilbury Power Station Case Ref: TR030003
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- 5.6.7. Therefore the Panel advises the SoS that, on the basis of information before it, the proposed development would have no AEOL, either alone or in-combination with other projects or plans, on the qualifying features of any European site. In this circumstance, the Panel sees no need to progress to Stages 3 and 4 of the HRA process.

6. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

6.1. INTRODUCTION

- 6.1.1. The statutory framework for deciding NSIP applications where there is a relevant designated NPS is set out in s104 PA2008. Subject only to specific exceptions provided for in s104, the Secretary of State must decide the application in accordance with a relevant designated NPS, which in the case of this application is the NPS for Ports (NPSP). Paragraph 1.2.5 of the NPSP sets out that one exception is where the application for port infrastructure would result in adverse impacts of the development outweighing its benefits.
- 6.1.2. Accordingly, this chapter summarises the Panel's findings on each of the matters in Chapters 4 and 5 in order to reach a conclusion on the case for granting development consent for this application. This is based on an assessment of those matters which the Panel considers are both important and relevant to the decision as well as the LIRs submitted to the examination, as required by s104 PA2008.
- 6.1.3. In the light of the Panel's conclusion on the case for development consent in this chapter, Chapter 7 then turns to the Applicant's proposals for compulsory acquisition and related matters, followed by discussion of the draft DCO in Chapter 8 before reaching an overall recommendation about whether development consent should be granted for the application in Chapter 9.

6.2. FINDINGS AND CONCLUSIONS

- 6.2.1. This section summarises the conclusions reached in Chapter 4 (Findings and Conclusions in Relation to the Main Issues) and Chapter 5 (Findings and Conclusions in Relation to Habitats Regulations Assessment). The Panel has not included references in this summary, since the full references are in the corresponding sections of Chapters 4 and 5.

Policy Justification for the Proposed Development

- 6.2.2. The NPSP states a strong policy objective for new port capacity, in view of the essential role of ports in ensuring sustainable growth in the UK economy.
- 6.2.3. The NPSP does not prescribe the locations where new port facilities might be developed, but points out that substantial additional capacity needs to be provided at a wide range of facilities and locations, to provide flexibility to match the changing demands of the market and to be responsive to changing commercial demands. UK ports are in a competitive market which the Government welcomes and encourages.

- 6.2.4. It is therefore left to port operators as to when and where new developments might be proposed. Tilbury2 is such a proposal from an established port operator in response to identified market needs for capacity close to its existing operation, the Port of Tilbury.
- 6.2.5. The identified need for new port capacity in the case of Tilbury2 includes principally the movement of freight (as would be provided for in the proposed Ro-Ro terminal) and bulk goods (as would be provided for in the CMAT). These would be close to, and in conjunction with, the existing Port of Tilbury, thus unlocking more of the potential of that port infrastructure to better meet other identified needs including, for instance, enhancing the existing cruise terminal.
- 6.2.6. The particular location proposed for Tilbury2 would be close to the Port of Tilbury's markets, thus minimising road miles, and would be readily rail-linked, thus maximising onward movement by rail. It would be on previously developed land which would be brought back into productive use, thus avoiding a significant call on green field land.
- 6.2.7. With reference to the wider potential benefits of port development as set out in the NPSP, the Panel agrees that the proposed development of Tilbury2 would also make a significant contribution to the local economy through the creation of a large number of jobs both during construction and operation of the port.
- 6.2.8. This is recognised by the support from TC, in the jurisdiction of which Tilbury2 would be developed, as well as the other local authorities that would be impacted by Tilbury2: GBC, ECC and KCC.
- 6.2.9. The case for the proposed development is set out by the Applicant in the Outline Business Case (OBC) which asserts that the proposals provide an holistic fit with local, regional and national policies and objectives. The OBC has been constructed according to HM Treasury's standard five-case model, with strategic, economic, commercial, financial and management cases.
- 6.2.10. The economic case points out that the Port of Tilbury is supported by its parent organisation, Forth Ports, and that the Tilbury2 proposed development does not require public funding. The commercial, financial and management cases demonstrate that the proposed development is deliverable. No evidence was put forward to counter the Applicant's business case, and the Panel agrees that the OBC makes a strong argument for the policy justification of the proposed development.
- 6.2.11. There have been very few representations about the Ro-Ro proposals for Tilbury2, which in the Panel's view are compliant with the policy support provided in the NPSP. With regard to the importation of aggregates or construction materials, this falls within the category of 'bulk movements' and such importation is already a key part of the existing Port of Tilbury. In this context, the CMAT would form part of the port development, and would help to meet forecast demand for aggregates and production related facilities for London as well as the Southeast and Eastern regions.

The Panel concludes that there are very few opportunities for deep sea aggregates wharves on the river Thames and that the case is made for the location of the CMAT on the chosen part of the Tilbury2 site.

- 6.2.12. The Panel finds that the application as a whole meets the policy justification for port development required by the NPSP. The Panel also finds that the explanation for the change of approach in treating the CMAT berth together with the Ro-Ro berth as the NSIP as set out in Chapter 2 of the CMAT Position Statement is justified and that the associated development constituting Works Nos 3 to 12 meet the tests of the DCLG guidance. The Panel concludes that the policy justification for the proposed development weighs strongly in its favour.

Dredging

- 6.2.13. The proposals for capital and maintenance dredging for Tilbury2 include compliance with the WFD, impacts on the marine environment, archaeology and Tilbury Fort and how the powers that the Applicant is seeking are expressed in the draft DCO including the DML in Schedule 9. By the end of the examination, the MMO, PLA, Hist E and the EA were all content with the final form of article 43 and the DML, together with the final versions of the Works Plans, Limits of Dredging Plan, and the protective provisions in Schedule 10 of the draft DCO, requiring the Applicant to consult with these bodies as appropriate before applying for dredging consents.
- 6.2.14. NE maintained its concerns about potential impacts on the Thames Estuary and Marshes SPA and Ramsar site and functionally-linked habitats, but the Panel considers that paragraph 10 of the DML requiring the Applicant to consult with NE (and the EA) before submitting a construction method statement to the MMO would provide sufficient safeguards.
- 6.2.15. The Panel considers that the dredging proposals have been properly assessed in accordance with the NPSP and are sufficiently well provided for and controlled in the appropriate articles and other provisions in the DCO including the DML, and concludes therefore that dredging is not a matter which weighs against the Order being made.

Navigation

- 6.2.16. As required by regulation 4 of the Infrastructure Planning (Decisions) Regulations 2010, the ExA must have regard to the whether the proposed development is likely to cause a danger to navigation. The Panel concludes that navigation matters have been satisfactorily explored in the application, is satisfied there are no issues outstanding which would be likely to cause navigational dangers, and that there is nothing that weighs against the Order being made.

Design

- 6.2.17. Several elements of the proposed development on the main site would be visually dominant, but the Panel concludes that the proposed development meets the objectives of good design set out in the NPSP as far as possible. The Panel concludes therefore that design matters do not weigh against the Order being made.

Land-side Transport

- 6.2.18. The application proposes a number of highway improvements to mitigate the impact of the proposed development, principally a new road and rail link to the main site. No transport issues arose concerning this, but two matters relating to the SRN were key features in the examination: the M25 J30 and the ASDA roundabout.
- 6.2.19. In both cases, HE needed to be convinced that the traffic modelling had been done correctly, that the mitigation proposals were such that the impact on these two locations would be acceptable, and that the mechanisms for carrying out the works would not adversely affect HE's responsibilities with regard to the SRN. By the end of the examination, HE was satisfied in relation to these matters and had agreed a SoCG and protective provisions.
- 6.2.20. All matters relating to the LRNs within the responsibility of TC, ECC and KCC were satisfactorily resolved and mitigated, as evidenced through their SoCGs. The Framework Travel Plan and Sustainable Distribution Plan were agreed with TC.
- 6.2.21. The Active Travel Plan would provide new cycle and pedestrian access routes from Tilbury town to Tilbury Fort and the riverside, improvements to highways and other transport infrastructure. However, this would be secured by a s106 Agreement between the Applicant and TC which was not signed by the end of examination, so no weight can be placed upon it. The Panel's conclusion though is that these works are not essential to mitigate adverse transport impacts.
- 6.2.22. All matters relating to specific interests of NR and NGET have been satisfactorily resolved and mitigated through SoCGs and protective provisions in the draft DCO. The Panel concludes that there is no justification for the amendments to the protective provisions proposed by RWE at the end of the examination.
- 6.2.23. The Panel's overall conclusion in relation to the transport matters is that they weigh in favour of making the Order.

Land Use

- 6.2.24. The main issue is whether the use of an area comprising 8.75ha of Green Belt land for the proposed development represents a conflict with Green Belt policy.
- 6.2.25. Alignment of the proposed railway line through part of the Green Belt comprises necessary transport infrastructure which would be compatible

with paragraph 146 of the NPPF. Although intrusion of part of the CMAT site into the Green Belt would comprise inappropriate development there are factors which in the Panel's view provide the very special circumstances to outweigh limited harm to the Green Belt. The rest of the land in the Green Belt in this corner of the proposed development site is intended for landscaping and ecological mitigation, so its essential Green Belt purpose of remaining as open land would not change.

6.2.26. The proposals for Tilbury2 promote the re-use of previously-developed land and there would be no adverse impacts on open spaces.

6.2.27. The Panel concludes therefore that the only land use reason weighing against the application is 0.73ha of inappropriate development in the Green Belt, for which the Panel considers that very special circumstances exist to outweigh limited harm.

Landscape and Visual Impacts

6.2.28. The proposed development would have an adverse impact on the surroundings overall from a landscape and visual perspective. The Panel finds however that appropriate and proportionate mitigation including for the residents of Tilbury would be provided through the LEMP and the lighting strategy which would be secured through requirements 11 and 12 of the draft DCO. No further visual mitigation would be possible by way of tree planting along the north or south river frontages.

6.2.29. However, after these various mitigation measures proposed by the Applicant some element of harm would still be caused by the proposed development, though this would be limited. Overall, the Panel concludes that the landscape and visual impact of the proposed development weighs marginally against the granting of development consent.

Historic Environment

6.2.30. The main impact on the historic environment concerns the Tilbury Fort scheduled monument, and the Applicant and the heritage organisations are agreed that the proposed development would cause additional harm, though less than substantial, to the Fort in terms of its setting. Hist E considered the impact of construction would be major adverse, the Applicant moderate adverse.

6.2.31. 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 proposed Ro-Ro terminal. However, the Panel concludes that moorings by their nature would be temporary and affect few lines of sight.

6.2.32. Mitigation of the impact on built heritage assets on the south bank of the river would be secured through the external appearance and height of the proposed development and the lighting strategy, requirements 3 and 12 in the draft DCO.

- 6.2.33. The impact on the terrestrial and marine archaeological environments would be appropriately addressed and mitigated through the WSIs, secured through requirement 6 of the draft DCO and paragraph 14 of the DML at Schedule 9.
- 6.2.34. As required by regulation 3(3) of the Infrastructure Planning (Decisions) Regulations 2010, the ExA must have regard to the desirability of preserving Tilbury Fort as a scheduled monument or its setting. The Panel agrees with the Applicant's assessment of a moderate adverse impact on Tilbury Fort while less than substantial additional harm to the setting of the Fort would occur as a result of the proposed development. Mitigation of the impact of construction on archaeology and cultural heritage would be secured through the CEMP, requirement 4 in the draft DCO.
- 6.2.35. The heritage improvements to Tilbury Fort contained in the s106 Agreement between the Applicant and TC in favour of EH would not affect the harm experienced by the Fort and the Panel does not regard the s106 Agreement as a determining factor in its recommendation.
- 6.2.36. The Panel has concluded that the setting of Tilbury Fort cannot be preserved unchanged with the proposed development. The Panel concludes therefore that the impact of the proposed development on the historic environment weighs against granting development consent.

Noise and Vibration

- 6.2.37. Measures to mitigate noise and vibration include noise attenuation barriers, triple glazing or another form of noise insulation or ventilation offered to properties where noise impacts are predicted to be above the SOAEL. These measures would be secured through the CEMP and OMP, requirements 4 and 11 of the draft DCO and the DML at Schedule 9.
- 6.2.38. The Panel agrees with the Applicant that specification of noise limits advocated by GBC is unnecessary given the other proposed mitigation measures.
- 6.2.39. The Panel concludes that noise and vibration are not matters which weigh against the Order being made.

Biodiversity, Ecology and Nature Conservation

- 6.2.40. Impacts on biodiversity, ecology and nature conservation interests on the Tilbury2 site would be an unavoidable consequence of the proposed development, but significant mitigation and compensatory measures would be secured in the CEMP, OMP, LEMP and EMCP, requirements 4 and 11 in the draft DCO. Despite such measures there would still likely be a net negative residual effect on ecology during construction, which should however diminish during operation.
- 6.2.41. There is no dispute about the national importance of the OMHPDL centred on the Lytag Brownfield LoWS, and its loss would be a significant adverse

consequence of the proposed development. Whilst there is acknowledged doubt about the likely success of recreating significant areas of OMHPDL off-site at the Mucking Landfill, in the Panel's view this site offers a reasonable prospect of doing so. The Panel concludes that even without the steps taken by the Applicant to provide for off-site compensation for the loss of OMHPDL centred on the Lytag Brownfield LoWS, such loss in itself would not be a reason to refuse the application for development consent at Tilbury2.

- 6.2.42. The Panel concludes that the off-site proposals at Paglesham would provide suitable compensation for coastal floodplain grazing marsh, scrub and reptiles.
- 6.2.43. In relation to the intertidal mudflat, the actual loss of habitat within the Order limits would be de minimis in the Panel's view.
- 6.2.44. The Panel concludes that the loss of OMHPDL from the centre of the site weighs against the proposed development but in view of offsite compensation proposals, biodiversity, ecology and nature conservation are not matters overall which weigh against the Order being made.

Climate Change Adaptation

- 6.2.45. The main issue relevant to climate change is the potential for increased flood risk, particularly given the water environment in the vicinity of the proposed development. By the close of the examination the Applicant had satisfied the EA that appropriate mitigation of flood risk is possible on this site, secured through requirement 8 in the draft DCO.
- 6.2.46. The Panel concludes that climate change is not a matter which weighs against the Order being made.

Flood Risk and Hydrology

- 6.2.47. FRAs have been carried out for the proposed development, and with the addendum to the Level 3 FRA, are acceptable to the EA. Requirement 8 of the draft DCO requires that authorised development must be constructed and operated in accordance with the FRAs. The Panel finds that the proposals satisfy the Sequential Test and the Exception Test is not applicable.
- 6.2.48. Protective provisions in Schedule 10 of the draft DCO provide for TC in its capacity as Local Lead Flood Authority to approve plans of specified works such as culverts and bridges in relation to ordinary watercourses. Similarly, the agreed protective provisions in favour of the EA provide for the EA's approval to plans of specified works such as flood defences and watercourses prior to construction.
- 6.2.49. Apart from the EA's disagreement over proposed disapplication of water abstraction restrictions under s24 of the Water Resources Act 1991, the Panel concludes that flood risk and hydrology are not matters which weigh against the Order being made.

Water Quality and Resources

- 6.2.50. With the use of appropriate requirements and mitigation, the proposed development would be compliant with the WFD, and there are mechanisms in the draft DCO requiring approval to works from the EA to ensure no deterioration to water body status. A Drainage Strategy for the site secured by requirement 4 of the draft DCO includes SuDS techniques to mitigate the impact on the current run-off regime. Pollution prevention and mitigation measures are provided in the CEMP and OMP, secured through requirements 4 and 11, and the DML secured through Schedule 9 of the draft DCO, ensuring the establishment of an exclusion zone for capital dredging during construction around the area of higher concentration of contaminants.
- 6.2.51. The CEMP, secured through requirement 4, provides for assessment of ground conditions to be undertaken in agreement with the EA and TC, with risk assessments, a remediation strategy and verification reports for their approval.
- 6.2.52. Similarly, no piling may take place without a piling risk assessment first being undertaken and submitted to the EA for approval, consultation with the EA before applying to the PLA for dredging consent, and approval from the EA for drainage works.
- 6.2.53. The Panel concludes that with the implementation of the proposed mitigation measures, potential impacts on water quality and resources would likely be minor or negligible and thus these matters would not weigh against the Order being made.

Socio-economic Impacts

- 6.2.54. The proposed development would secure significant employment opportunities during construction and operation. The enhanced capacity of Ro-Ro and construction aggregates processing would support the local, regional and national economy, increase opportunities for local businesses and provide other benefits for Tilbury and more widely in Essex and Kent.
- 6.2.55. The Panel concludes therefore that the socio-economic benefits weigh strongly in favour of the proposed development.

Construction and Piling

- 6.2.56. Mitigating the vibration effects of piling on Tilbury Fort would be controlled by measures within the CEMP, secured through requirement 4 in the draft DCO.
- 6.2.57. Effects of underwater noise caused by piling on sensitive receptors in the marine environment would be mitigated by a daily non-piling window secured through the DML at Schedule 9 in the draft DCO.
- 6.2.58. The Panel concludes that construction and piling matters do not weigh against the Order being made.

Ground Conditions and Contamination

- 6.2.59. No significant adverse impacts from land contamination would arise during the construction and operation of the development, after the implementation of the proposed mitigation measures secured through the CEMP and OMP, requirements 4 and 11. The Panel notes that a draft SWMP was not included in the final version of the CEMP and should be required therefore as part of the CEMP prior to certification.
- 6.2.60. The Panel concludes that ground conditions and contamination matters do not weigh against the Order being made.

Waste Management

- 6.2.61. The proposed measures for the management of waste for the construction, demolition and excavation phase are set out in the Site Waste Management Plan (SWMP), and the OMP, secured by requirement 11, would require that the SWMP is then developed for the operational phase. The SWMP would be delivered as part of the CEMP, which itself would be secured through requirement 4 in the draft DCO.
- 6.2.62. However, the SWMP submitted with version 2 of the draft CEMP was not included in the final CEMP, though it is clearly provided for in that document. As the CEMP is proposed to be a certified document, a fully developed SWMP should be required to be submitted as part of this.
- 6.2.63. Hazardous and non-hazardous waste arising from the construction and operation of the proposed development would be properly managed and controlled through the CEMP and OMP, secured through requirements 4 and 11 in the draft DCO.
- 6.2.64. The Panel concludes that waste management matters do not weigh against the Order being made.

Air Quality

- 6.2.65. With regard to NO₂, PM₁₀, and PM_{2.5}, the air quality objective of levels not exceeding 40 µg/m³ for annual mean NO₂ would be met at all locations. The PM₁₀ and PM_{2.5} impacts would be negligible at all receptors, with concentrations all below the air quality objectives, and the operation of the proposed development would not have significant adverse long-term effects on air quality at the closest residential receptors.
- 6.2.66. Concerning shore power for ships whilst berthed, the Applicant proposes to provide the infrastructure to facilitate the future use of shore power, should vessels become equipped to use it and provided sufficient electrical power capacity becomes available.
- 6.2.67. The Panel concludes that there are no matters relating to air quality that weigh against the Order being made.

Pollution Control and Other Regulatory Regimes

- 6.2.68. All pollution and environmental impacts would be subject to control through the draft DCO and the relevant pollution and environmental regulations.
- 6.2.69. The Panel concludes that pollution control and other environmental regulatory regimes matters do not weigh against the Order being made.

Health

- 6.2.70. Public Health England concluded that there were no significant risks to public health associated with the proposed development.
- 6.2.71. Mitigation measures to control noise and vibration described in the OMP would be sufficient and secured through requirement 11 in the draft DCO. Measures for lighting impacts would be secured through the lighting strategy, requirement 12 in the draft DCO. Physical improvements contained in the Active Travel Plan would be part of the unsigned s106 Agreement between the Applicant and TC, but are not essential mitigation.
- 6.2.72. The Panel concludes that health matters do not weigh against the Order being made.

Utilities

- 6.2.73. All utility constraints on the proposed development would be resolved through protective provisions in Schedule 10 of the draft DCO, and accordingly the Panel concludes that there are no issues in relation to utilities that would weigh against the Order being made.

Cumulative Impacts with other Development Proposals

- 6.2.74. The assessment of cumulative and in combination effects of other surrounding developments with the proposed development of Tilbury2 during construction and operation did not identify any long-term significant effects once mitigation is taken into account.
- 6.2.75. The Applicant submitted a post application cumulative effects assessment of the proposed development with the LTC and the TEC to the fullest extent possible with the information available for those two projects. The potential effects of the three proposed developments together could be significant in due course, but the impacts are too uncertain to attract significant weight now.
- 6.2.76. Since the applications for development consent for these projects are some way off, and there is no guarantee they may progressed at all, the Panel concludes that it is not for the Tilbury2 application to mitigate the potential impacts of these projects.
- 6.2.77. The Panel concludes therefore that the Applicant has carried out a proportionate assessment of cumulative and in combination effects of

other surrounding developments with the proposed development of Tilbury2 as part of the submitted application, and this is not a matter which weighs against the Order being made.

Habitats and Species Regulations

- 6.2.78. Prior to granting a development consent order, the decision-maker must, under The Conservation of Habitats and Species Regulations 2017, consider whether the project may have a significant effect on a European site, either alone or in combination with other plans or projects.
- 6.2.79. The European sites of relevance to the application are the Thames Estuary and Marshes SPA and the Thames Estuary and Marshes Ramsar site. A Stage 1 Habitats Regulations Assessment (HRA) report was undertaken by the Applicant which concluded that the proposed development would not be likely to result in significant effects on the integrity of these sites, nor any of their qualifying features and that no further assessment was required.
- 6.2.80. However, NE did not agree with this conclusion, and accordingly, a Stage 2 appropriate assessment was carried out by the Applicant and submitted as a revised HRA. In the light of this, the Panel decided to carry out a Report on the Implications for European Sites (RIES).
- 6.2.81. NE's final representation to the examination confirmed it was not able to agree to no Adverse Effects on Integrity (AEOI) without the additional mitigation it had put forward during the examination.
- 6.2.82. The fact that NE as the Statutory Nature Conservation Body has not been able to agree to no AEOI is a serious issue in relation to the Tilbury2 application. However, the Panel has considered very carefully the representations and reasoning put forward by NE in this regard and the responses by the Applicant to address these, and this is set out in paragraphs 5.5.17 to 5.5.22, 5.5.35 to 5.5.42 and 5.5.62 to 5.5.69 above. The Panel is not convinced that there is any additional evidence put forward by NE to outweigh the Applicant's conclusions drawn in the final version of the HRA Stage 2 Report at Deadline 7 [[REP7-020](#)].
- 6.2.83. Therefore the Panel advises the SoS that, on the basis of information before it, the proposed development would have no AEOI, either alone or in-combination with other projects or plans, on the qualifying features of any European site. In this circumstance, the Panel sees no need to progress to Stages 3 and 4 of the HRA process. The Panel also concludes that sufficient information has been provided by the Applicant to enable the SoS to undertake an appropriate assessment.

6.3. THE DEVELOPMENT BALANCE

- 6.3.1. In this chapter, the Panel has summarised the conclusions reached in relation to each of the sections in Chapters 4 and 5. The purpose of this section is to draw the threads together in reaching a recommendation as

to whether the case is made for granting development consent for the Tilbury2 application.

- 6.3.2. The proposed development would meet the policy justification for port development required by the NPSP in that it would provide additional new port capacity in support of sustainable growth in the UK economy. Socio-economic benefits in terms of employment opportunities during construction and operation would be significant. The new road and rail links as part of the infrastructure corridor would also provide significant benefits to the local transport network. These matters therefore weigh in favour of the draft Order, strongly so in relation to the policy justification and socio-economic benefits.
- 6.3.3. Standing against the proposed development are a number of adverse impacts that would weigh against the Order being made.
- 6.3.4. The proposed development would lead to a moderate adverse impact on the scheduled monument of Tilbury Fort and less than substantial additional harm to the setting of the Fort. There would also be a marginal adverse landscape and visual impact.
- 6.3.5. With regard to the OMHPDL, the Panel has concluded that this weighs against the proposed development, but in view of the offsite compensation proposals, matters of biodiversity, ecology and nature conservation do not overall weigh against the Order being made. The loss of 0.73ha of Green Belt land to inappropriate development is justified by very special circumstances which outweigh limited harm.
- 6.3.6. For all other matters considered in Chapter 4:
- dredging;
 - navigation;
 - design;
 - noise and vibration;
 - climate change adaptation;
 - flood risk and hydrology;
 - water quality and resources;
 - construction and piling;
 - waste management;
 - ground conditions and contamination;
 - air quality;
 - pollution control and other regulatory regimes;
 - health;
 - utilities; and
 - cumulative impacts
- there are no issues which would weigh against the Order being made.
- 6.3.7. In relation to the Habitats and Species Regulations, the Panel understands the views of NE that on a precautionary basis it was not able to agree to no AEOI without the additional mitigation it had put forward during the examination. The actual loss of habitat from the intertidal

mudflat within the Order limits would be de minimis in the Panel's view. The Panel advises the SoS that, on the basis of information before it, the proposed development would have no AEOL, either alone or in combination with other projects or plans, on the qualifying features of any European site.

6.3.8. The DCO Obligation under s106 TCPA between the Applicant and TC contains a number of elements:

- an Active Travel Plan;
- a Skills and Employment Strategy; and
- financial contributions relating to Tilbury Fort, Gravesend and the Tilbury to Gravesend Ferry.

6.3.9. Whilst these would undoubtedly bring additional benefits to the localities involved if the proposed development is implemented, the final version of the DCO Obligation submitted at the end of the examination remained unsigned. From correspondence between the Applicant and TC at the end of the examination, there is reason to believe that it will be signed and therefore the measures secured within it would be delivered. But it cannot be taken into account as part of this examination, so the Panel accords it no weight. However, in the Panel's view, none of the measures included in the draft agreement are essential to make the proposed development acceptable, and so the absence of a signed DCO Obligation does not lead the Panel to the conclusion that without such benefits the Order should be refused.

6.3.10. As is set out in paragraphs 3.1.2 and 6.1.1 of this report, the starting point for reaching a decision is that s104(3) PA2008 requires the SoS to decide the application in accordance with any relevant national policy statement, except to the extent that one or more of the exceptions in subsections (4) to (8) applies, creating a presumption in favour of NPS compliant development. The Panel concludes that none of the matters weighing against the proposed development are sufficient to outweigh the advantages of the proposed development through the policy, transport and socio-economic benefits. The Panel as the ExA therefore concludes that there is a clear justification in favour of granting development consent for the Tilbury2 application.

7. COMPULSORY ACQUISITION AND RELATED MATTERS

7.1. INTRODUCTION

7.1.1. The draft DCO contains powers of compulsory acquisition (CA) and also for temporary possession (TP) of land and rights. The Applicant is seeking these powers to:

- acquire land permanently within the Order limits;
- temporarily possess land within the Order limits;
- acquire rights over the Order land;
- extinguish existing rights over the Order land;
- create new rights over the Order land; and
- temporarily suspend rights over the Order land

in order to construct, operate and maintain the authorised development [REP7-042].

7.1.2. The Applicant already has the freehold ownership of most of the proposed Tilbury2 site from its purchase of the former Tilbury 'A' power station, in addition to the existing port and other landholdings in the area [REP1-016 Appendix 6 to Appendix B, Plan A]. The detailed position in relation to the Applicant's existing land ownership within the Order limits is shown on the Land, Crown Land and Special Category Land Plans [REP5-006]. The land interests for which the Applicant is seeking CA and TP powers in the draft Order are essentially to implement the infrastructure corridor, to construct the jetty and to carry out modifications to the ASDA roundabout.

7.1.3. The application was accompanied by the required:

- Land, Crown Land and Special Category Land Plans showing the Order land containing 42 separate plots to be subject to CA and TP powers [APP-009];
- a Statement of Reasons (SoR) to explain the proposed CA [APP-018];
- a Funding Statement [APP-019]; and
- A Book of Reference (BoR) containing details of the land and interests the subject of proposed CA powers [APP-020].

7.1.4. Amendments and clarifications were made to the Land, Crown Land and Special Category Land Plans (abbreviated to just "Plans" in the rest of this chapter) during the application to remove one plot (03/05) and reduce the area of another (plot 03/04a) as is explained later in this chapter. The final version of the Plans is that submitted at Deadline 5 [REP5-006]. Similarly, amendments were made to the SoR and BoR so that the final versions are those submitted at Deadline 7 [REP7-042 and REP7-038].

- 7.1.5. The Panel is content that these are non-material changes to the application because they do not involve the addition of any land to be compulsorily acquired or temporarily possessed, and there are no environmental impacts from these changes.
- 7.1.6. An update of the negotiations for acquisition of freehold or temporary interests relating to each plot identified in Appendix F of the SoR was provided at various stages during the examination [[REP3-026](#), [REP4-017](#) and [REP5-024](#)], and again in the final version of the SoR [[REP7-042](#)].

Proposed powers of acquisition in the draft DCO

- 7.1.7. As can be seen from the comparison version of the draft DCO submitted at the end of the examination with the application version [[REP7-013](#)], a considerable number of changes were made to the articles dealing with CA and TP during the examination. The detailed reasoning for these is set out in tables of revisions prepared by the Applicant at successive stages, in response to the Panel's written questions and discussions at the two ISHs ([REP1-005](#), [REP3-004](#), [REP5-046](#), [REP6-028](#) and [REP7-031](#)). The commentary which follows does not therefore trace the detailed sequence of changes, but concentrates on the CA and TP provisions in the final version of the draft DCO at the end of the examination.
- 7.1.8. The preamble to the draft Order contains a statement for approval that the SoS is satisfied that the special category land, in this case common land (as identified in the BoR), meets the exemption set out in s131 PA 2008. The Panel therefore proposes that the draft DCO would need to be amended to refer specifically to s131(4) in the light of the Panel's conclusions on this matter below, so that the Order does not need to follow the special parliamentary procedure required by s131(3) PA2008.
- 7.1.9. The main powers authorising the CA of land, or of interests in and/or rights over land, are contained in article 23 (compulsory acquisition of land) and article 25 (compulsory acquisition of rights) of the draft DCO. The compulsory acquisition proposals also provide for:
- the acquisition of common land which therefore falls under the definition of 'Special Category Land' under the APFP Regulations⁵⁵ and is shown in pink with green honeycomb hatching on the Plans; and
 - the acquisition of land for the purposes of providing replacement land for that Special Category Land, known as the 'Replacement Land' and is shown in pink with pink hatching on the Plans [[REP5-006](#)].
- 7.1.10. If CA powers are granted, the owner of the affected land would be entitled to compensation and any dispute in respect of the compensation payable would be referred to and determined by the Lands Chamber of the Upper Tribunal.

⁵⁵ The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

- 7.1.11. **Article 23 - compulsory acquisition of land** - would provide the Applicant with the power to acquire compulsorily so much of the Order land required for the authorised development, or to facilitate it, or is incidental to it. The Order land consists of those plots shown pink on the Plans to be acquired permanently, and plots shown yellow where rights may be acquired. This article is subject to articles 25, 26 and 32.
- 7.1.12. **Article 24 - time limits** - would impose the usual limit of 5 years on the exercise of the powers to acquire land compulsorily or to possess land temporarily.
- 7.1.13. **Article 25 - compulsory acquisition of rights** – would allow for rights over land to be acquired instead of the land itself which the Applicant would be authorised to acquire under article 23, and also for new rights to be created over land. For those plots shown yellow on the Plans, only rights can be acquired and restrictive covenants imposed, and not the freehold interest.
- 7.1.14. **Article 26 - acquisition of subsoil and airspace only** - would allow the Applicant to acquire land below or above the surface, rather than having to acquire all of the land.
- 7.1.15. **Article 27 - private rights over land** - provides for the extinguishment of private rights over land and rights proposed to be acquired compulsorily, including on Order land already owned by the Applicant.
- 7.1.16. **Article 28 - power to override easements and other rights** - provides that in carrying out the authorised development within the Order land, the Applicant could override all easements, rights, trusts and incidents.
- 7.1.17. **Article 29 - rights over or under streets** - would permit the Applicant to use the subsoil and/or the airspace under or over any street within the Order limits without having to acquire the street or any right or easement in it.
- 7.1.18. **Article 30 - modification of Part 1 of the Compulsory Purchase Act 1965** – would amend the provisions of the Compulsory Purchase Act 1965 so they are consistent with the terms of the Order. The notice periods introduced by the Housing and Planning Act 2016 would not therefore apply to the temporary possession or use of land under articles 32 and 33 of this Order.
- 7.1.19. **Article 31 - application of the Compulsory Purchase (Vesting Declarations) Act 1981** – would apply the provisions of the Act to the Order.
- 7.1.20. **Article 32 - temporary use of land for constructing the authorised development** - would allow the plots set out in Schedule 6 and coloured blue on the Plans to be occupied and used temporarily during construction of the authorised development, but not permanently. This article also allows for the temporary occupation of any land intended for

permanent acquisition which has not yet been acquired, and similarly for land over which it is intended to acquire new rights. Any of the authorised development listed in Schedule 1 can be built and left on land that has been temporarily occupied. This provides for flexibility in the construction programme and also reduces the extent of the CA of land. The time limits set out in article_24 apply to this article.

- 7.1.21. **Article 33 - temporary use of land for maintaining the authorised development** - would enable the Applicant to take TP of any land within the Order limits, and construct temporary works if necessary, for the purpose of maintaining the authorised development during the maintenance period (five years from the time the particular infrastructure is brought into operational use).
- 7.1.22. **Article 34 – statutory undertakers** – would allow the Applicant to extinguish rights of statutory utilities and remove and reposition their apparatus over or within any of the Order land as required.
- 7.1.23. **Article 35 - apparatus and rights of statutory utilities in stopped up streets** – would govern what happens to statutory utilities' apparatus (pipes, cables, etc.) under streets that are stopped up by the Order. Without the article, the statutory utility would not have access to the apparatus, since there would no longer be a right of way along the street.
- 7.1.24. **Article 36 – recovery of costs of new connections** – would provide that if a gas, water, electricity or sewerage undertaker's or public communications provider's apparatus is removed thereby interrupting the service to owners or occupiers of premises, their costs in obtaining a new service can be recovered from the Applicant.
- 7.1.25. **Article 37 - Special Category Land** - would prevent the Applicant from using its CA or TP powers over the common land until it has acquired the replacement land. This restriction does not apply to the use of TP powers on those plots set out in Schedule 6 and shown blue with green honeycomb hatching on the Plans.

7.2. WHAT THE PLANNING ACT REQUIRES

- 7.2.1. CA powers can only be granted if the conditions set out in s122 and s123 PA2008 are complied with.
- 7.2.2. Section 122(2) requires that the land must be needed for the development to which the DCO relates, or to facilitate the development or is incidental to it, or is replacement land. The land to be taken must be no more than is reasonably required and be proportionate.

- 7.2.3. Section 122(3) requires that there must be a compelling case in the public interest, which means that the public benefit derived from CA must outweigh the private loss which would be suffered by those whose land is affected. In balancing public interest against private loss, CA must be justified in its own right. But this does not mean that the CA proposal can be considered in isolation from the wider consideration of the merits of the proposed development, and there will be some overlap. There must be a need for the proposed development to be carried out and consistency and coherence in the decision-making process.
- 7.2.4. Section 123 requires that one of three conditions is met by the proposal, which include that the prescribed procedure has been followed in relation to the land.
- 7.2.5. A number of general considerations also have to be addressed either as a result of following applicable guidance or in accordance with legal duties on decision-makers:
- all reasonable alternatives to CA (including modifications to the proposed development) should have been explored;
 - the proposed interference with the rights of those with an interest in the land must be for a legitimate purpose, necessary and proportionate;
 - the Applicant must have a clear idea of how it intends to use the land it proposes to acquire;
 - there is a reasonable prospect of the requisite funds becoming available to meet the costs of CA including compensation; and
 - the purposes for which CA powers of land are included in the Order are legitimate and are sufficient to justify interfering with the human rights of those with an interest in the land.

7.3. APPLICANT'S JUSTIFICATION FOR SEEKING POWERS OF ACQUISITION

Land required

- 7.3.1. The land proposed to be subject to CA and TP powers lies within parts of the four main areas of the application site bound by the Order limits, shown on Figure 2.1 at paragraph 2.1.6 above, namely:
- 7.3.2. **The main Tilbury2 site.** The new Ro-Ro and CMAT port facilities would be located on the former Tilbury A Power Station site. All of this land is in the freehold ownership of the Applicant, and no CA or TP powers are sought over this, with the exception of the removal of a sewer pipe belonging to Anglian Water and extinguishment of its rights. In the north-west corner of the main Tilbury2 site is an operational electricity sub-station (Tilbury Town Sub-station) which is leased to UK Power Networks (UKPN). This would be unaffected by the proposed works and would remain operational throughout construction and operation of the proposed development of Tilbury2.

- 7.3.3. **Sections of the tidal Thames.** This includes an area of inter-tidal habitat along the site frontage itself and an extent of the river. It is proposed to acquire the river bed as well as the structures on the surface of the water. This land is owned by the PLA, the Crown Estate and Anglian Water. All of this area is subject to CA and TP to enable construction of the extended jetty.
- 7.3.4. **The proposed infrastructure corridor to the main site between Ferry Road and Fort Road.** Immediately to the west of Fort Road and south of the London to Southend railway are areas of grassland and scrub typically used for fly grazing of horses. There is also a small industrial/depot site containing a number of small single storey storage buildings and an area of external vehicle and plant storage. These areas are proposed for CA to enable the construction of new road and railway links to the main site. This area is also where common land and its replacement are proposed for CA. The improvement works and new junction to Fort Road would require TP powers. The western end of the corridor is largely in the Applicant's ownership, and TP is proposed for the works to Ferry Road and acquisition of rights to enable the connection of the proposed new rail sidings to the existing London to Southend railway.
- 7.3.5. **The ASDA roundabout to the north of the Port.** TP powers are proposed to enable the Applicant to carry out highway improvements to this roundabout.
- 7.3.6. In addition, there are public rights of way (PROWs) within and close to the Order limits. These are shown on Fig. 4.4 of the ES [[APP-104](#)] with proposed changes on the Rights of Way and Access Plans [[REP5-011](#)], and are considered in section 4.6 of this report. FP146 runs east – west within the Order limits along the river front to the north of the existing jetty, access to which crosses over it. FP144 runs south from the built up area of Tilbury across the existing railway at an unmanned (pedestrian only) level crossing and runs toward Fort Road and the riverside. TP would be needed to stop up part of FP144.
- 7.3.7. A number of existing utility services lie within the Order limits and some would need to be diverted or re-aligned to accommodate the authorised development. Where such diversions or re-alignments may not be wholly contained within the land to be acquired, or within the land already owned by the Applicant, it would undertake the works using TP powers.
- 7.3.8. As set out in section 4.2, the OBC [[AS-016](#)] explains the business need for expansion of the existing Port of Tilbury, setting out an economic case for the proposals, and the benefits in terms of investment and employment. In addition to the contribution which the authorised development would make to achieving the objectives set out in the NPSP, the Applicant considers it would also deliver substantial economic and other benefits. At the same time it would limit, so far as practical, associated environmental and other impacts, including in particular land take and loss of property. No residential properties would be acquired.

Status of negotiations

- 7.3.9. The Applicant undertook diligent inquiry through a land referencing process to identify parties within Categories 1, 2 and 3, as defined in s44 and s57 of the PA2008, taking account of the fact that it already owns a large proportion of the land. Despite this, there are some plots where it has not been possible to identify the relevant interests because they cover unregistered land. The Category 3 area is shown on the plan at Appendix 1 of [\[REP3-031\]](#) and covers 3552 interests.
- 7.3.10. This process is described in detail in the SoR and the results set out in the BoR, which was revised during the examination to include minor amendments. The final version of the BoR submitted at Deadline 7 is the definitive position at the end of the examination [\[REP7-038\]](#). Overall the Panel concludes that the land referencing has been carried out thoroughly and accurately.
- 7.3.11. The Applicant has been in discussion for a considerable length of time with many of the landowners affected by the proposals, with the continuing aim of negotiating to acquire by agreed private treaty the land and rights needed to construct and operate the proposed development. The position in relation to the Applicant's negotiations with landowners affected by the proposals is set out in Appendix B of the SoR [\[REP7-042\]](#) and the Applicant's Closing Statement [\[REP7-036\]](#).
- 7.3.12. However, the Applicant cannot be fully confident that all the remaining interests in the Order land will be acquired by private agreement within a reasonable timeframe. While negotiations will continue, the Applicant believes CA powers are justified to ensure that the proposed development can be implemented.

Details of plots

- 7.3.13. The specific purposes for which the Applicant requires each plot of land within the Order limits shown on the Plans and listed in the BoR are set out in Appendix A to the SoR.
- 7.3.14. In addition, Schedule 6 to the draft DCO includes details of all the plots over which powers of temporary use and possession are sought.

Crown Land

- 7.3.15. One plot of land where rights are proposed to be acquired (06/02) and one plot proposed to be temporarily possessed (06/01) are owned by the Crown, managed by the Crown Estate Commissioners. As such it is 'Crown Land' under the PA2008 and the APFP Regulations.
- 7.3.16. By virtue of s135 of the PA 2008, the Applicant is unable to compulsorily acquire Crown Land. Nor can this land be included within the DCO such that all other interests in it held otherwise than by or on behalf of the Crown can be compulsorily acquired. The works powers of the draft DCO

cannot be exercised over the land unless the appropriate Crown authority (in this case the Crown Estate) consents.

- 7.3.17. Consent is therefore required for the inclusion of both plots in the DCO, to enable the CA of other interests in plot 06/02 and the authorisation of TP of plot 06/01.

Statutory bodies

- 7.3.18. The tables in Chapter 8 of the SoR and Appendix D set out the plots owned by statutory undertakers subject to CA of land and rights.
- 7.3.19. Section 127 of PA2008 applies to land acquired by statutory undertakers for the purposes of their undertaking. Where a representation is made by a statutory undertaker and not withdrawn by the close of the examination, the CA of statutory undertaker's land and/or rights can be authorised only to the extent that the SoS is satisfied that it can be purchased and not replaced without serious detriment to the carrying on of the undertaking; or if purchased, it can be replaced by other land belonging to, or available for acquisition by, the undertaker without serious detriment to the carrying on of the undertaking.
- 7.3.20. Section 138 of PA2008 applies where a DCO authorises the acquisition of land (compulsorily or by agreement) and a statutory undertaker has a relevant right, or there is relevant apparatus on, under or over the land. The extinguishment of the relevant right, or the removal of the relevant apparatus, can only take place if the SoS is satisfied that it is necessary for the purpose of carrying out the proposed development.
- 7.3.21. The draft DCO for Tilbury2 would authorise interference by the Applicant with the apparatus of statutory undertakers such that services would be diverted or re-aligned.
- 7.3.22. The Applicant's approach has been to satisfy the requirements of s127 and s138 PA2008 through seeking agreement with statutory undertakers regarding the effects of the proposals on their land and/or apparatus through the protective provisions contained within the draft DCO. In practice, the Applicant believes the proposed development would cause the minimum disruption to statutory undertaker operations, and the CA of rights can occur without serious detriment to the carrying on of the relevant undertaking.

Alternatives to CA

- 7.3.23. The Applicant has given detailed consideration to alternatives to proposed CA in Chapter 6 of the SoR. This covers three aspects: the choice of location for Tilbury2, which in turn would require the infrastructure corridor to exist, and acquisition of the river bed to support the marine infrastructure.

Location of Tilbury2

- 7.3.24. Options for expansion of the existing port are plainly very limited. Expansion along the river frontage to the west (upstream) is constrained by existing residential development. Immediately to the east of the existing cruise terminal (downstream) is also not possible due to the presence of Tilbury Fort. Apart from the intervening operational Tilbury Water Recycling Centre (which is not available for redevelopment), the Tilbury2 site is therefore the closest land to the existing port, and as such is the optimum location for the expansion of the Port of Tilbury.

Infrastructure Corridor

- 7.3.25. The Surface Access Options Report attached as an appendix to the Masterplanning Statement [[APP-034](#)] explains the road and rail proposals. This includes consideration of why a new highway is proposed, as opposed to upgrading of the existing Fort Road (and thus potentially avoiding the extent of CA requirements), and the detailed options that were considered for the interaction with the existing highway network at either end of the corridor, including effects on land ownership.
- 7.3.26. The existing highway is inappropriate for the likely traffic levels, and so radical changes to its alignment would have been necessary (which would also have involved CA) to ensure it could be a safe and geometrically sound route. The potential increased changes in traffic at Fort Road would have been detrimental to the setting of Tilbury Fort. The proposed infrastructure corridor is likely to have an impact that would be less harmful than upgrading Fort Road. If the option of upgrading Fort Road was pursued, the road itself and its associated traffic would split this area into two isolated sites.
- 7.3.27. At the eastern end of the infrastructure corridor, a number of options were considered for linking the new road to the existing Fort Road before arriving at the option contained within the application which would provide the best traffic engineering solution.
- 7.3.28. The Applicant considers that a railhead at Tilbury2 is an essential feature of the proposals. Omitting rail connectivity would limit the range of port-related uses that could be accommodated at the site. In particular, the viability of bulk aggregate transshipment at Tilbury2 would be reliant on the provision of a new railhead due to the limited distances over which aggregates can economically be transported by road. In any event, if Tilbury2 were developed without a railhead, any port-related uses on the site would inevitably result in a significantly greater volume of HGVs being generated with significantly greater environmental effects.
- 7.3.29. Two main options were considered for the proposed railhead. The first was to create a new turnout from the existing rail line immediately to the north of the Tilbury2 site. This would have the benefit of reducing the amount of new off-line siding and thereby in turn the overall width of the infrastructure corridor and land take. However, consultation with Network

Rail (NR) concluded that this option was not feasible without revised signalling and other rail infrastructure.

- 7.3.30. The option taken forward therefore would relocate an existing Port of Tilbury railhead from the riverside to Tilbury2, so making use of the existing rail corridor. This would have the benefit of using the existing rail turnout and signalling on the main line and the need for limited additional works. This option is supported by NR. The rail alignment would be as close as possible to the road alignment to reduce land requirements, but also taking account of several other factors. These include having some distance between the railhead and the residents of Tilbury in order to reduce likely noise effects, avoiding Anglian Water assets in the locality, an existing bund, and Fort Road abutments at the eastern end.

Marine Infrastructure

- 7.3.31. The marine infrastructure that forms part of the application, and therefore the associated CA and TP proposals for the river bed in which it would sit, would be the minimum required to support the requirements of such operations.
- 7.3.32. The Applicant's claim therefore is that the CA and TP proposals that relate to the road and rail links in the infrastructure corridor and the marine infrastructure are no more than would be required and are proportionate in the context of the proposed development.
- 7.3.33. In addition, a range of environmental measures would mitigate the effects of the infrastructure corridor on the residents of Tilbury, the setting of Tilbury Fort and protected species and habitats. This means that the infrastructure corridor would be wider than just the highway and rail boundaries, and therefore would require more CA of land in order to support this necessary mitigation.

Special considerations affecting the Order land

- 7.3.34. Three plots are shown on the Plans as special category land forming part of a registered common. Plots 03/08 and 03/11 are proposed for CA (and plot 03/04a in the ownership of TC is proposed for CA as replacement land). The third plot of common land 03/07 is proposed for TP. The acquisition of the common land would be required for construction of the road and rail links as part of the infrastructure corridor.
- 7.3.35. The two plots of common land proposed for CA would be subject to s131 PA2008 which makes provision for special parliamentary procedure to apply unless the SoS is satisfied that one of the exemptions applies, in this case suitable replacement land has been, or would be, provided in exchange.
- 7.3.36. These plots are part of an area of registered common land known as West Tilbury Common, managed and maintained by the West Tilbury Commons Conservators, a body made up of representatives of the local

community. The common rights as currently registered and understood by the West Tilbury Commons Conservators would transfer from plots 03/08 and 03/11 to the replacement land, plot 03/04a; the mechanism for this would be provided in article 37 of the draft DCO.

- 7.3.37. The common land is undeveloped and is generally used without express consent for the fly-grazing of horses and some limited use by members of the public walking dogs. The Planning Policy Compliance Statement [REP7-014] sets out the Applicant's rationale for its conclusion that this land is not public open space, which is based on the nature of the current uses of the land and the lack of any formal designation.
- 7.3.38. The SoR sets out the Applicant's detailed investigations and conclusions in relation to the ownership of the common land and including those third parties who benefit from rights of common over it. These are extensive, and are shown in the BoR. Whilst the investigations show that CH Cole and Sons appears to be the only entity actively exercising rights of common over the common land, it is unclear whether the Local Authority Commons Register does in fact represent the full ownership.
- 7.3.39. The Applicant considers that the exemption to the application of special parliamentary procedure which is provided by s131(4) PA2008 would apply to the two plots of common land proposed for CA because suitable land is being offered in exchange. This replacement land (plot 03/04a) would be subject to the same rights, trusts and incidents in the common land as at present. The proposed replacement land is 13,509m² in area (4m² larger than the common land proposed to be acquired), is very similar in character to the common land and is very close to it.
- 7.3.40. As such, the Applicant considers the replacement land would meet the requirements of s131(12) of the Act, namely that it is not less in area than the common land, and no less advantageous to the persons entitled to rights of common or other rights and to the public. Accordingly, the Applicant argues the exemption in s131(4) PA2008 applies to these two plots of common land, and that the draft DCO should not be subject to special parliamentary procedure.

Funding

- 7.3.41. The Funding Statement [APP-019] sets out in accordance with paragraph 9 of the DCLG Guidance⁵⁶ the Applicant's position concerning the financial resources required for the proposed development, including the cost of CA and the payment of compensation, as applicable. It explains how the CA costs are proposed to be funded and within what timescale.
- 7.3.42. The Applicant has obtained valuation advice which assesses the total compensation potentially payable (including professional fees) as approximately £12.4 million. Based on this, the Applicant would be able to meet any liability from available funds which would be budgeted for in

⁵⁶ Planning Act 2008: guidance related to procedures for the compulsory acquisition of land, DCLG 2013

the relevant years. The Applicant therefore considers that the SoS can be satisfied that the requisite funds for payment of compensation will be available at the appropriate time.

Human Rights

- 7.3.43. The draft Order has the potential to infringe the human rights of persons affected by the proposed development. Such infringement can be authorised provided the appropriate statutory procedures for making the Order are followed, a compelling case is made out in the public interest for CA, and the interference with Convention Rights⁵⁷ is proportionate.

7.4. OBJECTIONS

- 7.4.1. The Panel took a generous interpretation to the extent to which representations contained objections to the proposed CA powers. In many cases, these representations related to the way in which the interests of the affected statutory undertaker are dealt with by way of protective provisions in Schedule 10 of the draft DCO. For that reason, the following sections which deal with the substance of these representations are as much related to the draft Order as they are the specific plots.
- 7.4.2. The Panel's analysis therefore is to consider the representations from the following APs as they concerned land interests, even though they might not strictly represent a formal objection:
- Network Rail [[RR-013](#), [REP1-075](#), [REP3-035](#) and [REP4-006](#)];
 - Port of London Authority [[REP1-080](#) and [REP1-082](#)];
 - National Grid Electricity Transmission [[REP1-077](#)];
 - Highways England [[REP1-060](#), [REP3-046](#) and [REP4-002](#)];
 - Anglian Water Services [[REP1-025](#)];
 - Cadent Gas [[REP1-040](#)];
 - Crown Estate [[RR-007](#)];
 - Thurrock Council [[REP1-101](#)];
 - Historic England [[REP1-064](#)];
 - RWE [[RR-015](#)];
 - Cole Family [[EV-015](#)];
 - West Tilbury Commons Conservators [[AS-039](#)]; and
 - Mr. A. Gothard [[EV-015](#)].
- 7.4.3. Though no formal requests were made for a CA hearing, the Panel nonetheless decided to hold two such hearings on 20 April and 27 June, 2018 [[EV-015](#) and [EV-016a](#)].

Network Rail Infrastructure Ltd (NR)

⁵⁷ The European Convention on Human Rights (Convention) was incorporated into domestic law by the Human Rights Act 1998

7.4.4. CA of rights belonging to NR in plot 02/03, and of its land interests in plots 03/01, 03/02, 03/03, 03/12 and 03/16 is proposed, with TP of a footpath across the existing railway to enable its closure (plot 02/04). NR submitted a formal objection [[RR-013](#)] and maintained this during the examination whilst negotiations took place concerning the form of protective provisions.

7.4.5. The agreed protective provisions are contained in Part 6 of Schedule 10 of the draft DCO, and NR agreed in its SoCG with the Applicant that it hoped to be in a position to withdraw its objection by the end of August 2018 [[REP7-051](#)]. However, NR had not responded by the close of the examination to the Panel's invitation to confirm by Deadline 7 whether the objection to CA powers was maintained or withdrawn [[PD-013](#)]. The Panel therefore need to consider the case for CA and TP of the various plots in which NR has interests in the eventuality that its objection is not withdrawn.

7.4.6. NR stated that the plots listed in paragraph 7.4.4 above constitute land acquired by NR for the purpose of its statutory undertaking. It considers that new rights and restrictions over railway land cannot be created without serious detriment to NR's undertaking, and no other land is available to NR which would allow the detriment to be made good. In these circumstances, s127 of PA2008 would not be satisfied [[REP1-075](#)].

7.4.7. However, the Applicant set out its rationale for CA and TP of these plots as follows [[REP2-007](#) and [REP3-031](#)]:

- CA of rights over plot 02/03 would be necessary to ensure that the rail sidings which form part of the infrastructure corridor are able to connect to the national rail network. The existing connection to the London, Tilbury and Southend line (Mainline) (Tilbury Port Junction), currently serving the Applicant's Tilbury Riverside Terminal, would instead serve the proposed new Tilbury2 rail terminal. The land included in this plot is therefore already used as the connection point from the existing port terminal sidings to the national rail network. It is subject to a connection agreement with NR which is intended to be novated for the benefit of Tilbury2 instead. In the absence of agreement being reached, CA of this plot is included to ensure that Tilbury2 trains would be able to pass over the connection, which in any event would also require consent to do so from NR and Office of Rail and Road under the rail regulatory regimes. The Applicant therefore considers there would be no detriment to the operation of NR's undertaking through the inclusion of this plot within the Tilbury2 proposals, and as such, s127(3) is satisfied;
- CA of plots 03/01, 03/02, 03/03, 03/12, and 03/16 is required for the construction and operation of the infrastructure corridor. They fall outside NR's 'operational fence', and thus would not have an impact on NR's undertaking. As such, the Applicant considers s127 would not apply to these plots; and
- TP of plot 02/04 is proposed for the purposes of closing a level crossing over the railway, and the footpaths leading to that crossing.

NR has indicated that it agrees to the removal of this level crossing, provided that protective provisions ensure access for these works is undertaken in such a way that does not impact on NR's operations.

7.4.8. The Panel's conclusion is that NR's interests in plots 03/01, 03/02, 03/03, 03/12 and 03/16 can be purchased and not replaced without serious detriment to the carrying on of the railway undertaking. S127 (3)(a) would be satisfied therefore. CA of these plots is justified in order to ensure the implementation of the proposed development. The position in respect of plot 02/03 the Panel considers is different because of the direct interface with the mainline and the risk of serious detriment to the carrying on of NR's undertaking. In this situation, the Panel considers that s127 (6)(a) would not be satisfied.

7.4.9. Accordingly, if NR's objection is not withdrawn the Panel recommends that CA of plots 03/01, 03/02, 03/03, 03/12 and 03/16 and TP of plot 02/04 should be approved, but that CA of plot 02/03 should be refused.

Port of London Authority (PLA)

7.4.10. The PLA owns nearly the entire riverbed required for the construction of the new jetty. CA is proposed of plots 06/05a, 06/06, 06/10, 06/11 and 06/12, with TP of plots 06/03, 06/05, 06/07, 06/08, 06/09 and 07/01. The PLA objected to the CA of its interests but accepted instead that a long term lease would be sufficient.

7.4.11. At the end of the examination, agreement had been reached between the Applicant and the PLA about its protective provisions in Part 3 of Schedule 10 of the draft DCO, and an accompanying agreement for lease. Whilst it would appear that all matters are agreed and the Applicant understands that the PLA has withdrawn its objection [AS-086 and REP7-017], a formal withdrawal of the PLA's objection had not been received by the Panel at the end of the examination.

7.4.12. The Panel has no reason to believe that a withdrawal will not be forthcoming in due course, but in the event this does not take place the Panel's conclusion is that the Applicant's request for CA of the PLA's interests does need to be considered as affecting a statutory undertaker's land. In that circumstance the tests of s127(3)(a) would not be met in the Panel's view. The Panel accepts the PLA's arguments concerning maintaining the integrity of ownership of the river bed, and in this circumstance why a long term lease to the Applicant to enable the proposed development to be carried out is much to be preferred to acquisition. If the PLA's objection is not withdrawn therefore, the Panel would not recommend the CA of plots 06/05a, 06/06, 06/10, 06/11 and 06/12. The Panel sees no reason not to grant TP of plots 06/03, 06/05, 06/07, 06/08, 06/09 and 07/01, however, as this would not affect the PLA's ownership of these plots.

National Grid Electricity Transmission (NGET)

7.4.13. NGET has rights over two plots (03/06 and 03/13) which are proposed for TA to enable improvement works to Fort Road to take place, as well
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as a range of assets such as substations and overhead lines. NGET's objections were around securing continuing access to these assets. Accordingly, the Applicant negotiated appropriate protective provisions with NGET, which are agreed and contained in Part 12 of Schedule 10.

- 7.4.14. The solicitors acting for NGET withdrew the objection before the end of the examination [[REP7-029](#)]. In the light of this, the Panel recommends there is no issue with the Applicant's proposals insofar as they affect NGET's interests.

Highways England Company Ltd (HE)

- 7.4.15. HE has freehold and leasehold interests in the ASDA roundabout (plots 01/02, 01/03, 01/04, 01/05 and 01/06) and A1089 St Andrew's Road at the western end of the infrastructure corridor (02/01). TP of these plots is proposed, to which HE lodged a formal objection largely because of its disagreement with the Applicant about the nature of proposed highway improvements [[REP1-060](#)].
- 7.4.16. Considerable discussion took place during the examination at ISHs and in submissions at each deadline about the works necessary to mitigate the impact of traffic on the strategic road network, and the protection of HE's interests in the protective provisions proposed in the draft DCO.
- 7.4.17. At the end of the examination, agreement had been reached about the improvement measures needed at the ASDA roundabout, and the mechanism for HE to approve detailed designs set out in protective provisions for HE in Part 9 of Schedule 10 [[AS-086](#)]. On this basis, HE withdrew its in principle objection to TP powers [[REP7-030](#)]. Accordingly, the Panel recommends there is no outstanding issue with the Applicant's proposals insofar as they affect HE's interests.

Anglian Water Services (AWS)

- 7.4.18. The Applicant proposes the acquisition of part of a redundant jetty belonging to AWS in order to enable it to construct the new jetty for the Ro-Ro and CMAT ships (plot 06/05a). TP of those other parts of the jetty, plots 06/04 and 06/05, is also proposed in order for it to be demolished.
- 7.4.19. AWS submitted a representation objecting to CA and TP powers as they affect AWS's interests [[REP1-025](#)]. Discussions took place during the examination which led to the agreed terms for the acquisition of the jetty and protective provisions for AWS's numerous wastewater and surface water assets across the Order land, contained in Part 8 of Schedule 10 of the draft DCO. AWS consequently confirmed that its objection was withdrawn [[REP7-011](#) Appendix 3] and the Panel recommends that there are no outstanding issues with the Applicant's proposals insofar as they affect AWS's interests.

Cadent Gas Ltd

- 7.4.20. Cadent Gas has rights in terms of apparatus concerning plots 01/02, 01/03, 01/04, 02/02, 03/04 and 03/04a. It submitted a formal objection pending agreement with the Applicant about protective provisions [[REP1-040](#)]. These were agreed and are contained in Part 11 of Schedule 10 of the DCO. Accordingly, the solicitors acting for Cadent Gas withdrew the objection before the end of the examination [[REP7-035](#)]. In the light of this, the Panel recommends there is no issue with the Applicant's proposals insofar as they affect Cadent Gas Ltd's interests.

The Crown Estate

- 7.4.21. Whilst nearly all of the riverbed is owned by the PLA, two plots at the western end of the proposed jetty works are part of the Crown Estate. Acquisition of rights is proposed over plot 06/02 and TP of over plot 06/01. This is 'Crown Land' under the PA2008 and the APFP Regulations.
- 7.4.22. By virtue of s135 of PA 2008, the Applicant is unable to compulsorily acquire Crown Land; moreover, such land cannot be included within the draft DCO such that all other interests in it held otherwise than by or on behalf of the Crown can be compulsorily acquired. Neither can the works powers in the draft DCO be exercised over the land unless the appropriate Crown authority (in this case the Crown Estate) consents. This therefore applies both to the proposed CA of rights in plot 06/02 and the TP of plot 06/01.
- 7.4.23. Article 56 of the draft DCO includes provisions seeking in effect to enable the Order to be confirmed without the appropriate Crown consent being in place by providing that CA will not be authorised until such consent is given. This consent had not been received by the end of the examination, and in this circumstance the Panel considers that the article requires amendment.
- 7.4.24. The Applicant has been in active discussions with the Crown Estate Commissioners who indicated they are agreeable to a long term lease of their interests in the sea bed, similar to the agreement reached with the PLA [[REP7-042](#)]. The Panel wrote asking the Crown Estate to confirm whether its consent is being given or is withheld, and the Commissioners confirmed that good progress is being made with the Applicant to enable consent to be given under s135 of PA2008 [[REP7-049](#)].
- 7.4.25. It is regrettable that this position was still uncertain at the end of the examination given the length of time the Crown Estate has had to respond, but plainly until such consent is issued then the CA and TP proposed in the draft DCO cannot be confirmed in relation to these two plots for which there is otherwise no issue in the Panel's view. The Panel judges it likely that such consent will eventually be granted. If, however, no consent is forthcoming, the draft DCO must exclude CA of any interests held otherwise than by or on behalf of the Crown and all other provisions applying in relation to Crown land including TP relating must be removed.

- 7.4.26. Article 56 is recommended to be amended to comply with s135 PA2008 so ensuring that the DCO cannot be granted conditional on receiving Crown consent for CA of rights held other than by the Crown. This is the approach adopted in similar circumstances in several recently made Orders, including The East Anglia THREE Offshore Wind Farm Order 2017 (article 37) and The National Grid (Richborough Connection Project) Order 2017 (article 22):

Crown Rights

(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any licensee to use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

(a) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;

(b) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or

(c) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.

(3) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and is deemed to have been given in writing where it is sent electronically.

Thurrock Council (TC)

- 7.4.27. The Council has many interests in plots in the Order land, principally concerning highways as well as freehold ownership of land at the western end of the infrastructure corridor (plots 01/01, 01/02, 01/05, 02/01, 02/02, 02 /04, 03/01, 03/03, 03/04, 03/04a, 03/06, 03/13, 03/14 and 03/15).
- 7.4.28. Amongst these is plot 03/04a which is the proposed replacement land for CA of two plots of common land (03/08 and 03/11). Towards the end of the examination, the Applicant noted that the original size of this plot when the application was submitted (18,024sqm) was considerably larger than the combined size of the two plots of common land it is intended to

replace (13,505 sqm), and so the area of plot 03/04a was reduced accordingly to 13,509 sqm [\[REP5-013\]](#). As is set out above, the Panel did not consider this reduction in plot size constituted a material amendment, and therefore accepted this change.

- 7.4.29. Formal agreement had not been reached by the end of the examination between the Applicant and TC concerning the transfer of this land [\[REP7-036\]](#). However, the Council has not objected to any of the proposals for CA or TP concerning its land interests, and the Panel concludes that the requests for all these, including CA of plot 03/04a, is justified in order to provide replacement land for the common land needed to ensure the implementation of the proposed development.

Historic England (Hist E)

- 7.4.30. The application as submitted contained proposed TP of a plot of common land which Hist E observed was very close to the northern extent of the landward defences of Tilbury Fort, and requested that consideration should be given to siting the proposed construction site elsewhere [\[REP1-065\]](#). Although this was not a formal objection as Hist E has no land interest in this plot (03/05), the Applicant decided in response to remove this from the scheme [\[REP2-006\]](#).

RWE Generation UK plc (RWE)

- 7.4.31. RWE was the former owner of the Tilbury A power station site and sold the land to the Applicant for the proposed Tilbury2 development. RWE continues to own the adjoining former Tilbury B power station to the immediate east, currently being demolished. RWE is proposing to submit an application for development consent for a new gas fired power station (the TEC) on this site.
- 7.4.32. RWE has a number of retained property rights within the Order limits of the Tilbury2 application, primarily for the purposes of access, services and cooling water infrastructure. RWE is a statutory undertaker for the purposes of the PA2008 as it holds an electricity generation licence under s6(1) (a) Electricity Act 1989. RWE argued that its rights relating to its statutory undertaking and its proposals for the TEC would be affected by the CA provisions of the draft DCO for Tilbury2 [\[RR-015\]](#).
- 7.4.33. RWE made several detailed submissions during the examination concerning articles 3 and 4 of the DCO, which it claimed contains provisions revoking RWE's existing works licence granted under the Port of London Act 1968 and the extinguishment of its existing rights. It does not consider that s127 and s138 are satisfied as far as its interests are concerned [\[RR-015\]](#). In RWE's view, the fact that there is not currently an operational power station on the Tilbury 'B' site does not affect its status as a statutory undertaker, nor the status of the Tilbury 'B' site as operational land [\[REP2-015\]](#).
- 7.4.34. RWE claimed that its rights relating to access and services across the Tilbury2 site should be included in Part 3 of the BoR as third party rights

which may be capable of being overridden pursuant to the CA and TP articles of the DCO. In relation to the jetty, RWE argued its rights should be included in Part 1 of the BoR as an interest in the land. These rights are 'relevant rights' belonging to RWE in its capacity as a statutory undertaker for the purpose of it carrying on its undertaking, and the existing infrastructure is 'relevant apparatus' for the same purposes. S138 therefore applies [[REP1-087](#)].

- 7.4.35. The Applicant's response was that whilst RWE is clearly a statutory undertaker in general terms, this is not relevant in the particular circumstances of this application given that there is no operating power station at the site, nor in immediate prospect. PA2008 protects statutory undertakers to the extent that development consent proposals interfere with their:
- (a) operational land (s127(1)(c)(i)) - land that is used for the purposes of carrying on the statutory undertaker's undertaking. The site of the TEC is currently not in operational use by RWE as an electricity generating station, and as such it is not operational land; or
 - (b) 'relevant apparatus' (s138(3)(a)) - apparatus vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking. Whilst the various structures on the existing jetty are apparatus, they are not 'relevant' for the purposes of the Act as they do not currently service an operational electricity generation plant [[AS-086](#)].
- 7.4.36. The Applicant's position is that RWE's rights with respect to the jetty are contractual not proprietary. This is because the transfer of the jetty from RWE to the Applicant was a transfer of a chattel (i.e. the jetty) rather than of land. As such, RWE's reserved rights under that transfer are also contractual.
- 7.4.37. Crucially in the Panel's view, the Applicant stated firmly that no CA proposals are included in the draft DCO in relation to land or concerning RWE's reserved rights. As such rights are contractual, and as they are not subject to CA or TP proposals, they do not therefore require to be included in the BoR [[REP5-013](#)].
- 7.4.38. This did not satisfy RWE [[REP3-048](#) and [REP5-055](#)], but the later submissions put forward by RWE and the Applicant were focussed on amendments to the relevant articles of the draft DCO and the protective provisions contained in Part 10 of Schedule 10. As explained in Chapter 8 of this report, these were not agreed by the end of the examination and the Panel's conclusions and recommendations on how they should be finalised are set out there.
- 7.4.39. However, in relation to RWE's objection, the Panel's conclusion is to agree with the Applicant that the draft DCO does not contain CA proposals affecting RWE's interests. In this situation, whether RWE is classed as a statutory undertaker or not at this juncture is not relevant, and consequently issues relating to s127 and 138 do not arise.

Cole Family

- 7.4.40. As explained above in the sections dealing with special considerations and the interests of TC, three plots are shown on the Plans and the BoR as special category land forming part of a registered common in the ownership of the Cole family. Plots 03/08 and 03/11 are proposed for CA (with plot 03/04a in the ownership of TC proposed for CA as replacement land for these two plots) and plot 03/07 is proposed for TP. The acquisition of the common land would be required for construction of the road and rail links as part of the infrastructure corridor.
- 7.4.41. Although a formal objection was not received from the Cole family, agents acting on their behalf explained the status of negotiations at the CA hearing on 20 April 2018. By the end of the examination agreement had been reached on terms for the purchase by the Applicant of plots 03/08 and 03/11 and a lease for TP of plot 03/07 [[REP7-037](#)]. Solicitors acting for the Cole family confirmed there was no objection to the Applicant's proposals for CA and TP of their land interests [[REP6-022](#)]. The Panel's conclusion is that the request for CA of plots 03/08 and 03/11 and TP of plot 03/07 is justified in order to ensure the implementation of the proposed development.
- 7.4.42. However, the two plots proposed for CA (03/08 and 03/11) are common land and so subject to s131 PA2008 which makes provision for special parliamentary procedure to apply to the DCO unless the SoS is satisfied that one of the exemptions applies, in this case suitable replacement land. Whilst the proposed replacement plot 03/04a appears to meet the criteria for such replacement land, at the close of the examination formal agreement had not been reached between the Applicant and TC concerning the transfer of this land and notified to the Panel [[REP7-036](#)].
- 7.4.43. Even though the Council has not objected to any of the proposals for CA or TP concerning its land interests, until the transfer of this plot to the Applicant actually takes place the replacement land cannot be definitively demonstrated to be available for vesting in the Cole family as the owners of the two plots of common land. If agreement is not reached about the transfer of the replacement site to the Applicant, in order to avoid the draft DCO being subject to special parliamentary procedure, the replacement site would fall to be acquired compulsorily under the terms of the draft DCO.

West Tilbury Commons Conservators

- 7.4.44. The three plots of special category land are part of an area of registered common land managed and maintained by the West Tilbury Commons Conservators as holders of common rights. They set out a number of conditions they wished to apply to the replacement land in transferring the common rights from plots 03/08 and 03/11 to the replacement land

plot 03/04a [[AS-039](#)]. Following negotiations during the examination, the Clerk to the Conservators wrote to the Applicant expressing their satisfaction with the replacement site, so this can also be taken into account in meeting the requirements of s131 PA2008 regarding exemptions [[REP7-011](#) Appendix 7].

Mr A Gothard

- 7.4.45. Mr Gothard is the freehold owner of plots 03/09, 03/10 and 03/11 currently in use as a small industrial/depot site. An objection to CA of these two plots was raised by Mr Gothard's agent at the CA ISH on 20 April 2018. Negotiations continued during the examination and terms were agreed for the purchase by the Applicant [[REP7-036](#)]. Mr Gothard's agent confirmed that once contracts had been exchanged the objection would be withdrawn [[REP7-026](#)]. This had not occurred by the close of the examination, but in any event the Panel concludes that CA is justified to enable implementation of the proposed development.

7.5. THE PLANNING ACT TESTS

- 7.5.1. Paragraph 9 of the DCLG Guidance advises that the Applicant must have "*a clear idea of how [it intends] to use the land which [it proposes] to acquire*". The SoR sets out at Appendix A the particular purposes for which each plot of land is subject to proposed CA or TP. The Applicant considers it also demonstrates that no more land than is reasonably required is proposed to be CA for the purpose of delivering the proposals, and it is proportionate and justifiable.
- 7.5.2. The Applicant is satisfied that all the land included in the Order land is necessary to enable the delivery of the proposals.
- 7.5.3. The Applicant has continued during the examination to acquire land and rights by agreement in order to try to avoid the need for CA wherever possible. However, in the event that this cannot be achieved, the Applicant requires the CA and TP powers in order to implement the proposed development.
- 7.5.4. In addition to establishing the purpose for which CA is sought, s122 of PA 2008 requires the SoS to be satisfied that there is a compelling case in the public interest to outweigh the private loss that would be suffered by those whose interests in land and/or rights over land are to be acquired. The Applicant argues that the application for Tilbury2:
- aligns with national government policy for ports set out in the NPSP;
 - will deliver economic benefits that are in the public interest; and
 - is expected to generate an increase in GVA of £22.4 million during construction, and a total of £562.2 million for the combined Port of Tilbury once operational.
- 7.5.5. Accordingly, the Applicant considers the CA powers would be legitimate, necessary and proportionate for the purposes of constructing and

operating the proposals in the public interest. Without them it would be unable to guarantee the delivery of the proposals.

Crown Land

- 7.5.6. The Crown Estate Commissioners have indicated they are agreeable to a long term lease of their interests in the sea bed, to enable consent to be given under s135 of PA2008. Whilst there is no reason to suppose this will not be forthcoming, until such consent is issued then the CA and TP proposed in the DCO cannot be confirmed in relation to these two plots, for which there is otherwise no issue in the Panel's view. If, however, no consent is forthcoming the DCO must exclude CA of any interests held otherwise than by or on behalf of the Crown applying in relation to all other provisions, including TP. The Panel also recommends amendment of article 56 as set out above.

Special Category Land

- 7.5.7. Two plots fall within the definition of common land to which s131 PA 2008 applies, requiring the Order to be subject to special parliamentary procedure unless the SoS is satisfied that a dispensation applies.
- 7.5.8. Article 37 of the draft DCO would ensure that CA powers cannot be exercised over the common land until the replacement land is provided. The replacement land in the ownership of TC is subject to CA, to which the Council has raised no objection, and the Panel reached the conclusion above that this is justified.
- 7.5.9. The likelihood is that the replacement land the Applicant is seeking to acquire from TC will be confirmed to the SoS following the closure of the examination as having been transferred to the owners of the two plots of common land. If not, then in the Panel's view the CA of the proposed replacement plot 03/04a plot provides a long stop reassurance to the SoS that the circumstances set out in s131(4) PA 2008 should apply to plots 03/08 and 03/11, meaning that the Order would not be subject to special parliamentary procedure.

Statutory undertakers' interests

- 7.5.10. Appendix D of the SoR [[REP7-042](#)] lists 16 statutory undertakers and other similar bodies having or possibly having a right to keep equipment on, in or under the land within the Order limits. Most of these are telecommunications providers from whom no representations were made. As noted above, an extensive set of protective provisions are contained in Schedule 10 of the draft DCO. These are both general, applying to classes of statutory undertakers such as utility providers and telecommunications providers (Parts 1 and 2), and particular named undertakers (Parts 3 to 12). Where no representations were received from statutory undertakers the Panel concludes there is no conflict with either s127 or s138 PA2008 as appropriate.

- 7.5.11. Objections from Anglian Water, HE, Cadent and NGET were withdrawn. Those submitted by PLA and NR remained at the end of the examination, and which the Panel concludes from their submissions relate to s127 rather than s138 PA2008. The Panel recommends therefore that the SoS can be satisfied there is no conflict with the requirements of s127 or s138 PA2008 concerning the CA of statutory undertakers' land proposed in the Tilbury2 draft DCO, with the exception of the interests of NR concerning plot 02/03 and the PLA concerning plots 06/05a, 06/06, 06/10, 06/11 and 06/12 under s127 if their objections are not formally withdrawn.

Funding

- 7.5.12. The Funding Statement sets out the total cost of constructing Tilbury2 as £136 million (a figure the Applicant reconfirmed at Deadline 4 [[REP4-020](#)]). The total compensation potentially payable (including professional fees) is assessed as approximately £12.4 million, of which £11.2 million would be to meet potential Category 3 claims.
- 7.5.13. The Applicant, Port of Tilbury London Ltd, is a subsidiary of Forth Ports Ltd and the Funding Statement contains the experience of the Group in carrying out previous large scale capital projects and its ability to raise the financial resources necessary to implement the Tilbury2 proposals.
- 7.5.14. Given that the Port of Tilbury London Ltd is a private company, the Panel asked for reassurance of the position set out in the Funding Statement that sufficient funds would be available and ring fenced solely for the purpose of meeting the CA obligations. A letter from the Chief Financial Officer of Forth Ports Ltd was submitted at Deadline 3 which confirmed to the Panel's satisfaction the arrangements that would be put in place [[REP3-025](#)]. The Panel concludes therefore that the SoS can be satisfied that the requisite funds for payment of compensation would be available at the appropriate time.

Consideration of alternatives

- 7.5.15. The Applicant set out in the SoR the way in which alternatives to CA were considered in the preparation of the application and this is covered above. The Panel concludes therefore that the requirements to explore all reasonable alternatives to proposed powers of CA have been satisfied.

Human Rights Act considerations

- 7.5.16. The Applicant considers in the SoR that Article 1 of the First Protocol to the European Convention of Human Rights is applicable, and also Articles 6 and 8 in terms of those affected by the proposed CA and TP of land:
- First Protocol, Article 1 covers the rights of those whose property is to be CA and whose peaceful enjoyment of their property is to be interfered with;
 - Article 8 protects the rights of the individual in respect of private and family life; and

- Article 6 entitles those affected by the project to a fair and public hearing by an independent and impartial tribunal.

7.5.17. The Applicant is satisfied that, although the Convention rights are likely to be engaged, there is a compelling case in the public interest for the proposals which outweighs in this instance any impact on individual rights. Those affected by CA may claim compensation in accordance with the statutory Compensation Code. Should the draft Order be made, aggrieved persons may also challenge the Order in the High Court pursuant to s118 PA2008 if they consider that the grounds for doing so are made out. APs have the right to apply to the Upper Tribunal (Lands Chamber) if compensation is disputed.

7.5.18. The Panel is satisfied that in relation to Article 1 of the First Protocol and Article 8, the proposed interference with individuals' rights would be lawful, necessary, proportionate and justified in the public interest. In relation to Article 6, the Panel is satisfied that all objections which have been made have either been resolved by the Applicant or the objectors have had the opportunity to present their cases before the Panel during the examination, including at CA hearings held for this purpose.

7.6. CONCLUSIONS ON THE CASE FOR POWERS OF CA AND TP

7.6.1. The Applicant already has the freehold ownership of the large majority of the proposed Tilbury2 site, but is seeking CA powers to complete land ownership where necessary, and acquire rights. The Applicant is also seeking powers of TP and use. The Applicant has a clear purpose for each plot subject to proposed CA powers as set out in the SoR. Negotiations have taken place, and indeed continue, to enable the Applicant to assemble its proposed interests without recourse to CA powers. If these negotiations fail, then the Applicant argues such powers are necessary to enable the proposed development to be satisfactorily implemented.

7.6.2. For the reasons set out in this chapter, the Panel is satisfied that the case has been made that all of the land included in the BoR and Land, Crown Land and Special Category Land Plans is required either for the development, or to facilitate it, or as incidental to it.

7.6.3. In relation to the objections set out in this chapter, the Panel does not consider that the private losses suffered are such as to outweigh the public benefits that would accrue from the grant of the CA and TP powers which are sought.

7.6.4. The Panel concludes in the light of these considerations that the conditions in s122 and s123 of PA2008 are satisfied.

Recommendation on including CA and TP powers in the Order

7.6.5. NR and the PLA indicated that their objections would be withdrawn, but the Panel had not received formal notification of this before the close of

the examination. If this is not forthcoming during the decision period, then the Panel recommends against granting CA powers over plot 02/03 in NR ownership, and plots 06/05a, 06/06, 06/10, 06/11 and 06/12 in the PLA's ownership, as set out above.

7.6.6. In addition, in the absence of consent from the Crown Estate as required by s135 PA2008, the Panel recommends that plots 06/01 and 06/02 are excluded from the scope of CA.

7.6.7. However, assuming the SoS is informed by these bodies of the withdrawal of their objections as they indicate, there would be little, if any, outstanding impediment to the CA and TP powers proposed in the DCO as a whole.

7.6.8. The Panel has concluded that development consent should be granted for the reasons set out in Chapters 4 to 6. It follows therefore that its delivery would be jeopardised in the absence of the CA powers, and the TP and use of land intended as set out in the draft DCO. Interference with persons and affected land interests is proportionate to the benefits that would be brought about by the development. In this situation, the Panel concludes that the compelling case in the public interest for the grant of CA and TP powers has been made.

7.6.9. With regard to the incorporation of other statutory powers pursuant to s120(5)(a) PA2008, the Panel is satisfied that as required by s117(4) the DCO has been drafted in the form of a statutory instrument, and that no provision of the draft DCO contravenes the provisions of s126 which preclude the modification of compensation provisions.

8. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

8.1. INTRODUCTION

- 8.1.1. This chapter outlines the structure and evolution of the draft DCO from the version submitted with the application to the recommend DCO included with this report at Appendix D.

8.2. THE DCO AS APPLIED FOR

- 8.2.1. The draft DCO as initially applied for was included with the application [APP-016], and the final version Revision 7 [[AS-089](#)] was submitted on the last day of the examination on 20 August 2018.
- 8.2.2. The draft DCO consists of five parts:
- Part 1: Preliminary (Articles 1-5);
 - Part 2: Works Provisions (Articles 6-22);
 - Part 3: Powers of Acquisition and Possession of Land (Articles 23-40);
 - Part 4: Operational Provisions (Articles 41-49);
 - Part 5: Miscellaneous and General (Articles 50-60);
 - Schedules 1-11.
- 8.2.3. Schedule 1 specifies the proposed works. Works Nos. 1 and 2 - a Ro-Ro berth on the river Thames and a CMAT berth on the river Thames⁵⁸ - would comprise the NSIP, while Work Nos. 3-12 would comprise associated development. The associated development would include a Ro-Ro terminal, access roads, an operational compound, storage areas, a warehouse, a construction materials and aggregates terminal, a new access highway, a road overbridge, works to the ASDA roundabout, and a new rail line for the CMAT facilities.
- 8.2.4. Schedule 2 details the 12 requirements that would need to be met by the proposed development, and the procedure for the discharge of the requirements. Schedules 3 and 4 deal with the classification of roads and the stopping up of roads, respectively. Schedules 5 and 6 address CA and TP, respectively. Schedule 7 deals with port premises byelaws, while Schedule 8 considers traffic management. Schedule 9 contains the DML and Schedule 10 contains the protective provisions in favour of 12 parties. Finally, Schedule 11 contains a list of the documents to be certified.
- 8.2.5. The requested draft Order is more extensive than many, and has a number of distinctive elements – the range of schedules, the inclusion of port premises byelaws (Schedule 7), the inclusion of the DML as a schedule (Schedule 9), and the number of protective provisions (Schedule 10). The Applicant's explanation for the various components of the draft DCO is in the Explanatory Memorandum at the close of the

⁵⁸ The CMAT berth was associated development in the original application
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examination [[AS-082](#)]. The Applicant's Closing Statement also contains a summary of the main issues and submissions concerning the draft DCO during the examination [[REP7-036](#)].

8.3. CHANGES DURING THE EXAMINATION

8.3.1. This section of the report addresses the matters in respect of which there was discussion between the Applicant, the Panel, IPs and APs at the hearings and through correspondence about potential changes to the draft DCO.

8.3.2. The discussions were extensive, and the Applicant worked hard to produce a draft DCO that met the requirements of the various parties. In doing so, the Applicant submitted a number of revisions to the draft DCO with accompanying explanatory documents which were as follows:

- In the Applicant's draft DCO Revision 1 [[REP1-015](#)] at 20 March 2018, the changes mostly arose from issues raised by the Panel at the DCO ISH on 21 February 2018 [[EV-004](#)];
- In Revision 2 [[REP3-004](#)] at 30 April 2018, many of the changes made were agreed and included in the Applicant's response to written representations, LIRs and IP responses to the ExA's FWQ submitted at Deadline 2 [[REP2-007](#)];
- In Revision 3 [[AS-065](#)] at 18 June 2018, most of the changes arose from and were agreed in the Applicant's response to the ExA's SWQ [[REP4-020](#)];
- In Revision 4 [[REP5-046](#)] at 6 July 2018, the changes arose from changes agreed by the Applicant [[REP5-015](#)] at the DCO ISH on 28 June 2018 [[EV-018](#)];
- In Revision 5 [[REP6-028](#)] at 3 August 2018, the changes arose from the Applicant's response [[REP6-036](#)] to the Panel's response to the Applicant's draft DCO Revision 4 [[PD-014](#)];
- In Revision 6 [[REP7-005](#)] at 16 August 2018, changes were made to reflect changes agreed with IPs, and other points which the Applicant identified as requiring amendment since Revision 5 of the draft DCO;
- In the final revision, Revision 7 [[AS-089](#)] at 20 August 2018, the Applicant responded to the Deadline 7 submissions, and made its final amendments to article 2 (Interpretation), Schedule 9 (Deemed Marine Licence) and Schedule 10 (Protective Provisions).

8.3.3. As can be seen from this brief summary of the main amendments made to the draft DCO through the seven revisions, a significant number of changes have been made. At the end of the examination, the Panel asked the Applicant to provide a tracked changes version of the final draft DCO [[AS-091](#)], comparing it with the draft DCO supplied with the application, from which these changes can be seen.

8.3.4. The Applicant provided explanations of the changes to the draft DCO for each revision through the examination [[REP1-005](#), [REP3-004](#), [AS-067](#), [REP5-046](#), [REP6-028](#)], and a consolidated explanation for all changes up

to and including Revision 6 [[REP7-031](#)]. An explanation of changes between Revisions 6 and 7 was also provided [[AS-085](#)].

8.3.5. The DCO provisions in respect of which the Panel recommends changes to the final submitted draft DCO [[AS-089](#)] in the recommended DCO (Appendix D) are summarised in Table 1 below.

8.3.6. By way of context, a number of matters relating to the DCO were particularly prominent during the examination:

- 1) *Article 3: Disapplication of legislation etc and Article 4: Application of enactments relating to the Port of Tilbury.* These were the subject of considerable discussion through the examination, particularly with the PLA and RWE with regard to overlapping powers and preservation of existing rights.
- 2) *Schedule 1: Authorised development.* After careful examination, the Panel agreed with the Applicant that Works Nos. 1 and 2 both comprised the NSIP, and that Works Nos. 3-12 were valid associated development. The Panel also examined the proposed works and the ancillary development to ensure that all items were necessary and sufficient for the proposed development, particularly items (v) and (x) at the end of the Schedule.
- 3) *Schedule 2: Requirements.* A number of the requirements were the subject of extensive examination. Requirement 3: *External appearance and height of the authorised development* was strengthened in recognition of IPs' concerns regarding the heights of various components of the proposed development and their colour. Requirement 5: *Offsite mitigation* was also significantly strengthened, particularly to ensure that the EMCP was included as a certified document to provide the necessary assurance regarding mitigation and compensation measures. Requirement 7: *Highway works* was enhanced to provide HE with the assurance that it required with regard to completion of works to the SRN prior to the opening of the Ro-Ro and CMAT terminals. Requirement 10: *Operational noise monitoring and mitigation (receptors)*, was substantially enhanced following considerable dialogue with GBC.
- 4) *Schedule 7: Port premises byelaws.* Byelaws are proposed to regulate matters relating to the 'Port Premises', which is defined as the 'extended port limits' as shown on the harbour extended port limits plan.
- 5) *Schedule 9: DML.* The Applicant included an initial version of the DML with the draft DCO as part of the application by which the Applicant sought deemed consent under s65 of the Marine and Coastal Access Act 2009 (MCAA). This was significantly revised following detailed representations from the MMO about the range of licensable marine activities and conditions.
- 6) *Schedule 10 (Protective Provisions).* Schedule 10 includes 12 sets of protective provisions. Part 3 (Port of London Authority), Part 4 (Environment Agency), Part 5 (Thurrock Council as lead local flood

authority), Part 6 (railway interests), Part 7 (Thurrock Council as highway authority), Part 9 (Highways England), Part 10 (RWE UK Ltd), Part 11 (Cadent Gas Ltd) and Part 12 (National Grid Electricity Transmission) all required substantial dialogue between the party concerned and the Applicant. The protective provisions were all fully agreed before the end of the examination, except Parts 5, 7, 9 and 10 as detailed in Table 1 below.

- 7) *Terrestrial Archaeological WSI and Marine Archaeological WSI.* The two WSIs were both examined in depth in dialogue with Hist E and the MMO. Both were accepted at the end of the examination as documents to be certified in accordance with article 57, together with the Marine Archaeological WSI which would be secured through paragraph 14 of the DML (Schedule 9 in the draft DCO).
- 8) *Dredging.* The MMO in particular raised concerns about the power to undertake dredging granted by article 43.
- 9) *CA Matters.* The application contains limited proposed CA and TP powers but these exercised several statutory undertaker objectors who generally sought comfort in bespoke protective provisions.
- 10) *Highways Powers.* HE and TC queried the use of the streets and highways powers in Part 2 of the DCO (and their associated Schedules) and article 52 (traffic regulation measures) and the interaction of these powers with their protective provisions.
- 11) *Permitted Development.* Discussion with the Applicant took place on a number of occasions about the intended use by the Applicant of permitted development powers and why article 41 is additionally needed if permitted development powers exist.

8.3.7. As noted in section 1.7 of this report, a draft Development Consent Obligation made pursuant to s106 of the TCPA 1990 was offered between the Applicant and TC. However, the final version submitted at the end of the examination remained unsigned, so the Panel accords it no weight, for reasons explained in paragraph 6.3.9 of this report [[AS-098](#)].

Table 1: DCO issues outstanding at end of examination – recommended changes to the draft DCO and included in the recommended DCO at Appendix D

Provision	Examination Issue and ExA's Recommendation
Preamble	The reference in the Planning Act should be to the powers of the Panel rather than a Single Appointed Person. The second paragraph of the Preamble in the draft DCO should be amended to refer to section 74(2) rather than section 83(1).
Preamble	This leaves open which sub-section of s131 PA2008 is applicable in relation to the CA of common land proposed in the Order. The Applicant considered the replacement land proposed meets the requirements of s131(12) of the PA2008, namely that it is not less in area than the common land, and no less advantageous to the persons entitled to rights of common or other rights and to the public. Accordingly, the Applicant argued that the exemption in <u>s131(4)</u> of PA2008 applies to these two plots of common land, and that the DCO should not be subject to special parliamentary procedure. The Panel agrees with this and recommends that the Preamble in the draft DCO should be amended so that the final phrase reads "that section 131(4) applies".
Article 23: Compulsory acquisition of land and Article 25: Compulsory Acquisition of rights	Several bodies lodged formal objections to the use of CA and TP powers over their land, pending agreement over protective provisions, following which they indicated that such objections would be formally withdrawn. In the case of NR and the PLA, no such withdrawal was received by the close of the examination, and the consent of the Crown Estate concerning acquisition of rights had similarly not been received. Accordingly, pending the receipt of such formal notifications, the Panel recommends the following plots are removed from the scope of CA: plots 02/03, 06/01, 06/02, 06/05a, 06/06, 06/10, 06/11 and 06/12.
Article 43: Powers to dredge	This article has been amended following further discussions between the Applicant and the MMO, and now reflects the agreed position between the parties, apart from MMO's assertion [REP7-033] that the wording should be "<i>within the UK Marine area</i>" instead of "<i>in the UK marine licencing area</i>". This was to avoid deposit of dredged material anywhere at sea without a marine licence, in line with the current wording of similar provisions within Harbour Empowerment and Harbour Revision Orders. The Panel concurs and recommends that article 43 of the draft DCO is amended accordingly to read "<i>within the UK Marine area</i>".
Article 56: Crown Rights	The article dealing with Crown Rights needs to be amended to comply with s135 PA2008, so ensuring that the DCO cannot be granted

Provision	Examination Issue and ExA's Recommendation
	conditional on receiving Crown consent for CA of rights held other than by the Crown. The reasons for this are explained in paragraphs 7.4.21-26 above. Accordingly, article 56 of the draft DCO should be amended to read as follows: Crown Rights (1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any licensee to use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)— (a) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners; (b) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or (c) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department. (2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown. (3) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and is deemed to have been given in writing where it is sent electronically.
Schedule 9: DML	The Applicant stated that an arbitration clause should be included in the DML, as detailed in its closing statement [REP7-036, paragraph 6.9]. The MMO maintained that this clause should not be included [REP7-033]. The arbitration clause, paragraph 27, was included in the DML in the Applicant's final submitted draft DCO [AS-089]. The Applicant asserted that the principle of the PA2008 was to ensure a "one stop shop" regime, and that the MMO's position in general was not prejudiced, since the proposed clause made it clear that it was not to be taken, or to operate, so as to fetter or prejudice the statutory rights, powers, discretions or responsibilities of the MMO. In the MMO's submission at Deadline 7 [REP7-033], the MMO stated that it strongly opposed the inclusion of such a provision, based on its statutory role in enforcing the DML. According to the MMO, the intention of the PA2008 was for DMLs granted as part of a DCO in effect to operate as a marine licence granted under the MCCA2009. There was nothing to suggest that after having obtained a licence it

Provision	Examination Issue and ExA's Recommendation
	should be treated any differently from any other marine licence granted by the MMO (as the body delegated to do so by the SoS under the MCAA). Having considered the arguments of the Applicant and the MMO, the Panel finds in favour of the MMO in this matter for the reasons stated in the paragraph above. Accordingly, the Panel recommends that paragraph 27 is deleted from the DML at Schedule 9 of the draft DCO.
Schedule 10: Part 4, protective provisions for the protection of the EA	According to the final SoCG Update Report [REP7-012 Appendix 4], the form of the protective provisions concerning the EA was now agreed between the parties. However, discussions in respect of the disapplication of s24 of the Water Resources Act 1991 were still on-going and were not concluded by the end of the examination. The Applicant has included the disapplication of s24 Water Resources Act 1991 in the draft DCO and was of the view that dewatering during construction was something that could be covered under the protective provisions. The EA in its submission at Deadline 7 [REP7-041] stated that it was still not in a position to agree to disapply s24 Water Resources Act 1991 under s150 of the PA2008. Unless EA has agreed, it would be unlawful for the disapplication to be included in the draft DCO. However, under paragraph 41 of the protective provisions, which addresses approvals for the works, approvals must not be unreasonably withheld, including approvals in relation to water resources. Whilst this issue is yet to be resolved, the two parties stated that they intended to continue discussions and inform the SoS of any updates in respect of agreement on the matter. This may involve some adjustments to the EA's protective provisions. However, the Panel must reach a conclusion on matters as they stood at the end of the examination. Accordingly, the Panel recommends that article 3(1)(c), which relates to the disapplication of s24 Water Resources Act 1991, is removed from the draft DCO unless the Applicant and EA inform the SoS during the decision period that agreement has been reached on the matter.
Schedule 10: Part 5, protective provisions for the protection of the TC as local flood authority	According to the final SoCG Update Report [REP7-012 Appendix 1], all matters were now agreed between the Applicant and TC with the exception of the detailed wording of the protective provisions which remained under discussion, and it was expected that these would be agreed prior to the closure of the examination on 20 August 2018. In TC's submission on the final day of the examination, 20 August 2018 [AS-087], TC stated that the Council considered that the protective provisions were now substantially agreed with the Applicant, although some minor differences remained over largely drafting issues. TC offered to provide a copy of its suggested track changes to Part 5 if required. This submission from TC was too late for the Panel to request TC's

Provision	Examination Issue and ExA's Recommendation
	tracked changes version of Part 5. However, from the submissions from the Applicant and TC the Panel concludes that there are no matters of substance to resolve. The Panel recommends that no further changes are made to Schedule 10 Part 5 of the draft DCO.
Schedule 10: Part 6, protective provisions for the protection of NR	According to the final SoCG Update Report [REP7-012 Appendix 9], NR has agreed the protective provisions in Part 6 of the draft DCO as submitted by the Applicant at Deadline 6 [REP6-033]. In NR's submission at Deadline 6, NR stated that it continued to have discussions with the Applicant on a suite of agreements and those discussions were making good progress. No update on these discussions was provided at Deadline 7 or the last day of the examination, 20 August 2018, so the Panel does not know the nature or status of the agreements being discussed between the Applicant and NR. However, since the protective provisions were agreed, the Panel does not consider that these agreements are material to the granting of the DCO. The Panel recommends that no further changes are made to Schedule 10 Part 6 of the draft DCO.
Schedule 10: Part 7, protective provisions for the protection of TC as Highway Authority	According to the final SoCG Update Report between the Applicant and TC [REP7-012 Appendix 1], all matters were stated as agreed with the exception of the detailed wording of the protective provisions which remained under discussion, and it was expected that these would be agreed prior to the closure of the examination on 20 August 2018. In TC's submission on the last day of the examination [AS-094], TC stated that it could confirm that the protective provisions for TC as Highways Authority were now agreed and TC attached the latest agreed draft of these provisions [AS-090]. This draft contains tracked changes, and following the Panel's comparison between TC's tracked changes version and the Applicant's tracked changes version at draft DCO Revision 7 [AS-089], is the Panel concludes that the two versions are the same. The Panel recommends that no further changes are made to Schedule 10 Part 7 of the draft DCO.
Schedule 10: Part 9, protective provisions for the protection of HE	According to the final SoCG Update Report [REP7-012 Appendix 8] at Deadline 7, there were some detailed DCO drafting matters regarding HE's protective provisions which were still under discussion and the intention was that they would be concluded prior to the end of the examination. Following the Panel's comparison of the protective provisions contained in HE's submission on the last day of the examination [AS-081] with the Applicant's Revision 7 on the same day [AS-089], the

Provision	Examination Issue and ExA's Recommendation
	Panel concludes that the two versions are the same. The Panel recommends that that no further changes are made to Schedule 10 Part 9 of the draft DCO.
Schedule 10: Part 10, protective provisions for the protection of RWE	There was no SoCG between the Applicant and RWE. In RWE's submission at Deadline 7 [REP7-044], RWE confirmed that it was content with the form of protective provisions included at Schedule 10 Part 10 of the Applicant's Revision 5 of the draft DCO [REP6-033], with the exception of the further amendments shown as tracked changes in the version of the protective provisions attached as appendix 1 [REP7-008] to its main submission [REP7-044]. Comparing RWE's version of the protective provisions with those in the Applicant's final submitted draft DCO, Revision 7 [AS-089], it is evident that RWE's amendments were not included. However, the Applicant responded to RWE's Deadline 7 submissions in its submission on the final day of the examination [AS-086]. The amendments proposed by RWE to the protective provisions in Schedule 10 Part 10 [REP7-008] are as follows, with the paragraph numbers relating to RWE's document, followed by the appropriate paragraph number in Schedule 10 Part 10 in brackets. The Panel has carefully considered the Applicant's response [AS-086] and given its considered recommendation after each point. Para 130 (138), which deals with any temporary interference caused by the Applicant's works or the Company's operation of the delivered works, sub-paragraph (9) requires the Applicant to adopt any reasonable requirements that may be made by RWE to ensure that any temporary interference does not prejudice RWE's development programme for a power station on land adjacent to the Order limits <i>provided that those requirements must not materially interfere with the unloading and loading of vessels within the extended port limits</i>. RWE has deleted the highlighted text. The Panel notes that the Applicant wishes to retain the highlighted words and RWE wishes to remove them, the Applicant arguing that RWE has sufficient protection in the Jetty Asset Transfer agreement [REP7-004]. The Panel recommends that the highlighted words should be retained, and points out that paragraph 142 (147) requires the two parties to act reasonably in connection with the implementation of this Part of this Schedule. Paragraph 132, which deals with damage to RWE's existing apparatus, has been inserted by RWE to make the Applicant liable for damage caused to RWE's existing apparatus if it is used in connection with the operation of a power station by RWE on land adjacent to the Order limits. The Applicant objects to such an indemnity, on the grounds that it goes further than it reasonably should do, to protect a possible future development. The Panel agrees with the Applicant, and recommends that paragraph 132 proposed by RWE should not be included in Schedule 10 Part 10 of the draft DCO. Paragraph 133, which deals with consents to licence proposals, sub-paragraph (2) has been amended by RWE to add the phrase <i>and will for no consideration grant such rights to RWE as are necessary to enable RWE to carry out</i>

Provision	Examination Issue and ExA's Recommendation
	<i>dredging works in accordance with the terms of its licence.</i> The Applicant states that this matter relates to what are now paragraphs 140(1), 140(2) and 143 of Schedule 10 in which wording covering this matter was added in the DCO submitted at Deadline 7 [REP7-005], with which the Applicant understands that RWE is content. The Panel recommends that no change is made to paragraph 140 of Schedule 10 Part 10 of the draft DCO. Paragraph 136 (143), which deals with alternative apparatus being placed in the river Thames by RWE, has been amended by RWE to add rights for RWE to undertake dredging associated with the alternative apparatus. The Panel recommends that no change is made to paragraph 143 of Schedule 10 Part 10 of the draft DCO, since it would relate to a hypothetical future development. Paragraph 138 (144), which deals with highway access for abnormal loads, in particular the stopping up of the current private means of access for RWE and the provision of alternative means of access, has been added by RWE. The Applicant states that a clearance height of greater than 6m is not possible and notes that the clearance on the highway network is 5.3m, so nothing larger than this can be moved on the network. RWE states that it may wish to bring abnormal loads in by water and move them to its proposed power station site, and states in this paragraph 138, for the first time in the examination, the envisaged dimensions of the abnormal loads (i.e. 7m height, 9m width and 40m length). The Panel's view is that it is unreasonable for RWE to table these abnormal dimensions at the final deadline in the examination. The Applicant has included paragraph 144 (2) in the final revision of the draft DCO [AS-089], whereby the Company must use reasonable endeavours in operating the authorised development to facilitate access by abnormal load vehicles to RWE's land adjacent to and on the eastern side of the Order limits in connection with the construction of any power station by RWE on that land. The Panel's recommendation is that this is a reasonable provision, and RWE's proposed paragraph 138 cannot be justified. The Panel recommends that no change is made to paragraph 144 of Schedule 10 Part 10 of the draft DCO. Paragraph 139, which deals with dust management in relation to a possible new power station on land adjacent to the Order limits, has been added by RWE. Both RWE and the Applicant state that this is already covered in the OMP. The Panel agrees, and recommends that paragraph 139 proposed by RWE should not be included in Schedule 10 Part 10 of the draft DCO. Paragraph 141 (146), which deals with RWE's and the Company's rights and interests under the Jetty Asset Transfer (JAT) agreement, has been amended by RWE, with the intention that the Order does not authorise any activity which would conflict with such rights and interests. The Applicant states that the proposed wording is unnecessary and would introduce ambiguity. The Panel's conclusion is that the proposed wording is unnecessary, since RWE is adequately protected through the JAT agreement and the draft DCO protective provisions. The Panel recommends that no change is made to paragraph 146 of Schedule 10 Part 10 of the draft DCO.

Provision	Examination Issue and ExA's Recommendation
	Paragraph 143 (blank), which seeks to limits the powers of the Company to compulsorily acquire, possess, extinguish, suspend, override or otherwise interfere with any interest or right in, on or over any land within the Order limits that is at the relevant time vested in RWE. The Panel's recommendation is that this paragraph is not required and should not be included, since the Applicant has retained the term "Order land" in Article 28 as requested by RWE (paragraph 143 being an alternative option proposed by RWE). Drawing all these matters together and the Panel's recommendations about them, the Panel's overall recommendation is that no further changes are made to Schedule 10 Part 10 of the draft DCO.

8.4. CONCLUSIONS

- 8.4.1. The Applicant's draft DCO was subject to seven revisions through the course of the examination, as a result of the hearings, the Panel's written questions and submissions by the IPs and APs.
- 8.4.2. Table 1 above summarises the matters that were not fully resolved by the end of the examination, and on which the Panel has concluded and made recommendations to the Secretary of State. These proposed changes to the draft DCO submitted at the end of the examination are therefore contained in the recommended DCO in Appendix D.

9. SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

9.1. THE CASE FOR DEVELOPMENT CONSENT

- 9.1.1. In Chapter 6, the Panel concludes that the adverse impacts of the proposed development do not outweigh its benefits and therefore there is a clear justification in favour of granting development consent for the Tilbury2 application in line with the presumption set out in the National Policy Statement for Ports.
- 9.1.2. In terms of the Habitats Regulations Assessment the Panel advises the SoS that, on the basis of information before it, the proposed development would have no AEOL, either alone or in-combination with other projects or plans, on the qualifying features of any European site. In this circumstance, the Panel sees no need to progress to Stages 3 and 4 of the HRA process. The Panel also concludes that sufficient information has been provided by the Applicant to enable the SoS to undertake an appropriate assessment.

9.2. COMPULSORY ACQUISITION AND TEMPORARY POSSESSION

- 9.2.1. As described in Chapter 7, the Applicant has the freehold ownership of the large majority of the proposed Tilbury2 site, but is seeking compulsory acquisition (CA) powers to both complete land ownership where necessary, and acquire rights. The Applicant is also seeking powers of temporary possession (TP) and use. The Applicant has a clear purpose for each plot subject to proposed CA and TP powers as set out in the Statement of Reasons. Negotiations have taken place, and continue, to enable the Applicant to assemble its proposed interests without recourse to CA powers. If these negotiations fail, then the Applicant argues such powers would be necessary to enable the proposed development to be satisfactorily implemented.
- 9.2.2. For the reasons set out in Chapter 7, the Panel is satisfied that the case has been made that all of the land included in the Book of Reference (BoR) and Land, Crown Land and Special Category Land Plans – except as described in paragraphs 9.2.5 and 9.2.6 - would be required either for the development, or to facilitate it, or as incidental to it.
- 9.2.3. The Panel concludes in the light of these considerations that the conditions in s122 and s123 of PA2008 would be satisfied.
- 9.2.4. In relation to the objections made, the Panel does not consider that the private losses suffered would be such as to outweigh the public benefits that would accrue from the grant of the CA and TP powers which are sought.

- 9.2.5. Network Rail and the Port of London Authority indicated that their objections would be withdrawn, but the Panel had not received formal notification of this before the close of the examination. If this notification is not forthcoming, then the Panel recommends against granting CA powers over several of their plots in their respective ownership, as set out in Chapter 7.
- 9.2.6. In addition, in the absence of consent from the Crown Estate as required by s135 PA2008, the Panel recommends that plots 06/01 and 06/02 are excluded from the scope of the DCO.
- 9.2.7. However, assuming that the Secretary of State is informed by these bodies of the withdrawal of their objections as they have indicated, there would be no outstanding impediment to the CA and TP powers proposed in the DCO as a whole.
- 9.2.8. Having considered the effects of not confirming these elements of the request, the Panel is nevertheless satisfied that the proposed development as a whole remains deliverable.
- 9.2.9. The Panel has concluded that development consent should be granted for the reasons set out in Chapter 6. It follows therefore that its delivery would be jeopardised in the absence of the CA powers, and the TP and use of land intended as set out in the draft DCO. Interference with persons and affected land interests is proportionate to the benefits that would be brought about by the development. In this situation, the Panel concludes that a compelling case in the public interest for the grant of CA and TP powers has been made.

9.3. DEVELOPMENT CONSENT ORDER

- 9.3.1. The Applicant's draft DCO was subject to seven revisions through the course of the examination as a result of the hearings, the Panel's written questions and submissions by the Interested and Affected Parties.
- 9.3.2. The draft DCO contains a DML which has been agreed apart from an arbitration clause, and 12 sets of protective provisions, eight of which were fully agreed at the close of the examination.
- 9.3.3. The Panel concludes that the final version of the draft DCO [\[AS-089\]](#) reflects the results of the examination, subject to some matters that were still outstanding at the end of the examination. The Panel has addressed these matters in Table 1 in Chapter 8, and concluded and made recommendations on each of these matters to the Secretary of State.
- 9.3.4. The matters on which the Panel recommends changes to the draft DCO are reflected in the recommended DCO in Appendix D of this report.

9.4. RECOMMENDATION

- 9.4.1. The Panel is satisfied that the description of the authorised development in Schedule 1 of the draft Order comprises development falling within the terms of s14, s24 and s115 of the PA2008 and further that the provisions and requirements in the draft DCO fall within the terms of s120 PA2008.
- 9.4.2. The Panel has had regard to the matters listed in s104 PA2008 as amended, including the NPSP, and the LIRs submitted by Thurrock Council and Gravesham Borough Council. None of the exceptions in s104 (4) to (8) apply in the case of this application in the Panel's view.
- 9.4.3. The Panel has considered all important and relevant matters and concludes, for the reasons stated in this report, that subject to the modifications to the draft Order that the Panel proposes at Appendix D, the benefits of the proposed development contained in the application for the proposed development of Tilbury2 as a whole would outweigh adverse impacts. The Panel as the ExA therefore recommends that the Secretary of State should grant development consent for this application.
- 9.4.4. The Panel has also considered the request for powers of CA and TP to be included in any Order that is made. The Panel concludes that in the situation where development consent for the application is granted, with some exceptions a compelling case is justified in the public interest for the grant of the CA and TP powers sought by the Applicant in respect of the land and rights shown on the Land, Crown Land and Special Category Land Plans and described in the BoR.
- 9.4.5. In the Panel's view there is no conflict with the requirements of the NERC Act 2006, or the Public Sector Equality Duty under the Equalities Act 2010, and proper regard has been made to the Infrastructure Planning (Decisions) Regulations 2010.
- 9.4.6. As the Examining Authority, the Panel recommends under s75 of the Planning Act 2008 that development consent for the Proposed Port Terminal at Former Tilbury Power Station, Tilbury2, should be granted and that the Secretary of State makes an Order under s114, s115 and s120 of the Planning Act 2008 in the form at Appendix D.

APPENDICES

APPENDIX A: THE EXAMINATION

APPENDIX B: EXAMINATION LIBRARY

APPENDIX C: LIST OF ABBREVIATIONS

APPENDIX D: THE RECOMMENDED DCO

The Examination

The Examining Authority (ExA) was under a duty to **complete** the Examination of the application by the end of the period of six months beginning with the day after the close of the Preliminary Meeting.

Item	Matters	Due Dates
1	Preliminary Meeting	Tuesday 20 February 2018
2a.	Open Floor Hearing (OFH) (afternoon)	Tuesday 20 February 2018
2b.	OFH (evening)	Tuesday 20 February 2018
3.	Issue Specific Hearing on the Draft Development Consent Order (dDCO)	Wednesday 21 February 2018
4.	Rule 8 Issue by the Panel of: • Examination Timetable • The Panel's First Written Questions (FWQs) • Notification of Hearings to be held in April 2018	Monday 26 February 2018
5.	Deadline 1 Deadline for receipt of: • Comments on Relevant Representations (RRs) • Summaries of all RRs exceeding 1500 words • Written Representations (WRs) • Summaries of all WRs exceeding 1500 words • Local Impact Reports from any Local Authorities • Statements of Common Ground (SoCG) requested by the Panel • Responses to the Panel's FWQs • Comments on Applicant's updated and errata application documents • Written summaries of oral representations provided in the February ISH on the dDCO and the OFHs • Post hearing submissions including submissions of oral case from the February 2018 hearings • Revised draft DCO from the Applicant • Notification by Affected Parties of their wish to speak at the Compulsory Acquisition Hearing to be	Tuesday 20 March 2018

	held on Friday 20 April 2018 • Notification by Interested Parties of their wish to make oral representations at the ISH on planning policy and environmental matters (Wednesday 18 April 2018) and/or the ISH on socio-economic, technical and other environmental matters (Thursday 19 April 2018) • Notification of wish to speak at any future Open Floor Hearing • Notification of wish to attend the Accompanied Site Inspection (or a part of it) which is to be held on Monday 16 April 2018 and Tuesday 17 April 2018 • Notification of locations or sites that are suggested by Interested Parties and Affected Persons for inclusion in an Accompanied Site Inspection • Notification by statutory parties of wish to be considered an Interested Party • Applicant's proposed revised draft itinerary for the Accompanied Site Inspection	
6.	• Notification by the Panel of Site Inspections to be held in the company of interested parties on 17 and 18 April 2018	Wednesday 28 March 2018
7.	Deadline 2 Deadline for receipt by the Panel of: • Comments on WRs and responses to comments on RRs • Comments on Local Impact Reports • Comments on responses to FWQs • Comments on any revised draft DCO or other documents from the Applicant submitted at deadline 1 • Responses to any further information requested by the Panel • Applicant's final itinerary for the Accompanied Site Inspections to be held on 16 April and 17 April 2018	Wednesday 4 April 2018
9a.	Accompanied Site Inspection to the application site and nearby locations and viewpoints in Thurrock	Monday 16 April 2018
9b.	Accompanied Site Inspection to relevant locations and viewpoints in Gravesham	Tuesday 17 April 2018
10a.	Issue Specific Hearing on Planning Policy	Wednesday 18 April

	and Environmental Matters (including, but not necessarily limited to planning policy and cumulative/in-combination effects; landscape and visual impacts; historic environment; biodiversity; Habitat Regulations Assessment; dredging and navigation; contaminated land and waste; water quality, flood risk and Water Framework Directive assessments).	2018
10b.	Issue Specific Hearing on Socio-economic issues, technical and other environmental matters (including, but not necessarily limited to socio-economic effects; engineering design and construction; transportation and traffic; noise; air quality impacts; health and safety).	Thursday 19 April 2018
11.	Compulsory Acquisition Hearing	Friday 20 April 2018
12.	Deadline 3 Deadline for receipt of: • Responses to any information requested by the Panel • Comments to any information submitted by the Applicant or Interested Parties at Deadline 2 • Post hearing submissions including written submissions of oral cases • Responses to any revised dDCO or other documents submitted by the Applicant at earlier deadlines • Revised draft DCO from Applicant • Any revised or updated SoCGs	Monday 30 April 2018
13.	Publication by the Panel of: • The Panel's Second Written Questions (SWQs)	Tuesday 8 May 2018
14.	Deadline 4 Deadline for the Receipt of:- • Responses to the Panel's SWQs • Comments on any information previously requested by the Panel • Comments on any information submitted by the Applicant or Interested Parties/Affected Persons at Deadline 3	Tuesday 22 May 2018
15.	Notification by the Panel of June ISHs, OFH and CAH	Thursday 24 May 2018
16.	Publication by the Panel of Agendas for June Hearings	Tuesday 19 June 2018
17.	Compulsory Acquisition Hearing	Wednesday 27 June 2018
18.	Issue Specific Hearing on outstanding	Wednesday 27 June

	Environmental, Planning Policy and Socio-economic issues	2018
19.	Issue Specific Hearing on the draft Development Consent Order	Thursday 28 June 2018
20.	Issue Specific Hearing on Traffic and Terrestrial Ecology	Thursday 28 June 2018
	Deadline 5 Deadline for receipt of: • Comments on responses to the Panel's SWQs • Responses to any further information requested by the Panel • Applicant's revised draft DCO • Any revised or updated SoCGs • Post hearing submissions including written submissions of oral cases from the June 2018 hearings	Friday 6 July 2018
21.	Publication by the Panel of: • Report on the Implications for European Sites (RIES)	Friday 13 July 2018
22.	Publication by the Panel of: • The Panel's schedule of proposed changes to the Applicant's most recently submitted version of the dDCO	Friday 13 July 2018
23.	Deadline 6 Deadline for receipt of: • Comments on the Panel's dDCO or the Panel's schedule of proposed changes • Comments on the RIES • Comments on responses to information requested by the Panel • Comments on responses on post hearing submissions including written submissions of oral case from the June 2018 hearings	Friday 3 August 2018
24.	Issue by the Panel of information requests under Rule 17	Tuesday 7 August 2018
25.	Deadline 7 Deadline for receipt of: • Responses to comments on the Panel's draft DCO or schedule of proposed changes • Responses to comments on the RIES • Responses to information requested by the Panel • Final updated documents from the Applicant in relation to Compulsory	Thursday 16 August 2018

Appendix A

	Acquisition or any other changed or updated matters • Any revised or updated SoCGs • Final dDCO to be submitted by the Applicant in the SI template with the SI template validation report	
26.	The Panel is under a duty to complete the Examination of the application by the end of the period of 6 months beginning with the day after the close of the Preliminary Meeting.	Monday 20 August 2018

Tilbury2 Examination Library

Updated - 19.11.2018

This Examination Library relates to the Tilbury2 application. The library lists each document submitted to the examination by any party and documents issued by the Planning Inspectorate. All documents listed have been published to the National Infrastructure's Planning website and a hyperlink is provided for each document. The documents within the library are categorised either by document type or by the deadline to which they are submitted.

Please note the following:

- Advice under s51 of PA2008 issued by the Inspectorate is published to the National Infrastructure Website but is not included within the Examination Library as such advice is not an examination document;
- This document contains references to documents from the point the application was submitted;
- The order of documents within each sub-section is chronological, numerical, or alphabetical and confers no priority or higher status on those that have been listed first.

TR030003 – Tilbury2	
Examination Library - Index	
Category	Reference
Application Documents As submitted and amended version received before the PM. Any amended version received during the Examination stage to be saved under the Deadline received	APP-xxx
Adequacy of Consultation responses	AoC-xxx
Relevant Representations	RR-xxx
Procedural Decisions and Notifications from the Examining Authority Includes Examining Authority's questions, s55, and post acceptance s51	PD-xxx
Additional Submissions Includes anything accepted at the Preliminary Meeting and correspondence that is either relevant to a procedural decision or contains factual information pertaining to the examination	AS-xxx
Events and Hearings Includes agendas for hearings and site inspections, audio recordings, responses to notifications, applicant's hearing notices, and responses to Rule 6 and Rule 8 letters	EV-xxx
Representations – by Deadline	
Deadline 1:	REP1-xxx
Deadline 2:	REP2-xxx
Deadline 3:	REP3-xxx
Deadline 4:	REP4-xxx

Appendix B

Deadline 5:	REP5-xxx
Deadline 6:	REP6-xxx
Deadline 7:	REP7-xxx
Other Documents Includes s127/131/138 information, s56, s58 and s59 certificates, and transboundary documents	OD-xxx

TR030003 – Tilbury2**Examination Library****Application Documents**

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APP-002	1.2 Application form
APP-003	1.3 Section 55 Checklist
APP-004	1.4 Guide to the application
APP-005	1.5 Electronic Index
APP-006	2.0 Introductory Text and Contents Table
APP-007	2.1 Location Plan
APP-008	2.2 General Arrangement Plans
APP-009	2.3 Land, Special Category Land and Crown Land Plans
APP-010	2.4 Works Plans
APP-011	2.5 Rights of Way and Access Plans
APP-012	2.6 Classification of Roads Plan
APP-013	2.7 Traffic Regulation Measures Plans
APP-014	2.8 Harbour Limits Plan
APP-015	2.9 Engineering Drawings and Plans
APP-016	3.1 Draft Development Consent Order
APP-017	3.2 Explanatory Memorandum to Draft DCO
APP-018	4.1 Statement of Reasons
APP-019	4.2 Funding Statement
APP-020	4.3 Book of Reference
APP-021	5.1 Consultation Report
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APP-024	5.2 Consultation Report Appendix 3
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APP-029	5.3 Head of Terms for Section 106 Agreement with Thurrock Council
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APP-032	6.2 ES Appendix 1.A Planning Policy Compliance Statement
APP-033	6.2 ES Appendix 2.A Secretary of State Scoping Opinion
APP-034	6.2 ES Appendix 5.A Masterplanning Statement
APP-035	6.2 ES Appendix 9.A: Consultation Exercise for LVIA
APP-036	6.2 ES Appendix 9.B: Landscape Character Assessment
APP-037	6.2 ES Appendix 9.C: Photographic Field Survey Record
APP-038	6.2 ES Appendix 9.D: Artificial Lighting Field Record
APP-039	6.2 ES Appendix 9.E: ZTV & ZVS Study
APP-040	6.2 ES Appendix 9.F: Predicted Visual Effects
APP-041	6.2 ES Appendix 9.G: British Library - Extract 18th Century Map
APP-042	6.2 ES Appendix 9.H: Indicative Visual Effect - Cruise Ship
APP-043	6.2 ES Appendix 9.I: AGI Extracts

APPENDIX B: Examination Library

REPORT TO THE SECRETARY OF STATE: Tilbury2 – Proposed Port Terminal at
Former Tilbury Power Station

APP-044	6.2 ES Appendix 9.J: Preliminary Lighting Strategy and Assessment
APP-045	6.2 ES Appendix 9.K: Tree Survey
APP-046	6.2 Appendix 10.A: Tilbury Power Station: Ecology Survey and Mitigation Plan
APP-047	6.2 ES Appendix 10.B Non-statutory nature conservation designation (LoWS)
APP-048	6.2 ES Appendix 10.C Statutory nature conservation designation information
APP-049	6.2 ES Appendix 10.D: Plant species list (2016-17)
APP-050	6.2 ES Appendix 10.E: Bat dropping DNA analysis results (2016)
APP-051	6.2 ES Appendix 10.F: Summary of dormouse survey results (2016)
APP-052	6.2 ES Appendix 10.G: Great crested newt eDNA analysis results (2016-17)
APP-053	6.2 ES Appendix 10.H: Breeding bird survey visit maps (2017)
APP-054	6.2 ES Appendix 10.I: Wintering bird survey results by compartment (2016-17)
APP-055	6.2 ES Appendix 10.J Invertebrate Survey Report (June 2008)
APP-056	6.2 ES Appendix 10.K Invertebrate Survey Report (2016)
APP-057	6.2 ES Appendix 10.L Invertebrate Survey of Tilbury2 (2017)
APP-058	6.2 ES Appendix 10.M Lichen Survey Report (2017)
APP-059	6.2 ES Appendix 10.N: Reptile survey results (2016-17)
APP-060	6.2 ES Appendix 10.O: Habitat Regulations Assessment (HRA) Report
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APP-062	6.2 ES Appendix 10.Q: Static bat detector raw data
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APP-072	6.2 ES Appendix 13.A Transport Assessment
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APP-075	6.2 ES Appendix 14.A: Navigation Risk Assessment
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APP-077	6.2 ES Appendix 15.B EnviroCheck Report Part 1 of 4
APP-078	6.2 ES Appendix 15.B EnviroCheck Report Part 2 of 4
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APPENDIX B: Examination Library

REPORT TO THE SECRETARY OF STATE: Tilbury2 – Proposed Port Terminal at Former Tilbury Power Station

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APP-083	6.2 ES Appendix 15.E: Detailed UXO Risk Assessment
APP-084	6.2 ES Appendix 15.F: Hydrogeology and Ground Conditions Chapters CSMs
APP-085	6.2 ES Appendix 15.G: Hydrogeology and Ground Conditions Impact Assessments
APP-086	6.2 ES Appendix 16.A: Level 2 Flood Risk Assessment
APP-087	6.2 ES Appendix 16.B: Level 3 Flood Risk Assessment
APP-088	6.2 ES Appendix 16.C: Water Framework Directive Assessment
APP-089	6.2 ES Appendix 16.D: Hydrodynamic Sediment Modelling
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APP-091	6.2 ES Appendix 17.A: Monitoring background noise and modelling of construction noise at Tilbury Docks
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APP-100	6.3 Figure 3.3 Port Land Uses
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APP-110	6.3 Figure 8.3 GP surgeries within Thurrock and Tilbury
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APPENDIX B: Examination Library

REPORT TO THE SECRETARY OF STATE: Tilbury2 – Proposed Port Terminal at Former Tilbury Power Station

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APP-128	6.3 Figure 10.5a-b Bat survey results - emergence & re-entry (2017)
APP-129	6.3 Figure 10.6a Bat survey results - static detector locations (2017)
APP-130	6.3 Figure 10.6b-i Bat survey results - transect survey results (2017)
APP-131	6.3 Figure 10.7a Dormouse survey results (2016)
APP-132	6.3 Figure 10.7b Dormouse survey results (2017)
APP-133	6.3 Figure 10.8a Water vole survey results (2016)
APP-134	6.3 Figure 10.8b Water vole survey results (2017)
APP-135	6.3 Figure 10.9 Great crested newt eDNA survey analysis results (2016-17)
APP-136	6.3 Figure 10.10a Reptile survey - results (2016)
APP-137	6.3 Figure 10.10b Reptile survey - results (2017)
APP-138	6.3 Figure 10.11 Breeding bird survey results - territory mapping (2017)
APP-139	6.3 Figure 10.12 Wintering bird survey compartments (2016-17)
APP-140	6.3 Figure 10.13 On-site ecological mitigation & compensation
APP-141	6.3 Figure 11.1 Nature Conservation Designations
APP-142	6.3 Figure 11.2 Benthic Ecology Study Area
APP-143	6.3 Figure 11.3 Benthic Sample Locations and Biotope
APP-144	6.3 Figure 11.4 Sediment Particle Size Distribution
APP-145	6.3 Figure 11.5 Fish and Shellfish Study Area
APP-146	6.3 Figure 11.6 Plankton Study Area
APP-147	6.3 Figure 11.7 Marine Mammals Distribution on the Thames
APP-148	6.3 Figure 11.8 Projects Considered In the Cumulative Assessment
APP-149	6.3 Figure 12.1 Designated Built Heritage assets within 2km of the site boundary
APP-150	6.3 Figure 12.2 Sensitive Built Heritage Assets Beyond 2km of the site boundary
APP-151	6.3 Figure 16.1 Study Area
APP-152	6.3 Figure 16.2 Stream Network
APP-153	6.3 Figure 17.1 Noise Monitoring Location Plan
APP-154	6.3 Figure 17.2 Noise Assessment Locations
APP-155	6.3 Figure 18.1 Construction Dust Assessment Study Area
APP-156	6.3 Figure 18.2 Traffic Emissions Assessment Study Area
APP-157	6.3 Figure 18.3 Air Quality Monitoring Sites and AQMAs
APP-158	6.3 Figure 18.4 Operational Emissions Assessment Study Area
APP-159	6.4 Non-Technical Summary
APP-160	6.5 Statement in Respect of Statutory Nuisance
APP-161	6.6 Equalities Impact Assessment
APP-162	6.7 Carbon and Energy Report
APP-163	6.8 Sustainability Statement

APP-164	6.9 Construction Environmental Management Plan (including CTMP and SWMP as appendices)
APP-165	6.10 Operational Management Plan
APP-166	7.1 Outline Business Case
APP-167	7.2 Consent and Agreements Position Statement
APP-168	7.3 Mitigation Route Map
APP-169	7.4 Project Glossary
Adequacy of Consultation Responses	
AoC-001	Thurrock Council
AoC-002	London Borough of Bexley
AoC-003	Basildon Borough Council
AoC-004	Essex County Council
AoC-005	Kent County Council
AoC-006	Gravesham Borough Council
AoC-007	Castle Point Borough Council
AoC-008	Greater London Authority
Relevant Representations	
RR-001	Mr Colin Elliott
RR-002	Historic England
RR-003	Mr Stephen Aldridge
RR-004	London Port Health Authority
RR-005	Buglife - The Invertebrate Conservation Trust
RR-006	Essex Field Club
RR-007	The Crown Estate
RR-008	Health and Safety Executive
RR-009	Essex Chambers of Commerce
RR-010	London Resort Company Holdings Limited
RR-011	English Heritage
RR-012	Dr Mark G Telfer
RR-013	Network Rail Infrastructure Limited
RR-014	Northfleet Property LLP
RR-015	RWE Generation UK Plc
RR-016	Tarmac Ltd
RR-017	Environment Agency
RR-018	Essex County Council
RR-019	Gravesham Borough Council
RR-020	Highways England
RR-021	Kent County Council
RR-022	London Gateway Port Limited
RR-023	Marine Management Organisation
RR-024	National Grid Electricity Transmission PLC
RR-025	Natural England
RR-026	Port of London Authority
RR-027	Public Health England
RR-028	Purfleet Real Estate Limited
RR-029	Royal Mail Group Limited
RR-030	The Corporation of Trinity House of Deptford Strond

APPENDIX B: Examination Library

REPORT TO THE SECRETARY OF STATE: Tilbury2 – Proposed Port Terminal at Former Tilbury Power Station

RR-031	Thurrock Council
RR-032	Wendy McDowall
Procedural Decisions and Notifications from the Examining Authority	
PD-001	Notification of Decision to Accept Application
PD-002	Section 55 Checklist
PD-003	Section 51 advice to the Applicant
PD-004	Notice of the Appointment of the Examining Authority
PD-005	Rule 6 - Notification of the preliminary meeting
PD-006	Rule 8 letter - notification of timetable for the examination
PD-007	First Written Questions
PD-008	Notification of change to the appointed Examining Authority
PD-009	Notification of Accompanied Site Inspections and Notice of appointment of Examining Authority
PD-010	Second Written Questions
PD-011	Notification of Hearings - 27-28 June 2018
PD-012	Report on the Implications for European Sites (RIES) Issued by the Examining Authority - 13 July 2018
PD-013	Rule 17 Letter - Notification of Procedural Decision
PD-014	Examining Authority's Response to the Applicant's Draft Development Consent Order (dDCO) Revision 4
Additional Submissions	
AS-001	London Borough of Bexley Adequacy of Consultation - Accepted at the discretion of the Examining Authority
AS-002	Port of Tilbury London Limited Application Errata - Covering Letter. Additional Submission - Accepted at the discretion of the Examining Authority
AS-003	Port of Tilbury London Limited Application Errata - Results of outstanding dormouse survey visit. Additional Submission - Accepted at the discretion of the Examining Authority
AS-004	Port of Tilbury London Limited Application Errata - Response to Essex County Council's Adequacy Of Consultation Response. Additional Submission - Accepted at the discretion of the Examining Authority
AS-005	Port of Tilbury London Limited Application Errata - Explanation Table. Additional Submission - Accepted at the discretion of the Examining Authority
AS-006	Port of Tilbury London Limited Application Errata - Environmental Statement - Chapter 5. Additional Submission - Accepted at the discretion of the Examining Authority
AS-007	Port of Tilbury London Limited Application Errata - Landscape and Ecology Management Plan. Additional Submission - Accepted at the discretion of the Examining Authority
AS-008	Port of Tilbury London Limited

	Application Errata - Environmental Statement - Chapter 5 (Tracked Changes). Additional Submission - Accepted at the discretion of the Examining Authority
AS-009	Port of Tilbury London Limited Application Errata - Appendix 12E: Marine Archaeological Written Scheme of Investigation (Tracked Changes). Additional Submission - Accepted at the discretion of the Examining Authority
AS-010	Port of Tilbury London Limited Application Errata - Engineering Drawings and Plans. Additional Submission - Accepted at the discretion of the Examining Authority
AS-011	Port of Tilbury London Limited Application Errata - Appendix 12A: Archaeological Statement (Highlighted Changes). Additional Submission - Accepted at the discretion of the Examining Authority
AS-012	Port of Tilbury London Limited Application Errata - Appendix 12D: Written Scheme of Investigation for Terrestrial Archaeological Mitigation (Tracked Changes). Additional Submission - Accepted at the discretion of the Examining Authority
AS-013	Port of Tilbury London Limited Application Errata - Landscape and Ecology Management Plan (Tracked Changes). Additional Submission - Accepted at the discretion of the Examining Authority
AS-014	Port of Tilbury London Limited Application Errata - Funding Statement Appendix 2. Additional Submission - Accepted at the discretion of the Examining Authority
AS-015	Port of Tilbury London Limited Application Errata - Land, Crown Land and Special Category Land Plans Additional Submission - Accepted at the discretion of the Examining Authority
AS-016	Port of Tilbury London Limited Application Errata - Outline Business Case. Additional Submission - Accepted at the discretion of the Examining Authority
AS-017	Port of Tilbury London Limited Application Errata - Figure 9.3: Landscape Context (Sheet 2 of 2). Additional Submission - Accepted at the discretion of the Examining Authority
AS-018	Port of Tilbury London Limited Application Errata - Outline Business Case (Tracked Changes). Additional Submission - Accepted at the discretion of the Examining Authority
AS-019	Port of Tilbury London Limited Application Errata - Appendix 12A: Archaeological Statement. Additional Submission - Accepted at the discretion of the Examining Authority
AS-020	Port of Tilbury London Limited Application Errata - Figure 9.8: Sensitive Receptor Viewpoints and

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	Zone Of Significant Visibility. Additional Submission - Accepted at the discretion of the Examining Authority
AS-021	Port of Tilbury London Limited Application Errata - Environmental Statement Appendix 16c Water Framework Directive Assessment - Culvert Location Plan. Additional Submission - Accepted at the discretion of the Examining Authority
AS-022	Port of Tilbury London Limited Application Errata - Figure 10.13 On-site ecological mitigation and compensation. Additional Submission - Accepted at the discretion of the Examining Authority
AS-023	Port of Tilbury London Limited Application Errata - Figure 4.5: Existing Buildings. Additional Submission - Accepted at the discretion of the Examining Authority
AS-024	Port of Tilbury London Limited Application Errata - Figure 4.3: Infrastructure Site Key Features. Additional Submission - Accepted at the discretion of the Examining Authority
AS-025	Port of Tilbury London Limited Application Errata - Non-Technical Summary. Additional Submission - Accepted at the discretion of the Examining Authority
AS-026	Port of Tilbury London Limited Application Errata - Equalities Impact Assessment - Appendix A. Additional Submission - Accepted at the discretion of the Examining Authority
AS-027	Port of Tilbury London Limited Application Errata - Figure 9.9: Landscape Strategy. Additional Submission - Accepted at the discretion of the Examining Authority
AS-028	Port of Tilbury London Limited Application Errata - Non-Technical Summary (Tracked Changes). Additional Submission - Accepted at the discretion of the Examining Authority
AS-029	Port of Tilbury London Limited Application Errata - Appendix 12D: Written Scheme of Investigation for Terrestrial Archaeological Mitigation. Additional Submission - Accepted at the discretion of the Examining Authority
AS-030	Port of Tilbury London Limited Application Errata - Appendix 12E: Marine Archaeological Written Scheme of Investigation. Additional Submission - Accepted at the discretion of the Examining Authority
AS-031	Port of Tilbury London Limited Application Errata - 5.2 Consultation Report Appendix 4.9. Additional Submission - Accepted at the discretion of the Examining Authority
AS-032	Port of Tilbury London Limited Application Errata - 5.2 Consultation Report Appendix 4.9

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	(Tracked Changes). Additional Submission - Accepted at the discretion of the Examining Authority
AS-033	Maritime & Coastguard Agency Consultation Response. Additional Submission - Accepted at the discretion of the Examining Authority
AS-034	Anglian Water Services Limited Late relevant representation. Additional Submission - Accepted at the discretion of the Examining Authority
AS-035	Port of Tilbury London Limited Amended Book of Reference - 19 December 2017
AS-036	Port of Tilbury London Limited Amended Book of Reference - 19 December 2017 (Tracked Changes)
AS-037	Cadent Gas Limited Late relevant representation. Additional Submission - Accepted at the discretion of the Examining Authority
AS-038	A N Jones Additional Submission - Accepted at the discretion of the Examining Authority
AS-039	West Tilbury Commons Conservators Additional Submission - Accepted at the discretion of the Examining Authority
AS-040	Mark Telfer Additional Submission - Accepted at the discretion of the Examining Authority
AS-041	Currie & Brown Additional Submission - Accepted at the discretion of the Examining Authority
AS-042	Port of London Authority Additional Submission - Accepted at the discretion of the Examining Authority
AS-043	Mrs Adeola J Brown Additional Submission - Accepted at the discretion of the Examining Authority
AS-044	Gravesham Borough Council Items to be discussed at the preliminary meeting. Additional Submission - Accepted at the discretion of the Examining Authority
AS-045	Addleshaw Goddard LLP on behalf of Network Rail Additional Submission - Accepted at the discretion of the Examining Authority
AS-046	Port of Tilbury London Limited Additional Submission - Accepted at the discretion of the Examining Authority
AS-047	Sue Edwards Additional Submission - Accepted at the discretion of the Examining Authority
AS-048	Shakespeare Martineau LLP on behalf of Cadent Gas Limited Additional Submission - Accepted at the discretion of the Examining Authority

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REPORT TO THE SECRETARY OF STATE: Tilbury2 – Proposed Port Terminal at Former Tilbury Power Station

AS-049	Port of Tilbury London Limited Response to Relevant Representations. Additional Submission - Accepted at the discretion of the Examining Authority
AS-050	Port of Tilbury London Limited Statement of Common Ground up-date report for Preliminary Meeting. Additional Submission - Accepted at the discretion of the Examining Authority
AS-051	Port of Tilbury London Limited Response to Examining Authority's Rule 6 Letter. Additional Submission - Accepted at the discretion of the Examining Authority
AS-052	Marine Management Organisation Additional Submission - Accepted at the discretion of the Examining Authority
AS-053	Stephanie Lakin Additional Submission - Accepted at the discretion of the Examining Authority
AS-054	Maritime & Coastguard Agency Additional Submission - Accepted at the discretion of the Examining Authority
AS-055	Port of Tilbury London Limited Update on Highways England issues and Statements of Common Ground
AS-056	National Grid Electricity Transmission Plc Letter regarding attendance at the April 2018 Hearings. Additional Submission - Accepted at the discretion of the Examining Authority
AS-057	Stephanie Lakin Written Submission of 15 April 2018. Additional Submission - Accepted at the discretion of the Examining Authority
AS-058	English Heritage Tilbury Fort information booklet. Additional Submission - Accepted at the discretion of the Examining Authority
AS-059	RWE Generation UK plc Comments in respect of the ExA Hearings Round 2 Agendas. Additional Submission - Accepted at the discretion of the Examining Authority
AS-060	RWE Generation UK plc Indicative block layout for Tilbury Energy Centre (Drawing Ref: UKP/TLC/0208/AP3). Additional Submission - Accepted at the discretion of the Examining Authority
AS-061	Cadent Gas Limited Letter regarding attendance at the 20 April 2018 Compulsory Acquisition Hearing. Additional Submission - Accepted at the discretion of the Examining Authority
AS-062	Marine Management Organisation Updated piling information. Additional Submission - Accepted at the discretion of the Examining Authority
AS-063	Historic England Comments on the Cumulative Effects Assessment. Additional

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	Submission - Accepted at the discretion of the Examining Authority
AS-064	Port of Tilbury London Limited Information requested by the Examining Authority in their second written questions - Cover Letter
AS-065	Port of Tilbury London Limited Information requested by the Examining Authority in their second written questions - Revision 3 of the Draft Development Consent Order - Clean
AS-066	Port of Tilbury London Limited Information requested by the Examining Authority in their second written questions - Revision 3 of the Draft Development Consent Order – Tracked Changes
AS-067	Port of Tilbury London Limited Information requested by the Examining Authority in their second written questions - Explanation of Changes to the Draft Development Consent Order
AS-068	Port of Tilbury London Limited Information requested by the Examining Authority in their second written questions - Ports Limits Plan v2
AS-069	Port of Tilbury London Limited Information requested by the Examining Authority in their second written questions - Ecological Management and Compensation Plan Updated Draft – Clean
AS-070	Port of Tilbury London Limited Information requested by the Examining Authority in their second written questions - Ecological Management and Compensation Plan Updated Draft – Track Changes
AS-071	Port of Tilbury London Limited Information requested by the Examining Authority in their second written questions - Statements of Common Ground Update Report
AS-072	Port of Tilbury London Limited Information requested by the Examining Authority in their second written questions - Highways England Resume Paper
AS-073	Port of Tilbury London Limited Updated Statements of Common Ground with the Environment Agency, Historic England & Highways England - Accepted at the discretion of the Examining Authority
AS-074	Natural England Comments on the Cumulative Environmental Assessment. Additional Submission - Accepted at the discretion of the Examining Authority
AS-075	Amazon UK Services Update on position in relation to traffic. Additional Submission - Accepted at the discretion of the Examining Authority
AS-076	National Grid Electricity Transmission Plc Notification of non-attendance at the June 2018 Issue Specific Hearings. Additional Submission - Accepted at the discretion of the Examining Authority
AS-077	RWE Generation UK plc

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REPORT TO THE SECRETARY OF STATE: Tilbury2 – Proposed Port Terminal at Former Tilbury Power Station

	Notification of attendance at the June 2018 Hearings and a track changes version of the draft protective provisions. Additional Submission - Accepted at the discretion of the Examining Authority
AS-078	Cadent Gas Limited Notification of attendance at the June 2018 Hearings. Additional Submission - Accepted at the discretion of the Examining Authority
AS-079	Network Rail Notification of non-attendance at the Issue Specific Hearing on the draft Development Consent Order, Written Submission and a track changes version of the draft protective provisions. Additional Submission - Accepted at the discretion of the Examining Authority
AS-080	Cadent Gas Limited Notification of non-attendance at the 28 June 2018 Hearings, Written Submission and a track changes version of the draft protective provisions. Additional Submission - Accepted at the discretion of the Examining Authority
AS-081	Highways England Highways England Protection Provisions - Additional Submission - Accepted at the discretion of the Examining Authority
AS-082	Port of Tilbury London Explanatory Memorandum for DCO Rev 7 - Tracked Changes - Additional Submission - Accepted at the discretion of the Examining Authority
AS-083	Port of Tilbury London Explanatory Note on S106 agreement - Additional Submission - Accepted at the discretion of the Examining Authority
AS-084	Port of Tilbury London End of Examination Cover Letter - Additional Submission - Accepted at the discretion of the Examining Authority
AS-085	Port of Tilbury London Explanation of changes to DCO - Additional Submissions - Accepted at the Discretion of the Examining Authority
AS-086	Port of Tilbury London Response to Interested Parties' Deadline 7 Submissions - Additional Submission - Accepted at the discretion of the Examining Authority
AS-087	Thurrock Council Thurrock Council Drainage Protection Provisions - Additional Submission - Accepted at the discretion of the Examining Authority
AS-088	Thurrock Council Thurrock Council and Applicant continued discussion on s106 agreement - Additional Submission - Accepted at the discretion of the Examining Authority
AS-089	Port of Tilbury London The Port of Tilbury (Expansion) Order Rev 7 - Clean - Additional Submission - Accepted at the discretion of the Examining

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REPORT TO THE SECRETARY OF STATE: Tilbury2 – Proposed Port Terminal at Former Tilbury Power Station

	Authority
AS-090	Thurrock Council Thurrock Council as Highway Authority - Tracked Changes - Additional Submission - Accepted at the discretion of the Examining Authority
AS-091	Port of Tilbury London DCO Rev 7 - Tracked Changes against Applicant Version of DCO - Additional Submission - Accepted at the discretion of the Examining Authority
AS-092	Port of Tilbury London End of Examination Cover Letter- Additional Submission - Accepted at the discretion of the Examining Authority
AS-093	Port of Tilbury London DCO Rev 7 - Tracked Changes against Revision 6 of the DCO - Additional Submission - Accepted at the Discretion of the Examining Authority
AS-094	Thurrock Council Thurrock Council Response to Deadline 7 - Additional Submission - Accepted at the discretion of the Examining Authority
AS-095	Port of Tilbury London Explanatory Memorandum for DCO Rev 7 - Clean - Additional Submission - Accepted at the discretion of the Examining Authority
AS-096	Thurrock Council Thurrock Council Correspondence - Additional Submission - Accepted at the discretion of the Examining Authority
AS-097	Port of Tilbury London Report - Additional Submission - Accepted at the discretion of the Examining Authority
AS-098	Port of Tilbury London Final 106 Agreement - Additional Submission - Accepted at the discretion of the Examining Authority
Events and Hearings	
Unaccompanied Site Inspections	
EV-001	Note of Unaccompanied Site Inspection - 19 February 2018
Preliminary Meeting - 20 February 2018	
EV-002	Preliminary Meeting Note
EV-003	Recording of Preliminary Meeting
Hearings - 20 & 21 February 2018	
EV-004	Agenda for the Issue Specific Hearing on the Draft Development Consent Order
EV-005	Recording of Open Floor Hearing - 2.30pm 20 February 2018
EV-006	Recording of Open Floor Hearing - 6.00pm 20 February 2018
EV-007	Recording of Issue Specific Hearing on the Draft Development

	Consent Order
Issue Specific Hearings - 18 & 19 April 2018	
EV-008	Agenda for the Issue Specific Hearing on Planning Policy and Environmental Matters
EV-009	Agenda for the Issue Specific Hearing on Socio-economic, Technical and other Environmental Matters
EV-010	Recording of Issue Specific Hearing on Planning Policy and Environmental Matters - Part 1
EV-011	Recording of Issue Specific Hearing on Planning Policy and Environmental Matters - Part 2
EV-012	Recording of Issue Specific Hearing on Socio-economic, Technical and Other Environmental Matters - Part 1
EV-013	Recording of Issue Specific Hearing on Socio-economic, Technical and Other Environmental Matters - Part 2
Compulsory Acquisition Hearing - 20 April 2018	
EV-014	Agenda for the Compulsory Acquisition Hearing
EV-015	Recording of Compulsory Acquisition Hearing
Compulsory Acquisition Hearing (2) - 27 June 2018	
EV-016	Agenda for the Compulsory Acquisition Hearing 2
EV-016a	Recording of Compulsory Acquisition Hearing 2
Issue Specific Hearings - 27 & 28 June 2018	
EV-017	Agenda for Issue Specific Hearing 4 on outstanding Environmental, Planning Policy and Socio-economic issues
EV-017a	Recording of Issue Specific Hearing 4 on outstanding Environmental, Planning Policy and Socio-economic Issues
EV-018	Agenda for Issue Specific Hearing 5 on the draft Development Consent Order
EV-018a	Recording of Issue Specific Hearing 5 on the draft Development Consent Order
EV-019	Agenda for the Issue Specific Hearing on Ecology, Habitats Regulations Assessment, and Traffic and Transportation
EV019a	Recording of Issue Specific Hearing on Ecology, Habitats Regulations Assessment, and Traffic and Transportation
Representations	
Deadline 1 - 20 March 2018	
• Comments on Relevant Representations (RRs) • Summaries of all RRs exceeding 1500 words • Written Representations (WRs) • Summaries of all WRs exceeding 1500 words • Local Impact Reports from any Local Authorities • Statements of Common Ground requested by the Panel • Responses to the Panel's FWQs • Comments on Applicant's updated and errata application documents	
• Notification by Interested Parties of their wish to make oral representations at the ISH on planning policy and environmental matters (Wednesday 18 April 2018) and/or the ISH on socio-economic, technical and other environmental matters (Thursday 19 April 2018) • Notification of wish to speak at any future Open Floor Hearing • Notification of wish to attend the Accompanied Site Inspection (or a part of it) which is to be held on Monday 16 April 2018 and Tuesday	

- Written summaries of oral representations provided in the February ISH on the dDCO and the OFHs - Post hearing submissions including submissions of oral case from the February 2018 hearings - Revised draft DCO from the Applicant - Notification by Affected Parties of their wish to speak at the Compulsory Acquisition Hearing to be held on Friday 20 April 2018		17 April 2018 - Notification of locations or sites that are suggested by Interested Parties and Affected Persons for inclusion in an Accompanied Site Inspection - Notification by statutory parties of wish to be considered an Interested Party - Applicant's proposed revised draft itinerary for the Accompanied Site Inspection
REP1-001	Port of Tilbury London Limited - Summary of Case given at Preliminary Meeting	
REP1-002	Port of Tilbury London Limited - Covering Letter	
REP1-003	Port of Tilbury London Limited - Draft Development Consent Order - Revision 1	
REP1-004	Port of Tilbury London Limited - Draft Development Consent Order - Revision 1 (Track Changes)	
REP1-005	Port of Tilbury London Limited - Explanation of Changes to draft Development Consent Order	
REP1-006	Port of Tilbury London Limited - Construction Environmental Management Plan v1	
REP1-007	Port of Tilbury London Limited - Construction Environmental Management Plan v1 - Track Changes	
REP1-008	Port of Tilbury London Limited - Operational Management Plan v1	
REP1-009	Port of Tilbury London Limited - Operational Management Plan v1 - Track Changes	
REP1-010	Port of Tilbury London Limited - Landscape and Ecological Management Plan v2	
REP1-011	Port of Tilbury London Limited - Landscape and Ecological Management Plan v2 - Track Changes	
REP1-012	Port of Tilbury London Limited - Revised Sheet 3 of Works Plans	
REP1-013	Port of Tilbury London Limited - Revised Limits of Dredging Plan	
REP1-014	Port of Tilbury London Limited - Flood Risk Assessment Addendum	
REP1-015	Port of Tilbury London Limited - Summary of Case given at DCO Hearing	
REP1-016	Port of Tilbury London Limited - Response to the Examining Authority's First Written Questions	
REP1-017	Port of Tilbury London Limited - Environmental Statement Non-Technical Summary v2	
REP1-018	Port of Tilbury London Limited - Environmental Statement Non-Technical Summary v2 - Track Changes	
REP1-019	Port of Tilbury London Limited - Mitigation Route Map v1	
REP1-020	Port of Tilbury London Limited - Mitigation Route Map v1 - Track Changes	
REP1-021	Port of Tilbury London Limited - Statements of Common Ground Update Report for Deadline 1	
REP1-022	Port of Tilbury London Limited - Written Scheme of Investigation	

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REPORT TO THE SECRETARY OF STATE: Tilbury2 – Proposed Port Terminal at Former Tilbury Power Station

	for Terrestrial Archaeological Mitigation v2
REP1-023	Port of Tilbury London Limited - Written Scheme of Investigation for Terrestrial Archaeological Mitigation v2 - Track Changes
REP1-024	Amazon UK Services - Written Representation
REP1-025	Anglian Water Services Limited - Written Representation
REP1-026	Anglian Water Services Limited - Appendix 1
REP1-027	Anglian Water Services Limited - Appendix 2
REP1-028	Anglian Water Services Limited - Appendix 3
REP1-029	Anglian Water Services Limited - Appendix 4
REP1-030	Buglife - Deadline 1 Submission
REP1-031	Buglife - Annexe A
REP1-032	Buglife - Annexe B
REP1-033	Buglife - Annexe C
REP1-034	Buglife - Annexe D
REP1-035	Buglife - Annexe E
REP1-036	Buglife - Annexe F
REP1-037	Buglife - Annexe G
REP1-038	Buglife - Annexe H
REP1-039	Cadent Gas Limited - Deadline 1 Submission
REP1-040	Cadent Gas Limited - Written Representation
REP1-041	Chris Henderson - Deadline 1 Submission
REP1-042	Colin Elliott - Deadline 1 Submission
REP1-043	Crown Estate - Deadline 1 Submission
REP1-044	Environment Agency - Written Representation
REP1-045	Environment Agency - Summary of Written Representation
REP1-046	Environment Agency - First Written Questions
REP1-047	English Heritage - First Written Questions
REP1-048	English Heritage - First Written Questions: Appendix D - Conservation Plan
REP1-049	Essex Chambers of Commerce - Deadline 1 Submission
REP1-050	Essex County Council - Deadline 1 Submission
REP1-051	Essex County Fire & Rescue Service - Deadline 1 Submission
REP1-052	Gateway Learning Community Trust - Deadline 1 Submission
REP1-053	Gravesham Borough Council - Potential site visit locations in Gravesham
REP1-054	Gravesham Borough Council - Written Representation
REP1-055	Gravesham Borough Council - First Written Questions
REP1-056	Gravesham Borough Council - Local Impact Report
REP1-057	Thurrock Local History Society - Deadline 1 Submission
REP1-058	Zayo Group UK Limited - Deadline 1 Submission
REP1-059	Highways England - Attendance at Accompanied Site Visit, April Issue Specific Hearings and Compulsory Acquisition Hearing
REP1-060	Highways England - Written Representation
REP1-061	Highways England - Summary of Written Representations
REP1-062	Highways England - First Written Questions
REP1-063	Historic England - Deadline 1 Submission
REP1-064	Historic England - Written Representation
REP1-065	Historic England - First Written Questions
REP1-066	Kent County Council - Written Representation

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REP1-067	Kent County Council - First Written Questions
REP1-068	London First - Deadline 1 Submission
REP1-069	London Gateway Port Ltd - Deadline 1 Submission
REP1-070	London Resort Company Holdings Limited - Written Representation
REP1-071	London Resort Company Holdings Limited - Summary of Written Representation
REP1-072	Mick Lewis - Deadline 1 Submission
REP1-073	Marine Management Organisation - Deadline 1 Submission
REP1-074	Natural England - Written Representation
REP1-075	Network Rail - Deadline 1 Submission
REP1-076	National Grid Electricity Transmission Plc - Deadline 1 Submission
REP1-077	National Grid Electricity Transmission Plc - Written Representation
REP1-078	National Grid Electricity Transmission Plc - First Written Questions
REP1-079	Port of London Authority - Note of submissions made at the ISH on 21 February 2018
REP1-080	Port of London Authority - Written Representation
REP1-081	Port of London Authority - Summary of Written Representations
REP1-082	Port of London Authority - First Written Questions
REP1-083	Port of London Authority - Baseline Dredging Document (referred to in the response to Written Question Q1.9.22)
REP1-084	Public Health England - Letter to Port of Tilbury London Limited, copied to the Planning Inspectorate
REP1-085	RWE Generation UK plc - Notice of wish to attend a hearings in April
REP1-086	RWE Generation UK plc - Summary of the oral case put forward at the dDCO Issue Specific Hearing
REP1-087	RWE Generation UK plc - Written Representation
REP1-088	RWE Generation UK plc - Summary of Written Representation
REP1-089	RWE Generation UK plc - First Written Questions
REP1-090	Thurrock Council - Written Representation
REP1-091	Thurrock Council - Written Summary of Oral Representations Provided at the Issue Specific Hearing on the Draft Development Consent
REP1-092	Thurrock Council - Response to First Written Questions
REP1-093	Thurrock Council - Response to First Written Questions: Appendix 1.1.3
REP1-094	Thurrock Council - Response to First Written Questions: Appendix 1.2.13
REP1-095	Thurrock Council - Response to First Written Questions: Appendix 1.2.14a
REP1-096	Thurrock Council - Response to First Written Questions: Appendix 1.2.14b
REP1-097	Thurrock Council - Response to First Written Questions: Appendix 1.4.1e
REP1-098	Thurrock Council - Response to First Written Questions: Appendix 1.14.6a
REP1-099	Thurrock Council - Response to First Written Questions: Appendix 1.14.6b

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REPORT TO THE SECRETARY OF STATE: Tilbury2 – Proposed Port Terminal at Former Tilbury Power Station

REP1-100	Thurrock Council - Response to First Written Questions: Appendix 1.14.14
REP1-101	Thurrock Council - Local Impact Report
REP1-102	Susan Edwards - Late Submission for Deadline 1 - Accepted at the discretion of the Examining Authority
Deadline 2 – 04.04.2018 Deadline for receipt by the Panel of: - Comments on WRs and responses to comments on RRs - Comments on Local Impact Reports - Comments on responses to FWQs - Comments on any revised draft DCO or other documents from the Applicant submitted at deadline 1 - Responses to any further information requested by the Panel - Applicant's final itinerary for the Accompanied Site Inspections to be held on 16 April and 17 April 2018	
REP2-001	Highways England - Response to Applicant's response to First Written Questions
REP2-002	Highways England - Response to the Thurrock Council's Response to First Written Questions
REP2-003	Highways England - Response to the Essex County Council's Response to First Written Questions
REP2-004	Highways England - Environmental Impact Assessment
REP2-005	Highways England - Comments on revised draft DCO
REP2-006	Port of Tilbury London Limited - Cover Letter
REP2-007	Port of Tilbury London Limited - Response to the Written Representations, Local Impact Reports and Interested Parties Responses to First Written Questions
REP2-008	Port of London Authority - Comments on Responses to FWQs, ES and Deadline 1 material
REP2-009	Port of Tilbury London Limited - Ecological Mitigation and Compensation Plan
REP2-010	Port of Tilbury London Limited - Land, Crown Land and Special Category Land Plans
REP2-011	Port of London Authority - Comments on Written Representations
REP2-012	Marine Management Organisation - Deadline 2 Submission
REP2-013	Historic England - Deadline 2 Submission
REP2-014	The Environment Agency - Deadline 2 Submission
REP2-015	RWE Generation UK plc - Deadline 2 Submission

Deadline 3 – 30.04.2018

Deadline for receipt by the Panel of:

- Responses to any information requested by the Panel
- Comments to any information submitted by the Applicant or Interested Parties at Deadline 2
- Post hearing submissions including written submissions of oral cases
- Responses to any revised dDCO or other documents submitted by the Applicant at earlier deadlines
- Revised draft DCO from Applicant (if required)
- Any revised or updated SoCGs

REP3-001	Port of Tilbury London Limited - Cover Letter
REP3-002	Port of Tilbury London Limited - Revision 2 of the draft Development Consent Order - Clean
REP3-003	Port of Tilbury London Limited - Revision 2 of the draft Development Consent Order - Track Changes
REP3-004	Port of Tilbury London Limited - Explanation of Changes to Draft Development Consent Order
REP3-005	Port of Tilbury London Limited - Planning Policy Compliance Statement - Clean v2
REP3-006	Port of Tilbury London Limited - Planning Policy Compliance Statement - Track Changes v2
REP3-007	Port of Tilbury London Limited - Framework Travel Plan v1 - Clean
REP3-008	Port of Tilbury London Limited - Framework Travel Plan v1 - Track changes
REP3-009	Port of Tilbury London Limited - Sustainable Distribution Plan v1 - Clean
REP3-010	Port of Tilbury London Limited - Sustainable Distribution Plan v1 - Track changes
REP3-011	Port of Tilbury London Limited - Construction Environmental Management Plan v2 - Clean (including appended updated Construction Traffic Management Plan)
REP3-012	Port of Tilbury London Limited - Construction Environmental Management Plan v2 - Track Changes (including appended updated Construction Traffic Management Plan)
REP3-013	Port of Tilbury London Limited - Terrestrial Archaeological Scheme of Investigation v2 - Clean
REP3-014	Port of Tilbury London Limited - Terrestrial Archaeological Scheme of Investigation v2 - Track Changes
REP3-015	Port of Tilbury London Limited - Updated Statement of Reasons - Clean
REP3-016	Port of Tilbury London Limited - Updated Statement of Reasons - Track Changes
REP3-017	Port of Tilbury London Limited - Ecology Update
REP3-018	Port of Tilbury London Limited - Revised Sheet 3 of the Works Plans
REP3-019	Port of Tilbury London Limited - Draft section 106 Agreement (with Active Travel Plan and version 2 of the Skills and

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REPORT TO THE SECRETARY OF STATE: Tilbury2 – Proposed Port Terminal at Former Tilbury Power Station

	Employment Strategy appended)
REP3-020	Port of Tilbury London Limited - Traffic Generation Assumptions for Tilbury2
REP3-021	Port of Tilbury London Limited - Asda Roundabout: DCO Powers and Potential Scope of Works
REP3-022	Port of Tilbury London Limited - Note on Highways England Protective Provisions in the DCO
REP3-023	Port of Tilbury London Limited - Filming at Tilbury Fort Note
REP3-024	Port of Tilbury London Limited - Interaction of Tilbury2 and River Thames Flood Defences
REP3-025	Port of Tilbury London Limited - Letter from Forth Ports Director of Finance in relation to Ring fencing of Compulsory Acquisition Funding
REP3-026	Port of Tilbury London Limited - Update to Statement of Reasons Annex F (Land Negotiations Tracker)
REP3-027	Port of Tilbury London Limited - Qualitative Cumulative Effects Assessment of Tilbury2 with Tilbury Energy Centre and Lower Thames Crossing
REP3-028	Port of Tilbury London Limited - Statements of Common Ground Update Report for Deadline 3
REP3-029	Port of Tilbury London Limited - Written Summary of Case at Issue Specific Hearing of 18 April
REP3-030	Port of Tilbury London Limited - Written Summary of Case at Issue Specific Hearing of 19 April
REP3-031	Port of Tilbury London Limited - Written Summary of Case at Compulsory Acquisition Hearing of 20 April
REP3-032	Buglife - Comments on Deadline 2 documents and Issue Specific Hearing submissions
REP3-033	Buglife - RSPB letter in support Buglife's position
REP3-034	Environment Agency - Deadline 3 Submission
REP3-035	Network Rail - Deadline 3 Submission
REP3-036	Port of London Authority - Deadline 3 Submission
REP3-037	Thurrock Council - written submission following the Issue Specific Hearing on Planning Policy and Environmental Matters of 18th April 2018
REP3-038	Thurrock Council - written submission following the Issue Specific Hearing on Socio-economic, Technical and other Environmental Matters of 19th April 2018
REP3-039	English Heritage - Deadline 3 Submission
REP3-040	Gravesham Borough Council - written submission following the Issue Specific Hearing on Planning Policy and Environmental Matters of 18th April 2018
REP3-041	Gravesham Borough Council - written submission following the Issue Specific Hearing on Socio-economic, Technical and other Environmental Matters of 19th April 2018
REP3-042	Natural England - Written Submission of Oral Case & Post-Hearing Submissions

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REP3-043	Marine Management Organisation - Deadline 3 Submission
REP3-044	Historic England - Deadline 3 Submission
REP3-045	Amazon UK Services - Deadline 3 Submission
REP3-046	Highways England - Comments following the hearings of 18-20 April 2018
REP3-047	RWE Generation UK plc - Summary of the oral case put forward at the Compulsory Acquisition Hearing 20 April 2018
REP3-048	RWE Generation UK plc - Comments on information submitted by the Applicant or Interested Parties at Deadline 2 & response to the ExA Hearings Round 2 Agendas
Deadline 4 - 22.05.2018 Deadline for receipt by the Panel of: • Responses to the Panel's SWQs (if required) • Comments on any information previously requested by the Panel • Comments on any information submitted by the Applicant or Interested Parties/Affected Persons at Deadline 3	
REP4-001	Environment Agency - Deadline 4 Submission
REP4-002	Highways England - Deadline 4 Submission
REP4-003	Marine Management Organisation - Deadline 4 Submission
REP4-004	RWE Generation UK plc - Deadline 4 Submission
REP4-005	Thurrock Council - Deadline 4 Submission
REP4-006	Network Rail - Deadline 4 Submission
REP4-007	Port of London Authority - Deadline 4 Submission
REP4-008	Natural England - Deadline 4 Submission
REP4-009	Historic England - Deadline 4 Submission
REP4-010	Cadent Gas Limited - Deadline 4 Submission
REP4-011	Kent County Council - Deadline 4 Submission
REP4-012	National Grid Electricity Transmission Plc - Deadline 4 Submission
REP4-013	Gravesham Borough Council - Deadline 4 Submission
REP4-014	English Heritage - Deadline 4 Submission
REP4-015	Essex County Council - Deadline 4 Submission
REP4-016	Port of Tilbury London Limited - Cover Letter
REP4-017	Port of Tilbury London Limited - Updated Statement of Reasons Appendix F (Land Negotiations Tracker)
REP4-018	Port of Tilbury London Limited - Habitats Regulations Assessment Report
REP4-019	Port of Tilbury London Limited - Updated Highways England SoCG
REP4-020	Port of Tilbury London Limited - Response to the Examining Authority's Second Written Questions
REP4-021	Port of Tilbury London Limited - Marine Written Scheme of Investigation - Clean
REP4-022	Port of Tilbury London Limited - Marine Written Scheme of Investigation - Tracked Changes
REP4-023	Port of Tilbury London Limited - Terrestrial Written Scheme of Investigation - Clean
REP4-024	Port of Tilbury London Limited - Terrestrial Written Scheme of

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	Investigation - Tracked Changes
REP4-025	Port of Tilbury London Limited - Revised Sheet 3 of the Works Plans
REP4-026	Port of Tilbury London Limited - Revised Limits of Dredging Plan
Deadline 5 - 06.07.2018 Deadline for receipt by the Panel of: • Comments on responses to the Panel's SWQs (if required) • Responses to any further information requested by the Panel • Applicant's revised draft DCO • Any revised or updated SoCGs • Post hearing submissions including written submissions of oral cases from the June 2018 hearings	
REP5-001	Port of Tilbury London Limited - Cover Letter
REP5-002	Port of Tilbury London Limited - Revised Limits of Dredging Plan v3
REP5-003	Port of Tilbury London Limited - Section 106 Agreement v2 - Clean (including Active Travel Plan and SES appendix v2 - Clean and Tracked Changes)
REP5-004	Port of Tilbury London Limited - Operational Community Engagement Plan v2 - Clean
REP5-005	Port of Tilbury London Limited - Operational Community Engagement Plan v2- Track Changes
REP5-006	Port of Tilbury London Limited - Land, Crown Land and Special Category Land Plans v3
REP5-007	Port of Tilbury London Limited - Book of Reference v2 - Clean
REP5-008	Port of Tilbury London Limited - Book of Reference v2 - Track Changes
REP5-009	Port of Tilbury London Limited - Updated Statement of Reasons v2 - Clean
REP5-010	Port of Tilbury London Limited - Updated Statement of Reasons v2 - Track Changes
REP5-011	Port of Tilbury London Limited - Rights of Way and Access Plans v2
REP5-012	Port of Tilbury London Limited - Traffic Regulation Measures Plans v2
REP5-013	Port of Tilbury London Limited - Written Submission of Case at Compulsory Acquisition Hearing on 27th June
REP5-014	Port of Tilbury London Limited - Written Submission of Case at Issue Specific Hearing on outstanding environment, planning policy and socio-economic matters on 27th June
REP5-015	Port of Tilbury London Limited - Written Submission of Case at Issue Specific Hearing on the DCO on 28th June
REP5-016	Port of Tilbury London Limited - Written Submission of Case at Issue Specific Hearing on Traffic and Transportation Issues on 28 June: Traffic Transportation Matters only
REP5-017	Port of Tilbury London Limited - Statements of Common Ground Update Report for Deadline 5

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REP5-018	Port of Tilbury London Limited - Framework Travel Plan v2 - Clean
REP5-019	Port of Tilbury London Limited - Framework Travel Plan v2 - Track Changes
REP5-020	Port of Tilbury London Limited - Sustainable Distribution Plan v2 - Clean
REP5-021	Port of Tilbury London Limited - Sustainable Distribution Plan v2 - Track Changes
REP5-022	Port of Tilbury London Limited - Operational Management Plan v2 - Clean
REP5-023	Port of Tilbury London Limited - Operational Management Plan v2 - Track Changes
REP5-024	Port of Tilbury London Limited - Update to Statement of Reasons Appendix F (Land Negotiations Tracker) v3
REP5-025	Port of Tilbury London Limited - Marine Archaeological Written Scheme of Investigation v4 - Clean
REP5-026	Port of Tilbury London Limited - Marine Archaeological Written Scheme of Investigation v4 - Tracked Changes
REP5-027	Port of Tilbury London Limited - Works Plans v2
REP5-028	Port of Tilbury London Limited - General Arrangement Plans v2
REP5-029	Port of Tilbury London Limited - Extended Port Limits Plan v3
REP5-030	Port of Tilbury London Limited - Noise Resume Paper
REP5-031	Port of Tilbury London Limited - Bird Monitoring and Action Plan (BMAP)
REP5-032	Port of Tilbury London Limited - Update Habitats Regulations Assessment (HRA) Stage 2 Report - Clean
REP5-033	Port of Tilbury London Limited - Update Habitats Regulations Assessment (HRA) Stage 2 Report - Track Changes
REP5-034	Port of Tilbury London Limited - Mitigation Route Map v2 - Clean
REP5-035	Port of Tilbury London Limited - Mitigation Route Map v2 - Track Changes
REP5-036	Port of Tilbury London Limited - Written Submission of Case on Ecology and HRA issues at ISH of 28 June 2018
REP5-037	Port of Tilbury London Limited - Requirement 3 Colour Palette
REP5-038	Port of Tilbury London Limited - Planning Policy Compliance Statement - Clean v3
REP5-039	Port of Tilbury London Limited - Planning Policy Compliance Statement - Track Changes v3
REP5-040	Port of Tilbury London Limited - Application and Examination Document Tracker
REP5-041	Port of Tilbury London Limited - Ecological Mitigation and Compensation Plan Draft for Deadline 5 - Clean
REP5-042	Port of Tilbury London Limited - Ecological Mitigation and Compensation Plan Draft for Deadline 5 - Track Changes
REP5-043	Port of Tilbury London Limited - Highways England Paper Addendum
REP5-044	Port of Tilbury London Limited - Revision 4 of the draft Development Consent Order - Clean
REP5-045	Port of Tilbury London Limited - Revision 4 of the draft Development Consent Order - Track Changes

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REPORT TO THE SECRETARY OF STATE: Tilbury2 – Proposed Port Terminal at Former Tilbury Power Station

REP5-046	Port of Tilbury London Limited - Explanation of Changes to Draft Development Consent Order
REP5-047	Historic England - Deadline 5 Submission
REP5-048	Thurrock Council - written response following the Compulsory Acquisition Hearing on 27th June
REP5-049	Thurrock Council - Council's written response following the Issue Specific Hearing on outstanding environmental, planning policy and socio-economic issues held on 27th June
REP5-050	Thurrock Council - written response following the Issue Specific Hearing on Ecology, Habitats Regulations Assessment, and Traffic and Transportation held on 28th June
REP5-051	Thurrock Council - written response following the Issue Specific Hearing on the Applicant's draft Development Consent Order held on 28th June
REP5-052	Environment Agency - Deadline 5 Submission
REP5-053	English Heritage - Deadline 5 Submission
REP5-054	Buglife - Deadline 5 Submission
REP5-055	RWE Generation UK plc - Deadline 5 Submission
REP5-056	Marine Management Organisation - Deadline 5 Submission
REP5-057	Network Rail - Deadline 5 Submission
REP5-058	Highways England - Issue Specific Hearing on the Applicant's Draft Development Consent Order (dDCO) – Highways England Response
REP5-059	Highways England - Issue Specific Hearing on Ecology, Habitats Regulations Assessment, and Traffic and Transportation – Highways England Response
REP5-060	Highways England - Highways England's response to Highways England Paper
REP5-061	Natural England - Deadline 5 Submission
REP5-062	Port of London Authority - Deadline 5 Submission
REP5-063	Gravesham Borough Council - Post hearing Written Submissions - Issue Specific Hearing on Draft Development Consent Order
REP5-064	Gravesham Borough Council - Post hearing Written Submissions - Issue Specific Hearing on outstanding Environmental, Planning Policy and Socio-economic issues
Deadline 6 07.08.2018 • Comments on the Panels dDCO or the Panel's Schedule of proposed changes • Comments on the RIES • Comments on responses to information requested by the Panel • Comments on responses on post hearing submissions including written submissions of oral case from the June 2018 hearings	
REP6-001	Gravesham Borough Council - Comments on the Examining Authority's Response dDCO
REP6-002	Port of Tilbury London Limited - Updated Cumulative Effects Assessment – Tracked
REP6-003	Port of Tilbury London Limited - Updated ES Glossary – Clean

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REP6-004	Port of Tilbury London Limited - Update to statement of Reasons Appendix F
REP6-005	Highways England - Response
REP6-006	Port of Tilbury London Limited - Updated Cumulative Effects Assessment – Clean
REP6-007	Natural England - Written responses
REP6-008	Port of Tilbury London Limited - Construction Environmental management plan – Clean
REP6-009	Port of Tilbury London Limited - Works Plans
REP6-010	Port of Tilbury London Limited - Oxford Brooks University Independent Review
REP6-011	Port of Tilbury London Limited - Ecological Mitigation and Compensation Plan (EMCP) – Clean
REP6-012	Port of Tilbury London Limited - SoCG Update Report
REP6-013	Port of London Authority - PLA Response to Examining Authority's Response to dDCO
REP6-014	Historic England – Written Response
REP6-015	Port of Tilbury London Limited – Responses to Interested Parties'
REP6-016	Port of Tilbury London Limited – Marine Archaeological Written Scheme of Investigation – Tracked
REP6-017	Port of Tilbury London Limited – Updated ES Glossary – Tracked
REP6-018	Port of Tilbury London Limited – Ecological and Compensation Plan (EMCP) Tracked
REP6-019	Port of Tilbury London Limited - Response to Oxford University Independent Review
REP6-020	Port of Tilbury London Limited – Response to ExA's Report on the Implications for European Sites
REP6-021	Thurrock Council – Written Response to ExA's Response to Applicants dDCO.
REP6-022	Roythornes Solicitors – Letter from Roythornes Solicitors
REP6-023	Port of Tilbury London Limited - Environmental Statement non-technical summary - Tracked
REP6-024	Historic England - Historic England Letter to CgMs
REP6-025	Port of Tilbury London Limited – Revision 5 of the dDCO - Tracked
REP6-026	Port of Tilbury London Limited – Operational Management Plan – Clean
REP6-027	Port of Tilbury London Limited - Environmental Statement non-technical summary – Clean

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REP6-028	Port of Tilbury London Limited - Explanation of Changes to dDCO
REP6-029	Port of Tilbury London Limited - Cover Letter
REP6-030	Port of Tilbury London Limited - Landscape and Ecological management plan - Tracked
REP6-031	Port of Tilbury London Limited - Noise Resume Paper
REP6-032	Port of Tilbury London Limited - Construction Environmental Management Plan - Tracked
REP6-033	Port of Tilbury London Limited - Revision 5 of dDCO - Clean
REP6-034	Port of Tilbury London Limited - Operational Management Plan - Tracked
REP6-035	Port of Tilbury London Limited - Marine Archaeological Written Scheme of Investigation - Clean
REP6-036	Port of Tilbury London Limited - Response to ExA comments on DCO and Related Interested Parties
REP6-037	Network Rail Infrastructure Limited - Comments
REP6-038	RWE Generation UK plc - Comments on DCO
REP6-039	Marine Management Organisation - MMO Response
REP6-040	Environment Agency - Comments on DCO
REP6-041	Port of Tilbury London Limited - Landscape and Ecological Management Plan - Clean
Deadline 7 17.08.2018 • Responses to comments on the Panel's draft DCO or schedule of proposed changes (if one was required) • Responses to comments on the RIES (if one was prepared) • Responses to information requested by the Panel • Final updated documents from the Applicant in relation to Compulsory Acquisition or any other changed or updated matters • Any revised or updated SoCGs • Final dDCO to be submitted by the Applicant in the SI template with the SI template validation report	
REP7-001	Gravesham Borough Council Deadline 7 Submission - Gravesham Borough Council Response
REP7-002	Gravesham Borough Council Deadline 7 Submission - Gravesham Borough Council Response Appendix
REP7-003	Port of Tilbury London Deadline 7 Submission - Noise Resume Paper - Track Changes
REP7-004	RWE Generation UK PLC Deadline 7 Submission - RWE Generation UK PLC - Appendix 3

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REP7-005	Port of Tilbury London Deadline 7 Submission - Revision 6 of the Draft Development Consent Order - Clean
REP7-006	Port of Tilbury London Revision 6 of the Draft Development Consent Order - Tracked Changes from Revision 5
REP7-007	Port of Tilbury London Deadline 7 Submission - Marine Archaeological Written Scheme of Investigation - Tracked changes
REP7-008	RWE Generation UK PLC Deadline 7 Submission - RWE Generation UK PLC Appendix 1- Tracked Changes
REP7-009	Port of Tilbury London Deadline 7 Submission - Report
REP7-010	Port of Tilbury London Deadline 7 Submission - Marine Archaeological Written Scheme of Investigation - Clean
REP7-011	Port of Tilbury London Deadline 7 Submission - Response to the Examining Authority's Rule 17 Request
REP7-012	Port of Tilbury London Deadline 7 Submission - SoCG Update Report
REP7-013	Port of Tilbury London Deadline 7 Submission - Revision 6 of the Draft Development Consent Order - Tracked Changes
REP7-014	Port of Tilbury London Deadline 7 Submission - Planning Policy Compliance Statement - Clean
REP7-015	Port of Tilbury London Deadline 7 Submission - Ecological Mitigation and Compensation Plan - Tracked
REP7-016	Port of Tilbury London Deadline 7 Submission - Mitigation and Compensation Plan - Clean
REP7-017	Port of London Authority Deadline 7 Submission - Port of London Authority Written Response
REP7-018	Port of Tilbury London Deadline 7 Submission - Habitats Regulations Stage 2 report - Tracked
REP7-019	Port of Tilbury London Deadline 7 Submission - Cover Letter
REP7-020	Port of Tilbury London Deadline 7 Submission - Habitats Regulations Stage 2 report - Clean
REP7-021	Port of Tilbury London Deadline 7 Submission - Noise Resume Paper - Clean
REP7-022	Natural England Deadline 7 Submission - Natural England Written Response

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REP7-023	Port of Tilbury London Deadline 7 Submission - Planning Policy Compliance Statement - Track Changes
REP7-024	Port of Tilbury London Deadline 7 Submission - Note on Thurrock Flexible Generation Plant
REP7-025	Port of Tilbury London Deadline 7 Submission - Final Section 106 Agreement
REP7-026	Mr A K Gothard Response Deadline 7 Submission - Mr A K Gothard Response
REP7-027	Port of Tilbury London Deadline 7 Submission - Explanatory Memorandum - Clean
REP7-028	Historic England Deadline 7 Submission - Historic England Written Response
REP7-029	National Grid Deadline 7 Submission - National Grid Electricity Written Response
REP7-030	Highways England Deadline 7 Submission - Highways England Written Response
REP7-031	Port of Tilbury London Deadline 7 Submission - Explanation of Changes to Draft Development Consent Order
REP7-032	Port of Tilbury London Deadline 7 Submission - Explanatory Memorandum - Tracked
REP7-033	Marine Management Organisation Deadline 7 Submission - Marine Management Organisation Written Response
REP7-034	Amazon UK Services Limited Deadline 7 Submission - Amazon UK Services Limited Interested Parties Response
REP7-035	Cadent Gas Limited Deadline 7 Submission - Cadent Gas Limited Written Response
REP7-036	Port of Tilbury London Deadline 7 Submission - Closing Statement
REP7-037	Port of Tilbury London Deadline 7 Submission - Book of Reference - Tracked Changes
REP7-038	Port of Tilbury London Deadline 7 Submission - Book of Reference - Clean
REP7-039	Environment Agency Deadline 7 Submission - Environment Agency Protective Provisions
REP7-040	Enovert South Limited Deadline 7 Submission - Enovert South Limited Written Response
REP7-041	Environment Agency Deadline 7 Submission - Environment Agency Written Response
REP7-042	Port of Tilbury London Deadline 7 Submission - Updated Statement of Reasons - Clean
REP7-043	Thurrock Council Deadline 7 Submission - Thurrock Councils - Response to Rule 17

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REPORT TO THE SECRETARY OF STATE: Tilbury2 – Proposed Port Terminal at Former Tilbury Power Station

REP7-044	RWE Generation UK PLC Deadline 7 Submission - RWE Generation UK PLC Written Response
REP7-045	Port of Tilbury London Deadline 7 Submission - The Port of Tilbury London (Expansion) order - Revision 6
REP7-046	Thurrock Council Deadline 7 Submission - Thurrock Council Written Response
REP7-047	RWE Generation UK PLC Deadline 7 Submission - RWE Generation UK PLC Appendix 2 - Clean
REP7-048	Port of Tilbury London Deadline 7 Submission - Updated Statement of Reasons - Track Changes
REP7-049	The Crown Estate Deadline 7 Submission - The Crown Estate Written Response
REP7-050	Port of Tilbury London Deadline 7 Submission - Works Plan
REP7-051	Port of Tilbury London and Network Rail Deadline 7 Submission - SoCG Between Port of Tilbury and Network Rail
REP7-052	Port of Tilbury London Deadline 7 Submission - Application and Document Tracker
Other Documents	
OD-001	Regulation 24 Transboundary Screening document
OD-002	Section 56 Notice
OD-003	Certificates of compliance with s56 and s59 of the Planning Act 2008 and Regulation 13 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009
OD-004	

Abbreviations or usage	Reference
AEOI	Adverse Effects on Integrity
AOD	Above Ordnance Datum
AP	Affected Person
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AQD	Air Quality Directive
AQMAs	Air Quality Management Areas
AQP	Air Quality Plan
AQS	Air Quality Strategy
ASI	Accompanied Site Inspection
ATP	Active Travel Plan
AWSCEA	Anglican Water Services
BMAP	Bird Monitoring and Action Plan
BoR	Book of Reference
BS	British Standard
C&I	Commercial and Industrial
CA	Compulsory Acquisition
CAH	Compulsory Acquisition Hearing
CD&E	Construction, Demolition and Excavation
CEA	Cumulative Effects Assessment
CEMP	Construction Environmental Management Plan
CGL	Cadent Gas Limited
CHP	Combined Heat and Power
CJEU	Court of Justice of the European Union
CMAT	Construction Materials and Aggregates Terminal
CMS	Continuous Monitoring Station
CRN	Calculation of Railway Noise
CROW Act	Countryside and Rights of Way Act 2000
CRTN	Calculation of Road Traffic Noise

Appendix C

cSAC	candidate SAC
CTMP	Construction Traffic Management Plan
DCLG	Department for Communities and Local Government
DCO	Development Consent Order
DfT	Department for Transport
DML	Deemed Marine Licence
DMRB	Design Manual for Roads and Bridges
DPD	Development Plan Document
EA	Environment Agency
ECC	Essex County Council
EEA	European Economic Area
EH	English Heritage
EHRC	Equality and Human Rights Commission
EIA	Environmental Impact Assessment
EIA Regulations	Infrastructure Planning (Environmental Impact Assessment) Regulations 2009
EMCP	Ecological Management and Compensation Plan
EP	Environmental Permit
EPR	Examination Procedure Rules 2010
EPS	European Protected Species
EPUK	Environmental Protection UK
ES	Environmental Statement
ExA, the Panel	Examining Authority
FRA	Flood Risk Assessment
FTE	Full Time Equivalent
FTP	Framework Travel Plan
FWQ	First Written Questions
GBC	Gravesham Borough Council
GVA	Gross Value Added
ha	Hectares
Habitats Regulations	Conservation of Habitats and Species Regulations 2017

APPENDIX C: Abbreviations

REPORT TO THE SECRETARY OF STATE: Tilbury2 – Proposed Port Terminal at Former Tilbury Power Station

Appendix C

HE	Highways England
HGVs	Heavy Goods Vehicles
HIA	Health Impact Assessment
Hist E	Historic England
HRA	Habitats Regulations Assessment
IAP1	Initial Assessment of Principal Issues
IAQM	Institute of Air Quality Management
IEA	Institute of Environmental Assessment
IECS	Institute of Estuarine & Coastal Studies
IEMA	Institute of Environmental Management and Assessment
INNS	Invasive Non-Native Species
IP	Interested Party
ISH	Issue Specific Hearing
JAT	Jetty Asset Transfer
JNCC	Joint Nature Conservation Committee
KCC	Kent County Council
LA	Local Authority
LDVs	Light Delivery Vehicles
LEMP	Landscape and Ecological Management Plan
LEP	Local Economic Partnership
LGP	London Gateway Port
LI	Landscape Institute
LIR	Local Impact Report
LOAEL	Lowest Observable Adverse Effect Level
LoWS	Local Wildlife Site
LRN	Local Road Network
LSE	Likely Significant Effect
LTC	Lower Thames Crossing
MACAA2009	Marine and Coastal Access Act 2009
MCA	Maritime and Coastguard Agency

APPENDIX C: Abbreviations

REPORT TO THE SECRETARY OF STATE: Tilbury2 – Proposed Port Terminal at Former Tilbury Power Station

MCZ	Marine Conservation Zone
MMO	Marine Management Organisation
MMP	Materials Management Plan
MPS	Marine Policy Statement
NE	Natural England
NERC Act	Natural Environment and Rural Communities Act 2006
NGET	National Grid Electricity Transmission Limited
NO ₂	Nitrogen Dioxide
NOAEL	No Observed Adverse Effect Level
NO _x	Mono-Nitrogen Oxides
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NPSE	Noise Policy Statement for England
NPSNN	National Policy Statement for National Networks
NPSP	National Policy Statement for Ports
NR	Network Rail
NRA	Navigation Risk Assessment
NSIP	Nationally Significant Infrastructure Project
NSR	Noise Sensitive Receptor
OBC	Outline Business Case
OFH	Open Floor Hearing
OMHPDL	Open Mosaic Habitat on Previously Developed Land
OMP	Operational Management Plan
PA2008	Planning Act 2008
PFA	Pulverised Fuel Ash
PHE	Public Health England
PIA	Personal injury accident
PLA	Port of London Authority
PM	Preliminary Meeting
PM ₁₀ and PM _{2.5}	Particulate Matter
pMCZ	proposed MCZ

APPENDIX C: Abbreviations

REPORT TO THE SECRETARY OF STATE: Tilbury2 – Proposed Port Terminal at Former Tilbury Power Station

PMSC	Port Marine Safety Code
PoTLL, 'the Applicant'	Port of Tilbury London Limited
PPCS	Planning Policy Compliance Statement
PPG	Planning Practice Guidance
PRoW	Public Right of Way
PSED	Public Sector Equality Duty
pSPA	potential SPA
RIES	Report on Implications for European Sites
Ro-Ro	Roll-on/roll-off
RR	Relevant Representation
RWE	RWE Generation UK plc
SAC	Special Area of Conservation
SCI	Site of Community Importance
SDP	Sustainable Distribution Plan
SES	Skills and Employment Strategy
SO ₂	Sulphur Dioxide
SOAEL	Significant Observed Adverse Effect Level
SoCG	Statement of Common Ground
SoR	Statement of Reasons
SoS	Secretary of State
SPA	Special Protection Area
SRN	Strategic Road Network
SSSI	Site of Special Scientific Interest
STW	Sewage Treatment Works
SuDS	Sustainable Drainage System
SWMP	Site Waste Management Plan
SWQ	Second Written Questions
TA	Transport Assessment
TAG	Transport Analysis Guidance
TC	Thurrock Council
TCPA1990	Town and Country Planning Act 1990

APPENDIX C: Abbreviations

REPORT TO THE SECRETARY OF STATE: Tilbury2 – Proposed Port Terminal at Former Tilbury Power Station

Appendix C

TEC	Tilbury Energy Centre
TEEC	Tilbury Energy and Environment Centre
TFGP	Thurrock Flexible Generation Plant
TP	Temporary Possession
TTGDC	Thurrock Thames Gateway Development Corporation
UKPN	UK Power Networks
UrHIA	Urban Health Impact Assessment
USI	Unaccompanied Site Inspection
VDV	Vibration Dose Value
WFD	Water Framework Directive
WID	Water injection dredging
WR	Written Representation
WSI	Written Scheme of Investigation

Recommended Development Consent Order

STATUTORY INSTRUMENTS

201[X] No.

INFRASTRUCTURE PLANNING

The Port of Tilbury (Expansion) Order 201[X]

Made - - - -

Coming into force - -

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An application has been made to the Secretary of State, under section 37 of the Planning Act 2008^(a) (“the 2008 Act”) in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009^(b) for an Order granting development consent.

The Panel, having examined the application with the documents that accompanied the application, and the representations made and not withdrawn, has, in accordance with section 74(2) of the 2008 Act, made a report and recommendation to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn, and the report of the Panel, has decided to make an Order granting development consent for the development described in the application [with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application].

[In relation to the compulsory acquisition of the Order land which is common land, the Secretary of State is satisfied, having considered the report and recommendation of the Panel and in accordance with section 131(3) of the 2008 Act, that section 131(4) applies.]

The Secretary of State, in exercise of the powers conferred by sections 114, 115 and 120 of the 2008 Act, makes the following Order—

(a) 2008 c.29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c.20).

(b) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522 and S.I. 2013/755.

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Port of Tilbury (Expansion) Order 201[9] and comes into force on [X] 201[9].

Interpretation

2.—(1) In this Order, unless otherwise stated—

“the 1845 Act” means the Railways Clauses Consolidation Act 1845(a);

“the 1961 Act” means the Land Compensation Act 1961(b);

“the 1965 Act” means the Compulsory Purchase Act 1965(c);

“the 1968 Act” means the Port of London Act 1968(d);

“the 1974 Act” means the Control of Pollution Act 1974(e);

“the 1980 Act” means the Highways Act 1980(f);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(g);

“the 1984 Act” means the Road Traffic Regulation Act 1984(h);

“the 1990 Act” means the Town and Country Planning Act 1990(i);

“the 1991 Act” means the New Roads and Street Works Act 1991(j);

“the 1991 Transfer Scheme” means the Port of Tilbury Transfer Scheme 1991 as confirmed by the Port of Tilbury Transfer Scheme 1991 Confirmation Order 1992(k) made under section 22 of the Ports Act 1991(l);

“the 2004 Act” means the Traffic Management Act 2004(m);

“the 2008 Act” means the Planning Act 2008(n);

“the 2009 Act” means the Marine and Coastal Access Act 2009(o);

“address” includes any number or address for the purposes of electronic transmission;

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“the authorised development” means the development described in Schedule 1 (authorised development) and any other development within the meaning of the 2008 Act authorised by this Order;

“authorised officer” means a Police Constable, the Company Harbour Master, a PLA Harbour Master, and a person authorised by the Company for the purpose of enforcing the byelaws;

“the book of reference” means the document of that description set out in Schedule 11 certified by the Secretary of State as the book of reference for the purposes of this Order;

-
- (a) 1845 c.20.
(b) 1961 c.33.
(c) 1965 c.56.
(d) 1968 c.xxxii.
(e) 1974 c.40.
(f) 1980 c.66.
(g) 1981 c.66.
(h) 1984 c.27.
(i) 1990 c.8.
(j) 1991 c.22.
(k) S.I. 1992/284.
(l) 1991 c.52.
(m) 2004 c.18.
(n) 2008 c.29.
(o) 2009 c.23.

“building” includes any structure or erection or any part of a building, structure or erection;

“business day” means a day other than a Saturday or Sunday, a bank holiday in England, Good Friday or Christmas Day;

“Cadent” means Cadent Gas Limited (company number 10080864) whose registered office is at Ashbrook Court, Prologis Park, Central Boulevard, Coventry, CV7 8PE;

“carriageway” has the same meaning as in the 1980 Act;

“the classification of roads plans” means the plans of that description set out in Schedule 11 certified by the Secretary of State as the classification of roads plans for the purposes of this Order;

“commence” means beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised development other than operations consisting of environmental surveys and monitoring, investigations for the purpose of assessing ground conditions, receipt and erection of construction plant and equipment, erection of any temporary means of enclosure, the temporary display of site notices or advertisements, and “commencement” is to be construed accordingly;

“the Company” means Port of Tilbury London Limited (company number 02659118) of Leslie Ford House, Tilbury Freeport, Tilbury, Essex, RM18 7EH;

“the Company Harbour Master” means every person having the powers of a harbour master due to their appointment as dock master by the Company under the 1968 Act;

“construct” includes execution, placing, altering, replacing, relaying and removal and “construction” is to be construed accordingly;

“cycle track” has the same meaning as in section 329(1) (further provisions as to interpretation) of the 1980 Act;

“the deemed marine licence” means the deemed marine licence granted by article 53;

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means provided it is in an electronic form;

“the engineering drawings and plans” means the documents of that description set out in Schedule 11 certified by the Secretary of State as the engineering drawings and plans for the purposes of this Order;

“the environmental statement” means the documents of that description set out in Schedule 11 certified by the Secretary of State as the environmental statement for the purposes of this Order;

“the existing river jetty” means the jetty existing in the river Thames at the date of this Order coming into force, as shown shaded blue and labelled *Existing Jetty Superstructure* on sheet 3 of the works plans;

“the extended port limits” means the extended port limits shown on the extended port limits plan;

“the extended port limits plan” means the plan of that description set out in Schedule 11 certified by the Secretary of State as the extended port limits plan for the purposes of this Order;

“flood risk activity” has the same meaning as in the Environmental Permitting (England and Wales) Regulations 2016(a);

“footpath” and “footway” have the same meaning as in the 1980 Act;

“highway”, “highway authority” and “local highway authority” have the same meaning as in the 1980 Act;

(a) S.I. 2016/1154.

“the highway management contractor” means the management contractor appointed by Highways England under the DBFO contract in respect of the highway on that part of the strategic road network within which the HE works are situated;

“the land, special category land and crown land plans” means the plans of that description set out in Schedule 11 certified by the Secretary of State as the land, special category land and crown land plans for the purposes of this Order;

“landing place” has the same meaning as in the 1968 Act;

“the limits of deviation” means the limits of deviation referred to in article 7 (limits of deviation);

“the limits of dredging plan” means the plan of that description set out in Schedule 11 certified by the Secretary of State as the limits of dredging plan for the purposes of this Order;

“maintain” and any of its derivatives include inspect, repair, adjust, alter, remove or reconstruct and any derivative of “maintain” is to be construed accordingly;

“mean high water level” means the level which is half way between mean high water springs and mean high water neaps;

“mean high water neaps” means the average throughout the year of the heights of two successive high waters during those periods of 24 hours when the range of the tide is at its least;

“mean high water springs” means the average throughout the year of the heights of two successive high waters during those periods of 24 hours when the range of the tide is at its greatest;

“the MMO” means the Marine Management Organisation;

“National Grid” means National Grid Electricity Transmission plc (company number 02366977) whose registered office is at 1 to 3 Strand, London, WE2N 5EH;

“Network Rail” means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006^(a)) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“the Order land” means the land shown coloured pink and the land shown coloured yellow on the land, special category land and crown land plans and described in the book of reference;

“the Order limits” means the Order limits shown on the works plans;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981^(b) (interpretation);

“the PLA” means the Port of London Authority;

“the PLA Harbour Master” means any harbour master of the PLA and any of their authorised deputies and assistants and any person authorised by the PLA to act in that capacity;

“the Port of Tilbury” means the harbour undertaking of the Company at the Port of Tilbury in Essex;

“the relevant planning authority” means the local planning authority for the land in question, being Thurrock Council, or any successor to it as planning authority;

“the rights of way and access plans” means the plans of that description set out in Schedule 11 certified by the Secretary of State as the rights of way and access plans for the purposes of this Order;

“statutory undertaker” means any statutory undertaker for the purposes of section 127(8) (statutory undertakers’ land) of the 2008 Act;

(a) 2006 c.46

(b) 1981 c.67.

“street” means a street within the meaning of section 48 (streets, street works and undertakers) of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“traffic authority” has the same meaning as in section 121A of the 1984 Act;

“the traffic regulation measures plan” means the plan of that description set out in Schedule 11 certified by the Secretary of State as the traffic regulation measures plan for the purposes of this Order;

“the tribunal” means the Lands Chamber of the Upper Tribunal;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“the UK marine licensing area” has the meaning given to it in section 66(4) (licensable marine activities) of the 2009 Act;

“vessel” means every description of vessel or water-borne structure, however propelled, moved or constructed, and includes displacement and non-displacement craft, personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over or placement in water and which is at the time in, on or over water;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“the works plans” means the plans of that description set out in Schedule 11 certified by the Secretary of State as the works plans for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the airspace above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the enjoyment of interests or rights and are for the benefit of land which is acquired under this Order or is otherwise comprised in the Order land.

(3) All measurements of distances, directions and lengths referred to in this Order are to be construed as if the words “or thereabouts” were inserted after each such distance, direction and length and distances between points on a work comprised in the authorised development are taken to be measured along that work.

(4) For the purposes of this Order, all areas described in square metres in the book of reference are to be construed as if the words “or thereabouts” were inserted after each such area.

(5) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the plan to which the reference applies.

(6) References in this Order to numbered works are references to the works as numbered in Schedule 1 (authorised development).

Disapplication of legislation, etc.

3.—(1) The following provisions do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction, operation or maintenance of any part of the authorised development—

- (a) sections 66 to 75 (control of works and dredging) of the 1968 Act;
- (b) Thames Barrier and Flood Prevention Act 1972(a);
- (c) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (byelaw making powers of the authority) to the Water Resources Act 1991;

(a) 1972 c.xl.

- (d) section 23 (prohibition of obstructions, etc. in watercourses) of the Land Drainage Act 1991^(a);
- (e) the provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991;
- (f) regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016^(b) in respect of a flood risk activity only; and
- (g) the provisions of the Neighbourhood Planning Act 2017^(c) insofar as they relate to temporary possession of land under articles 32 (temporary use of land for constructing the authorised development) and 33 (temporary use of land for maintaining the authorised development) of this Order.

(2) Any works licence granted by the PLA under section 66 (licensing of works) of the 1968 Act in respect of an existing structure and still having effect immediately before this Order comes into force is extinguished and no longer has effect from the date this Order comes into force.

(3) If such a works licence applies to an existing structure as well as to other works or structures paragraph (2) has effect to extinguish the works licence only in relation to, and so far as it applies to, the existing structure.

(4) Any existing structure may remain and subsist in the river Thames under the authority of, and subject to the terms of, this Order and the requirement to obtain a works licence under section 66 of the 1968 Act does not apply to the structure.

(5) If any part of the ‘B station’ intake structures comes into the ownership of the Company at any time after this Order comes into force—

- (a) on the day after the Company serves a notice on the PLA to that effect, any works licence granted by the PLA under section 66 of the 1968 Act in respect of that part of that ‘B station’ intake structure and still having effect at that time is extinguished and no longer has effect; and
- (b) thereafter that part of the ‘B station’ intake structure in question may remain and subsist in the river Thames under the authority of, and subject to the terms of, this Order and the requirement to obtain a works licence under section 66 of the 1968 Act does not apply to that part of that ‘B station’ intake structure for so long as—
 - (i) it remains in the ownership of the Company; and
 - (ii) the Company continues to operate and maintain the authorised development as a working port facility; and
 - (iii) it is not used as part of the remaining ‘B station’ intake structures.

(6) If after paragraph (5) has taken effect—

- (a) any of the ‘B station’ intake structures—
 - (i) is used as part of the remaining ‘B station’ intake structures; or
 - (ii) ceases to belong to the Company; or
- (b) the Company ceases to operate and maintain the authorised development as a working port facility,

the Company must forthwith serve on the PLA notice of that event with full particulars of the change and details of any new owner or user of the ‘B station’ intake structure in question, and on the day after service of the notice paragraph 3(5)(b) ceases to have effect in relation to the part of the ‘B station’ intake structures to which the notice relates.

(7) The PLA must not grant or vary—

- (a) a river works licence under section 66 of the 1968 Act; or

(a) 1991 c.59.
 (b) S.I. 2016/1154.
 (c) 2017 c.20.

(b) a dredging licence under section 73 of that Act,

licensing any works or dredging within the extended port limits without the consent of the Company (acting in exercise of its statutory functions).

(8) Despite the provisions of section 66(1)(b) of the 1968 Act, the grant or variation by the PLA of a river works licence in relation to any part of the river Thames situated within the extended port limits belonging to the PLA and in respect of which the Company has a proprietary interest is not, without the consent of the Company, to be deemed to confer on the holder of the licence such rights in, under or over the land as are necessary to enable the holder of the licence to enjoy the benefit of the licence.

(9) The Company must not unreasonably withhold or delay its consent under paragraph (7) or paragraph (8) but may require reasonable modifications to the proposed works or dredging or impose reasonable terms and conditions on them, and in considering whether to grant consent, require modifications or impose terms and conditions the Company (acting in exercise of its statutory functions) must have regard only to the matters mentioned in paragraph (10).

(10) The matters referred to in paragraph (9) are the prevention of significant interference with—

- (a) the works comprising the authorised development within the extended port limits;
- (b) access to and egress from those works;
- (c) the use of those works or of the land within the extended port limits, by the Company for the purposes of performing its statutory functions or by users of those works in exercise of their right under section 6(1) of the 1968 Act; or
- (d) the performance of any of the Company's or the Company Harbour Master's functions connected with environmental protection or health and safety.

(11) Despite the provisions of section 193(2) (general and local lighthouse authorities) of the Merchant Shipping Act 1995(a), nothing in this Order constitutes the Company as a local lighthouse authority.

(12) Despite the provisions of section 2 (port health districts and authorities) of the Public Health (Control of Disease) Act 1984(b), the Company may not be designated as a port health authority in respect of the land and premises within the extended port limits.

(13) In this article—

“the ‘B station’ intake structures” means—

- (a) the two ‘B station’ cooling water intake caissons shown on sheet 3 of the works plans;
- (b) the two ‘B station’ cooling water intake tunnels shown on sheet 3 of the works plans between those cooling water intake caissons and mean high water level; and
- (c) any related ancillary structures, plant or pipework; and

“existing structure” means any of the following existing structures and parts of existing structures within the river Thames shown on sheet 3 of the works plans:

- (a) the ‘A station’ cooling water intake caisson and the ‘A station’ cooling water intake tunnel between that caisson and mean high water level;
- (b) the ‘A station’ cooling water outfall caisson and the ‘A station’ cooling water intake tunnel between that caisson and mean high water level;
- (c) the existing Anglian Water jetty; and
- (d) the existing river jetty insofar as it does not comprise any of the ‘B station’ intake structures.

(a) 1995 c.21

(b) 1984 c.22

Application of enactments relating to the Port of Tilbury

4.—(1) Subject to paragraphs (2), (3) and (6), from the date of the coming into force of this Order the functions under the 1968 Act which were or may have been transferred to the Company by the 1991 Transfer Scheme in relation to the Port of Tilbury apply and have effect in relation to the extended port limits.

(2) Paragraph (1)—

- (a) does not apply to any function conferred by—
 - (i) section 5(1) (general duties and powers) of the 1968 Act;
 - (ii) section 64 (use of Thames Water) of that Act in respect of the discharge of water to the river Thames; or
 - (iii) section 85 (agreements about calling at landing places) of that Act;
- (b) applies the functions exercisable under section 5AA (company's functions subordinate to Port Authority's functions) of the 1968 Act subject to the amendments in paragraph (6); and
- (c) applies the functions to which it relates subject to Part 3 of Schedule 10 (protective provisions for the Port of London Authority).

(3) In the application of the functions under the 1968 Act which apply to the extended port limits by virtue of paragraph (1), for the purposes of paragraph 1 of Schedule 4 to the 1991 Transfer Scheme—

- (a) any dock or landing place situated within the extended port limits is to be treated as part of the Company's docks;
- (b) the works and land within the extended port limits are to be treated as part of the Company's port premises; and
- (c) the undertaking carried on by the Company within the extended port limits is to be treated as part of the Company's Port of Tilbury undertaking.

(4) Any part of the extended port limits situated within the river Thames is to be treated as having been designated by the PLA for the purposes of section 112 (special directions to vessels in the Thames) of the 1968 Act as an area in which the power to give special directions under that provision applies.

(5) The General Trading Regulations made by the Company in 2005 under section 22 (charges regulations) of the 1968 Act and which apply to the Port of Tilbury, together with any changes to them, apply to the extended port limits from the date the authorised development opens for operational use unless otherwise notified by the Company.

(6) Section 5AA (Company's functions subordinate to Port Authority's functions) of the 1968 Act as applied to the extended port limits by paragraph (1) is treated as being amended in relation to the extended port limits—

- (a) by the substitution of the following for paragraph (a) of that section—

“(a) any enactment (including any provision of this Act or of any subordinate legislation) whether passed or made before or after the date of this Act and relating to or made by the Port Authority; and”;
- (b) by the substitution in paragraph (b) of that section of “enactment” for “local statutory provision”; and
- (c) by the insertion at the end of that section of—

“and is to be exercised in accordance with subsections (2) and (4) of this section.

(2) Subject to subsection (3) of this section, the Port Authority may after consulting the company (except in cases of emergency) notify the company in writing of—

- (a) specified functions of the company, or
- (b) specified circumstances, manner or extent of the carrying out of any function of the company,

which the Port Authority considers may have a significant effect on the need for it to exercise any of its statutory functions in the Thames outside the extended port limits, or significantly affect how the Port Authority exercises those functions.

(3) The Port Authority may not give a notification under subsection (2) of this section in relation to—

- (a) construction of the works specified in Schedule 1 to The Port of Tilbury (Expansion) Order 2019; or
- (b) any specified function or specified work approved by the Port Authority under Part 3 of Schedule 10 to that Order which is carried out by the Company in the exercise of the powers of article 41 for the purposes of the maintenance of the authorised development, or operation of the Company's harbour undertaking.

(4) The company must not—

- (a) exercise any function specified in a notice given under subsection (2)(a) of this section, or
- (b) exercise any function in any circumstances, manner or extent specified in a notice given under subsection (2)(b) of this section,

without the consent of the Port Authority, which must not be unreasonably withheld or delayed.”.

Incorporation of the 1845 Act

5.—(1) The following provisions of the 1845 Act are incorporated in this Order—

section 24 (penalty for obstructing construction of railway);
section 47 (provision in cases where roads are crossed on a level);
section 58 (company to repair roads used by them), subject to paragraph (3);
section 61 (company to make sufficient approaches and fences to highways crossing on the level);
section 68 (gates, bridges, etc.);
section 73 (accommodation works not to be required after five years);
section 75 (penalty on persons omitting to fasten gates);
section 86 (company to employ locomotive power, carriages, etc.);
section 105 (penalty for bringing dangerous goods on railway); and
section 145 (penalties to be summarily recovered before two justices).

(2) In those provisions, as incorporated in this Order—

“the company” means the Company;

“the goods” includes anything conveyed on the railways authorised to be constructed by this Order;

“the railway” means any railway authorised to be constructed by this Order and, except where the context otherwise requires, any other works associated with the railway; and

“the Special Act” means this Order.

(3) In section 58 of the 1845 Act, as incorporated in this Order, for the words from “the determination of two justices” to the end there is substituted the word “arbitration”.

PART 2

WORKS PROVISIONS

Principal powers

Development consent granted by the Order

6. Subject to the provisions of this Order, including the requirements in Schedule 2 (requirements), the Company is granted development consent for the authorised development.

Limits of deviation

7.—(1) The authorised development listed in Schedule 1 (authorised development) must be constructed within the Order limits but in doing so the Company may deviate—

- (a) in the case of—
 - (i) Work No. 9A, laterally so that the centre line of the work may be situated—
 - (aa) up to 1 metre to the south of the centre line shown on the works plans; and
 - (bb) to the north of the centre line of that work shown on the works plans, up to the centre line of Work No. 12; and
 - (ii) Work No. 12, laterally so that the centre line of the work may be situated—
 - (aa) up to 1 metre to the north of the centre line shown on the works plans; and
 - (bb) to the south of the centre line of that work shown on the works plans, up to the centre line of Work No. 9A;
- (b) in the case of any other linear work comprised in any part of the authorised development listed in Schedule 1, laterally so that the centre line of the work may be situated up to 1 metre either side of the centre line of that work shown on the works plans;
- (c) in the case of a non-linear work comprised in any part of the authorised development listed in Schedule 1, laterally from the lines or situations of that work shown on the works plans to the extent of the limits of deviation shown on the works plans for that work;
- (d) in the case of a linear work comprised in any part of the authorised development listed in Schedule 1, vertically from the levels of the authorised development shown on the engineering drawings and plans—
 - (i) to any extent upwards not exceeding 0.5 metres; and
 - (ii) to any extent downwards; and
- (e) in the case of any dredging within the Order limits carried out during the construction of the authorised development, to any extent downwards to the limits shown on the limits of dredging plan.

(2) In this article, reference to—

- (a) a “linear work” is a reference to any work shown on the works plans by way of a centre line; and
- (b) a “non-linear work” is a reference to any other work shown on the works plans.

Streets

Street works

8.—(1) The Company may, for the purposes of the authorised development, enter on so much of any street and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus in the street;

- (d) maintain apparatus in the street or change its position; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c) and (d).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) of the 1991 Act (prohibition of unauthorised street works).

(3) The Company must not construct works to any street under paragraph (1) for which it is not the street authority without the consent of the street authority, which may attach reasonable conditions to any consent.

Application of the 1991 Act

9.—(1) Works executed under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of Part 3 (street works in England and Wales) of the 1991 Act as major highway works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) (which defines what highway authority works are major highway works) of that Act; or
- (b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64 (dual carriageways and roundabouts) of the 1980 Act or section 184 (vehicle crossings) of that Act.

(2) In Part 3 of the 1991 Act references, in relation to major highway works, to the highway authority concerned are, in relation to works which are major highway works by virtue of paragraph (1), to be construed as references to the Company.

(3) The following provisions of the 1991 Act do not apply in relation to any works constructed under the powers of this Order—

- section 56 (directions as to timing);
- section 56A (power to give directions as to placing of apparatus);
- section 58 (restrictions following substantial road works);
- section 58A (restriction on works following substantial street works);
- section 73A (power to require undertaker to re-surface street);
- section 73B (power to specify timing, etc., of re-surfacing);
- section 73C (materials, workmanship and standard of re-surfacing);
- section 78A (contributions to costs of re-surfacing by undertaker); and
- Schedule 3A (restriction on works following substantial street works).

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the construction of street works) and any regulations made, or code of practice issued or approved under, those provisions apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the Company under the powers conferred by article 13 (temporary stopping up and restriction of use of streets) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act **(a)** referred to in paragraph (4) are—

- section 54 **(b)** (advance notice of certain works), subject to paragraph (6);
- section 55 **(c)** (notice of starting date of works), subject to paragraph (6);

(a) Sections 54, 55, 57, 60, 68 and 69 were amended by section 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).

(b) As also amended by section 49(1) of the Traffic Management Act 2004.

(c) As also amended by section 49(2) and 51(9) of the Traffic Management Act 2004.

section 57(a) (notice of emergency works);
section 59(b) (general duty of street authority to co-ordinate works);
section 60 (general duty of undertakers to co-operate);
section 68 (facilities to be afforded to street authority);
section 69 (works likely to affect other apparatus in the street);
section 75 (inspection fees);
section 76 (liability for cost of temporary traffic regulation); and
section 77 (liability for cost of use of alternative route),

and all such other provisions as apply for the purposes of the provisions mentioned above.

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

(7) Nothing in article 10 (construction and maintenance of new, altered or diverted streets)—

- (a) affects the operation of section 87 (prospectively maintainable highways) of the 1991 Act, and the Company is not by reason of any duty under that article to maintain a street to be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or
- (b) has effect in relation to street works as respects which the provisions of Part 3 of the 1991 Act apply.

(8) Any provision contained in Part 3 of the 1991 Act does not apply to the Company or to the street authority in any case where Part 7 (for the protection of Thurrock Council (as highway authority)) or Part 9 (for the protection of Highways England) of Schedule 10 contains either an equivalent provision or a provision which conflicts with the provision in Part 3.

Construction and maintenance of new, altered or diverted streets

10.—(1) Subject to paragraph (4), any street constructed under this Order must be completed to the reasonable satisfaction of the street authority and, unless otherwise agreed in writing with the street authority, must be maintained by and at the expense of the Company for a period of 12 months from its completion and thereafter by the street authority.

(2) Subject to paragraph (4), where a street is altered or diverted under this Order, the altered or diverted part of the street must be completed to the reasonable satisfaction of the street authority and, unless otherwise agreed in writing with the street authority, that part of the street must be maintained by and at the expense of the Company for a period of 12 months from its completion and thereafter by the street authority.

(3) Where land not previously part of the public highway comes to form part of the public highway by virtue of the construction, diversion or alteration of the streets set out in Schedule 4, unless otherwise agreed in writing with the street authority, the land is deemed to have been dedicated as public highways on the expiry of a period of 12 months from completion of the street that has been constructed, altered or diverted.

(4) In the case of any bridge or any other structure constructed under this Order to carry a street, both the street surface and structure of the bridge or other structure must be completed to the reasonable satisfaction of the street authority and, unless otherwise agreed in writing with the street authority, must be maintained by and at the expense of the Company for a period of 24 months from its completion and thereafter by the street authority.

(5) In any action against the Company in respect of loss or damage resulting from any failure by the Company to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the

(a) As also amended by section 52(3) of the Traffic Management Act 2004.

(b) As amended by section 42 of the Traffic Management Act 2004.

Company had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(6) For the purposes of a defence under paragraph (4), the court must in particular have regard to the following matters—

- (a) the character of the street and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the Company knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and
- (e) where the Company could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant to prove that the Company had arranged for a competent person to carry out or supervise the maintenance of the part of the street to which the action relates unless it is also proved that the Company had given the competent person proper instructions with regard to the maintenance of the street and that the competent person had carried out those instructions.

(7) The date of completion of any works referred to in paragraphs (1), (2), (3) and (4) is to be agreed between the Company and the street authority, acting reasonably.

Classification of roads

11.—(1) The roads described in paragraph 1 of Schedule 3 are to be classified as part of the existing A1089 St Andrew's Road from such day as the Company may determine as if such classification had been made under section 12(3) (general provision as to principal and classified roads) of the 1980 Act.

(2) The roads described in paragraph 2 of Schedule 3 are to be classified as the classified un-numbered Ferry Road from such day as the Company may determine as if such classification had been made under section 12(3) (general provision as to principal and classified roads) of the 1980 Act.

(3) The roads described in paragraph 3 of Schedule 3 cease to be a classified road from such day as the Company may determine as if such classification had been made under section 12(3) (general provision as to principal and classified roads) of the 1980 Act.

(4) The roads described in paragraph 4 of Schedule 3 are to be classified as the classified un-numbered link road from such day as the Company may determine as if such classification had been made under section 12(3) (general provision as to principal and classified roads) of the 1980 Act.

(5) The Company must publish a notice in the *Thurrock Gazette* or any other local newspaper circulating in the area on each occasion that it makes a determination under this article.

Permanent stopping up and restriction of use of highways and private means of access

12.—(1) Subject to the provisions of this article, the Company may, in connection with the construction of the authorised development, stop up each of the highways and private means of access specified in column (1) of Parts 1, 2 and 3 of Schedule 4 (permanent stopping up of highways and private means of access & provision of new highways and private means of access) to the extent specified and described in column (2) of those Parts of that Schedule.

(2) No highway or private means of access specified in column (1) of Parts 1 and 3 of Schedule 4 (being a highway or private means of access to be stopped up for which a substitute is to be provided) is to be wholly or partly stopped up under this article unless—

- (a) the new highway or private means of access to be constructed and substituted for it, which is specified in column (3) of those Parts of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the highway or private means of access to be stopped up is first provided and subsequently maintained by the Company, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the highway or private means of access until the completion and opening of the new highway or private means of access in accordance with sub-paragraph (a).

(3) No highway specified in column (1) of Part 2 of Schedule 4 (being a highway to be stopped up for which no substitute is to be provided) is to be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all of the land which abuts on either side of the highway to be stopped up.

(4) The condition referred to in paragraph (3) is that—

- (a) the Company is in possession of the land;
- (b) there is no right of access to the land from the highway concerned;
- (c) there is reasonably convenient access to the land otherwise than from the highway concerned; or
- (d) the owners and occupiers of the land have agreed to the stopping up.

(5) Not less than 28 days prior to the whole or part stopping up of a highway under this article, the Company must erect a notice upon the highway in question at, or as close as reasonably practicable to, each point of stopping up containing the date and extent of the stopping up and, in the case of a highway mentioned in Part 1 of Schedule 4, giving details of the substitute or new highway to be provided.

(6) Where a highway or private means of access has been stopped up under this article—

- (a) all rights of way over or along the highway or private means of access so stopped up are extinguished; and
- (b) the Company may appropriate and use for the purposes of the authorised development so much of the site of the highway or private means of access as is bounded on both sides by land owned by the Company.

(7) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(8) This article is subject to article 35 (apparatus and rights of statutory utilities in stopped up streets).

Temporary stopping up and restriction of use of streets

13.—(1) The Company may, during and for the purposes of constructing the authorised development, temporarily stop up, alter or divert any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without limitation on the scope of paragraph (1), the Company may use any street temporarily stopped up under the powers conferred by this article and lying within the Order limits as a temporary working site.

(3) The Company must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(4) The Company must not temporarily stop up, alter or divert any street under this article without the consent of the street authority, which may attach reasonable conditions to its consent.

(5) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Access to works

14. The Company may, with the consent of the street authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the Company reasonably requires for the purposes of constructing the authorised development.

Agreements with street authorities

15.—(1) A street authority and the Company may enter into agreements in writing with respect to—

- (a) the construction of any new street including any structure carrying the street, whether or not over or under any part of the authorised development;
- (b) the strengthening or improvement of any street under the powers conferred by this Order;
- (c) the maintenance of any street or of the structure of any bridge or tunnel carrying a street over or under the authorised development;
- (d) any stopping up, alteration or diversion of a street under the powers conferred by this Order;
- (e) the construction in the street of any of the authorised development; or
- (f) such other works as the parties may agree.

(2) Such an agreement may, without limitation on the scope of paragraph (1)—

- (a) provide for the street authority to carry out any function under this Order which relates to the street in question;
- (b) include an agreement between the Company and the street authority specifying a reasonable time for completion of the works;
- (c) provide for the dedication of any new street as public highway further to section 38 (power of highway authorities to adopt by agreement) of the 1980 Act; and
- (d) contain such terms as to payment and otherwise as the parties consider appropriate.

Use of private roads for construction

16.—(1) The Company may use any private road within the Order limits for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of, or in connection with, the construction of the authorised development.

(2) The Company must compensate the person liable for the repair of a road to which paragraph (1) applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred by paragraph (1).

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of such compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Level crossings

17. Once the powers of article 12 have been exercised in relation to Footpath 144 shown on sheet 2 of the rights of way and access plans, the level crossing which forms part of that footpath is closed and discontinued.

Discharge of water

18.—(1) Subject to paragraphs (3) and (4), the Company may use any watercourse, public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the Company under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991 **(a)**.

(3) The Company must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs, whose consent may be given subject to such terms and conditions as that person may reasonably impose.

(4) The Company must not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The Company must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(6) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016**(b)**.

(7) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, an internal drainage board, a joint planning board, a local authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991**(c)**, have the same meaning as in that Act.

Protective works to buildings

19.—(1) Subject to the following provisions of this article, the Company may at its own expense carry out such protective works to any building lying within the Order limits or which may be affected by the authorised development as the Company considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the construction in the vicinity of the building of any part of the authorised development; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised development is first opened for use.

(3) Subject to paragraph (5), for the purpose of determining how the functions under this article are to be exercised the Company may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works to a building under this article the Company may (subject to paragraphs (5) and (6))—

(a) 1991 c.56.
(b) S.I. 2016/1154.
(c) 1991 c.57.

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it),

and if it is reasonably required in either case, the Company may enter and take possession or exclusive possession (in whole or in part) of the building and land for the purpose of carrying out protective works.

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter and take possession of a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter and take possession of land,

the Company must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (5)(c) or (5)(d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question of whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 60 (arbitration).

(7) The Company must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised development constructed in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the construction or use of that part of the authorised development,

the Company must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Without affecting article 40 (no double recovery), nothing in this article relieves the Company from any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act.

(10) Any compensation payable under paragraph (7) or (8) is to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(11) Section 13(a) (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of, land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125(b) (application of compulsory acquisition provisions) of the 2008 Act.

(12) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the construction, maintenance or use of the authorised development;

(a) As amended by sections 62(3) and 139(4)-(9) of, paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 223 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(b) As amended by section 190 of, and paragraph 17 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22).

- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development; and
- (c) any works the purpose of which is to secure the safe operation of the authorised development or to prevent or minimise the risk of such operation being disrupted.

Authority to survey and investigate land

20.—(1) The Company may for the purposes of this Order enter on—

- (a) any land shown within the Order limits; and
- (b) where reasonably necessary, any land which is adjacent to but outside the Order limits, or which may be affected by the authorised development, and—
 - (i) survey or investigate the land;
 - (ii) without limitation to the scope of sub-paragraph (i), make trial holes in such positions on the land as the Company thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
 - (iii) without limitation to the scope of sub-paragraph (i), carry out ecological or archaeological investigations on such land, including making any excavations or trial holes on the land for such purposes;
 - (iv) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes; and
 - (v) enter on the land for the purpose of exercising any of the powers conferred by sub-paragraphs (i) to (iv).

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the Company—

- (a) must, if so required, before or after entering the land, produce written evidence of their authority to do so; and
- (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes are to be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority.

(5) The Company must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

Felling or lopping of trees and removal of hedgerows

21.—(1) The Company may fell or lop any tree or shrub within or overhanging land within the Order limits, or cut back its roots, if the Company reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or

(b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the Company must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(4) The Company may, for the purposes of constructing the authorised development but subject to paragraph (2), remove any hedgerow within the Order limits that is required to be removed.

(5) In this article "hedgerow" has the same meaning as in the Hedgerow Regulations 1997(a).

Works in the river Thames: conditions

22.—(1) Subject to the provisions of this article, during the construction of the authorised development the public right of navigation over any part of the river Thames that is situated within the Order limits may be temporarily suspended with the written approval of the PLA.

(2) Not later than 28 business days prior to the proposed commencement date of any suspension of the public right of navigation, the Company must apply to the PLA for approval under paragraph (1) for such suspension (except in the case of an emergency when the Company must give such notice as is reasonably practicable).

(3) An application for approval under paragraph (2) must provide details of the proposed suspension, including particulars of—

- (a) its commencement date;
- (b) its duration; and
- (c) the affected area,

and must include an explanation of the need for the proposed suspension.

(4) The PLA may in relation to any application for approval made under paragraph (2) impose reasonable conditions for any purpose described in paragraph (5).

(5) Conditions imposed under paragraph (4) may include conditions as to—

- (a) the limits of any area subject to a temporary suspension of the public right of navigation;
- (b) the duration of any temporary suspension;
- (c) the means of marking or otherwise providing warning in the river Thames of any area affected by a temporary suspension of the public right of navigation; and
- (d) the use by the Company of the area subject to any temporary suspension so as not to interfere with any other part of the river Thames or affect its use.

(6) Following an approval of any suspension given by the PLA under this article or determined in accordance with article 60 (arbitration), the PLA must issue a notice to mariners within 12 business days of the approval, giving the commencement date and other particulars of the suspension to which the approval relates, and that suspension will take effect on the date specified and as otherwise described in the notice.

(7) Subject to paragraph (8), an application for approval under this article is deemed to have been refused if it is neither given nor refused within 28 business days of the PLA receiving the application under paragraph (2).

(8) An approval of the PLA under this article is not deemed to have been unreasonably withheld, if approval within the time limited by paragraph (7) has not been given pending the outcome of any consultation on the approval in question that the PLA is obliged to carry out in the proper exercise of its functions.

(a) S.I. 1997/1160.

PART 3

POWERS OF ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Compulsory acquisition of land

23.—(1) The Company may acquire compulsorily so much of the Order land as is required for the authorised development, or to facilitate it, or which is incidental to it.

(2) This article is subject to article 25 (compulsory acquisition of rights), article 26 (acquisition of subsoil or airspace only) and article 32 (temporary use of land for constructing the authorised development).

Time limit for exercise of powers to acquire land compulsorily or to possess land temporarily

24.—(1) After the end of the period of 5 years beginning with the day on which this Order comes into force—

- (a) no notice to treat is to be served under Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act; and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 31 (application of the Compulsory Purchase (Vesting Declarations) Act 1981),

in relation to any part of the Order land.

(2) The authority conferred by article 32 (temporary use of land for constructing the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the Company from remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights

25.—(1) Subject to paragraphs (2) to (3), the Company may acquire such rights over, or impose such restrictive covenants affecting, the Order land as may be required for any purpose for which that land may be acquired under article 23 (compulsory acquisition of land), by creating them as well as acquiring rights already in existence, instead of acquiring the whole of the land.

(2) In the case of—

- (a) the land shown numbered 02/03 and 04/01 on the land, special category land and crown land plans, the Company's powers of compulsory acquisition under article 23 are limited to the acquisition of such wayleaves, easements or other rights over the land, the imposition of restrictive covenants affecting the land or the creation of new rights over the land as the Company may require for or in connection with the authorised development; and
- (b) the land shown numbered 06/02 on the land, special category land and crown land plans, the Company's powers of compulsory acquisition under article 23 are limited to the acquisition of such wayleaves, easements or other rights over the land held otherwise than by or on behalf of the Crown as the Company may require for or in connection with the authorised development.

(3) Subject to section 8 (other provisions as to divided land) of, and Schedule 2A(a) (counter notice requiring purchase of land) to the 1965 Act (as substituted by paragraph 10 of Schedule 5 (modification of compensation and compulsory purchase enactments for the creation of new

(a) As inserted by paragraphs 1 and 3 of Schedule 17 to the Housing and Planning Act 2016 (c. 22).

rights)), where the Company acquires a right over land or the benefit of a restrictive covenant, the Company is not required to acquire a greater interest in that land.

(4) Schedule 5 (modification of compensation and compulsory purchase enactments for the creation of new rights) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

Acquisition of subsoil or airspace only

26.—(1) The Company may acquire compulsorily so much of, or such rights over, the subsoil of and the airspace over the Order land as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the Company acquires any part of, or rights in, the subsoil of or the airspace over any Order land, the Company is not required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil or airspace only—

- (a) Schedule 2A (counter notice requiring purchase of land not in notice to treat) to the 1965 Act;
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) section 153(4A) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

(4) Paragraphs (2) and (3) are to be disregarded where the Company acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory or airspace above a house, building or manufactory.

Private rights over land

27.—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order are extinguished—

- (a) from the date of acquisition of the land by the Company, whether compulsorily or by agreement; or
- (b) on the date of entry onto the land by the Company under section 11(1) (powers of entry) of the 1965 Act,

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right or burden of the restrictive covenant—

- (a) from the date of the acquisition of the right or the benefit of the restrictive covenant being imposed in favour of the Company, whether compulsorily or by agreement; or
- (b) on the date of entry onto the land by the Company under section 11(1) of the 1965 Act (powers of entry); or
- (c) on the commencement of any activity authorised by the Order which interferes with or breaches those rights,

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights over land of which the Company takes temporary possession under this Order are suspended and unenforceable for as long as the Company remains in lawful possession of the land.

(4) Any person who suffers loss by the extinguishment or suspension of any private right or by the imposition of any restrictive covenant under this article is entitled to compensation in

accordance with the terms of section 152 of the 2008 Act, to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) This article does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act applies, or where article 34 (statutory undertakers) applies.

(6) Paragraphs (1) to (3) have effect subject to—

(a) any notice given by the Company before—

(i) the completion of the acquisition of the land or the acquisition of the rights or the imposition of restrictive covenants over or affecting the land;

(ii) the Company's appropriation of it;

(iii) the Company's entry onto it; or

(iv) the Company's taking temporary possession of it,

that any or all of those paragraphs do not apply to any right specified in the notice; and

(b) any agreement made at any time between the Company and the person in or to whom the right in question is vested or belongs.

(7) If any agreement as is referred to in paragraph (6)(b)—

(a) is made with a person in or to whom the right is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(8) References in this article to private rights over land include any right of way, trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support; and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Power to override easements and other rights

28.—(1) Any authorised activity which takes place on land within the Order land (whether the activity is undertaken by the Company or by any person deriving title from the Company or by any contractors, servants or agents of the Company) is authorised by this Order if it is done in accordance with the terms of this Order, notwithstanding that it involves—

(a) an interference with an interest or right to which this article applies; or

(b) a breach of a restriction as to the user of land arising by virtue of a contract.

(2) In this article “authorised activity” means—

(a) the erection, construction, operation or maintenance of any part of the authorised development;

(b) the exercise of any power authorised by this Order; or

(c) the use of any land (including the temporary use of land).

(3) The interests and rights to which this article applies include any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support; and include restrictions as to the user of land arising by the virtue of a contract.

(4) Where an interest, right or restriction is overridden by paragraph (1), compensation—

(a) is payable under section 7 (measure of compensation in case of severance) or 10 (further provision as to compensation for injurious affection) of the 1965 Act; and

(b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—

(i) the compensation is to be estimated in connection with a purchase under that Act; or

- (ii) the injury arises from the execution of works on or use of land acquired under that Act.

(5) Where a person deriving title under the Company by whom the land in question was acquired—

- (a) is liable to pay compensation by virtue of paragraph (4); and
- (b) fails to discharge that liability,

the liability is enforceable against the Company.

(6) Nothing in this article is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1) of this article.

Rights over or under streets

29.—(1) The Company may enter on, appropriate and use so much of the subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised development or for any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the Company may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the Company acquiring any part of that person's interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Modification of Part 1 of the Compulsory Purchase Act 1965

30.—(1) Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1)(a) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 24 (time limit for exercise of powers to acquire land compulsorily or to possess land temporarily) of the Port of Tilbury (Expansion) Order 201[9]”.

(3) In section 11A(b) (powers of entry: further notice of entry)—

- (a) in subsection (1)(a) after “land” insert “under that provision”;
- (b) in subsection (2), after “land” insert “under that provision”.

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article

(a) As inserted by section 202(1) of the Housing and Planning Act 2016 (c.22).

(b) As inserted by section 186(3) of the Housing and Planning Act 2016 (c.22).

24 (time limit for exercise of powers to acquire land compulsorily or to possess land temporarily) of the Port of Tilbury (Expansion) Order 201[9].”

(5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—

(a) for paragraphs 1(2) and 14(2) substitute—

“(2) But see article 26(3) (acquisition of subsoil or airspace only) of the Port of Tilbury (Expansion) Order 201[9], which excludes the acquisition of subsoil or airspace only from this Schedule”; and

(b) after paragraph 29 insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 19 (protective works to buildings), 32 (temporary use of land for constructing the authorised development) or 33 (temporary use of land for maintaining the authorised development) of the Port of Tilbury (Expansion) Order 201[9].”

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

31.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.

(3) In section 1 (application of Act) for subsection (2) substitute—

“(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”

(4) In section 5 (earliest date for execution of declaration), in subsection (2), omit the words from “, and this subsection” to the end.

(5) Omit section 5A(a) (time limit for general vesting declaration).

(6) In section 5B(b) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 118(c) (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 24 of the Port of Tilbury (Expansion) Order 201[9].”

(7) In section 6(d) (notices after execution of declaration), in subsection (1)(b) for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134(e) (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.

(8) In section 7 (constructive notice to treat) in subsection (1)(a), omit the words “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(9) In Schedule A1(f) (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—

“(2) But see article 26(3) (acquisition of subsoil or airspace only) of the Port of Tilbury (Expansion) Order 201[9], which excludes the acquisition of subsoil or airspace only from this Schedule.”

(a) Inserted by section 182(2) of the Housing and Planning Act 2016 (c.22).

(b) As inserted by section 202(2) of Schedule 3 to the Housing and Planning Act 2016 (c.22).

(c) As amended by paragraphs 1 and 59 of Schedule 13, and Part 20 of Schedule 25, to the Localism Act 2011 (c. 20) and section 92(4) of the Criminal Justice and Courts Act 2015 (c. 2).

(d) As amended by paragraph 52(2) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c.11) and paragraph 7 of Schedule 15 to the Housing and Planning Act 2016(c.22).

(e) As amended by section 142 of, and Part 21 of Schedule 25 to, the Localism Act 2011 (c. 20) and S.I. 2017/16.

(f) As inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016 (c.22).

(10) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (as modified by article 30 (modification of Part 1 of the Compulsory Purchase Act 1965)) to the compulsory acquisition of land under this Order.

Temporary possession of land

Temporary use of land for constructing the authorised development

32.—(1) The Company may, in connection with the construction of the authorised development but subject to article 24 (time limit for exercise of powers to acquire land compulsorily or to possess land temporarily)—

- (a) enter on and take temporary possession of—
 - (i) the land specified in column (1) of Schedule 6 (land of which only temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that Schedule relating to the part of the authorised development specified in column (3) of that Schedule; and
 - (ii) any of the Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4(a) (execution of declaration) of the 1981 Act;
- (b) remove any buildings and vegetation from the land referred to in sub-paragraph (a);
- (c) construct temporary works (including the provision of means of access) and buildings on the land referred to in sub-paragraph (a); and
- (d) construct any works on the land referred to in sub-paragraph (a) as are mentioned in Schedule 1 (authorised development).

(2) Not less than 28 days before entering on and taking temporary possession of land under this article the Company must serve notice of the intended entry on the owners and occupiers of the land and that notice must state the period for which temporary possession will be taken and the works, facilities or other purpose for which the Company intends to take possession of the land.

(3) The Company may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of any land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (3) of Schedule 6; or
- (b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the works, use of facilities or other purpose for which temporary possession of the land was taken unless the Company has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the Company must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the Company is not required to—

- (a) replace a building removed under this article;
- (b) restore the land on which any permanent works have been constructed under paragraph (1)(d);
- (c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development; or

(a) As amended by section 184 and 185 of, and paragraphs 1 and 2 of Schedule 18 to, the Housing and Planning Act 2016 (c.22).

(d) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development.

(5) The Company must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(7) Subject to article 40 (no double recovery), nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5).

(8) Where the Company takes possession of land under this article, the Company is not required to acquire the land or any interest in it.

(9) Section 13(a)(refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

Temporary use of land for maintaining the authorised development

33.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any of the authorised development, the Company may—

- (a) enter upon and take temporary possession of any of the land within the Order limits if possession is reasonably required for the purpose of maintaining the authorised development;
- (b) enter on any of the land within the Order limits for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and
- (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the Company to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article the Company must serve notice of the intended entry on the owners and occupiers of the land and that notice must state the period for which temporary possession will be taken and the purpose for which the Company intends to take possession of the land including the particulars of the part of the authorised development for which possession is to be taken.

(4) The Company may only remain in temporary possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which temporary possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the Company must remove all temporary works and temporary buildings and restore the land to the reasonable satisfaction of the owners of the land.

(6) The Company must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(a) As amended by sections 62(3) and 139 of, and paragraph 27 and 28 of Schedule 13, and part 3 of Schedule 23, to, the Tribunals, Courts and Enforcement Act 2007 (c.15).

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) Subject to article 40 (no double recovery), nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the Company takes temporary possession of land under this article, it is not required to acquire the land or any interest in it.

(10) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(11) In this article "the maintenance period", in relation to any part of the authorised development, means the period of 5 years beginning with the date on which that part is first brought into operational use by the Company.

Supplementary

Statutory undertakers

34.—(1) Subject to the provisions of article 25(2) (compulsory acquisition of rights), Schedule 10 (protective provisions) and paragraph (2), the Company may—

- (a) exercise the powers conferred by articles 23 (compulsory acquisition of land) and 25 (compulsory acquisition of rights) in relation to so much of the Order land as belongs to statutory undertakers; and
- (b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers over or within the Order land.

(2) Paragraph (1)(b) has no effect in relation to apparatus in respect of which the following provisions apply—

- (a) Part 3 (street works in England and Wales) of the 1991 Act; or
- (b) article 35 (apparatus and rights of statutory utilities in stopped up streets).

Apparatus and rights of statutory utilities in stopped up streets

35.—(1) Where a street is stopped up under article 12 (permanent stopping up and restriction of use of highways and private means of access), any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 12 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the Company must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, the Company must pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

- (a) the construction of the relocation works required in consequence of the stopping up of the street; and
- (b) the doing of any other work or thing rendered necessary by the construction of the relocation works.

(4) If in the course of the construction of relocation works under paragraph (2)—

- (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the Company, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the construction of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) is to be reduced by the amount of that excess.

(5) For the purposes of paragraph (4)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Paragraphs (3) to (6) do not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 (street works in England and Wales) of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works are to be determined in accordance with section 85 (sharing of cost of necessary measures) of that Act and any regulations for the time being having effect under that section; and
- (b) the allowable costs are to be borne by the Company and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article—

“relocation works” means work constructed, or apparatus provided, under paragraph (2); and

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) (interpretation of chapter 1) of the Communications Act 2003(a).

Recovery of costs of new connection

36.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 34 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the Company compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 34, any person who is—

(a) 2003 c.21.

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the Company compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 35 (apparatus and rights of statutory utilities in stopped up streets) or Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this article—

“public communications provider” has the same meaning as in section 151(1) (interpretation of chapter 1) of the Communications Act 2003; and

“public utility undertaker” means a gas, water, electricity or sewerage undertaker.

Special category land: West Tilbury common land

37.—(1) The Company must not exercise a relevant Order power in respect of the special category land until the Company has acquired the replacement land in the Company’s name, or in the name of the persons who owned the special category land on the date this Order came into force.

(2) At the beginning of the day on which a relevant Order power is first exercised by the Company in respect of the special category land—

- (a) the replacement land vests in the same persons who owned the special category land on the date this Order came into force (if the replacement land is not already owned by those persons) and becomes subject to the same rights, trusts and incidents as attach to the special category land; and
- (b) the special category land is discharged from all rights, trusts and incidents to which it was previously subject.

(3) As soon as reasonably practicable after paragraph (2) takes effect, the Company must apply under section 14 (statutory dispositions) of the Commons Act 2006^(a) and paragraph 8 of Schedule 4 (applications pursuant to section 14: statutory dispositions) to the Commons Registration (England) Regulations 2014^(b) to amend the relevant register of common land accordingly.

(4) In this article—

“relevant Order power” means—

- (a) a power contained in Part 2 (works provisions) (but not including article 20 (authority to survey and investigate land));
- (b) the service of a notice to treat under the 1965 Act or a notice under section 134 of the 2008 Act pursuant to article 23 (compulsory acquisition of land) or article 25 (compulsory acquisition of rights); or
- (c) the entry onto and temporary possession of land under article 32 (temporary use of land for constructing the authorised development);

“the replacement land” means the land numbered 03/04a in the book of reference and shown on the land, special category land and crown land plans;

“rights, trusts and incidents” includes all such provisions contained in the Commons Regulation (West Tilbury) Provisional Order Confirmation Act 1893^(c) or having effect under that Act; and

^(a) 2006 c.26.

^(b) S.I. 2014/3038

^(c) 1893 (56 and 57) Victoria I, c, cii

“the special category land” means the land identified as forming part of registered common land and numbered 03/08 and 03/11 in the book of reference and shown on the land, special category land and crown land plans.

Compensation

Disregard of certain interests and improvements

38.—(1) In assessing the compensation payable to any person on the acquisition from that person of any land or right over any land under this Order, the tribunal must not take into account—

- (a) any interest in land; or
- (b) any enhancement of the value of any interest in land by reason of any building erected, works executed or improvement or alteration made on relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the construction of the works or the making of the improvement or alteration was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(2) In paragraph (1) “relevant land” means the land acquired from the person concerned or any other land with which that person is, or was at the time when the building was erected, the works constructed or the improvement or alteration made as part of the authorised development, directly or indirectly concerned.

Set-off for enhancement in value of retained land

39.—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal must set off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity which will accrue to that person by reason of the construction of the authorised development.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 25 (compulsory acquisition of rights), the tribunal must set off against the value of the rights so acquired—

- (a) any increase in the value of the land over which the new rights are required; and
- (b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity,

which will accrue to that person by reason of the construction of the authorised development.

(3) The 1961 Act has effect, subject to paragraphs (1) and (2), as if this Order were a local enactment for the purposes of that Act.

No double recovery

40. Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law, or under two or more different provisions of this Order.

PART 4

OPERATIONAL PROVISIONS

Maintenance of the authorised development and operation of the Company’s harbour undertaking

41.—(1) The Company may—

- (a) maintain the authorised development; and

(b) operate it as part of its harbour undertaking within the extended port limits.

(2) For the purposes of operating its harbour undertaking within the extended port limits, the Company may—

- (a) within the extended port limits (other than those parts of the river Thames situated within the extended port limits), construct and maintain roads, railway lines, buildings, sheds, offices, workshops, depots, walls, foundations, fences, gates, tanks, pumps, conduits, pipes, drains, wires, mains, cables, electrical substations, signals, conveyors, cranes, container handling equipment, lifts, hoists, lighting columns, weighbridges, stairs, ladders, stages, platforms, catwalks, equipment, machinery and appliances;
- (b) without limitation on the scope of sub-paragraph (a), within the extended port limits construct, carry out and maintain such other works as may be necessary or convenient for the purposes of, or in connection with or in consequence of, the maintenance, operation or use of the Company's harbour undertaking, including—
 - (i) works to divert, remove or replace apparatus, including mains, sewers, drains, pipes, conduits, cables, electrical substations and electrical lines; and
 - (ii) landscaping and other works to mitigate any adverse effect of the maintenance, operation or use of the Company's harbour undertaking or to benefit or protect any person or premises affected by the maintenance, operation or use of the Company's harbour undertaking;
- (c) within the parts of the river Thames situated within the extended port limits construct and maintain such other works as may be necessary or convenient for the purposes of, or in connection with or in consequence of, the maintenance, operation or use of the Company's harbour undertaking, including works for the accommodation or convenience of vessels (including but not limited to berthing and mooring facilities, ladders, buoys, bollards, dolphins, fenders, rubbing strips and fender panels, fender units and pontoons); and
- (d) construct works and carry out development of whatever nature, as may be necessary or expedient for the purposes of, or for purposes associated with or ancillary to, the maintenance, operation or use of the Company's harbour undertaking.

(3) This article does not authorise any works which are likely to give rise to any significant adverse effects that have not been assessed in the environmental statement.

Power to appropriate

42.—(1) Regardless of anything in section 6 (public access to port premises) of the 1968 Act or any other enactment, the Company may from time to time set apart and appropriate any part of the authorised development comprised in the extended port limits for the exclusive or preferential use and accommodation of any trade, person, vessel or goods or any class of trader, vessel or goods, subject to the payment of such charges and to such terms, conditions and regulations as the Company may think fit.

(2) No person or vessel may make use of any part of the authorised development comprised in the extended port limits so set apart or appropriated without the consent of the Company, and the Company Harbour Master may order any person or vessel making use of the authorised development comprised in the extended port limits without such consent to leave or be removed.

Powers to dredge

43.—(1) The Company may dredge, deepen, scour, cleanse, alter and improve the river bed and foreshore within any part of the Order limits situated within the river Thames as may be required for the purpose of maintaining and operating the authorised development, but only to the depth shown on the limits of dredging plan.

(2) All materials dredged up or removed by the Company in exercise of the powers of paragraph (1) of this article or under Schedule 1 (authorised development) to this Order (other than wreck within the meaning of Part IX (salvage and wreck) of the Merchant Shipping Act 1995^(a)) are to be the property of the Company and may be used, sold, deposited or otherwise disposed of as the Company thinks fit.

(3) No materials dredged under the powers of this Order may be disposed of in the UK marine area except in accordance with an approval from—

- (a) the MMO under the deemed marine licence or under any other marine licence granted by the MMO; and
- (b) the PLA under Part 3 (for the protection of the Port of London Authority) of Schedule 10, where such disposal is on the bed of the river Thames.

(4) The exercise of the powers of this article is subject to the requirements of Schedule 10 (protective provisions) as to the PLA's approval of dredging proposals and the payment of compensation for dredged material.

(5) In respect of any activities falling within paragraph (1), this Order is deemed to be 'legislation' falling within section 75(3) (exemptions for certain dredging etc. activities) of the 2009 Act.

Power to operate and use railways

44.—(1) The Company, or any person permitted by the Company, may operate and use the railways comprised in the authorised development together with any ancillary works as a system, or part of a system, for the carriage of goods.

(2) The Company may enter into agreements with Network Rail and the Office of Rail and Road in connection with the construction, operation and use of the railways comprised in the authorised development.

Byelaws relating to the extended port limits

45.—(1) The byelaws contained in Schedule 7 (port premises byelaws – the Port of Tilbury (Expansion) Byelaws 201[9]) have effect in relation to the extended port limits from such date as the Company may determine and for the purposes of section 168 (confirmation of byelaws) of the 1968 Act are to be treated as byelaws made by the Company under section 161 (byelaws for port premises) of the 1968 Act and subsequently confirmed on the date this Order comes into force.

(2) The byelaws contained in Schedule 7 continue to have effect until such time as they are amended or revoked by further byelaws made by the Company under section 161 (byelaws for port premises) of the 1968 Act.

(3) The Company must publish a notice in *The London Gazette* of the date determined under paragraph (1).

(4) Byelaws made under section 161 (byelaws for port premises) of the 1968 Act are enforceable by the Company and any authorised officer.

(5) The Company must not make any byelaw under section 161 (byelaws for port premises) of the 1968 Act so as to conflict with any byelaw made by the PLA, or with any general direction to vessels given by the PLA or the PLA Harbour Master acting under any enactment.

(6) In the case of conflict between—

- (a) a byelaw made by the Company; and
- (b) a byelaw made, or direction given, by the PLA or the PLA Harbour Master,

the byelaw or direction of the PLA or of the PLA Harbour Master will prevail.

(a) 1995 c.21

Fixed penalty notices

46.—(1) This article applies where it appears to an authorised officer that a person has committed an offence under byelaws made under section 161 (byelaws for port premises) of the 1968 Act.

(2) The authorised officer may serve on that person a fixed penalty notice in respect of the offence.

(3) Where a person is given a fixed penalty notice under this article in respect of an offence —

- (a) no proceedings may be instituted for that offence before the expiration of 14 days after the date of the notice; and
- (b) that person may not be convicted of the offence if the fixed penalty is paid before the expiration of 14 days after the date of the notice.

(4) A fixed penalty notice must state—

- (a) the amount of the fixed penalty;
- (b) particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence;
- (c) the time by which and the manner (including the number to be used for payments by credit or debit card) in which the fixed penalty must be paid; and
- (d) that proceedings may be instituted if payment is not made within the time specified in the fixed penalty notice.

(5) The amount of the fixed penalty is—

- (a) one fifth of the maximum amount of the fine to which the person to whom the fixed penalty notice is issued would be liable on summary conviction provided that person pays the fixed penalty in full within 7 days of issue of the fixed penalty notice; or
- (b) one half of the maximum amount of the fine to which the person to whom the fixed penalty notice is issued would be liable on summary conviction.

(6) An authorised officer may require a person to whom this article applies to pay a deposit of one tenth of the maximum amount of the fine to which a person may be liable under level 3 on the standard scale on accepting a fixed penalty notice if that person fails to provide, when requested, a residential address in the United Kingdom.

(7) Payment of the deposit must be made—

- (a) in person to the authorised officer by cash, credit or debit card, if the authorised officer has the necessary means to accept payment in that manner;
- (b) by telephone by credit or debit card to the number stipulated in the fixed penalty notice for making payments; or
- (c) by App.

(8) The Company must apply the deposit towards payment of the fixed penalty.

(9) In any proceedings a certificate which—

- (a) purports to be signed on behalf of the chief finance officer of the Company; and
- (b) states that payment of a fixed penalty was or was not received by a date specified in the certificate, is evidence of the facts stated.

(10) In this article—

“App” means a software application for use on an electronic device which provides for payment by credit or debit card and which is provided by the Company for that purpose;

“credit card” means a card or similar thing issued to any person, use of which enables the holder to defer payment of the deposit;

“debit card” means a card or similar thing issued by any person, use of which causes the deposit to be paid by the electronic transfer of funds from any current account of the holder at a bank or other institution providing banking facilities; and

“fixed penalty notice” means a notice offering the opportunity of the discharge of liability to conviction of an offence under byelaws made under section 161 of the 1968 Act.

Planning legislation

47.—(1) Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as operational land for the purposes of that Act) of the 1990 Act.

(2) It does not constitute a breach of the terms of this Order if, following the coming into force of this Order, any development, or any part of a development, is carried out or used within the Order limits in accordance with any planning permission granted under the 1990 Act (including a planning permission granted under article 3 (permitted development) and Class B (dock, pier, harbour, water transport, canal or inland navigation undertakings) of Part 8 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015(a)).

Application of landlord and tenant law

48.—(1) This article applies to any agreement entered into by the Company under article 51 (consent to transfer of benefit of Order) so far as it relates to the terms on which any land is subject to a lease granted by or under that agreement.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) No enactment or rule of law to which paragraph (2) applies is to apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Defence to proceedings in respect of statutory nuisance

49.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(b) in relation to a nuisance falling within paragraph (g) of section 79(1) (noise emitted from premises so as to be prejudicial to health or a nuisance) of that Act no order is to be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the Company for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) of the 1974 Act;
 - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or

(a) S.I. 2015/596

(b) 1990 c.43; there are amendments that are not relevant to this Order.

- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) of the 1974 Act does not apply where the consent relates to the use of premises by the Company for the purposes of or in connection with the construction or maintenance of the authorised development.

PART 5

MISCELLANEOUS AND GENERAL

Benefit of Order

50. Subject to article 51 (consent to transfer benefit of Order), the provisions of this Order have effect solely for the benefit of the Company.

Consent to transfer benefit of Order

51.—(1) Subject to the provisions of this Order the Company may, with the written consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order (including the deemed marine licence) and such related rights as may be agreed between the Company and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the Company and the lessee any or all of the benefit of the provisions of this Order (including the deemed marine licence) and such related rights as may be so agreed.

(2) The powers conferred by paragraph (1)(a) may only be exercised by the Company or a transferee.

(3) A lessee (‘the granting lessee’) may not make a grant under paragraph (1)(b)—

- (a) for a longer period than the period of the grant to the granting lessee; or
- (b) conferring any benefit or right that is not conferred by the grant to the granting lessee.

(4) Where an agreement has been made in accordance with paragraph (1), references in this Order to the Company, except in paragraphs (2) and (5), include references to the transferee or the lessee.

(5) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the Company.

(6) Before giving consent under this article, the Secretary of State must consult the PLA, National Grid, Cadent and such other parties as the Secretary of State considers appropriate.

(7) The Company must within 10 business days after entering into an agreement under paragraph (1) in relation to which any of the benefit of the deemed marine licence is transferred to another party, notify the PLA, the Environment Agency and the MMO in writing, and the notice must include particulars of the other party to the agreement under paragraph (1) and details of the extent, nature and scope of the functions transferred or otherwise dealt with which relate to the functions of any of those bodies.

Traffic regulation measures

52.—(1) Subject to the provisions of this article, the Company may, for the purposes of the authorised development—

- (a) make provision, in respect of those roads specified in column (1) of Part 1 of Schedule 8 (traffic regulation measures, etc.), as to the speed limits of those roads as specified in column (2) of that Part of that Schedule;

- (b) make provision, in respect of those roads specified in column (1) of Part 2 of Schedule 8, as to the clearway status of, and the application of other prohibitions to, those roads as specified in column (2) of that Part of that Schedule; and
- (c) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act in so far as it is inconsistent with any prohibition, restriction or other provision made by the Company under this paragraph.

(2) No speed limit imposed by or under this Order applies to vehicles falling within regulation 3(4) (regulations in relation to orders and notices under the 1984 Act) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011(a) when used in accordance with regulation 3(5) of those regulations.

(3) Without limiting the scope of the specific powers conferred by paragraph (1) but subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, the Company may, in so far as necessary or expedient for the purposes of, in connection with, or in consequence of the construction, maintenance and operation of the authorised development—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;
- (c) authorise the use as a parking place of any road;
- (d) make provision as to the direction or priority of vehicular traffic on any road; and
- (e) permit or prohibit vehicular access to any road,

either at all times or at times, on days or during such periods as may be specified by the Company.

(4) The power conferred by paragraph (3) may be exercised at any time prior to the expiry of 24 months from the opening of Work No.3 for operational use but subject to paragraph (7) any prohibition, restriction or other provision made under paragraph (3) may have effect both before and after the expiry of that period.

(5) The Company must not exercise the powers conferred by paragraph (1) or (3) unless the Company has—

- (a) given not less than—
 - (i) 12 weeks' notice in writing of the Company's intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or
 - (ii) 4 weeks' notice in writing of the Company's intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily,
 to the chief officer of police and to the traffic authority in whose area the road is situated and that notice must include the time periods within which the traffic authority may specify the manner in which, under sub-paragraph (b), the Company must advertise its intention to exercise the powers conferred by paragraph (1) or (3); and
- (b) advertised the Company's intention in such manner as the traffic authority may specify in writing within 28 days of its receipt of notice of the Company's intention in the case of sub-paragraph (a)(i), or within 7 days of its receipt of notice of the Company's intention in the case of sub-paragraph (a)(ii).

(6) Any prohibition, restriction or other provision made by the Company under paragraph (1) or (3)—

- (a) has effect as if duly made by, as the case may be—
 - (i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or

(a) 2004 c.18.

- (ii) the local authority in whose area the road is situated, as an order under section 32 (power of local authorities to provide parking places) of the 1984 Act, and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject;
 - (b) is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the 2004 Act; and
 - (c) must be advertised in the same manner as the Company's intention to make the prohibition, restriction or other provision was under paragraph (5)(b).
- (7) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the Company from time to time by subsequent exercise of the powers conferred by paragraph (1) or (3) within a period of 24 months from the opening of the authorised development for operational use.
- (8) Before exercising the powers conferred by paragraphs (1) or (3) the Company must consult such persons as the Company considers necessary and appropriate and have regard to the representations made to the Company by any such person.
- (9) An order made under paragraph (3)(a) may be varied or revoked by an order made by the highway authority under the 1984 Act.
- (10) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.

Deemed marine licence

53. The Company is granted a deemed marine licence under Part 4 (marine licensing) of the 2009 Act to carry out the activities specified in Part 1 of Schedule 9 (deemed marine licence), subject to the licence conditions set out in Part 2 of that Schedule.

Protective provisions

54. Schedule 10 (protective provisions) has effect.

Saving for Trinity House

55. Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

Crown Rights

56.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any licensee to use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (a) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or
- (c) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.

(3) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and is deemed to have been given in writing where it is sent electronically.

Consents, agreements and approvals

57.—(1) Where any application is made to a relevant authority, the consent, agreement, certification or approval concerned must, if given, be given in writing and is not to be unreasonably withheld or delayed.

(2) If a relevant authority which has received an application fails to notify the Company of its decision before the end of the period of 28 days beginning with the date on which the application was received, the relevant authority is deemed to have given its consent, agreement or approval, as the case may be.

(3) Any application to which this article applies must include a written statement that the provisions of paragraph (2) apply to that application.

(4) If before this Order comes into force the Company or any other person has taken any step in relation to an application to which this article applies, that step may be taken into account to determine whether the consent, agreement, certification or approval concerned should be granted provided that step would have been a valid step for the purpose of the application if it had been taken after this Order came into force.

(5) Where any application is made to a relevant authority and the application includes submissions relating to the discharge of an obligation under Part 3 of Schedule 10 (protective provisions) at the same time, paragraph (2) does not apply to that application.

(6) In this article—

“application” means an application or request for any consent, agreement, certification or approval required or contemplated by articles 8 (street works), 10 (construction and maintenance of new, altered or diverted streets), 13 (temporary stopping up and restriction of use of streets), 14 (access to works), 18 (discharge of water), 20 (authority to survey and investigate land) and 52 (traffic regulation measures); and

“relevant authority” means the owner of a watercourse, public sewer or drain, a local authority, a traffic authority, a highway authority or a street authority.

Certification of documents

58.—(1) As soon as practicable after the making of this Order, the Company must submit copies of each of the plans and documents set out in Schedule 11 (documents to be certified) to the Secretary of State for certification that they are true copies of those plans and documents.

(2) Where any plan or document set out in Schedule 11 (documents to be certified) requires to be amended to reflect the terms of the Secretary of State’s decision to make this Order, that plan or document in the form amended to the Secretary of State’s satisfaction is the version of the document required to be submitted for certification under paragraph (1).

(3) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

(4) The Company must, following certification of the plans and documents in accordance with paragraph (1), make those plans and documents available in electronic form for inspection by members of the public.

Service of notices

59.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

(a) by post;

(b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or

(c) with the consent of the recipient and subject to paragraphs (5) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978^(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

(a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and

(b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

(a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and

(b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is taken to be fulfilled only where—

(a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;

(b) the notice or document is capable of being accessed by the recipient;

(c) the notice or document is legible in all material respects; and

(d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

(a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and

(b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article must not be taken to exclude the employment of any method of service not expressly provided for by it.

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

(a) 1978 c.30.

Arbitration

60. Except where otherwise expressly provided for in this Order and unless otherwise agreed in writing between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

Signed by authority of the Secretary of State for Transport

Address
Date

Signature
Title
Department for Transport

SCHEDULES

SCHEDULE 1

Articles 2 and 6

AUTHORISED DEVELOPMENT

In the area of Thurrock Council and within the Order limits—

Nationally Significant Infrastructure Project

Work No. 1 – as shown on sheet 3 of the works plans being the construction of a Roll on Roll off berth on the river Thames comprising—

- (a) the construction of dolphins in the river bed with associated fenders and walkways;
- (b) the construction of a floating pontoon with associated restraint structures;
- (c) the construction of structures and buildings on the floating pontoon;
- (d) the construction of an approach bridge with abutments, with a roadway, footway and wind barrier on the surface of the bridge;
- (e) the construction of a linkspan bridge between the floating pontoon and the approach bridge, with a roadway, footway and wind barrier on the surface of the bridge;
- (f) the construction of a surface water outfall;
- (g) the alteration, renovation and renewal of the existing river jetty and its associated structures including fenders and piles;
- (h) the alteration and renewal of an existing flood defence;
- (i) the removal of the existing jetty known as the Anglian Water jetty and its associated structures;
- (j) related dredging works within the river Thames for the above; and
- (k) piling works and construction operations (including piling and scour preventative and remedial works) within the river Thames.

Work No. 2 – as shown on sheet 3 of the works plans being the construction of a Construction Materials and Aggregates Terminal (CMAT) berth on the river Thames comprising—

- (a) the construction of dolphins in the river bed with associated fenders and walkways;
- (b) the construction of a conveyor hopper and supporting structures on the river bed;
- (c) the installation of pipework on the existing river jetty and connections to Work No. 8A;
- (d) the construction of a conveyor and supporting structures in the river bed;
- (e) the alteration, renovation and renewal of the existing river jetty and its associated structures including fenders and piles;
- (f) related dredging works within the river Thames for the above; and
- (g) piling works and construction operations (including piling and scour preventative and remedial works) within the river Thames.

Associated Development

Work No. 3 – as shown on sheets 2 and 3 of the works plans being the construction of a Roll on Roll off terminal comprising—

- (a) the filling of land for port facilities, port surfacing and port infrastructure with associated civil works, earth works and service works;
- (b) the construction of rail sidings and associated rail infrastructure;

- (c) the laying out of vehicular, cyclist and pedestrian roads and routes including a connection to Work No. 1(d);
- (d) the construction of ancillary buildings, including staff welfare and operational facilities;
- (e) the construction of site lighting infrastructure, including lighting columns;
- (f) the demolition of existing buildings; and
- (g) the installation of above ground and underground drainage infrastructure, including a pumping station.

Work No. 4 – as shown on sheets 1 and 2 of the works plans and being the construction and laying out of vehicular, cyclist and pedestrian roads and routes for the Roll on Roll off terminal and the construction materials and aggregates terminal comprising—

- (a) the demolition of existing buildings;
- (b) the construction of private means of accesses to land;
- (c) the construction of a gatehouse and associated infrastructure; and
- (d) the construction of a 3 metre high noise barrier.

Work No. 5 – as shown on sheet 2 of the works plans and being the construction of an operational compound for the for the Roll on Roll off terminal and the CMAT comprising—

- (a) the filling of land for port facilities, port surfacing and port infrastructure with associated civil works, earth works and service works;
- (b) the construction of car parking facilities;
- (c) the construction of ancillary buildings including staff welfare facilities; and
- (d) the demolition of existing buildings.

Work No. 6 – as shown on sheets 1 and 2 of the works plans and being the construction and laying out of storage areas comprising—

- (a) the filling of land for port facilities, port surfacing and port infrastructure with associated civil works, earth works and service works; and
- (b) the construction of a railway line and associated railway infrastructure.

Work No. 7 – as shown on drawing sheet 3 of the works plans being the construction of a warehouse comprising—

- (a) the filling of land for port facilities, port surfacing and port infrastructure with associated civil works, earth works and service works;
- (b) the construction of a warehouse;
- (c) the construction of a railway line, rail sidings and associated rail infrastructure (to the extent that the location of Work No. 3 overlaps with the location of this Work No. 7);
- (d) the laying out of vehicular, cycling and pedestrian roads and routes; and
- (e) the construction of site lighting infrastructure, including lighting columns.

Work No. 8 – as shown on drawings sheets 2 and 3 of the works plans being the construction of a construction materials aggregates terminal comprising—

- (a) Work No. 8A
 - (i) the construction of silo facilities and associated piping and pumping infrastructure and road tanker loading facilities;
 - (ii) the construction of weighbridges;
 - (iii) the construction of a railway line, rail sidings and associated rail infrastructure (to the extent that the location of Work No. 3 overlaps with the location of this Work No. 8A);
 - (iv) the construction and laying out of vehicular roads and routes; and

- (v) the filling of land for port facilities, port surfacing and port infrastructure with associated civil works, earth works and service works.
- (b) Work No. 8B
 - (i) the filling of land for port facilities, port surfacing and port infrastructure with associated civil works, earth works and service works;
 - (ii) the construction of a railway line, rail sidings and associated rail infrastructure (to the extent that the location of Work No. 3 overlaps with the location of this Work No. 8B);
 - (iii) the construction of site lighting infrastructure, including lighting columns;
 - (iv) the construction of a conveyor and supporting structures; and
 - (v) the construction and laying out of vehicular roads and routes.
- (c) Work No. 8C
 - (i) the filling of land for port facilities, port surfacing and port infrastructure with associated civil works, earth works and service works;
 - (ii) the construction of an aggregate storage yard;
 - (iii) the construction of a railway line, rail sidings and associated rail infrastructure;
 - (iv) the construction of a conveying system and supporting structures; and
 - (v) the construction and laying out of vehicular and pedestrian access routes and roads.
- (d) Work No. 8D
 - (i) the filling of land for port facilities, port surfacing and port infrastructure with associated civil works, earth works and service works;
 - (ii) the construction of an aggregate storage yard;
 - (iii) the construction of construction materials and aggregate processing facilities including associated buildings and infrastructure;
 - (iv) the construction of a railway line, rail sidings and associated rail infrastructure (to the extent that the location of work No.8C overlaps with the location of this Work No.8D); and
 - (v) the construction and laying out of vehicular and pedestrian access routes and roads.

Work No. 9 – as shown on sheet 1 of the works plans being the construction of a new highway from Ferry Road to a point 190 metres south-west of the centrepont of the existing Fort Road bridge over the London to Tilbury railway line comprising—

- (a) Work No. 9A
 - (i) the construction of a new single lane two way highway approximately 1250 metres in length from a point on St Andrew’s Road approximately 1460 metres from the centrepont of the Asda Roundabout to a point approximately 190 metres southwest of the centrepont of the existing Fort Road bridge over the London to Tilbury railway line;
 - (ii) the construction of a new junction with a new highway as shown on sheet 2 of the rights of way and access plans at a point approximately 1700 metres southeast of the centre point of the existing Asda roundabout constructed pursuant to Work No. 9B;
 - (iii) the construction of a new junction with a new highway as shown on sheet 1 of the rights of way and access plans at a point approximately 275 metres southwest of the centre point of the existing bridge that carries Fort Road over the London to Tilbury railway line constructed pursuant to Work No. 9C;
 - (iv) the improvement of the existing highway known as St Andrew’s Road for a length of approximately 150 metres;
 - (v) the construction of a 3 metre high noise barrier;

- (vi) the construction of private means of accesses to land as shown for illustrative purposes on sheet 2 of the rights of way and access plans;
 - (vii) the construction of a footway and cycleway;
 - (viii) the demolition of existing buildings;
 - (ix) works to alter the course of, or otherwise interfere with, a watercourse other than a navigable watercourse; and
 - (x) works to alter the position of apparatus, including mains, sewers, drains and cables.
- (b) Work No. 9B
- (i) the construction of a new highway approximately 165 metres in length from a junction with a St Andrew's Road at a point approximately 1825 metres southeast of the centre point of the roundabout known as the Asda roundabout to a point approximately 1700 metres southeast of the of the centre point of the roundabout known as the Asda roundabout; and
 - (ii) the construction of a cycleway.
- (c) Work No. 9C
- (i) the construction of a new highway approximately 100 metres in length from a point on the existing Fort Road approximately 290 metres south-southwest of the centre point of the existing bridge that carries Fort Road over the London to Tilbury railway line to a point on the existing Fort Road, approximately 280 metres southwest of the centrepont of the existing bridge that carries Fort Road over the London to Tilbury railway line;
 - (ii) the construction of a new junction with Fort Road as shown on sheet 1 of the works plans at a point approximately 290 metres south-southwest of the centrepont of the existing bridge that carries Fort Road over the London to Tilbury railway line;
 - (iii) the construction of a private means of access to land as shown for illustrative purposes on sheet 2 of the rights of way and access plans; and
 - (iv) the construction of a cycleway.

Work No. 10 – as shown on sheet 1 of the works plans being the construction of a road overbridge at Fort Road comprising—

- (a) the construction of a new bridge over new highway and new railway (Work No. 9A and Work No. 12) tying into the existing bridge over the London to Tilbury railway line;
- (b) the construction of a new length of highway of approximately 330 metres in length, from a point 330 metres south-southeast of the centre point of the existing bridge that carries Fort Road over the London to Tilbury railway line to the centre point of the existing bridge that carries Fort Road over the London to Tilbury railway line;
- (c) the construction of a cycleway;
- (d) works to alter the course of, or otherwise interfere with, a watercourse other than a navigable watercourse;
- (e) works to alter the position of apparatus, including mains, sewers, drains and cables; and
- (f) the improvement of existing highway known as Fort Road including markings to indicate a mini-roundabout.

Work No. 11 – as shown on sheet 1 of the works plans being the improvement of a highway known as the Asda Roundabout.

Work No. 12 – as shown on sheet 1 of the works plans being the construction of a rail line from a point approximately 95 metres southeast of the existing connection of the rail sidings known as the Riverside Sidings to the London to Tilbury railway line to a point approximately 35 metres south of the centrepont of the existing Fort Road bridge over the London to Tilbury railway line comprising—

- (a) the construction of a railway line, passing loop and associated rail infrastructure of approximately 1325 metres in length from the existing siding off of the London to Tilbury railway line to Work No. 6;
- (b) the construction of a 1.5 metre high noise barrier;
- (c) the construction of private means of accesses to land;
- (d) the demolition of existing buildings;
- (e) works to alter the course of, or otherwise interfere with, a watercourse other than a navigable watercourse; and
- (f) works to alter the position of apparatus, including mains, sewers, drains and cables.

Ancillary Works

For the purposes of or in connection with the construction of any of the works and other development mentioned above, ancillary or related development which does not give rise to any significant adverse effects that have not been assessed in the environmental statement, being development consisting of—

works within highways, comprising—

- (a) alteration of the layout of any street permanently or temporarily, including increasing the width of the carriageway of any street by reducing the width of any kerb, footway, cycleway, or verge within the street; and altering the level or increasing the width of any such kerb, footway, cycleway or verge within the street, works for the strengthening, improvement, repair, maintenance or reconstruction of any street;
- (b) street works, including breaking up or opening a street, or any sewer, drain or tunnel under it, and tunnelling or boring under a street;
- (c) relocation or provision of new road traffic signs, signals, street lighting and carriageway lane markings; and
- (d) works to place, alter, remove or maintain street furniture or apparatus (including statutory undertakers' apparatus) in, under or above a street, including mains, sewers, drains, pipes, cables, cofferdams, lights, fencing and other boundary treatments;

works within the river Thames situated within the Order limits to—

- (e) alter, clean, modify, dismantle, refurbish, reconstruct, remove, relocate or replace any work or structure (including river walls);
- (f) carry out excavations and clearance, deepening, scouring, cleansing, dumping and pumping operations;
- (g) use, appropriate, sell, deposit or otherwise dispose of any materials (including liquids but excluding any wreck within the meaning of the Merchant Shipping Act 1995(a)) obtained in carrying out any such operations;
- (h) remove and relocate any vessel or structure sunk, stranded, abandoned, moored or left (whether lawfully or not);
- (i) temporarily remove, alter, strengthen, interfere with, occupy and use the banks, bed, foreshore, waters and walls of the river; and
- (j) construct, place and maintain works and structures including piled fenders, protection piles and cofferdams;

other works and development—

- (k) for the strengthening, alteration or demolition of any building;
- (l) to place, alter, divert, relocate, protect, remove or maintain services, plant and other apparatus and equipment belonging to statutory undertakers, utility companies and others

(a) 1995 c.21

- in, under or above land, including mains, sewers, drains, pipes, cables, lights, cofferdams, fencing and other boundary treatments including bollards and security cameras;
- (m) ramps, steps, footpaths, footways, cycle tracks, cycleways, bridleways, equestrian tracks, non-motorised user routes or links, byways open to all traffic and crossing facilities;
 - (n) embankments, viaducts, bridges, aprons, abutments, shafts, foundations, retaining walls, drainage works, outfalls, pollution control devices, pumping stations, culverts, wing walls, fire suppression system water tanks and associated plant and equipment, highway lighting and fencing;
 - (o) settlement mitigation measures for the benefit or protection of, or in relation to, any land, building or structure, including monitoring and safeguarding of existing infrastructure, utilities and services affected by the authorised development;
 - (p) to alter the course of, or otherwise interfere with, navigable or non-navigable watercourses;
 - (q) landscaping, noise barriers, works associated with the provision of ecological mitigation, and other works to mitigate any adverse effects of the construction, operation or maintenance of the authorised development;
 - (r) areas of hard or soft landscaping works, or public realm, at various locations adjacent to the proposed highway and associated works;
 - (s) site preparation works, site clearance (including fencing and other boundary treatments, vegetation removal, works of demolition, including demolition of existing structures, and the creation of alternative highways or footpaths) and earthworks (including soil stripping and storage and site levelling);
 - (t) construction compounds and working sites, temporary structures, storage areas (including storage of spoil and other materials), temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction-related buildings, temporary worker accommodation facilities, welfare facilities, office facilities, other ancillary accommodation, construction lighting, haulage roads and other buildings, machinery, apparatus, works and conveniences;
 - (u) service compounds, plant and equipment rooms, offices, staff mess rooms, welfare facilities, and other ancillary and administrative accommodation;
 - (v) for the benefit or protection of the authorised development;
 - (w) within the Order limits (other than the parts of the river Thames situated within the extended port limits) roads, railway lines, buildings, sheds, offices, workshops, depots, walls, foundations, fences, gates, tanks, pumps, conduits, pipes, drains, wires, mains, cables, electrical substations, signals, conveyors, cranes, container handling equipment, lifts, hoists, lighting columns, weighbridges, stairs, ladders, stages, platforms, catwalks, equipment, machinery and appliances and such other works and conveniences as may be necessary or expedient; and
 - (x) of whatever nature, as may be necessary or expedient for the purposes of, or for purposes associated with or ancillary to, the construction of the authorised development.

SCHEDULE 2 REQUIREMENTS

Article 6

PART 1 REQUIREMENTS

Interpretation

1. In this Part of this Schedule—

“AOD” means above ordnance datum (Newlyn);

“the bird monitoring and action plan” means the document of that description in Schedule 11 certified by the Secretary of State as the bird monitoring and action plan for the purposes of this Order;

“the construction environmental management plan” means the document of that description in Schedule 11 certified by the Secretary of State as the construction environmental management plan for the purposes of this Order;

“the drainage strategy” means the drainage strategy contained in appendix 16.E of the environmental statement;

“the ecological mitigation and compensation plan” means the document of that description set out in Schedule 11 certified by Secretary of State as the ecological mitigation and compensation plan for the purposes of this Order;

“the flood risk assessments” means the level 2 flood risk assessment, the level 3 flood risk assessment and the level 3 flood risk assessment addendum;

“the level 2 flood risk assessment” means the level 2 flood risk assessment contained in appendix 16.A of the environmental statement;

“the level 3 flood risk assessment” means the level 3 flood risk assessment contained in appendix 16.B of the environmental statement;

“the level 3 flood risk assessment addendum” means the document of that description set out in Schedule 11 certified by the Secretary of State as the level 3 flood risk assessment addendum for the purposes of this Order;

“the framework travel plan” means the framework travel plan contained in document reference v2 [PoTLL/T2/EX/140], appendix 13.B of the environmental statement;

“the landscape and ecological management plan” means the landscape and ecological management plan contained in document reference v3 [PoTLL/T2/EX/177], appendix 10.P of the environmental statement;

“the navigational risk assessment” means the navigational risk assessment contained in appendix 14.A of the environmental statement;

“the operational community engagement plan” means the document of that description set out in Schedule 11 certified by the Secretary of State as the operational community engagement plan for the purposes of this Order;

“the operational management plan” means the document of that description set out in Schedule 11 certified by the Secretary of State as the operational management plan for the purposes of this Order;

“the preliminary lighting strategy and impact assessment” means the preliminary lighting strategy and impact assessment contained in appendix 9.J of the environmental statement;

“the requirement 3 colour palette” means the document of that description set out in Schedule 11 certified by the Secretary of State as the requirement 3 colour palette for the purposes of this Order;

“the sustainable distribution plan” means the sustainable distribution plan contained in document reference v2 [PoTLL/T2/EX/142], appendix 13.C of the environmental statement; and

“the terrestrial written scheme of investigation” means the written scheme of investigation for terrestrial archaeological mitigation contained in document reference v3 [PoTLL/T2/EX/104], appendix 12.D of the environmental statement.

Time limit for commencement of the authorised development

2. The authorised development must commence within 5 years of the date on which this Order comes into force.

External appearance and height of the authorised development

3.—(1) Construction of—

- (a) the proposed ancillary buildings constructed as part of Work No 3(d);
- (b) the proposed ancillary buildings constructed as part of Work No. 5(c);
- (c) the proposed warehouse constructed as part of Work No. 7(b);
- (d) any silo facilities constructed as part of Work No. 8A(i);
- (e) any processing facilities constructed as part of Work No. 8D(iii); and
- (f) any fencing constructed as part of Work Nos. 9 or 12,

must not commence until the details of the external materials to be used in the construction of those works have been submitted to and approved in writing by the relevant planning authority, in consultation with Historic England and Gravesham Borough Council.

(2) All structures constructed as part of the authorised development apart from those listed in sub-paragraph (1) must be constructed in accordance with the requirement 3 colour palette.

(3) The authorised development must be carried out in accordance with details approved by the relevant planning authority under sub-paragraph (1).

(4) The diameter of Work No. 8A(i) must not exceed 15m.

(5) The height of the—

- (a) elements of the authorised development; or
- (b) aspect of operation of the authorised development,

set out in column (1) of the below table must not exceed the maximum height set out in column (2)—

<i>Building, structure or operation</i> (1)	<i>Maximum height (AOD)</i> (2)
Buildings constructed as part of Work No. 3(d)	12 metres
Buildings constructed as part of Work 5(c)	12 metres
Processing facilities constructed as part of Work No. 8D	34 metres
Silo facilities constructed as part of Work No. 8A(i)	104 metres
The warehouse constructed as part of Work No. 7(b)	Eaves height: 22 metres Ridge height: 26 metres
The storage of containers within Work No. 3	22 metres
The stockpiling of material within the limits of deviation shown on the works plans of Work No. 6	9 metres

The stockpiling of material within the limits of deviation shown on the works plans of Work No. 8	21 metres

Construction environmental management plan

4. The authorised development must be constructed in accordance with the construction environmental management plan.

Off-site mitigation

5.—(1) No part of the authorised development may be commenced until a final version of each of—

- (a) a Wildlife and Countryside Act 1981^(a) and Conservation of Habitats and Species Regulations 2017^(b) licence method statement for the loss of bat roosts;
- (b) a Wildlife and Countryside Act 1981 licence method statement for water vole translocations; and
- (c) a Protection of Badgers Act 1992^(c) licence method statement for badger sett interference,

have been approved by Natural England; and

- (d) a reptile translocation method statement approved by the relevant planning authority has been approved by the relevant planning authority.

(2) Each of the method statements listed in sub-paragraph (1) is to be considered to form part of the ecological mitigation and compensation plan once it has been approved by Natural England or the relevant planning authority (as appropriate).

(3) The authorised development must be constructed and maintained in accordance with the ecological mitigation and compensation plan (including the method statements approved under sub-paragraph (1)).

Terrestrial written scheme of archaeological investigation

6. The authorised development must be constructed in accordance with the terrestrial written scheme of investigation.

Highway works

7.—(1) Work Nos. 3 and 8 must not be opened for use until—

- (a) Work Nos. 9A, 9B and 11 have been completed and are available for use by the public; and
- (b) the Company has entered into an agreement with Highways England under article 15(1) for the carrying out by Highways England of a package of alterations to the existing road marking on the A13 westbound and A282 northbound approaches to Junction 30 of the M25.

(2) The design of the package of road marking alterations mentioned in sub-paragraph 7(1)(b) must be in accordance with the Design Manual for Roads and Bridges (or any replacement or modification of it) and generally in accordance with the in-principle design of those alterations agreed between the Company and Highways England during the examination of the application for this Order.

(a) 1981 c. 69
(b) S.I. 2017/1012
(c) 1992 c. 51

(3) The agreement mentioned in sub-paragraph 7(1)(b) must include arrangements for the Company to—

- (i) pay the costs reasonably and properly incurred by Highways England in implementing the road marking alterations mentioned in sub-paragraph 7(1)(b), up to a limit of £50,000 plus any VAT payable; and
- (ii) pay to Highways England a commuted sum that represents the increased maintenance costs, if any, that will be incurred as a result of carrying out those road marking alterations, to be calculated in accordance with FS Guidance s.278 Commuted Lump Sum Calculation Method dated 18th January 2010 (or any replacement of it) as modified to reflect reasonable contractual payments due to be paid by Highways England to the highway management contractor.

Flood risk assessment

8. The authorised development must be constructed and operated in accordance with the flood risk assessments.

Noise mitigation (noise barriers)

9.—(1) Work No. 4 must not be opened for operational use until the noise barrier to be constructed as Work No. 4(d) has been constructed.

(2) Work No. 9A must not be opened for public use until the noise barrier to be constructed as Work No. 9A(v) has been constructed.

(3) Work No. 12 must not be opened for operational use until the noise barrier to be constructed as Work No. 12(b) has been constructed.

Operational noise monitoring and mitigation (receptors)

10.—(1) Prior to the commencement of first operational use of any of Work Nos. 1 to 8 inclusive the Company must—

- (a) carry out a re-assessment of the predicted noise impacts arising from the finalised detail design of those works and the operational procedures to be implemented for them; and
- (b) provide the results of the re-assessment to the relevant planning authority and Gravesham Borough Council.

Initial noise insulation

(2) Following the re-assessment carried out under sub-paragraph (1), if external noise arising from the operation of Work Nos. 1 to 8 is predicted to be above the Significant Observed Adverse Effect Level (SOAEL) set out in the table below at any noise sensitive receptor, the Company must offer the owner and occupier of that receptor a package of mitigation.

<i>Time period</i>	<i>SOAEL (free-field LAeq,T)</i>
Daytime (07.00 to 23.00)	55dB(A)
Nighttime (23.00 to 07.00)	55dB(A)

(3) The package of mitigation to be offered in accordance with sub-paragraph (2) must include at the noise sensitive receptor concerned the installation of triple glazing, or another form of noise insulation or ventilation, whose effect is predicted to be an improvement in the overall noise insulation of the receptor by a margin that is not less than the amount by which the external noise level is predicted to exceed the SOAEL set out in sub-paragraph (2).

(4) The Company is not required to make a mitigation offer under sub-paragraph (2) in respect of any noise sensitive receptor if the receptor's existing noise insulation, glazing or ventilation is sufficient to ensure that significant health effects arising from noise attributable to operation of Work Nos. 1 to 8 are predicted not to occur within the habitable rooms at the receptor.

(5) If the package of mitigation offered in accordance with sub-paragraph (2) is agreed in writing by the owner and occupier of the receptor within the period specified in the offer, which

must not be less than thirty days starting with the day after the offer has been received by the owner and occupier, then the package of mitigation must be implemented at the Company's cost prior to the commencement of first operational use of any of Work Nos. 1 to 8.

Ongoing noise monitoring and mitigation scheme

(6) No part of Work Nos. 1 to 8 must be brought into operational use until a written noise monitoring and mitigation scheme for the operation of those works based on the final detailed design of those works and the operational procedures to be implemented for them has been submitted to and agreed in writing with the relevant planning authority and Gravesham Borough Council and has been implemented in accordance with the terms of the scheme.

(7) A scheme agreed under sub-paragraph (6) must, as a minimum, include provision for the following matters—

- (a) the nature, location and temporal length of monitoring including (without limitation) provision as to how noise levels recorded at monitoring locations will be attributed to Work Nos. 1 to 8 rather than background noise;
- (b) provision for variation of the scheme if the design or operational procedures for Work Nos 1 to 8 change from the date of the start of operational use of those works;
- (c) a trigger point comprising noise levels attributable to and during operation of Work Nos. 1 to 8 at which the Company will be required to make an offer of mitigation to an affected noise sensitive receptor during the period of the monitoring, which at a minimum must be no higher than the SOAEL set out in sub-paragraph (2), except where the existing noise insulation, glazing or ventilation at the receptor is sufficient to ensure that significant health effects arising from noise attributable to operation of Work Nos. 1 to 8 are predicted not to occur within the habitable rooms at the receptor.
- (d) that any mitigation offered to an affected noise sensitive receptor must include the offer of the installation of triple glazing or another form of noise insulation or ventilation at that noise sensitive receptor, the effect of which is predicted to be an improvement in the overall noise insulation of the receptor by a margin that is not less than the amount by which the external noise level is predicted to exceed the SOAEL set out in sub-paragraph (2), except where the existing noise insulation, glazing or ventilation at the receptor is sufficient to ensure that significant health effects arising from noise attributable to operation of Work Nos. 1 to 8 are predicted not to occur within the habitable rooms at the receptor.

(8) For the purposes of this paragraph “noise sensitive receptor” means—

- (a) any habitable room within a building or part of a building used for residential purposes; and
- (b) any proposed habitable room within such a building or part of a building for which there is an extant planning permission under the 1990 Act that is capable of being implemented.

Operational plans and documents

11. The authorised development must be constructed and operated in accordance with the following documents—

- (a) the bird monitoring and action plan;
- (b) the drainage strategy;
- (c) the ecological mitigation and compensation plan;
- (d) the framework travel plan;
- (e) the landscape and ecological management plan;
- (f) the navigational risk assessment;
- (g) the operational management plan;
- (h) the operational community engagement plan; and

- (i) the sustainable distribution plan.

Lighting Strategy

12.—(1) No part of the authorised development may be brought into operational use until a written scheme of the proposed operational lighting to be provided for that part of the authorised development has been submitted to and approved in writing by the relevant planning authority, in consultation with Historic England and Gravesham Borough Council.

(2) The written scheme submitted under sub-paragraph (1) must be in general accordance with the preliminary lighting strategy and impact assessment.

(3) The authorised development must be operated in accordance with the scheme approved under sub-paragraph (1).

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Interpretation

13. In this Part of this Schedule, “discharging authority” means—

- (a) any body responsible for giving any consent, agreement or approval required by a requirement included in Part 1 of this Schedule, or for giving any consent, agreement or approval further to any document referred to in any such requirement; or
- (b) the local authority in the exercise of its functions set out in sections 60 (control of noise on construction sites) and 61 (prior consent for work on construction sites) of the 1974 Act^(a).

Applications made under requirements

14.—(1) Where an application has been made to the discharging authority for any consent, agreement or approval required by a requirement contained in Part 1 of this Schedule, or for any consent, agreement or approval further to any document referred to in any such requirement, the discharging authority must give notice to the Company of its decision on the application within a period of 8 weeks beginning with—

- (a) the day immediately following that on which the application is received by the discharging authority; or
- (b) where further information is requested under paragraph 15, the day immediately following that on which the further information has been supplied by the Company,

or such longer period as may be agreed in writing by the Company and the discharging authority.

(2) In determining any application made to the discharging authority for any consent, agreement or approval required by a requirement contained in Part 1 of this Schedule, the discharging authority may—

- (a) give or refuse its consent, agreement or approval; or
- (b) give its consent, agreement or approval subject to reasonable conditions,

and where consent, agreement or approval is refused or granted subject to conditions the discharging authority must provide its reasons for that decision with the notice of the decision.

(a) 1974 c.40. Section 61 was amended by Schedule 7 to the Building Act 1984 (c. 55), Schedule 15 to the Environmental Protection Act 1990 (c. 43) and Schedule 24 to the Environment Act 1995 (c. 25). There are other amendments to section 61 but none are relevant.

Further information regarding requirements

15.—(1) In relation to any application referred to in paragraph 14, the discharging authority may request such further information from the Company as it considers necessary to enable it to consider the application.

(2) If the discharging authority considers that further information is necessary and the requirement concerned contained in Part 1 of this Schedule does not specify that consultation with a consultee is required, the discharging authority must, within 10 business days of receipt of the application, notify the Company in writing specifying the further information required.

(3) If the requirement concerned contained in Part 1 of this Schedule specifies that consultation with a consultee is required, the discharging authority must issue the application to the consultee within five business days of receipt of the application, and notify the Company in writing specifying any further information requested by the consultee within five business days of receipt of such a request.

(4) If the discharging authority does not give the notification within the period specified in subparagraph (2) or (3) it (and the consultee, as the case may be) is deemed to have sufficient information to consider the application and is not entitled to request further information without the prior agreement of the Company.

Appeals

16.—(1) Where a person (“the applicant”) makes an application to a discharging authority, the applicant may appeal to the Secretary of State in the event that—

- (a) the discharging authority refuses an application for any consent, agreement or approval required by—
 - (i) a requirement contained in Part 1 of this Schedule; or
 - (ii) a document referred to in any requirement contained in Part 1 of this Schedule;
- (b) the discharging authority does not determine such an application within the time period set out in paragraph 14(1), or grants it subject to conditions;
- (c) the discharging authority issues a notice further to sections 60 (control of noise on construction sites) or 61 (prior consent for work on construction sites) of the 1974 Act;
- (d) on receipt of a request for further information pursuant to paragraph 15 of this Part of this Schedule, the applicant considers that either the whole or part of the specified information requested by the discharging authority is not necessary for consideration of the application; or
- (e) on receipt of any further information requested, the discharging authority notifies the applicant that the information provided is inadequate and requests additional information which the applicant considers is not necessary for consideration of the application.

(2) The appeal process is as follows—

- (a) any appeal by the applicant must be made within 42 days of the date of the notice of the decision or determination, or (where no determination has been made) the expiry of the time period set out in paragraph 14(1), giving rise to the appeal referred to in subparagraph (1);
- (b) the applicant must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the discharging authority and any consultee specified under the relevant requirement contained in Part 1 of this Schedule;
- (c) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to consider the appeal (“the appointed person”) and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the attention of the appointed person should be sent;
- (d) the discharging authority and any consultee (if applicable) must submit their written representations together with any other representations to the appointed person in respect

of the appeal within 10 business days of the start date specified by the appointed person and must ensure that copies of their written representations and any other representations as sent to the appointed person are sent to each other and to the applicant on the day on which they are submitted to the appointed person;

- (e) the applicant must make any counter-submissions to the appointed person within 10 business days of receipt of written representations pursuant to sub-paragraph (d) above; and
- (f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable after the end of the 10 day period for counter-submissions under sub-paragraph (e).

(3) The appointment of the appointed person pursuant to sub-paragraph (2)(c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(4) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal the appointed person must as soon as practicable notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

(5) Any further information required pursuant to sub-paragraph (4) must be provided by the party from whom the information is sought to the appointed person and to the other appeal parties by the date specified by the appointed person. The appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within 10 business days of the date specified by the appointed person but must otherwise be in accordance with the process and time limits set out in sub-paragraphs (2)(c) to (e).

(6) On an appeal under this paragraph, the appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the discharging authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to the appointed person in the first instance.

(7) The appointed person may proceed to a decision on an appeal taking into account such written representations as have been sent within the relevant time limits and in the sole discretion of the appointed person such written representations as have been sent outside of the relevant time limits.

(8) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

(9) The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for a judicial review.

(10) If an approval is given by the appointed person pursuant to this Part of this Schedule, it is deemed to be an approval for the purpose of Part 1 of this Schedule as if it had been given by the discharging authority. The discharging authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person's determination.

(11) Save where a direction is given pursuant to sub-paragraph (12) requiring the costs of the appointed person to be paid by the discharging authority, the reasonable costs of the appointed person are to be met by the applicant.

(12) On application by the discharging authority or the applicant, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal

are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to relevant guidance on the Planning Practice Guidance website or any official circular or guidance which may from time to time replace it.

Amendments to approved details

17.—(1) With respect to the parameters specified in paragraph 3(5), the documents specified in paragraphs 4, 5, 6, 8, 10, 11 and 12 and any other plans, details or schemes or other documents which require approval by the relevant planning authority pursuant to any provision of Part 1 of this Schedule (“the approved plans, parameters, details or schemes”), the Company may submit to the relevant planning authority for approval any amendments to or replacements of the approved plans, parameters, details or schemes and following any such approval by the relevant planning authority the approved plans, parameters, details or schemes are to be taken to include the amendments or replacements approved pursuant to this sub-paragraph.

(2) Approval under sub-paragraph (1) for amendments or replacements to the parameters identified in paragraph 3(5) must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority that the subject-matter of the approval sought does not give rise to any significant adverse effects that have not been assessed in the environmental statement.

Anticipatory steps towards compliance with any requirement

18. If before this Order comes into force the Company or any other person has taken any step in compliance with any requirement in Part 1 of this Schedule, that step may be taken into account to determine compliance with that requirement provided that step would have been a valid step for the purpose of the requirement if it has been taken after this Order came into force.

SCHEDULE 3

Article 11

CLASSIFICATION OF ROADS, ETC.

In the administrative area of Thurrock Council—

A1089 St Andrew's Road classified road

1. A 1080 metres of length of new highway to be classified and existing highway to be reclassified (as identified in paragraph (a) and (b) below) as part of the A1089 St Andrew's Road to include—

- (a) reclassification of approximately 914 m of the existing highway known as classified un-numbered St Andrew's Road as the A1089 St Andrew's Road, commencing approximately 914 metres northwest from the centreline of the point where the existing highway known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge; to the centreline of the point where the existing highway known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge;
- (b) reclassification of approximately 216 m of the existing highway known as classified un-numbered Ferry Road as the A1089 St Andrew's Road, commencing from the centreline of the point where the existing highway known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge to a point approximately 216 metres southeast from the centreline of the point where the existing highway known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge,

then approximately 1.08 km of new highway—

- (c) commencing from a point 216 metres southeast from the centreline of the point where the existing highway known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge continuing for approximately 94 metres in a east southeast direction to its junction with the proposed classified un-numbered Ferry Road to be constructed;
- (d) then continuing in an easterly, then north-easterly direction for a distance of approximately 902 metres to a junction with the proposed classified un-numbered Link Road to be constructed;
- (e) then continuing in a north-easterly direction for approximately 84 metres to a point approximately 189 metres west-south-west of the centre point of the bridge where the existing highway known as un-classified Fort Road passes over the existing railway line known as the London to Tilbury line,

identified by a blue line on the classification of roads plans.

Classified un-numbered Ferry Road

2. A 170 metres length of new highway to be classified as the classified un-numbered Ferry Road (as identified below) to include, commencing from a point at its junction with the proposed A1089 St Andrew's Road, approximately 423 metres north of the centre point of the existing Riverside Rail Freight Terminal roundabout and continuing in a southerly direction for approximately 170 metres to the centre point of the existing highway known as classified un-numbered Ferry Road approximately 256 metres north-north-east of the centre point of the existing Riverside Rail Freight Terminal roundabout,

identified by an orange line on the classification of roads plans.

Declassification of classified un-numbered Ferry Road

3. The declassification of approximately 172 metres of the existing highway known as classified un-numbered Ferry Road commencing at a point 215 metres southeast from the centreline of the point where the existing highway known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge continuing in a south easterly direction to a point approximately 375 metres south-south-east from the centreline of the point where the existing highway known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge,

identified by a yellow line on the classification of roads plans.

Classified un-numbered link road

4. A length of 96 metres of new highway commencing from a junction with the proposed highway to be classified as A1089 St Andrew's Road to be constructed at a point 273 metres west-south-west of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line and continuing in a south-easterly direction to a junction with the proposed improved highway known as unclassified Fort Road at a point 287 metres south-west of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line,

identified by a purple line on the classification of roads plans.

SCHEDULE 4

Articles 10 and 12

PERMANENT STOPPING UP OF HIGHWAYS AND PRIVATE MEANS OF ACCESS & PROVISION OF NEW HIGHWAYS AND PRIVATE MEANS OF ACCESS

In the administrative area of Thurrock Council

1. In relating this Schedule 4 to its corresponding rights of way and access plans, the provisions described in this Schedule are shown on the rights of way and access plans in the following manner—

- (a) new highways which are to be substituted for a highway to be stopped up (or which are otherwise to be provided) as are included in column 3 of Part 1 of this Schedule, are shown by red stipple (as shown in the key on the rights of way and access plans) and are given a reference label (a capital letter in a circle) and will be a road unless the word ‘footpath’ appears beneath its reference letter in column 3.
- (b) private means of access to be stopped up, as described in column 2 of Part 3 of this Schedule, are shown by a solid black band (as shown in the key on the rights of way and access plans), over the extent of stopping up described in column 2 of Part 3 and are given a reference label (a lower case letter in a circle).
- (c) new private means of access to be substituted for a private means of access to be stopped up (or which are otherwise to be provided) as are included in column 3 of Part 3 of this Schedule, are shown by thin diagonal hatching (as shown in the key on the rights of way and access plans) and are given a reference label (a number in a circle).

PART 1

HIGHWAYS TO BE STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED AND NEW HIGHWAYS WHICH ARE OTHERWISE TO BE PROVIDED

(1) <i>Highway to be stopped up</i>	(2) <i>Extent of stopping up</i>	(3) <i>New highway to be substituted/provided</i>
<i>The rights of way and access plans - sheet 2</i>		
-	-	Reference A A length of new highway from a point 45 metres southeast of the point where the existing highway currently known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge running in a north-easterly then easterly direction to a point 273 metres west-south-west of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to

		Tilbury line.
-	-	Reference B A length of new highway from a point approximately 423 metres north of the centre point of the existing Riverside Rail Freight Terminal roundabout running in a south-westerly direction to a point 256 metres north of the centre point of the existing Riverside Rail Freight Terminal roundabout.
-	-	Reference C A length of new highway from a point 273 metres west-south-west of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line and running in a south-easterly direction to a point 287 metres southwest of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line.
-	-	Reference D A length of new highway from a point 11 metres south-south-west of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line running in a southwest direction to a point 287 metres southwest of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line.
<i>The rights of way and access plans sheet 4</i>		
Footpath 146	A length from a point 82 metres east of the centre point of where it passes under the existing Anglian Water jetty in an easterly direction for a distance of 40 metres.	Reference A To be substituted by a new footpath from a point 82 metres east of the centre point of where the existing footpath passes under the existing

		Anglian Water jetty in an easterly direction for a distance of 40 metres.

PART 2

HIGHWAYS TO BE STOPPED UP FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

(1) <i>Highway to be stopped up</i>	(2) <i>Extent of stopping up</i>
<i>The rights of way and access plans – sheet 2</i>	
Footpath 144	A length of approximately 345 metres from a point 162 metres south of its junction with the existing highway known as the Beeches in a southerly then easterly then southerly direction to the southern highway boundary of the proposed A1089 St Andrew's Road to be constructed.

PART 3

PRIVATE MEANS OF ACCESS TO BE STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED AND NEW PRIVATE MEANS OF ACCESS WHICH ARE OTHERWISE TO BE PROVIDED

(1) <i>Private means of access to be stopped up</i>	(2) <i>Extent of stopping up</i>	(3) <i>New private means of access to be substituted/provided</i>
<i>The rights of way and access plans – sheet 2</i>		
Reference a	A length from its junction with the existing unclassified Fort Road eastwardly for a distance of approximately 165 metres.	Reference 1 To be substituted by a new private means of access connecting to the proposed A1089 St Andrew's Road to be constructed at a point 186 metres southwest of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line and continuing in an easterly direction for approximately 250 metres to connect to the existing private means of access.
		Reference 2 A new private means of access to statutory undertakers' apparatus from the new unclassified unnumbered link road between the existing Fort Road and the new A1089 St Andrew's Road.

		Reference 3 A new private means of access to statutory undertakers' apparatus from the new A1089 St Andrew's Road.
		Reference 4 A new private means of access to statutory undertakers' apparatus from the new A1089 St Andrew's Road.

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR THE CREATION OF NEW RIGHTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or imposition of a restrictive covenant as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5(3)—

- (a) for “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable”.

3.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) For section 5A(5A) (relevant valuation date) of the 1961 Act, substitute—

“(5A) If—

- (a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) (powers of entry) of the 1965 Act (as modified by paragraph 7 of Schedule 5 to the Port of Tilbury (Expansion) Order 201[9]);
 - (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as substituted by paragraph 10 of Schedule 5 to the Port of Tilbury (Expansion) Order 201[9]) to acquire an interest in the land; and
 - (c) the acquiring authority enters on and takes possession of that land,
- the authority is deemed for the purposes of subsection (3)(a) to have entered on that land when it entered on that land for the purpose of exercising that right.”

Application of Part 1 of the 1965 Act

4.—(1) Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act and modified by article 30 (modification of Part 1 of the Compulsory Purchase Act 1965) to the acquisition of land under article 23 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 25 (compulsory acquisition of rights)—

- (a) with the modifications specified in paragraph 5; and

(a) 1973 c. 26.

(b) with such other modifications as may be necessary.

5.—(1) The modifications referred to in paragraph 4(1)(a) are as follows:

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or the restriction imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restriction is or is to be enforceable.

(3) For section 7 (measure of compensation in case of severance) of the 1965 Act substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (persons without power to sell their interests);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

7. Section 11(a) (powers of entry) of the 1965 Act is modified to secure that, where the acquiring authority has served notice to treat in respect of any right or restriction, as well as the notice of entry required by subsection (1) of that section (as it applies to a compulsory acquisition under article 23), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restriction; and sections 11A(b)(powers of entry: further notices of entry), 11B(c) (counter-notice requiring possession to be taken on a specified date), 12(d) (unauthorised entry) and 13(e) (refusal to give possession to acquiring authority) of the 1965 Act are modified correspondingly.

8. Section 20(f) (tenants at will, etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

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- (a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.
 - (b) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).
 - (c) Section 11B was inserted by section 187(2) of the Housing and Planning Act 2016 (c. 22).
 - (d) Section 12 was amended by section 56(2) of, and part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).
 - (e) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).
 - (f) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 and S.I. 2009/1307.

9. Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 30(4) is also modified so as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired or enforce the restrictive covenant imposed, subject to compliance with that section as respects compensation.

10. For Schedule 2A to the 1965 Act substitute—

“SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1. —(1) This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 (execution of declaration) of the 1981 Act as applied by article 31 (application of the Compulsory Purchase (Vesting Declarations) Act 1981) of the Port of Tilbury (Expansion) Order 201[9] in respect of the land to which the notice to treat relates.

(2) But see article 26(3) (acquisition of subsoil or airspace only) of the Tilbury (Expansion) Order 201[9] which excludes the acquisition of subsoil or airspace only from this Schedule.

2. In this Schedule, “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

6. The authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority do not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

Determination by Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant,
- (b) the use to be made of the right or covenant proposed to be acquired or imposed, and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

13. If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”

SCHEDULE 6

Article 32

LAND OF WHICH ONLY TEMPORARY POSSESSION MAY BE TAKEN

(1) <i>Plot Reference Number(s) shown on land, special category land and crown land plans</i>	(2) <i>Purpose for which temporary possession may be taken</i>	(3) <i>Relevant part of the authorised development</i>
01/01, 01/02, 01/03, 01/04, 01/05, 01/06, 01/07	Temporary possession of land for working space and to undertake works to improve the Asda roundabout and its slip roads, including to associated footways, cycleways and utilities.	Work No. 11
02/01	Temporary possession of land to undertake works to the existing St Andrew's Road, a tie in to the new road, to create the new road, to create a new pedestrian and cycle crossing and to divert utilities.	Work No. 9A
02/02	Temporary possession of land to undertake works to the existing St Andrew's Road and Ferry Road, a tie in to the new road, to create the new road, to undertake works, to modify and create new footways and cycleways and to divert utilities.	Work Nos. 9A and 9B
02/04	Temporary possession of land to stop up existing footpath 144 and existing level crossing.	Work Nos. 9A and 12
03/06	Temporary possession of land to undertake works to the existing Fort Road, the creation of a junction with a new road, and to modify and create new footways and cycleways and to divert utilities.	Work Nos. 9C and 10
03/07	Temporary possession of land to provide working space to undertake earthworks; divert utilities and undertake ecological restoration.	Work No. 10
03/13	Temporary possession of land for the improvement and raising of the existing Fort Road and the construction of a new bridge structure, and tie in of the raised highway to the highway on the existing bridge.	Work No. 10
03/14	Temporary possession of land to undertake works to the surface of the highway on the existing bridge and undertake utilities diversions.	Work No. 10
03/15	Temporary possession of land to construct traffic management measures and working space for works associated	Work No. 10

<i>(1) Plot Reference Number(s) shown on land, special category land and crown land plans</i>	<i>(2) Purpose for which temporary possession may be taken</i>	<i>(3) Relevant part of the authorised development</i>
	with the highway on the existing bridge and for the creation of the new bridge and undertake utility diversions.	
06/01	Temporary possession of land to provide working space for the construction of jetty facilities.	Work No. 1
06/03, 06/07, 06/08, 06/09	Temporary possession of land to provide working space for the construction of works for the accommodation and convenience of vessels and their protection zones.	Work Nos. 1 and 2
06/04	Temporary possession of land to remove the existing Anglian Water jetty.	Work No. 1
06/05	Temporary possession of land (including river bed) to remove the existing Anglian Water jetty.	Work No. 5

**PORT PREMISES BYELAWS- THE PORT OF TILBURY
(EXPANSION) BYELAWS 201[9]**

PART 1

PRELIMINARY

Citation and commencement

1.—(1) These byelaws may be cited as the Port of Tilbury (Expansion) Byelaws 201[9] and were made by Port of Tilbury London Limited under section 161 (byelaws for port premises) of the Port of London Act 1968 and confirmed under section 168 (confirmation of byelaws) of that Act, as provided for by article 45 of the Port of Tilbury (Expansion) Order 201[9].

Interpretation

2.—(1) In these byelaws, unless the context otherwise requires—

“the 1968 Act” means the Port of London Act 1968;

“aquatic sport” includes angling, diving, swimming, snorkelling, water skiing, aquaplaning, paragliding, power boat racing, para-kiting or parachute towing, use of personal water craft and paddleboards or any similar activity;

“authorised officer” means a Police Constable, the Company Harbour Master, a PLA Harbour Master, and a person authorised by the Company for the purpose of enforcing the byelaws;

“the Company” means Port of Tilbury London Limited (company number 02659118) of Leslie Ford House, Tilbury Freeport, Tilbury, Essex, RM18 7EH;

“Company property” means property within the Port Premises and which is owned by, or is under the administration management or control of the Company and includes any property under lease, tenancy or licence, from or to the Company;

“the Company Harbour Master” means every person having the powers of a harbour master due to their appointment as dock master by the Company under the 1968 Act;

“dangerous goods” means—

- (a) any dangerous substance within the meaning of the Dangerous Goods in Harbour Areas Regulations 2016; or
- (b) any dangerous substances within the meaning of the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996; or
- (c) any dangerous goods within the meaning of the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997;

“exhaust muffler” means a device used to decrease the amount of noise emitted from the exhaust of an engine;

“the extended port limits” means the extended port limits shown on the extended port limits plan;

“the extended port limits plan” means the plan of that description certified by the Secretary of State under article 58 of the Port of Tilbury (Expansion) Order 201[9];

“goods” means all wares, merchandise, articles or things of every description, other than vessels, and includes containers, trailers, flats and livestock;

“hovercraft” has the meaning assigned to it by section 4 (interpretation etc.) of the Hovercraft Act 1968;

“Master” when used in relation to any vessel means any person having the command, charge or management of the vessel for the time being;

“motor vehicle” means a mechanically propelled vehicle;

“the Order” means the Port of Tilbury (Expansion) Order 201[9];

“owner” when used in relation to goods includes any consignor, consignee, shipper or agent for the sale custody or control of such goods and, when used in relation to any vessel includes any part owner, charterer consignee or mortgagee in possession;

“the PLA” means the Port of London Authority constituted in the 1968 Act;

“PLA Harbour Master” means any harbour master of the PLA and any of their authorised deputies and assistants and any person authorised by the PLA to act in that capacity;

“Police Constable” includes any constable appointed by the Company under section 154 (appointment, etc., of constables) of the 1968 Act;

“the Port Premises” means any land (including land covered by water) and premises as are situated within the extended port limits;

“the River” means that part of the river Thames within the limits of the PLA, as described in Schedule 1 (description of port limits) to the Port of London Act 1968;

“surveillance aircraft” means an unmanned aircraft which is equipped to undertake any form of surveillance or data acquisition;

“vehicle” means a motor vehicle or pedal cycle;

“vessel” means every description of vessel or water-borne structure, however propelled, moved or constructed, and includes displacement and non-displacement craft, personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over or placement in water and which is at the time in, on or over water; and

“works” means construction or repair works undertaken and the product of such works.

(2) Unless the context otherwise requires references in these byelaws to any Act whether public, general or local, or any instrument made under an Act, or any provision in any Act or any such instrument, is to be construed as references to that Act or instrument as amended by any other Act or instrument.

Application of the byelaws

3. These byelaws apply to the Port Premises.

Offences and defences

4.—(1) Contravention of any of byelaws 5, 8, 9, 10, 11, 12, 14, 22, 24, 28, 33, 37, 43, 48, 49, 50, 51, 56, 57 and 58 is punishable with a fine not exceeding level 3 on the standard scale.

(2) Contravention of any of byelaws 6, 7, 13, 15, 16, 17, 18, 19, 20, 21, 23, 25, 26, 27, 29, 30, 31, 32, 34, 35, 36, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 53, 54, 55, and 59 is punishable with a fine not exceeding level 2 on the standard scale.

(3) Where the commission by any persons of an offence under these byelaws is due to the act or default of some other person, that other person is guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this byelaw whether or not proceedings are taken against any other person.

(4) In any proceedings for an offence under these byelaws it is a defence for the person charged to prove—

- (a) that the person took reasonable precautions and exercised all due diligence to avoid the commission of such an offence; or
- (b) that the person had a reasonable excuse for their act or failure to act.

(5) If in any case the defence provided by this byelaw involves the allegation that the commission of the offence was due to the act or default of some other person, any person charged may not, without leave of the Court, rely on that defence unless, within a period ending 7 clear days before the hearing, the person charged has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of the other person as is then in their possession.

(6) Where a breach of these byelaws is committed by a body corporate and that breach is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, company secretary or other similar officer of the body corporate, or any person who was purporting to act in such capacity, that person, as well as the body corporate, is guilty of that offence and is liable to be proceeded against under this byelaw.

(7) The institution of any proceedings under these byelaws is without prejudice to the recovery of damages or to the pursuance and enforcement of any other civil remedy in respect of any act or omission which is in contravention of the byelaws.

(8) A person who is suspected of a breach of the byelaws must provide their correct name and address when required to do so by an authorised officer.

PART 2

OPERATION

Fouling and obstruction of the Port Premises

5.—(1) A person must not intentionally and without authority from the Company Harbour Master, within the Port Premises, do, cause or permit to be done or omit to do anything tending to cause—

- (a) an encumbrance, pollution or fouling of any water or foreshore of any part of the Port Premises;
- (b) an obstruction or danger to navigation within the Port Premises;
- (c) a danger to life or health within the Port Premises; or
- (d) any nuisance.

(2) A person must not place, leave, tranship or dispose of ballast, rubbish or refuse except at such places within the Port Premises as may be designated by the Company.

(3) A person carrying out any activities referred to in paragraph (2) must ensure they are carried out in accordance with all necessary consents and approvals and such activities are carried out at the sole risk of the person placing, leaving, transhipping or disposing of the same.

(4) The Master of a vessel must not load or discharge any cargo, ballast, fuel, refuse or rubbish any part of which is liable in the course of such loading or discharging to fall into any part of the River within the Port Premises without taking such precautions by affixing canvas or tarpaulins or other suitable material or thing as will effectually prevent any such cargo ballast fuel refuse or rubbish from falling into the River.

Aids to navigation

6.—(1) A person must not without lawful excuse, place, move in to or remove from the Port Premises, or otherwise interfere with, any light, fog signal, buoy, radar, reflector or other object used as an aid to navigation.

(2) A person must not within the Port Premises shine or direct a light, laser or other object in such a way as may mislead vessels or endanger navigation.

Plant and machinery, etc.

7.—(1) Any person in charge of any plant, machinery, equipment or appliance situated on the Port Premises must remove that plant, machinery, equipment or appliance from the Port Premises upon order of the Company, giving reasonable notice depending on the nature of the plant, machinery, equipment or appliance involved and the reasons for the removal.

(2) If the owner or operator of any plant, machinery, equipment or appliance fails to comply with such an order by the Company, the plant, machinery, equipment or appliance may be removed by the Company at the risk and expense of the owner or operator.

(3) All persons operating plant, machinery, equipment or appliances within the Port Premises must comply with any reasonable written notices given by the Company as to the use of safety devices in addition to those as may be required by law.

(4) Except with written permission of the Company, no person may store in or about the Port Premises any plant, machinery, equipment or appliance unless that plant, machinery, equipment or appliance is used for the purpose of loading, unloading or handling goods.

Yacht races and aquatic sports

8. A person must not conduct or participate in a yacht or boat race or other aquatic sport, or in any other similar activity, within the Port Premises.

PART 3

PROTECTION AND CONTROL OF PORT PREMISES

Entry upon Port Premises

9.—(1) A person must not enter or be upon the Port Premises except pursuant to express statutory authority or written licence, pass or other permission from the Company and upon the terms and conditions of that licence, pass or permission.

(2) A licence, pass or permission may be restricted to allow entry to certain areas of the Port Premises only. No person may enter an area of the Port Premises for which that person does not have a licence, pass or permission.

(3) The Company may withhold, delay, refuse or revoke any licence, pass or permission referred to in this byelaw in relation to any person.

(4) Every person on the Port Premises must at the instruction of any authorised officer, produce any pass or other evidence of their licence or permission to be on the Port Premises.

(5) A person must not break or get over, through or under a boundary or other fence, or trespass upon the Port Premises.

(6) No person or vehicle is permitted to be or remain upon or within the limits of any railway lines as designated by the Company without the permission of the Company.

(7) A person must not write upon or soil, deface, mark or injure any wall, shed, barricade, railing, fence, post, or any other property belonging to the Company.

(8) A person must not use or have in their possession any key (including an electronic key) with which they can obtain entry or exit to or from any of the docks, warehouses, sheds or other buildings belonging to the Company unless such key has been issued to the person by the Company with permission for use.

(9) Every person in charge of a vehicle must stop at the designated barriers or security posts at the entrances to the Port Premises as directed by the Company.

(10) A person must not enter or remain on board any vessel without permission of the Master or other lawful excuse.

(11) The Master of every vessel must not refuse any authorised officer entry upon the vessel if the authorised officer has a reasonable suspicion of the contravention of any byelaw or the commission of an offence.

(12) A person on Port Premises who is suspected of an offence or being in breach of a byelaw or who is without proper business at the Port Premises must surrender any pass in their possession and leave the Port Premises immediately on being required to do so by an authorised officer.

Photography

10. A person must not take photographs within the Port Premises without the Company's permission.

Climbing

11. A person must not climb, scale or otherwise ascend any structure or building within the Port Premises without the Company's permission.

Intoxicating substances

12.—(1) A person must not be in an intoxicated condition within the Port Premises.

(2) A person must not, without permission of the Company consume alcohol within the Port Premises.

Inspection of bags, parcels, etc.

13. A person must not refuse to produce for inspection, at the request of any authorised officer, the contents of any outer clothing, article, bag, case, parcel, vehicle, box or container of any kind in their possession, on the Port Premises.

Non-permitted activities

14.—(1) A person who is on the Port Premises must not, without the prior consent of the Company—

- (a) sell or offer for sale any goods or services;
- (b) distribute, post or leave any circulars, leaflets or advertising matter;
- (c) undertake personal solicitation;
- (d) organise any general meeting; or
- (e) deliver any address to any audience or gather together any persons whereby any work or business within the Port Premises or the control, management or use of the Port Premises is, or is likely to be, obstructed, impeded or hindered.

Structures and works

15.—(1) No structure or work which interferes with the operation of the Port Premises may be placed or erected on the Port Premises except with written permission from the Company and upon such terms and conditions as the Company may stipulate.

(2) Every structure or work placed or erected in contravention of this byelaw must, upon order of the Company, be removed forthwith by the owner of such structure or work thereof or by the person by whom such structure or work was so placed or erected.

(3) Where a structure or work is not removed pursuant to an order of the Company under this byelaw, the Company may at the risk and expense of the owner or person referred to in this byelaw undertake such removal.

Leaving of goods

16.—(1) A person must not place or leave any goods on the Port Premises in such a manner as to create an obstruction or interference.

(2) A person must not, without written permission of the Company, place or leave any goods on the Port Premises except goods for use:

- (a) by vessels;
- (b) in connection with shipping;
- (c) by the Company; or
- (d) in connection with railway wagons, road transport, sheds or harbour facilities.

(3) A person must not place or leave goods on the Port Premises, including any goods coming within paragraphs (2)(a) to (2)(d) of this byelaw, which are likely to cause a nuisance or endanger life or health.

Artificial lights

17.—(1) Subject to paragraph (2), a person must not use any artificial light on the Port Premises without the prior permission of the Company.

(2) Electric lights that do not pose a potential risk to the navigational safety of vessels or present a health and safety or fire risk may be used on the Port Premises.

(3) In any event, any person in control of any electric light at the Port Premises must immediately comply with any direction of the Company Harbour Master in relation to the use, extinction or screening of such electric light.

Railway rolling stock

18. Railway rolling stock or locomotives must not be brought on to the Port Premises except with the Company's permission and upon such terms and conditions as the Company may determine.

Live animals

19.—(1) A live animal must not be brought into the Port Premises without the express prior permission of the Company.

(2) Paragraph (1) does not apply to—

- (a) dogs in the custody of a police officer or member of HM Forces or UK Border Forces on duty;
- (b) guide dogs for the visually impaired;
- (c) a dog trained by Hearing Dogs for Deaf People (registered charity number 293358); or
- (d) any other dog that is similarly specifically trained by a registered charity to assist any person with any disability within the meaning of the Equality Act 2010.

Compliance with signage and notices

20.—(1) A person must not act in contravention of any printed or written notice, direction or sign displayed by the Company within the Port Premises unless otherwise directed by the Company.

(2) A person must not remove, or interfere with any mark, printed or written notice, direction, sign or device, order, byelaw or regulation of the Company which is posted, attached, or affixed to or on the Port Premises.

Erection of signs

21. A person must not display, place or erect on the Port Premises without written permission of the Company any placard, hoarding, poster, advertisement, sign, device or similar article.

Removal of Company property

22. A person must not remove from Port Premises without permission of the Company any Company property.

Reporting of accidents

23.—(1) Every person involved in an accident within the Port Premises that causes the death of or an injury to any other person or loss of or damage to property, must as soon as reasonably practicable and in any event within 7 days of being requested to do so by the Company, deliver to the Company a written report giving full details of the accident.

Surveillance

24. A person must not operate surveillance aircraft within or over the Port Premises without the Company's permission.

Authority for removal of goods

25. A person removing goods from the Port Premises must, on request, provide the Company with a copy of their authority to remove those goods in writing or electronically as stipulated by the Company.

PART 4

OPERATION OF VEHICLES

Driving of vehicles

26.—(1) A person must not drive or otherwise operate a vehicle within the Port Premises without the due care and attention or without reasonable consideration for other persons within the Port Premises.

(2) A person driving or otherwise operating a road vehicle within the Port Premises must give way to any locomotive, railway rolling stock or other rail or rail-mounted vehicle.

Compulsory weighing

27. The Company may at any time require the operator of any vehicle, (whether loaded or unloaded), to submit the vehicle to compulsory weighing at weight scales designated by the Company for the purpose. Weighing will be carried out in accordance with any requirement as the Company may stipulate.

Restrictions on operation of vehicles

28.—(1) A person must not operate a vehicle within the Port Premises—

- (a) in a shed, warehouse or open storage area, except to pick up or deliver goods or for other purposes permitted by the Company;
- (b) between railway tracks;
- (c) across railway tracks except at a signed railway crossing;

- (d) at speeds greater than those indicated by speed restriction signs or in a manner which may cause a nuisance, death or injury to persons or damage to property;
- (e) which is loaded in excess of its permitted load limit, or whose load is not adequately secured and supported;
- (f) from which petrol, oil, or any other substance likely to be dangerous or to constitute a nuisance, is dripping, leaking, escaping or falling; or
- (g) which, in the reasonable opinion of the Company is improperly loaded or unserviceable or likely to cause damage to roadways or other property.

(2) All persons operating vehicles within the Port Premises must comply with the provisions of the rules in the Highway Code England, Scotland and Wales (as updated).

Restrictions on parking vehicles

29.—(1) A person must not park a vehicle within the Port Premises—

- (a) unless the Company has first issued a permit for such person to do so;
- (b) in such a manner as to create an obstruction or interference;
- (c) elsewhere than in a parking area approved and designated as such by the Company;
- (d) which is loaded in excess of its permitted load limit, other than at an appropriate place for the purpose of immediately reducing its load; or
- (e) from which petrol, oil, or any other substance likely to be dangerous or to constitute a nuisance, is dripping, leaking, escaping or falling.

(2) Subject to paragraph (3), for the purposes of this byelaw, a vehicle is parked wherever it is stopped, whether or not the driver remains in the vehicle and whether or not the engine of the vehicle is running, and the term includes any vehicle apparently abandoned.

(3) A vehicle is not parked contrary to this byelaw where it is stopped—

- (a) as required by a traffic control device or by an authorised officer; or
- (b) whilst the vehicle cannot move due to an obstruction or failure of the vehicle.

Supply and discharge of fuels and oils

30. A person must not supply to, receive into or discharge from, a vehicle on the Port Premises any petrol or other fuel or oil except at locations and times approved by the Company.

PART 5

BERTHING, MOORING AND ANCHORING

Information note:

These Byelaws only relate to the Port Premises.

The PLA's Thames Byelaws 2012 ("the PLA's Byelaws") apply throughout the River, including within the Port Premises.

The PLA's General Directions for Navigation in the Port of London 2016 ("the PLA's General Directions") apply throughout the River, including within the Port Premises.

Details of the PLA's Byelaws and General Directions can be found at:

<https://www.pla.co.uk/Safety/Regulations-and-Guidance/Byelaws-Rules-and-Regulations-Governing-Navigation>

Vessels to be berthed only with permission of the Company Harbour Master and as directed

31.—(1) The Master of any vessel may only berth or moor that vessel within the Port Premises with the permission of the Company Harbour Master and then only at such place and in such manner as directed by the Company Harbour Master.

(2) The permission referred to in paragraph (1) must be obtained before such vessel enters the River or, as the case may be, moves from any place within the River.

(3) The Master of any vessel may only permit such vessel to move from one berth to another berth within the Port Premises with the prior permission of the Company Harbour Master.

(4) The Master of a vessel clearing from the Port Premises must give notice to the Company Harbour Master of their intention to vacate the berth occupied by such vessel.

(5) A vessel must not use its anchor within the Port Premises, whether to facilitate berthing or mooring or otherwise, unless it is (i) in an emergency or to ensure a safe berthing and (ii) the Company Harbour Master has given prior consent.

Information note:

See also the reporting, passage plan and vessel movement requirements of the PLA's General Directions.

Vessels to be able to move on short notice and to have crew available at all times

32. The Master of every power-driven vessel berthed or moored within the Port Premises must ensure that, unless exempted by the Company, such vessel must at all times have—

- (a) sufficient power and crew available to enable the vessel to move under its own power on short notice;
- (b) sufficient crew on board to operate winches and handle mooring lines; and
- (c) sufficient crew to ensure that the vessel is at all times securely made fast and that the moorings are adjusted as necessary to allow for the rise and fall of the tide and for the loading and unloading of cargo.

Lines to be made fast

33.—(1) The Master of every vessel berthed or moored within the Port Premises must ensure that the lines of such vessel are made fast only to facilities provided for berthing or mooring purposes.

(2) Lines may not be laid across any quay or over the River in such manner as to obstruct the passage of any other vessel.

Vessels berthing alongside other vessels

34.—(1) The Master of every vessel must ensure that—

- (a) such vessel does not make fast to or secure alongside any other vessel within the Port Premises without permission of the Company Harbour Master and the approval of the PLA Harbour Master;
- (b) when ordered by the Company Harbour Master, the Master permits any other vessel of no greater tonnage, measurement or deadweight, to make fast to, or secure alongside, such vessel;
- (c) where the Master's vessel has another vessel secured alongside—
 - (i) the Master allows a free and unencumbered passage over such vessel to the outer vessel for loading, unloading and access to and from the quay; and
 - (ii) the lines by which the outer vessel is made fast or secured must not, except in any emergency, be cut or cast off without permission of the Company Harbour Master

and without notice of the intention to do so having been given to the Master of the outer vessel which is so made fast or secured.

Delays in departure to be reported

35. Where a vessel is delayed in leaving the Port Premises the Master of that vessel must report immediately to the Company Harbour Master the reason and the probable duration of the delay.

Information note:

See also the reporting and passage plan requirements of the PLA's General Directions.

Vessels not to test equipment without permission of the Company Harbour Master or shut down engines

36. The Master of every vessel must ensure that such vessel—

- (a) when berthed at the Port Premises or alongside another vessel within the Port Premises does not without the permission of the Company Harbour Master engage in equipment or machinery tests or any operations likely to endanger property at the Port Premises or other vessels;
- (b) when berthed or moored within the Port Premises, operates its engines in accordance with any directions given by the Company Harbour Master; and
- (c) does not use any propulsion or other manoeuvring machinery or equipment in such manner as to cause damage to Company property.

Bunkering

37.—(1) A Master of any vessel berthed at the Port Premises must not permit the same to receive bunkers except with the permission of the Company Harbour Master.

(2) When bunkers are being supplied every Master must ensure that all scuppers and other openings are blocked off to the Company Harbour Master's satisfaction.

(3) All vessels providing bunker services within the Port Premises must carry oil spill response and clean-up equipment, including containment booms and must have crew trained in its use.

Information note:

See also the reporting and passage plan requirements in the PLA's General Directions.

Vessels to display name and draught marks

38. The owner of every vessel of over 60 tonnes gross registered tonnage within the Port Premises must ensure that such vessel conspicuously displays its name and accurate draught marks.

Vessels to have sufficient means of access and egress

39. The Master of every vessel when berthed within the Port Premises must ensure—

- (a) that the vessel has suitable means of access and egress, clearly illuminated at night, for the use of persons boarding or leaving the vessel;
- (b) that every means of access and egress is attended at all times by a watchman or other responsible person and has a suitable heaving line and lifebuoy conveniently located thereby; and
- (c) that suitable safety nets are used beneath every means of access and egress and in such other places as may be necessary to prevent persons or goods from falling into the River.

Cargo handling equipment not to obstruct and to be well lit

40. Any person placing or leaving equipment for loading cargo on to, or unloading cargo from or handling cargo on a vessel within the Port Premises must—

- (a) ensure that it is placed in such a manner as to give clear and uninterrupted access to and from the vessel and does not interfere with any other operation within the Port Premises; and
- (b) ensure that, from sunset to sunrise, any such equipment is clearly illuminated.

Side ports

41. The Master of every vessel must ensure that the side ports of such vessel whilst within the Port Premises from sunset to sunrise are—

- (a) clearly illuminated when open; and
- (b) closed when not in use.

Display of signals and use of lights for loading and unloading

42. The Master of every vessel must ensure that—

- (a) when that vessel is loading or unloading in the Port and is using lights for such purpose, those lights are used in safe positions and are of a type approved by the Company, and any connecting wires between ship and shore for those lights are properly insulated, protected against damage, do not constitute a hazard to the movement of persons or equipment and are connected in accordance with the directions of the Company;
- (b) where that vessel is turning its propeller while berthed at the Port Premises, the vessel indicates such activity by hanging signboards illuminated at night over each quarter in line with such propeller; and
- (c) that vessel displays correct night and day shapes, flags and lights for the operation in which it is engaged.

Rodents

43. The Master of a vessel must not permit the passage of any rodents between the vessel and the Port Premises or onto any other vessel and must take all necessary precautions including the attachment of suitable devices to the lines of the vessel, for that purpose.

Exhaust mufflers to be used at all times

44. The Master of every vessel must ensure that the internal combustion engines on such vessel when operating within the Port Premises are equipped with efficient exhaust mufflers, which must be used continuously when the engines are running.

Rigging gear etc., not to overhang side of vessel

45. The Master of every vessel must ensure that no rigging gear or other equipment of such vessel when within the Port Premises overhangs or projects from the side of the vessel in a manner that may endanger life or property.

Whistles, sirens, etc. not to be sounded unnecessarily

46. The Master of every vessel must ensure that no whistle, siren or fog-horn on such vessel when within the Port Premises is sounded unnecessarily.

All vessels to maintain adequate watch and notify any accident, fire etc.,

47. Unless exempted in writing by the Company, the Master of every vessel must ensure that when within the Port Premises such vessel maintains an adequate watch and, in the event of any danger, accident, disturbance or fire on that vessel, that such watch immediately gives an alarm and notifies:

- (a) the nearest Police Constable;
- (b) the Company's Health and Safety Manager;
- (c) the Company Harbour Master;
- (d) the PLA Harbour Master; or
- (e) any other authorised officer.

Vessels not to be abandoned, sunk etc.,

48. A person must not abandon, sink, burn, break up, dismantle or cast adrift within the Port Premises any vessel or any other material.

All accidents, collisions and groundings within the Port Premises to be reported

49.—(1) The Master of a vessel involved in:

- (a) an accident causing death or injury to persons or loss or destruction of or damage to property;
- (b) a collision;
- (c) a grounding; or
- (d) any pollution or fouling of any water or foreshore of the River,

within the Port Premises, must as soon as reasonably practicable deliver to the Company Harbour Master log extracts covering the incident and a detailed written report of such accident, collision or grounding.

(2) Notwithstanding any other report required by this byelaw, the Master of any vessel involved in an accident, collision or grounding within the Port Premises must immediately report the incident by the quickest possible means to the Company Harbour Master.

(3) Nothing in this byelaw relieves the Master of, or discharges, any legal obligation to make any other notification to any other person or body.

Information note:

See also the accident and incident reporting requirements in the PLA's Byelaws.

No dredging or removal of obstructions to be carried out without permission

50.—(1) A Master of any vessel must not engage in dredging or the removal of obstructions within the Port Premises without the permission of the Company.

(2) In the case of dredging, the Company must not grant permission unless the Master will be acting in accordance with plans approved under Part 3 of Schedule 10 to the Order or a licence granted by the PLA under section 73 of the 1968 Act.

Recovery of lost cargo or gear

51.—(1) The Master of a vessel which has lost cargo or ship's gear within the Port Premises must, after obtaining permission from the Company Harbour Master, quickly recover the lost article if practicable, but if such recovery is not made, the Master of that vessel, must deliver to the Company a written report of the loss giving:

- (a) the appropriate location of the lost article;

- (b) a description of the lost article; and
- (c) other pertinent details relating to the loss.

(2) Where the Company receives a report pursuant this byelaw, the Company may, at the risk and expense of the owner of the vessel which lost the article, recover the lost article.

Information note:

See also the accident and incident reporting and foreshore protection requirements in the PLA's Byelaws.

PART 6

NOTICE, CERTIFICATES AND MANIFESTS

Notice, certificates and manifests

52.—(1) The owner of every vessel must, wherever possible, give notice to the Company of the expected date and approximate time of arrival of their vessel at the berth.

(2) The Master of a vessel arriving at the Port Premises must, not less than 24 hours before the vessel's arrival, deliver to the Company a certificate signed by the Master setting forth as much of the following information as is required in respect of that vessel by the Company:

- (a) name of vessel;
- (b) port of registry;
- (c) gross tonnage;
- (d) gross registered tonnage;
- (e) draught upon arrival;
- (f) time of arrival;
- (g) last port of call;
- (h) name of Master;
- (i) name of owner or agent;
- (j) tonnage of goods to be unloaded;
- (k) number of passengers to be landed;
- (l) port of origin;
- (m) number of bags of mail to be landed;
- (n) official number;
- (o) length overall; and
- (p) details of all dangerous goods either for discharge at the Port or which are to remain on board the vessel.

(3) The Master in charge of a vessel arriving at the Port Premises must immediately deliver to the Company one copy, or more copies as requested by the Company, of the manifest of the vessel (certified by HM Revenue & Customs in the case of a vessel engaged in foreign trade or by the person in charge of the vessel engaged in domestic trade) setting forth details of cargo to be unloaded at the Port Premises including marks and numbers of consignments on each Bill of Lading, weigh bill or similar document, together with the weight and measurement of such cargo.

Delivery of manifest on departure

53. The Master of a vessel clearing from the Port Premises must, within 7 days after the vessel's departure, deliver to the Company one copy, or more copies as requested by the Company, of the manifest of the vessel (certified by HM Revenue & Customs in the case of a vessel engaged in

foreign trade or by the Master of the vessel if engaged in domestic trade) setting forth details of cargo that was carried on the vessel including marks and numbers of consignments on each Bill of Lading, weigh bill or similar document, together with the weight and measurement of such cargo.

PART 7

AIRSHIPS, HYDROFOIL AND AIR CUSHION CRAFT

Use of Port Premises by hydrofoil and air cushion craft

54. An airship, hydrofoil, hovercraft or other air cushion craft must not land on, take off from or operate in the water within the Port Premises except with prior permission of the Company and at locations designated by the Company.

PART 8

FIRE PREVENTION

Compliance with fire protection and prevention standards

55.—(1) Every person within the Port Premises must comply with all such standards and policies for fire prevention and protection against fire within the Port Premises as are from time to time published by the Company.

(2) The Master of any vessel must give reasonable facility and assistance to the fire, police, ambulance or other emergency services for dealing with alleviating or preventing any emergency.

Hot working

56.—(1) A person must not use any naked flames, hot rivets, welding, grinding or burning equipment within the Port Premises, or in any vessel berthed within the Port Premises, except with permission of the Company and in accordance with the terms of that permission.

(2) A person must not burn, boil or heat by fire any article or substance on the Port Premises except with permission of the Company and in such place and in such manner as the Company directs.

No rockets etc., to be set off and no blasting operations to be carried out without permission

57. A person, other than a person authorised by HM Coastguard or the Company, must not set off rockets or fireworks or carry out blasting operations within the Port Premises.

Prohibition of smoking etc.

58.—(1) A person must not smoke in any part of the Port Premises except at locations designated as smoking areas where notices are displayed permitting the possession of such lights or device.

(2) In any place within the Port Premises, including any vessel moored within the Port Premises, where explosives or dangerous goods (including highly inflammable goods) are located, a person must not have in their possession any match or other fire-producing device or wear or have in their possession any article or substance which may cause explosion or fire, except with the permission of the Company Harbour Master.

Fire hydrants

59. A person must not use a fire hydrant located on Company property for any purpose other than putting out a fire or in connection with a fire drill without permission of the Company and then only in accordance with the terms of such permission.

SCHEDULE 8

Article 52

TRAFFIC REGULATION MEASURES, ETC.

In the administrative area of Thurrock Council—

PART 1

SPEED LIMITS & RESTRICTED ROADS

As shown on the traffic regulation measures plan—

<i>Road name, number and length</i> (1)	<i>Speed limit</i> (2)
<i>The traffic regulation measures plans – sheet 1</i>	
St Andrew's Road, A1089 From a point 10 metres southeast of the southern kerb of the access road to Tilbury Port to a point 30 metres northwest of the point where the existing highway currently known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge.	40mph speed limit
St Andrew's Road, A1089 From a point 30 metres northwest of the point where the existing highway currently known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge to a point 440 metres southeast of the point where the existing highway currently known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge.	Restricted Road
St Andrew's Road, A1089 From a point 440 metres southeast of the point where the existing highway currently known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge to a point 186 metres southwest of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line.	40 mph speed limit
Ferry Road, Classified un-numbered From a point approximately 420 metres north of the centre point of the existing Riverside Rail Freight Terminal roundabout to a point 130 metres south of the centre point of the existing Riverside Rail Freight Terminal roundabout.	Restricted Road
Fort Road, Unclassified From the centre point of the existing highway known as unclassified Fort Road at a point 90 metres north of its junction with the existing highway known as Brennan Road to a point 335	40 mph speed limit

metres southwest of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line.	
Fort Road, Unclassified From a point 335 metres southwest of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line to a point 875 metres southwest of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line.	20 mph speed limit
Fort Road, Unclassified From a point 875 metres southwest of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line to a point 130 metres south of the centre point of the existing Riverside Rail Freight Terminal roundabout.	Restricted Road
Link Road, Classified un-numbered From a point 273 metres west-south-west of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line to a point 287 metres southwest of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line.	40mph speed limit
<i>The traffic regulation measures plans - sheets 1 and 2</i>	
St Andrew's Road, A1089 From a point 10 metres southeast of the southern kerb of the access Road to Tilbury Port to a point 30 metres northwest of the point where the existing highway currently known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge.	40mph speed limit
<i>The traffic regulation measures plans – sheet 2</i>	
Dock Road, A1089 From a point 80 metres north of the point where the existing A1089 Dock Road meets the Asda roundabout, to a point 80 metres south of the point where the existing A1089 St Andrew's Road meets the Asda roundabout, including the entire circumference of the entire Asda Roundabout.	30mph speed limit
St Andrew's Road, A1089 From a point 80 metres south of the point where the existing A1089 St Andrew's Road	40mph speed limit

meets the Asda roundabout to a point 10 metres southeast of the southern kerb of the existing access road to Tilbury Port.	
<i>The traffic regulation measures plans – sheets 2 and 3</i>	
Dock Road, A1089 From a point 300 metres southwest of the centre point of the bridge where the existing highway known as unclassified Marshfoot Road passes over the existing A1089 Dock Road to a point 80 metres north of the point where the existing A1089 Dock Road meets the Asda roundabout.	50mph speed limit

PART 2

PROHIBITIONS

As shown on the traffic regulation measures plan—

<i>Road name, number and length (1)</i>	<i>Measures (2)</i>
The traffic regulation measures plans - sheet 1	
St Andrew's Road, A1089 From a point 440 metres southeast of the point where the existing highway currently known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge to a point 186 metres southwest of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line.	No waiting at any time.
Ferry Road, Classified un-numbered From a point approximately 420 metres north of the centre point of the existing Riverside Rail Freight Terminal roundabout to a point 130 metres south of the centre point of the existing Riverside Rail Freight Terminal roundabout.	No waiting at any time.
Declassified Ferry Road classified un-numbered From a point 215 metres southeast from the centreline of the point where the existing highway known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge to a point approximately 375 metres southeast from the centreline of the point where the existing highway known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge.	Prohibition of motor vehicles.
Fort Road, Unclassified From the centre point of the existing highway known as unclassified Fort Road at a point 90 metres north of its junction with the existing highway known as Brennan Road to a point 130 metres south of the centre point of the existing	No waiting at any time.

Riverside Rail Freight Terminal roundabout.	
Link Road, Classified un-numbered From a point 273 metres west-south-west of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line to a point 287 metres southwest of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line.	No waiting at any time.
The traffic regulation measures plans – sheets 1 and 2	
St Andrew's Road, A1089 From a point 10 metres southeast of the southern kerb of the access Road to Tilbury Port to a point 186 metres southwest of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line.	No waiting at any time.

PART 3

REVOCATIONS AND VARIATIONS OF EXISTING TRAFFIC REGULATION ORDERS

As shown on sheet 4 of the traffic regulation measures plan—

<i>Road name, number and length (1)</i>	<i>Title of Order (2)</i>	<i>Revocations or Variations(3)</i>
St Andrew's Road, A1089 From a point 50 metres southeast of the south eastern kerbline of the Dock entrance road extending in a south easterly direction for a distance of approx. 845 metres.	(St Andrew's Road, Tilbury)(40 mph Speed Limit) Order 2010.	Order to be revoked.

SCHEDULE 9

Article 53

DEEMED MARINE LICENCE

PART 1

GENERAL

Interpretation

1. In this licence—

“the 2008 Act” means the Planning Act 2008;

“the 2009 Act” means the Marine and Coastal Access Act 2009;

“the authorised development” has the meaning given in paragraph 3(2);

“business day” means a day other than a Saturday or Sunday or bank holiday in England;

“commence” means beginning to carry out any part of a licensed activity and “commenced” and “commencement” are to be construed accordingly;

“condition” means a condition in Part 2, Part 3 and Part 4 of this licence and references in this licence to numbered conditions are to the conditions with those numbers in Part 2;

“construction environmental management plan” means the document of that description in Schedule 11 to the Order, certified by the Secretary of State as the construction environmental management plan for the purposes of the Order;

“the environmental statement” means the document of that description in Schedule 11 (documents to be certified) to the Order, certified by the Secretary of State as the environmental statement for the purposes of the Order;

“the existing river jetty” means the jetty existing in the river Thames at the date of this Order coming into force, as shown shaded blue and labelled *Existing Jetty Superstructure* on sheet 3 of the works plans;

“the licence holder” means Port of Tilbury London Limited and any transferee pursuant to article 51 of the Order;

“licensed activity” means any of the activities specified in Part 1 of this licence;

“marine written scheme of investigation” means the marine archaeological written scheme of investigation contained in document reference v6 [PoTLL/T2/EX/228], appendix 12.E of the environmental statement;

“the MMO” means the Marine Management Organisation;

“the Order” means the Port of Tilbury (Expansion) Order 201[9];

“the River” means so much of the river Thames and the Thames estuary, as is within the UK marine area; and

“the UK marine area” has the meaning given to it in section 42 (UK marine area) of the 2009 Act.

Contacts

2.—(1) Except where otherwise indicated, the main point of contact with the MMO and the address for email and postal returns and correspondence are as follows—

(a) Marine Management Organisation

Marine Licensing Team
 Lancaster House
 Hampshire Court
 Newcastle upon Tyne
 NE4 7YH
 Tel—0300 123 1032
 Fax—0191 376 2681
 Email—marine.consents@marinemangement.org.uk

(b) Marine Management Organisation

MMO Lowestoft
 Pakefield Road
 Lowestoft
 Suffolk
 NR33 0HT

Tel—01502 573 149 or 01502 572 769

Email—lowestoft@marinemangement.org.uk

(2) The contact details for the MMO Marine Pollution Response Team are—

Tel (during office hours)—0300 200 2024

Tel (outside office hours)—07770 977 825 or 0345 051 8486

Email—dispersants@marinemangement.org.uk

or such replacement contact details notified to the licence holder in writing by the MMO.

Details of licensed marine activities

3.—(1) Subject to the licence conditions in Part 2, this licence authorises the licence holder (and any agent, contractor or subcontractor acting on their behalf) to carry out any licensable marine activities under section 66(1) (licensable marine activities) of the 2009 Act which—

- (a) form part of, or are related to, the authorised development; and
- (b) are not exempt from requiring a marine licence by virtue of any provision made under section 74 (exemptions specified by order) of the 2009 Act.

(2) In this paragraph “the authorised development” means:

- (a) the construction of a Roll on Roll off berth on the river Thames comprising—
 - (i) the construction of dolphins in the river bed with associated fenders and walkways;
 - (ii) the construction of a floating pontoon with associated restraint structures;
 - (iii) the construction of structures and buildings on the floating pontoon;
 - (iv) the construction of an approach bridge with abutments, with a roadway, footway and wind barrier on the surface of the bridge;
 - (v) the construction of a linkspan bridge between the floating pontoon and the approach bridge, with a roadway, footway and wind barrier on the surface of the bridge;
 - (vi) the construction of a surface water outfall;
 - (vii) the alteration, renovation and renewal of the existing river jetty and its associated structures including fenders and piles;
 - (viii) the alteration and renewal of an existing flood defence;
 - (ix) the removal of the existing jetty known as the Anglian Water jetty and its associated structures;
 - (x) related dredging works within the river Thames for the above and the disposal of any arisings from such dredging; and
 - (xi) piling works and construction operations (including piling and scour preventative and remedial works) within the river Thames;
- (b) the construction of a Construction Materials and Aggregates Terminal (CMAT) berth on the river Thames comprising—
 - (i) the construction of dolphins in the river bed with associated fenders and walkways;
 - (ii) the construction of a conveyor hopper and supporting structures on the river bed;
 - (iii) the installation of pipework on the existing river jetty and connections to Work No. 8A;
 - (iv) the construction of a conveyor and supporting structures in the river bed;
 - (v) the alteration, renovation and renewal of the existing river jetty and its associated structures including fenders and piles;
 - (vi) related dredging works within the river Thames for the above and the disposal of any arisings from such dredging; and
 - (vii) piling works and construction operations (including piling and scour preventative and remedial works) within the river Thames;

- (c) activities to—
- (i) alter, clean, modify, dismantle, refurbish, reconstruct, remove, relocate or replace any work or structure (including river walls);
 - (ii) carry out excavations and clearance (excluding clearance or detonation of ordnance), deepening, scouring, cleansing, dumping and pumping operations;
 - (iii) use, appropriate, sell, deposit or otherwise dispose of any materials (including liquids but excluding any wreck within the meaning of the Merchant Shipping Act 1995(a)) obtained in carrying out any such operations;
 - (iv) remove and relocate any vessel or structure sunk, stranded, abandoned, moored or left (whether lawfully or not);
 - (v) temporarily remove, alter, strengthen, interfere with, occupy and use the banks, bed, foreshore, waters and walls of the river; and
 - (vi) construct, place and maintain works and structures including piled fenders, protection piles and cofferdams but not including groynes;
- (d) other works and development—
- (i) to place, alter, divert, relocate, protect, remove or maintain services, plant and other apparatus and equipment belonging to statutory undertakers, utility companies and others in, under or above land, including mains, sewers, drains, pipes, cables, lights, cofferdams, fencing and other boundary treatments including bollards and security cameras;
 - (ii) embankments, viaducts, bridges, aprons, abutments, shafts, foundations, retaining walls, drainage works, outfalls, pollution control devices, pumping stations, culverts, wing walls, fire suppression system water tanks and associated plant and equipment, highway lighting and fencing; and
 - (iii) to alter the course of, or otherwise interfere with, navigable or non-navigable watercourses;
- (e) such other works as may be necessary or convenient for the purposes of, or in connection with or in consequence of, the construction, maintenance, operation or use of the authorised development, including—
- (i) works to divert, remove or replace apparatus, including mains, sewers, drains, pipes, conduits, cables, electrical substations and electrical lines; and
 - (ii) landscaping and other works to mitigate any adverse effect of the construction, maintenance and operation of the works or to benefit or protect any person or premises affected by the construction, maintenance and operation of the works;
- (f) such other works as may be necessary or convenient for the purposes of, or in connection with or in consequence of, the construction, maintenance or use of the authorised development, including works for the accommodation or convenience of vessels (including but not limited to berthing and mooring facilities, ladders, buoys, bollards, dolphins, fenders, rubbing strips and fender panels, fender units and pontoons); and
- (g) activities to carry out works and development of whatever nature, as may be necessary or expedient for the purposes of, or for purposes associated with or ancillary to, the operation and maintenance of the authorised development,

and any other element of the authorised development as defined by article 2 of the Order.

(3) Subject to condition 3(4), the grid coordinates within the UK Marine Area within which the licence holder may carry out a licensed activity are specified below—

<i>Point reference</i>	<i>Easting (m)*5</i>	<i>Northing (m) *5</i>
P01	565744.828	175345.292
P02	565749.328	175329.143

(a) 1995 c.21

P03	565673.531	175323.596
P04	565673.001	175342.102
P05	565649.201	175339.000
P06	565649.686	175339.000
P07	565632.366	175321.567
P08	565638.047	175320.177
P09	565588.000	175253.280
P10	565432.000	175252.020
P11	565436.958	175225.590
P12	565651.138	175140.025
P13	565746.298	175087.712
P14	566725.508	175139.190
P15	566725.264	175146.895
P16	566367.073	175232.706
P17	566357.738	175364.065
P18	566111.400	175349.600
P19	566076.861	175363.690
P20	566043.816	175364.297

(4) No hydrodynamic dredging may be carried out by the licence holder within the area within the grid coordinates for the area of the River specified below and more particularly shown on the works plans—

<i>Exclusion Zone</i>	<i>Easting (m)*5</i>	<i>Northing (m)*5</i>
EZ01	566376.99	175224.03
EZ02	566403.39	175224.01
EZ03	566492.00	175202.78
EZ04	566492.00	175131.94
EZ05	566377.00	175125.07

PART 2

CONDITIONS APPLYING TO LICENSABLE ACTIVITIES

Notifications regarding licensed activities

- 4.—(1) The licence holder must inform the MMO and HM Coastguard in writing:
- (a) at least 5 business days prior to the commencement of the first licensed activity; and
 - (b) within 5 business days following the completion of the final licensed activity,
- of the commencement or the completion (as applicable).
- 5.—(1) The licence holder must provide the following information to the MMO—
- (a) the name and function of any agent or contractor appointed to engage in any licensed activity within seven days of appointment; and
 - (b) details of any vessel being used to carry on any licensed activity listed on behalf of the licence holder, together with details of the vessel owner or operating company not less than 24 hours before the commencement of the licensed activity in question.
- (2) Any changes to details supplied under subparagraph (1) must be notified to the MMO in writing prior to the agent, contractor or vessel engaging in the licensed activity in question.
- (3) Only those persons notified to the MMO in accordance with this condition are permitted to carry out a licensed activity.

6. The licence holder must ensure that a copy of this Schedule has been read and understood by any agents and contractors, together with any masters or transport managers responsible for the vessels that will be carrying out any licensed activity on behalf of the licence holder, as notified to the MMO under condition 10.

7. Copies of this Schedule must be available for inspection at the following locations—

- (a) the licence holder's registered office; and
- (b) during the construction of the authorised development only, at any site office which is adjacent to or near the River and which has been provided for the purposes of the construction of the authorised development.

8. The licence holder must request that the masters or transport managers responsible for the vessels that will be carrying out any licensed activity on behalf of the licence holder as notified to the MMO under condition 5 make a copy of this Schedule available for inspection on board such vessels during the carrying out of any licensed activity.

Construction Environmental Management Plan

9. All licensed activities must be carried out in accordance with the construction environmental management plan where applicable.

Construction method statement

10.—(1) Following consultation with the Environment Agency and Natural England, the licence holder must submit a construction method statement, together with a report on the consultation carried out, for approval by the MMO, at least 6 weeks prior to the commencement of any licensed activity.

(2) The construction method statement must include the following details—

- (a) the detailed construction methodology to be employed by the licence holder in carrying out the licensed activity;
- (b) a programme of works including timings and durations, method of delivery of material to site and plant to be used during the works; and
- (c) if relevant, the results of further sediment sampling undertaken in accordance with a sampling plan approved under condition 11.

(3) The licence holder must not commence the licensed activity until the MMO has approved in writing the submitted construction method statement.

(4) The licensed activity must be carried out in accordance with the approved construction method statement, unless otherwise agreed in writing by the MMO.

Sediment sampling

11.—(1) If the licence holder considers that sediment sampling is required to demonstrate the appropriateness of a construction methodology to be included in a construction method statement submitted to the MMO for approval under condition 10, prior to submitting that construction method statement to the MMO, the licence holder must submit a sediment sampling plan for approval by the MMO.

(2) The licence holder must not submit the relevant construction method statement mentioned in sub-paragraph (1) to the MMO until sediment sampling has been undertaken in accordance with the approved sediment sampling plan, unless otherwise agreed in writing by the MMO.

Piling

12.—(1) Where a licensed activity involves percussive piling the licence holder must commence piling activities using soft-start techniques for at least 20 minutes to ensure an incremental

increase in pile power until full operational power is achieved. Should piling cease for at least 20 minutes the soft-start procedures must be repeated.

(2) No piling which is a licensed activity may be carried out between the hours of 18:00 to 08:00.

Dredging

13. Water injection dredging which is a licensed activity must not be undertaken in the period 1 June to 30 August.

Marine written scheme of archaeological investigation

14.—(1) The authorised development must be carried out in accordance with the marine written scheme of investigation.

(2) Archaeological method statements together with a report on any consultation carried out in their preparation must be submitted to the MMO for approval in accordance with the provisions of the marine written scheme of investigation six weeks before any works to which the method statements relate commence.

Concrete and cement

15.—(1) The licence holder must not discharge waste concrete slurry or wash water from concrete, or cement into the River.

(2) Where practicable, the licence holder must site concrete and cement mixing and washing areas at least 10 metres away from the River and any surface water drain to minimise the risk of run off entering the River.

Coatings and treatments

16. The licence holder must ensure that any coatings and any treatments are suitable for use in the River and are used in accordance with either guidelines approved by the Health and Safety Executive or the Environment Agency.

Pollution and Spills

17. The licence holder must—

- (a) store, handle, transport and use fuels, lubricants, chemicals and other substances so as to prevent releases into the marine environment, including bunding of 110% of the total volume of all reservoirs and containers;
- (b) report any spill of oil, fuel or chemicals into the marine area to the MMO Marine Pollution Response Team pursuant to paragraph 2(2) of this Schedule within 12 hours of the spill occurring; and
- (c) store all waste in designated areas that are isolated from surface water drains and open water and are bunded.

Post-construction

18. The licence holder must remove all temporary structures, waste and debris associated with the construction activities within 6 weeks following completion of the final construction activity.

Disposal

19. The licence holder must inform the MMO of the location and quantities of material disposed of each month under this licence. This information must be submitted to the MMO by 15 February

each year for the months August to January inclusive, and by 15 August each year for the months February to July inclusive.

20. The licence holder shall ensure that only inert material of natural origin, produced during dredging shall be disposed of within the disposal site TH070 South Falls (or any other disposal site approved in writing by the MMO), and that any other materials are screened out before disposal at this site.

21. The material to be disposed of within the disposal site referred to in condition 20 must be placed within the boundaries of that site

22. During the course of disposal, material must be distributed evenly over the disposal site.

PART 3

PROCEDURE FOR THE DISCHARGE OF CONDITIONS

Meaning of “application”

23. In this Part, “application” means a submission by the licence holder for approval by the MMO of any construction method statement or plan under conditions 10 and 11.

Further information regarding application

24.—(1) The MMO may request in writing such further information from the licence holder as is necessary to enable the MMO to consider the application.

Determination of application

25.—(1) In determining the application the MMO may have regard to—

- (a) the application and any supporting information or documentation;
- (b) any further information provided by the licence holder in accordance with paragraph 11; and
- (c) such other matters as the MMO thinks relevant.

(2) Having considered the application the MMO must—

- (a) grant the application unconditionally;
- (b) grant the application subject to the conditions as the MMO thinks fit; or
- (c) refuse the application.

Notice of determination

26.—(1) Subject to sub-paragraph (2) or (3), the MMO must give notice to the licence holder of the determination of the application as soon as reasonably practicable after the application is received by the MMO.

(2) Where the MMO has made a request under condition 24, the MMO must give notice to the licence holder of the determination of the application as soon as reasonably practicable once the further information is received.

(3) Where the MMO refuses the application the refusal notice must state the reasons for the refusal.

SCHEDULE 10

PROTECTIVE PROVISIONS

Article 54

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1. The provisions of this Part have effect for the protection of statutory undertakers unless otherwise agreed in writing between the Company and the statutory undertaker in question.

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the statutory undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of a statutory undertaker within paragraph (a) of the definition of that term, electric lines or electrical plant (as defined in the Electricity Act 1989^(a)), belonging to or maintained by the statutory undertaker for the purposes of electricity supply;
- (b) in the case of a statutory undertaker within paragraph (b) of the definition of that term, any mains, pipes or other apparatus belonging to or maintained by the statutory undertaker for the purposes of gas supply;
- (c) in the case of a statutory undertaker within paragraph (c) of the definition of that term—
 - (i) mains, pipes or other water apparatus belonging to or maintained by the statutory undertaker for the purposes of water supply; and
 - (ii) mains, pipes or other water apparatus that is the subject of an agreement to adopt made under section 51A (agreements to adopt water main or service pipe at future date) of the Water Industry Act 1991; and
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the sewerage undertaker under the Water Industry Act 1991^(b); and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewage disposal works, at future date) of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and in each case includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land; and

“statutory undertaker” means—

(a) 1989 c.29.

(b) 1991 c.56.

- (a) any licence holder within the meaning of Part 1 (electricity supply) of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 (gas supply) of the Gas Act 1986(a);
- (c) a water undertaker within the meaning of the Water Industry Act 1991; and
- (d) a sewerage undertaker within the meaning of Part 1 (preliminary) of the Water Industry Act 1991,

for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the Company and the statutory undertaker are regulated by Part 3 (street works in England and Wales) of the 1991 Act.

4.—(1) Regardless of the temporary stopping up, alteration or diversion of streets under the powers conferred by article 13 (temporary stopping up and restriction of use of streets), a statutory undertaker is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the temporary stopping up, alteration or diversion was in that street.

(2) Where any street is stopped up under article 12 (permanent stopping up and restriction of use of highways and private means of access), any statutory undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the Company must grant to the statutory undertaker legal easements reasonably satisfactory to the statutory undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the Company or of the statutory undertaker to require the removal of that apparatus under paragraph 6 or to carry out works under paragraph 8.

5. Despite any provision in this Order or anything shown on the land, special category land and crown land plans, the Company must not acquire any apparatus otherwise than by agreement.

6.—(1) If, in the exercise of the powers conferred by this Order, the Company acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the statutory undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a statutory undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the statutory undertaker in question in accordance with sub-paragraphs (2) to (8).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the Company requires the removal of any apparatus placed in that land, the Company must give to the statutory undertaker in question 28 days' written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a statutory undertaker reasonably needs to remove any of its apparatus) the Company must, subject to sub-paragraph (3), afford to the statutory undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the Company and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the Company, or the Company is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the statutory undertaker in question must, on receipt of a written notice to that effect from the Company, as soon as reasonably practicable use reasonable

(a) 1986 c.44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45), and was further amended by section 76 of the Utilities Act 2000 (c.27).

endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the Company under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the statutory undertaker in question and the Company or in default of agreement settled by arbitration in accordance with article 60 (arbitration).

(5) The statutory undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 60 (arbitration), and after the grant to the statutory undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the Company to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the Company gives notice in writing to the statutory undertaker in question that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the Company, that work, instead of being executed by the statutory undertaker, may be executed by the Company in accordance with plans and in a position agreed between the statutory undertaker and the Company or, in default of agreement, determined by arbitration in accordance with article 60 (arbitration), without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the statutory undertaker.

(7) In carrying out any work under sub-paragraph (6) the Company must comply with all statutory obligations which would have been applicable had the works been carried out by the statutory undertaker.

(8) Nothing in sub-paragraph (6) authorises the Company to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 600 millimetres of the apparatus.

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the Company affords to a statutory undertaker facilities and rights for the construction and maintenance in land of the Company of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the Company and the statutory undertaker in question or in default of agreement settled by arbitration in accordance with article 60 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in land of the Company, the arbitrator must—

- (a) give effect to all reasonable requirements of the Company for ensuring the safety and efficient operation of the tunnels and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the Company; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in, under, over or above the tunnels for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by the Company in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the statutory undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the Company to that statutory undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

8.—(1) Not less than 28 days before starting the execution of any works authorised by this Order that will or may affect any apparatus the removal of which has not been required by the

Company under paragraph 6(2), the Company must submit to the statutory undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the statutory undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a statutory undertaker under sub-paragraph (2) must be made within a period of 28 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a statutory undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the Company, reasonably requires the removal of any apparatus and gives written notice to the Company of that requirement, paragraphs 1 to 7 applies as if the removal of the apparatus had been required by the Company under paragraph 6(2).

(5) Nothing in this paragraph precludes the Company from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The Company is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the statutory undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

(7) Nothing in sub-paragraph (6) entitles the Company to carry out works to any apparatus but, upon receipt of notice from the Company, the statutory undertaker must proceed to carry out such works as may be required without unnecessary delay.

9.—(1) Subject to the following provisions of this paragraph, the Company must repay to the statutory undertaker in question the proper and reasonable expenses incurred by that statutory undertaker in, or in connection with the inspection, removal, relaying, replacing, alteration or protection of any apparatus under any provision of this Part of this Schedule (including any costs reasonably incurred or compensation properly paid in connection with the acquisition of facilities and rights or exercise of statutory powers for such apparatus) including the cutting off of any apparatus from any other apparatus or the making safe of any redundant apparatus as a consequence of the exercise by the Company of any power under this Order and the surveying of any land or works, the inspection, superintendence and monitoring of works or the removal of any temporary works reasonably necessary in consequence of the exercise of the Company of any power under this Order.

(2) The value of any apparatus removed under this Part is to be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with this Part—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the Company or, in default of agreement, is not determined by arbitration in accordance with article 60 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount

which apart from this sub-paragraph would be payable to the statutory undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a statutory undertaker in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the statutory undertaker in question any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

10.—(1) Subject to sub-paragraphs (1) and (3), if by reason or in consequence of the construction, maintenance or failure of any of the works referred to in paragraph 6(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a statutory undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any statutory undertaker, the Company must—

- (a) bear and pay the cost reasonably incurred by that statutory undertaker in making good such damage or restoring the supply; and
- (b) indemnify the statutory undertaker against all reasonable claims, penalties, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from, or reasonably and properly incurred by, the statutory undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the Company with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a statutory undertaker, its officers, servants, contractors or agents.

(3) A statutory undertaker must give the Company reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the Company which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

11. If in consequence of the exercise of the powers conferred by this Order the access to any apparatus is materially obstructed the Company must provide such alternative means of access to that apparatus as will enable the statutory undertaker to maintain or use the apparatus no less effectively than was possible before the obstruction.

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

12.—(1) For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the Company and the operator.

(2) In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

(a) 2003 c.21.

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 (electronic communications networks and services) of Part 2 of the 2003 Act^(a);

“electronic communications code network” means—

- (a) so much of an electronic communications network or infrastructure system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 (application of the electronic communications code) of the 2003 Act; and
- (b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;

“infrastructure system” has the same meaning as in the electronic communications code and references to providing a infrastructure system are to be construed in accordance with paragraph 7(2) of that code; and

“operator” means the operator of an electronic communications code network.

13. The exercise of the powers of article 34 (statutory undertakers) is subject to Part 10 (undertaker’s works affecting electronic communications apparatus) of the electronic communications code.

14.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator,

the Company must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the Company with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the Company reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the Company which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the Company and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 60 (arbitration).

15. This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the Company and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

^(a) See section 106.

PART 3

FOR THE PROTECTION OF THE PORT OF LONDON AUTHORITY

16. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the Company and the PLA, for the protection of the PLA in relation to the construction and maintenance of the authorised development.

Definitions

17. In this Part of this Schedule—

“construction” includes execution, placing, altering, replacing, relaying and renewal and, in its application to a specified work which includes or comprises any operation, means the carrying out of that operation and “construct” and “constructed” have corresponding meanings;

“core information” means the information (including information comprised in plans) regarding specified works or specified functions that the PLA may from time to time prescribe as being required to accompany any submission of plans for approval under paragraph 18, such information being that which the PLA publishes on its website from time to time as being required to accompany an application for a works licence under section 66 (licensing of works) or, as the case may be, an application for a licence to dredge under section 73 (licensing of dredging, etc.) of the 1968 Act;

“the PLA” means the Port of London Authority;

“plans” includes navigational risk assessments, plans, sections, elevations, drawings, specifications, programmes, construction methods and descriptions including, where applicable, such relevant hydraulic information about the river Thames as may be reasonably requested by the PLA;

“specified function” means—

- (a) any function of the Company under this Order (except any function under article 23, 25 or 26); and
- (b) any function conferred by the following provisions of the 1968 Act applied to the extended port limits under article 4(1) (application of enactments relating to the Port of Tilbury)—
 - (i) section 120(1) to (5) and (7) (powers to raise and remove vessels sunk, etc.); and
 - (ii) section 121 (removal of obstructions other than vessels); and
- (c) any function under section 252 (powers of harbour and conservancy authorities in relation to wrecks) of the Merchant Shipping Act 1995,

the exercise of which may affect the river Thames or any function of the PLA; and

“specified work” means any part of the authorised development (which for this purpose includes the removal of any part of the authorised development), which—

- (a) is, may be, or takes place in, on, under or over the surface of land below mean high water level forming part of the river Thames; or
 - (b) may affect the river Thames or any function of the PLA,
- including any projection over the river Thames by any authorised work or any plant or machinery.

Approval of detailed design

18.—(1) The Company must not commence the construction of any specified work or the exercise of any specified function until plans of the work or function have been approved in writing by the PLA.

(2) The Company must submit to the PLA plans of the specified work or specified function together with all relevant core information and must thereafter provide such further particulars as

the PLA may, within 20 business days starting with the day on which plans are submitted under this sub-paragraph, reasonably require, and the particulars so supplied are to provide all information necessary to enable the PLA to determine whether approval should be given and, if so, whether conditions should be imposed.

(3) Any approval of the PLA required under this paragraph must not be unreasonably withheld but may be given subject to such reasonable modifications, terms and conditions as the PLA may make for the protection of—

- (a) traffic in, or the flow or regime of, the river Thames;
- (b) the use of its land, or the river Thames, for the purposes of performing its functions; or
- (c) the performance of any of its functions connected with environmental protection.

(4) Requirements made under sub-paragraph (3) may include conditions as to—

- (a) the proposed location of any temporary work and its dimensions or the location where the specified function is proposed to be exercised;
- (b) the programming of temporary works or the exercise of the specified function;
- (c) the removal of any temporary work and the undertaking by the Company of any related work or operation that the PLA considers to be necessary for the purpose of removing or preventing any obstruction to navigation;
- (d) the relocation, provision and maintenance of works, moorings, apparatus and equipment necessitated by the specified work or specified function; and
- (e) the expiry of the approval if the Company does not commence construction or carrying out of the approved specified work or exercise of the specified function within a prescribed period.

(5) Subject to sub-paragraph (6), an application for approval under this paragraph is deemed to have been refused if it is neither given nor refused—

- (a) in the case of an application for approval under article 43 (power to dredge), within 40 business days of the paragraph 18 specified day; and
- (b) in any other case, within 30 business days of that day.

(6) An approval of the PLA under this paragraph is not deemed to have been unreasonably withheld if approval within the time limited by sub-paragraph (5) has not been given pending the outcome of any consultation on the approval in question that the PLA is obliged to carry out in the proper exercise of its functions.

(7) The Company must carry out all operations for the construction of any specified work or the specified function without unnecessary delay and to the reasonable satisfaction of the PLA so that traffic in, or the flow or regime of, the river Thames, and the exercise of the PLA's functions, do not suffer more interference than is reasonably practicable. The PLA is entitled at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey those operations and the Company must provide all reasonable facilities to enable that inspection and survey to take place.

(8) In this paragraph “the paragraph 18 specified day” means, in relation to any specified work or specified function—

- (a) the day on which plans and sections of that work or function are submitted to the PLA under sub-paragraph (1); or
- (b) the day on which the Company provides the PLA with all further particulars of the work or function that have been requested by the PLA under that sub-paragraph,

whichever is the later.

As built drawings

19. As soon as reasonably practicable following the completion of the construction of the authorised development, the Company must provide to the PLA as built drawings of any specified

works in a form and scale to be agreed between the Company and the PLA to show the position of those works in relation to the river Thames.

Discharges, etc.

20.—(1) The Company must not without the consent of the PLA exercise the powers conferred by article 18 (discharge of water) so as to—

- (a) deposit in or allow to fall or be washed into the river Thames any gravel, soil or other material;
- (b) discharge or allow to escape either directly or indirectly into the river Thames any offensive or injurious matter in suspension or otherwise; or
- (c) directly or indirectly discharge any water into the river Thames.

(2) Any consent of the PLA under this paragraph must not be unreasonably withheld but may be given subject to such terms and conditions as the PLA may reasonably impose.

(3) Any consent under this paragraph is deemed to have been given if it is neither given nor refused (or is refused but without an indication of the grounds for refusal) within 35 days of the day on which the request for consent is submitted under sub-paragraph (1).

21. The Company must not, in exercise of the powers conferred by article 18 (discharge of water), damage or interfere with the beds or banks of any watercourse forming part of the river Thames unless such damage or interference is approved as a specified work under this Order or is otherwise approved in writing by the PLA.

Navigational lights, buoys, etc.

22.—(1) The Company must, at or near a specified work, a structure which remains in the river Thames by virtue of article 3(4) or 3(5) (disapplication of legislation, etc.) or a location where a specified function is being exercised, exhibit such lights, lay down such buoys and take such other steps for preventing danger to navigation as the PLA may from time to time reasonably require.

(2) The PLA must give the Company not less than 20 business days' written notice of a requirement under sub-paragraph (1) except in the case of emergency when the PLA must give such notice as is reasonably practicable.

Directions as to lights

23. The Company must comply with any reasonable directions issued from time to time by the PLA Harbour Master with regard to the lighting of—

- (a) a specified work or a structure which remains in the river Thames by virtue of article 3(4) or 3(5) (disapplication of legislation, etc.); or
- (b) the carrying out of a specified function or the use of apparatus for the purposes of such a function,

or the screening of such lighting, so as to ensure that it is not a hazard to navigation on the river Thames.

Permanent lights on tidal works

24. After the completion of a specified work the Company must at the outer extremity of that work exhibit every night from sunset to sunrise such lights, if any, and take such other steps, if any, for the prevention of danger to navigation as the PLA may from time to time direct.

Removal, etc. of the PLA's moorings and buoys

25.—(1) Subject to sub-paragraph (2), if by reason of the construction of any specified work or the exercise of any specified function it is reasonably necessary for the PLA to incur the cost of—

- (a) temporarily or permanently altering, removing, re-siting, repositioning or reinstating existing moorings or aids to navigation (including navigation marks or lights) owned by the PLA;
- (b) laying down and removing substituted moorings or buoys; or
- (c) carrying out dredging operations for any such purpose,

not being costs which it would have incurred for any other reason, the Company must pay the costs reasonably so incurred by the PLA.

(2) The PLA must give to the Company not less than 20 business days' notice of its intention to incur such costs, and take into account any representations which the Company may make in response to the notice within 10 business days of the receipt of the notice.

Sedimentation, etc. remedial action

26.—(1) This paragraph applies if any part of the river Thames has become or is likely to become subject to sedimentation, scouring or other changes in the flow or regime of the river Thames which—

- (a) is wholly or partly caused by a specified work or a specified function during the period beginning with the commencement of construction of the work or function and (subject to sub-paragraph (4)) ending with the expiration of six years after the date of completion of all the specified works comprised in the authorised development; and
- (b) for the safety of navigation or for the protection of any works in the river Thames, should in the reasonable opinion of the PLA be removed or made good.

(2) Subject to sub-paragraph (3) the Company must either—

- (a) pay to the PLA any additional expense to which the PLA may reasonably be put in dredging the river Thames to remove the sedimentation or in making good the scouring so far as (in either case) it is attributable to either or both the specified work and the specified function; or
- (b) carry out the necessary dredging or work to make good the scouring at its own expense and subject to the prior approval of the PLA which may be subject to reasonable conditions but which may not be unreasonably withheld or delayed;

and the expenses payable by the Company under this sub-paragraph include any additional expenses accrued or incurred by the PLA in carrying out surveys or studies which may be agreed with the Company in connection with the implementation of this paragraph.

(3) If it is established that the sedimentation, scouring or other changes in the flow or regime of the river was partly caused by a specified work or a specified function and partly by another factor, the Company's liability under sub-paragraph (2) is apportioned accordingly.

(4) At any time before the expiry of the period of six years after the date of completion of all the specified works comprised in the authorised development ("the completion date") the PLA may serve notice on the Company stating that in the opinion of the PLA the river Thames or any part of it may, after the expiry of that period, become subject to sedimentation, scouring or other changes in its flow or regime wholly or partly caused by a specified work or specified function. Any such notice must specify—

- (a) the additional period (not exceeding 10 years after the completion date) during which the provisions of sub-paragraphs (1) and (2) ought to apply; and
- (b) the PLA's reasons for reaching that opinion.

(5) On receipt of any such notice the Company may serve a counter-notice within 30 business days beginning on the day the notice was received, such notice to include details of the Company's objection to the PLA's notice or any conditions it may wish to impose on compliance by the Company with the PLA's notice.

(6) In the event that the PLA and the Company cannot agree the matters raised in the PLA's notice and the Company's counter-notice within two months from the service of the Company's counter-notice, either party may refer the matter to arbitration under paragraph 37.

(7) If the Company fails to serve a counter-notice or if it serves a counter-notice and the matter is either agreed between the PLA and the Company or determined pursuant to sub-paragraph (6), then the provisions of sub-paragraphs (1) and (2) will apply during such additional period as is specified in the PLA's notice or as may be so agreed or determined.

Removal of temporary works

27.—(1) On completion of the construction of the whole or any part of a permanent specified work, the Company must—

- (a) as soon as reasonably practicable after such completion seek approval under paragraph 18 for the removal required by sub-paragraph (b); and
- (b) as soon as reasonably practicable after the grant of that approval under paragraph 18 remove—
 - (i) in the case of completion of part, any temporary tidal work (other than a residual structure) carried out only for the purposes of that part of the permanent specified work;
 - (ii) on completion of all the specified works, any remaining temporary tidal work (other than a residual structure); and
 - (iii) in either case, any materials, plant and equipment used for such construction,

and make good the site to the reasonable satisfaction of the PLA.

(2) For the purposes of the Company making good the site in accordance with sub-paragraph (1)(b), the PLA may require that—

- (a) any residual structure is cut off by the Company at such level below the bed of the river Thames as the PLA may reasonably direct; and
- (b) the Company takes such other steps to make the residual structure safe as the PLA may reasonably direct.

(3) As soon as reasonably practicable after the Company has complied with the PLA's requirements under sub-paragraphs (1) and (2) in relation to any residual structure, the PLA will grant the Company a works licence for that structure under section 66 (licensing of works) of the 1968 Act, and the terms of the licence are to reflect such requirements.

(4) For the avoidance of doubt, article 3 (disapplication of legislation, etc.) will not apply to a residual structure which will, accordingly, be subject to sections 66 to 75 of the 1968 Act.

(5) In this article—

“residual structure” means any part of a temporary tidal work that the PLA agrees cannot reasonably be removed by the Company on completion of the construction of the permanent specified works; and

“tidal work” means any specified work any part of which is, or may be, or, in, under or over the surface of land below mean high water level forming part of the river Thames.

Protective action

28.—(1) If any specified work or the exercise of any specified function—

- (a) is constructed or carried out otherwise than in accordance with the requirements of this Part of this Schedule or with any condition in an approval given under paragraph 18(4); or
- (b) during construction or carrying out gives rise to sedimentation, scouring, currents or wave action, which would be materially detrimental to traffic in, or the flow or regime of, the river Thames,

then the PLA may by notice in writing require the Company at the Company's own expense to comply with the remedial requirements specified in the notice.

(2) The requirements that may be specified in a notice given under sub-paragraph (1) are—

- (a) in the case of a specified work or specified function to which sub-paragraph (1)(a) applies, such requirements as may be specified in the notice for the purpose of giving effect to the requirements of—
 - (i) this Part of this Schedule; or
 - (ii) the condition that has been breached; or
 - (b) in any case within sub-paragraph (1)(b), such requirements as may be specified in the notice for the purpose of preventing, mitigating or making good the sedimentation, scouring, currents or wave action so far as required by the needs of traffic in, or the flow or regime of, the river Thames.
- (3) If the Company does not comply with a notice under sub-paragraph (1), or is unable to do so then the PLA may in writing require the Company to—
- (a) remove, alter or pull down the specified work, and where the specified work is removed to restore the site of that work (to such extent as the PLA reasonably requires) to its former condition; or
 - (b) take such other action as the PLA may reasonably specify for the purpose of remedying the non-compliance to which the notice relates.
- (4) If a specified work gives rise to environmental impacts over and above those anticipated by any environmental document, the Company must, in compliance with its duties under any enactment, take such action as is necessary to prevent or mitigate those environmental impacts and in so doing must consult and seek to agree the necessary measures with the PLA.
- (5) If the PLA becomes aware that any specified work is causing an environmental impact over and above those anticipated by any environmental document, the PLA must notify the Company of that environmental impact, the reasons why the PLA believes that the environmental impact is being caused by the specified work and of measures that the PLA reasonably believes are necessary to counter or mitigate that environmental impact. The Company must implement either the measures that the PLA has notified to the Company or such other measures as the Company believes are necessary to counter the environmental impact identified, giving reasons to the Company as to why it has implemented such other measures.
- (6) In this paragraph “environmental document” means-
- (a) the environmental statement; and
 - (b) any other document containing environmental information provided by the Company to the PLA for the purposes of any approval under paragraph 18.

Abandoned or decayed works

29.—(1) If a specified work or a structure which remains in the river Thames by virtue of article 3(4) or 3(5) (disapplication of legislation, etc.) is abandoned or falls into decay, the PLA may by notice in writing require the Company to take such reasonable steps as may be specified in the notice either to repair or restore the specified work or structure, or any part of it, or to remove the specified work and (to such extent and within such limits as the PLA reasonably requires) restore the site of that work to its condition prior to the construction of the specified work.

(2) If any specified work or structure which remains in the river Thames by virtue of article 3(4) or 3(5) is in such condition that it is, or is likely to become, a danger to or an interference with navigation in the river Thames, the PLA may by notice in writing require the Company to take such reasonable steps as may be specified in the notice—

- (a) to repair and restore the work or part of it; or
- (b) if the Company so elects, to remove the specified work and (to such extent as the PLA reasonably requires) to restore the site to its former condition.

(3) If on the expiration of such reasonable period as may be specified in a notice under this paragraph the work specified in the notice has not been completed to the satisfaction of the PLA, the PLA may undertake that work and any expenditure reasonably incurred by the PLA in so doing is recoverable from the Company.

Facilities for navigation

30.—(1) The Company must not in the exercise of the powers conferred by this Order interfere with any marks, lights or other navigational aids in the river without the consent of the PLA, and must ensure that access to such aids remains available during and following construction of any specified work or the exercise of any specified function.

(2) The Company must provide at any specified work, or must afford reasonable facilities at such work (including an electricity supply) for the PLA to provide at the Company's cost, from time to time such navigational lights, signals, radar or other apparatus for the benefit, control and direction of navigation as the Company may deem necessary by reason of the construction and presence of the specified work and must ensure access remains available to such facilities during and following construction of the specified work.

Survey of riverbed

31.—(1) The PLA may, at the Company's expense (such expense to be that which is reasonably incurred), carry out a survey (or externally procure the carrying out of a survey) for the purpose of establishing the condition of the river Thames—

- (a) before the commencement of construction of the first specified work below mean high water level to be constructed following approval under paragraph 18;
- (b) before the commencement of construction of any other specified work, or the carrying out of any other specified function, approved under paragraph 18;
- (c) during the construction of any specified work, or the carrying out of any specified function, as is reasonably required; and
- (d) after completion of, respectively—
 - (i) any specified work and the exercise of all related specified functions; and
 - (ii) all the specified works constructed and specified functions carried out under this Order in relation to such construction,

of such parts of the river Thames as might be affected by sedimentation, scouring, currents or wave action that might result from the construction of the relevant specified work, or the carrying out of a specified function as would, if it were to be constructed or carried out, constitute specified works, or give rise to operations, below mean high water level.

(2) The PLA must make available to the Company the results of any survey carried out under this paragraph.

(3) The PLA must not under this paragraph carry out a survey of any part of the river Thames in respect of which the Company has provided to the PLA survey material which the PLA is satisfied establishes the condition of the river Thames, and in the case of a survey under sub-paragraph (1)(c), the effect of the specified works and the specified functions.

(4) A survey carried out under this paragraph is the property of the PLA.

Consideration for dredged material

32.—(1) The Company must pay to the PLA for material dredged by the Company under this Order from so much of the river Thames of which the freehold is vested in the PLA, consideration calculated at a rate agreed between them and otherwise in accordance with this paragraph.

(2) The Company must pay consideration under sub-paragraph (1) as respects material dredged in the course of the construction of the authorised development based on the quantity of such material that—

- (a) is not used for the construction of the authorised development; and
- (b) is sold by the Company or by any other person exercising any powers under this Order.

Restriction on powers of compulsory acquisition

33. Nothing contained in Part 3 of this Order authorises the acquisition of any interest in, or the acquisition or extinguishment of any right in, on or over, any Order land if the interest or right is at the time of the proposed acquisition vested in the PLA.

Protection for the PLA's functions

34.—(1) Subject to article 3 (disapplication of legislation, etc.) the exercise in, under or over the river Thames by the Company of any of its functions under this Order is subject to—

- (a) any enactment relating to the PLA;
- (b) any byelaw, direction or other requirement made by the PLA or the PLA Harbour Master under any enactment; and
- (c) any other exercise by the PLA or the PLA Harbour Master of any function conferred by or under any enactment.

(2) The Company's dockmaster must not give or enforce any special direction to any vessel under section 112(1)(b) (special directions to vessels in the Thames) of the 1968 Act, or enforce such a direction under section 118 (enforcement of directions) of that Act, if to do so would conflict with a special direction given to the same vessel by the PLA Harbour Master.

(3) The Company must not take any action in the river Thames in relation to the removal from the extended port limits of any vessel or other thing except with the consent of the PLA Harbour Master, which must not be unreasonably withheld.

Indemnity

35.—(1) The Company is responsible for and must make good to the PLA all financial costs, charges, damages, losses or expenses which may be incurred reasonably or suffered by the PLA by reason of—

- (a) the construction or operation of a specified work or its failure;
- (b) the exercise of any specified function; or
- (c) any act or omission of the Company, its employees, contractors or agents or others whilst engaged on the construction or operation of a specified work or exercise of a specified function dealing with any failure of a specified work,

and the Company must indemnify the PLA from and against all claims and demands arising out of or in connection with the specified works or specified functions or any such failure, act or omission.

(2) The fact that any act or thing may have been done—

- (a) by the PLA on behalf of the Company; or
- (b) by the Company, its employees, contractors or agents in accordance with plans or particulars submitted to or modifications or conditions specified by the PLA, or in a manner approved by the PLA, or under its supervision or the supervision of its duly authorised representative,

does not (if it was done or required without negligence on the part of the PLA or its duly authorised representative, employee, contractor or agent) excuse the Company from liability under the provisions of this paragraph.

(3) The PLA must give the Company reasonable notice of any such claim or demand as is referred to in sub-paragraph (1) and no settlement or compromise of it is to be made without the prior consent of the Company.

Disposals, etc.

36. The Company must within 7 days after the completion of any sale, agreement or other transaction under article 51 (consent to transfer benefit of Order) in relation to which any powers,

rights and obligations of the Company are transferred to another party, notify the PLA in writing, and the notice must include particulars of the other party to the transaction under article 51, the general nature of the transaction and details of the extent, nature and scope of the works or functions sold, transferred or otherwise dealt with.

Disputes

37. Subject to any protocol agreed in writing by the parties, any dispute arising between the Company and the PLA under this Part of this Schedule is to be determined by arbitration as provided in article 60 (arbitration).

PART 4

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

38. The following provisions apply for the protection of the Environment Agency unless otherwise agreed in writing between the Company and the Agency, in relation to construction of the authorised development and, within any maintenance period defined in article 33 (temporary use of land for maintaining the authorised development), any maintenance of any part of the authorised development.

Definitions

39. In this Schedule—

“the Agency” means the Environment Agency;

“construction” includes execution, placing, altering, replacing, relaying, removal and excavation and “construct” and “constructed” is to be construed accordingly;

“damage” includes (but is not limited to) scouring, erosion, loss of structural integrity and environmental damage to any drainage work or any flora or fauna dependent on the aquatic environment, and “damaged” is to be construed accordingly;

“drainage work” means any main river and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring or flood storage capacity;

“environmental duties” means the Agency’s duties in the Environment Act 1995(a), the Natural Environment and Rural Communities Act 2006(b) and the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017(c);

“fishery” means any waters containing fish and fish in, or migrating to or from such waters and the spawn, spawning grounds or food for such fish;

“flood defence” means any bank, wall, embankment, bridge abutments, lock gates or other structure or any appliance (including any supporting anchorage system) that fulfils a function of preventing, or reducing the risk of, flooding to land or property;

“flood storage capacity” means any land, which, taking account of the flood defences, is expected to provide flood storage capacity for any main river;

“main river” means all watercourses shown as such on the statutory main river maps held by the Agency and the Department for Environment, Food and Rural Affairs, including any structure or appliance for controlling or regulating the flow of water into, in or out of the channel;

“maintenance” has the same meaning as in article 2 (interpretation), save for the exclusion of the works of inspection;

(a) 1995 c.25
(b) 2006 c.16
(c) S.I. 2017/407

“plans” includes sections, drawings, specifications, associated pre-construction ground investigation methodologies and method statements; and

“specified work” means so much of any permanent or temporary work or operation forming part of the authorised development (other than works required in an emergency) as is in, on, under or over a main river or drainage works or within 16 metres of a drainage work or is otherwise likely to—

- (a) affect any drainage works or the volumetric rate of flow of water in or flowing to or from any drainage works; or
- (b) affect the flow, purity or quality of water in any main river or other surface waters or ground water; or
- (c) cause obstruction to the free passage of fish or damage to any fishery; or
- (d) affect the conservation, distribution or use of water resources; or
- (e) affect the conservation value of the main river and habitats in its immediate vicinity.

Dredging

40.—(1) — The Company must consult the Agency as soon as reasonably practicable before applying to the PLA for consent to any dredging under Part 3 of this Schedule and in doing so the Company must allow the Agency 28 days to respond to the consultation.

(2) Subject to sub-paragraph (1), nothing in this Part of this Schedule applies to dredging carried out under the powers of this Order.

Specified works

41.—(1) Before commencing construction of a specified work (excluding any piling works which comprise a “licensable marine activity” as defined in the 2009 Act), the Company must submit to the Agency for its written approval—

- (a) plans of the specified work together with the details of the positioning of any structure within the main river; and
- (b) such further particulars as the Agency may within 20 business days of the receipt of the detailed designs reasonably require.

(2) Any submission made by the Company under sub-paragraph (1), and any approval given by the Agency under this paragraph, may be in respect of all or part of a specified work.

(3) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency under sub-paragraph (1), or settled in accordance with paragraph 48 where applicable, and in accordance with any reasonable conditions or requirements specified under this paragraph.

(4) Any approval of the Agency required under this paragraph—

- (a) must not be unreasonably withheld;
- (b) is deemed to have been refused if it is neither given nor refused within 8 weeks of the submission of the plans or within 4 weeks of the receipt of further particulars if such particulars have been required by the Agency for approval;
- (c) in the case of a refusal, must be accompanied by a statement of the grounds of refusal; and
- (d) may be given subject to such reasonable requirements or conditions as the Agency may make for the protection of any drainage work, flood defence, fishery, main river or water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties.

(5) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (4)(b).

(6) Without limitation on the scope of sub-paragraph (4)(d) the requirements or conditions which the Agency may make under that paragraph include conditions requiring the Company at its own expense to construct such protective works (including any new works as well as alterations to existing works) whether temporary or permanent before or during construction of the specified work (including provision of flood banks, walls or embankments or other new works and the strengthening, repair or removal of banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work or flood defence against damage;
- (b) to secure that its efficiency or effectiveness for flood defence purposes is not impaired; or
- (c) to ensure the risk of flooding is not otherwise increased by reason of any specified work, maintenance work or protective work,

during the construction of or by reason of any specified work.

(7) Any dispute in respect of any approval or refusal under this paragraph is subject to the dispute resolution procedure in paragraph 48.

Construction and inspection

42.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 41 must be constructed—

- (a) without unnecessary or unreasonable delay;
- (b) in accordance with the plans approved or deemed to have been approved or settled under this Part of this Schedule; and
- (c) to the reasonable satisfaction of the Agency,

and an officer of the Agency is entitled to watch and inspect the construction of such works.

(2) The Company must give to the Agency not less than 10 business days' notice in writing of its intention to commence construction of any specified work and notice in writing of its having been brought into use not later than five business days after the date on which it has been completed.

(3) If the Agency reasonably requires, the Company must construct all or part of any protective works so that they are in place prior to the carrying out of any specified work to which they relate.

(4) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Agency may by notice in writing require the Company, at the Company's own expense, to comply with the requirements of this Part of this Schedule or (if the Company so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(5) Subject to sub-paragraph (4) if, within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served upon the Company, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any expenditure incurred by it in so doing is recoverable from the Company.

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency must not except in an emergency exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined.

Maintenance of drainage works

43.—(1) Subject to sub-paragraph (5), the Company must from the commencement of the construction of a specified work until its completion ("the maintenance period"), maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the Company for the purposes of or in connection with the

specified work, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the Company is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the Company, or (if the Company so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) If, within a reasonable period being not less than 28 business days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the Company, the Company has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the Company.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not except in a case of emergency exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined.

(5) This paragraph does not apply to—

- (a) drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not proscribed by the powers of this Order from doing so; and
- (b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part of this Schedule.

Alternative access

44. If by reason of construction of any specified work the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the Company must provide such alternative means of access that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction within 72 hours of the Company becoming aware of such obstruction.

Emergency powers

45.—(1) Subject to sub-paragraph (2), if by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the Company to the reasonable satisfaction of the Agency.

(2) If such impaired or damaged drainage work is not made good to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the Company to restore it to its former standard of efficiency or where necessary to construct some other work in substitution for it.

(3) If, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of impaired or damaged drainage work is served under sub-paragraph (2) on the Company the Company has failed to begin taking steps to comply with the requirements of the notice and has not thereafter made reasonably expeditious progress towards its implementation, the Agency may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the Company.

(4) In any case where immediate action by the Agency is reasonably required in order to secure that imminent flood risk or damage to the environment is avoided or reduced, the Agency may take such steps as are reasonable for the purpose and may recover from the Company the reasonable cost of so doing.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (1), the Agency must not except in a case of immediate foreseeable need exercise the powers conferred by sub-paragraph (1) until the dispute has been finally determined in accordance with paragraph 48.

Free passage of fish

46.—(1) The Company must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the Company requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) If within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the Company fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and may recover from the Company the expense reasonably incurred by it in doing so provided that the notice specifying those steps is served on the Company as soon as is reasonably practicable after the Agency has taken, or commenced to take the steps specified in the notice.

Indemnities and Costs

47.—(1) The Company must indemnify the Agency in respect of all costs, charges and expenses which the Agency may reasonably incur or have to pay or which it may sustain—

- (a) in the examination or approval of plans under this Part of this Schedule;
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule; and
- (c) in the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

(2) Without affecting the other provisions of this Part of this Schedule, the Company must indemnify the Agency from all claims, demands, proceedings, costs, damages, expenses or loss, which may be reasonably made or taken against, recovered from, or reasonably incurred by, the Agency by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any damage to the fishery;
- (c) any raising or lowering of the water table in land adjoining the authorised development or any sewers, drains and watercourses;
- (d) any flooding or increased flooding of any such lands; or
- (e) inadequate water quality in any water in any watercourse or other surface waters or in any groundwater,

which is caused by the construction of any of the specified works or any act or omission of the Company, its contractors, agents or employees whilst engaged upon the work.

(3) The Agency must give to the Company reasonable notice of any such claim or demand and no settlement or compromise may be made without the agreement of the Company.

(4) In any case where immediate action by the Agency is reasonably required in order to secure that imminent flood risk or damage to the environment is avoided or reduced, the Agency may take such steps as are reasonable for the purpose and may recover from the Company the reasonable cost of so doing.

(5) The fact that any work or thing has been executed or done by the Company in accordance with a plan approved or deemed to be approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the Company from any liability under the provisions of this Part of this Schedule.

Dispute resolution

48. Any difference or dispute arising between the Company and the Agency under this Part of this Schedule is to be determined by arbitration in accordance with article 60 (arbitration) of the Order unless otherwise agreed in writing between the Company and the Agency, except that where there is no agreement between the parties the arbitrator is to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State for the Environment and the Secretary of State for Transport acting jointly.

PART 5

FOR THE PROTECTION OF THURROCK COUNCIL (AS LEAD LOCAL FLOOD AUTHORITY)

49. The following provisions of this Part of this Schedule apply for the protection of Thurrock Council unless otherwise agreed between the Company and Thurrock Council.

50. In this Part of this Schedule—

“construction” includes execution, placing, altering, replacing, relaying, removal and excavation and “construct” and “constructed” are to be construed accordingly;

“drainage work” means an ordinary watercourse and includes any land which is expected to provide flood storage capacity for an ordinary watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence in connection with an ordinary watercourse;

“ordinary watercourse” has the same meaning as given in section 72 (interpretation) of the Land Drainage Act 1991;

“plans” includes sections, drawings, specifications and method statements; and

“specified work” means any of the following works carried out in relation to or which may affect any ordinary watercourse—

- (a) erecting any mill dam, weir or other similar obstruction to the flow of the watercourse, or raising or otherwise altering any such obstruction;
- (b) construction or installation of a bridge or other structure;
- (c) installing a culvert in the watercourse; or
- (d) altering a watercourse or a culvert or other form of drainage infrastructure in a manner that would be likely to affect the flow of the watercourse.

51.—(1) Before beginning to construct any specified work, the Company must submit to Thurrock Council plans of the work, and such further particulars as Thurrock Council may within 28 days of the submission of the plans reasonably require.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by Thurrock Council, or determined under paragraph 59.

(3) Any approval of Thurrock Council required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) is to be deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans for approval or where further particulars are submitted under sub-paragraph (1), within 2 months of the submission of those particulars; and
- (c) may be given subject to such reasonable requirements or conditions as Thurrock Council may make for the protection of any ordinary watercourse or for the prevention of flooding.

52. The requirements or conditions which Thurrock Council may make under paragraph 51 include conditions requiring the Company at its own expense to construct such protective works (including any new works as well as alterations to existing works) as are reasonably necessary—

- (a) to safeguard any ordinary watercourse against damage, or
- (b) to secure that the efficiency of any ordinary watercourse for flood defence or land drainage purposes is not impaired and that the risk of flooding is not otherwise increased, nor land drainage impaired,

by reason of the specified work.

53.—(1) Any specified work, and all protective works required by Thurrock Council under paragraph 51, must be constructed to the reasonable satisfaction of Thurrock Council and an officer of Thurrock Council is entitled on giving such notice as may be reasonable in the circumstances, to inspect and watch the construction of such works.

(2) The Company must give to Thurrock Council not less than 14 days' notice of its intention to commence construction of any specified work and the Company must give to Thurrock Council notice of completion of a specified work not later than 7 days after the date on which it is brought into use.

(3) If any part of a specified work in, over or under any ordinary watercourse is constructed otherwise than in accordance with the requirements of this Part of this Schedule, Thurrock Council may by notice require the Company at its own expense to comply with the requirements of this Part of this Schedule or (if the Company so elects and Thurrock Council in writing consents, such consent not to be unreasonably withheld) at the Company's expense to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as Thurrock Council reasonably requires.

(4) Subject to sub-paragraph (5), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served upon the Company, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, Thurrock Council may execute the works specified in the notice and any expenditure reasonably incurred by it in so doing is to be recoverable from the Company.

(5) In the event of any dispute as to whether sub-paragraph (3) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, Thurrock Council must not, except in an emergency, exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

54.—(1) From the commencement of the construction of any specified work until the date falling 12 months from the date of completion of the specified work ("the maintenance period"), the Company must at its expense, maintain in good repair and condition and free from obstruction the drainage work which is situated within the limits of deviation for that specified work and within land held or occupied by the Company, whether the drainage work is constructed under this Order or is already in existence.

(2) If any such drainage work is not maintained to the reasonable satisfaction of Thurrock Council, it may by notice require the Company to maintain the drainage work at the Company's expense, or any part of it, to such extent as Thurrock Council reasonably requires.

(3) If, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the Company, the Company has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, Thurrock Council may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the Company.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), Thurrock Council must not except in a case of emergency exercise the powers of sub-paragraph (3) until the dispute has been finally determined.

55. If by reason of the construction of any specified work or of the failure of any such work the efficiency of any ordinary watercourse for flood defence or land drainage purposes is impaired, or that watercourse is otherwise damaged, so as to require remedial action, such impairment or

damage must be made good by the Company at its expense to the reasonable satisfaction of Thurrock Council and if the Company fails to do so, Thurrock Council may make good the same and recover from the Company the expense reasonably incurred by it in doing so.

56.—(1) The Company must indemnify Thurrock Council in respect of all losses, expenses, actions, liabilities, costs, charges and expenses which it may reasonably incur or which it may sustain—

- (a) in the examination or approval of plans under this Part of this Schedule; and
- (b) in the inspection and supervision of the construction of a specified work in respect of an ordinary watercourse or any protective works required Thurrock Council under this Part of this Schedule.

(2) The maximum amount payable to Thurrock Council under sub-paragraph (1)(a) or (1)(b) is to be the same as would have been payable to Thurrock Council in accordance with the scale of charges for pre-application advice and land drainage consent applications published on Thurrock Council's website from time to time.

57.—(1) Regardless of the other provisions of this Part of this Schedule but subject to paragraph 56, the Company must, within 28 days of receiving written notification from Thurrock Council, indemnify Thurrock Council from all losses, expenses, actions, charges, costs, claims, demands, proceedings or damages, which may be incurred, made or taken against, or recovered from Thurrock Council by reason of—

- (a) any damage to any ordinary watercourse so as to impair its efficiency for flood defence or land drainage purposes;
- (b) any raising or lowering of the water table in land adjoining or affected by a specified work or adjoining any sewers, drains and watercourses;
- (c) any flooding, increased flooding or impaired drainage of any such lands as are mentioned in paragraph (b) above;
- (d) any claim in respect of pollution under the 1974 Act;
- (e) damage to property including property owned by third parties; or
- (f) injury to or death of any person,

which is caused by, or results from, the construction and maintenance of any specified work or any act or omission of the Company, its contractors, agents or employees whilst engaged upon the specified work.

(2) Thurrock Council must give to the Company reasonable notice of any such claim or demand and no settlement or compromise of any such claim or demand is to be made without the consent of the Company which, if it withholds such consent, is to have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

58. The fact that any work or thing has been executed or done in accordance with a plan approved or deemed to have been approved by Thurrock Council, or to its satisfaction, does not (in the absence of negligence on the part of Thurrock Council, its officers, contractors or agents) relieve the Company from any liability under the provisions of this Part of this Schedule.

59. Any dispute arising between the Company and Thurrock Council under this Part of this Schedule is to be determined by arbitration in accordance with article 60 (arbitration) of the Order.

PART 6

FOR THE PROTECTION OF RAILWAY INTERESTS

60. The following provisions of this Schedule have effect, unless otherwise agreed in writing between the Company and Network Rail and, in the case of paragraph 74, any other person on whom rights or obligations are conferred by that paragraph.

61. In this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of powers under section 8 of the Railways Act 1993;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail Infrastructure Limited and—

(a) any station, land, works, apparatus and equipment belonging to Network Rail Infrastructure Limited or connected with any such railway; and

(b) any easement or other property interest held or used by Network Rail Infrastructure Limited for the purposes of such railway or works, apparatus or equipment; and

“specified work” means so much of the construction and maintenance of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

62.—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

(a) co-operate with the Company with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and

(b) use its reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

63.—(1) The Company must not exercise the powers conferred by article 12 (permanent stopping up and restriction of use of highways and private means of access), article 13 (temporary stopping up and restriction of use of streets), article 14 (access to works), article 17 (level crossings), article 18 (discharge of water), article 20 (authority to survey and investigate land), article 21 (felling or lopping of trees and removal of hedgerows), article 23 (compulsory acquisition of land), article 25 (compulsory acquisition of rights), article 26 (acquisition of subsoil or airspace only), article 27 (private rights over land), article 28 (power to override easements and other rights), article 32 (temporary use of land for constructing the authorised development), article 33 (temporary use of land for maintaining the authorised development) and article 34 (statutory undertakers) or the powers conferred by section 11(3) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The Company must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The Company must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, as applied by article 34 (Statutory Undertakers), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The Company must not under the powers of this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions.

64.—(1) The Company must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 60 (arbitration).

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated disapproval of those plans and the grounds of disapproval the Company may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the Company. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer is deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the Company that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the Company desires such part of the specified work to be constructed, Network Rail must construct it without unreasonable delay on behalf of and to the reasonable satisfaction of the Company in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the Company.

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the Company, if Network Rail so desires, and such protective works must be carried out at the expense of the Company in either case without unreasonable delay and the Company must not commence the construction of the specified works until the engineer has notified the Company that the protective works have been completed to the engineer's reasonable satisfaction.

65.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 64(4) must, when commenced, be constructed—

- (a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 64;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of a specified work, the Company must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Schedule imposes any liability on the Company with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the Company or its servants, contractors or agents.

66. The Company must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

67. Network Rail must at all times afford reasonable facilities to the Company and its agents for access to any works carried out by Network Rail under this Schedule during their construction and must supply the Company with such information as the Company may reasonably require with regard to such works or the method of constructing them.

68.—(1) If any permanent or temporary alterations or additions to railway property, are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the Company reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the Company must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the Company, Network Rail gives notice to the Company that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the Company decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the Company must, notwithstanding any such approval of a specified work under paragraph 64(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 69(a) provide such details of the formula by which those sums have been calculated as the Company may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the Company to Network Rail under this paragraph.

69. The Company must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the Company as provided by paragraph 64(3) or in constructing any protective works under the provisions of paragraph 64(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the Company and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watchkeepers and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

70.—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 64(1) for the relevant part of the authorised development giving rise to EMI (unless the Company has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the Company must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the Company’s compliance with sub-paragraph (3)—

- (a) the Company must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 64(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the Company all information in the possession of Network Rail reasonably requested by the Company in respect of Network Rail’s apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail must allow the Company reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail’s apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of their execution must be selected at the reasonable discretion of Network Rail, and in relation to such modifications paragraph 64(1) has effect subject to the sub-paragraph.

(6) If at any time prior to the completion of the authorised development and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised development causes EMI then the Company must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the Company’s apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail’s apparatus.

(7) In the event of EMI having occurred –

- (a) the Company must afford reasonable facilities to Network Rail for access to the Company’s apparatus in the investigation of such EMI;

- (b) Network Rail must afford reasonable facilities to the Company for access to Network Rail's apparatus in the investigation of such EMI; and
- (c) Network Rail must make available to the Company any additional material information in its possession reasonably requested by the Company in respect of Network Rail's apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to subparagraphs (5) or (6)—

- (a) Network Rail must allow the Company reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
- (b) any modifications to Network Rail's apparatus approved pursuant to those subparagraphs must be carried out and completed by the Company in accordance with paragraph 65.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 74(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which subparagraph (6) applies.

(10) For the purpose of paragraph 69(a) any modifications to Network Rail's apparatus under this paragraph are deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 60 (arbitration) to the Institution of Civil Engineers is to be read as a reference to an arbitrator being a member of the Institution of Engineering and Technology.

71. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the Company informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the Company must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

72. The Company must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless the Company has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

73. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the Company, be repaid by the Company to Network Rail.

74.—(1) The Company must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Schedule which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction or maintenance of a specified work or the failure thereof or
- (b) by reason of any act or omission of the Company or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

and the Company must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the Company or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision does not (if it was done without

negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the Company from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the Company reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand is to be made without the prior consent of the Company.

(3) The sums payable by the Company under sub-paragraph (1) may include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs is, in the event of default, enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail’s railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

75. Network Rail must, on receipt of a request from the Company, at a frequency to be agreed between the parties, provide the Company free of charge with written estimates of the costs, charges, expenses, future costs forecasts and other liabilities for which the Company is or will become liable under this Schedule (including the amount of the relevant costs mentioned in paragraph 74) and with such information as may reasonably enable the Company to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Schedule (including any claim relating to those relevant costs).

76. In the assessment of any sums payable to Network Rail under this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the Company under this Schedule or increasing the sums so payable.

77. The Company and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the Company of—

- (a) any railway property shown on the works plans or land, special category land and crown land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

78. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I (the provision of railway services) of the Railways Act 1993.

79. The Company must give written notice to Network Rail if any application is proposed to be made by the Company for the Secretary of State’s consent, under article 51 (consent to transfer benefit of Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and

- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

80. The Company must no later than 28 days from the date that the documents submitted to and certified by the Secretary of State in accordance with article 58 (certification of documents) are certified by the Secretary of State, provide a set of those documents to Network Rail in the form of a computer disc with read only memory.

PART 7

FOR THE PROTECTION OF THURROCK COUNCIL (AS HIGHWAY AUTHORITY)

81. The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the Company and Thurrock Council.

82. In this Part of this Schedule—

“highway” means a street vested in or maintainable by Thurrock Council as highway authority under the 1980 Act;

“plans” includes sections, drawings, specifications and particulars (including descriptions of methods of construction); and

“specified work” means so much of any of the authorised development as forms part of or is intended to become a highway, or part of any such highway.

83. Without affecting the application of sections 59 (general duty of street authority to co-ordinate works) and 60 (general duty of undertakers to co-operate) of the 1991 Act, before commencing the construction of any specified work, the Company must submit to Thurrock Council for its approval proper and sufficient plans and must not commence the construction of a specified work until those plans have been approved or settled by arbitration.

84. When signifying approval of plans submitted under paragraph 83, Thurrock Council may specify any protective works (whether temporary or permanent) which in its opinion must be carried out before the commencement of the construction of a specified work to ensure the safety or stability of the highway and such protective works must be carried out at the expense of the Company.

85. If, within 28 days after any plans have been submitted to Thurrock Council under paragraph 83, it has not intimated its disapproval and the grounds of disapproval, Thurrock Council is deemed to have approved them.

86. In the event of any disapproval of plans by Thurrock Council under paragraph 83, the Company may re-submit the plans with modifications and, in that event, if Thurrock Council has not intimated its disapproval and the grounds of disapproval within 28 days of the plans being re-submitted, it is deemed to have approved them.

87. On submission of the plans for a specified work, the Company must pay Thurrock Council 2% of the anticipated cost of constructing the specified work to cover Thurrock Council’s reasonable fees, costs, charges and expenses in approving the plans for and in supervising construction of the specified work.

88. Thurrock Council may apply to the Company for up to two further payments (limited in each case to a maximum of 2% of the anticipated cost of constructing the specified work) if it reasonably considers that its fees, costs, charges and expenses in approving plans for and supervising construction of the specified work will exceed the amount the Company must pay under paragraph 87.

89. The Company must use reasonable endeavours to agree to pay any amount sought by Thurrock Council under paragraph 88 (having regard to the extent of the outstanding work in

respect of which Thurrock Council is likely to incur fees, costs, charges and expenses) and following agreement must pay any such amount.

90. The Company must repay to Thurrock Council all reasonable fees, costs, charges and expenses reasonably incurred by it (in approving the plans for and supervising construction of a specified work) which have not otherwise been covered by a payment made under paragraphs 87 to 89.

91. Thurrock Council must repay to the Company (or, with the Company's agreement, offset against any amounts for which the Company is otherwise liable to Thurrock Council) any payment or part of a payment made under paragraphs 87 to 90 which exceeds the fees, costs, charges and expenses it has incurred in approving plans for and in supervising the construction of a specified work and in response to a written request from the Company (served no earlier than after the final adoption of all of the specified works under article 10(1) to (4)) Thurrock Council must provide to the Company a financial summary containing detailed evidence of how the payments received by Thurrock Council under paragraphs 87 to 90 have been spent.

92. The Company must not, except with the consent of Thurrock Council, deposit any soil, subsoil or materials or stand any vehicle or plant on any highway (except on so much of it as is for the time being temporarily stopped up or occupied under the powers conferred by this Order) so as to obstruct the use of the highway by any person or, except with the same consent, deposit any soil, subsoil or materials on any highway except within a hoarding.

93. Except in an emergency or where reasonably necessary to secure the safety of the public no direction or instruction may be given by Thurrock Council to the contractors, servants or agents of the Company regarding the construction of any specified work without the prior consent in writing of the Company; but Thurrock Council is not liable for any additional costs which may be incurred as a result of the giving of instructions or directions under this paragraph.

94. The Company must, if reasonably so required by Thurrock Council, provide and maintain during such time as the Company may occupy any part of a highway for any purpose connected to the construction of any part of the authorised development, temporary ramps for vehicular traffic or pedestrian traffic, or both, and any other traffic measures required to protect the safety of road users in accordance with the standard recommended in Chapter 8 of the Traffic Signs Manual issued for the purposes of the Traffic Signs Regulations and General Directions 1994 in such position as may be necessary to prevent undue interference with the flow of traffic in any highway.

95. Any specified work, and all protective works required by Thurrock Council under paragraph 84 must be constructed in accordance with approved plans and to the reasonable satisfaction of Thurrock Council and an officer of Thurrock Council is entitled on giving such notice as may be reasonable in the circumstances, to inspect and watch the construction of such works (such inspection and supervision being at the Company's expense).

96. The Company must give to Thurrock Council not less than three months' notice of its intention to commence construction of any specified work and the Company must give to Thurrock Council notice of completion of a specified work not later than 7 days after the date on which it is brought into operational use.

97. If any part of the specified works comprising a structure in, over or under any existing or intended highway is constructed otherwise than in accordance with the requirements of this Part of this Schedule, Thurrock Council may by notice require the Company at its own expense to comply with the requirements of this Part of this Schedule or (if the Company so elects and Thurrock Council in writing consents, such consent not to be unreasonably withheld) at the Company's expense to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as Thurrock Council reasonably requires.

98. Subject to paragraph 99, if the Company has failed to begin taking steps to comply with the reasonable requirements of the notice under paragraph 96 and has not subsequently made

reasonably expeditious progress towards their implementation within 28 days beginning with the day after the date on which the period specified in the notice given under paragraph 96 ends, Thurrock Council may construct the works specified in the notice and any expenditure reasonably incurred by it in so doing is to be recoverable from the Company.

99. In the event of any dispute as to whether paragraph 97 is properly applicable to any work in respect of which notice has been served under that paragraph, or as to the reasonableness of any requirement of such a notice, Thurrock Council must not, except in an emergency, exercise the powers conferred by paragraph 97 until the dispute has been finally determined.

100. If any specified work is not maintained by the Company in accordance with article 10 (construction and maintenance of new, altered or diverted streets) to the reasonable satisfaction of Thurrock Council, it may by notice require the Company to maintain the work or any part of it in accordance with article 10 to such extent as Thurrock Council reasonably requires for as long as the obligation to maintain the specified work under article 10 applies.

101. If the Company has failed to begin taking steps to comply with the reasonable requirements of any notice issued under paragraph 100 and has not subsequently made reasonably expeditious progress towards their implementation within 28 days beginning with the date on which a notice in respect of any work is served on the Company, Thurrock Council may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the Company.

102. In the event of any dispute as to the reasonableness of any requirement of a notice served under paragraph 100, Thurrock Council must not except in a case of emergency exercise the powers of paragraph 101 until the dispute has been finally determined.

103. Regardless of the other provisions of this Part of this Schedule but subject to paragraph 104 the Company must, within 28 days of receiving written notification from Thurrock Council, indemnify Thurrock Council from all losses, expenses, actions, charges, cost, liabilities, claims, demands, proceedings or damages, which may be incurred, made or taken against, or recovered from Thurrock Council by, in connection with or incidental to a specified work including by reason of—

- (a) the construction or maintenance of a specified work or the failure of the specified work;
- (b) any subsidence of, or damage to, any highway or any retained sanitary convenience, refuge, sewer, drain, pipe, cable, wire, lamp column, traffic sign, bollard, bin for refuse or road materials or associated apparatus or any other property or work belonging to, or under the jurisdiction or control of, or maintainable by Thurrock Council or a statutory undertaker;
- (c) any act or omission of the Company or of its agents, contractors, employees or servants whilst engaged upon a specified work;
- (d) a claim in respect of noise nuisance or pollution under the 1974 Act;
- (e) damage to property including property owned by third parties; or
- (f) injury to or death of any person.

104. Thurrock Council must give to the Company reasonable notice of any such claim or demand and no settlement or compromise of any such claim or demand is to be made without the consent of the Company which, if it withholds such consent, is to have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

105. The fact that any work or thing has been executed or done in accordance with a plan approved or deemed to have been approved by Thurrock Council, or to its satisfaction, does not (in the absence of negligence on the part of Thurrock Council, its officers, contractors or agents) relieve the Company from any liability under the provisions of this Part of this Schedule.

106. Wherever in this Part of this Schedule provision is made with respect to the approval or consent of Thurrock Council, that approval or consent must be in writing and may be given subject to such reasonable terms and conditions as Thurrock Council may require in the interests

of safety or to ensure highway construction standards are met and in order to minimise inconvenience to persons using the highway, but must not be unreasonably withheld.

107. In respect of a bridge structure, a highway drainage structure or apparatus, any retaining wall or traffic signals installed or altered as part of the authorised development, the Company must pay to Thurrock Council (at the time when the relevant structure or apparatus is, in accordance with this Order, to become maintainable by Thurrock Council) a commuted sum to reflect any additional cost that may be incurred by Thurrock Council over an appropriate timeframe in maintaining that structure or apparatus, the amount of which is to be determined with reference to the detailed design of the structure or apparatus and agreed between the Company and Thurrock Council, both acting reasonably.

108. Any provision contained in this Part of this Schedule has no effect to the extent that it is the same as, or conflicts with, a provision contained in The Traffic Management (Thurrock Council) Permit Scheme Order 2017, or any other permit scheme made by Thurrock Council under section 33A of the 2004 Act.

109. Unless otherwise agreed between the parties any difference arising between the Company and Thurrock Council under this Part of this Schedule (other than a difference as to its meaning or construction) must be determined by arbitration in accordance with article 60 (arbitration).

PART 8

FOR THE PROTECTION OF ANGLIAN WATER

110. The following provisions of this Part of this Schedule, unless otherwise agreed in writing between the Company and Anglian Water, have effect.

111. In this Part of this Schedule—

“1991 Act” means the Water Industry Act 1991;

“Anglian Water” means Anglian Water Services Limited, company number 02366656, whose registered office is at Lancaster House, Lancaster Way, Ermine Business Park, Huntingdon, Cambridgeshire PE29 6YJ;

“apparatus” means any works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage together with—

- (a) any drain or works vested in Anglian Water under the 1991 Act; and
- (b) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of the 1991 Act or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewage disposal works) of that Act,

and includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any sewer, drain, or works (within the meaning of section 219 (general interpretation) of the 1991 Act) and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“alternative apparatus” means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in not less efficient a manner than previously;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;

“plan” includes sections, drawings, specifications and method statements; and

“the standard protection strips” means the strips of land falling the following distances to either side of the medial line of any relevant apparatus—

- (a) 2.25 metres where the diameter of the apparatus is less than 150 millimetres;
- (b) 3 metres where the diameter of the apparatus is between 150 and 450 millimetres;

- (c) 4.5 metres where the diameter of the apparatus is between 451 and 750 millimetres; and
- (d) 6 metres where the diameter of the apparatus exceeds 750 millimetres.

112.—(1) The Company must not interfere with, build over or near to any apparatus within the Order limits or execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around any apparatus (where the apparatus is laid in a trench) within the standard protection strips unless otherwise agreed in writing with Anglian Water, such agreement not to be unreasonably withheld or delayed.

(2) The Company must bring the requirements in sub-paragraph (1) to the attention of any agent or contractor responsible for carrying out any of the authorised development on behalf of the Company.

113. The alteration, extension, removal or relocation of any apparatus must not be implemented until—

- (a) any requirement for any permits under the Environmental Permitting (England and Wales) Regulations 2016 or other legislation and any other associated consents are obtained, and any approval or agreement required from Anglian Water on alternative outfall locations as a result of such re-location are approved, such approvals from Anglian Water not to be unreasonably withheld or delayed; and
- (b) the Company has made the appropriate applications required under the 1991 Act and the Company has supplied to Anglian Water a plan and section of the works proposed and Anglian Water has given the necessary consents and approvals, such consent and approval not to be unreasonably withheld or delayed,

and such works must be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

114. In the situation where in exercise of the powers under this Order the Company acquires any interest in any land in which apparatus is placed and such apparatus is to be relocated, extended, removed or altered in any way, no alteration or extension can take place until Anglian Water has established to its reasonable satisfaction, contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus.

115. Regardless of any provision in this Order or anything shown on any plan, the Company must not acquire any apparatus otherwise than by agreement, and before extinguishing any existing rights for Anglian Water to use, keep, inspect, renew and maintain its apparatus within the Order limits, the Company must, with the agreement of Anglian Water, create a new right to use, keep, inspect, renew and maintain the apparatus that is reasonably convenient for Anglian Water such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 60 (arbitration).

116. If in consequence of the exercise of the powers under this Order the access to any apparatus is materially obstructed the Company must provide such reasonable alternative means of access to such apparatus as will enable Anglian Water to maintain or use the apparatus no less effectively than was possible before such obstruction.

117. If in consequence of the exercise of the powers under this Order, previously unmapped sewers, lateral drains or other apparatus are identified by the Company, notification of the location of such assets will as soon as reasonably practicable be given to Anglian Water and afforded the same protection as other Anglian Water apparatus.

118. If for any reason or in consequence of the construction of any of the works referred to in paragraphs 111 to 113 and 115 above any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Anglian Water, or there is any interruption in any service provided by Anglian Water, the Company must—

- (a) bear and pay the cost reasonably incurred by Anglian Water in making good any damage or restoring the supply; and
 - (b) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty or costs reasonably incurred by Anglian Water,
- by reason or in consequence of any such damage or interruption.

PART 9

FOR THE PROTECTION OF HIGHWAYS ENGLAND

Application

119. The provisions of this Part of this Schedule apply to the HE works and have effect unless otherwise agreed in writing between the Company and Highways England.

Interpretation

120.—(1) Where terms defined in article 2 are inconsistent with the terms defined in subparagraph (2) below, the latter prevail.

(2) In this Part of this Schedule—

“as-built information” means one digital copy of the following information, where applicable to the phase of the HE works in question —

- (a) as-constructed drawings in both pdf and auto CAD dwg formats for anything designed by the Company;
- (b) list of suppliers and materials, test results and CCTV surveys (CCTV to comply with DMRB standards);
- (c) product data sheets, and technical specifications for all materials used;
- (d) as-constructed information for any utilities discovered or moved during the works;
- (e) method statements for the works carried out;
- (f) in relation to road lighting, signs and traffic signals any information required by Series 1400 of the Specification for Highway Works or any replacement or modification of it, but subject to any exceptions to it (including a replacement or modification of it) as agreed by the Company and Highways England;
- (g) organisation and methods manuals for all products used;
- (h) as-constructed programme;
- (i) test results and records;
- (j) a stage 3 road safety audit subject to any exceptions to the road safety audit standard as agreed by the Company and Highways England;
- (k) the health and safety file; and
- (l) such other information as may be required by Highways England to be used to update any relevant databases and to ensure compliance with Highways England’s Asset Data Management Manual that is in operation at the relevant time;

“the commuted sum” means such sum calculated as provided for in paragraph 128 of this Part of this Schedule and approved by Highways England to be used to fund the future cost of maintaining the HE works;

“the contractor” means any contractor or sub-contractor appointed by the Company to construct the HE works;

“the designer” means any designer appointed by the Company to design the HE works;

“the detailed design information” means details of the following —

- (a) site clearance details;
- (b) boundary and mitigation fencing;
- (c) road restraints systems and supporting road restraint risk appraisal process assessment;
- (d) drainage and ducting and supporting drainage calculations;
- (e) earthworks including supporting geotechnical assessments and any required strengthened earthworks appraisal form certification;
- (f) kerbs, footways and paved areas;
- (g) traffic signs and road markings;
- (h) traffic signal equipment and associated signal phasing and timing detail;
- (i) road lighting (including columns and brackets) and supporting lighting calculations;
- (j) electrical work for road lighting, traffic signs and signals;
- (k) highway structures and any required structural approval in principle;
- (l) landscaping;
- (m) proposed departures from DMRB requirements;
- (n) walking, cycling and horse riding assessment and review report;
- (o) utilities diversions;
- (p) topographical survey;
- (q) site waste management plan;
- (r) maintenance and repair strategy in accordance with Designing for Maintenance Interim Advice Note 69/15 or any replacement or modification of it;
- (s) asbestos survey;
- (t) regime of california bearing ratio testing as a method for a ground penetration test for valuation of the mechanical strength of the ground on which new construction of highway is to take place;
- (u) regime of core testing and sampling of existing trunk road pavement construction;
- (v) site investigation survey;
- (w) health and safety information; and
- (x) other such information used to inform the detailed design of the HE works that may be required by Highways England;

“the DBFO contract” means the contract between Highways England and the highway management contractor for the maintenance and operation of parts of the strategic road network including the A282, M25, A13 (part) and the A1089;

“DMRB” means the Design Manual for Roads and Bridges or any replacement or modification of it;

“the estimated costs” means the estimated costs in respect of the HE works agreed pursuant to paragraph 123 of this Part of this Schedule;

“the excess” means the amount by which Highways England estimates that the costs referred to in paragraph 123 of this Schedule will exceed the estimated costs pursuant to paragraph 123(4) of this Schedule;

“the HE works” means Work No. 11 and any works ancillary to Work No. 11;

“the highway management contractor” means the management contractor appointed by Highways England under the DBFO contract in respect of the highway on that part of the strategic road network within which the HE works are situated;

“the nominated persons” means the Company’s representatives or the contractor’s representatives on site during construction of the HE works, as notified to Highways England from time to time;

“the programme of works” means a document setting out the sequence and timetabling of the HE works;

“road safety audit” means an audit carried out in accordance with the road safety audit standard and with a process to be approved by Highways England prior to it being carried out;

“the road safety audit standard” means the DMRB Standard HD 19/15 or any replacement or modification of it; and

“utilities” means any pipes, wires, cables or other equipment belonging to any person or body having power or consent to undertake street works under the 1991 Act.

General

121.—(1) The Company acknowledges that the HE works are situated on highway in respect of which Highways England has appointed the highway management contractor.

Prior approvals

122.—(1) The HE works must not commence until—

- (a) a stage 1 and stage 2 road safety audit has been carried out and all recommendations raised by them or any exceptions are approved by Highways England, and
- (b) the detailed design of the HE works comprising of the following details has been submitted to and approved by Highways England—
 - (i) the detailed design information, incorporating all recommendations and any exceptions approved by Highways England under paragraph (a);
 - (ii) the programme of works;
 - (iii) details of proposed road space bookings;
 - (iv) a schedule confirming how relevant routine maintenance obligations imposed on the highway management contractor by the DBFO contract are to be discharged by the Company during execution of the HE works;
 - (v) a scheme of traffic management;
 - (vi) the identity of the contractor and nominated persons;
 - (vii) a process for stakeholder liaison; and
 - (viii) information demonstrating that the walking, cycling and horse riding assessment and review process undertaken by the Company in relation to the HE works has been adhered to in accordance with the DMRB Standard HD 42/17;
- (c) all necessary temporary traffic regulation measures have been made by the Company under article 52(1) or 52(3), or all necessary temporary traffic regulation orders have been made by Highways England;
- (d) at least 56 days’ notice of the commencement date of the HE works has been given to Highways England in writing, unless otherwise agreed by Highways England;
- (e) stakeholder liaison has taken place in accordance with the process for such liaison agreed under sub-paragraph (1)(b)(vii); and
- (f) the Company has procured and provided to Highways England collateral warranties from the contractor and designer of the HE works in favour of Highways England and the highway management contractor requiring the contractor and designer to exercise all reasonable skill care and due diligence in designing and constructing the HE works, including in the selection of materials, goods, equipment and plant.

(2) Highways England must notify the Company of its approval or, as the case may be, of its disapproval and the grounds of disapproval, within 56 days of the information required by sub-paragraphs (1)(a) and (1)(b)(i)-(1)(b)(viii) being received by Highways England.

(3) In the event of any disapproval, the Company may re-submit the information required by sub-paragraphs (1)(a) and (1)(b)(i)-(1)(b)(viii) with modifications and Highways England must

notify the Company of its approval or, as the case may be, of its disapproval and the grounds of disapproval, within 56 days of the revised detailed design information being received by Highways England.

(4) The documents and programmes approved under sub-paragraphs (1) and (2) may be subsequently amended by agreement between the Company and Highways England from time to time, both parties acting reasonably.

(5) Within 28 days of a written request by the Company and in any event prior to the commencement of the HE works, Highways England must inform the Company of the identity of the person who will act as the point of contact on behalf of Highways England for consideration of the information required under sub-paragraphs (1) and (2).

Construction traffic route surveys

123.—(1) The HE works must not commence until a dilapidation survey of the condition of the roads, bridges and retaining walls along the routes approved for construction traffic for the authorised development as part of the scheme of traffic management approved under sub-paragraph 120(1)(b)(v) has been carried out by the Company and has been submitted to and approved in writing by Highways England.

(2) No more than 28 days after the completion of construction of the authorised development, the roads, bridges and retaining walls surveyed under sub-paragraph (1) must be re-surveyed by the Company.

(3) If the re-survey carried out under sub-paragraph (2) indicates that there has been damage to the roads, bridges and retaining walls that have been surveyed, and that such damage is attributable to the use of those roads, bridges and retaining walls by construction traffic for the authorised development, the Company must submit a scheme of remedial works for those damaged routes, bridges and retaining walls to Highways England for its approval in writing, which must not be unreasonably refused.

(4) The scheme of remedial works approved under sub-paragraph (3) must be carried out by the Company at its own cost.

Construction of the HE works

124.—(1) The HE works must be constructed to the satisfaction of Highways England acting reasonably and in accordance with—

- (a) the information approved under paragraph 120(1) or as subsequently varied by agreement between the Company and Highways England;
- (b) the DMRB and the Specification for Highway Works (contained within the Manual of Contract Documents for Highway Works) together with all other relevant standards as required by Highways England (to include all relevant interim advice notes, the Traffic Signs Manual 2008 and any amendment to or replacement of such standards for the time being in force), save to the extent that exceptions to those standards apply which have been approved by Highways England under paragraph 120(1) in respect of the HE works;
- (c) the Traffic Signs Regulations and General Directions 2016 or any amendment to or replacement of them; and
- (d) all aspects of the Construction (Design and Management) Regulations 2015 or any amendment to or replacement of them.

(2) The Company must permit and must require the contractor to permit at all reasonable times persons authorised by Highways England (whose identity must have been previously notified to the Company and the contractor by Highways England) to gain access to the HE works for the purposes of inspection and supervision of the HE works.

(3) The Company must permit and must require the contractor to act upon any reasonable request made by Highways England in relation to the construction of the HE works as soon as reasonably practicable provided such a request is not inconsistent with and does not fall outside

the contractor's obligations under its contract with the Company or the Company's obligations under this Order.

(4) If any part of the HE works is constructed otherwise than in accordance with the requirements of this Part of this Schedule, Highways England may by notice in writing require the Company, at the Company's own expense to comply with the requirements of this Part of this Schedule.

(5) If within 28 days of the date on which a notice under sub-paragraph (4) is served on the Company, the Company has failed to take the steps required by that notice, Highways England may carry out—

- (i) the HE works; or
- (ii) works to reinstate the highway and other land and premises of Highways England and Highways England may in either case recover from the Company any expenditure reasonably incurred by it in so doing.

(6) If during construction of the HE works the Company causes any damage to the strategic road network then Highways England may by notice in writing require the Company, at the Company's own expense to remedy the damage.

(7) If within 28 days of the date on which a notice under sub-paragraph (6) is served on the Company, the Company has failed to take steps to comply with the notice, Highways England may carry out the steps required of the Company and may recover from the Company any expenditure reasonably incurred by Highways England in so doing, such sum to be payable within 30 days of demand.

(8) Nothing in this Part of this Schedule prevents Highways England from carrying out any work or taking such action as it reasonably believes to be necessary as a result of the construction of the HE works without prior notice to the Company in the event of an emergency or to prevent the occurrence of danger to the public and Highways England may recover from the Company any reasonable expenditure incurred by Highways England in so doing.

(9) In constructing the HE works, the Company must at its own expense divert or protect all utilities and all agreed alterations and reinstatement of highway over existing utilities must be constructed to the reasonable satisfaction of Highways England.

Payments

125.—(1) The Company must fund the full cost of the HE works and any incidental and amended works approved under this Part of this Schedule and must also pay to Highways England in respect of the HE works a sum equal to the whole of any costs and expenses which Highways England reasonably incurs (including costs and expenses for using internal or external staff) in relation to—

- (a) the checking and approval of the information required by paragraphs 120(1)(a) and 120(1)(b);
- (b) the supervision of the HE works;
- (c) all legal and administrative costs in relation to paragraphs (a) and (b) above;
- (d) routine maintenance approved under paragraph 120(1)(b)(iv);
- (e) any transfer of any land required for the HE works;
- (f) costs properly payable to the highway management contractor as a consequence of the HE works, including costs incurred in payment of compensation or damages or otherwise arising from any proceedings, actions, claims, demands or liability made against Highways England by the highway management contractor;
- (g) any costs incurred by Highways England in undertaking any necessary statutory procedure required as a result of construction of the HE works, and in preparing and bringing into force any traffic regulation order necessary to construct or implement the HE works provided that this paragraph will not apply to the making of any orders which

duplicate traffic regulation measures contained in, or which may be made by the Company under, this Order; and

- (h) any value added tax which is payable by Highways England in respect of the costs incurred pursuant to paragraphs (a) to (g) which Highways England cannot otherwise recover from HM Revenue and Customs,

paragraphs (a) to (g) together comprising “the estimated costs”.

(2) The estimated costs must not include any costs payable to the highway management contractor by Highways England to undertake any of the obligations for which costs may become due by the Company under sub-paragraph (1)(a)-(1)(e) unless such costs are contained within the schedule of estimated costs agreed pursuant to sub-paragraph (1).

(3) The Company and Highways England must, acting reasonably, agree a schedule of the estimated costs prior to the commencement of the HE works and once that schedule is agreed the Company must pay to Highways England the estimated costs prior to commencing the HE works and in any event prior to Highways England incurring any cost.

(4) If at any time after the payment referred to in sub-paragraph (3) has become payable, Highways England reasonably believes that the costs will exceed the estimated costs it may give notice to the Company of the excess and the Company must pay to Highways England within 30 days of the date of that notice a sum equal to the excess.

(5) If any payment due under any of the provisions of this Part of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the other party interest at 1% above the rate payable in respect of compensation under section 32 (rate of interest after entry on land) of the 1961 Act for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

(6) Highways England is not entitled to costs or expenses incurred under any limb of sub-paragraph (1) if those costs or expenses are included as part of the estimated costs under any other limb of that sub-paragraph.

Provisional certificate and defects period

126.—(1) As soon as—

- (a) a stage 3 road safety audit for the HE works has been carried out and all recommendations raised including remedial works have (subject to any exceptions agreed) been approved by Highways England;
- (b) the HE works incorporating the approved remedial works under sub-paragraph (1)(a) have been completed
- (c) the Company has provided a plan clearly identifying the extent of any land which is to become highway maintainable at public expense by Highways England upon the issue of the provisional certificate; and
- (d) the as-built information has been provided to Highways England,

Highways England must issue a provisional certificate of completion in respect of the HE works.

(2) The Company must at its own expense remedy any defects in the HE works which Highways England has reasonably identified in a notice given in writing to the Company during a period of 12 months from the date of the provisional certificate in accordance with the following timescales:

- (a) in respect of matters of urgency, within 24 hours of receiving the notice;
- (b) in respect of matters which Highways England considers to be serious defects, within 14 days of receiving notification of the same; and
- (c) in respect of all other defects notified to the Company, within 4 weeks of receiving notification of the same.

(3) Following the issue of the provisional certificate Highways England will be responsible for the HE works and must maintain them at its own expense.

(4) The Company must submit to Highways England stage 4(a) and stage 4(b) road safety audits as required by and in line with the timescales stipulated in the road safety audit standard.

(5) The Company must comply with the findings of the stage 4(a) and stage 4(b) road safety audits referred to in sub-paragraph (4) and be responsible for all costs of and incidental to them and provide updated as-built information to Highways England..

Opening to traffic

127. The Company must notify Highways England of the intended date of opening of the HE works to public traffic not less than 14 days in advance of the intended date and the Company must notify Highways England of the actual date that the HE works were opened to public traffic within 14 days of that date.

Final certificate

128.—(1) The Company must apply to Highways England for the issue of the final certificate at the expiration of the period referred to in paragraph 124(1), or if paragraph 124(2) applies at the expiration of the date on which any defects or damage arising from defects during that period have been made good to the reasonable satisfaction of Highways England and subject to the Company complying with the requirements on the Company in paragraphs 124(3) to (5) inclusive.

(2) If the provisions of sub-paragraph (1) are satisfied Highways England must issue a final certificate, such certificate not to be unreasonably withheld or delayed.

(3) The Company must pay to Highways England within 30 days of demand the costs reasonably incurred by Highways England in identifying defects and supervising and inspecting the Company's work to remedy such defects pursuant to paragraph 124.

Security

129.—(1) The HE works must not commence until—

- (a) the works are secured by a bond in a form and for a bond sum first approved by Highways England to indemnify Highways England against all losses, damages, costs or expenses arising from any breach of any one or more of the obligations of the Company under the provisions of this Part of this Schedule and the maximum liability of the bond must not exceed the agreed bond sum; and
- (b) the Company has provided a cash surety for a sum first approved by Highways England which may be utilised by Highways England in the event of the Company failing to meet its obligations to make payments under paragraph 123 or to carry out works the need for which arises from a breach of one or more of the obligations of the Company under the provisions of this Part of this Schedule (which must for the avoidance of doubt be a single cash surety for the entirety of the value of the HE works).

(2) Within 28 days of the issue of the final certificate referred to in paragraph 126, Highways England must in writing release the bond provider from its obligations in respect of the bond sum and release the remainder of the cash surety to the Company save insofar as any claim or claims have been made against the bond or liability on its part has arisen prior to that date in which case Highways England will retain a sufficient sum to meet all necessary costs required to settle that claim.

Commuted sum

130.—(1) Before commencing the HE works Highways England must provide the Company with an estimate of the commuted sum.

(2) The Company must pay to Highways England the commuted sum calculated in accordance with FS Guidance S278 Commuted Lump Sum Calculation Method dated 18th January 2010 (or any replacement of it) as modified to reflect reasonable contractual payments to the highway

management contractor within 28 days of the date that the HE works become maintainable by Highways England under paragraph 124.

Insurance

131. Prior to commencement of the HE works the Company must effect (or must procure that the contractor effects) public liability insurance with an insurer in the minimum sum of £10,000,000 (ten million pounds) in respect of any one claim against any legal liability for damage, loss or injury to any property or any person as a direct result of the construction of the authorised development by the Company.

Indemnity

132.—(1) The Company must in relation to the construction of the HE works take such precautions for the protection of the public and private interests as would be incumbent upon it if it were the highway authority and must indemnify Highways England from and against all costs, expenses, damages, losses and liabilities arising from or in connection with or ancillary to any claim, demand, action or proceedings resulting from the design and construction of the HE works provided that—

- (a) Highways England notifies the Company immediately upon receipt of any such claim, demand, action or proceedings;
- (b) unless Highways England is otherwise required to do so sooner as a requirement in law or to comply with any order of the court, Highways England must prior to the settlement or compromise of any such claim, demand, action or proceedings consult the Company and have regard to any representations made by the Company in respect of any such claim, demand, action or proceedings provided that such representations are received promptly and in any event not later than 14 days after notification is given in accordance with sub-paragraph (1); and
- (c) following the acceptance of any such claim, demand, action or proceedings, Highways England notifies the Company of the quantum in writing.

(2) Within 30 days of receiving notice of the quantum under sub-paragraph (1)(c), the Company must pay Highways England the amount specified as the quantum.

(3) Sub-paragraphs (1) and (2) do not apply if the costs, expenses, damages, losses and liabilities were caused by or arise out of the neglect or default of Highways England or its officers, servants, agents, contractors or any person or body for whom it is responsible.

Expert determination

133.—(1) Subject to sub-paragraph (5), article 60 (arbitration) does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the Company and Highways England or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) The Company and Highways England must use their best endeavours to settle a dispute within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 28 days of the notification of the dispute.

(4) The expert must—

- (a) invite the parties to make submissions to the expert in writing and copied to the other parties to be received by the expert within 21 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other parties within 21 days of receipt of the submission;

- (c) issue a decision within 42 days of receipt of the submissions under paragraph (b); and
- (d) give reasons for the decision.

(5) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 60 (arbitration).

(6) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such a determination, equally.

PART 10

FOR THE PROTECTION OF RWE GENERATION UK PLC

134. The provisions of this Part of this Schedule have effect for the protection of RWE Generation UK plc unless otherwise agreed in writing between the Company and RWE Generation UK plc.

135. In this Part of this Schedule—

“alternative apparatus” means any apparatus, plant or equipment installed by RWE from time to time within the extended port limits—

- (a) to materially modify, replace or perform substantially the same function as the existing apparatus; or
- (b) otherwise in connection with the construction of any power station by RWE on land adjacent to the Order limits,

to the extent that the apparatus referred to in either case is proposed to be within the area shaded brown on sheet 3 of the works plans;

“the existing apparatus” means the former Tilbury B power station cooling water intake caissons and cooling water intake tunnels, to the extent that they are for the time being owned by RWE, as shown on sheet 3 of the works plans and as more particularly defined as the “Transferor’s Jetty Fixtures” in the jetty asset transfer;

“functions” includes powers and duties;

“in” in a context referring to the existing apparatus or alternative apparatus being in land, includes a reference to apparatus under, over or on land;

“the jetty” means the existing river jetty;

“the jetty asset transfer” means an agreement for the transfer of the jetty from RWE to the Company dated 31 March 2017;

“the land access” means access by RWE to the existing apparatus by passing over the jetty in accordance with the jetty asset transfer, or in such other manner as may be agreed with the Company;

“plan” includes all designs, drawings, specifications and method statements necessary to describe the works to be executed;

“the river access” means access by RWE to the existing apparatus by use of the river Thames within the extended port limits; and

“RWE” means RWE Generation UK Plc, company number 03892782 of Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire, SN5 6PB or any of its entities or successor entities and includes any assignee of the jetty asset transfer.

Existing apparatus

136. This Order does not authorise the acquisition of any of the existing apparatus by the Company, except with RWE’s agreement.

137. The authorised development must be carried out, operated and maintained so as not to damage, interfere with, move or destroy the existing apparatus except with RWE's agreement.

138.—(1) If, for the purpose of constructing any works comprised in the authorised development the Company requires the ability temporarily to interfere with the land access or the river access, it must, except in emergencies, give to RWE 14 days' advance written notice of that requirement, together with a plan of the works proposed and a date by when the temporary interference will end.

(2) If, for the purpose of maintaining any works comprised in the authorised development the Company requires the ability temporarily to interfere with the land access or the river access, it must, except in emergencies, give to RWE 28 days' advance written notice of that requirement, together with a plan of the works proposed and a date by when the temporary interference will end.

(3) The Company must end the temporary interference with the land access or the river access on the date given pursuant to sub-paragraph (1) or sub-paragraph (2) unless otherwise agreed in writing between RWE and the Company.

(4) Those works must be executed in accordance with the plan submitted under sub-paragraph (1) or sub-paragraph (2) and in accordance with such reasonable requirements as may be made by RWE for the protection of RWE's access to the existing apparatus.

(5) At all times during execution of those works RWE must be afforded by the Company sufficient emergency access to the existing apparatus.

(6) Any requirements made by RWE under sub-paragraph (4) must be made within a period of 7 days beginning with the date on which a plan under sub-paragraph (4) is submitted to it and within a period of 14 days beginning with the date on which a plan under sub-paragraph (2) is submitted to it.

(7) Nothing in this paragraph precludes the Company from submitting at any time or from time to time, but in no case less than 14 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(8) The Company is not required to comply with sub-paragraph (1) or sub-paragraph (2) in emergencies but in those circumstances it must give to RWE notice and a plan of the works concerned as soon as reasonably practicable and the Company must comply with sub-paragraph (4) in so far as is reasonably practicable in the circumstances.

(9) Any proposed temporary interference with the land access or the river access by the Company after 1 June 2021 must have reasonable regard to any need for RWE to exercise the land access or river access to undertake works to the existing apparatus as part of the development of a power station on land adjacent to the Order limits and adopt any reasonable requirements that may be made by RWE to ensure that any temporary interference does not prejudice RWE's development programme for a power station on land adjacent to the Order limits provided that those requirements must not materially interfere with the unloading and loading of vessels within the extended port limits.

139.—(1) Subject to sub-paragraph (2), if by reason or in consequence of the construction, operation or maintenance of the authorised development any damage is caused to the existing apparatus (other than any part of that apparatus whose repair is not reasonably necessary in view of its intended removal by RWE) the Company must bear and pay the cost reasonably incurred by RWE in making good such damage.

(2) Nothing in sub-paragraph (1) imposes any liability on the Company with respect to any damage to the extent that it is attributable to the act, neglect or default of RWE or its officers, servants, contractors or agents.

140.—(1) The Company agrees that it will not withhold its consent under article 3(7) to any licence proposed to be granted by the PLA under section 66 (licensing of works) or 73 (licensing of dredging, etc.) of the 1968 Act in so far as it relates to the retention, maintenance and use of the existing apparatus, nor require any modifications or impose any terms or conditions under article

3(9) that are in addition to the standard terms of any such licence as are published on the PLA's website from time to time.

(2) If at the relevant time the Company has a proprietary interest in the parts of the river Thames situated within the extended port limits in respect of which RWE holds a licence granted by the PLA under section 66 (licensing of works) or 73 (licensing of dredging, etc.) of the 1968 Act relating to the existing apparatus, the Company agrees that it will for no consideration—

- (a) in the case of the works licence, give its consent under article 3(8) so that the grant of the licence to RWE will, pursuant to section 66(1)(b) of the 1968 Act, be deemed to confer on RWE such rights in, under or over the land concerned as are necessary to enable RWE to enjoy the benefit of the licence for as long as the licence subsists; and
- (b) in the case of the dredging licence, grant to RWE such rights over the land as are necessary to enable RWE to carry out the work covered by, and in accordance with, the terms of the licence.

Alternative apparatus

141.—(1) RWE and the Company must use their reasonable endeavours to co-ordinate with each other on the timing and method of construction and maintenance of the authorised development and the construction, use and maintenance of any alternative apparatus by RWE, in the interests of health and safety and the efficient and economic—

- (a) construction of the authorised development; and
- (b) construction of any alternative apparatus.

142.—(1) In particular, the Company must consult with RWE prior to finalising the detailed design of Work No. 2 and will accommodate any reasonable requirements of RWE in relation to the detailed design or construction of Work No. 2 so as to accommodate any alternative apparatus, provided those requirements—

- (a) are made prior to the Company finalising the detailed design of Work No. 2;
- (b) would not be detrimental to the construction, operation or maintenance of the authorised development; and
- (c) RWE pays to the Company such additional reasonable and proper costs as the Company would incur in accommodating those requirements.

143. If and to the extent that any alternative apparatus to be placed in the parts of the river Thames situated within the extended port limits and in respect of which at the relevant time the Company has a proprietary interest is licensed by the PLA under section 66 (licensing of works) of the 1968 Act, or in respect of which RWE holds a licence granted by the PLA under section 73 (licensing of dredging, etc.) the Company agrees that it will for no consideration—

- (a) in the case of the works licence, give its consent under article 3(8) so that the grant of the licence to RWE will, pursuant to section 66(1)(b) of the 1968 Act, be deemed to confer on RWE such rights in, under or over the land concerned as are necessary to enable RWE to enjoy the benefit of the licence for as long as the licence subsists; and
- (b) in the case of the dredging licence, grant to RWE such rights over the land as are necessary to enable RWE to carry out the work covered by, and in accordance with, the terms of the licence.

Highway access

144.—(1) The Company must construct Work Nos. 4 and 10 so that they afford a clearance under Work No.10 of at least 6 metres.

(2) The Company must use reasonable endeavours in operating the authorised development to facilitate access by abnormal load vehicles to RWE's land adjacent to and on the eastern side of the Order limits in connection with the construction of any power station by RWE on that land.

General

145. Any difference or dispute arising between the Company and RWE under this Part of this Schedule must, unless otherwise agreed in writing between the Company and RWE, be determined by arbitration in accordance with article 60 (arbitration) of this Order.

146. Subject to the provisions of this Part of this Schedule, RWE's and the Company's rights and interests under the jetty asset transfer continue to subsist and to have effect.

147. The Company and RWE must each act reasonably in connection with the implementation of this Part of this Schedule.

PART 11

FOR THE PROTECTION OF CADENT GAS LIMITED AS GAS UNDERTAKER

Application

148. For the protection of the undertaker referred to in this Part of this Schedule the following provisions, unless otherwise agreed in writing between the Company and the undertaker, have effect.

Interpretation

149. In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of the undertaker to enable the undertaker to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by the undertaker for the purposes of gas supply together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of the undertaker for the purposes of transmission, distribution or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“the authorised development” has the same meaning in article 2(1) of this Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” has the same meaning as in article 2(1) of this Order and commencement is construed to have the same meaning and for the purpose of this Part of this Schedule only includes any below ground surveys, monitoring or operations or receipt and erection of construction plant and equipment within 15 meters of any apparatus;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by the undertaker (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring

activities and the extent of ground subsidence which, if exceeded, requires the Company to submit for the undertaker's approval a ground mitigation scheme;

"ground subsidence event" means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

"maintain" and "maintenance" includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of the undertaker including construct, use, repair, alter, inspect, renew or remove the apparatus;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

"undertaker" means, as appropriate Cadent Gas Limited or any successor in title or assign including a successor to their licence as a gas transporter within the meaning of Part 1 (gas supply) of the Gas Act 1986; and

"specified works" means any part of the authorised development or activities undertaken in association with the authorised development:

- (a) is or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the Company under paragraph 7(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the Company under paragraph 150(2) or otherwise; or
- (c) includes any activity that is referred to in paragraph 8 of T/SP/SSW/22 (the undertaker's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22").

On Street Apparatus

150.—(1) Except for paragraphs 147 (apparatus in stopped up streets), 150 (removal of apparatus) and 151 (facilities and rights for alternative apparatus) in so far as paragraph (2) below applies 152 (retained apparatus: protection), 153 (expenses) and 154 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of the undertaker, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the Company and the undertaker are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

(2) Paragraphs 150 and 151 apply to diversions even where carried out under the New Roads and Street Works Act 1991, in circumstances where any apparatus is diverted from an alignment within the existing adopted public highway but is not wholly replaced within existing adopted public highway.

Apparatus of Undertakers in stopped up streets

151.—(1) Without prejudice to the generality of any other protection afforded to the undertaker elsewhere in the Order, where any street is stopped up under article 12 (permanent stopping up and restriction of use of highways and private means of access), if the undertaker has any apparatus in the street or accessed via that street the undertaker is entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the Company must grant to the undertaker, or must procure the granting to the statutory undertaker of, legal easements reasonably satisfactory to the specified undertaker in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph affects any right of the Company or the undertaker to require the removal of that apparatus under paragraph 150.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 13 (temporary stopping up and restriction of use of streets), an undertaker is at liberty at all times to take all necessary access across any such stopped up highway or to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

(3) The provisions of this Part of this Schedule apply and take precedence over article 35 (apparatus and rights of statutory utilities in stopped up streets).

Protective works to buildings

152. The Company, in the case of the powers conferred by article 19 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of the undertaker.

Acquisition of land

153.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the Company may not acquire any land interest or apparatus or acquire, extinguish, interfere with or override any easement or other interest or right of the undertaker otherwise than by agreement.

(2) Prior to the carrying out of any part of the authorised development (or in such other timeframe as may be agreed between the undertaker and the Company) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of the undertaker or affects the provisions of any enactment or agreement regulating the relations between the undertaker and the Company in respect of any apparatus laid or erected in land belonging to or secured by the Company, the Company must as the undertaker reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between the undertaker and the Company acting reasonably and which must be no less favourable on the whole to the undertaker unless otherwise agreed by the undertaker, and it is the responsibility of the Company to procure or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by the authorised development.

(3) The Company and the undertaker agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by the undertaker or other enactments relied upon by the undertaker as of right or other use in relation to the apparatus, then the provisions in this Schedule prevail.

(4) Any agreement or consent granted by the undertaker under paragraph 152 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

154.—(1) If, in the exercise of the agreement reached in accordance with paragraph 149 or in any other authorised manner, the Company acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of an undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of the undertaker in question in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of carrying out any part of the authorised development, in, on, under or over any land purchased, held, appropriated or used under this Order, the Company requires the removal of any apparatus placed in that land, it must give to the undertaker advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the

alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order the undertaker reasonably needs to remove any of its apparatus) the Company must, subject to sub-paragraph (3), afford to the undertaker to its satisfaction (taking into account paragraph 151(1) below) the necessary facilities and rights:

- (a) for the construction of alternative apparatus; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the Company, or the Company is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the undertaker must, on receipt of a written notice to that effect from the Company, take such steps to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed, with the Company's assistance if required by the undertaker, save that this obligation does not extend to the requirement for the undertaker to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the Company under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the undertaker and the Company.

(5) The undertaker must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to the undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the Company to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

155.—(1) Where, in accordance with the provisions of this Part of this Schedule, the Company affords to or secures for the undertaker facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the Company and the undertaker and must be no less favourable on the whole to the undertaker than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by the undertaker.

(2) If the facilities and rights to be afforded by the Company and agreed with the undertaker under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to the undertaker than the facilities and rights enjoyed by it in respect of the apparatus to be removed, the terms and conditions to which those facilities and rights are subject in the matter must be referred to arbitration in accordance with paragraph 158 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the Company to the undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

156.—(1) Not less than 56 days or such time period as may be agreed by the undertaker and Company before the commencement of any specified works the Company must submit to the undertaker a plan and, if reasonably required by the undertaker, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to the undertaker under sub-paragraph (1) must include a method statement which describes—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;

- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(3) The Company must not commence any works to which sub-paragraphs (1) and (2) apply until the undertaker has given written approval of the plan so submitted.

(4) Any approval of the undertaker required under sub-paragraph (2)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and,
- (b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1) or (2) apply, the undertaker may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (4), as approved or as amended from time to time by agreement between the Company and the undertaker and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by the undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the undertaker will be entitled to watch and inspect the execution of those works.

(7) Where the undertaker requires any protective works to be carried out by itself or by the Company (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to the undertakers' satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required and the undertaker must give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If the undertaker in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the Company, reasonably requires the removal of any apparatus and gives written notice to the Company of that requirement, paragraphs 144 to 146 and 149 to 151 apply as if the removal of the apparatus had been required by the Company under paragraph 150(2).

(9) Nothing in this paragraph precludes the Company from submitting at any time or from time to time, but in no case less than 56 days or such time period as may be agreed by the undertaker and the Company before commencing the execution of the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph applies to and in respect of the new plan.

(10) The Company is not required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to the undertaker notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (11) at all times.

(11) The Company must comply with the undertaker's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(~G)47 Avoiding Danger from underground services" at all times when carrying out any part of the authorised development.

(12) As soon as reasonably practicable after any ground subsidence event, identified in light of monitoring required in sub-paragraph (1) or which otherwise becomes apparent, attributable to the authorised development the Company must implement an appropriate ground mitigation scheme. If following the implementation of the ground mitigation scheme the undertaker believes protective work is essential to protect its apparatus it may, on giving the Company reasonable

notice save in an emergency, carry out such essential protective works and recover the costs of so doing in accordance with paragraph 153.

Expenses

157.—(1) Subject to the following provisions of this paragraph, the Company must pay to the undertaker on reasonable demand all charges, costs and expenses reasonably anticipated or incurred by the undertaker in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any alternative apparatus which may be required in consequence of the execution of any part of the authorised development as is referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by the undertaker in connection with the acquisition of rights or the exercise of statutory powers for alternative such apparatus including without limitation all costs incurred by the undertaker as a consequence of the undertaker;
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 150(3); or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting the undertaker;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the Company or, in default of agreement, is not determined by arbitration in accordance with paragraph 158 (arbitration) to be necessary, then, if such placing incurs cost in work involving the installation of apparatus or alternative apparatus under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the undertaker by virtue of sub-paragraph (1) must be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs must be borne by the Company.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to an undertaker in respect of works by virtue of sub-paragraph (1) must be reduced by the amount that represents the benefit, provided that, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course save in respect of cathode protected steel mains or other apparatus with an indefinite life span.

Indemnity

158.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works to apparatus or alternative apparatus authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the Company or in consequence of any act or default of the Company (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the Company under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of the undertaker, or there is any interruption in any service provided, or in the supply of any goods, by the undertaker, or the undertaker becomes liable to pay any amount to any third party, the Company must:

- (a) bear and pay on demand the cost reasonably incurred by the undertaker in making good such damage or restoring the supply; and
- (b) indemnify the undertaker for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the undertaker, by reason or in consequence of any such damage or interruption or the undertaker becoming liable to any third party as aforesaid other than arising from any default of the undertaker..

(2) The fact that any act or thing may have been done by the undertaker on behalf of the Company or in accordance with a plan approved by the undertaker or in accordance with any requirement of the undertaker or under its supervision does not (unless sub-paragraph (3) applies), excuse the Company from liability under the provisions of this sub-paragraph (1) unless the undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the Company in respect of-

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of the undertaker, its officers, servants, contractors or agents; and
- (b) any part of the authorised development or any other works authorised by this Part of this Schedule carried out by the undertaker as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section 3(b) are subject to the full terms of this Part of this Schedule including this paragraph 154.

(4) The undertaker must give the Company reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the Company and considering its representations.

Enactments and agreements

159. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between the undertaker and the Company, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the Company and the undertaker in respect of any apparatus laid or erected in land belonging to the Company on the date on which this Order is made.

Co-operation

160.—(1) Where in consequence of the proposed construction of any part of the authorised development, the Company or an undertaker requires the removal of apparatus under paragraph 150(2) or an undertaker makes requirements for the protection or alteration of apparatus under paragraph 152, the Company must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the undertaker's undertaking and each undertaker must use its best endeavours to co-operate with the Company for that purpose.

(2) Whenever the undertaker's consent, agreement or approval to is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

161. If in consequence of the agreement reached in accordance with paragraph 149(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the Company must provide such alternative rights and means of access to such apparatus as will enable the undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

162. Any difference or dispute arising between the Company and the undertaker under this Part of this Schedule must, unless otherwise agreed in writing between the Company and the undertaker, be determined by arbitration in accordance with article 60 (arbitration).

PART 12

FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY UNDERTAKER

Application

163. For the protection of the undertaker referred to in this Part of this Schedule the following provisions, unless otherwise agreed in writing between the Company and the undertaker, have effect.

Interpretation

164. In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of the undertaker to enable the undertaker to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means in the case of an electricity undertaker, electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by that undertaker together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of the undertaker for the purposes of transmission, distribution or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“the authorised development” has the same meaning as in article 2(1) of this Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” has the same meaning as article 2(1) of the Order and commencement is construed to have the same meaning and for the purpose of this Part of this Schedule only the terms commence and commencement include below ground surveys or monitoring or the receipt and erection of construction plant and equipment within 15 metres of any apparatus;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by the undertaker (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, triggers a requirement on the Company to submit for the undertaker’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of the undertaker including construct, use, repair, alter, inspect, renew or remove the apparatus;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“undertaker” means an electricity undertaker being a licence holder within the meaning of Part 1 (electricity supply) of the Electricity Act 1989;

“specified works” means any part of the authorised development or activities undertaken in association with the authorised development which:

- (a) is or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the Company under paragraph 165(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the Company under paragraph 165(2) or otherwise.

On street apparatus

165. Except for paragraphs 162 (apparatus in stopped up streets), 167 (retained apparatus: protection), 168 (expenses) and 169 (indemnity) of this Schedule which applies in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of the undertaker,

the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the Company and the undertaker are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

Apparatus of Undertakers in stopped up streets

166.—(1) Without prejudice to the generality of any other protection afforded to the undertaker elsewhere in the Order, where any street is stopped up under article 12 (permanent stopping up and restriction of use of highways and private means of access), if the undertaker has any apparatus in the street or accessed via that street the undertaker is entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the Company must grant to the undertaker, or must procure the granting to the statutory undertaker of, legal easements reasonably satisfactory to the specified undertaker in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph affects any right of the Company or undertaker to require the removal of that apparatus under paragraph 165.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 13 (temporary stopping up and restriction of use of streets), an undertaker is at liberty at all times to take all necessary access across any such stopped up highway or to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

(3) The provisions in this Part of this Schedule apply and take precedence over article 35 (apparatus and rights of statutory utilities in stopped up streets).

Protective works to buildings

167. The Company, in the case of the powers conferred by article 19 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of the undertaker.

Acquisition of land

168.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the Company may not acquire any land interest or apparatus or override any easement or other interest of the undertaker otherwise than by agreement.

(2) Prior to the carrying out of any part of the authorised development (or in such other timeframe as may be agreed between the undertaker and the Company) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of the undertaker or affects the provisions of any enactment or agreement regulating the relations between the undertaker and the Company in respect of any apparatus laid or erected in land belonging to or secured by the Company, the Company must as the undertaker reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between the undertaker and the Company acting reasonably and which must be no less favourable on the whole to the undertaker unless otherwise agreed by the undertaker, and it is the responsibility of the Company to procure or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by the authorised development.

(3) The Company and the undertaker agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by the undertaker or other enactments relied upon by the undertaker as of right or other use in relation to the apparatus, then the provisions in this Schedule prevail.

(4) Any agreement or consent granted by the undertaker under paragraph 167 or any other paragraph of this Part of this Schedule does not constitute agreement under paragraph 164(1).

Removal of apparatus

169.—(1) If, in the exercise of the agreement reached in accordance with paragraph 164(1) or in any other authorised manner, the Company acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of an undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of the undertaker in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of carrying out any part of the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the Company requires the removal of any apparatus placed in that land, it must give to the undertaker advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order the undertaker reasonably needs to remove any of its apparatus) the Company must, subject to sub-paragraph (3), afford to the undertaker to its satisfaction (taking into account paragraph 166(1) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the Company, or the Company is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the undertaker must, on receipt of a written notice to that effect from the Company, take such reasonable steps to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to the requirement for the undertaker to use its compulsory purchase powers to this end unless it elects to do so.

(4) Any alternative apparatus to be constructed in land of or land secured by the Company under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the undertaker and the Company.

(5) The undertaker must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to the undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the Company to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

170.—(1) Where, in accordance with the provisions of this Part of this Schedule, the Company affords to or secures for the undertaker facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the Company and the undertaker and must be no less favourable on the whole to the undertaker than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by the undertaker.

(2) If the facilities and rights to be afforded by the Company and agreed with the undertaker under paragraph 166(1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to the undertaker than the facilities and rights enjoyed by it in respect of the apparatus to be removed, the terms and conditions to which those facilities and rights are subject in the matter must be referred to arbitration in accordance with paragraph 173 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the Company to

the undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

171.—(1) Not less than 56 days or such time period as may be agreed by the undertaker and the Company before the commencement of any specified works the Company must submit to the undertaker a plan of the works to be executed and, if reasonably required by the undertaker, a ground monitoring scheme in respect of those works and seek from the undertaker details of the underground extent of their electricity tower foundations.

(2) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to the undertaker under sub-paragraph (1) must include a method statement which describes—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;
- (f) written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by the undertaker's engineers; and
- (h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic.

(4) The Company must not commence any works to which sub-paragraphs (2) or (3) apply until the undertaker has given written approval of the plan so submitted.

(5) Any approval of the undertaker required under sub-paragraphs (2) or (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and,
- (b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, the undertaker may require such modifications to be made to the plans as may be reasonably necessary for the purpose of

securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the Company and the undertaker and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by the undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the undertaker will be entitled to watch and inspect the execution of those works.

(8) Where the undertaker requires any protective works to be carried out by itself or by the Company (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to the undertakers' satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and the undertaker must give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If the undertaker in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the Company, reasonably requires the removal of any apparatus and gives written notice to the Company of that requirement, paragraphs 159 to 161 and 164 to 166 apply as if the removal of the apparatus had been required by the Company under paragraph 165(2).

(10) Nothing in this paragraph precludes the Company from submitting at any time or from time to time, but in no case less than 56 days or such time period as may be agreed by the undertaker and the Company before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph applies to and in respect of the new plan.

(11) The Company is not required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to the undertaker notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (12) at all times.

(12) The Company must comply with the undertaker's policies for development near overhead lines EN43-8 and the Health and Safety Executive's guidance note 6 "Avoidance of Danger from Overhead Lines" at all times when carrying out any works authorised under the Order.

(13) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the Company must implement an appropriate ground mitigation scheme. If following the implementation of the ground mitigation scheme the undertaker believes protective work is essential to protect its apparatus it may, on giving the Company reasonable notice save in an emergency, carry out such essential protective works and recover the costs of so doing in accordance with paragraph 168.

Expenses

172.—(1) Subject to the following provisions of this paragraph, the Company must pay to the undertaker on reasonable demand all charges, costs and expenses reasonably anticipated or incurred by the undertaker in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any alternative apparatus which may be required in consequence of the execution of any part of the authorised development as is referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by the undertaker in connection with the acquisition of rights or the exercise of statutory powers for such alternative apparatus including without limitation all costs incurred by the undertaker as a consequence of the undertaker;
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 165(3); or

- (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting the undertaker;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the Company or, in default of agreement, is not determined by arbitration in accordance with article 173 (arbitration) to be necessary, then, if such placing incur cost in works involving the installation of apparatus or alternative apparatus under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the undertaker by virtue of sub-paragraph (1) must be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs must be borne by the Company.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to an undertaker in respect of works by virtue of sub-paragraph (1) must be reduced by the amount that represents the benefit, provided that, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

173.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works to apparatus or alternative apparatus authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the Company or in consequence of any act or default of

the Company (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the Company under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of the undertaker, or there is any interruption in any service provided, or in the supply of any goods, by the undertaker, or the undertaker becomes liable to pay any amount to any third party, the Company must—

- (a) bear and pay on demand the cost reasonably incurred by the undertaker in making good such damage or restoring the supply; and
- (b) indemnify the undertaker for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the undertaker, by reason or in consequence of any such damage or interruption or the undertaker becoming liable to any third party as aforesaid other than arising from any default of the undertaker.

(2) The fact that any act or thing may have been done by the undertaker on behalf of the Company or in accordance with a plan approved by the undertaker or in accordance with any requirement of the undertaker or under its supervision does not (unless sub-paragraph (3) applies), excuse the Company from liability under the provisions of this sub-paragraph (1) unless the undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the Company in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of the undertaker, its officers, servants, contractors or agents; and
- (b) any part of the authorised development works or any other works authorised by this Part of this Schedule carried out by the undertaker as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section 3(b) are subject to the full terms of this Part of this Schedule including this paragraph 169.

(4) The undertaker must give the Company reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the Company and considering its representations.

Enactments and agreements

174. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between the undertaker and the Company, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the Company and the undertaker in respect of any apparatus laid or erected in land belonging to the Company on the date on which this Order is made.

Co-operation

175.—(1) Where in consequence of the proposed construction of any part of the authorised development, the Company or the undertaker requires the removal of apparatus under paragraph 165(2) or an undertaker makes requirements for the protection or alteration of apparatus under paragraph 167, the Company must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the undertaker’s undertaking and each undertaker must use its best endeavours to co-operate with the Company for that purpose.

(2) Whenever the statutory undertaker’s consent, agreement or approval to is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

176. If in consequence of the agreement reached in accordance with paragraph 164(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the Company must provide such alternative means of access to such apparatus as will enable the undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

177. Any difference or dispute arising between the Company and the undertaker under this Part of this Schedule must, unless otherwise agreed in writing between the Company and the undertaker, be determined by arbitration in accordance with article 60 (arbitration).

SCHEDULE 11

Article 58

DOCUMENTS TO BE CERTIFIED

(1) <i>Document</i>	(2) <i>Description</i>
bird monitoring and action plan	The bird monitoring and action plan contained in document reference [PoTLL/T2/EX/155].
book of reference	The book of reference contained in document reference 4.3 v3 [PoTLL/T2/EX/219].
classification of roads plans	The classification of roads plans contained in document reference 2.6.
construction environmental management plan	The construction environmental management plan v3 contained in document reference [PoTLL/T2/EX/185].
engineering drawings and plans	The engineering drawings and plans contained in document reference 2.9 [PoTLL/T2/EX/6].
ecological mitigation and compensation plan	The ecological mitigation and compensation plan contained in document reference [PoTLL/T2/EX/212].
environmental statement	The environmental statement, figures and appendices contained in document references 6.1, 6.2, 6.3 and 6.4 (subject to the substitutions set out below): (a) The environmental statement non-technical summary contained in document reference v3 [PoTLL/T2/EX/175]. (b) The framework travel plan (appendix 13.B) contained in document reference v2 [PoTLL/T2/EX/140]. (c) The landscape and ecological management plan (appendix 10.P) contained in document reference v3 [PoTLL/T2/EX/177]. (d) The marine archaeological written scheme of investigation (appendix 12.E) contained in document reference v6 [PoTLL/T2/EX/228]. (e) The monitoring and background noise and modelling of construction noise at Tilbury Docks (appendix 17.A) contained in document reference v2 [Appendix 1 of PoTLL/T2/EX/94]. (f) The sustainable distribution plan (appendix 13.C) contained in document reference v2 [PoTLL/T2/EX/142]. (g) The written scheme of investigation for terrestrial archaeological mitigation (appendix 12.D) contained in document reference v3

	[PoTLL/T2/EX/104].
extended port limits plan	The extended port limits plan contained in document reference v3 [PoTLL/T2/EX/153].
level 3 flood risk assessment addendum	The level 3 flood risk assessment addendum contained in document reference [PoTLL/T2/EX/46].
land, special category land and crown land plans	The land, special category land and crown land plans contained in document reference 2.3 v3 [PoTLL/T2/EX/127]
limits of dredging plan	The limits of dredging plan contained in document reference v3 [PoTLL/T2/EX/123].
operational community engagement plan	The operational community engagement plan contained in document reference 5.4 v2 [PoTLL/T2/EX/125].
operational management plan	The operational management plan contained in document reference 6.10 v3 [PoTLL/T2/EX/181].
the requirement 3 colour palette	The requirement 3 colour palette contained in document reference [PoTLL/T2/EX/160].
rights of way and access plans	The rights of way and access plans contained in document reference 2.5 v2 [POTLL/T2/EX/132].
traffic regulation measures plan	The traffic regulation measures plan contained in document reference 2.7 v2 [POTLL/T2/EX/133].
works plans	The works plans contained in document reference 2.4 v4 [POTLL/T2/EX/223].

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Port of Tilbury London Limited to construct, operate and maintain a new port terminal and associated facilities near to the existing Port of Tilbury on the river Thames.

The Order would permit Port of Tilbury London Limited to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

A copy of all documents mentioned in this Order and certified in accordance with article 58 (certification of documents) of this Order may be inspected free of charge during working hours at Port of Tilbury London Limited, Leslie Ford House, Tilbury, Essex RM18 7EH.