

Further minded view letter on proposed London Gateway port

Contents

London Gateway 'Minded View' Letter.....	2
Summary of the Secretary of State's minded decision.....	4
Highways - Combined development impacts.....	9
Conclusion.....	15
Annex A.....	17
Annex B.....	20

London Gateway 'Minded View' Letter

Messrs Bircham Dyson Bell
Solicitors & Parliamentary Agents
50 Broadway
London
SW1H 0BL

F.A.O. Robert Owen Esq

8 August 2006

Dear Sirs,

Harbours Act 1964

London Gateway Port Harbour Empowerment Order

1. Further to my letter of 20 July 2005, I am authorised by the Secretary of State to inform you that consideration has been given to the report of the Inspector, Mr David Ward BSc (Hons) CEng MICE FIHT, who was assisted by Andrew Mead, BSc Hons MRTPI MIQ, on the Public Inquiry held from 25 February to 5 September 2003, following objections made to the London Gateway Port Harbour Empowerment Order ("HEO", "the Order"), for which your predecessors in your present role as Agents, Messrs Macfarlanes, formally applied under Section 16 of the Harbours Act 1964 on behalf of your client, the Peninsular and Oriental Steam Navigation Company Ltd ("the Applicant") on 26 July 2002.
2. The Order, if made, would establish a new harbour authority - the London Gateway Port - and authorise various works necessary for the construction and operation of a new port to accommodate freight traffic, general cargo, aggregates and bulk liquids, and access thereto, as well as make provision for the compulsory acquisition of land and other matters.
3. The report of the Inspector also covers a concurrent public inquiry into an application for an Order under section 1 of the Transport and Works Act 1992 ("the TWA Order") and a direction as to deemed planning permission for works provided for in the TWA Order. That application was the subject of a separate minded letter issued on behalf of the Secretary of State on 20 July 2005 and will be considered in a separate letter being issued today on behalf of the Secretary of State.
4. The report of the Inspector also covers a concurrent public inquiry into an application for outline planning permission under the Town and Country Planning Act 1990, referred to in the report as the "Outline Planning Application" ("OPA"). This application is the subject of a separate letter being issued today on behalf of the Secretary of State for Communities and Local Government, further to the minded letter issued on that application on 20 July 2005.
5. The Inspector's report, including his conclusions and recommendations, was circulated with the Secretary of State's minded letter of 20 July 2005. References in square brackets in this letter are to paragraphs in the Inspector's report unless otherwise stated.
6. This letter is to be read in conjunction with the minded letter of 20 July 2005. Where appropriate to the treatment of the same matters within that letter, this letter updates and supersedes the minded letter of 20 July 2005.

Further minded view letter on proposed London Gateway port

7. This letter takes account of the submissions and representations made by the Applicant and other parties since the issue of the minded letter of 20 July 2005, including representations on the minded letter of 20 July 2005 in which the Secretary of State invited responses on particular matters and on subsequent letters from the Secretary of State on 9 January 2006 and 15 February 2006. Attached to this letter, listed at Annex B, or to the letter of the Secretary of State for Communities and Local Government are further representations which have not hitherto been circulated to the parties. Post-inquiry correspondence received which, however, raises no new relevant matters is not being circulated.

Summary of the Secretary of State's minded decision

8. For the reasons given in this letter, the Secretary of State remains minded to agree with the Inspector's overall recommendation that the application for the HEO be approved and the Order made, subject to modifications.
9. Having carefully considered all relevant representations, the Secretary of State considers that he is not in a position to determine the application for the HEO as he has yet to be assured that legally binding arrangements have been put in place to secure the delivery of necessary highways infrastructure to address the road transport impacts of the proposed development. To this end, the Secretary of State now invites the Applicant to submit finalised agreements under section 278 of the Highways Act 1980 and section 106 of the Town and Country Planning Act 1990. The Secretary of State is aware that the Secretary of State for Communities and Local Government is minded to grant outline planning permission, subject to conditions, and likewise requires submission of the finalised agreements referred to above.
10. The Secretary of State is aware that it has taken considerable time to reach this stage and wishes to see this case concluded as swiftly as possible. The Secretary of State's expectations with regard to the timing of submissions are set out in paragraphs 88 and 89 of this letter.
11. The Secretary of State's minded view to grant the application, subject to the requirements indicated within this letter, is without prejudice to any further substantive points which might arise from his consideration of the draft of the Order.

Need for proposed port

12. The Secretary of State agrees with the Inspector, for the reasons the Inspector gives, on the justification of the need for the proposed port and in the location proposed and of the scale of works. The Secretary of State considers the objectives of the proposed port to be the relevant objectives for the purposes of section 16 (1) and (5) of the Harbours Act 1964 and to be capable of being so justified [15.1.40 - 15.1.42, and chapter 4 of Volume 1].
13. Since the issue of his minded letter of 20 July 2005 the Secretary of State has initiated, on 22 May 2006, a review of his policy on ports, "the Ports Policy Review". The Secretary of State has invited publicly comments on the matters raised in his discussion document which he has placed on the Department for Transport website. Respondents are invited to send comments to the Department on the questions raised in the document by 1 September 2006. The Secretary of State has made no prejudgement as to his future policy on ports and will consider all responses without prejudice. The Secretary of State therefore gives little weight to this discussion document issued for consultation.
14. To aid consideration of the matters raised in the Ports Policy Review's discussion document the Secretary of State has commissioned and had published on the Department for Transport website two reports on UK port traffic, one forecasting future demand in relation to freight capacity at UK ports and one on the transshipment of containers.
15. The Secretary of State has considered the forecasts made by independent consultants in the reports. He notes that the forecasts are broadly compatible with previous forecasts including those available to the public inquiry. He sees nothing in the forecasts which cause him to question the basis on which he concluded in his letter of 20 July 2005 that there was a national need for additional significant container handling capacity and that the proposed London Gateway port would help meet that need.

Nature Conservation matters

16. The Secretary of State agrees with the Inspector that measures are required to maintain the special nature conservation status of the Thames Estuary and accepts the Inspector's finding that the proposed works at Sites A and X are suitable, and would be required, to compensate for the impact of the port on designated sites of European and international nature conservation significance [11.75 - 11.77, 11.82 - 11.83, 14.4.5 - 14.4.6, 15.1.43].
17. Since the Secretary of State issued his minded letter of 20 July 2005 the then Office of the Deputy Prime Minister and the Department for Environment, Food and Rural Affairs have issued Planning Policy Statement 9 on Biodiversity and Geological Conservation, supplemented by ODPM and DEFRA Circular 06/05 and 01/05. An associated guide to good practice was issued on 31 March 2006.
18. The Secretary of State has considered these documents. He sees nothing in them which would cause him to review his minded decision or the arrangements proposed to ensure compatibility with habitats legislation.

Compulsory Acquisition matters

19. The Secretary of State agrees that compulsory purchase of land at Site X from Messrs Long is justified, for the reasons set out in his minded letter of 20 July 2005. He agreed then to the Inspector's recommendation that the parties be requested to enter first into negotiations to achieve suitable management of the land rather than by compulsory purchase.
20. While the draft of a management agreement for the land at Site X has been submitted by the Applicant, no agreement has been concluded between the Applicant and Messrs Long. In view of the importance of securing compliance with the Habitats Directive, as indicated in his minded letter of 20 July 2005, the Secretary of State considers it will be necessary to confirm the compulsory acquisition powers contained in the Order for the acquisition of the identified land. Failing any final agreement on management or acquisition of the land he is minded to authorise compulsory acquisition, such power to last no longer than three years from the date of the coming into force of the Order.
21. However, where land identified for compulsory purchase is not required for the purposes of meeting statutory environmental requirements the Secretary of State remains minded to agree that a period of up to ten years, which the Applicant had now accepted, would be appropriate for this large and complex development scheme, which is likely to require construction over several years.
22. The Secretary of State is minded to agree with the Inspector that the case is made for including the compulsory acquisition powers in the Order in this matter and that all the proposed land, including for mitigation or compensation, is necessary for construction of the port and its access, subject to the considerations set out elsewhere within this letter.

Network Rail - compulsory acquisition

23. The Secretary of State received representations from the Applicant and Network Rail further to his minded letter of 20 July 2005 concerning the proposed provisions in the Order for the compulsory acquisition of Network Rail's interests in and rights to land and property.

24. The Secretary of State in his letter of 20 July 2005 stated that he was minded to agree with the Inspector's assessment that the interests of Network Rail in the Thameshaven branch line required greater certainty and protection than would be afforded by the Applicant's proposals. He has considered the Applicant's representation that its powers are proposed to be exercised only where the safe operation of the railway network and the rights of third parties to access it are not put at risk. He notes the Applicant's view that the efficient operation of the rail connection to the port might be put at risk by potentially lengthy disputes between the Applicant and Network Rail, which could have serious implications for the achievability of a desirable rail freight share for port traffic.
25. The Secretary of State considers that the case for the permanent compulsory acquisition of Network Rail's land, property and interests in the Thameshaven branch line without the consent of Network Rail has not been demonstrated by the Applicant. He agrees with Network Rail that there are numerous precedents in made Orders under the Transport and Works Act 1992 running counter to the Applicant's present proposal. He does not consider it reasonable to distinguish such made Orders according to the Applicant's categorisation that they are made for public authorities for whom commercial considerations are not relevant. He notes that the protective provisions in these Orders and in the present draft Order require that Network Rail's consent not be unreasonably withheld. He considers that the Applicant's proposed formulation concerning the limitation of the exercise of powers in relation to the safety of operation of the railway to have the potential to give rise to uncertainty and cause lengthy disputes.
26. The Secretary of State remains in agreement with the Inspector that loss of control by Network Rail could have safety ramifications beyond the immediate site [14.2.20 - 14.2.25]. The Secretary of State is therefore minded to require that the relevant powers in the Order be formulated in accordance with the proposed protective provisions of Network Rail that compulsory acquisition should be with the consent of Network Rail, and not circumscribed according to the Applicant's proposal. He reiterates that it is proposed that such consent is not to be unreasonably withheld by Network Rail and any conditions attached to the consent are to be reasonable. In the interests of avoiding delays which might affect the Applicant's rail operations he is minded to require in addition a provision that consideration of consent by Network Rail should not be unreasonably delayed.
27. The Secretary of State has considered the representations of the Applicant and Network Rail in respect of the proposed arbitration provisions in the Order. Where there is dispute as to whether proposed compulsory acquisition of land, property, interests and rights from Network Rail would jeopardise the safety or safe operation of the railway network or infringe the rights of access to the network of Network Rail's customers, the Secretary of State agrees that it is appropriate that the matter be referred to independent arbitration.
28. The Secretary of State notes the Applicant's preference for the Office of Rail Regulation (ORR) to be designated as the arbitrator for the purpose of the relevant provisions in the Order concerning the resolution of disputes. However, he considers that where a public body is established under statute, such as the ORR, it should not act as an arbitrator in such circumstances when its governing legislation has made no provision for such a role. The Secretary of State considers on the other hand that there is no such restriction upon a body governed by private law. Therefore he is minded to agree with Network Rail that the ORR is not an appropriate arbitrator and to designate, as proposed previously in the Order, the London Court of International Arbitration to appoint a person for this role, in the event of the parties failing to agree on the identity of an arbitrator. The Secretary of State notes that Article 47 of the draft HEO provides for disputes over land compensation and valuation to be determined by the Lands Tribunal. He considers that in respect of other matters for resolution there should be provision for the appointment of an arbitrator upon request from either party should both fail to agree on one, by the President of the Institution of Civil Engineers or, in respect of matters concerning electrical apparatus, the President of the Institution of Electrical Engineers (now the Institution of Engineering and Technology).

29. The Secretary of State notes the Inspector reported the objection of Cory Environmental Ltd to compulsory purchase as an objection to the proposed TWA Order. However, the compulsory acquisition powers in question relate to the upgrading of the Thameshaven Branch Line. Since the Secretary of State proposed, in paragraph 36 of his other letter of 20 July 2005 setting out his minded views on the TWA Order, to remove from that Order the powers relating to the upgrade of the branch line, it falls to him to consider the objection by Cory Environmental Ltd in the context of the HEO application. Having considered all the arguments, he is minded to agree with the Inspector, for the reasons given in his report, that there are compelling reasons in the public interest for conferring on the Applicant the compulsory acquisition powers in the HEO in respect of the land owned by Cory Environmental Ltd [14.5.5 -14.5.6].
30. The Secretary of State will address the matter of costs for any successful objections to compulsory purchase powers at the time of his final decision on the relevant statutory applications.

Other matters considered by the Secretary of State further to representations received following his minded letter of 20 July 2005

31. The Secretary of State notes the statement by Network Rail in its representation of 23 September 2005, referred to also by certain other parties, that the achievement of a significant rail share for port freight would be put in doubt in the absence of significant rail capacity improvements. The Secretary of State is minded to continue to agree with the Inspector that it is probable that there would be sufficient capacity on the national rail system, after committed improvements, to accommodate a share of the port traffic commensurate with sustainable distribution policy, thus lessening the demand upon the highway network [15.1.63]. He reiterates his view in his minded letter of 20 July 2005 that the Applicant or the relevant public bodies would have an incentive to invest in additional rail provision if it were found that greater capacity was needed in the future. In respect of this, he draws attention to his statement to Parliament of 27 June 2006 in which he announced that a business case would be developed for certain rail and road schemes with potentially national benefits and thus considered for funding from the Transport Innovation Fund.

Natural habitats

32. The Secretary of State notes the concern raised in a further representation from the RSPB about the possible impact upon the proposed compensation habitat at "Site A" arising from planned housing development at Stanhope Park. The consideration of an application for planning permission for housing is not a matter for the Secretary of State and is not part of the proposed Shellhaven port and logistics centre and business park. The Secretary of State notes however that the Planning Inspectorate has in 2006 issued guidance in collaboration with English Nature on the consideration of the impacts of new housing developments on sensitive sites of natural conservation interest.

Fisheries

33. The Secretary of State has considered the further representations submitted by the Applicant and the Kent and Essex Sea Fisheries Committee. He notes the concerns expressed by the KESFC. However, he considers that these have raised no new points and sees no reason to alter his minded view of 20 July 2005.
34. In respect of the Applicant's proposed compensation scheme the Secretary of State adheres to his view that the scheme is reasonable in making compensation available to those who can substantiate their prospective losses. He agrees with the Applicant that the scheme has appropriate coverage and that it would not be reasonable to extend it to fishermen not affected by the proposed port scheme but who might encounter competition from other fishermen potentially displaced as a result of dredging operations for the port.

Dredging powers

35. The Secretary of State has considered the representations of the Applicant, the Environment Agency, the Kent and Essex Sea Fisheries Committee and the Port of London Authority following his minded letter.
36. He accepts the case of the Applicant and the Port of London Authority that the proposed approvals regime provides a practical approach to dredging and tidal works with appropriate safeguards. He agrees with the PLA that, contrary to the submission of the Environment Agency, the regime would not add another layer of bureaucracy to the approvals process. The Secretary of State adheres to his position on these matters taken in his minded letter of 20 July 2005.

Noise measures; construction

37. The Secretary of State is minded to agree with the approach suggested by the Applicant in its representation of 20 October 2005 for the imposition of conditions in respect of a noise insulation scheme for properties in East Tilbury; noise mitigation measures for Great Garlands Farm, Old Hall Farm and Oak Farm; and a scheme for the sustainable handling and transport of construction materials and dredged materials. The Secretary of State expects to see these conditions provided for in appropriate protective provisions within the Order such that relevant works could not commence until approval had been given by the Local Planning Authority, such approval not to be unreasonably withheld or delayed, or otherwise determined by arbitration as the case might be.

Footpaths

38. The Secretary of State has considered the representations received from English Nature, the RSPB, Cliffe and Cliffe Woods Parish Council, High Halstow Parish Council and Cooling Parish Council on the matter of footpath access to Site X. Though recognising the recreational value of retaining footpath access in this area, he considers that this is outweighed by the nature conservation interests of the Site, as evidenced by its international classified status. He therefore adheres to his earlier view expressed in his minded letter of 20 July 2005 in agreement with the Inspector that footpath access should be curtailed for reasons of nature conservation.

Policing

39. The Secretary of State has considered a further representation from Essex Police on funding of the policing required for the combined port and park development. The representation calls attention to the evidence already submitted by Essex Police to the public inquiry. The Secretary of State considers therefore that this raises no new issues. With regard to the port the Secretary of State draws attention to Article 61 in the draft HEO which provides for the creation of a port police force through the appointment of constables. While mindful of his policy on new port police forces set out in "Modern Ports", the Secretary of State does not consider himself bound by the presumption against them set out therein. He has received no representations for or against a port police force in regard to the present application for an HEO. He is minded therefore to continue to let Article 61 stand as drafted.
40. With regard to the logistics centre and business park, and additionally the port should the HEO be made but the provision in Article 61 for the creation of a port police force not be implemented, policing arrangements would be determined on the basis of existing Government funding formulas. Given the predicted development of the total port and park project over the course of more than a decade the Secretary of State considers that it would be reasonable to assume that there would be sufficient time in which assessments of the resources needed to police an increasing resident and temporary daytime population could be updated to reflect more closely the population existing at any one time.

Highways - Combined development impacts

41. Since the issue of his minded letter of 20 July 2005 the Secretary of State has initiated on 7 August 2006 a consultation on planning and the strategic road network with a view to revising DTLR Circular 4/2001 on the control of development affecting trunk roads and agreements with developers under section 278 of the Highways Act 1980. The Secretary of State has published these documents on the Department for Transport website. The Secretary of State has invited comments on the consultation documents including the draft circular "Planning and the Strategic Road Network" from interested parties by 31 October 2006.
42. The Secretary of State considers that the documents may be relevant in as much as they contain proposals for the revision of the present Circular 4/2001. The Secretary of State will consider without prejudice all comments sent to him during the consultation period and has not determined what his policy will be. The Secretary of State therefore considers that little weight should be attached to the consultation documents and that his present policy as applied to London Gateway port and business park remains unaffected.
43. The Secretary of State considered the representations submitted since his minded letter of 20 July 2005 by the Applicant, the Highways Agency, Essex County Council and Thurrock Council. The Secretary of State has also considered the further representations submitted by SPEAC, Capital Shopping Centres, DLA Piper Rudnick Gray Cary, individual local residents and the Hassengate Medical Centre.

Trunk road network

44. The Secretary of State and the First Secretary of State in their minded letters of 20 July 2005 invited the Applicant to enter into discussions with the relevant highway authorities over the necessary highway schemes to address the road traffic impacts of the development, with a view to drawing up an agreement under section 278 of the Highways Act 1980, or an appropriate equivalent arrangement, for their delivery.
45. In response to the minded letters issued on 20 July 2005 on behalf of both Secretaries of State, the Applicant submitted draft agreements under section 278 of the Highways Act 1980 for an "Interim scheme" and a "Final scheme" for the delivery of highway works on the trunk road network.
46. The Applicant also submitted a draft alternative scheme for the partial funding of works ("the Stakeholder scheme"). The Secretary of State agrees with the Secretary of State for Communities and Local Government that the alternative scheme does not provide enough legal certainty that the works it would concern would be deliverable. In particular, the alternative scheme would depend on unknown future contributing developers contributing to a presently undefined scheme. The Secretary of State has therefore considered only the draft agreements submitted for the interim and final works schemes.
47. The Secretary of State notes the agreement between the Applicant and the Highways Agency as to the extent of the physical highways works, as defined in the interim and final schemes, subject to their being worked up in detail. They would be required to pass through the necessary statutory procedures, as with any trunk road scheme.

48. However, the Highways Agency has put forward the view that the physical works have been designed to accommodate the forecast traffic impacts of the combined port and logistics park development above a residual level, after allowing for a rail freight modal share as per "Test 5" (30% port, 10% OPA). Should the predicted rail freight share fail to be achieved, and with more road traffic generated as a result, the Highways Agency wishes to guard against unacceptable further impacts on road traffic flows. To ensure that traffic does not rise above the forecast level, and thus risk undermining the effective and safe operation of the immediate trunk road network, the Highways Agency has proposed more stringent restrictions on the area of development permitted to be in beneficial use before the final section 278 scheme is implemented, with additional measures for incorporation in the Travel Plan for the whole site.
49. The Secretary of State accepts that, even with a reasonable prospect of a significant rail freight share being achieved for the port and business park, it is necessary to have some certainty that the road network will be able to accommodate traffic generated by the combined development.
50. Given the need for greater certainty over traffic impacts, the Secretary of State considers that it is a reasonable precaution to accept the more stringent restrictions on the rate of development of the business park and port proposed by the Highways Agency. In respect of the port, the Secretary of State proposes to adopt the Highways Agency's suggested restriction by a modification to the Harbour Empowerment Order to the effect that no part of the port shall be brought into operational use unless and until the Interim scheme works as set out in the draft agreement under section 278 of the Highways Act have been substantially completed.

Travel Plan

51. The Applicant has submitted a revised Travel Plan for the combined port and park development, further to the Secretaries of State's minded letters of 20 July 2005, which aims to address the road traffic impact of the development on the Dartford River Crossing and which would have the effect in addition of mitigating the development's road traffic impact on other linked parts of the road network. The Secretary of State is satisfied that the impact on the Dartford River Crossing can be addressed by the Travel Plan and that no physical enhancement of the Crossing is required to cater for traffic from the port and park development.
52. The Travel Plan incorporates and updates the provisions of the earlier, separate Travel Plans in respect of the port and logistics centre. It includes a Vehicle Booking System for the port on the lines of the system which is in operation at the port of Southampton. The Secretary of State considers that the effectiveness of such a system has been demonstrated at Southampton and has no reason to suppose that it would not be equally effective in managing access by heavy goods vehicles to the London Gateway port. The Secretary of State notes that the Highways Agency places reliance on the vehicle booking system to help manage the broad traffic impacts of the port.
53. The Secretary of State has considered the Highways Agency's additional requirements for the Travel Plan, which the Agency states are necessary to ensure that the forecast level of traffic is managed and not exceeded, including a system to monitor and manage vehicle access to the business park.
54. The Secretary of State considers that the proposed Travel Plan requirements concerning the logistics centre and business park are principally matters for the Secretary of State for Communities and Local Government. Having reviewed all the evidence he shares her view that it is reasonable to require a means of monitoring and managing access to and egress from this site in order to mitigate the traffic impacts of the development, particularly in peak hours. He agrees with the reasoning and conclusions on this matter set out in today's letter from the Secretary of State for Communities and Local Government.

55. The Secretary of State has considered the Highways Agency's proposal for a recruitment policy designed to recruit labour from areas where the number and length of motorised journeys are likely to be the lowest and from where public transport provision is or will be at the relevant time attractive. The Secretary of State shares the assessment of the Secretary of State for Communities and Local Government that this initiative would be desirable and agrees with her conclusion that the Travel Plan should encourage local people to apply for employment opportunities.
56. The Secretary of State is satisfied with the other measures offered in the revised Travel Plan put forward by the Applicant. He notes the Highways Agency's support for these other measures. He considers that the provisions for establishing and operating the Travel Plan by means, inter alia, of a Committee and a site Co-ordinator constitute good practice and help provide assurance as to the continuing effectiveness of the measures laid down in the Plan. He is content that the proposed membership of the Travel Plan Committee has been enlarged to include all three relevant highway authorities (the Highways Agency, Thurrock Council and Essex County Council).
57. The Secretary of State considers that the Applicant's Travel Plan, supplemented and regulated by the Highways Agency's proposals of 9 February 2006, as modified by the Secretaries of State's considerations above with regard to a targeted recruitment policy and managed access for the logistics park, are required to help deliver the outcome of acceptable mitigation and management of road traffic impacts of the combined development on the highway network. The Secretary of State draws attention to and endorses the proposal of the Highways Agency that the Travel Plan Committee should act in a reasonable manner when considering the need for appropriate measures to secure compliance with the Travel Plan in the event of non-achievement of the predicted modal split.

Traffic demand and impacts

58. The Secretary of State, having reviewed all the evidence, considers that representors have not taken into account a number of factors which additionally can mitigate the road traffic impacts of the development. The Secretary of State therefore considers that the emphasis of the Travel Plan should in the first instance be on monitoring and managing traffic impacts, instead of physical systems to control or prohibit access to the site.
59. The Secretary of State notes the sensitivity test submitted by the Applicant for peak hours traffic flows on the Dartford Crossing. This test shows only slight differences in impacts on the Crossing in peak hours between the tests of the development with low rail freight share at 10% and high rail freight share at 30% for the port and 0% and 10% respectively for the business park. The sensitivity test indicates similarly slight differences for the A13. The Secretary of State agrees with the assessment of the Secretary of State for Communities and Local Government in her letter today that the sensitivity test is credible.
60. The Secretary of State is aware that the Secretary of State for Communities and Local Government has considered a further number of factors relating to the proposed port and its likely impacts on the highway network. He agrees with the assessment in her letter today that these factors singly or collectively would reduce the total traffic impact of the port from that predicted by the highway authorities and other representors.
61. For all the above reasons, and in agreement with reasoning of the Secretary of State of Communities and Local Government today, the Secretary of State considers that there is the probability of a significant margin between the road traffic forecast to be generated by the combined development - if the concerns of the Highways Agency, Essex County Council and Network Rail among others about the failure of the development to achieve more than a low rail freight share prove to be realised - and what may be generated in practice. The Secretary of State considers that the margin should also help address the concerns of Thurrock Council that the previous road traffic forecasts for the locality are outdated underestimates.

Thurrock Council

62. The Secretary of State has considered the representations from Thurrock Council, made on its own behalf and on the behalf of Thurrock Thames Gateway Development Corporation, in relation to highways matters.
63. The Secretary of State agrees with the assessment of the Secretary of State for Communities and Local Government in her letter today that there is a clear case to vary those provisions based around key dates in the executed agreement under section 106 of the Town and Country Planning Act 1990, to take account of the passage of time. He agrees with her assessment of the matters raised by Thurrock Council concerning background growth in traffic. He notes Thurrock Council's representation of 16 May and agrees with the Secretary of State of Communities and Local Government. He does not consider that it is acceptable to defer execution of an agreement before he has come to a decision on the Order. He accordingly invites the Applicant and Thurrock Council to enter into and submit a single revised executed agreement, which would in addition supersede the previous contract for the port and run with the title to the land, for these purposes.
64. The Secretary of State is in agreement with the Secretary of State for Communities and Local Government, who accepts the Highways Agency's view, contrary to Thurrock Council's submission, that east facing slip roads at the A13/A126 junction are not required in connection with the port and park development.

Essex County Council

65. The Secretary of State notes the representations submitted by Essex County Council. The County Council has asked that the Secretary of State be satisfied that appropriate additional capacity can be provided above that needed to mitigate the impact of development related traffic on the A13 and its junctions. The Secretary of State considers that this is not strictly required for consideration of the application for the port or for the combined development. He notes on the other hand that the Council is satisfied that the proposed Final works section 278 scheme would allow for some spare capacity, provided that the traffic forecasts remained accurate.
66. The Secretary of State notes that Essex County Council has indicated that it will accept the contributions offered and updated by the Applicant in respect of the section of the A13 between Pitsea and Five Bells, for which it is the responsible Local Highway Authority. Consideration of Government funding of any further upgrading of the A13 in Essex is outside the scope of the Secretary of State's consideration of the application for the port.

Secondary access

67. The Secretary of State has considered the further representations of the Applicant, Thurrock Council, Essex County Council, the Highways Agency, SPEAC, local residents and members of Parliament, English Nature and the RSPB on this matter, in addition to his earlier consideration in his minded letter of 20 July 2005.
68. The Secretary of State accepts the Applicant's case that provision of a designed contraflow system for the proposed new development access road and the Manorway would be adequate in all reasonable foreseeable circumstances to ensure maintenance of traffic flow on the access route for the development. The Secretary of State draws attention in this regard to the representation of the Applicant submitted on 20 October 2005 entitled Access and Emergency Access Review.
69. The Secretary of State notes SPEAC's request that a restriction be placed upon the growth of the development until a second access road is built. The Secretary of State considers that in practice the growth of the development would be limited by the provisions of the section 106 agreement with Thurrock and the section 278 agreement with the Highways Agency which have the consequential effect of limiting traffic to and from the development until certain local and trunk road works are implemented. He notes also that the proposed restriction of development of the "Tongue Land" and the strengthened Travel Plan measures to limit traffic.

70. The Secretary of State notes also the concerns of English Nature and the RSPB that a second access road could have an adverse impact on one or more of the several sensitive nature conservation sites in the locality. He agrees with the Secretary of State for Communities and Local Government that significant weight should be given to this matter.
71. The Secretary of State concludes for the above reasons that the need to provide a second access road for the development has not been demonstrated.

Emergency access

72. The Secretaries of State asked the Applicant to supply details of emergency access arrangements for the development site. The Applicant has supplied these details and the Secretary of State is aware that the Secretary of State for Communities and Local Government is minded to agree to impose the associated planning condition 45.
73. The Secretary of State has noted the references made in representations, including by Thurrock Council and SPEAC, to the implications for the Shellhaven site of the Buncefield depot accident. No representor, however, has drawn a direct parallel with the situation of the Buncefield depot. The Secretary of State considers that approach to be correct as the London Gateway port itself and the business park and logistics centre will not fill the role of a fuel depot and storage of fuel on site as such will thus be much more limited. The Secretary of State notes that evidence on safety considerations was made available to the Public Inquiry.
74. The Secretary of State agrees with the assessment for the development of the Secretary of State for Communities and Local Government in her letter today on the interim report of the Buncefield Major Incident Investigation Board.
75. The Secretary of State has considered the emergency access and evacuation routes for the development in the event of a major fuel accident. The Secretary of State is satisfied that the new dual carriageway access road, to the west of the development, and thus on the opposite side of the site to the locations for major fuel storage, would be able to serve as an evacuation route to the Manorway. The Applicant's proposed contraflow system, intended for use if necessary in the event of blockage from a traffic accident, could be employed to manage both egress by site vehicles and access by emergency vehicles. The Secretary of State notes that the principal means of access for emergency vehicles would be on the much less used eastern section of the Manorway to the immediate north of the Shellhaven and Coryton sites.
76. SPEAC and local residents have expressed concerns about the use of local roads in Stanford-le-Hope and Corringham by Shellhaven traffic. While in every day circumstances it would be open to the local highway authorities to regulate use of these roads by means of Road Traffic Regulation Orders, particularly for vehicles over a certain weight, the Secretary of State considers that in an emergency scenario it would be reasonable for vehicles temporarily to use the appropriate "B" road, the B1420, to relieve pressure on the A1014 where it approaches its junction with the A13.

Consideration

77. Having considered all the further representations and evidence submitted following his minded letter of 20 July 2005, the Secretary of State is minded to conclude that the road traffic impacts of the proposed port in combination can be accommodated on the highway network, subject to the implementation of the schemes provided for in the section 278 and section 106 agreements and the measures set out in the Applicant's updated Travel Plan, as supplemented by certain of the Highways Agency's proposed measures where they have been endorsed in this letter by the Secretary of State and by the Secretary of State for Communities and Local Government in her letter today. He is minded therefore to include in the HEO a provision to the effect that no part of the port shall be brought into operational use until the measures in the Travel Plan have been approved in writing by the Local Planning Authority following consultation with the Highways Agency and the Local Highway Authority and implemented as approved. He is aware that the Secretary of State for Communities and Local Government is minded to require a similar condition in respect of the outline planning application.
78. The Secretary of State notes the concerns of a number of representors that such measures will nevertheless be inadequate on account of an underestimating of overall traffic growth in the area and an overestimating of the freight traffic which can be accommodated by rail.
79. The Secretary of State considers that the appropriate safeguard against inadequacy of impact of these measures during the roll-out of the development is by the imposition of negatively worded conditions, which he and the Secretary of State for Communities and Local Government have devised.
80. The Secretary of State considers it would be reasonable therefore to permit the development to proceed without requiring additional highways measures to those already envisaged above. He considers that the Travel Plan measures are sufficient to address the forecast traffic impacts of the port. He considers that the remaining concerns revolve around the forecast road traffic impact of the business park and logistics centre on the highway network.
81. He is therefore minded to make the Order, subject to his being satisfied as to the conclusion of all the necessary outstanding agreements, and as mentioned in paragraph 11 of this letter, to his consideration of the draft of the Order.

Conclusion

82. The Secretary of State is satisfied in principle that the impacts of the proposed port, alone and in combination with the proposed business park and logistics centre, can be mitigated so that they are acceptable.
83. With regard to the predicted impacts on the highway network, he considers that it is necessary to be certain of the final details by which the required enhancement schemes are to be implemented. He hereby requires therefore that the Applicant submit revised agreements under section 278 of the Highways Act 1980 for the delivery of the interim and final scheme works; a revised and executed agreement under section 106 of the Town and Country Planning Act 1990 with the Local Planning Authority and additionally the Local Highway Authority as the local authorities among them shall agree; the section 106 agreement shall cover the port and the business park both jointly and separately in the event that one or other of the applications is not implemented.
84. The executed section 106 agreement shall incorporate the updated Travel Plan measures as indicated in the Secretary of State's consideration above. That is, the revised Travel Plan submitted by the Applicant with the additions proposed by the Highways Agency in its letter of 9 February 2006, except that a system for managing access to the business park shall be required to be reasonable, and shall be in accordance with the requirements set out today by the Secretary of State for Communities and Local Government.
85. The Secretary of State requires the Travel Plan to contain measures for monitoring of access to the whole site, consideration by the Travel Plan Committee of remedial actions and measures of compliance, if appropriate, to deliver an outcome which results in no detriment to traffic conditions on the highway network.
86. The Secretary of State requires a provision to be inserted in the executed agreement to the effect that there shall be no operational use of either the port or the business park unless and until the detailed measures which shall comprise the Travel Plan shall have been submitted by the Applicant to, and agreed in writing by, the Local Planning Authority, following consultation with the Local Highway Authority and the Highways Agency.
87. The Secretary of State requires the unilateral undertaking proposed by the Applicant in favour of Essex County Council for financial contributions to schemes for improving the A13 in Essex to be executed either as a unilateral undertaking or as an agreement under section 106 of the Town and Country Planning Act 1990 before the Secretary of State determines the application for the HEO.
88. The Secretary of State requires all the above-mentioned agreements or undertakings once they have been executed to be submitted to him and to the Secretary of State for Communities and Local Government. The Secretaries of State request that final draft agreements and undertakings shall be submitted to them within ten weeks from the date of this letter before arranging for the final versions of those documents to be executed.
89. The Secretaries of State have been engaged in substantial post-inquiry correspondence. Following receipt of responses to this letter the Secretary of State proposes to make a further circulation of relevant documents before proceeding to a final decision.

Yours faithfully,

Phil Carey
Head of Ports Division

Authorised by the Secretary of State to sign in that behalf

Department for Transport
Room 2/29b

Further minded view letter on proposed London Gateway port

Great Minster House
76 Marsham Street
London
SW1P 4DR

Annex A

The Secretary of State requires the Grampian conditions which apply to the port and business park in combination and to the port alone to be submitted in the form of draft articles for incorporation in the HEO. He suggests that they might conveniently be contained in a Schedule to the Order.

The Secretary of State draws attention to the recent Practice Guidance published by the Department for Communities and Local Government on Planning Obligations

The proposed Grampian conditions for the business park which the Secretary of State for Communities and Local Government proposes to impose are reproduced here for convenience.

1st Grampian Condition proposed by the Appellant for the Outline Planning Application for the Logistics Centre and Business Park (as amended by the Secretary of State for Communities and Local Government)

Completion of Interim works - OPA

1 None of the B1(b), B1(c), B2 or B8 uses forming part of the development hereby permitted shall be brought into beneficial use until the following works have been practically completed:

1.1 the provision of MOVA or such other equipment providing the same functionality as MOVA equipment to the traffic signals on junction 30 of the M25 together with associated detection and ancillary equipment and road markings; and

1.2 the provision of either:

1.2.1 a dedicated free flow left slip from the M25 (North) to the A13 (East); or

1.2.2 improvements to the signalisation of the left-turn facility from the M25 (North) to the A13 (East); and

1.3 improvements to the 3-lane section of the A13 East (westbound) approach on Junction 30 of the M25; and

1.4 the provision of a 25 metre (approx) flare on the A282 approach; and

1.5 re-marking of the existing A13 West (eastbound) 2-lane approach; and

1.6 further improvements to the MOVA equipment to accommodate the works referred to in paragraphs 1.2 to 1.5 above; and

1.7 revised signage and road markings for the A13 link section (M25 Junction 30 to the A126) and associated approaches.

1.8 deleted

2nd Grampian Condition - Completion of Final Works for Port and OPA implementation in combination proposed by the Appellant. The Secretary of State is minded to agree with the Secretary of State for Communities and Local Government's view.

2 No more than the total amount of B1(b), B1(c), B2 or B8 floorspace set out in the Table below (having regard to the amount of development at the adjacent port permitted by the Harbour Empowerment Order shown in the adjacent column in the Table) shall be brought into beneficial use until the following highway works have been practically completed (meaning complete such that they are operational but excepting minor snagging items). This condition shall not apply in the event that an election is made under a section 278 Agreement entered into with the Secretary of State for Transport that the Works set out below are not to be carried out:

The Works:

Further minded view letter on proposed London Gateway port

- 2.1 3-lane parallel collector distributor roads either side of the A13, and associated 2-lane slips, taking traffic to and from the A126 via M25 J30; and
- 2.2 MOVA signal control (already implemented as part of the interim measures, but extended to cover new improvement elements); and
- 2.3 Improvement for traffic from the M25 north to the A13 east at Junction 30 in the form of a left-turn slip road; and
- 2.4 Provision of a two-lane signalised left-turn facility from A13 east to the A282 south; and
- 2.5 Widening of the circulatory carriageways at Junction 30 on the northern (overbridge), southern (overbridge) and western (underbridge) sections from three to four lanes; and
- 2.6 Provision of an additional 2 lanes on the A282 south approach to Junction 30; and
- 2.7 Additional flaring on the A13 west approach to Junction 30
- 2.8 in each case as outlined on the Faber Maunsell drawing number W37204_A_8236 together with the implementation of VMS (or an agreed alternative) on the A1012-A1089 section and associated approaches

The Table:

Column 1 Development at the Port in beneficial use (number of berths)	Column 2 Maximum amount of permitted B1(b), B1(c), B2 or B8 floorspace in beneficial use
1 berth	503,044 square metres with the Ro-Ro (or 579,912 square metres without the Ro-Ro)
2 berths	456,812 square metres with the Ro-Ro (or 533,680 square metres without the Ro-Ro)
3 berths	410,580 square metres with the Ro-Ro (or 487,448 square metres without the Ro-Ro)
4 berths	364,348 square metres with the Ro-Ro (or 441,216 square metres without the Ro-Ro)
5 berths	318,116 square metres with the Ro-Ro (or 394,984 square metres without the Ro-Ro)
6 berths	271,884 square metres with the Ro-Ro (or 348,752 square metres without the Ro-Ro)

3rd Grampian condition proposed by Appellant

Supplementary Travel Plan

3. *With effect from the date of occupation of any part of the development hereby permitted the measures set out in the Faber Maunsell document entitled "Supplementary Travel Plan" shall be implemented.*

Alternative proposed by the Secretary of State

Further minded view letter on proposed London Gateway port

3. No part of the development hereby permitted shall be brought into beneficial use until the measures in the Travel Plan have been approved by the Local Planning Authority following consultation with the Local Highway Authority and Highways Agency on behalf of the Secretary of State.

Port only - in the event that the Port alone is implemented, the logistics park planning permission and TWA Order and deemed planning permission not being implemented. The Secretary of State invites representations in particular on condition 2 below.

1. No part of the port shall be brought into beneficial use until the Interim scheme works have been practically completed.
2. No more than six berths, or alternatively five berths and the ro-ro, shall be permitted to be in operation before the Final scheme works as provided for in the section 278 agreement shall have been implemented and practically completed.
3. With effect from the date of occupation of any part of the development hereby permitted the measures applicable to the port set out in the Faber Maunsell document entitled "Supplementary Travel Plan" shall be implemented.

Alternative for 3 proposed by the Secretary of State

3. No part of the port development hereby permitted shall be brought into beneficial use until the relevant measures in the Travel Plan have been approved by the Local Planning Authority following consultation with the Local Highway Authority and Highways Agency on behalf of the Secretary of State.

Annex B

List of relevant substantive correspondence received by the Secretary of State since the previous circulation of 15 February 2006

Letter of 8 March 2006 from Bircham Dyson Bell on behalf of the Applicant

Letter of 8 March 2006 from the Treasury Solicitor on behalf of the Highways Agency

Letters of 19 April 2006 from DfT to 1) Berwin Leighton Paisner and 2) Treasury Solicitor for the Highways Agency

Letter of 26 April 2006 from Berwin Leighton Paisner

Letter of 26 April 2006 from the Treasury Solicitor on behalf of the Highways Agency

Letter of 12 May 2006 from DfT to Highways Agency

Note of 1 June 2006 from Highways Agency in response to the above