

**REPORT TO THE MARINE MANAGEMENT ORGANISATION**

**BY CHRISTOPHER JACOBS**

**INDEPENDENT CHAIR OF AN INQUIRY PURSUANT TO PARAGRAPH 18(1B)  
OF SCHEDULE 3 OF THE HARBOURS ACT 1964**

**HARBOURS ACT 1964**

**A HARBOUR REVISION ORDER**

**PROMOTED BY**

**THE PORT OF LONDON AUTHORITY**

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## APPEARANCE LIST

### FOR THE PORT OF LONDON AUTHORITY

Richard Turney KC Instructed by Winckworth Sherwood LLP

He called:

Steven Lockwood	Chief Financial Officer, Port of London Authority ACMA
Benedict Fanning	Head of Estates, Port of London Authority BA MRICS
James Stride	Chief Harbour Master, Port of London Authority BSc(Hons) MA FRGS AFNI
James Trimmer	Director of Planning and Development, Port of London Authority BSc(Hons), DipTP, MRTPI, MRICS
Grace Rawnsley	Director of Sustainability and Net Zero Transition, Port of London Authority BSc MA

### FOR TOWER BRIDGE YACHT AND BOAT COMPANY

Paul Powlesland, Counsel Instructed by Tower Bridge Yacht and Boat Company

He called:

Nicholas Lacey	Director, Tower Bridge Yacht and Boat Company
Teresa Lundquist	Manager, Tower Bridge Yacht and Boat Company

Sir Simon Hughes

### FOR THAMESBANK

Claire Nevin, Counsel Instructed by the Environmental Law Foundation and Thamesbank

She called:

Emily Shirley

**FOR THE BARGE ASSOCIATION**

Dr Scott Pereira

**FOR THE RIVER THAMES SOCIETY**

Mrs Hilary Pereira

**FOR THE ORGANISATION OF PLA CUSTOMERS (OPLAC)**

Mr David Beaumont

**FOR THE NATIONAL BARGEE TRAVELLERS ASSOCIATION**

Mrs Pamela Smith

**FOR CHELSEA REACH BOATOWNERS ASSOCIATION (CRBA)**

Kate Bex KC

**FOR THAMES BLUE GREEN ECONOMY**

Mrs Diana McCann                      Environment Director

Lady Dido Berkeley

**FOR THE RESIDENTIAL BOAT OWNERS ASSOCIATION**

Clive Wren                                  Tidal Thames Representative

**FOR RALPH HARDWICK**

Simon Anthony

James McAdam

Simon Howard

**INDIVIDUAL OBJECTORS**

## **INTERESTED PARTIES**

Simon Anthony

James Haas

Andrew Wernick

Paula Jeffers

Abel Ducaux

### **Summary of Recommendations**

I have recommended that the Marine Management Organisation ('MMO') make the Harbour Revision Order ('HRO') with modifications<sup>1</sup>. The modifications that I have recommended relate to the HRO (dated 11 March 2025<sup>2</sup>) and are in respect of the following Articles:

#### **(1) Article 4(2)(i) – Section 2 of the Port of London Act 1968 ('the 1968 Act')**

The definition of harbourmaster should read as follows:

*"harbourmaster" means a person appointed by the Port Authority to be a harbourmaster and includes the deputies and assistants of a person so appointed and any other employee of the Port Authority authorised to carry out any functions of a harbourmaster.*

#### **(2) Article 4(2)(n) – Section 2 of the 1968 Act**

The definition of 'master' should be modified to read (at (b)) as follows:

*(b) in connection with a houseboat or commercial and club boats it means the owner or if the owner is not in occupation any person over the age of 18 who is in occupation for the time being and having or taking the command, charge or management of a vessel for the time being; and*

<sup>1</sup> This is one of the three options contained in Schedule 3, Paragraph 19(6) of the Harbours Act 1964.

<sup>2</sup> Inquiry Documents ID17

**(3) Article 4(2)(g) – Section 2 of the 1968 Act**

The definition of ‘navigation’ is modified to read as follows:

*“navigation” means the control or direction of the course of a vessel on or in the water for whatever purpose, whether travelling between two locations or not, but does not include any vessel under tow.*

**(4) Article 9(d). Powers relating to land – Section 11 of the 1968 Act.**

The HRO should be modified to clarify that no consideration is to be charged for property licences that relate solely to grab chains and escape ladders. This modification reflects the position of the Port of London Authority (PLA) that was set out in its ‘Note following the evidence of James Trimmer’, which was submitted during the Inquiry. The amended section 11 of the 1968 Act should read after subsection (3A):

.....

*(3B) Save that no consideration shall be payable in relation to any part of a property licence granted solely in relation to grab chains and escape ladders, the consideration for the grant of an interest in or rights over or under or a right to use land is to be such as may be agreed between the Port Authority and the holder of the permission or, failing agreement, is to be assessed in accordance with subsection (3C) by an arbitrator appointed on the application of either party, after notice to the other, by the President of the Royal Institution of Chartered Surveyors or their deputy.*

.....

**(5) Article 13. Charges regulations - Section 22 of the 1968 Act.**

Article 13(2)(b)(v) should be modified so that the reference within section 22 of the 1968 Act to *section 39(2B)(2)* is changed to *section 39(2B)*. This recommendation arises from what appears to be a typographical error.

**(6) Article 19. Recovery and enforcement of charges and consideration – Section 39 of the 1968 Act.**

Article 19(2D) of the HRO should be modified to reflect the two-stage process set out by the PLA in the ‘Note following the evidence of Mr Lockwood’, which was submitted during the Inquiry. Section 39 of the 1968 Act should materially read as follows:

*(2D) The Port Authority must not exercise the power conferred by subsection (2B) in relation to a houseboat without first obtaining*

- (i) an order for possession from a court of competent jurisdiction and*
- (ii) a warrant issued under subsection (2E),*

*(2E) If, upon application by the Port Authority, it appears to a justice of the peace that it is entitled to exercise the power conferred by subsection (2B), the justice must issue a warrant authorising the Port Authority to exercise the power*

**(7) Article 26. Dredging and improvement – Section 60 of the 1968 Act.**

Article 26 of the HRO should be modified to insert into section 60 of the 1968 Act a new subsection 3, referring to the duty of the Port Authority as set out at section 48A of the Harbours Act 1964 (‘the section 48A duty’). Section 60 would state as follows:

*(3) In exercising its powers under this section the Port Authority must have regard to the duty of the Port Authority under section 48A of the Harbours Act 1964.*

**(8) Article 29. Reclaiming creeks etc – Section 65 of the 1968 Act.**

Article 29 of the HRO should be modified to incorporate the section 48A duty into section 65 of the 1968 Act. Section 65 of the 1968 Act would read:

*65 Reclaiming creeks etc.*

*(1) The Port Authority may fill up, raise and reclaim creeks, inlets, bends, mud flats, sands and sloblands in and adjoining the Thames, and for that purpose may place piles in the Thames and construct groynes, retaining walls and other works in or upon the bed and banks of the Thames:*

*Provided that the Port Authority shall not exercise the powers of this section-*

- (a) without having regard to the duty of the Port Authority under Section 48A of the Harbours Act 1964;*
- (b) in relation to any land .....*

**(9) Article 31. Determination of permission applications – Section 66C of the 1968 Act.**

Article 31 of the HRO should be modified, to incorporate a reference to the section 48A duty, so that the Section 66C(2) reads as follows:

*(2) In determining any permission application (including the terms on which it is to be granted and what conditions, if any, are to be attached to it) the Port Authority must have regard to-*

*(a) their powers and duties as set out in this Act and other relevant legislation*

*(b) the duty of the Port Authority as set out in Section 48A of the Harbours Act 1964;*

*(c) the ability of the applicant to comply with and observe the terms of the permission including any requirement for removal of works or vessels or equipment; and*

*(d) any representations received within any period for receiving representations specified in the notice published under section 66B.*

**(10) Article 32. Charge for permission– Section 67 of the 1968 Act.**

Article 32 of the HRO should be modified to confirm that that no fees are to be charged for section 66B permission applications that relate solely to grab chains and escape ladders. This modification reflects the position of the PLA that was set out in its ‘Note following the evidence of James Trimmer’, which was submitted during the Inquiry.

Section 67 of the 1968 Act should materially read as follows:

*Charge for permission.*

*Save that no fee shall be payable in relation to a permission application made solely in relation to grab chains and escape ladders the Port Authority may charge a reasonable fee for registering and determining a permission application in accordance with section 66B (Permission applications).<sup>3</sup>*

**(11) Article 32. Charge for permission – Section 67(b) of the 1968 Act.**

Article 32 of the HRO should be modified such that the proposed new section 67(b), which relates to charges for monitoring compliance, is deleted.

<sup>3</sup> The text also reflects my recommendation that the proposed section 67(b) is deleted.

**(12) Article 105. Exemption for works authorised or powers conferred before 17<sup>th</sup> August 1894. – Section 68 of the 1968 Act.**

For consistency these references to works licences within section 68 should be changed to works permissions. Accordingly, section 68 should read as follows:

*68, Exemption for works authorised or powers conferred before 12<sup>th</sup> August, 1894.*

*The provisions in this Part of this Act relating to works permissions shall not apply to works authorised, or powers to execute, alter or maintain works conferred, under or by virtue of an enactment which came into force before 17<sup>th</sup> August, 1894.*

Article 105 of the HRO should be modified to include section 68 (Exemption for works authorised or powers conferred before 17th August, 1894) within the list of references to ‘licence’ and ‘licences’ which will be substituted with ‘permission’ and ‘permissions.’

**(13) Article 33. Appeal to the Secretary of State – Section 69 of the 1968 Act.**

Article 33 of the HRO should be modified to refer to deemed refusals within section 69(1) of the 1968 Act. This modification reflects the position of the PLA as set out on page 54 of Appendix 3 to the PLA Statement of Case that a right of appeal is available under section 69 is available for a deemed refusal.

Section 69 would materially read as follows.

*(1) An applicant for a works permission, a mooring permission or a dredging permission who is aggrieved by –*

*(a) the refusal by the Port Authority to grant the permission including a deemed refusal under section 66C(4);*

.....

**(14) Article 34. Works, mooring or dredging without permission – Section 70 of the 1968 Act.**

Article 34 of the HRO should be modified to increase the time limit within section 70(10) from seven to fourteen days. This modification relates to an objection made by the National Barge Travellers Association.

**(15) Article 34. Works, mooring or dredging without permission – Section 70 of the 1968 Act.**

Article 34 of the HRO should be modified to clarify the meaning of ‘Ordinary Course of Navigation.’ This modification relates to an objection made by the National Barge Travellers Association. The following subsection should be added to the revised section 70 of the 1968 Act, as follows:

*(15) In this section “Ordinary Course of Navigation” includes remaining continuously in one place for no longer than 14 days or such period as is reasonable in the circumstances.*

**(16) Article 106. Repeals. Vesting of embanked land – Section 72 of the 1968 Act.**

Schedule 1 of the HRO, to which Article 106 refers, should be modified to delete the repeal of section 72 and the reinstated section 72 should be re-worded in such a way as to render it compatible with the new permissions regime, so that the title would be vested subject to payment of a consideration within the section 11 part of the new split regime. This modification relates, in part, to an issue raised by the Tower Bridge Yacht and Boat Company.

*72. Vesting of embanked land*

*(1) Where pursuant to a works permission land is reclaimed by embankment and a certificate that the embankment has been completed is endorsed on the works permission by the Port Authority, upon payment of consideration for a property interest by the holder of the said works permission in accordance with section 11(3A), the land reclaimed by the embankment shall thereupon vest in the owner of the land in front of which the embankment has been made (hereinafter in this section referred to as "the adjoining land") for the like estate or interest as that upon which the adjoining land is then held and subject to, and with the benefit of, the like estates, interests, exceptions, reservations, incumbrances, covenants and conditions (hereinafter in this section referred to as "incidents") as then attached to the adjoining land and subject to any continuing terms of the works licence.*

*(2) A certificate under this section may be given under the hand of a duly authorised officer of the Port Authority and may, if the Port Authority and all persons directly affected by any incidents proposed to be modified so agree, contain provisions modifying any incident attaching to the land reclaimed by the embankment.*

I also recommend, consequential to this modification, that Article 105 of the HRO should be modified to include section 72 within the list of references to ‘licence’ and ‘licences’ which will be substituted with ‘permission’ and ‘permissions’.

Furthermore, it follows from my recommendation that section 72 of the 1968 Act should be retained and modified, that the transitional provision at Schedule 2, paragraph 4 of the HRO relating to ‘Vesting of embanked land’ should be modified to read as follows:

***Vesting of embanked land***

*4.—(1) Where a licence has been granted under section 66 of this Act where land is to be reclaimed by embankment and reclamation has not been completed at the commencement date that land is to vest in the adjoining landowner on completion of that work in accordance with the terms of the licence.*

*(2) Where the reclamation has been completed in accordance with the terms of the licence before the commencement date, but no certificate has been endorsed on the licence, the embanked land is to vest on the commencement date.*

Schedule 2 is referred to in Article 110 of the HRO. The wording of Article 110 does not require modification.

**(17) Article 48. Entry on land to survey, etc – Section 90(1A) of the 1968 Act.**

Article 48 of the HRO should be modified so that section 90(1A) of the 1968 Act reflects that the provisions in section 137, which apply to an authorised officer in that section, would apply to an authorised person within section 90.

Section 90(1A) should read as follows:

*(1A) Subsections (2) and (5) to (8) of section 137 (Powers of inspection of works and vessels) apply in relation to an inspection of land under this section by a duly authorised person acting on behalf of the Port Authority as they apply to an inspection of a work or vessel by a duly authorised officer of the Port Authority under that section.*

**(18) Article 68. Identity of master and owner or occupier – Section 138 of the 1968 Act.**

Article 68 of the HRO should be modified so that the amendments to section 138 of the 1968 Act exclude references to occupiers. I would propose the following wording:

*“Identity of master and owner*

*138.—(1) The master of a vessel in the Thames must at the request of a duly authorised officer of the Port Authority give the master’s name and address and such information as the master has about the name of the owner of the vessel and the owner’s address.*

*(2) If a master—*

*(a) fails to give the required information; or*

*(b) knowingly or recklessly, gives false or misleading information, in response to a request under subsection (1) the master is guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.*

*(3) The master or owner of a vessel shall, on written application by the Port Authority, give to the Port Authority in writing all information in the master’s or owner’s power as to the person who at any particular time was the master or owner of the vessel and the master or any owner refusing to give such information, giving false or misleading information or by the master’s or owner’s own negligence or default being unable to give the name and address of such person, is guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.*

*(4) In any proceedings relating to the vessel or its master the information given pursuant to subsection (1) or subsection (3) shall be admissible as evidence for the purpose of determining the identity of the master or owner of the vessel at a particular time.”*

**(19) Article 78. Rights of way over permitted works and land of Port Authority & Adverse possession claims in relation to the Thames. Sections 175A and 175B of the 1968 Act.**

Article 78 should not be approved. I have found that the insertion of the proposed sections 175A and 175B into the 1968 Act would not meet the test in section 14(2)(b) of the Harbours Act 1964.

**(20) References to ‘Her Majesty’s Revenue and Customs’ Articles 4, 14, 15, 17, 19, 20, 72, 80 and 84.**

The HRO contains numerous references to ‘Her Majesty’s Revenue and Customs.’ These references should be changed to ‘His Majesty’s Revenue and Customs’ in the following places: Page 1 of the HRO (at paragraph 14); Article 4(2)(v) (section 2 – definition of ‘river duties of tonnage’); Article 14 (section 23); Article 15 (section 35); Article 17 (section 37); Article 19 (section 39(8)); Article 20 (section 40); Article 72 (section 145); Article 80 (section 181) an Article 84 (section 186 – which refers to Her Majesty in relation to Crown rights).

**Note:** The terms Port Authority and PLA have been used interchangeably within this report. All references to the *Port of London Act* and *the 1968 Act* are to the Port of London Act 1968. Similarly, references to the *Harbours Act* and *the 1964 Act* are to the Harbours Act 1964.

I confirm that I have considered the documents set out in the Core Documents and Inquiry Documents indexes that have been placed on the Inquiry website. I have also considered the oral evidence and submissions that were before me during the course of the Inquiry hearings. The references to documents within the footnotes in this report correspond to Core Documents and Inquiry Documents references.

## **Introduction**

1. On 7 April 2020 the Port of London Authority (‘the PLA’) applied to MMO for the proposed Port of London Harbour Revision Order 202[ ] (‘the HRO’).
2. The PLA has applied for the HRO to be made under the powers conferred on the Secretary of State for Transport by section 14 of the Harbours Act 1964 which are delegated to the MMO by the Harbours Act 1964 (Delegation of Functions) Order 2010 (S.I. 2010/674) (‘the Delegation of Functions Order’).<sup>4</sup>
3. If the HRO is made, it would update the regulatory powers of the PLA by amending the Port of London Act 1968.

<sup>4</sup> Core Documents CDD3

4. The HRO is extensive in nature and contains 110 Articles. If approved, it would make significant amendments to the Port of London Act and would fully repeal some 27 sections and 2 schedules of that Act<sup>5</sup>. It would repeal The Port of London Authority (Manner of Borrowing) Order 1968<sup>6</sup> and amend related local legislation<sup>7</sup>.

### **Consultation**

5. The Port Authority undertook a consultation for six weeks between October and December 2019 and published a draft of the proposed HRO along with an explanatory guide on its website and a news release, which announced the HRO consultation. The consultation period was subsequently extended to eight weeks. The PLA states at paragraph 5.1 of its Statement in Support of the Application<sup>8</sup> that approximately 290 stakeholders received documents by email, and these stakeholders included all London riparian boroughs and Members of Parliament. Statutory undertakers, including the Environment Agency and local authorities were also consulted. Additionally, members of the public were consulted.
6. The PLA further states in its Statement in Support of the Application that discussions were held between the Port Authority and the following organisations: The Crown Estate; Trinity House; Department for Transport; Port of Tilbury London Limited; Royal Yachting Association; The Company of Watermen and Lightermen of the River Thames; The Inland Waterways Association; Historic England; Thames Water Utilities Limited; Open Spaces Society; Metropolitan Police; Representatives of owners of moorings in the Thames.
7. Following feedback from stakeholders, the PLA made a number of amendments to the HRO before the proposed Order was submitted in April 2020. A number of objections were made to the proposed HRO, many of which were resolved through the PLA

<sup>5</sup> See Schedule 1 to the HRO

<sup>6</sup> See Schedule 1 to the HRO

<sup>7</sup> The Medway Ports Authority Act 1973; The County of Kent Act 1981; The Essex Act 1987.

<sup>8</sup> Core Documents list – CDB2 – dated 16 January 2024

agreeing to make amendments or deletions in areas that were controversial. Significantly, the PLA decided to withdraw its proposed amendments to section 63 of the Port of London Act in relation to historic moorings. This decision was taken in response to concerns raised by 14 objectors.

### **Outstanding objections and MMO Inquiry announcement**

8. However, a significant number of objections were not resolved through agreement. Paragraph 19(1)(b) to Schedule 3 of the Harbours Act states that when making a decision on an application, which is not an application requiring an environmental impact assessment ('EIA') the Secretary of State must consider the matters set out in sub-paragraph 4<sup>9</sup>, which are (a) any objections made and not withdrawn, and (b) the report of any person who held an Inquiry or of any person appointed for the purpose of hearing an objector.
9. On 19 August 2024 the MMO announced its intention to hold a Public Inquiry ('the Inquiry') into the application. In doing so, the MMO exercised its powers under paragraph 18(1B) of Schedule 3 of the Harbours Act. On 9 January 2025 the PLA gave Notice of the Inquiry in accordance with MMO guidance.<sup>10</sup>
10. As the MMO exercised its powers to call for an Inquiry to be held it may, upon consideration of this report decide (a) not to make the order applied for; (b) to make the order in the form of the draft submitted; or (c) to make the order with modifications.<sup>11</sup>
11. As at the end of 2024 the following objectors had unresolved objections: Chelsea Reach Boatowners' Association (CRBA); David DeVere; Inland Waterways Association; National Barge and Travellers Association (NBTA); Organisation of Port of London Authority Customers (OPLAC); Ralph Hardwick; Residential Boatowners' Association; River Thames Society; Royal Yachting Association (RYA);

<sup>9</sup> There is also a reference to sub-paragraph (5), but that provision relates to 'a project to be carried out in Scotland'

<sup>10</sup> Core Documents CDG29

<sup>11</sup> Harbours Act 1964. Schedule 3, paragraph 19(6).

Thamesbank; The Barge Association; Thistleworth Marine Ltd; Tower Bridge Yacht and Boat Company (TBYBC); Thames Blue Green Economy (TBGE).

12. There were a further 8 objectors whose objections had been addressed by amendments to the HRO, but who had not formally withdrawn their objections.
13. The Inquiry held two Pre-Inquiry meetings on 21 November 2024 and on 7 February 2025. The Inquiry sat at 46 New Broad Street London EC2M 1JH from 25 February 2025 to 14 March 2025. There was a site visit on 18 and 19 March 2025, which comprised a view by boat of the tidal River Thames from London Gateway to Teddington Lock.
14. Prior to the commencement of the Inquiry, the PLA submitted a Note of Pre-Inquiry Amendments<sup>12</sup>. During the course of the Inquiry, the PLA made a number of changes to the proposed HRO, some of which were in response to points raised by objectors – such as the removal of the words ‘*or convenient*’ from ‘*an obstruction, danger or impediment to the safe or convenient navigation or use of the Thames*’, which would trigger a power of the PLA to act under the proposed sections 66, 66A, 70A and 73(1A) of the Port of London Act. This change was in response to a matter that had been raised by Mr Wren of the Residential Boatowners’ Association.
15. Furthermore, in response to the evidence of Sir Simon Hughes, the PLA decided to retain section 8 of the 1968 Act the requirement for the annual report to be provided to the Minister and for the Minister to be obliged to lay it before Parliament. These further amendments to the HRO are set out in a Note of Amendments made during the Inquiry.<sup>13</sup>
16. The final version of the HRO is dated 11 March 2025<sup>14</sup>. The final marked-up version of the Port of London Act is also dated 11 March 2025<sup>15</sup>. I have considered this 2025

<sup>12</sup> Inquiry Documents ID5

<sup>13</sup> Inquiry Documents ID19

<sup>14</sup> Inquiry Documents ID17

<sup>15</sup> Inquiry Documents ID18

version of the HRO and the March 2025 marked-up version of the 1968 Act in this report.

### **Section 14 Harbours Act 1964**

17. The relevant test for the making of a Harbour Revision Order is set out in section 14 of the Harbours Act<sup>16</sup>. Section 14(1) of the Harbours Act states that a harbour revision order may be made by the appropriate Minister in relation to a harbour which is being improved, maintained or managed by a harbour authority in the exercise of statutory powers and duties.

### **The objects in Schedule 2**

18. There are two tests which must be met in relation to the making of an HRO. Firstly, the HRO must satisfy the requirement within section 14(1) that it is made so as to achieve all or any of the objects specified in Schedule 2 to the Harbours Act.
19. Schedule 2 to the Harbours Act sets out 23 objects, including a ‘sweeping up’ paragraph at paragraph 17: *Any object which, though not falling within any of the foregoing paragraphs appears to the appropriate Minister to be one the achievement of which will conduce to the efficient functioning of the harbour.* The PLA has set out the relevant Schedule 2 object in relation to the various Articles of the HRO within its updated Statement in Support of the Application, dated 16 January 2024.
20. I have taken the claimed objects into account when considering whether they should be approved in light of the objections and the legal arguments that were put forward during the Inquiry.

<sup>16</sup> See Core Documents CDD1

21. I have found that the Articles within the HRO meet or are capable of meeting the objects in Schedule 2 that the PLA has put forward in its Statement in Support of the Application<sup>17</sup>. Where I have recommended that an Article should be approved or not approved or that it should be approved subject to modifications - that decision has been based on my assessment of the Article in relation to the desirability test.

### **The desirability test**

22. The second test relates to section 14(2)(b) of the 1964 Act, which states that an HRO shall not be made unless the appropriate Minister is satisfied that the making of the order is *desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner or of facilitating the efficient and economic transport of goods or passengers by sea or in the interests of the recreational use of sea-going ships*.
23. I have applied the section 14(2)(b) test in relation to the Articles within the HRO when considering whether to recommend if a particular Article should be approved.
24. Section 14(2A) provides a limited case where the section 14(2)(b) test would not apply. This concerns where the objects in Schedule 2 include *repealing superseded, obsolete or otherwise unnecessary statutory provisions of local application affecting the harbour, or consolidating any statutory provisions of local application affecting the harbour*.

### **Residual discretion**

25. I have been referred to the case of R (on the application of Great Yarmouth Port Company and Great Yarmouth Port Authority v Marine Management Organisation

<sup>17</sup> Core Documents CDB2

& Bourne Leisure (Hopton) Limited [2014] EWHC 833 (Admin)<sup>18</sup>, in which Cranston J considered the questions of whether the MMO could reasonably refuse to approve an HRO in circumstances where the objects test and the desirability test had been met. Cranston J held at [39] that: (emphasis added)

*The statutory language is that the MMO "may" make an order, and in the ordinary way that means that the MMO has a discretionary power, not a duty. That discretion, as we see shortly, can only be exercised if certain pre-conditions are met, but if they are there is nothing I can see in the language or design of the statute to suggest that the MMO is confined in the course it can take. **It is not just a matter of deciding whether or not an object in schedule 2 is capable of being met, and whether the making of an order is desirable in the interests specified in s. 14(2)(b). The statute confers on the MMO a residual discretion, and one it must exercise in the public interest.***

26. I have considered the residual discretion of the MMO when considering which Articles of the HRO should be adopted, modified or rejected.

### **The Objectors**

27. Eleven objectors and five interested parties appeared before the Inquiry. They are set out in the Appearance List above. There were other objectors, such as the RYA, which appeared at Pre-Inquiry Meetings, but not at the Inquiry.
28. Furthermore, there were 6 objectors whose outstanding objections only related to section 63 of the 1968 Act, in respect of which the PLA has withdrawn the amendment that was the subject of objection.
29. Finally, there were five objectors, who did not participate in the Inquiry, but who had unresolved objections when the Inquiry hearings commenced on 25 February 2025. These are: The Inland Waterways Association; Thistleworth Marine Ltd; East Greenwich Association; Charles Hay & Son Ltd and Mr Sturges.
30. I have considered all of the outstanding objections that were before me. These were helpfully summarised in a table that the PLA produced, at my request, which is set

<sup>18</sup> Core Documents CDG44

out at Appendix 3 to the PLA Statement of Case<sup>19</sup>. I have also considered and taken into account the documents that were produced by the MMO<sup>20</sup>, which contain the initial and further objections of all objectors and the subsequent correspondence and responses to those objections.

31. Appendix 3 to the PLA Statement of Case sets out details of the objections that were treated as live for the purposes of the Inquiry. I have not confined my consideration of the issues to the matters set out in Appendix 3 but have also considered wider issues and evidence from the PLA (such as the evidence of its Director of Sustainability) and from the objectors who participated in the Inquiry.
32. I have not limited the scope of this report to the Articles of the HRO which are referred to in Appendix 3 but have considered all of the Articles within the HRO. This is because at the outset of the Inquiry there remained a possibility that some of the Articles, to which there were no outstanding objections, might not satisfy the objects or desirability tests within the Harbours Act, or might nevertheless be objectionable or unlawful, such that the MMO (acting under the Delegation of Functions Order) would be entitled to modify or reject them within its residual discretion. I made the parties aware of this wider approach that I would take to the HRO during Pre-Inquiry Meetings and at the outset of the Inquiry.

### **Matters beyond the scope of the Inquiry**

33. A number of objectors have provided evidence and made submissions on matters that appeared to fall outside the scope of the Inquiry. In a written Note from Mr Powlesland, Counsel for the TBYBC dated 10 February 2025<sup>21</sup> it was submitted that the MMO is entitled to exercise its residual discretion by considering matters which have not been included in the HRO.

<sup>19</sup> Inquiry Documents SOC/1

<sup>21</sup> Inquiry Documents ID7

34. The PLA had earlier raised the issue of scope in a legal note in a letter to the Chair dated 6 February 2025<sup>22</sup> and complained that many of the Proofs of Evidence covered matters which were irrelevant to the Inquiry and which it did not propose to deal with in its rebuttal evidence. The PLA cited the following as examples of such matters:

- (i) David DeVere: The freehold ownership of the Thames
- (ii) Ralph Hardwick: Requests to amend sections of the Port of London Act, which are not amended by the HRO; requests to expand the scope of the amended sections beyond those included in the HRO; vessel emissions; blackwater/sewage from vessels; cruise ships; vessel speeds and wash; public nuisance from vessels; green messaging and public communications; charges levied on balconies.
- (iii) Thames Blue Green Economy: Request to reconstitute the PLA board through a new HRO; the PLA's compliance with environmental duties and responses to requests under the Environmental Information Regulations; requests to set up a new port authority; requests to submit a new draft HRO.
- (iv) TBYBC: Requests to set up a new port authority and to submit a new draft HRO.
- (v) Thamesbank: Comments on the Thames Vision and the exercise by the PLA of its environmental duties.

35. Furthermore, other objectors have raised matters which the PLA maintained were outside the scope of the HRO. East Greenwich Residents Association commented on whether the HRO should be amended to provide new powers relating to vessel emissions and noise pollution. In addition, Charles Hay & Son Ltd commented on whether the HRO should be used to bring the PLA within the scope of the Freedom of Information Act 2000. The NBTA made proposals in relation to the Countryside and Rights of Way Act 2000.

36. I accept that the allegations made by Mr DeVere are relevant to whether the HRO should be approved and have dealt with his arguments separately in this report. I also

<sup>22</sup> Inquiry Document PLA/6

accept that the submissions advanced by objectors in relation to environmental matters are relevant to whether it is desirable in the interests of securing the improvement, maintenance or management of the harbour for the HRO to be approved in circumstances where the proposed amendments to the 1968 Act appear to enable the PLA to undertake its statutory functions without reference to environmental duties.

37. Alternatively, even where the 'objects' and 'desirability' tests are met, the objectors would be entitled to argue (as they have done) that the MMO should exercise its discretion not to approve certain Articles, where there are public law related reasons relating to the environment for exercising that discretion not to approve.
  
38. Notwithstanding the above, I do agree with the PLA that it is beyond the scope of the Inquiry to modify the HRO to include amendments to sections of the 1968 Act that do not fall within any of the changes that the PLA would seek to make within the 110 Articles of the HRO that is before me. However, I consider that the objectors are entitled to request modifications to the pre-existing Articles. I also accept that I am able to recommend such modifications, as requested by the objectors, for the MMO to consider in accordance with paragraph 19(6)(c) of Schedule 3 to the Harbours Act.
  
39. It is important to note that I am not able to make findings or recommendations in relation to the issues that have arisen which reflect criticism with how the PLA is carrying out its existing statutory functions. It is not open to me to make findings on some of the criticisms that were directed towards the PLA, which did not relate to the HRO. For example, the Inquiry heard a detailed opening statement and evidence from Mr Simon Anthony<sup>23</sup> on the issue of riverworks licensing for balconies. Mr Anthony maintains that the PLA has been 'abusing its powers for decades' and that it is seeking to increase its powers that will enable it to 'extort even more money from hapless balcony owners'.

<sup>23</sup> Mr Anthony appeared as an interested party / member of the public, but also as one of the witnesses for Mr Hardwick.

40. I have noted that balconies which overhang the River Thames form part of the licensing regime and have taken this into account when considering the Articles of the HRO that are concerned with riverworks and licensing. However, I have not made any finding on the allegations that Mr Anthony has made regarding the amounts that are charged for balcony riverworks licences as these matters are outside the scope of the HRO.
41. Similarly, I am unable to make any findings or recommendation on the issues that Mr Hardwick and his witnesses have raised concerning speed and wash problems from clipper vessels and issues relating to cruise ships and pollution. These are matters which the PLA is able to address using its existing powers.
42. Whilst James Stride, the PLA Chief Harbourmaster, and Grace Rawnsley, the PLA Director of Sustainability, answered questions on the above points that were raised by Mr Hardwick, I do not consider that they fall within the scope of the HRO. I have however taken account of Mr Hardwick's evidence and submissions, particularly in relation to pollution, when considering more general points relating to environmental issues which were before the Inquiry. I have also considered whether the issues raised by Mr Hardwick are covered by other regulatory frameworks.
43. I do not accept that any submission as to how the Port Authority should be constituted or re-established falls within the scope of the Inquiry. Neither can I make findings or recommendations upon what some objectors have submitted ought to have been included within the HRO or whether there should be a new or different HRO.

### **Jurisdiction**

44. David DeVere, CRBA, OPLAC, River Thames Society, Residential Boatowners' Association, TBYBC, and The Barge Association have all raised concerns about the use of a HRO to amend primary legislation. One of the concerns that has been raised by Mr DeVere is that many of the provisions in the HRO are amendments of primary legislation and are not permitted by section 14(3) of the Harbours Act.
45. Section 14(3) of the Harbours Act materially states: (emphasis added)

*A harbour revision order may include all such provisions as appear to the appropriate Minister to be requisite or expedient for rendering of full effect any other provision of the order and ..... penal provisions and .... **provisions for excluding or modifying any provision of any Act** or of any instrument made under any Act (including this Act) and for repealing] any statutory provision of local application affecting the harbour to which the order relates.....*

46. Mr De Vere has referred to the Transport and Works Act 1992 (TWA 1992) and submits that the Secretary of State has no power that can be delegated to the MMO under the Harbours Act to amend local or general statutes and instruments. He argues that the TWA 1992 amended section 14 and section 16 of the Harbours Act, removing the broad power to 'amend' and replacing it with a more limited power to 'exclude or modify' local and general legislation.
47. Schedule 3(4)(c) of the TWA 1992 amended section 14(3) of the Harbours Act, as follows: (c) for the words "repealing and amending" there shall be substituted the words "excluding or modifying any provision of any Act or of any instrument made under any Act (including this Act) and for repealing". The issue before the Inquiry was therefore whether the HRO is able to operate, so as to amend primary legislation.
48. I have considered the arguments from the objectors and from the PLA on this point and I conclude that the Harbours Act does confer a jurisdiction to bring about the changes to the 1968 Act that are contended for in the HRO.
49. I accept that section 14 of the Harbours Act 1964 concerns the power of a Minister, upon the application of harbour authorities or others to make HROs. I agree with the position set out by the PLA in Appendix 2 of its Statement of Case that Parliament has authorised the making of subordinate legislation under the Harbours Act which can amend primary legislation in the way that is sought to be done by the HRO.
50. The PLA makes the point in the Legal Note continued in Appendix 2 of its Statement of Case that 'modify' should be given a wider meaning than that which is contended for by the objectors. In this regard, the PLA relies on the interpretation of 'modify' at section 126(1) of the Scotland Act 1998, which 'includes amend or repeal'.

51. This provision was considered by the Supreme Court in Re UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill [2019] AC 1022, in which the Court stated at paragraph 50:

*Considering first the meaning of modification, the expression “modify” is defined in section 126(1) of the Scotland Act as follows: “‘modify’ includes amend or repeal.” ..... The Lord Advocate accepts, however, that it is not confined to express amendment or repeal: a provision may also be held to modify another provision if it has the effect of amending or repealing it.*

52. There is no definition of ‘modification’ or ‘modifying’ in the interpretation section of the Harbours Act. However, I accept the position of the PLA that the HRO process does not preclude amendments or repeals of provisions in primary legislation. I also accept that a modification for the purpose of section 14(3) would include the insertion of new sections or subsections into primary legislation. The PLA has stated at Appendix 2 of its Statement of Case that this is not a point of substance because any amendments made by the HRO could be included as standalone provisions on the face of the HRO instead of as the more convenient textual amendments to the 1968 Act. I agree with that statement.
53. I have found that the proposed changes to the Port of London Act are not beyond the powers provided in section 14(3) of the Harbours Act and it follows that I do not accept the position taken by some of the objectors that the HRO should be rejected because the proposed changes to the 1968 Act are beyond the powers provided in section 14(3).

### **Consultation issues**

54. The NBTA has raised concerns within its objection that not all boat dwellers were consulted directly. OPLAC has raised a similar point about the consultation and states that not all River Works Licence holders were consulted. Other parties, including the River Thames Society, expressed concerns during the Inquiry at the perceived lack of a sufficiently far-reaching consultation.

55. I have noted the statutory Notice requirement upon an applicant for a HRO at paragraph 10 of Schedule 3 to the Harbours Act, which states that an applicant shall arrange for a notice to be published by Gazette and local advertisement and in such other ways as the Secretary of State may direct. At section 3 of the Legal Note at Appendix 2 to the PLA Statement of Case, the PLA confirms that the PLA advertised in 13 local newspapers and the London Gazette.
56. Furthermore, the PLA states that it consulted the MMO on its proposed list of consultees and the MMO advised that the PLA consult those included within its proposed list which the MMO were not intending to consult directly. The PLA states that 315 individuals or organisations were sent formal email notification of the application, including customers, stakeholders, MPs, local councils and other key contacts. In addition, a harbourmaster's consultation notification was sent to 3,431 people and the application was the subject of posts on social media.
57. I have summarised the consultation process in these paragraphs and at paragraphs 5-7 above. Having considered the points made by objectors on this issue and the responses by the PLA, I accept that the PLA consulted adequately and in accordance with the duties set out in the Harbours Act. I do not consider that the PLA was required to contact every individual River Works Licence holder or every boat dweller to comply with its statutory duty of consultation in relation to the HRO.

### **Environmental issues raised at the Inquiry**

58. A number of objectors noted that the PLA had not produced a witness to address the environmental issues that they had raised in their objections and expanded upon in their statements of case. In response to these concerns, the PLA called Grace Rawnsley, the PLA Director of Sustainability and Net Zero Transition, who gave evidence before the Inquiry on 10 March 2025. Ms Rawnsley produced a speaking note<sup>24</sup>, which was based on questions that had been asked of other PLA witnesses,

<sup>24</sup> Inquiry Documents ID15

but which those witnesses were unable to answer or where those other witnesses asked that questions should be referred to the Director of Sustainability.

### **Strategic Environmental Assessment**

59. A substantial issue between the PLA and the objectors was whether the HRO is unlawful because of the failure by the PLA to undertake a Strategic Environmental Assessment ('SEA'). Thamesbank, Thames Blue Green Economy, and TBYBC made submissions on this issue before the Inquiry.
60. Ms Nevin, representing Thamesbank, argued that the PLA were required to undertake a SEA under the Environmental Assessment of Plans and Programmes Regulations 2004/1633 and an Appropriate Assessment under the Conservation of Habitats and Species Regulations 2017.

### **Plans or programmes**

61. Thamesbank maintains in its closing submissions<sup>25</sup> that one of the triggers for a SEA is that the plan or programme must set the framework for future development consent of projects listed in Annex I or II of Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment ('the EIA Directive'). Thamesbank argues that this trigger is met because the HRO would set the framework for future development consents listed in Annex II of the EIA Directive that are likely to have a significant impact on the environment.
62. Thamesbank and other objectors submitted that the HRO meets the definition of 'plans and programmes' that would trigger a SEA under the Environmental Assessment of Plans and Programmes Regulations 2004/1633 ('SEA Regulations'). Regulation 5 of the 2004 Regulations clarifies that such an assessment must take place at an early stage in the decision-making process, "*during the preparation of*

<sup>25</sup> Inquiry Documents ID23

*that plan or programme and before its adoption or submission to the legislative procedure”.*

63. The position of the PLA is that development consent for works in the Port of London is governed by the Town and Country Planning Act 1990 and/or by the Marine and Coastal Access Act 2009 (MACAA 2009)<sup>26</sup> and that it is through those processes that the environmental impacts of river-works are regulated in addition to other regulatory controls, such as environmental permitting. The PLA points out that the EIA regime applies to decisions under the Town and Country Planning Act 1990 and MACCA 2009, but not to decisions under the 1968 Act. It follows that amendments to the 1968 Act cannot “set the framework for future development consent” since the 1968 Act does not relate to development consent.
64. Secondly, the PLA maintains that plans or programmes only fall within the scope of the SEA Regulations where they set out a significant body of criteria for determining how such future development consents will be determined. The PLA relies on the judgment of Sir Keith Lindblom in R (Rights: Community: Action) v SSHCLG [2022] PTSR 907, who considered the criteria for a qualifying plan or programme at [59]: *‘A defining characteristic is that the measure in question establishes a coherent framework comprising such “criteria” or “rules”, which are then to be applied by decision-makers when considering individual projects of development in a process for the granting or refusal of consent.’*
65. The PLA submitted in its closing submissions<sup>27</sup> that neither the HRO nor the 1968 Act set any criteria for determining how development consents will be determined and that in order to satisfy the condition that the provisions “set the framework”, they must at least be binding on the authorities with competence to grant development consent. This is consistent with the judgment of the European Court of Justice in NJ and another v An Bord Pleanála and others [2023] PTSR 1219 (at [49]), upon which the PLA relies.

<sup>26</sup> Core Documents CDD2

<sup>27</sup> Inquiry Documents ID31

66. Furthermore, as stated by the PLA at paragraph 30 of its closing submissions, the SEA Regulations only apply to plans and programmes which are ‘required by legislative, regulatory or administrative provisions’. It is the position of the PLA that the HRO is not so required. In R (Buckingham County Council) v Transport Secretary [2014] 1 WLR 324 Lord Sumption stated at [176] that the natural meaning of ‘required’ in this context is that it is ‘based on a legal obligation’. The Supreme Court noted that the issue was not strictly before the court, but stated (at [187]) that had the matter been before the Court they would have concluded that the legislature did not intend plans and programmes not based on a legal obligation to require an environmental assessment, even though they might have significant effects on the environment.
67. It is the position of the PLA that the HRO is not “required by legislative, regulatory or administrative provisions”. I have noted that the issue as to whether an HRO is ‘required’ arose in the Inquiry into Harbour Revision Orders promoted by the Environment Agency (Wales) at the Dee Estuary and Mostyn Docks Ltd at Dee Harbour. I have been referred to the report dated 28 March 2006 by an Inspector to the Secretary of State for Transport in relation to those Harbour Revision Orders.<sup>28</sup>
68. In that matter the Inspector considered that the proposed Dee Estuary HRO did not have the fundamental characteristics of a plan or programme. The Inspector also concluded that the Dee Estuary HRO, although prepared by an authority for adoption through a legislative procedure, was not “required by legislative, regulatory or administrative provisions”. The Inspector held that the Environment Agency, which had applied for the Order was not under any direct legislative, regulatory or administrative obligation to have done so. I do not consider that the decision of the Inspector is, in any way, binding on me – but I agree with the reasoning and conclusion on the point.
69. Having considered the points raised on behalf of the objectors and those points made in response by the PLA, I agree with the position taken by the PLA – that the HRO falls outside the scope of the SEA Directive<sup>29</sup> as it does not amount to a qualifying

<sup>28</sup> Inquiry Documents OPLAC/4

<sup>29</sup> Core Documents CDD8

plan or programme. Plans and programmes to which the SEA Regulations apply are those which set the framework for future development consent of projects listed in Annex I or Annex II of the EIA Directive.

70. I agree with the position taken by the PLA that the HRO, for which the PLA has applied, is not required by legislative, regulatory or administrative provisions, so as to engage the SEA Regulations.
71. Essentially, in my view the authorities demonstrate that the need for an environmental assessment within the scope of the SEA Regulations would be triggered through the process of applying for development consent for works under the TCPA 1990 and the MACAA 2009. These are not processes which are governed by the HRO.

### **The need for an appropriate assessment under the Habitats Regulations**

72. I do not consider that the HRO process was flawed through failure to obtain an Appropriate Assessment under the Conservation of Habitats and Species Regulations 2017. I agree with the position taken by Mr Turney KC in his closing submissions on behalf of the PLA<sup>30</sup>. Mr Turney states that the Habitats Regulations only apply to “European sites”. Mr Turney’s position is that there are no such sites in the tidal Thames, except for those that lie in the estuary to the east of Gravesend. I accept the position of the PLA that as there are no relevant European sites on the river upstream of Gravesend, none of the powers being sought in the HRO could have any effect on these European sites.

### **Aarhus Convention**

73. Ms Nevin additionally argued that the PLA failed to consider environmental impacts as part of the consultation process, which is a breach of the Aarhus Convention

<sup>30</sup> Inquiry Documents ID31

requirement that members of the public be involved in environmental decision making.

74. The position of Thamesbank is that the HRO is tainted by any failure to apply article 7 of the Aarhus Convention<sup>31</sup>. Article 7 refers to plans and programmes ‘relating to the environment.’ I have considered the Aarhus Implementation Guide<sup>32</sup>, which confirms that while the Convention does not define the terms “plans” and “programmes”; the following types of plans, programmes and policies may be considered as “relating to the environment”:

- *Those which “may have a significant effect on the environment” and require SEA.*
- *Those which “may have a significant effect on the environment” but do not require SEA, for example, those that do not set the framework for a development consent.*
- *Those which “may have effect on the environment” but the effect is not “significant”, for example, those that determine the use of small areas.*
- *Those intended to help to protect the environment.*

75. I accept the submission made by Thamesbank that the Aarhus Convention public participation requirements are not confined to plans and programmes requiring SEA but are concerned with any plans, programmes or policies “relating to the environment”.

76. I also accept the argument that the consultation requirements under Article 7 of the Aarhus Convention do apply to the HRO. Whilst the HRO does not require SEA because it does not set the framework for development consent, it does, at the very least, have an effect on the environment insofar as it updates and modernises legislation relating to a significant environmental resource in London.

77. It follows that the PLA is wrong to assert that the HRO does not relate to the environment in a way that engages the Aarhus Convention. However, notwithstanding

<sup>31</sup> Core Documents CDG4

<sup>32</sup> Core Documents CDG5

what would appear to be a significant omission on the part of the PLA, I nevertheless agree with Mr Turney's submission at paragraph 37 of his closing submissions that the provisions of the Aarhus Convention have been met in substance because there has been public engagement on the HRO, including through the Inquiry process.

78. Article 7 participation refers to the public generally rather than the public who might be concerned in matters relating to the HRO. Whilst members of the public addressed the Inquiry in relation to how they considered the HRO might and would affect them, there was also sufficient notification of the Inquiry through the PLA having complied with the MMO Harbour Orders guidance by giving notice of the Inquiry in newspapers where the original application was advertised not fewer than 6 weeks in advance of the Inquiry.
79. Furthermore, the Inquiry was livestreamed, thus enabling members of the public to participate by viewing, should they not have wished to attend the hearings.

#### **Whether the HRO should reflect environmental issues**

80. I have considered the arguments by objectors in relation to whether the HRO should better reflect the environmental duties of the PLA. In particular, Thamesbank has submitted at paragraph 13 of its Statement of Case<sup>33</sup> that it is striking that the HRO aims to revise and modernise the powers of the PLA, which is a trust port and manages the river Thames for the benefit of all river users, – but is silent as to the significant advances in environmental law since 1968 and the challenges that are now posed by climate change. Emily Shirley stated in her Proof of Evidence<sup>34</sup> that the HRO ignores the environment apart from the proposed single byelaw-making power which is not mandatory on the PLA in any event.
81. Thamesbank additionally maintains that the objective of the PLA's Thames Vision 2016 document will not be achieved if there is no environmental assessment overall of the proposals in the HRO. Ms Shirley stated in her evidence that the PLA's Thames Vision is aspirational and not binding.

<sup>33</sup> Inquiry Documents SOC/6

<sup>34</sup> Inquiry Documents THAM1

82. Furthermore, it was the position of TBYBC that an environmental duty should be expressly stated in various sections of the 1968 Act and that the HRO should bring about amendments to the Port of London Act, so as to reflect modern environmental attitudes and approaches.

83. The position taken by the PLA is that it has statutory duties under section 48A of the Harbours Act which it would be required to consider when considering any application under the new regime, as proposed by the HRO. The PLA also maintains that the HRO would give effect to section 48A of the 1964 Act through the byelaw making power that would be added to section 162 of the 1968 Act.

84. Section 48A of the Harbours Act 1964 sets out as follows:

*48A Environmental duties of harbour authorities.*

*It shall be the duty of a harbour authority in formulating or considering any proposals relating to its functions under any enactment to have regard to—*

*(a) the conservation of the natural beauty of the countryside and of flora, fauna and geological or physiographical features of special interest;*

*(b) the desirability of preserving for the public any freedom of access to places of natural beauty; and*

*(c) the desirability of maintaining the availability to the public of any facility for visiting or inspecting any building, site or object of archaeological, architectural or historic interest;*

*and to take into account any effect which the proposals may have on the natural beauty of the countryside, flora, fauna or any such feature or facility.*

85. A number of objectors, including Mr Hardwick and Thamesbank consider this power does not go far enough for the purposes of the section 48A duty. Sir Simon Hughes gave evidence on this issue on 5 March 2025 and described the proposed discretionary power to make byelaws to safeguard the environment as ‘an empty vessel’ and ‘a legislative framework with nothing in it’.

86. I agree with the position that has been taken by the objectors on this issue to the extent that I consider that it would be desirable for the purpose of section 14(2)(b) of

the Harbours Act for the section 48A duty to be reflected in the 1968 Act in relation to the granting of riverworks licences or permits for works, moorings and dredging and in respect of the issue of reclamation of creeks, and PLA dredging activity, which was a point of concern for objectors. I have recommended modifications to the HRO to this effect and have set out my reasoning in the sections of this report that relate to the proposed new permitting regime, dredging and the reclamation of creeks.

87. These modifications would provide clarity and a degree of visibility as to the impact and role of the section 48A duty in the internal decision-making processes of the PLA under the proposed permitting regime under the HRO. It would also be consistent with the activities already undertaken by the current PLA Environment Team, as described in the evidence of Ms Rawnsley.
88. The objectors have raised specific issues in relation to dredging, flooding, air quality, water quality, noise and excessive wash. I have considered these matters in turn below.

### **Dredging impacts**

89. Thamesbank have argued in their Statement of Case<sup>35</sup> that the amendments proposed under the HRO in relation to dredging are likely to have significant effects on the environment. In particular, concerns were raised in respect of proposed capital dredging.
90. Thamesbank referred in their closing submissions<sup>36</sup> to Mr Lockwood's account during his oral evidence that the PLA has internal plans to expand dredging "particularly out into the Estuary". Thamesbank noted that Mr Lockwood explained in his evidence that this would be needed to accommodate the greater navigational needs and increased traffic of large vessels navigating the Thames.

<sup>35</sup> Inquiry documents SOC/6

<sup>36</sup> Inquiry Documents ID23

91. Thamesbank also noted that Ms Rawnsley had stated in her evidence that the PLA has the authority to undertake capital dredging, but that only maintenance dredging has occurred in the Outer Thames Estuary thus far. Ms Rawnsley went on to clarify that even if maintenance dredging had previously taken place in an area, any deepening of an existing maintenance dredge would count as capital dredging. Furthermore, capital dredging refers not only to new dredging but dredging of an existing channel after a gap of 10 years.
92. The PLA has responded to these points and referred to the evidence of Mr Trimmer and Ms Rawnsley that there are no current plans for capital dredging by the PLA. Mr Turney KC submitted in his closing submissions that *'in any event, plainly such dredging will require environmental assessment, and both Mr Trimmer and Ms Rawnsley explained the extensive and careful consideration given to proposed dredging activity'*.<sup>37</sup>
93. Ms Rawnsley gave evidence on this issue on 10 March 2025. She stated that the PLA environment team works with a variety of regulators to assess the environmental impacts of dredging on the river. She confirmed that in 2007 the PLA published a "Baseline Document" for Thames maintenance dredging, focusing on environmental parameters such as sediment and water quality, relevant to the integrity of European Protected Sites. I have seen the PLA Maintenance Dredge Protocol Baseline Document Update<sup>38</sup> and the PLA Maintenance Dredging Framework Update 2022 to which Ms Rawnsley referred.<sup>39</sup> These documents were submitted by the PLA following the evidence of Mr Trimmer, the PLA Director of Planning and Development.
94. Ms Rawnsley further stated in her oral evidence that the Maintenance Dredging Protocol Baseline Document has been reviewed and adopted by Natural England as the regulator for designated sites. It has also been reviewed by the Environment Agency to ensure alignment with the Water Framework Directive.

<sup>37</sup> Inquiry Documents ID31

<sup>38</sup> Inquiry Documents ID12

<sup>39</sup> Inquiry Documents ID13

95. Ms Rawnsley stated in her speaking note that applications exceeding a specified volume must include sediment analysis, in line with OSPAR Guidelines for the Management of Dredged Material at Sea and must be agreed with the MMO under the Thames Concordat. The Thames Concordat aims to ensure that both regulatory bodies work more closely together and in a streamlined manner. Ms Rawnsley additionally stated in her oral evidence that the MMO would require and carry out a Habitats Regulations Assessment.
96. Ms Rawnsley confirmed that the PLA's internal dredging activities have been assessed in a Water Framework Directive ('WFD') assessment, which has been conducted in accordance with the Environment Agency guidance and approved by Natural England within the PLA's Maintenance Dredge Baseline document. If a proposed site was outside the scope of these assessments, then a separate WFD assessment would be undertaken and submitted to the Environment Agency, if required.
97. Ms Rawnsley stated in her oral evidence that all dredges above a certain threshold require an MMO licence. However, I have noted that under section 75 of MACAA 2009 the PLA would not generally require a marine licence for dredging or spoil disposal activity if the activity in question 'is undertaken by or on behalf of a harbour authority.' This would appear to relate to dredging conducted pursuant to section 60 of the 1968 Act (Dredging and Improvement conducted by the PLA).
98. The position is different for dredging carried out by third parties. The PLA Maintenance Dredging Framework Update <sup>40</sup> confirms that all dredging carried out by third parties licensed by the PLA under section 73 of the Port of London Act are now consented by the MMO under MACAA 2009<sup>41</sup>. In these circumstances, the evidence demonstrates that section 73 dredging, whether capital or maintenance

<sup>40</sup> Inquiry Documents ID13

<sup>41</sup> Inquiry Documents ID13

dredging, would be subject to environmental assessment by the MMO under MACAA 2009.

99. Notwithstanding what is set out in the Maintenance Dredging Framework Update, there does not appear to be a written framework for capital dredging in cases where the PLA would be exempt from MMO licensing requirements under section 75 of MACAA 2009.
100. Ms Rawnsley dealt with this issue in her evidence on 10 March 2025 and stated that the PLA consults all statutory bodies on capital dredging not covered by the maintenance baseline document and applies OSPAR guidance for the management of dredged material. She stated that capital dredging is often considered under the Development Consent Order ('DCO') process.
101. Ms Rawnsley further stated that the PLA would assess sediment samples using CEFAS (Centre of Environment, Fisheries and Agricultural Science) action levels and, where necessary, would apply restrictions to the dredging activity as appropriate (such as tide restrictions for water injection dredging and seasonal restrictions to protect fish species). Ms Rawnsley told the Inquiry that the PLA undertakes a range of post dredging activities for both third parties and PLA's own dredging, which includes sediment sampling and analysis. She stated that the PLA holds a database of all dredging activity that takes place on the Thames, which is fed back into the maintenance dredging baseline document when updated.
102. I accept the evidence of Ms Rawnsley that dredging is a highly regulated activity and that, in practice, the PLA consults widely in relation dredging applications, under both sections 60 and 73 of the 1968 Act. For example, the PLA consults statutory bodies on new applications, such as Natural England, the Environment Agency, the MMO, and Historic England, before assessing a dredging application.
103. Furthermore, the PLA has confirmed in its closing submissions that the Port Authority is under a duty under section 58(1) of MACAA 2009 to "*take any authorisation or enforcement decision in accordance with the appropriate marine*

*policy documents, unless relevant considerations indicate otherwise.”* It is the position of the PLA that the South East Marine Inshore Plan contains extensive policies in relation to environmental matters.

104. Mr Turney KC has submitted in his closing submissions that the HRO does not itself authorise any new dredging, extend the powers of the PLA to dredge, or extend the scope of dredging which it is able to permit.<sup>42</sup>
105. However, it is also correct that there is no written framework for capital dredging which is not covered under the maintenance dredging protocol and which would not be subject to marine licensing requirements as a consequence of section 75 of MACAA 2009. I do not accept that evidence of Mr Lockwood to the Inquiry was misunderstood by the objectors, as the PLA asserts. Mr Lockwood was candid in indicating that such capital dredging is, at least, anticipated.
106. Ms Rawnsley has confirmed within her speaking note<sup>43</sup> and oral evidence that the Harbours Act clearly sets out the responsibilities of a port authority in relation to the environment at section 48A. I have recommended in the paragraphs below that the amended sections 60 and 66C of the 1968 Act are modified to provide a reference to the section 48A duty. I have set out my reasoning in relation to those recommended modifications in relation to Articles 26 and 30 of the HRO below.

### **Flooding**

107. I have considered the points that were raised by TBGE on the issue of flooding and the evidence of Lady Berkeley to the Inquiry on this issue. In particular, concerns were raised that the PLA has relinquished jurisdiction over the Old London Docks, which might be able to operate as a flood alleviation basement. TBGE has also submitted that there should be provisions in the HRO that address flooding.
108. The position taken by the PLA is that it has no statutory flood powers and that flooding falls within the remit of the Environment Agency, which acts under a

<sup>42</sup> Inquiry Documents ID31

<sup>43</sup> Inquiry Documents ID15

statutory duty under section 7 of the Flood and Water Management Act 2010 to develop, maintain, apply and monitor a strategy for flood and coastal erosion risk management in England. Mr Stride confirmed in his evidence on 27 February 2025 that the PLA liaises very closely with the Environment Agency, who are the owners and operators of the Thames Barrier and will manage navigational safety when surge activity reduces air drop levels and vessels might not be able to pass through bridges.

109. Ms Rawnsley also stated in her written evidence that the PLA has worked with the Environment Agency, the lead organisation responsible for flood risk, on their Thames Estuary 2100 plan, which details flood prevention actions that are required for the Tidal Thames.
110. I have taken into account the arguments on the issues of flooding that were raised at the Inquiry. However, I accept the position of the PLA that issues of flooding in relation to the Tidal Thames are matters for the Environment Agency and that it would not be desirable within the meaning of section 14(2)(b) of the Harbours Act for the HRO to duplicate the role that the Environment Agency plays in relation to flooding.

### **Air quality**

111. Ms Rawnsley stated in her evidence that the PLA has undertaken air quality monitoring since 2019 and works with air quality consultants to provide calculations. Annual data for the current monitoring sites is available on the PLA Living Atlas Platform. Ms Rawnsley further detailed its use of a virtual emissions platform to track progress in emissions reductions. Furthermore, Ms Rawnsley stated that the PLA has undertaken studies in relation to the effects of cruise ships on air quality and has offered to install air quality monitors on residential balconies in response to concerns.
112. Objectors have maintained that the PLA has not responded appropriately to air quality issues that affect those who live on and use the River Thames. In particular, Mr Hardwick submitted a witness statement from Olena Ageieva-Furman, who lives

close to the River Thames and states that her chronic asthma condition is aggravated by diesel fumes from river vessels. She is concerned that the emissions activities of cruise ships are not properly regulated. Mr Hardwick asked a number of questions of Mr Stride on 29 February 2025, and in particular stated that some 29 cruise ships were permitted by the PLA (through the issue of passage plans) to enter the Thames between Greenwich and HMS Belfast. These entries gave rise to air quality concerns.

113. I have noted that Mr Hardwick submitted documents in evidence, many of which referred to high levels of air pollution emanating from cruise ships. For example, a report from Transport and Environment, published in June 2023<sup>44</sup> states that following a ban on large cruise ships entering Venice in 2021, sulphur oxide levels from cruise ships fell by 80%.
114. However, I consider that the air pollution problems arising from cruise ships are not a matter for the HRO. This is because there are other statutory and regulatory regimes which have been put in place to address the issue. Ms Rawnsley confirmed in her written evidence that international vessels that enter the Port of London through the North Sea Emissions Control Area must comply with MARPOL – the Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008. The regulator for MARPOL is the International Maritime Organisation (‘IMO’).
115. Furthermore, local authorities play an important role in air quality regulation. Part IV of the Environment Act 1995 (the 1995 Act) requires that local authorities review air quality in their areas and assess whether air quality standards are being achieved (section 82). Where it appears that air quality standards or objectives are not being met, a local authority is required under section 83 of the 1995 Act to designate an air quality management area. Section 84 requires a local authority to set up an action plan to detail the measures which will be undertaken to comply with air standards and objectives and to specify a date by which those measures will be carried out.
116. Ms Rawnsley confirmed in her evidence, the Local Air Quality Management Framework sets limits put into place through the Air Quality (England) Regulations

<sup>44</sup> Inquiry Documents HAR/ih

2000 (as amended in 2002). This framework requires local authorities to put plans in place to remedy air quality problems.

117. In respect of inland vessels with combustion engines, the Non-Road Mobile Machinery (Type-Approval and Emission of Gaseous and Particulate Pollutants) Regulations 2018 apply. The enforcement authority for these regulations is the Secretary of State for Transport.
118. Ms Rawnsley has stated in her evidence that the PLA has produced and updated a clean air strategy in response to the Department for Transport's Clean Air Strategy of 2019, in which it committed to producing guidance for ports. The PLA did not produce its Air Quality Strategy 2024 to the Inquiry (to which Ms Rawnsley alluded). However, that document is available online. The strategy contains objectives for the short (2026), medium (2030) and long term (2050).
119. I have taken account of the evidence on air quality that has been submitted by the objectors. I am satisfied that there are regulatory controls in relation to air quality and that the issues raised by the objectors fall outside the scope of the HRO.

### **Water quality**

120. Objectors have raised concerns relating to sewer outfalls, in particular from combined sewer overflows (CSOs). I have taken into account the evidence submitted to the Inquiry from Mr Hardwick and other objectors on this issue. It is uncontroversial that water quality is regulated by the Environment Agency, which has its own permitting regime to specify chemical limits for discharges.
121. In these circumstances, I do not consider that any provisions are required within the HRO to address the issue directly. The PLA identified a number of water quality initiatives within its evidence. Both Ms Rawnsley and Mr Stride referred to General Direction 10, which the PLA has enacted to prohibit the discharge of sewage from commercial vessels. Ms Rawnsley stated in her speaking note<sup>45</sup> that there is a gap in

<sup>45</sup> Inquiry Documents ID15

national and international legislation with MARPOL Prevention of sewage pollution from Ships covering ocean going vessels such as cruise vessels, and byelaws covering houseboats.

122. Ms Rawnsley also referred in her evidence to the PLA Clean Thames Manifesto<sup>46</sup>, which was published in 2023 and involves working with the three water companies that discharge into the Thames and the regulators Environment Agency and Ofwat to reduce storm water discharges from combined sewer overflows ('CSOs'). I have taken account of the evidence on water quality and the concerns that have been put forward by the objectors. However, I am satisfied that there are regulatory controls in relation to water quality that are exercised by other bodies. I find that the issues raised by the objectors fall outside the scope of the HRO.

### **Noise**

123. Mr Hardwick stated that there are a small number of vessels which are negatively impacting on the lives of the communities who live on the Thames. He cited RIBs (rigid inflatable boats) performing stunts outside residences and referred to a significant number of party boats which play loud music accompanied by loud and rowdy DJs and passengers.
124. Mr Stride explained in his evidence that these vessels are licensed and certified for passenger carrying purposes by the Maritime and Coastguard Agency and that the local licensing authority will grant licences in respect of alcohol and entertainments. He confirmed that the noise aspects are enforced by the London Port Health Authority, which is a separate organisation from the PLA. Complaints in relation to noise from vessels should be considered by the London Port Health Authority and the Environmental Health Department of the Riparian Borough. Accordingly, I find that the issue of excessive noise from vessels is not the responsibility of the PLA and therefore the issue falls outside the scope of the HRO.

### **Excessive wash and impact on residents**

<sup>46</sup> Core Documents CGD47

125. On 28 February 2025 Mr Stride gave evidence and stated that Thames Clippers are required to conform with the IMO High Speed craft Code and there are additional measures in place, including safety management systems and training for crews. He stated that the PLA received 40 reports in 2024. 5 complaints were substantiated in that harbourmasters detected that vessels were travelling, at speeds through the water, in excess of 12 knots. He confirmed that the PLA has 5 levels of enforcement and that the final levels are a formal reprimand and prosecution. One such prosecution took place in 2024.
126. Mr Howard gave evidence as a witness for Mr Hardwick and played film footage of wash from a Thames Clipper, which caused significant disturbance to his houseboat. I accept that wash from Clipper vessels is a point of concern for objectors. In relation to wash reports, Mr Stride confirmed in his oral evidence that the PLA received 29 reports in 2024, of which 15 were found to be substantiated, but none were sufficiently severe as to warrant a reprimand.
127. Mr Hardwick maintains that the excess speeds at which the Clippers travel damages the foreshore, hurts wildlife and adversely impacts on the lives of stakeholders who live in houseboats. Mr Stride, for the PLA, contended that the byelaw currently in place and the prosecution that took place last year demonstrates that the PLA is adequately responding to the problem. I agree with the position taken by the PLA that the problem is being addressed through byelaws and related enforcement action. I do not accept that the HRO requires amendment in respect of the problems that have arisen concerning the wash from clipper vessels and other vessels. The PLA has adequate powers to deal with the problem.
128. Concerns were raised by objectors in relation to the impact of vessel wash on ecosystems. Ms Rawnsley stated in her evidence that the Thames Estuary is a high energy environment due to the action of tides and wave action. She additionally stated that the species that occur within a high energy system, including bird species, would be unlikely to be impacted by naturally occurring wave action and the presence of vessels. Ms Rawnsley identified a number of initiatives that are being undertaken to enhance biodiversity in the Thames. I have considered the points

advanced by objectors to the effect that the HRO does not go far enough to protect biodiversity from commercial activity.

129. However, I do not consider that these matters properly fall within the scope of the HRO. The PLA is required to act in compliance with pre-existing statutory duties including the section 48A duty and section 40 of the Natural Environment and Rural Communities Act 2006.

### **Litter, microplastics and the ecological health of the Thames**

130. Ms Rawnsley has stated in her evidence that the PLA has been pro-active in tackling issues relating to litter and microplastics through the Clean Thames Partnership and (amongst other things) through initiatives such as The Clean Thames Manifesto and the placing of passive debris collectors and the provision of cages for litter to be deposited during clean-up operations.
131. I have taken account of submissions made by objectors on the need for more environmental protection within the HRO, including the deteriorating indicators and concerns raised within the Zoological Society of London ‘State of the Thames Report’ 2021, which I have also considered within the documents before me<sup>47</sup>. I have particularly considered the statement of Mrs Diana McCann on behalf of TBGE, who made the point that there is a tension between the roles of the PLA as ‘port operators’ and ‘custodians of the river’ and that the PLA’s public statements in relation to environmental duties are stated in language that is only aspirational.
132. Mrs McCann referred to a number of investigations and studies which show that the Thames is in poor ecological health and she expressed a concern in relation to infilling of creeks. However, having considered the points made by TBGE and other objectors, I do not consider that the HRO requires any amendment to require the PLA to undertake duties in relation to litter and microplastics or to address the concerns raised by the Zoological Society of London and other organisations and institutions,

<sup>47</sup> See Inquiry Documents TGBE/2

over and beyond insertion of references to section 48A of the Harbours Act, to which I have referred in this report.

133. I have been asked by TBGE to recommend proposals as to the future management of the River Thames. I am unable to make any such recommendations as these are matters that fall outside of the scope of the HRO.

### **Equality Impact Assessment**

134. Thamesbank and the NBTA have raised objections in relation to the public sector equality duty under section 149 of the Equality Act 2010 (PSED). In her rebuttal statement, Pamela Smith on behalf of NBTA states that the PLA should have carried out an equality impact assessment regarding the original and amended proposals. I do not accept this position.
135. The MMO is subject to the PSED and prior to the Inquiry provided three equality impact assessments<sup>48</sup>. I understand from the PLA Statement of Case<sup>49</sup> that the MMO has also been in touch with objectors concerning information about protected characteristics and is carrying out an ongoing assessment of equalities issues.
136. I agree with the position taken by the MMO in that equality impact assessments are not interim assessments, and each assessment constitutes a separate assessment at a specific point in time during the decision-making process. Accordingly, the three assessments before the Inquiry should be regarded as finalised individual documents. The PSED is an ongoing duty, and I understand that the MMO has continued to assess its duties through the Inquiry process and will produce assessments until a final decision is taken in relation to the HRO.
137. The PLA confirms at paragraph 4.1 of its Statement of Case that in exercising public functions under the 1968 Act, as amended by the HRO, the PLA will also be subject to the PSED and will have the necessary measures in place to discharge the duty. In

<sup>48</sup> Core Documents CDG1 - CDG3

<sup>49</sup> Inquiry Documents SOC/1

the circumstances I do not accept the objections, insofar as they relate to failures to comply with the PSED.

### **Arguments as to the ownership of the River Thames, as raised by David DeVere**

138. Mr DeVere asserted in his Proof of Evidence<sup>50</sup> and during his submissions to the Inquiry that he does not believe that the PLA and its predecessors have ever had any freehold ownership of the River Thames. Mr DeVere referred to the dispute in 1843 between the Crown and the City of London as to the ownership of the River Thames. He maintained that it was accepted, following that dispute, that the Thames Conservators (the predecessors to the PLA) only held a beneficial interest in the Thames and that the Crown retains legal ownership of the bed of the river.
139. I have considered the materials that Mr DeVere has put before the Inquiry and the submissions that he has made both in writing and during his oral submissions on 12 March 2025. However, I do not accept the arguments that were advanced.
140. Section 50 of the Thames Conservancy Act 1857<sup>51</sup> made a statutory transfer from the Crown and the City of London of the ‘bed and shores of the River Thames’, from Staines to Yantlet / Canvey Island to the Thames Conservators. The Port of London Act 1908<sup>52</sup> established the PLA and section 7 of that Act transferred ‘all rights, powers and duties of the Conservators in respect of the River Thames below the landward limit of the Port of London.’ Benedict Fanning, the Head of Estates for PLA, confirmed in his evidence that the PLA has registered much of the riverbed that it owns and is in the process of registering the unregistered parts of the riverbed that it owns.

<sup>50</sup> Inquiry Documents DEV/1

<sup>51</sup> Core Documents CDG40

<sup>52</sup> Core Documents CDG9

141. Mr Turney KC stated in his closing submissions on behalf of the PLA that the point raised by Mr DeVere may not be relevant to the HRO. He noted that some land within the PLA's jurisdiction is owned by the Crown, but that the relevant powers still apply. Mr Turney also stated that the new permissions regime would apply whether or not the land is owned by the PLA (as the river-works licence process does already). Furthermore, the corresponding changes to section 11 of the 1968 Act would apply only to PLA land.
142. I agree with the position taken by the PLA that I do not need to reach any determination on the extent of land ownership in the PLA in order to reach conclusions on HRO.

### **The Articles within the HRO**

143. There are 110 Articles within the HRO, which propose amendments to the Port of London Act. The HRO additionally proposes at Article 106 that some 25 sections and schedules within the 1968 Act are repealed. The repeals are set out at Schedule 1 of the HRO<sup>53</sup>. I have dealt below with the Articles and proposed amendments in the order in which they appear in the HRO. I have also dealt with the proposed repeals in the order in which the sections to be repealed currently appear within the 1968 Act and in the 11 March 2025 marked-up version of the Act<sup>54</sup>. For ease of reference, I have considered Schedules 7 and 10 both within the parts of the report that deal with the sections of the 1968 Act to which they relate and at the end of the report, where matters under the HRO relating to the schedules within the 1968 Act are considered.

### **Application of Section 14(2)(b) test to the Articles of the HRO**

<sup>53</sup> See Inquiry Documents ID17 at page 60

<sup>54</sup> See Inquiry Documents ID18

144. For the avoidance of doubt, I have considered the requisite test under section 14(2)(b) of the Harbours Act in relation to each Article and the residual discretion in the public interest when recommending whether to approve, not approve or modify each individual Article. Where I have recommended approval of a particular Article, I have done so with the Schedule 2 objects and the section 14(2)(b) desirability test in mind.
145. Where I have not expressly referred to section 14(2)(b), it should not be inferred that I have not considered that provision when deciding whether to recommend that a particular Article is approved, not approved or approved subject to modification.
146. I have considered the evidence before the Inquiry from the objectors and from the PLA when reaching findings on the individual Articles of the HRO. Where I have not referred to oral evidence, a proof of evidence, statement of case, written submissions or a particular document in relation to a particular Article below, it should not be inferred that I have not considered that material.

#### **Article 4: Interpretation of the Act**

147. Section 2 of the 1968 Act concerns interpretation. The HRO proposes over 30 changes to the definitions contained in section 2. The following proposed amendments to section 2 are the subject of outstanding objections:

- (i) Commercial and club boats
- (ii) Dredge
- (iii) Harbourmaster
- (iv) Houseboat
- (v) Master
- (vi) Minister
- (vii) Mooring

- (viii) Navigation
- (ix) Owner
- (x) Pleasure vessel
- (xi) Port rates
- (xii) River authority
- (xiii) The Surrey Canal
- (xiv) Terminal
- (xv) Trader
- (xvi) Vessel
- (xvii) Vessel licensing area
- (xviii) Waterman
- (xix) Works
- (xx) Yantlet Line

148. I have considered the definitions that are not the subject of any objection and can recommend that those changes to section 2 of the 1968 Act are adopted as they meet the requisite tests in section 14 of the Harbours Act. I have set out my findings on the 20 definitions which are subject to outstanding objections below:
149. **Commercial and club boats.** This is defined as any vessel (other than a ship registered under the Merchant Shipping Act 1995 or any vessel usually used for navigation) which is used primarily as a place for accommodating or receiving persons for the purpose of, recreation, entertainment or refreshment, or as club premises or offices while it is moored.
150. OPLAC and Thistleworth Marine Ltd (which were confirmed by Mr Beaumont at the Inquiry to be linked organisations) noted in their written objections that clarification was needed as to the reasons for the definition. The PLA has responded to state that the new definition is used in section 124(2)(d) of the 1968 Act, as an exception to unlicensed vessels not to be navigated, worked or moored within the

vessel licensing area. The term is also used in the definition of ‘master’ to enable a more comprehensive definition of what a master is. OPLAC did not appear to pursue the objection during the Inquiry. I have nevertheless treated it as a valid objection and, having read the initial points raised by the objectors and the responses of the PLA. I am satisfied that the definition within the HRO should be retained.

151. **Dredge**. Under the proposed changes to section 2 of the 1968 Act "dredge" means to cleanse, scour, cut, deepen, widen or dredge the bed or the banks of the Thames or take up, or move material (including through the use of conventional dredgers and hydrodynamic dredging techniques using water injection or agitation or devices to move material) whether or not the material is suspended in water from one part of the bed or the banks of the Thames to another part or remove material from the bed or the banks of the Thames, and “dredging” shall be construed accordingly.
152. OPLAC and Thistleworth Marine Ltd have expressed concerns about the impact of the definition, which would arguably require a dredging permission under the proposed new regime for houseboat owners levelling their moorings using household pressure washers.
153. At paragraph 9.1.8 of its Statement of Case<sup>55</sup>, the PLA confirms that the pressure washing activity described by the objectors would fall within the definition of ‘dredge’. The PLA states that it is already necessary to obtain a dredging licence/permission for that activity and that it is important for the PLA to regulate such activities because even small-scale dredges of this nature could have larger impacts on the Thames more generally.
154. The PLA accepts that it will exercise the existing and proposed new provisions on dredging regulation with a degree of common sense and that the PLA would not expect a permission to be required for activities which have a minimal impact. Given

<sup>55</sup> Inquiry Documents SOC/1

that pressure washing of mooring berths is currently regulated, I do not consider that the new definition to be objectionable. I note that the definition within the HRO is based in part on the definition in section 66(2)(a) of MACAA 2009.

155. Thamesbank has taken issue with the new definition of dredging and states in its closing submissions<sup>56</sup> that the new definition is wider than under the existing 1968 Act and that there should have been public consultation on potential environmental impacts. I have considered dredging impacts in the paragraphs below and have concluded that, subject to a modification to make reference to the Section 48A duty, the articles in the HRO which deal with dredging should be recommended for approval. I do not accept that the proposed new definition of dredging is capable of having or has any adverse impact on the environment or that the proposed definition required a SEA or consultation.
156. **Harbourmaster**. Under Article 4 of the HRO "Harbourmaster" is defined to mean a person appointed by the Port Authority to be a harbourmaster and includes the deputies and assistants of a person so appointed and anyone else the Port Authority authorises to carry out any functions of a harbourmaster. The RYA and OPLAC have expressed concerns about the expansion of the definition to include people authorised by the PLA to carry out the functions of the harbourmaster.
157. The RYA proposes that the wording within the definition in Article 4(2)(i) of the HRO should be changed to read as follows: '*and any other employee of the Port Authority authorised to carry out the functions of a harbourmaster*'. OPLAC has stated in its objection that: *Given the extensive powers given to harbourmasters we think this (i.e. the definition) should be withdrawn or at least re-worded with proper limitation.*
158. In response to these objections, the PLA has clarified within its Statement of Case that the types of people who will be authorised are the officers in Port Control and officers undertaking vessel inspection. The PLA goes on to state at paragraph 12.2

<sup>56</sup> Inquiry Documents ID23

of its Statement of Case: *However, it is important to allow the PLA flexibility in enabling the PLA to authorise non-employees to carry out the relevant functions, including the possibility of contracting out certain functions.*

159. The PLA additionally states that the harbourmaster would remain responsible for the actions of anyone acting with their authority and that there is precedent for these definitions within the Dart Harbour and Navigation Harbour Revision Order 2021<sup>57</sup> and the Cornwall Harbours Harbour Revision Order 2023<sup>58</sup>. I have noted that the wording within the Dart Harbour and Cornwall HROs is different and refers to *any other person for the time being authorised by the Authority to act, either generally or for a specific purpose, in the capacity of harbour master*. The RYA states in its objection that the scope of the powers under the 1968 Act are different to powers exercised in other harbours.
160. I have noted from Mr Stride's evidence at paragraph 1.2 of his Proof of Evidence<sup>59</sup> that the Chief Harbour Master's team is over 200 strong and includes a team of 10 harbour masters, over 120 pilots (both sea and river), over 30 crew that patrol the river Thames or operate Richmond Lock and Weir, and over 30 personnel that operate the two Vessel Traffic Centres at Thames Barrier and Gravesend. They are supported by a management and administration function. Furthermore, Mr Turney KC confirmed the extent of the undertaking in his opening submissions to the Inquiry: *The PLA's operations cover 95 miles of the River Thames, from Teddington to the North Sea, and is the UK's largest port by volume of trade. The river is also a recreational resource, public transport corridor, and a home for many people.*<sup>60</sup>
161. There was no evidence before the Inquiry as to how the PLA would be able to ensure that the complex and varied harbourmaster functions, particularly in relation to the navigational safety, could be satisfactorily discharged by contracting out certain

<sup>57</sup> Core Documents CDG24

<sup>58</sup> Core Documents CDG25

<sup>59</sup> Inquiry Documents PLA/3

<sup>60</sup> Inquiry Documents ID1

functions. I do not accept that, in the context of the particular issues faced by the tidal Thames, particularly in relation to navigational safety, that it would be desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner for the definition of ‘harbourmaster’ within the 1968 Act to admit the option of ‘out-sourcing’ or contracting out the role of the harbourmaster.

162. Accordingly, I find that the definition of harbourmaster’ as proposed under Article 4(2)(i) of the HRO<sup>61</sup> falls foul of the desirability test in section 14(2)(b) of the Harbours Act and that there is merit in the objection of RYA.

163. In the circumstances, I recommend that the definition of harbourmaster should read as follows: *"harbourmaster" means a person appointed by the Port Authority to be a harbourmaster and includes the deputies and assistants of a person so appointed and any other employee of the Port Authority authorised to carry out any functions of a harbourmaster.*

164. **Houseboat.** The HRO proposes a definition of “houseboat” to mean any vessel which is used primarily as a place of habitation. There are outstanding objections from River Thames Society; Residential Boatowners Association, National Barge Travellers’ Association; Thistleworth Marine Ltd; OPLAC and Objector N. The objectors raised a concern, with the references in an earlier version of the HRO to ‘usually used for navigation’ and ‘a ship registered under the Merchant Shipping Act’. The PLA has responded to that concern and revised its definition to make clear that a houseboat used for navigation is included within the definition. Having considered the objections, I accept the position that the PLA advances in relation to the definition. I also accept that the PLA has responded to the concern that there are boats used both for habitation and navigation. Accordingly, I recommend that the

<sup>61</sup> 11 March 2025 version

definition should be included within section 2 of the 1968, as per Article 4 of the HRO.

165. **Master.** The HRO proposes a definition of “master” in relation to a vessel, as follows:
- (a) *any person (except a pilot) having or taking the command, charge or management of a vessel for the time being (whether lawful or not);*
  - (b) *in connection with a houseboat or commercial and club boats it means the owner or if the owner is not in occupation any person over the age of 18 who is in occupation for the time being; and*
  - (c) *in connection with an autonomous vessel it means the person identified in accordance with s.138A, or if no person is so identified, the person who is in control of or is able to take control of that autonomous vessel;*
166. Thistleworth Marine Ltd and OPLAC have outstanding objections to this definition based on a concern that a ‘master’ might include a child or elderly owner, and requested clarity as to how the definition would apply if several people were in occupation or if the owner is a company. The PLA amended the definition to clarify that the definition is not intended to cover a minor who has been left on a vessel.
167. I have considered the proposed definition of ‘master’ in light of the changes to the 1968 Act that would be made under Article 68 of the HRO to require names and addresses. In relation to Article 68 I have accepted the position of the Residential Boatowners’ Association that it would be desirable (within the meaning of section 14(2)(b) of the Harbours Act) for owners and masters of vessels to be identifiable, but that it is not desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner for there to be a requirement to provide identities of occupiers.
168. Furthermore, I cannot see any justification that would meet the section 14(2)(b) test in altering the widely understood definition of the master of a vessel as someone who is in charge of a vessel to include any occupant where the owner is not in occupation.

I agree with the position taken by the River Thames Society that adequate information can be obtained from the master or owner without risking the infringing of Article 8 European Convention on Human Rights ('ECHR') rights of boat residents. Where an owner is not in occupation and where others are in occupation, it will be possible to ascertain the master i.e. the person in charge for the time being.

169. In the circumstances I would recommend that Article 4(n) should read (at (b)) as follows: *(b) in connection with a houseboat or commercial and club boats it means the owner or if the owner is not in occupation any person over the age of 18 who is in occupation for the time being and having or taking the command, charge or management of a vessel for the time being ; and*
170. Subject to the above modification, I conclude that the definition of 'master' should be included in the amended act as desirable within the meaning of section 14(2)(b) of the Harbours Act.
171. **Minister.** The HRO proposes that "the Minister" should be defined in the 1968 Act to mean the Secretary of State for Transport. OPLAC queried why the words "(except in Part VI and Part I of the Schedule 5 to this Act)" have been removed from the definition of "Minister". The PLA has explained in the Statement in Support of the Application, that the references to Part VI of and Schedule 5 to the 1968 Act have been removed because both have been repealed. I accept that the references to those repealed sections are unnecessary and that the amendment to the definition should stand.
172. **Mooring.** The HRO proposes that a definition of "mooring" includes anchoring; or any other act to moor or make fast a vessel to any work or chain or other vessel not underway or any thing, and "moor" and "moored" have corresponding meanings.

173. Thistleworth Marine Ltd and OPLAC raised concerns within their objections to the amendments made to the definition of “mooring”. They maintain that the addition to the definition of “mooring to include “make fast a vessel to any work or chain or other vessel not underway or any thing”, and "moor" and "moored" have corresponding meanings;” would expand the definition of mooring to include temporarily pulling alongside another vessel not under way, as soon as a line is secured. OPLAC states that the definition might prompt vessels not to secure a line, thus encouraging a dangerous practice.
174. I accept that this is a valid concern. However, the PLA takes the view that the example provided by these objectors does not give rise to a concern that vessel owners would be reluctant to engage in safe practices to avoid engaging the new mooring permissions regime. In this regard, the PLA refers to the exemptions in section 70(1A)(a) of the 1968 Act as proposed under the HRO in relation to short term moorings (less than 7 days in any one month period) and in section 70(1A)(f) for those mooring in the ordinary course of navigation, where a mooring permission would not be required.
175. Having considered the points made by the objectors and the responses of the PLA, I am satisfied that the amendment to the definition of mooring would not result in a potential for unsafe practices. I recommend that the amendment to the definition of mooring, as proposed under the HRO, should be implemented.
176. **Navigation.** The HRO would add a new definition to the 1968 Act, whereby “navigation” would mean the movement on or in the water for whatever purpose of any vessel, whether travelling between two locations or not, but does not include any vessel under tow.
177. The RYA has objected to the wording of the definition and states that the definition is very wide, particularly in light of the proposed definition of ‘vessel’ and arguably includes any uncontrolled movement on the water by anything that floats that is

capable of carrying a person or thing. The RYA states within its written objection that this is particularly relevant to the ‘dangerous driving’ offences in section 108 and the power to give general and special directions under sections 111 and 112 of the 1968 Act. The RYA maintains that the definition of ‘navigation’ should refer to the control or direction of the course of a vessel.

178. The RYA further states that the definition of navigation, as proposed, would include a child playing with an inflatable toy off any of the beaches in the lower Thames. Such a child might commit an offence under section 108 if navigating without due care and attention. OPLAC has objected to the definition on the basis that it might include houseboats moving with the tide or moving a small distance along a pontoon.
179. In response to these points, the PLA states that the new definition needs to capture movement that is not controlled or specifically directed because that could be particularly dangerous. The PLA maintains the definition is deliberately broad, so as to cover uncontrolled movement as this is something that the PLA might need to regulate in the interests of safety. The PLA states in its Statement of Case that the master of a vessel should not have a defence to the offence under section 108 (general rules for navigation) on the basis that they were not in control or directing their vessel when they should have been.
180. The difficulty with the PLA’s proposed definition is that a vessel which rises and falls with the tide – thus moving in the water- or a vessel which breaks free of its mooring or suffers from engine failure and is therefore adrift would not be ‘navigating’ the Thames in a way that users of the river would necessarily understand. I agree with the position taken by RYA that the term navigation connotes a degree of control or direction of the course of a vessel.
181. The PLA states at paragraph 12.4 of its Statement of Case that it would decide whether to prosecute in accordance with the circumstances of an individual case and

would differentiate between a child playing with an inflatable beach toy and the master of a vessel in the main navigation channel. Similarly, the PLA would apply a sensible approach to vessels rising and falling with the tide or houseboats making a minor adjustment alongside a pontoon.

182. Whilst the PLA would no doubt take a pragmatic and sensible approach to prosecutions, it is not desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner to apply an interpretation to a word that does not necessarily accord with its ordinary meaning.

183. As to the need to capture movements that are not controlled, the PLA would be entitled to prosecute a master who was not exercising due care or attention, or who was navigating a vessel in a manner likely to endanger or injure persons. Under the proposed definition such prosecutions would be possible where a vessel was adrift and without power. In such cases, the PLA would be able to recover or assist the vessel without requiring a statutory basis to do so.

184. Having considered the arguments before me, I recommend that the definition of ‘navigation’ under Article 4 (2) (q) of the HRO<sup>62</sup> is modified as per the proposal put forward by the RYA:

*“navigation” means the control or direction of the course of a vessel on or in the water for whatever purpose, whether travelling between two locations or not, but does not include any vessel under tow.”*

185. **Owner**. The HRO would extend the definition of "owner" in the 1968 Act to mean, in relation to a vessel, the owner of a vessel and any person having any interest in a vessel (whether as joint owner, lessee, charterer, mortgagee or otherwise) and includes the registered owner and a person letting a vessel for hire whether or not

<sup>62</sup> 11 March 2025 version

that person owns the vessel and in reference to houseboats or commercial and club boats includes the occupier or manager.

186. OPLAC and Thistleworth Marine Ltd have objected to this definition on the basis that it amounts to an unnecessary expansion. The PLA states at paragraph 12.7 of its Statement of Case that the revised definition is intended to ensure that there will always be someone to take responsibility as the owner of a vessel in any given circumstances. Although they would not normally be expected to be the first person to be contacted, in the absence of anyone else being contactable, it is reasonable for this to include someone like a mortgagee.
187. Having considered the objections and response to them, I take the view that the extension is not unnecessarily broad and would recommend that the definition is desirable within the section 14(2)(b) test and adopted as per the HRO.
188. **Pleasure vessel**. The HRO proposes that the definition of “pleasure vessel” is amended to the effect that it has the same meaning as in the Merchant Shipping (Boatmasters’ Qualifications, Crew and Hours of Work) Regulations 2015.
189. The NBTA, Thistleworth Marine Ltd and OPLAC have objected to the definition on the basis that there is potentially some overlap between the definitions of “pleasure vessel” and “houseboat”. However, this should not be objectionable because, as stated by the PLA at paragraph 12.6 of its Statement of Case, the main use of “pleasure vessel” is in exempting them from vessel licensing requirements.
190. Having considered the objections and response to them, I do not accept that the revised definition is objectionable. I have noted that the amendment to the definition serves to update the reference from the Merchant Shipping Regulations 1995 (which are no longer in force) to the Merchant Shipping (Boatmasters’ Qualifications, Crew

and Hours of Work) Regulations 2015<sup>63</sup>. I consider that the revised definition is desirable within the section 14(2)(b) test and recommend that it is adopted as per the HRO.

191. **Port rates.** The HRO proposes amendment of the definition of "port rates" to mean any charges levied by the Port Authority in relation to goods. OPLAC and Thistleworth Marine Ltd have raised concerns that the revised definition meant that "port rates" now covered charges on vessels. In response to these objections the PLA states at paragraph 8.3.3 of its Statement of Case that this issue arises from a defect in the original drafting of the 1968 Act, but that the wide definition of "goods" under the 1968 Act would also apply to charges on vessels. The PLA has stated that although it has not proved problematic, the PLA has agreed to amend the definition of "goods" so that it expressly excludes vessels.
192. It would therefore appear that the objections to the revised definition of port rates have been resolved. I consider that the definition meets the requirement of the section 14(2)(b) test and recommend that it is approved.
193. **River authority.** OPLAC has indicated a concern that the definition of river authority has been removed. The PLA has stated that all bodies which were formally river authorities have had their powers and duties taken over by the Environment Agency. The PLA states that the 1968 Act will automatically apply to successor bodies and so, in their view, it is unnecessary to provide a new definition. I accept the position of the PLA in relation to the deletion of river authority from section 2 of the 1968 Act.
194. **The Surrey Canal.** OPLAC has questioned the removal of the definition of The Surrey Canal. The PLA has explained the repeal in its Statement of Case and confirmed that The Surrey Canal only appears in the 1968 Act within Schedule 7, which would be repealed by the HRO and so the definition is therefore redundant.

<sup>63</sup> Core Documents CDG21

Having considered the objection and response, I accept the position of the PLA in relation to the deletion.

195. **Terminal.** The HRO proposes a new definition of “terminal”, which would mean a terminal, jetty, pier, wharf, or mono-buoy used by ships, other than houseboats, which is within a harbour but is managed by persons or a body of persons other than the harbour authority for that harbour.
196. The PLA considered objections from Thistleworth Marine Ltd and OPLAC, who raised concerns that the definition would now capture houseboats. Following these comments the PLA agreed to re-amend the definition to expressly exclude works used by houseboats. It would appear that the objections are resolved and I recommend that the new definition of terminal is approved.
197. **Trader.** The HRO proposes amendments to the definition of Trader. "Trader" in relation to port rates would be amended to mean as follows:
- (a) the owner of goods which have been transported and are liable to port rates, the consignee of those goods and any person taking delivery of those goods on behalf of the owner or consignee; and
  - (b) the owner of goods intended to be transported which will be liable to port rates, the shipper of those goods and any person shipping those goods on behalf of the owner or shipper;
198. OPLAC and Thistleworth Marine Ltd have objected to the amendments on the basis that the changes would expand the scope of when goods are liable to rates or dues. The PLA confirms at paragraphs 8.1.11 and 8.1.12 of its Statement of Case that the effect of the change is that port rates will now apply to goods which are not imported or intended to be exported. The PLA maintains that the amended wording is necessary because of the proposed amendments to section 21 of the 1968 Act, which

enables the PLA to demand charges for goods carried on or by any vessel navigating within and without entering or leaving the limits.<sup>64</sup>

199. I have considered the position of the objectors and the PLA responses. I find that the amendment to the definition of trader is consequential to the proposed changes to section 21 of the 1968 Act. I have recommended approval of the amendment to section 21, as proposed by the HRO, and recommend approval of the amended definition of trader.
200. **Vessel.** The HRO would make a number of amendments to the definition of vessel within section 2 of the 1968 Act. The revised definition would be as follows: *“vessel” means every description of vessel however propelled (and whether or not it is capable of self propulsion) or moved whether or not used for navigation and includes any thing constructed or used to carry persons or goods by water or under water and a seaplane on or in the water, a hovercraft, a hydrofoil vessel, any vessel which is used primarily as a place of habitation or as a place for accommodating or receiving persons for the purpose of recreation, entertainment or refreshment, or as club premises or offices while it is moored and an amphibious vehicle;*
201. OPLAC and Thistleworth Marine Ltd have raised objections in relation to the definition including houseboats. The PLA has responded to these objections at paragraph 12.5 of its Statement of Case and states that the 1968 Act contains a number of specific protections for houseboats, meaning that their inclusion within the definition of “vessel” should not cause concern. The PLA cites examples of houseboat-specific exemptions in section 120A (power to deal with unserviceable vessels) and section 137 (powers of inspection of works and vessels) of the 1968 Act. Having considered the objections and the matters raised by the PLA, I recommend that the amendments to the definition of vessel should be approved.

<sup>64</sup> The reference to the limits in section 21 of the 1968 Act refers to the definition of the port limits described in paragraph 2 of schedule 1.

202. **Vessel licensing area.** The definition of ‘vessel licensing area’ to which section 124 of the 1968 Act applies would be amended by the HRO. The proposed definition of the “vessel licensing area” is: ‘that part of the Thames classed as C or D waters as defined in Regulation 3(2)(a) of the Merchant Shipping (Categorisation of Waters) Regulations 1992’.
203. OPLAC has suggested that the PLA seeks to expand its territory, akin to a ‘land grab’. The position of the PLA is that the amendment ensures consistency between the PLA’s area of jurisdiction and the vessel licencing area, which would effectively be the whole of the River Thames including the estuary – and not just that part of the river to the former seaward limit.
204. Mr Stride explained in his evidence to the Inquiry that the changes will ensure that operators of vessels that transit outside the former seaward limit, but which are still within inland waters, will have the option of moving to the PLA’s vessel licensing regime from the Maritime and Coastguard Agency’s coding regime. Having considered the evidence on this issue, I am satisfied that the change in the vessel licensing area is desirable within the meaning of section 14(2)(b) of the Harbours Act. I therefore recommend that the changed definition should be approved.
205. **Waterman.** OPLAC has noted a concern within its objection that the definition, as proposed, was unworkable. However, the definition of ‘waterman’ has been deleted and replaced with a new definition for ‘Thames Waterman’, which reads as follows: ‘*Thames Waterman*’ means a person having charge of a vessel (other than a pleasure vessel) underway or working on the Thames and includes a Thames Lighterman. The definition is the same as the previous definition for ‘waterman’ – but with the added references to ‘Thames’. It follows that the definition is not a new definition, but an amendment to a pre-existing definition. Having considered the point raised by OPLAC and the explanation provided by the PLA in its Statement of Case, I recommend that the amended definition is approved.

206. **Works.** The HRO would amend the definition of "works" to the following: *'works' where used in relation to the permitting of works by the Port Authority, means works of any nature whatever in, under or over the Thames or which involve cutting its banks other than those referred to in section 73 ( Permitting of dredging, etc.) of this Act and " work " shall be construed accordingly.*
207. OPLAC has objected to the amendment and expressed a concern about the change of wording from 'licensing' to 'permitting'. I take the view that the definition is consequential to the new permitting regime set out at the proposed amended section 66 of the 1968 Act. I have recommended approval of the new regime, as proposed within the HRO, and so I similarly recommend approval of the amended definition of 'works'.
208. **Yantlet Line.** The HRO proposes that the definition of the Yantlet Line is amended to mean a line across the Thames from the London Stone North level in the Isle of Grain in the county of Kent to the City or Crow Stone opposite Canvey Island in the county of Essex and extending on the same trajectory up to the mean high water level on either side of the Thames.
209. OPLAC has objected to the amended definition and states within its objection that neither the London Stone nor the Crow Stone are submerged in the water and that the extension of both ends of the Yantlet Line to the mean high water mark appears to be a 'land grab' by the PLA.
210. Thamesbank also raised a concern in its Statement of Case<sup>65</sup> that the HRO's amendment to the Yantlet Line to extend it 'on the same trajectory up to the mean high water on either side of the Thames' would bring about a potential to exert an environmental impact on a larger area than under the 1968 Act, as currently drafted.

<sup>65</sup> Inquiry Documents SOC/6

I do not accept that the HRO would have this effect. The position was clarified by Mr Stride, who confirmed in his Proof of Evidence<sup>66</sup> that these amendments do not lead to a change in the port limits themselves.

211. The PLA has also clarified at paragraph 11.4 of its Statement of Case<sup>67</sup> that the amendment merely seeks to correct the current, somewhat confusing, situation whereby the line does not extend across the entire width of the river. It is the position of the PLA that the amendments do not lead to a change in the limit themselves, but the coordinates are a more precise and future-proofed measurement of that limit. I accept the position of the PLA and recommend that the amended definition of the Yantlet Line is approved.

#### **Article 5. Protection of members of the Port Authority**

212. Article 5 of the HRO would introduce a new section 4A (protection of members of the Port Authority) to the 1968 Act. This would exempt members of the Board from personal liability for their lawful actions as members of the PLA and provide for their indemnification by the PLA and for the PLA to take insurance to cover this liability.
213. The justification for this measure is based on section 60 of the Commissioners Clauses Act 1847 (the 1847 Act)<sup>68</sup>, to which reference is made in the Ports Good Governance Guidance (March 2018)<sup>69</sup>, as follows:

#### *Personal Liability*

- 3.27. *Board members have a duty of care to the trust port they are appointed to. The constitutions of trust ports should include provisions that board members are not personally liable for lawfully exercising their powers as a member.*

<sup>66</sup> Inquiry Documents PLA/3

<sup>67</sup> Inquiry Documents SOC/1

<sup>68</sup> Core Documents CDG6

<sup>69</sup> Core Documents CDC1

*In addition a board members property shall not be subjected to legal process because of a contract entered into as a member or because of any lawful act in exercise of members powers.*

3.28. *Incorporating section 60 of the commissioners clauses act 1847 is a long standing approach to providing this protection. However boards may wish to consider ensuring that they have appropriate modern wording for the indemnity provisions in their local legislation.*

214. Section 60 of the 1847 Act states that commissioners ‘*shall not be liable to execution of any legal process by reason of any contract or other instrument so entered into, signed, or executed by them, or by reason of any other lawful act done by them in the execution of any of their powers as commissioners*’. The provision goes on to indemnify ‘*commissioners... their heirs, executors, and administrators.*’

215. The proposed section 4A of the 1968 Act refers to members of the Port Authority or of any committee or subcommittee established under schedule 2. Schedule 2 Part II of the 1968 Act deals with proceedings and refers to committees. The HRO would introduce sub-committees into the Schedule. Under paragraph 4 of Schedule 2 part II a committee is constituted such that the majority of its members shall be members of the Port Authority. I have noted that the Schedule has not been amended to say anything about the constitution of sub-committees.

216. Neither the Ports Good Governance Guidance nor the 1847 Act refer to exemptions from personal liability for members of committees or sub-committees. Prior to the Inquiry the PLA had not explained why it seeks to extend the ambit of protection beyond board members. The position changed when the PLA produced a ‘Note following the evidence of Steven Lockwood,’<sup>70</sup> in which it confirmed that the current practice of the PLA is that all committees and sub-committees are comprised only of board members. The PLA additionally states that other PLA employees may attend meetings where necessary but are not considered to be members of the committee or sub-committee.

<sup>70</sup> Inquiry Documents ID10

217. I have taken account of the objections made by Thistleworth Marine Ltd and OPLAC and the evidence from the PLA, including that of Steven Lockwood, its Chief Financial Officer and, having done so, I consider that the PLA should be entitled to protection for its members and committee and sub-committee members in line with the DfT guidance in Ports Good Governance Guidance.
218. I accept that the proposed section 4A of the 1968 Act satisfies the Schedule 2 object of regulating the procedure of the Authority. I also find that the proposed section 4A meets the desirability test of securing the improvement, maintenance or management of the harbour in an efficient and economical manner. Accordingly, I recommend that Article 5 of the HRO is approved.

#### **Article 6. General duties and powers**

219. Article 6 of the HRO proposes that a new subsection (2A) is added to section 5 of the 1968 Act making clear that the power of the Port Authority to turn their surplus resources to account includes investment, provided such investment is for either the direct or indirect benefit of the undertaking. In his Proof of Evidence<sup>71</sup> Mr Lockwood has stated at paragraph 10.11 that the Ports Good Governance Guidance expressly states that trust port boards “should reinvest surpluses to support the continuing and long-term success of the port for the benefit of its stakeholders”.
220. OPLAC has expressed a concern about the implications of the PLA’s power to invest and asserts in its objection that the PLA has not explained why such latitude is required or how the power to invest will benefit the better running of the Port. The PLA maintains that the new section 5(2A) will allow investments which directly or indirectly benefit the port undertaking.

<sup>71</sup> Inquiry Documents PLA/1

221. The PLA further states in its Statement in Support of the Application that the proposed amendment achieves the objects of regulating the application of moneys in the nature of revenue and securing the financial affairs of the Port Authority are properly managed as set out in paragraph 13 of Schedule 2 to the Harbours Act 1964. Having considered the positions of OPLAC and the PLA, I consider that the proposed amendment meets the desirability test within section 14(2)(b) of the Harbours Act, particularly in light of the fact that the proposed amendment is consistent with the Ports Good Governance Guidance. I recommend that Article 6 of the HRO is approved.

### **Article 7. Hydrographic surveys**

222. Section 7 of the 1968 Act would be amended through Article 7 to impose a power to make surveys of the bed of the Thames estuary and the approaches to the Thames outside the seaward limit but within the vicinity of the Thames as the PLA considers necessary or desirable in the discharge of their functions. There are also minor amendments to the pre-existing duty to publish surveys.

223. Transport for London and Greater London Authority and OPLAC originally objected to Article 7 on the basis that it was unclear whether the surveys would be published. On reflection the PLA reverted to the original drafting in the 1968 Act. The PLA states in its Statement of Case that it had not intended to remove the obligation to publish surveys of the Thames within the limits carried out by the PLA.

224. There are no outstanding objections to the section 7 changes. Having considered the comments of the PLA within its Statement in Support of the Application and the PLA Statement of Case, I am satisfied that the extension of the PLA's surveying function meets the objects test. I am also satisfied that the proposed changes are desirable as a means of addressing the issue of regular surveys needing to be undertaken in the estuary and approaches to the river Thames because of shifting sands. I recommend that the HRO is approved in relation to Article 7.

## **Article 8. Annual Report**

225. Article 8 of the HRO proposed that section 8 of the 1968 Act would be amended to remove the requirement to submit an annual report on the exercise of the PLA's functions to the Minister for laying before Parliament. TBYBC objected to the proposal on the basis that it would amount to a removal of Parliamentary scrutiny.
226. The position of the PLA changed after the Inquiry heard evidence from Sir Simon Hughes, who gave evidence as a witness for TBYBC on 4 March 2025. Sir Simon clarified that the consequence of the laying of the annual PLA report before Parliament is that it is placed in the House of Commons and House of Lords' libraries. This in turn increases the opportunity for Parliament to debate matters within the report at the request of any Member of Parliament.
227. Following the evidence of Sir Simon Hughes the PLA re-inserted into section 8 of the 1968 Act the requirement that the Port Authority must provide the report to the Minister, who shall lay a copy of every such report before each House of Parliament. I am satisfied that the remaining changes to section 8 (that the report should be publicly available and that the report should be published on the PLA website or by other suitable electronic means, without charge) are uncontroversial. I recommend that Article 8, in its March 2025 form, should be approved. I accept that the changes, as they now stand, are desirable in the interests of securing the management of the harbour for the purposes of section 14(2)(b) of the Harbours Act.

## **Article 9. Powers relating to land**

228. The HRO seeks to make significant changes to the PLA's licensing regime. As matters stand an applicant who is granted a River Works Licence (RWL) would not receive any property right of interest in the land. A RWL is used by the PLA to grant

both the statutory consent to impede the public right of navigation and to grant the necessary rights to occupy the riverbed. section 66(b) of the 1968 Act currently states that the grant of a works licence relating to land belonging to the Port Authority ‘shall be deemed to confer on the holder of the licence such rights in, under or over land as are necessary to enable the holder of the licence to enjoy the benefit of the licence’.

229. The PLA proposes through the HRO to modernise the system by dividing the statutory consent from the proprietary grant. It is envisaged that a “works permission” would be granted to authorise the impeding of the public right of navigation. The HRO will introduce “mooring permissions,” which will be used to authorise the mooring of a boat, which is currently only dealt with by granting a licence to occupy land, and which does not give a right to impede the public right of navigation.
230. Section 11 of the 1968 Act, as it currently stands, regulates the PLA’s powers relating to land, but notwithstanding that the PLA has granted ‘licences to moor’ under section 11; the powers under that section only grant consent for the use of the PLA’s riverbed and do not grant any statutory consent for impeding the public right of navigation.
231. The HRO would insert changes to section 11 to account for the proposed new permitting regime, whereby the Port Authority would be able to agree or assess the consideration in relation to a grant of an interest in rights over or under land, or a right to use land belonging to the Port Authority and the holder of the permission.
232. There are provisions for referral of disputes over the level of consideration to an arbitrator and a new statutory appeal to the Secretary of State in relation to any decision to refuse to grant a right to use the land or any conditions imposed by the Port Authority in granting such a right. Furthermore, the HRO would provide for reimbursement to the holder of a grant of permission where the works or mooring

permission to which the right relates is subsequently revoked or terminated by the Port Authority.

233. The proposals for separation of the permission to impede the public right of navigation and the granting of a property right are based on a perceived tension by stakeholders between the PLA's statutory consent of works at section 66(1) and the granting of rights over the PLA's land for those works at section 66(1)(b) of the 1968 Act.
234. James Trimmer, the PLA Director of Planning and Development stated in his evidence that the current system has given rise to a view that the PLA is concerned with 'selling' consents. The PLA does not agree with this view but nevertheless maintains that the link between the statutory consent and the rights over land is inappropriate.
235. Benedict Fanning, the Head of Estates for the PLA, confirmed in his oral evidence that the proposed split is designed to make clear that the grant of a licence is in no way influenced by the level of consideration that the PLA might receive. He also confirmed that he was not aware of any allegation having been made in this regard, but that it could be thought that the two processes were linked.
236. As matters stand, Mr Fanning's department will receive a licence after it has been approved and will assess the licence fees on best consideration principles, excluding monopoly value. This assessment of consideration is not concerned with the cost of impeding navigation, but purely with the property interest. Under the proposed new scheme Mr Fanning's department would set the consideration level and would also create property rights and interests.

#### Subsection 3B – consideration for licences

237. The HRO also proposes an amendment to section 11(3) that would enable the PLA to ‘grant a licence for use of land or the discharge of water into the Thames... for such consideration as they think fit’. The HRO introduces new subsections 3A to 3G. Subsection 3B is concerned with consideration and states that the consideration for the grant of an interest in or rights over or under or a right to use land is to be such as may be agreed between the Port Authority and the holder of the permission. In the event of a failure to agree, the matter can be referred to an arbitrator for assessment on best consideration principles, excluding monopoly value<sup>72</sup>.
238. Some objectors have argued that the PLA ought to be required to obtain best consideration in all cases. Ms Bex KC, who appeared as a witness for CRBA, argued that there are no safeguards in place to prevent the PLA from disposing of property at a significant undervalue thus failing to protect assets of which the PLA are the custodian for the public good.
239. It is the position of CRBA that there should be an amendment to section 11 of the 1968 Act to make it clear that *proprietary rights cannot be sold other than for the “best consideration in money or money’s worth that may reasonably be obtained, having regard to all the circumstances of the case including the value of any such interest or right and taking into account any works or mooring permission granted but excluding any monopoly value attributable to the extent of the Port Authority’s ownership of comparable land.”*<sup>73</sup>
240. The PLA has responded that it should be afforded a degree of discretion because some organisations such as sports clubs, which fulfil a social purpose, should be granted discounted rates where appropriate. It has been suggested by objectors on

<sup>72</sup> See subsection (3C)

<sup>73</sup> This was the position set out within a letter from Hamblins LLP to the MMO dated 8 October 2021, which CRBA adopted as part of its Proof of Evidence. Inquiry Documents CRBA/1

the one hand that the existence of a discretion could lead to preferential treatment being given to some applicants.

241. On the other hand, it was suggested by other objectors, in particular by Mr Powlesland on behalf of TBYBC that discounts should be provided to riverworks which relate to environmentally beneficial operations, such as waste disposal facilities. I note that the revision to section 21 of the 1968 Act under Article 12 of the HRO would enable PLA to take environmental matters into account when considering whether to discount in relation to any particular application.
242. Ms Bex KC has stated in her written closing submissions<sup>74</sup> that Mr Turney KC had said at the hearing that it would be possible to draft a clause that enabled the PLA to continue to dispose of assets for less than best consideration than it currently does, but that the PLA takes the view that doing so would be a bad idea, primarily because circumstances might change and it might become necessary to revisit the 1968 Act.
243. It is regrettable that the PLA has published no guidance concerning the criteria for discounted consideration for River Works Licences or permissions. I accept the point made by Ms Bex that the current system is open to abuse.
244. However, I do not consider that it would be appropriate to recommend modification of the HRO so as to make changes to the 1968 Act to include provisions for best consideration or to require guidelines on discounting of rates. These are matters which the PLA should consider independently.
245. One of the criticisms of the PLA that was voiced at the Inquiry by objectors is that there is a lack of transparency concerning how the PLA exercises its statutory functions. I consider that, as a matter of good practice the PLA should draw up such

<sup>74</sup> Inquiry Documents ID29

guidelines, so that stakeholders' concerns over protection of assets might be allayed. Furthermore, guidelines would enable stakeholders to be better placed to fund schemes that require river works on the Thames, which may carry social or environmental benefits.

#### Subsections 3D – 3F New right of appeal

246. Subsections 3D to 3F would provide a new right of appeal to the Secretary of State in the event of a refusal to grant the necessary property right concerning conditions imposed in relation to such right. Subsection 3G provides for reimbursement where a works or mooring permission is revoked or terminated.

#### Conclusions on Article 9

247. I agree with the PLA that the proposed amendment to section 11 of the 1968 Act achieves the objects of paragraph 3(c) of Schedule 2 to the Harbours Act to vary powers to regulate the carrying on of activities by others relating to the harbour or activities on harbour land.
248. I have taken account of the objections to Article 9 that have been made by CRBA, in relation to the perceived artificiality of the separation of consideration to be paid for property rights and for permissions; whether there should be a public register of all applications for a lease of the riverbed (a point also made by the River Thames Society) and possible criminal sanctions for breaching terms of rights granted under the amended section 11. I do not consider that the HRO should be modified in light of these points. Neither am I persuaded that any modifications should be made to the HRO in light of the comments of Thistleworth Marine Ltd and OPLAC.

249. It is not immediately clear that there is any real benefit to be derived from replacing the current deemed right provisions in section 66(b) with a two-tier approach that will be vulnerable to claims that a licence holder may have acquired security of tenure. However, on balance and subject to a modification, I accept that Article 9 is a necessary consequence of the proposed new permitting regime.
250. I recommend modification to Article 9 in relation to the proposed new section 93A of the 1968 Act, which requires that any owner of land adjoining the Thames must install and maintain grab chains and escape ladders on the riverbank as the Port Authority may reasonably require in the interests of safety.
251. During the course of the Inquiry, the PLA confirmed, in a Note following the Evidence of James Trimmer,<sup>75</sup> that it would not charge riparian owners for installation of grab chains and safety ladders. However, the PLA has not incorporated this concession into the HRO. I have dealt with this issue in more detail in relation to Article 51 below. I recommended that article 9(d) of the HRO is amended so that the new subsection 3B will read as follows:
- (3B) Save that no consideration shall be payable in relation to any part of a property licence granted solely in relation to grab chains and escape ladders, the consideration for the grant of an interest in or rights over or under or a right to use land is to be such as may be agreed between the Port Authority and the holder of the permission or, failing agreement, is to be assessed in accordance with subsection (3C) by an arbitrator appointed on the application of either party, after notice to the other, by the President of the Royal Institution of Chartered Surveyors or their deputy.*
252. Subject to the above modification, I recommend that Article 9 of the HRO is approved as the changes meet the section 14(2)(b) test in that they are desirable in

<sup>75</sup> Inquiry Documents ID20

the interests of securing the management of the harbour in an efficient and economical manner.

#### **Article 10. Application of landlord and tenant law**

253. Article 10 of the HRO would insert section 11A into the 1968 Act to disapply landlord and tenant law to the interests created. Effectively the HRO would import property interests into the licensing regime but would prevent the holder of any property right that was granted from being able to assert entitlement to security of tenure. The justification advanced by the PLA for section 11A is that it is possible that some of the licences created under the new regime might be determined to be leases, even though that had not been the intention of the PLA in granting them.
254. Were that to be the case, the Port Authority would be restricted in its ability to exercise its statutory functions and, in particular, it would be prevented from taking action where required in the interests of river safety.
255. As matters stand the PLA has been cautious to ensure that any lease that it grants in relation to the riverbed will be granted in circumstances, so as not to provide security of tenure. In his oral evidence before the Inquiry, Mr Fanning stated that there have been: ‘instances where we have granted a lease, but running alongside it is a licence, and if the licence for some reason falls away, so does the lease, so there’s no security of tenure.’
256. Essentially, the proposed section 11A seeks to ensure to maintain the status quo insofar as the security of tenure provisions under landlord and tenant law do not apply in relation to river works under the present regime. Section 11A will ensure that they do not apply under the regime proposed by the HRO.

257. The PLA Statement in Support of the Application states that section 11A follows provisions which have been included in the legislation of other statutory undertakers to ensure that they are able to discharge their statutory functions. I have noted that section 42 of the Crossrail Act 2008, which allows for the Secretary of State to reclaim land needed for a development agreement where there is an existing lease in place, adopts the same wording as the proposed section 11A.
258. I have considered the objections to Article 10 from CRBA, Thistleworth Marine Ltd, OPLAC and TBYBC. CRBA stated in its initial objection that if the PLA is concerned not to be subject to the law of landlord and tenant, then it should simply ensure that it grants non-assignable licences over the riverbed and not leases.
259. However, notwithstanding the points made by objectors, I accept the position of the PLA as set out at paragraph 10.2 of its Statement of Case to the effect that the PLA must have the ability to terminate a lease where it is necessary to do so in the interests of the safe navigation of the Thames and the protection of public rights of navigation.
260. I agree that the new section 11A is necessary to preserve the status quo (as landlord and tenant law is not applicable to the current deemed property right situation). I also accept that the splitting of the licensing and property rights functions might leave the PLA in a potentially more vulnerable position where security of tenure will be claimed, which could prevent the PLA from exercising its statutory functions.
261. The amendment to the 1968 Act achieves the objects of paragraph 3(c) of Schedule 2 to the Harbours Act 1964 to vary powers to regulate the carrying on of activities by others relating to the harbour or activities on harbour land.
262. Having considered the evidence before me, I find that the proposed section 11A is necessary to ensure that the new split regime does not create any security of tenure interests that are not present within the current regime under section 66 of the 1968

Act. For these reasons I recommend approval of Article 10 of the HRO. I find that the insertion of the new section into the 1968 Act is desirable in the interests of securing the management of the harbour in an efficient and economical manner and satisfies the test in section 14(2)(b) of the Harbour Act.

### **Article 11. Power to acquire securities, lend money and give guarantees**

263. The HRO proposes that section 13 of the 1968 Act is amended to give subsidiaries of the Port Authority the same financial powers as the Port Authority itself. In its Statement in Support of the Application<sup>76</sup> the PLA states that the Port Authority is providing assistance to companies or groups along the river and may want to do so via a subsidiary as opposed to the Port Authority itself. The PLA states that in the past it has had subsidiaries such as Port of London Properties Limited, but it was limited to providing land in joint partnerships.
264. OPLAC has objected to this proposal on the basis that the need to include references to subsidiaries has not been adequately explained. At paragraph 8.4.9 of its Statement of Case the PLA states that providing for subsidiaries to have the financial powers contained in section 13 (power to acquire securities, lend money and give guarantees) further reflects this modernising approach to the PLA's operations. Mr Lockwood confirmed in his Proof of Evidence at paragraph 10.17<sup>77</sup> that the PLA does not have any current plans to restructure to include subsidiaries, but that the amendment sought would allow the PLA to restructure in the future to ensure the efficient running of its undertaking.
265. Having heard the evidence of Mr Lockwood I am satisfied that the proposal meets the objective in paragraph 13 of Schedule 2 1964 Act to securing that the financial affairs of the Port Authority are properly managed. I find that the proposed amendment meets the test in section 14(2)(b) as desirable in the interests of managing

<sup>76</sup> Core Documents CDB2

<sup>77</sup> Inquiry Documents PLA/1

the harbour in an efficient and economical manner and recommend that Article 11 of the HRO is approved.

#### **Article 106 - Repeal of Section 18 (Refreshment rooms)**

266. Under Article 106 of the HRO, section 18 of the 1968 Act, which relates to the provision of refreshment rooms, would be repealed as the provision is considered by the PLA to be no longer necessary. The PLA notes in its Statement in Support of the Application that Port Authority has a general power under section 19 (Staff benefits) to provide these facilities.

267. Furthermore, the Port Authority no longer owns the docks and it is not thought necessary to provide specifically for refreshment rooms or canteens as these facilities were only needed in the docks. The repeal meets the objective in paragraph 3(a) of Schedule 2 of abolishing powers to manage the harbour. I would recommend approval of Article 106 in relation to this repeal. There are no outstanding objections in respect of it.

#### **Article 106. Repeal of Section 20 (staff housing)**

268. Under Article 106 of the HRO, section 20 of the 1968 Act in relation to staff housing would be repealed. The PLA maintains that section 20 is no longer necessary. The provisions of section 19 (Staff benefits) would authorise providing housing, if this was deemed appropriate. I would recommend approval of Article 106 in respect of this repeal. There are no outstanding objections in relation to it.

#### **Article 12. Power to make certain changes**

269. Article 12 of the HRO proposes modifications to section 21 of the 1968 Act to address certain gaps in the Port Authority's charging powers. The first change within section 21 introduces a power to make charges in respect of intra port charging. This

would enable the PLA to levy charges on goods which are loaded in one part of the harbour limits and unloaded in another without leaving the limits.

270. The explanation for this change is provided at paragraph 8.1.2 of the PLA Statement of Case:

*Section 21 (power to make certain charges) has been modified to address certain gaps in the PLA's charging powers. The amendments in section 21(1) would allow for the modernisation of the charging regime by allowing for the PLA to charge in respect of apparatus and goods which are transported within the limits without entering or leaving the limits. The provision supplements the scope of the power to charge goods dues under section 26 (repeal of provisions limiting discretion of certain harbour authorities as to ship, passenger and goods dues charged by them) of the Harbours Act. It will make clear that the PLA may levy charges on goods which are loaded in one part of the harbour limits and unloaded in another without leaving the harbour limits.*

271. Mr Lockwood clarified in his Proof of Evidence<sup>78</sup> that:

*The PLA has no immediate intention to introduce intra-port charges, but they are something we may wish to introduce in the future. It would only seem right and proper in principle to recover our costs of managing, maintaining, and improving our harbour through all cargo carrying vessels including those operating within limits given they make up 5-10% of volume in any one year. The amendments are desirable in ensuring that the PLA can charge all users of the Thames on a fair and equitable basis. It is fairer that the PLA should be able to spread the costs amongst all users of the river.*

272. In his oral evidence before the Inquiry Mr Lockwood stated that he was not aware of intra port charging being used by any other harbour authority. He clarified that in his view most ports would not undertake such charging because they would simply comprise an entry and exit point and not a long stretch of river. He stated that as matters stand in the tidal Thames 100% of the charges are levied against 85%-90% of shipping cargo traffic. Mr Lockwood additionally confirmed that the PLA cargo charges are relatively insignificant in the decision to use road transportation rather than river transportation.

<sup>78</sup> Inquiry Documents PLA/1

273. At paragraph 7.12 of his Proof of Evidence Mr Lockwood stated that: *The changes clarify the position in relation to intra-port charging which is already arguably authorised under the HA 1964.* I note that section 26 of the Harbours Act 1964 enables all harbour authorities to charge goods dues. These dues are more accurately described as ship, passenger and goods dues, which are defined in the interpretation section of the 1964 Act at section 57:

*“ship, passenger and goods dues” means , in relation to a harbour, charges (other than any exigible (i.e taxable) by virtue of section 29 of this Act) of any of the following kinds, namely,— (a) **charges in respect of any ship for entering, using or leaving the harbour**, including charges made on the ship in respect of marking or lighting the harbour;*

*(b) charges for any passengers embarking or disembarking at the harbour (but not including charges in respect of any services rendered or facilities provided for them); and (c) charges in respect of goods brought into, taken out of, or carried through the harbour by ship (but not including charges in respect of work performed, services rendered or facilities provided in respect of goods so brought, taken or carried); (emphasis added)*

274. Notwithstanding that the PLA might be able to derive a power to impose intra port charging from the 1964 Act, it appears that the proposal in the HRO would meet the objective in paragraph 11 of Schedule 2 to empower the Port Authority to levy charges other than ship, passenger and goods dues. I have noted that stakeholders would have an ability to object to the charges under section 31 of the Harbours Act.

275. The HRO would also amend section 21 to widen the general power to make charges for services to make clear that the Port Authority has the power to recover its costs in connection with the new power to grant property interests or rights in connection with a works or mooring permission under section 11(3).

276. The proposed new subsection (3) allows the Port Authority to make total or partial exemptions, rebates or other arrangements in respect of the charges levied for the services under the terms of this section. It follows a similar provision in the Neath Harbour Revision (Constitution) Order 2009 (SI 2009/2207).

277. Mr Lockwood has clarified at paragraph 7.15 of his Proof of Evidence<sup>79</sup> that situations in which the PLA would look to grant rebates or charges waivers would be for environmental benefit including early adoption of innovative fuels (aligned with Thames Vision ambitions), to support the growth of emerging markets, to support community or charitable clubs and organisations such as Sail Training vessels (especially those in deprived areas or supporting underrepresented community groups) or to help new businesses in the early stages of establishment on a short term basis. I do not consider it appropriate that the HRO is modified to include this clarification but, as stated above in relation to charges for property rights, I take the view that the PLA should, as a matter of good practice, publish guidance for the benefit of stakeholders.
278. I have taken account of the objections to the proposed section 21 from Inland Waterways Association, Thistleworth Marine Ltd, OPLAC and TBYBC. In particular, the objectors have expressed a concern that intra port charging represents a substantial increase in the powers of the Port Authority.
279. Notwithstanding the points raised in the objections, I consider that the increased powers would permit the Port Authority to charge all users of the Thames on a fair and equitable basis. I find that Article meets the test in section 14 (2)(b) as desirable in the interests of managing the harbour in an efficient and economical manner. Accordingly, I recommend that Article 12 of the HRO is approved.

### **Article 13. Charges regulations**

280. The HRO would amend section 22 of the 1968 Act to ensure that the terminal operator and the owners of a work to which a vessel on which charges are payable is moored, are included within the list of stakeholders who should be required to

<sup>79</sup> Inquiry Documents PLA/1

provide the PLA with such information as is reasonably required, in connection with the assessment and collection of a charge. As matters stand the 1968 Act excludes these two groups from the requirement.

281. Mr Lockwood states at paragraphs 8.4 and 8.5 of his Proof of Evidence<sup>80</sup> that the PLA wants ‘to see fair and equitable charging across the river and if we are basing our charges when we have gaps in our information then it is likely that we are falling short of this aim’.
282. Following objections the PLA has amended the HRO, so that it is not able to require provision relevant information from the holder of a works, mooring or dredging permission. Furthermore, the definition of ‘terminal’ has been amended to confirm that houseboats are not included within that definition. The master or owner of houseboat is otherwise subject to the power to require information, as it falls within the definition of ‘vessel’ as amended within the definitions section the 1968 Act, at section 2.
283. Consequential changes have also been made to subsection (1) to remove reference to exemptions from charging which have been repealed. Subsections 1(b) and (c) would be amended to clarify that information required under that subsection must be such information as is reasonably required by the Port Authority.
284. Furthermore, subsection (4)(a) has been amended because the PLA considers that it would be onerous to have to publish extracts from the regulations with each schedule of charges when the regulations are themselves required to be published by the Port Authority under subsection 4(b).

<sup>80</sup> Inquiry Documents PLA/1

285. I have considered objections to this Article from River Thames Society, NBTA, Thistleworth Marine Ltd and OPLAC. NBTA has raised an issue concerning privacy as the definition of ‘vessel’ will now include ‘any vessel which is used primarily as a place of habitation’. The PLA states in response that it will sometimes become necessary to speak to owners of moorings to investigate issues relating to payment of charges where it is not possible to obtain the required information from an owner of master of a vessel.
286. Having considered the evidence and submissions before me, I consider that the requirement to provide information relevant to the assessment of charges is not disproportionate. Neither would the proposed amendment breach the Article 8 ECHR rights of boat dwellers. I note that the amendment states that any such information must be reasonably required.
287. I agree with the position taken by the PLA that the changes to section 22 meet the objective in paragraph 12 of Schedule 2 to secure the efficient collection of charges and to specify the persons by whom charges are to be paid. I consider that the amendment to section 22 meets the test in section 14(2)(b) of the Harbours Act, because the changes would facilitate a more fair and equitable charging system.
288. There appears to be a typographical error in the HRO in Article 13(2)(b)(v), which refers to section 39(2B)(2). There is no such section in the 1968 Act. Subject to clarification by the PLA, I would propose that Article 13(2)(b)(v) is modified to refer to section 39(2B). Subject to this modification I recommend that Article 13 is approved.

#### **Article 14. Arrangements with Her Majesty’s Revenue and Customs**

289. Article 14 of the HRO would update section 23(2) of the 1968 Act to refer to the Merchant Shipping Act 1995, which is the current legislation under which the register of ships is maintained. There have been no objections relating to this

provision in the HRO. The text of section 23 should be amended to read ‘His Majesty’s Revenue and Customs’ where appropriate. Subject to this modification, I consider that the amendment achieves the objective in paragraph 12 of Schedule 2 to secure the efficient collection of charges and that it meets the test in section 14(2)(b) of the Harbours Act.

### **Article 15. Payment of charges**

290. Article 15 of the HRO inserts two subsections into section 35 of the 1968 Act. Firstly, a new subsection (2)(aa) would be added to clarify that it is the owner of a vessel who is responsible for paying charges in relation to passengers.

291. Secondly, a new subsection (3) would be added to identify the person liable to pay charges for works, dredging or mooring permissions or vessel licences. Such charges would be paid by the applicant up to the date that the permission or licence is granted and by the permission or licence holder from the date of the grant of permission.

292. There are no outstanding objections in relation to Article 15. I have considered the submissions made by the PLA in the updated Statement in Support of the Application. I agree that the proposed amendments meet the objective in paragraph 12 of Schedule 2 to secure the efficient collection of charges and to specify the times at which and the persons by whom such charges are to be paid. I also consider that the changes are desirable within the meaning of section 14(2)(b) of the Harbours Act. Accordingly, I would recommend approval of Article 15 – but subject to the text of section 35 being modified to read ‘His Majesty’s Revenue and Customs’ at subsection (2)(b).

293. The PLA Statement in Support of the Application deals (within the commentary to Article 15) with repeals to sections 27, 29, 30 and 33, and Schedule 10 of the 1968

Act. These provisions contain various historic exemptions from charges. I have dealt with these repeals below.

## **Article 106. The removal of exemptions from charges**

### **Repeal of Section 27. – Exemption from charges at Richmond Lock and Slipway**

294. The PLA maintains that the exemptions from charges at Richmond Lock and Slipway are obsolete and relate to trading barges. The PLA states that no freight currently transits through the lock, nor has freight done so for many years. As matters stand, vessels returning on the same day do not pay for the return trip.
295. Mr Lockwood stated at paragraph 8.9 in his Proof of Evidence that the exemption relating to Richmond Lock and Slipway is administratively burdensome. Mr Stride, the PLA Harbourmaster, gave evidence on 27 February 2025 and stated that the lock system is operated by 12 ex marines and firemen and that the gates must be lowered manually with the operators going up onto the footbridge.
296. Mr Lockwood stated that during 2024 a total of 373 chargeable transits were made through Richmond Lock and weir, of which, only 27 were commercial vessels. Recreational vessels represent the vast majority of transits (346 in 2024). The total income derived from all chargeable transits for 2024 was £4,666.00. During 2024, a total of 30 same day return journeys were made by a mixture of commercial and non-commercial vessels.
297. I am satisfied that that repeal of this exemption through Article 106 of the HRO is not motivated by financial gain and that circumstances have changed since the exemption was put into place. I accept the position of the PLA that the exemption should be removed from the 1968 Act, as per the HRO and recommend approval of Article 106 in relation to this repeal, which appears within Schedule 1 of the HRO.

For the avoidance of doubt, I consider that the repeal of provisions which are obsolete or which have become administratively burdensome fall within the section 14(2)(b) desirability test.

298. In his opening submissions before the Inquiry Mr Beaumont of OPLAC raised a concern that the PLA has prevented people crossing the lock bridge at night following an incident in around 2010 when drunken individuals threatened the lock keeper. According to Mr Beaumont this has caused difficulties between the PLA and the local community. I do not consider that this is a matter that can be resolved through the HRO – though no doubt the PLA will wish to consider Mr Beaumont’s submissions.

#### **Repeal of Section 29. Exemption from port rates for bunker fuel and fish**

299. The position of the PLA is that bunker fuel has been excluded from the definition of goods, consequently the exemption is no longer needed. The PLA further states that the historic provision relating to the landing of fish from the open sea within the Port of London is no longer relevant.

300. I accept the justification put forward by the PLA for the repeal of section 29. I consider that the removal of an obsolete exemption is consistent with the desirability test in section 14(2)(b) of the 1968 Act. There are no unresolved objections to the removal of this exemption. I recommend approval of the repeal, as per Article 106 of the HRO.

#### **Repeal of Section 30. Exemption from port rates for goods in transit**

301. The Inland Waterways Association (‘IWA’) has objected to the repeal of this exemption on the basis that it presently applies to goods carried by vessels that call

at a number of ports in the course of a voyage and which enter the PLA port limits to load or discharge a part of their cargo before proceeding to another port. Those goods that are not loaded or discharged at London are 'in transit' and are presently exempted from PLA charges.

302. IWA maintains that the proposed removal of the existing exemption of charges on goods in transit would seriously disrupt the economics of many existing trade routes. For instance, a vessel from America carrying cargo for both London and Rotterdam would be faced with paying PLA charges on the part of the cargo destined for Rotterdam. In these circumstances it is argued that it might be more economical for the vessel not to call at London at all.<sup>81</sup>
303. The PLA states in its Statement of Case<sup>82</sup> that most other European ports charge for goods in transit and that as the Thames gets busier, it is necessary for there to be a greater emphasis on managing vessel movements to ensure navigational safety. It is anticipated that the additional costs of these operations may need to be recovered in the future if this activity develops and terminals take on a greater role as transshipment hubs, feeding other ports in the UK and abroad.
304. I have considered the objection made on behalf of IWA and the response of the PLA to it. I accept the position taken by the PLA on this issue that section 30 is not consistent with the modern requirement to make charges reflecting changing circumstances. I agree that the exemption should be removed from the 1968 Act. I consider that the repeal meets the test in section 14(2)(b) of the Harbours Act as the proposed change would be desirable in the interests of managing the harbour in an efficient and economical manner and would also operate to facilitate the efficient and economic transport of goods by sea. I recommend that the repeal is approved, as per the Article 106 of the HRO.

<sup>81</sup> Core Documents. CDE.3

<sup>82</sup> Inquiry Documents SOC/1

### **Repeal of Section 33. Exemption from river duties of tonnage**

305. The PLA has stated that this historic provision applied to smaller vessels which no longer exist, consequently it is being repealed through Article 106 of the HRO. There is no unresolved objection to the removal of this exemption. I consider that the repeal meets the desirability test in section 14(2)(b) of the Harbours Act, and I recommend that the exemption should be removed from the 1968 Act, as per Article 106 of the HRO.

### **Repeal of Schedule 10**

306. The exemption of lighters and craft in certain cases would be repealed through Article 106 of the HRO. This schedule refers to section 68 of the Port of London (Consolidation) Act 1922, the saving of which was set out in section 209, which is repealed within Article 106 of the HRO. There is no objection to the repeal of Schedule 10 and I recommend that the measure is approved.

307. I accept the position of the PLA that the removal of historic exemptions for charging meets the objective in paragraph 12 of Schedule 2 to secure the efficient collection of charges and to specify the times at which, and the persons by whom such charges are to be paid. The removal of the historic exemptions that would be brought about by the repeal of sections 27, 29, 30, 33 and Schedule 10 of the 1968 Act also accords with the section 14(2)(b) test. Alternatively, I have noted that the objects of the repeals relate to the repeal of obsolete or otherwise unnecessary statutory provisions of local application affecting the harbour – in which case section 14(2A) of the Harbours Act applies and it is not necessary to apply the section 14(2)(b) test. In any event, I recommend approval of Article 106 in relation to the repeals.

### **Article 16. Security for charges and consideration**

308. Article 16 of the HRO proposes that section 36 of the 1968 Act is widened to allow the Port Authority to require financial security to be provided not just in respect of a charge which is to be incurred, but also in respect of a liability to pay a consideration to the Authority. The form of security is not specified, but the PLA maintains in its Statement in Support of the Application that it should be sufficient to guarantee the obligation. There is no unresolved objection to the proposed amendment to section 36.

309. I agree with the position taken by the PLA that the amendment fulfils the objective in paragraph 12 of Schedule 2 to secure the efficient collection of charges. I recommend that Article 16 of the HRO is approved and find the changes to section 36 meet the requirement of the test in section 14(2)(b) of the 1964 Act.

#### **Article 17. Certificate of payment**

310. Section 37 of the 1968 Act is proposed to be amended to refer to Her Majesty's Revenue and Customs, instead of 'a customs officer'. This is a minor change, which fulfils the objective in paragraph 12 of Schedule 2 to secure the efficient collection of charges. There is no unresolved objection to the proposed amendment to section 37 and I find that it is desirable in line with the section 14(2)(b) test that the language of the 1968 Act is updated. Subject to modifying the wording of section 37 of the 1968 Act to refer to 'His Majesty's Revenue and Customs', I recommend that Article 17 of the HRO is approved.

#### **Article 18. Entry on vessels**

311. The HRO proposes amendment of section 38 of the 1968 Act. The reference in section 38(1) to the docks would be deleted. Subsection (2), which makes it an offence for a master of a vessel to fail to comply with a reasonable request for information by an officer of the Port Authority, would be expanded to cover making a false statement.

312. I agree with the PLA that the proposed changes to section 38 meet the objective in paragraph 12 of Schedule 2 to secure the efficient collection of charges and find that the changes to section 38 are desirable within the meaning of section 14(2)(b) of the 1964 Act. There is no unresolved objection to the proposed amendment, and I recommend that Article 18 of the HRO is approved.

### **Article 19. Recovery and enforcement of charges and consideration**

313. Article 19 of the HRO proposes amendment of section 39 of the 1968 Act to increase the PLA's enforcement powers in relation to river works and moored vessels. The proposed amendments in subsections 2A and 2B allow the PLA to seize a work or vessel until payment of the charges for the works or mooring permission; the consideration payable for use of land in respect of that work or mooring; together with the costs of removal, storage and maintaining the work and the vessel.
314. Section 39 would be amended to remove the reference of a dock where the wording was previously 'in a dock or within the limits'. In response to a point taken by OPLAC and Thistleworth Marine Ltd Mr Lockwood has stated at paragraph 12.5.4 of his Proof of Evidence<sup>83</sup> that this is not a substantive change. The power is still applicable within the whole of the limits, as it was before the change.
315. The proposed amendment to section 39 of the 1968 Act has been the subject of objections from River Thames Society, NBTA, Thistleworth Marine Ltd, OPLAC and TBYBC. In response to concerns from objectors about the power to seize or detain a work or vessel, the PLA has added new subsections (2D) and (2E) to section 39.

<sup>83</sup> Inquiry Documents PLA/1

316. These subsections provide that the PLA must not exercise the power in (2B) to seize or detain in relation to a houseboat without first obtaining a warrant under (2E).

317. As presently drafted subsection 2D and 2E states:

*(2D) The Port Authority must not exercise the power conferred by subsection (2B) in relation to a houseboat without first obtaining a warrant issued under subsection (2E),*

*(2E) If, upon application by the Port Authority, it appears to a justice of the peace that it is entitled to exercise the power conferred by subsection (2B), the justice must issue a warrant authorising the Port Authority to exercise the power.*

318. The position of the PLA is that the requirement to obtain a warrant from a Justice of the Peace provides an extra level of protection in relation to houseboats.

319. Paragraph 8.3.7 of the PLA's Statement of Case states:

*8.3.7 The PLA considers that it is appropriate for there to be clear and enforceable sanctions against owners of works or vessels who fail to pay the consideration for their use of the river. The use of these powers may engage Article 8 or Protocol 1, Article 1, but the interference with those rights would be justified in the public interest. The PLA would only use its powers to seize a vessel which is someone's home through seeking a court order. The Court could then make a determination on the issue of whether the exercise of the powers is justified and proportionate.*

320. However, the wording of the new sections 2D and 2E makes no reference to the seeking of a court order, only to the issue of a warrant. There is no reference to any exercise of discretion in the process set out at subsection (2E). I have noted that it was a feature of the evidence from CRBA and the NBTA that the process outlined in the HRO did not permit a procedure where the owner of a houseboat would have a fair hearing.

321. This issue as to the matter was raised with Mr Lockwood at the conclusion of his oral evidence, following which the PLA issued a Note<sup>84</sup>, which materially states as follows: (emphasis added)

*Section 39(2E) (Recovery and enforcement of charges and consideration)*

*3.1 The Chair raised a query as to whether the existence of section 39(2E) (“If, upon application by the Port Authority, it appears to a justice of the peace that it is entitled to exercise the power conferred by subsection (2B), the justice must issue a warrant authorising the Port Authority to exercise the power.”) conflicted with the comments in Mr Lockwood’s Proof of Evidence (PLA/1) that “the PLA would only use its powers to seize a vessel which is someone’s home through seeking a court order”. Mr Lockwood’s Proof of Evidence does also make reference to the proposed new (2E) at paragraph 12.5.11, stating that the new (2D) and (2E) “provide that the PLA must not exercise the power in (2B) in relation to a houseboat without first obtaining a warrant under (2E)”.*

*3.2 It should, firstly, be noted that the new subsection (2E) is of broader application than to just houseboats. If a justice of the peace considers that the PLA is entitled to use the power conferred in (2B) then they must issue a warrant authorising the PLA to exercise that power.*

**3.3 As regards the possible interaction between the obtaining of a warrant under (2E) and the practice described in the PLA’s evidence of obtaining a court order before seizing a vessel which is someone’s home, the process would take place in two stages. Firstly, in relation to a vessel which is someone’s home, the PLA would first seek and obtain a court order. This would enable any relevant human rights issues to be considered and adjudicated on and would allow the owner of the vessel to be involved in that process Once the PLA has obtained that court order, it is clearly entitled to exercise the seizure power. If the PLA then chooses to take possession of the vessel, it could then seek a warrant on the basis of the court order it has received. The justice of the peace would be required to grant that warrant**

322. I am grateful for the clarification that the PLA has provided. However, the two-stage process outlined by the PLA is not reflected in the wording of subsections (2D) and (2E). I consider that it is desirable that the HRO reflects the true position. Accordingly, I recommend that Article 19 (2D) of the HRO should be modified to

<sup>84</sup> Inquiry Documents ID10

reflect the position set out in the PLA Note. With this modification in place, sections 39(2D) and 39(2E) would read as follows:

*(2D) The Port Authority must not exercise the power conferred by subsection (2B) in relation to a houseboat without first obtaining*

*(iii) an Order for possession from a court of competent jurisdiction and*

*(iv) a warrant issued under subsection (2E),*

*(2E) If, upon application by the Port Authority, it appears to a justice of the peace that it is entitled to exercise the power conferred by subsection (2B), the justice must issue a warrant authorising the Port Authority to exercise the power.*

323. The PLA has not specified whether the order to enable it to establish a right to possession of a houseboat would be sought in the Magistrates or County Court. Any such application would involve consideration of welfare assessments and Article 8 ECHR proportionality issues. I would advise that the MMO clarifies with the PLA which court would be seised of these matters before any approval of the HRO by the Secretary of State.

324. Aside from the powers to seize and detain, Article 19 of the HRO would amend section 39 of the 1968 Act to authorise the Port Authority to sell detained goods, vessels or works. In relation to the PLA's enforcement powers in relation to river works and vessels Mr Lockwood states at paragraph 9.7 of his Proof of Evidence<sup>85</sup> that the PLA does not own the works or vessels in question and so currently has no means to recover the cost of dealing with them if it becomes necessary to remove them.

325. The PLA confirms in its Statement in Support of the Application<sup>86</sup> that subsection (4) would be amended to allow the sale of a work and references to a work are also now included in subsection (7) and to a work or vessel in subsection (12).

<sup>85</sup> Inquiry Documents PLA/1

<sup>86</sup> Core Documents CDB2

326. However, a new subsection (5) would introduce a safeguard qualifying the power of sale of a vessel, by providing that in a case where the vessel is not owned by the defaulting holder of a works or mooring licence, the power of sale is not to be enforced unless the owner of the vessel has not claimed ownership within 90 days of notification of the proposed sale.
327. The HRO proposes further changes in the enforcement powers within section 39. Subsection (6), as proposed, has been widened to cover any person, not just the master of a vessel, removing or attempting to remove, without the Port Authority's consent, goods, vessels or works which have been detained.
328. Subsection (7) would be amended to allow the proceeds of sale to be applied to the costs of the attempted sale and the sale and disposal, including the costs incurred by the Authority in seizing, removing pumping out, raising, maintaining or storing any work or vessel. Reference to the costs of sale has also been included in the power to recover costs in subsection (4).
329. Additionally, a new proposed subsection (13) clarifies that references to "vessel" include appurtenances, tackle and any chattels on or with it, but personal chattels are excluded based on the descriptions of "exempt goods" under section 9 of the Courts Act 2003 which cannot be seized by an enforcement officer in exercising a writ<sup>87</sup>.
330. Subsection 8(a) would be amended so that it refers to sums payable to Her Majesty's Revenue and Customs. I have noted that the HRO, as currently worded, refers to Her Majesty's Revenue and Customs. I have recommended above that the wording is changed.

<sup>87</sup> The reference to the Courts Act 2003 is set out at paragraph 22.7 of the PLA Statement in Support of the Application.

331. Subsection (11) would be amended so that it provides for a reasonable opinion to be required that the property to be sold has been abandoned, Notice may be given for seven days before the sale.
332. Finally, subsection 13 would confirm that chattels which would be subject to any sale would exclude ‘any tools or other items of equipment necessary for the employment of any person, or such clothing, bedding or furniture or domestic equipment and provisions as are necessary for satisfying their basic domestic needs (except where these have been abandoned or in the reasonable opinion of the Port Authority are so damaged as to no longer be usable for such employment or to satisfy basic domestic needs)’.
333. Subject to the amendment to subsection 2D, as detailed above, I would recommend that the changes to section 39 of the 1968 Act are approved. The changes achieve the objective in paragraph 12 of Schedule 2 to secure the efficient collection of charges and meet the test in section 14(2)(b) of the Harbours Act in that they are desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner.

#### **Article 20. Refusal of customs clearance**

334. Article 20 of the HRO proposes an amendment to section 40 of the 1968 Act to refer to ‘Her Majesty’s Revenue and Customs instead of “A customs officer”’. There is no unresolved objection to this change. I agree with the position taken by the PLA that this achieves the objective in paragraph 12 of Schedule 2 to secure the efficient collection of charges. I recommend that section 40 is modified to refer to ‘His Majesty’s Revenue and Customs’ instead of ‘Her Majesty’s Revenue and Customs’’. Subject to this modification I find that the amendment to update the language of the

1968 Act as proposed under Article 20 is desirable in line with the section 14(2)(b) test. I recommend that Article 20 of the HRO is adopted.

### **Article 106 - Repeal of Section 46. Port Fund**

335. Section 46 (Port Fund) is to be repealed through Article 106 of the HRO as the PLA considers that it is no longer feasible to carry all receipts to and make all payments out of the port fund. The PLA also maintains that there is no longer any need to retain the fund. The repeal meets the objective in paragraph 3(a) of Schedule 2 of the 1964 Act of abolishing duties or powers to manage the harbour.
336. OPLAC has objected to the repeal on the basis that further justification should be provided. The PLA responded to this objection by stating that the obligation to maintain the port fund has been removed because it is not compatible with modern accounting practices and that maintaining a port fund and requiring all receipts to be carried to it and all payments to be made from it is not feasible. The PLA maintains that this meets the objective in paragraph 13 of Schedule 2 of the 1964 Act to regulate the application of moneys in the nature of revenue and to securing that the financial affairs of the Port Authority are properly managed.
337. I accept this justification and that the proposals engage the test in section 14(2)(b) of the 1964 Act. I would recommend that Article 106 is approved in relation to the repeal of section 46.

### **Article 21. Application of Port Authority's revenue**

338. Article 21 of the HRO proposes that sections 47(1)(b), 47(1)(c) and 47(2) of the 1968 Act are repealed. These sections refer to port stock. The PLA states in its Statement in Support of the Application that there is no longer any port stock as it has all been

repaid. In addition, to reflect changes in accounting terminology, section 47 would be amended to refer to profit and loss statements instead of revenue account.

339. The PLA further states that the proposed changes meet the objective in paragraph 13 of Schedule 2 of the 1964 Act to regulate the application of moneys in the nature of revenue and to securing that the financial affairs of the Port Authority are properly managed. There are no objections to the changes in section 47. I find that the changes are desirable within the meaning of section 14(2)(b) of the Harbours Act, and I would recommend that Article 21 is approved. I would add that the pagination of the subsections within section 47 would need to be altered from how it appears in the March 2025 marked-up version of the 1968 Act<sup>88</sup>, so that the subsections are sequential.

#### **Article 22. Borrowing powers**

340. Article 22 of the HRO proposes an extension to the PLA's borrowing powers. As currently drafted, section 48 of the 1968 Act allows the PLA to borrow money, secured against the PLA's assets, or the port fund or against revenues, and such borrowing is capped at £200m. Section 48 details permissible sources of finance and places restrictions on what moneys borrowed can be used for which is namely capital and to repay monies already borrowed. Ministerial approval is required if the PLA wishes to borrow in excess of £200m, borrow by any other means listed or wish to use the funds borrowed for any other reasons than capital or to repay monies already borrowed.
341. Article 22 of the HRO would update section 48 to provide a new general and unrestricted power to borrow, which would not require ministerial approval. However, it is not proposed that the PLA should have a power to issue bonds.

<sup>88</sup> Inquiry Documents. ID18 – see page 31.

342. OPLAC and the TBYBC have objected to the proposal on the basis that the extended powers are not justified. In response, the PLA has stated that the proposed amendment is based on precedent in other harbour legislation. The PLA states at paragraph 8.4.5 of its Statement of Case that trust ports such as Harwich Haven Authority have made this change.
343. In his Proof of Evidence Mr Lockwood<sup>89</sup> states at paragraph 10.3 that the PLA may need to borrow to pay a premium for buying out its pension risk to de-risk its investment strategy. Mr Lockwood provides a further justification for the proposed changes at paragraph 10.8, where he states that as London continues to attract some of the largest shipping lines and vessels, the PLA might need to undertake dredging particularly out in the estuary to allow for the increasing draughts of these vessels. He states that the cost of such dredging could run into the tens of millions of pounds. (Note: – I have considered this statement in relation to Article 26 below)
344. Mr Lockwood also states at paragraph 10.10 of his Proof of Evidence that the PLA needs greater flexibility with its borrowing powers as part of its general need to modernise its undertaking. The PLA argues that the removal of the current restrictions would enable the PLA to borrow in line with its principal mandates around improving the tidal Thames, facilitating safe navigation, protecting the marine environment and promoting use of the river.
345. The PLA also maintains that section 48 is currently drafted in terms which were relevant when the 1968 Act was passed (for example referring to the issuing of “port stock”). It is argued that the 1968 Act is now in need of modernisation.

<sup>89</sup> Inquiry Documents PLA/1

346. The PLA maintains that the proposed extension to its powers under section 48 would achieve the objective in paragraph 10 of Schedule 2 of the Harbours Act to empower the Port Authority to borrow money with or without limitation with respect to the amount that may be borrowed or the time or manner in which the power may be exercised.

347. I have considered the objections to Article 22 and the PLA's arguments in support of the changes proposed under the HRO. I consider that the proposed extension would indeed modernise the PLA's financial undertaking and that the desirability test in section 14(2)(b) of the Harbours Act is satisfied. I recommend that Article 22 of the HRO is approved.

#### **Article 106. Repeals in relation to financial powers**

348. Mr Lockwood states at paragraph 10.16 of his Proof of Evidence that *Sections 49 (Temporary loans), 52 (Ranking of port stock), 53 (Stock Regulations), 55 (Regulations relating to bonds), 58 (saving for powers of the Treasury) are obsolete and therefore removed.* These repeals are given effect through Article 106 of the HRO. There are no outstanding objections to these repeals, and I accept Mr Lockwood's evidence that sections 49, 52, 53, 55 and 58 of the 1968 Act are obsolete. I find that the repeals are desirable within the meaning of section 14(2)(b) of the Harbours Act and I recommend that Article 106 is approved in relation to the repeals of those sections.

#### **Article 23. Miscellaneous rights of stockholders and others**

349. Section 54 of the 1968 Act provides rights in relation to specific categories of loan. Article 23 of the HRO proposes that this section is amended to confer rights on lenders generally who have loans secured on the assets of the Port Authority. The PLA states in its Statement in Support of the Application that these changes are

necessary in consequence of the proposed extension of the general powers to borrow in section 48, and the repeal of the provisions relating to port stock and bonds.

350. The PLA further states in its Statement in Support of the Application that the amendment to section 54 meets the objective in paragraph 10 of Schedule 2 of the Harbours Act to empower the Port Authority to borrow money with or without limitation with respect to the amount that may be borrowed or the time or manner in which the power may be exercised. There are no outstanding objections to these proposed changes to section 54. I accept the position of the PLA that it is necessary to amend the 1968 Act to confer rights on lenders in light of the extension to the PLA's borrowing powers that would be brought about by the amendment to section 48 of the 1968 Act. Accordingly, I find that the Article meets the section 14(2)(b) test in the 1964 Act, and I recommend that Article 23 should be approved.

#### **Article 24. Power to charge interest on capital**

351. Section 56 imposes a 10-year limit (except with the consent of the Minister) on the period for which the Port Authority can charge to capital interest (as part of the cost of a work carried out by them) on money raised to pay for the work. Article 24 of the HRO proposes that this limitation is removed and that the 10-year limit and requirement for ministerial consent should no longer apply. The PLA states in its Statement in Support of the Application that the Port Authority should be free to determine this on a commercial basis and without ministerial control.
352. The PLA further states that this provision achieves the objective in paragraph 13 of Schedule 2 of the Harbours Act to regulate the application of moneys in the nature of revenue and to secure that the financial affairs of the Port Authority are properly managed. There are no outstanding objections to these proposed changes to section 56. Having considered the justification set out by the PLA, I agree that the Article

meets the stated objective, and I find that the section 14(2)(b) desirability test is met. I recommend that Article 24 should be approved.

### **Article 25. Accounts and audit**

353. Article 25 of the HRO proposes an amendment to section 59(3) so that instead of specifying the qualifications required for an auditor of the Port Authority's accounts, it provides that an auditor must be eligible for appointment as a statutory auditor, as defined in section 1210 of the Companies Act 2006.
354. Related to the amendment to section 8 of the 1968 Act, it is proposed that a new section 59(4) would set out an obligation to publish a report including a statement of the audited accounts of the Port Authority and any auditor's report on the accounts on their website or by other suitable electronic means and at its principal office. This would replace the previous requirement to publish a summary of the statement of audited accounts and the auditor's report in one or more daily newspapers.
355. The PLA states at paragraph 28.3 of the Statement in Support of the Application that the amendments to section 59 of the 1968 Act meet the objective in paragraph 13 of schedule 2 of the Harbours Act to secure that the financial affairs of the Port Authority are properly managed.
356. There are no outstanding objections to these proposed changes to section 59 of the 1968 Act. I have considered the submissions of the PLA as set out in its Statement in Support of the Application and accept that the stated objective is satisfied and that the changes meet the desirability test in section 14(2)(b) of the 1964 Act. I recommend that Article 25 should be approved.

### **Article 26. Dredging and improvement**

357. Section 60 relates to dredging and improvement. Article 26 does not propose significant changes to section 60 of the 1968 Act. The definition of dredge has been removed from the wording of the section because the term would now be covered in an amendment to the interpretation section at section 2(1) of the 1968 Act.

358. A number of concerns were raised at the Inquiry by Thamesbank and TBYBC in relation to dredging. I have referred at paragraphs 89-91 above to the closing submissions from Ms Nevin, Counsel for Thamesbank,<sup>90</sup> which referred to the evidence of Mr Lockwood that more extensive dredging in the tidal Thames might be undertaken. Those submissions state as follows:

20. *Thamesbank's concerns about the PLA's plans to revise the licensing regime for dredging have been accentuated at this inquiry by Mr Lockwood's account of the PLA's internal plans to expand dredging "particularly out into the Estuary". Mr Lockwood explained that this would be needed to accommodate the greater navigational needs and increased traffic of large vessels navigating the Thames.*
21. *Ms Rawnsley also confirmed during cross examination that the PLA has the authority to undertake capital dredging but that only maintenance dredging has occurred in the Outer Thames Estuary thus far. In response to a question from the Chair, Ms Rawnsley clarified that even if maintenance dredging took place in an area before, any further deepening of an existing maintenance dredge would count as capital dredging.*
22. *Thamesbank is very concerned about the PLA's intention through this HRO to expand the definition of dredging and revise the licensing regime for dredging without a SEA or any public consultation on potential environmental impacts. These concerns are exacerbated by the PLA's decision to volunteer for the first time at this inquiry through Mr Lockwood that it is planning to increase dredging "particularly out into the Estuary" to accommodate large vessels. It is possible that some of these planned dredges would include capital dredges given the need to accommodate the increased depth required by large vessels. This kind of dredging will either not have happened before or not in the past 10 years. Given that 92% of the PLA's area is covered by environmental designations of some sort, with several of these located*

<sup>90</sup> Inquiry Documents 23

*in the Thames Estuary , it is difficult to conceive of a more clear-cut case for a SEA.*

359. I have stated above in relation to the wider environmental arguments that were considered at the Inquiry that I would not recommend that the HRO should be rejected because there was any failure to conduct a SEA because, amongst other reasons as detailed above, the HRO is not a plan or programme which has been determined to require an assessment under the Habitats Directive.
360. Furthermore, I have accepted the submission made by Mr Turney KC that the Conservation of Habitats and Species Regulations 2017 only apply to “European sites” and that the only such sites lie in the estuary to the east of Gravesend. Mr Turney KC submitted that there are no relevant European sites on or close to the river upstream of Gravesend and that none of the powers being sought in the HRO could have any effect on these European sites.
361. However, it remains the case that there are many sites along the tidal Thames that are protected for their environmental importance. Ms Shirley, who gave evidence on behalf of Thamesbank, stated at paragraph 14 of her Witness Statement<sup>91</sup> that there are Local Nature Reserves (LNR), Sites of Special Scientific Interest (SSSI), Special Protection Areas (SPA), Special Areas of Conservation (SAC) and Ramsar Sites. At paragraph 15 of her Witness Statement, Ms Shirley identified 14 nature conservation designations along the Tidal Thames.
362. Ms Shirley further stated in her Witness Statement that the mudflats, shingle beach, inter-tidal vegetation, islands and the river channel itself support many species from freshwater, estuarine and marine communities which are rare in London. The site is of particular importance for wildfowl and wading birds. Ms Shirley referred to the small areas of saltmarsh, which constitute a rare habitat in London.

<sup>91</sup> Inquiry Documents THAM/1

363. Ms Rawnsley, the PLA Director of Sustainability and Net Zero Transition, confirmed in her speaking note<sup>92</sup> and oral evidence before the Inquiry that the PLA must act in accordance with the section 48A duty.
364. I have referred to Ms Rawnsley's evidence on the issue of dredging at paragraphs 93-106 above. In relation to PLA internal dredging, Ms Rawnsley confirmed that the PLA's internal dredge activities have been assessed in a 2019 Water Framework Directive assessment as per Environment Agency guidance. The PLA's maintenance dredging has also been assessed and approved by Natural England within a baseline document. If a proposal was put forward outside the scope of these assessments a separate Water Framework Directive assessment would be submitted to the Environment Agency if required. The Environment Team at the PLA will determine a sample plan in line with OSPAR guidance for the management of dredge material at sea and the Environment Team would assess and analyse sample results and obtain marine licences, from the MMO, for the disposal of dredge material if necessary.
365. Ms Rawnsley confirmed in her oral evidence on 10 March 2025 that dredging is a highly regulated activity. However, the prospect of the PLA undertaking capital dredging was a concern for the objectors.
366. Notwithstanding the assurances provided by the PLA's Director of Sustainability, I accept the position of Ms Nevin and Mr Powlesland that there is a disconnect between the wording of section 60 as proposed under the HRO and the environmental duties and safeguards that were set out by Ms Rawnsley in her evidence. I also accept the points made by Ms Shirley and other witnesses that it is not possible for stakeholders to see in the 1968 Act, as it would be amended under the HRO, that environmental matters and assessments play a significant role around the operation of the powers set out in section 60.

<sup>92</sup> Inquiry Documents ID15

367. I find that the proposed section 60 does not reflect the process and considerations that have been set out in Ms Rawnsley's evidence. I therefore recommend that section 60 of the 1968 Act should be amended to include a reference to section 48A of the Harbours Act 1964. This modification would serve to confirm the PLA's current position around its need to consider environmental matters in line with the duty imposed on all harbour authorities. I have also recommended that there be an express reference to the section 48A duty because there is merit in points that were raised by some objectors (particularly Thamesbank and TBYBC) that the amendments proposed by the HRO do not make sufficient reference to the environmental duties that are imposed on those managing harbours.
368. The PLA maintained during the Inquiry that spelling out a duty in each or each relevant section would be superfluous, poor legislative drafting, and would risk such provisions becoming obsolete if and when Parliament wished to change the nature of the environmental duties on harbour authorities.
369. I do not accept that position. It is important that those who read and interpret the 1968 Act as amended by the HRO are able to understand from the wording of the 1968 Act that environmental matters would be taken into account by the Port Authority when exercising powers under the Act which could potentially threaten or damage the environment. As matters stand, under the HRO, there would only be an indirect reference to the section 48A duty within the 1968 Act. This is in relation to the ability to make byelaws under the new proposed section 162(m) of the 1968 Act
370. Accordingly, I find that it is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient or economical manner that Article 26 of the HRO is modified to insert into section 60 of the 1968 Act a new subsection 3 which would state as follows:

*(3) In exercising its powers under this section the Port Authority must have regard to the duty of the Port Authority under Section 48A of the Harbours Act 1964.*

371. Subject to the modification to insert a new subsection (3) to refer to the section 48A duty, I recommend that Article 26 of the HRO is approved and would, in that modified form, satisfy the test in section 14(2)(b) of the Harbours Act.

**Article 27. Protection in relation to dredging**

372. Article 27 of the HRO proposes an amendment to section 61(1) of the 1968 Act to the effect that the compensation payable by the Port Authority for any damage to property or works arising from dredging or improvement of the bed or banks of the Thames should not apply to property or works constructed without lawful authority.
373. The remaining proposed changes within section 61 are minor in nature. The reference to “licence” has been amended to “dredging permission” in line with the proposed changes to the licensing regime.
374. Furthermore, subsection (2) would be amended so that the notice requirement for dredging within twenty yards is changed to the metric figure: 18.28 metres. References to a sewer and submarine cable for this purpose have been deleted and replaced with more relevant and updated terminology. A reference in subsection (4) to a river authority would be changed to refer to the Environment Agency which has replaced river authorities as the body having functions in relation to drainage works in main rivers.
375. The PLA states that the proposed changes would meet the objective in paragraph 3(c) of Schedule 2 of the Harbours Act of varying powers for the purpose of regulating the carrying on by others of activities relating to the harbour or of activities on harbour land. There are no objections in relation to section 61 and I recommend

that Article 27 of the HRO is approved as the changes are desirable within the meaning of section 14(2)(b) of the Harbours Act.

### **Article 28. Works in the Thames**

376. Article 28 of the HRO would amend section 62 of the 1968 Act to make clear that the Port Authority must seek Trinity House's approval before placing, permitting or requiring to be placed certain works in the Thames. This amendment arose from requests made by Trinity House, with which the PLA has complied. Trinity House has confirmed to the MMO that it supports the amendments that the PLA has made.<sup>93</sup>
377. There are no objections in relation to section 62 and I recommend that Article 28 of the HRO is approved. I find that the changes to section 62 are clarificatory in nature and are desirable within the meaning of section 14(2)(b) of the Harbours Act.

### **Section 63. Removal of private moorings.**

378. The HRO, as originally proposed, put forward amendments to section 63 of the 1968 Act and sought to remove the exemptions from licensing in relation to historic mooring chains that had been in place before 29 September 1857. Following concerns raised by 14 objectors, the PLA decided not to pursue the changes. The PLA will continue to deal with historic moorings through the existing arrangements at section 63 of the 1968 Act.
379. At the commencement of the Inquiry there were six objectors who had not withdrawn their objections to the HRO, and whose objections were based on the amendments to section 63 of the 1968 Act.

<sup>93</sup> PLA Statement of Case at 12.8.4. Inquiry Documents SOC/1

380. Those objections were considered to be unresolved, but only to the extent that they had not been withdrawn. In light of the PLA having withdrawn its amendment, the outstanding objections have fallen away. There is now no Article within the HRO that amends section 63 of the 1968, which will remain unaffected by the HRO.

**Article 29. Reclaiming creeks etc.**

381. Article 29 would amend section 65(1)(a) of the 1968 Act to make clear that the Port Authority must obtain the consent of the Crown in writing before the Port Authority exercises its powers under subsection (1) to reclaim creeks and other inlets and areas adjoining the Thames in relation to Crown land.

382. Objectors raised concerns that reclaiming creeks was potentially hazardous to the environment. This point was made in the evidence of TBYBC and Thames Blue Green Economy. Ms Rawnsley stated in answer to questions by Mr Powlesland on behalf of TBYBC that the PLA would not take any steps to destroy a creek under section 65 without conducting a geo-environmental consideration or adding compensatory measures within a development scheme.

383. Mr Powlesland submitted on behalf of TBYBC that the world has changed significantly since 1968 and that a power to reclaim creeks, inlets, bends, mud flats, sands and sloblands would not feature in legislation today without reference to countervailing considerations in respect of environmental duties.

384. I agree with the position taken by the objectors that section 65, as currently drafted, does not reflect modern approaches to an activity that would now be conducted with regard to environmental considerations. For this reason, I would recommend the insertion of a reference to the section 48A duty within section 65 of the 1968 Act.

385. The reference to the section 48A duty would update the section and would also bring the wording of the section into alignment with the evidence of Ms Rawnsley before the Inquiry. Furthermore, it should allay some of the concerns of objectors that the reclamation of creeks could be undertaken without consideration of the potential adverse effects on the environment that might be associated with such activity.

386. Accordingly, section 65(1) should be amended to read as follows:

***65. reclaiming creeks etc***

*(1) The Port Authority may fill up, raise and reclaim creeks, inlets, bends, mud flats, sands and sloblands in and adjoining the Thames, and for that purpose may place piles in the Thames and construct groynes, retaining walls and other works in or upon the bed and banks of the Thames:*

*Provided that the Port Authority shall not exercise the powers of this section-*

.....

*(c) without having regard to regard to the duty of the Port Authority under Section 48A of the Harbours Act 1964.*

387. As to section 65(2), the PLA states in its Statement in Support of the Application<sup>94</sup> that it has been agreed that the saving for land in front of land of the Crown in section 2(1)(b) is unnecessary and can be repealed. Furthermore, the HRO contains a new subsection, which provides a definition of “in front of” for clarity in relation to subsection (1)(b).

388. I consider that Article 29 of the HRO meets the objective in paragraph 3(a) of Schedule 2 of the 1964 Act of varying powers to improve, maintain or manage the harbour. Subject to the addition of the reference to section 48A of the Harbours Act, as set out above, I find that the proposed amendment to section 65 would meet the test in section 14(2)(b) of the Harbours Act. I recommend that the Article 29 of the HRO is approved as modified on this basis.

<sup>94</sup> Core Documents CDB2

### **Article 30. Permitting of works**

389. As stated above (in relation to section 11 of the 1968 Act); the PLA proposes through the HRO to modernise Part 5 of the 1968 Act by dividing the statutory consent from the proprietary grant. The PLA maintains that the changes will bring the licensing regime into closer alignment with the marine licensing regime under Part 4 of MACAA 2009.
390. Article 30 of the HRO envisages that a “works permission” (as opposed to a “works licence”) would be granted under section 66 of the 1968 Act to authorise the impeding of the public right of navigation. This section 66 consent would correspond more closely to a land-based planning permission or a marine licence. Mr Lockwood referred in his evidence to the potential for an inference that the decision-making process in respect of licensing matters might be influenced in any way by the introduction of property matters into that process. However, he clarified that he was not aware of any allegations of such undue influence having been made.
391. As a consequence of the proposed new regime under Part 5 of the 1968 Act, extensive changes would be made to section 66. In line with the proposed changes section 66(1)(a) would be amended to remove reference to “consideration” which would now be reflected in the property right granted under section 11. Subsection 1(a) would also clarify that a works permission would authorise the use as well as the construction of a river work and that the permission may include conditions as to termination.
392. Section 66(1)(b) would be amended to make clear that the holder of a works permission would not be entitled to exercise the rights conferred by that permission unless or until the permission holder has been granted ‘such interest

in or rights over or under, or a right to use the land as is necessary to enjoy the benefit of the permission or to comply with any conditions imposed by the permission.’ This is a reference to the split property right that would be granted under section 11.

393. Subsections (2) to (3B) would be inserted into section 66 to enable the Port Authority to review, amend and potentially revoke existing works licences on grounds of navigational safety or adverse effects on the conservancy of the Thames. These actions would also be taken where a permission holder failed to comply with a requirement to pay a fee or supplied incorrect information (or failed to supply correct information) in circumstances where the Port Authority would otherwise have refused the application or granted the works permission on different terms.
394. Furthermore, such action would be taken where (subject to notification requirements) there had been a breach of the provisions of the works permission or where a permission holder had not obtained the necessary property right under section 11.
395. The new subsection (3C) would provide a permission holder with an opportunity to correct a breach of the provisions of a permission within a period specified in a notice provided by the Port Authority prior to that permission being terminated or revoked.
396. The proposed subsections (6) and (7) are intended to reflect the position in section 61, substituting for references to the cables of the Postmaster General references to “electronic communications line” and “electronic communications network”, as defined in section 2(1), and the Environment Agency in place of a river authority.

397. Subsection (8) is intended to clarify that nothing in the amended section 66 would affect the requirement for consent under any other enactment.
398. I have considered objections to Article 30 by the River Thames Society, which has expressed a concern that the split process would increase costs to river users. The PLA has stated in response to the objection that the principle that the current principle that there is an administrative application fee and a consideration for a property right would be unaffected by the proposed split in the permitting regime and that the separation of the fees would not affect the overall cost.
399. The NBTA, Thistleworth Marine Ltd, OPLAC, and TBYBC have raised concerns about how the proposed permission regime would affect those who currently hold river-works licences. These concerns are met by the inclusion of a transitional provision within the HRO at paragraph 3 of Schedule 2, to clarify that where a works licence has been granted, or deemed to have been granted by the Port of Tilbury Transfer Scheme 1991 Confirmation Order 1992, prior to the bringing into force of the HRO; this is to be deemed to have been granted as a works permission under section 66.
400. Furthermore, the proposed amendment to paragraph 3 of Schedule 2 confirms that the rights conferred upon the holder of the works licence by section 66(1)(b) would continue to apply notwithstanding the repeal of that provision.
401. It is the position of the PLA that the proposed changes to section 66 of the 1968 Act achieve the objective in paragraph 3(c) of Schedule 2 of the Harbours Act of varying powers for the purpose of regulating the carrying on by others of activities relating to the harbour or of activities on harbour land.
402. I agree with the PLA that the proposed changes would meet the Schedule 2 Harbours Act objective. The changes to section 66 of the HRO are linked to the changes to

section 11 of the 1968 Act as each form a component of the proposed splitting of the statutory consent from the proprietary grant. I have previously recommended approval of Article 9 of the HRO in relation to the changes to section 11. As with the proposed changes to section 11, I recommend that the changes to section 66 of the 1968 Act within the HRO are approved as they are desirable in the interests of securing the management of the harbour in an efficient and economical manner.

**Article 31. Permitting of mooring, Permission applications, Determination of permission applications & Public register of permissions**

**Section 66A**

403. Section 66A would introduce a new mooring permission for vessels on the river Thames. The PLA states that this power would allow the Port Authority to regulate the mooring of vessels on the river and enforce against vessels in the river.
404. Mr Trimmer stated at paragraphs 2.18 and 2.19 of his Proof of Evidence<sup>95</sup> that vessels are not considered to be works, so cannot be issued with consents under section 66, but that any vessel moored within the PLA's limits for a long period of time impedes the public right of navigation without any statutory basis for doing so.
405. Mr Trimmer also stated in his evidence that in order to ensure a degree of control through appropriate conditions, the PLA has resorted to issuing what are known as 'licences to moor' to vessels under section 11 of the 1968 Act, although this section only grants consent for the use of the PLA's riverbed and does not grant any statutory consent for impeding the public right of navigation.

<sup>95</sup> Inquiry Documents PLA/4

406. The proposal of a “mooring permission” at section 66A seeks to resolve this anomaly, whereby the statutory basis for impeding the public right of navigation would be covered by the ‘permission’, but the holder of that permission would be required to obtain a property right in order to enjoy the benefit of the permission.
407. The mooring permission under section 66A would be subject to a discretionary power to review and the PLA would be entitled to vary, suspend, revoke or terminate a mooring permission where the vessel constituted an obstruction to safe navigation or where the continued mooring of the vessel would be adverse to the conservancy of the Thames. These powers could also be exercised where there has been non-compliance, breach of any condition; provision of false or misleading information or a failure to obtain the requisite property right. The maximum length of any suspension of a mooring permission would not exceed 18 months. Section 66A provides a right of appeal against any decision taken by the PLA.
408. Furthermore, section 66A would provide that a mooring permission could be terminated if, in the PLA’s reasonable opinion, any vessel subject to that mooring has been abandoned.
409. In responses to objections, the PLA has clarified that revocation of permissions can only take place in certain circumstances, as specified in section 66 of the 1968 Act. These are essentially on grounds of safety of navigation and some sort of default by the permission holder.<sup>96</sup> Section 11 of the 1968 Act has been amended to enable a permission holder to claim reimbursement of a proportion of the consideration when a permission is revoked, subject to certain PLA retentions.
410. The NBTA has objected to Article 31 of the HRO on the basis that boats with an existing River Works Licence would have to obtain an additional mooring permission and that boats could have their permission to moor removed despite

<sup>96</sup> PLA SOC. Appendix 3, page 22.

retaining their River Works Licence. The PLA has responded to this concern and confirmed that the transitional provision at paragraph 4 of Schedule 2 to the HRO to makes it clear that a holder of an existing licence or agreement to moor granted by the PLA prior to the commencement date is not required to apply for a mooring permission under section 66A in relation to that mooring.

### **Section 66B**

411. Article 31 of the HRO would introduce a new section 66B into the 1968 Act, which would set down requirements that applications for works permissions, mooring permissions and dredging permissions are made in writing and accompanied by plans and full particulars of the works, mooring or dredging.
412. The proposed section introduces an obligation to undertake public consultation on works and dredging applications, except for applications for temporary works permissions. This requirement takes the form of the Port Authority publishing a notice of the permission application or requiring the applicant to publish notice of it, unless the PLA considers that notice of the application should not be published or where the Secretary of State certifies that such publication would be contrary to the interests of national security.

### **Section 66C**

413. Section 66C deals with the process by which applications for permissions are to be determined. The PLA has stated that the amendments to section 66B are based on sections 67 and 68 of MACAA 2009<sup>97</sup>.
414. I have noted that the marine licencing regime under Part 4 of MACAA 2009 contains, at section 69 *Determination of applications*, an equivalent section to the proposed section 66C. section 69(1) MACAA 2009 materially states:

<sup>97</sup> Core Documents CDD2

*(1) In determining an application for a marine licence (including the terms on which it is to be granted and what conditions, if any, are to be attached to it), the appropriate licensing authority must have regard to—*

*(a) the need to protect the environment*

415. Whilst there are differences between the two licensing regimes and whilst I accept that some of the other requirements within section 69 of MACAA 2009 should not be duplicated within the amended Port of London Act; I nevertheless consider that the wording of section 69 MACAA 2009 is relevant to the points raised by the objectors that there is a duty to protect the environment within MACAA 2009, but that no such duty will be incorporated into the Port of London Act through the HRO.
416. As I have stated above, TBYBC, Thamesbank and TBGE argued that current environmental issues were not at the forefront of public consciousness when the 1968 Act was being drafted and that the HRO should incorporate specific environmental duties to reflect the approach that would now be taken were the 1968 Act being drafted anew.
417. In addition to the points that I have set out at paragraph 366 above, the PLA's position has been that there is no need to incorporate any environmental duties into the 1968 Act through the HRO because environmental matters will be considered at the time that the PLA exercises its powers under the 1968 Act. In his Proof of Evidence<sup>98</sup> Mr Trimmer clarified (at 2.23) that the PLA would be required through section 66C to take account of 'other relevant legislation' which, for the avoidance of doubt, would include the provisions of section 48A of the Harbours Act 1964, the Water Framework Directive and the Marine Policy Statement.
418. Having considered the arguments raised by the parties, I consider that section 66C should be clarified to reflect the point made by Mr Trimmer: that it would be incumbent upon the PLA to consider environmental matters when determining

<sup>98</sup> Inquiry Documents PLA/4

permission applications. I do not consider that it is necessary to incorporate any new duty into the 1968 Act because the Harbours Act already imposes environmental duties on all harbour authorities through the section 48A duty.

419. Therefore, I recommend that section 66C is modified to include an express reference to section 48A of the Harbours Act. This modification is desirable within the meaning of section 14(2)(b) of the Harbours Act. In particular, it will provide a degree of clarity to stakeholders and will also provide consistency with the approach taken in MACAA 2009.

420. I recommend that Article 31 of the HRO is modified, so that section 66C(2) reads as follows:

*(2) In determining any permission application (including the terms on which it is to be granted and what conditions, if any, are to be attached to it) the Port Authority must have regard to-*

*(a) their powers and duties as set out in this Act and other relevant legislation*

*(b) the duty of the Port Authority as set out in Section 48A of the Harbours Act 1964;*

*(c) the ability of the applicant to comply with and observe the terms of the permission including any requirement for removal of works or vessels or equipment; and*

*(d) any representations received within any period for receiving representations specified in the notice published under section 66B.*

421. Section 66C contains further proposed provisions to require the Port Authority to have regard to the effects of any use intended for the works and contains a deemed refusal provision where the Port Authority has not granted permission within three months. There is also a proposed power for the PLA to request security from an applicant, where reasonable to do so, sufficient to guarantee any obligations arising from the grant of permission.

## **Section 66D**

422. The HRO proposes the inclusion of a new section 66D, which would require the Port Authority to maintain a public register of information relating to works, mooring and dredging permissions granted.
423. Section 66D provides for exclusions on grounds of national security or commercial confidentiality. The PLA states in its Statement in Support of the Application<sup>99</sup> that the register will provide a public record of all the permitted works (aside from those authorised under a temporary permission, unless the Port Authority decides to include them), dredging and mooring on the Thames, to assist for instance in enforcement under section 70 or specific information in relation to an incident on the Thames.
424. Section 66D would also require the PLA to include on the public register variations, suspensions, terminations and revocations of permissions granted, in addition to information supplied in connection with any permission, including plans. Furthermore, the PLA would be required to make arrangements for its register to be available for inspection at all reasonable times by members of the public free of charge.
425. I accept the position of the PLA that sections 66A, 66B, 66C and 66D would meet the objective in paragraph 4 of Schedule 2 of the 1964 Act of imposing or conferring on the Port Authority duties or powers in addition to or in substitution for powers or duties imposed or conferred under paragraph 3.
426. Subject to the modification within section 66C, as detailed above I would recommend that Article 31 of the HRO is approved and find that the modified Article 31 meets the desirability test in section 14(2)(b) of the Harbours Act.

<sup>99</sup> At paragraph 34.9

## Article 32. Charge for permission

427. Article 32 of the HRO would substitute an amended text for section 67 of the 1968 Act which, as currently drafted, concerns consideration for a works licence. The HRO would remove the current references to arbitration where there are disputes as to consideration. The PLA has clarified that this is because disputes over consideration for licences now fall under section 11.

428. The fees to which section 67 would now relate are reasonable fees for are (a) registering and determining a permission application in accordance with section 66B and (b) monitoring compliance with the terms and conditions of any such permission granted.

429. I have recommended above in relation to Article 9(d) that no consideration shall be payable in relation to any part of a property licence granted solely in relation to grab chains and escape ladders. For the same reasons as set out in relation to the proposed changes to section 11 (and having regard to the test in section 14(2)(b)) I do not consider that fees should be payable under section 67 for section 66B permission applications that solely relate to grab chains and escape ladders. Accordingly, I recommend that the wording in section 67 is modified to read as follows:

*Save that no fee shall be payable in relation to a permission application made solely in relation to grab chains and escape ladders the Port Authority may charge a reasonable fee for-*

*(a) registering and determining a permission application in accordance with section 66B (Permission applications)*

430. I also consider that the proposed section 67(b) of the 1968 Act is problematic. As set out above, this proposed provision would enable the PLA to charge a reasonable fee for ‘monitoring compliance with the terms and conditions of any such permission granted’.

431. Mr Trimmer stated at paragraph 2.27 of his Proof of Evidence that the charging of fees for monitoring compliance is comparable with the approach undertaken by the MMO under MACAA 2009. He gave evidence before the Inquiry on 3 and 4 March 2025 and on 4 March confirmed that he understood that charging for monitoring compliance was taken from MACAA 2009.
432. Part 4 of MACAA 2009 concerns marine licensing. Section 69(4) of MACAA 2009 states that the authority may require a reasonable fee towards the investigation, examination or an investigation, examination or test. This is roughly equivalent to the proposed section 66B(4). However, there is no power within Part 4 of MACAA 2009 for an authority to charge fees for monitoring compliance with the terms of a permission.
433. Whilst charging for monitoring does not, in fact, appear to be covered by MACAA 2009, I have noted that there is such a power within Article 4 of the Public Bodies (Marine Management Organisation) (Fees) Order 2014, which refers to a schedule of fees payable for monitoring. I have assumed that Mr Timmer must have been referring to this provision. Mr Trimmer stated before the Inquiry that the PLA would not charge for monitoring compliance but would only require a fee where there was found to have been a failure in compliance. He stated that his approach would be to ensure that any breach was remedied, rather than imposing a charge on the permission holder.
434. Notwithstanding the evidence of Mr Trimmer as to the approach that the PLA would take, the wording of the proposed section 67(b) does not contain the qualifications to which he referred. Having considered the evidence before me, I do not consider that the proposed measure would be proportionate. It follows that I do not consider that it would be desirable (within the meaning of section 14(2)(b)) to retain wording of section 67(b), as proposed by Article 32 of the HRO. The wording of the proposed

section 67(b) would enable the PLA to charge fees in all cases where it monitored compliance with the terms and conditions of any permission granted.

435. Accordingly, I recommend approval of Article 32, but subject to (i) the modifications detailed above that section 67 is amended to clarify the position of the PLA that no fee shall be payable in relation to a permission application made solely in relation to grab chains and escape ladders; and (ii) the deletion of the proposed new section 67(b), which relates to charges for monitoring compliance.

**Erroneous repeal of Section 68. Exemption for works authorised or powers conferred before 17th August, 1894**

436. The HRO originally sought the repeal of section 68 (exemption for works authorised or powers conferred before 17th August 1894) of the 1968 Act. OPLAC and the TBYBC identified within their objections that this was an error and the Amended HRO reinstates the provision through an amendment to Schedule 1 to the HRO, which crosses out section 68 as one of the repealed provisions within that section.

437. I note that from the 11 March 2025 marked up version of the 1968 Act<sup>101</sup> that the original references ‘works licences’ have been retained. For consistency these references should be changed to works permissions. Accordingly, section 68 should read as follows:

*68, Exemption for works authorised or powers conferred before 12<sup>th</sup> August, 1894.*

*The provisions in this Part of this Act relating to works permissions shall not apply to works authorised, or powers to execute, alter or maintain works conferred, under or by virtue of an enactment which came into force before 17<sup>th</sup> August, 1894.*

<sup>101</sup> Inquiry Documents ID18

438. Furthermore, Article 105 of the HRO should be amended to include section 68 (Exemption for works authorised or powers conferred before 17th August, 1894) within the list of references to ‘licence’ and ‘licences’ which will be substituted with ‘permission’ and ‘permissions’

**Article 33. Appeal to the Secretary of State.**

439. Article 33 of the HRO proposes changes to section 69 of the 1968 Act, which is concerned with appeals relating to refusals to grant a River Works Licence or against conditions imposed on the grant of a licence. The proposed amendments to section 69 are minor in nature. The appeal has been changed to an appeal to the Secretary of State, rather than to the Board of Trade and the terminology has been altered to reflect the new licensing regime. The procedure for the conduct of the appeal is set out in the amended Schedule 4 to the 1968 Act.
440. TBYBC sought clarification within its objection as to whether the section 69 appeal process applies to a deemed refusal under section 66C(4) – i.e. where the PLA has not made any decision after 3 months of the registration of an application and where the applicant has not sought to extend time. At page 54 of Appendix 3 to the PLA Statement of Case, the PLA confirms that the right to appeal under section 69 is available for such a deemed refusal.
441. However, this is not readily apparent from the wording of the proposed amended section 69(1)(a). The reference to deemed refusal is set out in relation to the deadline for lodging an appeal to the Secretary of State and may lead to confusion among some appellants as to the scope of the appeal.
442. Accordingly, and for the avoidance of doubt, I would recommend that section 69(1) is modified to read:

- (2) *An applicant for a works permission, a mooring permission or a dredging permission who is aggrieved by –*
- (b) *the refusal by the Port Authority to grant the permission, including a deemed refusal under section 66C(4).*

443. I agree with the PLA that Article 33 of the HRO meets the objective in paragraph 3(c) of Schedule 2 of the Harbours Act of varying powers for the purpose of regulating the carrying on by others of activities relating to the harbour or of activities on harbour land. I recommend that Article 33 is modified so that there is clarity within the proposed new section 69(1)(a) in relation to the decisions that will carry the right of appeal to the Secretary of State.
444. Subject to this modification, I consider that Article 33 meets the requirement of the desirability test within section 14(2)(b) of the Harbours Act, and I recommend that the Article should be approved in this modified format.

#### **Article 34. Works, mooring or dredging without permission**

445. Article 34 would amend section 70 of the 1968 Act to incorporate the new mooring permissions and dredging permission that will form part of the licensing regime. Accordingly, section 70(1) of the 1968 Act would be expanded to prohibit a person, or causing another person, to carry out works, dredge or moor a vessel without or in breach of the terms of a permission under sections 66, 66A or 73.
446. Subsection (1) would also include the words “cause or permit.” The PLA maintains in its Statement in Support of the Application that the inclusion of these words would cover a situation where the applicant is not in a position to comply with the conditions e.g. where the applicant has rented a flat with a balcony and is not given the right, in the lease, to remove the balcony.

447. The HRO proposes the inclusion of Subsection (1A) to provide exemptions to the need to obtain a mooring permission. The first exemption is where a vessel is moored for a period longer than 7 days in any one-month period. This proposal has been the subject of an objection from the NBTA, which is concerned about the time periods for which a vessel is able to moor before requiring a permission and its impact on the public right of navigation.
448. In response to that objection (at Appendix 3 of its Statement of Case<sup>102</sup>), the PLA has stated that ‘the public right to navigation is not subverted by section 70.’ Instead, it is expressly protected by the exceptions in section 70(1A)(f) for those ‘anchoring in the ordinary course of navigation’. The wording of section 70(1A)(f) has since been amended by the PLA to substitute ‘mooring’ for ‘anchoring’ I note that the definition of ‘mooring’ in the proposed amended section 2 of the 1968 Act includes anchoring.
449. Mrs Smith gave evidence on behalf of NBTA on 6 March 2025 and stated that her organisation has assisted some 30 houseboat owners who, in most cases, required assistance in relation to temporary moorings or from moorings where occupation was insecure. She maintains that restricting the occupation of Bargee Travellers to seven days on the entirety of the Thames under PLA jurisdiction compromises Bargee Travellers’ ability to live in their homes and thus violates their Article 8 ECHR rights.
450. The position of the PLA is that the seven-day limit is intended to protect against those who seek to moor permanently in the Thames without permission to do so and that Bargee Travellers would be able to rely on section 70(1A)(f), which creates an exemption for ‘any vessel mooring in the ordinary course of navigation’. Bargee Travellers are able to live on the River Thames because they exercise the public right of navigation.

<sup>102</sup> Inquiry Documents SOC/1

451. Mrs Smith has pointed out in her evidence that the ordinary course of navigation does not denote continuously cruising. She referred to section 17(3)(c)(ii) of the British Waterways Act 1995, which includes time spent at one place within the meaning of bona fide navigation - *navigation throughout the period for which the consent is valid without remaining continuously in any one place for more than 14 days or such longer period as is reasonable in the circumstances.*
452. Notwithstanding the clarification by the PLA that the ‘7 days in any one-month’ provision is not intended to capture Barge Travellers in the ‘ordinary course of navigation’, there is a tension between the exercise of public rights of navigation by Barge Travellers and the fact that they could be caught by the provision were they to remain at a location in the river for more than 7 days whilst navigating the Thames. This tension is capable of adversely affecting the rights of Barge Travellers to moor for reasonable periods whilst navigating the tidal Thames.
453. Having considered the evidence of Mrs Smith, I find that the proposed Article 34, as it stands, does not satisfy the desirability test within section 14(2)(b) of the Harbours Act. I recommend that Article 34 of the HRO is modified to include the following wording at the end of the revised section 70:
- (15) In this section “Ordinary Course of Navigation” includes remaining continuously in one place for no longer than 14 days or such period as is reasonable in the circumstances.*
454. This modification is desirable because it would accord with the position of the PLA at the Inquiry and would be consistent with other legislation.
455. The remaining exemptions within section 70(1) would relate to vessels moored under a right conferred by a works permission, vessels secured to a historic mooring to which section 63 applies, vessels subject to a section 69 appeal and within 14 days

of determination of any such appeal, vessels belonging to or used by the PLA and any vessel mooring at a work for which no permission is required.

456. Subsection (2) of section 70 retains a fine not exceeding level 5 on the standard scale<sup>103</sup> in respect of breach of or failure to have a works permission and would introduce a fine not exceeding level 4 for breach of or failure to have a dredging or mooring permission. I have noted that the £5000 cap on level 5 offences was removed on 12 March 2025 as a consequence of section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. The language of section 70(2) therefore appears to be out of date. This is a matter which the PLA should clarify with the MMO upon receipt of this report.
457. There is also provision for additional daily fines not exceeding £50. The disparity in the fine levels between subsections 2(a) and 2(b) is due to the scope of a Harbour Revision Order to create a new offence being limited by section 14(3) of the Harbours Act 1964 to a penalty not higher than level 4 on the standard scale. The PLA confirms in the Statement in Support of the Application that in relation to the breach of mooring permission, this would be an offence only if done without any reasonable excuse.
458. The remediation provisions in subsection (3) would allow the Port Authority to serve a stop notice as prescribed in subsection (4) and require the site to be restored to its former condition. The stop notice provisions reflect the MMO's powers under section 102 of the MACAA 2009.
459. Under subsection (5), the notice would be required to specify the potential consequences of failing to comply with the notice, including the actions the Port Authority may take in the event of such non-compliance. These would include the Port Authority seeking an injunction, and the carrying out of any remedial works or actions necessary in their reasonable opinion. Furthermore, the PLA would be

<sup>103</sup> This refers to the standard scale for summary offences at section 122 of the Sentencing Act 2020.

entitled to recover the costs of doing so and sell or dispose of an associated work or vessel.

460. Subsection (10) requires that, except in an emergency, the Port Authority must give at least 7 days' notice of their intention to the owner before removing any works or vessels. CRBA has objected to the 7 days' notice provision and states that the period is insufficient.
461. In response to that objection the PLA has maintained that the seven-day notice period would come at the end of several procedural steps. I agree with the position of CRBA and take the view that seven days would not provide sufficient notice in cases where the owner of a vessel to be removed needed to move belongings from that vessel or, in the case of a residential houseboat, find alternative accommodation. The seven-day period would not be desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner. I recommend that the time limit within the proposed section 70(10) is extended to 14 days.
462. Further subsections within the proposed section 70 would allow the PLA recover its costs from the owner of a vessel including any outstanding fees, costs concerning the service of notices, works to remediate the site, removal and storage of a vessel or works and any sale.
463. The Port Authority would be permitted to retain any surplus if the owner has not come forward within 6 months of a sale, or to recover any deficit from an owner as a debt, but they must return an unsold vessel to its owner if their costs relating to that vessel are paid.

The position of sub-licensees.

464. During the course of the Inquiry the PLA submitted a ‘Note on the proposed effect of section 70 Port of London Act 1968’<sup>104</sup>, which was drafted by Mr Turney KC. This Note confirmed that the provisions in section 70 are not engaged by contractual disputes between River Works Licence holders and those who occupy berths as sub-licences of the main licence holder.
465. The Note was submitted in response to a concern that had been raised by CRBA, the members of which are concerned that they might be liable to criminal sanctions under section 70 should their immediate landlord, which holds a River Works Licence, decide to terminate their contractual right to moor and the houseboat owners remain in situ pending the resolution of any dispute, or otherwise. The PLA has confirmed that the affected members of CRBA, as occupiers of berths at the premises of their landlord, have private contractual relationships with that landlord; and that the effect of the termination of such relationships is not to terminate the landlord’s River Works Licence.
466. It follows that if CRBA’s landlord were to terminate a private contractual right to moor in a berth, where mooring is permitted by virtue of section 66, a vessel which continues to moor there will not be mooring without the requisite permission. Therefore, no criminal liability will attach to the owner of the vessel under section 70, nor under the proposed regime.
467. The PLA asserts in its Statement in Support of the Application that the proposed changes to section 70 would meet the objective in paragraph 3(c) of Schedule 2 of the 1964 Act of varying powers for the purpose of regulating the carrying on by others of activities relating to the harbour or of activities on harbour land.
468. I have considered the objection to Article 34 by the River Thames Society to the effect that the proposed changes to section 70 could have human rights implications for boat occupiers. The PLA has responded to these concerns by stating that the PLA

<sup>104</sup> Inquiry Documents ID14

could only use its powers to seize a home through obtaining a court order, whereupon there would be an assessment of whether those actions amounted to disproportionate breaches of Articles 8 or Protocol 1, Article 1 of ECHR. Domestic remedies would be available in relation to any issues concerning Article 6 ECHR.

469. I have considered the objections to Article 34 from CRBA, River Thames Society, TBYBC, Inland Waterways Association, NBTA, and The Barge Association. Subject to the modifications that I have set out (at paragraph 453) above in relation to clarification of the meaning of ‘Ordinary Course of Navigation’ and (at paragraph 461) regarding the extension of the seven day time limit in section 70(10), I recommend that section 70 of the 1968 Act is amended in line with the proposals in the HRO and that, as modified, Article 34 of the HRO meets the requirement of the test in section 14(2)(b) of the Harbours Act.

#### **Article 35. Emergency safety notice**

470. Article 35 of the HRO would introduce a new section 70A to provide for an emergency safety notice to be issued requiring the provision of lights, signals or other aids to navigation or the stationing of guard vessel. The proposed new provision follows the equivalent procedure for emergency safety notices set out at section 104 of MACAA 2009.
471. The new section would apply to any permitted works, mooring or dredging activity which, in the reasonable opinion of the Port Authority, are or are likely to become an obstruction, danger or impediment to the safe navigation or use or conservancy of the Thames. Under the proposed subsection (5) the Port Authority would be required to state their grounds in the notice and must state the date and time from which the requirements take effect. Furthermore, the Authority would be able to specify steps to ensure compliance is undertaken safely.

472. The notice would be served on the permission holder and, if relevant, and there is no permission, on the person on whom a notice has already been served under section 70(3) relating to a breach of that section. Section 70A(7) would allow the Port Authority to revoke or vary an emergency safety notice. The section creates a new offence whereby the penalty for non-compliance is a fine not exceeding level 4 on the standard scale.
473. In his Proof of Evidence,<sup>105</sup> Mr Stride stated at paragraph 3.2.1 that although the PLA has a comprehensive consenting process, there remains a risk that once works are underway, a licensed works or dredging operation may subsequently be deemed to be an increased hazard to navigation. It is the position of the PLA that a process needs to be initiated to place additional mitigations to ensure the risk remains As Low As Reasonably Practicable (ALARP) as defined in the Port Marine Safety Code.
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474. Mr Stride stated that at present a harbour master does not have any powers to require a person responsible for works to take any action in the event the harbour master deems that the works are an unacceptable obstruction to safe navigation. He gave an example of jack-up barges altering position in a way that might impede navigation. The harbour master currently only has powers to instruct an individual vessel through the use of a special direction to the vessel's master. If the hazard does not directly involve a vessel, the harbour master cannot issue a special direction. The PLA maintains that the addition of section 70A to the Port of London Act would resolve this anomaly.
475. I have considered objections to Article 35, in particular from Thistleworth Marine Ltd and OPLAC, who have commented that the provision is not necessary because all river works are obstructions to the convenient use of the river. Following the evidence of Mr Stride, the PLA confirmed that it would delete the word 'convenient'

<sup>105</sup> Inquiry Documents PLA/3a

<sup>106</sup> Core Documents CDC2

from the proposed new section<sup>107</sup>. This clarifies the position of the PLA that that the focus of section 70A will be on safety issues.

476. The PLA maintains that the new section would meet the objective in paragraph 4 of Schedule 2 of the 1964 Act of imposing or conferring on the Port Authority duties or powers in addition or in substitution for powers or duties imposed or conferred under paragraph 3, specifically, paragraph 3(b) – varying powers for the purpose of making safe the navigation of the harbour. Having considered the evidence and submissions of the objectors and the evidence of Mr Stride, I recommend approval of the new section 70A. I find that Article 36 meets the requirement of the desirability test in section 14(2)(b) of the Harbours Act.

#### **Article 36. Works to be within nearest parish**

477. Article 36 of the HRO proposes an amendment to section 71 of the 1968 Act to replace ‘Licensing’ with ‘Permitting’ and ‘licensed’ with ‘permitted’. This Article is not subject to any objection. I find that it is desirable within the meaning of the test in section 14(2)(b) of the Harbours Act that the language of the 1968 Act is amended so that it is consistent with the new permissions regime. I recommend that Article 36 is approved.

#### **Article 106 - Section 72. Vesting of embanked land**

478. The HRO, through Article 106 and Schedule 1, would repeal section 72 of the 1968 Act whereby land that is embanked through works undertaken under a River Works Licence would vest in the holder of the licence. The PLA proposes that in future land that is owned by the PLA and embanked will either be sold or leased to the licensee, when the embankment is completed.

<sup>107</sup> See Inquiry Documents ID19 – Not

479. The repeal will not affect land which has been embanked previously because paragraph 6 of Schedule 2 of the HRO sets out transitional provisions which provide for the vesting of existing embankments which have been completed and for vesting still to occur where embankments have been authorised by the PLA but not completed.
480. Mr DeVere gave evidence on 12 March 2025 and stated that the historical position was that when a landowner was granted permission to embank on the River Thames, the embanked land would be vested in him once the works had been completed and signed off by the PLA. Mr DeVere stated that he perceived unfairness in the repeal of section 72 because the position that would now pertain is that the property owner would pay for the work for the land (comprising, for example, the piling and structure of the embankment), but the PLA would nevertheless receive that embanked land.
481. In a Note submitted by the PLA following the evidence of Mr Fanning<sup>108</sup>, the PLA provided further justifications for the repeal. The PLA noted that currently, section 72 provides an unusual way to affect the transfer of land through the endorsement of a certificate on a River Works Licence allowing the reclamation of land by embankment. The position of the PLA is that as a means of passing title this is neither transparent nor easy to record, and it does not accord with the wider split of property interests from statutory permissions, which forms the basis of much of the HRO.
482. The PLA argues that maintaining section 72 would require endorsing the property transfer on a works permission which no longer relates to property interests. The PLA considers that it would be preferable for the transfer of this land to be undertaken in the usual way by a disposal under section 11.

<sup>108</sup> Inquiry Documents ID11

483. TBYBC has objected to the repeal and states that it is conceivable that the PLA could grant a licence ('permission') that may interfere with an adjacent owner's riparian rights. The PLA responded to this objection at section 10.6 of its Statement of Case. The PLA states that it does not consider that it would be possible to grant an interest in reclaimed land which would interfere with an adjacent owner's riparian rights.
484. There is merit in the point made by TBYBC that the repeal of section 72 would give rise to a new power which may be to the detriment of an existing landowner. A riparian owner is the owner of land which abuts a watercourse. Should that owner embank out into the Thames, he would thereby create a strip of land beyond his land which would belong to the PLA and which would abut the watercourse, thus separating the land of the riparian owner from the watercourse. In this scenario, it is likely that the embanking process could have the effect of extinguishing the riparian rights and responsibilities of the landowner.
485. It is also possible that a newly created strip of embanked land could operate as a form of ransom strip whereby the PLA would be in a position to sell land that was created through embanking at a price that might be seen as unreasonable. In this regard I have noted that there has been evidence before the Inquiry to the effect that conflicts have arisen in respect of charges imposed by the PLA for balconies.
486. The PLA argues at paragraph 10.6.2 of its Statement of Case that the permissions regime enables public rights of navigation to be extinguished through the grant of a permission, but it does not permit interference with private land rights, such as the rights of a riparian owner. This is correct, but as discussed above, the repeal of section 72 would be capable of creating a strip of embanked land that could indeed interfere with the rights of a riparian owner.
487. I acknowledge that the section 72 process does not readily fit into the new regime where there would be a splitting of the statutory consent from the proprietary grant. As matters stand the vesting provision within section 72 would be taken into account

within the single licence fee. I consider that the rights of riparian owners would be safeguarded through the retention of the vesting provisions in section 72, but that the wording of section 72 would require modification to reflect that where pursuant to a works permission land is reclaimed by embankment, the land reclaimed by embankment shall thereupon vest in the owner of the land in front of which the embankment has been made.

488. However, the section should incorporate a mechanism whereby that land would vest in the owner of the land in front of the embankment, but subject to that owner agreeing a consideration with the PLA in relation to the property interest, which forms the second limb of the new split regime.

489. I find that it is not desirable to in the interests of securing the improvement, maintenance or management of the harbour in an efficient of economical manner for section 72 of the 1968 Act to be repealed in such a manner that would potentially affect the rights of riparian owners. However, as stated above, any vesting within section 72 must be subject to a consideration for the property interest rather than through the works permission fee.

490. Having considered the positions of TBYBC, Mr DeVere and the responses of the objectors, I find that the repeal of section 72 does not accord with the test in section 14(2)(b) of the Harbours Act. I recommend that Schedule 1 of the of the HRO, to which Article 106 refers, is modified to delete the repeal of section 72 and that section 72 is re-worded in such a way as to render it compatible with the new permissions regime.

491. I recommend that the reinstated section 72 should read as follows:

*72. Vesting of embanked land*

*(1) Where pursuant to a works permission land is reclaimed by embankment and a certificate that the embankment has been completed is endorsed on the works permission by the Port Authority, upon payment of consideration for a property interest by the holder of the said works permission in accordance with section*

*11(3A), the land reclaimed by the embankment shall thereupon vest in the owner of the land in front of which the embankment has been made (hereinafter in this section referred to as " the adjoining land") for the like estate or interest as that upon which the adjoining land is then held and subject to, and with the benefit of, the like estates, interests, exceptions, reservations, incumbrances, covenants and conditions (hereinafter in this section referred to as "incidents ") as then attached to the adjoining land and subject to any continuing terms of the works licence.*

*(2) A certificate under this section may be given under the hand of a duly authorised officer of the Port Authority and may, if the Port Authority and all persons directly affected by any incidents proposed to be modified so agree, contain provisions modifying any incident attaching to the land reclaimed by the embankment.*

492. I also recommend, consequential to this modification, that Article 105 of the HRO should be modified to include section 72 within the list of references to ‘licence’ and ‘licences’ which will be substituted with ‘permission’ and ‘permissions’

#### **Article 37 Permitting of dredging, etc**

493. Article 37 of the HRO would amend of section 73 of the 1968 Act to incorporate dredging within the new permissions regime within section 66 and to bring section 73 into line with the requirements for works and moorings permissions. As proposed by the HRO, section 73(1A) would provide for variation, suspension, revocation and termination.
494. Subsection (7) would be added to clarify that nothing in the section affects the requirement for consent under any other enactment. The PLA maintains that the changes to section 73 meet the objective in paragraph 3(c) of Schedule 2 of the 1964 Act of varying powers for the purpose of regulating the carrying on by others of activities relating to the harbour or of activities on harbour land.
495. Article 37 and the changes to section 73 are not subject to any objection. I have recommended above that section 66C is modified to require that section 48A of the Harbours Act is taken into account by the PLA when determining permission

applications, which include those for dredging licences under section 73. I do not consider that any further modification is necessary in respect of section 73 and recommend approval of the HRO in relation to this section. For the avoidance of doubt I consider that Article 73 meets the requirement of section 14(2)(b) of the Harbours Act.

### **Article 38. Crown property**

496. Article 38 amends section 74 of the 1968 Act to provide for permissions and permitting, where the current section refers to licensing. This is not subject to any objection. I recommend approval of Article 38 because the changes to section 74 reflect that the permission regime would replace the licensing system. The test in section 14(2)(b) of the Harbours Act is met because it is desirable that the language of the 1968 Act is updated so that it is consistent with the new permissions regime.

### **Article 39 Lands above mean high water level**

497. Article 39 of the HRO would remove the definition of “mean high water” within section 75 of the 1968. The PLA states in its Statement in Support of the Application<sup>109</sup> that the purpose of this change is to remove any possible confusion from the 1968 Act containing two definitions of that term. Mean high water level is defined in the definitions section of the 1968 Act as: *‘the level which is half way between mean high water springs and mean high water neaps’*. Whilst I cannot see any potential confusion between the two definitions, it is preferable that the Act should contain a single definition.

498. Section 75 is further amended to update references to the Board of Trade and substituting Secretary of State for those references.

<sup>109</sup> Core Documents CDB2

499. The amendments to section 75 are not subject to any outstanding objection. I recommend approval of Article 39 as proposed under the HRO because I accept that it is desirable for the purpose of section 14(2)(b) of the Harbours Act that the 1968 Act should contain a single definition of mean high water level and that the language of the section should be updated.

#### **Article 40. Transfer of work or mooring**

500. Article 40 of the HRO proposes a new section 75A, which sets out that the owner of a work to which a works permission relates, may not transfer their interest in that work unless they also transfer the works permission to the same person pursuant to subsection (2).

501. Under the proposed subsection (2) a works permission could only be transferred if its terms permitted it to be transferred, for the purpose of transferring the work to which it relates and only with the consent of the Port Authority, which is not to be unreasonably withheld. Additionally, the holder of a works permission would be required under subsection (3) to give the Port Authority (if requested and if known to them) details of any person having a current interest in the work.

502. Failure to provide the details or knowingly or recklessly giving false details is subject to a fine not exceeding level 3 on the standard scale. Under the proposed subsection (4), a person transferring their interest in the work or in a vessel which is subject to a mooring permission must give the Port Authority within 28 days of doing so details of the transferee. Article 40 creates an offence whereby failure to provide the details without a reasonable excuse or knowingly or recklessly giving false details is subject to a fine not exceeding level 3 on the standard scale.

503. The PLA states in its Statement in Support of the Application<sup>110</sup> that these provisions are intended to assist the Port Authority in the control of permitted works and moorings and to enable it to identify and enforce against the permission holder or any other person who has an interest in the work or mooring where the work or vessel has been transferred and the terms of a permission are not being complied with or a work has fallen into disrepair.
504. In his Proof of Evidence<sup>111</sup> Mr Trimmer states at paragraph 2.38 that consents (river works licenses and the proposed permissions) are personal and - particularly in cases of works associated with residential properties (balconies and end of garden moorings) or mooring chains within tidal creeks - there have been cases of properties or moorings chains being sold, in circumstances where the river works licence has not been retained by the new owner. In these cases, the former owner has remained liable for both the payment of consideration and the other obligations within the river works licence, albeit the works are no longer owned by them.
505. Mr Trimmer states that the provisions of the new section 75A are intended to establish an appropriate framework for the transfer of responsibility from former to new owners of works and/or moorings permissions including penalties for failure to provide the name of the new owner or provide false or for the provision of inaccurate information.
506. TBYBC has objected to the proposed section 75A and raises a concern that it is unclear whether the provision will be retrospective in its application. The PLA has responded within Appendix 3 of its Statement of Case and clarified that it would not be necessary for any successor to have to apply for a new permission. It would appear the provision is not retrospective in that it would apply to future transfers of pre-existing licences.

<sup>110</sup> Core Documents CDB2

<sup>111</sup> Inquiry Documents PLA/4

507. TBYBC also suggests that the PLA could require that any transferee register themselves with the PLA, but not demand that they seek permission which, the PLA could reject if minded to do so. However, this scenario might lead to a situation where a new transferee fails to register with the outcome that the previous licence or permission holder retains liability for the work or mooring.
508. OPLAC and Thistleworth Marine Ltd have suggested that the provision would be too onerous on owners who want to transfer houseboats or river works. The PLA has responded to this objection and stated within Appendix 3 of its Statement of Case that it has changed its earlier position and that a permission holder would be able to transfer a permission for the purpose of transferring the work to which it relates and with the consent of the PLA, such consent not to be unreasonably withheld.
509. The PLA maintains in its Statement in Support of the Application that the new section 75A meets the objective in paragraph 4 of Schedule 2 of the 1964 Act of imposing or conferring on the Port Authority duties or powers in addition to or in substitution for powers or duties imposed or conferred under paragraph 3, specifically 3(c) –varying powers for the purpose of regulating the carrying on by others of activities relating to the harbour or of activities on harbour land. Having considered the evidence of Mr Trimmer and the objections put forward, I recommend that Article 40 should be approved. The Article is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner and thus satisfies the test in section 14(2)(b) of the Harbours Act.

**Article 106 - Repeal of Section 76. Works to be approved by the Board of Trade.**

510. The HRO would, through Article 106, repeal section 76 of the 1968 Act in relation to tidal works, which are defined in the Act as works which belong to the Port Authority. The 1968 Act, as currently drafted, requires that such works that are placed on the bed of the River Thames are approved by the Board of Trade (now the

Secretary of State for Transport). The PLA has confirmed at paragraph 9.1.10 of its Statement of Case and at 108.13 of the Statement in Support of the Application that this section would be repealed by the HRO because it is now redundant, having been replaced by MACAA 2009. The PLA states that these matters would now be governed by an application for a marine licence.

511. In response to concerns raised by TBYBC that the repeal would remove oversight from central government, the PLA maintains at paragraph 9.1.11 of its Statement of Case that *“the repeal will assist applicants because it removes the additional hurdle of requiring consent from both the PLA and the Department for Transport (DfT). The PLA’s intention is that DfT will retain an oversight through its appeals role under section 69 (appeal to the Secretary of State) of the 1968 Act”*.

512. As this provision is concerned with tidal works (i.e. works that belong to the Port Authority, as defined within section 2 of the 1968 Act), those works would not be subject to any section 69 appeal unless PLA were to licence its own works to a third party and issue a decision against that third party.

513. The PLA has not provided any further detail in relation to its assertion that section 76 matters are now dealt with under MACAA 2009. On the basis that this assertion is correct, I accept that section 76 is redundant and would recommend approval of Article 106 and Schedule 1 in this regard. I would advise that the MMO seeks clarification from the PLA on this point prior to reaching a decision on the HRO.

#### **Article 41. Provision against danger to navigation**

514. Article 41 would amend section 77 (Provision against danger to navigation). It is proposed that section 77(1) is qualified to enable the Port Authority to monitor a tidal work once it becomes aware of its decay or destruction and to lay down buoys, lights

and take other steps to prevent danger to navigation if it considers it necessary to do so.

515. I accept the position of the PLA that Article 41 meets the objective in paragraph 3(b) of Schedule 2 of the Harbours Act to vary a power to mark or light the harbour. The amendments to section 77 are not subject to any outstanding objection. I find that the proposed changes meet the desirability test in section 14(2)(b) of the Harbours Act. I recommend approval of Article 41 as proposed under the HRO.

#### **Article 42. Abatement of works abandoned or decayed**

516. Article 42 of the HRO amends section 78 of the 1968 Act: (Abatement of works abandoned or decayed). Section 78 relates to tidal works and would be amended by substituting “Board of Trade” with “Secretary of State”. In subsection (1), “think” has been replaced by “thinks” while in subsection (3) “them” has been replaced by “the Secretary of State”. The amendments to section 78 are not subject to any outstanding objection and are made to update terminology. I consider that such updating measures meet the desirability test under the Harbours Act. For these reasons I recommend approval of Article 42.

#### **Article 43. Survey of tidal works**

517. Section 79 (Survey of tidal works) has been amended by replacing “Board of Trade” with “Secretary of State”. These changes are uncontroversial and are updating amendments. As stated above, I consider that such updating measures meet the test under the Harbours Act. For these reasons I recommend that Article 42 is approved.

#### **Article 44. Permanent lights on tidal works**

518. Article 44 of the HRO would add to section 80 of the 1968 Act a reference to section 62(2) of the 1968 Act in order to refer to the role of Trinity House in approving the placement of certain works. This amendment is not subject to any outstanding objection. I accept that the amendment provides a necessary clarification that is desirable for securing the management of the harbour in an efficient manner and meets the requirement of section 14(2)(b) of the Harbours Act. For these reasons I recommend approval of the Article 44 of the HRO.

#### **Article 45. Permanent lights on works**

519. Article 45 of the HRO would insert a new section 80A into the 1968 Act, which would make provision for the harbour master or Trinity House to require works in the Thames to be lit at night and during times of restricted visibility.

520. Mr Stride confirmed at paragraph 3.1.2 of his Proof of Evidence<sup>112</sup> and in his oral evidence that the current Act, in section 80, only provides the PLA with powers to maintain lights on works or infrastructure which are owned by the PLA. Section 80 does not concern works or infrastructure owned or maintained by third parties which constitute most of the infrastructure on the tidal Thames. Furthermore, the PLA is the designated Local Lighthouse Authority under section 193 of the Merchant Shipping Act 1995 but presently has no enforcement powers to require a third party to ensure lights within their works or infrastructure are maintained.

521. The new section would create an offence of failing to comply with the harbour master's requirements or those of Trinity House, subject to a defence that reasonable precautions were taken, or that due diligence was exercised to avoid the commission of the offence. This new offence at section 80A(2) is triable either summarily or on indictment.

<sup>112</sup> Inquiry Documents PLA/3

522. The new section 80A would also enable the Port Authority to pursue a civil injunction to secure compliance. Further, the provision would authorise the PLA to enter on land and the work in order to light or repair or replace existing lights on works and recover the costs of doing so as a debt.
523. The PLA maintains in its Statement in Support of the Application that this additional section meets the objective in paragraph 3(b) of Schedule 2 of the Harbours Act to vary a power to mark or light the harbour.
524. I have considered the objection from the RYA to the proposal that the lighting requirement should be included in individual permissions. However, I agree with the position taken by the PLA that it would not always be possible to include the requirements for lights within a permission because safety circumstances can change over time and will need to be dealt with when necessary – particularly as part of the PLA’s regular review of navigational safety risks (See Proof of Evidence of James Stride at 3.1.10).
525. I also agree that it is appropriate the level of fine is set at the upper limit because inadequate lighting could lead to a collision that could endanger life or cause significant environmental damage.
526. The PLA considers that the proposed new section would reduce the likelihood of a collision during hours of darkness or poor visibility. Having considered the points made by RYA and the PLA, I find that the new section 80A meets the desirability test within section 14(2)(b) of the Harbours Act and I recommend that Article 45 of the HRO is approved.

#### **Article 46. Agreements about calling at landing places**

527. Article 46 of the HRO would change section 85 of the 1968 Act to replace the reference to “waterman” with “master”. The PLA states in its Statement in Support of the Application that the change would widen the requirement as a boatmaster is required on commercial vessels which do not fall within pilotage, but private vessels may also want to enter into an agreement to use a landing place and not have a boatmaster in charge. The PLA states that this fulfils the objective in paragraph 3(a) of Schedule 2 of the Harbours Act of varying powers to improve, maintain or manage the harbour. This change is not subject to any objection and I recommend that Article 46 of the HRO is approved.

#### **Article 47 Maintenance of Richmond works and working of sluices**

528. Article 47 of the HRO would amend section 88(2) of the 1968 Act to delete the reference to the consent of the Board of Trade being required to keep up the sluices at Richmond for the protection of the navigation of the Thames. The PLA maintains within its Statement in Support of the Application that the consent of the Secretary of State is not considered to be appropriate because this section deals with protection of navigation and it is not considered appropriate that the Secretary of State makes a judgment on the periods for which the sluice gates are to be kept open in order to protect the navigation of the River Thames.

529. Furthermore, the HRO proposes that the height in subsection (1) has been converted to metric measurement and reference is now made to Ordnance Datum Newlyn. The amendments to section 88 of the 1968 Act are not subject to any objection, and I find they meet the test in section 14(2)(b) of the Harbours Act. I recommend that Article 47 is approved.

#### **Article 106 - Repeal of Section 89. Construction of references to Trinity High Water**

530. Section 89 would be repealed through Article 106 of the HRO because the definition of the level of Trinity High Water contained within it is no longer required. This deletion is not the subject of any objection, and I recommend approval of Article 106 and the associated Schedule 1 in relation to the repeal of section 89.

**Article 48. Entry on land to survey, etc.**

531. Article 48 of the HRO would expand section 90 of the 1968 Act to widen the powers of the Port Authority to enter on to third party land by including new powers to enter for the purposes of monitoring compliance with the terms of a works, dredging or mooring permission.

532. A new subsection (1A) would be inserted into section 90 to ensure that an authorised person on behalf of the authority entering land would have the same powers contained in section 137 subsections (2) and (5) to (8) – essentially taking another officer and materials, taking photographs and recordings, requiring assistance from others in exercising powers, imposition of a fine not exceeding Level 3 on the standard scale for failure to provide information in response to any request.

533. I consider that Article 48 of the HRO should be modified so that section 90(1A) reflects that the provisions in section 137, which apply to an authorised officer in that section, would apply to an authorised person within section 90.

534. Section 90(1A) should therefore read as follows:

*(1A) Subsections (2) and (5) to (8) of section 137 (Powers of inspection of works and vessels) apply in relation to an inspection of land under this section by a duly authorised person acting on behalf of the Port Authority as they apply to an inspection of a work or vessel by a duly authorised officer of the Port Authority under that section.*

535. Article 48 proposes a new subsection (3A) to clarify that compensation under subsection (3) will not be payable in respect of damage necessarily caused while identifying that there has been a breach of a permission.
536. Furthermore, a new subsection (5) would enable the Port Authority to authorise a constable to exercise these powers subject to the notification requirements of subsection (6).
537. The PLA maintains that these amendments meet the objective in paragraph 4 of Schedule 2 of the Harbours Act of imposing or conferring on the Port Authority duties or powers in addition to or in substitution for powers or duties imposed or conferred under paragraph 3(a), improving, maintaining or managing the harbour. I have noted the objections of NBTA to the proposed amendments and the responses of the PLA that section 90 will not be exercisable for the purpose of navigational incidents and that the power of entry does not include a power to enter a dwelling, albeit that it would be permissible to enter the common parts of a building used as a dwelling.
538. Having considered the objections and the responses of the PLA, subject to the modification to section 90(1A) detailed above, I find that Article 48 would meet the desirability test within section 14(2)(b) of the Harbours Act. I recommend that Article 48 of the HRO is approved.

#### **Article 49. Times when public use of Thames may be restricted**

539. Article 49 of the HRO proposes amendment of section 91 of the 1968 Act to widen the purposes for which public access may be restricted in subsection (1), to include any works or operations on or adjacent to the river, and any event or activity taking place on or over the river and to preserve the safety and security of the public. Mr Stride, the PLA Chief Harbourmaster has stated in his evidence to the Inquiry that

the Thames is the UK's busiest inland waterway, transports 1/8th of UK trade, hosts over 625 sporting events annually and is the backdrop for multiple nationally significant events (such as the London Mayor's New Year's Eve firework show).

540. Mr Stride stated in evidence that the London Eye New Year's Eve fireworks and the Oxford and Cambridge Boat Race require river closures, which are enforced through the presence of Harbour Service Launches crewed by Marine River Inspectors, supported when deemed necessary by harbour masters. However, vessels which breach the exclusion zones under current legislation can only be instructed to leave an exclusion zone through the application of a special direction.
541. Mr Stride stated that when the Hammersmith Bridge was closed for road and pedestrian traffic in recent years due to risk of falling debris, no provision was in place to secure the protection of river users including recreational users who were potentially at risk of parts of the bridge falling onto a passing river user.
542. The PLA therefore proposes through the HRO that section 91 is expanded to include restricting the access of the public to stretches of the tidal Thames for the purpose of allowing or facilitating any works or operations on or adjacent to the river, and any event or activity taking place on or over the river and to preserve the safety and security of the public.
543. In subsection (2) the power to impose a restriction or exclusion would be qualified so as not to extend for longer than is reasonably required for that particular purpose. The Port Authority would be required under amendments to subsection (3) to give notice in an appropriate form as soon as reasonably practicable to persons likely to be affected by the exclusion or restriction.

544. It is also proposed that subsection (4) imposes a triable either way offence where a person enters a restricted or excluded area without consent, lawful authority or reasonable excuse. The Port Authority maintains that this would prevent vessels from entering hazardous areas or endangering the public.
545. The RYA has objected to the level of fine that would be imposed by the newly created offence. I do not accept the position of RYA because I consider that the fines would be justified for the reasons advanced by the PLA: that the safety measures at public events are serious matters, justifying the potential for an unlimited fine.
546. The PLA maintains that amendments proposed in Article 49 meet the objective in paragraph 4 of Schedule 2 of the Harbours Act of imposing or conferring on the Port Authority duties or powers in addition to or in substitution for powers or duties imposed or conferred under paragraph 3(c), regulating the carrying on by others of activities on harbour land. Having considered the evidence before me, I accept the position taken by the PLA. I find that the proposed changes to section 91 of the 1968 Act are desirable within the meaning of section 14(2)(b) of the Harbours Act. I therefore recommend that Article 49 of the HRO is approved.

#### **Article 50 Abatement of nuisances**

547. Article 50 of the HRO proposes that section 92 of the 1968 Act would be extended to enable the Port Authority to recover as a debt in the courts the costs it reasonably incurs in abating a nuisance or annoyance from the person who created it. The PLA maintains that this fulfils the objective in paragraph 3(a) of Schedule 2 of the Harbours Act of varying powers to improve, maintain or manage the harbour. There are no outstanding objections to Article 50. I consider that the extension to section 92 of the 1968 Act meets the desirability test within section 14(2)(b) of the Harbours Act and I recommend that Article 50 is approved.

## **Article 106. Repeal of Section 93 (Flood Prevention)**

548. The PLA states in its Statement in Support of the Application<sup>113</sup> that Section 93 (Flood prevention) is repealed because the Port Authority no longer owns any of the works referenced in this section. This was not disputed in the Inquiry and there is no objection to the repeal. Accordingly, I recommend the approval of the repeal of this section through Article 106 of the HRO.

## **Article 51 Grab chains and escape ladders**

549. Article 51 of the HRO proposes that a new section 93A is inserted into the 1968 Act to give the Port Authority the power to require the owners of land adjoining the Thames to install and maintain such grab chains and escape ladders as the Port Authority may reasonably require. These safety measures were expressly recommended by Lord Clarke in January 2000 in the report of the Thames Safety Inquiry into the Marchioness disaster.<sup>114</sup>

550. In the report Lord Clarke recommended (at paragraph 3.15) that the PLA be given *‘statutory power to require local authorities and other riparian owners to make such provision for life-saving appliances and means of escape from the river as the PLA thinks fit, at the authorities’ and owners’ expense’.*

551. These recommendations were not implemented through legislation and there remain sections of the River Thames, particularly along the north bank, where grab chains and safety ladders have not been installed. This was apparent from the site visit that took place after the conclusion of the Inquiry hearings. Mr Stride stated in his oral evidence on 27 February 2025 that approximately 100 people a year

<sup>113</sup> Core Documents CDB2

<sup>114</sup> Core Documents CDG32 – at page 4.

enter the river and over the last five years there have been approximately 30 fatalities a year.

552. The PLA maintains that, following the recommendation of the Thames Safety Inquiry, the obligation to install and maintain the grab chains or escape ladders should be upon the riparian landowner and it would follow that those owners should also be responsible for paying for the installation and maintenance.
553. The proposed section 93A(2) of the new section allows for an adjoining landowner to object to a requirement to install this equipment on the ground that it is not practicable to do so. The objection must be made within 28 days of receiving notification of the requirement to install the safety measures by the PLA. Where there is an objection, the matter would be referred to be determined by a single arbitrator.
554. Subsection (3) makes non-compliance with a requirement under section 93A(1) an offence, triable summarily or upon indictment, unless there has been a successful objection under subsection (2) or where a person can prove they took all reasonable precautions and exercised all due diligence to avoid the commission of the offence (the defence is contained within subsection (5)). I have considered the objection of the RYA that fines should be set at lower levels but agree with the position taken by the PLA that these safety issues are a serious issue and would justify the level of fine potentially imposed in some cases.
555. In the event of such non-compliance the Port Authority would be entitled to go onto the land for the purpose of installation or maintenance of the equipment and reclaim their costs in doing so. Subsection (4) would clarify that the Port Authority's requirements under subsection (1) are also enforceable in civil proceedings for an injunction.

556. During the evidence of Mr Trimmer an issue was raised concerning whether the grab chains and escape ladders would fall within the new permitting regime, insofar as they would overhang the Thames. Mr Trimmer confirmed that he considered that these measures would require permission. The PLA subsequently confirmed that a property licence would also be required.

557. Following the evidence of Mr Trimmer, the PLA submitted a Note to the Inquiry<sup>115</sup>. The Note responded, amongst other things, to a concern raised that a riparian owner might commit an offence were he unable to install the safety ladders and grab chains due to difficulties in obtaining a permission or property right from the PLA. The Note stated:

*Clearly, it would not be reasonable for the PLA to require the installation of equipment which it was not prepared to grant a permission or property licence for and if the landowner can show they tried to obtain such a permission and it was refused, the PLA would suggest that this would clearly fall within the defence in subsection (5).*

*Some concerns were raised about the costs of obtaining the permission and property licence. The PLA can confirm that it does not intend to charge an administration fee in relation to permissions for grab chains and escape ladders. Additionally, it is the PLA's intention that there would be no consideration payable in relation to any part of a property licence granted solely in relation to grab chains and escape ladders*

558. It could be argued that it is administratively burdensome to require a riparian owner to submit an application for a works permission to install safety measures that are required by the PLA. Such an owner would be required to comply with the requirement of section 66B and submit 'plans, sections and full particulars of the works'. The section 66B procedure would also require the PLA to register the application and publish notice of it (unless the PLA deems this unnecessary). Furthermore, a riparian owner would be required to apply under section 11 for the grant of an interest or licence to use the land.

<sup>115</sup> Inquiry Documents ID20

559. However, I do accept that the grab chains and escape ladders should be subject to a degree of scrutiny through the works permission and property licence procedures. It would be necessary to ensure that such safety measures are fit for purpose in terms of construction and siting.
560. I have recommended modifications to Articles 9 and 32 of the HRO in the paragraphs above in light of the clarification set out in the PLA Note. As detailed above, I consider that those Articles should be modified to reflect that no fees or considerations are to be paid for permissions and property licences for grab chains and escape ladders.
561. I agree with the position taken by the PLA that these amendments meet the objective in paragraph 4 of Schedule 2 of the Harbours Act of imposing or conferring on the Port Authority duties or powers in addition to or in substitution for powers or duties imposed or conferred under paragraph 3(a), improving, maintaining or managing the harbour.
562. I do not accept the objections submitted by CRBA to the effect that the new power should only be granted by primary legislation and have dealt with issues relating to jurisdiction in the paragraphs above. Neither do I accept the objection made by TBYBC concerning the obligation on riparian owners to bear the cost of the safety measures because it was determined by Lord Clarke in an independent Inquiry that they should do so.
563. Subject to the modifications to Articles 9 and 32 of the HRO as detailed above, I recommend that the Article 51 of HRO should be approved. The test in section 14(2)(b) of the Harbours Act is satisfied because the provision of grab chains and escape ladders is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner. It is also desirable for the purpose of section 14(2)(b) that the recommendations made by Lord Clarke in January 2000 are brought into effect.

## **Article 52 General rules for navigation**

564. Article 52 of the HRO proposes amendment of the offence within section 108 for navigating a vessel without due care and attention or in a manner liable to injure or endanger persons. The PLA proposes the addition of the words “whether or not such navigation was also without due care and attention” to section 108(b). This is to clarify the difference from subsection (a) because problems have arisen due to the similarity of the two offences. There are no outstanding objections to this amendment. The clarification is desirable within the meaning of section 14(2)(b) of the Harbours Act in light of what the PLA has said about problems having arisen. I recommend that Article 52 of the HRO is approved.

## **Article 53. Overcrowding of vessels**

565. Section 110 of the 1968 Act sets out rules in relation to the overcrowding of vessels and requires that the master of a vessel shall not carry more people than it is licensed for or that it is reasonably fit to carry. Article 53 of the HRO would amend subsection (1) to remove the word “carry” and replace with “have on board.” The purpose of the proposed change is to clarify that this section covers static vessels.

566. Mr Stride has stated in his Proof of Evidence that it is necessary to extend the measure to static vessels because of the increased presence of Airbnb (where houseboat or vessel owners may not ever meet the personnel renting their vessels), the continued use of vessels to witness major events such as the Mayor of London’s New Year’s Eve event and increasing use of self-hire craft.

567. Mr Stride states that the current section 110 does not extend to vessels which are static, but only those which are navigating. Afloat bars, party boats or houseboats that are moored are not covered by this section. This means that the PLA’s Harbour

Service Launch and / or harbour masters are not empowered under the 1968 Act, as it stands, to use their judgement to prevent a potentially dangerous situation from developing, where an overcrowded vessel could capsize, excessively list, or a crowd surge could cause people to fall into the water. Mr Stride stated in his evidence before the Inquiry that the amendments to section 110 would enable harbourmasters to step in upon spotting a potentially unsafe event.

568. I have considered the objections from the NBTA and The Barge Association in relation to Article 53. Dr Pereira stated in his oral evidence on behalf of The Barge Association that static vessels should not be subject to the same requirements as navigating vessels, at least when safe at a bankside or pontoon mooring. He noted that Mr Stride had agreed that ‘a safe ship is a ship alongside’. The Barge Association considers that the measure should be limited to ‘situations where dry shod evacuation (for example, stepping ashore onto land or a pontoon) is not possible’. Mr Stride’s position before the Inquiry was that static vessels should be subject to the same requirements as navigating vessels because vessels are frequently rented out to individuals who are unfamiliar with the marine environment.
569. Whilst there is some force in Dr Pereira’s position, I consider that the proposed change to section 110 is driven by the use of Airbnb and self-hire craft, as stated by Mr Stride in his evidence. This is unlikely to have been a matter of concern to the drafters of the 1968 legislation, at a time where it might have been reasonable to assume that those in control of vessels would have a good understanding of safety issues on the Thames. Whilst it is correct that vessels moored to quays or pontoons will be safer in terms of being at risk of capsize or listing, it would still be desirable for the PLA to have power to regulate crowding levels on static vessels where safety issues arise.
570. Having considered the objections to the changes to section 110 and the evidence of the PLA, I recommend that the HRO is approved in relation to Article 53. I consider that the Article meets the requirement of the test in section 14(2)(b) of the Harbours Act.

#### **Article 54. Special directions to vessels in the Thames**

571. The PLA proposes through Article 54 to amend section 112(1) of the 1968 Act to make clear that where it is necessary for making the direction effective, a special direction may override any of the permissions which might be granted under the permitting regime in Part V i.e. a works permission, mooring permission or dredging permission. A further amendment to section 112 at subsection (3) would enable a harbourmaster in an emergency to give special directions applicable to all vessels in the Thames or to a particular class of vessel in the Thames. This would enable the PLA to deal with security incidents, such as unexploded ordinance.
572. Furthermore, the HRO would insert a reference within section 112 to the revised section 91 (Times when the Public Use of the Thames may be Restricted) to require a vessel to comply with a restriction imposed under that section.
573. At paragraph 3.7.1 of his Proof of Evidence<sup>116</sup>, Mr Stride states that special directions are defined in ‘A Guide to Good Practice on Port Marine Operations<sup>117</sup>’ as directions which are not for setting general rules, but which relate to specific vessels – or in an emergency, to a class of vessels – on particular occasions. Essentially, a special direction may be distinguished from a general direction because the former is more immediate and ensures that the PLA is able to maintain navigational safety, particularly in an emergency situation.
574. By contrast, a general direction, which is the subject of section 111 of the 1968 Act, would require the agreement of the pilotage authority (which is the PLA) and the Chamber of Shipping of the United Kingdom. Although not mentioned in the

<sup>116</sup> Inquiry Documents PLA/3

<sup>117</sup> Core Documents CDG35 at paragraph 1.8.1

legislation, Mr Stride states at paragraph 3.7.5 of his Proof of Evidence that the PLA publishes general directions following a 30-day consultation with stakeholders.

575. The RYA and NBTA have objected to the amendments to section 112 of the 1968 Act. In its objection the RYA states that it considers that the power should be conferred by way of an amendment to section 111 rather than section 112 and should serve simply to bypass the consent requirement in an emergency. RYA states that section 114(2) already makes provision for general directions that are given in an emergency.
576. The PLA has responded at paragraph 12.14.3 of its Statement of Case<sup>118</sup> and states that it does not consider that it would be appropriate for general directions to be made for a direction applicable on a single occasion nor in relation to a time-critical situation. The position of the PLA is that a special direction is the more appropriate method in the context of dynamic risk assessment and provides for additional enforcement methods over and above those available for the enforcement of general directions.
577. In its Statement of Case<sup>119</sup>, NBTA objects to the proposed power to override a mooring permission. I consider that it is reasonable for a harbourmaster to make a special direction that overrides a works, mooring or dredging permission where there is an emergency situation. It is relevant to note that the power to override would only subsist for as long as the special direction is in place.
578. The PLA states in its Statement in Support of the Application that the proposed amendment to section 112 meets the objective in paragraph 3(b) of Schedule 2 of varying powers for the purpose of making safe the navigation of the harbour. Having considered the evidence of the PLA and the objectors, I conclude that the proposed

<sup>118</sup> Inquiry Documents SOC/1

<sup>119</sup> Inquiry Documents SOC/4

amendment is desirable for the purpose of section 14(2)(b) of the Harbours Act and I recommend that Article 54 of the HRO is approved.

#### **Article 55. Regulation of crowds**

579. Article 55 of the HRO relates to section 119(1) of the 1968 Act, which authorises the giving of orders by the Commissioner of the Metropolitan Police, with a view to maintaining public order and safety. The HRO proposes that the section is widened to allow “a Police Officer of at least the rank of Assistant Chief Constable” to give such orders. The PLA maintains that this amendment is justified because the Port Authority’s area extends beyond the bounds of the Metropolitan police area and into the City of London, Essex and Kent.

580. The PLA has stated that the amendment would fulfil the objective in paragraph 3(a) of Schedule 2 of the Harbours Act of varying powers to improve, maintain or manage the harbour. The amendment is not the subject of any outstanding objection. I consider that it is desirable for the purpose of section 14(2)(b) of the Harbours Act that the section 119 powers may be exercised outside the jurisdictions of the Metropolitan police area, where appropriate. I recommend that Article 55 of the HRO is approved.

#### **Article 56. Power to raise and remove vessels sunk, etc.**

581. Article 56 of the HRO would amend the references to duties and taxes in subsections (2) and (3) of section 120 of the 1968 Act to cover taxes under any enactment. The PLA states that this change is to ensure that all forms of liability are covered.

582. Section 120(5) deals with situations where the owner of the vessel is not known. The HRO proposes changes to the wording of the Act whereby a notice under the section

*'may be given by displaying it at the principal office and on the website of the Port Authority or in other electronic form'*. The Port Authority no longer has a head office, hence the change of wording to *'principal office'*.

583. Subsection (7) would be amended to clarify that the powers in this section can also be used in relation to any equipment on the vessel and a new subsection (8) would enable the Port Authority to appoint a third person to carry out the practical actions *'to raise, remove, blow up or otherwise destroy the vessel'*. The PLA states in its Statement in Support of the Application<sup>120</sup> that the reason for this amendment is that historically the Port Authority has had its own significant salvage capacity, but this has diminished over time. At the same time, the size of vessels has largely increased. As a result, the Port Authority might need to contract out these powers in respect of vessels, particularly larger vessels.
584. It is stated that the proposed changes meet the objective in paragraph 3(b) of Schedule 2 of the Harbours Act of varying powers for the purpose of raising wrecks or making safe the navigation of the harbour.
585. I have considered the objections by CRBA. The PLA has accepted the points made by CRBA through reverting to the previous position whereby it acts under a duty to remove sunk vessels, as opposed to a power to do so.
586. I find that the proposed changes meet the requirement of the desirability test within section 14(2)(b) of the Harbours Act and recommend that Article 56 is approved.

#### **Article 57. Power to deal with unserviceable vessels & Sale or disposal of vessels**

<sup>120</sup> Core Documents CDB2

587. Article 57 of the HRO would insert a new section 120A into the 1968 Act, which would create a new power for the Port Authority to deal with unserviceable vessels. The proposed new provision is based on section 15 of the Harwich Harbour Act 1974<sup>121</sup> and would allow the Port Authority to deal with vessels to which section 120 does not apply.
588. Section 15 of the Harwich Harbour Act refers to vessels that are ‘laid by or neglected as unserviceable in the Harbour or on land immediately adjoining the Harbour.’ However, the proposed section 120A of the Port of London Act would confer the same powers on ‘any vessel in the Thames or on land immediately adjoining the Thames which is, in the reasonable opinion of the harbourmaster, laid by or neglected as unserviceable and the state of which may affect the navigation or conservation of the Thames’.
589. Mr Stride states in his Proof of Evidence<sup>122</sup> at paragraph 3.8.7 that there have been several examples of vessels, particularly in creeks, where additional powers to intervene at an earlier stage in order to protect the environment would have been useful. He gave the example in his oral evidence on 27 February 2025 of an oil spillage from an oil storage barge, which sunk in East London and which took six days to clear up.
590. He also referred to the Royal Iris, a former ferry, which is currently sunk in the Thames with silt building up inside its hull, where it poses a potential threat to the Thames barrier. He also referred to the risk of pollution from end-of-life vessels made from GRP (Glass Reinforced Plastic) or fibreglass constructed between 1960s to 1980s. These vessels are often not abandoned and still have an owner but are deteriorating to the extent that their polystyrene buoyancy breaks down leading to microplastics dispersing into the environment. Such vessels may be starting to list and might contain hazardous chemicals within them.

<sup>121</sup> Core Documents CDG14

<sup>122</sup> Inquiry Documents PLA/3

591. The PLA would wish to deal with these potential hazards through issuing notices in line with the proposed section 120A. Following objections the PLA has increased the notice period to 56 days.
592. The proposed new section 120A would apply a definition of “unserviceable” ( i.e. ‘laid by or neglected as unfit for ... service’), which is based on that in section 57 of the Harbours, Docks and Piers Clauses Act 1847.<sup>123</sup>
593. Furthermore, in response to matters raised by objectors, the proposed subsection (6) clarifies that section 120A does not apply to a houseboat which is occupied for residential purposes.
594. A new section 120B has been added to include further details concerning the mechanism for the sale or disposal of vessels by the Port Authority and provides that the vessel would vest in the new owner free of any mortgage or other charge. The section would require the Port Authority to provide notice of the operation of and such sale within 28 days to any person with the benefit of any mortgage or other charge, deals with registration of the new owner. The section also provides that where the vessel is destroyed or disposed of notice must be given to the Registrar of Shipping.
595. A number of objectors have raised issues relating to the proposed sections 120A and 120B. The RYA has requested that the words ‘in the reasonable opinion of the harbourmaster’ be omitted from section 120A. I agree with the position of the PLA that the harbourmaster is best placed to make the decision based on the safety of navigation.

<sup>123</sup> Core Documents CDG7

596. I have also considered RYA's objection to the proposed section 120B, where it is suggested that maritime liens should subsist where a vessel is sold under this power and the PLA should be required to give notice to registered mortgagees. I note that the PLA has added a requirement within section 120B to give 28 days' notice to any person with the benefit of any relevant mortgage, lien, charge or other interest where the Port Authority is able to obtain their contact details using reasonable endeavours<sup>124</sup>. The PLA maintains that it is important that sales operate to vest the vessel in the purchaser free of incumbrances because otherwise it would be impractical to sell such vessels and recover the costs of removing them. I agree with the position taken by the PLA in relation to the objections from RYA.
597. I have considered the objections to the proposed section 120A by CRBA. The PLA has accepted the points made by CRBA through increasing the notice period to vessel owners within section 120A(4) from 28 to 56 days.
598. The River Thames Society and The Barge Association object to the proposed section 120A on the basis that the new power is unnecessary and maintain, along with the TBYBC that there should be a right of appeal. I have considered the responses of the PLA to these objections where it is maintained that the power is necessary because, as matters stand, the PLA would only be able to deal with unserviceable vessels when they have sunk, stranded or abandoned. The PLA also states that section 120A would enable the Port Authority to remove unsafe vessels which constitute a potential but unrealised, hazard to navigation. I accept the position of the PLA in relation to the lack of an appeal, in that it would not be appropriate for there to be a right of appeal where the PLA may need to act urgently and rapidly.
599. The NBTA raised an objection to section 120A in relation to Human Rights considerations and environmental matters. The PLA has clarified in its responses that vessels which are laid by or neglected as unserviceable might constitute a potential environmental hazard. Furthermore, the PLA confirms that the amended HRO now

<sup>124</sup> See section 120B (3)

includes a new subparagraph 6 to make clear that the powers would not apply to houseboats being occupied for residential purposes.

600. I find that the PLA's responses to the objections raised in relation to the proposed sections 120A and 120B are reasonable and proportionate and I do not propose any modification to Article 57 of the HRO based on those objections. I note that the PLA has acknowledged at page 58 of Appendix 3 to its Statement of Case that the PLA is always under an obligation to behave reasonably and that obligation would apply when exercising the power to deal with unserviceable vessels.
601. An issue arose during the Inquiry hearing in relation to vessels of historic value or interest, which might appear unserviceable. Dr Pereira asked Mr Stride how the PLA would view a vessel that appeared unserviceable, but which was actually in the process of being restored. Mr Stride stated that the PLA would take account of any restoration plan produced by an owner of a vessel, the safety equipment on board and whether the vessel had been under way. Mr Stride also stated that a harbourmaster would take account of proof of insurance. The PLA would also consider any marine survey conducted for insurance purposes and could refer such a report to the PLA's surveyors. The harbour master would also take account of registration of a vessel with the Maritime and Coastguard Agency, Small Ships Register, or the National Historic Ships Register.
602. The PLA maintains that the new sections 120A and 120B meet the objective in paragraph 4 of Schedule 2 of the Harbours Act of imposing or conferring on the Port Authority duties or powers in addition to or in substitution for powers or duties imposed or conferred under paragraph 3 varying powers for the purpose of making safe the navigation of the harbour. Having considered the evidence from the PLA and the submissions and evidence of the objectors, I consider that the new powers sought are desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner and satisfy the requirement in section 14(2)(b) of the Harbours Act. I recommend that Article 57 is approved.

## **Article 58. Removal of obstructions other than vessels**

603. Article 58 of the HRO would amend section 121 of the 1968 Act, which gives the Port Authority the power to remove various obstructions other than vessels. Under the HRO, subsection (1) would be amended to include a situation where, if it was not reasonably practicable to remove the obstruction without destroying it, the Port Authority may destroy it.
604. The PLA justifies the proposed amendment by stating that it has had to deal with many obstructions such as sunken debris, shipping containers, machinery, petrified trees and crashed aircraft. The Port Authority states in its Statement in Support of the Application that it would typically seek to remove the obstruction, but that sometimes this may not be possible without destruction – for example cutting a shipping container into sections. There are similar provisions in section 252 of the Merchant Shipping Act 1995. A consequential amendment would be made to subsection (6) to include the word ‘destroy’.
605. The PLA states that all the towpaths along the Thames have now become public highways, footpaths or byways and the responsibility of the local highway authorities. Consequently, the reference to “towpath on the Thames” would be removed from section 121(1)(b) and replaced with a reference to “landing place.” This is because the Port Authority has concerns with the obstruction of public landing places and draw docks. Furthermore, the list of local authorities in subsection (7) would be updated to include the Greater London Authority and Transport for London.
606. The PLA maintains that the amendment to section 121 meets the objective in paragraph 3(b) of Schedule 2 of the Harbours Act of varying powers for the purpose of making safe the navigation of the harbour. There are no outstanding objections to

the proposed changes to section 121. I consider that Article 58 meets the requirement of the desirability test in section 14(2)(b) of the Harbours Act and recommend that the Article is approved.

#### **Article 59. Removal of projections**

607. Article 59 of the HRO would amend section 122 of the 1968 Act, which gives the Port Authority powers to remove or destroy projections in the river. Projections are defined in section 122 as anything which projects over the Thames and includes stairs and any tree, bush or other plant, but does not include anything authorised by statute or by a works permission. The HRO proposes amendment to section 122 insofar as it extends the power to projections which are likely to become a danger to the navigation or use of the Thames. Furthermore, the HRO would extend the section to enable the Port Authority to destroy the projection.

608. The PLA maintains that the amendment meets the objective in paragraph 3(b) of Schedule 2 of the Harbours Act of varying powers for the purpose of making safe the navigation of the harbour. There are no outstanding objections to Article 59. I consider that the proposed changes to section 122 of the 1968 Act are desirable for the purpose of section 14(2)(b) of the Harbours Act. I recommend that the Article 59 of the HRO is approved.

#### **Article 60. Unlicensed vessels not to be navigated.**

609. Article 60 concerns section 124 of the Port of London Act, which establishes a licensing regime for certain vessels within the vessel licensing area.

610. The definition of the vessel licensing area has been amended, so that it no longer refers to the part of the Thames above the forward seaward limit, but to ‘that part of the Thames classified as C or D waters defined in Regulation 3(2) of the Merchant Shipping (Categorisation of Waters) Regulations 1992.’
611. The PLA has stated in its Statement of Case<sup>125</sup> that the change in the vessel licensing area would mean that operators of vessels that transit outside the former seaward limit, but are still within inland waters, will have the option of moving to the PLA’s vessel licensing regime from the Maritime and Coastguard Agency’s coding regime. This may include vessels that regularly transit to the River Crouch or the River Blackwater, as these are accessible from Category D waters.
612. The PLA states at paragraph 12.16.6 of its Statement of Case that the purpose of this change is not a ‘land grab’ as was maintained within one objection – but to ensure consistency between the PLA’s area of jurisdiction and the vessel licensing area.
613. Article 60 proposes an exemption for ‘*a houseboat or commercial and club boats*’, as are now to be defined in the interpretation section of the 1968 Act. This section would replace a similarly worded provision.
614. Under subsection (2)(f), the HRO would insert a qualification to the exemption for vessels licensed by another local authority or navigation authority, so that the exemption will only apply to those other licences which the Port Authority considers to be appropriate. The PLA’s position is that it is desirable to ensure a comparable standard of assessment for vessels.
615. Furthermore, subsection (5)(a) would be amended such that a vessel can be navigated, worked or moored within an area four times in any period of 12 months

<sup>125</sup> Inquiry Documents SOC/1

and be treated as being only occasionally in the vessel licensing area. This change has been made to allow for two returns if the vessel navigates through the limits.

616. The only outstanding objection to the amendments to section 124 is from the RYA, which has requested that section 124(2)(h) is amended expressly to include a vessel licensed by or under the authority of the Maritime and Coastguard Agency. RYA has maintained that not all vessels authorised by the Maritime and Coastguard Agency to operate commercially must be surveyed, so section 124(2)(h) should cover such vessels.
617. The PLA responded to this matter in its Statement of Case by stating that objection amounts to a request to widen the scope of the exemption beyond vessels subject to relevant survey requirements. Having considered the competing submissions of the RYA and the PLA, I accept the position of the PLA and do not propose to recommend the modification which is sought by the RYA.
618. I agree that the proposed changes to section 124 within the HRO would meet the objective in paragraph 3(a) of Schedule 2 of the Harbours Act of varying powers to manage the harbour and /or 3(b) of Schedule 2 of varying powers for the purpose of making safe the navigation of the harbour. There are no other outstanding objections in relation to section 124. I consider that the changes to section 124 are desirable for the purposes of section 14(2)(b) of the Harbours Act and I recommend that Article 60 is approved.

#### **Article 61. Power to refuse or revoke or suspend or terminate a licence**

619. Article 61 of the HRO amends section 125(1) of the 1968 Act and inserts a reference to section 124. The reasons for the proposed changes are to clarify that section 125 only applies to licences for vessels within the vessel licensing area and to avoid confusion with the new vessel mooring regime that would be introduced by the HRO.

620. To ensure consistency with other sections of the 1968 Act, a reference to termination has been added to the heading and to subsection (1) alongside the existing references to revocation and suspension.
621. The PLA states that the changes to section 125 meet the objective in paragraph 3(a) of Schedule 2 of the Harbours Act of varying powers to manage the harbour and /or 3(b) of Schedule 2 of varying powers for the purpose of making safe the navigation of the harbour. There are no outstanding objections to the Article 61. I find that it is desirable that the 1968 Act is clarified to make clear that section 125 relates to licensing of vessels under section 124. To this extent the desirability test in section 14(2)(b) of the Harbours Act is met. I recommend that Article 61 of the HRO is approved.

#### **Article 62. Appeals**

622. Article 62 introduces an amendment to section 126(1) of the 1968 Act to incorporate the word ‘terminate’ so as to update the reference to the amended section 125. This is a consequential amendment, which I recommend for approval.

#### **Article 106 - Repeal of Section 128 – Registers to record mortgages etc, and to be open to inspection.**

623. Section 128 would be repealed through Article 106 of the HRO because the PLA does not consider that it is necessary for the purposes or functions of the Port Authority to hold details of mortgages on a register. The PLA states that the repeal meets the objective in paragraph 3(a) of Schedule 2 of the Harbours Act of abolishing duties or powers to manage the harbour. There are no objections to the changes, and I recommend approval of Article 106 in relation to the repeal.

### **Article 63. Lights detrimental to navigation**

624. Article 63 of the HRO concerns section 133 of the 1968 Act, which relates to action that the Port Authority may take in response to a person placing or using lights which might interfere with the safe navigation of a vessel.
625. In its Statement in Support of the Application<sup>126</sup>, the PLA states that it is faced with increased use of lights along the river, including lasers, which may be a hazard to navigation. Particularly in the case of a laser interfering with navigation, the Port Authority would want to be able to stop its use immediately, rather than issue a written notice. The provisions of section 133 of the 1968 Act would therefore be amended to omit the reference to a written notice in subsection (1) and consequential amendments are proposed in subsection (2).
626. The PLA states that this amendment meets the objective in paragraph 3(b) of Schedule 2 of the Harbours Act of varying powers for the purpose of marking or lighting the harbour or making safe the navigation of the harbour. There is no objection to this amendment, and I recommend that Article 63 of the HRO is approved. This is a measure which concerns safety of navigation, and I consider that the proposed amendment is desirable and that the test in section 14(2)(b) of the Harbours Act is met.

### **Article 64. Fireworks**

627. Article 64 of the HRO proposes the inclusion of a new section 133A into the 1968 Act to address the use of fireworks or explosives on or over the Thames. These uses

<sup>126</sup> Inquiry Documents CDB2

are capable of misleading vessels on the river or interfering with safe navigation. The PLA raises a concern that such activities could be mistaken for distress signals.

628. Under the proposed section 133A a person would require the Port Authority's prior written consent to the use of fireworks or explosives which interfere with safe navigation or mislead vessels. Such written consent may be given subject to conditions.
629. Furthermore, Subsection (2) would make it an offence not to comply with the provisions of subsection (1) without lawful authority or reasonable excuse. The PLA states in its Statement in Support of the Application<sup>127</sup> that this new section meets the objective in paragraph 4 of Schedule 2 of the Harbours Act of imposing or conferring on the Port Authority's duties or powers in addition to or in substitution for powers or duties imposed or conferred under paragraph 3(a) of Schedule 2 of the Harbours Act for improving, maintaining or managing the harbour. There is no outstanding objection to the introduction of section 133A and I recommend that Article 64 is approved. As stated above in relation to Article 63, this is a measure which concerns safety of navigation. I consider that the proposed new section is desirable and that the test in section 14(2)(b) of the Harbours Act is met.

#### **Article 65. Damage by a vessel**

630. Article 65 proposes amendments to section 134 of the 1968 Act, which relates to situations where owners of vessels might be liable to pay the Port Authority the cost of making good damage. The HRO would extend this section to include in subsection (1)(a)(i) reference to "the bed of the Thames", where damage is done to the bed of the Thames by a vessel and to make clear that the Port Authority can recoup the costs

<sup>127</sup> Core Documents CDB2

of making good such damage. A new subsection (1)(a)(iii) has been added to include damage done to any vessel belonging to or chartered or hired by the Port Authority.

631. Further clarification is proposed through subparagraph (b) in relation to the recoverability through the courts of the costs of surveying a vessel or the bed of the river as a debt, where such costs are incurred in the making good of any damage. The PLA maintains in its Statement in Support of the Application that the amendments to section 134 meet the objective in paragraph 3(a) of schedule 2 of the Harbours Act of varying powers to manage the harbour and /or 3(b) of schedule 2 of varying powers for the purpose of making safe the navigation of the harbour. There are no objections to the amendments to section 134. Having read the relevant section in the Statement in Support of Application I take the view that the proposed changes meet the desirability test in section 14(2)(b) of the Harbours Act. I recommend that Article 65 of the HRO is approved.

#### **Article 66. Giving false draught**

632. The HRO proposes that section 136(1) is amended so that the requirement for a master to state the draught of his vessel, if required to do so, covers vessels entering or leaving the limits, not just docks. The PLA maintains that information relating to draught will be needed to ascertain vessel charges and to check passage plans.
633. Furthermore, the HRO would update the reference to dockmaster substituting the word 'harbourmaster', as the Port Authority does not have a dockmaster. The PLA states that the changes meet the objective in paragraph 3(a) of Schedule 2 of the Harbours Act of varying powers to manage the harbour and /or 3(b) of Schedule 2 of varying powers for the purpose of making safe the navigation of the harbour. There are no objections to the amendments to section 136. Having read the Statement in Support of Application I consider that the proposed changes meet the desirability

test in section 14(2)(b) of the Harbours Act, and I recommend that Article 66 is approved.

### **Article 67. Powers of inspection of works and vessels**

634. Article 67 of the HRO would extend the powers contained in section 137 of the 1968 Act to board vessels. As section 137 currently stands, an authorised officer of the PLA may enter and inspect a vessel *‘for the purposes of any enactment relating to the Port Authority or of any byelaw of the Port Authority including the enforcement thereof’, or to prevent or extinguish fire.* The PLA proposes that these powers are extended to enable entry and the ability to board any work in the Thames or vessel within the limits in connection with any permission issued under the new regime in section 66 of the 1968 Act.
635. The amendments would include powers to require a vessel to stop to facilitate an officer to board or disembark from the vessel. In addition, under the amended section, the PLA would be entitled to enter the ‘interior part of a vessel as is being used for residential purposes’ in an emergency or to prevent or extinguish fire. The amended section 137 would create an offence for non-compliance (refusal or failure to give the required information or knowingly or recklessly giving false or misleading information) and would enable the PLA to authorise a constable to exercise the powers under the section.
636. The PLA states in its Statement of Case that the expansion of section 137 is based on the inspection powers granted to the MMO under MACAA 2009 and reflects the desire to bring the PLA’s works permitting functions into alignment with the marine licensing regime. I have noted that section 246 of MACAA 2009 relates to powers to board and inspect vessels and marine installations.

637. In relation to the proposed changes to section 137, the Residential Boat Owners Association and the NBTA object to the scope of the powers of inspection in relation to private homes. I have also considered objections made by Thistleworth Marine Ltd and OPLAC.
638. Mr Beaumont of OPLAC told the Inquiry that many houseboats are used for work by their residents and that section 137 amendments would entitle PLA officers to enter an office (which is not used for residential purposes, but nevertheless still part of a home) within the interior of a houseboat in a non-emergency situation. The PLA has clarified within its responses to objections that it is not intended that the PLA will have the power to inspect homes.
639. In response to the position of NBTA that the changes may engage Article 8 ECHR, the PLA has asserted in its Statement of Case that it considers the interference with those rights would be proportionate and justified in the public interest.
640. In his Proof of Evidence<sup>128</sup> Mr Stride states that the existing powers in section 137 relate to vessels and not to works and would only enable an authorised officer to board a vessel to enact or enforce any byelaw. He states that the existing powers do not provide any recourse in the event someone refuses to provide, or gives false information relating to, their name and address. Neither do the existing powers allow for the police to act on behalf of the PLA.
641. Mr Stride further states that the PLA requires the amended powers to assist in maintaining the safety of the river. The PLA nevertheless accepts that residents of houseboats will be distinguished from occupiers of properties on land but there are valid safety reasons for doing so based on the potential dangers posed to and by those living on vessels in a fast-flowing estuary. The position taken by the PLA is that people having control of vessels in navigable waterways (which are essentially

<sup>128</sup> Inquiry Documents PLA/3

water-based highways) have responsibilities that are not matched by those that are residents on land.

642. Within its Statement in Support of the Application<sup>129</sup>, the PLA has stated that the amended section 137 meets the objective in paragraph 4 of Schedule 2 of the Harbours Act of imposing or conferring on the Port Authority duties or powers in substitution for powers or duties imposed or conferred under paragraph 3(a) powers to manage the harbour.
643. Having considered the evidence and arguments before me, from the objectors and the PLA I accept that Article 67 meets the objective in paragraph 4 of Schedule 2 as set out in the Statement in Support of the Application. I also consider that the proposed changes to section 137 are desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner and satisfy the test in section 14(2)(b) of the Harbours Act. I recommend that Article 67 of the HRO is approved.

#### **Article 68. Identity of master and owner or occupier**

644. Article 68 of the HRO would amend section 138 of the 1968 Act in order to assist the Port Authority in identifying the master, owner and occupier of a vessel.
645. As currently drafted, section 138 provides that the owner of a vessel shall, on written application to him by the Port Authority, give to the Port Authority in writing all information in his power as to the person who at any particular time was the master of the vessel. Any owner refusing to give such information or 'by his own negligence or default' being unable to do so shall be guilty of an offence and liable to a fine not exceeding level 2 on the standard scale. Furthermore, the information provided

<sup>129</sup> Core Documents CDB2

would be admissible in evidence for the purpose of determining the identity of the master of the vessel at a particular time.

646. The position of the PLA is that at present there is no power to require a master to give his name and address or that of the vessel's owner. Neither is there any power within section 138 to compel production of the name of the occupier of a vessel.
647. Section 138 would be extended under the HRO to require the master or owner or occupier on receipt of a written application to provide the Port Authority with information as to who was the master, owner or occupier of a vessel at any particular time. Failure to do so through refusal, provision of false or misleading information, or through negligence or default would give rise to the commission of an offence. The information provided through the section 138 process would be admissible in evidence for the purpose of determining the identity of the master, owner or occupier of the vessel at a particular time.
648. Mr Stride states in his Proof of Evidence that without the ability to require information on the identity of masters, owners or occupiers, the PLA would be unable to enforce its regulation of the river and the management of the harbour would be made much more difficult.
649. A number of objectors have expressed opposition to the proposed changes to section 138. In her closing submissions Mrs Smith of the NBTA stated that no other navigation authority requires the identity of boat occupants to be provided. NBTA also raised human rights implications within its objection.
650. The River Thames Society and The Barge Association have objected to Article 68 and expressed concern about the impact of the changes to section 138 of the 1968 Act on those who live on residential vessels. Mrs Pereira stated in her closing

submissions on behalf of RTS<sup>130</sup> that if the PLA sought the new powers to assist with investigating throwing rubbish from boats, such matters could be dealt with under section 200 (prohibition of pollution), under which the master or owner of the vessel may be proceeded against.

651. Mrs Pereira further stated that section 22(1)(b) would enable the PLA to secure payment of terminal dues, without resorting to needing to know the identity of occupiers. She added that the police would have powers to act in cases of serious actions from occupiers of vessels and that the amended definition of ‘master’ required that someone else acquires that status in his or her absence.
652. Mr Wren, who gave evidence on behalf of the Residential Boatowners Association (RBOA), stated that the RBOA recognise the desirability for owners and masters of vessels to be identifiable. He stated: ‘However, we remain concerned about the requirement to provide identities of occupiers and consider that the explanations given do not justify contravention of Article 8 of the ECHR.’
653. In response to these objections the PLA makes a similar point to that made in relation to Article 67. The PLA acknowledges that residents of houseboats will be distinguished from occupiers of properties on land but states at paragraph 12.17/6 of its Statement of Case<sup>131</sup> that “*there are valid safety reasons for doing so based on the potential dangers posed to and by those living on vessels. People having control of vessels in navigable waterways (which are essentially water-based highways) have responsibilities that do not apply to residents on land.*” The PLA additionally states that to the extent that the use of the power in section 138 may engage Article 8 of the ECHR, the interference with those rights would be proportionate and justified in the public interest.

<sup>130</sup> Inquiry Documents ID25

<sup>131</sup> Inquiry Documents SOC/1

654. The PLA states that the amendments would meet the objective in paragraph 4 of Schedule 2 of the Harbours Act of imposing or conferring on the Port Authority duties or powers in substitution for powers or duties imposed or conferred under paragraph 3(a) powers to manage the harbour.
655. Having heard and considered the evidence from the PLA and objectors, I find that it is not desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner to require the identities of occupiers of vessels. I do not accept that there are safety or other reasons for distinguishing residents of houseboats from occupiers of properties on land in regard to requiring identities of occupiers.
656. The current section 138 of the 1968 Act requires that the owner of a vessel is to provide the identity of the master when requested to do so. I accept that it is desirable for the master to provide his name and address and any information that he has about the name and address of the owner. However, I do not consider that it is desirable for the purposes of section 14(2)(b) of the Harbours Act for the master or owner to provide names and addresses of occupiers.
657. Essentially, I agree with the position of the Residential Boatowners' Association that it is desirable that the owners and masters of vessels should be identifiable. I do not agree with the position of the PLA that it is desirable that occupiers are identifiable. Furthermore, it is likely that Article 8 ECHR would be engaged through a requirement for occupiers/residents of houseboats to provide their identities. I do not consider that the PLA has advanced a strong argument on the proportionality of such a measure.
658. I recommend Article 68 of the HRO is modified so that the amendments to section 138 of the 1968 Act exclude references to occupiers. I would propose the following wording:

*“Identity of master and owner*

*138.—(1) The master of a vessel in the Thames must at the request of a duly authorised officer of the Port Authority give the master’s name and address and such information as the master has about the name of the owner of the vessel and the owner’s address.*

*(2) If a master—*

*(a) fails to give the required information; or*

*(b) knowingly or recklessly, gives false or misleading information,*

*in response to a request under subsection (1) the master is guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.*

*(3) The master or owner of a vessel shall, on written application by the Port Authority, give to the Port Authority in writing all information in the master’s or owner’s power as to the person who at any particular time was the master or owner of the vessel and the master or any owner refusing to give such information, giving false or misleading information or by the master’s or owner’s own negligence or default being unable to give the name and address of such person, is guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.*

*(4) In any proceedings relating to the vessel or its master the information given pursuant to subsection (1) or subsection (3) shall be admissible as evidence for the purpose of determining the identity of the master or owner of the vessel at a particular time.”*

659. Subject to the above modification I recommend that Article 68 of the HRO is approved.

**Article 69. Autonomous vessels**

660. Article 69 of the HRO would insert a new section 138A into the 1968 Act. The new section would assist the Port Authority in dealing with the increased availability and use of autonomous vessels. The PLA states in its Statement in Support of the Application that some forms of autonomous vessel can operate without any person being on the vessel and some operate without any person being in control of the vessel even remotely. This would make it impossible for a harbourmaster to issue and ensure compliance with directions.

661. The PLA confirms that section 138A would require that before the owner of an autonomous vessel permits it to enter the Thames, they must first provide the harbourmaster with a notice containing the name, address and contact details of a person who is either in control or who is able to take control of the vessel remotely; details of the type of vessel and details of the vessel's proposed route within the Thames. This will ensure that the harbourmaster has the contact details of a person to whom he is able to issue directions in relation to the vessel. The notice must be given in writing, not less than 72 hours before entering the Thames and "in writing" is defined in section 2(1) as including by electronic means.
662. Furthermore, the new section makes it an offence to allow an autonomous vessel to enter the Thames without giving this notice. The owner would be liable to a fine not exceeding level 4 on the standard scale for committing such offence. The PLA states that the new section would meet the objective in paragraph 4 of Schedule 2 of the Harbours Act of imposing or conferring on the Port Authority duties or powers in addition to or in substitution for powers or duties imposed or conferred under paragraph 3(a) powers to manage the harbour and /or 3(b) for the purpose of making safe the navigation of the harbour.
663. I agree with the PLA that the new section would enable a harbourmaster to issue and ensure compliance with directions. I find that the desirability test in section 14(2)(b) of the Harbours Act is met in this regard. There are no objections to the insertion of a new section 138A and I recommend approval Article 69 of the HRO.

#### **Article 70. Thames watermen and Thames lightermen**

#### **Article 71. Register of Thames watermen and Thames lightermen**

664. Article 70 of the HRO would amend the heading of Part 8 and section 139 of the 1968 Act to take into account the new definitions of Thames waterman and Thames

lighterman. Furthermore, through Article 71 the Port Authority would not be under an obligation to keep a register of the Thames watermen and Thames lightermen although it may choose to do so. There are no objections to Articles 70 and 71 of the HRO and I recommend that those Articles are approved.

#### **Article 106 - Repeal of Section 140. Fees for licences and list of fares**

665. The PLA states in its Statement in Support of the Application<sup>132</sup> that section 140 is repealed through Article 106 of the HRO to reflect the fact that the watermen and lightermen no longer have a statutory role under the 1968 Act and that the Port Authority no longer has any power under section 164 of the Act to make byelaws for their government and regulation. This statement has not been disputed and there are no objections to the repeal. I recommend approval of Article 106 in relation to the repeal of section 140.

#### **Article 106 - Repeal of Section 141. Account of imports to be given to Port Authority**

666. Section 141 (Account of imports to be given to Port Authority) would be repealed through Article 106 of the HRO because in future the Port Authority will set out its requirements in relation to charges under section 22 of the 1968 Act. The PLA maintains that the repeal meets the objective in paragraph 3(a) of Schedule 2 of the Harbours Act of abolishing duties or powers to manage the harbour. This Article is not subject to any objection and I recommend approval of Article 106 in relation to the repeal.

#### **Article 72. Customs entry by Port Authority**

667. Article 72 would make minor amendments to update section 145 to reflect the modern position of His Majesty's Revenue and Customs. There are no objections in relation to this Article. I have noted that the marked-up version refers to 'Her Majesty' instead of 'His Majesty' and recommend that the reference is corrected.

<sup>132</sup> Core Documents CDB2

Subject to this modification I recommend that Article 72 is approved. I accept that it is desirable for the purpose of section 14(2)(b) of the Harbours Act that the language of the 1968 Act is updated to reflect current wording. I have recommended that the wording of section 145 of the 1968 Act should refer to His Majesty's Revenue and Customs.

### **Article 73. Passes for goods**

668. The reference to the Port Authority's police in section 147 would be deleted under the HRO because the Port Authority no longer has a police force. There are no objections in relation to this Article. It is desirable for the purpose of section 14(2)(b) of the Harbours Act that the language of the 1968 Act is updated appropriately. I recommend that Article 73 is approved.

### **Article 106 - Repeal of Section 148: Accommodation for customs officers.**

669. Section 148 (Accommodation for customs officers) would be repealed through Article 106 of the HRO because the Port Authority no longer provides accommodation for customs officers. The repeal meets the objective in paragraph 3(a) of Schedule 2 of the Harbours Act of abolishing duties or powers to manage the harbour. There is no objection to this repeal. I find that the test under the Harbours Act is met and I recommend that Article 106 is approved in relation to the repeal.

### **Sections 154 to 160 of the 1968 Act**

670. The updated March 2025 marked-up version of the Act<sup>133</sup> notes (at page 96) that sections 154-160 are omitted as no longer applicable to the Port of London Authority. Those sections relate to The Port Authority's Police Force, which no longer exists. I note that the sections remain in the Port of London Act, as currently drafted, as it appears on the PLA website.<sup>134</sup> However, the sections are not included within the

<sup>133</sup> Inquiry Documents ID18

<sup>134</sup> The Core Documents submitted to the Inquiry contained marked up versions of the 1968 Act, but not a clean copy of the Act as it currently stands.

repeals section in the Statement in Support of the Application. It is not clear why the sections are not expressly repealed by the HRO, or why they are not set out in the marked-up version of the 1968 Act, if they have not been repealed.

671. I do not recommend that the sections are repealed as they do not form any part of the HRO. I have advised that the MMO should request that the PLA clarifies its position on these sections.

#### **Article 74. Thames byelaws**

672. Section 162 of the 1968 Act sets out the purposes for which the Port Authority may make byelaws for the Thames. Article 74 of the HRO proposes four amendments to the section as currently drafted.
673. Firstly, the reference to “towpaths” in subsection (1)(f) would be deleted because all the towpaths along the Thames have now become public highways, footpaths or byways and are the responsibility of the local highway authorities.
674. Secondly, subsection (1)(h) would be amended to cover nuisances under or over the Thames as well as in the river.
675. Thirdly, a new subparagraph (m) would be added to allow the Port Authority to make byelaws for the purposes of securing the conservation of the natural beauty of the countryside and of flora, fauna and geological or physiographical features of special interest. The wording of this proposed subparagraph follows the wording of section 48A of the Harbours Act, which sets out the environmental duties of all harbour authorities.

676. This subparagraph (m) was the subject of criticism by objectors, most notably TBYBC, which maintained that the HRO should reflect a modern approach towards the environment by incorporating environmental duties expressly within the amended 1968 Act, which was enacted at a time when environmental concerns relating to the River Thames (around dredging for example) were not understood as they are today.
677. The PLA's response to these submissions is that the HRO does not have any direct effect on the matters set out in section 48A. The PLA maintains in its closing submissions to the Inquiry that certain of the section 48A powers can be exercised to further the conservation of natural beauty, etc., for example the new byelaw making power.<sup>135</sup> (as set out in para 26 of the closing submissions of Mr Turney KC). The PLA further state that section 48A may be relevant when the new powers are exercised but it is not relevant at the point at which the MMO will consider whether to approve the HRO and whether amendments should be made to it.
678. I have recommended that the HRO should be modified to require the PLA to consider the section 48A duty when determining works/mooring/dredging permission applications under the new section 66 regime, dredging undertaken by the PLA under section 60 of the 1968 Act and when determining whether to infill / reclaim creeks pursuant to the power under section 65. I consider that, in addition to the modifications that I have recommended, the new byelaw making power within the proposed amendment to section 162 would also operate to secure that environmental duties are considered and enforced where deemed necessary.
679. The RYA has objected to subsection (m) and requested that the words 'to secure the conservation ...' be replaced with 'to reduce the impact of the Port Authority's undertaking on'. The RYA requests this change because it states that it is not the PLA's duty or function to act as a conservation organisation. The PLA has responded within Appendix 3 to its Statement of Case by stating that to reduce the PLA's impact

<sup>135</sup> Inquiry Documents ID31. See para 26 of the PLA's closing submissions

would be unduly restrictive because the section 48A duty is broader in scope than the PLA's undertaking. I accept the position of the PLA in relation to this objection.

680. The fourth proposed amendment to section 162 is the new subparagraph 162(n), which authorises the making of byelaws to regulate bunkering. The PLA states in its Statement in Support of the Application<sup>136</sup> that it is usual for harbour authorities to have byelaws in respect of bunkering and that the main reason for such powers is that there could be severe environmental consequences in the event of a spill, but there are also safety risks such as fire.

681. The PLA states that the proposed amendments to section 162 meet the objective in paragraph 16A of Schedule 2 of the Harbours Act of imposing or conferring on the Port Authority duties or powers (including powers to make byelaws) for the conservation of the natural beauty of all or any part of the harbour or of any of the fauna, flora or geological or physiographical features in the harbour and all other natural features. I consider that the amendments to section 162 do meet this purpose, and that Article 74 meets the requirement of section 14(2)(b) of the Harbours Act. I recommend that Article 74 is approved.

#### **Article 75. Fines for breach of byelaws**

682. Paragraph (d) of section 167 of the 1968 Act would be amended by Article 75 of the HRO to raise the fine in relation to a breach of byelaws relating to port premises under section 161 from level 3 to level 4 on the standard scale and to a daily fine not exceeding £50 (from £20). There are no outstanding objections to the changes to section 167. I recommend that Article 75 is approved.

#### **Article 76. Confirmation of byelaws**

<sup>136</sup> Core Documents CDB2

683. Section 168 of the Port of London Act sets out the procedure whereby the PLA is required to confirm byelaws that it makes. The HRO proposes a number of amendments to this provision.
684. As currently drafted, section 168 would require that the PLA publishes a notice of intention to apply to the Secretary of State for confirmation of proposed byelaws in a number of publications. The HRO would amend subsection (3)(a) of the byelaw confirmation procedure to limit the obligations of the Port Authority. The PLA seeks a consistent approach to that taken to the publication of byelaws made under local government legislation, which only require publication in one or more local newspapers circulating in the areas to which the byelaws are to apply.
685. Under the amended section, the Port Authority would be required to publish in the London Gazette and in one or more newspapers circulating in the area to which the byelaws apply.
686. The PLA confirms in its Statement in Support of the Application that the Greater London Authority and Transport for London would be added to the list of local authorities to receive a copy of the notice if the byelaws affect Greater London. Port of Tilbury London Limited and London Gateway Port Limited would be added to the list of bodies to receive a copy of the notice of the byelaws. Furthermore, Southend-on-Sea Borough Council would receive a copy of the notice if the byelaws apply to any part of the Thames between the former seaward limit and the seaward limit. This amendment would ensure that all harbour authorities adjoining the Thames are made aware of changes in the byelaws.
687. The requirement to give notice to every river authority has been replaced with an obligation to give notice to the Environment Agency to reflect the fact that the Agency has taken on the powers and duties of the river authorities.

688. As the Port Authority has no head office, these words in subsection (3)(c) have been replaced with “principal office”.
689. Through its website the Port Authority also conveys statutory and other information affecting river users, and it is likely that copies of the byelaws will be available to download without payment or charge. However, the PLA has not sought to add a requirement to publish on its website. The Port Authority states in its Statement in Support of the Application that it may also choose not to charge for hard copies of the byelaws and for this reason the words “if demanded” have been added to the end of subsection (3)(d). The PLA states that the changes to Section 168 meet the objective in paragraph 3(a) of Schedule 2 of the Harbours Act of varying powers to improve, maintain or manage the harbour. There are no outstanding objections to the amendments to section 168 and, having considered the points made in the Statement in Support of the Application, I consider that the proposed amendments to section 168 of the 1968 Act are desirable within the meaning of section 14(2)(b) of the Harbours Act. I recommend that Article 76 is approved.

#### **Article 77. Proof of byelaws**

690. Article 77 of the HRO proposes that section 169 is amended such that a copy of the byelaws can be authenticated by the seal of the Port Authority only. The PLA maintains in its Statement in Support of the Application<sup>137</sup> that the signature of the secretary should no longer be a requirement in addition to the seal. There are no outstanding objections to the amendments to section 169 and I recommend that Article 77 is approved.

#### **Article 78. Rights of way over permitted works and land of Port Authority & Adverse possession claims in relation to the Thames**

##### **Section 175A**

<sup>137</sup> Core Documents CDB2

691. Article 78 of the HRO proposes a new section 175A, which states:

*175A Rights of way over permitted works and land of Port Authority*

*As from [the date of commencement of the Order] no right of way may be acquired by prescription or user over any permitted work in, under or over the Thames or any road, way, slipway, steps, place on land or landing place within the ownership of the Port Authority and giving access to the Thames.*

692. The PLA has clarified that the amendment would not be retrospective. The PLA states within its Statement in Support of the Application that the proposed new provision is based on section 57 of the British Transport Commission Act 1949<sup>138</sup> which prevents such rights being acquired over access to railway stations or depots, or docks of (now) Associated British Ports. Section 57 of the British Transport Commission Act 1949 reads as follows:

***57. As to rights of way over roads footpaths &c.***

*As from the passing of this Act no right of way as against the Commission shall be acquired by prescription or user over any road footpath thoroughfare or place now or hereafter the property of the Commission and forming an access or approach to any station goods-yard wharf garage or depot or any dock or harbour premises of the Commission.*

693. Section 57 of the British Transport Commission Act 1949 was considered by HHJ McCahill QC in Jones v First Greater Western Limited [2013] EWHC 1485 (Ch). HHJ McCahill held at [251] and [252] that section 57 prevented the acquisition of any right over land forming an access or approach to any station and ‘is apt to cover both public and private rights of way.’

694. In his Proof of Evidence<sup>139</sup>, Mr Fanning stated that the effect of rights of way being acquired by prescription or user *is that the PLA could not remove the right to use the*

<sup>138</sup> Core Documents CDG48

<sup>139</sup> Inquiry Documents PLA/2

*access way in the event that relevant works were abandoned or in the event that the exercise of the right became a danger to navigation.*

695. Mr Fanning further stated that: *the new section is needed in order to ensure that rights of way do not prevent use of the river by the public and/or interfere with safety of navigation. Also, from an estates management point of view it will prevent sterilisation of areas of the riverbed which could otherwise be occupied by future licensees paying a consideration to the PLA which ultimately is to the benefit of the general public. The PLA ought to be able to control access to the river at particular locations.*
696. Mr Fanning gave evidence before the Inquiry on 26 February 2025. He confirmed in answers to questions from Mr Powlesland on behalf of TBYBC that the primary concern of the PLA relates to the acquisition of a private right of way. He gave an example where the PLA would want to move an abandoned boat in a creek but might be unable to do so because an access track or path might be claimed by somebody as a private right of way.
697. Mr Fanning also accepted that, in a scenario where there was a concrete jetty or some other access or slipway to a boat which the public, as well as the person who held the River Works Licence, had used for over 20 years – the PLA would seek to exclude the public from a place in respect of which they had gained a prescriptive right.
698. Where public rights of user had been established, the PLA would not be prevented from accessing the jetty or slipway but would nevertheless wish to exclude the public because the land might otherwise become sterilised and would not be capable of providing an income for the PLA through future licensing.

699. I have not been referred to any cases or examples where the PLA has been unable to remove abandoned riverworks or works which had become a danger to navigation or the conservancy because of a right of way that had been acquired by a private individual or by the public. Neither have I been referred to any examples of Harbour Revision Orders in which the provisions of section 57 of the British Transport Commission Act 1949 or equivalent provisions were incorporated into primary legislation relating to the management of a harbour.
700. I have considered the objections to the proposed section 175A and submissions from the RYA; River Thames Society; NBTA and TBYBC .
701. The RYA states in its objection as follows: *The creation of public rights of way over, for example, slipways, steps, keys or other landing places should not be precluded. The cited justification of similar provisions relating to railway stations is wholly incomparable in both scale and nature. If a slipway, steps, quay or other landing place has become subject to a public right of way by prescription (i.e by public usage over a long period of time) then it should not be extinguished arbitrarily.*
702. The River Thames Society maintains in its Statement of Case that there should not be a blanket denial of the establishment of rights of way and that the PLA has not sufficiently considered the many stakeholders who use the banks of the river. The River Thames Society also argues that most riverbanks are not located in the commercially used areas that were covered by the British Transport Commission Act. In her closing submissions Mrs Pereira objected to the PLA's justification relating to sterilisation of land, as detailed in the evidence of Mr Fanning.
703. The NBTA has objected to the proposed section 175A and states in its Statement of Case that the provision would restrict the rights of the public to embark and disembark between the water and the land. NBTA argues that the provision would set unreasonable and draconian limits on the long-standing rights of the public.

NBTA has made proposals in relation to the Countryside and Rights of Way Act 2000, but those submissions are outside the scope of the HRO.

704. The PLA has stated in response to the objections that the new section would not affect rights of way already acquired but would enable the PLA in the future to determine the appropriate level of access to the river and appropriate locations for such access.
705. Whilst the TBYBC did not originally object to the proposed section 175A, Mr Powlesland set out the position of his client in his closing submissions. He stated that the PLA's attempt to avoid accrual of private and public rights of way by prescription was egregious and constituted an attempt by the PLA to place its private landholding interests above the public access to the Thames.
706. Mr Turney KC stated in his closing submissions<sup>140</sup> that the operation of the port should not be impeded by the adverse acquisition of property rights by third parties. He went on to say that the PLA land is held for the purposes of the port undertaking. Mr Turney argued that if the land is lost from that purpose – by prescription or adverse possession – it cannot be put to future use for port purposes for the benefit of port users.
707. I have considered the submissions that were made by the objectors and by the PLA in relation to the proposed section 175A. The PLA maintains in its Statement in Support of the Application that this new section meets the objective in paragraph 4 of Schedule 2 of the Harbours Act of imposing or conferring on the Port Authority duties or powers in addition or in substitution for powers or duties imposed or conferred under paragraph 3(c) regarding powers for the purpose of regulating the carrying on by others of activities relating to the harbour or of activities on harbour land. I accept that the new section would meet that objective.

<sup>140</sup> Inquiry Documents ID31

708. However, I do not accept that it is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner or facilitating the efficient and economic transport of goods or passengers by sea to limit the accrual of private or public rights of way by prescription. I find that the PLA has not established that the proposed section 175A can be justified in such a way that the MMO can be satisfied that the section 14(2)(b) test is met.
709. I consider that the existing and long established 20-year limitation period for the acquisition of rights of way through prescription and user<sup>141</sup> should remain and that the PLA would be able to use powers under the 1968 Act in addition to civil remedies to remove any obstacle or danger to navigation. I am not satisfied that the section 175A power is necessary to prevent sterilisation of PLA land.
710. Accordingly, I recommend that Article 78 of the HRO in relation to the proposed section 175A does not satisfy the test in section 14(2)(b) of the Harbours Act and should not be approved.

### **Section 175B**

711. Article 78 proposes that a new section 175B is included to address specifically the position following the recent case of The Port of London Authority v Mendoza [2017] UKUT 0146 (TCC)<sup>142</sup> and to apply to those parts of the Thames owned by the Port Authority the same regime as applies to those parts owned by the Crown, so that paragraph 11 of Schedule 1 to the Limitation Act 1980<sup>143</sup> (which allows the Crown to recover the foreshore within 60 years of any action accruing) applies.

<sup>141</sup> The term 'user' refers to use by members of the public

<sup>142</sup> Core Documents CDG22

<sup>143</sup> Core Documents CDG15

712. The proposed section would read as follows:

*175B Adverse possession claims in relation to the Thames*

*(1) Subject to subsection (2), paragraph 11 of Schedule 1 to the Limitation Act 1980 applies to actions brought by the Port Authority to recover foreshore of the Thames in the ownership of the Port Authority as it applies to actions brought by the Crown in relation to land in its ownership.*

*(2) This section does not apply in respect of any action which has accrued more than 12 years before [the date of the commencement of the Order].*

713. The position of the PLA, as set out in the Statement in Support of the Application<sup>144</sup> is that it would seem desirable to apply a standard arrangement to the position relating to adverse possession of land forming the bed of the Thames and the Port Authority therefore seeks to apply the current approach in this matter. The current position is that a person might be able to appropriate part of the riverbed in accordance with the terms of the Limitation Act and in this way remove the availability of the land in question for the provision of any future harbour facilities or use of the river. While such rights would not accrue where that person has a licence, rights might be acquired where the bed is occupied without the Port Authority's knowledge.<sup>145</sup>

714. The PLA has confirmed that this provision would not operate retrospectively, so that the proposed 60-year limitation on actions to recover the bed of the Thames would not apply to a right of action which has occurred more than 12 years before the date of the HRO coming into force.

715. The 60-year limitation period for the Crown to recover foreshore is an unusual provision and its application has not been extended to any other body. As stated above, the PLA relies on the case of Mendoza to justify the extension of the ordinary

<sup>144</sup> Core Documents CDB2

<sup>145</sup> See paragraph 80.3 of the Statement in Support of the Application

12-year limitation period (where land is unregistered) to claim that the unusual position enjoyed by the Crown should apply to land owned by the PLA.

716. In the case of Mendoza Judge Elizabeth Cooke held that it would be difficult for an owner of a houseboat to establish the requisite intention to possess the riverbed of the Thames through simply mooring a boat there:

*“66. The presence of a moored boat is as equivocal an act of possession as can be imagined. The casual observer, and likewise the paper owner, can know nothing of the boat owner’s intention from the boat’s presence. It is not possible to tell how long it has been there, how long the owner intends to stay, whether it is moored in exercise of an easement or of a public right, whether it is acquiring an easement, whether it has a licence to moor, or whether it is just trespassing, for a few days or a few months. As Mr Stonor QC put it in his skeleton argument, “it cannot be that, without more, every person who moors their vessel up and down the River Thames is to be taken to have the intention to possess the land under and around the vessel.”*

717. Furthermore, in order to succeed in an adverse possession claim in relation to the foreshore of the River Thames, a claimant would need to make his intention manifest to the whole world, including the PLA.<sup>146</sup>

718. The PLA sought to argue in Mendoza that no part of the bed of a river subject to public navigation rights can be acquired by adverse possession. The judge took the view that there can be no absolute rule that adverse possession is impossible on the bed of a river that is subject to public rights of navigation. However, that finding does not alter the position that it would be difficult for a claimant to establish the necessary intention to possess parts of the Thames riverbed in such a case.

719. The proposed section 175B only relates to the limitation periods in relation to unregistered land. The position would be different were a claimant seeking title through adverse possession to a registered part of the riverbed. In such a case the

<sup>146</sup> See paragraph 67 of the judgment.

more stringent tests within the Land Registration Act 2002 would apply, whereby it would be very difficult for any claim to succeed as the PLA would no doubt object to any such application.

720. Mr Fanning confirmed in his evidence to the Inquiry that the PLA is in the process of registering the parts of the riverbed that it owns. He also acknowledged that the areas of unregistered land, in respect of which section 175B would apply are a declining amount.
721. Under the new regime which splits the permission to moor a vessel or maintain a riverwork from the grant of a property licence, the Port Authority will need to grant a separate right or interest in land in order to allow someone to implement a works licence. This process will help to ensure that the Port Authority is able to grant the necessary and appropriate interest in land and that the PLA would not be frustrated by another landowner claiming adverse possession over the foreshore.
722. I have considered the objections to the proposed section 175B that have been made by the River Thames Society and the NBTA. The River Thames Society stated in its objection that the status quo is preferable to the proposed change.
723. The NBTA states in its Statement of Case<sup>147</sup> that it would not be appropriate for the PLA to obtain the same rights as the Crown and that the provision (along with section 175A) would set unreasonable and draconian limits on the long-standing rights of the public.
724. The PLA has stated in responses to objectors that it would seem desirable to apply a standard arrangement to the position relating to adverse possession of land forming the bed of the Thames.

<sup>147</sup> Inquiry Documents SOC/4

725. The PLA has stated in its Statement in Support of the Application <sup>148</sup>that the proposed modification of the Limitation Act 1980 falls within the scope of section 14 (3) of the 1964 Act as a provision which is supplementary to and required to give full effect to the provisions of the HRO which split the grant of interests in land from the works permitting regime.
726. Having considered the arguments of both the PLA and objectors, I do not accept that the replacement of the 12-year limitation period for future adverse possession claims, where the land is unregistered, with a 60- year period is necessary to give full effect to the new split regime.
727. Neither do I consider that the proposed section 175B is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner – or that it is desirable for the purpose of section 14(2)(b) of the Harbours Act to incorporate into the 1968 Act an unusual measure, which is only enjoyed by the Crown.
728. I find that the position of the PLA in relation to potential adverse possession claims is adequately protected by the long established 12 year limitation period; the ability to grant licences (under which adverse possession rights would not accrue); the ongoing land registration process; the ability of the PLA to monitor activity on the River and the difficulties that an applicant in an adverse possession claim would face as articulated in Mendoza - notwithstanding that there can be no absolute rule that adverse possession is impossible on the bed of a river that is subject to public rights of navigation.
729. In the circumstances I find that the proposal does not meet the requirement of the test in section 14(2)(b) of the Harbours Act. Accordingly, I recommend that the HRO is

<sup>148</sup> Core Documents CDB2

modified to exclude the proposed section 175B. As I have reached a similar conclusion in relation to the proposed section 175A, I recommend that Article 78 of the HRO is not approved.

### **Article 79. Removal of vehicles at port premises**

730. Article 79 of the HRO concerns section 177 of the 1968 Act, which deals with the removal of vehicles from port premises. Under the HRO, section 177 would be extended considerably. The proposed amendments are detailed in the Statement in Support of the Application. They deal with situations where the PLA may remove a vehicle to a place of safe custody at the owner's risk; the placement of parking prohibition notices; and provisions for the removal and destruction of vehicles where they appear to have been abandoned or where a vehicle has been left in an unsafe place or where it is considered to pose an obstruction or a security risk.
731. The PLA has referred in its evidence to problems where parked and wrecked vehicles are being left on its private accessways, particularly to radar sites, which are also used by the emergency services, and on draw docks, which give the public vessel access to the Thames. The amendments would address these problems. Further proposed amendments concern the definition of 'person responsible' and 'vehicle'.
732. The PLA maintains that the amendments to section 177 meet the objective in paragraph 4 of Schedule 2 of the Harbours Act of imposing or conferring on the Port Authority duties or powers in substitution for powers or duties imposed or conferred under paragraph 3(c) regarding powers for the purpose of regulating the carrying on by others of activities relating to the harbour or of activities on harbour land. There are no outstanding objections to the amendment to section 177. Having considered the proposed amendments and the justifications advanced in the Statement in Support of the Application, I consider that the changes to section 177 are desirable within the

meaning of section 14(2)(b) of the Harbours Act. I recommend that Article 79 is approved.

**Article 106. Repeal of Section 179. Millwall docks: exemption from London Building Acts**

733. It is proposed that section 179 is to be repealed through Article 106 of the HRO. The PLA states that the section relates solely to the Port Authority's buildings in the docks which have now all been sold. There are no objections to this repeal, and I recommend approval of Article 106 in relation to the repeal.

**Article 106. Repeal of Section 180. Obligations as to bridges, lights, roads etc.**

734. The HRO proposes that section 180 of the 1968 Act is repealed through Article 106. The PLA explains in its Statement in Support of the Application that the obligations in Schedule 7 to the Act regarding bridges, lights and roads have mostly been released but all the remainder relate to docks and land which the Port Authority has disposed of and in which it no longer has any interest. There are no objections that relate to the repeal of section 180 and the related repeal of Schedule 7. Again, I recommend approval of Article 106 in relation to the repeal.

**Article 80. Access for government officers**

735. Article 80 of the HRO would update section 181 of the 1968 Act by deleting the reference to 'Board of Trade and a customs officer' and replacing the reference with 'Her Majesty's Revenue and Customs'. I recommend that the Article is modified to replace the proposed wording within section 181 of the 1968 Act from 'Her Majesty's Revenue and Customs' to 'His Majesty's Revenue and Customs'. There

are no objections to Article 80 of the HRO. It is desirable in the interests of managing the harbour that the 1968 Act correctly identifies those who are to have free access whilst exercising their duties. Subject to the modification in relation to wording, I find that the test in section 14(2)(b) of the Harbours Act is met, and I recommend that Article 80 is approved.

### **Article 81. Authentication of Port Authority's documents**

736. Article 81 would amend section 183(1) of the 1968 Act to refer to permissions under the 1968 Act as amended by the HRO. Section 183 relates to authentication of documents. The section would also be amended to extend the scope of who is entitled to authenticate the Port Authority's documents to cover an officer authorised by the Port Authority. The PLA states that the reference in subsection (2) to the management of the business at a dock should be deleted as the Port Authority has ceased to own any docks. The PLA's position as to ownership of docks was set out during the Inquiry in a 'Note on removal of certain docks from the PLA's jurisdiction.'<sup>149</sup> There are no objections to Article 81 of the HRO, and I recommend that the Article is approved.

### **Article 82. Service of documents**

737. Article 82 relates to section 184 of the 1968 Act, which would be widened to allow for electronic communication and service. Additionally, subsections (1)(b) and (3)(b) have been updated to cover limited liability partnerships. There are no objections to these changes and recommend that Article 82 of the HRO is approved.

### **Article 83. Port Authority's publications**

<sup>149</sup> Inquiry Documents ID16

738. Article 83 of the HRO proposes amendments to section 185 of the 1968 Act to show that documents are to be made available at the PLA's principal office, as there is no longer a head office. Further amendments refer to documents being available in hard copy and electronic form. The PLA states in its Statement in Support of the Application<sup>150</sup> that as in the case of the Port Authority's byelaws, it may choose not to charge for hard copies of its publications (especially as copies are available free of charge on the Port Authority website) and for this reason the words "if demanded" have been added to the end of paragraph (b).
739. These amendments are not the subject of any objection. They are updating measures and therefore desirable, for the purpose of section 14(2)(b) of the Harbours Act, in the interests of securing the maintenance of the harbour in an efficient manner. I recommend approval of Article 83.

#### **Article 84. Crown rights**

740. Section 186 of the 1968 Act concerns the extent to which the Port Authority may interfere with any land or rights that belong to the crown or to a government department. The section would be amended by Article 84 of the HRO to make references to the new permissions regime under section 70 of the 1968 Act, as amended by the HRO.
741. Furthermore, the reference to the Port of London (Consolidation) Act 1920 in section 186(2) of the 1968 Act would be replaced with a reference to land in which there is an interest belonging to a government department (or in trust by Her Majesty for a government department); Her Majesty in right of the Crown or in right of the Duchy of Lancaster or the Duchy of Cornwall and so held since 1856. The PLA maintains in its Statement in Support of the Application<sup>151</sup> that the reference to an existing

<sup>150</sup> Core Documents CDB2

<sup>151</sup> Core Documents CDB2

interest of a government department makes it easier to identify what land this provision relates to.

742. The amendments are not the subject of any objection. I recommend approval of Article 84, subject to amending the references within section 186 of the 1968 Act to ‘Her Majesty’ to refer to ‘His Majesty’.

**Article 85. Certain powers not exercisable in Medway approach area and areas off Southend-on-Sea and Sheerness**

743. Under Article 85 a new proviso would be added to section 187(1)(a) of the 1968 Act to clarify that the restriction set out in the first column of Schedule 8 (powers not exercisable in The Medway Approach Area and off Southend on Sea and Sheerness) in relation to laying down moorings does not apply when the Port Authority is laying them in the carrying out of its statutory functions as a local lighthouse authority. The PLA states in its Statement in Support of the Application that the clarification is to ensure that the Port Authority is able to discharge the responsibilities as a local lighthouse authority which were conferred on it by the Merchant Shipping Act 1995 and to comply with directions given by the general lighthouse authority under section 199 of the Merchant Shipping Act (Control of local lighthouse authorities).
744. Furthermore, references to Southend Corporation and the urban district council of Sheerness have been updated to read Southend-on-Sea Borough Council and Swale Borough Council respectively. Section 187(2), which repealed section 47 of the Southend-on-Sea Corporation Act 1947 would be deleted because that repeal has now had effect and so the provision is spent. These amendments are not the subject of any objection. Having considered the Statement in Support of the Application, and the position in respect of section 199 of the Merchant Shipping Act, I consider that the amendments to section 187 are desirable for the purpose of section 14(b)(2) of the Harbours Act. I recommend approval of Article 85.

### **Article 86. Saving for the East London railway tunnel**

745. Article 86 deletes the reference to the London Transport Board in section 189 of the 1968 Act. This is because the tunnel is now vested in Rail for London Limited. The PLA states in its Statement in Support of the Application that it considers that there is no need to name the current owner in order to identify the tunnel to which this section relates. Section 189(3) would be repealed because the Port Authority no longer owns the Eastern and London Docks. Again, these amendments are not the subject of any objection, and I recommend approval of Article 86.

### **Article 87. Saving for rights, etc, of Temples**

746. Article 87 of the HRO concerns section 192 of the 1968 Act, which preserves the rights of the Inner Temple and Middle Temple. Part VI of the Port of London Act (sections 94-107), which dealt with prevention of pollution, were repealed by the Water Authorities etc (Miscellaneous Provisions) Order 1974, SI 1974/607, art 12(1)). Article 87 of the HRO would remove from section 192 of the 1968 Act, the reference to Part VI. This is an updating measure, and I recommend that Article 87 of the HRO should be approved.

### **Article 88. For protection of the Essex County Council**

747. Article 88 updates section 193 of the 1968 Act. Subsection (2) is to be repealed because it refers to section 46 (Refuse dumps) of the Essex County Council (Canvey Island Approaches, etc.) Act 1967 which has been repealed. Further amendments have been inserted to include reference to the new permitting regime in Part V of the Act. There are no objections to these amendments, and I recommend that Article 88 of the HRO should be approved.

### **Article 89. Saving for the Trinity House**

748. Article 89 of the HRO amends section 194 of the Port of London Act, which preserves the rights of Trinity House. The wording has been updated and, according to the PLA Statement in Support of the Application, adopts wording that is consistent with other legislation. The amendments are of a minor nature, and I understand from the PLA Statement in Support of the Application, that they have been inserted at the request of Trinity House. There are no objections to these amendments and I recommend that Article 89 of the HRI is approved.

### **Article 90. For protection of statutory undertakers**

749. Section 195 of the 1968 Act contains protective provisions for the protection of the interests of statutory undertakers. Article 90 of the HRO proposes amendments to enable the Port Authority to extend the circumstances in which it can give directions to statutory undertakers regarding the construction, alteration, replacement or renewal of their apparatus to include directions for the conservancy of the Thames or to enable the construction of works in the Thames.

750. The PLA has stated in its Statement in Support of the Application<sup>152</sup> that unlike the Water Industry Act 1991, the Electricity Act 1989 does not include a saving for harbour authorities in relation to the exercise of the undertaker's powers. The PLA maintains that it needs to ensure that unfettered use of statutory undertakers' powers does not prevent appropriate river development.

<sup>152</sup> Core Documents CDB2

751. Additionally, section 195 would be amended to enable the Port Authority to require apparatus which has been constructed, placed, altered, renewed, maintained or retained by undertakers to be relocated – at the expense of the Port Authority.
752. The PLA states in its Statement in Support of the Application that the changes to section 195 of the 1968 Act relate to the Port Authority’s functions as landowner, regulator and promoter of use of the Thames, and are being made to protect the Port Authority’s scope to act in the interests of river users and the wider Thames community. The PLA maintains that this will ensure that the Authority has the powers necessary to effectively manage the river, ongoing developments on it, and to ensure its progressive improvement. I consider that this justification meets the desirability test in section 14(2)(b) of the Harbours Act. There are no objections to the proposed amendments to section 195 and, having considered the Statement in Support of the Application, I recommend that Article 90 is approved.

**Article 106. Repeal of Section 196. Application of Merchant Shipping Act 1894 to local lights**

753. The PLA states in its Statement in Support of the Application<sup>153</sup> that section 196 (Application of Merchant Shipping Act 1894 to local lights) is repealed because the Port Authority is now a local lighthouse authority under the Merchant Shipping Act 1995, so section 196 is redundant. I accept the position set out in the Statement in Support of the Application and I recommend that the repeal of this section through Article 106 of the HRO is approved.

**Article 91. For the protection of the Metropolitan Water Board**

<sup>153</sup> Core Documents CDB2

754. Section 197 contains protections for the benefit of the Metropolitan Water Board (and its successors), whereby these bodies are not required to hold licences, where work is undertaken under other legislation. The HRO would amend the wording of the section to reflect the new works, mooring, dredging permitting regime. The HRO would also impose an added requirement for any body, to which the exemption from the permitting regime in this section applies, to give six weeks' notice to the Port Authority of its intention to carry out works. The PLA states within its Statement in Support of the Application that this notice period would enable the PLA to assess the proposals and respond to any nuisance interference with the navigation or conservancy arising from the works. There are no objections to the proposed changes to section 197 and, having considered the Statement in Support of the Application and the proposed new wording, I find that the notice period requirement meets the desirability test within section 14(2)(b) of the Harbours Act. I recommend that Article 91 is approved.

#### **Deleted Section 198A**

755. The HRO originally contained a proposed section 198A, which would have provided the Port Authority with a power to obtain a warrant to use no more than reasonable force to enter onto land, a work or a vessel. This proposal has been abandoned.

#### **Article 106 - Repeal of Section 199. Traffic offences on dock roads**

756. Section 199 (Traffic offences on dock roads) is to be repealed through Article 106 of the HRO because the Port Authority no longer has any dock roads. The PLA states in its Statement in Support of the Application that although the Port Authority does still operate a wharf, the PLA considers that these detailed provisions are disproportionate for such a small area. The PLA maintains that the repeal meets the objective in paragraph 3(a) of Schedule 2 of the Harbours Act of abolishing duties

or powers to manage the harbour. I recommend Article 106 is approved in relation to the repeal. There are no objections in relation to this measure.

### **Article 92. Prohibition on pollution, etc, of Thames and docks**

757. Section 200 of the 1968 Act gives the Port Authority powers to prosecute and remove ‘anything in or beside the Thames’ in respect of pollution. The HRO proposes that the powers in this section are amended to include the passing of liquids and other poisonous, noxious or waste matter into the river within the offence created. The PLA states in its Statement in Support of the Application<sup>154</sup> that this is in line with other harbour authority powers such as section 25 of the Harwich Harbour Act 1974.
758. Furthermore, the Statement in Support of the Application states that section 200(5) would be extended to include provisions to allow the Port Authority to recover as a debt the costs of removal and remediation or mitigation of damage or pollution caused from the person committing the offence. Subsection (5) would clarify that the pollution, to which the section relates, might not be directly caused and could result from a chain reaction.
759. The PLA states that the amendments to section 200 meet the objective in paragraph 3(a) of Schedule 2 of the Harbours Act of varying powers to improve, maintain or manage the harbour.
760. The River Thames Society has objected to the amendment to section 200 and states that the PLA should be rigorous in dealing with offensive discharges from large scale operators, such as water utility companies. There was evidence from Mr Stride when giving evidence before the Inquiry that the PLA acts on reports of pollution through

<sup>154</sup> Core Documents CDB2

sending vessels to investigate and is currently procuring a replacement Thames overspill clearance vessel.

761. The PLA points out that the amendments to section 200 aim to strengthen the PLA's powers in relation to pollution<sup>155</sup> and the PLA also maintains that the way in which it is exercising its existing powers does not amount to an objection to the HRO.
762. Having considered the position of the River Thames Society and the responses of the PLA, I take the view that the amendments to section 200, which aim to increase protection against toxic substances, meet the requirement of section 14(2)(b) of the Harbours Act in that they are desirable in the interests of securing the improvement, maintenance of management of the harbour in an efficient and economical manner. Accordingly, I recommend that Article 92 is approved.

### **Article 93. Obstructing bridges**

763. Article 93 of the HRO relates to section 202 of the 1968 Act, which enables the Port Authority to detain and prosecute a person who obstructs a movable bridge when it is in the process of moving. As currently drafted the section relates to bridges that belong to the Port Authority. However, the PLA does not currently own bridges. The section would be amended to cover movable bridges 'within the limits' to cover bridges over creeks. There are no objections to the proposed changes to section 202.
764. It is desirable in the interests of efficient management of the harbour that offences under the 1968 Act are correctly formulated. For this reason, I consider that the amendment to section 202 of the 1968 Act meets the test in section 14(2)(b) of the Harbours Act. I recommend Article 93 of the HRO is approved.

<sup>155</sup> PLA Statement of Case. Inquiry Documents SOC/1. Appendix 3. Page 18.

### **Article 106 - Repeal of Section 204. Offences of bribery etc.**

765. Section 204 confirms that the Port Authority shall be deemed to be a public body for the purpose of the Prevention of Corruption Acts 1889-1916. This section has been repealed through Article 106 of the HRO because the Port Authority is now subject to the Bribery Act 2010.<sup>156</sup> I recommend that Article 106 of the HRO should be approved in relation to the repeal.

### **Article 94. Institution and defence of proceedings**

766. Article 94 of the HRO relates to section 205 of the 1968 Act, which gives details about the authorisation within the PLA of the bringing of and defence of proceedings. The HRO would add a minor amendment whereby the secretary of the Port Authority may lay an information or complaint. The amendment is of a minor nature and meets the objective in the Harbours Act of regulating the procedure of the Port Authority. It is not the subject of any objection. I recommend that Article 94 should be approved.

### **Article 95. Jurisdiction of justices**

767. Article 95 of the HRO would amend section 207(1)(c) of the 1968 Act so that the distance on the jurisdiction of justices from the banks of the Thames is converted from an imperial to a metric measurement (100 yards to 91.44 metres). The amendment is not subject to any objection, and I recommend that Article 95 should be approved.

<sup>156</sup> Core Documents CDB2. PLA Statement in Support of the Application – paragraph 108.24

**Article 106. Repeal of Section 209. (Saving of section 68 of the Port of London (Consolidation) Act 1922)**

768. This section would be repealed through Article 106 of the HRO, alongside Schedule 10 to which it refers. Schedule 10 refers to the exemption of lighters and craft in certain cases and is considered a historic exemption which should not be retained. There is no objection to the repeal of Schedule 10 and I recommend approval of Article 106 in relation to it.

**Article 96. Tilbury Landing Stage Lower**

769. Article 96 of the HRO proposes a new section 210A, which relates to the jetty, or landing stage at Tilbury, which was constructed under the Port of London and Midland Railway Act 1922<sup>157</sup>. The PLA states in its Statement in Support of the Application that the jetty was split into two parts with part owned by the Port Authority and part by the Railway Company, known as the Tilbury Landing Stage Lower. The Port Authority's part was transferred to the Port of Tilbury, which now also owns and operates the part previously owned by the Railway Company.
770. The PLA further states that this proposed new section provides for a deemed permission for the landing stage lower under section 66 of the 1968 Act on the terms set out in a new Schedule 12 to the 1968 Act which is introduced by article 104. The deemed permission will cease to have effect if the landing stage lower is no longer used primarily in connection with the accommodation of ferry services between Tilbury and Gravesend.

<sup>157</sup> Core Documents CDG11

771. There are no outstanding objections to the proposed new section 210A. I agree with the position taken by the PLA that the new section meets the objectives of paragraphs 4 and 17 of Schedule 2 of the Harbours Act of imposing or conferring on the Port Authority powers for the purpose of regulating the carrying on by others of activities relating to the harbour or of activities on harbour land as well as (in so far as it regularises the position of the landing stage lower) being conducive to the efficient functioning of the harbour. The provision would be desirable within the meaning of section 14(2)(b) of the Harbours Act as it would secure the efficient management of the harbour. Accordingly, I recommend that Article 96 is approved.

### **Article 97. Inquiries by the Minister**

772. Section 215 of the 1968 Act would be updated by the HRO to delete references to the Board of Trade. The ‘Minister’ is defined in the amended section 2 of the Act as the Secretary of State for Transport. This amendment is an updating measure and is not subject to objection. I recommend that Article 97 is approved.

### **Article 98. Description of port limits**

773. Schedule 1 of the 1968 Act describes the port limits. The PLA produced a map showing updated jurisdiction of the Port, which was added to the Inquiry Core Documents and displayed during the course of the Inquiry hearings<sup>158</sup>. In his Proof of Evidence,<sup>159</sup> Mr Stride explained that the original Port of London Act 1908 was drafted to establish the Port of London to bring order to a chaotic raft of docks, wharves and creeks in the tidal Thames. However, the areas of responsibility for the PLA have reduced as docks have been sold and privatised.

<sup>158</sup> Core Documents CDE49. [Updated Jurisdiction Following HRO](#)

<sup>159</sup> Inquiry Documents PLA/3

774. Mr Stride also stated in his Proof of Evidence that the aim of Article 98 and the revised Schedule 1 within the HRO *is to give clarity on the current areas the PLA is responsible for, and is not, as claimed by a number of objectors, a 'land grab'*.
775. Within the proposed amendments to Schedule 1, the landward and seaward limits are described with reference to co-ordinates which more precisely define the limits. Furthermore, the proposed amendment to Schedule 1 seeks to clarify the extent of the PLA jurisdiction for the River Brent. Mr Stride states in his evidence that the tidal River Brent, other than the Grand Union Canal, has always been within the PLA port limits.
776. Article 98 of the HRO would also remove all references to former docks from Schedule 1 because the PLA neither owns those former docks, nor exercises any responsibility in relation to them.
777. Article 98 would also make changes to the definition of 'Yantlet Line' to confirm that although the line does not extend across the width of the river, the responsibilities of the PLA do extend beyond the London Stone and Crow Stone. The revised definition within section 2 extends the line 'on the same trajectory up to the mean high water level on either side of the Thames'. Mr Stride confirms at paragraph 3.11.8 of his Proof of Evidence that the precise coordinates set out within the proposed amended Schedule 1 would reflect this position.
778. The River Thames Society and OPLAC have sought clarification of the changes to Schedule 1. Having considered the indicative map produced by the PLA and the evidence from Mr Stride, I accept that the PLA has not sought through the changes to Schedule 1 to extend the limits or otherwise encroach on a part of the river over which it does not have jurisdiction. For example, Mr Stride has clarified that a reference to Chelsea Creek within the amended Schedule 1 is also intended to clarify the position and is not an extension of the port limits.

779. However, I have noted a contradictory statement by the PLA at paragraph 100.6 of its Statement in Support of the Application to the effect that the transitional provisions at paragraph 2 to Schedule 3 of the HRO would ‘avoid the need for owners of existing works which will now be within the port limits to apply for a works permission’. It is possible that this statement contributed to the impression that the PLA was seeking to add areas of the Thames to its jurisdiction. However, the evidence before the Inquiry was that the only jurisdictional changes would relate to an extension of vessel winter and summer limits within the pre-existing territorial limits of the PLA.
780. I am satisfied from the evidence of Mr Stride that the PLA does not propose to extend its territory through the HRO. The HRO does alter the limits, but to the extent of removing the docks, which are no longer in the ownership or control of the PLA.
781. The clarification of the limits through the more precise descriptions in Schedule 1 meets the criteria in section 14(2)(b) of the Harbours Act in that it is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner and in the interests of facilitating the efficient and economic transport of goods and passengers by sea. Accordingly, I recommend that Article 98 is approved.

#### **Article 99. Provisions relating to members of the Port Authority**

782. Article 99 relates to Schedule 2 to the 1968 Act, which concerns the appointment of the chairman and members of the Port Authority. The HRO makes a number of amendments to these provisions. The most significant amendments are at paragraph 4, where the chairman and members that are to be appointed will be widened, so that they are no longer limited to the 9 areas detailed in the schedule. Furthermore, paragraph 6 would be amended to confirm that a member will cease to be a member

of the board at the time that they cease to hold the executive positions that they held when they were appointed.

783. There were no objections to the changes to Schedule 2 before the Inquiry. I note that the PLA has stated that the changes to the Schedule meet the objective in paragraph 2 of Schedule 2 of the Harbours Act of regulating the procedure of or any committee of the Port Authority. The PLA also maintains that the changes are consistent with the requirements of the DfT's Ports Good Governance Guidance<sup>160</sup> in relation to board effectiveness. Having considered the justifications advanced by the PLA, I consider that the test under section 14(2)(b) of the Harbours Act is met, and I recommend that Article 99 is approved.

#### **Article 100. Proceedings.**

784. The HRO would amend Schedule 2, Part 2, which deals with the proceedings of the Port Authority. Paragraph 2 would be amended to confirm that the validity of any proceedings of the Port Authority would not be invalidated where a member might have been disqualified from acting on grounds of interest or who had ceased to hold office. The Schedule would also update the way that meetings could be conducted, by inclusion of telephonic and electronic means.
785. The amendments include a new sub paragraph 4A, which permits delegation from a committee to a sub-committee. The Schedule, as currently drafted, clarifies at paragraph 4 that the majority of the members of any committee shall be members of the Port Authority.
786. As stated in the paragraphs above, during the evidence of Mr Lockwood on 25 February 2025 a point was raised as to how sub-committees were to be constituted,

<sup>160</sup> Core Documents CDC1

as this is not set out in the Schedule. The PLA has clarified that all committees and sub-committees are comprised only of board members<sup>161</sup>. Other PLA employees may attend meetings where necessary but are not considered to be members of the committee or sub-committee.

787. A new paragraph 5A would deal with the validity of proceedings of committees and sub-committees and paragraph 6 would be amended to insert a reference to sub-committees. The PLA states in its Statement in Support of the Application that the amendments proposed in Article 100 meet the objective in paragraph 2 of Schedule 2 of the Harbours Act of regulating the procedure of or any committee of the Port Authority. It is additionally stated that a number of other HROs have incorporated similar provisions.

788. There are no outstanding objections to the proposed changes to Schedule 2, part 2 of the 1968 Act. Having considered the evidence and documents from the PLA on the point and having considered the Statement in Support of the Application, I consider that the desirability test in section 14(2)(b) of the Harbours Act is met and I would recommend that Article 100 of the HRO is approved.

#### **Article 101. Appeals to the Minister**

789. Article 101 of the HRO proposes that Schedule 4 to the 1968 Act is replaced with a new appeals procedure to cover appeals to the Secretary of State in respect of decisions made by the Port Authority under sections 11 (powers relating to land), 69 (works permissions, mooring permissions, dredging permissions) and 126 (refusing, revoking, suspending or terminating a vessel licence). The PLA states in its Statement in Support of the Application that the new procedure set out in the revised

<sup>161</sup> As stated in relation to Article 5 above.

Schedule 4 is based on provisions that have been included elsewhere in legislation, for example in the High Speed (London – West Midlands) Act 2017.

790. As amended, Schedule 4 would set out a written representations procedure and includes timeframes for the steps to be taken. The PLA maintains that the changes achieve the objective in paragraph 3(c) of Schedule 2 of the Harbours Act of varying powers for the purpose of regulating the carrying on by others of activities relating to the harbour or of activities on harbour land. There are no outstanding objections to the proposed procedure for appeals to the Secretary of State. Having considered the Statement in Support of the Application and the proposed text of Schedule 4, I find that the provision of the more detailed appeals process in Schedule 4 is desirable for the purpose of the test in section 14(2)(b) of the Harbours Act. I recommend that Article 101 is approved.

#### **Article 106. Repeal of Schedule 7.**

791. The repeal of Schedule 7, which relates to docks over which the PLA no longer has any responsibility, is linked to the repeal of section 180, which is not the subject of any objection. I recommend that Article 106 is approved in relation to the repeal of the schedule.

#### **Article 102. Powers not exercisable in the Medway Approach Area and off Southend-on-Sea and Sheerness**

792. Article 102 of the HRO would update Schedule 8 of the 1968 Act to reflect the fact that the urban district of Sheerness is now part of the district of Swale. Furthermore, it is proposed that a modification is made to paragraph (2) of Schedule 8, which disapplies the powers of the Port Authority to regulate the Port with the Medway

Approach area and off Southend-on-Sea and Sheerness, to make clear that the Port Authority can exercise its powers to lay down or replace buoys in these areas.

793. The PLA justifies these changes in its Statement in Support of the Application by stating that the current exemptions are inconsistent with the responsibilities which the Port Authority has as a local lighthouse authority under the Merchant Shipping Act 1995.
794. The changes to Schedule 8 are reflected in similar changes to section 187. The PLA states that they meet the objective in paragraph 3(a) of Schedule 2 of the Harbours Act of varying powers to improve, maintain or manage the harbour. There are no objections to these changes and, having considered the Statement in Support of the Application, I recommend that Article 102 is approved.

#### **Article 106. Repeal of Schedule 10**

795. As set out above, Schedule 10 to the 1968 Act is repealed within Article 106 of the HRO. Schedule 10 refers to section 68 of the Port of London (Consolidation) Act 1922, the saving of which was set out in section 209, which is repealed within Article 106 of the HRO. There are no objections to the repeal. I have considered the repeal of Schedule 10 in the paragraphs above in relation to repeals of historic exemptions. I accept that Schedule 10 should be repealed and recommend approval of Article 106 in this regard.

#### **Article 103. Transitional provisions**

796. The HRO proposes minor changes to Schedule 11 of the 1968 Act. A reference to the Board of Trade is deleted and references to section 67 of the Act has been changed to reflect the new permissions regime under Part V of the Act, as amended

by the HRO. There are no objections to Article 103. I consider that Article 103 meets the test in section 14(2)(b) of the Harbours Act, and I recommend that Article 103 is approved.

#### **Article 104. Deemed permission for the landing stage lower**

797. The HRO seeks to introduce a new Schedule 12 to the 1968 Act, entitled ‘Deemed permission for the landing stage lower’ which contains the terms of the deemed permission referred to in the new section 210A. I have recommended in relation to Article 96 that the new section 210A should be approved and it follows that the Article 104 should be approved for the same reasons.

#### **Article 105. References to licence**

798. Article 105 makes changes to references to ‘licence’ and ‘licences’ in the 1968 Act and substitutes those references with ‘permission’ and ‘permissions. This accords with the terminology in the new Part V regime I therefore recommend approval of Article 105. I have recommended above that the list of sections within Article 105<sup>162</sup> should be modified to include section 68 (Exemption for works authorised or powers conferred before 17th August, 1894)<sup>163</sup> and section 72 (Vesting of embanked land).<sup>164</sup>

#### **Article 106. Repeals**

<sup>162</sup> This list is at page 57 of the 11 March 2025 version of the HRO – Inquiry Documents ID17

<sup>163</sup> See paragraphs 436 - 438 of this report above

<sup>164</sup> See paragraphs 478-492 of this report above

799. Article 106 deals with the sections within the 1968 Act, which would be repealed by the HRO. Those repeals are set out in Schedule 1 of the HRO<sup>165</sup> and accord with the details provided at pages 46 to 48 of the Statement in Support of the Application<sup>166</sup>. In this report I have dealt with the appeals sequentially as the repealed sections appear within the 1968 Act and I have made recommendations in relation to each repeal. I recommend that Article 106 is approved, subject to my findings concerning the repeal of section 72 of the Port of London Act (Vesting of embanked land)<sup>167</sup>.

800. As stated in the paragraphs above, Schedule 1 of the HRO should be modified to exclude the current reference to section 72.

### **Part 3 of the Harbour Revision Order**

#### **Modifications to local legislation.**

##### **Article 107. Modifications of the Medway Ports Authority Act 1973.**

801. Article 107 proposes that section 85(2) of the Medway Ports Authority Act 1973<sup>168</sup> is modified by the insertion of subsection (ca) to read as follows: (emphasis added)

#### ***85 For mutual protection of Authority and Port of London Authority***

*(1) In this section " the Act of 1968 " means the Port of London Act, 1968.*

*(2) If any dispute or difference shall arise between the Authority and the Port of London Authority in connection with—*

.....

***(ca) the exercise by the Port of London Authority of their powers to lay down or place buoys within the Medway approach area under section 62 (Works in the Thames) of the 1968 Act or section 201 (Powers of harbour authorities) of the Merchant Shipping Act 1995***

.....

<sup>165</sup> Schedule 1 of the HRO is at page 60 of Inquiry Documents ID17

<sup>166</sup> Core Documents CDB2

<sup>167</sup> See paragraphs 478-492 of this report above

<sup>168</sup> Core Documents CDG13

*the dispute or difference may be referred by either party after notice in writing to the other of them—*

*(i) in the case of a dispute or difference arising in relation to the construction of works by the Port of London Authority in the Medway approach area, under the said sections 66, 111 and 120, under the said sections 20 and 21 or under subsections (1) or (3) of the said section 30 to the Secretary of State; and*

*(ii) in any other case, to the Secretary of State for the Environment;*

*and the decision of the Secretary of State or of the Secretary of State for the Environment, as the case may be, shall be final and binding on both parties:*

802. In its Statement in Support of the Application<sup>169</sup> the PLA clarifies that the new subsection would deal with the Port Authority's power to lay down or place buoys under section 62 of the 1968 Act or under section 201 of the Merchant Shipping Act 1995 (which deals with the powers of harbour authorities). The PLA states that this paragraph has been added because of the modification being made to paragraph 2 of Schedule 8 to the 1968 Act. Previously this paragraph had excluded the use by the Port Authority of these powers in the Medway approach area, therefore their powers could not previously conflict with those of the relevant port authority in Medway.

803. There is no outstanding objection to the proposed changes to the Medway Ports Authority Act 1973. I agree with the position taken by the PLA that the changes to the 1973 Act achieve the objective in paragraph 3 of Schedule 2 of the Harbours Act of varying powers imposed or conferred on the Port Authority by a statutory provision of local application affecting the harbour, being duties or powers imposed or conferred for the purposes of (a) improving, maintaining or managing the harbour. I have concluded that the amendment is desirable in the interests of securing the management of the harbour and, having considered the Statement in Support of the Application, I recommend that Article 107 is approved.

#### **Article 108. Modifications of the County of Kent Act 1981**

<sup>169</sup> Core Documents CDB2

804. The HRO proposes two modifications to the County of Kent Act 1981<sup>170</sup> to include savings for the Port Authority's powers. These are set out in the Statement in Support of the Application. Firstly, it is proposed that section 33 (Touting, hawking, photographing etc.) is modified to insert a new subsection 10, which would prevent the district council from designating any land owned by or vested in the Port Authority for certain activities listed in subsection (2) (for example - , touting, hawking, photographing). The new subsection (10) would also require the district council to consult the PLA before designating any seashore not owned by the Port of London Authority which is within the Port of London limits.
805. The second proposed change to the County of Kent Act 1981 is the insertion of a new subsection (2) in section 85 (Extension of section 268 of Act of 1936 to houseboats). Section 85 extends the application of section 268 of the Public Health Act 1936 to cover houseboats. In turn, section 268 of the Public Health Act 1936 provides for local authorities to be able to make byelaws in relation to the cleanliness of a number of types of structure. The new subsection (2) would provide for a situation whereby if the district council makes, amends or revokes byelaws which by virtue of section 85 apply to houseboats, it must first notify the Port Authority and provide them with a draft of their proposal. It must also consider any written representations of the Port Authority within two months of receiving them.
806. I understand from the PLA Statement in Support of the Application that Kent County Council was consulted in relation to the HRO.<sup>171</sup> There are no outstanding objections to the proposed amendments to the County of Kent Act 1981. Having read and considered the Statement in Support of the Application, I consider that the amendment is desirable in the interests of securing the management of the harbour in line with section 14(2)(b) of the Harbours Act and I recommend that Article 108 is approved.

<sup>170</sup> Core Documents CDG16

<sup>171</sup> Core Documents CDB2 - Statement in Support of the Application – paragraph 5.2

## **Article 109. Modifications of the Essex Act 1987**

807. The HRO proposes five sets of modifications to the Essex Act 1987<sup>172</sup> (Essex Act) to include savings for the Port Authority's powers. These are set out in the Statement in Support of the Application.
808. Section 11 (Touting, hawking, photographing etc.) would be modified in the same way as the modification to the equivalent section 33 of the County of Kent Act 1981. Section 11 of the Essex Act empowers a district council to designate certain places such that certain of the activities listed in subsection (2) cannot be done in those places without the district council's consent. The HRO would insert text into subsection (6)(a) requiring a district council to notify the Port Authority where a designation would affect the seashore within the limits of the Port Authority.
809. The HRO would also insert a new subsection (9A) requiring the district council to consult the Port Authority before giving consent under section 11 to the hawking, selling or offering or exposing for sale anything on the seashore. Furthermore, a new subsection (11) states that no part of the seashore which is owned by the port authority is to be designated without the prior agreement of the Port Authority.
810. Section 30 (Unauthorised structures on seashore) of the Essex Act provides the district council with powers to regulate the placing of certain structures on the seashore. The HRO would omit the words "which is vested in or under the control of the port authority" from subsection (5) so that nothing in section 30 will affect any part of the seashore which is in the limits of the Port of London. The HRO would also add a new subsection (6) which would require the district council to consult the Port Authority before consenting to any structures being placed within the specified

<sup>172</sup> Core documents CDG17

areas, which are described at paragraphs (1)(a) and (1)(b) of column 2 of Schedule 8 to the 1968 Act.

811. Section 31 (Byelaws as to boats) of the 1987 Act extends the powers from section 76 of the Public Health Act 1936 to enable a district council to make byelaws to regulate boats. The HRO would omit the words “which is vested in or under the control of the port authority” from subsection (2)(c)(iv) – so that no byelaw made under section 31 would have effect in relation to any part of the seashore which is in the limits of the Port of London. The HRO would also add a new subsection (4) before making, amending or revoking byelaws in relation to the area included in paragraphs (1)(a) and (1)(b) of column 2 of Schedule 8 to the 1968 Act a district council must first notify the Port Authority and provide them with a draft of their proposal. It must also consider any written representations of the Port Authority within two months of receiving them.
812. The HRO would modify subsection 2 of section 57 of the Essex Act, which lists the sections of that Act which relate to piers. The Order would add section 76 (For the Protection of the Port of London Authority) to that list of sections. This would have the effect that the wharf in Leigh-on-Sea known as Bell Wharf, which is within the limits of the Port of London, would be included in the area over which the Port Authority enjoys protections under section 76 of the Essex Act.
813. Section 66 (Pier byelaws) of the Essex Act empowers Southend Council to make byelaws for certain purposes in relation to piers. The HRO would insert wording into subsection (1) to require consultation with the Port Authority, and the taking into account of any representations made by them, before the making of such byelaws.
814. Finally, the HRO would insert wording into section 83 of the Essex Act to require consultation with, and the taking account of any representations from, the Port Authority before the construction of groynes by Southend Council on the foreshore.

815. I understand from the PLA Statement in Support of the Application that Essex County Council and Southend-on-Sea Borough Council were consulted in relation to the HRO.<sup>173</sup> There are no outstanding objections to the proposed amendments to the Essex Act. Having read the relevant sections of the Essex Act and having considered the Statement in Support of the Application, I consider that the amendment is desirable in the interests of securing the management of the harbour within the meaning of section 14(2)(b) of the Harbours Act and I recommend that Article 109 is approved.

### **Article 110. Savings and transitional provisions**

816. Article 110 confirms that the transitional provisions contained within Schedule 2 to the HRO<sup>174</sup> are to have effect. Schedule 2 to the HRO provides that existing works licences granted under section 66 of the unamended 1968 Act will remain in force after the commencement date of the HRO and will be deemed to have been granted as a works permission under the amended section 66(1)(a) of the 1968 Act. (Permitting of works). Furthermore, the deemed rights ‘as are necessary to enable the holder of the licence to enjoy the benefit of the licence’ under section 66(1)(b) of the unamended 1968 Act will continue to apply to pre-existing works licences.

817. Schedule 2 to the HRO also confirms that the holder of an existing licence or agreement to moor granted by the Port Authority prior to the commencement date is not required to apply for a mooring permission under section 66A (Permitting of mooring) of the Act in relation to that mooring. The PLA confirms in its Statement of Case that the substance of existing river works licences will not change.<sup>175</sup>

<sup>173</sup> Statement in Support of the Application – paragraph 5.2

<sup>174</sup> Schedule 2 to the HRO is set out at pages 61 and 62 of the 11 March 2025 version of the HRO. Inquiry Documents ID17.

<sup>175</sup> Inquiry Documents SOC/1 at paragraph 9.6.2

818. I have recommended in the paragraphs above<sup>176</sup> that the repeal of section 72 should not be approved and that section 72 should be modified. It follows from this recommendation that the transitional provision at Schedule 2, paragraph 4 of the HRO relating to ‘Vesting of embanked land’ should be modified to read as follows:

***Vesting of embanked land***

*4.—(1) Where a licence has been granted under section 66 of this Act where land is to be reclaimed by embankment and reclamation has not been completed at the commencement date that land is to vest in the adjoining landowner on completion of that work in accordance with the terms of the licence.*

*(2) Where the reclamation has been completed in accordance with the terms of the licence before the commencement date, but no certificate has been endorsed on the licence, the embanked land is to vest on the commencement date.*

819. Subject to the above modification to Schedule 2 of the HRO, I consider that the Article 110 is desirable in the interests of securing the management of the harbour for the purposes of section 14(2)(b) of the Harbours Act. I recommend that Article 110 of the HRO is approved.

**Conclusions**

820. I have recommended that the MMO makes the HRO for which the PLA has applied, but with the modifications set out in the Summary of Recommendations at the beginning of this report.

821. It is arguable that the modifications have substantially affected the character of the order – particularly as I have recommended that Article 78 is not approved in relation to the proposed new sections 175A and 175B (Rights of Way over permitted works and adverse possession claims in relation to the Thames). I have also recommended that certain functions of the PLA must be exercised with express regard to the section 48A duty.

<sup>176</sup> At paragraphs 478-492

822. In these circumstances if the MMO is minded to make the order applied for with the modifications that I have recommended, it should follow the procedure set out in paragraph 21 of Schedule 3 to the Harbours Act and not make the order with the modifications until such period for consideration of, and comment upon, the proposed modifications by the PLA and ‘those other persons as (the MMO) thinks reasonable’ has expired.
823. I have requested for completeness that the MMO obtains clarification from the PLA in relation to the following four matters, where the position of the PLA has appeared unclear:
- (i) Whether the Order that the PLA would seek to enable it to establish a right to possession of a houseboat (prior to applying for a warrant) would be sought in the Magistrates or County Court.
  - (ii) Whether, in light of section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, the level of fine within section 70(2)(a) should be described as ‘not exceeding level fine on the standard scale’ or ‘at level 5 on the standard scale’. (see paragraph 456 above)
  - (iii) The assertion by the PLA that matters relating to section 76 of the 1968 Act are now dealt with under MACAA 2009.
  - (iv) The status of sections 154 to 160 of the 1968 Act in relation to the HRO.
824. Although the answers to these points do not affect my findings, I would suggest that this information is provided prior to the MMO making a decision in relation to the determination of the HRO application.

CHRISTOPHER JACOBS

8 OCTOBER 2025

