

Tracey Williams  
Case Manager  
The Planning Inspectorate  
National Infrastructure  
Temple Quay House  
Temple Quay  
Bristol  
BS1 6PN

20 July 2021

Our Ref: PoTLL/TFGP/EX/12

Dear Ms Williams,

## **Planning Act 2008**

### **Application for the Thurrock Flexible Generation Plant Development Consent Order**

#### **Deadline 6 Submission**

1. This letter constitutes the Port of Tilbury London Limited's ('PoTLL') Deadline 6 submission in respect of the examination of the application for the Thurrock Flexible Generation Plant ('the TFGP') DCO by Thurrock Power Limited ('the Applicant'). It primarily focuses on the Examining Authority's Third Written Questions.

#### Discussions with the Applicant, DCO Protective Provisions and Deadline 5A submissions

2. As context to these submissions, I can confirm that PoTLL continues to discuss the proposed legal agreement with the Applicant and DCO drafting matters (including Protective Provisions) but these negotiations are not yet completed. Further updates on these matters will be provided at the forthcoming hearings on 26 July.
3. In light of the impending end of the Examination, included at Appendix 1 to this letter is PoTLL's preferred version of its Protective Provisions. These are presented in track changes (save for changes from 'the Port Company' to 'Port of Tilbury London Limited' to be consistent with the Applicant's current draft of the DCO) from those presented at Deadline 2 - to streamline the definitions and reflect that:
  - the provisions on sediment erosion and accumulation are appropriate as PoTLL is a separate harbour authority from the PLA;
  - parts of the proposed alternative (New Fort Road) AIL access are located on land which is owned by PoTLL but outside of its harbour limits. Whilst PoTLL would consider this still as part of its statutory undertaking, for the avoidance of any doubt and given its location adjacent to the entrance to the Port, the protections for the Port should explicitly include protections in respect of that access;
  - PoTLL agrees that Thurrock Council is the appropriate body to solely approve works to highways which affect access to the Port; however, PoTLL would wish to be consulted on such works so it can be mindful of these works in



Registered Office:  
Leslie Ford House  
Tilbury, Essex RM18 7EH  
Registered in England (No. 2659118)



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LONDON

PORT OF TILBURY LONDON LTD

LESLIE FORD HOUSE  
TILBURY, ESSEX RM18 7EH  
SWITCHBOARD: +44 (0)1375 852200  
FACSIMILE: +44 (0)1375 855106

planning movements to and from the Port and advising its tenants of the works;

- the Applicant has suggested to us that the protections in the Protective Provisions should only relate to PoTLL's undertaking at the date of the DCO. In PoTLL's view, the Protective Provisions should relate to the Port as it exists from time to time, i.e. as it expands. 'Time-limiting' Protective Provisions in this way is not something that is found in other Protective Provisions, either in the TFGP DCO or in made DCOs and should not be accepted here, particularly in the known context of PoTLL's expansion plans; and
- PoTLL has accepted the deletion of provisions relating to 'deemed refusal' of approvals required to be given under these Protective Provisions.

4. PoTLL has also noted the Deadline 5A submissions of:

- Thurrock Council [REP5A-002], which supports the proposed land-based AIL access rather than the causeway and notes the interface with the Freeport proposals, consistent with the concerns raised by PoTLL to date; and
- Historic England [REP5A-005], which has raised queries as to why the land-based alternative AIL access is needed. As PoTLL's previous submissions make clear, this is necessary and preferable as an available alternative to ensure that impacts to PoTLL operations and to future economic benefits of the Thames Freeport, and the risks of marine and ecological-based impacts, are removed.

PoTLL also considers in this context that it is right for the Applicant to consider that a small, lightly used post-construction, landscaped access built on a non-designated heritage asset and located adjacent to existing highways and the Fort Road bridge, when this is assessed to have little appreciable impact on Tilbury Fort's setting, will not lead to any significant impacts on the historic environment.

Response to ExA's Third Written Questions

5. PoTLL has considered all of the questions set out by the ExA and in light of PoTLL's previous Examination submissions it has limited its responses to the matters set out in the table below, which seek to assist and inform the Examination further rather than to repeat matters. This includes Question 3.3.6, which is directed at PoTLL.

| Question(s)  | PoTLL Response  |
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| 3.3.1 Does the Applicant intend to limit the exercise of CA powers in relation to Work Nos 10, 11 and 15 to ensure only one AIL access is brought into use? If so, please signpost where/how this is secured in the dDCO? If not, please explain | <p>Contrary to our in-principle objection, which is sustained, in a scenario where the causeway does form part of any made DCO, and where no agreement is able to be reached between PoTLL and the Applicant over land powers, PoTLL would not support the exercise of CA powers being limited to being in respect of just one AIL access.</p> <p>This is because, in that scenario, PoTLL would be relying on the AIL access review provisions of Requirement 18, which would hopefully facilitate the early removal of the causeway. As such, PoTLL would not want to be in a position where the causeway was built with compulsory acquisition powers, the alternative</p> |

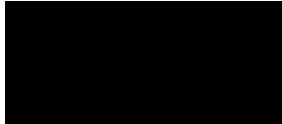
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|   | <p>access is then identified as usable but is unable to be brought forward and built because of a limitation in the DCO's CA powers for that alternative access.</p> <p>In any event, PoTLL's view is that this 'choice' should not be required in the DCO as compulsory acquisition powers for the causeway should not be given in the first place. This is because there is a clear alternative to the need for compulsory acquisition of the land and interests which would support the causeway, that alternative being the land-based AIL access. As such, the statutory tests for compulsory acquisition powers in respect of the causeway are not met because there is no compelling case for compulsory acquisition of the causeway-related land.</p> |
| <p>3.3.3 Requirement 18 - In light of the inclusion of Work No 15 (Alternative AIL access), and noting the concerns expressed by IPs in relation to the potential impact on plans for the Thames Freeport, please provide further justification for the 5 year review period included in Requirement 18. Please also explain why the review date is linked to the commencement of operation of Work No 1.</p>   | <p>PoTLL considers that even noting its own submissions on Requirement 18, which sought to reduce the impact of the causeway as much as possible, these two questions should be considered together to highlight that given there is an alternative access, as noted in question 3.3.4, simply reducing the timeframes for the Requirement 18 review process, as set out in question 3.3.3, should not be seen as the panacea to the issues with the causeway PoTLL has raised.</p> <p>As has been set out in PoTLL's previous submissions, and as can be seen from reading Thurrock Council's Deadline 5A submission, there will be a crossover between the construction of a complicated causeway and the build out of PoTLL's further expansion plans.</p> |
| <p>3.3.4 Requirement 18 - The ExA understands that the Applicant has structured the dDCO to facilitate the removal of the causeway (and relevant part of the access) when a suitable alternative is available. Requirement 18 defines a suitable alternative as one which is 'environmentally acceptable, permanent, feasible and economic'. Please explain why the Applicant considers the alternative AIL access does not currently meets the criteria for a suitable alternative as defined in Requirement 18.</p> | <p>As such PoTLL's view is that the causeway should not be authorised and built in the first place, negating the need for Requirement 18 and a review period, however small. If, contrary to PoTLL's submissions, there being no demonstrable need for the causeway and its inability to fulfil the statutory compulsory acquisition tests, the ExA and the Secretary of State are still minded to include provision for the causeway and Requirement 18 in any DCO, then the obligation to undertake a review should arise after the shortest possible period.</p>   |
| <p>3.3.6 Requirement 18 - The ExA notes PoTLL's proposed amendments to Requirement 18(2). Please provide further justification for the report of the</p>  | <p>As has been evidenced in this Examination, both the current causeway proposal, and the alternative land-based proposal, involve extensive interaction with PoTLL's operations, statutory undertaking and Freeport proposals. In practical terms, given the constraints</p>   |

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| <p>review of AIL access to be prepared in consultation with the Port.</p> | <p>identified by the Applicant of delivering AILs from the north, it is clear that any other alternative proposal would need to involve some form of interaction with PoTLL and it therefore makes entire sense, and is necessary to protect PoTLL's statutory undertaking and operational land, for PoTLL to be consulted on all stages of the process set out in Requirement 18.</p> <p>Above and beyond this, as set out in its Deadline 4 submissions [REP4-031] in relation to why PoTLL should be a consultee in article 8, PoTLL's role in respect of Tilbury2 is that of a statutory harbour authority with responsibility for a statutory undertaking that needs to be protected.</p> <p>In its position as a statutory undertaker PoTLL is affected both directly in relation to the proposals for the current routine and AIL accesses through the Port and the associated CA powers sought; and also indirectly, through the proposed causeway being located directly adjacent to Tilbury2, causing potential impacts to navigation that have required mitigation measures as identified in the pNRA [PDC-052]. This would also be true of any alternative access proposals.</p> <p>As has been noted previously, as statutory harbour authority, PoTLL is required to maintain the 'open port' duty under section 6 of the Port of London Act 1968 – this applies to land and marine access to Tilbury2 at all times and so could be affected by any alternative access proposals.</p> <p>Furthermore, under section 48A of the Harbours Act 1964 PoTLL is under a duty in 'considering any proposals in relation to its functions', to have regard to:</p> <ul style="list-style-type: none"> <li>(a) the conservation of the natural beauty of the countryside and of flora, fauna and geological or physiographical features of special interest;</li> <li>(b) the desirability of preserving for the public any freedom of access to places of natural beauty; and</li> <li>(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.</li> </ul> <p>Its involvement in the Requirement 18 process will help ensure this duty can be actively fulfilled and met.</p> <p>In light of all the above, therefore, it is appropriate and necessary for PoTLL, as a body with important statutory functions required to be discharged in the public interest, to be included within the Requirement 18 processes.</p> |
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| 3.3.12 Please provide a fully consolidated version of the CTMP and Code of Construction Practice. | PoTLL would welcome this and for the Applicant, in so doing, to take account of PoTLL's comments on these documents in its previous submissions. |
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6. If you have any further questions, on any of these submissions please do not hesitate to contact our legal advisers at Pinsent Masons LLP, [REDACTED] and [REDACTED].

Yours sincerely,



PETER WARD  
COMMERCIAL DIRECTOR  
PORT OF TILBURY LONDON LIMITED

## Appendix 1: ~~Port of Tilbury~~ preferred Protective Provisions

1. The provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and the Port of Tilbury London Limited.

2. In this Part of this Schedule—

"accumulation" means any accumulation of silt or other material (including any materials used to construct the authorised development) which constitutes an impediment to navigation at the Port or at or in the approaches to the Port;

"the affected highways" means the A1089 St Andrews Road, Ferry Road, Fort Road, ~~or and~~ the unnamed link road between Fort Road and the A1089 St Andrews Road;

"erosion" means any erosion of the bed or banks of the river or any quay or jetty or other structure of whatever nature within the Port;

"plans" includes navigational risk assessments, sections, descriptions, drawings, specifications, proposed method statements, traffic management measures, vehicle movement profiles and hydraulic information including, but not limited to, information as the discharge of water and materials;

"the Port" means—

(a) any land with the Port of Tilbury held by Port of Tilbury London Limited for the purposes of its statutory undertaking;

(b) the Work No.15 Land, together with any quays, jetties, docks, river walls and other land or works held in connection with that undertaking;

~~"the Port plan" means the document certified as the Port by the Secretary of State for the purposes of this Order;~~

~~"the Port of Tilbury" means the harbour over which the Port has jurisdiction as is delineated on the Port Company plan and as may be amended from time to time, together with any quays, docks, river walls or other land held in connection with that harbour;~~

"specified work" means any work, activity or operation authorised by this Order and their associated traffic movements which may affect—

- (a) the Port ~~of Tilbury and the affected highways~~;
- (b) access to, from and within the Port;
- (c) streets within the Port;
- (d) navigation to and from the Port ~~of Tilbury~~;
- (e) the Port's ability to carry out dredging to facilitate shipping access to the Port; and
- (f) the functions of the Port of Tilbury London Limited as the statutory harbour authority for the Port ~~of Tilbury~~, and

includes without limitation Work Nos. 10, 11 and 15; ~~and~~

"street" has the same meaning as in the 1991 Act; ~~and~~

"the Work No.15 Land" means the land within the limits of deviation of Work No. 15 owned by Port of Tilbury London Limited.;

3. (1) The undertaker must not exercise the powers conferred by articles 3 (Development consent etc. granted by the Order) including in respect of the permitted preliminary works, 5 (maintenance of authorised development), 11 (street works), 13 (temporary restriction of use of streets), 14 (access to works), 15 (traffic regulation), 17 (authority to survey and investigate the land), 18 (removal of human remains), 19 (compulsory acquisition of land), 22 (compulsory acquisition of rights), 25 (acquisition of subsoil only), 27

(rights under or over streets), 28 (temporary use of land for carrying out the authorised development), 29 (temporary use of land for maintaining the authorised development), 30 (statutory undertakers) and 35 (felling or lopping of trees and removal of hedgerows) in respect of the Port ~~and the affected highways~~ unless the exercise of such powers is with the consent of the Port of Tilbury London Limited.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to the Port, unless preventing such access is with the consent of the Port of Tilbury London Limited.

(3) The undertaker must consult the Port of Tilbury London Limited prior to seeking to exercise its powers conferred by articles 11 (street works) or 13 (temporary restriction of use of streets) in respect of any of the affected highways.

(4) Articles 20 and 23 shall not apply to the Port and any interests or rights held by the Port of Tilbury London Limited.

4. (1) At least 56 days before commencing the carrying out or maintenance of any specified work, the undertaker must submit to the Port of Tilbury London Limited plans of that work for its approval.

(2) Any approval of the Port of Tilbury London Limited under this paragraph—

(a) must not be unreasonably withheld;

(b) may be given subject to such reasonable requirements, conditions or restrictions as the Port of Tilbury London Limited may make for the protection of the Port and navigation to and from the Port and the approaches to the Port, including a requirement for the undertaker to carry out protective works at its own expense; and

(c) must not restrict the powers granted to the undertaker under this Order where such powers do not affect the Port or the affected highways.

(3) The undertaker must carry out any specified work and any protective works required under sub-paragraph (2)(b) in accordance with the plans approved under sub-paragraph (1) or settled under article 43 (arbitration).

~~(4) If the Port Company fails to express its refusal or approval of any plans or arrangements within 30 days after they have been delivered to it under sub-paragraph (1) and the Port Company has not requested an extension of time to give its consent from the undertaker prior to the expiration of the 30 days which the undertaker has granted, acting reasonably, the Port Company is deemed to have refused them.~~

~~(5) If the Port Company fails to express its approval of any plans or arrangements delivered to it under sub-paragraph (1) at the expiration of the extension of time granted by the undertaker under sub-paragraph (4), such a request is deemed to have been refused by the Port Company.~~

(4) The undertaker must inform the Port of Tilbury London Limited in writing of the intended start date and the likely duration of the carrying out of a specified work at least 30 working days prior to the commencement of the first specified work.

5. (1) If during the construction of a specified work or after the completion of that work and wholly or partly in consequence of its construction there is caused or created an accumulation or erosion the undertaker, if so requested by the Port of Tilbury London Limited acting reasonably, must remedy such accumulation or erosion to the extent attributable to such construction and, if it refuses or fails to do so as soon as reasonably practicable, the Port of Tilbury London Limited may itself cause the work to be done and may recover the reasonable cost of doing so from the undertaker.

(2) For the purposes of sub-paragraph (1)—

(a) in the case of an accumulation, the remedy must be its removal; and

(b) in the case of erosion, the remedy must be the carrying out of such reconstruction works and other protective works or measures as Port of Tilbury London Limited reasonably requires.

6. In exercising the powers conferred by the Order in relation to the affected highways or any street through the Port, the undertaker must have regard to the potential disruption, delay or congestion of traffic which



may be caused, and seek to minimise such disruption, delay or congestion so far as is reasonably practicable. The undertaker must not at any time prevent or unreasonably impede access by emergency service vehicles to the Port.

7. (1) Where the undertaker carries out any works to ~~the affected highways or any~~ street within the Port it must make good any defects in those works notified to it by Port of Tilbury London Limited within the period of three months after the date of its removal from occupation of that area of highway or street.

(2) The undertaker may, at its sole discretion and in place of carrying out any works to remedy any defects under sub-paragraph (5), pay to Port of Tilbury London Limited a sum equal to the cost to Port of Tilbury London Limited of carrying out the required works as calculated by Port of Tilbury London Limited (acting reasonably).

8. Any person duly appointed by Port of Tilbury London Limited for this purpose may at all reasonable times, on giving to the undertaker such notice as may in the circumstances be reasonable, enter upon and inspect any part of a specified work; and the undertaker must give to such person all reasonable facilities for such inspection and, if the duly appointed person is of the opinion that the construction of the work poses danger to any property of the Port or person within the Port, the undertaker must adopt such measures and precautions as may be reasonably practicable for the purpose of preventing any damage or injury.

9. (1) The Port of Tilbury London Limited may any at time close the Port and exclude access by the undertaker (including access under any power granted by this Order, under any access right howsoever acquired and as provided for in any agreement between the undertaker and Port of Tilbury London Limited) where the Port of Tilbury London Limited reasonably considers that it necessary to do so in response to a request from an emergency service or government agency, any emergency or accident, or an imminent threat to the health or safety of persons or of damage to property.

(2) The Port of Tilbury London Limited must inform the undertaker of any closure of the Port as soon as reasonably practicable, including details of the location and extent of the closure and where known, the anticipated duration of the closure.

10. The Marine Operations Plan ~~passage plan~~ to be prepared by the undertaker under Requirement ~~XX~~17(5) must include, but is not limited to, the following matters-

(a) a deconfliction process for use of Work No. 10 and vessels navigating to and from and berthing at berths adjacent to Work No.10; ~~and~~

(b) a prohibition on use of Work No. 10 within the period between 1 hour before and 1 hour after a scheduled departure or arrival of large vessels at berths adjacent to Work No. 10; and

(c) protocols for sharing of information between the Port of Tilbury London Limited and the undertaker to facilitate compliance with sub-paragraphs (a) and (b).

11. Where transhipment use of the Port by the undertaker is authorised by the Port of Tilbury London Limited (on such commercial terms as may be agreed), the undertaker may not commence such use unless and until a port passage plan in respect of that transhipment is approved by the Port of Tilbury London Limited.

12. (1) The undertaker is to be responsible for, and must make good to the Port of Tilbury London Limited all losses, costs, charges, damages and costs however caused, which may reasonably be incurred or occasioned to the Port of Tilbury London Limited by reason or arising in connection with-

(a) the perusal of plans, documents under Schedule 2 of this Order and this Part of this Schedule and the inspection of a specified work;

(b) the costs of alterations to aids to navigation owned by the Port of Tilbury London Limited, laying down moorings or buoys or carrying out any dredging operations in relation to either of those activities, as may be necessary in consequence of the construction of a specified work;

(c) any disruption to the flow of commercial terrestrial or marine traffic to, from and within the Port ~~of Tilbury~~ caused by the construction, maintenance, decommissioning or failure of a specified work and any



marine or terrestrial traffic associated with it or by the undertaker utilising the powers under article 367, which leads to a financial loss or penalty to the Port of Tilbury London Limited;

(d) the construction, maintenance or failure of a specified work, or the undertaking by the Port of Tilbury London Limited of works or measures to prevent or remedy danger or impediment to navigation, or damage to the Port arising from such construction, maintenance or failure; including but not limited to—

(i) any additional costs of dredging incurred by the Port of Tilbury London Limited as a result of the construction, maintenance, decommissioning or use of the specified work or the contamination of the riverbed caused by the construction, maintenance, decommissioning or use of the specified work; and

(ii) damage to any, street, plant, equipment or building belonging to the Port of Tilbury London Limited that is caused by the construction, maintenance or failure of a specified work; and

(iii) any act or omission of the undertaker or its servants and agents while engaged in the construction, maintenance or use of a specified work.

(2) Without limiting the generality of sub-paragraph (1), the undertaker must indemnify the Port of Tilbury London Limited from and against all claims and demands arising out of, or in connection with, such construction, maintenance or failure or act or omission as is mentioned in that sub-paragraph.

(3) Nothing in this paragraph imposes any liability on the undertaker to the extent that any losses, costs, charges, damages, expenses, claims or demands referred to in sub-paragraph (2) are attributable to negligence on the part of Port of Tilbury London Limited or of any person in its employ or of its contractors.

(4) The Port of Tilbury London Limited must give to the undertaker notice in writing of any claim or demand for which the undertaker may be liable under this paragraph and no settlement or compromise of any such claim or demand may be made without the consent in writing of the undertaker.

13. The fact that any work or thing has been executed or done with the consent of the Port of Tilbury London Limited and in accordance with any conditions or restrictions prescribed by the Port of Tilbury London Limited or in accordance with any plans approved or deemed to be approved by the Port of Tilbury London Limited under this Part of this Schedule or under Schedule 2 of this Order or to its satisfaction or in accordance with any directions or award of any arbitrator does not relieve the undertaker from any liability under the provisions of this Part.

14. Save to the extent expressly provided for nothing in this Order affects prejudicially any statutory or other rights, powers or privileges vested in, or enjoyed by, the Port of Tilbury London Limited at the date of this Order coming into force.

15. With the exception of any duty owed by the Port of Tilbury London Limited to the undertaker, nothing in this Order is to be construed as imposing upon the Port of Tilbury London Limited any duty or liability to which the Port of Tilbury London Limited would not otherwise be subject.

16. Any difference arising between the undertaker and Port of Tilbury London Limited under this Part of this Schedule (other than any difference as to the meaning or construction of this Part of this Schedule) shall be resolved by arbitration under article 435 (arbitration).