



The Planning Inspectorate  
Yr Arolygiaeth Gynllunio

**Thurrock Flexible Generation Plant**

**(EN010092)**

Correspondence received after the close of the Examination at 23:59 on  
Monday 16 August 2021

No.	From	Organisation	Date received
1	Julian Boswall	Thurrock Power Limited	17 August 2021
2	ESP Utilities Group	ESP Connections Limited	18 August 2021
3	Clare Shaw-Carter	National Grid	19 August 2021
4	Julian Boswall	Thurrock Power Limited	16 November 2021
5	Julian Boswall	Thurrock Power Limited	26 November 2021
6	Julian Boswall	Thurrock Power Limited	29 November 2021
7	Kevin Farren	SSE Enterprise Telecoms Limited	29 December 2021
8	Peter Ward	Port of Tilbury London Limited	21 January 2022
9	Julian Boswall	Thurrock Power Limited	24 January 2022
10	Peter Ward	Port of Tilbury London Limited	10 February 2022

**From:** [REDACTED]  
**To:** [Thurrock FPG](#)  
**Cc:** [REDACTED]; [Williams, Tracey](#); [REDACTED]@stateraenergy.co.uk"  
**Subject:** Re: Thurrock Power Limited - confidential documents  
**Date:** 17 August 2021 11:08:17  
**Attachments:** [image008.png](#)  
[image009.png](#)  
[image010.png](#)  
[image011.jpg](#)  
[image001.png](#)  
[image002.png](#)  
[image003.png](#)

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Dear Caroline

Thank you for your email.

I am referring to two documents in the PoTLL Deadline 8 submission:

1. Appendix 1 Comparison of Heads of Terms.
2. Appendix 3 Schedule 9, which reproduces item 1 in a different format, with at least one important change mentioned below. (We have not done a full comparison.)

PoTLL was keen that our 3 way discussions with RWE were confidential to allow it to explain its private negotiations with RWE to acquire the RWE land. This set the context for the structure of the 3 way negotiations. The Applicant has respected this throughout.

The Heads of Terms, which include important financial information, have been under negotiation as a private document between the parties for months. There has never been any discussion between the parties, let alone agreement, that this document would be submitted into the Examination at any stage. The agreed purpose of the negotiation was to see if private agreement could be reached on legal documents, subsequent to any agreement to the (non binding) Heads of Terms, which would then allow the Applicant to request removal of the causeway. This agreement was not reached by the close of the Examination and negotiations on the Heads of Terms are continuing. (The Heads and all discussions are have always been expressly stated to be 'subject to contract' as shown at the end of Appendix 1 document, which has been altered in Appendix 3 without discussion or agreement.)

PoTLL has submitted the Heads of Terms into the Examination without the express agreement of the Applicant.

We specifically objected to this approach in our email to Pinsent Masons prior to Deadline 8 (responding to PoTLL's Deadline 7 submission, where we saw the suggestion of submitting the Heads of Terms for the first time), which email was included in our Deadline 8 submission. There are several terms in the Heads which are fundamentally unacceptable in their current form (levels of uncertainty, control and bankability) and upon which the Applicant has not been afforded an opportunity to make any submission. The Applicant would not, under any circumstances, have agreed to these Heads being submitted in their unredacted form and with no commentary being provided on the points of difference.

None of the extensive new drafting in the PoTLL protective provisions in PoTLL's Appendix 3 has been seen by the Applicant in advance.

As noted in my second email of yesterday, Appendix 3 contains a signature below 'Thurrock Power Limited' (which I now see is redacted online), whose presence puzzles us, as the Heads of Terms were never signed by either party as they were not agreed.

Kind regards

Julian

---

**Julian Boswall**

Partner

Burges Salmon LLP

T: [REDACTED]

M: [REDACTED]

[REDACTED]

**From:** [ESP Utilities Group Ltd](#)  
**To:** [Thurrock FPG](#)  
**Subject:** Reference: PE162386. Plant Not Affected Notice from ES Pipelines  
**Date:** 18 August 2021 13:06:30

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Thurrock Flexible Generation Plant – EN010092  
Planning Inspectorate

18 August 2021

Reference: Thurrock Flexible Generation Plant – EN010092

Dear Sir/Madam,

Thank you for your recent plant enquiry at: North of the existing Tilbury National Grid substation, off Station Road, Thurrock, RM18 8UL

I can confirm that ESP Utilities Group Ltd has no gas or electricity apparatus in the vicinity of this site address and will not be affected by your proposed works.

ESP Utilities Group Ltd are continually laying new gas and electricity networks and this notification is valid for 90 days from the date of this letter. If your proposed works start after this period of time, please re-submit your enquiry.

**Important Notice**

Please be advised that any enquiries for ESP Connections Ltd, formerly known as British Gas Connections Ltd, should be sent directly to us at the address shown above or alternatively you can email us at: [PlantResponses@espug.com](mailto:PlantResponses@espug.com)

**ESP have provided you with all the information we have to date however, there may be inaccuracies or delays in data collection and digitisation caused by a range of practical and unforeseeable reasons and as such, we recommend the following steps are taken as a minimum before work is commenced that involves the opening of any ground and reference made to HSG47 (Avoiding danger from underground services).**

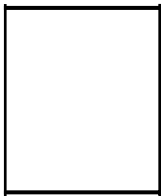
- A. Plans are consulted and marked up on site**
- B. The use of a suitable and sufficient device to locate underground utilities before digging (for example the C.A.T and Genny)**
- C. Trial holes are dug to expose any marked up or traced utilities in the ground**
- D. If no utilities are shown on any plans and no trace is received using a suitable**

and sufficient device, trial holes are dug nonetheless using hand tools at the location or at regular intervals along the location that the work is being carried out depending on the length of excavation work being undertaken

**E. All location work is carried out by individuals with sufficient experience and technical knowledge who may choose to control this activity under a Safe System Of Work**

Yours faithfully,

Plant Protection Team  
**ESP Utilities Group Ltd**



Bluebird House  
Mole Business Park  
Leatherhead  
KT22 7BA



[Redacted] li [Redacted]



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From: [REDACTED]  
To: [Thurrock FPG](#)  
Cc: [REDACTED]  
Subject: National Grid - withdrawal of objection  
Date: 19 August 2021 18:48:18

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To whom it may concern

**Application by Thurrock Power Ltd for an Order Granting Development Consent for the Thurrock Flexible Generation Plant**

We act for National Grid Electricity Transmission Plc and National Grid Gas ("National Grid") in relation to the above application.

National Grid and the Applicant have agreed protective provisions for the protection of National Grid's apparatus which the Applicant has agreed to include in the final draft DCO. National Grid hereby withdraws its objection to the application.

Yours faithfully,

Clare Shaw-Carter | Senior Associate | Planning and Infrastructure Consenting | Eversheds Sutherland

T: [REDACTED]  
M: [REDACTED]  
[REDACTED]  
[REDACTED]

**Please note I do not work on Fridays**

**Eversheds Sutherland**

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[REDACTED]

**From:** [REDACTED]  
**To:** [REDACTED]  
**Cc:** [REDACTED]; [REDACTED]  
**Subject:** Thurrock Power Limited DCO application - EN010092  
**Date:** 16 November 2021 09:25:38  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[0.jpg](#)

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Dear Gareth

We act for Thurrock Power Limited, which is promoting this DCO application.

We are aware that the ExA's report is due to be submitted today to the Secretary of State. We wish to explain that very substantial progress has been made in resolving issues as between TPL, PoTTL and RWE. We are aiming to provide a substantive update to you by Friday 26<sup>th</sup> November.

Regards

Julian

---

**Julian Boswall**

Partner

Burges Salmon LLP

T [REDACTED]  
M [REDACTED]  
[REDACTED]



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[REDACTED]



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[REDACTED]

[REDACTED]

**From:** [REDACTED]  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Thurrock Power Limited DCO application - EN010092  
**Date:** 26 November 2021 17:17:22  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)

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Dear Gareth  
We will provide this update on Monday.  
Regards  
Julian

---

**Julian Boswall**  
Partner  
Borges Salmon LLP

T: [REDACTED]  
[REDACTED]  
[REDACTED]



---

**From:** Julian Boswall <[REDACTED]@borges-salmon.com>  
**Sent:** 16 November 2021 09:25  
**To:** [REDACTED]@beis.gov.uk  
**Cc:** [REDACTED]@beis.gov.uk; Julian Boswall [REDACTED]@borges-salmon.com>; Paula McGeady [REDACTED]@borges-salmon.com>  
**Subject:** Thurrock Power Limited DCO application - EN010092

Dear Gareth  
We act for Thurrock Power Limited, which is promoting this DCO application.  
We are aware that the ExA's report is due to be submitted today to the Secretary of State. We wish to explain that very substantial progress has been made in resolving issues as between TPL, PoTTL and RWE. We are aiming to provide a substantive update to you by Friday 26<sup>th</sup> November.  
Regards  
Julian

---

**Julian Boswall**  
Partner  
Borges Salmon LLP

T: [REDACTED]  
[REDACTED]  
[REDACTED]



From: [REDACTED]  
To: [REDACTED]  
Cc: [REDACTED]  
Subject: Thurrock Power Limited DCO application - EN010092  
Date: 29 November 2021 19:29:48  
Attachments: [image001.png](#)  
[image002.png](#)  
[image003.png](#)

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Dear Gareth

Whilst we continue to make progress with PoTTL and RWE, TPL has decided that – rather than volunteer an update which may not be in the terms you need - we will await any formal request from you in relation to the application.

We should emphasise that a fit for purpose DCO requires a legally secure access route for Abnormal Indivisible Loads. The only version of the DCO which delivers that is the one TPL submitted at the end of the Examination, which includes the causeway and related CA powers.

The version of the DCO submitted by PoTTL at the end of the Examination, without warning and in terms which were not agreed, is not fit for purpose. It seeks to incorporate a non-legally binding heads of terms in an unworkable way, which was confidential between the parties, not agreed at the time and which has been overtaken by subsequent negotiations.

The causeway should only be excluded from the DCO if it is pursuant to a formal request by TPL, which in turn will only happen if the relevant access options currently under negotiation with PoTTL and RWE have been entered into.

Regards

Julian

---

**Julian Boswall**

Partner

Burges Salmon LLP

T: [REDACTED]  
[REDACTED]  
[REDACTED]



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**From:** C2requests [REDACTED]  
**Sent:** 29 December 2021 07:41  
**To:** NI Enquiries <NIEnquiries@planninginspectorate.gov.uk>  
[REDACTED]

**Subject:** RE: Telecoms Post

Public

Good morning,

Thank you for your initial enquiry and copy of your drawing.

It would appear from your drawing that there is no NEOSNetworks apparatus in the proposed work area. I

have attached a plan for your reference.

If there are any further questions, please do not hesitate to contact me.

Yours sincerely,

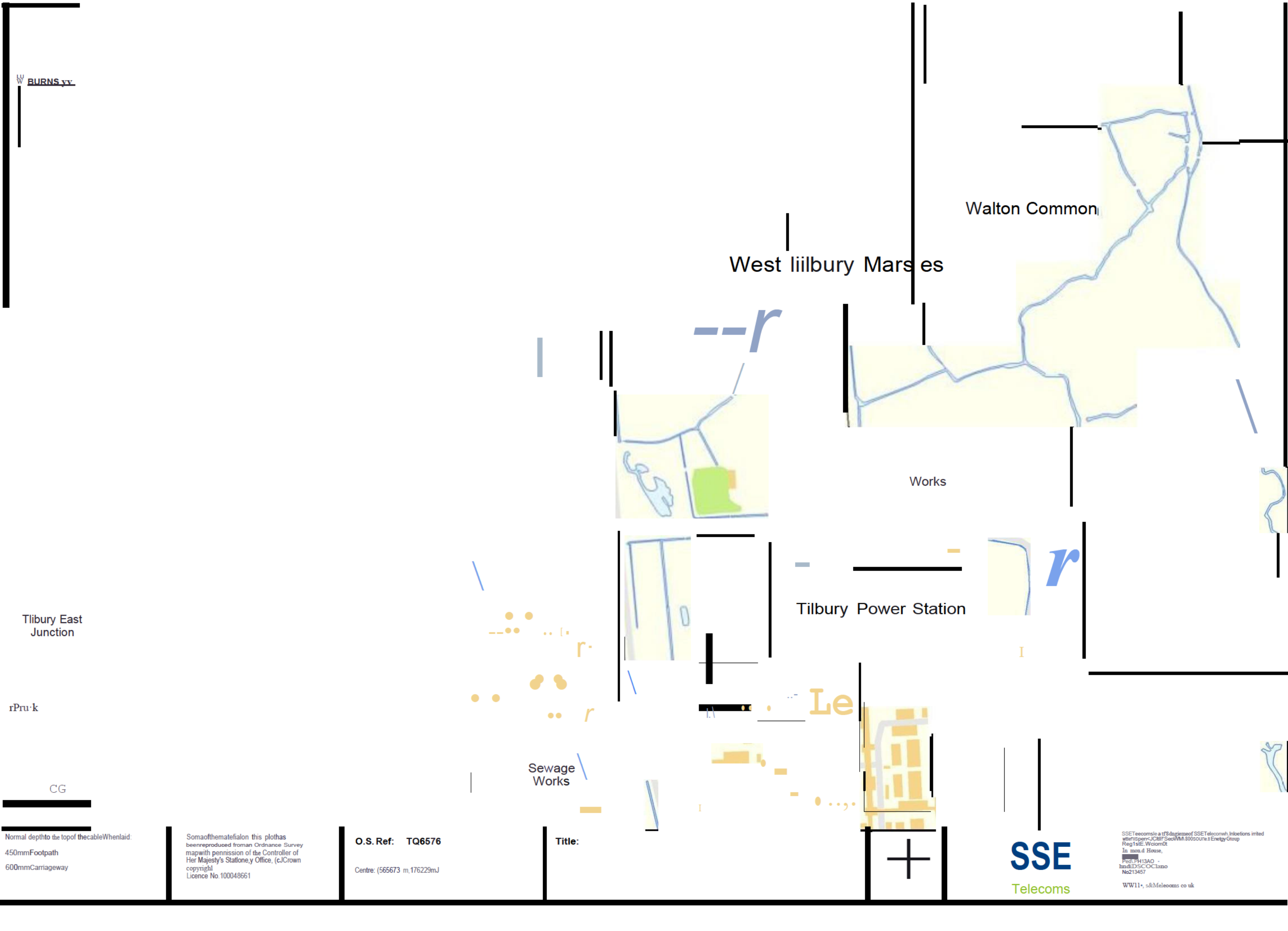
**Kevin Fanen**

FIBRE AND RECORDS SUPPORT ADMINISTRATOR  
[REDACTED]

4 Penner Road, Havant, Hampshire, P09 1QH

EOS

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W BURNS.yv

Tilbury East Junction

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CG

Normal depth to the top of the cable when laid:  
450mm Footpath  
600mm Carriageway

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O.S. Ref: TQ6576

Centre: (565673 m, 176229m)

Title:



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Telecoms

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Company No. 0213457  
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Registered in England and Wales  
Incorporated in England  
Registered Office: SSE Telecoms House, 130-132, The Quadrant, London, SE1 1NF  
Company No. 0213457





PORT OF  
**TILBURY**  
LONDON

PO BOX 101, TILBURY, LONDON E16 1EH

LESLIE FORD HOUSE  
TILBURY, ESSEX SM18 1EH

Gareth Leigh  
Head of Energy Infrastructure Planning  
Department for Business, Energy and Industrial Strategy  
1 Victoria Street  
London  
SW1H 0ET

21 January 2022

Our Ref: PoTLUTFGP/POSTEX/2

Dear Mr Leigh,

## Planning Act 2008

### Application by Thurrock Power Limited for the Thurrock Flexible Generation Plant Development Consent Order

#### Update following Response to Secretary of State Consultation of 21 December 2021

1. Further to my letter of 12 January 2022, where I confirmed that Port of Tilbury London Limited ('PoTLL') had agreed all matters with Thurrock Power Limited ('the Applicant') in relation to the Thurrock Flexible Generation Plant ('TFGP') save for two points of DCO drafting, set out in paragraph 8 of that letter, I am writing to update the Secretary of State on the position between the parties on those points.

#### Definition of 'the Port'

2. Since submission of my letter of 12 January 2022, and as indicated in it, PoTLL has sought to agree a position with the Applicant on this point but unfortunately has not been able to do so. The parties have therefore 'agreed to disagree' on the point and request that the Secretary of State determines what drafting should be included within the final DCO, should the Secretary of State decide to make a DCO for TFGP.
3. For the avoidance of doubt, PoTLL's position on this matter is as follows.
4. It has been PoTLL's consistent position that it is not appropriate or precedent for Protective Provisions ('PPs') to 'time freeze' the extent of the protections that they provide, as seen in:
  - the penultimate bullet point of paragraph 3 of its Deadline 6 submission [REPG-026/AS-049];
  - paragraphs 22-24 of its Deadline 7 submission [REP7-049];
  - paragraphs 3.7.8 to 3.7.14 of its Deadline 8 submission [REP8-008]; and
  - my letter of 12 January 2022.
5. As set out in those submissions, the purpose of PPs is to protect a statutory undertaking from impacts arising from a development. The question is, therefore, at the time when the Protective Provisions actually come to be applied (i.e. when the development is taking



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llq iscttd n[ngblki (No.1 651J1 J8J

place, e.g. construction, operation and decommissioning), what is the extent of the statutory undertaking that is to be protected? If PPs were to be time frozen, this would mean that the full spatial extent of the statutory undertaking as it stands at the time the development is to take place may not be protected, negating the very purpose of the PPs.

6. This is particularly relevant in the context of the recent decision on the Lake Lothing Third Crossing DCO<sup>1</sup>, where it was noted that consideration of what constitutes the ‘carrying on’ of a port undertaking, for the purposes of section 127 of the Planning Act 2008 (which seeks to protect ‘statutory undertaker’s land’), includes future operations.
7. As noted in the above-referenced submissions, PoTLL is part of the Thames Freeport initiative, which the Government itself has acknowledged<sup>2</sup> is expected to create 21,000 jobs and provide a £2.5 billion boost to the local economy. The Thames Freeport is now open for business and PoTLL is pursuing a fast tracked expansion strategy to ensure those benefits are realised.
8. It is therefore the case that the Freeport tax site, as set out in the appendix to my 12 January letter, will soon become part of PoTLL’s statutory undertaking, which should benefit from protections just as much as the existing undertaking. As such, whilst PoTLL continues to welcome that the definition of ‘the Port’ in article 2 of the DCO is now agreed to refer to the RWE land as well (I refer to the Applicant’s submissions of 12 February), it should not stop there and should incorporate the full extent of the Freeport, to the extent that at the time the PPs are engaged PoTLL holds an interest in that land (i.e. it therefore forms part of its statutory undertaking).
9. As such, PoTLL proposes that a new sub-paragraph (d) should be added to the definition of ‘the Port’ so that the definition reads as follows:

*the “Port” means:*

*(a) any land (including land covered by water) within the Port of Tilbury which is owned or used by Port of Tilbury London Limited for the purposes of its statutory undertaking; as at the date of the Order;*  
*(b) the Work No. 15 land; and*  
*(c) any land within the limits of deviation of Work Nos. 12(a), 12(c), 12(d) and 12(e), and any land comprised in plots 01/09, 01/10 and 01/15 shown on the land plans and special category land plans, in which Port of Tilbury London Limited holds an interest; and*  
*(d) any land within the area shaded edged and hatched in red on the map referred to in article 2(b) of the Designation of Freeport Tax Sites (Thames Freeport) Regulations 2021, in which Port of Tilbury London Limited holds an interest, together with any quays, jetties, docks, river walls and other land (including land covered by water) or works held in connection with that undertaking;*

10. PoTLL confirms its understanding that the Applicant has not agreed to propose this further change, but we would strongly encourage the Secretary of State to make it to ensure that the PPs will function to protect PoTLL’s statutory undertaking fully, as is their purpose.

### Costs

11. This issue relates to the drafting of what is now paragraph 84 of PoTLL’s protective provisions in version 9 of the draft DCO submitted by the Applicant on 12 January 2022.

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<sup>1</sup> See paragraph 5.8.111 of the Examining Authority’s Recommendation Report.

<sup>2</sup> [REDACTED]



12. PoTLL's position was set out in its Deadline 8 submission [REP8-008], with the drafting as shown in its marked-up DCO submitted at that deadline [REP8-011], namely that it is appropriate that PoTLL should be indemnified for the costs of reviewing documents that it is consulted on pursuant to Schedule 2 to the Order; and for the costs arising from obstructions caused by the Applicant within a working port.
13. PoTLL has, however, considered this matter further and has decided that it does not wish to trouble the Secretary of State over it, and therefore it is prepared to drop this point and pursue it no further.

Other matters

14. Finally, PoTLL is currently reviewing the clean and track changed versions of the DCO submitted by the Applicant on 12 January. PoTLL has noticed a number of small drafting matters which it is raising with the Applicant and which PoTLL anticipates should be able to be agreed.
15. 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]  
[REDACTED]

Yours sincerely,



PETER WARD  
COMMERCIAL DIRECTOR  
PORT OF TILBURY LONDON LIMITED

Secretary of State for Business, Energy and  
Industrial Strategy  
1 Victoria Street  
London  
SW1H 0ET

One Glass Wharf  
Bristol BS2 0ZX

DX 7829 Bristol

**BY EMAIL ONLY:**  
**ThurrockFPG@planninginspectorate.gov.uk**

For the attention of Gareth Leigh

Direct Line: [REDACTED]

Our ref: PM08/JB13/47016.3/MCGEA

Your ref: EN010092

24 January 2022

When telephoning please ask for: Julian Boswall

Dear Mr Leigh,

**Planning Act 2008**

**Application by Thurrock Power Limited for an Order Granting Development Consent for the Thurrock Flexible Generation Plant project**

**APPLICANT'S RESPONSE TO PORT OF TILBURY SUBMISSION DATED 21 JANUARY 2022**

- 1.1 Thurrock Power Limited (the "Applicant") has received a copy of the submission made to the Secretary of State by the Port of Tilbury London Limited ("PoTLL") dated 21 January 2022 regarding the definition of the Port within the Protective Provisions. The Applicant concurs that the position reached on the definition of the 'Port' for the purposes of Protective Provisions within any DCO which may be granted is not agreed. The Applicant strongly objects to the definition sought by PoTLL for the reasons set out in this letter.
- 1.2 As noted in previous submissions, the Applicant objected to the expanded definition of "Port" sought by PoTLL during Examination. PoTLL is seeking to include future expansion within the definition and the Applicant does not accept that is reasonable. The Applicant does not consider it to be fair or reasonable that it can become bound by the Protective Provisions in respect of considerable areas of land at an uncertain point in the future simply because this is acquired by PoTLL and which cannot, by its nature, be in Port use at the time any DCO is made.
- 1.3 The Applicant notes that the plan submitted by PoTLL relates to Freeport tax status, it does not infer any planning status or rights to compulsory purchase. The plan does not reflect land ownership; the land included in it does not all belong to PoTLL and indeed includes areas within which the Applicant, not PoTLL, has an option to lease. It also includes an area that the National Highways Lower Thames Crossing DCO project has also included in its proposals<sup>1</sup>. It is not the function of that tax status plan to give PoTLL a claim to control or fetter the development of any other party ahead of securing any development or planning consent of its own. At this stage, PoTLL's plan is simply aspirational, it does not have rights to the required land and it does not have planning consent or even a public proposal for such a consent.

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<sup>1</sup> This DCO application was submitted and then withdrawn during the acceptance period. The project documentation has been available to TPL and PoTLL both of which are in separate discussions with National Highways.

- 1.4 The area sought for inclusion by PoTLL goes considerably beyond the RWE site it has recently contracted to buy and includes land in which the Applicant has legal options in place for lease. It includes areas of the Order limits of this application which are required for the construction and operation of the proposed flexible generation station. The Freeport tax site as shown on the plan submitted by PoTLL has been drawn in a manner which clearly conflicts with the flexible generation plant despite PoTLL having been aware of these plans for some years and this DCO application having been made before the Freeport tax status area was defined. The Freeport tax status plan as drawn includes areas required by the flexible generation plant project for the gas pipeline, secondary access, ecological, landscaping and habitat works. These areas are also a significant distance from the Estuary foreshore and the extended Tilbury 2 port facility; it is therefore difficult to see what 'port-related' function they would have for the Port.
- 1.5 The Applicant has substantive concerns that PoTLL has not taken its proposals and constraints into account in the definition of the Freeport tax status area. The Applicant is particularly concerned by the interaction between the Freeport tax status area and its gas pipeline connection, which is required to be routed within the consented corridor so as to accommodate the piling design for the Lower Thames Crossing project and to maintain set-off distances from National Grid and Network Rail apparatus. The Applicant does not have the ability to design this solely to comply with any preferences PoTLL might demand. Similarly, the secondary access to Station Road must be designed to maintain agreed separation distances from the existing level crossing and electrical pylons as agreed with Network Rail and National Grid.
- 1.6 In response to PoTLL's submission that the function of the Protective Provisions is to protect this future, expanded area, that is fundamentally disputed by the Applicant. The Protective Provisions, as drafted by the Applicant, are specifically designed to control the use of an access through the existing, operational Port. They are not designed to cover other areas and infrastructure and are specifically not drafted to cover situations where both projects are undertaking works with overlapping red line boundaries. When read as a whole, it is entirely clear that the provisions have been drafted only to control access in and through an operational Port.
- 1.7 That the expanded land was not in contemplation for protection is also demonstrably shown by the nature of agreed DCO change request submitted on 12 January 2022. That request agreed to the removal of compulsory acquisition powers over the listed plots which form the access through the PoTLL and RWE land because a voluntary agreement has been reached. The change now sought by PoTLL would remove these powers (and many others) from the land to the north of the main site which includes the main construction compound area, the gas pipeline route and secondary access route. There is no agreement in place with PoTLL regarding these areas or Works (because they have no legal interest in that land at this time and could not enter into such an agreement). However, if the drafting of the Protective Provisions - if the definition of Port is expanded - would remove the compulsory powers in respect of the land required for these. It is entirely unreasonable that PoTLL should be allowed to create future ransom positions through the application of Protective Provisions.
- 1.8 The Applicant notes that the land PoTLL is seeking to have included clearly has potential for future development post construction of the Lower Thames Crossing in its own right, not necessarily related to the Port and certainly for the northern areas unlikely to be required as 'operational Port'. It should not therefore be treated as a current statutory undertaking and PoTLL should not be given a preferential position to the Applicant's much more advanced NSIP. The Applicant considers a fairer comparison here to be the Lower Thames Crossing project which will have physical interaction with the flexible generation plant around the gas pipeline. In that case, both parties have agreed that until the LTC proposals are better developed they could only agree principles to work together to ensure both projects could be progressed and neither would prevent or unreasonably impede the other. It also provides for agreeing for example how overlapping compulsory powers would be exercised and which party will acquire what. An interface agreement covering the specifics of that will be entered into when construction programmes are finalised. LTC has not sought to remove the Applicant's powers or to

control their exercise. That is very different to the one-way control and complete exclusion of some of the Applicant's DCO powers sought by PoTLL.

- 1.9 The Applicant notes the specialist legal submissions on this point (by DLA Piper, as specialist ports lawyers on behalf of the Applicant) conclude that: "it is not appropriate to extend the undertaking being protected in the DCO beyond its current operational land. It would not be proportionate to extend the protection speculatively to any future extension to that operational land, which PoTLL is looking to purchase on risk, fully aware of the proposals for this nationally significant infrastructure project <sup>2</sup>.
- 1.10 The Applicant submits that allowing the Protective Provisions drafted for a specific purpose (to control access through an operational Port) to be expanded to cover unknown further development areas would be fundamentally unworkable in practice. The Applicant also objects in principle to the setting of a precedent that Protective Provisions should be able to be unilaterally expanded in such a manner. Not only is that unreasonable as the Applicant can have no certain idea what land could become bound and when, but it means that such provisions would have to be drafted to seek to cover a huge variety of situations which may arise in the future. Such drafting, which has not been included in the submissions before the Secretary of State, will be lengthy, is likely to be complex and cumbersome, and is essentially undesirable.
- 1.11 If the DCO applied for is granted, that extant consent will be part of the planning baseline for PoTLL's Freeport proposals and a consideration in the determination of their planning consent(s). It is then for that later proposal to set out how it will coexist with the former. That approach, which is the accepted approach across the planning system, is fair and reasonable. To seek to provide in the DCO protections for inchoate proposals on land which has no planning status, no Port ownership status and no published proposals is unreasonable for the reasons already explained, does not accord with planning practice and should not be allowed as a point of principle.

Yours sincerely,

  
 Julian Boswall  
Partner  
BURGES SALMON LLP

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<sup>2</sup> REP7-042 at section 3.7

Gareth Leigh  
Head of Energy Infrastructure Planning  
Department for Business, Energy and Industrial Strategy  
1 Victoria Street  
London  
SW1H 0ET

10 February 2022

Our Ref: PoTLL/TFGP/POSTEX/3

Dear Mr Leigh,

**Planning Act 2008**

**Application by Thurrock Power Limited for the Thurrock Flexible Generation Plant  
Development Consent Order**

**Response by Port of Tilbury London Ltd ('PoTLL') to the Applicant's letter of 24  
January 2022**

1. This letter responds to the letter of Thurrock Power Limited ('the Applicant') relating to the Thurrock Flexible Generation Plant ("TFGP"), sent to you on 24 January 2022 ('the Letter'). The Letter responded to the letter PoTLL submitted to you on 21 January 2022 ('the PoTLL Letter'). Both the Letter and the PoTLL Letter focussed on the definition of 'the Port' to be included in article 2 of any DCO made for the TFGP, for the purposes of the DCO's protective provisions in favour of PoTLL.
2. This letter seeks only to comment on the points made by the Applicant in the Letter; it does not make any 'new' points on the issue between the Applicant and PoTLL relating to the definition of 'the Port'.

Land overlap

3. In respect of the concerns expressed in paragraphs 1.3 and 1.4 of the Letter that the land incorporated within the Freeport tax sites is inconsistent with proposed uses by National Highways' Lower Thames Crossing project ('LTC') and the TFGP, PoTLL wishes to highlight that the wording proposed in the PoTLL Letter makes clear that the protections in the Protective Provisions ('the PPs') would only apply to future Port land *'in which Port of Tilbury London Limited holds an interest'*.
4. Clearly if the LTC team or the Applicant did not wish PoTLL to hold an interest in the relevant land, they would not grant one to PoTLL. As such, the PPs would not apply to that land and so the Applicant's concern does not arise.
5. Similar logic applies to the Applicant's concerns in respect of an overlap between Freeport associated works and use, the LTC and the TFGP. Those Freeport works and use would only be possible if PoTLL had (a) an interest in that land, either through a voluntary deal with those parties, or if required through any compulsory acquisition process; and (b)



planning consent. National Highways, National Grid and the Applicant would be able to object to any such Freeport proposals and have their concerns properly heard through the planning (and, if relevant, compulsory acquisition) process concerned.

6. Until the conclusion of those planning and land processes, the protection PoTLL is seeking through the protective provisions in relation to future port land would not arise, as PoTLL would not 'hold an interest' in the land or have planning consent for it to be used for port-related purposes.
7. The concern expressed in paragraph 1.7 of the Letter that the drafting would change the nature of the land arrangements between PoTLL and the Applicant is also unfounded. The Applicant agreed to wording that applies the protections of paragraph 81(3) of the protective provisions to 'any interest' that is held by PoTLL, with no reference to 'the Port' in that paragraph. As such, the change to 'the Port' definition that is under discussion does not change the impact of that paragraph 81(3) as agreed.
8. In any event, similar to the discussion in paragraph 4 above, if the Applicant did not wish to sell the land to PoTLL on which those aspects of the development it refers to in paragraph 1.7 of the Letter would sit, then the protections in paragraph 81(3) would not apply.
9. The Applicant is therefore in no worse position than it currently is under PoTLL's proposed wording or indeed under the voluntary agreements that have been reached between the Parties, as any 'deal' for the additional land would need to be separately negotiated.
10. Finally, I can confirm that PoTLL is developing a wide range of proposals for the Freeport tax sites, not all of which are required to be directly served by or close to water. This can be seen by the wide ranging uses already in existence within the Port, including the landlocked parcel which forms the westernmost Freeport tax site, which is used for car storage. Furthermore, PoTLL has already submitted temporary planning applications for car storage on part of the RWE land, evidencing that it will be looking to exploit the potential of its Freeport status at speed.
11. In summary, PoTLL's position in relation to the protective provisions does not seek to prejudice, and could not possibly have the effect of prejudging, what may happen in relation to land interests and planning consent required for future port-related uses. All PoTLL is seeking to do is to ensure that the protective provisions will equally 'work' *should* the Port be permitted to expand in the future. Whilst that is not a certainty it is clearly a reasonable prospect, not least given the Freeport policy and related legislation now in place.
12. PoTLL agrees with what the Applicant says in conclusion in paragraph 1.11 of the Letter, that "if the DCO applied for is granted, that extant consent will be part of the planning baseline for PoTLL's Freeport proposals and a consideration in the determination of their planning consent(s). It is then for that later proposal to set out how it will coexist with the former. That approach, which is the accepted approach across the planning system, is fair and reasonable."
13. Given this, it is plainly not the case, as the Applicant goes on to suggest in paragraph 1.11 of the Letter, with which PoTLL disagrees, that "to seek to provide in the DCO protections for inchoate proposals on land which has no planning status, no Port ownership status and no published proposals is unreasonable for the reasons already explained, does not accord with planning practice and should not be allowed as a point of principle".



14. PoTLL is not seeking that and rejects, as a fundamental misunderstanding, the Applicant's statement in paragraph 1.3 of the Letter, that PoTLL is seeking "a claim to control or fetter the development of any other party ahead of securing any development or planning consent of its own".

#### Protective provisions and protection over future interests

15. The debate that took place during the Examination over whether there should be a time limit on the extent of protection offered by the protective provisions arose because the Applicant sought to time limit the protection to the date of the Order, to which PoTLL then responded.
16. By contrast other DCOs<sup>1</sup>, and primary legislation such as the Channel Tunnel Rail Link 1996, Crossrail Act 2008 and the High Speed Two (London to West Midlands) Act 2017, have generally stayed silent on the matter and just refer to the relevant land or apparatus that is to be protected, without any reference to a point in time. As such, at the point when the protective provisions on those projects are engaged, the question will simply be whether there is at that time apparatus or land that is affected by the project in question.
17. The Applicant refers to advice on this issue it has received from DLA Piper. PoTLL have been advised throughout this Examination by Pinsent Masons LLP (as noted throughout our correspondence and at appearances at the Examination's Issue Specific Hearings), who are also specialist ports lawyers, and they have advised PoTLL that there is no legal reason why the PPs should be time limited to the date of the Order. Indeed, that is not the usual approach, as evidenced by the numerous precedents mentioned in the PoTLL letter and referred to in the Examination.
18. Notwithstanding this PoTLL has, in the spirit of compromise, offered to limit the protection it should receive through the protective provisions by reference to the designated Freeport sites, already therefore creating an element of risk for any other eastwards expansion of the Port.
19. For all of the reasons set out in its previous submissions, however, which are not repeated here, PoTLL does not consider that additional risk to its future operational land should be created by deleting from the protective provisions the proposed wording it is seeking in relation to the definition of 'the Port'.
20. PoTLL therefore urges the Secretary of State to follow the almost universally consistent precedents in this regard by retaining the wording proposed in the PoTLL letter, so ensuring that the purpose of the protective provisions and the delivery of Freeport economic benefits will not be compromised.

#### Other matters

21. Further to paragraph 14 of PoTLL's letter of 21 January we have set out in the **Appendix** to this letter for your consideration a number of minor drafting matters (relating to typographical errors and consistency). We have not been able to discuss these with the Applicant but wanted to pass them to you now given that the Secretary of State's determination of the application is due very shortly.

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<sup>1</sup> See PoTLL's Deadline 8 submission [REP8-004].

22. 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,

[REDACTED]

PETER WARD  
COMMERCIAL DIRECTOR  
PORT OF TILBURY LONDON LIMITED



## APPENDIX

### Minor DCO drafting matters (relating to typographical errors and consistency)

1. PoTLL considers that, in making the final DCO, the following minor drafting changes will need to be made to ensure that the DCO gives proper effect to the changes proposed by the Applicant:
  - the definition of ‘the Port’ should be moved from PoTLL’s Protective Provisions to article 2, as the term is used in article 10;
  - when moved, the definition of ‘the Port’ should have a comma, rather than a semi-colon, before the word ‘together’;
  - in article 10(3)(b), the words ‘Work No. 12’ should be replaced with ‘Work Nos. 12 and 15’. Throughout the Examination, the aim of this article has been to ensure that neither the Applicant nor PoTLL could be considered to be in breach of the Tilbury2 DCO as a result of the TFGP, in light of the fact that the TFGP proposals have been assessed, considered and authorised through this separate DCO process. The act of constructing the new access road from Fort Road as part of the TFGP, which falls within the Order limits for the Tilbury2 DCO, has been dealt with in this respect by the inclusion of Work No. 15 within sub-paragraph (a) of this article, but the passage of vehicles over that road would be ‘missing’ from this protection if this suggestion is not taken up in respect of sub-paragraph (b). As such, we request that this oversight is rectified by making this change which, importantly, is beneficial to both the Applicant and PoTLL in ensuring that there is complete clarity in respect of this matter; and
  - in PoTLL’s Protective Provisions:
    - in paragraph 80, the words “specified work” are duplicated, therefore the duplication should be removed;
    - in paragraph 80, in the definition of “specified work”, at the end of the block of text which follows sub-paragraph (e), the full stop should be replaced with a ‘; and’, rather than a full stop; and the semi-colon at the end of the definition of ‘street’ should be replaced with a full stop;
    - one of the two full stops at the end of paragraph 81(3) should be deleted; and
    - paragraph 82(3) is missing a full stop at the end.