

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

25 January 2021

Our Ref: PoTLL/TFGP/EX/4

Dear Ms Williams,

Planning Act 2008

Application for the Thurrock Flexible Generation Plant Development Consent Order

PoTLL Submission for Procedural Deadline D

1. Further to the Applicant's submissions at Procedural Deadline C, its responses to the Examining Authority's ('ExA') Rule 17 Request of 6 January 2021, and the ExA's Rule 8 decision of 20 January 2021, this letter constitutes PoTLL's response to those submissions and submissions for Procedural Deadline D.
2. As a starting point, PoTLL acknowledges that the Applicant has sought to engage with it; both formally, as set out in its Procedural Deadline C Cover letter [PDC-001] and on a more informal basis, in respect of the marine and terrestrial access issues that have been raised in its submissions to the Examining Authority to date; and that progress has been made.
3. However, certain points of dispute do remain between the parties, meaning that PoTLL's objections to the project remain.

Navigation issues

4. PoTLL welcomes the Navigational Risk Assessment ('the NRA') submitted at Procedural Deadline C [PDC-052] and can confirm that it agrees that it is a sufficiently robust and acceptable assessment of navigation risk raised by construction and use of the causeway in respect of the operations of the expanded Port of Tilbury.
5. However, PoTLL is concerned that the following aspects of the NRA are not secured through the latest version of the draft DCO [PDC-009] submitted alongside the NRA:
 - the mitigation measures set out in section 8;
 - the mechanisms for developing and agreeing the Marine Operations Plan with PoTLL and the PLA, specifically identified as risk control measure A4; and
 - the need for updates to the NRA if there is a change to the design or to the proposed marine operation of the causeway.
6. At the very least PoTLL would expect that the draft DCO should include a Requirement which deals with the first of the above matters; and it would encourage the Applicant to



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include one in the next iteration of the DCO, alongside consideration of how the other matters should be dealt with in Protective Provisions for PoTLL's benefit and for the Port of London Authority (which include references to navigational risk assessments).

Terrestrial access

7. Whilst discussions are on-going with the Applicant in respect of terrestrial access matters, PoTLL is disappointed to note that, despite the Applicant's Procedural Deadline C submissions including a revised Outline Construction Traffic Management Plan [PDC-048] and amendments to Requirement 6 of the draft DCO, no provision is made within these documents for PoTLL to have any role in the development of the management of construction traffic, including in relation to movements within Tilbury2.
8. As such, PoTLL will continue to seek such provisions in its discussions with the Applicant, but would encourage the ExA to ask the Applicant why it considers they are not necessary given the concerns raised in PoTLL's previous submissions.

Revised draft DCO

9. PoTLL has reviewed the revised draft DCO submitted by the Applicant and has a number of concerns:
 - the DCO has yet to contain any Protective Provisions for the benefit of PoTLL, nor even a placeholder for them. PoTLL will work with the Applicant in developing these provisions, of which it is currently considering a draft;
 - the DCO contains a new article 37 giving the Applicant the power to dredge within the Order limits. PoTLL notes that:
 - (a) whilst capital dredging under this power would be subject to the controls within the Protective Provisions for the benefit of the Port of London Authority, controls over maintenance dredging are specifically excluded from those provisions leaving an unacceptable 'regulatory gap'; and
 - (b) capital dredging within the Order limits has the potential to impact upon the operation of vessels on the approaches to Tilbury 2, and that this issue is not specifically considered within the NRA. PoTLL would therefore expect that provisions for PoTLL's benefit in respect of this should be included within its Protective Provisions; and
 - as can be seen from the Applicant's Procedural Deadline C Cover Letter, PoTLL did comment on the Applicant's proposed new Requirements 17 and 18 but it appears that its comments have not been taken into account by the Applicant, with no reasons having been given as to why this is the case. As such, and for the reasons given in PoTLL's consultation response appended to the Applicant's Procedural Deadline C Cover Letter, the need for consistency within the DCO and in the context of PoTLL's general concerns that it wishes its statutory undertaking to be protected, PoTLL suggests the amendments to Requirements 17 and 18 (which presume that a new defined term for PoTLL as 'the Port Company' will be included in the draft DCO alongside Protective Provisions for PoTLL's benefit, in the next iteration of the draft DCO) set out in **Appendix 1** to this letter.

Ecology

10. Despite PoTLL's request in its consultation response to the Applicant for a populated Biodiversity Metric 2.0 to be provided, this has not been made available, and nor does there appear to be a suitable narrative to explain the various changes in the most recent biodiversity change calculations [PDC-032] that have accrued since the previous iteration of the calculations [APP-093]. Thus, PoTLL would note that it remains difficult to verify the

Applicant's claims made regarding net gain. As an indication as to the difficulties encountered in verifying the calculations, we note that the 76.442ha (Table 2.1) total area of baseline habitats given in the 'Biodiversity Net Gain Assessment' [PDC-032] does not tally with the total area of post-construction habitats (Table 2.3 and 2.5), when one would expect these figures to be comparable. Furthermore, the 76.442ha figure given for baseline habitats is at odds with the total of 84.95ha total (Table 3.2) provided for baseline habitats in the Onshore Ecology ES Chapter [PDC-022].

11. The above difficulties notwithstanding, we note that the latest 'Biodiversity Net Gain' calculations [PDC-032] appear to state that once the loss of intertidal mudflat is taken into account, then the Applicant's calculated net gain is now predicted to be **less than 10%** (para 4.1.5). It is therefore suggested that the Applicant's Biodiversity Metric 2.0 spreadsheet should be made available for consideration by all parties.
12. In light of all of the above points, PoTLL intends to continue to be involved in the Examination of the proposed Thurrock Flexible Generation Plant DCO until these issues and any other matters arising are able to be resolved.
13. As such, I can confirm that John Speakman of PoTLL, alongside Robbie Owen, Matthew Fox and Jan Bessell from its advisers Pinsent Masons, wish to attend Part 2 of the Preliminary Meeting on 16 February to answer any queries the ExA may have in relation to the above submissions.

Yours sincerely,



PETER WARD
COMMERCIAL DIRECTOR
PORT OF TILBURY LONDON LIMITED

Appendix 1: Proposed Amendments to Requirements 17 and 18

Review of access for abnormal indivisible loads

17.—(1) Within five years from the date of final commissioning of ~~the~~ Work No. 1, the undertaker must submit a report of the review of access options for transportation of abnormal indivisible loads (~~AHL~~) to or from Work No. 1 in writing to the relevant planning authority, the review having been carried out in consultation with the Port Company.

(2) A report submitted under sub-paragraph (1) must set out how the options considered perform against the tests set out in sub-paragraph (6).

~~(2) (3)~~ If a permanent, feasible and economic alternative to use of ~~the causeway to be constructed as~~ Work No. 10 for ~~AHL abnormal indivisible loads~~ access is identified in the report submitted under sub-paragraph (1), then the undertaker must—

- (a) submit applications for any consents required for that alternative ~~abnormal indivisible loads~~~~AHL~~ access and to decommission Work No.10 and reinstate the sea defence wall altered under Work No. 11 within 6 months of the date of the submission of the review; and
- (b) advise the relevant planning authority and the Port Company of the outcome of any applications under this sub-paragraph which were not determined by relevant planning authority within five business days of the undertaker being notified of that outcome.

(4) Where all the consents applied for under sub-paragraph (3)(a) required to create and/or use alternative AHL access are granted, the causeway to be constructed as the undertaker must forthwith carry out the decommissioning of Work No. 10 and the changes to the sea defence wall to be carried out as Work 11 and reinstate the sea defence wall altered under Work No. 11, such works to be must be decommissioned carried out in accordance with those consents and a causeway decommissioning plan approved under requirement 18(3).

(5) (a) Where the review undertaken under sub-paragraph (1) does not identify a permanent, feasible and economic alternative to use of the causeway to be constructed as Work No. 10 for abnormal indivisible loads~~AHL~~ access, or all of the necessary consents under sub-paragraph (3)(a) to create or use such an access are not granted, then the undertaker must carry out a subsequent review in consultation with the Port Company and submit it to the relevant planning authority within five years of the later of:;

- (i) the submission of the review under sub-paragraph (1); ~~or~~and
- (ii) the undertaker notifying the relevant planning authority of the any refusal of consent under sub-paragraph ~~2~~(3)(b);

(b) where the review undertaken under this sub-paragraph identifies an environmentally acceptable, permanent, feasible and economic alternative to use ~~of the causeway to be constructed as~~ Work No. 10 for ~~abnormal indivisible loads~~~~AHL~~ access which was not identified in the previous review, sub paragraphs ~~(2)~~ (3) and (4), ~~(3)~~ will apply as if the report had been submitted under sub-paragraph (1); and

(c) ~~w~~Where a subsequent review undertaken under this sub-paragraph does not identify a permanent, feasible and economic alternative to use of ~~the causeway to be constructed as~~ Work No. 10 for ~~abnormal indivisible loads~~~~AHL~~ access, then a further review will be required at each five year interval as if the subsequent review had been submitted under sub-paragraph (1).

~~(6)~~ In this requirement, a permanent, feasible and economic alternative means:

- (a) that the alternative route is available and will remain so for the flexible generation plant's operating lifetime of Work No. 1;
- (b) that transport of abnormal indivisible loads~~AHL~~ via the alternative route is feasible and practicable, taking into account factors including but not limited to the physical characteristics of the ~~abnormal indivisible loads~~~~AHLs~~ and the route (such as load limits and clearance), and that the terms of the agreement of landowners and having all of the consents required to create and/or use the alternative route to use of the route are economically feasible; and

- (c) that the alternative route costs no more than 10% more than the cost of the cost of shipment of abnormal indivisible loads from the nearest port of to delivery, berthing and unloading at the causeway Work No. 10 at the time that that the review is carried out.

Causeway decommissioning plan.

18.—(1) Where in accordance with requirement 17(3), ~~the causeway to be constructed as~~ Work No. 10 is to be decommissioned and the sea defence wall altered under Work No. 11 is to be reinstated, the undertaker must, within 6 months of the undertaker receiving all of the consents for which applications were made under requirement 17(~~3~~), submit a causeway decommissioning plan to the relevant planning authority for approval in consultation with the Environment Agency, the Port Company and the PLA.

(2) Where Work No. 1 permanently ceases operation and no Causeway decommissioning plan has previously been approved under this requirement, the undertaker must, within 6 months of the operation of Work No. 1 ceasing, submit a causeway decommissioning plan to the relevant planning authority for approval in consultation with the Environment Agency, the Port Company and the PLA.

(3) The causeway decommissioning plan must include:

- (a) a description of the decommissioning works and methods for Work Nos. 10 and 11;
- (b) a description of environmental management measures to be employed in the decommissioning works;
- (c) details of the reinstatement of the sea defence wall altered as part of Work No. 11;
- (d) details of the restoration of mudflat habitat; and
- (e) a timetable for implementation.

(4) Decommissioning and reinstatement works in relation to Work No.s 10 and 11 must be carried out in accordance with the approved causeway decommissioning plan.