

Thurrock Power Ltd Comments on Port of Tilbury London Limited's Deadline 2 Submission (REP-096)

Deadline 3



1 CONSTRUCTION ACCESS THROUGH THE PORT

- 1.1 The Applicant notes and welcomes PoTLL's confirmation that terrestrial access through the Port for normal construction and operational access is accepted in principle (REP2-096 para 1.4.2) which reflects the position which was advised to the Applicant by PoTLL in 2019. The Applicant continues to negotiate a voluntary agreement for this access with PoTLL but this not yet been completed. The Applicant is not withdrawing its request for compulsory powers for those rights.

2 USE OF THE CAUSEWAY

- 2.1 The Applicant sought to engage with PoTLL seeking to agree commercial terms to use the Port for the transport of AILs repeatedly in the development of this project going back to 2017 (as set out in the statement of reasons), and again in 2018 and 2019.
- 2.2 PoTLL did not respond substantively to these requests over that period. The Applicant was aware that PoTLL was heavily engaged in promoting and then delivering Tilbury2 during this period. PoTLL was advised by the Applicant in 2019 that it was looking at a causeway solution as there had been no substantive response to any communication seeking to discuss using the Port facilities and a route through Tilbury2.
- 2.3 It is not reasonable for PoTLL to argue now that there was a failure to consider use of the Port as an alternative when the Applicant sought to do so but it was PoTLL which would not engage.
- 2.4 Contrary to PoTLL's submission, the Applicant did consider all the alternative highway options in detail and at length (APP-046 para 3.2.7). However as noted in the ES the engine block AILs are too large to fit under most highway bridges and options are accordingly very constrained.
- 2.5 The Applicant specifically identified a highway solution which involved upgrading minor local roads and using the 'Gateway Academy' roundabout, building a haul road and craning the AILs over the railway line. That potential solution was included in the original consultation for the project but was later ruled out as explained in the ES.
- 2.6 It was a big decision for the Applicant to develop the causeway solution. The Applicant would not have brought this solution forward, with the attendant costs and delay to the application, and additional complexities of introducing a marine element to the project, if there had been a reasonable alternative using the highway network available.
- 2.7 The causeway is necessary simply to allow the delivery of the AILs which are fundamental to the development, and to allow replacement of those if necessary during the project's lifetime, which is required to ensure that the project is fundable.
- 2.8 The Applicant does not accept that the causeway solution is "unacceptable" or "unjustifiable". These claims are extreme. It is notable that in its response to the consultation on the causeway dated 11 November 2019¹, PoTLL raised concern over some points of detail about the causeway and stressed it would need to be satisfied that whatever structure would be constructed, would not interfere with the safe and efficient operation of vessels using Tilbury2. PoTLL did not object to the proposal as being fundamentally unacceptable. PoTLL has agreed the preliminary navigation risk assessment and it is clear that the causeway is acceptable in navigational terms. RWE did not object to the causeway

¹ Included in appendix 8.4 of the consultation report, part 5 of 5 APP-039 at page 64

- and expressed support in principle for the development². The PLA is content with the causeway in principle subject to the relevant controls and protective provisions in the PLA's favour.
- 2.9 PoTLL submits in their written representation that the causeway has environmental effects which they consider not to be necessary if their now proposed alternative access was to be used. The causeway has been included and assessed as part of the application and, as PoTLL notes later in the same submission, the effects are found to be not significant. It is not a meaningful criticism of a development to say that effects could be avoided by not building part of a proposal - that logic leads inexorably to a position of no development being put forward because no impacts then arise. The causeway is part of the scheme currently before the ExA and the Applicant continues to submit that the effects of it are acceptable and the planning balance overall falls in favour of granting the DCO currently sought.
- 2.10 The Applicant notes that the submission by PoTLL that a working restriction on the causeway from November to March is required and that impacts the construction programme; that submission is factually incorrect. No such seasonal restriction is required or proposed.
- 2.11 The Applicant has responded the point concerning access to RWE's site in its response to RWE's written representation.
- 2.12 PoTLL also claims the causeway will "reduce or sterilise" the RWE site. The Applicant proposes to use an existing access route over the site over which third party rights of access (for National Grid) already exist. The Applicant has already offered that it would consent to any reasonable diversion or alteration of that route within the RWE site to accommodate redevelopment.
- 2.13 The assertion that the causeway will "sterilise" the RWE site is unsubstantiated. There are no specific proposals for the RWE site – whether power or port related. There is no reason to imagine that if development proposals come forward that it will not be possible to find an alternative AIL access solution as part of that development, if that were required. That would be entirely normal in any major development of the kind which PoTLL implies is in contemplation. PoTLL's submission is silent on this obvious point.
- 2.14 The Applicant notes from PoTLL's submission that the RWE site has been included in the Freeport area. No details have been provided as to any proposals for the RWE site. The Applicant is aware that PoTLL has a right of pre-emption in the event RWE decides to sell its land.
- 2.15 On the assumption that PoTLL and RWE are working together, as the inclusion of the RWE site in the Freeport scheme indicates (or the assumption that PoTLL acquires the RWE site), PoTLL has it entirely within its power to provide a reasonable, acceptable alternative by entering into an agreement with the Applicant to use the Port facilities and a route through Tilbury2 for delivery of AILs, as the Applicant had originally sought between 2017 and 2019. This would remove any restraint arising from the causeway and its access arrangements. (The detail of such an alternative is considered further in the next section.)
- 2.16 The Applicant has also already agreed that where a reasonable, acceptable alternative access for AILs can be delivered, the causeway would be removed and has committed to that in the dDCO drafting.

² RWE consultation response dated 11 November 2019, included in appendix 8.4 of the consultation report, part 5 of 5 APP-039 at page 68

3 POTLL SUGGESTION OF A CHANGE REQUEST

- 3.1 The Applicant went to considerable trouble to ensure that the application as made secured a deliverable project. This involved a delay to the application to develop the causeway solution for the delivery of AILs.
- 3.2 The Applicant is not prepared to withdraw the causeway solution from the application and the request by PoTLL for it to do so is clearly unreasonable. No promoter would withdraw a fundamental element of a DCO application without having absolute certainty as to a deliverable alternative. No DCO promoter would take the procedural risk of the Change urged on the Applicant by PoTLL, given the normal sensitivities attached to change requests and the procedural demands and risks which they involve. As a recent DCO promoter of Tilbury2, PoTLL must understand this.
- 3.3 It is correct that the Applicant has been exploring with PoTLL an additional, alternative access for AILs through the Port (after delivery by sea), Fort Road public highway and along the northern boundary of Tilbury2 to then join the existing proposed main construction access.
- 3.4 The Applicant could only commit to using this alternative if it had:
- a. secured the necessary development consent (or planning permission) and permits and licences where relevant for relevant works;
 - b. secured the deregistration of the affected common land, on which a new road needs to be constructed;
 - c. secured a binding option for easement (or compulsory acquisition powers) for the route from Fort Road to the Site;
 - d. secured a binding commercial agreement for the handling/offloading of the AILs into the Port and their passage to Fort Road.
- 3.5 Anything short of this would not put the Applicant in the same position it is currently with the causeway solution. This is fundamental to the deliverability and therefore the successful financing of the project.
- 3.6 PoTLL states that the alternative AIL access is acceptable to all parties. This may turn out to be correct but it is premature to make that claim at this point. It is true to say that it appears that there is a credible route, which is physically deliverable on the ground, subject to some ongoing technical work. There are, however, important issues which need to be resolved in a binding agreement with PoTLL as just explained. In addition, the consents mentioned above need to be obtained.
- 3.7 The Applicant strongly rejects PoTLL's submission that the causeway should be deleted by the Secretary of State from the DCO in any event and the alternative AIL access should be imposed in some way on the Applicant by requirement. This is the Applicant's application not PoTLL's. The Applicant is entitled to have the application as made determined by the Secretary of State, including any changes which the Applicant may choose to make within normal procedural considerations.
- 3.8 PoTLL's request is not reasonable and would create a ransom situation in favour of PoTLL. The delivery of the generating station would then be dependent on PoTLL agreeing acceptable terms for AIL access in a situation where the bargaining power of the parties has been fundamentally skewed by the DCO requirement sought by PoTLL.
- 3.9 The Applicant included the causeway solution in its application for good reason. It is essential to having a deliverable project. Despite PoTLL's claims to the contrary it is clearly acceptable in marine and planning terms and any issues as regards operational impact for

RWE are resolvable, as detailed in the Applicant's response to RWE's Deadline 2 submission.

3.10 The Applicant objects to the requirement sought by PoTLL.

4 APPLICANT CHANGE REQUEST

4.1 The Applicant is contemplating a possible change request to add an additional access for the AILs along the route indicated above. This is being actively prepared at the moment. A judgment is required by the Applicant and its team as to whether, in procedural terms, there is enough time for this to be delivered through the DCO (which would require the ExA's acceptance of the change request and the ExA making quick procedural decisions at key points) or if it is delivered outside the DCO by way of a planning application and commons deregistration application.

5 DCO DRAFTING

5.1 Securing of the mitigation identified in the preliminary navigational risk assessment

5.1.1 The Applicant set out in its explanation of the changes to revision 4 of the DCO submitted at deadline 2 (REP2-018) that the securing of the mitigation set out in the preliminary NRA needs to be balanced with the ability for the final NRA to adopt the most appropriate mitigation identified at that time and cannot unreasonably constrain the PLA as the approval body for the final NRA. The Applicant has therefore added the principles of the identified mitigation to requirement 17 to secure those with the ability for the specific detail to reflect the final NRA.

5.1.2 The Applicant has also specified in the draft protective provisions (REP2-014 schedule 9 part 8) that the marine operations plan identified in the pNRA will cover the subject matter sought by PoTLL.

5.2 Draft Protective Provisions

5.2.1 The Applicant provided draft protective provisions to PoTLL before including those in the dDCO but had received no comments on those. As requested by the ExA that draft was included in revision 4 of the dDCO at deadline 2 (REP2-014).

5.2.2 The Applicant notes the submission of alternative draft protective provisions by PoTLL also at deadline 2. Those draft provisions are not accepted or agreed by the Applicant and detailed comments will be provided to PoTLL in order to seek to reach agreement on the drafting of those provisions.

5.3 PoTLL LEMP

5.3.1 The Applicant notes that PoTLL has listed various plots next to the current DCO works in which it has landscape and ecological works. It is not explained how or why PoTLL thinks that works, in the vicinity and not encroaching on that land, would cause a problem.

5.3.2 The Applicant notes that the CCR land in its application is reserved for CCR as required by the legislation, it is not being developed as part of this project. Any development of that will require further consents and will be controlled by those consents.