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

2 July 2021

Our Ref: PoTLL/TFGP/EX/11

Dear Ms Williams,

Planning Act 2008

Application for the Thurrock Flexible Generation Plant Development Consent Order

Deadline 5A Submission

1. This letter constitutes the Port of Tilbury London Limited's ('PoTLL') Deadline 5A submission in respect of the examination of the Thurrock Flexible Generation Plant ('the TFGP') project being promoted by Thurrock Power Limited ('the Applicant').
2. As well as dealing with the items noted in the Rule 8 Letter, this letter provides an update on matters raised by PoTLL in its previous submissions to help inform the ExA's consideration of hearing agendas, potential third written questions and any other requests for further information or written comments the ExA may wish to make.

Agreement and Compulsory Acquisition

3. Further to its previous submissions in respect of the TFGP, PoTLL continues to discuss all aspects of the interaction of that project with PoTLL's statutory undertaking. Good progress continues to be made in respect of a proposed Agreement between the parties with the aim that these should be resolved by the time of the hearings programmed for the end of July.
4. Until this Agreement is complete, however, PoTLL continues to maintain its objection to the proposed compulsory acquisition powers, on the basis set out in its Relevant Representation in respect of the Applicant's change request [RR-030].

DCO and Certified Documents

5. Matters are yet to be agreed in respect of DCO drafting. Apart from on-going discussions in respect of the draft Protective Provisions, PoTLL can confirm that its position in respect of the other outstanding matters it has raised in its previous written and oral submissions can be summarised as follows (with reference to the DCO as submitted by the Applicant at Deadline 5 [REP5-007]):



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| DCO Provision | PoTLL Position |
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| Article 8 (transfer of benefit) | <p>PoTLL welcomes the addition of sub-paragraph (4)(iv) to this article at Deadline 5.</p> <p>However, for the reasons given in its Deadline 4 submission, PoTLL maintains its position that it should be added as a party to be notified under paragraph (5) and that the article should also provide for consultation by the Secretary of State with relevant parties (such as the PLA and MMO, as is provided for in similar DCOs) prior to any consent being given to a transfer of benefit under this article, including with PoTLL.</p> <p>In respect of the change to sub-paragraph (4)(iv), PoTLL notes that a portion of the new access to be provided between Fort Road and the Tilbury2 Access Road is not within the extended port limits for Tilbury created by the Tilbury2 DCO, despite it providing a potential access point to the Port. For this reason, PoTLL considers that the words 'or of any street created pursuant to Work No. 15,' should be added to this sub-paragraph after the first reference to 'the Port of Tilbury,'.</p> <p>In addition, the correct reference to PoTLL's status of having statutory functions is '...any successor as the statutory harbour authority for the Port of Tilbury' as opposed to the current wording of '....any successor as the statutory Port Authority for the Port of Tilbury'.</p> |
| Article 10(4) | <p>Following further consideration of the overlap between the Tilbury2 DCO and the TFGP, PoTLL considers that this provision should be drafted along these lines:</p> <p><i>The carrying out of any of the following works and operations:</i></p> <p>(a) <i>Work Nos. 12 (a), 12(e), and 15;</i></p> <p>(b) <i>any ancillary work listed in Schedule 1;</i></p> <p>(c) <i>the use of Substation Road for the passage of construction, maintenance or decommissioning vehicles utilised for the authorised development; and</i></p> <p>(d) <i>any activities carried out pursuant to the requirements set out in Schedule 2,</i></p> <p><i>is not to be regarded as conflicting, or constituting non-compliance by Port of Tilbury London Limited, with the following requirements in Schedule 2 to the Port of Tilbury (Expansion) Order 2019:</i></p> <p>(e) <i>Requirement 4;</i></p> <p>(f) <i>Requirement 5;</i></p> <p>(g) <i>Requirement 11 (c), (d), (f) and (h); and</i></p> <p>(h) <i>Requirement 12.</i></p> |

| DCO Provision | PoTLL Position |
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| Articles 19 and 22 (and Requirement 4(10)) | This relates to the Applicant's proposals for different access proposals to its power station site in the context of the 'ground heave' issue adjacent to the National Grid substation. PoTLL welcomes the drafting introduced by the Applicant at Deadline 5 [REP5-003]. However, it is considered that similar wording will also need to be included in the temporary possession articles of the DCO (articles 28 and 29). |
| Requirement 14 | PoTLL accepts the Applicant's position on this requirement stated by the Applicant in its Deadline 5 submissions. |
| Requirement 17 (navigation risk assessment) | <p>As noted in its previous submissions, PoTLL is concerned to ensure that the evolving NRA for a causeway (if included in any DCO that is made) deals properly with the decommissioning phase.</p> <p>Whilst it acknowledges that the causeway decommissioning plan requirement (Requirement 18) refers to the plan including '<i>details of any barge or other vessel movements required and measures to avoid shipping or navigation risks</i>', PoTLL would expect that such details would have first been determined in accordance with a NRA process with the PLA (noting also that the PLA is only a consultee on the causeway decommissioning plan). As such PoTLL considers it is appropriate for Requirement 17 to deal with decommissioning.</p> <p>PoTLL therefore requests that sub-paragraph (4) of this requirement is amended as highlighted in yellow below:</p> <p><i>(4) No change to the operation of Work no. 10, including any decommissioning, may be implemented until a revised navigational risk assessment reflecting the proposed change has been submitted to and approved by the PLA following consultation with the Port of Tilbury London Limited.</i></p> |
| Requirement 18 (AIL review) | <p>Further to PoTLL's previous submissions, including at the first set of Hearings, it considers that this Requirement should be amended as set out below. These changes aim to expedite the review and removal process, given the issues PoTLL has raised in relation to interference with Government-supported Port expansion; and reflect PoTLL's belief that the Applicant should not be the party in control of determining whether an acceptable alternative is in place, given other commercial imperatives which may influence that decision:</p> <p><i>(1) No later than <u>five years one year</u> from the commencement of operation of Work no. 1 coming into force of this Order, the undertaker must submit a report of the review of access options for transportation of AILs to or from Work no. 1 in writing to the relevant planning authority and send a copy to Highways England.</i></p> <p><i>(2) A report submitted under sub-paragraph 1 must:</i></p> <p><i>(a) set out how the options assessed perform against the tests set out in sub-paragraph (6); and</i></p> <p><i>(b) be prepared in consultation with the Port of Tilbury London Limited.</i></p> <p><i>(3) If, in the opinion of the relevant planning authority, following consultation with the Port of Tilbury London Limited, an environmentally acceptable, permanent, feasible and economic alternative to the use of the causeway to be constructed as Work no. 10 for AIL access is identified in the report submitted under sub-paragraph (1), then the relevant planning authority must</i></p> |

| DCO Provision | PoTLL Position |
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| | <p>notify the undertaker of that decision in writing. Where such notice is issued the undertaker must;</p> <p>(a) submit applications for any consents required for that alternative AIL access within <u>36</u> months of the date of the issue of a notice under this sub-paragraph by relevant planning authority, and</p> <p>(b) advise the relevant planning authority <u>and the Port of Tilbury London Limited</u> of the outcome of any applications under this subparagraph which were not determined by that planning authority within five business days of the undertaker being notified of that outcome.</p> <p>(4) Where all the consents required to create and use the alternative AIL access are granted, the causeway to be constructed as Work no.10 and the changes to the sea-defence wall to be carried out as Work no.11 must be decommissioned in accordance with requirement 19(4). <u>such works to commence no later than 1 month following the approval of a causeway decommissioning plan under requirement 19(4).</u></p> <p>(5) (a) Where, <u>in the opinion of the relevant planning authority, following consultation with the Port of Tilbury London Limited</u> the review undertaken under sub-paragraph (1) does not: -identify an environmentally acceptable, permanent, feasible and economic alternative to the use of the causeway to be constructed as Work no.10 for AIL access, or the necessary consents to create or use such an access are not granted, then the undertaker must carry out a subsequent review within <u>five years one year</u> of the later of;</p> <p>(i) the submission of the review under sub-paragraph (1); or</p> <p>(ii) the undertaker notifying the relevant planning authority of the refusal of consent under sub-paragraph 2(b).</p> <p>(b) Where, <u>in the opinion of the relevant planning authority, following consultation with the Port of Tilbury London Limited,</u> the review undertaken under <u>this</u> sub-paragraph (a) identifies an environmentally acceptable, permanent, feasible and economic alternative to the use of the causeway to be constructed as Work no. 10 for AIL access which was not identified in the previous review, sub paragraphs (2) <u>and</u> (3) will apply as if the report had been submitted under sub-paragraph (1).</p> <p>(c) Where a subsequent review undertaken under this sub-paragraph does not, <u>in the opinion of the relevant planning authority following consultation with the Port of Tilbury London Limited,</u> identify an environmentally acceptable, permanent, feasible and economic alternative to the use of the causeway to be constructed as Work no. 10 for AIL access, then a further review will be required at each <u>five one</u> year interval as if the subsequent review had been submitted under sub-paragraph (1).</p> <p>(6) In this requirement, an environmentally acceptable, permanent, feasible and economic alternative means:</p> <p>(a) that the environmental impacts of the alternative are determined by the relevant planning authority to be likely to be acceptable to any authority from whom consent would be required to construct or operate the alternative access (which view is without prejudice to any later decision made by it in any statutory capacity or in determining any application received), having regard to the assessment criteria applicable at the time of undertaking the review, which criteria may include environmental impact assessment and assessment of the impact on protected species and habitats, and taking account of any mitigation which can be delivered without prejudicing the ability of the alternative to comply with paragraphs (b), (c) and (d) of this sub-paragraph;</p> <p>(b) that the alternative route is available and will remain so for the operational lifetime and decommissioning of Work no. 1;</p> <p>(c) that transport of AIL via the alternative route is practicable, taking into account factors including but not limited to the physical characteristics of the</p> |

Commented [PM1]: PoTLL is concerned with the drafting of this provision as it is asking the LPA to substitute its views for other stakeholders such as Natural England, the Environment Agency and the PLA. The NEWT-style wording proposed by PoTLL in its Deadline 2 submissions [REP2-96] is standard drafting in DCOs and would be more suitable in PoTLL's view.

| DCO Provision | PoTLL Position |
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| | <p><i>ALLs and the route (such as load limits and clearance), the agreement of landowners and having all of the consents required to create and/or use the alternative route; and</i></p> <p><i>(d) that the alternative route costs no more than 10% more than the cost of shipment from the port of delivery to, berthing and unloading at the causeway.</i></p> <p><i>(7) In this requirement "ALL" means abnormal indivisible load and includes the generating station engine blocks.</i></p> |

6. PoTLL hopes to make progress on the above issues prior to the DCO Issue Specific Hearing programmed for the end of July but in the meantime hopes that this summary assists the Examining Authority in considering the agenda for that hearing.
7. PoTLL also notes that its comments on the Construction Traffic Management Plan and Code of Construction Practice made in its previous submissions have yet to be resolved – see in particular at Deadline 3 [REP3-023] and at Deadline 4 [REP4-031]. We note also that the Applicant, as it has done with the draft DCO, will need to consolidate the 'main' version and the 'change' version of these documents.

Causeway Removal

8. PoTLL continues to advocate for the Applicant to remove the causeway from the TFGP proposals in addition to the changes promoted through the Change Request it has already made, for all of the reasons stated in PoTLL's previous submissions.
9. PoTLL has noted the Relevant Representations and Deadline 5 submissions of third parties in respect of the Applicant's Change Request; and would make the following points:
 - in the context of its on-going HRA concerns, it is important to note Natural England's view [RR-028] that the balance of ecological impacts lies clearly in favour of the alternative access and removal of the causeway entirely from the project, resulting in the demonstration of no adverse effects on integrity of the Thames Estuary and Marshes SPA and Ramsar. As it has noted previously, PoTLL would add to this that removing the causeway would also better accord with and meet the mitigation hierarchy of avoiding effects in the first place;
 - the PLA [RR-029], as a further important third party marine stakeholder, has indicated its preference for the alternative access and sets out that the causeway would cause direct conflict with the location of land for port-related development and part of the Freeport;
 - Highways England [RR-027] as a key highway stakeholder indicates no concerns with the alternative proposals;
 - Gravesham Borough Council [RR-025] also supports the removal of the causeway; and
 - whilst PoTLL notes that, at paragraph 3.6 of its Local Impact Report Addendum [REP5-022], Thurrock Council has suggested that it is too early to understand if the causeway proposals could impact upon the future Thames Freeport proposals, it is also noted that the document is dated May 2021. Given the likely governance procedures that would have been required to produce this

document, PoTLL does not consider that the report fully reflects the fast moving development of the Freeport proposals, which PoTLL is developing in partnership with the Council's economic growth team (the Council being part of the Freeport consortium). As PoTLL set out in the plans appended to its Deadline 4 submission, there is a clear overlap between the causeway and the Freeport proposals – an overlap which could and should be removed in the context of a clear alternative being available to the Applicant.

10. PoTLL has also considered the Applicant's response to the Examining Authority's Second Written Question 2.4.1, 2.6.3 [REP5-007] and its related response to the 'Hydrock Report' at [REP5-016] and has responded in the table below.

| Applicant Comment | PoTLL Response |
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| <p>The Applicant is not aware from its land referencing exercise that PoTLL yet has any legal interest in the relevant land which would provide it with the control necessary to bring forward any development.</p> | <p>As PoTLL has consistently set out in its submissions, it is working closely with RWE to facilitate development on its land as part of the Freeport proposals and together will enable such development to be brought forward.</p> |
| <p>It is unclear how permitted development rights would apply to such development when the land in question is not currently operational port land. The Applicant also does not agree that any phase of a development of the scale and nature proposed by the Port could be developed under permitted development rights in this area, as the EIA development exclusion is likely to apply.</p> | <p>PoTLL notes that it is not just permitted development rights that could be relied upon to bring forward development. Temporary planning permissions (such as were obtained for Tilbury2 for the parking of vehicles disembarking from Tilbury1 prior to the construction of the new port development) have been obtained at speed by PoTLL in the past.</p> <p>PoTLL also notes that it has utilised permitted development powers for various not inconsiderable developments within the existing Port of Tilbury notwithstanding the EIA exclusion in article 3(10) of the GPDO – it has not been an impediment to Port development.</p> <p>Examples of development under these provisions include the 318,000 sq. ft high bay warehouse which the port operates for a single customer (Stora Enso) and the 213,000 sq. ft chilled warehouse occupied by Culina.</p> <p>As noted above, PoTLL is working closely with RWE on bringing forward Port expansion and the Freeport proposals such that arrangements could be made for the relevant land to become operational land.</p> |
| <p>On the basis that permitted development rights are unlikely to be available, any development at this site must be subject to its own planning determination in due course. The fact that no planning application has been</p> | <p>PoTLL's contentions in this Examination are not that the causeway prevents a specific form of proposed development that needs to be engaged with; but that, as shown in its Deadline 4 submission, the causeway would restrict and potentially impede riverside development</p> |

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| <p>made brings inherent uncertainty over what will be consented or on what terms. It is therefore not possible for the Applicant to engage with the proposals in any meaningful way as the detail of what is being proposed is simply not available.</p> | <p>(including works in the river itself) in general terms; and that because of the Freeport proposals and permitted development rights, such economically beneficial development is very likely to be brought forward in the short to medium term.</p> <p>Moreover, the exact planning regime within designated Freeports is presently being worked on by government and a key driver of any amended planning regime will be to speed up the process in order to encourage quicker development and inward investment.</p> <p>In the context of an acceptable alternative ALL access proposal and the limited if any benefit of the causeway use, the Applicant's position is not acceptable to PoTLL.</p> |
| <p>As part of any planning process, PoTLL will have to explain how they will deal with existing undertakers on the land, not just the Applicant but also, for example, National Grid and potentially Lower Thames Crossing. It is not unusual for large-scale development to have to address existing users, including through accommodation works.</p> | <p>PoTLL is working closely with both National Grid and the Lower Thames Crossing team, building on its relationships developed through the Tilbury2 development.</p> <p>In any event, the development areas that would be affected by the causeway proposals would be able to be brought forward notwithstanding the progress of the Lower Thames Crossing project.</p> <p>In respect of National Grid, its primary concern is to ensure access to its substation, which would not be affected by Port expansion (and it is, in any event, protected by an ongoing property right); and protection of its assets. In respect of the latter, no overhead apparatus would be affected by the land affected by the causeway; and National Grid's underground gas pipeline would be subject to standard restrictions similar to those that PoTLL was able to easily deal with in its Tilbury2 development without delay to that project.</p> |
| <p>It is entirely within PoTLL's power to provide a suitable alternative dock for delivery of AILs as part of the port's "business as usual" operation and for PoTLL to identify, consent and provide an alternative route to the TPL site. Should an alternative be delivered, the causeway could be removed (and this is provided for within the dDCO).</p> | <p>As set out in PoTLL's previous submissions, it agrees that it is within its power to provide a suitable alternative docking facility for delivery of AILs – indeed it would be under a statutory <u>duty</u> to make any existing suitable facilities at Tilbury1 available to the Applicant. There is no need to 'consent' an alternative route as it would be within the Port of Tilbury (a publicly-accessible facility) and then onto public highways until reaching the Tilbury2 site.</p> <p>As such, this alternative is therefore already available to the Applicant and is not a reason why</p> |

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| | <p>the causeway cannot be removed from the draft DCO at this stage.</p> |
| <p>The Applicant disagrees with PoTLL's contentions that removing the causeway would be prohibitively complex or technically difficult (and a response to the Hydrock report is being provided separately in the Applicant's answer to question 2.4.1).</p> | <p>PoTLL notes that the response to 2.4.1 refers to the report submitted at [REP5-016]. It appears clear from that response that Aecom have acknowledged that a range of further work will be required to ensure that the causeway could be built in a robust and safe manner – so it cannot be said that it would not be complex or difficult to construct or decommission. That judgement would need to come at a later date and so it cannot be simply said that PoTLL could 'just' remove it as the Applicant has previously stated.</p> |
| <p>The Applicant continues to be surprised at the suggestion that the causeway would represent any kind of significant impediment to a future development of the RWE land assuming PoTLL acquires this in the future. It is the kind of secondary matter whose resolution is common place in bringing forward a new port development – by providing an alternative solution and using compulsory powers as a fall back if necessary. The latter will not in this case be needed because, as already mentioned, the DCO is deliberately structured to facilitate the removal of the causeway and the relevant part of the access route as and when a suitable alternative is available.</p> | <p>PoTLL's point is that an alternative is available <u>now</u>, through the Change Request and PoTLL's statutory duties applying to the original Port of Tilbury; as such there is no need for a 'fallback' and no compelling case for the powers sought in respect of the causeway to be granted.</p> <p>In any event, as noted above, the 'fallback' as currently drafted does not require or provide for any alternative to be brought forward expeditiously.</p> |
| <p>The Applicant is unclear how the Freeport proposals relate to RWE's submissions that its land is operational land being held for the purposes of future energy development and that the Applicant's proposals for a causeway would have a serious detriment to the carrying on of that undertaking. If that is the case (as RWE submits) then the Applicant does not understand how a proposal for a Freeport on the land would not cause the same serious detriment (albeit the Applicant refutes that the causeway would have such an effect). It is contradictory for RWE to submit on the one hand that the causeway would result in a serious detriment to the carrying on of its undertaking but, on the other hand, to be separately</p> | <p>RWE will make its own comments to this point but PoTLL appreciates that RWE needs to continue to consider the optimal use of the land within its undertaking.</p> <p>As such, whilst PoTLL and RWE are working closely together, RWE has to be alive to the possibility (however remote) that port development does not come forward – in that scenario, a causeway being built in front of prime development land (for any other use, including gas-related) could potentially cause serious detriment.</p> <p>It is not therefore a contradiction but instead a protection of RWE's position and operational land for all scenarios.</p> |

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| working with PoTLL on plans to develop the land as a Freeport. | |
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Conclusions

11. In light of the points above and the detailed nature of its own Relevant Representation on the Change Request, I can confirm that PoTLL does not intend to submit a separate standalone 'Written Representation' in respect of the Change Request, but requests that the Relevant Representation is taken into account as the Written Representation.
12. In light of all of the above and whilst good progress continues to be made in discussions with the Applicant, until these are resolved, completed and secured, PoTLL will continue to make submissions to the Examination and (as set out at Deadline 5) will wish to attend and speak at the CAH and ISH now scheduled for 26 July (and their back-up date of 28 July).
13. If you have any further questions, please do not hesitate to contact our legal advisers at Pinsent Masons LLP, [REDACTED] and [REDACTED]
14. Both Robbie Owen and Matthew Fox will attend the hearings, as will Jan Bessell [REDACTED] and Valentina Kass-Vertic [REDACTED] ([REDACTED]) from Pinsent Masons, alongside John Speakman of PoTLL [REDACTED]

Yours sincerely,

[REDACTED]

PETER WARD
COMMERCIAL DIRECTOR
PORT OF TILBURY LONDON LIMITED