

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

12 January 2022

Our Ref: PoTLL/TFGP/POSTEX/1

Dear Mr Leigh,

Planning Act 2008

Application for the Thurrock Flexible Generation Plant Development Consent Order

Response to Secretary of State Consultation of 21 December 2021

1. Following the end of the Examination of the Thurrock Flexible Generation Plant (“TFGP”) in August 2021, PoTLL has been engaging with the Applicant, alongside RWE, to seek to agree aspects of disagreement between us that were expressed in PoTLL’s Examination submissions.
2. I am pleased to report that, with the exception of the two issues mentioned below, such agreement has now been reached, ensuring that:
 - all provisions in relation to the proposed causeway can be removed from the proposed DCO; and
 - appropriate controls can be put in place within the DCO and in legal agreements between the parties, in relation to the exercise of DCO powers that will affect the Port including the construction and operation of the alternative access from Fort Road.
3. This agreement has been documented in legal agreements between PoTLL and the Applicant, and between RWE and the Applicant, with appropriate interlinkages between them, which were legally completed earlier today.
4. The agreements also set out agreed changes to the drafting of the DCO. I can confirm that PoTLL has had sight of the resulting letter which the Applicant is intending to submit to you today (referred to below as the DCO Change submissions), setting out the proposed changes to the DCO drafting and associated plans, and is in full agreement with it.
5. As such, the DCO amendments that PoTLL put forward in its Deadline 8 submissions [REP8-011] can be ignored, save in relation to the two matters discussed below.



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6. The two outstanding issues between the parties are as follows:

- The drafting of the definition of 'the Port' in article 2 of the DCO. This is particularly important to PoTLL as it defines the geographical ambit of the controls in its Protective Provisions that have now been agreed with the Applicant.

As the Secretary of State will see from the DCO Change submissions, the parties have agreed that this definition should be amended such that it 'captures' the land currently owned by RWE which is within the Order limits for the TFGP. This reflects the fact that (as foreshadowed in its Examination submissions) PoTLL has now agreed terms with RWE for the transfer of its land to PoTLL, but full acquisition has not yet taken place.

However, from PoTLL's perspective, the revised definition does not go far enough as it will limit the effect of the Protective Provisions to a point in time and only to PoTLL's current land and RWE's land. For the reasons set out in its Deadline 8 submission [REP8-008] PoTLL considers this to be both unprecedented and unacceptable.

Given that Port expansion adjacent to Tilbury2 now forms part of the Government's designated Freeport site (again, as foreshadowed in PoTLL's Examination submissions, and as now set out in the November 2021 Regulations and associated plan contained in Appendix 1 of this letter), it is now even more likely that land surrounding the TFGP will soon become part of PoTLL's statutory undertaking, which land should be protected at the relevant time by the Protective Provisions.

I can confirm, however, that as soon as possible following submission of this letter PoTLL will endeavour to meet with the Applicant to seek to reach agreement on this definition and PoTLL will then confirm to the Secretary of State whether any further progress on this issue has been able to be made.

- The drafting of paragraph 12 (as numbered in the DCO submitted by the Applicant at Deadline 7 [REP7-012]) of PoTLL's Protective Provisions in relation to the Port's recovery of costs. The parties have 'agreed to disagree' on this drafting. PoTLL's position is therefore as 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].

7. 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]

Yours sincerely,

[REDACTED]

PETER WARD
COMMERCIAL DIRECTOR
PORT OF TILBURY LONDON LIMITED

Annex 1

Designation of Freeport Tax Sites (Thames Freeport) Regulations 2021 (and accompanying Tilbury area map)

STATUTORY INSTRUMENTS

2021 No. 1195

INCOME TAX

CORPORATION TAX

STAMP DUTY LAND TAX, ENGLAND

The Designation of Freeport Tax Sites
(Thames Freeport) Regulations 2021

Made - - - - 28th October 2021
Laid before the House of
Commons - - - - 29th October 2021
Coming into force - - 19th November 2021

The Treasury make the following Regulations in exercise of the powers conferred by section 113 of the Finance Act 2021⁽¹⁾.

The areas designated by these Regulations are either situated in a freeport or considered by the Treasury as being used, or likely to be used, for purposes connected with activities carried on, or likely to be carried on, in a freeport⁽²⁾.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Designation of Freeport Tax Sites (Thames Freeport) Regulations 2021 and come into force on 19th November 2021.

(2) In these Regulations, a reference to an area “shown edged and hatched in red” on a map is a reference to the hatched area extending up to the red edging, but not including the red edging itself.

Designation of freeport tax sites

2.—(1) The following areas are designated as special areas⁽³⁾ for the purposes referred to in section 113(1)(a), (b) and (c) of the Finance Act 2021—

(1) 2021 c. 26.

(2) “Freeport” is defined in section 113(5) of the Finance Act 2021 (“FA 2021”). The relevant freeport for this designation is the area known as the “Thames Freeport”, which is identified edged in blue on the map entitled “Thames Freeport - All Tax Sites and Freeport Boundary” and dated 21st October 2021, published with the consent of the Treasury for the purposes of section 113 of FA 2021. The map is available electronically at [REDACTED]

[REDACTED] A person unable to access the document electronically can arrange access to a hard copy by inspection free of charge at 1 Horse Guards Road, London SW1A 2HQ.

(3) Areas so designated are known as “freeport tax sites” under section 113(3) of FA 2021.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (a) the area shown edged and hatched in red on the map marked “Project Title: London Gateway; Drawing Title: Freeport – Tax Site” and dated 23rd July 2021(4);
 - (b) the areas shown edged and hatched in red on the map marked “Location: Ford Dagenham; Drawing Title: Thames Freeport Tax Site” and dated 20th October 2021(5);
 - (c) the area shown edged and hatched in red on the map marked “Location: Port of Tilbury; Subject: Thames Freeport – Tax Site” and dated 14th October 2021(6).
- (2) The designations made by paragraph (1) take effect on 19th November 2021.

Alan Mak

James Morris

Two of the Lords Commissioners for Her Majesty’s Treasury

28th October 2021

-
- (4) The map marked “Project Title: London Gateway; Drawing Title: Freeport – Tax Site” and dated 23rd July 2021 is available electronically at [REDACTED]. A person unable to access the document electronically can arrange access to a hard copy by inspection free of charge at 1 Horse Guards Road, London SW1A 2HQ. The area designated is known as the “London Gateway tax site”.
 - (5) The map marked “Location: Ford Dagenham; Drawing Title: Thames Freeport Tax Site” and dated 20th October 2021 is available electronically at [REDACTED]. A person unable to access the document electronically can arrange access to a hard copy by inspection free of charge at 1 Horse Guards Road, London SW1A 2HQ. The areas designated are known as the “Dagenham tax site”.
 - (6) The map marked “Location: Port of Tilbury; Subject: Thames Freeport – Tax Site” and dated 14th October 2021 is available electronically at [REDACTED]. A person unable to access the document electronically can arrange access to a hard copy by inspection free of charge at 1 Horse Guards Road, London SW1A 2HQ. The area designated is known as the “Tilbury tax site”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

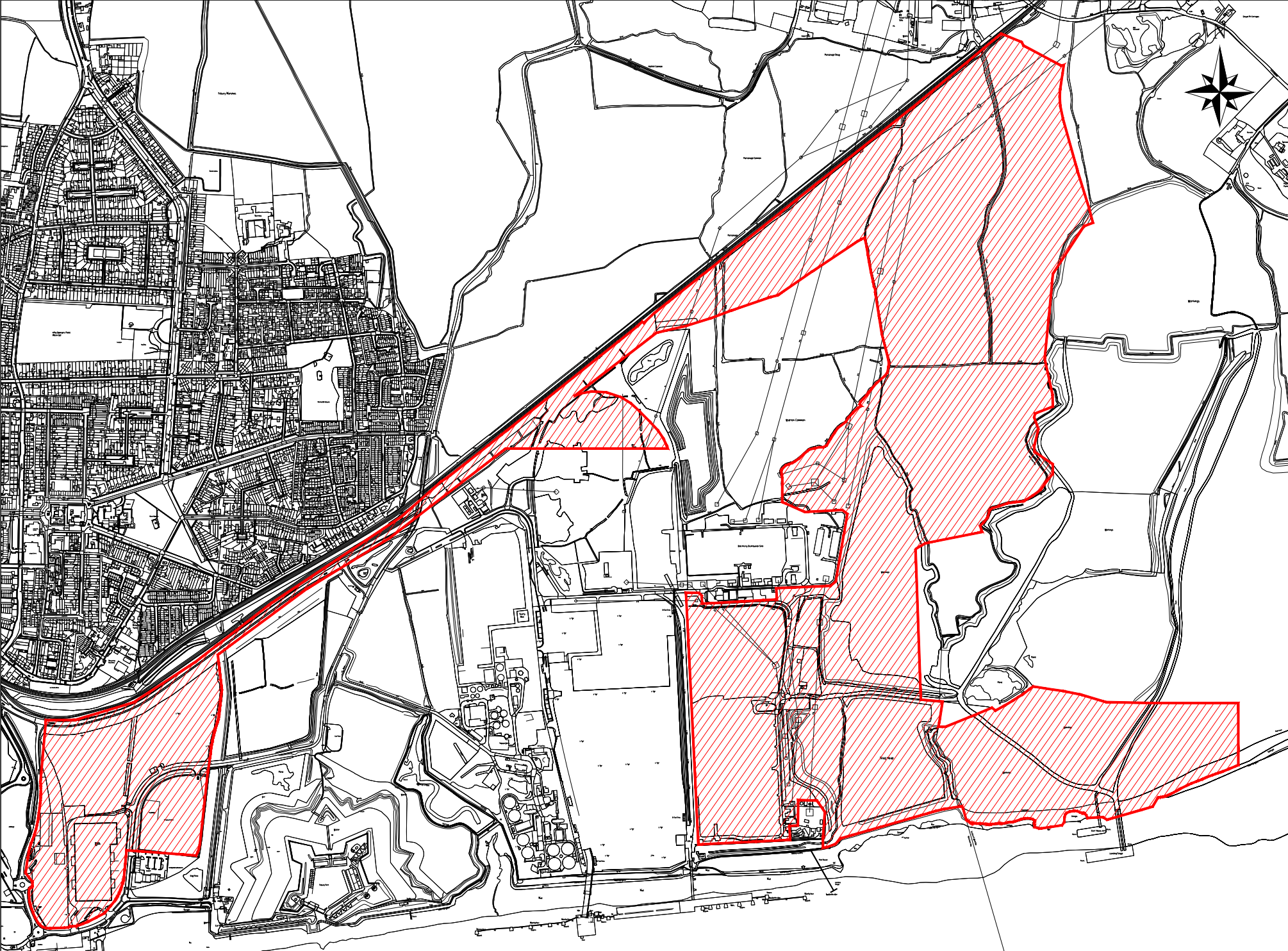
These Regulations designate areas, known as “freeport tax sites”, as special areas for the purposes of Parts 2 (plant and machinery allowances) and 2A (structures and buildings allowances) of the Capital Allowances Act 2001 (c. 2) (“CAA 2001”) and Part 4 (stamp duty land tax) of the Finance Act 2003 (c. 14) (“FA 2003”).

Section 45O in Part 2 of CAA 2001 provides that expenditure incurred by a company on the provision of plant and machinery for use in a freeport tax site qualifies for enhanced capital allowances if certain conditions are met.

Section 270BNA in Part 2A of CAA 2001 provides that expenditure incurred on non-residential structures and buildings situated in a freeport tax site qualifies for an enhanced annual rate of structures and buildings allowances if certain conditions are met.

Section 61A in Part 4 of and Schedule 6C to FA 2003 provides for relief from stamp duty land tax for acquisition of land situated in a freeport tax site if certain conditions are met.

A Tax Information and Impact Note covering these instruments was published on 3rd March 2021 alongside Spring Budget 2021 and is available on the website at: <https://www.gov.uk/government/publications/designation-of-freeport-tax-sites/designation-of-freeport-tax-sites>. It remains an accurate summary of the impacts that apply to this instrument.



Notes
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|---|-------------------|----------|-----|-------|
| C | Harding Added | 15/10/21 | DM | E Law |
| B | 2021 OS Map Added | 27/8/21 | JMI | E Law |



DRAWN BY:
D Mickelburgh
 REQUESTED BY:
E Law
 CHECKED:
ENGINEER

Location: Port of Tilbury
 Subject: Thames Freeport - Tax Site

Scale: 1:1250 @ 2972.5mm x 2102.5mm (2.5 x A0)

| DATE | DRAWING NUMBER | REV | SHEET No. |
|------------|----------------|-----|-----------|
| 14 Oct '21 | TS 5157 | C | |