

PLANNING ACT 2008  
INFRASTRUCTURE PLANNING  
(APPLICATIONS: PRESCRIBED FORMS AND PROCEDURE) REGULATIONS  
2009 REGULATION 5 (2) (q)

## PROPOSED PORT TERMINAL AT FORMER TILBURY POWER STATION

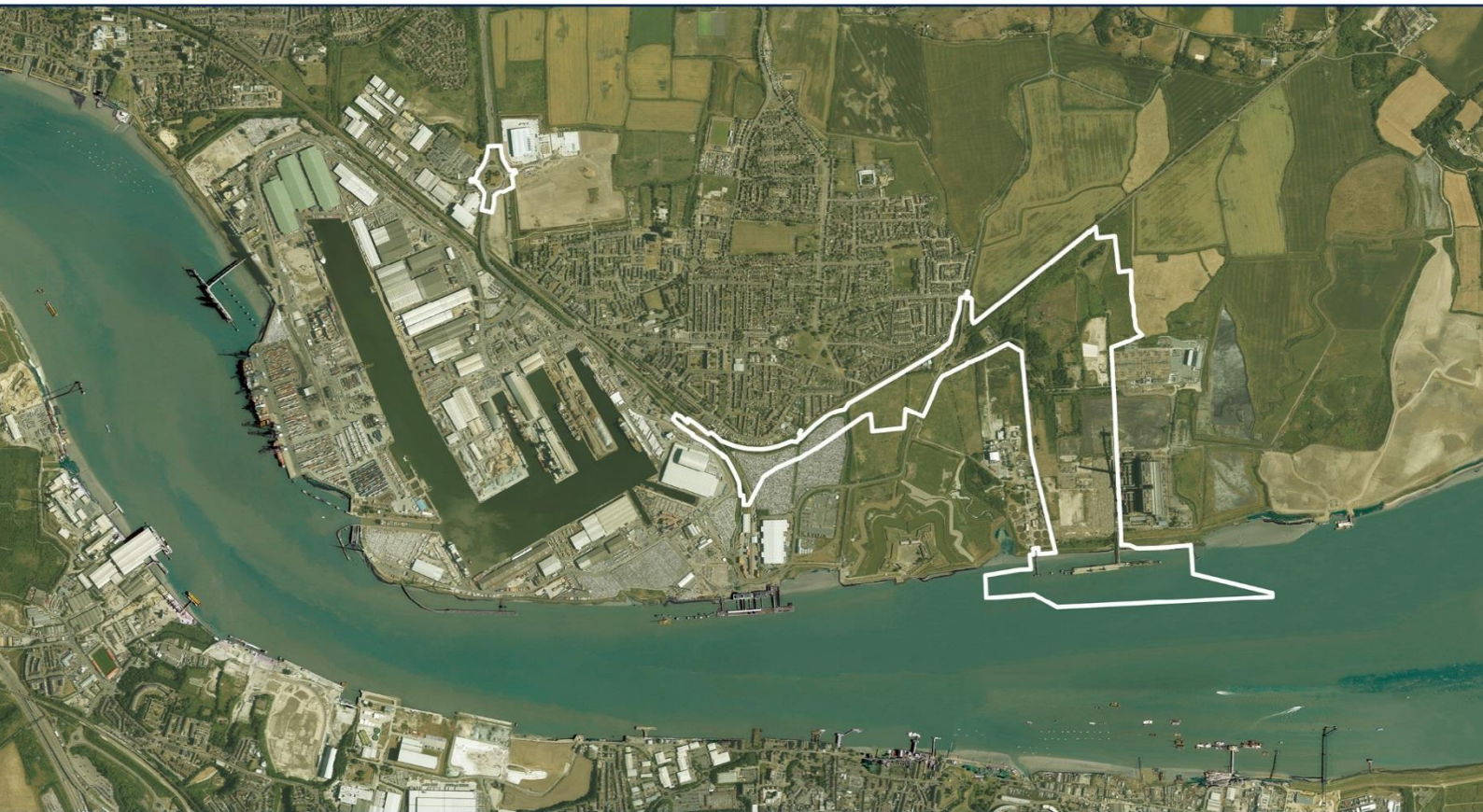
# TILBURY2

TR030003

VOLUME 7

## CONSENT AND AGREEMENTS POSITION STATEMENT

DOCUMENT REF: 7.2



## 1. PURPOSE AND OBJECTIVE

- 1.1 This statement sets out Port of Tilbury London Limited's (PoTLL) intended strategy for obtaining the consents and associated agreements needed to implement the proposed "Tilbury2" development ("the proposals"). It is submitted in accordance with regulation 5(2)(q) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure Regulations) 2009 as a document which PoTLL considers necessary to support the application.
- 1.2 The purpose and objective of this position statement is to identify at a high level what consents are expected to be needed for the Proposals, together with how those consents will be obtained.

## 2. THE PROPOSALS

- 2.1 PoTLL is proposing a new port terminal on the north bank of the River Thames at Tilbury, Essex a short distance to the east of its existing Port of Tilbury. The proposed port terminal will be constructed on land that formed the western part of the now redundant Tilbury Power Station and is bounded to the west by a waste water treatment works and to the east by the Tilbury B power station that is presently being demolished. The project is known as "Tilbury2".
- 2.2 The proposed main uses on the site will be a Roll-on/Roll-off (RoRo) terminal and a Construction Materials and Aggregates terminal (the "CMAT"), and associated infrastructure including rail and road facilities and revisions to the existing marine infrastructure. An 'infrastructure corridor' is proposed that will accommodate road and rail links to the existing rail and road network. The CMAT will include stockpiling of construction materials and some processing of aggregates for the production of asphalt and concrete products.
- 2.3 The Proposals will require works including, but not limited to:
- 2.3.1 creation of hard surfaced pavements;
  - 2.3.2 improvement of and extensions to the existing river jetty including creation of a new RoRo berth;
  - 2.3.3 associated dredging of berth pockets around the proposed and extended jetty and dredging of the approaches to these berth pockets;
  - 2.3.4 new and improved conveyors;
  - 2.3.5 erection of welfare buildings;
  - 2.3.6 erection of a single 10,000 sqm. warehouse
  - 2.3.7 a number of storage and production structures associated with the CMAT;
  - 2.3.8 the construction of a new link road from Ferry Road to Fort Road; and
  - 2.3.9 formation of a rail spur and sidings.

### 3. STRATEGY

3.1 The basis of the consents strategy is that:

3.1.1 the proposed volumes of import/export of RoRo units for the proposed terminal exceed the threshold of 250,000 units stated in the Planning Act 2008 ("the Act") for throughput per annum - the proposals therefore constitutes a Nationally Significant Infrastructure Project ("NSIP");

3.1.2 the consequence of this is that a Development Consent Order (DCO) must be sought as the principal consent for the works (under the Act) and to provide the necessary land acquisition and temporary possession powers;

3.1.3 where possible and practicable, additional consents should be included within the DCO; and

3.1.4 the proposals have and will be developed on the basis of strong collaboration between the key stakeholders, and agreements will be secured at key stages of project development as necessary.

3.2 The basis for this approach, particularly that set out in paragraph 3.1.3 above, is two-fold:

3.2.1 the extent of the powers under the Act (as described in paragraphs 3.3-3.7 below); and

3.2.2 a government consultation in 2014 in respect of the DCO process (as described in paragraphs 3.8-3.12).

#### *Planning Act 2008*

3.3 Section 33 of the Act makes it clear that there is no requirement for certain principal conventional consents to be obtained where a DCO is required to authorise a project (as is the case for the Proposals).

3.4 In addition, Part 7 of the Act sets out what can be included within a DCO. Effectively, the scope of this is extremely broad and includes compulsory acquisition powers.

3.5 In particular, section 120 of the Act makes it clear that the following can be included within a DCO:

3.5.1 ancillary matters (including those listed in Schedule 5 to the Act);

3.5.2 the application, modification or exclusion of statutory provisions for which provision may be made in the DCO;

3.5.3 amendment, repeal or revocation of any local legislation, where thought necessary or expedient by the Secretary of State in consequence of or in connection with the DCO; and

3.5.4 incidental, consequential, supplementary, transitional or transitory provisions and savings.

- 3.6 Further, section 150 of the Act states that a requirement to obtain certain prescribed consents (under the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015) ("section 150 consents") can be removed by the DCO as long as the relevant consenting body agrees to this.
- 3.7 From the above, it is clear that the intention of the Act is to encourage as many consents to be 'wrapped up' in a DCO as possible.

*Government consultation*

- 3.8 On 31 July 2014 the Department for Communities and Local Government (CLG) published a '*Technical consultation on planning*' document ("the Consultation"). The Consultation, which closed on 26 September 2014, set out a number of proposed reforms to the planning system, including the NSIP regime under the Act (as referred to in 3.1.1). One aspect of the NSIP regime CLG consulted on was a proposal to reduce the number of section 150 consents required.
- 3.9 In the Consultation, CLG proposed that 10 consents were removed from the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010 and thus would no longer be section 150 consents. This would result in a developer being able to choose freely whether to include these consents in a DCO without the need for the agreement of the relevant consenting body. CLG stated that this would give developers more certainty and, indeed, it strongly supported the overarching policy aim of DCOs being a 'one-stop-shop' for consents required for the construction of major infrastructure developments.
- 3.10 On 5 March 2015<sup>1</sup>, the Government responded to the comments received on the Consultation. As part of setting out its next steps, it was confirmed that the three consents required in respect of discharge for works purposes and trade effluent would be removed from the section 150 consents list. This was reflected in the revised section 150 consents list in the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015 which came into force on 6 April 2015 and revoked the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010.
- 3.11 It was further confirmed that: "... [removal from the section 150 list of] *European Protected Species Licence* [will follow] *early in the next Parliament when a suitable legislative vehicle is identified. The remaining six consents will be streamlined between 2015 and 2017 when taking forward work to consolidate consents within the Environmental Permitting Regulations*".
- 3.12 Work on this has begun in earnest, with, from 6 April 2016, the Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2016 repealing section 109 of the Water Resources Act 1991 (*Structures in, over or under a main river*) (one of the six consents mentioned above) and bringing 'flood risk' consents within the scope of the Environmental Permitting (England and Wales) Regulations 2010. These regulations have now been replaced by the consolidated Environmental Permitting (England and Wales) Regulations 2016, but the 'flood risk' consent regime is unchanged.

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<sup>1</sup> *Streamlining the consenting process for nationally significant infrastructure planning: The Government's response to the Summer 2014 Technical Consultation* (CLG, March 2015).

- 3.13 The above makes clear that Government policy now supports much more clearly the 'one-stop-shop' approach for construction-related consents and PoTLL will keep under review any further Government comment made in relation to this topic.
- 3.14 PoTLL believes that the approach to 'including' all consents within a DCO should apply for both those that do and those that do not require the agreement of the relevant body under section 150 in order for them to be included in the DCO. PoTLL envisages this approach being as follows:
- 3.14.1 The DCO contains an express provision disapplying the requirement for the consent in question.
  - 3.14.2 In exchange, the DCO includes 'protective provisions'<sup>2</sup> for the benefit of the body concerned, typically providing for the body to approve detailed plans of relevant aspects of the project in question before they may be constructed and, in some cases, operated. Conditions and protections relating to ongoing operation can also be included.
  - 3.14.3 Those provisions are specifically stated to have effect unless otherwise agreed between PoTLL as the DCO applicant/beneficiary and the body concerned.
  - 3.14.4 Compliance with the provisions is a matter as between the parties and can be enforced accordingly.
  - 3.14.5 It is possible for the provisions to say that any approval given by the body concerned under the plan approval, etc., provisions, shall be deemed to be an approval given under the legislation/regime disapplied.
  - 3.14.6 Either way, the protective provisions provide a means for the body concerned to monitor, enforce compliance and to review the effectiveness of the approval regime enshrined in the protective provisions.
  - 3.14.7 The mechanism of approval being given under the protective provisions allows the body concerned to approach a project in two stages:
    - (a) the DCO application stage, when the principle of the project is accepted by the body concerned and the detail of the protective provisions is negotiated. Sufficient details of the project will be produced by the applicant at this stage, particularly in the Environmental Statement, the other application documents and during the Examination process, to secure this acceptance; and
    - (b) the subsequent plan approval stage(s) under the protective provisions, when the approval of plans cannot be unreasonably refused (so preserving the in-principle

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<sup>2</sup> It should be noted that in the case of the Marine Management Organisation, a 'deemed marine licence' will be included within the DCO, as permitted under s.149A of the Act. This is subtly different from the proposed solution in respect of disapplying consent requirements and including protective provisions, as this licence doesn't 'disapply' the marine licensing requirements that apply under the Marine and Coastal Access Act 2009. Instead, it deems the marine licence to have been granted by the DCO.

approval of the project signified by the DCO) but when detailed matters going to construction can properly be considered.

- 3.15 This is a tried and tested approach adopted in numerous local and public (hybrid) Acts, Harbours Act Orders, TWA Orders and Scottish Provisional Orders for many decades and is now being adopted in the case of DCOs. It is also consistent with the approach proposed by expert respondents to the Consultation, including the National Infrastructure Planning Association.

*The approach of PoTLL*

- 3.16 It is clear, then, that the intent of the Act and Government policy is to include as many construction-related consents as practicable within DCOs. PoTLL's approach to consents for the proposals is therefore to fit within that legislative and policy intent and to include as many consents as practicable within the DCO. This means that the Proposals will benefit from the principal advantage that the intent of the Act and Government policy are designed to deliver, namely the certainty that the majority of consents required for the construction of the proposals is in place at the point of the making of the DCO, minimising the need for any further approvals before the works covered by the DCO can commence.

#### 4. **CONSENTS AND AGREEMENTS**

*Consents*

- 4.1 The principal consent for the proposals will be a DCO. The DCO process enables land acquisition along with many consents and powers to be dealt with at the same time. The DCO application may, however, need to be supplemented by other applications because: (a) a specific consent cannot be contained in the DCO; (b) a consenting authority declines to allow a consent to be contained in the DCO; or (c) it is not desirable or it is inappropriate to include a consent within the DCO due to the stage of design development and the level of detail available.
- 4.2 The majority of consents required are included, or addressed, within the draft DCO, as permitted by various provisions of the Planning Act 2008, although discussions in some of these respects are continuing with the principal stakeholders. These fall into the following categories:
- 4.2.1 authorisation of all permanent and temporary works (equivalent of planning permission, and where necessary, Scheduled Monument Consent, Listed Building Consent and Conservation Area Consent);
  - 4.2.2 compulsory acquisition of land and of rights over land such as easements and restrictive covenants, and the temporary possession of land;
  - 4.2.3 consent to construct works on common land;
  - 4.2.4 consent to carry out street works and to stop up highways permanently or temporarily;

- 4.2.5 highway matters (such as in relation to the proposed infrastructure corridor);
  - 4.2.6 traffic regulation matters;
  - 4.2.7 consent to stop up and divert (where necessary) public and private rights of way;
  - 4.2.8 consent to undertake 'flood risk' activities;
  - 4.2.9 consent to abstract water;
  - 4.2.10 consent to obstruct ordinary watercourses;
  - 4.2.11 consent to discharge into an available watercourse;
  - 4.2.12 consent or approval for the carrying out of the works required under any relevant byelaws made under the Water Resources Act 1991;
  - 4.2.13 consent to undertake works in the River Thames;
  - 4.2.14 consent to carry out tree works;
  - 4.2.15 deemed marine licence under the Marine and Coastal Access Act 2009;
  - 4.2.16 disapplication of any relevant local legislation or byelaws; and
  - 4.2.17 any required utility diversions.
- 4.3 Some of these consents (namely those listed at paragraphs 4.2.8 (in respect of 'flood risk' activities), 4.2.12 (in respect of byelaws made under the Water Resources Act 1991)) and 4.2.10 (in respect of ordinary watercourses) are prescribed in the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015. As a result, under section 150 of the Planning Act 2008 the relevant consenting body (in the case of the former two, the Environment Agency (EA) and in the case of the latter, the relevant drainage authority) must agree to the inclusion (i.e. disapplication) of these consents within the DCO. Discussions between PoTLL and these parties are ongoing, and PoTLL is confident that the necessary agreements will be obtained before or during the examination of its application, in exchange for PoTLL including in the DCO appropriate protective provisions.
- 4.4 Because of the location of the proposals, the regime under the Port of London Act 1968 applies in terms of river works licences (for example). PoTLL's proposed approach is to disapply this regime in exchange for a set of protective provisions for inclusion in the DCO for the benefit of the Port of London Authority. Discussions as to the nature of these protective provisions are on-going.
- 4.5 Some consents, if required, will be sought separately from the DCO, for instance:
- 4.5.1 **Environmental Permits** under the Environmental Permitting (England and Wales) Regulations 2010 (as amended) – in principle, the DCO could include a provision removing the requirement for such

permits if the EA agrees and appropriate alternative provision is made through the DCO (e.g. protective provisions). However, it is considered unlikely that the EA would agree, aside from 'flood risk' elements of the permitting regime, as there appears to be no precedent for the EA having done so in DCO applications to date. Further, it will be more appropriate to obtain these permits once detailed construction methods and programmes are identified. Therefore, at this stage it is assumed that these permits, apart from those relating to flood risk activities, will be sought separately;

- 4.5.2 **Protected Species Licences** under the Wildlife and Countryside Act 1981, the Conservation of Habitats and Species Regulations 2010 and other legislation – the presence (or otherwise) of protected species has been determined by surveys undertaken as part of the Environmental Impact Assessment work and is reported in chapters 10 and 11 of the Environmental Statement. In principle, the DCO could include a provision removing the requirement for such licences but it is unlikely that Natural England (NE) will agree as there appears to be no precedent for NE having done so in DCO applications to date. Further, it will be more appropriate to obtain these licences once further details are available. Therefore, it is assumed that these licences (where required) will be sought separately;
- 4.5.3 any consents required under the Highways Act 1980 in respect of construction works (e.g. scaffolding and hoarding licences, etc.) (to be sought by appointed contractor); and
- 4.5.4 any section 61 consents under the Control of Pollution Act 1974 for works outside of hours specified or which exceed permitted noise thresholds (although the Development Consent Order proposes to amend the appeals process in respect of these licences by providing that an appeal should be heard by the Secretary of State rather than by a Magistrates' Court) (to be sought by the appointed contractor).

#### *Agreements*

- 4.6 Agreements with third parties will be required as part of the DCO process and these are likely to take a variety of forms.
- 4.7 A fundamental part of the DCO process is the preparation and agreement of Statements of Common Ground (SoCGs) with third parties to identify the matters on which parties are in agreement, in order to narrow the focus for examining the application concerned and to make the examination process more efficient.
- 4.8 SoCGs are currently being progressed with a number of interested persons and it is intended these will be submitted into the examination process in due course.
- 4.9 Other forms of agreement are also likely to be required alongside SoCGs, e.g. legal agreements regulating land and works powers, undertakings, memoranda of understanding, letters of comfort, etc. A number of these are being progressed by PoTLL where appropriate.