



PORT OF
TILBURY
LONDON

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

PROPOSED PORT TERMINAL AT FORMER TILBURY POWER STATION

TILBURY2

TRO30003

Written Submission of Case at CAH of 20th April

PoTLL/T2/EX/96





Pinsent Masons

PORT OF TILBURY LONDON LIMITED – TILBURY2 – DEVELOPMENT CONSENT ORDER APPLICATION

COMPULSORY ACQUISITION HEARING

20 APRIL 2018

SUMMARY OF APPLICANT'S SUBMISSIONS

1. INTRODUCTION

- 1.1 This note summarises the submissions made by Port of Tilbury London Limited ("PoTLL") at the Compulsory Acquisition Hearing held on 20 April 2018 ("the hearing") in relation to PoTLL's application for development consent for a Proposed Port Terminal at the Former Tilbury Power Station known as "Tilbury2" ("the Scheme").
- 1.2 Oral submissions by all parties attending the hearing were made pursuant to the agenda published by the Examining Authority ("the ExA") on 11 April 2018 ("the agenda"). In setting out PoTLL's position on the issues raised in the agenda, as submitted orally at the hearing, the format of this note follows that of the agenda. In addition, extra items have been added where interested parties or the ExA raised points not specifically mentioned in the agenda and in relation to which PoTLL made oral submissions. Where the ExA requested a written response to an agenda item, the Applicant has also responded as appropriate in the note below

PINS' ISH Agenda Item/ Issue	Summary of PoTLL's Oral Submissions made in the hearing	Relevant Document References
<p>3.1 Can the Applicant please advise when the next updated version of the Land Tracker in Appendix F of the First Written Questions will be provided?</p>	<p>Robbie Owen of Pinsent Masons LLP, on behalf of PoTLL, confirmed that an updated Appendix F would be submitted at Deadline 3.</p> <p>This is submitted at Deadline 3 under Document Reference Number PoTLL/T2/EX/91.</p>	<p>Update to Statement of Reasons Appendix F (PoTLL/T2/EX/91).</p>
<p>3.2 To aid understanding, can the Applicant provide a table setting out to which plots the various subsections of Article 27 apply?</p>	<p>Robbie Owen confirmed that information would be provided at Deadline 3 setting out to which plots the various subsections of Article 27 apply. He indicated that it was likely that paragraph (3) of this article would be removed at Deadline 3 to ensure that there was no confusion that rights held by RWE within the Tilbury2 site were not sought to be overridden pursuant to this article. This change has been made in the DCO submitted at Deadline 3 (PoTLL/T2/EX/62).</p> <p>This information is set out below:</p> <ul style="list-style-type: none"> • Paragraph (1) applies to all land proposed to be compulsorily acquired – i.e. all land coloured pink on the land plans; namely plots 03/01 – 03/04a, 03/08-03/12, 03/16, 06/06, 06/10, 06/11, and 06/12. • Paragraph (2) applies to all land upon/over which rights or restrictive covenants are to be compulsorily imposed – this is all plots coloured yellow on the land plans, namely plots 02/03, 04/01 and 06/02. • Paragraph (3) in the dDCO submitted at Deadline 3, applies to all land over which temporary possession powers are proposed to be exercised - this is all plots coloured blue on the land plans, namely plots 02/01, 02/02, 03/06, 03/07, 03/13, 03/14, 03/15, 06/01, 06/03, 06/04, 06/05, 06/07, 06/08, 06/09, and 07/01. 	<p>Draft DCO v2 (PoTLL/T2/EX/62)</p> <p>Land, Crown Land, and Special Category Land Plans (REP2-10)</p>
<p>3.3 Would the Applicant provide a map showing the area to which Category 3 interests apply, and how many such interests are</p>	<p>Robbie Owen confirmed that such a map would be provided, and this is included at Appendix 1 to this note. This is a copy of the map produced at the time that the Category 3 area was identified, as such it was based on the draft Order limits at that time.</p>	

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listed in Part 2B of the Book of Reference?	<p>As explained in paragraph 4.26 of the Statement of Reasons, this encapsulated</p> <p><i>"All residential properties and community buildings that were identified as having a potential "relevant claim" as a Category 3 interest, based on the noise 'contours' that were developed for the proposals, which created a 'zone' in which properties and affected interests were identified (which were sufficiently wide to also incorporate those who could potentially make a claim in relation to effects from vibration, smell, fumes, smoke, artificial lighting and discharge; and those who could make a claim under section 10 of the Compulsory Purchase Act 1965) – this was 600 metres from the Order limits for the infrastructure corridor, 1 metres kilometres north of the Tilbury2 site boundary, and 1.5 kilometres south of the Tilbury2 site boundary. This zone did not change as the design developed".</i></p> <p>The Category 3 area denoted on that plan covers 3552 interests, all of which are included in Part 2B of the Book of Reference.</p>					
3.4 Would the Applicant state the current position concerning negotiations with Statutory Undertakers re s127 and s138 PA2008?	<p>Robbie Owen explained that the general position is that detailed negotiations are on-going with all section 127 and 138 parties, as identified in the Statement of Reasons. The parties who have submitted relevant objections are Network Rail, the PLA, Anglian Water, National Grid, and Cadent.</p> <p>Robbie Owen confirmed that it was PoTLL's understanding that section 127 would potentially be relevant to the following stakeholders who have submitted objections. He also confirmed that PoTLL's position in respect of these stakeholders and the tests under section 127 is as set out below.</p> <table border="1" data-bbox="577 1099 1637 1334"> <thead> <tr> <th data-bbox="577 1099 1055 1166">Party</th> <th data-bbox="1055 1099 1637 1166">Update</th> </tr> </thead> <tbody> <tr> <td data-bbox="577 1166 1055 1334">Network Rail</td> <td data-bbox="1055 1166 1637 1334">PoTLL does not consider that any of the land proposed to be acquired is 'operational' land save for plot 02/03 – as can be seen from the General Arrangement Plans, the Tilbury proposals sit outside Network's Rail</td> </tr> </tbody> </table>	Party	Update	Network Rail	PoTLL does not consider that any of the land proposed to be acquired is 'operational' land save for plot 02/03 – as can be seen from the General Arrangement Plans, the Tilbury proposals sit outside Network's Rail	<p>Statement of Reasons (PoTLL/T2/EX/79) Chapter 8</p> <p>General Arrangement Plans (APP-008).</p>
Party	Update					
Network Rail	PoTLL does not consider that any of the land proposed to be acquired is 'operational' land save for plot 02/03 – as can be seen from the General Arrangement Plans, the Tilbury proposals sit outside Network's Rail					

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		<p>operational fence. As such there would be no 'detriment to the undertaking' of Network Rail in respect of those plots.</p> <p>Notwithstanding this, good progress is being made in respect of negotiating protective provisions with Network Rail, such that their objections can be withdrawn.</p> <p>Plot 02/03 is included to ensure that Tilbury2 can connect to the railway network. However, it is both parties' intention that this should be able to be achieved through the novation of the existing connection agreement for the Port's existing sidings.</p>	
	PLA	The PLA has not submitted an objection on the basis that the proposals would cause a serious detriment to its undertaking and so section 127 does not apply.	
	Anglian Water	Anglian Water has not submitted an objection on the basis that the acquisition of its land/extinguishment of rights that is proposed (i.e. its jetty and the pipe at plot 04/01) would cause a serious detriment to its undertaking and so section 127 does not apply.	
	<p>Robbie Owen then went on to explain that PoTLL considers that section 138 applies to the rest of the statutory undertakers listed in Appendix F to the Statement Reasons. Of those</p>		

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	<p>parties, only Anglian Water, Cadent and National Grid have submitted objections on the basis that the proposals' effects on their apparatus would cause a detriment to their undertaking.</p> <p>All of the above have agreed in their representations that this will be able to be dealt with through mutually agreed protective provisions.</p> <p>Robbie Owen confirmed that progress has been made with all of these parties in this regard.</p>	
<p>3.5 Paragraph 3.19 of the Statement of Reasons is incomplete; would the Applicant state whether plots 02/03, 04/01, 06/02 and shaded yellow be referred to in the last sentence?</p>	<p>Robbie Owen confirmed that there was an error in the application Statement of Reasons in relation to this paragraph. He explained that the 'slash' at the end of this paragraph should be a full stop, and that the reference to 'blue' should in fact be 'yellow'.</p> <p>This error has been corrected in the revised Statement of Reasons submitted at Deadline 3.</p>	<p>Statement of Reasons (PoTLL/T2/EX/79)</p>
<p>3.6 Plot 03/05 (temporary use of common land for a construction compound, diversion of utilities and ecological restoration) has been removed from the Order limits according to the cover letter from the Applicant at Deadline 2 [REP2-006]. Would the Applicant please explain the reasons for this removal and what consequences flow for implementation of the Proposed Development, and changes to the dDCO</p>	<p>Robbie Owen confirmed that plot 03/05 has already been removed from the Land Plans at Deadline 2, and it will be removed from DCO Schedule 6 at Deadline 3. This has been done.</p> <p>Ian Wright, Engineer for PoTLL, explained that the removal of this plot will not affect the ability of the Proposed Development to be carried out. It had been proposed for use in helping to undertake the realignment of Fort Road and the construction of its new bridge, but this will now be able to be built out using plot 03/07 and the compulsory acquisition plots adjacent to 03/05 (with the exception of the replacement common land).</p> <p>Robbie Owen then went on to note page 22 of the Applicant's Response to Interested Parties Deadline 1 submissions (REP2-007), which set out that a large proportion of the Coastal and Floodplain Grazing Marsh that was to be temporarily affected by the scheme and would have required restoration, will now not be affected by the scheme.</p>	<p>Draft DCO v2 (PoTLL/T2/EX/62)</p>

PINS' ISH Agenda Item/ Issue	Summary of PoTLL's Oral Submissions made in the hearing	Relevant Document References
<i>and SoR?</i>		
<p>3.7 Would the Applicant explain how in practice the funds necessary to meet compulsory acquisition (CA) claims will be ring fenced solely for that purpose, and remain so for the period of time over which CA powers will be available, as set out in para 7.6 of the funding statement [APP-019]?</p>	<p>Robbie Owen made the following points in response to this Agenda item, points which were confirmed by John Speakman, Senior Asset Manager:</p> <p>As outlined in the Funding Statement (APP-019), Port of Tilbury London Limited is a wholly owned subsidiary of Forth Ports Limited. These are well established and substantial companies in their own right. They were both incorporated as companies in 1991 at the time of the transfer schemes made under the Ports Act 1991 but of course the underlying port undertakings existed well before then. In the case of Tilbury it was part of the Port of London Authority and in the case of Forth Ports Limited it was the Forth Ports Authority now in its 50th year.</p> <p>The Forth Ports Group generates substantial revenue from its statutory and commercial activities and is adequately funded to meet the costs of compulsory acquisition should this be required. The Group and its directors manage the business so that adequate financial resources are maintained to meet obligations as they fall due. The finances of the business are tightly managed by the directors through internal control procedures, budgeting and planning systems. Funds allocated to meet the liability of compulsory acquisition will be managed and maintained as with other such liabilities so that the funds are available to meet the liabilities when they fall due.</p> <p>If compulsory acquisition powers are included in the DCO, then the sum required to meet the related obligations will be accrued for in the accounts of Port of Tilbury London Limited and will only be released once those powers have been exercised and all resulting compensation payments made, or in the event that the interests in and rights over the land concerned are acquired by Port of Tilbury London Limited without having to use those powers.</p> <p>In response to comments from the Panel, Robbie Owen confirmed that PoTLL would provide at Deadline 3 a letter from the Director of Finance at Forth Ports Group to give further comment as to how funding for compulsory acquisition purposes would be safeguarded. This is included</p>	<p>Funding Statement (APP-019)</p> <p>Letter from Forth Ports' Director of Finance in relation to Ringfencing of Compulsory Acquisition Funding (PoTLL/T2/EX/90).</p>

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	within PoTLL's Deadline 3 submission as Document Reference PoTLL/T2/EX/90.	
<p>3.8 Formal objections to the use of compulsory acquisition powers have been made by:</p> <ul style="list-style-type: none"> • <i>Network Rail (Relevant Representation (RR) and Deadline 1 submission); [RR-013 and REP1-075]</i> • <i>Cadent Gas (Written Representation (WR); [REP1-039]</i> • <i>Port of London Authority (PLA) (FWQ and Deadline 1 submission); [REP1-082 and REP1-080]</i> • <i>National Grid Electricity Transmission (NGET) (WR). [REP1-077]</i> <p><i>In all cases, these are subject to the agreement of protective provisions. Would the Applicant and other parties state the current position concerning negotiations in each case?</i></p>		
<p>The Examining Authority indicated that given the response given by PoTLL to agenda item 3.5, and pre-hearing submissions made by Cadent and National Grid, no further discussion on this agenda item was required.</p> <p>Alison Gorlov, on behalf of the PLA confirmed that good progress had been made between PoTLL and the PLA in respect of the proposed lease between the parties, and the proposed protective provisions for the PLA's behalf to be included within the draft DCO.</p>		
<p>3.9 The proposed works to the Asda roundabout are not yet agreed with Highways England. If the design might change, would the Applicant state how this affects the justification for the proposed temporary use powers concerning plots 01/01 to 01/07?</p>	<p>Robbie Owen confirmed that the temporary possession plots 01/01 to 01/07 have been drawn widely to provide sufficient working space for the possibilities of varied requirements for the Asda roundabout, bearing in mind that work would take place directly on the highway.</p> <p>He explained that this can be seen by the fact that the powers cover all four arms of the roundabout as well as the circumference of the roundabout itself. Nothing that is being discussed with stakeholders would involve more land than is currently shown.</p> <p>Following comments from Highways England at this hearing, and at the Issue Specific Hearing on 19 April, Robbie Owen re-confirmed that PoTLL would produce a note for Deadline 3 setting out that it is likely that the realistic alternative proposals to the application proposals for the Asda roundabout works would be undertaken within the Order limits, but that even if this was not the case, the DCO contains sufficient powers for PoTLL to undertake the necessary</p>	<p>Asda Roundabout: DCO Powers and Potential Scope of Works (PoTLL/T2/EX/85)</p>

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	works outwith the Order limits. This has been submitted for Deadline 3.	
3.10 Would Anglian Water state whether it no longer needs any jetty facilities to operate the Tilbury Water Recycling Centre?	Robbie Owen explained, which was also confirmed by John Speakman , that Anglian Water had confirmed to PoTLL that the Anglian jetty is not required for the Tilbury Water Recycling Centre. If river access is needed from time to time then Anglian will, subject to normal commercial terms and schedules of shipping/maritime activities and in accordance with PoTLLs' 'open port duty', be able to moor and load or discharge vessels in connection with the Tilbury Water Recycling Centre, by prior agreement with PoTLL.	
3.11 Historic England in its Deadline 2 submission [REP2-013] queries whether plots 03/08 and 03/10 are to be used for a construction compound or other uses before being returned to grazing. This suggests temporary possession, whilst the stated purpose for both these plots in the SoR is compulsory acquisition to construct a new road and railway link as part of the infrastructure corridor, to construct a junction with the new spur road and the new spur road; to construct associated environmental mitigation measures, to undertake	Robbie Owen explained that plots 03/08 and 03/10 are plots proposed for compulsory acquisition. However, pursuant to article 32(1)(a)(ii) PoTLL may first utilise its temporary possession powers over the land for constructing the scheme and the uses set out in this question. He set out that PoTLL had previously suggested that plot 03/05 may be used for construction purposes and then returned to grazing (being that it was also part of the common land), however his land was removed from the scheme at Deadline 2 (REP2-010). As set out at paragraph 5.104 of the ES (Errata Chapter 5 Document Reference AS-006), the construction <u>compound</u> will be on the Tilbury2 site. This was then confirmed by Ian Wright .	Land, Crown Land and Special Category Land Plans (REP2-010) Errata Chapter 5 (AS-006)

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<i>utilities provision and diversions and to modify and divert footways and cycleways. This suggests permanent uses. Could the applicant please clarify?</i>		
3.12 RWE maintains that it has continuing interests over the Tilbury2 sites which are not reflected in the BoR, SoR etc. Will RWE please provide a plan showing the location of these services, utilities, cooling water intake/outfall rights and interests?	<p>Robbie Owen reiterated PoTLL's position that it does not intend to acquire any of RWE's proprietary interests and interests in the Tilbury2 site.</p> <p>In respect of its existing assets and proprietary interests and interests he explained that PoTLL would aim to work with RWE to produce a mutually agreed plan for Deadline 3.</p> <p>This has not proved to be possible in the time available since the hearings. PoTLL understands that RWE will be submitting its own plans at Deadline 3, and at Appendix 2 PoTLL has submitted its own version of the requested plans.</p> <p>The property transactions between RWE and PoTLL were complex; as such the plans at Appendix 2 seek to show only the main assets and proprietary interests and interests that directly relate to the concerns raised by RWE in respect of the Tilbury2 DCO.</p>	
3.13 The Applicant considers that no compulsory acquisition proposals have been made in relation to RWE's reserved rights land on the Tilbury2 site, because Article 3 of the dDCO provides for the extinguishment of existing works licences. Article 28 as currently drafted would	<p>Robbie Owen confirmed that the position with regards to this issue is as follows:</p> <ul style="list-style-type: none"> • RWE and PoTLL have a contractual arrangement in relation to the cold water intakes which form part of the jetty structure. As it is a contractual arrangement, it does not form an interest which can be compulsorily acquired, or which needs to form part of the book of reference. • As indicated in PoTLL's response to RWE's written representations, PoTLL does not intend to acquire RWE's proprietary rights and interests across the Tilbury2 site – these will be unaffected. • Article 3 is not related to the compulsory acquisition proposals, and only seeks to 	

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<p><i>provide the power to override easements and other rights on land within the Order limits (though the Applicant accepts this should only refer to Order Land). Would the Applicant explain how then this relates to plot 06/10 for example, comprising the existing jetty serving the former power station over which RWE claims continuing rights and which is intended for compulsory acquisition by the Applicant?</i></p>	<p>regulate the position in respect of existing structures and related river works licences.</p> <p>This was confirmed by Judith Pike, of Walker Morris LLP, property lawyers on behalf of PoTLL.</p>	
<p><i>3.14 The dDCO [REP1-003] currently provides for compulsory acquisition of the existing jetties and riverbed (plots 06/02, 06/05, 06/05a, 06/06, 06/10, 06/11 and 06/12), and temporary possession of the riverbed (plots 06/03, 06/07, 06/08/06/09 and 07/11) to construct the new berths Works No 1 and 2. The PLA</i></p>	<p>Robbie Owen explained that, if agreement with the PLA is reached, PoTLL would be able to amend article 23 (compulsory acquisition of DCO's land-related documents, as the exclusion would only relate to the PLA's interest in that land – PoTLL would still wish to compulsorily acquire any unknown parties' interests that may arise.</p> <p>Alison Gorlov on behalf of the PLA indicated that the PLA was in general agreement with this approach.</p>	

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<p><i>is willing to grant a lease instead of agreeing to CA and Temporary Possession (TP) powers, in which case the Applicant would only wish to retain its ability to use CA powers in respect of any third party interests in and rights over the PLA's river bed that might come to light. If agreed, what are the actual powers to be obtained for these plots in the dDCO and how would they be shown on the Land Plans, etc?</i></p>		
<p>3.15 Would the Applicant and Crown Estate state the current position concerning Crown Estate approval to proposed temporary use of plot 06/01 and compulsory acquisition of plot 06/02?</p>	<p>Robbie Owen set out that the Crown Estate have indicated to PoTLL that they are generally supportive of the Scheme and the inclusion of the relevant land within the DCO.</p> <p>He went on to explain that PoTLL have agreed a term of a lease of the riverbed with the Crown Estate. This will be discussed further with them once negotiations with the PLA have concluded, as it is agreed that the lease with the Crown Estate will mirror the terms of the PLA lease.</p>	
<p>3.16 Would the Applicant state the current position concerning negotiations with the le family estate and other interested parties re the Special Category Land</p>	<p>Robbie Owen introduced John Speakman who explained that the position in respect of the owners of the common land is as follows:</p> <ul style="list-style-type: none"> • Cole family: Title to the Cole family interests has been thoroughly investigated and resolved and is now pending first registration at the Land Registry. Documentation to acquire/lease special category land is well progressed with the Cole family and it is 	<ul style="list-style-type: none"> •

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<p><i>plots 03/08 and 03/11, and is the Applicant agreeable to the requests from the West Tilbury Commons Conservators set out in their letter of 4 January 2018?</i></p>	<p>anticipated that this will be resolved and exchanged within the next few weeks. Levels of compensation have been settled with the Cole family for the acquisition of their interests. The documentation with the Cole family comprises an option to acquire the permanent take land and a lease of the land of which temporary possession is required.</p> <ul style="list-style-type: none"> • Gothard – a series of offers and counter offers has been made between the parties. • Thurrock Council - discussions are on-going, and PoTLL had met recently with the Council to seek to move matters forward. <p>In respect of the Conservators, John Speakman confirmed that PoTLL had responded to the Conservators' letter of 4 January in January, and had been seeking a meeting with them since then.</p>	

PROPOSED PORT TERMINAL AT
FORMER TILBURY POWER STATION

TILBURY2

TRO30003

APPENDIX 1: CATEGORY 3 AREA PLAN

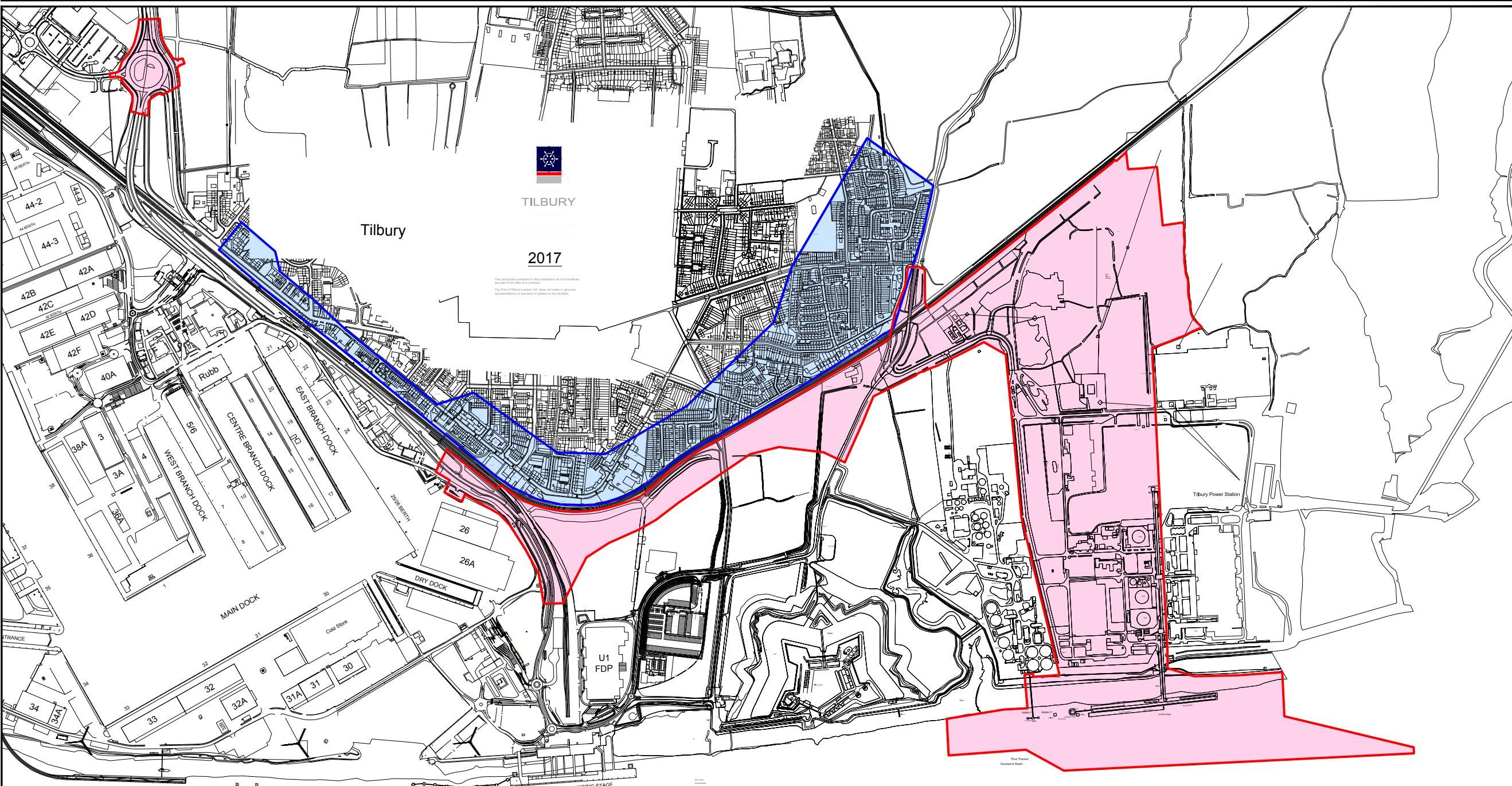
TILBURY 2 DOCUMENT REF: PoTLL/T2/EX/96



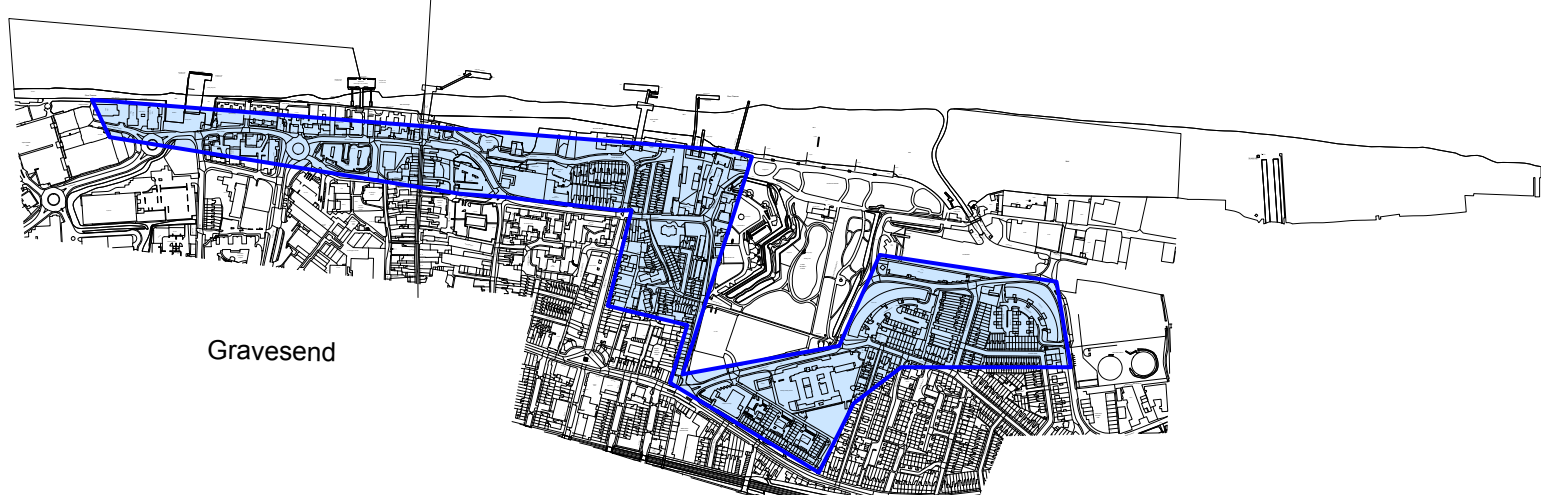
Tilbury Port

Key:

- Draft Red Line Boundary
- Predicted Noise Contour



RIVER THAMES



Gravesend

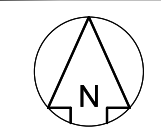
Title:
Draft Red Line Boundary

Scale: NTS @ A3

Dwg Ref: L:\Projects\Tilbury Port\CAD\DWG\Red Line Plan\Tilbury Port Red Line Plan with Noise Contour R3.dwg

Plan Ref: Tilbury Port Red Line Plan with Noise Contour R3.pdf

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Date:	20.04.2017	Drawn by:	G.J.
Rev:	3	Checked:	L.T



PROPOSED PORT TERMINAL AT
FORMER TILBURY POWER STATION

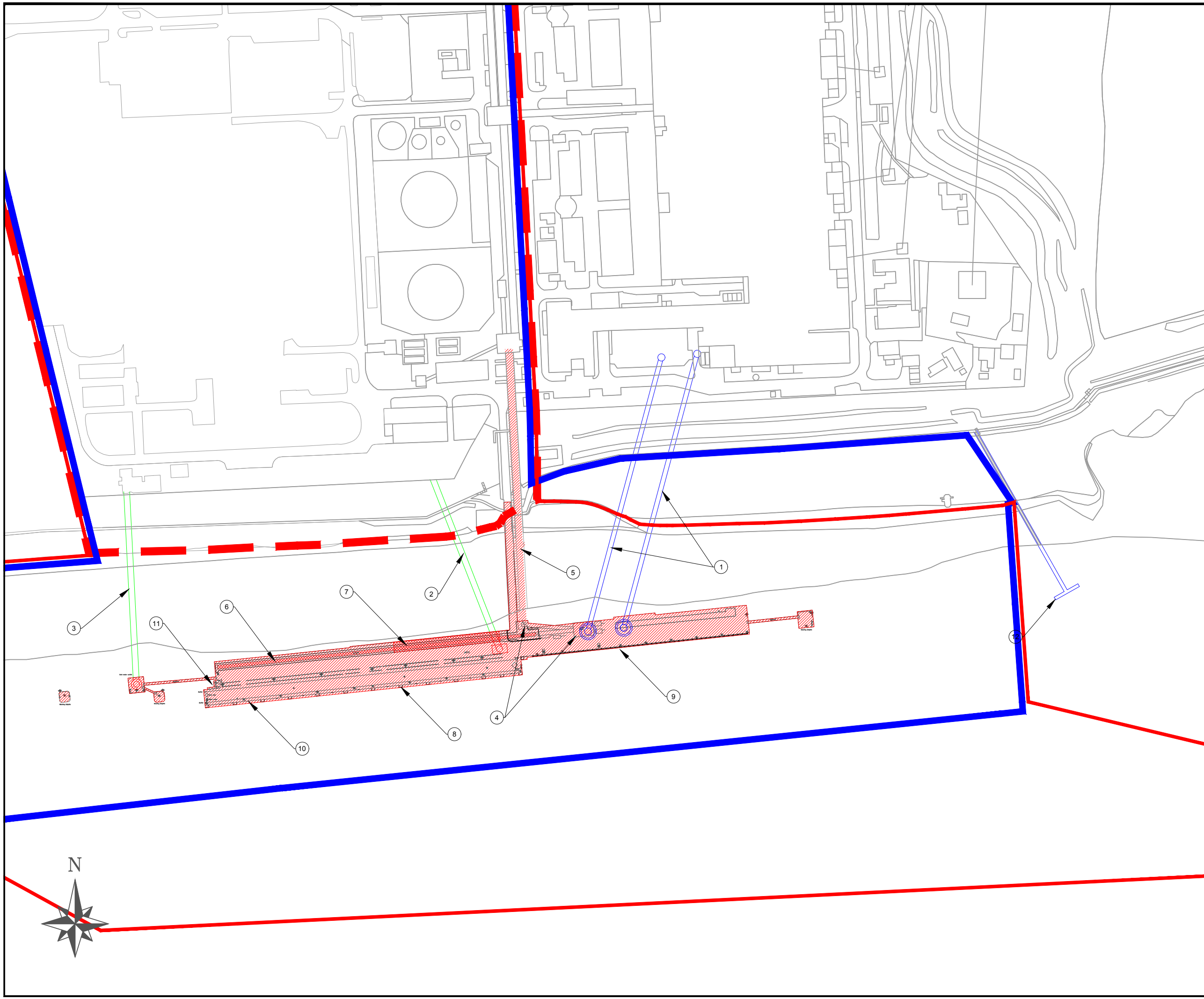
TILBURY2

TRO30003

APPENDIX 2: PLANS IDENTIFYING RWE ASSETS AND RIGHTS


TILBURY 2 DOCUMENT REF: PoTLL/T2/EX/82





Notes

- Key;
- Assets transferred to PoTLL displayed in **RED**
 - Assets retained by RWE displayed in **BLUE**
 - Pipes to be authorised by DCO displayed in **GREEN**
- ① 2 x 'B Station' Cold water intake pipes.
 - ② 1 x 'A Station' Cold water intake pipe
 - ③ 1 x 'A Station' Water outfall pipe
 - ④ Hopper/feeder & Junction tower
 - ⑤ Covered conveyor along bridge
 - ⑥ Conveyor running along and above the jetty
 - ⑦ Brick plant house
 - ⑧ 13 No. large rubber fenders
 - ⑨ 48 No. timber fenders
 - ⑩ 18 No. Ladders
 - ⑪ 2 No. sets of stairs
 - ⑫ 'B Station' Outfall (Outside order limits)
- T2 Title Boundary
 - DCO Boundary
 - Harbour Limits

REV	AMENDMENT	DATE	NAME	REV REQ
				
DRAWN BY:		S Willmore		
REQUESTED BY:		P Smyth		
CHECKED:		ENGINEER		

Location: Tilbury 2 Jetty

Subject: RWE to PoTLL Asset Transfer Plan.

Scale: 1:1500 at A3

DATE	DRAWING NUMBER	REV	SHEET No.
16/04/18	TS 4048	A	1 of 1