



The Planning Inspectorate  
The Square Temple Quay  
Bristol  
Avon  
BS1 6PN

**Our ref:** AE/2018/123090/01-L01  
**Your ref:** \*  
**Date:** 3 August 2018

Dear Sir/Madam

**APPLICATION BY PORT OF TILBURY LONDON LIMITED FOR AN ORDER GRANTING DEVELOPMENT CONSENT FOR A PROPOSED PORT TERMINAL AT THE FORMER TILBURY POWER STATION (TILBURY 2) - DEADLINE 6 FORT ROAD, TILBURY, ESSEX, RM18 7NR.**

Thank you for the opportunity to comment further on the application for a Development Consent Order for the proposed Tilbury 2 development. Our letter relates to the Examining Authority's Response to the applicant's draft Development Consent Order – revision 4 – published on 13 July 2018.

**5.8.16 - Schedule 2 Requirements**

**R5 Off-site mitigation**

Our position in regards to the ecological mitigation and compensation plan were included in our response referenced AE/2018/122977, dated 3 July 2018. Whilst we are satisfied with the approach to off-site mitigation as reflected in that reply since the previous deadline, we have had no contact with the applicants on this issue. We have however worked with the applicants on a statement of common ground covering all aspects of the Tilbury 2 development. Within the statement of common ground off-site mitigation is fully covered, whilst we are yet to see full detailed plans for the proposed mitigation these will be provided by the applicant and approved by us via the protective provisions. Within the statement of common ground we welcome the inclusion of a commitment to phased mitigation to ensure new habitat is established prior to any translocation of species.

## **5.8.27 - Schedule 10**

### **Part 4: For the Protection of the Environment Agency**

As detailed in our submission at deadline 5, the applicant is seeking to disapply certain legislation within the Environment Agency's remit.

We indicated that we were content with this in principle subject to agreement of satisfactory Protective Provisions.

Since our last submission we have had further discussions with the applicant regarding the protective provisions and had hoped to be in a position to present the Examining Authority with an agreed version of Protective Provisions. We have indicated to the Applicant the changes we would require to the version that appeared in the draft DCO submitted by the Applicant for Deadline 5 and we are awaiting a response.

Our position is that, save for S24 Water Resources Act 1991 (abstraction licensing) regarding which we explain below, we would be prepared to give consent under s150 Planning Act to disapplication of the other legislation listed in Article 3 of the draft DCO for which we are the consenting authority if the applicant is prepared to agree to the amendments we have requested in the draft Protective Provisions. Otherwise we are unable to give consent under s150 Planning Act 2008 for any disapplication.

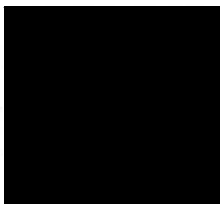
We are not currently in a position to give consent under s150 Planning Act 2008 to disapplication of s24 Water Resources Act 1991 for the following reasons.

- Currently, we do not have sufficient information to assess the possibility of disapplying S24. We have not been provided with any details on the proposed abstractions required at the site. At this stage we do not know whether there is a requirement for new consumptive abstraction and/or dewatering activities to enable construction activities.
- We have reviewed the Water Framework Directive (WFD) assessment TILBURY2 TR030003 VOLUME 6 PART B ES APPENDIX 16.C: WFD ASSESSMENT DOCUMENT REF: 6.2 16.C The site is within the South Essex Thurrock Chalk groundwater body. The report states that in 2015 the groundwater body was at Good Status for both Chemical and Quantitative tests. There was no assessment of the potential impact to the quantitative status from abstraction, only comments on remedial measures to prevent deterioration of water quality from the impact of piling and surface water contaminant runoff.
- We believe the status of Good was an artefact of reporting no visible signs of deterioration, which is the product of Recent Actual abstraction being only 52% of annual recharge. Unfortunately, WFD requires us to assess against the worst case scenario, which is the Fully Licenced condition and, as such, the water body has been reclassified.

- The current status of the South Essex Thurrock Chalk groundwater body is Poor Status - High Confidence. The status is based on the Fully Licenced scenario within the groundwater body being 150% of annual recharge. Our policy for this groundwater body is, therefore, that no new consumptive groundwater is currently available for licencing. We are actively trying to reduce abstraction to return the status to Good in accordance with WFD legislation. Under our normal pre-application process, requests for all new licences are firstly assessed against water availability, driven by the current WFD status. Disapplying S.24 would therefore mean that the WFD status and legislation, could potentially be ignored, resulting in further deterioration of the groundwater body.
- The complexity and size of new abstractions are also currently unknown, but we would have concerns that disapplying S.24 would also preclude our opportunity to test the impact of any abstraction under Section 32(3) of the Water Resources Act 1991 via Groundwater Investigation Consent. The process allows us to assess the impact to the environment and the potential derogation of other lawful abstractions.
- If abstraction is needed solely for dewatering activities, to enable construction in a dry environment, we would have less concerns, as the impact could potentially be mitigated by artificial recharge of the same groundwater body with the dewatered water without consumptive loss. Dewatering falls under recently enacted legislation, New Authorisations, and since January this year dewatering is now a licensable activity.

We will continue our dialogue with the Applicant with a view to resolving the outstanding matters and will update the Examining Authority on our position by 16 August.

Yours faithfully



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