PORT OF TILBURY LONDON

PLANNING ACT 2008

INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE)

RULES 2010

PROPOSED PORT TERMINAL AT FORMER TILBURY POWER STATION

TILBURY2

TRO30003

RESPONSE TO INTERESTED PARTIES' DEADLINE 7 SUBMISSIONS

TILBURY 2 DOCUMENT REF: PoTLL/T2/EX/231

Response to Interested Parties' Deadline 7 Submissions

Application by Port of Tilbury London Limited for an Order Granting Development Consent for a Proposed Port Terminal at the Former Tilbury Power Station ('Tilbury2')

Issued for end of Examination, 20 August 2018

1.1 This document contains the Applicant's response to the submissions of Interested Parties at Deadline 7 which deal with those matters that were still outstanding at Deadline 7. The matters set out here are those which the Applicant considers that it would be helpful to the Examining Authority to confirm the Applicant's position and reference the evidence and submissions supporting that position.

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1.0. APPLICANT'S RESPONSE TO INTERESTED PARTIES' DEADLINE 7 SUBMISSIONS

Interested Party	Interested Party Comment	PoTLL Response
Historic England	Response to Rule 17 Request Item 12 – Page 2 Penultimate Paragraph We do not accept the position taken by the Applicant that it is unnecessary to establish a foreshore elevation monitoring programme. It therefore continues to be our advice that a baseline of foreshore elevation levels, adjacent to Tilbury Fort, should be established prior to project commencement against which any changes are to be assessed during or post-delivery of the proposed development project.	The Applicant is aware that this is an unresolved issue on which the Examining Authority will need to consider and make a recommendation and the Secretary of State come to a determination. As such, the Applicant has set out the below position arising from its submissions to date: The Applicant has set out in its Examination submissions at Deadline 4 (REP4-020 (response to 2.8.47xi), REP5-029 (response to 3.13.4ii) and REP6-015 (response to HE) that there is no evidential basis upon which to base and impose any form of DCO requirement that meets the 6 relevant tests pursuant to the National Planning Policy Framework and the Community Infrastructure Levy Regulations 2010 (as amended), requiring monitoring of the Tilbury Fort foreshore. As those responses set out, the Applicant's Hydrodynamic Sediment Modelling Report (APP-089) demonstrates that there are no hydrodynamic or sedimentation effects shown in this area of the Tilbury Fort foreshore arising from Tilbury2. As such, any effects will be small and probably not detectable in natural variation. The modelling in the report does show some changes towards erosion close to the eastern end of the fort foreshore (see Fig 3.11) which may be associated with very local changes to slopes in the dredged berth but after a small adjustment of slopes this will reach a new equilibrium. Currently the model says there is a mix of erosion on the low water line but accretion further up the foreshore. If the area is eroding naturally overall then a proportion of that eroded material will contribute to the infill of the dredging berths, however there is plenty of sediment movement in this area so this contribution will be very small. Any Water Injection Dredge will retain material in the sediment system and therefore will not result in any loss of sediment from the area around the foreshore. This demonstrates that any form of DCO requirement on this topic would be: • unnecessary: as there is no evidence to suggest that Tilbury2 will have an effect on the foreshore; • not fairly and reasonably related to scale and kind to the development: there is no direct link to works to the foreshore being caused by Tilbury2, and so any requirement to monitor and then remedy any change could lead to a disproportionate imposition being placed on PoTLL and its construction programme; and • not dealing with something that is necessarily directly related to the development: as changes to the foreshore would occur naturally, not from Tilbury2. As such, any requirement would be contrary to the tests for DCO requirements set out in the NPPF and the Community Infrastructure Levy Regulations 2010 (as amended). However, without prejudice to that position and cognisant of the fact that Historic England does not provide contrary evidence, but disagrees with this conclusion, the Applicant has proposed below suggested potential wording for a DCO requirement, if the ExA and Secretary of State determine that it is demonstrably and directly related to the development, proportionate and necessary:

Interested Party	Interested Party Comment	PoTLL Response
		Tilbury Fort foreshore *(1) Prior to starting construction of the authorised development, the Company must-* *(a) establish the elevation levels of the foreshore of Tilbury Fort; and* *(b) submit a report detailing the elevation levels established pursuant to paragraph (a) above to Historic England.* *(2) Following completion of dredging pursuant to Work Nos. 1(j) and 2(f), and prior to the commencement of first operational use of Work No. 1 or 2, the Company must-* *(a) re-establish the elevation of the foreshore of Tilbury Fort; and* *(b) submit to Historic England a report detailing the elevation levels established pursuant to paragraph (a) above.* *(3) No later than 28 days after submission of the report mentioned in sub-paragraph (2)(b) Historic England must-* *(a) notify the Company whether it considers that as a result of the dredging carried out by the Company pursuant to Work Nos. 1(j) and Work No. 2(f), in the period of time between submission of the report mentioned in sub-paragraph (1)(b) and submission of the report mentioned in sub-paragraph (2)(b), the elevation levels of the foreshore of Tilbury Fort have reduced such as to cause a risk to the integrity of archaeological remains, giving reasons for its determination; and* *(b) notify the Company that it requires the Company to undertake such remedial action to the foreshore of Tilbury Fort as Historic England may reasonably specify to mitigate the risks to the integrity of archaeological remains considered to have been caused by the Company.* *(4) If Historic England notifies the Company under sub-paragraph (3) that remedial action must be carried out, the Company must undertake the remedial action to the reasonable satisfaction of Historic England.* *(5) If any dispute arises between Historic England and the Company under sub-paragraph (3) or (4), it is to be determined by the Company appealing to the Secretary of State under paragraph 16.*
Natural England	<u>Response to ExA Question on AEOI</u> With regards to subsequent stages we consider that this is for the Planning Inspectorate to advise as we are not aware that there will be any further opportunity for us to input. Any decisions regarding the Development Consent Order should be made with reference to our position and The Conservation of Habitats and Species Regulations 2017. Natural England have set out in previous consultations steps that we consider could be used to avoid or mitigate noise disturbance (see Deadline 5 response) and ensure no adverse effects on sedimentation and water quality (see deadline 6 response).	As set out in the Applicant's Deadline 7 submissions, the Examining Authority is asked to note the context of Natural England's residual comments on the matter of Adverse Effects on Integrity (AEOI). NE's final position on HRA matters is as set out in its Deadline 6 response [REP6-007] and at agreed item 1 of the final Statement of Common Ground [REP7-012 – Appendix 5]. This is that "*Natural England ultimately has no fundamental or in-principle objection to the Tilbury2 project on Habitats Regulations grounds and agrees that there should be no need for HRA to proceed to stage 3 or 4*". The Applicant asks the Examining Authority to observe that this position can only logically be founded on an absence of dispute as to the conclusions of the Stage 2 assessment (as set out in the Update HRA Report [REP5-033/034] and as reflected in the RIES). This is that there will be no AEOI. If NE considers that there is no need for Stages 3 and 4 of the HRA process to be engaged, it is not then a logical proposition to suggest that AEOI could in some way still occur. Natural England's final representation [REP7-022] refers to *"steps that we consider could be used to avoid or mitigate noise disturbance… and ensure no adverse effects on sedimentation and water quality".* It is assumed that these are measures which NE

Interested Party	Interested Party Comment	PoTLL Response
		considers would satisfy its residual concerns over AEOI. These measures, which were previously suggested by NE in their representations at Deadline 6 [REP6-007] and Deadline 5 [REP5-061], comprise significant timing restrictions on piling for marine works (avoiding the October-March period of importance for wintering birds), and in respect of sedimentation and water quality, significant timing restrictions and programme delay involving initial dredging in a two month window with a sediment monitoring programme following this initial dredge to be undertaken over the course of a subsequent year before any further dredging campaigns would be permissible. The Applicant asks the Examining Authority to note that Natural England suggests these measures merely to obviate residual and (due to the predictive nature of assessment) inevitable small uncertainties falling out of the assessments, not to address a defined and substantiated risk. Natural England has not provided any evidence that such small uncertainties amount to a risk, either of a significant effect, or a threat to integrity. On noise, Natural England has not responded to the Applicant's sensitivity testing. This sensitivity testing (carried out solely to reassure NE and provide additional evidence as to the robustness of the original assessment), supports entirely the conclusion that worst case noise effects on birds using functionally linked habitats can give rise to no significant effects. On dredging, Natural England's case appears to be based on inevitable margins of uncertainty over the outputs from established predictive modelling, and appears to disregard that these outputs indicate a *de minimis* effect in any event. The ExA is also asked to note the MMO comment at 4.4 of their Deadline 7 submission that *"the MMO has not received any concerns regarding water quality from the Environment Agency*". Notwithstanding the above, the Applicant duly considered the merits of these additional measures suggested by NE at the points in the Examination when they were first suggested. However, the logistical and financial implications of adopting such measures without clear justification for doing so are wholly disproportionate to their rationale, are in some cases impracticable, and are therefore prohibitive. To the extent that there is a level of residual uncertainty in the predictive assessments at all, this is *de minimis;* sensitivity testing indicates that the assessment conclusions are robust even accounting for any such marginal uncertainties, and DCO protective provisions will remain in the case of dredging licences in any event. The significant logistical constraints on the construction and operation of this nationally significant project that the adoption of the suggested measures would give rise to are therefore simply not justifiable.
MMO	<u>Response to Rule 17 Request</u> 1. Responses to comments on the Panel's draft DCO or schedule of proposed changes 1.1.3 With regard to 2.5.1.1 of the MMO's deadline 6 response on Article 43 - 2.5.1.1. Para 3 – The MMO acknowledges the change of "on the bed of the river Thames" to "within the UK marine licensing area", however as requested this should be "within the UK marine area" to avoid deposit of dredged material anywhere at sea without a marine licence. This is in line with the current wording of similar provisions within Harbour Empowerment and Harbour Revision Orders. 1.1.6 The MMO has requested that Part 1 1(3) is amended to "subject to condition 3(4), the grid co-ordinates within the UK marine area within which the licence holder may carry out a licenced activity are specified below". Following this change the	The 'UK marine area' is defined in s42 of the Marine and Coastal Access Act 2009 as follows: "(1) For the purposes of this Act, the "UK marine area" consists of the following— (a) the area of sea within the seaward limits of the territorial sea adjacent to the United Kingdom, (b) any area of sea within the limits of the exclusive economic zone, (c) the area of sea within the limits of the UK sector of the continental shelf (so far as not falling within the area mentioned in paragraph (b), and see also subsection (2)), and includes the bed and subsoil of the sea within those areas." On the other hand, the 'UK marine licensing area' is defined in section 66(4) of the Marine and Coastal Access Act 2009 as the UK marine area other than the Scottish inshore region. The MMO has jurisdiction to issue marine licences in the UK marine licensing

Interested Party	Interested Party Comment	PoTLL Response
	MMO request that the definition of mean high water springs is removed and instead the definition of “UK marine licencing area” is changed to “UK Marine Area” as defined under section 42 of the 2009 Act. This is in line with previous DCOs. 3. Responses to information requested by the Panel With regard to item number 5.8.10 – The MMO has had discussions with the Applicant and notes their response. The MMO is satisfied that the difference between the port and order limits has been explained sufficiently. The change to Article 43 was requested in order for the DCO to be in line with the current wording of similar provisions within Harbour Empowerment and Harbour Revision Orders. The MMO maintain their position on this matter.	area, except in relation to certain matters where the Welsh Ministers and Northern Irish Executive have competence. Under the Planning Act 2008, harbour facilities are nationally significant infrastructure projects requiring development consent if they are in England or Wales or in waters adjacent to England or Wales (s24 Planning Act 2008). Under s115 of the Planning Act 2008, development consent may (only) be granted for development for which development consent is required and for associated development or related housing development (the latter is not relevant for present purposes). With certain exceptions that are not relevant for present purposes, associated development must be in England or English waters. Accordingly the Order could not authorise development or operations outside English waters. Therefore article 43, cannot as a matter of *vires* under the Planning Act 2008 authorise deposition outside English waters. There is therefore no need to refer to an area that the Order cannot affect, and to change article 43 to refer to the UK marine area would be to suggest that the Order had a jurisdiction that it cannot have.
MMO	Response to Rule 17 Request 1. Responses to comments on the Panel's draft DCO or schedule of proposed changes 1.1.7 The MMO requests that amendments are made to show the entire order limits in the document Work Plans V3 [POTLL/T2/EX/195]. An updated version of this document was not provided as part of the deadline 6 responses.	This is a reference to the extended port limits plan. It is not necessary to show the entire order limits as there is no risk of confusion - the purpose of this plan is to show where the extended port limits are - this is clear from the underlying mapping and would not be rendered more clear by zooming out to show the entire Order limits.
MMO	<u>Response to Rule 17 Request</u> *2. Responses to comments on the RIES (paragraphs 2.1 – 2.3)* *4. Additional Comments from MMO to Deadline 6 responses (paragraphs 4.1-4.4)* 2.1. With regard to paragraph number 4.12 – The MMO refers to section 1.1.4 above regarding the installation of groynes requiring a separate marine licence. The MMO welcomes the Applicant intent to amend the DML as described. Due to the references in the REIS, the MMO still wish to highlight that as part of the HRA process if an AEOI cannot be ruled out then alternative solutions must be considered, and then if there are no alternative solutions then the next stage of the derogations must be considered, compensation (Article 6(4) of the Habitats Directive and regulation 64 of The Conservation of Habitats and Species Regulations 2017 and regulation 29 of the Conservation of Offshore Marine Habitats and Species Regulations 2017 respectively). The creation of new saltmarsh habitat is compensation not mitigation. Compensation is undertaken to maintain the coherence of the Natura 2000 network. The implementation of mitigation means that an AEOI can be ruled out. As compensatory measures are required the applicant cannot conclude no that the activities will have no AEOI. The Applicant may wish to contact Natural England to discuss this aspect further...	The Applicant notes that the MMO comments on the proposals to install groynes in a section of the Thames shoreline within the Order Limits to create conditions favourable to saltmarsh accretion. The MMO notes that this is a compensation measure for habitat losses. The MMO indicates that this is therefore a matter that engages with the consideration of AEOI as part of the HRA process, and in line with European case law. This misunderstands and conflates two different issues and therefore is misconceived for the following reason, and as previously set out in the Applicant’s submissions. The creation of compensatory saltmarsh habitat along the Thames shoreline is not intended as compensation for any significant effect or adverse effect on integrity as regards any European or Ramsar Sites. The compensation is to ensure no net loss of ‘priority’ saltmarsh habitat in accordance with the duties levied by domestic legislation – specifically sections 40-41 of the Natural Environment and Rural Communities Act (NERC Act) 2006 - and to assist with the project target of avoiding net loss to biodiversity more generally in accordance with applicable planning policy. If the saltmarsh creation were not proposed at all, there would not be a significant effect on the SPA and Ramsar Site, nor an adverse effect on integrity. The HRA report [REP7-018/020] is explicit in stating that the compensatory saltmarsh creation is not relied upon in reaching its no AEOI conclusions (see Appendix 11 integrity matrices footnote b).
MMO	<u>Response to Rule 17 Request</u> 3.2.3 The MMO are content that if the condition listed in section 3 paragraph 3.2.2 above is added to the DML then the MMO’s concerns regarding the Marine WSI are satisfied. This is providing that section 8 of the Marine WSI is updated to include the following in the method statement:	<u>3.2.3</u> The Applicant does not consider that any changes are necessary to the Marine WSI in this regard. Items (i) to (iii) of this list are included in the list set out at paragraph 8.1.6 of the Marine WSI. That list summarises the more detailed provisions in section 7 of the Marine WSI,

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	(i) a protocol for archaeological discoveries, (ii) any mitigation to be implemented (including where necessary archaeological exclusion zones), (iii) a protocol for reporting/recording archaeological and historical material, (iv) the archaeological method statement will be produced in consultation with and a report on the consultation carried out will be submitted to the MMO with the method statement. 3.2.4 The Marine WSI should specifically set out the protocol for handling the moving and/or detonation of any UXO's, as well as who will undertake the actions.	which fully explain how all protocols and reporting for each stage of the works will be undertaken. Item (iv) has been incorporated into an amendment to condition 14(2) of the DML submitted as part of the final draft DCO for the end of Examination so that it now reads: *Archaeological method statements together with a report on any consultation carried out in their preparation must be submitted to the MMO for approval in accordance with the provisions of the marine written scheme of investigation six weeks before any works to which the method statements relate commence.* 3.2.4 The Applicant does not consider that any changes are necessary to the Marine WSI and DML to deal with the movement and detonation of ordnance. As the MMO notes in this paragraph, such activities have been specifically excluded from the DML. As such, if these activities did become necessary, PoTLL would have to obtain a marine licence in the normal way, and the MMO would at that point be able to ask for and receive information as to who and how they will be carried out.
Thurrock Council	Response to Rule 17 Request **Schedule 10, Part 5 – For the Protection of Thurrock Council (as Drainage Board)** Following the submission of Revision 5 of the draft DCO at Deadline 6, TC provided further comment on the drafting of Schedule 10, Part 5 to the Applicant on 14th August 2018. TC has arranged a further conference call with the Applicant on 20th August 2018 and it is intended that the Applicant will submit the final dDCO with those matters agreed between the parties prior to the close of the Examination on 20th August 2018. If there are matters outstanding at this point then TC will advise the ExA.	The Applicant has continued to discuss the provisions for the protection of Thurrock Council as drainage board and has therefore agreed to further amendments. It should be noted that these provisions are now referred to as for the protection of Thurrock Council "as local flood authority" at the request of Thurrock Council. These provisions are considered to be substantially agreed with Thurrock Council although some minor differences over largely drafting remain.
Thurrock Council	Response to Rule 17 Request **Schedule 10, Part 7 – For the Protection of Thurrock Council (as Highway Authority)** TC considers that the main issues which need to be addressed though revisions to Schedule 10, Part 7 are (in summary): i. the mechanisms for the recovery of costs, fees and charges associated with the approval of plans and the inspection / supervision of works (para. 87); ii. the length of notice period (para. 92); and iii. the potential addition of a provision referring to a commuted sum for maintenance. A further conference call was held on 16th August 2018 and TC has arranged a further conference call with the Applicant on 20th August 2018. The Applicant intends to submit the final dDCO with those matters agreed between the parties prior to the close of the Examination on 20th August 2018. If there are matters outstanding at this point then TC will advise the ExA.	The protective provisions for the protection of Thurrock Council (as highway authority) have been further amended following discussions between the parties. The Applicant understands that these provisions are now agreed with Thurrock Council.

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PLA	17(5) The PLA is satisfied that it will be able to withdraw its objection on the completion of the agreement for lease referred to in (ii) above. It will confirm the position (expected to be withdrawal) before the close of the Examination.	The Applicant understands that the PLA has withdrawn its objection. The Agreement for Lease of the riverbed upon which the modified jetty will sit has been executed by the Applicant and the PLA and completed on 20 August 2018. The Applicant can also confirm that both it and the PLA have signed the Tripartite Agreement referred to in the Closing Statement [REP7-036], and it is anticipated that RWE will complete it shortly. The final form of this agreement is appended at **Appendix 2** to this submission.
Gravesham Borough Council	Comments on PoTLL's suggested wording for a noise limit requirement in the event that the Examining Authority considers it is necessary; suggests examples it considers comparable; and seeks clarification on various matters.	The Applicant's detailed response to these submissions can be found in the Deadline 7 Noise Resume Paper (REP7-021).
Amazon UK Services Limited	Both the PEP analysis and the iTransport analysis show a significant increase in queuing on the A1089 Dock Road approach to the Asda roundabout in the morning peak period. This impact has not been addressed by the mitigation works proposed. We confirm that Amazon are not objecting to the development proposals at Tilbury2 in principle. However we maintain our position that based on the assessments undertaken, the proposed mitigation measures put forward from the Asda roundabout are unlikely to adequately mitigate the impact of increased vehicles arriving to the Port from the A1089 Dock Road in the morning peak period. On the basis that our concerns have not been properly addressed we object on the basis that the mitigation proposals put forward for the Asda roundabout do not mitigate the impacts of the proposed development. It is noted that Highways England and Thurrock Council have accepted the level of impact envisaged at the Asda roundabout as a result of the Tilbury2 proposals. Amazon therefore keen to remain in contact with all parties so that if predicted queueing does occur in the future as a result of Tilbury2, that the highway authorities consider works at this point in time.	The Examining Authority will be aware that Amazon has made representations to the Examination on traffic assessment issues [REP1-024, REP3-045 and AS-075]. However, in both public at Examination, and in discussions with the Applicant, Amazon has not provided any evidence to support their assertions. The Applicant has provided additional information to Amazon to show that their concerns are unfounded, but the starting point must be the Transport Assessment [APP-072], which concludes that there are no concerns that need to be mitigated at Asda roundabout in morning peak hours (as concluded at paragraph 7.4.16 of the Transport Assessment). As Amazon's submission notes, the level of impact and mitigation at the Asda roundabout are agreed by Highways England and Thurrock Council. In the absence of any evidence to the contrary from Amazon, the Applicant considers that the issues in relation to the Asda Roundabout are settled.
Highways England	Protective Provisions	After intensive discussions between the Applicant and Highways England, the Applicant is pleased to confirm that a fully agreed set of protective provisions is included in the draft DCO submitted for the end of the Examination. This means that the matters under discussion at item 5.2.1 of Statements of Common Ground can now be considered agreed.
Highways England	<u>Requirement 7 Wording</u> With the exception of the wording "up to a limit of £50,000 plus any VAT payable", the balance of the wording is acceptable HE. HE considers that the highlighted wording should not form part of the wording of the Requirement and should be removed. The parties have recorded this as a "Matter not agreed" in the final SoCG and rely on their respective submissions as part of this submission. HE's position is that the figure proposed is not acceptable in principle nor the calculation capable of being confirmed at this stage before detailed design. There is no basis for an exception to the general principle that works to the SRN occasioned by proposed authorised development should be payable in full by the promoter. There should be no expectation that the public purse is required to incur the balance of any costs in excess of the cap if they are reasonably required to be undertaken in consequence of the works outlined - works that are agreed by the	The Applicant's position is that as these works are providing betterment (rather than mitigation) to a junction that has recently been subject to a large piece of improvement work, and that it should not be liable for an unknown cost that could be exacerbated in the intervening time period between works starting on site and this requirement being agreed by matters outside the Applicant's control and unrelated to Tilbury2. Therefore it is reasonable and appropriate in these particular circumstances to scope and cap the betterment works sum. The £50,000 figure is a worst case estimate by the Applicant's highways consultant, on the basis that the greatest proportion of this cost will be traffic management measures. This is set out in greater detail in the letter appended at **Appendix 1** to this submission. The Applicant is aware that works are going to be required to this junction as a result of the London Gateway development; as such, it should be possible for these works to be undertaken at the same time, reducing the number of closures requiring traffic

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	Parties to be necessary to make the authorised development acceptable. The figure proposed is formed by the Applicant on its own assessment of the cost of the works and their implementation. This is unacceptable to HE and cannot be relied upon without further verification by HE at a later date. The works are subject to final detailed design and will need to be submitted for approval and arrangements for implementation secured in the agreement to be secured under article 15. This is standard practice in respect of any improvements on the SRN and is the point in time at which costing information will be considered by HE. In any event, HE has not been provided by the Applicant with costings at this time, to carry out any such verification even though it would be on the preliminary works and premature to do so.	management measures. The Applicant needs to be able to budget a reasonable amount for these works, and it should not be exposed (both in risk terms and as an open-ended liability on its accounts) to any potential for Highways England to over-engineer the works required, and therefore the costs.
RWE	<u>Article 28</u> The Applicant has included an amendment in revision 5 of the dDCO changing "Order land" to "Order limits". The change was not explained in the Applicant's Deadline 6 "Explanation of Changes to the Draft Development Consent Order" but the consequence is to extend the Applicant's power to override rights to include rights over land within the Order Limits. The Examining Authority is referred to RWE's previous objections to such a provision in relation to its rights secured over the Order limits but not relating to the Order land, and the Applicant's previous submissions at Deadline 2 (see the Applicant's "Response to the Written Representations, Local Impact Reports and Interested Parties' Responses to First Written Questions") confirmed that it has no intention of acquiring or interfering with such rights. Accordingly, the Applicant amended both Articles 27 and 28 in its revision 2 of the dDCO to give effect to that intention and RWE has relied upon that position being reflected in the dDCO throughout the examination. To revert to the original drafting of 'Order limits', without drawing this to RWE's or the ExA's attention, is wholly inappropriate and disingenuous, particularly (as explained in RWE's written representation (REP1 - 087)) as this has potentially significant consequences for RWE and the ability to bring forward the Tilbury Energy Centre project. RWE therefore insist that the reference to "Order land" is retained in Article 28. Alternatively, an express provision could be included within the protective provisions benefitting RWE preventing the Applicant from using its powers under Article 28 to interfere with RWE's rights. RWE has suggested wording in its version of the protective provision to address this. 2.11.7 Paragraph 143 of the PPs is included in light of the above: *Other than in respect of rights and interests under the jetty asset transfer and as provided for in this Part of the Schedule the Company shall not exercise any of the powers in Part 3 of this Order to compulsorily acquire, possess, extinguish, suspend, override or otherwise interfere with any interest or right in, on or over any land within the Order limits that is at the relevant time vested in RWE*	As RWE is aware, this change was made in genuine error at Deadline 6 as part of the Applicant having checked the wording of the Order generally against changes made to DCOs in general as a result of the Housing and Planning Act 2016. When it was queried by RWE on 16 August the Applicant confirmed by return that it would be reversed by the Applicant at Deadline 7, which it was. This was plainly an error and was confirmed as such and addressed any concerns raised. As such, the wording proposed by RWE is not required in the Protective Provisions and has not been included in the DCO submitted for the end of Examination.
RWE	2.11.1 In paragraph 130(9) delete: "*provided that those requirements must not materially interfere with the unloading and loading of vessels within the extended port limits".* **Reason:** The proposed inclusion by the Applicant of the wording shown in paragraph 130 (9) which it is proposed by RWE to delete would impose a greater restriction on RWE than the rights contained in the jetty asset transfer. The Applicant agrees that those rights should subsist notwithstanding the provisions of the Order and therefore	<u>Context</u> The Jetty was a key part of why the Applicant purchased the Tilbury2 site from RWE, as it would facilitate the operation of a new port facility. At the time of the land purchase, there were detailed and lengthy discussions about the contractual arrangements in respect of RWE's apparatus which were to remain attached to the Jetty and the interaction with the Applicant's intended port operations.

Interested Party	Interested Party Comment	PoTLL Response
	the wording should be deleted.	<u>Jetty Transfer Agreement</u> RWE have, at REP7-004, submitted a copy of the Jetty Asset Transfer agreement ('JAT') which is helpful for the context of the JAT and the discussions on the RWE Protective Provisions. The JAT includes a pre-agreed form of Works Licence should RWE seek to carry out works to the existing apparatus on a redevelopment ('Works'). The JAT permits RWE to keep their existing apparatus (as defined in Part 10 of the RWE Protective Provisions in the DCO) on and attached to the structure of the Jetty, to make and keep connections to the existing apparatus, and to use the existing apparatus for the extraction of cooling water and transmission of the same to RWE's retained land. RWE can call for the Works Licence to be granted to allow RWE to carry out the Works. By clause 4.5 of the JAT, RWE is granted a right of access to that part of the Jetty shown hatched in blue on the plan attached to the JAT via the Jetty Access (which is hatched brown on the plan) to maintain, repair and/or upgrade RWE's existing apparatus. However these rights are subject to the requirements to cause as little inconvenience and disruption as reasonably possible to the Applicant's operations including cargo handling at the Jetty, the Tilbury2 site and the berthing of vessels at the Jetty. It can be seen that this is similar to the provision in the Protective Provisions that RWE is now seeking to remove. Under the Works Licence RWE can carry out the Works (subject to obtaining the necessary consents for the Works), and to enter that part of the Jetty hatched blue to do so. RWE in the exercise of these rights must use all reasonable endeavours to minimise nuisance, damage, annoyance or inconvenience to the Applicant or the other tenants or occupiers or customers of the Applicant and make good damage to the Applicant's reasonable satisfaction. <u>Protective Provisions</u> Paragraph 138(9) of RWE's protective provisions requires the Applicant to have regard to the need for RWE to exercise land or river access to undertake work to the existing apparatus as part of a development of a power station and adopt any reasonable requirements of RWE. This provision must be seen in the context that it has been included to take account of RWE's proposals for a new power station and the Applicant's proposed development. These proposals, as well as those of the Applicant in respect of Tilbury2 (in terms of a new port facility being provided), were in the contemplation of the parties at the time of the JAT being entered into. The Applicant is seeking to ensure that any reasonable requirements of RWE do not materially interfere with the unloading and loading of vessels consistent with the principles of the JAT and Works Licence. <u>Balance</u> This is a matter of striking a reasonable and fair balance between the Applicant's and RWE's interests. The wording in this sub-paragraph seeks to strike that balance, i.e. in this case between the Applicant's *maintenance* of the Authorised Development (this would likely be the context of para 138(9) given the Applicant's current construction programme) and continuing port operations at the same time, and RWE's access to the existing apparatus. The Applicant considers that a fair balance has been struck by the wording proposed. The Applicant further notes that in considering that balance, regard must be had to the fact that if *this* DCO is made, then it will be on the basis that following Examination and consideration by the Secretary of State, Tilbury2 will be deemed to be in the public interest. Whether or not TEC will similarly be deemed to be in the public interest will at the point this DCO is made be entirely unknown and that scheme will remain contingent on successful promotion of a DCO. That affects the balancing exercise.

Interested Party	Interested Party Comment	PoTLL Response
		This wording has therefore been retained in the DCO submitted for the end of Examination, and it is understood that RWE maintain their position that it should be removed.
RWE	2.11.2 The addition of paragraph 132. **Reason**: RWE is seeking an indemnity in the same terms offered to other statutory undertakers within Schedule 10 (see for example, paragraph 10 of Part 1 of Schedule 10) in relation to its existing apparatus in the event that that apparatus is used as part of a power station. The Examining Authority will note that RWE is not seeking such an indemnity in respect of any alternative apparatus. RWE acknowledges that there is a difference of opinion between RWE and the Applicant as to whether RWE are an existing statutory undertaker. As confirmed at Deadline 1 within the RWE written representation (REP01-87) RWE is a statutory undertaker for the purposes of the Planning Act 2008 by virtue of it having a s6 (1) (a) Electricity Act 1989 electricity generating licence. It has never been disputed by the Applicant that RWE will be a statutory undertaker once they are operating a power station on retained land. Given this position, and that one of the purposes underlying the rights reserved to RWE in the Jetty Asset Transfer is to grant RWE the necessary rights to use the existing apparatus as part of a cooling system for a power station on its land, RWE does not believe that there is any reasonable basis for not extending the same protection to RWE's existing apparatus if it is used for that purpose. The intended use was clearly understood and contemplated by the Applicant. The Applicant has sought to argue that it is not appropriate to protect RWE's future project in the Tilbury 2 DCO but that argument overlooks the reality that the provision is for the protection of existing apparatus being used for a purpose expressly contemplated by an existing arrangement and the powers which the Applicant is seeking under the DCO might interfere with.	RWE reference the JAT in support of their proposed indemnity provisions. However, there is no indemnity provision in the JAT and the Applicant considers it unjustified as explained below. Whilst RWE is clearly a statutory undertaker in general terms, it is the Applicant's position that this is not relevant for the purposes of this Examination or this provision given that there is no operating power station at the site or in prospect. The Planning Act 2008 protects statutory undertakers to the extent that development consent proposals interfere with their: (a) operational land (s.127(1)(c)(i)) - land that is used for the purposes of carrying on the statutory undertaker's undertaking. The site of the Tilbury Energy Centre is currently not in operational use by RWE as an electricity generating station, as such it is not operational land; or (b) 'relevant apparatus' (s.138(3)(a)) - apparatus vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking. Whilst the various structures on the existing jetty are apparatus, they are not 'relevant' for the purposes of the Act as they do not currently service an operational electricity generation plant. Notwithstanding the above, the Applicant has clearly recognised the existence of the JAT between the parties and the subsequent need to ensure that RWE's retained rights agreed between them and the Applicant under the agreement in relation to 'the existing apparatus' (a term defined in the Protective Provisions) are protected during the development of Tilbury2, and so safeguard the potential for RWE's proposed new power station, and this has informed the drafting of the Protective Provisions to date. However this proposed additional paragraph seeks to go further than this in seeking to have the Applicant liable for interference with the potential use of the apparatus in connection with a proposed but as of yet unspecified power plant, i.e. when it then becomes 'relevant apparatus' for the purposes of the Act. This is not acceptable – protective provisions (and not least indemnities) should only be used to protect the interests of third parties where they exist, not where they might exist. This issue, i.e. indemnifying RWE in relation to interference with the potential future use of the apparatus in connection with a power plant, is not a matter that the DCO should reasonably be expected to cover. The protective provisions include reasonable provisions dealing with protecting the fabric of the existing apparatus and access to it, but that is as far as they should go. As and when RWE brings forward its own DCO for the power station, this matter would be perfectly capable of being dealt with then and that would be the appropriate time, not now. An indemnity in the terms sought by RWE requires the strongest possible justification. The Applicant does not consider that there is one.
RWE	2.11.3 The inclusion of the following wording at the end of paragraphs 133(2) and 136(1): *and will for no consideration grant such rights to RWE as are necessary to enable RWE to carry out dredging works in accordance with the terms of its licence* **Reason**: The current wording proposed by the Applicant engages with the provisions of article 3(8) and ensures that the Applicant's consent is provided so as to confer on RWE the rights referred to in section 66(1)(b) of the 1968 Act in respect of any	This relates to what are now paragraphs 140(1), 140(2) and 143 of Schedule 10. Wording covering this matter was added to these paragraphs in the DCO submitted at Deadline 7, and the Applicant understands that RWE is content with it. This matter is therefore now agreed between the parties.

Interested Party	Interested Party Comment	PoTLL Response
	licence for works granted under s66. This ensures that the Applicant cannot prevent RWE from enjoying the benefits of the licence nor seek a landowner ransom before RWE may do so. However, there are no such statutory rights associated with the enjoyment of a dredging licence granted under section 73 of the 1968 Act. Consequently, the consent of the landowner is required prior undertaking any licensed dredging. The wording is required to ensure that the Applicant is not able to frustrate works by refusing to grant the necessary rights or demanding a ransom payment in respect of their grant.	
RWE	2.11.4: The addition of paragraph 138: *At all times following the stopping up of the private means of access noted at Part 3 of Schedule 4 the Company must at its cost provide RWE with either an access capable of accommodating abnormal loads measuring up to 7m (height), 9m (width) and 40m (length) through the Port of Tilbury to a point east of Work No 10 on either the existing private means of access or new private means of access that is to be provided or such other means of transporting loads of that size from the Port of Tilbury to RWE's retained land.* **Reason**: As explained in its previous submissions, RWE has an existing right of way to the proposed TEC site via Fort Road "at all times and for all purposes" reserved through the transfers effecting the sale of part of the former Tilbury Power Station site for the benefit of RWE's retained land. The Applicant has confirmed that it is not seeking any powers under the dDCO to acquire or interfere with that right and has previously proposed amendments to articles 27 and 28 to give effect to that submission (noting our comments on the latest revisions to Article 28 above). Whilst that right is granted subject to "lift and shift" provisions in the related land transfer, the powers contained within Article 12 of the draft DCO and shown on Sheet 2 of the Rights of Way and Access Plan propose a stopping up of RWE's existing private means of access and its replacement with an access which passes under the proposed Fort Road bridge (Work No.10) to a point joining the proposed A1089 St Andrews Road as described in Part 3 of Schedule 4 of the dDCO. The Applicant has agreed to construct Work No. 10 to allow clearance of at least 6m, but this would still act as a constraint on the ability of RWE to move abnormal loads which RWE has indicated may be necessary for the construction of TEC. At present, regardless of constraints on the wider highway network further afield, such loads could be landed at the Port of Tilbury and moved to RWE's land without constraint. However, RWE is mindful of the Applicant's Deadline 6 submission ("Responses to Interested Parties' Deadline 5 submissions" (pages 18 & 19)) and has proposed amendments which preserve RWE's right but do not insist on the Work No 10 being altered to accommodate such loads. This would enable the Applicant to identify such other means such as alternative routes through its land, or alternative mean over moving abnormal loads from the port to RWE's land this is an interference with RWE's rights which is not authorised by the dDCO.	As set out in previous submissions, the Applicant's proposed Protective Provisions provide that Work Nos. 4 and 10 (i.e. the access to the Tilbury2 site, and the Fort Road overbridge) must be constructed to provide for a clearance of 6 metres. The Applicant cannot accept anything more than this for the following reasons: • Standard highway clearance is 5.3 metres, so the Applicant is already providing more than standard. • Even at a clearance of 6m, RWE would not be able to utilise the existing highway network (for example there are a number of bridges over the A1089) to reach this junction with over height vehicles. • As explained at the Issue Specific Hearing on traffic and transportation issues on 28 June 2018 and in the written submission of case (REP5-016), from an engineering perspective it is not possible to fit a bridge accommodating the dimensions suggested by RWE within the Order limits (and associated impact on, for example, common land to the south of the bridge). RWE's reliance on its existing property rights as justification for this addition to the protective provisions is misplaced, given the context of the DCO. Furthermore, the requirement for a clearance of even 6m was not in the contemplation of the parties when the rights of access and 'lift and shift' provisions were agreed. Whilst the Applicant acknowledges RWE's recognition of its Deadline 6 submissions, RWE's proposed wording cannot be accepted as: • the problems identified above are still relevant in terms of the use of the new private means of access within the DCO; • the existing private means of access will not be able to be utilised due to the engineering proposals for the Scheme, including ecological mitigation areas and watercourses; and • there is no room for any other form of private means of access from Fort Road at this location. This is essentially a matter that RWE will need to address in its own DCO when RWE will have some clarity as to the nature and scale of any abnormal loads that will be involved in the construction of the proposed TEC and when provision for abnormal access for construction loads, etc., would ordinarily be made in such a scheme. However, the Applicant is willing to work with RWE on this issue moving forward, and is prepared to put this on the face of the Order. As such the following wording has been included in the protective provisions submitted for the end of Examination at paragraph 144(2): "*The Company must use reasonable endeavours in operating the authorised development to facilitate access by abnormal load vehicles to RWE's land adjacent to and on the eastern side of the Order limits in connection with the construction of any power station by RWE on that land".*

Interested Party	Interested Party Comment	PoTLL Response
RWE	2.11.5: The addition of paragraph 139: *The Company must, following the date on which a power station on the land adjacent to the Order Limits becomes operational, undertake dust monitoring at the power station site as one of the selected monitoring locations proposed in the operational management plan described in Schedule 11 and must provide the result of such monitoring to RWE within 7 days of them becoming available.* **Reason:** RWE has highlighted concerns throughout the examination with regard to the potential for dust emissions from the Tilbury 2 development to impact upon the future operation of the TEC. RWE can design its TEC scheme to address this concern provided the Applicant complies with emissions standards secured by the monitoring provisions as set out in section 7 of the Applicant's Operational Management Plan. RWE note the Applicant's response to paragraph 2.14 of its Deadline 5 submission and the changes made to the Operational Management Plan at Deadline 6 in the section titled 'Monitoring Locations' which seek to further demonstrate that dust monitoring and mitigation will be adaptive to the on-going operations of the Port and its surroundings, but reinforce the point that the inclusion of paragraph 139 in the protective provision requires nothing beyond that already required by the Applicant's Operational Management Plan. In response to the Applicant's Deadline 6 submission, RWE is not asking for monitoring to take place on its site if TEC is not consented or built. Its proposed wording is clear that the monitoring obligation would only apply "following the date on which a power station…becomes operational"	As RWE recognises, the additional protective provision it proposes requires nothing more than is in the OMP. As such it is not necessary for it to be included within the Order and the protective provisions. The 'Monitoring Locations' part of the OMP, which sets out that site boundary monitoring will take place and explicitly includes a location on the eastern site boundary (nearest to RWE's land) downwind of RWE operations. The OMP goes on to then explain how monitoring will be carried out and the requirement for remedial action to be taken by the Applicant if dust levels are higher than the dust levels set out in that document. As such, sufficient controls are in place to manage dust on the Tilbury2 site, including at its eastern boundary. It is not appropriate that RWE should be treated differently from any other potential receptors – air quality is managed by local authorities. In particular, wording of this kind would imply that RWE would then have the opportunity to require PoTLL to take remedial action through contact with the local authority, potentially putting the Applicant in a disadvantageous position. The Applicant notes that it had offered to discuss this issue with RWE's Air Quality experts, and this was not taken up. Similarly the point was raised as an agenda item by the ExA at the June hearings and RWE chose not to attend or make their expert available to ensure a fair opportunity for all to test the veracity of the submissions being made.
RWE	2.11.6 *The inclusion of the following wording at the end of paragraph 141: and except in so far as provided for in this Part of this Schedule this Order does not authorise any activity which would conflict with such rights and interests* **Reason:** The additional wording clarifies that the Applicant will not interfere with RWE's rights under the Jetty Asset Transfer other than as set out in the protective provision. RWE are reassured by the Applicant's insertion of paragraph 141 in its Revision 5 dDCO. However, whilst the rights under the jetty asset transfer may still subsist they could still be interfered with beyond the extent otherwise specified in the protective provision under authority of article 28. The Applicant has accepted that the relationship between itself and RWE should be consistent with the jetty asset transfer and the additional wording seeks to ensure that is the case.	The Applicant considers that this wording in this paragraph (now 146) is not necessary or justified and is potentially ambiguous. It is clear from paragraph 146 that the JAT continues to subsist and that its contractual provisions will have effect for the benefit of both RWE and the Applicant, subject to the DCO's RWE protective provisions. That has consistently been RWE's concern with the DCO and the Applicant's provision would protect RWE and counters any suggestion that somehow the DCO could negate the JAT. The additional text proposed by RWE essentially just re-formulates the words which already exist – if RWE's rights are expressed to continue to subsist then it follows that the DCO does not interfere with them. As noted by the Applicant in its response at Deadline 7 to the Examining Authority's Rule 17 request, however, the Applicant considers that this additional provision is unjustified because it is cast unacceptably wide and could quite conceivably frustrate construction and/or operation of Tilbury2 under the DCO in some unknown way in the future. The scope is so wide that its effects could be considerable and yet it is not possible to quantify them now. It is therefore unacceptable to include RWE's additional provision in the DCO because it is not possible to ascertain what its full effect could be and does not reasonably relate to the promoted scheme and its potential effects.

APPENDIX 1: I-TRANSPORT LETTER ON LIKELY COSTS OF M25 J30 WORKS

i-Transport LLP
85 Gresham Street, London, EC2V 7NQ

Tel: 020 3705 9215

Mr J Speakman
Port of Tilbury London Limited
Leslie Ford House
Tilbury Freeport
Tilbury
Essex
RM18 7EH

Our Ref: PH/PR/ITL11323
Date: 17 August 2018

Dear John

Tilbury2 – M25 Junction 30 Works

Further to the agreement with Highways England of the M25 Junction 30 works as shown on i-Transport drawings ITL11323-SK-048A and ITL11323-SK-051 which is reflected in the revised wording of draft DCO Requirement 7, please find below a breakdown of the expected costs of these works, based on our experience.

Overnight (on the basis of a worse case of 4 night closures for 4 lanes – could feasibly be done in 2)	£28,000 (assumes 4 nights)
Road Marking Alterations (mobilising and employing operatives and plant)	£10,000
Contingency	£10,000
Total (exclusive of any VAT payable)	**£48,000**

A limit of **£50,000** would more than cover the works as the indicative costs above are robust and considered a 'worst-case'. It is important to note that the costs above do not take into account the ability

to undertake these works in conjunction with other planned works, specifically on the A282 Northbound Off-Slip where committed improvements because of London Gateway are due.

Yours sincerely

PHIL HAMSHAW

Partner

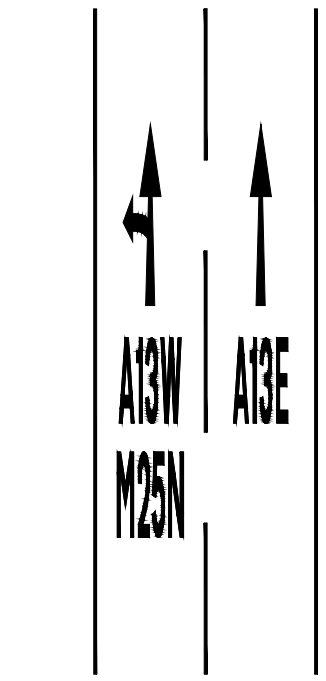
for i-Transport LLP

phil.hamshaw@i-transport.co.uk

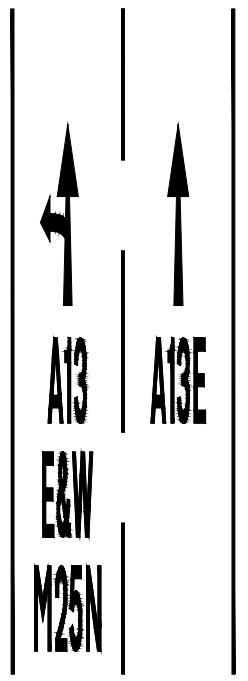
SCALE BAR @ 1:500

0 5 10 25 50

SCALE - NOT TO SCALE



EXISTING ROAD MARKINGS



PROPOSED ROAD MARKINGS

REV	DATE	BY	DESCRIPTION	CHK	APD
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DRAWING ISSUED FOR FEASIBILITY CONSIDERATION AND PLANNING PURPOSES ONLY. DRAWING NOT TO BE USED FOR CONSTRUCTION. I-TRANSPORT LLP ACCEPT NO RESPONSIBILITY FOR ERRORS MADE BY OTHERS IN SCALING FROM THIS DRAWING. MEASUREMENTS SHOULD BE TAKEN FROM FIGURED DIMENSIONS ONLY. CDM REQUIREMENTS CONSIDERED AT FEASIBILITY STAGE ONLY. FURTHER CONSIDERATION REQUIRED BY DETAILED DESIGN TEAM.

CLIENT: PORT OF TILBURY

STATUS: FOR INFORMATION

i-Transport

4 Lombard Street, London, EC3V 9HD
Tel: 020 7190 2820
Fax: 020 7190 2821

www.i-transport.co.uk

TITLE: M25 JUNCTION 30 NORTHBOUND OFF SLIP MITIGATION

PROJECT: TILBURY 2

SCALE @ A3:	CHECKED:	APPROVED:
AS SHOWN	PH	PH
FILE REF:	DRAWN:	DATE:
ITL11323	MC	26.06.18

DRAWING No: ITL11323-SK-048

PROJECT No: ITL11323 REV: A

T:\Projects\111000 Series Project Numbers\113231TL Tilbury Power Station\Tech\Acad\i-Transport Drawings\Working Drawings\SK\ITL11323-SK-048A.dwg

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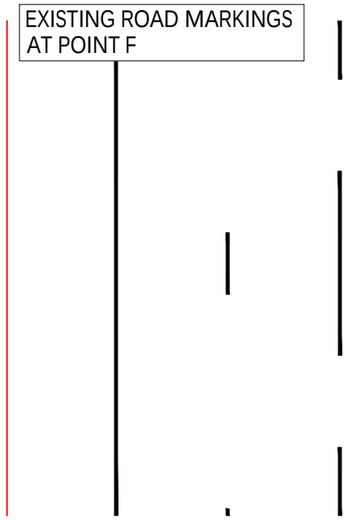

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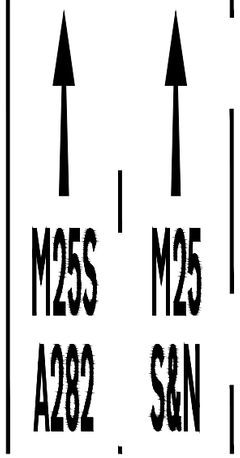

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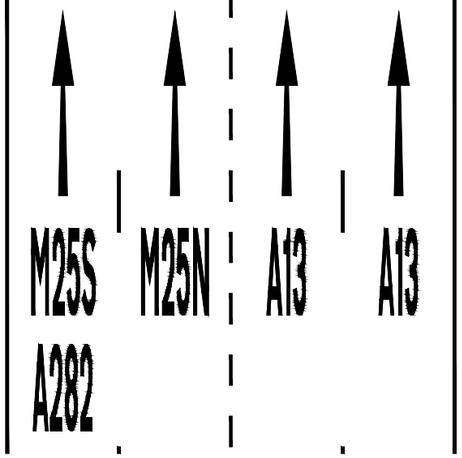

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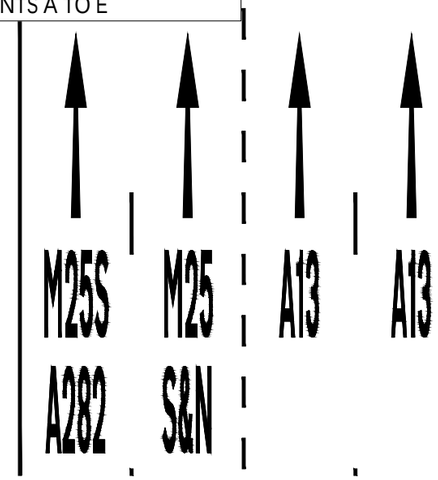

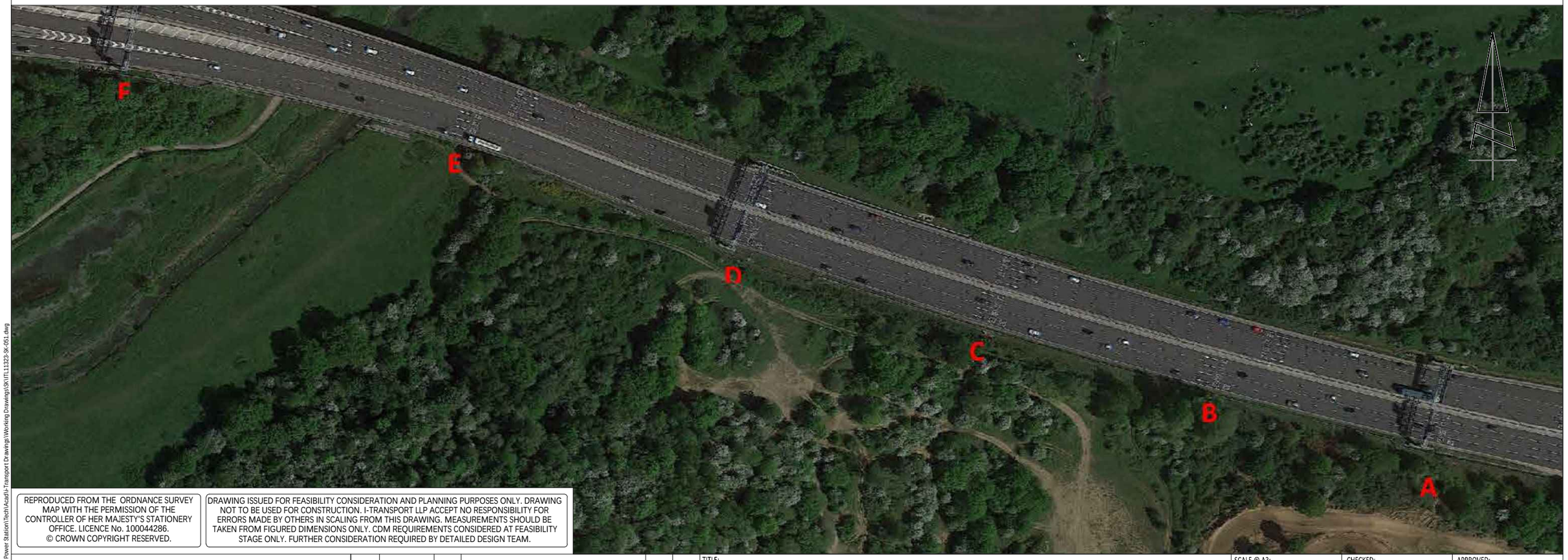

i-Transport

85 Gresham Street, London, EC2V 7NQ Tel: 0203 705 9215

www.i-transport.co.uk

REV	DATE	BY	DESCRIPTION	CHK	APD

STATUS: ISSUE

TITLE: A13 WESTBOUND ROAD MARKING IMPROVEMENTS

SCALE @ A3:	CHECKED:	APPROVED:
N.T.S	PH	PH
FILE REF:	DRAWN:	DATE:
ITL11323	MC	26.07.18

PROJECT: TILBURY 2

CLIENT: PORT OF TILBURY

DRAWING No: ITL11323-SK-051

PROJECT No: ITL11323 REV: -

T:\Projects\111000 Series Project Numbers\111323\TL Tilbury Power Station\Tech\Acad\i-Transport Drawings\Working Drawings\SK\ITL11323-SK-051.dwg

APPENDIX 2: TRIPARTITE AGREEMENT BETWEEN POTLL, RWE AND PLA

DATED 2018

(1) PORT OF LONDON AUTHORITY

(2) RWE GENERATION UK PLC

(3) PORT OF TILBURY LONDON LIMITED

AGREEMENT RELATING TO TILBURY2 AND THE GRANT OF A REPLACEMENT RIVER WORKS LICENCE IN RESPECT OF PART OF THE TILBURY 'B STATION' WORKS IN THE RIVER THAMES

Pinsent Masons

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THIS AGREEMENT is made on 2018

BETWEEN:-

(1) **THE PORT OF LONDON AUTHORITY,** whose principal office is at London River House, Royal Pier Road, Gravesend, Kent DA12 2BG ("**PLA**");

(2) **RWE GENERATION UK PLC** registered as company number 03982782 and having its registered office at Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire SN5 6PB ("**RWE**"); and

(3) **PORT OF TILBURY LONDON LIMITED** of Leslie Ford House, Tilbury ESSEX RM18 7EH ("**PoTLL**").

RECITALS:-

(A) RWE owns works and apparatus in the bed and foreshore of the river Thames at Tilbury in Gravesend Reach, which are the subject of a river works licence granted by the PLA ("the Existing Licence", as defined in this Agreement).

(B) Some of these works and apparatus, known as the 'B station' apparatus, may in future be used by RWE in connection with its undertaking including the operation of a power station that RWE intends to develop on its adjacent land.

(C) The Existing Licence will be affected by the provisions of a proposed development consent order being applied for by PoTLL to allow it to construct and operate a new port terminal and associated facilities (known as Tilbury2).

(D) Articles 3(2) to (4) of the proposed development consent order would have the effect that, except in respect of the 'B station' intake structures, the Existing Licence is extinguished and ceases to have effect so far as relating to assets located within the area defined in the proposed development consent order as "the extended port limits", from the date the Order comes into force.

(E) The Parties are therefore agreed that it is expedient that a new river works licence should be granted to RWE in respect of the 'B station' intake structures located within the extended port limits, to take effect on the date articles 3(2) to (4) of the development consent order come into force.

IT IS AGREED as follows:-

1. **INTERPRETATION**

1.1 In this Agreement:-

"**the Draft Order**"	means the draft of the Order submitted by PoTLL to the Examining Authority at Deadline 6 on 3 August 2018;
"**the Examining Authority**"	means the panel appointed by the Secretary of State for Transport to examine PoTLL's application for the Draft Order;

"**the Existing Licence**"	means the licence relating to the RWE Works and other works and apparatus, granted under sections 243 and 252 of the Port of London (Consolidation) Act 1920 to the Central Electricity Generating Board Eastern Division dated 16 September 1958, as amended by a letter dated 18 July 1962 from the PLA to the Central Electricity Generating Board which letter was subsequently varied by the PLA's letter dated 29 August 1963 to the General Electricity Generating Board; and by a letter dated 13 January 1964 from the PLA to the Central Electricity Generating Board; and a letter dated 4 February 1964 from the Central Electricity Generating Board to the Port of London Authority; and a letter dated 10 May 1968 from the Port of London Authority to the Central Electricity Generating Board and a letter in reply dated 24 May1968 from the Central Electricity Generating Board to the PLA and by a letter dated 3 August 1992 from National Power plc (the successor in title to the Central Electricity Generating Board) to the PLA; and a letter dated 3 September 1992 from the PLA to National Power PLC; and a Supplemental Licence dated 28 June 2011 between the PLA and RWE npower plc as successor in title to National Power PLC (and RWE is the successor in title to RWE npower plc);
"**the Extended Port Limits**"	means PoTLL's port limits which will be extended by the Order if it is made, as shown on the extended port limits plan submitted by PoTLL with its application for the Order;
"the Jetty Asset Transfer"	means an agreement made between RWE and PoTLL dated 31 March 2017**;**
"**the New Licence**"	means the river works licence to be granted by the PLA to RWE under section 66 of the Port of London Act 1968 for the retention and maintenance of the RWE Works, or for the retention, maintenance and use of the RWE Works, on terms and conditions to be agreed with RWE, that (i) generally reflect the PLA's current standard terms and conditions; and (ii) are subject to such further terms and conditions as the PLA, acting reasonably as a harbour authority, shall require;
"**the Order**"	means the Port of Tilbury (Expansion) Order in the form in which it is made by the Secretary of State; and
"**the RWE Works**"	means those of the works licensed by the Existing Licence which are situated within the Extended Port Limits and which comprise the following 'B station' works and apparatus shown on drawing no. 3584/PLA/203 appended in Schedule 1 to this Agreement, as they may be renewed or refurbished from time to time in accordance with the Existing Licence: (i) two cooling water intake caissons (extending upwards to their interface with the underside of the jetty deck); (ii) two associated cooling water intake tunnels; and (iii) any related ancillary structures, plant or pipework.

1.2 The headings in this Agreement are for convenience only and are not to be taken into consideration in the interpretation of this Agreement.

1.3 References in this Agreement to numbered clauses are references to the clauses of this Agreement and references in this Agreement to numbered articles and Schedules are references to the articles of and Schedules to the Draft Order.

1.4 Words importing the singular include the plural and vice versa; words importing either gender include the other gender and words importing persons include firms, companies and corporations and vice versa.

1.5 A reference in this Agreement to a "**Party**" or the "**Parties**" is a reference to the parties who are signatories to this Agreement, or their successors in title and commitments made in this Agreement are binding on those successors.

1.6 A reference to an enactment includes a reference to it as amended (whether before or after the date of this Agreement) and to any other enactments which may, after the date of this Agreement, directly or indirectly replace it, with or without amendment.

2. APPLICATION FOR AND GRANT OF NEW RIVER WORKS LICENCE

2.1 RWE agrees that it will make applications to the PLA for:

2.1.1 the New Licence to be granted by the PLA to take effect on the day the Order comes into force; and

2.1.2 the Existing Licence so far as relating to the RWE Works to be revoked by the PLA on the day the Order comes into force.

2.2 RWE agrees:

2.2.1 to make the applications mentioned in clause 2.1 ("the applications") by 20 September 2018;

2.2.2 to secure that the applications are compatible with the provisions of the Jetty Asset Transfer; and

2.2.3 not to take a grant of the New Licence unless it is so compatible.

2.3 The PLA agrees in principle to grant the New Licence and to process the applications made by RWE in accordance with clauses 2.1 and 2.2 in a timely manner in order to fulfil the intention of the Parties that the New Licence should take effect as stated in clause 2.1.

2.4 The PLA agrees:

2.4.1 to consult RWE and PoTLL on the terms of the New Licence;

2.4.2 to take into account any comments either of them may have on the PLA's draft of the New Licence; and

2.4.3 to take into account the terms of the Jetty Asset Transfer in framing the terms of the New Licence and the desire of RWE and PoTLL to secure compatibility of the New Licence with the Jetty Asset Transfer.

2.5 If the PLA grants the New Licence, it agrees to:

2.5.1 make the grant on terms that it is to take effect on the day the Order comes into force; and

2.5.2 revoke the Existing Licence so far as relating to the RWE Works with effect from the day the Order comes into force.

2.6 If articles 3(7) and 3(8) of the Order are in force when the New Licence is granted, PoTLL agrees that it will give its consent as required by article 3(7) for the New Licence to be granted, and its consent as required by article 3(8) in respect of such rights as are noted in article 3(8) being conferred on RWE by the New Licence, without requiring any modifications or imposing any terms and conditions as provided for by article 3(9).

3. **RIGHTS OF THIRD PARTIES**

Only the PLA, RWE and PoTLL may enforce the terms of this Agreement and no other Party may enforce any such term by virtue of the Contracts (Rights of Third Parties) Act 1999.

4. **VARIATIONS**

No variation of this Agreement is effective unless it is in writing and is signed by or on behalf of a duly authorised representative of each of the Parties.

5. **EXECUTION**

This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

IN WITNESS of which, this Agreement is executed as a Deed on the date set out above:

Executed as a deed by affixing)
THE COMMON SEAL OF THE)
PORT OF LONDON AUTHORITY)
in the presence of:)

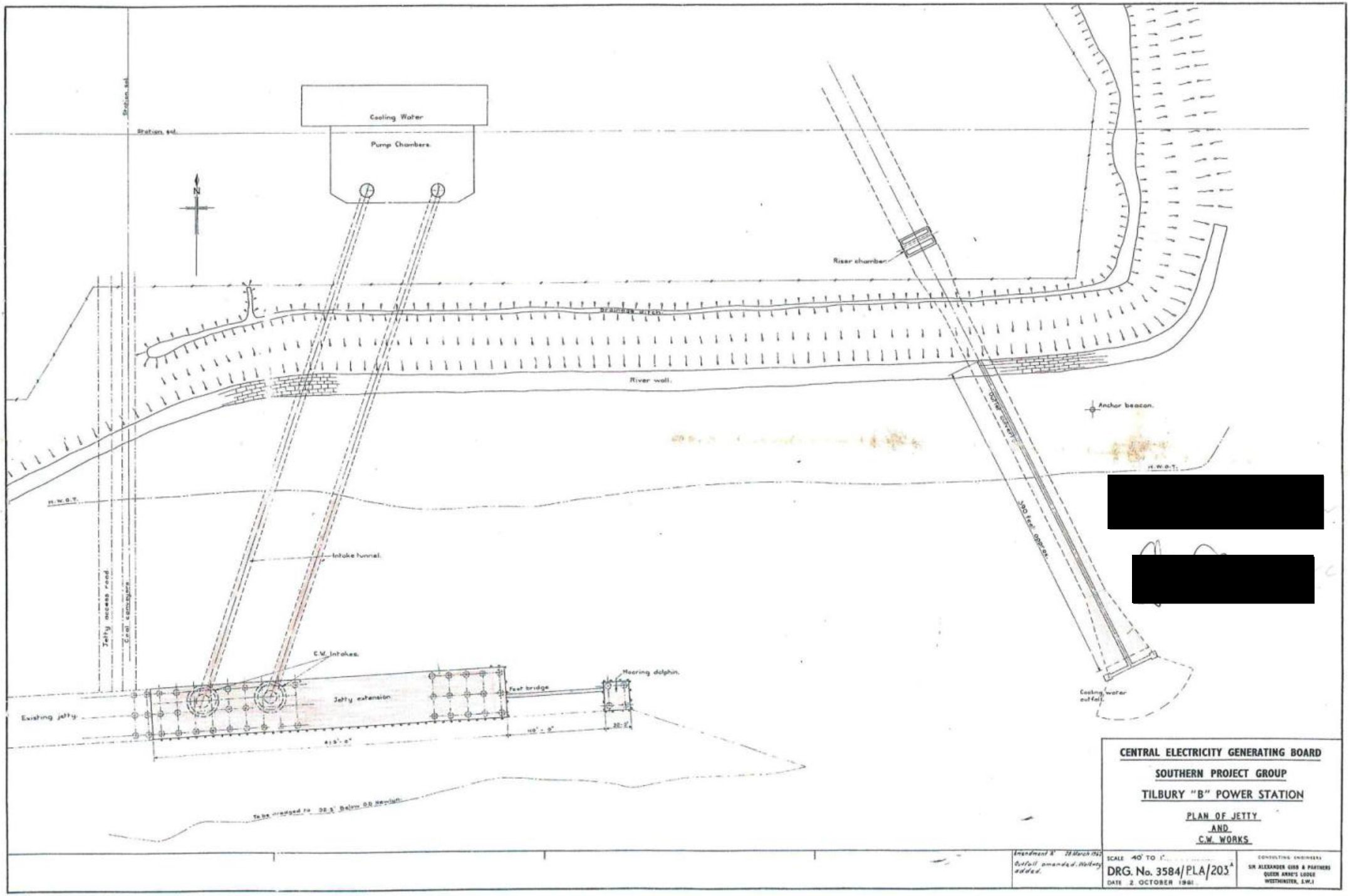
)

Executed as a deed by affixing)
THE COMMON SEAL OF)
RWE GENERATION UK PLC)
in the presence of:)

Executed as a deed by affixing)
THE COMMON SEAL OF PORT)
OF TILBURY LONDON LIMITED)
in the presence of:)

SCHEDULE 1

DRAWING NO. 3584/PLA/203



CENTRAL ELECTRICITY GENERATING BOARD

SOUTHERN PROJECT GROUP

TILBURY "B" POWER STATION

PLAN OF JETTY
AND
C.W. WORKS

Amendment 'A' 29 March 1962
Outfall amended. Notes added.

SCALE 40' TO 1"

DRG. No. 3584/PLA/203[A]

DATE 2 OCTOBER 1961

CONSULTING ENGINEERS
SIR ALEXANDER GIBB & PARTNERS
QUEEN ANNE'S LODGE
WESTMINSTER, S.W.1

R/C 19.7.62

C/E

PORT OF LONDON AUTHORITY
CHIEF ENGINEER

DRAWING No
125.6984

APPLICATION FOR
RIVER ACCOMMODATION

PRINCIPAL COPY

CROWN FORESHORE	PRIVATE FORESHORE
NO	NO

TITLE

Central Electricity Generating Board.
Extension of Jetty, circulating water works, dredging etc.
Tilbury.

C 6031/62

FORESHORE PLAN
No. 47178
F.LE No 10/26/03 Pt 4
9/10/62

(Ref 125.5609

JETTY 405' x 69.8'
CONNECTED TO SHORE BY ROAD

ASH JETTY 295' x 38.8'
JOINED TO ABOVE.