



PORT OF
TILBURY
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Robert Ranger
Case Manager
The Planning Inspectorate
National Infrastructure
Temple Quay House
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21 December 2018

Our Ref: PoTLL/T2/EX/230
Your ref: TR030003

Dear Mr Ranger,

Planning Act 2008

Draft Port of Tilbury (Expansion) Order for “Tilbury2”

Response to Consultation by Secretary of State

Further to the Secretary of State's letter dated 7 December 2018, please find below Port of Tilbury London Limited's ('PoTLL') responses to the queries raised in the letter:

1. Crown Land

- 1.1 Good progress has been made in discussions with the Crown Estate in respect of obtaining consent under sections 135(1) and 135(2) of the Planning Act 2008 in relation to the Tilbury2 proposals.
- 1.2 However, matters have not yet been able to be finalised, and with the Christmas break occurring next week, it is not expected that the consents will be obtained until early January 2019.
- 1.3 PoTLL and the Crown Estate will update the Secretary of State as soon as the Crown Estate is able to give its consent. PoTLL understands that the Crown Estate will also be writing to the Secretary of State today to state the same position.

2. Land Transfer

- 2.1 A contract for the sale of plot 03/04a from Thurrock Council to PoTLL completed on 20 December 2018. PoTLL therefore now owns this land.

3. Objection by Port of London Authority ('PLA')

- 3.1 PoTLL understands that the PLA has written to the Secretary of State to confirm that its objection to the Tilbury2 project has been withdrawn.
- 3.2 PoTLL notes that this withdrawal has been made in the light of the agreed protective provisions contained within, and the other relevant provisions of, revision



7 of the draft DCO submitted to the Examination on 20 August 2018 (Document Reference AS-089).

4. Protective Provisions

RWE

- 4.1 The issues relating to the protective provisions (PPs) for RWE Generation UK plc (RWE) that were outstanding at the close of the examination on 20 August 2018 are still outstanding and so not agreed. PoTLL does not consider that they will be able to be agreed between the parties.
- 4.2 PoTLL's views on these matters therefore remain as expressed in its response to Interested Parties' submissions at Deadline 7 (Document Reference AS-086) as submitted by PoTLL at the end of the examination on 20 August 2018, and the Secretary of State is referred to them accordingly.
- 4.3 That response may be found on PINS' website here:
<https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/TR030003/TR030003-001036-Response%20to%20Interested%20Parties'%20Deadline%207%20Submissions.pdf>
- 4.4 PoTLL has seen a draft of RWE's response to the Secretary of State's letter dated 7 December 2018. RWE's response refers to the various outstanding issues on the PPs with reference to the penultimate version 6 of the draft DCO submitted by PoTLL at Deadline 7 on 16 August 2018. To assist the Secretary of State, PoTLL has set out in the table below each of the outstanding issues on the PPs giving the corresponding references, where applicable, to the current version of the draft DCO, which is version 7, submitted by PoTLL at the end of the examination on 20 August 2018:

Issue	Provision in current version 7 of the DCO (20/08/18)	Corresponding provision in version 6 of the DCO (submitted at Deadline 7 on 16/08/18)	References in RWE's submissions at Deadline 7 with the protective provisions (PPs) appended being based on version 5 of the DCO submitted by PoTLL at Deadline 6
Interference with RWE's land or river access	Para. 138(9) of Sch. 10	Para. 134(9) of Sch. 10	2.11.1; and para 130(9) of RWE's version of the PPs
Terms of indemnity	Para. 139(1) of Sch. 10	Para. 135(1) of Sch. 10	2.11.2; and para 132 of RWE's version of the PPs
Access for abnormal loads	Para. 144(2) of Sch.10.	N/A	2.11.4; and para 138 of RWE's version of the PPs
Dust management	N/A	N/A	2.11.5; and para 139 of RWE's version of the PPs

Interference with RWE's existing rights and interests	Para. 146 of Sch.10	Para. 142 of Sch.10	2.11.6 and 2.11.7; and paras 141 and 143 of RWE's version of the PPs
Consent to river works licences	Para. 140(1) of Sch. 10	Para. 136(1) of Sch. 10	N/A

- 4.5 The outstanding issues referred to in RWE's response to the Secretary of State's letter dated 7 December 2018 have not changed since the end of the examination, except that RWE has added one further issue which is referred to in the final entry in the table above. The wording concerned is contained in what is now paragraph 140(1) of the PPs, but the same wording was in paragraph 136(1) of the PPs in the Deadline 7 version of the DCO. RWE therefore had an opportunity to raise this point after Deadline 7 and before the end of the examination but did not do so.
- 4.6 The wording concerned, which refers to the 'retention, maintenance and use' of RWE's existing 'B station' apparatus, relates to PoTLL's discretion to give consent to any river works licence (RWL) proposed to be granted to RWE within the proposed harbour limits by the PLA. The wording reflects the wording found in the agreed and now executed Tripartite Agreement between PoTLL, RWE and PLA which provides further mechanisms and assurances relating to the grant of a new RWL for RWE in respect of the existing apparatus. The wording of the Agreement was reproduced in Appendix 2 to PoTLL's response document AS-086 referred to at paragraph 4.2 above.
- 4.7 The effect of the Agreement is that in the case of a proposed RWL for the retention, maintenance and use of RWE's existing apparatus, the Agreement builds on the provisions of paragraph 140(1) of the PPs and provides further assurances to RWE. Paragraph 140(1) of the PPs is deliberately restricted to the retention, maintenance and use of RWE's existing apparatus because PoTLL is not currently able to say now that it would not withhold its consent to a proposed RWL (and/or dredging licence) that RWE may apply for in relation to the *modification* of that existing apparatus as part of a new power station proposal by RWE. This is because there are no details available of what such modified apparatus may be and therefore the works and dredging it may require. This is to be contrasted with paragraph 140(2) of the PPs, which PoTLL is content should apply to *any* such licence RWE may at any time hold for the existing apparatus, even if and when modified, as PoTLL has always said that it would not seek to use its position as a landowner to prevent RWE from enjoying the full benefit of any RWL or dredging licence that may be held at any time by RWE.
- 4.8 Furthermore RWE says in its letter to the Secretary of State that the additional words "put RWE in a worse position than under existing arrangements, which the applicant has previously confirmed it does not wish to interfere with". This is misconceived: the existing arrangements referred to are the proprietary arrangements between RWE and PoTLL detailed in paragraph 4.9 below, whereas this wording is a regulatory matter concerning PoTLL's ability to manage the safety of navigation within the extended harbour undertaking it would have if the DCO is made.
- 4.9 However, this statement is a helpful reminder of the context of RWE's submissions, which is that RWE has mutually agreed detailed and extensive contractual protections set out in legal agreements with PoTLL that RWE signed up to at the

time of the purchase by PoTLL of the Tilbury2 land and river jetty, including in the Jetty Asset Transfer dated 31 March 2017. RWE was therefore fully aware of PoTLL's intentions for the land at the time but is now seeking to use the DCO process to advance a more favourable position.

- 4.10 For these reasons PoTLL considers that the wording concerned contained in paragraph 140(1) of the PPs should remain, as it is entirely appropriate not to commit PoTLL in relation to any future unknown works to modify the current B station apparatus in order to render it suitable for any power station proposal that may at some point in the future be brought forward by RWE.
- 4.11 And in that respect there is a final general point PoTLL would like to end with. As RWE has referred to in its letter to the Secretary of State, it has discontinued its proposed Tilbury Energy Centre (TEC) project (see: <https://infrastructure.planninginspectorate.gov.uk/document/EN010089-000052>). Consequently, PoTLL considers that its various responses to RWE's proposed additions and changes to the PPs to protect potential future power generating uses of the RWE site have even greater weight - it would not be appropriate for the Order's PPs to include these further and far reaching provisions to anticipate an electricity generating development on the site at an undefined point in the future.
- 4.12 RWE concludes in its letter that the additional provisions and changes to the PPs it is seeking are "essential for the protection of RWE and its statutory undertaking". PoTLL would wish to remind the Secretary of State that PoTLL does not consider that in this context RWE is a statutory undertaker, as the power station has been demolished and the existing river apparatus is not being used. Given the recent turn of events with the TEC there is now even less prospect that RWE will ever again be a statutory undertaker in respect of its Tilbury site and the Secretary of State is therefore entitled to place very little weight on RWE's submissions on the outstanding matters relating to the PPs.

Thurrock Council (as Lead Local Flood Authority)

- 4.13 Separate from RWE, the Secretary of State will be aware that another outstanding issue on protective provisions relates to those provisions for the protection of Thurrock Council as Lead Local Flood Authority (Part 5 of Schedule 10).
- 4.14 I am pleased to confirm that these provisions have now been agreed with Thurrock Council, and a clean copy of these, alongside a comparison with those in revision 7 of the draft DCO, are enclosed with this letter.

If you have any questions on any of these matters, please do not hesitate to contact our legal advisers: matthew.fox@pinsentmasons.com or robbie.owen@pinsentmasons.com.

Yours sincerely



PETER WARD
COMMERCIAL DIRECTOR
PORT OF TILBURY LONDON LIMITED