

IN PARLIAMENT
HOUSE OF COMMONS
SESSION 2005-06

CROSSRAIL BILL

AGAINST – ON MERITS – PRAYING TO BE HEARD BY COUNSEL. &C.

TO THE HONOURABLE THE COMMONS OF THE UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND IN PARLIAMENT ASSEMBLED.

THE HUMBLE PETITION of the PORT OF LONDON AUTHORITY

SHEWETH as follows:-

- 1 A Bill (hereinafter referred to as "the Bill") has been introduced and is now pending in your honourable House intituled "A bill to make provision for a railway transport system running from Maidenhead, in the County of Berkshire, and Heathrow Airport, in the London Borough of Hillingdon, through central London to Shenfield, in the County of Essex, and Abbey Wood, in the London Borough of Greenwich; and for connected purposes".
- 2 The Bill is promoted by the Secretary of State for Transport.
- 3 Under clause 1 (Construction and maintenance of scheduled works) of the Bill the nominated undertaker may construct and maintain the works specified in Schedule 1 ("the Scheduled works") to the Bill. The Scheduled works include Work No. 1/5. Work No.1/5 is a railway extending through the existing Connaught Tunnel ("the Tunnel"). It includes a station at Custom House (being a reconfiguration of the existing North London Line Custom House Station) and alteration of the Tunnel. The Scheduled works also include Works Nos. 1/6A and 1/6B which are railways in tunnel beneath the River Thames, Work No. 1/29 which is a jetty for construction purposes in the River Lea, and Works Nos. 1/38A and 1/38B which are a wharf and a conveyor for construction purposes over the River Thames.

- 4 Clause 2 (Works: further and supplementary provisions) of, and Schedule 2 to, the Bill will authorise the nominated undertaker to carry out additional works described in that Schedule. Paragraph 8 of Schedule 2 to the Bill authorises use of watercourses for drainage of water in connection with the construction or maintenance of the works authorised by the Bill. Paragraph 10 of Schedule 2 to the Bill empowers the nominated undertaker to interfere temporarily with certain waterways.
- 5 Under clause 5 (Temporary possession and use) of, and Schedule 5 to, the Bill the nominated undertaker may enter upon and take temporary possession of land for the purposes stated in that Schedule.
- 6 Under clause 6 (Acquisition of land within limits shown on deposited plans) and clause 7 (Acquisition of land not subject to the powers under section 6(1)) of the Bill the Secretary of State is authorised to acquire compulsorily the lands shown on the deposited plans within the limits of deviation for the scheduled works and also outside those limits. These lands include the land in the London Borough of Newham in which the Tunnel is constructed and the Tunnel itself, and lands in the ownership of your Petitioners.
- 7 Clause 47 (Disapplication and modification of miscellaneous controls) of, and Schedule 12 to, the Bill make provision for the disapplication and modification of various statutory controls. Paragraph 6 of Schedule 12 to the Bill disapplies sections 70 and 73(3) of the Port of London Act 1968 ("the 1968 Act").
- 8 Clause 52 (Protection of interests) of, and Schedule 14 to, the Bill make provision for the protection of the interests of certain bodies and persons. Part 6 of Schedule 14 contains protective provisions relating to your Petitioners' interests.
- 9 Your Petitioners are a body corporate which is the statutory harbour authority for the Port of London, with functions under the 1968 Act and other enactments and orders. Your Petitioners and their rights, interests and property are injuriously affected by the Bill, to which your Petitioners object for reasons amongst others, hereinafter appearing.
- 10 Your Petitioners are the former owners of certain areas of land in Newham including the Royal Docks. In exercise of the powers of the London and St. Katherine Docks Company Act 1875 the Royal Albert Dock was constructed connected by a dock cut to the Royal Victoria Dock and the Tunnel was constructed to take substituted lines for the Great Eastern Railway Company under the cut. The structure of the Tunnel, the covered way and the retaining walls were to be maintained by the dock company and the permanent way was to vest in the railway company. Ownership of the Tunnel was

to vest in the railway company with ownership of the soil above remaining with the dock company. Under subsequent enactments the property of the dock company vested in your Petitioners, your Petitioners' powers were consolidated and a saving was provided for the railway company, and alterations were made to the Tunnel but without change to the liabilities.

- 11 The 1968 Act further consolidated your Petitioners' powers. The saving was not continued in that Act. Instead, prior to the coming into force of the 1968 Act, your Petitioners entered into an Agreement ("the Agreement") with the British Railways Board ("the Board") setting out what was to happen to statutory savings which were to be repealed by the 1968 Act. The Agreement included provisions which continue to have effect.
- 12 Under the Agreement obligations ("the obligations") were imposed on your Petitioners with regard to the use by the Board's trains of your Petitioners' then existing surface railway line in emergency and the maintenance and repair of the Tunnel. Subsequently your Petitioners transferred title to the land formerly used by the surface railway, land surrounding the Tunnel and land occupied by the pump house and apparatus for de-watering the Tunnel to the London Docklands Development Corporation. This land is now vested in the London Development Agency ("the LDA"). The LDA now operates and maintains the pump house for de-watering the Tunnel.
- 13 In consequence your Petitioners no longer have an interest in surrounding land and have no interest in the Tunnel itself but have anachronistic contractual obligations to maintain the structure of the Tunnel, the covered way inside it and the retaining walls which they owe to Network Rail Infrastructure Limited, the Board's successors. The LDA have obligations to your Petitioners to maintain water drainage of the Tunnel. The Tunnel itself is in the ownership of Network Rail Infrastructure Limited but ownership is expected to pass to Docklands Light Railway Limited pursuant to the draft Docklands Light Railway (Stratford International Extension) Order, if that Order is made.
- 14 The Bill authorises the nominated undertaker to construct and maintain the Scheduled works including Work No. 1/5 and this work specifically includes alteration of the Tunnel. The Bill also authorises the Secretary of State to acquire compulsorily land within the limits of deviation for or in connection with the authorised works or otherwise for or in connection with Crossrail. The Tunnel and surrounding land is within the limits of deviation and, it is understood, would be acquired for Work No. 1/5.
- 15 In your Petitioners' submission, given the material change in circumstances relating to the Tunnel which the Bill proposes, including the proposed enhancement of the Tunnel

to enable it to be used for the Crossrail train service and its intended acquisition by the Secretary of State, it would not be reasonable for your Petitioners to be expected to continue to have maintenance obligations in relation to the Tunnel if the Crossrail project proceeds and on the true construction of the obligations your Petitioners would have no obligation to maintain the structure of the tunnel, the covered way and the retaining walls enhanced as proposed.

- 16 Your Petitioners have met officials of the Department for Transport who have informed your Petitioners that the Department's position is that as part of the Crossrail scheme the Tunnel will be so significantly changed as to be a different structure. On that basis your Petitioners have been informed that the Secretary of State accepts in principle that your Petitioners should be released from their responsibilities in respect of that enhanced tunnel. Your Petitioners have submitted to the Agents for the Bill a draft Deed of Release of the obligations relating to the Tunnel and hope that it will be possible to agree a satisfactory Deed of Release. If however this does not prove possible your Petitioners ask that the Bill should be amended to ensure that your Petitioners' concerns are met and in particular that your Petitioners are released from their obligations in relation to the Tunnel.
- 17 Part 6 of Schedule 14 to the Bill contains provisions for the protection of your Petitioners' interests as port authority, but in your Petitioners' submission these are insufficient or inadequate in a number of respects and amendments to them are required. Your Petitioners are concerned to ensure that compensation or consideration payable to your Petitioners in respect of temporary works on your Petitioners' land should be assessed in accordance with the provisions of section 67 of the 1968 Act. They also seek an indemnity similar to that which the Bill would grant to the British Waterways Board and a provision for exclusion of liability for merely approving plans. They seek provision to ensure that the exercise by their harbourmaster of his powers is to have priority in the waters within their jurisdiction and they seek a general saving provision. They have concerns arising from the provisions relating to piles or stumps which may become exposed in the course of construction of the works authorised by the Bill, to costs relating to removal of moorings and to tidal works. They also seek assurances relating to the plan approval process which Part 6 of Schedule 14 to the Bill would provide, including regarding prior consultation, your Petitioners' costs, and plan and method statement requirements.
- 18 Your Petitioners seek amendment to paragraph 8 of Schedule 2 to the Bill, which provides for discharge of water, and to Part 6 of Schedule 14 to the Bill to ensure that oil or other offensive or injurious matter will not be discharged or allowed to escape into

waters within your Petitioners' jurisdiction and to ensure that discharges of water into those waters would be subject to your Petitioners' consent and to such conditions as your Petitioners may require.

- 19 The Bill would authorise compulsory purchase or temporary possession of areas of your Petitioners' land including river bed, which is part of the channel used for navigation, and foreshore. In your Petitioners' submission this is inappropriate and the compulsory powers should be limited to compulsory purchase of sub-soil for the railway tunnels.
- 20 Paragraph 10 of Schedule 2 to the Bill would empower the nominated undertaker to interfere temporarily with waterways including waterways within your Petitioners' jurisdiction. Authorised temporary interference would include construction or maintenance of temporary works, dredging works and temporary closure of waterways to navigation. Paragraph 6 of Schedule 12 to the Bill would disapply section 70 of the 1968 Act, which prohibits various activities in relation to works without a river works licence under section 66 of that Act, and section 73(3) of that Act, which prohibits dredging without a licence. It would therefore disapply usual requirements for river works licences and dredging licences from your Petitioners. In your Petitioners' submission this is not appropriate for temporary works and dredging works that are not integral to the railway works but are works in the rivers to facilitate the scheme, such as works for the areas around jetties to be used in conjunction with work sites ashore. In your Petitioners' submission paragraph 6 of Schedule 12 to the Bill should be deleted.
- 21 Your Petitioners have had discussions with officials of the Department for Transport about protection of your Petitioners' interests as port authority, and there are a number of further concerns in relation to which agreement in principle has already been reached. Your Petitioners hope that it will be possible to resolve their outstanding concerns by agreeing amendments to the Bill and by an Agreement between the Secretary of State, the nominated undertaker and your Petitioners. If any outstanding matters can not be resolved to your Petitioners' satisfaction, your Petitioners will beg leave to refer to such matters and will ask that the Bill be amended to meet any outstanding concerns.
- 22 For the foregoing and connected reasons your Petitioners respectfully submit that, unless the Bill is amended as proposed above, the clauses of and Schedules to the Bill referred to above, so far as affecting your Petitioners, should not be allowed to pass into law.

23 There are other clauses and provision of the Bill which, if passed into law as they now stand will prejudicially affect your Petitioners and their rights, interests and property and for which no adequate provision is made to protect your Petitioners.

YOUR PETITIONERS therefore humbly pray your Honourable House that the Bill may not be allowed to pass into law as it now stands and that they may be heard by their Counsel, Agents and witnesses in support of the allegations of this Petition against so much of the Bill as affects the property, rights and interests of your Petitioners and in support of such other clauses and provisions as may be necessary or expedient for their protection, or that such other relief may be given to your Petitioner in the premises as your Honourable House shall deem meet.

AND your Petitioners will ever pray, &c.

Agents for the above-named Petitioners

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PORT OF LONDON AUTHORITY

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