

1 September 2021

**VIA EMAIL**  
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Dear Kath,

## **THE LONDON RESORT DEVELOPMENT CONSENT ORDER (BC080001)**

### **PRODEDURAL DECISION RESPONSES AND PROGRESS REPORT 1 SEPTEMBER 2021**

On behalf of London Resort Company Holdings Limited (“LRCH”) this letter seeks to respond to the procedural decisions made by the Examining Authority (“ExA”) in their letter dated 12 August 2021 as relates to the progression of the application towards Examination. As part of the LRCH response relate to project progress, this letter and attachments also acts as the latest Progress Report (which was due on 1 September) and is combined into a single response given the inter-relationship between these issues.

#### **Procedural Decisions**

This letter sets out the Applicant’s response to the latest procedural decisions and addresses these in the same order as the last letter from the ExA.

#### Procedural Decision 1 – Examination, Environment Information and Consultation

##### *Start of Examination*

Without wishing to restate our response (6 August 2021) to the ExA’s letter (29 July 2021) in relation the start of Examination and any postponement, it is useful to provide an overview of our position, not least in relation to; whether environmental information and consultation is sufficiently current; whether all baseline information will be sufficiently current; and whether it effectively addresses any changes to cumulative effects.

Both the Applicant and the ExA have recognised that the decision by Natural England on 11 March 2021 to issue a SSSI Notification across much of the DCO Order Limits (Kent Project Site) has had a significant effect on the project which requires documentation to be updated to reflect this change. Updating the Documents requires additional Pre-Examination time, which has been permitted and is an important exercise in such exceptional circumstances.

Representations have been submitted by the Applicant, as well as other key landowners including Ebbsfleet Development Corporation regarding the deficiencies in the SSSI process and raising objections. However, whilst we cannot pre-empt the decision of Natural England on, or before, 10<sup>th</sup> December 2021, we have assumed that the Site will be designated (in whole or in part) as a SSSI for the purposes of our updated information.



As the ExA will be aware, the Applicant had already proposed some off-site mitigation (APP-156 – Environmental Statement Appendix 12.10 – General Principles of Offsite Ecological Mitigation). However, the Notification and likely Designation of the SSSI has resulted in the need to identify additional land for off-site ecological compensation. Ecological survey of the Site/s has been undertaken, with final seasonal restricted surveys being completed in October 2021.

To add further clarity to the position, the Applicant notes that the traffic modelling work undertaken within the submitted DCO documents was based around a spreadsheet model – which was previously agreed with stakeholders, including Highways England and Kent County Council (KCC). Subsequently, on 27<sup>th</sup> May 2021 KCC highlighted that a Kent Traffic Model had been recently verified and would be made available to the Applicant and recommended that the Kent Traffic Model should be used for any assessment work. The Applicant has been working with KCC and the Kent Traffic Model since then, including commercial discussions around its use, which will be included within future consultation.

HS1 is a key stakeholder for the Project and their infrastructure forms part of the modal shift which the Project is utilising when operational. HS1 has undertaken a study of passenger numbers related to the proposed development of the Scheme, with a focus on three of their stations: Ebbsfleet; Stratford; and St Pancras. Whilst we have been provided sight of a working draft of the study, we are unable to disclose the content at this time but will do so within the ES and during examination.

Considering the above factors, both alone and cumulatively, comprise exceptional circumstances in which the start of Examination can be delayed by the ExA, in line with the guidance.

#### *Environmental Information and Consultation*

In question 1 of the letter dated 12 August 2021, the ExA has also asked the Applicant to explain whether all the environmental information and consultation is sufficiently current; and to address cumulative effects with other developments, noting their relative timings and assessment of construction and operational effects.

As noted previously and further clarified above, environmental information is being updated by the Applicant. The update to the environmental information has been required due to the exceptional circumstances – but it also means that the information is sufficiently current at the point of Examination (and would have been consulted upon for additional rigour) – this relates to the Environmental Statement, and also other DCO documents which are being updated to reflect the SSSI related issues, and also the parameters / visual impact topics captured in recent correspondence.

This acknowledges the content of the ExA's letter and Advice Note 16 and as such, represents a change to a position previously stated by the Applicant. Using the Environmental Statement topics, the Applicant suggests that reports and appendices associated with the following will be updated and consulted upon:

- Land use and socio-economic effects (6.1.7);
- Land transport (6.1.9);
- Landscape and visual effects (6.1.11);
- Terrestrial and freshwater ecology and biodiversity (6.1.12);
- Noise and vibration (6.1.15);
- Air quality (6.1.16); and
- Greenhouse gases and climate change (6.1.20).

As requested by the ExA (9 July 2021), the Applicant has also been reviewing and amending the Design and Access Statement, Design Code and Parameter Plans so to clarify the height, scale and massing of the different types of building and structure. Furthermore, the Applicant has also been preparing visualisation and photomontages using the revised parameters noted previously and establishing a baseline of existing developments that are comparable to the various buildings and structures proposed. A workshop held in August

2021 with the Kent LPAs was particularly helpful and has contributed to the rationalisation of parameters as was always intended during the pre-Examination period.

Lastly, notwithstanding any update to documents where the baseline information has been updated, we have also updated relevant documents in respect of cumulative effects and construction/operational effects.

#### Procedural Decision 2 – Materiality of any change

The Applicant has been carefully assessing the potential for changes to the Project which may have arisen by virtue of the SSSI Notification and other matters, including both new documents and proposed amendments to submission documents by the ExA. It has previously been indicated that the project proposal, order limits, project effects (individually or cumulatively) or other matters would not give rise to a material change.

This assessment is kept under review by the Applicant and remain of the opinion that the same conclusion can be drawn, that there is no material change. It is noted that the ExA previously (25 June 2021) considered that the schedule of additional submissions do not constitute a material change, albeit the ExA reserved the right to review the position when documents are submitted.

The Applicant notes the content of Advice Note 16 and that there is no legal definition of ‘material’ but instead tests to apply as to whether a change is substantial or not and whether the development now proposed is not in substance the same that was originally applied for. To date, the environmental information, assessment and consultation undertaken has not led to any new or different likely significant environmental effects. Furthermore, the Applicant has no need to extend the Order land to acquire new land via Compulsory Acquisition powers.

Noting the above, the Applicant is of the view that the new and revised information does not constitute a request to materially change an application, as per paragraph 2.2 of Advice Note 16.

As noted above, it remains the ExA’s responsibility to decide whether new information constitutes a material change and, obviously, this cannot be done until submitted documentation has been reviewed. This, in turn, requires a sufficient period for proportionate and robust information to be assessed, together with a fair and equal consultation on that information prior to submission to the ExA – which aligns with procedural guidance and the content of Advice Note 16.

#### Procedural Decision 3 – Progress Reports

Consistent with the earlier Progress Reports, this latest update comprises this covering letter and two attached documents, specifically:

- i. a ‘*Schedule of updated and new documents (document reference 8.1)*’; and
- ii. a ‘*Schedule of consultation (document reference 8.2)*’.

The following paragraphs describe the content of the two documents, explaining how they should be read and interpreted, and other matters which have progressed but which sit outside of the content of the two attachments.

The exceptional circumstances noted in response to Question 1 have directly led to the content of the two schedules attached to this letter (Schedule of updated and new documents; and Schedule of consultation). The Applicant welcomes the ExA’s request to amend the structure of the Progress Report.

The Applicant considers that the two schedules have a continued role within the Progress Report as they include extensive information on all application documents and consultees. The Applicant proposes to reframe how the information is presented within the covering letter (this document), as per the following approach.

In line with the letter from the ExA (9 July 2021), one of the main tasks progressed this month is the revision of the parameters plans and engagement with the Local Authorities on the content of the parameters plans and illustrative masterplan. This information will also be reflected in a number of other application documents at the point of submission.

In addition to the above, further progress has been made in respect of the traffic and transport, as referred to in response to Procedural Decision 1 above. This has included engagement with Highways England on the application document and assessment work undertaken to date, as well as discussions around sensitivity modelling.

Furthermore, engagement in respect of both land use and socio-economic effects; and human health has continued with a range of organisation to help refine the assessment work already undertaken and further define the impacts of the Scheme, with progress also made in updating these ES chapters.

With regard to the second part of procedural decision 3, the Applicant also wishes to advise the ExA of a change to the programme for submitting new and updated information. The effect of the additional tasks, as noted in response to procedural decision 1, and the need to consult on all updated and new documents, not just environmental information as previously noted by the Applicant, has resulted in the following revised programme for the submission of documents to the ExA. The Applicant will submit all updated and new documents to the ExA on 18 February 2022, which includes a 5 week consultation period on all updated and new documents from 3 January 2022. We trust that this early indication addresses the ExA's question.

For the avoidance of doubt, the next Progress Reports are due to be provided on 29 September 2021. We provisionally anticipate further Progress Reports to be provided to the ExA on 27 October 2021 and 24 November 2021. Should the ExA have any comment on this matter then please do let us know.

#### Procedural Decision 4 – Consultation

As noted in the Applicant's response to Question 1 above, and noting the content of the ExA's letter (12 August) and Advice Note 16, the Applicant will be consulting on all updated environmental information, including both EIA and non-EIA information, and the draft DCO and Explanatory Memorandum.

Consulting on all updated information now, prior to submission to the ExA, would likely satisfy the procedural requirements. This position ties in with our current position in respect of materiality, as noted in response to Question 2 above.

Linked to the response to Question 1, above, and with regard to our working assumption that the SSSI will be confirmed by Natural England, the Applicant wishes to note the timeframe which Natural England are working to and to which they are bound. Natural England is currently assessing the responses to the consultation which they undertook between 11<sup>th</sup> March 2021 and 12<sup>th</sup> July 2021 on the SSSI Notification. A recommendation will be made to the Board of Natural England and, in turn, Natural England then has to make a decision to either confirm or withdraw the notification by 10<sup>th</sup> December 2021 or the notification will cease to exist. Natural England have advised that the decision will be widely promoted.

I trust the above deals with the latest issues raised by the ExA, though clearly please do not hesitate to get in contact.

Yours sincerely,



**Christopher Potts**



Director

Enc. Schedule of updated and new documents (document reference 8.1 Rev 04, 1 September 2021)  
Schedule of consultation (document reference 8.2 Rev 04, 1 September 2021)