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Lead Member of the Examining Authority
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By email only

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Dear Mr Smith

DCO Application by London Resort Company Holdings – BC080001: Response to questions posed by the Examining Authority in its letter of 21 December 2021

I am writing on behalf of Transport for London (TfL) in response to the questions you posed in your letter of 21 December in relation to the application by London Resort Company Holdings (LRCH / the Applicant) for an order granting development consent (the Application). We note your appointment as the Lead Member of the Examining Authority (ExA) and appreciate the opportunity to be consulted on the future procedure.

This letter is structured to provide TfL's response to each of your questions in turn.

1. Taking the current circumstances into account, can a continued delay in the commencement of the Examination of the Application until June or July 2022 still be justified in the public interest?

To be clear, the engagement undertaken by the Applicant with TfL to date has been extremely limited. This has fallen substantially short of the monthly frequency proposed in the schedule of consultation initially put forward by the Applicant in June 2021 in response to the ExA's request [examination library reference AS-025]. Other than some limited technical engagement with the Applicant and its consultants over the use of TfL's Railplan model, TfL has not met with LRCH since July 2021 and in recent months even correspondence has tailed off. As such, the Applicant has made very little attempt to try to address the significant concerns previously identified by TfL and other Interested Parties in their Relevant Representations in March 2021 about the scope and extent of the assessment of the transport impacts [RR-793]. This includes the lack of robust rail and highway modelling and the absence of an evidence-based assessment to determine the requisite mitigation. Nor is there any substantial evidence that the Applicant is undertaking the analysis necessary to address these and other deficiencies.

In the circumstances, TfL therefore feels that there is no alternative course of action but to commence the examination of the Application no earlier than June/July 2022, to allow the Applicant the time to address these fundamental concerns.

Nevertheless, we are also clear that a continued delay to the commencement of the DCO examination process is not in the interests of any party and is contrary to the spirit, if not the letter, of the process. If the Applicant is unwilling or unable to commit the time and resource necessary to engage with stakeholders and address the issues in a timely manner then it should be looking to withdraw its application and resubmitting it once sufficient progress has been made.

Certainly, if the Applicant has failed to undertake the further work necessary to allow the examination to start in June or July 2022 then that is entirely down to the lack of progress it has made in both the assessment of impacts and the engagement with Interested Parties that is essential for a sufficiently well-evidenced DCO examination. The Applicant cannot cite any other third parties as a cause for further delay since the likely designation of the Swanscombe Peninsula as a SSSI was known in early 2021 – which in any case would not have a bearing on the transport assessment. There have not been any other material changes in circumstances that could reasonably have delayed further work being undertaken.

2. If a delay is still justified:

- a. what steps will or should the applicant take to assure the ExA that the time period of the delay is justified;**
- b. is a schedule of updated and new documents and a schedule of consultation sufficient to justify ongoing delay; and, if not**
- c. what regular reports and other information should be provided to the ExA by the applicant and by what dates, to demonstrate that progress is being made and that the extension of time is being put to good use, which in turn might be suggested as being sufficient to offset the harm caused by ongoing delay and is therefore in the public interest; and**
- d. what further steps should the ExA take if commitments to progress continue not to be met?**

If the ExA upholds the extension to allow the Applicant further time to address the issues raised, a deadline should be set for the Applicant to provide the additional information required to enable the Application to be ready for examination. The Applicant should then be asked to set out clearly the programme of work it is undertaking to inform revised application documents and provide the further information requested by Interested Parties. This should not merely be a list of documents to be updated but also a schedule of the actual updated and new analysis that is being undertaken, the reason why such updated analysis is needed, and clear identification of the impact of any revisions on other assumptions. There should be frequent checkpoints – for example fortnightly – for the Applicant to update the ExA to demonstrate with sufficient detail that it is indeed undertaking the necessary

engagement and analysis with progress being made. A final deadline should be agreed by when the Applicant must deliver the updated application documents to allow an examination to start in June or July 2022. If the Applicant does not comply with these parameters, TfL suggests the ExA should leave the Applicant in no doubt as to the implications and if withdrawal of the Application is not forthcoming, the ExA should be prepared to bring forward the start of the examination if any further delay is deemed to serve no useful purpose given lack of progress.

For the Application to be ready for examination TfL considers the following further assessment in particular needs to be undertaken and information provided by the Applicant:

- Robust rail modelling – making use of established models (such as Railplan) – which are able to take account of network impacts such as re-routing due to crowding, as well as detailed assessment of the services connecting London Resort with central London and the stations along the route, to inform a comprehensive and credible rail strategy (in contrast to what has been submitted)
- Robust highway modelling – making use of established models – which include major roads within London and are able to take account of network impacts such as re-routing due to congestion, as well as use of an appropriate measure of capacity impacts that takes account of congested networks
- Adequate demonstration of the feasibility of the use of river services, including the capacity of pier infrastructure at Tilbury and in central London
- Understanding of the resilience of public transport (rail, bus/coach, river) and highway networks and how London Resort demand will be accommodated in the event of planned or unplanned closures or disruption
- Demonstration of how an overall sustainable mode share will be ensured, the measures to achieve this and enforceable limits on visitors if not achieved
- Evidence-based assessment of the required mitigation on public transport and highway networks – including the number of visitors triggering particular infrastructure and service interventions – with work undertaken in conjunction with transport stakeholders to agree and develop the mitigations

TfL has requested the bulk of this information from the Applicant in its Relevant Representation submitted in March 2021 [RR-793].

TfL would want to see updated application documents, including the Transport Assessment, by no later than May 2022 to enable review and consideration of the information in advance of examination commencing in June/July.

The schedule of documents presented at previous four-weekly progress updates is in itself not sufficient as it has not proven useful for Interested Parties and the ExA in understanding what work is being undertaken. For example, the Transport Assessment has repeatedly been stated as being less than 20 per cent complete in every published

Schedule of updated and new documents between June and September 2021 [AS-025 and AS-053] with no further updates being provided since September. This is despite the Applicant committing to undertaking highway and public transport modelling which, if to be used meaningfully, would result in substantial changes to the Transport Assessment being required. Indeed, while the Applicant requested to use TfL's Railplan model in June 2021 to assess public transport impacts, and agreed to pay the associated fees to do so, this work has not meaningfully progressed and the license fee has not been paid.

The revised transport modelling would also drive a need to update other aspects of the Environmental Assessment including the noise and air quality assessment. Furthermore, revisions to any other DCO documents may result in changes to assumptions that impact on the transport modelling. This all demonstrates the major limitations of a schedule of updated and new documents in informing the ExA and Interested Parties about progress with the examination, given the approach of the Applicant to date.

The schedule of consultation, while accurate in TfL's case, has also demonstrated how the Applicant is consistently failing to undertake the consultation it has committed to do. As discussed in response to Question 1 above, the Applicant committed to monthly meetings with TfL, but has not now met with TfL to discuss any matters other than technical details of TfL's Railplan model since July 2021. The schedule of consultation is therefore of little value in the absence of a fundamental shift in the Applicant's readiness to engage with Interested Parties.

3. If, taking account of the changed circumstances, further delay is not justified, would it be appropriate for the ExA to curtail delay and to proceed directly to Examine the application as currently before it, commencing in March 2022?

TfL does not consider it would be beneficial to start the examination in March 2022 as the Applicant has given assurances that it will provide updated application documents to enable a better informed examination for the ExA and Interested Parties to start by June or July 2022. However, if the Applicant fails to do this or misses further deadlines, and does not withdraw its application, then starting the examination earlier may be the only option open to the ExA to avoid continued uncertainty for all involved. TfL recognises that the continued delays are causing major issues for local residents and businesses, and risk running counter to the public interest.

In such circumstances, it is likely that a larger number of Interested Parties would be objecting to the DCO, on the basis that they would have insufficient information to be assured about the impacts of the scheme on their interests and appropriate mitigation being provided

TfL also assumes that the Applicant would continue to attempt to update its application documents which could result in large volumes of new information being provided during the examination, unless the ExA decides to not accept this updated

information. This could make an earlier examination difficult to manage for the ExA and challenging for Interested Parties to adequately respond to deadlines if faced with a need to review large volumes of new information in short timescales.

4. What other considerations might be relevant to this procedural decision?

TfL considers that it would be appropriate and in the public interest for the Applicant to commit to covering the reasonable costs (time and materials) of statutory authorities in responding to the DCO application for work that is over and above their statutory duties. This issue has been exacerbated by the prolongation of the pre-examination period and the difficulties in engaging with the Applicant. Cost recovery would enable statutory authorities to be fully engaged in the process rather than having to rely on the potentially very limited resources that would otherwise be available. The risk would otherwise be that the full involvement of such authorities in the examination would be hindered, resulting in the ExA being less well informed in making its recommendations following the examination.

The ExA should also be willing to award costs to Interested Parties where the Applicant fails to provide the information requested by Interested Parties to the satisfaction of the ExA and within such timescales as to permit examination to commence in June/July. This would provide reassurance to Interested Parties that their continued expense could be recovered in the event the Applicant continues to fail to provide requested information.

In this context, TfL also notes that the Funding Statement [APP-031] indicates that the Applicant is not currently funded to carry out the Development, but that investors have been identified. According to paragraph 4.4 of the Funding Statement, “the investors’ commitment to fund the project will be subject to it receiving development consent”. Further, under Article 54 of the draft DCO [APP-027], the Applicant is not required to evidence the existence of funding until the DCO is made. It is therefore not clear that the Applicant will have sufficient funds to pay third party costs if the DCO is refused. The ExA may wish to consider requiring the Applicant to provide proof at this stage of its ability to pay third party costs should these be awarded (for example by providing a form of security to the Planning Inspectorate).

5. What other possible measures might the ExA lawfully and fairly decide to take in the circumstances and recognising the concerns of parties?

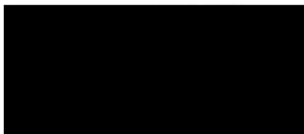
In the event that the Applicant fails to provide sufficient information to enable a proper examination, but also fails to withdraw its application at the request of the ExA, the ExA may wish to consider curtailing the six month examination period to a significantly reduced duration. Whilst the ExA is under a duty to complete the examination within a six-month period, it does not need to utilise the full six months. Indeed, it would not be in the public interest to entertain a six-month examination period for an incomplete application not capable of proper examination, and it would not be fair on Interested Parties to incur the significant expense associated. Instead the ExA could decide to

hold a limited examination whereby hearings are held immediately following the preliminary meeting (compulsory acquisition and open floor only) and followed by a single round of written submission, and then only any further submissions required to ensure that Interested Parties have had the opportunity to comment on the application.

If the pre-examination process is to lead to a fruitful and informed examination, it will be essential that the ExA takes a robust approach with the Applicant and is unambiguous about what is required and the consequences of continuing to not meet the expectations of the DCO process.

TfL remains ready to work with the Applicant and other Interested Parties and to assist the ExA to help ensure this Application can be moved forward according to the proper process.

Yours sincerely



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