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To: [Thurrock FPG](#)
Cc: [Hazel Anderson](#); "[James Trimmer](#)"; [Michael Atkins](#)
Subject: Submission in response to Procedural Deadline B sent on behalf of the Port of London Authority
Date: 29 October 2020 17:07:11
Attachments: [image001.png](#)
[Final PLA response for Procedural Deadline B.PDF](#)

Dear Sirs,

Please find attached the submission on behalf of the Port of London Authority in response to Procedural Deadline B.

You will note from the final paragraph of the response that the PLA and Winckworth Sherwood intend to attend Part 2 of the Preliminary meeting principally to observe. However, if the Examining Authority has any questions or there is further debate on the matters covered by this submission in which the PLA could assist further, we would reserve the right to speak if required.

We would be grateful, therefore, if the details required to join the Microsoft Teams meeting be sent to the following individuals:

- Michael Atkins (PLA) - Michael.Atkins@pla.co.uk
- Hazel Anderson (Winckworth Sherwood) - handerson@wslaw.co.uk
- Samantha Woods (Winckworth Sherwood) – swoods@wslaw.co.uk

I should be grateful if you could acknowledge receipt.

Kind regards,
Sam

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THE THURROCK FLEXIBLE GENERATION PLANT DEVELOPMENT CONSENT ORDER

Response to Procedural Deadline B submitted on behalf of the Port of London Authority

PINS Reference Number	EN010092
Interested Party Reference Number	20025539
Document Ref.	PLA 2
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Date	29 October 2020

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1. Introduction

- 1.1 The Port of London Authority (“the PLA”) observed the Preliminary Hearing Part 1 on 20 October 2020 and has given further thought to the matters raised at the hearing where relevant to the PLA’s statutory undertaking and the matters already raised in its Relevant Representations (“RR”) (PLA 1). It has also had the opportunity to fully consider the submission on behalf of the Port of Tilbury London Limited (“PoTLL”) dated 6 October 2020, the Applicant’s response to that letter dated 16 October 2020 (“the Applicant’s response letter”) and the further submission on behalf of PoTLL dated 26 October 2020 (“the second PoTLL letter”).
- 1.2 The PLA wishes to raise the following points of concern for consideration before Part 2 of the Meeting on 4 November 2020. The points below do not necessarily follow the order of the Agenda but references to the relevant Agenda points have been added where appropriate.

2. Navigation Risk Assessment (“NRA”) (Revised Agenda item 8)

- 2.1 The PLA would like to put on record that it shares the disappointment of PoTLL that the NRA was not submitted as part of the Environmental Statement (“ES”) alongside the original application, a point it had already raised in paragraph 5.2 of its RR (PLA 1). In fact, the need for a NRA if barges and the river were to be used had been made clear to the Applicant in the PLA’s response to the original Scoping consultation and at that stage the PLA was already expressing its disappointment that “further consideration of navigation matters has not been documented” (PLA response to Scoping consultation, Scoping Opinion dated September 2018). The point was reiterated to the Applicant when it approached the PLA for a meeting just prior to the original Application being made in February.
- 2.2 The PLA supports the analysis of the Scoping Report, ES and NRA set out in paragraphs 40 to 45 of the second PoTLL letter. The option of using barges on the river was considered in the Scoping Report (at paragraph 3.35) and the Scoping Opinion did require an assessment of impacts on navigation arising from this (at 4.3.11 in table 4.3). The PLA, therefore, agrees with PoTLL that there has been “a failure to provide a description of the likely significant effects of the ‘proposed development’, that is, including the causeway” (paragraph 44 of the second PoTLL letter).
- 2.3 Additionally, the PLA agrees with the point made in paragraphs 15 and 16 of the second PoTLL letter that emphasise, particularly in light of the refusal of permission in the recent Thanet Offshore Extension Wind Farm DCO, the importance and relevance of navigational risk issues. To echo the second PoTLL letter: “navigation risk, safety and the statutory functions of ports in particular should not be seen as a minor issue capable of being ‘sorted out’ during the Examination” (paragraph 16).
- 2.4 The PLA supports the assessment of the current position on the NRA set out in paragraph 46 of the second PoTLL letter. For the record, the PLA has met with the Applicant to discuss the NRA but agrees with PoTLL that the proposed methodology is not yet agreed. Concerns have been raised by the PLA’s Harbour Master with the Applicant’s consultant particularly in relation to the assessment of the operation of the causeway on shipping on the river Thames.
- 2.5 The PLA understands that following further discussions with the Harbour Master, the Applicant’s consultant is now re-drafting the NRA to address these concerns but can confirm that it has not seen such further draft. It is understood from paragraph 3 of the Applicant’s response letter that the Applicant intends to submit a version of the NRA prior to Part 2 of the Preliminary Meeting on 4 November 2020. However, the PLA

wishes to make clear that receipt of an NRA at that point cannot be taken as the Applicant having provided an adequate assessment and mitigation of risks to shipping on the river Thames; instead it is the start of a process and dialogue between the PLA and the Applicant which will entail a considerable amount of work. The PLA will need to consider the document's adequacy and then, once satisfied that an appropriate approach has been taken, work with the Applicant regarding any proposed mitigation measures to ensure safe navigation and, then agree in particular, how and by what means these are to be secured to the PLA's satisfaction within the Order or otherwise. Therefore, even if a copy of the NRA is received prior to 4 November 2020, the PLA will not be in a position to have considered these matters prior to Part 2 of the Preliminary Meeting nor most likely by Deadline 2 when Written Representations and Statements of Common Ground are currently due.

3. Applicant's proposed change request re Work No.9 (Revised Agenda Item 3a)

- 3.1 Allied to the points raised in paragraphs 2.1 to 2.5 above, the PLA also notes from comments made at Part 1 of the Preliminary Meeting that the Applicant is now proposing to submit a change request by 16 November 2020 to remove Work No.9 – the saltmarsh mitigation works in the river. It is regrettable from the PLA's perspective that changes are likely to be made to works in the river at the request of Interested Parties which might have been avoided had more effective consultation taken place before the Application was made.
- 3.2 Furthermore, the PLA was surprised to hear the Applicant's comments at Part 1 of the Meeting that this decision was taken after a 5-way meeting involving the PLA, among other relevant bodies. The PLA would be keen to know when this meeting was held, who attended on behalf of the PLA and what was agreed because it has no record of any PLA attendance at such a meeting.
- 3.3 The saltmarsh mitigation is closely linked to the proposed causeway (Work No.10), including but not limited to the fact that the two works share the same limits. The PLA already had concerns regarding the nature of the causeway, whether it is a permanent or temporary structure, its future legacy and its eventual decommissioning, which details are not yet entirely clear in the application documents and from discussions with the applicant (see paragraph 5 of the PLA's RR – PLA 1).
- 3.4 This now has further relevance given the proposed removal of the saltmarsh mitigation and it is not clear whether that has any bearing on the permanency or otherwise of the structure. Similarly, it is not clear what impact it would have on the limits of deviation of Work No.10. During Part 1 of the Meeting, the Applicant identified that the removal of Work No.9 would have an impact on its proposals for dredging which is of particular relevance and concern to the PLA. The PLA is unclear whether these are matters that will be included in the change report due on 16 November and, as with the NRA, the PLA will have very little time to consider its position on these proposed changes to works in the river prior to Deadline 2 when Written Representations and Statements of Common Ground are currently due.

4. Principal issues – Annex E of the Rule 6 letter (Agenda Item 4)

- 4.1 Given these are both matters which are distinct from landward traffic and transport issues, the PLA fully supports the PoTLL submission that navigation and shipping ought to be a principal issue in its own right, rather than navigational safety being an issue within Traffic and Transport. The importance of effects of the proposals on navigation and shipping within the jurisdiction of two statutory harbour authorities should be considered in more specific detail. If the Examining Authority ("ExA") decides to include this as a separate issue, it could also cover the PLA's concerns on the nature and

legacy of the proposed causeway (Work No.10) raised in paragraphs 3.3 and 3.4 above.

- 4.2 The PLA therefore requests that the ExA add 'Ports, Navigation and Shipping' to the list of Principal Issues set out in Annex D of the Rule 6 letter.

5. SOCG matters – Annex E of the Rule 6 letter (Agenda Item 5)

- 5.1 The PLA notes that there are a number of matters listed in Annex E for inclusion in a Statement of Common Ground (SoCG) between the PLA and the Applicant. However, the PLA as the statutory harbour authority for the tidal Thames and owner of much of the river bed itself, has powers under the Port of London Act 1968 including the licensing of works and dredging on the river, reflecting its conservancy duties to maintain a safe navigation for users of the river, and environmental duties, including those of conservation under s68A of the Harbours Act 1964. It therefore considers that any SoCG between it and the Applicant ought to reflect all the matters for which the PLA ordinarily has responsibility. The PLA requests that the SoCG also includes the following topics:

- 5.1.1 The effect on the marine environment including marine habitats, species and nationally designated sites;
- 5.1.2 The effect on European sites and features relevant to Habitat Regulations Assessment; assessment, methodology and conclusions;
- 5.1.3 Sediment analysis and dredging disposal (including matters related to timing);
- 5.1.4 Cumulative and in-combination effects;
- 5.1.5 The adequacy of the outline Saltmarsh Enhancement and Management Plan and outline Ecological Mitigation Plan (if this is retained in the proposals);
- 5.1.6 The Deemed Marine Licence (Schedule 8 of the dDCO); and
- 5.1.7 Adequacy and means of securing mitigation.

6. Examination timetable – Annex C of the Rule 6 letter (Agenda Item 6)

- 6.1 Given that the fundamental matter of what the proposed works and operations in the river are to be is now uncertain and the fact that the NRA to deal with effects on shipping and navigation has not yet been submitted, the PLA is very concerned that the Examination Timetable at Annex C of the Rule 6 letter currently requires it to submit its Written Representations, as well as a SOCG, by 7 December 2020. To properly prepare these documents to assist the Examination into the proposed scheme, the currently missing information will need to be considered in significant detail.
- 6.2 The PLA recognises that it is a matter for the ExA to decide if, with the current information and assessment the Environmental Statement is adequate and whether to start the Examination. However, if the Examination is started as currently scheduled, the PLA wishes the ExA to take note that it will still be awaiting fundamental information integral to its Written Representations, namely the NRA and the detail on the change regarding the saltmarsh mitigation.
- 6.3 The delayed receipt of these documents and the currently proposed 7 December (Deadline 2) deadline to respond, unfairly prejudices the PLA's ability to both protect its interests and assist the ExA in its consideration of the relevant issues. The PLA therefore requests that it be given an extended deadline to provide its Written

Representations and the SOCG in order to allow it proper opportunity to consider and comment on this currently missing information. Without having had sight of these documents, or time to properly consider their contents, it is difficult for the PLA to know how much work is involved and how much further time it might need. The PLA would, therefore, reserve its position as to how long an extension is required.

7. Attendance at Part 2 of the Preliminary Meeting

- 7.1 The PLA intends to attend Part 2 of the meeting on 4 November 2020, principally to observe, but if the ExA has any queries regarding the matters raised above, the PLA and its legal advisors, Winckworth Sherwood, would wish to reserve a right to speak if required.