
THURROCK FLEXIBLE GENERATION PLANT

Comments in relation to the supplementary documents submitted by the Applicant at Procedural Deadline C

PINS Reference Number	EN010092
Interested Party Reference Number	20025539
Document Ref.	PLA 3
Author	Winckworth Sherwood LLP
Date	25 January 2021

Minerva House
5 Montague Close
London
SE1 9BB
DX: 156810 London Bridge 6

T 020 7593 5000
F 020 7593 5099
www.wslaw.co.uk

Winckworth
Sherwood

Solicitors and
Parliamentary Agents

Introductory comments

1. The Port of London Authority (“the PLA”) has considered the 57 documents submitted by the Applicant at Procedural Deadline C. As noted by the Examining Authority (“ExA”) in his letter of 6 January 2021, the documents relate in part to the further information requested in the ExA’s letter of 2 November 2020, in part to issues raised by Interested Parties and in part to the change request which the Applicant has now submitted and which the ExA has accepted into the Examination.
2. The PLA has taken the opportunity to comment in the tables below on all of the documents submitted which it considers relevant to its concerns. These comments relate only to these documents or parts of documents in the form submitted at Procedural Deadline C and not necessarily to that document in its entirety. If necessary, the PLA reserves the right to comment on the document in its entirety within the application as a whole at the appropriate point in the Examination i.e. Written Representations.
3. It will be noted from the comments below that there are a number of areas in which the PLA will require changes to be made to the drafting of the DCO. These amendments in relation to the Procedural Deadline C documents are set out in general terms in the tables below but the PLA is in wider discussions with the Applicant, including on suggested amendments to the draft DCO and related matters. It is hoped that these amendments can be agreed with the Applicant and the ExA updated accordingly.
4. Turning to the other points required for Procedural Deadline D, the PLA wishes to reserve a right to speak at Part 2 of the Preliminary Meeting on any matters relating to the Examination Timetable, if any other party raises suggested changes to that published as Annex C to the Examining Authority’s Procedural Decision letter dated 2 November 2020.

PDC-001 – Procedural Deadline C Cover Letter

Reference	Extract	PLA comments
TFGP responses to Natural England DAS letter dated 21/10/20	<p><i>“Construction of the causeway will take six months”</i></p> <p><i>“The causeway will be privately owned by the Applicant and will not be legally accessible to members of the public notwithstanding any coast path changes.</i></p> <p><i>We agree that the causeway should be fenced and unauthorised access should be prevented. A document detailing this has been circulated on 05/11/20 for comment.”</i></p>	<p>The PLA notes this timescale and will require further detail on the construction methodology and timescales when available.</p> <p>The PLA notes the proposed introduction of fencing and a gate on the causeway. The PLA requires that appropriate signage must be provided on the riverside detailing ownership and a contact in the event of the causeway being used to exit the river Thames in the case of an emergency.</p>
TFGP response to Port of London Authority consultation responses	<p><i>“We consider that the local sediment chemistry is well understood from the sampling for the Tilbury2 application together with this application, and that the sediment samples taken for this application remain representative of the area in which the causeway would be constructed even though the dredge volume has changed since the Sampling Plan was approved.</i></p> <p><i>However, we have drafted a DCO requirement to undertake further sediment sampling prior to construction for approval by the PLA and MMO of the material disposal. The further sampling would be in accordance with an updated Sampling Plan to be approved.</i></p> <p><i>In the unlikely event that further sampling were to identify unexpected contamination preventing material disposal as proposed, the material could be disposed of to a licensed onshore landfill. The road transport movements required for</i></p>	<p>The PLA notes the Applicant’s intention to carry out further sediment sampling prior to construction. In line with other matters affecting the conservancy of the river Thames, and following disapplication of sections 66 to 75 of the Port of London Act 1968 (“the 1968 Act”), this is a matter which must be considered by the PLA for approval in accordance with the procedures in the DCO. The PLA is considering any necessary adjustments to the protective provisions and other points of DCO drafting to discuss with the Applicant.</p>

Reference	Extract	PLA comments
	<p><i>this, in a worst case, would be well within the construction traffic that has been assessed in the Environmental Statement.”</i></p> <p><i>“The Applicant will not be making a separate Dredging License or River Works license application.</i></p> <p><i>Article 10 of the draft DCO disapplies sections 66 to 75 of the Port of London Act 1968, removing the requirement for licences under that Act for construction.</i></p> <p><i>Schedule 8 (Deemed Marine License) of the DCO authorises construction of the causeway and barge berthing pocket including dredging.</i></p> <p><i>The Applicant has always included dredging in the description of Work no.10 as it is necessary for the construction of that work. The dredging and volumes of material to be dredged are also set out in the deemed marine licence in schedule 8 of the Order. However, noting the PLA’s submission that it did not consider the power to dredge to be explicit, the Applicant has proposed a new article 37, power to dredge, based on the equivalent powers granted in the Port of Tilbury Expansion DCO, that would be of assistance in removing any dubiety.”</i></p>	<p></p> <p>The PLA is the statutory harbour authority for the tidal river Thames between Teddington and the outer Thames Estuary. It is also the owner of the riverbed for much of that stretch of the river and all of the riverbed currently included within the Order limits for this DCO.</p> <p>The PLA’s statutory functions include responsibility for conservancy, hydrographic surveying, dredging, managing the public navigation and controlling vessel movements. These duties, in particular the conservancy duty, mean that the PLA must ensure the river is fit to be used safely for navigation by all users. The PLA must retain adequate control over works and dredging activities in the river so as not to be in breach of its statutory duties. As these controls under Part 5 of the 1968 Act have been disapplied under article 10, the PLA must have the ability to control and approve such works and operations through dedicated protective provisions and appropriate amendment of other wording in the draft Order.</p> <p>The role of the PLA in this regard is entirely separate from the deemed marine licence which the Applicant is seeking from the Marine Management Organisation.</p> <p>The PLA is considering any necessary adjustments to the Protective Provisions and other points of DCO drafting to discuss with the Applicant but, to confirm, subsequent maintenance dredging required for future uses of the causeway will not be approved under the Protective Provisions and a separate application for a dredging licence will be required under s.73 of the 1968 Act.</p>

Reference	Extract	PLA comments
	<p><i>“The assessment of material disposal by WID or excavation was an ‘up to’ volume as a worst-case design envelope parameter for the environmental impacts of this activity.</i></p> <p><i>Where a proportion of the material would be used for saltmarsh creation (under a proposal that the Applicant now intends to withdraw), then less would be disposed of than in the worst-case assessment for disposal. This is not a shortfall in material.”</i></p>	<p>The PLA is now content that there was not a shortfall in material and, in any event, that the saltmarsh creation proposal is intended to be withdrawn.</p>
	<p><i>“For the avoidance of doubt, we confirm that there is no proposal to import material for the saltmarsh creation.</i></p> <p><i>As set out in the consultation letter the Applicant intends to in any case to withdraw the saltmarsh creation proposal on the advice of several consultees.”</i></p>	<p>The PLA is now content that there is no proposal to import material and, in any event, that the saltmarsh creation proposal is intended to be withdrawn.</p>
	<p><i>“With regard to a test of environmental sustainability for an alternative access for AILs, as you note the causeway has the benefit of reducing road movements but there is a tension between this benefit and the environmental impact that some consultees have highlighted of retaining the causeway in the long term. We do not consider that an environmental sustainability test in the DCO requirement could resolve that tension.</i></p> <p><i>As set out in the DCO requirement, any alternative access would be subject to obtaining consents at the time, which as a matter of course includes appropriate environmental assessment and controls.”</i></p>	<p>The PLA notes the Applicant’s response on this point. It also notes that a criterion of environmental acceptability has been introduced at paragraph (4)(b) of Requirement 17 in Schedule 2 to the DCO. The PLA supports this addition but would suggest that, for consistency, it must be included with each reference to “permanent, feasible and economic” throughout Requirement 17.</p> <p>Please see further comments on the drafting of the DCO below.</p>

Reference	Extract	PLA comments
	<p><i>“Clarification now included in section 4.3.4 on what intertidal habitat will be removed, i.e. intertidal habitats on the causeway structure itself and potential minor disturbance of sediments accumulated on/within it. This would not involve additional dredging of sediment.”</i></p>	<p>The PLA is content with the clarification added.</p>
	<p><i>“Further detailed hydrological assessment has not been undertaken because the decommissioning will result in a reversal of those changes to hydrodynamic processes outlined in the construction phase. As outlined in section 4.3.4, accretion of sediments into the former causeway footprint following decommissioning will occur at similar timescales to those for the adjacent dredge pocket, i.e. months to a few years.”</i></p>	<p>The PLA notes that further detailed hydrological assessment has not been undertaken. In line with other matters affecting the conservancy of and safety of navigation on the river Thames, and following disapplication of sections 66 to 75 of the 1968 Act, this is a matter which must be considered by the PLA for approval in accordance with the procedures in the DCO. The PLA is considering any necessary adjustments to the protective provisions and other points of DCO drafting to discuss with the Applicant.</p>
	<p><i>“Clarifications now included in paragraphs 4.2.6 and 4.2.7. The impact is not reversible while the causeway remains in place. The loss described in 4.2.7 is beneath the causeway structure.”</i></p>	<p>The PLA is content with the clarification added.</p>
	<p><i>“These points are noted and would be addressed at the time of preparing the Causeway Decommissioning Plan.”</i></p>	<p>The PLA notes the approach that these matters will be considered at the time of the preparation of the Causeway Decommissioning Plan. In line with other matters affecting the conservancy of and safety of navigation on the river Thames, and following disapplication of the sections 66 to 75 of the 1968 Act, the Causeway Decommissioning Plan is a matter which must be considered by the PLA for approval in accordance with the procedures in the DCO. The PLA is considering any necessary adjustments to the protective provisions and other points of DCO drafting to discuss with the Applicant.</p>

PDC-008 - Deemed Marine License Co-ordinate Plan

Reference	Extract	PLA comments
		See comments on limits of deviation for Work no.10 in relation to PDC-056.

PDC-009 and PDC-010 – Draft Development Consent Order

Reference	Extract	Comments
Article 37 Power to Dredge	New article 37.	<p>The PLA is pleased that an express power to dredge has been included in the DCO to avoid any confusion on this matter. It will provide the Applicant with a full mark up of necessary changes to this article in due course but raises some general points on this article below.</p> <p>The power expressed in article 37(1) is too broad as currently drafted. The PLA will require the power to dredge to be limited to a much smaller area of the river Thames than the current limits of Work no.10 provide for. The PLA suggests the power be limited to within the area shown within the dredging boundary on the causeway concept design revised layout plan within the Concept Design of Causeway for Delivery of Abnormal Indivisible Loads (APP-130).</p> <p>To reiterate what is set out above, the DCO does not authorise any subsequent maintenance dredging required for future uses of the causeway. These will not be approved under the Protective Provisions and a separate application for a dredging licence under s.73 of the 1968 Act will be required.</p> <p>Article 37(4) is inappropriate for inclusion in the DCO. The exemption in</p>

Reference	Extract	Comments
		<p>section 75(3) of the Marine and Coastal Access Act 2009 is only applicable to harbour authorities. Since the Applicant is not a harbour authority they would not be able to rely on the exemption in any event and therefore it is not appropriate to include this paragraph. This will also need to be reflected in the revised Explanatory Memorandum.</p> <p>Finally, the PLA would require wording to be added to clarify that the exercise of the powers in the article is subject to the requirements of the protective provisions included in the DCO for the benefit of the PLA.</p>
Schedule 1 – Work no.10	“gated” added in description of causeway	Please see comments on PDC-001 in relation to the new gate proposal.
Schedule 2, requirement 4	Detailed design	The PLA requires a new paragraph to this Requirement to ensure that the construction of Work no.10 is carried out in accordance with the principles and design contained in the Concept Design of Causeway for Delivery of Abnormal Indivisible Loads document (APP-130). It will provide the Applicant with suggested drafting in due course.
Schedule 2, requirement 12	New paragraphs (3), (4) and (5)	<p>The PLA notes the Applicant’s intention to carry out further sediment sampling prior to construction. In line with other matters affecting the conservancy of the river Thames, and following disapplication of sections 66 to 75 of the 1968 Act, this is a matter which must be considered by the PLA for approval in accordance with the procedures in the DCO.</p> <p>The sediment sampling plan under Requirement 12 will need to include details of an alternative method of dredging to be used if it is determined that WID would not be appropriate.</p>
Schedule 2 – new requirement	New requirement.	In line with other matters affecting the conservancy of and safety of navigation on the river Thames, and following disapplication of sections

Reference	Extract	Comments
17		<p>66 to 75 of the 1968 Act, the decision on when to decommission the causeway is a matter which must be considered by the PLA for approval in accordance with the procedures in the DCO. It will provide the Applicant with a full mark up of necessary changes to this article in due course but raises some general points on this article below.</p> <p>It is understood that a review of the AIL access options is to take place within the first five years after the commencement of operation of Work no.1 and every five years thereafter. The drafting of 17(1) needs to be amended to reflect this.</p> <p>Overall, the PLA does not consider that the Requirement works correctly as drafted because there is no mechanism for anyone other than the Applicant to assess whether any of the alternatives meet the criteria in (5). The relevant planning authority must be given such a role and the PLA would expect to be consulted on the report in conjunction with it.</p> <p>As expressed above, it notes that a criterion of environmental acceptability has been introduced at paragraph (4)(b) of Requirement 17 in Schedule 2 to the DCO. The PLA supports this addition but would suggest that, for consistency, it must be included with each reference to “permanent, feasible and economic” throughout Requirement 17. The PLA would also suggest that a definition of environmental acceptability be added to 17(5).</p> <p>Finally, the PLA considers that the cost of decommissioning causeway must be included in the consideration of costs under 17(5)(c).</p>
Schedule 2 – new requirement 18	New requirement.	<p>In line with other matters affecting the conservancy of and safety of navigation on the river Thames, and following disapplication of sections 66 to 75 of the 1968 Act, the Causeway Decommissioning Plan is a matter which must be considered by the PLA for approval in accordance with the procedures in the DCO. It will provide the Applicant with a full</p>

Reference	Extract	Comments
		<p>mark up of necessary changes to this article in due course.</p> <p>The PLA notes that since the consultation version of this Requirement, it has been added to 18(1) and will be consulted by the local planning authority on the decommissioning plan. It would request that for consistency the references to the PLA and the Environment Agency are also added to 18(2).</p>

PDC-012 Environmental Statement - Assessment of Causeway Decommissioning

Reference	Extract	PLA comments
<p>Paras 1.2.2 and 1.2.3</p>	<p><i>“A Causeway Decommissioning Plan would be produced to detail the works and environmental management at the time, but in summary, decommissioning of the causeway would involve the removal of the security gate, concrete slabs and stone gabion foundations comprising the causeway structure. The permanent sea wall would be reinstated in place of the access gate. The mudflat area beneath the causeway and barge berthing pocket would refill through natural accretion. The stone from the causeway is likely to be repurposed for coastal defence works elsewhere and therefore likely to be removed by barge; whether by barge or road vehicle the transport requirements would be no greater than in construction. 1.2.3 Causeway decommissioning activities are therefore expected to give rise to types of potential impact that are similar to construction and which would be no greater in terms of magnitude or duration.”</i></p>	<p>Please see above comments on the Causeway Decommissioning Plan.</p>

Reference	Extract	PLA comments
Para 2.9.1	<i>“The temporary impact of barge movements (if any are required) would have no greater effect than assessed for construction in the Shipping and Navigation Risk Assessment, as no greater number of barges would be needed. Details of any vessel movements and a further assessment of shipping/navigation risks, if required, would be provided through the Causeway Decommissioning Plan.”</i>	The PLA agrees that the details of vessel movements and a further assessment of shipping and navigation risks would need to be provided through the Causeway Decommissioning Plan. For this reason this needs to be included in the list of matters at paragraph 3 of Requirement 18 in the DCO – see comments on drafting earlier in this document.

PDC-015 and PDC-016 Submission for Procedural Deadline C - Environmental Statement Volume 2 Chapter 2 - Project Description

Reference	Extract	PLA comments
Para 2.10.4	<i>“The causeway will have a 2.5 m high palisade security fence and gate at at the landward end to prevent access onto it from the footpath, to prevent unauthorised recreational use. The fencing will be positioned inland of the inter-tidal zone so that access onto the causeway would not be possible without wading through the soft mud at this location.”</i>	Please see comments on PDC-001 in relation to the new gate proposal.
Para 3.2.12 and para 3.2.24	<i>“The anticipated dredging method for the barge beaching pocket is by a floating marine dredging plant using water injection dredging (WID). The remaining material would be excavated working from the shore as described in the preceding paragraph. Approximately 16,100 m3 of material is expected to be dredged and excavated in total, of which up to 13,000 m3 would be dredged by WID and the remaining material excavated.”</i> <i>“Dredged material from preparation of the barge beaching pocket and causeway construction will be disposed via</i>	Please see comments above in relation to Requirement 12.

Reference	Extract	PLA comments
	<p><i>dispersion in the Thames (for material removed by WID) or onshore within the main development site or to a licensed landfill. Initial sediment analysis, detailed in Volume 6, Appendix 17.2: Hydrodynamic Modelling and Sediment Assessment, indicates that the dredged material is unlikely to contain contamination of concern.”</i></p>	
<p>Paras 3.6.4-3.6.6</p>	<p><i>“The causeway will be a permanent structure during the lifetime of the Flexible Generation Plant for the reasons set out in paragraph 2.10.7, unless a preferable alternative for AIL access becomes economically and practically feasible. The causeway will be decommissioned at the end of the Flexible Generation Plant’s operating lifetime, or earlier if the tests for decommissioning before then are met (as set out in the DCO requirement on this point).</i></p> <p><i>Decommissioning of the causeway would involve the removal of the security gate, concrete slabs and stone gabion foundations comprising the causeway structure. The permanent sea wall would be reinstated in place of the access gate. The mudflat area beneath the causeway and barge berthing pocket would refill through natural accretion. The stone from the causeway is likely to be repurposed for coastal defence works elsewhere and therefore likely to be removed by barge; whether by barge or road vehicle the transport requirements would be no greater than in construction.</i></p> <p><i>Causeway decommissioning activities are therefore expected to give rise to types of potential impact that are similar to construction and which would be no greater in terms of magnitude or duration.”</i></p>	<p>Please see above comments on the PLA’s approval of the Causeway Decommissioning Plan.</p>

PDC-019 and PDC-020 Submission for Procedural Deadline C - Environmental Statement Volume 3 Chapter 17 - Marine Environment

Reference	Extract	PLA comments
		The PLA has no further specific comments on the amendments to this Chapter.

PDC-045 Submission for Procedural Deadline C - Land Plans & Special Category Land Plans - Application Document Reference A2.2

Reference	Extract	PLA comments
Land Plans – Sheet 4 of 4		See comments on limits of deviation in relation to PDC-056.

PDC-047 Submission for Procedural Deadline C - Location & Order Limits Plans - Application Document Reference A2.1

Reference	Extract	PLA comments
Location & Order Land Plans – Sheet 5 of 5		See comments on limits of deviation in relation to PDC-056.

PDC-050 and PDC-051 Submission for Procedural Deadline C - Outline Ecological Management Plan - Application Document Reference A8.7 Version 1

Reference	Extract	PLA comments
Para 9.1.6	<i>“Post-construction monitoring will be undertaken of the mudflat in the area around the causeway where accretion and potential colonisation by pioneer saltmarsh species is expected. The purpose of this monitoring will be to observe the extent and rate of saltmarsh colonisation and the condition of the mudflat and any saltmarsh habitat in this area, with this information to be provided to Natural England and the Port of London Authority for information. Details of the monitoring programme will be developed when this Outline EMP is updated prior to construction, in consultation with Natural England.”</i>	<p>In line with other environmental matters affecting the river Thames, and the PLA’s environmental duties, such as under s.48A of the Harbours Act 1964, the monitoring of habitats is a matter which must be considered by the PLA for approval in accordance with the procedures in the DCO.</p> <p>The PLA will provide the Applicant with a full mark up in due course but would suggest relevant amendments to Requirement 14 to ensure the PLA is consulted in relation to the saltmarsh and mudflat monitoring plan.</p>

PDC-052 Submission for Procedural Deadline C - Preliminary Navigation Risk Assessment for the Thurrock FPG Plant Causeway - Revision R03-00

Reference	Extract	PLA comments
		<p>In line with its obligations in relation to the safety of navigation on the river Thames, and following disapplication of sections 66 to 75 of the 1968 Act, the PLA will require the Applicant to submit a navigational risk assessment for its approval relating to the causeway in accordance with provisions in the DCO and substantially in the form</p>

Reference	Extract	PLA comments
		of the preliminary NRA as agreed. The PLA will provide a full mark up of the DCO to the Applicant in due course but will require a navigational risk assessment to be subject to approval under the Requirements.

PDC-053 Submission for Procedural Deadline C - Restrictions on Public Access to the Causeway - Revision 0

Reference	Extract	PLA comments
Para 1.2	<p><i>“A 2.5 m high palisade security fence and gate will be installed at the landward end of the causeway to prevent access onto it from the footpath. The fencing will be positioned inland of the inter-tidal zone so that access onto the causeway would not be possible without wading through the soft mud at this location. An illustrative drawing of the fence design and location is shown in the following section.</i></p> <p><i>Signs stating that the causeway is privately owned and forbidding access will be placed at the landward end (on the fence) and at the seaward end of the causeway to discourage access via the water, for example from recreational watercraft.</i></p> <p><i>Should significant unauthorised use causing danger or disturbance become apparent to Thurrock Power Ltd during the causeway life, consideration would then be given to additional measures which could include CCTV monitoring and active enforcement against trespassing.”</i></p>	Please see comments on PDC-001 in relation to the new gate proposal.

PDC-056 Submission for Procedural Deadline C - Works Plans - Application Document Reference A2.3

Reference	Extract	PLA comments
Sheet 6 of 6	Work no. 10 limit of deviation	This plan shows that the limit of deviation for Work no.10 has not decreased despite the removal of Work no.9 (which shared that limit) from the authorised development. The PLA considers this limit to be excessive given the size and shape of the causeway and berth pocket shown in the Concept Design document for the causeway and the fact that the proposed construction method is understood to be working within the footprint of the causeway and from the shore outwards. The PLA therefore requests that a revised plan be submitted to show a more appropriate limit of deviation for Work no.10. If necessary, and as suggested in relation to new article 37 (Power to dredge), a separate dredging limit/plan should be adopted for the Work.

PDC-057 Submission for Procedural Deadline C - Illustrative General Arrangement Plans - Application Document Reference A2.6

Reference	Extract	PLA comments
		See comments on limits of deviation in relation to PDC-056.

**Winckworth Sherwood LLP
Solicitors and Parliamentary Agents
On behalf of the Port of London Authority
25 January 2021**