

THE THURROCK FLEXIBLE GENERATION PLANT DEVELOPMENT CONSENT ORDER

Written Representations submitted on behalf of the Port of London Authority

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Author	Winckworth Sherwood LLP
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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

1. Introduction

1.1 These Written Representations are made on behalf of the Port of London Authority ("the PLA") in respect of an application for Development Consent submitted by Thurrock Power Ltd ("TPL") for the Thurrock Flexible Generation Plant Order ("the DCO"). The application is accompanied by a draft of the proposed DCO ("the dDCO"). These Written Representations are submitted in pursuance of Rules 8(1)(a), and 10(1), (2) and (4) of the Infrastructure Planning (Examination Procedure) Rules 2010.

1.2 The structure of these Written Representations is as follows:

Section 1 – Introduction

Section 2 – The PLA

Section 3 – The DCO and areas of agreement

Section 4 – Design of the causeway

Section 5 – Marine environment

Section 6 – Acquisition of necessary land interests

Section 7 – Consents and licensing

Section 8 – Navigational risk

Section 9 – Decommissioning of the causeway

Section 10 – Other amendments to the DCO and the PLA's PPs

Section 11 – Conclusion

2. The PLA

2.1 The Port of London Authority is the statutory harbour authority for the tidal Thames ("the river") between Teddington and the outer Thames Estuary. It is governed by the Port of London Act 1968 ("the 1968 Act"). It falls within the definition of "statutory undertaker" for the purposes of s.8 of the Acquisition of Land Act 1981 as applied by s.127 of the Planning Act 2008.

2.2 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 also has duties under section 48A of the Harbours Act 1964 to have regard to environmental matters and the environmental impact of works for which it has a consenting function.

2.3 Under section 66 of the 1968 Act, the PLA's consent, in the form of a licence, is required for the construction by other people of any works in, on, under or over the river and, under section 73, for the carrying out of dredging or other comparable operations. The PLA provides moorings in the river and licenses their provision by others. As the body responsible for licensing river works and moorings, the PLA must have special

regard for the unimpeded use of and access to licensed works by the PLA's existing licensees.

- 2.4 The PLA's functions also include the promotion of the use of the river for freight and passengers as an important and sustainable transport corridor for London.
- 2.5 The PLA owns approximately 95% of the bed and foreshore of the river between Teddington and Canvey Island, including land over which works have been constructed under licence, with most of the rest being owned by the Crown Estate. The PLA owns all of the riverbed and foreshore within the Order limits as shown on sheets 5 and 6 of the Works Plans (PDC-056).
- 2.6 The PLA is a trust port. Accordingly, it manages the river for the benefit of all river users and is obliged to turn its assets to account for the benefit of its statutory undertaking. As part of this obligation it must also minimise the conservancy and other charges payable under the 1968 Act by river users. The PLA is wholly funded by such charges and the other funds it generates: it does not receive any central or other Government subsidy.

3. The DCO and areas of agreement

- 3.1 The DCO would authorise TPL to construct and operate a flexible generating plant including construction of gas engines and batteries, creation of temporary and private access routes and a causeway for barge deliveries¹. This development (in the dDCO defined as "the authorised development") and the powers sought in the dDCO are referred to in these Written Representations as "the Scheme". The dDCO would, at article 10, disapply the PLA's licencing regime under the 1968 Act and would, in Part 5 of Schedule 9, include protective provisions to provide for the protection of the PLA's interests ("the PLA PPs").
- 3.2 These Written Representations are addressing the Scheme, the details of which are subject to change through the process of the examination. It has already undergone some change through TPL's change request dated 14 January 2021 and the Examining Authority's ("the ExA") subsequent acceptance of it. Unless otherwise stated, references to the dDCO are to the draft dated December 2020 (published on the National Infrastructure Planning website on 16/12/20), which is in the form submitted by TPL for Procedural Deadline C (PDC-09). During the constructive discussions held between the PLA and TPL, revised drafting has been shared between the parties. Where such drafting is not yet before the ExA, this is made clear. It is understood that TPL will submit a revised dDCO at deadline 2. It is expected that this revised version will contain many of the changes requested by the PLA which it can confirm to the ExA in due course, once it has had an opportunity to review the document.
- 3.3 The majority of the Scheme does not impact the river, nor the statutory functions of the PLA, it being a land-based flexible generating plant. The primary part of the Scheme of interest to the PLA is the causeway described in the DCO as Work no.10 which TPL intends to use to deliver abnormal indivisible loads ("AILs") to its construction site. The PLA's interests also extend to any other aspect of the Scheme which may affect the river or any other function of the PLA.
- 3.4 In principle, the PLA supports appropriate use of the river for transportation of materials or other deliveries. The PLA has therefore approached the Scheme constructively, and is involved in ongoing discussions with TPL. Following the PLA's Relevant

¹ Thurrock Power Ltd, Covering Letter (APP-001)

Representations (RR-005), there has been further environmental information submitted by TPL, as well as the change request in January 2021. The main issues under discussion between the two parties can now be summarised as follows and the detail on these issues can found in paragraphs 4 to 9 below:

- 3.4.1 the design and construction of the causeway;
- 3.4.2 the marine environment;
- 3.4.3 the acquisition of necessary land interests;
- 3.4.4 PLA consents and licensing, including in relation to maintenance dredging;
- 3.4.5 navigational risk; and
- 3.4.6 the decommissioning of the causeway.

Although the principle of these issues, or aspects of these issues, has been agreed between the parties, some issues do remain, in particular in relation to how the principled agreement is reflected and secured through the drafting of the DCO. The PLA welcomes the continuing discussions with TPL to secure that the PLA PPs are improved upon so as to be fully fit for purpose.

- 3.5 An initial Statement of Common Ground (“SoCG”) between the PLA and TPL, dated March 2021, has been shared between the parties. The parties consider that it would be most beneficial to the ExA for this to be submitted later in the Examination and it is understood that TPL proposes to do so at deadline 3 on 12 April 2021. The issues between the parties are not extensive but the PLA reasonably needs to see the revised drafting of the dDCO which it understands will be submitted at deadline 2 before many of the points can be finally agreed.

4. Design of the causeway

- 4.1 The principle of the construction and use of a causeway and berthing pocket of the design set out in APP-130 for the delivery of AILs is acceptable to the PLA, subject to adequate controls being imposed by the DCO, in particular through the Requirements set out in Part 1 of Schedule 2 to the dDCO (“the requirements”) and the PLA’s PPs as well as the adoption as part of the application of a reduced Limit of Deviation for Work no.10 (on which see paragraph 4.4).
- 4.2 The PLA requires that the development authorised by the DCO be sufficiently tied to the design included in APP-130 which is also the design assessed in the Environmental Statement (“ES”) and on which the preliminary navigational risk assessment (“NRA”) was based. This must be the case both in relation to the physical construction of the causeway and the area to be dredged around it. The PLA has proposed changes both to article 37 (power to dredge) and requirement 4 in the dDCO to properly secure this. This revised drafting has not yet been agreed by TPL but there are constructive discussions ongoing.
- 4.3 In relation to this, the PLA has made clear to TPL that the description given of Work no.10 in Schedule 1 to the dDCO must be entirely consistent with the description of the works authorised by the deemed marine licence in Schedule 8. The two must be authorising precisely the same works. The PLA awaits further drafting from TPL on this point.

- 4.4 The PLA was concerned to see that there was no reduction in the Limits of Deviation of Work no.10 as part of the change request submitted to withdraw the saltmarsh enhancement proposal. It is understood that TPL does now intend to submit a revised Works Plan with a reduced limit and the PLA was sent draft Rev 3 of sheet 6 on 18 February 2021. If that Plan is submitted to the Examination, and subject to adequate drafting being included in the DCO to secure the causeway design, the PLA is content with the Limit of Deviation for Work no.10.
- 4.5 The PLA raised the lack of detail in relation to the gate to be constructed in the flood defence wall in RR-005. The PLA's concern about the flood gate would be where such works extended over the river. It understands from TPL that it is not proposed to undertake gate works from the river. If works were to extend over the river, PLA approval would be required under the PLA's PPs and the PLA is content with this position.
- 4.6 Finally, the PLA raised points in relation to the proposal in TPL's procedural deadline C submission 'Restrictions on Public Access to the Causeway' (PDC-053) in its procedural deadline D submission (PDD-011). If the causeway is to be gated, the PLA requires that appropriate signage be provided on the riverside detailing ownership and a contact in the event of the causeway being used to exit the river in an emergency. The PLA understands that the principle of this is agreed by TPL but awaits documentation being submitted to the examination to confirm this.

5. Marine environment

- 5.1 The ES which accompanies the application contains initial assessment of impacts on the marine environment. Following comments made in PDD-011, the parties have agreed that the ES will be supplemented by further surveys and sampling prior to construction which will be subject to the approval of the PLA through the process provided for under the requirements and the PLA's PPs, as amended by the PLA.
- 5.2 Specifically, the parties have agreed revised drafting for requirement 12 to secure further sediment sampling prior to construction and to secure the use of dredging methods appropriate to the levels of contamination found in the sampling by requiring removal not dispersal of contaminated material. Sediment sampling works both prior to and during construction will also be required to be approved by the PLA under the PLA's PPs.
- 5.3 The PLA has made a number of suggested drafting amendments to the PLA's PPs to cover, among other matters, the carrying out of river bed surveys, a scour and accretion monitoring and mitigation plan, and the monitoring and remediation of sedimentation. The PLA understands these to have mostly been agreed by TPL.
- 5.4 Finally, the PLA has requested that requirement 14(2) be amended to secure that a monitoring programme for saltmarsh colonisation and mudflat habitats be approved by the relevant planning authority in consultation with Natural England and the PLA, prior to construction commencing on Work no.10. This monitoring programme is referred to by TPL in paragraph 9.1.6 of the Outline Ecological Management Plan submitted at Procedural Deadline C (PDC-050). The PLA understands this programme to be necessary to monitor natural impacts on the river habitats now that the proposal to create saltmarsh has been removed from the application. This revised drafting has not yet been agreed by TPL but there are constructive discussions ongoing.

6. Acquisition of necessary land interests

- 6.1 As explained in paragraph 2.5 of these Written Representations, the PLA is the owner of the riverbed included within Order limits for the DCO and falls within the definition of “statutory undertaker” for the purposes of s.8 of the Acquisition of Land Act 1981 as applied by s.127 of the Planning Act 2008. The PLA raised concerns in RR-005 in relation to whether its land was subject to compulsory acquisition through the DCO. Paragraph 11.42 of TPL’s Statement of Reasons (APP-024) states:

“The Applicant is not seeking any compulsory powers over the land in the river Thames required for the causeway.”

- 6.2 This point has also been confirmed at a number of meetings between the PLA and TPL and is evidenced by the fact that no PLA land is included within the Book of Reference. There are ongoing discussions between the PLA and TPL to ensure that this stated position is accurately captured through the drafting of the DCO. The focus of these discussions is on the definition of “Order land” and the PLA is hopeful agreement can be reached.
- 6.3 The PLA and TPL are negotiating an agreement to secure the necessary interests to allow TPL to construct the causeway on the riverbed and bring it into use. Both parties agree that there is no known impediment to such an agreement being able to be reached.

7. Consents and licensing

- 7.1 As explained above, under section 66 of the 1968 Act, the PLA’s consent, in the form of a licence, is required for the construction by other people of any works in, on, under or over the river and, under section 73, for the carrying out of dredging or other comparable operations. These powers to grant consent have been disapplied by article 10 of the dDCO. It is, therefore, important that the PLA PPs include provisions for the approval of specified works and specified functions in place of this. The PLA has provided TPL with a number of amendments to the PLA PPs to ensure they are suitable and enable the PLA to continue to fulfil its statutory functions.
- 7.2 Under the PLA PPs, once the causeway has been constructed, the PLA will grant TPL a licence under section 66 of the 1968 Act to retain the causeway over their land during the operational period. Such licence may be granted for consideration to be agreed or assessed in accordance with section 67 of the 1968 Act. There is no known impediment to such a licence being able to be granted.
- 7.3 TPL has stated to the PLA that the DCO is not intended to authorise maintenance dredging during operation of the causeway. The PLA agrees that this is the correct approach and will require TPL to obtain a dredging licence under s.73 of the 1968 Act in accordance with the PLA’s requirements in force at the time of application. The PLA has notified TPL of a number of occasions in the dDCO where the authorisation of maintenance dredging appears contrary to this. The PLA will require these points to be amended in the final DCO but is hopeful agreement can be reached. The PLA also requires specific wording to be added to confirm this position in the PLA’s PPs and it understands the principle of this to be agreed by TPL.

8. Navigational risk

- 8.1 After the request of the PLA and other Interested Parties, TPL has now produced a preliminary NRA which was submitted at Procedural Deadline C (PDC-053).

- 8.2 The PLA agrees that this document demonstrates that a causeway of the design set out in APP-130 can be constructed and operated without creating an unacceptable risk to navigational safety. The preliminary NRA identifies a number of risk mitigation measures which will be finalised in a final NRA to be produced prior to the construction of Work no.10. The PLA has explained to TPL that the production of the final NRA in substantially the form of the preliminary NRA and its approval by the PLA must be secured through a requirement in the DCO. It is understood that the principle of this is agreed but there are ongoing discussions as to specific drafting. In particular, this will involve the addition of the PLA to the requirements as a “discharging authority”. The PLA has suggested some revised drafting on this to TPL, based on wording preceded in the Port of Tilbury (Expansion) Order 2019.

9. Decommissioning of the causeway

- 9.1 The PLA understands from the change request that the causeway is no longer to be considered as a permanent structure and will be decommissioned either at the time of decommissioning of the flexible generator plant or sooner if “a permanent, feasible and economic alternative” is found for the delivery of AILs². TPL seek to secure this through a requirement in the DCO.
- 9.2 As currently drafted, the PLA does not consider that requirement 17 works correctly. There is no mechanism for anyone other than TPL to assess whether any of the alternatives meet the criteria in 17(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. The PLA awaits revised drafting from TPL on this point. Additionally, the PLA has previously requested that any alternative must also be “environmentally acceptable” and that this term be used throughout requirement 17. It is understood that this principle is accepted by TPL.
- 9.3 The approval of any works to decommission the causeway will be dealt with through the PLA’s normal licensing regime under the 1968 Act. Additionally, requirement 18 of the DCO will require TPL to produce a causeway decommissioning plan for approval by the relevant planning authority in consultation with the Environment Agency and the PLA. The PLA has suggested a number of amendments to this requirement to ensure consistency in the approvals process and that the plan covers the correct matters. It is understood this drafting is agreed and will be submitted to the examination in due course.

10. Other amendments to the DCO and the PLA’s PPs

- 10.1 Aside from the specific examples given above, the PLA has provided TPL with a full mark up of the dDCO with additional proposed amendments. There are ongoing discussions between the parties on the amended drafting, details of which are which will be captured in the draft SoCG, which the PLA now understands will be submitted by TPL at deadline 3. The PLA understands that many of its proposed changes have been accepted by TPL and will be reflected in the version of the dDCO submitted at deadline 2. The PLA’s requested changes include the following:
- 10.1.1 clarification of the definition of Order land;
 - 10.1.2 clarification of article 10 (disapplication of legislation etc.) to ensure it fits with the PLA’s PPs;

² Assessment of Causeway Decommission (PDC-012)

- 10.1.3 amendments to article 36 (works in the river Thames: conditions) including in relation to the suspension of the public right of navigation;
- 10.1.4 amendments to article 37 (power to dredge);
- 10.1.5 amendments to the description of Work no.10 in schedule 1 to ensure consistency with what is authorised in by the deemed marine licence in schedule 8;
- 10.1.6 amendments throughout to reflect the position that maintenance dredging is not intended to be authorised by the DCO;
- 10.1.7 various amendments to the requirements, including:
 - 10.1.7.1 wording to secure that the causeway be constructed in accordance with APP-130;
 - 10.1.7.2 additions to requirement 12 to secure PLA approval of additional sediment sampling and the proper disposal of dredged material;
 - 10.1.7.3 an addition to requirement 14 to secure PLA consultation on the monitoring programme for saltmarsh colonisation and mudflat habitats;
 - 10.1.7.4 additional requirement to secure the PLA's approval of the final NRA and passage plans for AIL movements;
 - 10.1.7.5 amendments to requirements 17 (review of access for abnormal indivisible loads) and 18 (causeway decommissioning plan);
 - 10.1.7.6 amendments throughout the requirements to reflect the inclusion of the PLA as a discharging authority;
- 10.1.8 amendments to the deemed marine licence in schedule 8 to ensure maintenance dredging is not authorised and to remove authorisation for activities which the PLA does not consider appropriate for the powers being sought in this DCO;
- 10.1.9 various amendments to the PLA's PPs, including:
 - 10.1.9.1 a requirement to seek PLA approval in relation to the exercise of any specified function, meaning functions of TPL under the DCO the exercise of which may affect the river or any function of the PLA, as well as specified works;
 - 10.1.9.2 the production of scour and accretion monitoring and mitigation strategies in relation to specified works or the exercise of specified functions;
 - 10.1.9.3 additional wording in relation to discharges under article 16 (discharge of water);
 - 10.1.9.4 revised and additional wording in relation to the removal of temporary works;

- 10.1.9.5 amendments in relation to surveys of the river bed;
- 10.1.9.6 additional wording in relation to sedimentation monitoring;
- 10.1.9.7 additional wording in relation to the grant of a PLA licence for the causeway after construction;
- 10.1.9.8 new paragraphs covering restriction on powers of compulsory acquisition, consideration to be paid for dredged material, the provision of as built drawings for specified works and clarification that s.73 of the 1968 Act shall apply to maintenance dredging.

11. Conclusion

- 11.1 The PLA does not object to the general purpose of the Scheme or the principle of the appropriate use of the river for deliveries. The parties are working constructively towards a version of the dDCO that will meet the PLA's concerns and are hopeful that agreement can be reached. In the event that any matters remain unresolved, the PLA will update the ExA through the SoCG at an appropriate stage of the examination.

Winckworth Sherwood LLP
Solicitors and Parliamentary Agents
On behalf of the Port of London Authority
23 March 2021