



Silvertown Tunnel Case Team
The Planning Inspectorate (by email only)

Your reference: TR010021
Our reference: DCO/2014/00018

27 January 2017

Dear Sir or Madam,

Application by transport for London for an Order Granting Development Consent for the Silvertown Tunnel Project – Deadline 3 representations

Issue Specific Hearings on Air Quality, Noise and other Environmental Issues – Marine Management Organisations (MMO) summary of verbal representations in response to specific agenda points

Agenda point 8

8. Marine Ecology

8.1. After discussions between the Applicant, MMO and MMO's technical advisor, Cefas, it is agreed that the sampling undertaken to inform the Environmental Impact Assessment (EIA) was as agreed. The ground conditions at the site were not as anticipated and, as such, the gear used failed at all but 2 of the 10 sampling sites. A proposed way forward is for further sampling to be undertaken pre-construction, with suitable gear, to corroborate the findings in the Environmental Statement (ES).

The MMO will work with the Applicant to ensure this requirement is held as a condition within the deemed marine licence (DML). The MMO will also liaise with Cefas and the Applicant to ensure that the outcome of this sampling is determined i.e. if the further sampling does not corroborate the findings of the EIA then next steps, such as mitigation, are identified and secured within the DML.

8.2. A formal Marine Conservation Zone (MCZ) assessment is not required for the Thames Estuary as it is still a recommended MCZ (rMCZ) and, as such, is not a material consideration in licensing decisions. However, the MMO note that the Applicant has undertaken an assessment of all features and impact pathways of the rMCZ. The MMO further note that discussions between the Applicant and Natural England are ongoing regarding the rMCZ.

8.6. The MMO require a method statement to be submitted for all marine licensable works and not just for piling works. This is covered by Condition 4 of the DML. The MMO will consult the Environment Agency (EA) and Port of London Authority (PLA) on any method statement that includes piling works and consider their response in any subsequent decision.

8.7. The timing of the piling activities, and percussive piling, will be secured through Condition 4 of the DML which requires a method statement for all licensable works; any such method statement would be required to consider timings.

8.8. The MMO held a meeting with the Applicant and Cefas on 13 January 2017, to discuss the concerns relating to the potential behavioural impacts of fish from impact piling. It was agreed that assessment of the impacts by the Applicant was correct but that the use of peer reviewed literature, alongside the current dBHT assessment, would be more appropriate. The references have been supplied to the Applicant by Cefas. The MMO are now awaiting clarification from the Applicant that the provided references corroborate the current assessment.

8.9. Cefas have requested sight of 'photos of sediments, core samples results of particle size analysis (PSA) and geotechnical studies from both surveys in the area, and the British Standards the Applicant applied to their assessment to carry out both the surveys and the modelling'. Also, Cefas have advised that a 'scour and accretion monitoring and mitigation strategy' must be put in place.

The MMO will seek further meetings with the Applicant and Cefas to discuss the scope of such a requirement and its requirement through the DML.

Agenda point 10

10. Dredging and Navigation

10.1. The latest version of the DML now has a section for coordinates, but does not currently display them. The MMO is satisfied with the Applicant's intention to include them; however, until the coordinates have been received, the MMO cannot conclude that this matter is agreed.

10.2. The MMO are content that the requirement for a method statement is now held within condition 4 of the DML.

10.4 The MMO is satisfied with wording in Condition 10 (1). Tailpieces have been used in previous DMLs and it is considered that the MMO, as the enforcement body for the DML, requires flexibility to carry out its duties. The tailpieces included in this condition is not intended to allow a material alteration to the scheme, but to allow for flexibility of timings where appropriate, such as in an instance when inclement weather conditions may delay aspects of the project. The requirement to agree aspects of the work in writing, rather than as a variation to the DML, allow for the MMO to ensure that works are undertaken within the scope of the assessment, but with a reduced burden on both the Applicant and MMO to make such a change.

10.5. The MMO will be satisfied once the wording 'as soon as reasonably practical' is removed from Condition 10 (2). The MMO note that the Applicant has agreed to change the wording of the condition.

Once appropriate wording has been agreed with the Applicant the MMO will offer consideration as to whether the current tailpiece is required.

10.6 The MMO confirms that the timing of the dredging will be required to be signed off by the MMO under Condition 4 of the DML.

10.7 The MMO will discuss the requirement for a condition, regarding an Archaeological Written Scheme of Investigation (WSI), to be included in the DML with Historic England and will provide comments at Deadline 4.

Issue Specific Hearings on the Development Consent Order

Agenda Point 4

4.1 The requirement for additional sampling to corroborate ground investigations within the EIA needs to be added as a condition of the DML. Further consideration of this is provided within our comments in response to 8.1 (as above).

4.2 The MMO's current position is that the requirement for a WSI must be held within the DML; this is to ensure the MMO has the ability to enforce its requirement for issues in the marine area. It is understood that the Applicants view is that this is suitably enforceable through the DCO requirements; the MMO will discuss this with Historic England regarding aspects in the marine environment and provide a further update at Deadline 4.

4.3. The latest version of the DML now has a section for coordinates but does not currently display them. The MMO is satisfied with the Applicant's intention to include them; however until the coordinates have been received the MMO cannot conclude that this matter is agreed.

4.4. The MMO have concerns regarding the following wording of Condition 3 (2) as it seems to allow a wide scope of works;

'(2) In this paragraph "the authorised development" means the development described in Schedule 1 (authorised development) to the Order, and any other development within the meaning of section 32 of the 2008 Act that is authorised by the Order.' The MMO intend to have further discussions on the matter with the Applicant.

4.5. The MMO is satisfied with the requirement in Condition 4 for the submission of a method statement. Please see the MMOs response to agenda point 10.2 (as above).

4.6. The MMO is satisfied that the Applicant has agreed to remove the phrase 'as soon as reasonably practical' from Condition 10. Please see the MMOs response to agenda point 10.5 (as above).

4.7. The MMO does not agree with the timescales for the MMO to make a determination within Conditions 12 and 14, as it is considered inappropriate for the DML to place these types of restrictions on a deemed regulator. The MMO must ensure that suitable consideration is given to each issue that needs resolved and must not be limited by time. The MMO may need to consult advisors on the scope of a document received, with whom service level agreements are in place, and should an advisor request further information outside the timescales allowed by these conditions, the MMO needs the flexibility to request this further information.

It is the understanding of the MMO that these timescales have been placed within the DML to allow for clarity on the time required for conditions to be discharged prior to works commencing. In previous DMLs, and marine licences, this clarity is provided by wording that places a requirement on the Applicant to submit relevant documents, for approval, in a specified amount of time prior to works commencing.

The MMO intend to provide revised wording to the Applicant with the aim of closing out this concern.

Agenda point 5

Schedule 12

The MMO would like to clarify that the river area is as described in the Port of London Act 1968, which refers to Mean High Water as the upper limit of the river area. The MMO have jurisdiction up to Mean High Water Springs which is a slightly different location; therefore, the coordinates of the river area should be provided to ensure clarity for the MMO to undertake enforcement duties.

The MMO intend to provide revised wording to the Applicant upon review of precedents.

Yours faithfully

A black rectangular redaction box covering the signature of David Morris.

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