

INFRASTRUCTURE PLANNING

THE INFRASTRUCTURE PLANNING (EXAMINATIONS PROCEDURE) RULES 2010

THE SILVERTOWN TUNNEL ORDER

**ExA's Second Written Questions and Requests for Information
PLA's Responses**

Unique Reference Number	SILV-340
Rule No.	8(1)(b)
Document Ref.	PLA9
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Date	6 March 2017
Date of revision & version number	

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1. Introduction

- 1.1 The following information is provided by the Port of London Authority (“the PLA”) in respect of an application for Development Consent submitted by Transport for London (“TfL”) for the Silvertown Tunnel Order (“the DCO”). It responds to the ExA’s second written questions.
- 1.2 This document is submitted alongside the information requested from the PLA by the ExA (PLA10).
- 1.3 References to provisions of the dDCO reflect the numbering in the revised dDCO as it is understood will be submitted at Deadline 4.

A. ExA requests PLA response	
DC	DCO Wording
DC2.3	
Question to:	Applicant and PLA
Question	Articles 17, 29 and 30: Please provide any further update to these articles in addition to any further update to Schedule 13 Protective Provisions to address outstanding issues remaining between the PLA and Applicant.
PLA response:	<p>The PLA and the Applicant have agreed in principle amendments in articles 17, 29 and 30 that address the PLA’s concerns regarding navigation. Drafting issues remain but it is expected that these will be resolved before deadline 5.</p> <p>The terms of the PLA’s protective provisions in Schedule 13 have also been amended and are now agreed subject to two outstanding issues regarding surveys of the river (now paragraph 46) and the treatment of compensation for temporary works (now paragraph 49). See also C4 below.</p>

DC2.8	
Question to:	PLA (and Applicant)
Question	<p>Schedule 1: Can the PLA confirm whether the amendments made to Work No 20 and to ancillary works meet their concerns? If not, please put forward further agreed changes with the Applicant.</p> <p>The issue of ensuring that materially different or worse environmental effects do not arise from ancillary development is raised in question CL2.6 under the heading of Construction on land. This may affect the wording at the end of this schedule. If so, please amend.</p> <p>Work 1(f) and (g) appears still to include references to head houses which are proposed to be removed in NMC2? Please remove.</p>
PLA response:	<p>The PLA has been seeking a clearly defined position and alignment of Work No. 20, particularly in relation to the location of the proposed temporary jetty. As set out at paragraph 4.9 of the PLA's WR [REP1-053] it is not acceptable in practical terms for the temporary jetty to be placed anywhere within the boundary of Work No. 20. The dDCO submitted by the Applicant at DL3 satisfactorily addresses this point by separating Work No. 20 into 20A and 20B. The temporary jetty and related dredging works and construction operations must be carried out within the area delineated in relation to Work No. 20A and shown on sheet 3 of the works plans. The revised work plans submitted by the Applicant at DL3 [REP3-002] shows a defined area for Work No. 20A within the larger Work No. 20B.</p> <p>The issue of materially different or worse environmental effects is relevant to both ancillary development and to the maintenance of the authorised development.</p> <p>Article 39(2) of the dDCO still refers to a "not materially worse than" test rather than "not materially different" (which is the test correctly applied in paragraph (y) at the end of Schedule 1).</p> <p>The words at paragraph (y) at the end of Schedule 1 place a restriction only on the catch all ancillary works and development in that sub-</p>

	<p>paragraph rather than the entire lettered list. The PLA proposed amendments in its Comments on the ExA's First Written Questions and Requests for Information [REP1-054] to ensure that all the authorised development is within the scope of what has been assessed in the ES (see in that document the comment regarding DC 90). These amendments to the dDCO are necessary and the PLA invites the Examining Authority to agree that they should be made.</p> <p>The additional wording at (k) relating to the re-establishment of the bed of the river to 5.80 metres below chart datum has been agreed between the Applicant and the PLA.</p> <p>The PLA has no comments on Work 1(f) and (g) and the references to head houses.</p>
DC2.9	
Question to:	Applicant, Host Boroughs, other Boroughs, HSE, Historic England, MMO and EA
Question:	<p>Requirement 5 – In the light of the discussions during the DCO Hearing held on the 19 January 2017, please review and update the way that Requirement 5(2) is structured. Bearing in mind continuing concern from host boroughs and/or the PLA that more of the subsidiary plans should require their approval including the Construction Environmental Management Plan (CEMP), Construction Site River Strategy, Lighting Management Plan and Site Waste Management Plan, please provide further justification as to why there should be any division between plans requiring approval and those only requiring consultation.</p> <p>Please provide an updated CoCP, preferably agreed with the relevant Boroughs and the PLA, in the form that would be certified.</p>
PLA response:	<p>The PLA has been provided with a copy of Revision 3 of the CoCP which it is understood the Applicant will submit to the ExA at deadline 4. The following comments on WQ DC2.9 are made on the Revision 3 version of the CoCP.</p> <p>Table 1-1 in the CoCP provides a useful summary of subsidiary</p>

environmental management plans and the role of local authorities and/or stakeholders. This should be reflected in Requirement 5.

In Table 1-1, with the exception of the Passage Plan, the Applicant still does not propose for the subsidiary plans to be approved by the PLA and/or the host boroughs. The CoCP now proposes that the PLA is to be consulted on the CEMP, CSRS, Emergency Plan, Lighting Management Plan and AWSI (where mitigation measures are identified in the River Thames). However, even this limited improvement is not fully reflected in Requirement 5(2), which omits requirements to consult the PLA in relation to the CEMP, the CSRS and the Lighting Management Plan.

In its response to the ExA's FWQ DC94, the PLA indicated its concern to approve the following plans (in addition to the Passage Plan): CEMP, Emergency Plan, CSRS, Lighting Management Plan. These concerns remain.

The PLA has had useful exchanges with the Applicant regarding the draft it has seen of Revision 3 of the CoCP and understands that a number of revisions are to be made and submitted at deadline 4. It will not therefore mention those agreed points in this response. If the PLA considers that they are not adequately addressed in the submitted version of Revision 3 the PLA will notify the ExA at the next available opportunity. On that basis the PLA has the following comments on what is understood to be in Revision 3 of the CoCP:

1.4.8 and 1.4.10 - "not materially worse" is not the correct test. It should read "not materially different". That is the test correctly applied in the dDCO at Schedule 1, paragraph (y) and the end.

1.4.9 – The PLA has two points on this paragraph.

- (a) The process described in this paragraph requires identification, review and if necessary assessment to identify design changes or mitigation measures that are necessary but nothing requires such design changes or mitigation measures to be implemented.

(b) The trigger for further environmental assessment is the identification of certain things that are materially different from those assumed during the preparation of the ES, which the PLA agrees is the right test. However, the assessment that may follow is limited to identifying significant adverse effects that are not materially worse than those reported in the ES. As with 1.4.8 and 1.4.10, that is not the correct test for compliance with the Directive (2011/92/EU as amended).

3.2 – This section of the CoCP defines transport by river of (i) construction materials associated with the Scheme including concrete and (ii) suitable excavated material. Transport by river will have occurred if the material has been transported by river to a wharf local to the Scheme provided the worksite lies within a 4km radius of the wharf and the distance over which the materials are carried by road from the wharf to the worksite does not exceed the distance that the materials are transported by river from the point of loading up to the local wharf. As set out in paragraph 11.4 of the PLA's Written Representations [REP1-053], it is important that desirable river use should not be such as to give rise to undesirable increased associated transport by road. A 4km distance, measured as the crow flies, is in fact a journey distance in excess of 4km by road and may go through already congested areas. The PLA therefore agrees with the Royal Borough of Greenwich that the current distance requirement of 4km from the construction site to a local wharf should be reduced to a 2.5km radius, or 5km by road.

The CoCP provides the Applicant with the ability to approve 'Additional Derogations' which means that additional material that is not identified in the CSRS can be transported by road. The PLA have requested involvement in the signing off of any additional derogations (see section 5.4 of the SoCG between TfL and the PLA) and TfL are *"currently considering this request."*

There is a reference at 15.4.3 of the CoCP to the management of spill water decanting from the excavated material transport barge. There do not appear to be any measures in the CoCP for the minimisation of

	<p>spillage arising from the loading of vessels or barges with spoil. The Applicant has referred the PLA to the ability for this to be dealt with by the MMO under the DML. If this issue were left to the DML there would not be any PLA involvement in a process relating to the PLA's functions. Further, there is no provision in the DML or anywhere else to secure that identified mitigation is actually implemented.</p> <p>The Applicant has not agreed arrangements with the PLA. Discussions continue. The PLA has no feeling for the likelihood of settlement being reached. A further update will be provided as soon as practicable and in any case by Deadline 5.</p>
DC2.13	
Question to:	Applicant, EA, PLA and Other SUs
Question:	Please provide updates of relevant parts of Schedule 13 to include Protective Provisions agreed with PLA and EA and any other amendments required to satisfy other SUs.
PLA response:	<p>The Schedule 13 amendment of particular concern to the PLA is the new paragraph 35. The PLA had sought a requirement that the tunnelling works should be subject to approval. This was not with a view to treating the tunnel as a river work (which is the reason for approving works within the definition of "specified work"). It was because the tunnel will be shallow with an average 8m of cover over its length against the reference design, reducing to 4.4m of cover in the navigable channel if the full extent of the 1.5m LoD are utilised. This is as against the recommended cover of one tunnel diameter (12.3m) as set out in the Further Development of Tunnel Engineering Report by Mott Macdonald (July 2013 – TfL Supporting Technical Documentation 298348/MNC/TUN/002). The PLA therefore seeks assurance that the tunnel depth will not be such that there is a risk of cover becoming insufficient. If this occurred it could result in a requirement to place scour protection on the river bed. Whilst noting the commitments by the Applicant in the dDCO to maintain the bed of the river Thames at 5.80 metres below chart datum this would not prevent the Applicant from applying in the future for a river works licence under S66 of the Port of London Act 1968 (as amended) to place scour protection on the river bed. It is critical for river users and the</p>

	<p>maintenance of the public right of navigation that this should not happen and water depths are maintained. Paragraph 35 represents the Applicant's proposal for dealing with the issue. The PLA is content with it.</p> <p>As explained in the response to DC2.3, there are outstanding issues in relation to paragraphs 46 and 49 of Schedule 13.</p>
DN1	
Question to:	The EA, PLA and MMO
Question:	Please can the EA, PLA and the MMO provide their views on the Applicant's technical appendix (Appendix 12 to [REP3-032] on jetty pile scour in the near-shore?)
PLA response:	As set out at paragraph 3.2 of the PLA's Deadline 3 submission [REP3-03a] the Applicant's technical note concludes that scour around the near shore piles of the temporary jetty will be in the order of 0.46m deep and 1.61m lateral extent. This is consistent with the original hydrodynamic assessment. Whilst interaction between the temporary jetty scour and the river wall may be unlikely, it is noted that a flood defence monitoring and mitigation plan is being sought by the EA which means there is potential for the reactive placement of scour protection. The PLA is supportive of a risk based approach providing it is proportionate (which is also in place for the Thames Tideway Tunnel) and has agreed with the Applicant that any works within the river (including reactive measures) will require the approval of the PLA at the appropriate time.
CA3	
Question to:	Applicant and Relevant Statutory Undertakers
Question:	Please provide a statement demonstrating that all outstanding issues with regard to plots in which SUs have interests have been resolved so that there will be no need to report the substance of objections to the SoS under the terms of s127 or s138.
CA4	
Question to:	Applicant & relevant Affected Persons
Question:	Please provide a detailed case justifying CA concerning any outstanding CA objections where it is not anticipated that agreement will be reached

	prior to the close of the Examination.
PLA response: [C3 and C4]	<p>The only PLA issue that potentially impacted on sections 127 and 138 concerned the principles underlying the payment of compensation. Further discussions will take place and if necessary there will have to be argument before the Upper Tribunal (Lands Chamber) in the context of assessment of compensation. There are no outstanding issues on this subject for the ExA.</p> <p>Following discussions with the Applicant the PLA has the following outstanding CA issues.</p> <p><i>Commercial use of tunnel unconnected with highway uses</i></p> <p>The PLA has an outstanding objection to the terms on which the Applicant would be permitted to acquire the subsoil required for the tunnel. The justification for such outright acquisition is that the land is required for the tunnel, and the PLA has no quarrel with that. However, the dDCO would enable TfL to use the tunnel as a quite separate revenue-earning asset by selling space for its use as a conduit by the owners of apparatus. That is clearly contemplated by article 47 (which allows apparatus to be placed in the tunnel only with TfL's consent, for which payment may be demanded).</p> <p>In discharge of its obligation to turn its assets to account and to obtain best value, the PLA invariably charges a fee to all those who place apparatus within the river Thames. Article 47 would allow for that to be bypassed by the use of the tunnel as a conduit. The PLA as landowner would therefore be deprived of its opportunity to demand payment for the use of its land which had been acquired for the limited public purpose of providing the tunnel.</p>

It is not right that land compulsorily acquired for a public purpose should be used for a commercial activity that is unconnected with the operation of the public asset, still less when that is at the expense of the landowner from whom the land for the public asset was acquired. Reflecting this, the PLA has historically secured the preservation of its rights as a landowner by provision preventing infrastructure from being used in that way.

In the present case, in the absence of agreement with TfL, the PLA seeks the amendment of article 47 so that the apparatus to which TfL may consent is limited to such apparatus as is reasonably required for the operation of the tunnel itself, and removing the ability for TfL to demand payment.

Schedule 13, paragraph 49 (compensation for temporary works)

The PLA has a number of drafting issues which it believes are uncontroversial but which have yet to be raised with the Applicant. The PLA will discuss them with the Applicant and is reasonably confident that settlement will be reached.

In addition at the end of sub-paragraph (1) some words regarding the PLA's expenses which were in the dDCO as applied for have been dropped without obvious explanation. The PLA assumes this is a simple error and that the words will be reinstated, but that has not yet been raised with TfL.

Finally, the PLA will explain to TfL why the addition of sub-paragraph (2) is irrelevant to the workings of section 67 of the Port of London Act 1968 (which is the provision being applied).