

THE PROPOSED A122 (LOWER THAMES CROSSING) DEVELOPMENT CONSENT ORDER

DEADLINE 2

**Comments on documents and submissions
made at Deadline 1 submitted on behalf of
the Port of London Authority**

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1. Introduction

1.1. This is a written submission made on behalf of the Port of London Authority (**PLA**) in respect of documents submitted at Deadline 1.

1.2. Documents addressed in this submission are:

- 1.2.1. draft Development Consent Order (**REP1-043**);
- 1.2.2. Environmental Statement Addendum (**REP1-181**);
- 1.2.3. Statement of Common Ground – the Environment Agency (**REP1-058**);
- 1.2.4. Statement of Common Ground – Virgin Media Limited (**REP1-087**);
- 1.2.5. Written representation of Port of Tilbury London Limited (**REP1-274**); and
- 1.2.6. Written representation of Holland Land and Property Ltd on behalf of C H L Mott and M Mott (**REP1-320**).

1.3. The Examining Authority is asked to note that a number of other Interested Parties to the examination made representations at Deadline 1 which are similar to those made by the PLA. For the purposes of brevity, those points are not repeated in this submission, but the PLA wishes to state in particular its support of representations made by: the Port of Tilbury London Limited (**REP1-274**); Gravesham Borough Council (**REP1-228**); and Thurrock Council (**REP1-281**).

1.4. The PLA understands that the Applicant intends to submit revised Land Plans at Deadline 3. The PLA will review those documents at that time, in the context of changes which impact its interests. However, in order to be able to review and comment effectively on the revised plans submitted at Deadlines 1 and 3 - including the Tunnel Limits of Deviation and Tunnel Protection Zones plan at Annex C of the Applicant's Post-event submissions for ISH2 (**REP1-184**) - the PLA needs to be provided with an updated version of the Flotation Sensitivity Check, a version of which was previously shared with the PLA by the Applicant (as referenced at para 5.8 of the PLA's written representation – **REP1-269**). Any updated version of the Flotation Sensitivity Check must include all elements of design, taking into account factors of tunnel cover, possible scour protection and agreed dredge depth, where the upward tunnel limits of deviation are exercised. It is only when the details before the PLA are consistent with the works for which authorisation is sought under the dDCO, that the PLA will be able to assess properly the design of the dDCO scheme and its potential impacts on the UK's largest port.

2. PLA comments on the revised draft Development Consent Order (dDCO) submitted at Deadline 1

Article 2(1) – definition of “begin”

2.1. In the context of the new definition of “begin” at Art. 2(1), Kent County Council has suggested at para 12.14 of its written representation (**REP1-243**) that Requirement 2 be amended to read:

“2. (1) The authorised development must not begin later than the expiration of 5 years beginning with the date on which this Order comes into force.

(2) The authorised development must not commence later than the expiration of 5 years beginning with the date on which this Order comes into force.”

- 2.2. The PLA seconds Kent County Council in requesting this drafting change as a means of curtailing possible extended uncertainty in circumstances where, as currently drafted, the dDCO scheme is begun but there is no impetus to actively commence construction of the scheme.

Article 6 – Limits of deviation

- 2.3. The PLA maintains its position that the dDCO provides a greater degree of flexibility than is necessary, in terms of the extent of vertical deviation of the tunnel that it seeks to authorise.
- 2.4. The Applicant has repeatedly suggested to the PLA that the PLA should not be concerned with the extent of the Applicant’s powers or limits of deviation provided that protective provisions for the PLA are sufficient. The Applicant has queried the fact that the PLA has requested that the limits of deviation be reduced, on the basis that the PLA has the benefit of protective provisions. That is an unusual approach. The PLA is of the view that, in the first instance, the Applicant should seek only the powers which are required to deliver the scheme. Protective provisions should then be agreed in respect of the exercise of those powers.
- 2.5. While the limits of deviation should be those required to construct the scheme, they need to work with the other powers in the dDCO to enable a constructable scheme. Based on the PLA’s assessment of the information available to it, the dDCO appears to take such wide powers that they overlap with each other in a way that could affect the constructability of the scheme. The Flotation Sensitivity Check (see para 1.4 above) sets out that the reference design of the tunnel (i.e. with no upwards limits of deviation exercised) has less tunnel cover than is normal and no justification is provided by the Applicant for this. The PLA considers that the details provided in the Application have not demonstrated adequately that it is possible to construct the tunnel on the alignment shown as, if the Applicant exercises its powers to deviate upwards when constructing the tunnel, the Applicant could not achieve the minimum cover required for the tunnel without impacting detrimentally on the PLA’s ability to dredge the navigable channel of the river to the agreed depth of 12.5m below chart datum (plus 0.5m overdredge). If scour protection is required, then this adds a further constraint on the PLA’s ability to dredge. In practical terms: if the tunnel is in place before the PLA dredges and the PLA is then prevented from doing so by the position in which the tunnel had been constructed and the necessary protections around it, there will be no effective recourse for the PLA and the Port of London and its commercial viability will suffer accordingly.
- 2.6. In order to prevent such a scenario, the PLA would request that the authorised upwards limits of deviation, per the Tunnel Limits of Deviation plan, be reduced from its current limit of 6m to a level which meets the Applicant’s need for a reasonable degree of flexibility while also removing the potential for the conflicts identified above.

Schedule 14 sub-para 104(4) – Facilities for navigation

2.7. The PLA cannot understand the intention behind the inclusion of this new provision at sub-para 104(4). The provision was not discussed with the PLA prior to the dDCO being reissued. The provision appears to restrict interference with the river bed, in terms of possession, acquisition of rights or imposition of restrictive covenants, to what is “reasonably necessary” in respect of specified scheduled works. However, the PLA cannot see how this relates to navigation, to which the remainder of para 104 applies.

3. Environmental Statement addendum (ES addendum)

3.1. Table 2.2 of the ES addendum substitutes amended wording into para 9.5.6 bullet a. of the Marine Biodiversity chapter of the Environmental Statement (**ES**) (APP-147). The result of this substitution is that where this paragraph of the ES previously refers to: “Construction of the main tunnels with a layer of cover above of at least 0.9 tunnel diameter (14.4m)”; the ES addendum now amends this to read: “Main tunnels would be constructed with adequate cover”.

3.2. The PLA had identified previously in its written representation discrepancies in different measurements given for tunnel cover in different application documents, and noted the uncertainty and the impossibility of assessing adequately the impacts on the PLA as a result. The Applicant has resolved this inconsistency by removing reference to a specific measurement of tunnel cover, simply stating that that the cover will be “adequate”. A specific measurement is needed; without one it is not clear what level of tunnel cover will be required.

3.3. In addition, revised para 9.5.6 of the ES, per the ES addendum, provides that cover will be “in line with the River Restrictions Plan”. The River Restrictions Plan does not provide measurements for tunnel cover and, moreover, “in line with” does not imply any degree of certainty that the degree of cover must match what is on the plan – on the basis that the extent of cover could be scaled off – but only generally similar.

3.4. Where measurements for tunnel cover remain in the application documents - for example, plate 5.1 of the revised Statement of Reasons (REP1-048) - they are lower than is normal and the Applicant is yet to give justification for this.

4. Statement of Common Ground (SoCG) – Environment Agency (EA)

4.1. Item no. 2.1.8 of the draft agreed SoCG with the EA includes a comment from the Applicant that:

“In the first protection zone no activities are allowed, and in the second protection zone dredging and maintenance is allowed (works undertaken by the Port of London Authority) and other activities only after consent by the undertaker (National Highways).”

This statement is incorrect. Art. 48(2) of the dDCO provides that consent is not required from the undertaker by the PLA, or any other party with a licence under the Port of London Act 1968 (**1968 Act**), for specified activities in the second protection zone.

5. Statement of Common Ground – Virgin Media Limited (Virgin Media)

- 5.1. Item no. 2.1.3 of the draft agreed SoCG with Virgin Media addresses the request of Virgin Media to install cables in the tunnel and the Applicant's response that It "does not consider this to be a matter to be resolved as part of the DCO process". This statement appears to anticipate that the Applicant will enter into a separate arrangement with Virgin Media for the installation of apparatus in the tunnel presumably without obtaining the relevant licence under the 1968 Act. The ability of the Applicant to do so would be as a result of powers conferred by the dDCO, see in particular Art. 53(4) (Disapplication of legislative provisions, etc). The PLA's comments on Art. 53 are set out at section 14 of its written representation.
- 5.2. The purpose of the dDCO is to authorise a road scheme, and it ought not to be used as a means of bypassing the river works licensing scheme which would ordinarily apply. In the no-Order world, telecoms companies must obtain a licence under s66 and pay consideration under s67 of the 1968 Act. The position which appears to be reflected by the Virgin Media SoCG is that, in the Order world, telecoms companies in their capacity as undertakers may be given a means through Art. 53 of avoiding having to comply with the river works licensing regime in circumstances where the telecoms company's activity has nothing to do with the road tunnel which is authorised by the dDCO. The dDCO should not be used to authorise such action, and this should be made explicit in its drafting. The Applicant has recently suggested an amendment to Art. 53 which the PLA is reviewing.

6. Written representation of Port of Tilbury London Limited (PoTLL)

- 6.1. Section 5 of PoTLL's written representation addresses the need for connectivity to the Port of Tilbury from the proposed Lower Thames Crossing and emphasises in particular the requirement for a road link to the Port, being the Tilbury Link Road (**TLR**), to provide resilience, future capacity and reduce congestion. The PLA notes PoTLL's comment at para 5.1.3 that "it may be difficult to change the application to include a TLR now the Examination is in progress, PoTLL has focused its representations on the need to ensure that the TLR is not impeded".
- 6.2. As set out in the PLA's written representation, London Gateway and PoTLL together handle over 50% of trade in the Port of London. The PLA therefore endorses these representations, in terms of ensuring that the dDCO Scheme is designed and constructed to be TLR-ready as a minimum.
- 6.3. Following Deadline 1, the PLA and PotLL met and discussed the benefits of producing a joint statement regarding planning policy as applicable to the dDCO scheme and its interaction with the river, in particular the National Policy Statement for Ports and the South East Inshore Marine Plan. The PLA and PotLL expect to submit this joint statement at Deadline 3.

7. Written representation of Holland Land and Property Ltd on behalf of C H L Mott and M Mott (C and M Mott)

- 7.1. Section 7 of C and M Mott's written representation sets out how access is required to an existing jetty which is utilised in connection with the disposal of inert material on the Goshems Farm land restoration site. The jetty consists of a pontoon with dual access brow and 15 piles and whilst the jetty is located outside of the Order limits it is used in connection with land that is located within the Order limits. A licence for the jetty has been granted by the PLA and the licence allows the unloading of spoil and other bulk cargoes.
- 7.2. The jetty has an important function on the river, facilitating the transport of material by water. This jetty in particular has been used in conjunction with major development projects allowing material to be removed from London by water rather than by HGV. For example, over 845,000 tonnes of material excavated in connection with the Northern line extension was transported via the river from Battersea and offloaded via the jetty, saving 450,000 lorry movements. The PLA therefore supports the comments by C and M Mott that appropriate landside access needs to be maintained to the jetty.