

**THE PROPOSED A122 (LOWER THAMES CROSSING) DEVELOPMENT CONSENT ORDER**

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**Comments on Applicant's submissions at Deadline 2  
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 by the Applicant at Deadline 2.

1.2. Documents addressed in this submission are:

1.2.1. Draft Development Consent Order (**dDCO**) - (**REP2-005**);

1.2.2. Applicant's response to IP comments made on the draft DCO at Deadline 1 (**Applicant's response on dDCO**) - (**REP2-077**); and

1.2.3. Environmental Statement Addendum (**ES Addendum**) – (**REP2-041**)

## 2. Art. 2 – interpretation - definition of “authorised development”

2.1. At section 9.2 of the Applicant's response on dDCO made at Deadline 2 (**REP2-077**), it addresses the points raised by the PLA as to the applicability of precedents – both general and specific – cited by the Applicant in drafting the dDCO. The PLA has stated previously (see REP1-271 para 3.1) that the Applicant's precedents are not relevant to DCOs which authorise schemes including major river crossings, and further, that they are not necessarily appropriate for DCOs engaging the river Thames (the **river**) due to their location much further upstream than the Lower Thames Crossing dDCO scheme. The Great Yarmouth Third River Development Consent Order 2020 is not comparable to the Applicant's dDCO scheme, neither in the very large scope of the works proposed as part of this NSIP by the Applicant, nor in terms of impacts on the river, river traffic and river trade. Interference with the River Yare is not comparable in terms of the impacts the Applicant's dDCO scheme will have.

2.2. As the Applicant identifies at paragraph 9.2.1 of its response on dDCO (REP2-077) the definition of authorised development in its dDCO is a matter not agreed between the parties. The PLA notes that the definition of authorised development has been raised by a number of other interested parties.

## 3. Arts. 3(3) and (4) – development consent etc granted by the order – land in the river adjoining Order limits

3.1. The introduction of Art. 3(4) of the dDCO raises a new issue for the PLA as, in displacing Art. 3(3), it introduces a level of uncertainty as to the continued effect of the Port of London Act 1968 (the **1968 Act**). Albeit the PLA considers that it is unintentional, Art. 3(4) as drafted could arguably be interpreted in two distinct ways as the new article 3(4) overlaps to some degree with words in parentheses in Art. 3(3).

3.2. In the PLA's view, the words “(other than in order land comprising part of the river Thames outside of the order limits)” in Art. 3(3) do not work effectively alongside the new Art. 3(4) and consequently the PLA intends to suggest to the Applicant that the words quoted be deleted.

**4. Art. 8 – consent to transfer benefit of order – transfer of undertaking**

4.1. The Applicant states that the PLA’s concerns in respect of parties to whom all powers in the dDCO may be transferred is misconceived (para 9.3.1 of the Applicant’s response to IPs - REP2-077). The PLA agrees that transfer of benefit of the dDCO is strictly and explicitly related to the undertaking of the bodies referenced in Art. 8(5), as the Applicant states. However, the fact remains that this constitutes an exceptionally long list of pre-approved bodies to which powers can be transferred, and in a number of cases their current business is an indication, rather than a guarantee, of what their future business will entail. As previously noted, the PLA cannot see why it is necessary for the completion of a road scheme to transfer powers to such a wide range of bodies.

**5. Art.18 – powers in relation to relevant navigation or watercourses – interference with the river**

5.1. Removal of wording relating to exercise of powers as “may appear to be” reasonably necessary in the context of interference with the river is welcomed. However, as drafted, such interference can still occur anywhere within the river and this power should be limited to within the Order limits.

**6. Art. 28 – compulsory acquisition of rights and imposition of restrictive covenants – and over which rights may be acquired for permanent outfall**

6.1. Para 9.5.1 of the Applicants response on dDCO states that: “the Applicant will submit updated information on the temporary outfall at a later deadline”. The PLA awaits the updated information and relevant plans.

**7. Art. 35 and Sch. 11 – temporary use of land for carrying out the authorised development – temporary possession of land**

7.1. Notwithstanding the Applicant’s response in respect of the potential extent of temporary possession, as set out at section 9.6 of the Applicant’s response to IPs (REP2-077), there is nothing which actively prevents the Applicant increasing its liability for compensation in circumstances where land is temporarily possessed for an extended period of time where authorised works remain incomplete. The Applicant’s licence requirements to ensure proper use of public funds is not sufficient reassurance in this respect.

7.2. The PLA’s point about the lack of a back-stop date to the exercise of the Applicant’s powers of temporary possession remains. Whilst Art 35.(4) deals with time periods for possession after the completion of part of the authorised development or the completion of the work for which temporary possession was taken, it does not deal with a scenario where work commences but is then paused. The PLA has therefore suggested an amendment to the drafting of the dDCO to specify that the Applicant’s exercise of those powers will cease no later than a fixed period of time, such as within 2 years from the Applicant last having carried out any activity in, over or under the land to which those powers relate.

**8. Art. 35 and Art. 36– compulsory acquisition and temporary works**

8.1. The Applicant states (para 9.7.2 of REP2-077) that “the PLA have available to them the details of works in Schedule 1 to the dDCO”. The PLA and the Applicant’s respective property teams are discussing this matter.

**9. Art. 37 – statutory undertakers**

9.1. The PLA maintains that the drafting at Art. 37 is extremely wide, applying to any Order land belonging to statutory undertakers (which includes the PLA). Art. 37(1) is currently not subject to Art. 33 - and specifically Art. 33(8) - which limits the Applicant’s ability to acquire easements or other new rights or impose restrictive covenants on, over or under the river bed of the river for the protection of the tunnels.

**10. Art. 48(9) – protection of the tunnel area, etc – explosives anchorage**

10.1. Amendments to Art.48(9) whilst a positive step by the Applicant, are not sufficient to reassure the PLA in respect of the disapplication of the licence for an explosives anchorage at Higham bight. The PLA suggests the wording be amended to:

“From the date that construction of the permanent elements of Work No. 5A or Work No. CA5 starts[...]”

10.2. The PLA has removed “begun” (as defined in Art. 2) as the proposed trigger for the disapplication. “Commence” would have been a more appropriate trigger, but it is no longer included as definition in the front end of the dDCO, and so the PLA has used “starts” instead.

10.3. In addition to which, and in terms of the proposed timing of Works No. 5A and CA5, the PLA will comment further once the relevant maritime consultant has completed the first stage of the exercise in relation to potential alternative locations for an explosives anchorage and when, consequently, it has a clearer idea of the timeframe to obtain an alternative licence.

**11. Art. 53(4) – disapplication of legislative provisions etc – apparatus in the tunnel**

11.1. The PLA welcomes the restriction on exercise of powers under Art. 53(4) to the undertaker “in its capacity as a highway authority”, and is in further discussion with the Applicant about drafting to make clear that utilities installing apparatus in the tunnel will require a river works licence under the 1968 Act.

**12. Sch. 2 – requirements – river safety lighting management plan**

12.1. Paragraph 9.11.4 of the Applicant’s response to IPs (REP2-077) indicates that it considers the issue of lighting on the river to have been addressed and that the PLA’s position is disproportionate. The PLA does not agree. Paragraph 6.8.5 of the Code of Construction Practice (**CoCP**) (APP-336) provides that:

*The EMP2 must require a River Safety Lighting Management Plan (RSLMP) to be prepared by the Contractors for any lighting required during the construction phase for the northern tunnel entrance compound, the laying out of Tilbury Fields, the construction of the drainage outfall in the River Thames, and the construction of the water inlet with self regulating valve at Coalhouse Point, insofar as that lighting is reasonably expected to adversely affect any vessels using the river Thames.*

- 12.2. It is conceivable that the contractor could consider that lighting will not adversely affect the river and not be obliged to produce a plan. Having reviewed the list at Table 4.1 of the CoCP of “Envisaged roles and responsibilities for the Project construction phase”, the PLA has been unable to identify any which have responsibility for navigational safety or a maritime coordinator.
- 12.3. The PLA requires that the second iteration of the Environmental Management Plan (EMP2), as provided for in the CoCP will include a RSLMP. The PLA has suggested the Applicant inserts a new paragraph 4(3)(j) in Schedule 2 (Requirements) which identifies that the EMP2 will include a River Safety Lighting Management Plan.
- 12.4. Whilst the PLA agrees with the Applicant that EMP2 will require the contractors to produce Construction Logistics Plans (CLPs), the PLA’s specific point is that CLPs are not subject to consultation with interested parties or to sign-off by, for example, the Secretary of State. As set out at paragraph 6.1.8 of Appendix 2.2 – Code of Construction Practice, First Iteration of Environmental Management Plan (REP1-156) CLPs will be submitted to National Highways only for review and approval.

### **13. Sch. 14, Part 8 – protective provisions – para 97**

- 13.1 In the context of the definition of “begin” at Art.2, and insofar as the works that are encompassed within the definition of a “specified work” or “specified function”, per Part 8 of Schedule 14 to the dDCO at paragraph 97 of that part, the PLA has made a minor drafting point to the Applicant on this matter which the PLA hopes can be agreed and resolved.

### **14. Sch.14, Part 8 – protective provisions – para 99(1)**

- 14.1. The amendments to paragraph 99(1) do not deal with the specific point that the detailed design and construction of the tunnelling works in the river must consider more than just the navigable channel depth. The obligation in the dDCO at para 99 of Sch. 14 needs to consider the entirety of the channel of the river, not only the navigational channel. There are features in the river (such as unexploded ordnance and abandoned works) which are outside the navigational channel but do nevertheless need to be considered in the tunnel design. In addition, there is a degree of navigation, especially by smaller and recreational vessels, that occurs outside of the navigable channel, particularly this far downstream in the river.
- 14.2. A means of addressing this point would be to link paragraph 99 to the river restrictions plan so that the areas outside of the navigational channel are also considered in the design and construction of the tunnel.
- 14.3. The ExA is asked to note also that the changes to paragraph 99 submitted at Deadline 1 and taken forward to the current dDCO (REP2-005) are not agreed by the PLA. The PLA needs to review the updated Flotation Sensitivity Check before considering and commenting on the revised drafting at paragraph 99.

**15. Sch.14, Part 8 – protective provisions – para 99(2)**

- 15.1. Following advice from its tunnelling consultant, the PLA requires a risk assessment to be undertaken and submitted to support any submission made to the PLA pursuant to paragraph 99 and the PLA therefore propose that the requirement for a risk assessment is included as a new paragraph 99(2)(d).

**16. Sch.14, Part 8 – protective provisions – para 104(4)**

- 16.1. The PLA has previously noted in its Deadline 2 submissions (REP2-091), the issue of sub-paragraph 104(4) not forming a coherent part of the remainder of paragraph 104. Paragraph 104(4) is not about facilities for navigation, so the PLA suggests removing it to a separate paragraph under a separate header.
- 16.2. Further, the PLA notes that the “temporary outfall” is not defined. While it is clear to both the PLA and the Applicant which temporary outfall is currently referred to, the PLA believes it would be better for the sake of drafting clarity and those working on the dDCO scheme in the future (e.g. contractors) to specify which outfall is being referred to.

**17. Environmental Statement Addendum (REP2-041)**

- 17.1. In respect of the use of a single tunnel boring machine (**TBM**), Table C.1 of the ES Addendum “Key information on a single TBM approach” suggests that a single tunnel boring machine will be delivered by water (with the implication that, if two are required, each would be delivered by the same means). The bullets at the top of page 100 of the tracked ES Addendum state:

*-only one TBM would be delivered to and then removed from the northern tunnel entrance compound via the Port of Tilbury. Delivery of the single TBM via the River Thames would reduce river vessel requirements, compared to the delivery of two TBMs.*

*- TBM(s) would no longer be removed from the southern tunnel entrance compound. River vessel movements to remove the TBM would be reduced for the single TBM, and via the northern tunnel entrance compound.*

- 17.2. It appears, therefore, that the TBM (or TBMs) are to be delivered by river, but this is not secured in any of the Applicant's documents; there is no commitment to use of the river for this operation.
- 17.3. Table C.5 states in relation to marine biodiversity that “The single TBM would operate for longer but produce lower levels of underwater noise and vibration due to a reduction in the number of TBMs being driven simultaneously. As a result there would be no change in the assessment of effects reported in the DCO application”. Reference is made to Chapter 9 of the Environmental Statement (APP-147). It is unclear to the PLA from Appendix 9.1, Assessment of ground-borne noise and vibration, and underwater noise from the tunnel boring machine at marine receptors (APP-420) whether the report assessed one or two TBMs, due to multiple references to TBM (singular) rather than TBMs (plural).