

THE PROPOSED A122 (LOWER THAMES CROSSING) DEVELOPMENT CONSENT ORDER

**Responses to comments on submissions
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 comments on submissions made by the Applicant at Deadline 5.

1.2. Documents referred to in this submission are:

- 1.2.1. Draft Development Consent Order (**dDCO**) v7.0 – REP5-025;
- 1.2.2. Applicant’s responses to IP’s comments on the dDCO at Deadline 4 – REP5-089;
- 1.2.3. Preliminary Navigation Risk Assessment (**pNRA**) – REP5-059; and
- 1.2.4. Applicant's Comments on IP submissions at Deadline 1 to 3 - REP5-088.

1.3. In addition, the PLA wishes to draw the Examining Authority’s attention to two (2) errata it has identified in its Deadline 5 submission (REP5-111). The errata relate to two internal cross-references in the document as follows:

- 1.3.1. at paragraph 13.1, the cross-reference to paragraph 16 should be to 14; and
- 1.3.2. at paragraph 13.2, the cross-reference to paragraph 12 should be to 5.6.

2. Draft Development Consent Order v7.0 – REP5-025

2.1. As discussed at Compulsory Acquisition Hearing 3 (**CAH3**), the PLA has been in discussion with the Applicant about the drafting relating to temporary possession (**TP**) in the dDCO. The drafting that has been proposed to the PLA by the Applicant resolves the PLA’s two concerns on this point. Firstly this is because the Order now excludes TP of the tunnel plots. Secondly, as explained in CAH3 the issue of temporary possession being taken and retained in the event of a delay to the project with the land remaining unused, is proposed to be resolved by wording in the PLA’s protective provisions which would enable the PLA to impose conditions relating to timing on approvals granted under paragraph 98 of Schedule 14. Subject to these amendments to the dDCO being made by the Applicant, the PLA anticipates that its issues with temporary possession will be resolved.

2.2. The parties are also agreed that Article 53 will need to be amended so if any cabling or utilities are proposed to be placed in the tunnel which are not required solely for the use of the authorised development, that these works remain subject to the usual river works licensing process and do not fall within the disapplication of legislative provisions currently identified at Article 53.

2.3. The Applicant has previously asserted that the protective provisions set out in Schedule 14 of the dDCO gives the PLA the ability to approve the design and construction of the tunnel. However, paragraph 98 states that PLA’s approval is not required under that paragraph for any tunnelling works covered by the protective provisions, and paragraph 99 does not deal with an approval of design. We are in discussion with the Applicant regarding changes to paragraphs 99 and 100 of the dDCO which would include an obligation for the detailed design and construction of the tunnelling works to take into account the need to protect the existing and future use of the river Thames and the functions of the PLA. The changes, if made, would also require the Applicant to consult

the PLA on matters it may reasonably request during construction of the tunnelling works, require the Applicant to notify the PLA of the expected start date of tunnelling works at a suitable point in advance of certain stages in the tunnelling works programme, and require the preparation of a river use and navigation emergency response plan.

2.4. There are some outstanding matters of detail which remain under discussion on paragraphs 99 and 100, including further thought to be given as to what is to be done in the event that there is a disagreement which proceeds to arbitration. The PLA’s position is that relevant tunnelling works should not begin until any arbitration which affects that work is resolved and we are in discussions with the Applicant on that point.

3. Applicant’s responses to IP’s comments on the dDCO at Deadline 4 (Applicant’s IP D4 Responses) – REP5-089

3.1. Section 7.3 of Applicant’s IP D4 Responses addresses the redrafting of Art 37 of the dDCO, in response to the PLA’s representations. In particular, paragraph 7.3.2 states that the Applicant is “concerned that the [PLA’s drafting] suggestions would fall foul of the Office of Parliamentary guidance that only necessary provisions be included, but has nonetheless adopted the insertion in an effort to provide comfort to the PLA”.

3.2. The PLA acknowledges that the revised wording is in certain respects not in keeping with the Office of the Parliamentary Counsel’s Drafting Guidance (the **OPC Guidance**). However, the wording suggested by the PLA at Art 37(1) reflects the drafting elsewhere in the dDCO. The OPC Guidance repeatedly stresses the importance of consistency in legislative drafting; using different constructions in the same legislation to mean the same thing can cause ambiguity and give rise to confusion. We acknowledge that we would approach the drafting differently if starting from scratch, but we took the approach of proposing drafting which is consistent with the dDCO as a whole. This follows the principle of consistency set out in the OPC Guidance and we are content that the drafting serves its purpose within the context of this dDCO.

4. Preliminary Navigation Risk Assessment v.2.0 (pNRA) – REP5-059

4.1. Text inserted into paragraph 2.2.10 of the pNRA includes a degree of further detail on vessel movements. The PLA notes that these figures – and assessment thereof – must be kept under review if river use is to be significantly increased beyond existing berth capacity, or if a new site for material transport is to be introduced.

5. Applicant’s Comments on IP submissions at Deadline 1 to 3 (Applicant’s IP D1-3 Comments) - REP5-088

5.1. The Applicant addresses points raised by the PLA in respect of anchor penetration at numbered page 64 of the Applicant’s IP D1-3 Comments. The PLA raises this point for the benefit of the Applicant because it was unclear from the application documents if the anchor penetration depth assessment had been undertaken on pre or post dredge levels. Ultimately this is a matter for the Applicant and the risk is theirs to manage. The

PLA has made the point a number of times and has alerted the Applicant to this risk and therefore will make no further comments on this point.

- 5.2. On numbered page 69 of the Applicant's IP D1-3 Comments, item number 4.19.3, the Applicant addresses the PLA's comments as to the effects of noise and vibration on waterfowl which feed underwater. The Applicant refers back to its previous answer, relating to what was covered in the Habitats Regulation Assessment (Screening Report and Statement to Inform an Appropriate Assessment) (**HRA**) (APP-487). This document addressed the issue of the potential effects of underwater noise and vibration on invertebrate prey species, but did not do so in respect of the waterfowl that are qualifying features of the SPA. Consequently, there is no change in the position the PLA raised at earlier deadlines of the examination.
- 5.3. At item number 4.19.4 on the same page of the Applicant's IP D1-3 Comments, the Applicant states that that the potential effects of construction lighting on the ecology of the river have been considered in chapter 9 of the Environmental Statement (ES)(APP-147). Whilst this is correct, the document covers only the principles of the lighting plan, which would in itself be acceptable if the PLA were given pre-commencement approval, but the ES states that only the MMO will be given opportunity for review. The PLA's issue remains as to relevant assessment being required only where operations are proposed for 24 hours a day; the PLA's view is that assessment should be required where any work is carried out during night-time (i.e. between sunset and sunrise).