



PORT OF  
**TILBURY**  
LONDON

**Section 56(2) Planning Act 2008**

**Application by National Highways Limited for an Order Granting Development  
Consent**

**for**

**Lower Thames Crossing**

**Planning Inspectorate Reference: TR010032**

**PORT OF TILBURY LONDON LIMITED**

**RESPONSE TO SUBMISSIONS MADE AT DEADLINE 6**

**AND DEADLINE 6A**

**Deadline 7: 17 November 2023**

**1. RESPONSE TO SUBMISSIONS MADE AT DEADLINE 6**

**Draft DCO Version 8 [REP6-011]**

- 1.1 On the matter of tunnelling, PoTLL supports the Port of London Authority (PLA) as the appropriate body to ensure that the tunnel is designed so that it may be constructed and operate safely, minimising the risks to navigation in the river Thames to the greatest extent practicable. It is through proper controls that PoTLL will be able to take comfort that the tunnel will not cause harm to the operation of the Port of Tilbury.
- 1.2 The Applicant has submitted revised Protective Provisions for the benefit of the PLA as part of Version 8 of the draft DCO. At paragraph 99(5), a reference to arbitration may be made in the event of dispute as to the detailed design and construction methodology of the tunnel. A key part of that provision is that the tunnelling may not be commenced until the arbitration has completed.
- 1.3 The Applicant has added further drafting at paragraph 99(6), intended to allow for a reference to be made to the Secretary of State for a decision as to whether tunnelling may commence, during any period of arbitration. Further drafting requires the arbitrator, in such circumstances, to ensure that their decision does not conflict with the Secretary of State's decision.
- 1.4 PoTLL supports the position of the Port of London Authority (PLA) that the Applicant's drafting at paragraph 99(5) and (6) is not acceptable.
- 1.5 The provision of the arbitration clause is required to resolve any dispute about the design and construction of the tunnelling. It is imperative that the PLA has proper oversight of the detailed design of the tunnel to ensure that the safety and security of navigation in the river is secured, to the greatest extent practicable. As advised during the Issue Specific Hearing 5 on Tunnelling, the risk to the river Thames from the tunnelling process is low, but the impacts of any incident are extremely high, potentially impacting the national economy should an incident be so severe as to impede or block access to the Port of Tilbury. Please see section 3 of PoTLL's Summary of Oral Submissions, submitted at Deadline 4 [REP4-347].
- 1.6 The ability of the undertaker to refer a dispute over the tunnelling plans, that is subject to an ongoing arbitration, to the Secretary of State for them to direct that the disputed plans may nevertheless be implemented and tunnelling may commence serves to fundamentally undermine the arbitration process and the very purpose of the PLA's protective provisions. Arbitration is the mechanism to resolve any dispute between the Applicant and the PLA about the tunnelling proposals and is intended to ensure that a suitably qualified expert determines if the plans are suitable for implementation or require further revision. Given the technical nature of tunnelling, this is not something that is suitable to be determined by the Secretary of State.
- 1.7 In any event, notwithstanding the intention of sub-paragraph (6) the drafting does not appear to be a clear reflection of the Applicant's proposal. As drafted, the sub-paragraph applies where the undertaker provides the Secretary of State with:
- 1.7.1 the PLA's representations;
  - 1.7.2 the written account required under sub-paragraph (3); and
  - 1.7.3 agrees that the tunnelling work under dispute can begin.
- 1.8 This does not make clear sense. The drafting appears to state that it is the undertaker who must agree that tunnelling work may begin, presenting that agreement to the Secretary of State. The present drafting is not adequate, notwithstanding the fundamental objection against the principle of the Applicant's proposal.

- 1.9 The further addition in sub-paragraph (5) of a requirement that the appointed arbitrator must ensure that their decision ‘does not conflict’ with the decision of the Secretary of State fetters and interferes with the independence and expertise of the arbitrator and is contrary to the purpose of arbitration as a mechanism for dispute resolution. Indeed, the obvious question is why there is provision for two different types of dispute resolution for what is clearly a key issue for the Scheme and the national economy.
- 1.10 The requirement that tunnelling must not commence until arbitration is complete, with the decision of the arbitrator being binding on the undertaker, is fundamental to PoTLL being able to be confident that the PLA has adequate oversight to protect the interests of users of the river Thames. The proposed drafting, submitted by the Applicant, enables this impartial, technical assessment of the matters in dispute to be circumvented by reference to the Secretary of State.
- 1.11 It is, in PoTLL’s view, likely that the Secretary of State would decline to authorise tunnelling to commence without the benefit of the arbitration decision, setting out the full technical considerations behind the arbitrator’s decision as to the acceptability of the plans. However, PoTLL can see no basis for the inclusion of this provision in the DCO, except to cater for a circumstance where the Applicant’s proposals are not of a sufficiently high standard to be confident that tunnelling can be conducted safely. If this is the case, the Applicant should be required to improve the plans to resolve the concerns.
- 1.12 PoTLL further notes that the reference to arbitration is in accordance with article 64 of the Order, enabling a suitably qualified expert to be appointed to determine the matter. Whilst no arbitration rules are provided within the draft Order, commercial arbitrations are typically conducted to a very rapid timescale. Any delay to the commencement of tunnelling would be correspondingly brief in the event the arbitration found the plans were sufficient. In the event the arbitration found the plans were insufficient, the delay is proportionate to manage the increased risk to the river Thames from sub-standard proposals.
- 1.13 The Applicant’s proposals are entirely novel and without precedent. In PoTLL’s view, the operation of the arbitration clause would not unduly delay the implementation of the Scheme in any way, but would instead ensure that the implementation of the tunnel is carried out in the best practicable manner, having due regard to the extensive consequences affecting safety, use of the river Thames and the national economy that may occur in the event of any tunnelling issues occurring.

## **2. RESPONSE TO SUBMISSIONS MADE AT DEADLINE 6A**

### **9.160 Asda roundabout construction impact assessment**

- 2.1 PoTLL has carried out an initial review of this assessment and comments are provided with the intention of assisting the Examining Authority to prepare for Issue Specific Hearing 13 on Traffic & Transportation. A further, more detailed review will be carried out and will inform PoTLL’s submissions during that hearing and its written submissions to be provided at Deadline 8.
- 2.2 In its Deadline 6A submissions, the Applicant has provided an assessment of the impacts at the ASDA Roundabout resulting from the construction of the A122 Lower Thames Crossing (LTC). The assessment uses Arcady (Junctions 10) local modelling to provide greater clarity on the impacts previously identified at Deadline 3 within the ASDA roundabout VISSIM Construction Assessment Report [REP3-132]. The impacts are summarised as being caused by a combination of construction traffic (consisting of construction staff and HGV movements) and the reassignment of existing traffic due to temporary traffic management measures.
- 2.3 The assessments show impacts at the ASDA roundabout in all three peak hours assessed (07:00-08:00, 08:00-09:00 and 17:00-18:00) and in every construction phase stretching over the anticipated 6 year construction period. The greatest capacity constraints are shown on the A1089 Dock Approach arm, particularly in the 07:00-08:00 peak hour. However, all peak hours, during every construction phase, show the junction to be operating over-capacity or close-to capacity on at least one arm of the junction.

- 2.4 The impacts identified in the assessment result in capacity constraints at the ASDA roundabout. The Applicant accepts these capacity constraints and that they are required to be mitigated.
- 2.5 The Applicant has set out that the mitigation is secured by control plans, namely the Framework Construction Travel Plan (FCTP) and the outline Traffic Management Plan for Construction (oTMPfC). Mitigation measures would be implemented in accordance with those Plans.
- 2.6 The control plans seek to mitigate the two identified causes of the capacity constraints at the ASDA roundabout, being the addition of LTC construction traffic, and the reassignment of existing traffic onto the junction due to temporary traffic management measures elsewhere on the network. The mitigation will consist of the following non-physical measures:
- 2.6.1 delivering temporary traffic management measures that have been designed to result in less traffic being reassigned from local roads onto the ASDA Roundabout; and
  - 2.6.2 limiting construction vehicles (both construction HGVs and worker vehicles) from utilising the ASDA roundabout in the peak hours.
- 2.7 In each case, the Applicant has not demonstrated in detail that this approach successfully achieves a reduction of the impacts at the ASDA roundabout. The Applicant has also not considered if these proposed mitigation methods are practicable or feasible within the wider limitations of the LTC construction programme, through consideration of the knock-on effects on construction cost and timescales.
- 2.8 Physical mitigation, such as the Scheme of Mitigation proposed by PoTLL for the ASDA roundabout provided at Appendix 1 to PoTLL's Summary of Oral Submissions [REP6-163], would provide constraint-free use of the Strategic Road Network (SRN) at the ASDA Roundabout during every phase of construction and during every peak hour. This is confirmed by the Applicant's assessment of traffic flows using LTAM with the addition of the PoTLL mitigation option. The additional traffic flows from construction traffic and reassigned traffic are shown to be able to use the junction without causing detriment to the local road network, minimising the construction impacts on local communities.
- 2.9 Providing physical mitigation at the ASDA roundabout would also positively contribute to the construction of LTC. This would be achieved through enabling a reduction in the overall construction period by allowing construction vehicles to have unhindered access to the SRN during all times of day. By contrast, use of the FCTP and oTMPfC would require construction traffic to avoid the SRN at peak times, with the corresponding slow-down of construction movements. This remains true after offsetting for the initial construction impacts of implementing the physical mitigation, which would be experienced for a far shorter period than the anticipated 6 year construction period.
- 2.10 Physical mitigation would also lead to reductions in the overall cost of mitigation, greater than the cost of implementing the physical mitigation, by allowing contractors to operate throughout the day without delays or unexpected pauses. The impacts on local roads and junctions would be reduced, particularly within the local communities of Tilbury, Chadwell St Mary and Linford. The primary routes in LTAM for construction workers accessing the North Portal Compound are through these communities and this is directly linked to the forecast constraints on the SRN.
- 2.11 It is clear from PoTLL's initial review that its concerns that the operation of the ASDA roundabout will be significantly impacted by the Scheme's construction traffic and traffic regulation measures elsewhere on the network are well founded. This has been demonstrated by the Applicant, despite construction worker traffic being assessed as using local roads, which are generally unsuitable for high volumes of construction workers, in preference to the strategic road network.
- 2.12 The Applicant's proposals are wholly reliant on the measures in the FCTP and oTMPfC being sufficient to mitigate each of these identified impacts. As above, it has not been demonstrated that it is possible for the Applicant to deliver less disruptive temporary traffic management measures, and

the impacts that limiting construction vehicles (including construction worker vehicles) during peak periods would have on the programme for constructing the Scheme have not been considered. Nor has it been demonstrated that the measures included in the FCTP and oTMPfC will actually be capable of achieving the mitigation impact suggested.

- 2.13 In the context of the issues demonstrated by the Applicant's own modelling, PoTLL maintains its position that it is necessary to ensure that the Applicant manages traffic in a timely reactive matter, rather than simply relying on the forums created under the Control Plans. For this reason, PoTLL continues to develop a traffic protocol with the Applicant that will ensure that impacts affecting access to the Port of Tilbury that do arise are addressed urgently.
- 2.14 Furthermore, the modelling demonstrates the need for a robust process to be in place in order for all parties to be confident that the Asda Roundabout will remain able to cope with the addition of LTC construction traffic to the existing Port and local traffic. If the Applicant is confident that its mitigation proposals are acceptable and sufficient (including its commitments in the outline Materials Handling Plan), then there should be no complaint about including in the DCO POTLL's suggested Requirement, which is supported by key stakeholders, and which simply ensures that the Applicant demonstrates its mitigation proposals to be adequate.
- 2.15 PoTLL suggests that it is entirely reasonable for the Applicant to be required to consider and plan for a scenario where its limited mitigation proposals are not capable of adequately mitigating the impacts on the Asda Roundabout, or can only do so with consequential impacts for the construction of the Scheme. PoTLL considers that it would be irresponsible to proceed with a scheme on the scale of the Lower Thames Crossing with such limited resources available to mitigate potentially severe impacts on a key junction on the strategic road network.