

THE PROPOSED A122 (LOWER THAMES CROSSING) DEVELOPMENT CONSENT ORDER

**Comments on Applicant's submissions at Deadline 6
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 6.
- 1.2. Documents referred to in this submission are:
 - 1.2.1. Draft Development Consent Order v8.0 (REP6-011);
 - 1.2.2. Stakeholder Actions and Commitments Register v4.0 (REP6-051);
 - 1.2.3. Tunnel Depth Report v2.0 (REP6-076); and
 - 1.2.4. Applicant’s response to comments made by Natural England at D5 (REP6-095)
- 1.3. In addition, the PLA asks the Examining Authority (**ExA**) to note that, whilst the Applicant submitted its *Response to the Joint Statement on Policy Compliance of the Lower Thames Crossing Scheme with Ports Policy Made on the dDCO at D3* (REP6-093), it intends to make its comments on that document at Deadline 8.
- 1.4 The ExA is also advised that the PLA and the Applicant met on 14 November 2023 to discuss the Applicant’s river use commitments and their proposed amendments to the outline Material Handling Plan (**oMHP**). The meeting was constructive and it is intended that further discussions will take place before Deadline 8. The PLA has therefore chosen not to make any comments on this matter at Deadline 7 but will participate at ISH12 and will provide a detailed position statement at Deadline 8 following review of the Deadline 7 version of the oMHP and reflecting any progress made on this matter at ISH12 and during the further discussions that are planned between the PLA and the Applicant.

2. Draft Development Consent Order (dDCO) v8.0 – REP6-011

- 2.1. The PLA and the Applicant have been in ongoing discussion on certain outstanding points of drafting in the dDCO, namely Art. 53 and paragraphs 99 and 100 of Part 8 of Schedule 14 to the dDCO (**PLA’s protective provisions**). The wording of Art. 53 has now been settled by the parties and the PLA anticipates the agreed redrafting being included in an updated dDCO to be published at Deadline 7.
- 2.2. In respect of the PLA’s protective provisions, agreement has not yet been reached on the drafting of paragraph 99, primarily because the PLA cannot accept the provision whereby a dispute relating to tunnelling works under the river Thames (**river**) is to be settled by an arbitrator, save that the Applicant can at any point decide to refer the matter to the Secretary of State in respect of matters of dispute and where an arbitrator would have to ensure their decision was consistent with that of the Secretary of State. Disputes can be referred to the Secretary of State under other parts of the Order, but this is generally either where the parties fail to agree on arbitration as a route to resolution, or on appeal. The process proposed for the PLA under paragraph 99 where the Applicant can unilaterally intervene to override an arbitration process under this dDCO is unique and provides the Applicant with an unwarranted degree of control over dispute resolution.
- 2.3. Paragraph 104 of the PLA’s protective provisions deal with remedial works where there is a material change to the river bed. The PLA has raised with the Applicant the need for the reference to “material” to address the fact that what is material in the context of the river

may be different from what is material in the context of the project as a whole and that, from the PLA's point of view, paragraph 104 should deal with materiality so far as the river is concerned.

- 2.4. The ExA is asked to note that, as and when the PLA's protective provisions are settled, there remain certain elements of the dDCO on which the parties remain in dispute. Whilst discussions continue with the Applicant, it is likely that some matters will be for the adjudication of the ExA and the decision-maker. These include matters such as the large number of potential transferees under article 8 (*consent to transfer benefit of Order*) and the issues which are drawn out below. The final position will be reflected in the PLA's final PADS at Deadline 9.
- 2.5. The PLA remains of the view that the definition of "authorised development" in Art. 2 is unusually wide, especially for a project of this size and scope. The PLA would like the definition of "authorised development" to be restricted so the authorised development is only what is described in Schedule 1 (authorised development) of the Order, and does not include "and any other development authorised by this Order, or any part of it, which is development within the meaning of section 32 (meaning of development) of the 2008 Act". Those words, which expand the definition beyond what is usual, leaves uncertainty as to what development will be authorised. That is a concern because the Port will remain operational and the PLA needs to understand the impact of the authorised development on its future operations.
- 2.6. The PLA maintains its position that, on principle, its land and interests ought not to be subject to powers of compulsory acquisition in the dDCO. Acquisition of land required should be achieved by means of a negotiated property agreement. The Applicant maintains powers of compulsory acquisition in the current draft of the dDCO. The PLA has responded to the Applicant's draft heads of terms and awaits the Applicant's comments on the PLA's proposed amendments.
- 2.7. The PLA has previously raised concerns about third party utilities being placed in the tunnel, as these would usually be subject to the PLA's river works licensing regime that has been disapplied by Art. 53 of the dDCO. The PLA has proposed alternative drafting to the Applicant, which retains the requirement for any party installing utility apparatus not required directly or solely for the purposes of the new highway to apply for a river works licence. This requirement will apply during construction and maintenance as well as after the maintenance period. Following some modification by the Applicant, this drafting has been agreed with the Applicant and should be submitted at Deadline 7.
- 2.8. At Schedule 10 to the dDCO, the PLA notes the removal of Plot no 16-41 and the inclusion of Plot no 16-70, which has the effect of that (renumbered) plot now being subject to powers of temporary possession. This is acceptable to the PLA, subject to the matter of Mean High Water (**MHW**) level, previously referred to in the PLA's Deadline 4 submission (REP4-343) being resolved. As noted, the PLA needs to ensure that the MHW level shown on the relevant Application plans is correct, and would welcome a discussion with the Applicant on that subject.

2.9. The PLA maintains its position in respect of the interpretation and use of “begin” at Art. 2 and Schedule 2 to the dDCO, which has not been addressed by the Applicant in successive iterations of the dDCO. This issue has been raised previously by the PLA as follows:

- 2.9.1. at paragraph 11.2 of *PLA Deadline 1 Submission - PLA3 - Written Representation* (REP1-269);
- 2.9.2. at paragraph 2.1 of *PLA Deadline 2 Submission - Comments on documents and submissions made at Deadline 1* (REP2-091); and
- 2.9.3. at paragraph 3.1 of *PLA Deadline 4 Submission - Written submissions of oral comments made at ISH5 ISH7 and CAH1* (REP4-345).

The PLA remains concerned that, as currently drafted, and absent the suggested amendment to Requirement 2 – the amendment being to include a reference to commencing the dDCO scheme not less than 5 years after the DCO coming into force, in addition to the existing requirement that development begin within that period – there remains uncertainty because once the Applicant has begun preliminary works such as GI or digging a trench, the DCO has effect indefinitely and there is no requirement on when the development must commence. The Applicant would therefore be able to construct the project at any future time, leave the PLA uncertain as to when the authorised development will be carried out.

3. Stakeholder Actions and Commitments Register v4.0 – REP6-051

- 3.1. The PLA considers that it should be a named beneficiary of the Tunnel Design and Safety Consultation Group (**TDSCG**), as detailed in the table at Appendix A of the Register on numbered page 14, as it has a clear interest in tunnelling design and safety and has had a similarly consultative role on other recent tunnelling projects, including Silvertown.
- 3.2. The PLA should be added to the list of beneficiaries of the TDSCG, as there are some pertinent issues that are (rightly) being deferred to the detailed design period and given the criticality of some of those issues to the river and river users, it is appropriate that the PLA is kept informed

4. Tunnel Depth Report v2.0 – REP6-076

- 4.1. The Tunnel Depth Report (**TDR**) was updated at Deadline 6. The updates include further analysis in relation to scour protection and consideration of the action of large vessel propeller forces. The TDR now allows for 1.3m of scour protection and with a resultant level of cover at the minimum point of 0.52 times the tunnel diameter if the tunnel crown is at the maximum upward limit of deviation and the riverbed has been dredged to the agreed dredge depth. The PLA welcomes the continuing engagement by the Applicant on this matter and is now, on the whole, content with the work that has been undertaken.
- 4.2. A number of minor points emerge from the updated TDR – these are not points of principle or points that require further assessment to be undertaken but rather are points of update

or clarification that are required. The PLA has discussed these points with the Applicant and expects a further update of the TDR at Deadline 8.

5. Applicant's Response to comments made by Natural England at D5 – REP6-095

- 5.1. In the Applicant's response at Annex C: Q11.1.2 – Tunnelling vibration on the marine environment (numbered page 7), the PLA's concerns about the effects of tunnelling have not been addressed. Although Natural England anticipates a conclusion of no likely significant adverse effects, the assessment covers only the displacement of invertebrate fauna and does not address underwater feeding waterfowl, other than looking at potential effects on prey species. Consequently, the PLA's concerns in this respect remain unaddressed.
- 5.2. At Annex C: Q11.9.7 Caveats on Mitigation: Adequacy of Security (numbered pages 8-9), Natural England retains concerns regarding ambiguity and insufficient certainty as to the securing of mitigation measures. These concerns are not robustly defended by the Applicant in its response and the PLA would note that any ambiguity or uncertainty in this respect may have implications for the PLA, depending on whether the Applicant changes the planned mitigation and/or compensation in extent or location to engage the river further.