

THE PROPOSED A122 (LOWER THAMES CROSSING) DEVELOPMENT CONSENT ORDER

**Responses to ExQ3 submitted on behalf of
the Port of London Authority**

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Author	Winckworth Sherwood LLP
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Arbor
255 Blackfriars Road
London
SE1 9AX

Winckworth
Sherwood
Solicitors and
Parliamentary Agents

Comments on the Examining Authorities third written questions and requests for information (**ExQ3**) submitted by the Port of London Authority (**PLA**).

4	Traffic and Transportation	
Q4.2.2	<p>River access and jetties for construction The respective positions of the Applicant and PLA in relation to the use of the River Thames as a means of construction transport and access has already been discussed and agreement has not been fully reached. There are outstanding concerns by PLA that the Applicant has not given adequate in principle consideration to the use of the River Thames to serve the element of the construction site south of the River Thames, or is seeking to defer consideration to a later stage than current of the Materials Handling Plan (MHP) [REP6-160]. Please keep the ExA updated at Deadline 7 and successive deadlines on any changed positions emerging from discussions on this point. Please ensure that if agreement is not reached, a final position is reflected in a final PADS statement for the PLA.</p>	<p>The Applicant, PLA and Thurrock Council are meeting on 6 December 2023, the day after this Deadline 8, to discuss use of the river during construction. From the PLA's perspective, the focus will be on the commitments set out in the outline Materials Handling Plan [REP7-126] and in particular the matters raised by the PLA at ISH12 on 23 and 28 November 2023.</p> <p>The PLA notes the ExA comments at ISH12 and if it is not possible to reach agreement at the meeting the PLA will provide its final comments on this matter at Deadline 9A along with a final PADS statement.</p>
17	Habitats Regulation Assessment	
Q17.1.1	<p>Habitats Regulations Assessment and the Report on the Implications for European Sites The ExA directs all IPs but specifically NE, MMO, PLA, EA and Local Authorities to the questions posed within the Report on the Implications for European Sites (RIES) as issued by the ExA on 14 November 2023. The questions relate to clarifying matters or seeking information required to inform the Habitats Regulations Assessment (HRA) and the recommendation to the Secretary of State. Comments on the RIES and</p>	<p>The PLA has reviewed the questions posed within the RIES and sets out below answers to the questions directed towards the PLA:</p> <p>QR1: <i>Can the PLA comment on the Applicant's updated response on survey data provided at Deadline 5 and confirm what specific limitations (if any) it considers this imposes on the conclusions of its HRA Report?</i></p> <p>Any HRA should be based on the best available scientific knowledge and data. The findings of a HRA are only as good as the ecological surveys on which they are based. The older an ecological survey is, the less reflective of the habitat or species present it is. Therefore, it is unlikely to provide an accurate</p>

	<p>responses to questions are timetabled for Deadline 8 (5 December 2023).</p> <p>At this time, should disagreements about any aspect of the HRA remain, the Applicant and any relevant IP are requested to submit a statement setting out what is required, in their view, to enable agreement. There will be circumstances where to be of practical use, this will need to be in the form of a ‘without prejudice’ statement, where one party may acknowledge that they do not agree with an in-principle position taken by another, but they also set out in practical terms the actions that would be necessary to address the issue, without conceding their basic point that such actions are not necessary.</p>	<p>representation of the potential effects of the project. This is likely to be magnified in an estuarine environment, where habitats are subject to rapid change.</p> <p>As previously stated, the Chartered Institute of Ecology and Environmental Management’s (CIEEM) advice note on the Lifespan of Ecological Reports & Surveys, April 2019,¹ states that beyond three years any ecological report is “unlikely to still be valid and most, if not all, of the surveys are likely to need to be updated” (page 1). Whilst accepting that in the case of a large-scale, long-term and multi-phased project it is likely to be necessary to update any ecological surveys after consent is granted, the initial consenting decision should be based on valid data.</p> <p>BS42020:2013 (Biodiversity: code of practice for planning and development) sets out criteria determining the adequacy of ecological information to ensure that it is fit to inform the decision-making process. These criteria include:</p> <ul style="list-style-type: none"> • Appropriate for the purpose intended • Sufficiently up-to-date (e.g. not normally more than 2 to 3 years old) <p>The shelf life is dependent on a number of factors, but includes whether environmental conditions are likely to have changed. The greater the change, the greater the need for up-to-date information. As noted, estuarine environments are rapidly changing environments.</p> <p>The PLA raised the issue of outdated survey data at ISH1. As raised at that ISH, some of this data is not sufficiently up-to-date because survey dates range from four years ago in 2019 to others getting on for ten years ago, which will be twenty or so years away from the projected new opening date of the project. The Applicant’s updated responses on survey data do not update the survey data itself, and the PLA’s position remains the same.</p>
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¹ [REDACTED]

		<p>QR4: <i>To NE and PLA: In relation to the potential for LSE on bird feeding behaviour, to which qualifying features do you consider this relates, and is this addressed in the Applicant’s assessment?</i></p> <p>The Thames Estuary and Marshes Special Protection Area (SPA) qualifies under article 4.2 of the Directive on the conservation of wild birds (79/409/EEC) as it is used regularly by over 20,000 waterfowl in any season. This includes shelduck (<i>Tadorna tadorna</i>), teal (<i>Anas crecca</i>), pintail (<i>Anas acuta</i>), gadwall (<i>Anas strepera</i>), shoveler (<i>Anas clypeata</i>), tufted duck (<i>Aythya fuligula</i>) and pochard (<i>Aythya ferina</i>).</p> <p>QR6: <i>The PLA is invited to comment on the Applicant’s response on this matter [REP2-046]. PLA is requested to confirm whether concerns remain that a LSE from visual disturbance requires assessment. If so, what additional information is required?</i></p> <p>The PLA considers that the HRA needs also to consider visual disturbance from working on the foreshore during winter. This relates to disturbance of feeding birds in the intertidal area. Mitigation for noise and visual disturbance to birds is secured through commitment HRA004 in the Register of Environmental Actions and Commitments (REAC), within the Code of Construction Practice, First iteration of Environmental Management Plan [REP7-123]. This mitigation will involve the provision of noise-attenuating barriers approximately 3m in height and would also function as visual screening for over-wintering, breeding and specially protected birds. Therefore, significant effects from visual disturbance are unlikely and no additional information is required.</p> <p>QR7: <i>The PLA is requested to comment on the Applicant’s response in relation to whether an impact pathway to intertidal habitats associated with the Thames Estuary and Marshes Ramsar site exists and, if concern remains, what information would be required to satisfy the concern?</i></p>
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