

THE PROPOSED A122 (LOWER THAMES CROSSING) DEVELOPMENT CONSENT ORDER

**Comments on Applicant's submissions at Deadline 8
submitted on behalf of the Port of London Authority**

PINS Reference Number	TR010032
Interested Party Reference Number	20035622
Document Ref.	PLA 22
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Date	11 December 2023

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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 8.

1.2. This submission refers to the following documents:

- 1.2.1. Draft development consent order v10.0 - REP8-007;
- 1.2.2. Explanatory Memorandum v6.0 - REP8-009;
- 1.2.3. Environmental Statement Appendix 2.2: Code of Construction Practice including Register of Environmental Actions and Commitments (REAC), First Iteration of Environmental Management Plan - REP8-045 and ES Appx 2.2 - Code of Construction Practice, First iteration of Environmental Management Plan – Annex B - Outline Materials Handling Plan v4.0 – REP7-127;
- 1.2.4. Outline Traffic Management Plan for construction – REP8-087;
- 1.2.5. Schedule of Changes to the dDCO during Examination – REP8-106;
- 1.2.6. Post-event submissions, including written submission of oral comments, for ISH12 – REP8-111;
- 1.2.7. Post-event submissions, including written submission of oral comments, for ISH14 – REP8-114;
- 1.2.8. Applicant's response to Interested Parties' comments on the dDCO at D7 REP8119;
- 1.2.9. Applicant's response to ExA Commentary on dDCO - REP8-117; and
- 1.2.10. Applicant's comments on the Report on the Implications for European Sites (RIES) - REP8-120.

2. Draft development consent order v10.0 (dDCO) (REP8-007)

2.1. While progress has been made between the Applicant and the PLA on the dDCO, there are a small number of significant outstanding points that remain. What we understand will be the key outstanding points are covered where applicable in submissions below, with the exception of arbitration under the PLA’s protective provisions which is covered in detail in the PLA’s Deadline 8 Submission - Proposed Arbitration Rules (REP8-161). The final version of the dDCO will be submitted to the examination at the same time as this Deadline 9 submission, so the PLA has not yet seen the changes the Applicant proposes and any points made here by the PLA are unable to be reflected in any subsequent iterations of the dDCO. As such, the PLA is likely to make submissions at Deadline 9A on the final version of the dDCO.

3. Explanatory Memorandum v6.0 (EM) (REP8-009)

- 3.1. New paragraph 6.3 j of the EM (numbered page 79) states that: “*National Highways notes a number of parties have not objected to the Secretary of State being the discharging authority under Schedule 2 (e.g., Natural England, the Environment Agency, TfL, the Port of Tilbury London Limited, and the Port of London Authority).*”
- 3.2. The ExA is asked to note that the PLA has not made any submissions, either within the remit of the examination, or informally to the Applicant, in respect of the discharging authority under Schedule 2 to the dDCO.

4. Environmental Statement Appendix 2.2: Code of Construction Practice (CoCP) including Register of Environmental Actions and Commitments (REAC), First Iteration of Environmental Management Plan (EMP1) (REP8-045) and ES Appx 2.2 - Code of Construction Practice, First iteration of Environmental Management Plan – Annex B - Outline Materials Handling Plan v4.0 (REP7-127)

4.1. The PLA considers that the CoCP EMP1 is potentially misleading in terms of the Applicant’s commitment to river use. Paragraph 6.1.6 of the CoCP seems to suggest that there is a meaningful commitment to river facilities, reading as follows:

The Contractors will investigate the use of multimodal transport including use of the River Thames via port facilities adjacent to the Project Order Limits – see Section 6.2 of the outline Materials Handling Plan. Contractors will be required to consider the impact of any multimodal transport options on the wider road network and environment and demonstrate the decision process used to select them.

4.2. However, on drilling down to section 6.2 of the outline Materials Handling Plan (**oMHP**), as cited by the Applicant in the CoCP EMP1, the commitment relates only to transport of aggregates, rather than any broader commitments to multimodal transport and use of the river which may – or may not - be secured by section 8 of the oMHP depending on whether the PLA’s suggested amendment to the drafting of paragraph 8.3.3 (at paragraphs 2.12-2.18 of its Deadline 8 submission (REP8-162) is accepted by the Applicant. In addition, paragraph 6.1.6 provides that the consideration of the contractor is limited to the impact on the road network and environment, with the effect that there is inconsistency between EMP1 and the oMHP. EMP1 needs to be updated to reflect accurately the provisions of the oMHP in this respect.

4.3. The PLA notes also that there has been no revision to the drafting of the CoCP EMP1 in terms of site lighting near the river (paragraphs 6.8.5 – 6.8.7) nor to provisions relating to Environmental Incident Control (paragraph 6.10.3), notwithstanding previous submissions made by the PLA in relation to these matters. In summary: the caveat at paragraph 6.8.5 that a river safety lighting management plan (**RSLMP**) is required only “insofar as that lighting is reasonably expected to adversely affect any vessels using the River Thames” and that such a decision is to be made by the contractor, is neither appropriate nor acceptable to the PLA. The Applicant’s reliance on the PLA’s protective provisions is also not appropriate. The Applicant should be designing out impacts, rather than letting them occur and relying on the PLA’s protective provisions to resolve any lighting impacts once they have occurred. It also remains unacceptable to the PLA that a lighting management plan is required only to be submitted to the MMO in circumstances where 24-hour working is proposed: a lighting management should be required in any circumstances where working will take place in hours of darkness, otherwise the safety of vessels on the river will be compromised. In respect of emergency control, the PLA should be specifically included in the list of stakeholders with whose input emergency control measures are prepared, per paragraph 6.10.3.

4.4. The PLA also has points to make on EMP1 relating to the water inlet with self-regulating valve at Coalhouse Point (**tidal inlet**). These are as follows:

4.4.1. Table 6.1, which sets out proposed working hours, includes 24-hour working for tidal works, which is relevant to points raised above concerning lighting; i.e. that paragraphs 6.8.5 – 6.8.7 detail the requirements for site lighting near the river relating to navigation, but there is no mention of the potential environmental effects of that (potentially 24-hour) lighting; and

4.4.2. REAC commitment HR011 has been amended to include a timing restriction to limit construction to between 1 April and 30 August, to avoid effects on wintering birds. However, this is only “where reasonably practicable”. Whilst the pragmatic approach is to accept that there are circumstances where working within timing restrictions may not be feasible, the PLA would expect mitigation to be put in place to prevent adverse effects and for such a commitment to be included in the REAC.

5. Outline Traffic Management Plan for Construction (oTMPfC) (REP8-087)

5.1. Paragraph 2.4.22 f of the oTMPfC states that one of the key outcomes required from monitoring under the plan will be to:

Prepare data and include this as part of the Monitoring Report showing transported quantity (by weight) of ‘bulk aggregate’ imported via ‘port facilities’ against forecasted amounts, including derogation forms where applicable.

5.2. The PLA notes that the commitment captured here is only in relation to the monitoring of transport of aggregates. The PLA contends that this commitment should be to monitor any materials which are forecast to be transported by water in construction of the authorised development.

5.3. The PLA notes also in the oTMPfC that the Applicant has made an addition in respect of dispute resolution at Appendix E, paragraph E.6.10.c which provides that:

For disputes that arise during the development of the TMP, a representation of disagreements will be included in the submitted TMP which shall set out the position of both the Applicant and those parties who are in dispute with the Applicant for consideration by the SoS as part of their approval of the relevant TMP. (Note: underlining added for emphasis).

The new wording states that a “representation of disagreements will be included” but does not make it clear who will author this document. We assume, in the absence of any statement to the contrary, that such a representation will be prepared by the Applicant. The PLA (which is a named member of the relevant sub-group of the Traffic Management Forum) would like confirmation that the representation of disagreements will accurately reflect the views of all parties who have noted disagreement. To that end, the PLA would request the paragraph be amended to include the words underlined:

For disputes that arise during the development of the TMP, a representation of disagreements will be included in the submitted TMP which shall set out the position of both the Applicant and those parties who are in dispute with the Applicant, to be prepared by the Applicant and any parties with whom there is disagreement, for consideration by the SoS as part of their approval of the relevant TMP.

6. Post-event submissions, including written submission of oral comments, for ISH12 (Applicant’s post-ISH12 submissions) (REP8-111)

6.1. Paragraph 4.2.16 of the Applicant’s post-ISH12 submissions addresses points in response to the PLA. This includes the issue of consultation on, and approval of EMP2. The Applicant states that “following [consultation], there will be continued community liaison, including with the PLA, to further finesse the documents, noting that ultimate

approval will be secured by the SoS”. The PLA notes that this “continued community liaison” is not secured and so cannot be relied on by the PLA and other parties.

- 6.2. In response to PLA’s comments regarding the RSLMP, the Applicant confirms that the matter is covered by paragraphs 6.8.5 to 6.8.7 of the CoCP (REP7-122), and provision is also made in paragraph 112 of the PLA’s Protective Provisions that the undertaker must comply with any reasonable directions issued by the Harbour Master with regard to lighting so as to ensure that it is not a hazard to navigation on the river. This does not address the point. The PLA acknowledged that the provision in paragraph 112 allows an impact to be rectified if one does arise. However, the Applicant should endeavour not to cause the impact in the first instance. A RSLMP should be required and secured through EMP1 to ensure that when working in close proximity to the river, the issue of lighting has been properly considered and where necessary mitigation measures are employed to minimise the potential for unacceptable impacts on navigation and on the river environment from any lighting that is proposed.
 - 6.3. The Applicant also states its position that the PLA’s concern regarding involvement in environmental incident control is dealt with in the PLA’s protective provisions, paragraph 100 of which requires the Applicant to provide to the PLA a river use and navigation emergency response plan. However, the PLA notes that this relates to the tunnelling works and not to activities that could take place on the land and which could impact the river.
 - 6.4. Action Point 22 from ISH12 required that the Applicant “*discuss with the PLA, the manner in which lighting, and its potential associated impacts on shipping/navigation on the River Thames, would be secured. This should include the extent to which the PLA would be formally consulted and the interaction between matters secured in the Code of Construction Practice and the Protective Provisions proposed for the PLA. Applicant to provide an update and the PLA to provide any further comments*”. The Applicant has not discussed this matter with the PLA. The Applicant instead has sent the PLA a response which largely reflects what the Applicant submitted at Deadline 8 in relation to lighting and concludes that no further amendments are considered necessary. The PLA disagrees as set out in this document.
 - 6.5. Paragraphs C.7.2 to C.7.8 of the Applicant’s post-ISH12 submission sets out its position in response to this action point, wherein it cites a series of existing measures in the CoCP and PLA’s protective provisions, which merely demonstrates that it has not changed its position on this issue in response to the PLA’s justified concerns. Paragraph C.7.8 concludes: The Applicant has not identified any adverse significant effect arising from lighting, and the Preliminary Navigational Risk Assessment [REP5-058] has not identified an issue in this context, and in these circumstances, the above controls are considered proportionate [...] and no further amendments are considered necessary”.
 - 6.6. The Applicant has not noted that the pNRA does not consider lighting from the land affecting vessels navigating on the river. The Applicant asserts that the pNRA does not identify any adverse significant effect from lighting; however, as the pNRA does not take into account lighting from the land in its assessment, then it follows that the assessment could never report such an effect.
- 7. Schedule of Changes to the dDCO during Examination (REP8-106) and Post-event submissions, including written submission of oral comments, for ISH14 (Applicant’s post-ISH14 submissions) (REP8-114)**

- 7.1. Paragraph 3.1.7 of the Applicant’s post-ISH14 submissions states (again) that the Applicant does not consider that the authorised development will include dredging, “*but acknowledges that the definition of dredging in the Port of London Authority Act 1968 [PLA 1968] is broad and could cover the excavation associated with the outfall works in the river*”. The Applicant notes that it has amended the definition of “specified work” in the PLA’s protective provisions to cover excavation in connection with the outfall works. The PLA considers that this drafting is inadequate, and, notwithstanding the Applicant’s repeated assertions that dredging will not form part of the authorised development, the PLA cannot share that view, based on the documents before the examination. Consequently, the PLA requires the additional wording in the PLA’s protective provisions to extend beyond the specified works relating to the outfall so that it can ensure it retains the control otherwise contained in s73 of PLA 1968, otherwise disapplied by Article 53 of the dDCO.
- 7.2. Paragraph 4.1.1 of the Applicant’s post-ISH14 submissions addresses the ExA’s question on definition of “commence” and “begin” in the dDCO, effectively stating that it intends to maintain its position. The PLA, in the context of the reasons it has set out in detail in previous submissions, maintains that the provisions as drafted create uncertainty for the PLA and other IPs in terms of when the development will begin in earnest.

8. Applicant’s response to Interested Parties’ comments on the dDCO at D7 (Applicant’s IP D7 responses) (REP8-119)

- 8.1. Table 5.1 of the Applicant’s IP D7 responses addresses points raised by the PLA. On numbered page 9, the Applicant states that the PLA’s suggested amendment to paragraph 104 is not necessary as the drafting makes “no reference to materiality being related to the Project”. As the PLA has previously raised with the Applicant, the PLA’s issue with this paragraph is precisely that the drafting makes no reference to how materiality is to be determined. Without any change to the drafting, there is a large question mark over how one would determine whether a change was material or not: as set out in previous submissions, what the PLA may consider to be material in the context of the river at this location is not necessarily what the Applicant will consider to be material from its perspective as promoter of the scheme.
- 8.2. Rows on numbered pages 9 and 10 of the Applicant’s IP D8 responses consider the PLA’s comments on the number of undertakers to whom benefit of the dDCO may be transferred under Article 8 of the dDCO and the wide definition of “authorised development”, in respect of each of which the PLA notes continued lack of movement. The PLA will make final submissions on these provisions in the final version of the Applicant’s dDCO at Deadline 9 and its updated PADSS document to be submitted at Deadline 9A.
- 8.3. The issue of compulsory acquisition of the PLA’s land and interests under the dDCO, and related negotiation of a property agreement, is addressed at numbered page 11. The PLA notes that, as it has stated previously in submissions, while there remains a significant distance between the parties in terms of quantum, this need not hinder reaching agreement on all other matters, reserving the issue of value to be determined by the Upper Tribunal (Lands Chamber). The Applicant’s comment that agreement is unlikely to be reached is consistent with what, from the PLA’s perspective, appears to be a lack of enthusiasm to engage on this matter.
- 8.4. The PLA is also confused by the Applicant’s assertion that the draft heads of terms conflict with the dDCO, and requests clarification on this point. The amendments made by the PLA’s agents were fairly minor and the PLA does not think that they are controversial. The Applicant has not explained how or where there is a conflict. In any event, even if there

were to be a conflict, it is entirely normal for side agreements to conflict or override provisions of a DCO, so a conflict is not a legitimate barrier to reaching agreement.

8.5. The Applicant notes, in the context of land of which temporary possession is sought, as included in Schedule 10 (numbered page 11), that in relation to the question of Mean High Water, the Applicant “is happy to explain its position in this matter”. The PLA awaits this explanation.

9. Applicant’s response to ExA Commentary on dDCO (REP8-117)

9.1. The Applicant’s response to QD3 includes that it proposes to include the Mitigation Route Map (MRM) as submitted at Deadline 4 (REP4-203) as a certified document at Schedule 16 to the dDCO. The PLA restates the submission it made previously at Deadline 8, in respect of errors it had identified in the MRM (Written submission of oral comments at ISH12 and ISH14 (REP8-162)), noting that these errors should be addressed and rectified before a final version of the MRM is produced for certification.

10. Applicant’s comments on the Report on the Implications for European Sites (RIES) (REP8-120)

10.1. The PLA raises the following issues in the Applicant’s comments on the RIES:

10.1.1. **QR3 & QR5:** No new information has been provided by the Applicant in terms of underwater noise and vibration in relation to tunnelling. The PLA defers to Natural England in its capacity as national advisor, and wishes to know if Natural England is satisfied with the information provided by the Applicant on underwater noise and vibration. The PLA is aware that Natural England previously identified a procedural risk in not including this in the HRA albeit it accepted that there are unlikely to be significant effects from underwater noise and vibration.

10.1.2. **QR13:** From the answer provided it appears that the Applicant is expecting full ecological functionality of the compensation site at Coalhouse Point within three months. The PLA questions whether this is realistic timescale.