



PORT OF
TILBURY
LONDON

Section 56(2) Planning Act 2008

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

for the

Lower Thames Crossing

Planning Inspectorate Reference: TR010032

PORT OF TILBURY LONDON LIMITED

COMMENTS ON DOCUMENTS SUBMITTED AT DEADLINE 9

Deadline 9A: 15 December 2023

1. INTRODUCTION

- 1.1 PoTLL is mindful that the Examining Authority (ExA) has requested that interested parties provide at Deadline 9A the final Statements of Common Ground (SoCG), final Principal Areas of Disagreement Summary Statements (PADSSs), and comments on the Applicant's final documents including the draft DCO and certified documents.
- 1.2 PoTLL is engaging with the Applicant and there continues to be progress in respect of the areas of disagreement between the parties. In discussions with the Applicant, it was agreed that it would be unhelpful to submit a final SoCG and PADSS at Deadline 9A, where further progress is realistically likely to be made prior to Deadline 10.
- 1.3 In view of this, PoTLL has not submitted a final PADSS at this Deadline, and understands that the Applicant will also not be submitting the final SoCG with PoTLL at this time.
- 1.4 In respect of comments on the draft DCO, PoTLL and the Applicant identified that, due to an administrative error, the Protective Provisions for PoTLL contained within the final draft DCO submitted at Deadline 9 **[REP9-108]** did not incorporate a number of agreed changes. The Applicant is arranging for the Protective Provisions to be corrected, although we understand that, due to production timescale limitations for the Applicant, the final draft DCO that includes these agreed changes cannot be provided before Deadline 10.
- 1.5 At a meeting between lawyers for PoTLL and the Applicant on 14 December 2023, it was confirmed that a number of further changes to the Protective Provisions may also be agreeable, but that it would not be possible to obtain instructions in time for these to be included within any submission made at Deadline 9A.
- 1.6 PoTLL has therefore limited its comments on the draft DCO and Certified Documents, set out below, to those matters where there is considered to be no scope for further agreement before Deadline 10.
- 1.7 Accordingly, the following documents will be submitted at Deadline 10, and not at Deadline 9A:
 - 1.7.1 final PADSS;
 - 1.7.2 final SoCG (to be submitted by the Applicant);
 - 1.7.3 comments on the final Protective Provisions submitted by the Applicant;
 - 1.7.4 PoTLL's preferred Protective Provisions (noting that no agreement has been entered into); and
 - 1.7.5 comments on the draft DCO and Certified Documents to the extent that they relate to the matters referred to in paragraph 1.5 above.

2. DRAFT DEVELOPMENT CONSENT ORDER (SUBMITTED AT DEADLINE 9)

Preliminary works

- 2.1 PoTLL maintains its position that:
 - 2.1.1 the definition of preliminary works is drafted too broadly to be able to understand what works will be involved;
 - 2.1.2 through the definition of "begin" we understand that preliminary works may include 'material operations' within the meaning of section 56(4) of the Town and Country Planning Act 1990, and preliminary works therefore cannot be dismissed as minor or insignificant;

- 2.1.3 the requirement for a preliminary traffic management plan within the outline Traffic Management Plan for Construction further demonstrates that preliminary works will be more than minor works;
 - 2.1.4 the Preliminary Works Environmental Management Plan (PWEMP) (at Annex C to the Code of Construction Practice [REP9-191]) applies from the making of the DCO and therefore should be assessed to the same standard as a final document being provided to the Secretary of State for approval to discharge a Requirement; and
 - 2.1.5 the lack of clear submissions setting out the precise nature and extent of the preliminary works requires a precautionary approach to be taken and an assumption must be made that the PWEMP will apply to material operations.
- 2.2 PoTLL has agreed with the Applicant that the works to which the PoTLL's protective provisions apply will include preliminary works within the Port. PoTLL is seeking minor amendments to the Protective Provisions to be submitted at Deadline 10 to provide further clarification that various relevant protections contained within the body of the DCO will also apply, in relation to the Port, in respect of preliminary works.

Tunnelling

- 2.3 As advised throughout the Examination, PoTLL supports the Port of London Authority (PLA) in the need to ensure that the design, construction and maintenance of the tunnel are subject to appropriate controls and oversight. These matters are resolved other than in respect of paragraph 99 of the Protective Provisions for the PLA, within Schedule 14 to the draft DCO [REP9-108].
- 2.4 As set out in PoTLL's Summary of Oral Submissions [REP4-347] at section 3.2, the potential consequences of issues occurring during, in particular, the construction of the tunnel could be far reaching for PoTLL, and to the national economy. Accordingly, whilst the risk of a serious incident is low, it should be reduced to as close to zero as is practicable.
- 2.5 PoTLL is satisfied that this has been achieved, except for the inclusion of drafting within paragraph 99 that would enable the Applicant to ask the Secretary of State to overrule an ongoing or completed arbitration, such arbitration being fundamental to resolving disputes about the design and construction methodology of the tunnel, and therefore going directly to concerns about safety on the river.
- 2.6 PoTLL has set out its submissions on this matter in its Deadline 7 submission [REP7-226] at section 3, and in its Deadline 9 submission [REP9-297] at paragraph 2.3.
- 2.7 In the Applicant's Response to Interested Parties' comments on the draft Development Consent Order at Deadline 7 [REP8-116], at paragraph 6.1.7, the Applicant suggests that, because PoTLL considers it is likely that the Secretary of State would decline to authorise tunnelling in circumstances where an arbitration is ongoing (or determined against the Applicant), this justifies the retention of the disputed wording. This argument is nonsensical as the provision results in less clarity over who the final decision-maker will be in the case of a dispute, provides uncertainty as to the robustness and effectiveness of the protective provisions for the PLA, and undermines any comfort that PoTLL would otherwise be able to take from the protective provisions for the PLA.
- 2.8 Whilst this drafting remains in the protective provisions for the PLA, PoTLL **cannot be satisfied** that the risks to the safety of the river, access to its port, and the national economy, have been reduced as far as reasonably practicable. The uncertainty caused by this provision goes to the fundamental purpose of the PLA's protective provisions, and results in the loss of confidence that the PLA will have the oversight required to ensure that the tunnel is constructed to a design and methodology that will protect the river.

- 2.9 **Resolution:** Remove “Unless subparagraph (6) applies” and “(and where subparagraph (6) applies, the arbitrator must ensure its decision does not conflict with the Secretary of State’s decision under that subparagraph).” from paragraph 99(5) of Schedule 14. Remove sub-paragraph (6) from the same paragraph.
- 2.10 PoTLL confirms that, should this amendment be made, it would withdraw its objection insofar as it relates to the tunnel.

Traffic

- 2.11 PoTLL has made extensive submissions throughout the Examination about the impacts of the Scheme on traffic and transport matters, during both construction and operation. PoTLL has restricted its submissions in this document to responding to matters raised by the Applicant at Deadline 9, and to refer the Examining Authority to where PoTLL’s final position may be found within the Examination Library.
- 2.12 PoTLL confirms that its objections are maintained in the manner set out in its Deadline 8 and Deadline 9 submissions, namely:
- 2.12.1 in respect of the ASDA Roundabout and passive provision for the Tilbury Link Road, as set out in [\[REP8-164\]](#);
- 2.12.2 in respect of the Wider Network Impacts (‘Silvertown Tunnel’ approach), as set out in the Updated Joint Position Statement at Appendix D to Thurrock Council’s Deadline 8 submission [\[REP8-166\]](#) (from page 190 of that document); and
- 2.12.3 in respect of the Orsett Cock interchange, as set out in Appendix D to Thurrock Council’s Deadline 9 submission [\[REP9-229\]](#), in the Joint Position Statement on the Orsett Cock Interchange Requirement (from page 179 of that document).

Response to the Applicant’s comments at Deadline 9 on Traffic

Orsett Cock Interchange

- 2.13 PoTLL notes that, in the Applicant’s Responses to Interested Parties’ comments on the Draft Development Consent Order at Deadline 8 [\[REP9-108\]](#) at paragraph 11.1.4, the Applicant considers that the definition of ‘optimisation’ included within the Requirement submitted within the final draft Development Consent Order “makes clear that this extends to improving and enhancing journey times, having due regard to port journeys and operations”. The Applicant’s draft Requirement does not, however, specify what baseline this ‘optimisation’ is to be assessed against.
- 2.14 PoTLL wishes to ensure that the Scheme is capable of implementation, but that doing so does not result in unacceptable adverse impacts including to the access to the Port of Tilbury. There therefore needs to be a clear objective against which the performance of the interchange is judged to ensure this is achieved. This is what is set out in the Deadline 9 Joint Submission by the Interested Parties [\[REP9-299\]](#) at Appendix D (and in the ‘APV Parties Version’¹ of the Requirement from page 184 of that document), and what is not achieved by the Applicant’s drafting.
- 2.15 Given the uncertainty as to what ‘optimisation’ is to be assessed against, the Applicant’s drafting could be interpreted to require the Orsett Cock interchange to function at a level that is not achievable within the Order limits, given the inherent difficulties in the design of the Scheme that requires traffic travelling to the Port of Tilbury from the A122 Lower Thames Crossing or the A13 east of the junction, to travel via the Orsett Cock.

¹ The full label being the Applicant’s Preferred Version Parties Version. This is the mark up of the Applicant’s preferred version of the Orsett Cock Requirement (forming part of the final draft DCO), that is preferred by the parties to the various joint statements on this junction: Thurrock Council, PoTLL, DP World and Thames Enterprise Park.

- 2.16 PoTLL would therefore urge the ExA and Secretary of State to consider the Applicant's drafting with care as to whether it is, in practice, sufficiently precise that it meets the necessary standard of a DCO Requirement, in particular as to whether it is clear and enforceable; or whether the approach taken in the APV Parties Version, which requires the Orsett Cock interchange to function by reference to independent 'objectives', is to be preferred. PoTLL submits that the use, in the APV Parties Version, of freestanding objectives, that do not rely upon an unspecified baseline, is significantly clearer, more precise and accordingly, enforceable.

ASDA Roundabout

- 2.17 In respect of the ASDA Roundabout, the Applicant has suggested in the Applicant's Responses to Interested Parties' comments on the draft Development Consent Order at Deadline 8 [REP9-108], that the Requirement would amount to 'salami-slicing and disaggregating the Project'. PoTLL does not accept this and notes that the ASDA Roundabout has been demonstrated by the Applicant² to be a particularly acute bottleneck on the road network during construction.
- 2.18 It is readily apparent from the Applicant's evidence that there is a realistic potential for there to be impacts to the ASDA Roundabout from the Applicant's construction traffic that exceed the impacts assessed in the Environmental Statement (in particular around air quality, and safety for pedestrians and other road users in the Tilbury area), that cannot be adequately managed by the 'hands-off' approach envisaged by the outline Traffic Management Plan for Construction (oTMPfC) [REP9-236]. It is irresponsible not to consider the effects of this possibility, yet the Applicant has consistently refused to recognise it as remotely likely, even as its own submissions highlight this risk.
- 2.19 An alternative to focusing on the ASDA Roundabout would be to broaden the ASDA Roundabout Requirement so as to apply to the whole road network used by the Applicant during construction. However, this would be disproportionate and unduly onerous where the modelling does not identify impacts. In respect of the ASDA Roundabout, however, the LTAM model identified specific impacts at this junction, although it is not designed to provide that level of granularity in its output. The ASDA Roundabout is a key and unavoidable junction for HGVs accessing the Port of Tilbury. The additional pressure from the Applicant's construction traffic in this specific location has the very real potential, by itself, to have wider economic impacts associated with the slowing or interference of trade flowing into and out of the Port of Tilbury. There are, therefore, clear reasons to subject the ASDA Roundabout to further scrutiny based both on its uniquely critical nature, and from the concerning impacts that are demonstrated by the Applicant's own evidence.
- 2.20 PoTLL also notes that any scheme of mitigation approved under this Requirement could easily dovetail with the processes suggested in the oTMPfC, as the scheme would form the starting point against which any Traffic Management Plan is then developed. The scheme of mitigation would therefore be able to complement and support the Traffic Management Plan, rather than conflict with it.
- 2.21 PoTLL is also acutely aware that paragraph 6.2.10 of the outline Materials Handling Plan [REP9-189] advises that the Baseline Commitment³ "is consistent with the construction traffic inputs into the Transport Assessment and has been used for the purposes of a reasonable worst-case scenario in the environmental assessments". Accordingly, any decision to derogate from the Baseline Commitment would inevitably cause further and unassessed traffic impacts from additional traffic on the main construction route into the North Portal compound, beyond those already identified as causing unacceptable congestion at this junction. In this circumstance, physical intervention would certainly be required and it makes complete sense to include within the DCO the mechanism for identifying if and when that intervention is needed.

² See generally the Applicant's modelling of this junction in [REP3-128, REP3-129, REP3-132, REP6-123] and [REP6A-008], and PoTLL's submissions noting the impacts identified by the Applicant, found in particular in [REP4-349] and [REP6A-016].

³ 80% by weight of bulk aggregates imported to the North Portal construction area, amounting to 35% of the total bulk aggregates across the project (paragraph 1.3.7 of the outline Materials Handling Plan, provided by the Applicant at Deadline 9).

Passive provision for the Tilbury Link Road

- 2.22 PoTLL notes the Applicant's comments in Table 12.1 in the Applicant's Responses to Interested Parties' comments on the Draft Development Consent Order at Deadline 8 [REP9-108]. PoTLL considers that it has responded to these points within its Deadline 8 submission [REP8-164].

Wider network impacts

- 2.23 PoTLL has reviewed the Applicant's Deadline 9 submissions but has not identified any new comments that it has not addressed in previous submissions. Notwithstanding this, PoTLL is mindful of the wide-ranging support from Interested Parties for a Requirement to manage the impacts of the LTC Scheme on the wider road network to be included within the DCO. It is clear that a wide range of stakeholders have serious concerns about the risk of impacts on the wider road network, and it is disappointing that the Applicant has made no concessions that recognise these very real fears.
- 2.24 The Applicant has not sought to reassure Interested Parties that the impacts will not happen; rather it has held itself out as being in some way different from other promoters of highway schemes such that affected local highway authorities must meekly accept adverse impacts and look to resolve these without reference to the cause. It is concerning that the party responsible for England's strategic road network (SRN) has been so unwilling to recognise the link between the SRN and the local roads on which the majority of journeys start and finish. PoTLL is therefore hopeful that the Secretary of State will, in making their decision, confirm that the SRN and the Applicant do not exist in isolation from the local road network it links, and that adverse impacts need to be addressed for the Lower Thames Crossing in the same way they would on any other scheme.

Proposed resolutions for traffic concerns

- 2.25 **Resolution 1:** The ASDA Roundabout Requirement in the form in [REP8-164] is included in the Development Consent Order to require the Applicant to confirm the effectiveness of non-physical interventions as envisaged by the outline Traffic Management Plan for Construction, and provide further mitigation in the event that non-physical interventions are insufficient to manage traffic impacts.
- 2.26 **Resolution 2:** The APV Parties Version of the Orsett Cock interchange Requirement 18, being Appendix 2 to Thurrock Council's Deadline 9 submission [REP9-299], is included in the Development Consent Order in place of the Applicant's drafting.
- 2.27 **Resolution 3:** Requirement 17 (passive provision for Tilbury link road) is revised in the manner set out in [REP8-164] at paragraph 2.30, for the reasons set out in that document and PoTLL's Deadline 9 submission [REP9-297] at paragraph 2.4.2.
- 2.28 **Resolution 4:** The Wider Highway Network Monitoring and Mitigation Requirement, found as Annex A to Appendix D of Thurrock Council's Deadline 8 submission [REP8-166] is included in the Development Consent Order to ensure that adverse impacts on the wider highway network are identified by the Applicant and mitigated as necessary; and to ensure that appropriate monitoring is undertaken following the opening of the Scheme.

3. OTHER DOCUMENTS

- 3.1 PoTLL has reviewed the Certified Documents that the Applicant has provided following the hearings in November where these were discussed in detail. PoTLL is disappointed to note that no material changes have been made to these documents to address the concerns raised during the hearings. PoTLL therefore maintains its position in respect of the Certified Documents as set out in Section 5 of PoTLL's Deadline 8 submission [REP8-164].