

INFRASTRUCTURE PLANNING

**THE INFRASTRUCTURE PLANNING
(EXAMINATIONS PROCEDURE) RULES 2010**

**THE THAMES WATER UTILITIES LIMITED (THAMES TIDEWAY TUNNEL) DEVELOPMENT
CONSENT ORDER**

**Response of the Port of London Authority (PLA) to the Examining Authority's first
Written Questions**

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Question:

2. Biodiversity, Biological Environment & Ecology

There are obligations on the decision maker and the Applicant under the Habitats Directive (92/43/EEC) (Habitats Directive), the Conservation of Habitats and Species Regulations 2010 (as amended) (the 2010 Habitats Regulations) and the Directive on the Conservation of Wild Birds (2009/147/EC). Under Article 6.3 of the Habitats Directive an Appropriate Assessment is required where a plan or project is likely to have a significant effect upon a European site either alone or in combination with others.

Q2.1 Can Natural England (NE), the EA, Port of London Authority (PLA) and the Marine Management Organisation (MMO), relevant local authorities and other relevant nature conservation Interested Parties answer the following questions:

- a) Has the Applicant's Habitats Regulations Assessment No Significant Effects Report provided sufficient information to form the basis of any necessary Appropriate Assessment of the proposals?*

PLA's Response

Where the assessment has been made of the construction and operation within the Thames Estuary the PLA confirms that it has been made fully. However, there are at least two features that are not acknowledged and the assessment does not deal with the off-site works.

Question:

- b) If not, set out in the response:*

i) what is needed in order to achieve sufficient information;

ii) the reasoning for this;

iii) if this is an agreed position with any other party, please identify the Party concerned and the extent of agreement providing supporting documentation from that organisation

PLA's Response

1. There are missing sites which, the PLA considers, it would have been reasonable to foresee that an effect may be possible; in particular the Margate and Long Sands SAC and the Essex Estuaries SAC. It may be that these sites will not be affected but, if that was the case, then the assessment should have considered them and explained why they had not been included.
2. Excavated material will be transported and disposed of in some of the receptor sites on the Thames Estuary. Some of these have been expressly mentioned within the application, while others may be used after subsequent assessments. These activities will affect the Natura 2000 sites Cliffe (Thames Estuary & Marshes SPA & Ramsar), Wallasea (Outer Thames Estuary SPA and Essex Estuaries SAC) (all "the special sites"), where the barges would move out of the navigational channel to attend the receptor sites. Despite the special sites having their own HRA for small rates of provision, the Project's input may alter frequency in the areas of these special sites and this is not quantified in the HRA.
3. When issuing consent under the Port of London Act 1968, the PLA is a competent authority for the purposes of the Habitats Directive and the Habitats Regulations. Despite this, the PLA was not consulted on the HRA during its development (see HRA Section 3.2, 3.3 and Appendix A).

There has not been any discussion on an agreed position between the PLA and other regulators.

Question:

Article 46 Public rights of navigation

Article 46(3) sets out the period of days notice to be provided.

Q6.46 Can this be confirmed as an agreed period with the Port of London Authority and if not submissions should be made by the applicant and Port of London Authority setting out each Parties position.

PLA's Response

This period of notice has not been agreed with the PLA. The Panel is requested to consider the PLA's Written Representations on article 46. As explained within the representations, TWUL has not discussed article 46 with the PLA and in its present form the article is not acceptable.

Question:

Article 53 Discharge of requirements

Q6.54 Is deemed consent justified and reasonable? If so how and why?

Q6.55 Does it provide adequate safeguarding in relation to matters that are the subject of required mitigation particularly in relation to matters that have potential human, cultural, environmental and nuisance effects?

Other Parties involved in the approval process are invited to submit their views.

PLA's Response

1. The Panel is referred to section 4 of the PLA's Written Representations. For the reasons given, the PLA opposes article 53 and Schedule 17 in their present form.
2. Deemed consent is neither justified nor reasonable – see WR section 4.4.
3. The Written Representation's deal in detail with the PLA's concerns about the imposition of inflexible time limits that may be unworkable, the risk that unsafe conditions might arise by default, the flaws in the adjudication arrangements and the delays likely to result and, finally, the inadequacy of fees.

Question:

Schedule 16 Provisions for the Protections of Specified Undertakers

Q6.65 Details of all protective provisions are required. If these are not agreed between the Parties then submissions should be made individually by each party requiring protective provisions setting out full reasoning for the need.

PLA's Response

As explained within the Written Representations, protective provisions in favour of the PLA have not yet been agreed. A revised set is being prepared and will be discussed with TWUL and provided to the Panel. The explanation for these provisions will, among other things, reflect the reasons given in the Written Representations for various matters to be dealt with in the protective provisions.

Question:

Schedule 17 Procedure for Discharge of Requirements etc. and Appeals

In relation to 1. and 2.

Q6.66 *Schedule 17 1(3) sets out deemed consent. How and why is this reasonable or justified?*

Q6.67 *Could any of the discharging authorities respond on how reasonable the timescales set out are?*

PLA's Response

The Panel is requested to consider the PLA's response to Q6.54 and 6.55.

Question:

In relation to fees

Q6.69 *Could any discharging authority comment on the adequacy of the charging schedule for discharge?*

PLA's Response

The Panel is referred to paragraph 4.7 of the WRs.

Question:

The ExA has timetabled two accompanied site visits. The first relates to works sites with no public access and the second is to inspect locations which have been referred to in the evidence, in particular any locations which cannot readily be seen from the public realm such as views from sample buildings.

Q12.5 *Can all parties advise of any locations which they feel the ExA should visit during its accompanied site visit to aid understanding of the application and potential impacts.*

PLA's Response

The PLA would like the Panel to see the following sites where works are to be constructed in the River.

Putney	In-river CSO site
Carnwath Road Riverside	Main drive site (includes safeguarded wharf)
Cremorne Wharf	CSO (includes safeguarded wharf)
Chelsea Embankment	in-river CSO
Kirtling Street *	Main drive site (includes safeguarded wharf)
Heathwall PS *	In-river CSO site (includes safeguarded wharf)
Albert Embankment *	In-river CSO site
Victoria Embankment *	In-river CSO site
Blackfriars Bridge *	In-river CSO site; includes relocation of Blackfriars Millennium Pier
Chambers Wharf	Main driver site
King Edward Memorial Park	In-river CSO site.

* Indicates sites within the central London reaches where navigation is particularly constrained.

**Winckworth Sherwood LLP
Solicitors and Parliamentary Agents
On behalf of the Port of London Authority**

4 November 2013