

Thames Tideway Tunnel
Thames Water Utilities Limited



Application for Development Consent

Application Reference Number: WWO10001

Examining Authority's Second Written Round of Questions and Requests for Information Response from Thames Water

Biodiversity, Biological Environment & Ecology

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**Thames
Tideway Tunnel**



Creating a cleaner, healthier River Thames

Responses to second written questions Q21 Biodiversity, Biological Environment & Ecology

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Abbreviations

CoCP	Code of Construction Practice
CSO	combined sewer overflow
DCO	development consent order
ExA	Examining Authority
EA	Environment Agency
GLA	Greater London Authority
MMO	Marine Management Organisation
PLA	Port of London Authority

1 Question: 21.1

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.

The Applicant has submitted a Habitats Regulations Assessment: No Significant Effects Report (Doc 6.3). The ExA understands that no Party has disagreed with the conclusions of that report. Accordingly, although the examination timetable includes a deadline for the publication of any Report on the Implications for European Sites (RIES) by the ExA, such a report may be unnecessary.

Does any Party consider that a RIES ought to be published in this case? Any Party who considers that a RIES ought to be published should explain why it is thought to be necessary.

1.1 Our response

- 1.1.1 The Secretary of State is the competent authority under the Conservation of Habitats and Species Regulations 2010 ('the 2010 Regulations') for the purposes of the application for development consent for the Thames Tideway Tunnel project.
- 1.1.2 The 2010 Regulations require the competent authority to carry out an appropriate assessment in circumstances where a plan or project is likely to have a significant effect on a European site or a European Marine site, either alone or in combination with other projects and plans. The appropriate assessment must be undertaken by the competent authority as part of the decision to issue development consent.
- 1.1.3 The process prescribed by the 2010 Regulations has two stages:
- a. firstly, a screening stage to determine if there is likely to be a significant effect on a European Site (screening)
 - b. secondly, if the conclusion from screening is that such an effect is likely, the completion of the appropriate assessment.
- 1.1.4 In completing the appropriate assessment the Competent Authority must consult Natural England.
- 1.1.5 In the case of our application, we have already completed a screening process during our pre-application consultation. We prepared a screening report on the effects of the project on European Sites. That report was provided to all relevant stakeholders including Natural England. It has consulted on the potential for a likely effect with Natural England and other relevant stakeholders.

- 1.1.6 The conclusion of our screening exercise, having regard to the responses to consultation including that of Natural England, was that an effect on a 'European Site' was not likely. The outcome of that process was written up in the [*Habitats Regulations Assessment: No Significant Effects Report*](#) (Doc ref: 6.3).
- 1.1.7 The approach that was taken is entirely consistent with the legal requirements of the 2010 Regulations and the Planning Inspectorate's Advice Note 10.
- 1.1.8 As the preamble to the question notes, no party to the examination considers that the project would have an adverse effect on any European Site or European Marine site. However, the submission of the *Habitats Regulations Assessment: No Significant Effects Report* does not remove the obligation on the Secretary of State to discharge his duties under the 2010 Regulations. Whether a Report on the Implications for European Sites should be published and whether Secretary of State should complete an appropriate assessment of the project are ultimately matters for the Examining Authority and Secretary of State to consider and determine respectively.
- 1.1.9 Given the two stage nature of the appropriate assessment process as described above, and as reflected in Planning Inspectorate Advice Note 10, we believe that the Examining Authority should provide the Secretary of State with a report that considers whether the project is likely to have a significant effect on a European Site or a European Marine site, ie, a screening report that considers whether the project would have a significant effect on a European Site or European Marine site.
- 1.1.10 We are of the opinion that, given the content and conclusions set out in the *Habitats Regulations Assessment: No Significant Effects Report*, in particular the advice from Natural England appended to that report, the project is not likely to have an adverse effect on any European Site or a European Marine site and hence an appropriate assessment is not needed.

2 Question: 21.2

The updated Terrestrial Ecology Survey (Doc2 9.10.04) refers to a bat roost at Cremorne Wharf which would be affected by the proposed works of demolition. Mitigation is referred to in the Design Principles (CREWD.10) but does not appear to be covered directly in the Requirements. Can the Applicant and Natural England comment on whether this approach would provide sufficient certainty in relation to mitigation for impacts on a protected species?

2.1 Our response

- 2.1.1 The mitigation related to the transitory bat roost at Cremorne Wharf Depot is identified in the second and third paragraphs of Section 11 of the site-specific *Code of Construction Practice (CoCP) Part B* issued to stakeholders for comment in December 2013. It requires the provision of a minimum of three bat boxes within Cremorne Gardens no later than one year in advance of the start of the demolition of the depot building. Requirement PW6 in the [Draft DCO](#) (Doc ref: 9.20.02) requires works to be carried out in accordance with the *CoCP*; therefore, the specific actions and timing detailed in the *CoCP Part B* must be adhered to. We have agreed with Natural England that this approach is sufficient to ensure that the necessary mitigation would be carried out.
- 2.1.2 We also note that design principle CREWD.10 is not mitigation related to this case. As stated above, appropriate measures are included in the *CoCP Part B* as they are construction-related controls. This design principle was included as an ecological enhancement before the need for mitigation was identified. The bat boxes that are now specified in the *CoCP Part B* would remain *in situ* permanently, irrespective of the creation of bat roosting opportunities in the replacement depot building referred to in the design principle.

3 Question: 21.3

Can the EA and GLA comment on their ability and/or willingness to be a party to such an agreement?

3.1 Our response

- 3.1.1 Although question 21.3 is directed to the Environment Agency (EA) and the Greater London Authority (GLA), having previously replied on this matter, we also wish to submit a response to this question. This is linked to our response to question 21.4.
- 3.1.2 We had intended for aquatic ecology compensation measures to be secured via a legal agreement. However, during the Issue Specific Hearing on 27 November 2013, the GLA advised that it would be unable to enter into such an agreement. The EA has confirmed that it is unwilling to enter into such an agreement.
- 3.1.3 We have therefore decided, in discussion with the EA, to progress compensation schemes through a Section 106 agreement with the relevant local planning authorities, namely the London Borough of Lewisham and the London Borough of Wandsworth. A positive response has been received by these local authorities and discussions are ongoing.
- 3.1.4 Securing compensation schemes through a Section 106 agreement with the local planning authorities will provide the commitment and assurance of delivery which is sought. Further information on this is provided in our response to question 21.4.

4 Question: 21.4

The Applicant's responses to the ExA's Q2.7 to Q2.10 describe the Biodiversity Compensation Working Group that has been established to consider potential compensation measures for the permanent loss of estuarine habitat. The recommendations of the group are intended to be concluded over the next 12 months. The responses state that the mechanism for securing the compensation measures is likely to be a legal agreement either with the EA or the Greater London Authority (GLA).

Given that the mitigation measures may not have been identified at the time the Secretaries of State consider the application for Development Consent, how can the delivery of the measures be secured?

4.1 Our response

- 4.1.1 Please also refer to our answer to question 21.3.
- 4.1.2 Since providing our response to first written question 2.11 on 4 November 2013 and further to ongoing discussions with the Environment Agency, we now intend to include defined compensation schemes in Section 106 agreements with the relevant local planning authorities. For the avoidance of doubt, the Environment Agency will not be a party to any s.106 agreements. This will provide greater assurance of the type of measures agreed and their delivery.
- 4.1.3 At present, we are progressing a number of preferred compensation schemes and holding discussions with relevant local authorities, namely the London Boroughs of Lewisham and Wandsworth. A specific scheme or schemes will then be presented to the Habitat Compensation Working Group in January 2014 for consideration and approval. All agreed measures will then be incorporated into the Section 106 agreements with the London Boroughs of Lewisham and Wandsworth.
- 4.1.4 We can provide the Examining Authority with a progress update prior to issuing the revised Section 106 agreements.

5 Question: 21.5

The Applicant's response to the ExA's Q3.8 states that dredging would be avoided during periods which are important for aquatic species except where agreed by the Employer.

Would this approach provide adequate protection to aquatic ecology or, alternatively, should approval be required from an appropriate public body?

5.1 Our response

- 5.1.1 The revised draft *Code of Construction Practice* Part A (see APP72.1 of 13 January submission) and the *Draft DCO* (see APP75.2 of 13 January submission) provide adequate controls for the Port of London Authority (PLA) and Marine Management Organisation (MMO) due to the requirement for approvals of environmental mitigation measures and works below the mean high water mark including dredging, which would include seasonal timing of works, in relation to maintenance and capital dredging. Therefore we do not consider it necessary to provide further approval for mitigation of the effects of dredging on aquatic species.
- 5.1.2 Under the terms of the revised *Draft DCO* (Schedule 15, Part 2, para. 8), the MMO would approve details of capital dredging activities, including environmental mitigation measures. Schedule 15, Part 2, para. 22 also requires the MMO to be notified of any changes to the information on which the basis for a decision to grant approval is made.
- 5.1.3 Schedule 16, Part 2, para. 17 protects the PLA's powers under Section 73 of the Port of London Act 1968 regarding licensing of maintenance dredging. In considering such a licence application, the PLA would consider environmental mitigation, including matters relating to aquatic species, as noted in the PLA's [Guidance Note 3: Wider environmental issues](#).
- 5.1.4 The environmental mitigation measures required as part of the above mentioned licence applications would include avoiding dredging in periods that are important for aquatic species in accordance with the mitigation set out in Section 8.11 of the draft *Code of Construction Practice* Part A. All works must be undertaken in accordance with any approval or licence granted and it should be noted that any changes to the timing of the works would only be made in consultation with the appropriate body as well as the employer (Thames Water). Section 4.7.3 also requires provision of further information regarding dredging to the relevant bodies, including timing, prior to commencing dredging. The MMO and PLA have the necessary powers to control any changes as the bodies granting approval of mitigation measures and licences respectively.

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Thames Water Utilities Limited

Clearwater Court, Vastern Road, Reading RG1 8DB

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