



Application for Development Consent

Application Reference Number: WWO10001

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

Drafting Notes Relating to Updated Draft DCO

Doc Ref: **APP75.1**



Thames Tideway Tunnel

Drafting notes on the updated draft DCO as issued to the ExA on 13 January 2014

These notes do not seek to explain every single change made to the draft DCO, as some are more minor and/or typographical. Explanation is provided here of the main points and/or reasons for the change (e.g. stakeholder response).

ARTICLE	COMMENTS FROM THE APPLICANT
Article 2 - Definitions	<p>'acceptance date'</p> <p>This is a new definition which has been added as a part of the proposed mechanism to address the issue of the temporal scope of powers. The definition reflects the terms of the definition found in the recently issued Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 Draft Thames Tideway Tunnel Project Specification Notice.</p> <p>The acceptance tests are a series of tests which are calibrated to ensure that the tunnel can be operated as part of the sewerage system in a variety of weather conditions so as to satisfy the Environment Agency such that they confirm the operating techniques. Thames Water will sign off acceptance. Deemed acceptance will occur if the acceptance tests have not been passed within 3 years of construction completion if the only reason for the tests not having been completed are the non-occurrence during that period of the relevant weather conditions necessary to perform the test.</p> <p>Thus, if the EA is not satisfied, Thames Water cannot sign off the acceptance.</p> <p>Notwithstanding the drafting included in the updated draft, the applicant is continuing to look at the approach to these definitions, to provide clarity as to the outstanding matters, such as the procedure for the acceptance tests referred to and what governs that procedure.</p> <p>It is currently proposed that the following articles are limited to expire on the acceptance date: 7, 10, 11, 15, 16, 18 (part), 22, 23, 25, 26, 34, 46 (part), 47, and various paragraphs of part 1 of Schedule 19.</p>
	<p>'authorised development'</p> <p>In the context of the concerns around 'maintenance', this definition has been amended such that the authorised development is that development listed in part 1 of schedule 1, and any other works which are development further to the remedial works power in article 21 or the power in relation to statutory undertakers in article 41.</p> <p>In turn, at the end of part 1 of schedule 1, drafting has been added to ensure that maintenance is addressed, provided that such development does not give rise to any materially new or materially different environmental effects from those assessed in the Environmental Statement (in respect of which see the response to first written question 6.9).</p>
	<p>'environmental statement' – this definition has been included further to the</p>

	<p>first DCO ISHs. This definition is likely to require a further update in light of documentation submitted to the examination.</p>
	<p>'highway works (class 1)' and 'highway works (class2)'</p> <p>These definitions were included in the version of the draft DCO provided to stakeholders on 9 December 2013. This was further to the applicant's commitment to review highway works so as to ascertain whether there were non-critical highway works which did not need to benefit from the disapplications in schedule 19 part 1.</p> <p>Having considered this in greater detail, and as set out in response to second written question 34.2, the applicant has concluded that it requires all highway works to be dealt with under the one regime.</p> <p>Hence these definitions (in article 2) and associated text (in schedule 19 part 1) are no longer included in the draft DCO as issued to the Panel on 13 January 2014.</p>
	<p>'maintain'</p> <p>Submissions have previously been made in relation to this definition, which remains as drawn. We refer also to the applicant's response to first written question 6.9. To address the concerns raised, the definition of 'authorised development' has been amended, and additional wording has been provided at article 5.</p>
	<p>'major detailed requirements'</p> <p>This list has been reviewed and the number of requirements falling within this category has been substantially increased. Please refer to the Applicant's response to second written question 25.2.</p>
	<p>'relevant planning authority'</p> <p>At the first DCO ISHs, the applicant committed to consider the use of this definition. This term is used in articles 2 (definitions), 16(b) (access to works), 23(4) & (11)(b) (human remains), and 53(3) (discharge of requirements etc) (now 53(2)).</p> <p><i>Definition</i></p> <p>The definition as set out in article 2 is: "means the council of the relevant London Borough and any successors to its function as planning authority for the area in which the land to which the provisions of this Order apply is situated".</p> <p><i>Context</i></p> <p>In the context of article 16, the relevant planning authority will be the one for the area in which the new access is situated.</p> <p>In the context of article 23 the relevant planning authority will be the one for the area in which the remains are found.</p> <p>In the context of article 53, this states that:</p>

	<p>“(3) Where an application is made to or request is made of the relevant planning authority, a highway authority, a street authority or the owner of a watercourse, sewer or drain, for any consent, agreement, approval or notice required or contemplated by any of the provisions of the Order such consent, agreement or approval shall, if given, be given in writing and shall not be unreasonably withheld”</p> <p>Hence the relevant planning authority is the one to which the application or request has been made.</p> <p><i>Concluding comments</i></p> <p>Therefore in all cases above the definition is clear by virtue of its use in context.</p> <p>In addition, elsewhere in the DCO variations on this term have been used, and the applicant has sought to rationalise these so that just this defined term is used. This is particularly the case in schedule 3, and also in article 51.</p>
	<p>‘special administration’</p> <p>In the context of article 9, this term has been expressly defined.</p>
	<p>‘Thames Water Utilities Limited’</p> <p>In the context of article 9, the applicant has proposed a definition of this entity such that statutory successors are expressly referred to in the DCO.</p>
Article 3	<p>Grant of development consent</p> <p>This has been made expressly subject to the protective provisions in schedule 16.</p>
Article 5	<p>Power of maintenance</p> <p>As mentioned in the first DCO ISHs, the applicant has included wording for the avoidance of doubt. Furthermore, the applicant has amended the definition of ‘authorised development’, and these changes in combination are to address the concerns raised about the scope of the consent granted.</p>
Article 7	<p>Defence to statutory nuisance</p> <p>This has been limited to noise during the construction period, up to the acceptance date.</p>
Article 9	<p>Transfer of the benefit</p> <p>The issue was raised in previous hearings about whether further articles should be excluded from this article, over and above the powers of compulsory acquisition. The Applicant has considered this and is of the view that matters surrounding compensation go with the powers of compulsory acquisition. Article 41 has been amended to make it clear that it is referring to the powers of compulsory acquisition in articles 27 and 28.</p> <p>At article 9(4) it was queried whether the reference to Thames Water Utilities</p>

	<p>Limited, rather than the undertaker, was correct. This is correct as it is TWUL as Applicant who benefits from the powers initially, and article 9(4) makes it clear that any other body is subject to the same restrictions as TWUL in the first instance. The Applicant has now defined TWUL to include statutory successors in title.</p> <p>Further to stakeholder discussions, at article 9(5) an addition has been made, such that where the Secretary of State considers an application for the transfer of powers to a transferee under article 9(2), the Secretary of State must have regard to the importance of ensuring that the transferee has the necessary financial and other resources to undertake the authorised project. Although this is strictly unnecessary, nevertheless we have added this in response to a stakeholder request.</p>
Article 10	<p>Street works</p> <p>Article 10(2) is now subject to consent.</p>
Article 11	<p>Street layout</p> <p>This has been amended further to stakeholder comments.</p>
Article 12	<p>New and altered streets</p> <p>This has been amended further to stakeholder comments.</p>
Article 14	<p>Public rights of way and permissive paths</p> <p>This has been amended further to stakeholder comments.</p>
Article 16	<p>Access to works</p> <p>This has been amended further to stakeholder comments.</p>
Article 17	<p>Agreements with street authorities</p> <p>In response to stakeholder comment and discussion, the scope of this article has been expanded so as to enable agreements to be entered into in respect of city walkways.</p>
Article 18	<p>Traffic regulation</p> <p>At 18(8) the deemed consent has been amended such that deemed refusal occurs instead. Deemed consents elsewhere in the DCO have been similarly treated.</p>
Articles 20 and 21	<p>Protective works and remedial works</p> <p>The issue of what further consents would be required, was raised at the first DCO ISH.</p> <p>For clarity, article 3 of the draft DCO provides for development consent within the order limits. By virtue of S.33 and S.115 of the Planning Act 2008, the need for listed building and other consents provided for, is removed. That does not apply outwith the order limits as article 3 does not grant such</p>

	<p>consent. Hence the applicant would either need to rely on the General Permitted Development Order, or planning permission would need to be secured by way of a formal application for planning permission. Other consents would need to be secured, as detailed in response to first written question 6.35.</p> <p>It would be unnecessary and inappropriate to write into this DCO the effect of the primary Act, which is clear, as summarised here.</p> <p>We trust that this provides clarity but would be content should the ExA wish to propose additional wording in the DCO to this effect.</p>
Articles 20 and 21	<p>Protective works and remedial works</p> <p>These articles are subject to further amendments, as suggested by stakeholders.</p>
Article 22	<p>Survey and investigation</p> <p>This article has been amended further to stakeholder comment, and to provide clarity of its relationship with article 34.</p>
Article 34	<p>Temporary use of land for construction</p> <p>As detailed in submissions made on 23 December 2013, and in responding to second written question 25.1, this article has been amended, for the reasons already detailed in those submissions and response.</p>
Article 34	<p>Temporary use of land for construction</p> <p>Article 34 (11) has been amended to indicate that it is not intended to deny blight claims.</p>
Article 35	<p>Temporary use of land for maintaining the authorised project</p> <p>This article has been restricted to land within the order limits.</p>
Article 46	<p>Public right of navigation</p> <p>Comments are awaited from the PLA. This article therefore remains subject to such comments.</p>
Article 47	<p>Rights under or over streets and city walkways</p> <p>This article has been amended to remove reference to 'appropriation', such that for the avoidance of doubt it relates solely to temporary use of such subsoil or airspace.</p> <p>Additional text has been included further to stakeholder comment.</p>
Article 48	<p>Landlord and tenant law</p> <p>A concern was raised that this could relate to development that formed part of the authorised project, such as the new foreshore structure and pier at Blackfriars, but which is not intended to be caught by this article. Hence the</p>

	<p>article has been amended such that unintended consequences can be avoided by agreement.</p>
Article 51	<p>Safeguarding</p> <p>This has been amended to deal with the issue of 'exempt applications' as discussed at the first DCO ISH.</p> <p>It has further been amended for clarity and certainty.</p>
Article 56	<p>Local legislation</p> <p>This has been amended as follows.</p> <p>(1) is to make it clear that the provision is subject to any other provision of the order.</p> <p>(2) has been amended to make it clearer that it relates to (1).</p> <p>(4) has been added to reflect the ability to challenge the use of the article.</p>
Article 56A	<p>Pipe subways</p> <p>This has been added further to stakeholder discussion, to address the issue of pipe subways and the application of such legislation.</p>
Article 59	<p>Arbitration</p> <p>The issue of costs was raised at the first DCO ISH. Costs of arbitration are addressed through the Arbitration Act 1996, hence the model wording is sufficient.</p> <p>Further the identity of the correct nominating body was raised, and the applicant has taken on board suggestions made by stakeholders.</p>
Schedule 1	<p>Description of the authorised project</p> <p>Work 15c (Albert Embankment Foreshore) – the proposed change to the description of development in work 15 (xii) and (xiii) in Schedule 1 DCO is to correct a drafting error and bring Schedule 1 in line with other project documentation.</p> <p>Thames Water has described the proposed use of the two potential accesses for Albert Embankment Foreshore in the Planning Statement (at Paragraphs N.4.25 and 26). In particular Paragraph N.4.26 describes that for construction access Option B the main site access point would be from a temporary access road constructed between Camelford House and Tintagel house. Occasional access to the interception structure would still be required along Lack's Dock. This description is also consistent with the Transport assessment (paragraph 16.2.10) and the Environmental Statement (paragraph 3.3.18 of Vol. 16). The proposed alteration to the draft DCO is to reflect and would be consistent with the transport, planning and environmental assessment carried out.</p> <p>The Access Plan (Drg Ref. DCO-PP-15X-ALBEF-17005 – rev 1) for Albert Embankment, (which is listed in Schedule 2 part 3 of the draft DCO), refers to</p>

	<p>access at Lack's Dock as access for construction for option A, plus occasional use if option B is selected. Within the draft DCO, Schedule 9 (Access to Works) (further to article 16) aligns with this, in describing 2 accesses one to the south and one to the north of Camelford House.</p> <p>The Land Acquisition plan for Albert Embankment (Drg no. DCO-LA-000-ZZZZZ-020023-Rev 1) provides that at Lack's Dock access will be taken for both temporary use and permanent rights over third party land. It is noted on the plan that if Option A is confirmed the limits provided for Option B (ie between Camelford House and Tintagel House) will not be required. If Option B is confirmed then the limits provided through Lack's Dock remain. Therefore the acquisition powers allow for either Option A (access via Lack's Dock) or Option B (access between Camelford House and Tintagel House and additionally via Lack's Dock) and so the DCO acquisition powers are consistent with the description of the accesses as above.</p> <p>For ease of reference, the Land Plots for Lack's Dock are Plots 38 38a 40 41 42 43 & 44.</p> <p>For all these reasons a correction has been made to schedule 1 of the draft DCO.</p>
Schedule 1	<p>Description of the authorised project</p> <p>Works 16 (Victoria Embankment Foreshore) and 17 (Blackfriars Bridge Foreshore) – these have been amended to accord with the scheme changes as previously accepted by the ExA.</p> <p>Work 26 (Abbey Mills Pumping Station) – this wording has been amended to reflect the latest position in respect of the Lee Tunnel project.</p>
Schedule 2	<p>Plans</p> <p>The plan numbers in schedule 2 have been updated to accord with the latest version numbers.</p>
Schedule 3	<p>Requirements</p> <p>The requirements have been amended since the draft DCO dated 23 September 2013 as a result of ongoing stakeholder engagement and in response to comments made by the ExA in the examination hearings.</p> <p>PW7 and PW8 remain under review following discussions with stakeholders and an update will be provided at the next DCO hearings.</p> <p>Thames Water has also made changes to ensure greater consistency across all the sites and to ensure mitigation is clearly secured. The main changes are:</p> <ul style="list-style-type: none"> • The addition of three project wide requirements (PW13, PW14 and PW15) covering excavated material and waste, ground water dewatering monitoring and management and operational noise in response to EA and LPAs. • The deletion of the Tunnel Land Quality Assessment at the request of the EA (what were CARRR14, DRMST11, KRTST4, CHAWF8, GREPS8).

	<ul style="list-style-type: none"> • Revision to the landscape requirements to ensure consistency across the project and in response to LPAs and submission to ExA on 23 December 2013 (ACTST5, BAREL5, PUTEF13, CARRR7, DRMST6, KNGGP6, FALPS4, CHEEF8, KRTST5, HEAPS8, ALBEF9, VCTEF16, BLABF14, EARPS5, DEPCS4, GREPS6, KEMPF6). • Revision to land contamination requirement in response to EA and LPAs (ACTST3, HAMPS2, BAREL3, PUTEF11, CARRR3, DRMST4, KNGGP3, FALPS2, CREWD7, CHEEF11, KRTST3, HEAPS6, ALBEF12, VCTEF14, BLABF17, SHTPS3, CHAWF7, EARPS3, DEPCS5, GREPS7, KEMPF10, BEKST3, ABMPS3, BESTW2). • Addition of 'arsenal' conditions for Section 106 agreements. The latest drafts of the S.106 agreements are being submitted on 13 January 2014 (ACTST12, HAMPS8, PUTEF21, CARRR15, DRMST11, KNGGP14, FALPS12, CREWD14, CHEEF19, KRTST14, HEAPS18, ALBEF20, VCTEF23, BLABF26, SHTPS8, CHAWF13, EARPS12, DEPCS14, GREPS14, KEMPF17, BEKST6, ABMPS7, BESTW5). • Addition of detailed approval of above ground structures at Hammersmith, Falconbrook and Heathwall Pumping stations and Kirtling Street (HAMPS9, FALPS11, KRTST13, HEAPS17). • Additional requirements at Deptford Church Street to ensure continued vehicular and pedestrian access to St Pauls Church and St Josephs Catholic Primary School and for the school a fire and emergency assembly point (DEPCS12 and DEPCS13). • Additional requirements at Chambers and Cremorne Wharf to submit site restoration schemes to ensure land is left in an appropriate condition at sites where landscaping is not deemed an essential mitigation measure (CREWD9, CHAWF12). • Additional requirements at Earl Pumping Station to cover the removal and recording of a marker stone and works to street trees (EARPS10 and EARPS11). • Requirements at sites on safeguarded Wharfs have had the Mayor of London added as a consultee. <p>The level of agreement on the requirements is recorded in the relevant Statement of Common Ground with each stakeholder, and updates of these Statements are being provided on 13 January 2014.</p>
Schedule 7	<p>Public rights of way and permissive paths to be extinguished</p> <p>At Blackfriars Bridge it had been discussed with the City of London as to whether the stairs to the east and west ought to be included in this schedule, however they are already correctly addressed in schedules 8 and 6 respectively.</p>
Schedules 13 and 14	<p>Subsoil below 9 metres and temporary possession</p> <p>These have been altered in relation to Victoria Embankment Foreshore and Blackfriars Bridge Foreshore to accord with the scheme changes as previously accepted by the ExA.</p>

Schedule 15	<p>Deemed marine licence</p> <p>This has been altered further to stakeholder discussion. There are ongoing discussions.</p>
Schedule 16	<p>Protective provisions</p> <p>These have been altered further to stakeholder discussion.</p> <p>There are ongoing discussions with stakeholders, with a view to agreeing further protective provisions for inclusion.</p>
Schedule 17	<p>Procedure for the discharge of requirements etc and appeals</p> <p>Fees – a number of potential proposals were put forward by the boroughs in relation to fees. TWUL has considered these and remains keen to ensure that a fair fee is payable in respect of applications to discharge requirements. However there is considerable disparity between the views put forward. In light of the recent precedent of the made DCO for Hinkley Point C, which is reflected here in respect of fees, TWUL has not amended the fees provision, as it feels it offers a uniform and fair fee.</p> <p>Appeal timescales – these timescales have been amended as committed to at the first DCO ISH.</p> <p>Clarity as between appeals process and arbitration – article 53 is express that schedule 17 only applies save as otherwise provided for by the order. Article 59 (arbitration) is stated in similar terms. The schedule 16 protective provisions are being negotiated such that they provide which mechanism shall be used. Where there is not provision, then in relation to any consents, agreements, approvals or notices further to those matters listed in article 53(1), then schedule 17 applies. In relation to any other matter, if there is not contrary provision, then article 59 arbitration would apply.</p>
Schedule 19 – part 1	<p>Public legislation</p> <p>As noted above, the temporal scope of appropriate items has been addressed.</p> <p>Further, reference to the Listed Building and Conservation Area legislation has been removed. This has been removed on the basis that the Planning Act, S.33, already deals with that legislation.</p> <p>The scope of the reference to the 1990 TCPA has been reduced.</p> <p>Following stakeholder engagement, reference to the Marine and Coastal Access Act has been removed.</p> <p>As stated in response to first written questions, reference to the Land Drainage Act has been removed.</p>
Schedule 19, part 2	<p>Local legislation</p> <p>There has been one correction of a date, and one clarification in relation to the PLA Act, such that maintenance dredging is excluded.</p>

Generally	It should be noted that throughout the draft, square brackets are used to indicate where drafting is either subject to further stakeholder comment, or subject to further review for reasons set out in this note, or is otherwise potentially in need of further change in light of ongoing discussions and/or work.
Comparites	It should be noted that the article numbering is correct in the clean draft. The comparites will contain numbering errors due to the combination of the statutory instrument template and the comparite software.

Berwin Leighton Paisner
13 January 2014

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