

Planning and Borough Development
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Executive Director Planning and Borough Development
Mr Jonathan Bore



THE ROYAL BOROUGH OF
**KENSINGTON
AND CHELSEA**

Phil Stride
Head of the Thames Tideway Tunnel
The Point, 37 North Wharf Road,
Paddington, London W2 1AF

My reference: Consultation on
Draft DCO and CoCP for the Thames
Tideway Tunnel

Please ask for: Patricia Cuervo

30 December 2013

Dear Mr Stride,

Please see below the Council's comments to the last iteration of the draft Development Consent Order (DCO) and the Code of Construction Practice (CoCP).

1. Draft DCO

- 1.1 Under Work Provisions in the draft DCO, article 3 states that "subject to the provisions of this Order and to the requirements in Schedule 3 to this Order, the undertaker is granted "(a) development consent for the authorised development; and (b) consent for the ancillary works". This could be modified to include the design principles and the CoCP after the reference to the requirements. The revised version includes reference to Schedule 16 (protective provisions) only. It is understood that both, the design principles and the CoCP will be referred to in the requirements (Schedule 3) but their inclusion under article 3 will give reassurance regarding their implementation.
- 1.2 The Council has previously raised concerns due to the broad definition of the word 'maintain' which could lead to implementation problems of street works (Street and traffic regulations, article 10 (d) and (g) of the DCO). The power to maintain is extremely broad. It would allow almost any sort of work to be carried out on the project under the guise of "maintenance" at any point in the future, including even its demolition and replacement. Such work is not obviously subject to the detailed specifications and requirements laid down by the draft DCO and the associated

documentation in respect of the initial construction phase. Such an open-ended power is inappropriate. The power of maintenance should not authorise any future development which would otherwise require separate planning permission from the local authority, and should not be able to depart from the detailed specifications which will apply to the construction work. The words: “decommission, demolish, remove, clear, alter, remove and replace” should be removed from the definition. This has not been taken into consideration in the changes to the draft DCO.

- 1.3 The draft DCO proposal to dis-apply the Traffic Management Act (Traffic Regulation, point 18) is strongly objected, as the Council is best placed to decide in local traffic issues. This point still applies to the current consultation document.
- 1.4 Many of the various statutory powers and exemptions are of unlimited duration, lasting beyond the initial construction phase of the project into its routine operation and maintenance. See, for instance, Article 10 (powers to carry out street works), Article 18 (powers to regulate traffic) and Articles 55 and 56 (disapplication of statutory provisions such as provisions in the Traffic Management Act 2004). Given the scale of the undertaking, some special approach to regulation may be required for the construction phase of the project. However, Thames Water and the Infrastructure Provider should not be treated differently from any other statutory undertaker once the construction is complete and the project is being routinely operated and maintained. The powers claimed would be potentially disruptive and should not be countenanced on an open-ended basis unless very strong justification is shown. Moreover, most of the detailed regulation which will operate in place of the usual statutory controls during the period of construction will cease to apply once the construction is completed. Changes to the draft DCO include a note about limiting the temporal scope of all the powers within the DCO but there is no formal wording available for review.
- 1.5 Similarly, some of the statutory powers are of excessive geographical and temporal scope. For instance, Article 10 would allow street works to be carried out on any street, whether or not specified in the relevant Schedule and whether or not within the Order limits. Thames Water should be able to specify in advance the streets or areas in which they will have to carry out work. Failing this, any work carried out beyond the scheduled streets or Order limits should require the consent of the relevant street authority. It is not clear how this has been addressed in the changes (if at all).
- 1.6 The disapplication of local legislation (Article 56) is very sweeping. It would mean in effect that the project (including not only its construction but its subsequent operation and maintenance) could be carried out with no regard whatever to any provision of local legislation (including the London Local Authorities Acts). It is incumbent on Thames Water to identify the specific provisions of legislation which it is necessary to disapply, and why. Failing this, local legislation should cease to apply only where it would substantially impede the viable completion or operation of the project, or where it would prevent work from being carried out in a particular manner which is authorised by the DCO. The inclusion of point 3 under this article allows for a dialogue between the undertaker and any other person regarding a contravention of a statutory provision of local application. However, this change does not provide a way to solve disputes successfully and it is therefore not clear how this change addresses the Council’s concern.

- 1.7 Under Schedule 3 (Requirements), the new requirement (PW13) included in the draft DCO could lead to changes to any issue agreed within the Transport Strategy and could potentially result in increased road use. This is a serious concern that must be addressed.
- 1.8 Most of the Council's proposed wording has been incorporated into the Land Quality DCO requirements CREWD7 and CHEEF11. However, there are a few minor changes that should be included in the final requirement wording: (changes have been highlighted in red text)

Site specific remediation strategy

1. Unless agreed in writing by the local planning authority in consultation with the Environment Agency no works shall be undertaken at this site (~~save for demolition of existing buildings~~, works in the highway including site access, works to trees and installation of monitoring equipment) until the following has been submitted to and approved by the local planning authority, in consultation with the Environment Agency:

a. A preliminary risk assessment and site investigation scheme which has identified:

- (i) all previous uses
- (ii) potential contaminants associated with those uses
- (iii) a conceptual model of the site indicating sources, pathways and receptors
- (iv) qualitative risk assessment of any potentially unacceptable risks arising from contamination at the site.
- (v) proposed site investigation scheme (**based on the preliminary risk assessment**) providing information for a detailed quantitative assessment of the risk to all receptors that may be affected, including those off site.

b. A remediation strategy which includes:

- (i) The results of the site investigation**
- (ii) detailed quantitative assessment of the risk**
- (iii) options appraisal giving full details of the remediation measures required and how they are to be undertaken.**
- (iv) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy are complete and identifying any requirements for long-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.**
- (v) a programme for the submission of elements detailed in 4 and 5. 2.**

2. The works shall be undertaken in accordance with the approved details unless otherwise agreed with the local planning authority, in consultation with the Environment Agency.

- 1.9 The 'demolition of existing buildings' should be removed from point 1, in order to ensure that no sources of contamination (such as tanks) are removed before the preliminary risk assessment has been carried out.
- 1.10 In point 1a(v), the wording 'based on the preliminary risk assessment' should be included to ensure that the site investigation scheme is based on the preliminary risk assessment and that the assessment follows a phased approach.

1.11 In point 1b, a bullet point stating 'the results of the site investigation' should be included within the list to ensure that the results of the site investigation are included in the remediation strategy.

2. CoCP

2.1 The body implementing the DCO should coordinate works with third parties and ensure that tendering and securing consents are done with plenty of time. It is important to coordinate utility works to minimise disruption. Local authorities should be consulted of any unexpected utilities diversions and upgrades. Also, information about what parameters the contractors need to abide to should be passed to local authorities and adjoining boroughs should be informed of any decisions taken.

2.2 Regarding transport / traffic management: under the Cremorne Wharf site, the COCP Part B wording "There shall be suspension of five parking bays on Lots Road" should be replaced with "There shall be a suspension of a maximum of five parking bays on Lots Road. The Contractor will liaise with the local highway authority to reduce this where practicable."

2.3 The Council proposes the changes to the following paragraphs of the CoCP Part A in relation to Noise:

6.4.1 Should include the definition of 'BPM' "best practicable means", this is 'best practicable means' as defined by Section 72 of the Control of Pollution Act 1974, or refer to 6.1.3 in this clause.

6.4.2 'measures to be employed', change 'may include' to 'shall include'. Also reference to BS5228 should be the 2009 version.

2.4 In the Noise Insulation and Temporary Re-housing Policy it is stated that: "the noise insulation and temporary re-housing would only be allowed if the property complies with all the other requirements of the Noise Insulation (Railways and Other Guided Systems) Regulations 1996". It is not clear why the Regulations pertaining to Railway construction are used here, this should be explained.

2.5 Monitoring could be difficult to standardise when more contractors and subcontractors are appointed. Contractors need to be properly trained. Monitoring variations and dispensations of S61 may be difficult to control by the IP and Thames Water. Complaints monitorisation is important and the reports should be shared with the local authorities.

2.6 Under Water Resources, when dewatering is necessary, it should be subject to the controls set out in the CoCP. As the dewatering process can be very disruptive, prior consultation should take place with local authorities and other stakeholders. As currently drafted in the CoCP Part A, stakeholders will only be consulted for site specific monitoring arrangements.

2.7 Some of the Council's proposed wording for Air Quality has now been incorporated into the CoCP Part A and the reasons why Thames Water do not want to include a full list of the mitigation measures within the Air Quality chapter are accepted. It is expected that the specific measures will be detailed in the site specific air quality management plans.

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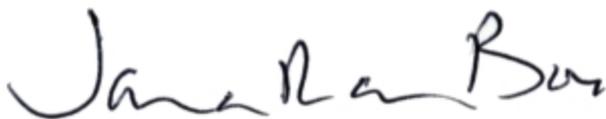
Web: www.rbkc.gov.uk

2.8 The Council strongly disagrees with Thames Water's response in the latest Statement of Common Ground (SoCG) regarding the proposed text for the CoCP Part B for Cremorne Wharf in relation to the PM10 monitoring and site action levels. The site action level of $250\mu\text{g}/\text{m}^3$ is recommended in the current BPG (and the Draft Supplementary Planning Guidance) and it is not advisable to deviate from these recommended levels. The use of an alert level of $200\mu\text{g}/\text{m}^3$ is recommended as a useful management tool. Additionally, the use of an hourly alert would delay notification of and action on a potential problem. Were the action level to be based on baseline monitoring this could lead to the action level being more stringent as it is unusual to experience 15min means greater than $250\mu\text{g}/\text{m}^3$). An action level based on PM10 must also be set, rather than on total suspended particles alone, as it is the finer fraction that has the biggest impact on health and that we, as the local authority are responsible for reducing.

2.9 Thames Water have not accepted the Council's request for an email alert to be sent to our council inbox when the upper limit is breached more than 5 times in one day. Thames Water have quoted the Olympics site within their response in the SoCG. However, it is not clear how the Olympics site provides a comparable situation on which to base their argument. Although it may have been difficult to identify the cause of short duration exceedence events on such a large site like the Olympics, it is possible to identify the cause of exceedence events on the smaller construction sites that the ones in Kensington and Chelsea. The Council currently receives data from a number of construction sites across the Borough using the methodology set out in the BPG and it proves to be appropriate way of managing dust and PM10 generation for site managers. Based on previous experience, the use of a 15 minute mean on a construction site the size of Cremorne Wharf and within this setting (i.e. within a densely populated residential area) as the proposed method is appropriate. The monitoring details should be set out in the CoCP Part B for Cremorne Wharf, so that the contractors know what is expected of them from the outset.

Please do not hesitate to contact my officer, Ms Patricia Cuervo, if you have any questions.

Yours sincerely,



Jonathan Bore
Executive Director Planning and Borough Development