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| <b>Committee(s):</b><br>Planning & Transportation  | <b>Date(s):</b><br>14 May 2020 |
| <b>Subject:</b><br>Consultation on an application for a non-material amendment to the Thames Tideway Tunnel Development Consent Order;<br>Delegation of Powers to Officers to respond to consultations in respect of applications to the Secretaries of State for non-material or minor material amendments to Development Consent Orders. | <b>Public</b>                  |
| <b>Report of:</b><br>Chief Planning Officer and<br>Director of the Department of the Built Environment   | <b>For Decision</b>            |
| <b>Report author:</b><br>Ted Rayment   |                                |

### Summary

The Court of Common Council has delegated to Planning and Transportation Committee responsibility for a number of local authority functions including the City's functions as local planning authority relating to town and country planning under the Planning legislation, including the Planning Act 2008 and secondary legislation pursuant to the same, and all functions as local highway, traffic and walkway authority not expressly delegated to another committee.

To facilitate the carrying out and administration of these functions, some of them have been delegated down to Chief Officers as set out in the Scheme of Delegations approved by Court of Common Council on 18 July 2019.

Tideway propose to submit an application to the Secretaries of State for non-material amendments to the Thames Tideway Tunnel Development Consent Order 2014 at the beginning of May 2020. As local authority it is proposed that no objections are raised to the current application; and that in order to ensure that the City's response is provided within the statutory time frame in the event of any subsequent consultations in respect of applications for non-material or minor material amendments to this and other development consent orders, authority be delegated to allow Officers to respond.

### Recommendation(s)

Members are asked to:

- Endorse the recommendation of City officers that no objections are raised in response to the consultation on Tideway's application to the Secretaries of State for non-material amendments to the Thames Tideway Tunnel Development Consent Order 2014.
- Delegate authority to the Director of the Built Environment, and/or the City Planning Officer and Development Director and/or the Assistant Director (Development) and/or the Assistant Director (Planning Development) to

respond to consultations in respect of applications pursuant to the Planning Act 2008 as amended and Regulations thereunder for non-material or minor material amendments to Development Consent Orders.

## **Main Report**

### **Background**

1. The Court of Common Council has delegated to Planning and Transportation Committee responsibility for a number of local authority functions, including the City's functions as local planning authority relating to town and country planning under the Planning legislation, including the Planning Act 2008 and secondary legislation pursuant to the same, and all functions as local highway, traffic and walkway authority not expressly delegated to another committee.
2. To facilitate the carrying out and administration of these functions, some of them have been delegated down to Chief Officers as set out in the Scheme of Delegations approved by Court of Common Council on 18 July 2019.
3. Recent proposed changes to the Thames Tideway Tunnel project developed in discussion with City officers have given rise to the need for submission by Tideway of an application to the Secretaries of State pursuant to the Planning Act 2008 for a non-material amendment to the Thames Tideway Tunnel Development Consent Order 2014. Thames Tideway have forwarded a copy of the draft submission for comment and consideration by officers prior to the submission of the application to the Secretaries of State which is expected in May 2020.

### **Changes to the Thames Tideway Tunnel Project**

4. In order to facilitate construction of the design proposed, some amendments are required to the approved drawings for the Blackfriars site. The amendments proposed will allow for minor adjustments to the area approved for the location of permanent site structures, amend and slightly increase the area approved for permanent loss of the listed river wall and amend the demolition and site clearance drawings so that they reflect these changes.
5. The Tideway overflow weir chamber is to be constructed to divert flow from the Low Level Sewer in a section of this river wall. City officers raised several objections to the original proposals, and the design has been revised as suggested by officers.
6. The revised design resolves the key objections noted by the officers which sought to ensure that the interception chamber and the City's reinstated pipe subway will be separate physical structures.
7. The design development provides further benefits to the City Corporation over the original design:-.

- a) Improved access arrangement – new access point with stair access and separate entry manhole for plant and material access/egress, as well as emergency access/rescue.
  - b) Robust structure with 120yr design life requiring little maintenance and providing resilience through improved access to the network.
  - c) Increased internal area potentially providing a staging area for future works on surrounding areas of the service subway.
8. Approval from the Secretaries of State is required for non-material amendments to the Development Consent Order in order to construct this improved design. These comprise amendments to the DCO approved plans for the Blackfriars Bridge foreshore site, namely :
- the Site works parameter plan;
  - the Extent of loss of listed river wall plans; and
  - the Demolition and site clearance plans.

### **Materiality of the Proposed Amendment**

9. Tideway are seeking consent for these changes under Schedule 6 of the Planning Act 2008, which makes provision for the Secretary of State to grant both material and non-material changes to a DCO. In deciding whether a change is material the Secretary of State must have regard to the effect of the change, together with any previous changes made, on the development consent order as originally made. The 2008 Act and the 2011 Regulations do not, however, provide any definition of a material or non-material change.
10. The 'Guidance on Changes to Development Consent Orders' (published by the former DCLG in December 2015) states that, given the range of infrastructure projects that are consented through the 2008 Act, whether a change is material or non-material will depend on the circumstances of the specific case. The guidance does provide examples of four characteristics that might indicate that a change may be more likely to be treated as material. These are noted as examples and provide a starting point for assessing the materiality of any proposed changes.
11. Each of the four examples provided in the DCLG Guidance are considered below, and for the reasons set out it is considered that the changes proposed in this application are not material.

### **Environmental Statement**

12. The DCLG Guidance states that a change should be treated as material if it would require an updated Environmental Statement (from that provided at the time the original Development Consent Order was made) to take account of new or materially different likely significant effects on the environment. In this case, the proposed amendments are localised in nature and will not give rise to any new or materially different environmental effects from those assessed in the

original ES for the consented scheme. No update to the Environmental Statement submitted with the original DCO application is therefore required.

## Habitats and Protected Species

13. The DCLG Guidance indicates that a change is likely to be material if it would invoke a need for a Habitats Regulations Assessment, or the need for a new or additional licence in respect of a protected species.
14. The changes do not require a Habitats Regulations Assessment and will not result in the need for any European Protected Species licences.

## Compulsory Acquisition

15. The DCLG Guidance states that a proposed change should be considered material if it would authorise the compulsory acquisition of any land, or an interest in or rights over land that was not authorised through the existing DCO.
16. No additional compulsory acquisition powers are thought necessary or are being sought as part of this amendment application. The extent of City Corporation land required permanently for the scheme was addressed by a written agreement in 2017 with Thames Water Utilities Limited and Bazalgette Tunnel Limited and the agreement anticipates that minor adjustments and fine-tuning of the land descriptions will need to be agreed when the detailed design is finalised.

## Impact on Business and Residents

17. The potential impact of the proposed changes on local people will also be a consideration when determining whether a change is material. The DCLG Guidance acknowledges that in some cases these impacts may already have been identified, directly or indirectly, in terms of likely significant effects on the environment. The guidance recognises that there may be other situations where this is not the case such as changes to visual amenity arising from changes to the size or height of buildings; impacts on the natural or historic environment; and impacts arising from additional traffic which were not considered at the time of the original application.
18. The proposed amendments are required to provide for minor adjustments to the area within the existing site boundary where works can take place. The works for which these amendments relate are below ground works with no changes required or proposed to any of the surface works or permanent above ground structures at Blackfriars.
19. The amendment proposed at Blackfriars would increase the overall area of the listed river wall approved for permanent removal, but this additional loss would not change the significance of the effects assessed in the Environmental Statement. The Heritage Statement submitted with the original DCO application concluded that the main heritage impact of the proposals at Blackfriars related to changes to the setting of the listed buildings, being both the river wall and those listed buildings around the site. The effect of the works was not considered to amount to substantial harm to the setting of the listed buildings. The proposed amendment would affect below ground works only and would not introduce any new visual impacts or changes to the setting of the listed buildings.

20. The changes are limited when considered in the context of the Project overall and are not considered to give rise to any new or materially different environmental or habitat issues and no additional compulsory purchase powers are being sought.

### **Current Position**

21. Delegated authority has been given to the Director of the Built Environment, and/or the City Planning Officer and/or the Assistant Director (Development) to determine applications to discharge requirements and approve details pursuant to the Thames Tideway Tunnel Development Consent Order and other similar Development Consent Orders, and to discharge conditions and approve details pursuant to deemed planning permission granted by Transport and Works Act Orders and statutes in respect of infrastructure projects (subject to the applications being in accordance with policy, not being of broad interest, and there being no more than 4 planning objections).

22. The delegations to chief officers do not cover responding to consultations on applications for material or non-material changes to a DCO pursuant to the Planning Act 2008 and Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011; the scope of the above delegation (number 124) only extending to determining applications to discharge requirements and approve details pursuant to the Thames Tideway DCO.

23. In response to the current consultation it is recommended that no objections are raised to the application; and in respect of future consultations delegated authority is sought to enable Chief officers to respond where the applications to the Secretaries of State are for non-material or minor material amendments to Development Consent Orders. This will be consistent with the approach taken for planning applications.

24. Consultations in respect of non-minor material changes would still be referred to Members for decision.

### **Corporate & Strategic Implications**

25. This proposal links the following themes of the City Together Strategy: is competitive and promotes opportunity; supports our communities; protects, promotes and enhances our environment; is vibrant and culturally rich; is safer and stronger.

### **Consultees**

26. The Town Clerk, the Chamberlain and the Comptroller & City Solicitor have been consulted in the preparation of this report and their comments have been incorporated.

## **Conclusion**

27. The proposed amendments to the Development Consent Order are in response to issues raised by officers and will provide benefits to the City in terms of access to the reinstated pipe subway. These changes are considered to be non-material and therefore it is proposed that in response to the formal consultation no objections be raised.
28. In order to ensure that the City's response is provided within the statutory time frame it is proposed that authority be delegated to allow Officers to respond to any subsequent applications for non-material or minor material amendments to DCOs .

## **Recommendation**

29. That the Committee agrees the recommendations set out in this report.

## **Background Papers:**

Draft Copy of application for Non-Material Amendment Thames Tideway tunnel  
received 17 April 2020  
Thames Tideway Tunnel development Consent Order 2014  
Planning Act 2008

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