Summary

In refusing to review the National Policy Statement for Waste Water of March 2012 (NPS), the Parliamentary Under Secretary is inviting the Examination Authority (ExA) to enable fiscal fraud on the UK and all London water bill payers by granting a Development Consent Order to the Applicant knowing that the Thames Tideway Tunnel project is unlawful and has no meaningful consent of Londoners, giving grounds for compensation against the Applicant.

Grounds the court will be bound to consider include:

1. That the Applicant knowingly persists in refusing to apply best technical knowledge not entailing excessive cost (BTKNEEC), as ordered by the Court of Justice of the European Union (CJEU) in their Judgement C-301/10 of 18 October 2012.

2. The Applicant has knowledge that better technical solutions exist and have been proposed for the UK to comply with the Urban Waste Water Treatment Directive at less cost and disruption, shorter implementation time and greater public benefit, for example:

    2.1 The In-River solution of Professor Chris Binnie, Independent Chairman of The Thames Tideway Strategy Study on possible solutions for compliance,
    2.2 A Treatment Train temporary solution proposed through Blue Green Independent Expert Team. (BGIET) by Abtek and Smart Sponge Ltd.
    2.3 A Blue Green Plan, using BTKNEEC, as proposed in Parliament by Lord Berkeley, BGIET and others.

    It is beyond reasonable doubt that these three alternatives, singularly or in combination, make the Applicant's Tunnel unnecessary for compliance with the UWWT Directive.

3. Lawyers advising the Applicant and government agencies have knowingly misled, omitted, or misrepresented legal advice on compliance to government agencies and the CJEU, for the purpose of unlawfully conspiring with the Applicant to permanently deprive the UK and all London water bill payers of water, property, environment, health and legal rights to a value of all assets proposed to be taken and an income from water bills in excess of £1 billion per annum.

4. Defra, the Environment Agency and Ofwat have failed in their duty to enable Ministers and Parliament to make policy by understanding the significance of the change in circumstances for the water industry brought about by advances in environmental knowledge, technology and skills in the circumstances of climate change.

5. Ordering the Examining Authority to accept the need for a Tunnel solution, and not consider alternatives in the circumstances of the planning process rendering the NPS unlawful.

6. Evidence for these grounds are publicly available on the parliamentary record, the website: bluegreenuk.com and historically in documents accessible by the court.

7. Accordingly, the ExA is requested to cooperate with the Supreme Court in making a Preliminary Reference to the Court of Justice of the European Union, with Question (a): "Following Judgement C-301/10, does the Court consider the Applicant has followed genuine due legal process for the UK's environmental pollution compliance obligations

under the UWWT and other relevant Directives?" The ExA is also requested to formulate further questions in consultation with the Parties, IP and those sharing common ground, in line with, or to join with in common cause and ground, **R (on the application of ClientEarth) (Appellant) *v* The Secretary of State for the Environment, Food and Rural Affairs (Respondent)[2013] UKSC 25** *On appeal from: [2012] EWCA Civ 897* per Lord Carnwath at para 38-40. (GAI21)

Argument.

To continue arguments already presented, including Request to Review the NPS, of 28 November 2013. (PPL05)

8. The Parliamentary Under Secretary replied to the Request to Review the NPS. (PPL05) " I have considered your request carefully. Given the findings of the reviews carried out since publication of the NPS, however, I do not consider there has been a significant change in circumstances on the basis of which the Thames Tideway Tunnel policy was decided which would justify a review. "

9. The acceptance or not of the Application now relies on the Parliamentary Under Secretary and the ExA understanding the significance of change in circumstances of the water industry well enough to explain that significance to the Ministers, and /or under section 104(7) that the adverse impacts outweigh the policy need and the benefits.

10. Government, the Applicant and their lawyers have evidenced no understanding of significant change in the water industry in their Application; the latest Defra review (GAI24) failed to evidence significant change beyond the concept of SUDS, and both failed to attribute significance to the new advances of Blue Green technologies (ACA08, NB slide 10). Both fail to distinguish the difference between SuDS and Blue Green Technologies, one from the other. The Applicant and it's lawyers know both the difference and its significance, but choose to withhold it from the Ministers and the ExA and omit it from their Application. The Application's consideration of alternatives must therefore be seen as disingenuous and false; meant to deceive the Government for private, corporate, monopoly and shareholder gain. In those circumstances, government are legally bound to consult independent experts to ensure there has been no significant change before consenting to this Significant Infrastructure Project, under the principle: 'The word of the seller is not enough'. Hodgson v Marks[1971] Ch 892 at p932.

11. At a meeting on 22 August 2012 at the Offices of the Applicant, between the Applicant, their technical team, BGIET, Thamesbank and Dr Mark Maimone VP CDMSmith, who had already started a blue green conversion of Philadelphia, as a ' new paradigm', all were in agreement on technical issues. The following email represents this key omission of TW's minutes, explaining 'Thames Water is a private company, and the solution that has been proposed by Thamesbank requires wider debate and agenda change. This is well beyond the remit of Thames Water':

----- Original Message -----
From: graham stevens <
Subject: **Minutes: Thames Tideway Tunnel/Thamesbank meeting - 22 August 2012**
Date: 9 September 2012 11:50:39 GMT+01:00
To: **...** and 5 more…

‘The discrepancy between the official minutes and notes of Thamesbank/IET/CDM Smith members present, in itself may be of most significance; we all took away the staggering admission that TW are in complete agreement with us technically, the only point of dispute is the governance capability of London to organize 'Blue-Greening' of it's water management.
How do we best include this TW position into a B-G plan? ‘

12. Government has been wrongly advised technically and legally on change in circumstances of the water industry. The Minister being ‘Minded to issue preliminary licences’ consultation is a strong indication to the ExA that he has not understood the significance of the changes and his primary consideration is now the contractual convenience of the Applicant. The fiscal fraud of the Applicant is continuing to sell a Significant Infrastructure Project knowing it is no longer needed and is not required by EU or national law.

13. There is some sympathy for anyone not understanding the significance of the change in circumstances for the water industry. If the Minister hasn’t understood the significance, the Applicant cannot claim the public has understood the significance of the Application in its public consultation process under the Aarhus Convention (GAI06). Failure to adequately consult alone is a ground to refuse the DCO.

14. The significance of the change in circumstances of the water industry has been presented at various time by the IP to the Applicant from December 2010, with Dominic Michaelis BGIET, by it’s Technical Subgroup to Justine Greening MP’s Thames Tunnel Working Group (TTWG-TSG), by Thamesbank, and its technical advisers BGIET, to the GLA on 21 August 2012 by Peter Smith of Hammersmith and Fulham BC, Dr Mark Maimone VP and Alan Hooper, Director CDMSmith, Professor Chris Binnie and Dr. Ben Pontin of BGIET. To The House of Lords and Deputy Leader of the Coalition Government on 12 December 2012 by Lord Berkeley, Dr Mark Maimone, Professors Chris Binnie, Richard Ashley and Cedo Maksimovic, Dr Ben Pontin and Roland Gilmore. To the Environment Agency and Defra Ministers at various times by Professor Darren Woolf and Roland Gilmore.

14. TW latest reply to ExA: ‘Thames Water’s Legal Submission Relating to Implications of Alternative Scheme Options’ Doc Ref: APP32.02 correctly informs the ExA that: ’The third point is that the application clearly has to be considered in the context of section 104 of the Planning Act 2008.
Whilst TWUL recognises that under the Town and Country Planning Act 1990 regime, there have been various authorities on alternatives and how alternatives are to be considered, none of those decisions were taken in the legal context of section 104 of the 2008 Act, which is very different. So, for example, one of the leading authorities on alternatives – Trusthouse Forte Hotels Ltd v Secretary of State for the Environment (1987) 53 P. & C.R. 293 – related to a proposed hotel development in the greenbelt where need was argued to outweigh the policy presumption against the development and it was successfully argued that that need could be met elsewhere. That is, however, a very different circumstance to this application, where there is a legal presumption in favour of granting development unless, for example, under section 104(7) the adverse impacts outweigh the policy need and the benefits. In relation to the legal context under section 104 of the 2008 Act, however, development consent should be granted unless, under section 104(7), the adverse impacts outweigh the policy need and the benefits. Indeed,

development consent should be granted even if other parties – or indeed even the Examining Authority – thought that there 'may' be an option that had lower environmental impacts.
Furthermore, in that context it is not possible to determine whether such an alternative is actually better, because we haven't gone through all the statutory processes of consultation, full environmental impact assessment, land referencing, and so on in relation to any alternative. So it could only ever be 'may', and that is a reflection of the point made earlier in the Issue Specific Hearings, that for all of the alternative sites that were considered during the Issue Specific Hearings the Examining Authority did not hear from the communities – or very often the authorities – for the alternative competitor sites. Similarly, if the Secretary of State feels that the adverse impacts of the development do outweigh the policy need and the benefits of the project, then development consent should be refused.'

15. This extract on behalf of the owners of TWUL, not its staff, adequately shows the sort of legal advice being given to the Applicant and Government which, firstly, successfully misled the CJEU into believing the UK had made and accepted a decision to build the Applicant's tunnel. Secondly, has misled government into believing their only option is to grant Development Consent.

16. The advice is trying to establish with its legal presumption that the Ministers hands are tied, and he is bound to consent. The advice is confident enough to rely on the Minister not having understood the change of circumstances in the water industry to use a confession that the Applicant has failed to adequately consult, while blaming the public for not being heard, to pressurise the Minister to accept the unlawfulness of the Application as government policy. Compliance requires the Applicant to have already gone through 'all the statutory processes of consultation' from the 1991 introduction of the Directive. Professor Ashley in his ethics paper has detailed the extent to which the Applicant has been prepared to go to ensure no Blue Green Plan exists to implement BTKNEEC for London. (ACA02)

17. Question (b) for the Preliminary Reference in cooperation and common ground with the Supreme Court: 'Does blue green technology represent a significant change in the water industry, in line with the EU Blueprint for Water?'

18. Professionally, lawyers must give correct legal advice which will stand up in any court, even if it does not serve their clients aim. It is negligent to give wrong legal advice and fraudulent to knowingly give wrong legal advice, under the Theft Act s12(?). Lawyers involved in this Application have known since preparing the CJEU case, that the advice they are giving is to enable only their clients Tunnel Application to succeed; their legal advice has, in effect, been how to prevent any better solution competing with their clients private financial benefit against the greater public benefit. In guiding their clients around the law, knowing this is unlawful, their advice becomes a conspiracy with their client to defraud the public by avoidance of fulfilling their legal obligation to comply with EU Directives and their transposition into English law. The Applicants part in the conspiracy is knowing it needs its lawyers to outwit the law to mask its fiscal fraud with a legal face, constantly citing its duty under the Companies Act to maximise profit for shareholders. Corporations are constantly forgiven for 'mere puff' in exaggerating benefits of their product; in this case a tunnel. The purpose of the law is to draw the boundary between lawful bias and lawyer's bias, cooperation and manipulation, explanation and misrepresentation, evidence and false information.

19. The adverse impacts of opportunity costs; losing the new water industry, clearly outweigh the policy need, falsely presented as only the Tunnel, and benefits; wildly exaggerated at over £4billion. Professor Chris Binnie has assessed between negative benefits and a maximum of £2-300m. (PPL06 Annex 6)
The loss of the new water industry has to be compared with the UK's 1970's loss of the Space, Photovoltaic, Clean Fuels, Satelite and Telecommunications industries by the Labour government's cancellation of the successful UK rocket programme launching the 'Prospero' satellte.

20. In the circumstances of an Applicant attempting to defraud Londoners with an unlawful DCO for a Significant Infrastructure Project, it is necessary to revisit the purpose of our EU Treaties. The EU arose out of the World War 2 promise it would "never happen again". The legal mechanisms established to prevent war were an economic cooperation that would bind the Community for mutual benefit, legal unity obliging Member States to compete commercially on a level playing field. Transfer of sovereignty enabled each european citizen to be protected from their state's national abuse of power by european legal supremacy. Each Member State agreed to comply with EU law for national, economic, social and military security by following democratically agreed directions to ensure mutual european benefit. As we examine this Application, the context is 95 conservative MP's having no conception of this and an Application attempting to take advantage of it.

21. The Climate Change Act is one such transposition of European law to fit with English law, the UWWT and Water Framework Directives two more. These require the UK to adopt policies to protect its citizens from environmental pollution, as defined in the Directives and from those refusing to comply with protection measures. The Aarhus Convention continues the Putney Debates demand of 1647 that citizens are fully able to participate in the decision-making process determining significant aspects of their future. It is known that environmental pollution, in the form of air pollution, is currently killing 4,300 people per year in London alone, more than road deaths (GRO08). The 29,000 deaths in the UK, quoted in the Supreme Court, establishes common ground with that case.

22. Environmental death rates are at the heart of the Climate Change and pollution debate. The importance of this Application decision cannot be overestimated; standing as it does at the crossroads of the Government's commitment to give sustainability and climate change priority in its planning policies for the protection of its subjects from environmental hazards. Public loss of confidence in lawyers enforcing these policies is the danger if a DCO is granted.

23. Lord Steyn has warned against ignoring public loss of confidence in the law in the well known line of cases defining bias of judges, Porter v Magill [2001] UKHL 67. "...the case has at its core the need for 'the confidence which must be inspired by the courts in a democratic society.'". The prime example of the legal mechanism failing to prevent war is the judge who, as he was biased towards Hitler's discrimination, failed to jail him for life in 1923.
The public is informed on results in recent history of policy needing to help banks, and the G20 policy of targeting investment to infrastructure projects after the subprime financial crisis, and alarming indications that globalization is tempting financiers and Banks to greater negligence and fraud, beyond the scale of the 1929 Crash; misselling, Lehman Brothers bankruptcy, Libor fraud, RBS near collapse of English banking, HSBC financing drug trafficking, JP Morgan Chase enabling the Madoff Ponzi scheme, Goldman Sachs 'Giant vampire squid' tactics, etc.., beginning a familiar list. These have been well documented by films such as 'Inside Job'; the Oscar winning documentary of the 2008

financial crash, to inform the public in the expectation that financial law will be enforced. These examples cannot be ignored as evidence of behavioural changes in banks and international corporations. Applying big data technology, researchers have revealed 740 investors control 80% of international corporations.
The European Union has legal mechanisms in place to protect Member States from a legal battle between private profit and public environmental health risk over pollution and the dangers from climate change, trading life expectancy for private economic gain.

24.The treatment of one leading expert in BTKNEEC, Professor Chris Binnie, is put in evidence, as requested by the ExA when referred to at the Westminster hearing in response to the Applicant's criticisms of Professor Binnie: (PPL05,SEE03,IND09)

----- Original Message -----
From: Chris Binnie
To:
Sent: Tuesday, March 13, 2012 7:28 PM
Subject: Tideway tunnel consideration of Advocate General Opinion.

Dear ,
Good to talk.

In my SUDS, whilst applaudable, is expensive but could only be implemented by many different organisations and people, thus no government or water company could rely on SUDS to meet the UWWTD, especially with infraction procedings and a likely fine to be based on the days until the UWWTD is met.

Herewith my report on the legal aspects.

In this I did not make two points which have come up since.

The consultants say that the benefit to property values from doing the scheme would be "minor". The base amount in the defra cba is £1,000m. Were "minor" to be £200m then the subsequent analysis would show that the overall benefit including the valuation of the disbenefits during construction, would be negative.

Should the in-river scheme be able to meet the standards such as dissolved oxygen concentration in the river, then the extra benefit from constructing the tunnel would be minimal so, under the Whitburn AG ruling, the tunnel would not be needed.

However, I am a water engineer not a lawyer so, with defra lawyers saying implacably that a collecting system that only spilled under unusual storm conditions is required, then I have had to withdraw my report which is attached. This must be brought out to whoever you pass this document.

Best wishes,
Chris Binnie

This evidence shows the direct conflict of BTKNEEC with unlawful censorship by lawyers with influence over credibility and employment, as described by Professor Ashley.
The last paragraph is most disturbing, showing lawyers overruling a leading expert in favour of their own incorrect opinion. This gives an impression of a government captured by corporate interests unlawfully refusing to listen, hear or understand expert advice and thereby failing to understand the significance of the change in circumstances in the water industry. When added to the failure to listen to all the other leading experts; Dr Maimone, Professors Ashley, Maksimovic, Green, Woolf, Savic, all backed up by 100's of PhDs, and many others easily found in the evidence available since March 2012, it adds up to a potential planning disaster with permanent social, environmental and economic damage, and to loss of confidence in the legal profession.

25. At best, the Applicant is making a very uncertain claim to reduce water pollution in the Thames from 60 CSOs per year to 4-5 CSOs per year, at extremely excessive cost, which the Parliamentary Under Secretary himself acknowledges, in his letter refusing an NPS Review, is not sufficient, as all polluted water must be captured for compliance.

26. One significance in the change for the water industry of blue green technology is in its solving air and water pollution together, along with flooding, drought, heat fatalities, lowering energy and water bills for householders, changing peoples behaviour to be more law abiding. Another significant change of circumstance in the water industry is that blue green technologies solve different forms of pollution, air, water, soil, toxic fuels, at the same time as enabling economic benefits to be realized from natural capital- ecosystem services or symbiotic functioning, for example. Finally, it's significance is in changing the circumstance for the whole environment, not only water; it is developing as an economic way of reversing global warming by lowering CO2 in the atmosphere. Loss of opportunity for all these potential industries are adverse impacts that outweigh the flawed policy need for a tunnel with minimal benefits, as analyzed by the former Sir Ian Byatt, First Director General of Ofwat. (PPL05 annex 3)

27. Question (c) for the Preliminary Reference to the CJEU by the ExA: 'Does blue green technology represent the integration of environmental improvement and protection legislation of the EU?'

28. For the reasons given above the IP would also again request the NPS be reviewed, as it may be at any time. Lord Carnwath provides the reasoning for referring the case to the CJEU in the Supreme Court ruling on the basis of environment including air, water, soil, plants and animals, including humans, in the UWWT Directive.

Graham Stevens IP
Chair, Blue Green Independent Expert Team
at bluegreenuk.com

Appendix; title page of TW minutes of meeting held on 22 August 2012

100-OM-CMN-TBANK-000002

Thames Water

Meeting minutes

Subject:	Thamesbank: Integrated water management solution for the River Thames
Purpose:	Thamesbanks' proposed alternative to the Thames Tideway Tunnel
Date and time:	Wednesday 22 August 2012; 11:00 hrs
Location:	FLEET Conference Room
Attendees:	**Internal:** Jim Otta (JO), Jatin Seejore (JS), David Crawford (DC), Derek Arnold (DA), John Greenwood (JG), Chris Marlow (CM) **External:** Lady Dido Berkley (DB), Graham Stevens (GS), Mark Maimone (MM), Alan Hooper (AH), Prof Darren Woolf (DW), Prof Colin Green (CG)
Apologies:	-
Minute taker:	Chris Marlow
Doc ref:	TBC

Item	Action item/Notes for the record	By who	By when
1	**Introductions** **JO** led introductions. **DB** requested a 12:15 finish due to a meeting later in the afternoon with the GLA. Summarised Thamesbanks' aim: pushing blue-green policy across London.		
2	**Project overview – *Presentation*** **JS** introduced the project's history and the need for action, provided an overview of the Thames Tideway Strategic Study options that were considered and explained why the tunnel option is the best one going forward. He also summarised the technical details of the Thames Tideway Tunnel proposal. **DB** thanked **JS** and requested **MM** gave his presentation before starting a wider discussion.		
3	**CSO Control: a Green Approach 'Philadelphia's Green City Waters Programme' – *Presentation*** **MM** confirmed that he was asked to come to the UK to talk about the Philadelphia solution. He has worked on the scheme for over 12 years. Philadelphia's solution has been developed over 4-5 years; it was signed off by the City of Philadelphia in 2011, and then by the Federal Government in early 2012. **MM** confirmed that Philadelphia is facing affordability issues and the city was keen to exercise prudence in their big infrastructure projects.		