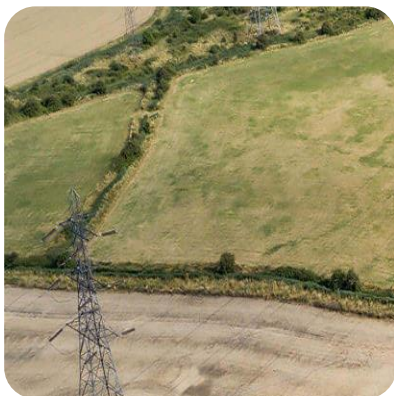




Thurrock Flexible Generation Plant

Deadline 5 – Applicant's response to the ExA's Second Written Questions



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2.1 AIR QUALITY

ExQ.	Question	Response
2.1.1		Concentrations reported for 2018 were lower than predicted for 2022 because of the height above ground at which the concentration was predicted.
Applicant	Table 1.3 of Appendix 12.8 displays an increase between the 2018 monitored concentration and 2022 modelled baseline concentration without Thurrock Flexible Generation Plant in place at several locations. It would be expected that predicted NO ₂ concentrations would reduce in line with national projections. Please explain why increases have occurred.	<p>Concentrations in 2018 were predicted at the actual height of the samplers at the monitoring locations. This was because the purpose of that exercise was to allow a comparison of the modelled and monitored concentrations to help derive adjustment factors to ensure that the model was not underpredicting.</p> <p>Concentrations in 2022, 2025 and 2030 were predicted at the typical breathing height of sensitive receptors because the purpose of these predictions was to assess impacts on those receptors. As the latter is usually lower than the height of the samplers, the concentrations reported for 2022 were in some cases greater than those reported for 2018. (Particularly where the main source of air pollution is road traffic, the pollutant concentration will typically decrease with height above ground, being further away from the pollution source which is vehicle exhausts close to ground level.)</p>
2.1.2	Please respond to the concerns raised by Gravesham Council in its Deadline 4 response [REP4-023].	The responses to Gravesham Council's Deadline 4 submission are provided in the document 'Applicant's Comment on Gravesham Council's Deadline 4 submission'.
Applicant		

2.2 COMPULSORY ACQUISITION

ExQ.	Question	Response
2.2.1	Does the Applicant intend to limit the exercise of CA powers in relation to Work Nos 12(c) and 12(d) to ensure only one access is brought into use? (see also ExQ2.8.1 below).	Yes, the Applicant agrees that compulsory powers should not be exercisable on the option not taken forward. The Applicant has proposed amendments to articles 19 and 22 of the dDCO at deadline 5 which would only allow compulsory power to be exercised over one access.
2.2.2	Please provide an update on discussions with SUs on protective provisions.	<p>The Applicant has set out details of progress on protective provisions for Thurrock Council, Highways England, Port of Tilbury London Limited and RWE in response to question 2.5.4 below.</p> <p>The only other statutory undertakers that the Applicant is in active discussion with are:</p> <p>Network Rail: The parties have now reached agreement in principle on the majority of issues and are working to finalise the protective provisions and private agreement. It is anticipated that this work will be concluded shortly, at which point a short statement of common ground could be submitted setting out the points of agreement reached between the parties. It is anticipated that this will be ready for Deadline 6.</p> <p>National Grid: The majority of points between the parties have now been agreed and there are only a small number of matters outstanding. It is expected that the private agreements and protective provisions will be finalised shortly, at which point it is intended that a short statement of common ground, outlining the position between the parties, can be submitted. It is anticipated that this will be ready for Deadline 6.</p> <p>Environment Agency: The majority of points between the parties have now been agreed and there are two drafting points outstanding.</p> <p>Drafting has been agreed with Anglian Water and the PLA.</p>
2.2.3	In response to ExQ1.3.12, the Applicant recognises that the public access rights under S193 of the Law of Property Act 1925 could be extinguished by the CA of Walton Common and acknowledges the possibility that those rights could be found not to apply to the exchange land. In such circumstances, the ExA considers this could result in a loss or diminution of existing rights. Should Art 33 of the dDCO be amended to include specific reference to s193 LPA 1925 as well as the Commons Regulation (West Tilbury) Provisional Order Confirmation Act 1893?	The strict legal position is that upon the compulsory acquisition of the common land the provisions in s193 are extinguished, but immediately upon their extinguishment the provisions of the Countryside and Rights of Way Act 2000 take effect thereby securing the right for access to the land by the public at large. In order however to directly preserve the existing rights, a definition has been added to this article to address the concern: <i>"In this article "rights, trusts and incidents" includes all such provisions contained the Commons Regulation (West Tilbury) Provisional Order Confirmation Act 1893 or having effect under that Act [and s193 of the Law of Property Act 1925]"</i> .

APPLICANT'S RESPONSE TO THE EXA'S SECOND WRITTEN QUESTIONS

ExQ.	Question	Response
2.2.4		The reference to the capacity market was included as at that time, flexibility to look at that funding model was being retained.
Applicant	Please explain how the requirement to enter into a capacity market contract in order to obtain board approval would impact on the proposed timescale for the construction of the causeway.	Reaching financial close on this project will not be dependent on a successful capacity market award because Thurrock Power Ltd has the benefit of a Framework Revenue Guarantee with Statkraft. This arrangement forms part of a 15-year strategic partnership with Statera Energy (parent company of Thurrock Power Ltd) to realise 1GW of energy storage and utility scale flexible gas-powered generation. The capacity market therefore has no bearing on the timescale for the construction of the causeway.

2.3 CULTURAL HERITAGE

ExQ.	Question	Response
2.3.1	In its Deadline 4 submission [REP4-024] the Council states that Walton Common could be considered a non-designated heritage asset. Please confirm whether or not the council considers Walton Common to be a non-designated asset and whether it has been included on any list of such assets compiled by the Council.	n/a
Thurrock Council		
2.3.2	The ExA notes HE's position as stated at ISH2 (Cultural Heritage) [EV-015 (at approx. 36.30)] was that the effect of the Proposed Development on the setting of Bowaters Farm battery, St James Church and Earthworks near church was "less than significant". However, in its Deadline 4 response HE indicates that it considers the effect on the setting of these heritage assets would be significant. Please clarify HE's position on the significance of effect of the Proposed Development on the setting of these heritage assets.	n/a
Historic England		

2.4 DESIGN AND LAYOUT

ExQ.	Question	Response
2.4.1	Design of causeway - please comment on the Hydrock Technical design note [Appendix 3 of REP4-031] and the engineering challenges, constraints and risks it identifies. How does the Applicant propose to manage these risks?	A response to Hydrock's note from the Applicant's engineering advisors, AECOM, is enclosed. In summary, this site does not present unusual or unexpected engineering challenges, which are well understood and will be addressed in further detailed stages of design. The Applicant is confident that the causeway can be constructed and decommissioned as set out in the conceptual strategy – as has been the done successfully for a number of other docks, jetties and causeways in this area of the Thames and other similar estuary environments. Examples of other similar constructions on which AECOM has advised are included in the response.

2.5 DRAFT DEVELOPMENT CONSENT ORDER

ExQ.	Question	Response
2.5.1	Requirement 10 (Surface and foul water drainage) - please confirm whether the wording of this requirement is now agreed.	The Council requested a number of detailed amendments to this requirement, which the Applicant considered could appropriately be set out in the Conceptual Drainage Strategy. The Council agreed that the changes made to that strategy as submitted at Deadline 4 (REP4-015) address the Council's request.
Applicant/Thurrock Council		The wording of this requirement is agreed, as noted in the draft Statement of Common Ground submitted at Deadline 4 (paragraph 1.2.9 of REP4-013).
2.5.2	Requirement 13 – please confirm whether the wording of this requirement is now agreed.	n/a
Thurrock Council		
2.5.3	Requirement 14 – Please comment on PoTLL's suggested amendments to Requirement 14 and provide reasons for departing from the approach followed in other DCOs.	<p>The Applicant has explained that it does not agree with the amendments sought by PoTLL because no consent to develop the CCR area will be granted by this DCO, the land is protected by the DCO and a subsequent consent will be needed to carry out works on it. It is not appropriate to seek to pre-determine the application of future permissions to develop the CCR land in a LEMP.</p> <p>The CCR requirements raised by PoTLL were added at Deadline 4 in revision 5 of the dDCO (REP4-003 at requirements 22 and 23). The Applicant does not consider that it is departing from previous DCOs in this regard.</p> <p>The Applicant notes that in the PoTLL deadline 4 submission (REP4-031 at item 3 of the section of the table sub-headed 'Issue Specific Hearing on the draft DCO 29 April' on page 8) PoTLL is no longer requesting the amendments to this requirement previously set out, but instead states "<i>PoTLL would welcome therefore either further content in the Outline Ecological Management Plan [PDC-050] or within the requirements of the full LEMP set out in paragraph (1) of Requirement 14, which provides that the full LEMP includes such measures (e.g. 'measures for the on-going management of invasive species and pollution').</i>". The Applicant submits that this is unnecessary as this is already dealt with under existing legislation and the management plans the Applicant is committed to.</p> <p>With regard to long-term management of any invasive species risk on the CCR land (post construction), the landowner has legal duties under existing legislation to avoid the spread of non-native and invasive species under the Wildlife and Countryside Act 1981 and The Invasive Alien Species (Enforcement and Permitting) Order 2019. The OEMP already has explicit commitments to implementing a biosecurity protocol to minimise the risk of spreading invasive species, both for construction works in the onshore environment (paragraph 2.6) and the marine/inter-tidal environment (paragraph 5.5.1). The CoCP likewise has these commitments in paragraphs 6.5.21 and 6.5.22 for the onshore environment and 6.6.5 for the marine/inter-tidal environment.</p> <p>The specific nature of pollution on the undeveloped CCR land that PoTLL is concerned about is not explained, but the CoCP sets out measures that will be adopted during construction to control and minimise the risk of pollution impacts; and requirement 5(ii) is explicit that the final CoCP must include measures to control pollution incidents. With regard to long-term management of pollution risk from the facility in operation, this is</p>
Applicant		

APPLICANT'S RESPONSE TO THE EXA'S SECOND WRITTEN QUESTIONS

ExQ.	Question	Response
		subject the regulation and control of the facility under its Environmental Permit by the Environment Agency. The Environmental Permitting regime should not be duplicated into DCO requirements or the LEMP.
2.5.4		Protective provisions have been agreed with Anglian Water and the PLA.
Applicant	Please provide an update on PPs. This should specify which are agreed and where they are not, provide a summary of the matters still under discussion.	<p>Discussions with National Grid, Network Rail and the Environment Agency are set out in response to question 2.2.2 above.</p> <p>Thurrock Council: The Applicant has been in continuing discussion with the Council around its request for a section 106. Having established the detail of the request, the parties consider that these could be appropriately dealt with under Protective Provisions and the addition of one further requirement on education and skills addressing in particular how the Applicant will seek to deliver local employment opportunities. The items under discussion for the Protective Provisions relate to local highway issues, including a request for a commitment by the Applicant to fund road condition surveys and remediation of damage, which the Applicant has agreed to in principle.</p> <p>Port of Tilbury London Limited: As noted on the Port's deadline 4 submission, draft protective provisions have been under discussion between the parties covering use for the Port's road and traffic management and compulsory powers. The parties are some distance apart on compulsory acquisition and the Applicant considers that we are unlikely to be able to resolve that until progress is made on the voluntary access agreement currently under negotiation. The target date for completion of that agreement is early July.</p> <p>RWE: Draft protective provisions have been under discussion. Issues agreed in principle include notice periods, the treatment of existing apparatus, protection of the rights of rights holders (such as National Grid's access rights over RWE land), consultation on works to the flood defences and the principle that the Applicant's access can be diverted if the site is developed. The parties are not agreed on the application of compulsory acquisition powers which RWE is seeking to limit, and the details of the indemnity provision. The parties have agreed it is unlikely that these will be agreed until progress is made on the voluntary access agreement currently under negotiation and the focus of the parties' efforts is therefore on that agreement at this time. The target date for completion of that agreement is early July.</p> <p>Highways England (Lower Thames Crossing) is set out in response to question 2.8.3</p>
2.5.5		PoTLL has suggested the following amendments to article 8 of the dDCO which are addressed in turn:
Applicant	Please comment on the proposed amendments to Art 8 of the dDCO and the concerns raised by PoTLL in its Deadline 4 submission.	<ul style="list-style-type: none"> <i>paragraph 4(a)(iii) should refer to powers in relation to 'streets' rather than 'highways' being able to be transferred without Secretary of State consent – this would enable transfers to PoTLL of the streets within Tilbury2 where the Applicant carries out any works;</i> <p>The Applicant notes that article 4(a)(iii) refers to <u>works</u> within a highway. The Applicant notes this is not an ownership issue – it is not about the transfer of highways themselves (as Thurrock Power Ltd is not taking the highways), but about the benefit of the consent to do works to those highways, allowing the highway authority to undertake works the public highway under the consent if that is necessary or expedient. The 'streets' within</p>

APPLICANT'S RESPONSE TO THE EXA'S SECOND WRITTEN QUESTIONS

ExQ.	Question	Response
		<p>the Port affected by the order do not need to transfer to PoTLL as they already vest in them as landowner, so there is no need for a transfer there.</p> <p>The only area where a new 'street' is to be created which affects the Port is the new Fort Road access, Work 15. That access is partially on the Port's land. That access will be constructed by the Applicant: there is no proposal at present for the Port to construct that. The Applicant therefore considers that rather than expanding the highway provision, a separate provision addressing the Port and streets is more proportionate and has made a revision to this article.</p> <ul style="list-style-type: none"> • <i>PoTLL should be a notified party under paragraph (5); and</i> • <i>PoTLL should be consulted by the Secretary of State prior to any consent for transfer of benefit being granted.</i> <p>As the Applicant explained in the hearings, the Applicant does not consider that there is any need to specify that PoTLL must be consulted. No other party is named in this article.</p> <p>As an affected landowner, the Applicant would expect the Secretary of State to consult PoTLL where a transfer was requested which would affect them, however that decision is for the Secretary of State having regard to the particulars of the transfer request before them. The Applicant considers that starting to specify consultees in the Order prejudices the Secretary of State's decision on who needs to be consulted for any particular change, and will inevitably led to a domino effect where every party feels they must be listed, creating unnecessarily drafting.</p>
2.5.6	Please comment on the PPs included in version 5 of the dDCO [REP4-003] for the benefit or RWE (Schedule 9, Part 10).	n/a
RWE Generation (UK) Limited		
2.5.7	Please provide an updated dDCO at Deadline 5 which incorporates version 5 [REP4- 003] and the proposed new Work 15.	Version 6 consolidates the change into version 5 and adds the further changes made in response to these questions.
Applicant		
2.5.8	Please confirm whether or not the inclusion of new sub-paragraph 12 to Art 37 of the dDCO (v5) [REP4-003] addresses the concerns raised by PoTLL in relation to this article. If not, please explain.	n/a
Port of Tilbury London Limited		
2.5.9	Please provide an update on discussions on the DML.	The Applicant updated the DML at deadline 4. The Applicant has also responded to the MMO's previous comments directly to the MMO to try and seek agreement. The MMO is considering that response.
Applicant		

2.6 GENERAL QUESTIONS

ExQ.	Question	Response
2.6.1		The Applicant has agreed this response with the PLA.
Applicant/PLA	Please provide an update on how discussions are progressing on the agreements to allow the Applicant to construct the causeway, bring it into use and retain it during operation of the causeway. Please provide an indication of when these agreements are likely to be completed.	<p>The parties have agreed in principle to the necessary licence for the construction of the causeway being granted by the PLA. That licence will likely be issued in line with the PLA's standard commercial terms which have been discussed between the parties and which are acceptable to the Applicant. A formal agreement is not required or being progressed at this time. The licensing process will be undertaken on application after a DCO has been granted.</p> <p>The licensing arrangements necessary for the operational phase are secured in the DCO at schedule 9, part 6 paragraph 9, which commits the PLA to issue the operational licence for the causeway 'structure' <i>"as soon as reasonably practicable after the undertaker has complied with the PLA's requirements"</i>. In respect of the removal of any temporary structures used for construction, <i>"the PLA will grant the undertaker a works licence for that structure under section 66 (licensing of works) of the 1968 Act"</i>.</p> <p>The parties have agreed that there is no impediment to any licence being granted as and when it is required.</p>
2.6.2		
Applicant/PLA	Please provide an update on discussions between the Applicant and the PLA and identify any outstanding areas of disagreement (and updated SOCG would be sufficient).	An updated SoCG is submitted at deadline 5.
2.6.3		
Applicant	Please respond to the concerns expressed by PoTLL that the construction of the causeway, its proposed timescale and ongoing presence would impact negatively on plans for the Thames Freeport.	<p>The Applicant notes the concerns expressed by Port of Tilbury London Limited ("PoTLL") in its Deadline 4 submission (REP4-031). Whilst an illustrative plan was submitted by PoTLL to the ExA showing the potential future use of land around the causeway, at this stage it appears that those plans are nothing more than aspirational and that no firm proposals exist for development in this area. In particular the Applicant would highlight the following:</p> <ol style="list-style-type: none"> 1. The Applicant is not aware from its land referencing exercise that PoTLL yet has any legal interest in the relevant land which would provide it with the control necessary to bring forward any development. 2. It is unclear how permitted development rights would apply to such development when the land in question is not currently operational port land. The Applicant also does not agree that any phase of a development of the scale and nature proposed by the Port could be developed under permitted development rights in this area, as the EIA development exclusion is likely to apply. 3. On the basis that permitted development rights are unlikely to be available, any development at this site must be subject to its own planning determination in due course. The fact that no planning application has been made brings inherent uncertainty over what will be consented or on what terms. It is therefore not possible for the Applicant to engage with the proposals in any meaningful way as the detail of what is being proposed is simply not available.

APPLICANT'S RESPONSE TO THE EXA'S SECOND WRITTEN QUESTIONS

ExQ.	Question	Response
		<p>4. As part of any planning process, PoTLL will have to explain how they will deal with existing undertakers on the land, not just the Applicant but also, for example, National Grid and potentially Lower Thames Crossing. It is not unusual for large-scale development to have to address existing users, including through accommodation works.</p> <p>5. It is entirely within PoTLL's power to provide a suitable alternative dock for delivery of AILs as part of the port's "business as usual" operation and for PoTLL to identify, consent and provide an alternative route to the TPL site. Should an alternative be delivered, the causeway could be removed (and this is provided for within the dDCO).</p> <p>6. The Applicant disagrees with PoTLL's contentions that removing the causeway would be prohibitively complex or technically difficult (and a response to the Hydrock report is being provided separately in the Applicant's answer to question 2.4.1).</p> <p>7. The Applicant continues to be surprised at the suggestion that the causeway would represent any kind of significant impediment to a future development of the RWE land assuming PoTLL acquires this in the future. It is the kind of secondary matter whose resolution is common place in bringing forward a new port development – by providing an alternative solution and using compulsory powers as a fall back if necessary. The latter will not in this case be needed because, as already mentioned, the DCO is deliberately structured to facilitate the removal of the causeway and the relevant part of the access route as and when a suitable alternative is available.</p> <p>8. The Applicant is unclear how the Freeport proposals relate to RWE's submissions that its land is operational land being held for the purposes of future energy development and that the Applicant's proposals for a causeway would have a serious detriment to the carrying on of that undertaking. If that is the case (as RWE submits) then the Applicant does not understand how a proposal for a Freeport on the land would not cause the same serious detriment (albeit the Applicant refutes that the causeway would have such an effect). It is contradictory for RWE to submit on the one hand that the causeway would result in a serious detriment to the carrying on of its undertaking but, on the other hand, to be separately working with PoTLL on plans to develop the land as a Freeport.</p> <p>9. The Applicant's full response on RWE's serious detriment submission is submitted separately.</p>

2.7 HABITATS AND ONSHORE ECOLOGY

ExQ.	Question	Response
2.7.1		<p>The Applicant's position is that the assessment of how and to what extent the mudflats support qualifying features of the Thames Estuary and Marshes SPA is already fully covered in the HRAR [REP2-022], under the assessment of disturbance effects from construction and use of the causeway (Sections 6.4 and 6.5).</p> <p>These sections assess the potential effects of the causeway using the precautionary assumption that the causeway and surrounding maximum potential disturbance zone for each of the four species found to be present within the potential impact zone during surveys will be unavailable to birds. The numbers of birds potentially affected were derived from the surveys undertaken by the Applicant and reported in the Foreshore Wintering Bird Surveys report [PDC-033]. The area of mudflats affected by direct habitat loss will by definition support fewer qualifying birds than the larger zone of potential disturbance assessed in Sections 6.4 and 6.5. There is therefore no need to repeat this analysis for the smaller area of mudflat affected by habitat loss to causeway construction, because by definition this will produce a result showing a smaller impact on birds than that assessed for disturbance. As the HRAR concludes no AEOI for disturbance over the larger disturbance area, the conclusion for the smaller habitat loss area would be the same.</p> <p>In view of the importance attached to functionally linked land [see RSPB and Lydd Airport v. SSCLG and SST [2014] EWHC 1523 (admin)], and noting comments from NE [RR-022; PDD-012], please update the assessment of habitat loss and displacement in the Habitats Regulations Assessment Report [PDC-039]. The updated assessment should include consideration of how and to what extent the mudflats support features of the Thames Estuary and Marshes European Site. It is considered that statements such as 'considering the affected area is not within the SPA' are not consistent with the approach adopted by the court in the Lydd Airport case.</p> <p>In relation to the approach adopted by the court in the Lydd Airport case, the Applicant would point out that the impacts considered in that judgement relate to the continued effects of bird-scaring activities on functionally linked land, which is different to the impacts that would occur over the lifetime of the causeway when it is present but not in use. Nonetheless, the Applicant considers that the approach taken in the HRAR is consistent with the Lydd Airport case. Paragraph 27 of the judgement states:</p> <p><i>"Although the question of its legal status was mooted, I am satisfied, as was the case at the Inquiry, that while no particular legal status attaches to FLL, the fact that land is functionally linked to protected land means that the indirectly adverse effects on a protected site, produced by effects on FLL, are scrutinised in the same legal framework just as are the direct effects of acts carried out on the protected site itself. That is the only sensible and purposive approach where a species or effect is not confined by a line on a map or boundary fence. This is particularly important where the boundaries of designated sites are drawn tightly as may be the UK practice."</i></p> <p>The effects on FLL are scrutinised by the same legal framework (the HRA process) as direct effects on the site itself in the HRAR, by virtue of the assessment on qualifying bird features on FLL being included in the HRAR as summarised above.</p> <p>Paragraph 107 of the Lydd Airport judgement notes that <i>"the statutory focus of "adverse effects" is on the integrity of the site, not on an adverse effect in some lesser sense"</i> and goes on to note that the Inspector was <i>"right not to treat any effect as an effect on integrity; but he does not commit the error of thinking that it is merely because the affected area is small, that there can be no effect on integrity. In reality, whether an adverse effect on a small proportion of a site would amount to an adverse effect on its integrity depends on the particular circumstances."</i></p> <p>The HRAR [REP2-022] concludes that the impact of habitat loss does not comprise a Likely Significant Effect on integrity when the small size of mudflat directly affected, the location of the affected area and the extent of similar habitat in and outwith the SPA is considered. The assessment of impacts on qualifying bird features, as</p>
Applicant		

APPLICANT'S RESPONSE TO THE EXA'S SECOND WRITTEN QUESTIONS

ExQ.	Question	Response
		<p>outlined above, also fully takes into account the extent to which the areas of mudflats potentially affected by the causeway are used by qualifying features of the SPA, and this assessment concludes no AEOL based on the findings of the surveys undertaken to determine the level of use of the affected areas by SPA birds.</p> <p>The Applicant therefore considers that the treatment of FLL in the HRAR [REP2-022] is consistent with the Lydd Airport judgement.</p>
2.7.2		<p>Further discussions with NE have been ongoing on the following issues in the SoCG where agreement has not yet been reached:</p> <p><u>Habitats Regulations Assessment in relation to birds</u></p> <p>The Applicant does not accept that assessment of effects of mudflat loss on birds should be undertaken at a smaller scale than the Thames Estuary & Marshes SPA for reasons outlined in our previous responses (comments 1a , 1f and 1i of REP2-056).</p> <p>Nevertheless, we agreed to undertake this additional analysis with the aim of moving the discussion with NE forward. This additional analysis of impacts at the scale of the Mucking Flats & Marshes SSSI was sent to NE for comment on 23 April 2021.</p>
Applicant/NE	Please provide an update on the discussions between the Applicant and NE in relation to the outstanding matters referred to in the draft SOCG submitted at Deadline 4 [REP4-012].	<p>NE provided a response to this shortly before Deadline 5 on 10 June 2021 and have indicated that they will be submitting comments to the Examination for Deadline 5.</p> <p>The Applicant has sent an initial response via email to NE on 11/06/21 but will need more time to fully consider and respond after sight of the Deadline 5 submission. We will seek to update the ExA at or before Deadline 6.</p> <p><u>Common Land</u></p> <p>Feedback from NE on the proposed approach to Common Land was received on 10/06/21. The Applicant is reviewing and will respond in due course.</p> <p><u>Other matters</u></p> <p>The applicant is continuing to discuss the matters of sediment accretion (with saltmarsh succession and mudflat loss) and Water Vole mitigation with Natural England.</p> <p>The applicant is awaiting feedback from Natural England on the question of noise impact thresholds for birds identified in the SoCG.</p>

2.8 TRANSPORT AND TRAFFIC

ExQ.	Question	Response
2.8.1	The ExA notes the applicant's willingness to consider including a mechanism to control the use of works 12(c) and 12(d) (referred to in the Applicant's Written Summary of Oral Submissions [REP4-020] as Work 4A and 4B)).	The Applicant has proposed amendments to requirement 4 to provide that only one of the accesses may be taken forward to detailed design.
Applicant	Please provide details of any proposed mechanism and any consequential amendments to the dDCO to take account of it. See also ExQ2.2.1 above	
2.8.2	Please provide an update on discussions on the siting of the access on Station Road and associated issues.	The Applicant and Network Rail have reached an agreement in principle on the location of the access road junction on Station Road and are discussing the cost of these works which will be provided for under the terms of a private agreement. Negotiations between the Applicant and Network Rail are continuing in order to agree the final wording of the protective provisions and private agreement. Both the Applicant and Network Rail expect these will be finalised before the end of the Examination.
Applicant/Network Rail		This response has been agreed with Network Rail by the Applicant, and is submitted by on behalf of both the Applicant and Network Rail.
2.8.3	Please provide an update on discussions (including SOCG, protective provisions and interface agreement between the Applicant and Lower Thames Crossing).	A draft SoCG has been submitted at deadline 5.
Applicant/Highways England		<p>Draft protective provisions have been under discussion between the parties covering use of the strategic road network, payment for making of any road traffic regulation order required by Highways England because of the development; and the principle of inclusion of block values in the gas pipeline to facilitate diversion for the Lower Thames Crossing (LTC) scheme if the pipeline is constructed before LTC proceeds. Work is progressing on the interface agreement which will provide for how the projects interact practically (notice and co-ordination of works, access to one another's sites, interaction of access routes and traffic management) and legally (particularly in regard to any overlapping powers of compulsory acquisition). It is considered that satisfactory conclusion of this agreement would remove the need for detailed protective provisions on those points. The parties are not yet agreed on costs under the PPs.</p> <p>The Applicant notes that there are two outstanding DCO drafting points between the Applicant and Highways England:</p> <ol style="list-style-type: none"> 1. Highways England have requested that they be added to the requirements as a discharging authority to approve the CTMP. The Applicant does not agree to that change, but did add HE as a consultee at deadline 4. The Applicant continues to submit that Thurrock Council as Local Planning Authority is the

APPLICANT'S RESPONSE TO THE EXA'S SECOND WRITTEN QUESTIONS

ExQ.	Question	Response
		<p>appropriate discharging body for that requirement. Highways England has been added as a consultee for the CTMP and will have the opportunity to make representations to the Local Planning Authority in making the planning decision on the plan; that is entirely normal and in line with standard planning practice.</p> <p>2. Highways England have requested an addition to requirement 18 which the Applicant is currently considering.</p>