

The Lake Lothing (Lowestoft) Third Crossing Order 201[*]



Lake Lothing
**THIRD
CROSSING**

Document SCC/LLTC/EX/202: Closing Submissions (Other Interested parties)

Planning Act 2008

Infrastructure Planning

The Infrastructure Planning (Examination Procedure) Rules 2010

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1 Introduction

1.1.1 The purpose of this document – Closing Submissions (Other Interested Parties) [SCC/LLTC/EX/202] – is to provide the Examining Authority with a short summary of the Applicant’s position in relation to those affected persons who have submitted, and who have not yet withdrawn, objections to the Scheme. These Closing Submissions are therefore intended to complement the information provided in the Applicant’s Compulsory Acquisition Negotiations Tracker [REP10-073], which provides a detailed update on the progress and status of the Applicant’s negotiations with all affected persons as at Deadline 10 (24 May 2019). In addition, these Closing Submissions provide an update on the information presented in the Compulsory Acquisition Negotiations Tracker [REP10-073] in relation to affected persons with whom Heads of Terms have been agreed so recently (i.e. between Deadline 10 (24 May 2019) and Deadline 11 (4 June 2019)) that this progress is not reflected in the above-mentioned Tracker.

1.1.2 The parameters outlined above encompass the following Interested Parties, in respect of whom a brief summary follows:

- **ABP** – please see document SCC/LLTC/EX/201.
- **Cara Jane Robinson** – Heads of Terms are now agreed.
- **Lings** – covered in this document.
- **Nexen** – covered in this document.
- **Network Rail** – As noted in the Summary of the Applicant’s Oral Submissions at Hearings on 14 May 2019 and Responses to Interested Parties’ Deadline 9 Submissions [REP10-080], the Applicant understood that all DCO drafting points (including the form of the Protective Provisions as set out in Part 4 of Schedule 13 to the draft DCO), were agreed with Network Rail. Network Rail has however subsequently sought a further change to the Protective Provisions on 4 June 2019, which has now been agreed, and included in the draft DCO submitted to this deadline (SCC/LLTC/EX/196). Network Rail has indicated it will now be writing to the Examining Authority confirming that DCO drafting matters are settled. Network Rail has however indicated that it cannot formally withdraw its objection until the requisite legal agreements are completed, and as such, this will be after the close of the Examination of the application for development consent for the Scheme.
- **Northumbrian Water Limited** – A side agreement has now been completed between the parties.
- **Statuslist Limited** – Heads of Terms are at an advanced stage. The most recent representation from Statuslist [REP8-035] was in relation to the Applicant’s consultation on non-material changes, in response to which Statuslist requested a change to NMC8 that the Applicant subsequently made, in submitting the relevant documents appropriately amended at

Deadline 10. Prior to that, in its Response to Deadline 5 [REP5-017], Statuslist confirmed that it would not be attending CAH1 or ISH1, and noted that positive discussions were ongoing with the Applicant. Statuslist has not attended any subsequent hearings, which is indicative of the progress made in negotiations between the parties.

- 1.1.3 These Closing Submissions also set out (at section 4 below) the latest position on the Applicant's endeavours to obtain Crown land consent in the context of section 135 of the Planning Act 2008.
- 1.1.4 This document closes (in section 5 below) with a summary of the Applicant's position in relation to funding, as this topic has been raised separately by a number of Interested Parties.

2 Nexen

- 2.1.1 The principle concerns of Nexen relate to access to its operational site during construction and operation of the Scheme, and associated implications for the delivery of its “development land” (plot 3-56 on the Land Plans [REP10-016]), which is proposed to be subject to powers of temporary possession to facilitate the Applicant’s delivery of the Scheme. Further points raised by Nexen relate to the nature of rights sought by the Applicant over Nexen’s land interests and the perceived potential for interference caused by the proposed pontoon (plots 3-52 and 3-53 as shown on the Land Plans [REP10-016]) adjacent to the site, in Lake Lothing.
- 2.1.2 The Applicant has responded at length to Nexen’s concerns in the following examination documents:
- the Applicant’s Responses to Written Representations and Interested Parties’ Responses to Written Questions [REP4-014], at pages 48-68, (in response to Nexen’s Written Representation);
 - in the Applicant’s Written Summaries of Oral Submissions made at Compulsory Acquisition Hearing 1 [REP5-010] at pages 30-33 (in response to matters raised by Nexen at CAH1);
 - and in the Applicant’s Consultation Report on the Proposed Non-Material Changes to the Application [REP7-003] (see Appendix K, in response to comments raised by Nexen on the proposed non-material change).
- 2.1.3 The Applicant also responded to four questions posed by the Examining Authority in relation to matters raised by Nexen, in the Applicant’s Responses to the Examining Authority’s Second Written Questions [REP8-004] (see Q1.15 to Q1.18), which was followed by further comments set out in the Applicant’s Comments on Responses to the Examining Authority’s Second Written Questions [REP9-009] (see page 3); and again in the Applicant’s Summary of Oral Submissions made at Hearings on 14 May 2019 and Responses to Interested Parties’ Deadline 9 Submissions [REP10-080] – see pages 26-28.
- 2.1.4 Access to the Nexen site during construction is secured via the Interim Code of Construction Practice [REP10-078] which imposes a requirement on the Contractor to maintain access to Nexen’s site during the construction phase (see paragraph 2.6.1 therein).
- 2.1.5 As a consequence of Nexen’s concerns, the Applicant brought forward a non-material change to provide a second access point to the site, presented as NMC6 in the Applicant’s Proposed Non-Material Changes to the Application [REP4-013] (“the NMC report”).
- 2.1.6 As the NMC report explains, this new Private Means of Access (PMA) is to the north of, and is in addition to, the revised access arrangement originally proposed in the Application (which essentially maintains Nexen’s existing site access, with the

new bridge southern approach passing above it (with standard headroom of 5.3 metres)). The new PMA (NMC6) would allow a further separate point of access to the northernmost part of the Nexen site via its western side, together with increased headroom (6.5m) where the new PMA would pass beneath the southern approach to the new bridge.

- 2.1.7 The headroom of 6.5 metres proposed at the second access would obviate the need for additional headroom sought by Nexen for oversize vehicles at the existing access point; as such, a standard clearance of 5.3m is proposed to be maintained in that original location.
- 2.1.8 Furthermore, the provision of a second access for Nexen would facilitate the separation of HGV traffic associated with existing operations on Nexen's operational site from traffic that may be associated with Nexen's 'development land' - the potential future intensification of traffic through a single point of access being a concern of Nexen's.
- 2.1.9 The minimum headroom for these access points, being 5.3 metres and 6.5 metres, is provided for on the Engineering Section Drawings, Mainline Long Section Sheet 2 of 2 [REP10-041] (see note 7 on the drawing), compliance with which is secured by article 5 of the DCO (Limits of Deviation).
- 2.1.10 Nexen in responding to the NMC report [REP4-013], set out a number of concerns with the proposed NMC6, to which the Applicant again responded in its Consultation Report on the Proposed Non-Material Changes to the Application [REP7-003] (see Appendix K). The Applicant maintains that not only does NMC6 address Nexen's concerns in respect of the impact of the Scheme, it also offers a material improvement on the existing situation where there is a single operational access to the site. The current configuration provides a constrained corridor to the west of the Nexen building, which places restrictions on the nature of vehicular movements/manoeuvres that may occur here.
- 2.1.11 The Applicant notes that Nexen has previously attempted to acquire additional land in this location to address the issues associated with those existing constraints. The Applicant has submitted vehicular tracking information to support its proposals (see REP7-003, Appendix L), and has further considered vehicular tracking undertaken by Nexen, on which the Applicant has set out its views in its Comments on Responses to the Examining Authority's Second Written Questions and to Interested Parties' Representations submitted at Deadline 9 [REP9-009] – see page 3, in particular drawing comparison between the situation as it is today, and as it would be, if NMC6 was delivered with the Scheme in place.
- 2.1.12 The Applicant therefore considers there is a robust access strategy for Nexen's land (comprising both the operational site and the 'development land') covering both the construction and operational phases of the Scheme, and thus the alternative proposals put forward by Nexen are unnecessary. Those alternative proposals comprise: (i) a more northerly position for a second access point to the

site (i.e. closer to the southern bank of Lake Lothing); and (ii) access to the Nexen site through the adjacent land holding of Motorlings.

- 2.1.13** Both of these propositions have been considered by the Applicant and ruled out. In relation to a more northerly access point, as an alternative to NMC6, the Applicant explained (in paragraph K.13 of REP7-003) that this would require the compulsory acquisition of additional land, which is allocated for employment development, and accommodation works to the quay wall. It would introduce industrial operations and HGVs into an area ultimately intended to be redeveloped as public realm and it would appear to lead to the need for lengthy reversing manoeuvres within the Nexen site, an issue that Nexen has raised as a concern and sought to avoid.
- 2.1.14** In respect of access through the Lings site (see paragraph K.19 of REP7-003) the Applicant considers this would be a disproportionate use of powers of compulsory acquisition, where alternative means of access can adequately be provided without interfering with land interests held by third parties. In REP9-009, at p27, the Applicant noted that this proposal is also not supported by Lings who would be adversely affected by such a proposition.
- 2.1.15** With regards to the Applicant's proposed temporary use of plot 3-56, the Applicant notes that this area is currently unused scrubland which Nexen has ambitions to bring forward for development. However, no planning application or planning permission exists and, as such, the Applicant does not consider the temporary use of this land in the short term, for the purposes of facilitating the delivery of the Scheme, would compromise Nexen's development aspirations for the site.
- 2.1.16** In REP9-009, at page 27, the Applicant noted that in the SoCG with the local authorities (REP5-005, item [53]) that the highway authority in principle considers the retained existing access would be capable of servicing the future development of the scrubland. As such, the site, once returned to the landowner post construction, would remain available for development. Consequently, the principal debate remains one of compensation in relation to any diminution in value of the retained land, and, as the Examining Authority acknowledged in its second written question 1.18, it is not required to have regard to representations relating to compensation.
- 2.1.17** In its Written Representation [REP3-019], Nexen questioned the nature of rights sought by the Applicant over the site, to which the Applicant responded in its Responses to Written Representations and Interested Parties' Responses to Written Questions (REP4-014 at page 52), explaining that the nature and purpose of such rights is explained in the Statement of Reasons, and, in essence, those rights are required for the purposes of constructing, using, accessing, maintaining and protecting the new A12 Lake Lothing Third Crossing, and for the diversion protection and maintenance of, and access to, statutory undertakers' apparatus, and for new access to premises (i.e. Nexen's premises). It was acknowledged that such rights could have the effect of restricting development of land and that such restrictions would also be a compensatable matter.

2.1.18 At Deadline 10 Nexen submitted a Written Summary of Oral Representations made at the Compulsory Acquisition Hearing (CAH2) [REP10-090], in which it commented that the additional PMA comprising NMC6 had not been adequately or appropriately provided for in the updated application documentation submitted by the Applicant following the Examining Authority's Procedural Decision to accept the proposed NMCs into the examination of the Application [PD-015]. In particular, Nexen asserted that (i) the descriptions of Work No.1E and Work No.6 needed "to be updated to reflect that it is proposed for a new public highway to form a new, more northerly (and additional) access into the land as a result of NMC6", commenting that, "At present Work No.6 in the draft DCO indicates that new highway would only provide a new access road and parking facilities for the new control tower building and electrical substation and plant room, not the [Nexen] Land" and querying "whether the latest Rights of Way and Access Plans (Sheet 2 of 2) is clear enough to show that this will be provided as public highway up to the boundary of the Land that shall remain in the ownership of the Nexen Group".

2.1.19 In response to those concerns, and to confirm that the updated application documentation does include appropriate provision for NMC6, the Applicant sets out below some guidance on the interpretation of the updated Application documentation:

- Schedule 1 (Authorised Development): Work No.6, at paragraph (o), has been updated (see the Applicant's revised draft DCO Revision 5 (tracked changes version [REP10-005] – NB: paragraph (o) has been correctly renumbered as paragraph (c) in the Applicant's final draft DCO, Revision 7, submitted at Deadline 11 with document reference SCC/LLTC/EX/196 and is therefore referred to henceforth as paragraph (c) also) to include reference to the short spur of new highway coming off the north side of Riverside Road, and to include reference to all of the private means of access shown on the corresponding part of Sheet 2 of the Rights of Way and Access Plans [REP10-023] (i.e. PMA references 4 and 4a – PMA reference 4 being Nexen's original access, and PMA reference 4a being the access proposed in NMC6). Part 3 of Schedule 3 to the draft DCP [REP10-005] has been updated to include a new entry providing for new PMA reference 4a (NMC6).
- The short spur of new highway is shown hatched green on REP10-023, where it is labelled reference E; a corresponding entry, describing reference E, has been added to Part 1 of Schedule 3 to the draft DCO [REP10-005]. In addition, the proposal for new PMA reference 4a (NMC6) to take the form of an underpass beneath the new crossing is clearly indicated on REP10-023 in Inset B, which shows the new highway hatched green passing under the new crossing until it reaches PMA reference 4a (NMC6) which provides access to Nexen's land. The labelling and annotation for Inset B explains that there is both new highway (hatched green) and improved existing highway (hatched red) passing "at ground level below the new bridge".

- Paragraph (c) of Work No. 6 includes references to access being provided “for the new control tower building” and “for the electrical substation and plant room” because these are works which would need to be delivered under the DCO – they also form part of Work No. 6 (see paragraphs (a) and (b) thereof) – and so, where the provision for new PMAs is set out in paragraph (c), this also includes a cross-reference to them. Clearly, Nexen’s existing site does not come within the ambit of such works and this is why it is not referred to in paragraph (c) of Work No. 6. In addition, the fact that this new PMA (reference 4a) is intended to provide access off the new spur of highway (also serving the control tower and electricity substation) is apparent from the part of the work description which explains that the “new highway” (reference E) is being provided “to accommodate the new private means of access”.
- In Schedule 1, the description of Work No. 1E, at paragraph (vi), is also drafted so as to include provision for the two PMAs referenced 4 and 4a. This aligns with the corresponding drafting in Work No.6 (described above).

2.1.20 The Applicant is of the view that appropriate provision has been made in the updated application documentation submitted by the Applicant at Deadline 10 as described above for the new, additional access (reference 4a) proposed as NMC6 and accepted by the Examining Authority in PD-015, and reflected subsequently in the Applicant’s final draft DCO submitted at Deadline 11 (reference LLTC/SCC/EX/196). In consequence, the Applicant considers that Nexen’s concerns, expressed in REP10-090 as outlined above, are unfounded.

2.1.21 Nexen has indicated that it is exploring commercial opportunities associated with the use of its quay. The Applicant accepts the positioning of the pontoon (an outcome of the navigational risk assessment) would affect vessel access to this area. (In response to Nexen’s recent representations regarding the utility of the pontoon [REP10-090], as the Examining Authority is aware, the DCO (DML) provides for dredging associated with the pontoon.)

2.1.22 The Applicant has not seen evidence of a feasible or viable proposal for the use of Nexen’s quay. As noted in REP4-014, at page 62, inspection of the bathymetry (underwater depth of lake) indicates that the bed of the lake in front of the Nexen site is silted to such an extent that it dries at low water therefore the ability to use it as a marine facility is currently severely restricted. Consultation with ABP as the Statutory Harbour Authority confirmed that this area has not been dredged for more than 10 years. The Applicant also notes that as the majority of the area of lake on which the pontoon would sit, and which would therefore be required for Nexen’s purported scheme, is in the ownership of ABP, Nexen would need to acquire the relevant rights to be able to undertake such dredging, in addition to obtaining a Marine Licence.

2.1.23 Furthermore, it is not clear whether the Nexen ‘quay’ is actually a quay, as opposed to simply being a sheet piled retaining structure. There are no bollards present that indicate a working quay and it is unclear as to whether it has been designed to

support the dredge depth adjacent to it that would be required for commercial marine operations. The Applicant also notes that because of the changes in direction of the quay wall in this area the length of individual vessels that could be accommodated on this wall is severely limited. As the section of quay wall behind the pontoon is around 60m it would only likely be possible to berth vessels up to 55m (65m if the bow overran the berth). This is very limiting for a commercial bulk cargo berth as there are few vessels in the global fleet that would fit this requirement.

- 2.1.24** Notwithstanding the overarching issues with Nexen's proposals, the Applicant considers that the length of wall immediately to the west of the proposed pontoon location would, in principle, be better suited to such operations because of the increased land margin and further distance from the building. A proportion of this quay, subject to appropriate risk assessments may still be able to be utilised with the Scheme in place.
- 2.1.25** Finally, it remains unclear how such an extensive marine operation could be accommodated alongside the existing landside operations (bearing in mind the land adjacent to the quay is where HGVs currently turn and the building itself is situated within 5m of the quay edge), and further alongside the office development aspirations for the adjacent 'development land' (plot 3-56).
- 2.1.26** To that end, while the Applicant accepts the pontoon would present a theoretical obstacle to the use of this quay, it is unclear in reality whether such a scenario could ever prevail. The Applicant therefore considers that any curtailment of the development potential of the site could be appropriately considered as part of any claim for compensation for injurious affection.
- 2.1.27** The Applicant continues to negotiate with Nexen to resolve its outstanding concerns through a Side Agreement. Having provided a proposed draft Side Agreement to Nexen some five weeks ago, the Applicant has, whilst finalising these Closing Submissions, been informed of Nexen's intention to provide the Applicant with its comments on that proposed draft Side Agreement prior to the close of the Examination. The Applicant's preference would be to achieve acquisition of the land required for the Scheme by agreement, including the land in which Nexen has an interest, and accordingly the Applicant will continue to try to achieve a settled position on the Side Agreement with Nexen. However, if that is not possible within the timescales necessary for timely delivery of the Scheme, the Applicant is content that adequate mitigation to ensure Nexen can continue to operate during construction and thereafter, and bring forward its development land, would in any event be provided for through the DCO in the form in which it has been applied for by the Applicant.

3 Lings

- 3.1.1 Lings' representations have been focussed on the potential impact of the Scheme on their site during construction; on the operational consequences of the Scheme, including the potential future impact on trading; on the Applicant's justification for the use of plots included in the application and the purpose of those uses, and; the funding of the Scheme, including in relation to liabilities under the compensation code.
- 3.1.2 In responding to Lings' Written Representation [REP3-023], the Applicant included (in its Response to Interested Parties' Deadline 3 Submissions, Appendix F [REP4-022]) an expert witness report prepared by Rapleys LLP, providing an assessment of the effects of the Scheme on the Lings site.
- 3.1.3 In considering the revised access arrangement for the Lings site, proposed as part of the Scheme, it was noted that while the new access point is directly available to nearside traffic only, the position for offside traffic on Waveney Drive involves using the new southern roundabout which is very close by. The current situation would involve offside traffic (from the same starting point) waiting to turn right at the traffic lights (in the same position as the proposed roundabout) and then making a further right turn from Riverside Road before negotiating the internal site layout. As such, access to the site is not materially more circuitous with the Scheme in place – indeed it avoids passing through a signalised junction.
- 3.1.4 The report also highlights that the existing access road is relatively narrow and the mini roundabout within the Lings site rather tight to negotiate. Furthermore, the access way faces the workshop element of the building and not the showroom accommodation and the roadway within the site is currently shared between customers and deliveries of vehicles from transporters being unloaded on the highway, as well as movements associated with the Enterprise franchise. It was also considered that the Lings site covers a substantial area and that such large sites typically accommodate transporter movements within them – as would be required post-construction of the Scheme.
- 3.1.5 As explained in the Applicant's Proposed Non-Material Changes to the Application [REP4-013], the Applicant proposed a slightly amended arrangement for the proposed new access point, described as non-material change 7 (NMC7), which removed the sharp left turn into the site, and instead directed traffic alongside the eastern façade of the Lings building. Following the Examining Authority's Procedural Decision [PD-015] accepting the NMCs applied for by the Applicant (in REP4-013), this amended design forms part of the Application. The Applicant did not receive any representations from Lings relating to this change, but it was borne out of negotiations with the affected party and as such is understood to be supported by them.
- 3.1.6 In respect of the impacts of land take associated with the Scheme, while it was evidently accepted by Rapleys that there would be a loss of display space,

opportunities remain to mitigate that loss by use of the gravelled area adjacent to Kirkley Ham (which is the most prominent part of the site) and, furthermore, it should be acknowledged that there will be a substantial increase in traffic past the site, which will increase the profile of the site to potential customers.

- 3.1.7** Consequently, the Applicant acknowledges that there will be an impact on Lings operations, including a reduction in forecourt available for the display of vehicles. However, with provisions in the DCO to return to Lings that land within Lings' site currently occupied by Enterprise, together with the provision of additional accommodation works to alter the internal circulation of the site to reflect the new access point, as well as the opportunity to create additional display space adjacent to Kirkley Ham, the Applicant is of the considered opinion that the impacts of the Scheme can be adequately mitigated. The Applicant currently remains engaged in discussion with Lings about the phasing of accommodation/reconfiguration works, though the principle of them is agreed.
- 3.1.8** With regard to the construction phase, the Interim Code of Construction Practice (CoCP) (Appendix 5A of the Environmental Statement) [REP10-078], at paragraph 2.6.1, requires the contractor to maintain access to the Lings site during the works (save for in exceptional circumstance); as such, this requires a new access point to be provided before the existing one is stopped up. In relation to dust, a point raised by Lings, the CoCP, in section 3, has a number of requirements in this regard to manage the migration of dust to adjacent properties. Additionally, the Applicant has sought temporary possession of adjacent land to provide additional space for Lings' operations during the construction phase to mitigate the effect of land take during construction (which will evidently be greater than that required for the permanent works).
- 3.1.9** Lings has made a number of plot-related representations, to which the Applicant has responded in detail. Specifically, in the Applicant's Responses to Written Representations and Interested Parties' Responses to Written Questions [REP4-014], at page 25 (in respect of plots 3-58, 3-32, 5-10, 5-14, 5-31, 3-57, 5-37 and 5-28); Written Summaries of Oral Submissions made at Compulsory Acquisition Hearing 1 [REP5-010], at page 22 (in relation to plots 5-10, 5-14, 5-31, 3-56 and 3-57) and in the Applicant's Responses to Interested Parties' Representations Submitted at Deadline 7 [REP8-006], at page 12 (in relation to plots 3-52, 5-10, 5-31 and 5-14).
- 3.1.10** A central theme of the comments relates back to the nature of rights required by the Applicant. As explained in the above mentioned documents submitted by the Applicant to the examination, these rights are necessary in order to enable the Applicant to inspect and maintain the Scheme, though those same parcels of 'blue land' (in the interests of land use efficiency) are also to be used for the diversion of statutory undertakers' apparatus, and they will similarly need easements, restrictive covenants and rights to inspect and maintain their apparatus.
- 3.1.11** In respect of plots 3-58 and 5-37 (land owned by Lings, but occupied by Enterprise), the Applicant explained that it is not the Applicant's intention to acquire,

either compulsorily or by agreement, Lings' interest in the land comprised in these plots. Indeed, as is made clear, through the wording in the relevant plot descriptions in the Book of Reference [REP10-006] that the Applicant seeks a power to acquire all interests in that land other than those owned by Lings – i.e. the intention is to acquire the leasehold interest owned by Enterprise, in order to facilitate the on-site relocation proposals outlined above.

- 3.1.12** The Applicant considers it has appropriately justified all the land included within the Order limits as being required either directly for the Scheme, or to facilitate, or as being required incidentally to, the Scheme.
- 3.1.13** Lings has made a number of representations relating to funding, and, as this has also been raised by other parties, it is addressed in a separate section of this report (section 5), below.
- 3.1.14** The Applicant continues to engage in negotiations with Lings, principally in matters related to compensation, to resolve its outstanding concerns by way of a Side Agreement. The Applicant considers that the mitigating measures in the Order and associated documents are adequate to address the representations made by Lings, and that Lings' outstanding issues can be dealt with by reference to the compensation code, if an agreement cannot be reached.

4 Crown land

4.1 The Applicant's request for Crown land consent

4.1.1 As is explained in the Statement of Reasons [REP10-009] at section 8.2, the Applicant's proposed Order limits include an area of land which is understood to be Crown land. This is shown on the Crown Land Plan [APP-051.2]. As Crown land is protected from compulsory acquisition, the Applicant has sought the consent of the appropriate Crown authority – in this case the Secretary of State for Transport, as the land is owned by the Secretary of State for Transport and managed on the Secretary of State's behalf by Highways England Historical Railways Estate ("HEHRE"), by virtue of the fact that it was previously owned by the British Railways Board (Residuary) Limited ("BRBR"), which formerly owned residual railway land arising from rail privatisation.

4.1.2 As noted in the Applicant's response to the Examining Authority's Second Written Question 1.6 [REP8-004], on 25 June 2018, prior to the submission of the application on 13 July 2018, the Applicant wrote to HEHRE and then to the Estates team at the Department for Transport, HEHRE having referred the matter directly to the DfT's Estates team, advising the Applicant that the latter was the appropriate body to issue the necessary consent. This advice has subsequently been confirmed by the DfT's Transport and Works Act Orders Unit; however the Applicant has yet to receive the consent sought, despite having made repeated requests by email and telephone during the period between June 2018 and May 2019. On 29 May 2019 the Applicant received an email from the DfT's Estates team advising that it had requested valuation advice from its professional advisers and that the advice sought was "expected to be received at the end of July".

4.1.3 It therefore, unfortunately, seems clear that the Crown land consent sought by the Applicant will not be granted prior to the close of the examination of the application for development consent for the Scheme.

4.2 Crown land drafting in the Examining Authority's draft DCO and the Applicant's final draft DCO

4.2.1 In anticipation, the Applicant assumes, of the position outlined above, the ExA's draft DCO [PD-016] published on 29 May 2019, included two new draft articles – one entitled Crown land (new article 23) and the other entitled Crown rights (new article 57).

4.2.2 The Applicant has acknowledged the necessity of these new articles, given that to date it has not been possible to secure Crown land consent. Accordingly, the Applicant has accepted the ExA's proposed drafting in its final draft DCO, subject to the addition of some proposed minor drafting amendments aimed at clarifying the position in the context of sections 135 and 227 of the Planning Act 2008 – the amendments are shown in mark-up in the Applicant's final draft DCO, Revision 7, tracked change version, submitted at Deadline 11 with document reference SCC/LLTC/EX/197. The key point reflected in the proposed amendments is the

distinction between ‘interests in Crown land’ and ‘non-Crown interests in Crown land’, the compulsory acquisition of the latter being that which is permitted when Crown land consent is granted by the appropriate Crown authority. It is in this context that the Applicant has proposed that new article 23 be re-titled ‘Acquisition of non-Crown interests in Crown land’.

4.3 Applicant’s intention to continue to seek Crown land consent following the close of the Examination

4.3.1 The Applicant understands that irrespective of the addition of new article 57 (Crown rights), if the DCO for the Scheme is to be made in the form applied for – i.e. including the Crown land identified on the Crown Land Plan [APP-051.2] – then the necessary Crown land consent will still need to be secured. To that end, the Applicant will continue to pursue the Crown land consent originally applied for in June 2018 and requested repeatedly thereafter.

4.3.2 Noting that the advice sought by the DfT’s Estates team in this matter is due to be received by it “at the end of July”, the Applicant will endeavour to secure the necessary consent by the close of the Examining Authority’s reporting period (5 September 2019), with the aim of being able to provide the Secretary of State, at the start of his decision-making period, with confirmation that the requirements of section 135 of the Planning Act 2008 are satisfied and that the DCO can therefore be made in the form applied for by the Applicant.

5 Funding

- 5.1.1 As a number of representations have been made in relation to the funding of the Scheme, the Applicant summarises its position here.
- 5.1.2 The starting point is of course the Funding Statement [APP-008], which the Applicant considers to be clear, accurate and robust. The Examining Authority's first written questions 3.7 to 3.10 concerned funding matters, to which the Applicant responded in its Responses to the Examining Authority's Written Questions [REP3-029].
- 5.1.3 Over the course of the examination, the Applicant has clarified a number of matters, which are summarised here.
- 5.1.4 In its Responses to Written Representations and Interested Parties' Responses to Written Questions [REP4-014] the Applicant noted that;
- 5.1.4.1 The 'additional £8m' which it was noted in June 2018 may be required to fund the Scheme, has been accounted for in the County Council's capital budget, and that that sum includes provision for the costs of land acquisition and compensation associated with the delivery of the Scheme. This was confirmed in a letter from the Council's S151 officer (Appendix E to REP4-014).
- 5.1.4.2 The County Council is currently meeting with partners with regard to funding the £8.3m local contribution, the requirement for which was identified previously in the Outline Business Case. In advance of contributions being confirmed from other local sources, the £8.3m has also been underwritten by the County Council. This was confirmed in a letter from the Council's S151 officer (Appendix E to REP4-014).
- 5.1.4.3 The Applicant's Property Cost Estimate includes an allowance for material detriment claims; this is formulated on the basis of quantified risk, on account of material detriment ordinarily falling within the standard heads of claim applied in the event that land is proposed to be acquired compulsorily.
- 5.1.5 Further detail of the position, including a chronological account of the funding situation and an explanation of the role and status of the Section 151 Officer was included within the Applicant's Written Summaries of Oral Submissions at Compulsory Acquisition Hearing 1 [REP5-010], pages 40-41, supported by two appendices (Appendices 1 and 2).
- 5.1.6 In summary, the Applicant has evidenced it has access to sufficient funds to implement the Scheme and has made appropriate allowances for liabilities associated with claims under the compensation code.