MR SMITH: Good morning, everybody, and welcome to today's issue-specific hearing 2, for the Lower Thames Crossing. This is the third in this examination, but the first that the Examining Authority has held to explore the draft development consent order. Now, before we move any further, can I just check with the case team that we can be heard and seen online and that the recordings and the live streams have started? I gather there may be an issue with my camera. Is that better?

PARTICIPANT: Yes.

MR SMITH: Okay. And can I just check with the case team that the recordings and live streams are now started?

PARTICIPANT: The live stream is fine. I believe the recording's just started, thank you.

MR SMITH: Thank you very much. I have received notification now the recording has started. So, to introductions, my name is Rynd Smith; I am the lead member of a panel, which is the Examining Authority for the Lower Thames Crossing application, and I am in the chair for this hearing. I'll draw your attention to the frequently asked questions, linked to our rule 6 letter and available on our website, where you'll find brief biographies of myself and my panel member colleagues, and details of the Examining Authority's appointment. My fellow panel members working with me will introduce themselves. I will start by turning to Ms Janine Laver.

MS LAVER: Hello, good morning. I'm Janine Laver. I am the deputy chair today and I'll take the chair if Mr Smith's internet fails, or he is unable to continue. I may also ask questions as they arise. And you're on to Mr Pratt.

MR PRATT: Good morning, everybody. I'm Ken Pratt and I'm a member of this panel. I'll mainly be observing today and will be taking notes, but I may ask questions if they arise. My camera will generally be switched off once the event is underway and that will allow you to focus on those who are speaking and those who are leading that particular of the event. But be assured, I'm in the background and I'm listening carefully to everything that is said. Can I now hand over to Mr Taylor?

MR TAYLOR: Good morning, everybody. My name is Ken Taylor; I'm also a panel member. Once the proceedings get underway, I will switch my camera off so you can focus on the events that are going on. I will be spending some time

today, during this hearing, working on other aspects of the examination. But I will fully brief myself on the recording after this event. And I'll hand you over to Mr Young.

MR YOUNG: Thank you, Mr Taylor. Good morning, everybody – Dominic Young. For the same reasons as Mr Taylor's set out, you won't see a great deal of me today, but I will be in the background, may occasionally turn my camera on. But I will be following events. I'll hand back to Mr Smith. You're on mute, Mr Smith.

MR SMITH: Well, you've answered part of my question, Mr Young. I just wanted to check that I still could be seen and heard because we do seem to be having a visit from the technical gremlins this morning. Can I also ask the case team and the AV company to check the status of the live stream because I'm actually checking that with my monitor here, using an external internet connection, and it is shown as offline? So if a little work can be done just to check to see whether that's the case, and if it is offline to please restore it.

Now, ladies and gentlemen, you'll note from the last two introductions from my panel colleagues, Mr Taylor and Mr Young, that it is, in fact, a normal part of the working style of a larger Examining Authority with five members that each panel member has their own particular lead topic responsibility, and that not all members of the EXA will necessarily attend all elements of all the hearings. Where that's the case, we do all review recordings and brief each other on relevant issues. And as we move forward in this examination, you will see sub-teams, to an extent, of the panel, working on events in this way quite frequently.

Okay. So, having introduced the panel, I will also now introduce our Planning Inspectorate colleagues working with us on this examination, some of whom you've spoken to already. You, I guess, will have encountered already our case manager, Eleanor Church. And I will just flag that she will be moving on from this case shortly, to undertake other duties for the Planning Inspectorate. Bart Bartkowiak has been appointed in her stead, and Bart Bartkowiak and Ted Blackmore will be the joint case managers leading the Planning Inspectorate case team for this application going forward. The team delivering this hearing today is led by Bart and Eleanor, with case officers Katy O'Loan and Ryan

Sedgman in registration, and planning officer, Alice Humphries, supporting the Examining Authority.

Hopefully, the agenda papers provide a clear explanation of our and your reasons for being here today, which is to hold an issue-specific hearing, inquiring into the draft development consent order. This hearing provides the Examining Authority with its first opportunity to explore the draft order, having undertaken quite a lot of reading in the pre-examination period. To authorise a project such as this, an applicant needs the Secretary of State, in this case for transport, to make a piece of law, delegated legislation – the development consent order, or DCO. And they have prepared a draft DCO as their starting point and, mindful that we will be making a recommendation to the Secretary of State about whether this project should proceed or not, we must provide the Secretary of State with the best draft development consent order that we can, irrespective of any other matters around the planning merits that we deal with in this examination. So, we need to explore the drafting of the DCO with the applicant and we need to start that process now, before we go any further in the examination process.

Like issue-specific hearing 1, into the definition of the project, that we started yesterday and will resume again tomorrow morning, this hearing is intended as a place to 'unpack', in inverted commas. For the applicant, it enables the DCO to be explained as the starting point; and for the EXA, it enables us, again, to flag high-level questions that have emerged from our first steps reading and review of the draft development consent order. Now, as I flagged yesterday, with issue-specific hearing 1, we're holding this hearing before we receive your detailed cases. Your written representations at deadline 1 on 18 July are still nearly a month away. We wanted to, again, give you a sense of some of our initial thinking and for you, in turn, to be able to provide your views on early-stage reviews of the DCO at this stage. But, very clearly, we need to state that our starting point is one of having no firm and concluding views at this stage. This is an exploration. We are at the start of a very substantial journey and our questions are, essentially, like the headlights shining forward, helping us to see where our report, through the rest of this examination, might take us in due course.

I will just remind you that you can find all the information you need about the application and the documents produced for this examination on the Planning Inspectorate's national infrastructure website. There's a landing page for the Lower Thames Crossing and if you google, 'Lower Thames Crossing Planning Inspectorate', you will be taken directly there. And we publish everything that we accept into this examination as a document on that website. Our rule 6 letters also include the web address.

So, now you know who we are and why we are here, I'm going to hand you over to Janine Laver and she will start the process of enabling you to introduce yourselves. So, over to you, Ms Laver.

MS LAVER: Thank you, Mr Smith. This is Janine Laver, panel member, speaking. Shortly I will be asking you, individually, to introduce yourselves to the hearing. Before I do, just a few things to cover. We advised you in the agenda that we're being live streamed and recorded. And the recordings we make are retained and published and form a public record that can contain your personal information and to which the UK general data protection regulation applies. Does anyone have any questions about the terms on which the recordings are made? Okay, no hands, so I'm assuming everybody understands this procedure.

Now, we'd like to hear introductions from anyone who's requested to be heard today, either on their own behalf or representing another person or organisation. I have a list of people which I believe are here and I will run through that list shortly, inviting individuals to come onto camera to introduce themselves. We would need to know your name, the organisations that you represent, and your role. Now, as with issue-specific hearing 1, yesterday, we did invite interested parties to speak on all agenda items at appropriate points in the proceedings, so, during your introduction, you do not need to declare specific items that you wish to speak on today. There will be an opportunity for you to speak at appropriate points.

For any interested parties represented by more than one person, I would ask that someone takes the lead on making the introductions and then ask each member of your team that intends to speak to introduce themselves. So, without further ado, can I please ask who is here to speak for Kent County Council today?

MR RATCLIFFE: Good morning. My name is Joseph Ratcliffe. I am the transport strategy manager at Kent County Council and I'm here with Michael Humphries, who can introduce himself.

MS LAVER: Thank you.

MR HUMPHRIES: Good morning, I'm Michael Humphries, King's Counsel, despite what it says on the Teams legend. And I'm also representing Kent County Council.

MS LAVER: Thank you very much, both of you. Could I now turn, please, to Essex County Council? I believe we have Mr Woodger.

MR WOODGER: Good morning. Mark Woodger, growth and development team, Essex County Council. I'm here to speak on behalf of Essex County Council on an as-needed basis. Thank you.

MS LAVER: Wonderful, thank you. Now to Thurrock Council, do we have Mr Edwards representing today?

MR EDWARDS: Yes, good morning, ma'am. Douglas Edwards KC, representing Thurrock Council. There are three other representatives of Thurrock Council attending today. I'll just allow them to introduce themselves, firstly, Mr Stratford, who's next to me, please.

MR STRATFORD: Chris Stratford, town planner. I think I know you all now. Good morning.

MS LAVER: Good morning, thank you.

MR EDWARDS: Also, separately, at the examination meeting, our two other representatives are Ben Standing, who I can see is on screen. I invite him to introduce himself.

MR STANDING: Hello, my name is Ben Standing. I'm a partner at Browne Jacobson solicitors, representing Thurrock.

MS LAVER: Thank you very much.

MR EDWARDS: And also, Mr Henry Church, who's also online.

MR CHURCH: Hello, I'm Henry Church. I'm a senior director in the compulsory purchase team at CBRE, representing Thurrock.

MS LAVER: Excellent. Thank you very much, everybody. We're going on to turn now to Havering Council, please, Mr Douglas?

MR DOUGLAS: Good morning, madam. Good morning, everyone. My name's Daniel Douglas. I'm the transport planning team leader at the London Borough of Havering and I'll invite my colleague, Lynn, to introduce herself.

MS LAVER: Thank you.

MS BASFORD: Good morning, everyone, it's Lynn Basford here, representing London Borough of Havering. I'm a chartered town planner and transport planner.

MS LAVER: Thank you very much, Ms Basford. Mr Church, you've still got your video on. Could I just ask you to kindly switch that off, please? Thank you very much. Moving to Gravesham Council, do we have Mr Lewis and Mr Bedford? Oh no, Wendy, good morning.

MR BEDFORD: Good morning, madam. My name's Michael Bedford, King's Counsel, and I'll be primarily speaking today, but I'll introduce Mr Alastair Lewis in a moment. He's a partner and parliamentary agent at Sharpe Pritchard and he will be taking the lead when we get onto your annex A issues on the specifics of the development consent order. As you've already seen, Wendy Lane, the assistant director of planning, is also on, as indeed is Tony Chadwick, the NSIP project manager. But I don't expect that we'll be hearing from them directly today. So perhaps, I'll just ask Mr Lewis. Oh, Mr Lewis is now on screen so you can see him. You can see the whole complement of us, so hopefully that's it. Thank you very much.

MS LAVER: Wonderful, thank you. Okay, I'll move now down my list, so Port of Tilbury, London – Ms Dablin?

MS DABLIN: Good morning. My name is Alison Dablin, I'm an associate with Pinson Masons and I'm here representing the Port of Tilbury London Ltd.

MS LAVER: Thank you very much. And on to Port of London Authority – Alex Dillistone, hopefully.

MS DILLISTONE: Good morning, madam. Alex Dillistone from Winckworth Sherwood for the Port of London Authority, and with me today, I have –

MS OWEN: Good morning, madam. I'm Lucy Owen, I'm the deputy director of planning and development at the Port of London Authority.

MS LAVER: Okay. Ms Dillistone, will you be leading today?

MS DILLISTONE: Yes, I will.

MS LAVER: Great, thank you very much. Okay, down my list, we're now moving to Transport for London.

MR RHEINBERG: Good morning. My name's Matthew Rheinberg – major projects and urban design manager at Transport for London.

MS LAVER: Wonderful, thank you very much. Do I have speakers for the Marine Management Organisation, today?

MS CALVERT: Hi, yeah, my name's Laura Calvert. I'm licensing case manager at the Marine Management Organisation, and with me today is Gregg. I'll let Gregg introduce yourself.

MR G SMITH: Good morning. My name's Gregg Smith; I'm the case officer for the Marine Management Organisation.

MS LAVER: Thank you very much, good morning to you both. And next on the list, the Environment Agency, please.

MS BOLT: Good morning, madam. My name is Carol Bolt and I'm a solicitor with the Environment Agency and there's just myself in the agency today.

MS LAVER: Great, thank you very much. Next, Northumbrian Water.

MS WOODS: Good morning. My name is Samantha Woods, associate solicitor at Winckworth Sherwood. We are legal advisors to Northumbrian Water Ltd, who operate in the area as Essex and Suffolk Water.

MS LAVER: Thank you very much, Ms Woods. Okay, just coming down a bit further. Now, is there a Mr Foster[?] in the virtual room – Mr Trevor Foster? Just checking if Mr Foster's joined. He's on my list as due to represent several parties. Mr Foster, if you're there, could you please show? Okay, I'll move down a little bit. Mr Francis Wilson, if you're on the virtual chat, could you pop up?

MS WILSON: Francis Wilson's had to go to hospital, I'm afraid.

MR WILSON: Can you hear me? Can you hear me?

MS LAVER: Okay, I'm hearing two people.

MR WILSON: Yeah, can you hear me? Wilson, Francis Wilson.

MS LAVER: Yes, hello Mr Wilson. And then, is that Mrs Wilson as well?

MR WILSON: Yeah, that's right. I'm in transit so I can't really pay a lot of attention. Trevor Foster's representing my wife and myself.

MS LAVER: I don't believe Mr Foster's joined yet.

MR WILSON: Right. He's probably trying to.

MS LAVER: Okay. Thank you very much. So, Mrs Wilson, you're actually on stream and you're listening?

MRS WILSON: Yes, I am.

MS LAVER: Okay, wonderful. Thank you very much. Okay, moving down a little bit further, Mr David Bowling, please. Mr David Bowling? Okay, we may come back to you, Mr Bowling.

MR BOWLING: Hello, hello.

MS LAVER: I can hear a voice; I can't see anybody.

MR BOWLING: Hi, it's Mr Bowling here.

MS LAVER: Hello, Mr Bowling.

MR BOWLING: Representing the WELCOM Forum of East Tilbury, and I'm also a community first responder with the East of England Ambulance.

MS LAVER: Okay, thank you very much. When you say the WELCOM Forum, could you just give me a little bit of information about that?

MR BOWLING: Yes. The WELCOM Forum is a community forum at East Tilbury and Linford, and we operate alongside the Thurrock Association of Forums, which I'm a voting member of that as well.

MS LAVER: Okay. So are you representing just the forum or yourself today?

MR BOWLING: Just the forum.

MS LAVER: Okay, thank you very much.

MR BOWLING: Thank you.

MS LAVER: Okay, if I could move to Mr Holland, Mike Holland.

MR HOLLAND: Good morning, madam.

MS LAVER: Good morning.

MR HOLLAND: Mike Holland, from Holland Land and Property. I represent the principal landowners at the northern portal and the works area, the Linford area, and South Ockendon, being the Mott family, E&K Benton Ltd, and the Linford Land Consortium. I also represent their development partners in respect of some of that land, Mulberry Strategic Land and EA Strategic Land.

MS LAVER: Okay, that's great. Thank you very much. Onto London Gateway Ports – Mr Shadarevian, are you in the room?

MR SHADAREVIAN: Yes, I am here, ma'am. Can you see and hear me?

MS LAVER: Definitely, yes, thank you. Is anyone else with you today?

MR SHADAREVIAN: Yes, there are people with me today, ma'am, but they won't be called upon to speak.

MS LAVER: Okay, thank you. And last on my list, I have [James Cunningford?]. But I think he's with you, Mr Shadarevian. Is that correct?

MR SHADAREVIAN: That is correct, ma'am. He is registered here, but he won't be speaking.

MS LAVER: Understood. Alright, thank you very much. Is there anybody else in the virtual room that I haven't come to? Just in case I've missed somebody.

PARTICIPANT: Hello.

MS LAVER: Hello. I can hear somebody, but I can't see anybody, and I can't see a name. No? Okay, we're going to move on to the rest of this section of the agenda. So, turning to today's hearing, the agenda sets out the topics – sorry, before I move on, haven't come to the applicant. Please forgive me. Mr Henderson, my apologies.

MR HENDERSON: Good morning, madam. Good morning, everyone. My name is Tom Henderson, I'm a partner and solicitor and the law firm, BDB Pitmans, and we are representing National Highways on the Lower Thames Crossing. I'll just allow my colleague, Mr Latif-Aramesh, to introduce himself in a moment. He's going to be leading, generally, on today's hearing, with my support at various junctures. Thanks.

MR LATIF-ARAMESH: Good morning. My name is Mustafa Latif-Aramesh, also from BDB Pitmans, instructed on behalf of the applicant. As Mr Henderson said, I will be leading on today's hearing, assisted by him.

MS LAVER: Okay. Nobody else for the applicant, Mr Henderson?

MR HENDERSON: We have four other colleagues in the room with us, but we don't anticipate needing to call upon them. But if we do, we'll introduce them then. Thank you.

MS LAVER: Okay, thank you. Just for the purpose of anybody watching, the applicant – Mr Henderson and Mr Latif-Aramesh, when you're shown on our screens, you're showing with the little indicator that you're from the Planning Inspectorate. Obviously, you don't work for the Planning Inspectorate; you are the applicant. We will see if we can get that resolved with our AV company, but if not, for the purpose of the recording, Mr Henderson and Mr Latif-Aramesh are from National Highways. Now, I understand Mr Trevor Foster has tried to re-join. Mr Foster, if you're just able – if you're on now and able to introduce yourself, now's the time to do it. Okay, I'm going to press forward.

So, the agenda sets out the topics today that we will be discussing. As this hearing is primarily targeted to the applicants to unpack the development consent order, the applicant will be invited to speak first and, as and when, the panel will ask questions. Any questions from interested parties in the room will be put through the panel, please. As I have already noted, we will come to interested parties for input at appropriate times in the proceedings, so I would therefore please ask that you don't interrupt when someone else is speaking. When you begin to speak to an item or question, please do reintroduce yourself by name and say which organisation, if any, or which person, you represent. This helps people who are watching the live stream or the recording to understand, later, what is going on.

Can I also ask that, if an issue's been identified by one speaker already, it doesn't need to be repeated by another speaker who agrees. It is sufficient – if you wish to come on and say that you agree, that would be adequate. If you're not in the virtual room with us today, with a live connection to Teams, you can watch the proceedings on the live stream, in real-time or catch-up, using the published recording. You will be able to make comments to us, in writing, about anything you have heard today by deadline 1 on 18 July. So there is plenty of time available to submit your views in writing. Matters put orally and in writing are treated equally by the panel. Again, that goes to all interested parties in the room. If you don't feel that there's adequate time for you to make your points, you can still put your points to us in writing by 18 July.

Now, as I said, it's really important that we respect all participants and allow everyone to have their say at the appropriate times. Please do not interrupt the other speakers. Everyone should have the time to make full use of their opportunity to speak. If the panel needs to clarify something that's been said, then we will intervene. If anyone interrupts in a way that is unnecessary or vexatious, or disrupts the hearing, they will be issued with a warning. If the same person interrupts again, they may be excluded from the remainder of the hearing. I would add that repeated interruptions that lead to disruption can be viewed as unreasonable behaviour for which awards of cost can be sought by other interested parties. If you happen to remain unmuted at any point, the case team or the chair may mute you, just so that we're not over-hearing background

information when it is not your turn to speak. So don't be alarmed if we switch your microphones off.

We will be running this hearing in sessions today and we'll try to keep these to approximately an hour and a half in length. Obviously, these are not precise; the chair will choose when to call the breaks, and that's likely to be when there's a natural breakpoint in the discussion. We do hope to break, however, around about 11.30, for a short recess of around 15 minutes; hopefully, then, around about 1.15, for an hour for lunch; and, if needs be, we will have to take a break in the late afternoon. But we'll see how we're running this afternoon before we decide on that. We hope to end the business of this hearing today, but we do have time available on Friday, this week, 23 June, to continue if needs be. We've already allocated some time on Friday morning to business arising from issue-specific hearing 1, yesterday, and if we do have to run this DCO hearing over until Friday, to continue, that will happen in the afternoon, around 2.15. We will obviously post something on our planning website about that.

Now, I'm almost done with housekeeping, but just to talk about technology: if anything goes wrong, today, with the technology at your end and you struggle to participate, please contact the case team by email or by phone and they'll try to get you back in the viewing. If that fails, they may ask you to attend a rollover hearing on Friday or make submissions in writing at deadline 1, on Tuesday 18 July. Now, obviously, if anything goes wrong with technology at our end, we will also try to restart the event as soon as we can. So try and stay connected, please. If the issue is so serious that we can't continue, we will announce our next steps on the Lower Thames Crossing landing page of the National Infrastructure website. The contingency time, as I said, is Friday 23 June, if we need to resume.

The introductions are now complete, and I thank you for your patience. Before I hand you back to Mr Smith, does anyone have a burning issue they need to raise now, before we get into the primary agenda items? If you do, please raise your hands in the chat function. Okay, no. So, Mr Smith, I'll hand back to you. You're on mute as well.

MR SMITH: Thank you very much, Ms Laver. Apologies, I believe we do have one hand, just let me check. I'm getting a hand signal – no that has gone, apologies.

Thank you, Ms Laver. My name is Rynd Smith, panel lead, speaking again. Now, we're moving on to agenda item 2. The purpose of this hearing, I have spoken to, at reasonable length, in my introductory remarks, so I don't plan to pass over those again. Simply, to remind you that, in terms of the unpacking process around the development consent order draft, agenda item 3 is principally for the applicant, for it to set out its stall, its story. And then, agenda item 4 is principally for the Examining Authority to explore initial questions. And we will explore those questions, inviting in bodies who are interested, in the room, as we march through that part of the agenda.

There's one final remark I'll make about the purpose of this hearing. And that is that it is conducted without prejudice to your in-principle positions, either that you might have set out in your relevant or, indeed, in your future representations. What does that mean in plain English? What it means is that interested parties are at liberty to ask for changes or improvements to provisions in the draft development consent order at any time, without conceding an in-principle position that they might hold, for example that there should be no such provision in the order or, indeed, that the order itself should not be made, development consent should not be granted. Now, the reason why we hold these hearings in this without prejudice manner is because it's in the interests of ensuring that the draft development consent order becomes the best draft that can be obtained in the circumstances. And also, to be clear, this is being conducted without prejudice to the Examining Authority's future deliberations on its recommendation to the Secretary of State. We hold open to ourselves the ability to make a recommendation that the order be made, with or without changes, or not be made. And we will not make that judgement at all until we have heard absolutely everything in this entire examination and the examination is closed. So, hopefully, that's reasonably clear.

We do find it useful, when we're walking through the development consent order in hearings such as this, to refer to a specific version of it. Now, the version that I have on screen in front of me is the version two, tracked draft development consent order. And if you're following in the examination library, that is under reference bracket AS-039. I'll give that reference again: AS-039, in the examination library. That will be our main reference source because it tracks the latest proposed changes that the applicant has brought forward. What

I suggest is that, rather than screen-sharing, that, actually, we each have that available on screen in front of us, if that's at all possible. However, if anybody does wish to speak to an item and is unable to access the relevant text, do ask, as you make your submissions, because we can arrange for that document to be screen-shared at the right provision, if needs be.

That's all I need to say about the purpose or, indeed, the practice of this hearing. But I will just finally ask, is there anybody with any questions about what we're about to embark upon? Again, show of yellow hands, please, in the virtual room, if there's anybody who wishes to ask any final questions. Again, I'm seeing no such questions. So I'm then going to move to Mr Latif-Aramesh for the applicant, on agenda item 3, which, as I've indicated, is their opportunity to make opening submissions and set out their stall. We've framed a set of items, A-F, that we would like their opening submission to pass through. But I trust, Mr Latif-Aramesh, you will be in a position to march through those and it's not my intent to stop you because we will be holding the substantive discussion in agenda item 4. So, over, with no further ado, to the applicant.

MR LATIF-ARAMESH: Thank you very much, sir. Mustafa Latif-Aramesh, for the applicant. If I could just make three very brief, preliminary comments. The first is, we have prepared a detailed note responding to each item in the agenda, as well as the items in annex A to the agenda, which we will submit at the relevant deadline. So, what we propose to do today is to try to summarise our position, best we can, on those items. The second preliminary matter to deal with is, you very helpfully refer to iteration of the draft order, AS-039. Both Mr Henderson and I will also be referring to the expansion memorandum in quite a few contexts and the reference for that is APP-057. The third and final preliminary matter is to introduce the matter by way of explaining the engagement we've had on it to date, mindful of the fact that you mentioned, at the preliminary meeting, that you wanted to understand where the applicant had firm positions and which provisions were the subject of further discussions. We will seek to address the details as we go through some of the provisions on these points but, in high-level terms, detailed pre-application engagement has been undertaken on the draft order. Schedule 2, which contains the requirements – the primary schedule, which secures the relevant control documents and management plans – was itself a document that was included in the community impacts consultation.

In addition, through detailed engagement with specific stakeholders, a number of significant changes have been made to the order. I'm not going to list out all of the changes that we've made over time, but it's to provide you comfort that we have stress-tested the positions that we've landed on and that we have accommodated, where possible, modifications to the order. Just a few examples: the compulsory acquisition period, which we'll be returning to, in agenda item 4, in relation to annex A, the period was reduced from 10 years to eight years, following comments from a number of stakeholders. The notice periods in a number of provisions, including the temporary possession article, were increased from 14 days to 28 days. Article 48, which relates to the protection of the tunnel area in the river Thames, was refined to reflect comments and amendments proposed by the Port of London Authority. A provision was inserted into schedule 2, which secures a consultation period and, in addition to that, a number of ancillary works in schedule 1 were refined in response to stakeholder comments. Again, we'll provide a more detailed list in our written submission, but we just wanted to provide that comfort at the start.

Turning, then, to the structure of the draft order. On the basis that we understand later agenda items involve detailed consideration of the specific provisions, we'll give a very high-level overview again. The main body of the draft order follows a heavily precedented structure and approach, containing seven parts. Part 1 contains the preliminary matters, such as things like the definitions and the commencement of the order. Part 2 contains the principal powers, including the powers to carry out, operate, and maintain the authorised development. Part 3 contains powers and provisions relating to streets, and Mr Henderson will be leading on those aspects. Part 4 contains supplemental powers, including powers in relation to survey and investigations, discharge of water, protective works. Part 5 relates to powers relating to compulsory acquisition, including the temporary possession of land and certain protections including in respect of Crown land. Part 6 is concerned with the operational provisions; this includes the power to operate and regulate the use of the tunnel area as well as impose road user charges. Finally, part 7 contains miscellaneous and general powers, including the disapplication of certain legislative provisions. Again, there's a question on that, so we won't spend too long on that point.

The main body of the order is then supported by a number of schedules, which are introduced by the relevant articles. Again, the layout and the content of those schedules follows a heavily precedented and conventional approach. Schedule 1 describes the authorised development and comprises a number of numbered and ancillary works. Schedule 2 sets out the requirements which I referred to earlier. Schedules 3 to 6 relate to traffic regulation, permanent stopping up, as well as the classification of roads, which we touched on, briefly, at yesterday's issue-specific hearing. Schedule 7 contains trees subject to tree preservation orders. Schedules 8 to 11 relate to compulsory acquisition and temporary possession. Schedules 12 and 13 are the primary schedules dealing with the operational matters, namely the bylaws for the tunnel area, as well as the road user charging provisions. Schedule 14 contains the protective provisions which, again, is an agenda item, so we don't intend to particularise those at this juncture. And, finally, schedule 16 contains the list of certified – documents proposed to be certified by the Secretary of State, should the order be made. That concludes our submissions under agenda item 3(a), and I will hand over to Mr Henderson to address agenda item 3(b).

MR SMITH: Thank you very much, Mr Latif-Aramesh. So, over to you, Mr Henderson.

MR HENDERSON: Thank you, sir. Tom Henderson, for the applicant. So, dealing with the powers sought and their relationship to the project, the explanatory memorandum document, referred to by Mr Latif-Aramesh, describes the powers sought and contains an enhanced level of project-specific rationale for the inclusion of the provisions in the draft DCO. And by way of indication of that, it runs to over 100 pages. Now, taking our guide from you, sir, we weren't proposing to now page turn the various provisions in the explanatory memorandum. We would invite interested parties to refer to that if they've got any questions or seek any guidance about what the provisions are required to do.

MR SMITH: And, indeed, I would just indicate here, in the interests of being helpful to everybody, that the nature of this is very much an unpacking or an initial hearing will be. If, by the end of this, we start to have a sense, from the parties in the room, about those elements of the structure of the order and, indeed, elements of the justification for components of the order that are an issue that they are concerned about, then we will have found this exercise to be very, very helpful

indeed. But, again, the detail can be drawn out in deadline 1 submissions in due course. Back to you, Mr Henderson.

MR HENDERSON: Thank you, sir. Tom Henderson, for the applicant. So I'll just make some very brief comments on the general approach to the drafting of the order. Now, the applicant, in particular, had regard, when drafting the DCO, to advice note 15 of the Planning Inspectorate. And that advice note sets out, at paragraph 3.1, that applicants should consider drafting conventions made by the relevant government department that would authorise the draft development consent order. And on this point, the applicant would observe that in recent highway DCO decisions, the Secretary of State has made clear that there should be a degree of consistency across many DCOs, and we cite some examples in our written note that we'll submit.

And therefore, the starting point, for us, was to consider precedent and consider whether the relevant power and article from those precedents is appropriate and relevant for this project. And once the principle of that had been established, our approach was to certainly follow that precedent. And we would emphasise, on that score, that the draft DCO for this application is supported by broad and wide-ranging DCO practice, with limited exceptions, which we'll explore under your annex A questions, which picks up novel drafting. There are relatively few of those, for instance, on road user charging. So that was all we were proposing to say, at this point, on agenda item (b). But as we've said, we'll be happy to explore any particular provisions that you've asked about or interested parties wish to ask about later. Thank you.

MR SMITH: Thank you very much, Mr Henderson. Now, as we move on to agenda item 3(c), this is a, as I see, critically important introductory item because, I think it's fair to say in summary, that it is a well-precedented approach but that this draft development consent order secures the specific construction and operational performance of the proposed development, not just directly in the draft DCO itself, via the mechanism of articles in the main body of the order or requirements in the schedules, but with reference to a set of documents that we outline in the bullet points under agenda item (c). And, understanding the nature of those documents, the way in which their approval process itself is designed and the way in which they are tied into the order as, for example, certified documents, and therefore, what their standing is, in terms of measuring and

assessing the eventual performance of construction and/or operation under the order, it's really important for everybody around this table to understand.

So, who will be leading on this for the applicant? Is this Mr Latif-Aramesh again?

MR LATIF-ARAMESH: That's correct, sir. Mustafa Latif-Aramesh, for the applicant. Thank you for that introduction, sir. I think, to provide that assurance up front, each of the documents that are specifically named in the bullet points in your agenda item are specifically secured under the terms of the requirements. And what we've set out to do is to secure the relevant documents in the relevant requirements contained in schedule 2. In the case of a number of documents, these are secured by reference to multiple requirements as they give rise to matters in the scope of those said requirements. To deal with the situation generally, before moving onto some of the specifics, the applicant's position is that the context is, the provision of the parameters outline management plans as well as documents like the design principles, it has submitted, provide an adequate level of assurance and certainty commensurate with the stage of design development for the project itself. In addition, the applicant's approach has been to secure those outline documents, but also bake in further consultation. So, many of the requirements we will refer to, prior to the submission of the relevant documents to the Secretary of State, who would approve it, to consult with relevant authorities and bodies.

We are happy to cover the specifics of who is consulted. These are secured under the terms of the requirements themselves, or by reference to a table that's contained in the relevant plan. It is also worth bearing in mind that, in line with the applicant's general approach of accommodating further engagement, a number of the documents secure, over the construction and operational phase, working groups of forums where other parties will be invited and views can be made known as the project develops.

The consent that's being sought by the applicant is for a preliminary scheme design and not a detailed one. And so, to ensure that contractors are not constrained in delivering the project, in an environmentally sensitive and cost-effective way, there is a necessary and proportionate need for flexibility, which we have also sought to reflect in these requirements. What I proposed to do, sir, was to then go through the documents as you have listed them in your agenda

item. But what I might do is spend some time on the first of those, the design principles, but then provide a summary position for the other ones, because the general securing mechanisms are largely the same.

MR SMITH: Yeah, no, that strikes me as a very sensible way through, so please proceed.

MR LATIF-ARAMESH: Thank you, sir. Mustafa Latif-Aramesh, for the applicant. So, to start with the design principles, this is a document which is not common for transport DCOs, but which has been provided by the applicant to provide further assurance on the design parameters for the authorised development. Under requirement 3 – so, that's paragraph three of schedule 2 in the draft order – the detailed design of the project must be carried out in accordance with those design principles. This ensures that the principles are properly secured and considered at the start of the detailed design process itself. Requirement 5, which relates to landscaping, similarly references the design principles on the basis that the scope of that requirement and the scope of the design principles themselves extend to those permanent features of the authorised development.

For completeness, we note that requirement 13, which is the requirement which secures the replacement travellers' site, also references a specific design principle contained in the design principles itself. It may be helpful, notwithstanding that we're returning to the replacement travellers' site later in the agenda, to look at this principle as an example of how the design principles document itself works. So, the specific design principle is S11.12 and that is a design principle, as I said, which relates specifically to how the replacement travellers' site will be designed. What that design principle requires is, firstly, that the replacement must be developed in accordance with the Government's guidance on designing gypsy and travellers' sites, the good practice guide; that the site itself shall include 21 residential pitches in the three groupings, reflecting the existing site; that the site shall also be carried out in accordance with Essex Police's designing out crime guidance; moreover, it secures a plan which is specifically included in appendix C to the design principles.

Notwithstanding, therefore, the relatively short references, in the requirement, to the design principles, what they enable is substantive controls over how parts of the authorised development will be designed and developed.

MR SMITH: Can I just briefly check, there, because, again, I think it would be very useful if we all have a reasonably shared understanding around this virtual table

on these points. Because, I think, part of the issue here is the degree to which detail is being searched for by some, including this Examining Authority in part, on the face of the order in the requirements themselves not being found, then moving into the relevant subsidiary document – in this case, the design principles document – and it would be, as I take it then, your general submission, not that there is insufficient detail or that matters have been left out, but that we should direct ourselves to the relevant subsidiary document and that is where the detail will be found. And so, to the extent that that is being argued, your first proposition will be that we should maintain that split, that we should be looking at the headline power of control in the order, in the requirement, and then the detail, the standard to be provided, the outcome to be delivered, the enforceability, the actual mechanism that resolves whether something is lawful or not and how it will be delivered, and where and when and why, to be found in the relevant document.

MR LATIF-ARAMESH: Thank you, sir. Mustafa Latif-Aramesh, for the applicant. That is correct, that is our position. I would just add to that that some of the details that are included, in terms of the substantive controls that are proposed, are better suited to the documents – the outline management plans and the design principles. So, by way of example, that requirement 13, because we are specifically trying to secure an illustrative plan, that kind of thing wouldn't be appropriate to put into the order. And so, we've sought to provide the substantive controls in the documents and then create the nexus between the order and the relevant control documents.

MR SMITH: Okay. Well, that's the theory. We will discuss some of the detail in agenda item 4 but thank you very much for that very clear explanation.

MR LATIF-ARAMESH: Thank you, sir. Mustafa Latif-Aramesh, for the applicant. The next document that you've mentioned in the agenda item is the environmental master plan. So that sets out the illustrative design for the project and the proposed planting and landscaping. In effect, it's intended to be the mechanism which secures the location of the environmental mitigation and compensation features within the project design. I won't propose to go through that in any great detail but requirement 5 is the relevant requirement which secures the environmental master plan. It specifically states that the landscape and ecology

management plan, which is to be submitted prior to consultation, should be based on the environmental master plan itself.

The next document that's mentioned in your agenda is the environmental management plan. It's worth stating, here, that the applicant's approach to the preparation of environmental management plans is based on the design manual for roads and bridges, and specifically, standard LA120. In particular, that standard requires the production of three phases of management plans: the design phase, the construction phase, and the operational phase. The code of construction practice, which is APP-336, is the first iteration of the environmental management plan, in effect, the first of those three plans required under LA120. So far as the securing mechanism is concerned, that is requirement 4, sub-paragraph 2. Mr Henderson will be speaking to you, in a bit more detail, about the preliminary works controls, so I won't focus on that at this juncture.

I think, at this point, it's also worth making two preliminary comments about how the code of construction practice – that is, the first iteration of the environmental management plan – is secured, noting that this comment has been raised in a number of relevant representations, but also some of the procedural deadline C submissions. And that is that the way that requirement 4 secures the code of construction practice is to say that the second iteration, i.e. the construction phase environmental management plan, must substantially accord with the code of construction practice. Now, our position is that that is appropriate because the code of construction practice is an outline document. It will necessarily develop as the detailed design and construction programme is developed. But we also wanted to draw the Examining Authority's specific attention to the A47 Wansford to Sutton decision letter, where an attempt to remove to phrase 'substantially in accordance with' was rebuffed by the Secretary of State, on the basis that, 'the Secretary of State considers its omission an inappropriate fettering of his discretion'. So, on that basis, we consider the language is appropriate, not just in general terms but for this project, on the basis of the contents of the code of construction practice itself.

And, again, without wishing to take up too much more time, table 2.1, in the code of construction practice, is an example of the list of consultees that will be consulted prior to the approval of the final environmental management plan.

And, on that point, we think it's worth drawing your attention to paragraph 20 of schedule 2, which applies generally. Paragraph 20 of schedule 2 sets out: where consultation is required under a particular provision in schedule 2, due consideration will be given to any responses; the applicant must include, in its application to the Secretary of State, copies of any representations made about the proposed application and it must provide an account of how such representations have been taken into account as part of the submission made to the Secretary of State. That's really important because that's one of the examples of the provisions that we've put in to provide assurance that the consultation will be transparent and meaningful, in relation to the discharge of the requirements.

MR SMITH: So this, in effect, is providing what amounts to a consultation report, as in the pre-application process almost, at each stage of discharge decision making.

MR LATIF-ARAMESH: That is correct. The form that the document takes is not quite called a consultation report but, effectively, because it requires a –

MR SMITH: They do the same job.

MR LATIF-ARAMESH: Yes.

MR SMITH: Okay.

MR LATIF-ARAMESH: The last document that you've – sorry, were you about to say something, sir?

MR SMITH: No, no. I'm just making sure I absorb this. Please do continue.

MR LATIF-ARAMESH: The last document that's mentioned in the agenda item is the outlined landscape and ecology management plan. So I wanted to just emphasise, so the environmental master plan, which we discussed earlier, secures the spatial extent and location of the environmental and landscapes elements detailed within the outlined LEMP, the landscape ecology management plan. But the outlined LEMP differs in that it sets out the management regimes, management expectations and monitoring requirements for the proposals in each land parcel shown in the environmental master plan, so the way that those two documents work together is, effectively, one is the graphic representation of the environmental features and compensations secured. And the other is the detailed management and monitoring requirements, which the landscaping ecology management plan, which is to be approved by the Secretary of State, must accord with.

That concludes my submissions under this agenda item. Again, as I mentioned, there are more details we can provide on the specific securing mechanisms, but we would propose to do that in our detailed submission.

MR SMITH: Yes, and there are already some questions arising on these matters, including from my panel colleagues, but we'll defer those into agenda item 4 because that's the place where the conversation will take place. Just before the applicant moves on in its in principle setting out of its stall in agenda item 3, I do note that there is a gentleman called Mr Foster, who has been attempting to gain access to this hearing. Can I just check whether Mr Foster is present in the room?

MR FOSTER: I can hear you, sir.

MR SMITH: Excellent.

MR FOSTER: You can hear me.

MR SMITH: I can hear you.

MR FOSTER: My camera has failed me this morning, but you're being received loud and clear.

MR SMITH: Excellent. Well, look, Mr Foster, if you missed elements of the introductory – either registration session or the session led by my colleague Ms Laver, to flag you are now here. The drill will be, if you are able to raise the virtual hand – if you're able to click on the little icon to raise a yellow hand if you wish to speak on an item, then please do.

MR FOSTER: Thank you.

MR SMITH: And we will try and ensure that you are then brought in at relevant items when you wish to speak, but obviously, accord politeness and consideration to others and await your turn. If you do request to speak on an item, you will be brought in. Hopefully, that means that everybody who was expected to be here is now here and in the room and able to hear us. Okay, with apologies to the applicant, if we can then move back to agenda item 3, where, I believe, we're about to commence 3(d) and the explanation of the discharging role of the Secretary of State and other local and public authorities.

MR LATIF-ARAMESH: Thank you, sir. Mr Mustafa Latif-Aramesh for the applicant. There are two preliminary comments to make here. The first is that, mindful of your request that we set out our stall on where we have firm positions and where matters are under discussion, the discharging authorities is one of those areas

where we have really tested the position that we've landed on. And our position, the applicant's position, is settled.

The second preliminary comment is that the explanatory memorandum includes detailed reasons, which I propose to summarise here, for why the Secretary of State is the appropriate discharging authority. I should note, it's section 6.3 of the expansion memorandum that sets out the detailed justification for why the Secretary of State is the appropriate discharging authority.

In short, it's the applicant's position that the Secretary of State is the appropriate discharging authority for the requirements contained in schedule 2 on the basis that there are a large number of local authorities across the project and the need for consistency on decision-making warrants one discharging authority. The complexity of the project, including its scale, the need to consider significant utilities works, works on the strategic road network, and the disparate elements of the project being intrinsically linked together justifies one discharging authority with competence across the entire range of the project features.

Any attempt to disaggregate parts of the project would be wholly impractical and artificial. The requirements reflect arrangements agreed with the Department for Transport and, in particular, in 2016, the Department for Transport agreed to be the competent authority for signing off and discharging the requirements for DCOs promoted by National Highways. There is now a specific team in the Department for Transport, the purpose of which is to fulfil this function, hence the inclusion in the order of the same provisions. In light of those arrangements agreed with the DfT, there are resources in place which are capable and competent to deal with the discharging function. And if any local authority was given this function, they would likely not have the resources to deal with the function, leading to duplicated aspects of public administration and misuse of taxpayer funds.

The 2008 Act was specifically designed to simplify and streamline the overall process for nationally significant infrastructure projects. If a local authority were to refuse permission, then it would be reasonable for there to be an appeal process. Necessitating the second separate level of approval relating to all the requirements would dilute the fundamental purpose of the 2008 Act

and could lead to delays in the delivery of the project, leading to further disruption for local communities.

It should be noted that, under the requirements, as I alluded to earlier, local authorities and other relevant statutory bodies will be consulted on the discharge of requirements 4, 5, 6, 8, 9, 10, 11, 12 and 14. Again, that will be in our written submission, so there's no need to keep a note of all the numbers I just read out. As I mentioned as well, paragraph 20 specifically sets out the processes that will be followed in connection with that consultation.

We would note, notwithstanding those project-specific reasons for why the Secretary of State is the appropriate discharging authority, that this has been the position of the Secretary of State in every single development consent order promoted by National Highways. Again, we will provide a full list of those orders in our written submissions.

But we did want to draw attention to one specific example where the Secretary of State, having made an order which granted a local authority a discrete role in discharging requirement, then made a correction order, the effect of which was to substitute the Secretary of State as the appropriate discharging authority. That matter related to a local road, and so the applicant's position is that this very clearly reflects the Secretary of State's practice. It is the best use of taxpayer funds. It is necessary because of the complexity and scale of the project and avoids having to make multiple applications to separate local authorities, which might give rise to inconsistent decision-making.

Finally, I will just note that the order does secure local authority approval in appropriate places. For example, in relation to the traffic regulation provisions, which Mr Henderson will be talking about a bit later today, the consent of local highway authorities is required in connection with some matters. Requirement 13, which we have discussed, relating to the replacement travellers' site, is to be discharged by Thurrock Council, so we have stress tested where is appropriate and incorporated that into the draft order. I think that concludes my submissions on this agenda item.

MR SMITH: Thank you very much. In which case, we're then moving onto agenda item 3(e). And I will just give a little bit of additional oral guidance in relation to the applicant's addressing this item, which is that clearly, the proposition is that a developmental consent order is, for want of a better description, a one-stop shop.

It is a single source of the powers and the standards necessary to deliver a nationally significant infrastructure project.

However, practice has typically been such that there is somewhat of a lattice of other mechanisms of securing and authorising elements of very substantial projects, including the utilisation of Town and Country Planning Act planning obligations or other forms of legal agreement, which can be agreements by way of deeds under seal, or they can be commercial contracts.

And essentially, our interest here is ensuring that we have the best understanding that we can obtain of circumstances under which any mechanism other than the draft development consent order is necessary to secure an element of performance that is necessary to the delivery of the proposed development.

Our initial challenge will be, in those circumstances, if an alternative obligation agreement or means of security is proposed, is there not a basis for crafting an appropriate power within the draft development consent order, so the order remains, if at all possible, as a one-stop shop?

If there are good reasons why that is not true, then we will need to know enough about the content of any additional obligations or legal agreements, contracts, in order to assure ourselves that where it is being argued that weight should be placed on the security that something will be done because of a planning obligation or agreement or contract, that we have the surety that that agreement contains what it is said to contain and has been formed in a lawful manner, has been executed and, at a point when the Secretary of State needs to make a decision, is either enforced or capable of immediately being put into place. So that's why we're asking the applicant to speak to us on these matters, and hopefully, the applicant will address those points.

MR HENDERSON: Thank you, sir. Tom Henderson for the applicant. Just for the purposes of signposting, I'll address this part of agenda item 3 and the next one. Just in response to the remarks you made, thank you for those. And the point is very well understood, and certainly, we're conscious – well, I would say at the outset, notwithstanding our aim of securing as much as possible via the draft DCO and Mr Latif-Aramesh has laid out how the vast majority of commitments required in relation to this scheme are secured by the DCO in its control documents. There will be a need for additional legal agreements, and I can just briefly outline what those are. But I would draw –

MR SMITH: Yes, that'll be great.

MR HENDERSON: – your attention and those of interested parties to two documents in particular which form parts of the application. The first is the consents and agreements positions statements, and that's application documents reference APP-058. And that sets out a full list of the agreements the applicant considers will be required in addition to the commitments made under the draft development consent order, and that includes a need for planning obligation agreements under section 106 of the Town and Country Planning Act.

And, in relation to section 106 agreements, there's an additional application document, which is reference APP-505, which sets out the heads of terms proposed for section 106 agreements, which are intended to be drawn up individually with six authorities and are in progress in terms of their negotiation. And we're mindful of your steer from the preliminary meeting of the value of executing those before the end of the examination process, and certainly, that's our intent. I can take you through each of the various forms of agreement referred to in the consents and agreements position statement, but what we could do is provide a table in our written submissions that just says where do we now stand on this particular agreement or licence, and that might be an easier way of providing you with an update.

MR SMITH: I think that probably would rather than reciting it long form and horribly at this stage. But what it does flag, and forgive me if you've already offered to do this and I've overlooked it, but what it does flag is the possible virtue of taking the consents and position statements APP-058 and iterating it at relevant deadlines in the way that we've asked for the tracking of other elements of process through the examination. Is that something that you'd be prepared to do?

MR HENDERSON: Tom Henderson for the applicant. Yes, sir, I would be happy to do that, so we'll –

MR SMITH: Okay, well I'll just ask that to be noted as an action arising out of this hearing –

MR HENDERSON: Sir, just on that one, I think it's implicit in what you said, but could that be one of the documents that we are permitted to submit at rolling deadlines if there's an update to be given?

MR SMITH: Absolutely correct.

MR HENDERSON: We'll just include it that way. Thank you.

MR SMITH: Yes, and essentially a nil return if there are no updates. Just confirm in the covering letter that nothing has changed.

MR HENDERSON: Agree. Thank you very much.

MR SMITH: If we could capture that one as an action, that would be much appreciated. That's Planning Inspectorate action, not immediately for the applicant. And I will foreshadow that we publish an action list at the end of relevant hearings, and it's something – if a party's asked to do something and then that will be included in the action list. Okay, apologies for interrupting you, Mr Henderson. Is there anything else you need to then cover on 3(e)?

MR HENDERSON: Tom Henderson for the applicant. That was it on agenda item 3(e), so I'll move on to 3(f), which we can cover very briefly unless you've got any questions. Sir, we laid out the – outlined the situation as far as the minor refinements' consultation was concerned at yesterday's issue-specific hearing 1, so just to focus on the implications of that for the draft development consent order.

Most of the changes associated with the three changes that form part of that process would require changes to various plans and management documents, so the changes that would be required to the draft development consent order are limited. But these would entail changes to schedules 8 and 11 to reflect changes to land in terms of reduction of land that we laid out and some minor changes to schedule 1 in relation to the movement of construction compounds, so insofar as drafting of the development consent order is concerned, if those changes were to be accepted, the modifications to the DCO are very limited.

We would just mention at this stage that we have a number of other relatively minor updates to make to the draft development consent order. Following discussions with the Port of London Authority, changes are proposed to be made to protective provisions as well as the drafting of Article 32, which relates to the acquisition of easements and restrictive covenants in the River Thames and to the drafting of Article 44, relating to the applicant's powers to use and close the tunnels. And we're also proposing to address some minor typographical errors that we've identified, so just putting you on notice that those matters will be addressed at the next deadline.

MR SMITH: And thank you very much. And in that respect, the prospective beneficiaries of proposed protective provisions are invitees to this hearing. One of the reasons for having them here today is to enable them to, at the due time in agenda item 4, tell us in very summary terms their side of that story around conversations that might be happening.

And I will flag that one of the very valuable components of an examination of a nationally significant infrastructure project is the ability to hone relevant components of a draft development consent order that bear on the obligations of, or the duties of, or of others or the way that others actually deliver their undertakings or business. And so we will view ourselves as a table around which conversations around the improvement of any such provisions can, of course, take place. Our desire, though, will be to make sure that we land any such amending processes sufficiently before we end up in the draft examination timetable, as it still is. It will shortly be confirmed in the rule 8 letter.

But shortly before we issue our proposed commentary on the draft development consent order, for us to issue such a commentary, we clearly need the applicant to have advanced what it views as its preferred draft DCO which should, at that point, have taken into account the outcome of any ongoing conversations around matters such as protective provisions. And so this is an exercise of trying to land as much as can be landed in order to have a complete and coherent consultation of the parties on the degree to which any outstanding changes might be sought because there are matters in dispute, so that's the way we see this DCO process playing out there.

And I do have to say, Mr Henderson, it is a matter of very considerable reassurance to this Examining Authority, and, I trust, to the assembled interested parties in this room or listening online, that there isn't the likelihood of a substantial number of additional, further changes other than, essentially, minor correcting and responsive changes that are necessary to take on board conversations with key stakeholders because, of course, the closer that we can get to certainty around what the applicant desires – the provisions, the order to be – within the framework of this examination, as early as we can, the better.

Now, Mr Henderson, is there anything else that you want to put on that agenda item? And indeed, if we're then taking agenda item 3 in the round, are

there any summary or concluding remarks that the applicant wishes to put in front of all of us to finish unpacking the drafting approach?

MR HENDERSON: Tom Henderson for the applicant. Thank you, sir, for those remarks. Just very briefly, on the subject of protective provisions that you commented on, I believe we're returning to these later in the agenda.

MR SMITH: We are.

MR HENDERSON: But just to say we believe we've got very well-developed sets of protective provisions through our negotiations with statutory undertakers over a number of years. Naturally, we remain in discussion with them, and so there may be some further refinements to those protective provisions. But we do believe they are well-progressed and, in our view, close to their final form.

MR HENDERSON: Indeed, and again, that is also appreciated. And I will indicate that this is a very different world from the world in some of the early-stage development consent order examinations where protective provisions in the first iteration draft of development consent order were advanced as a blank page. Clearly, we have considerably more than a blank page. However, we will be exercising our diligence, and we'll be probing and enquiring into all provisions as we move forward. And again, we are very, very grateful for the efforts of those bodies, authorities, companies, etc, who have to engage with the applicant around the formalisation and finalisation of these elements of the draft order.

Okay, well, Mr Henderson, on that basis I take it that you have reached the end of the oral submissions that you wish to make for agenda item 3. I've indicated that, with the exception of some very minor interjections that I've already made, I was not proposing to lead questions in that item because it was your item to set out your stall. The questions will emerge, and the debate and the discussion around the table will emerge in agenda item 4, which, as everybody can see from the agenda, is almost directly patterns the order of agenda item 3.

That's a big job, agenda item 4, so what I'm going to suggest now, then, is that it is 11.21. I suggest that it is a little earlier than we would propose normally to take our first morning break, but I think it's a very sensible time to do so. So, if we break now and we resume at 11.35, please, ladies and gentlemen, 11.35.

(Meeting adjourned)

MR SMITH: Good morning again, and welcome back, everybody, to this resumed session of issue-specific hearing 2 into the draft development consent order for the Lower Thames Crossing project. And just before we move back to the agenda, I will note that, during the break, there has been a request from Thurrock Council in relation to the possible timing of an agenda item, and that is in relation to their development consent order senior consultant. Apparently, his availability extends to 3.30 today. And, in relation to the agenda item 4(j), EXA observations on drafting, annex A, there are observations on requirements that Thurrock would wish to speak to, either at the end of the morning or immediately after lunch is their request.

And so my observation would be that we will do our level best to make sure, if necessary by taking items slightly out of order, that that is able to occur. Can I just ask if Thurrock need to say anything else on that request?

MR EDWARDS: Sir, thank you very much indeed for entertaining the request. We would be grateful for the reasons indicated if that item could be brought forward in the agenda, so it could be done while Mr Stratford is here. And we leave it, therefore, in your hands. Thank you.

MR SMITH: Yeah, well in timing terms, what I would indicate is if we don't get to it this morning, I will make sure that it is essentially the first item up in the afternoon session.

MR EDWARDS: I'd be grateful, sir. Thank you very much indeed.

MR SMITH: Any other observations on process or timing from any other party? No. In which case, we will then move agenda items on to agenda item 4, where we are dealing with the Examining Authority's questions on the draft development consent order.

Now, this will be more of a discursive item than the last one. The last one, the applicant essentially had their privilege to make their opening submissions and set out their stall. Here, we will raise the matters that we have set out in the agenda, and we will put questions. We will ask the applicant for in principle responses. We will then go around the room to see if anybody wishes to intervene on those matters. Then, we'll return to the applicant and provide them with a right of reply. Okay, so, hopefully, that's clear.

Now, if we move, firstly, to the high-level issue around the structure of the draft development consent order. And we have heard in opening submissions, and we have hopefully all seen in, essentially, the drafting of the order itself and the explanatory memorandum for it, that the applicant's proposition is that the structure is very well precedented, takes a form common and shared with a large number of equivalent large scale highway draft development consent orders and made development consent orders.

Now, that is broadly a position that appears on its face to be correct, and certainly, the Examining Authority's starting observations on the structure of the order are that the structure of the order is apparently well precedented and apparently reasonably well justified.

However, what I just want to do then is to check in the room to see if there are parties who wish to make in principle observations around structure approach and precedent for it. Do I see any hands rising? I see Thurrock Council, and I see Alex Dillistone, speaking for Port of London Authority, so I'm going to go to Thurrock Council first and then to Ms Dillistone.

MR EDWARDS: Thank you, sir. Thurrock Council have some general observations on this matter, and Mr Standing of Browne Jacobson is going to lead in terms of Thurrock's response. I'd like to hand over to Mr Standing, please.

MR STANDING: Thank you very much. Hello, sir. When we get to item (j) in relation to annex A we have many more comments, but, in relation to the structure of the DCO, broadly, we're happy with it. I think we want to say that we have had, over the last couple of years, quite a lot of correspondence with National Highways. They've mentioned that there have been a number of things which have been agreed. But there are still quite a number of things which haven't been agreed, and we have considerable concerns with. But broadly, we're okay with the structure of the DCO.

MR SMITH: Thank you very much, so we'll reserve comments to finer points of detail as we move through. In which case, I will then ask for Alex Dillistone's comments, please.

MS DILLISTONE: Thank you. Thank you, sir. It's Alex Dillistone from the Port of London Authority. We've heard this morning how the applicant has relied on precedent for its drafting. And we do agree that precedents are useful and necessary, and the need for them is set out in advice note 15.

Now, the applicant has looked to its own highway DCOs as precedent and to DCOs on the River Thames that are very much higher upstream than the location of this project, so what that means is that the precedents used do not take into account the size of the river at this location, the very much higher traffic in this location and the high volumes of river trade, so, in our view, in terms of precedent, we shouldn't lose sight of the fact that DCOs are flexible, and they need to adapt to the specific circumstances of a project and its geographic location. So we recognise the need for precedent, but also the fact that, because this project is a NSIP and because it is a nautical project, it is in some ways unprecedented, and therefore, solely relying on precedent is not always the appropriate approach.

Now, ports in England and Wales handle 95% of the total volume of UK trade and 75% of its value. Tilbury and London Gateway make significant and essential contributions to UK trade and the economy in addition to their environmental benefits.

And just to give a background to that, over 52 million tonnes of freight was handled at terminals within the port of London in 2022. And London Gateway and the Port of Tilbury combined handled over 50% of this trade, so unless adequate protection is provided for the PLA, and unless the precedent is adapted to these specific circumstances, we are going to have concerns about the PLA's continued ability to dredge in the river to an appropriate depth. And current and future access to ports in London will be threatened, which will restrict the supply of food and other essential goods into this country. Thank you.

MR SMITH: Those are clearly made submissions and, to a degree, anticipate one of the questions that I was going to ask under agenda item 4(b) in relation to the power source and their relationship to the project, where we get into the necessity of talking about one development consent order and three different types of NSIPs. And we then start to peel back the onion on this question about the degree to which precedent needs to perhaps broaden and take into account the fact that we have drafting sources in energy-made orders that might be relevant. I take it from your submission there that – are you suggesting that there may be elements of ports-made orders that might be relevant, or are you asking just for a more creative approach to be taken across the piece?

MS DILLISTONE: There's two elements to it. There are clearly, as you know, sir, tunnels that have been placed under the River Thames. There have been several projects recently where there have been tunnelling projects underneath the River Thames. But those have been further upstream of this project, so there will be elements of those DCOs that are relevant here. But we also need to take into account the fact that the river at this location is very much wider and that there is a different volume of traffic and also a different type of traffic further downstream. There's a lot more trade that is going into Port of Tilbury and into London Gateway.

MR SMITH: Yes, so, in other words, the essential nature of safeguarding the Thames as a commercial shipping way is your focus here. Okay, I'm going to then just check around the room to make sure that we don't have anybody else wishing to speak on this very initial broad-brush item and just check with my panel colleagues. And I'm not seeing anything immediately further, so I am then going to revert to the applicant for a response.

MR LATIF-ARAMESH: Many, many thanks, sir. Mr Mustafa Latif-Aramesh for the applicant. I just wanted to make a few brief comments in response to Ms Dillistone's helpful remarks there. The first relates to the nature of the project and its unique features and how that's featured in the order itself, so, as Mr Henderson said, we've had regard to precedent. But we've also considered whether it's appropriate for this specific project, and there is, indeed, project-specific variation. We're grateful to Ms Dillistone for commenting over the last few months on Article 48, which relates to the protection of the tunnels. That article is not precedented and has been developed in productive collaboration with the Port of London Authority.

On the subject of other relevant orders, I would draw your attention to paragraph 5.2 of the explanatory memorandum in which we set out that, in addition to looking at highways NSIPs, we've also looked at transport and works act orders which relate to underground and tunnel projects, including river projects, so we've taken this in the round. We've adapted things where relevant and necessary to this particular project, but as we've said, we've taken the approach of using precedent as a starting point and then fine-tuning as we go along.

And then there were two other comments I'd just like to make. The first is on the depth of the tunnel, so we are awaiting comments from the Port of London Authority on some provisions which we've sought to provide that should give comfort on that particular point.

And then, on the more general point of how has the order taken into account the potential use of the river, I would just make one comment, which is, unlike some other orders, the extent of physical interference above the river bed is limited. So you'll note in the land plans that, for the vast majority of the extent of the tunnel area, the only powers that the order seeks are those associated with subsoil works and subsoil acquisition. That means there's no power to take temporary possession of the surface of the River Thames.

The only circumstances where it is anticipated that powers under the order would be exercised on the river bed relate to a temporary outfall, a permanent outfall and other ground investigation works, so, on the extent of interference in the river generally, we've had regard to that in drafting the order and making sure matters are appropriately controlled. Thank you, sir.

MR SMITH: Thank you very much. Actually, on this matter, and apologies for reverting to the applicant before I raise it, but there is a lurking supplementary. And it's probably best dealt with here rather than in any of the more detailed subsequent agenda items, and, Ms Dillistone, it's probably one for you. And that is the broad question about, I guess, the strategic future of the navigation channel that is the Thames and whether there is any need to somehow safeguard the prospect of dredging works or deepening works in this part of the Thames that might have any possible future impact on the tunnel. In other words, does the tunnel itself express some commercial constraint that needs to be considered at this stage?

MS DILLISTONE: Thank you, sir. Alex Dillistone for the Port of London Authority. That is absolutely right, and you've anticipated some of our submissions that we were planning on making later on in the day. We are in discussions with the applicant about the depth to which the tunnel, the navigational channel, can be dredged. And there is clearly a need to balance the fact that the applicant intends to put a tunnel underneath the river with the fact that the river will need to be dredged to protect future commercial operations.

As you will know, as some people will know, in submissions that we have made previously, vessels are getting deeper. They are getting larger. And there

is an expectation that over the coming years that the river will need to be dredged to a deeper depth. We are in discussions with the applicant about these, and we hope that we'll come to some kind of arrangement about the tunnel. But, at the moment, we do have concerns about the way that all the plans fit together with the need to dredge to a certain depth, so those who will be – we can explain it in further detail later today and in future hearings. But we are in discussions with the applicant about them.

MR SMITH: Thank you very much, Ms Dillistone. And, look, I will observe that in a long past previous life, I spent a year of my life chairing an enquiry into the deepening of navigation channels into the River Yarra at the Port of Melbourne, which are probably similarly scaled set of port operations to the ones that we're dealing with here in the Thames. Questions of strategy about access to, availability, development of and maintenance of a major commercial shipping route are important questions. And so, not necessarily for this hearing, but some point in terms of the framework of security around that in the order, it is something that we are going to need to discuss.

I will return to Mr Latif-Aramesh on that point because I'm very conscious that I interjected that after he had made his responding submission.

MR LATIF-ARAMESH: Thank you, sir. Mr Mustafa Latif-Aramesh for the applicant. Bearing in mind what you said about dealing with this later in the agenda, I just wanted to make three points. The first was to agree with Ms Dillistone. We are in discussions. The second was to say that we anticipate and are confident that we can provide the Port of London Authority the assurance which they are seeking.

And then the third, in the interim period, we just draw your attention to paragraph 99 of the protected provisions for the benefit of the Port of London Authority, which specifically require that the design and construction must maintain a depth of 12.5 metres, and then, the next paragraph down, requires a half a metre over-dredge, so we're confident we're refining and discussing the details of those provisions, but we are confident we can reach an agreement on that point. And, from our perspective, the design of the tunnels is such that the future aspirations of the port that you've alluded to are not impacted. Thank you.

MR SMITH: Thank you very much. Okay, I think, at this juncture, we should move on because that was a segway into detailing what was otherwise a very high-level agenda item, so let's move then down the detail staircase into agenda item 4(b).

Now, we've already stepped into this territory in issue-specific hearing 1 yesterday. But for those who are present today and were not present yesterday, the issue that was surfaced, of course, is the fact that this is a development consent order that seeks to authorise more than one type of nationally significant infrastructure in that it seeks to authorise, principally, a highway. And its primary justification is to authorise highway NSIP works, but it is also seeking to authorise a number of utility diversions that are said to be of sufficient scale such that they meet the Planning Act 2008 definitions as NSIPs in their own right, that we have energy NSIPs, which are gas transmission and electricity transmission NSIPs.

Now, there are a – and I indicated when we started to discuss the strategy dimension of this yesterday, that this is an area where angels fear to tread. And we did, around that table, have slightly different views from two KCs about what was, in fact, capable and lawful of being provided for in the order, so I think we need to return to that as a harder question at this juncture, then to ask for views about how the authority for the provision of these three different types of NSIPs are provided. Is it appropriate and lawful to provide for those in a single order? And we have already had a clear view expressed by the applicant that they feel it is and that they also believe the approach taken in this draft to be precedented. But we have other views.

There's a very interesting question, then, about decision-making and the power of the relevant Secretary of State as decision-maker. And just testing the silly question here, are we in circumstances where there is any possibility of needing Secretary of State decisions by relevant Secretaries of State in response to both the energy dimensions and indeed, the highway transport dimension of this order? So I am, I think, going to go to the applicant first just to ask them to speak, if they wish to, further on the technical drafting, DCO drafting, dimensions of this point. I'm then going to go around the room, and then I'll return to the applicant for a reply.

MR LATIF-ARAMESH: Thank you, sir. Mr Mustafa Latif-Aramesh for the applicant. On your final question there, 'Is there a potential for multiple Secretaries of State

to be the decision-makers?', we can submit this because it's already in the public domain, but there is a letter which was sent by the Department for Transport, and what was then BEIS and is now – has a new name, DESNZ.

MR SMITH: DESNZ, yes.

MR LATIF-ARAMESH: And in that letter, they confirmed that the DfT will take the decision, but they will consult as appropriate with the relevant department, in this case, DESNZ, as the department which has the functions raised into energy NSIPs, so that deals with the latter part of your question.

MR SMITH: Yeah, thank you.

MR LATIF-ARAMESH: On the first part of your question, which is, 'How has the order secured the powers in relation to multiple NSIPs?', the first point to make is that the approach to including multiple NSIPs in a single order is precedented. A couple of examples, most recently, the A428 was found by the Secretary of State to include both the gas pipeline NSIP but also the highways NSIP. There are other examples which are less relevant but, nonetheless, include multiple NSIPs, so, for example, the Galloper Wind development consent order as well as some of the rail freight DCOs, which include both highways and rail freight NSIPs, so I think that deals with the general question that you asked.

And then, on the more particular one, which was, 'How has the order been drafted in order to do this?', schedule 1 contains – schedule 1 to the order contains the relevant works. And the preamble you'll see in schedule 1 includes the references to the relevant sections of the Planning Act under which energy NSIPs are listed, namely, sections 20 in connection with the gas pipeline and section 15 in connection with the electrical line NSIPs.

MR SMITH: Yeah, okay. And that's clear, and we certainly note the technical starting point there. We do get into this question that we touched on yesterday around angels fearing to tread again, but this question about whether it was ever possible that anything that was capable of satisfying the statutory definition of an NSIP in its own right was something that could be associated development in relation to another primary NSIP. And there was a proposition put by yourself, Mr Latif-Aramesh, that the answer to that question was a clear no and that, in fact, attempting to authorise and deliver something that met the statutory definition of an NSIP in those circumstances would, in fact, constitute a criminal offence,

whereas we did have some partially concluded submissions from others that that may not be the case.

Now, I, again, wanted to flag that if anybody wants to raise that and put in place good argument for it, then we don't need to go much further into the examination than this hearing in order to do that. And Mr Bedford yesterday, Mr Bedford KC – apologies – did suggest that there might be some virtue in essentially senior legal representation just briefly round tabling and working out whether there is an agreed position on this point, and that struck me yesterday as being a potentially very valuable way forward.

But I'm going to invite others in on the point and then see where we get to, so can I have a show of hands? Who wants to speak on this item? Well, Mr Bedford, unsurprisingly. Mr Humphries KC and, obviously, the applicant will have a right of reply. And I'm seeing Thurrock Council as well, so I think let's go to the three councils. I will start with Michael Humphries. I'll go to Michael Bedford. Then I will go to Thurrock Council. And then I'll come to the applicant.

MR HUMPHRIES: Michael Humphries for Kent County Council. So I think it's pretty clear, as National Highways have said, that a single application can include more than one project requiring development consent –

MR SMITH: I don't think that's probably the problem, so to speak. I guess we're now looking at this associating development versus specific headline authorisation point as being maybe the most difficult one that we face.

MR HUMPHRIES: Yes. I think my own view on this – normal practice would be to make sure that the other project is identified in the schedule as being NSIP. If it is NSIP, the guidance – the 2013 DCLG, as it was, guidance on associated development, paragraph 9, says, 'A single application can cover more than one project requiring development consent under the Planning Act,' and so it clearly can do that and it says next, 'Applicants are encouraged, as far as possible, to make a single application where developments are clearly linked.' That's clearly what National Highways have done here. The point is how is it described?

I mean, it might be said by people, ultimately, as long as everything is assessed, does it make a practical difference? I won't comment on that, but I would have thought the simple solution, if something is a separate NSIP, is simply to identify it in schedule 1 as an NSIP in the description, and, as I think,

again, National Highways have pointed out, that's something that's pretty well understood in other DCOs that have been made by the Secretary of State. That's the only thing I would comment on at this stage.

MR SMITH: Thank you very much. Mr Bedford.

MR BEDFORD: Thank you, sir. Michael Bedford, Gravesham Borough Council. Sir, as we see it, the development consent order doesn't directly say that anything is associated development. It has chosen not to do so, for the reasons explained in the explanatory memorandum. We don't have a problem with that. We certainly endorse the view that a single DCO can authorise more than one NSIP, and the only point of divergence between – yesterday was on a very narrow point, which was just if something was an NSIP, could it also be associated development?

On that, views differ. As you indicated, we have suggested an offline discussion to see if we can reach a common position on that. But, essentially, since this particular DCO doesn't, as it were, refer to anything as associated development, it's a slightly moot point as to whether in fact the examination needs to even grapple with that issue, but, as I say, we're very happy to liaise with others with expertise on this subject, and hopefully present you with what will hopefully be a joint note at probably deadline 1, which just sets out what people think about that.

MR SMITH: Well, look, if anybody specifically objects to that course of action – I mean, I did indicate yesterday it struck us as an eminently practical and sensible one, and a joint note at deadline 1 could be captured into the action list for this event. As I say, unless anybody objects to it, in which case they can say so afterwards. Okay. Thank you very much, Mr Bedford, and I will now go to Mr Edwards KC for Thurrock.

MR EDWARDS: Thank you very much indeed, sir. Douglas Edwards KC, Thurrock Council. Can I just deal with two preliminary matters? Firstly, the point that you raised about the potential for different consenting ministers to be involved in respect to different aspects of the project – so on a preliminary basis, I think we agree with what is said on behalf of the applicant. I certainly have not seen the correspondence that was referred to by the applicant. We'd appreciate the opportunity to look at that, but our preliminary view is that the applicant is right in the submission they've made in that respect, and if that changes, of course, we will make that clear in deadline 1 or otherwise.

Secondly, we agree with all of the other submissions that have been made to you on this topic, that it is perfectly lawful for an application to be made for a DCO and for a DCO to be granted in respect of more than one project. That seems to be common ground.

Thirdly, as a matter of principle, in terms of the way that National Highways have identified and seek consent for the utility works within the order, we are, in principle, content with that approach, and that it is lawful, and effectively the way it has been done ensures that matters that are material to the merits and the impact of those particular aspects of the project, namely the utility divergence, are before you and will be examined.

So, like Mr Bedford, the extent to which these matters are probably to be identified as NSIPs in their own right, or as associated, becomes, we would suggest, rather academic, in the sense that the way in which it's actually addressed in the order seems to be lawful, and we are content, in principle, with it.

But beyond that, sir, if you feel it necessary to consider the matter further, in terms of the issue that you raised yesterday and again today, about whether the utility works can be associated development, then we will obviously participate in the preparation of the note, and provide that to you in due course, but the headline response of Thurrock Council is, in terms of the approach that is taken in the order, in principle we consider it to be lawful and acceptable.

MR SMITH: Thank you very much. Two matters arising from that, in relation to the offer by the applicant to put in the correspondence from the other secretaries of state. Certainly my understanding is it isn't formally in the examination library yet, so it would be excellent if it was put in at deadline 1, and then everybody had the opportunity to comment on it, and I would like to capture that as an action in our action list.

Secondly, returning briefly to this question about associated or not associated, and indeed the operation of the relevant national policy statements, because there is a link between those two positions, and whether one is working with essentially a primacy in relation to the national networks NPS, and whether one is working to an equality. Now, that again can remain between multiple NPSs. Now, that again can remain an academic point, unless we move in to a point where we actually find ourselves with policy objectives and conflict.

Now, it's the applicant's starting submission to us. We have noted that there are no such conflicts. So yes, in those circumstances, the proposition that this is an academic point is likely to be true, but I think in terms of some sort of joint submission on this, we will be continuing to think carefully in that space, because of course an examination is a complete process and we don't yet have any formed or concluded views on particular aspects of policy compliance that would lead us to a view about whether we had any conflict that needs to be resolved.

So I guess the question of need about whether we look at things through a framework around associated development, or even can, is something that could remain entirely academic throughout the examination, or maybe isn't, and that's the only reason I'm raising it.

MR EDWARDS: Yes, sir. Can I firstly respond briefly with some initial thoughts on that particular point? This is a matter, you recall, that I touched on yesterday. All of Thurrock Council's position is, in terms of the application of policy statements, is that, whether regarded as being associated works or otherwise, it is necessary for you to examine the utility works, which are NSIPs in their own right, by reference to the relevant policy statements that apply to those types of works, and, essentially, we will be submitting that, in order for the DCO to be granted, there would have to be consideration of the various elements of the project, whether NSIPs in their own right or regarded as associated works by reference to those particular policy statements.

MR SMITH: Okay. That's a clear submission too, and conscious that we went into the detail of that after we've heard from Mr Humphries and indeed Mr Bedford, if they wish to put anything further to us in writing at deadline 1, please. I will now then return – oh, Mr Humphries. Is that your hand back up now by accident or by design?

MR HUMPHRIES: Pure accident, sir.

MR SMITH: Accident. Excellent. In which case I will go back to the applicant for concluding remarks on its side of this.

MR LATIF-ARAMESH: Thank you, sir. Mr Latif-Aramesh for the applicant. The first point on the letter that I referred to between the DfT and what was then –

MR SMITH: And is now – yes.

MR LATIF-ARAMESH: Yes. We're more than happy to provide it, but as I mentioned it's in the public domain, but we understand you'd like it to be on the record, so we're happy to provide it.

MR SMITH: Yeah, I think for matters such as this, there needs to be clarity that it is essentially an examination document, because there's all manner of stuff on the public domain. Its relevance is not necessarily apparent to us unless it's argued in front of us and then put in, so let's have it in. Okay. Is there anything else that –

MR LATIF-ARAMESH: Yes. Sorry I – just three more comments, sir. The first is on the joint note that you might request once you've had time to consider the point. We're happy to collaborate, but as far as the applicant's position is concerned, we agree with Mr Edwards KC that this might be an academic point because the application contains the relevant powers, it has assessed the relevant utilities works, and the planning statement appendix B contains consideration of the national policy statements relating to the energy works, which could be NSIPs in their own right, and which the applicant considers are NSIPs in their own right.

On the question of how the order is drafted, we don't need to get into this detail if you don't want us to, but as we've explained in the explanatory memorandum, we haven't disaggregated associated development and NSIP works, but that bears upon the question that I think you're asking, which is, 'How is the order being structured on this point?' But I won't go into that in detail if you'd prefer me not to.

MR SMITH: Yeah. Well, actually, there is a point of some detail in relation to that that I think we do need to explore, and I was actually planning to deal with that – I mean, it would nest under this agenda item, but it would equally nest under agenda item 4(c). Look, let's throw it onto the table right now, and that is that we have got, obviously, no disaggregation, as you say, between the principle works and associated development. We then also have a substantial body of what's best described as 'general/ancillary works,' that are identified as being 'works in connection with the construction of any of these works, further development within the order limits consisting of…' and then they are recited, and this is in schedule 1.

Now, I guess there is an element of a background question about those, which is that any 'further development work within the order limits' is a very, very large area of land, and we do potentially have specific activities that could occur as ancillary works that might be point emitters, for example of noise or dust or other air quality emissions, generate specific demand for works traffic, using particular accesses to work sites, etc.

Now, one of the conversations that has been had in various other previous examinations is about the degree to which an authorisation for general ancillary works that can be carried out within the entire order land sometimes might need any greater level of geographical specification to make sure that the effects of those works remain within the worst-case identified in the environmental statement, and here, I think, the issue is a Rochdale envelope one. Can we assure ourselves that we don't have point emissions that could, because they were tested for the purposes of the ES, as arising in location A, but in fact the order authorises them to occur in any location – could end up being materially more substantial adverse in a place other than was assessed in the ES?

Complex question. Hopefully relatively simple issue, and it really does come down to the fact – are there any of those general or ancillary works listed in schedule 1 that need to, essentially, become located works, shown as numbered works, included on works plans, and in order to make that they don't exceed the assessed Rochdale envelope for the project?

MR HENDERSON: Thank you, sir. Tom Henderson for the applicant. I'll address you on this one. I think the short answer is, 'No,' and there's three reasons why we give that answer. Firstly, with reference to schedule 1, you'll note that the ancillary works have two important caveats drafted into them. Firstly, they can only be exercised for the purposes of, or in connection with, the other works specified in the order, and you'll have seen in schedule 1, we have an extremely detailed list of what we call the 'numbered works', to which those lettered ancillary works would need to connect. So that's the first point to make.

The second point to make, and this was an unfortunate omission from the application version of the order that we corrected in the first turn of the document, when we submitted the updated version as before us in this examination – sorry, in this hearing – is that the lettered ancillary works are limited to those which would not be likely to give rise to any materially new or

materially different environment effects. That important caveat which is well-trodden in other DCOs is now included.

And the third point to make is that the exercise of any of those ancillary powers is still subject to all the controls that we've heard about in schedule 2, so the various plans and control documents would need to be adhered to in the exercising of any of those lettered works. So we consider they provide an appropriate degree of flexibility to deliver the works, in connection with the extensive set of controls that we've included, and, again, what we've included there is heavily precented. We don't think there's anything new or novel in what we've proposed. Thank you.

MR SMITH: Okay. Now very conscious that that was an item that could have been introduced in the following agenda item, as I'd closed off from other speakers. So I will just ask if anybody else wishes to speak on that very specific point, and I am seeing Michael Bedford and I'm also seeing Douglas Edwards KC for Thurrock. So I'm going to go to Michael Bedford then Douglas Edwards, then I'll provide the applicant with a final opportunity to respond to those points, and then we will, I promise, move on from this agenda item.

MR BEDFORD: Thank you, sir. It's a short point – sorry, Michael Bedford KC for Gravesham Borough Council. It's a short point in relation to the second of Mr Henderson's rationales for effectively saying to you that this was a non-issue. He drew your attention, of course, to the caveat of 'not materially different' in relation to ancillary works, in terms of being subject to environmental assessment [inaudible] precedented.

Well, that's fine up to a point, but of course, this particular DCO separately does have its own bespoke definition of that phrase, which departs from precedence, because the bespoke definition allows things to fall outside of that phrase if they are said to be, as it were, lesser effects, and our concern – and we'll obviously reflect on this further [inaudible] written submissions, but our concern is the risk of knock-on consequences if, in relation to one environmental topic, it's being said, 'Well, we're going to do this in a way which is less intrusive, so we therefore are able to say that we're not materially different.'

The question for us is: but what about some other environmental implication? And it's, as it were, joining up the different environmental implications, and so we just have a bit of concern about that. We want to follow

that through, but we're not, at the moment, on the same page as the applicant as to whether, in fact, there is sufficient protection there.

MR SMITH: Indeed, and that's a point that should also arise in discussions on item (j), in hopefully a little more detail. Can I then hear from Douglas Edwards KC?

MR EDWARDS: Yes, sir. Douglas Edwards KC. My hand was up still from the last item. We don't have anything to add at this stage on this particular item. We've heard what Mr Bedford KC has said on behalf of Gravesham, and so we'll take that away, and if we have further points related to this matter, we'll deal with at deadline 1.

MR SMITH: Thank you very much. In which case I will go back to the applicant for any final response to Mr Bedford on that limited point.

MR LATIF-ARAMESH: Thank you, sir. Mr Latif-Aramesh for the applicant. We propose to deal with the interpretive provision cited when we come to it under agenda item (j), in annex A, if that's okay.

MR SMITH: That's absolutely fine. We will go there. Okay, in which case, we are then going to move on to agenda item (c). We're dealing here with some kind of intersecting sects, some overlapping circles, because there is a degree to which item (c) and (d) – the relationship between the DCO and plans securing construction and operational performance, and obviously the relationship between those and the requirements set out in the draft order, and the discharging role of the Secretary of State and other local and public authorities – absolutely intersect. I mean, I would be content to take these two items together so that we don't artificially constrain the conversation. Can I just see: by show of hands, does anybody object to that proposition?

I'm not seeing any hands, so on that basis, ladies and gentlemen, we will cover jointly the relationship between the order and plan securing construction and operational performance, and the discharging role of the Secretary of State and other public authorities. It's fair to say that the examining authority's initial questions fall clearly into the 4(d) class, the question about the discharging role of the Secretary of State. The applicant has made general submissions to us that explain the relationship between the draft development consent order and the plans produced and approved beneath it. The process of iteration of those plans and the relationship between stages in DMRB is understood and appreciated, and in principle, the approach taken there is clear to the examining authority.

Now, I'm willing to hear from any party in the room who, again, thinks that the approach taken there – the setting out of issues, in particular plans and documents, is not well justified, not made out well, clearly explained, etc.

Very happy to hear those submissions, but before we do, if we go on to the discharging role of the Secretary of State – we've had it very clearly explained that we are in a different world in relation to particularly Highways development consent orders, in that a particular resourced unit has been set up, supporting the Secretary of State to enable the Secretary of State to discharge a range of detailed provisions in highways orders that would not be the case in relation to other development consent orders arising in, for example, energy NSIPs, because there, there is a much stronger tradition of matters being discharged more broadly by either local authorities or relevant expert authorities or bodies such as the Environment Agency.

Now, what we need to check here is that there is a clarity about essentially separation of powers and duties between National Highways as the proponent, the undertaker of this order, and the Secretary of State for transport as the discharging body, that there is essentially a form of governance or probity separation between the operation of the one function by National Highways and the discharging function by the Secretary of State.

To be clear that the Secretary of State is adequately resourced and expects to perform these duties, now we've had submissions on that from the applicant who says that they are, and indeed we've had clear explanations here this morning that I must admit answer a number of my subsidiary questions about the degree to which the Secretary of State will be provided with what amounts to a form of consultation report when discharge is being carried out, so the Secretary of State is alive to the commentary on discharge issues that have been made by relevant consultees and interested parties.

What I think I'm going to do here is I'm going to go round the room first and then return to the applicant, because I do think the applicant's in principle positions were made very clear in agenda item 3. So unless the applicant particularly wants to reexplain or add detail in relation to either 4(c) or 4(d), before we go to the room, in which case, raise your hand now, I will ask other interested parties who want to speak on either of these two points to raise your hands.

And I am seeing Michael Bedford, and I am seeing also Douglas Edwards KC for Thurrock, and I'm seeing Mr Matthew Rheinberg for Transport for London. Okay. In which case – and I do see also Daniel Douglas, who is team leader in transport planning for Havering. Just to ring the changes a little, what I'm going – and indeed Paul Shadarevian KC for DP World. So just to ring the changes a little, what I'm going to suggest we do is we have a London focus here, on the start of this item. I'm going to go to TfL first, if that's okay, Mr Rheinberg, then to Daniel Douglas for Havering, and then I will go to Paul Shadarevian, and then I will go to the two main interested councils. I'll go to Thurrock and then to Gravesham. So can we start with Mr Rheinberg?

MR RHEINBERG: Thank you, sir. Matthew Rheinberg, Transport for London. This is a very brief point, really. Transport for London has no objection to the Secretary of State being discharging authority. It's about the consultation that happens, and to make sure that the relevant authorities are properly consulted. So Transport for London's concern is that for several of the requirement, the relevant highway authority isn't consulted as currently drafted in the DCO on matters which are relevant for assets that it will be responsible for that are delivered for the project. So that's basically the key point I wanted to make.

MR SMITH: And that's a pretty powerful point, and a proposition – we won't deal with it until the end of this item, but would it be worth having an action that anybody who is the relevant local highway authority who believes they ought to be specifically named as a consultee in those terms could write in by deadline 1, so that we have a clear request list on that point? Others can comment on that as they wish. Let me then go to Daniel Douglas of Havering.

MR DOUGLAS: Good afternoon, sir. Good afternoon, everyone. Daniel Douglas, London Borough of Havering. Firstly, I'll just endorse from Havering's perspective what Mr Rheinberg has just said from Transport for London. I won't repeat it, as you've indicated earlier, sir. The point that I would want to make is around the length of time that interested local authorities, whether they be local highway authorities or local planning authorities, may get, either to approve certain management plans, in terms of consultation before they go to the Secretary of State for approval, or indeed any other matters within the requirements.

So in particular requirement 9 which concerns the historic environment, and subparagraph 5 in that particular requirement, where it states that 'no construction operations are to take place within 10 metres of the remains, referred to in subparagraph 4, for a period of 14 days from the date of any notice served, under subparagraph 4, unless otherwise agreed in writing with the Secretary of State.' From Havering's perspective, we feel that 14 days is too short. Particularly from potentially a resource point of view internally, and we're going to be putting forward in our local impact reports in more detail that we feel that length of time should be 28 days. Thank you.

MR SMITH: Thank you very much. In which case then, can I now move to Paul Shadarevian KC?

MR SHADAREVIAN: Sorry, sir. Having problems with my computer. Can you hear me now?

MR SMITH: I certainly can, and I can see you too, Mr Shadarevian.

MR SHADAREVIAN: Thank you very much indeed. I'm hoping this is the right point to raise this. It might be better raised at the end of the session, in relation to any other business, but we are following our submission yesterday, of course, concerned about what is not in this order.

And so it's possible that this might be dealt with under agenda item (c), but I raise it now, just to signpost this as an issue which we need to discuss in due course if in the event you and your fellow members of the panel should find that some kind of mitigation is necessary in relation to highways which are outside the scope of the currently drafted order, and what the implications of that might be, in terms of regulating the operations, and what mechanisms might be legally applied through the order or some other external process, in relation to the securing of those works in a timely fashion, bearing in mind of course that the A13, at the Orsett Cock, at the east of that, including the Manorway junction is a classified, not a trunk road, that any works that might be required to be done to improve its performance might well include also side road orders, which would need to be confirmed by the relevant minister.

There may also be the need for the acquisition of land, which has its own consequences. All of that together has consequences in terms of the timing of the delivery of those works, whether in fact, as a matter of judgement, there is a reasonable likelihood of them being delivered, and if so in what kind of

timescale, and of course that in turn has implications for the assessment of environmental effects, having regard also to the Rochdale envelope.

So all this raises many, many further considerations which could be triggered if you and your colleagues come to the view, sir, that there needs to be some form of mitigation to avoid an effect which you find is unacceptable. So I just raise that now as an issue which we need to explore further, but I don't want to interfere with the progress of this agenda, nor the way in which you wish to deal with it.

MR SMITH: Mr Shadarevian, I'm grateful, because this was a good agenda item to bring up, just as much what is missing as what is present. You've brought up something that in your view is missing. It's now on the table. The job in that respect is done. We will give it careful consideration, and direct the applicant to respond to it immediately in this item, and then if it needs further work as we go through, then it's on the list now. So thank you very much.

Now, as we move on, and before I go to either Gravesham or indeed Thurrock Councils, I do note that we have the Environment Agency's lawyer, Carol Bolt, who has raised her hand in the time between when we commenced this item and now. Given that we've been hearing from the London bodies and other authorities and undertakers before we move on to the councils, Ms Bolt, are you able to speak to us now?

MS BOLT: I am, sir. I'm Carol Bolt for the Environment Agency. Sir, it was just to put a marker down. I'm mostly in listening mode today, which I know is a bit unusual for a lawyer, but I don't have a client with me today. Although, I'll be able to speak on issues such as the protected provisions a bit later in the discussion.

But there are one or two points that are being discussed which the Agency may wish to comment on in our written representations, which are obviously a little way off yet, so I wouldn't want to lose the opportunity to do that by not raising my hand, and so I thought I'd just mention that as a general point, and the other thing is that we may have some comments to make about the period of time for the Secretary of State discharging issues, because sometimes those timescales affect us as well. So I just wanted to put that marker down if that's alright.

MR SMITH: Okay. Right, in which case – ah, we seem to be having hands arising from a number of participants, in that I have also seen a hand from a Mr Mike Holland. Mr Holland, are you with us?

MR HOLLAND: I am, sir.

MR SMITH: Okay, and you are an agent for a group of affected person landowners. Again, I will come to you now before I go to the main councils, because they may wish to pick up on points that others, such as yourself, make.

MR HOLLAND: Thank you very much. I'll just make one general observation, as most of my observations today will be where they're made. Under schedule 2 requirements, and its clarification perhaps the applicant might come back to us on, and I'm hoping I'm reading this correctly.

'The reference to consultation by the undertaker with the relevant planning authority relates to those matters under requirements.' When I look through requirements, and I take, for example, fencing or surface and foul water drainage, it occurs to me there may well be items there where landowners with retained land adjacent to land which has been permanently acquired would also need to be consulted on changes where those types of works may impact on the operation and the use and the retained land in their ownership, and I'm asking the question as to whether that consultation is restricted to the relevant planning authority, or whether the DCO wording should widen the scope of that consultation at that time in order for the Secretary of State to then discharge those requirements.

MR SMITH: Do you have a proposition at this stage? This may be too detailed. It may be a matter that you want to come back to at deadline 1 in writing, but do you have a proposition at this stage as to how broad it should be, and whether there are any specific entities missing that you suggest be included?

MR HOLLAND: I'm afraid my focus is probably rather narrow, in respect to those landowner clients I represent, but of course I also represent those that have an interest in their land, be that development partners, where there may well be subsequent development that comes forward, either in parallel to the construction of the LTC, or indeed post-construction.

MR SMITH: So is that a proposition that there should be a form of general notice and general consultation?

MR HOLLAND: That's correct.

MR SMITH: Okay. Thank you very much. That's clear. Right, what I am now then going to do is, as I indicated, I'm going to go to the two councils. So I am going to go to Thurrock first, and then I'm going to go to Gravesham. So Thurrock, please.

MR EDWARDS: Yes, sir. Thank you very much indeed. Douglas Edwards KC for Thurrock Council. There are going to be a number of contributions from the Thurrock team on this matter. I'm going to invite Mr Standing to address you first on these agenda items, followed by Mr Stratford, and then I'll pick up any final points. So if I could hand over on behalf of Thurrock to Mr Standing, please.

MR STANDING: Thank you very much. So like you said, there's two main comments I've got in relation to those two agenda items, (c) and (d). In relation to (d) and who the discharging authority is, Thurrock Council is strongly of the view that the discharging authority should be a council.

We believe that the locally elected members, the experienced officers, the experience of dealing with similar applications – they understand the area. It's precisely because of the complexity of the project that actually it should be the council who's responsible for this, because the effect of it not being the council is it's got to explain what is a very complex set of circumstances every time to the Secretary of State.

A number of other parties have already raised concerns about consultations, how adequate that'll be. It's of particular concern to the council, because [inaudible] it's effectively having to go through and make the decision on each occasion, and give all the necessary information that will be required for the Secretary of State. I note some of the concerns by the applicant about geographical issues, a number of different local authorities, but geography is actually in favour in relation to us here, because 70% of the project is going to be in Thurrock's area.

It makes sense that Thurrock is the party which is discharging most of these. It avoids unnecessary expenditure, allows us to be coordinated in a number of different things which are being discharged and how we're approving certain documents, and we appreciate that some of these will be trunk roads, in the same way that the Secretary of State will be making decisions in relation to local roads, and that there is a requirement for us to do this in consultation with

relevant stakeholders and relevant parties, but we do believe that Thurrock should be the party who is discharging.

We note the comments on precedence. We note that National Highways DCOs, in recent years, have primarily had the Secretary of State as the discharging authority, but that's not standard across all DCOs, all Secretary of States, and we think just because something has been done in the past doesn't mean that we should be following it necessarily here, as advice note 15 sets out. We need to determine what's appropriate in each case.

MR SMITH: Yeah. Mr Standing, can I just ask a hypothetical that flows on from that argument that you've put?

MR STANDING: Of course.

MR SMITH: And that is that say you were to successfully persuade us that that was the best approach, and Thurrock became, essentially, the main discharging body for matters within Thurrock's geographical area – now, we don't know what Mr Bedford's going to say in five minutes' time, but say his view is that Gravesham oughtn't or doesn't wish to be in the same position. Would it be tenable, in your view, to end up with an order that took one approach to the geographical area of Thurrock and a different approach to the geographical areas of other local authorities, or are we looking for consistency? If you win this 'argument' in inverted commas, does that mean that each individual local authority needs to be the principle discharging authority?

MR STANDING: I'm obviously acting on client's instructions here, but it's obviously our view that it would be preferable for all local authorities – for all discharging authorities to be the local authority, simply for the reasons that I set out. They understand their areas. They understand how it should be discharged. I understand your point, sir, that when it's disjointed it doesn't necessarily work as smoothly, but considering 70% of the area is in Thurrock, we still think we would make it work in relation to our area. But I think I would strongly advocate that all local authorities should look to be the discharging authority in relation to these matters.

MR SMITH: That's clear. Now return to your main submissions.

MR STANDING: Okay. Thank you. So I think I've covered what I wanted to mention in relation to the discharging authority, unless anyone else in my team wanted to comment on that before I move on to the next point.

MR EDWARDS: Yes, sir. Can I, before Mr Standing moves on, just invite Mr Stratford to raise one or two matters concerning the discharging authority? And then I have one particular discrete matter on that topic to add.

MR SMITH: Thank you very much.

MR STRATFORD: Thank you. Chris Stratford for Thurrock Council. Just a small point, really, to reinforce the precedent element. It's my understanding that most of the other secretaries of state – DLUHC and its predecessor names, Defra, BEIS – all have allowed local authorities to discharge. The majority of transport ones have not. I understand that there are some that have.

I personally was involved in the tideway scheme, along with Michael Humphries, and that had 14 different authorities, and all of the authorities were permitted to discharge through their normal processes, and that was supported by the applicant at the time using council support contributions, which, in fact, are provided for in the current section 106 heads of terms. There is a general understanding that that might be necessary, and furthermore, there is one consent being discharged under the requirements by the council, which is requirement 13, related to the travellers.

We also have a number of concerns, along with Havering, about the length of time given by the Secretary of State for such consultation if we don't succeed in persuading you, and we have and will make more detailed points in our LIR about this, extending the period of consultation from, what is in part 2 of schedule 2, four weeks up to six and eight weeks, if necessary, because some matters require that length of time. I think that's all I wanted to add, if that's okay.

MR EDWARDS: Thank you. Can I just then deal with one or two final matters? Can I return, sir, to the question and to the proposition that you put to Mr Standing, about essentially the potential for there to be a differential approach between host authorities concerning this charge?

Certainly, as a matter of principle and law, there is nothing that prevents you as the examining authority recommending or the Secretary of State providing such a differential approach, such as that Thurrock is the discharging authority for matters for concern that is administered to the area, and other local authorities' matters are dealt with directly by the Secretary of State. I have no doubt at all that Mr Bedford and others will have some observations to make on

that proposition, and I can certainly see that it may be considered more attractive for there to effectively be a common discharging position as between the authorities.

Sir, so far as the consequences of individual authorities discharging individual requirements, as their effective administrative area is concerned, and the point made with some emphasis by National Highways that that could lead to inconsistent outcomes – sir, we would suggest that that is actually unlikely, in terms of the authorities acting reasonably and in the public interest in terms of the matters to be discharged.

But if there were to occur a position where there were inconsistent outcomes, then it seems to us that this could easily be dealt with within the DCO itself, that if that is the result, there is a mechanism by which the matter can then be referred to the Secretary of State and his discharging body and advisors in order for that to be resolved at that stage, but sir, it seems to us that the potential, we would suggest – limited potential, such as it is for inconsistent outcomes – does not of itself overcome the concerns expressed, and the merits expressed, by Mr Standing, in terms of individual local authorities discharging the requirements within their area, and can be dealt with if it was to arise through the drafting of the DCO and a reference to the Secretary of State in the event that that scenario were to come to pass.

So, sir, those were all, I think, our team's submissions on the matter of the discharging requirements, and I understand Mr Standing has one or two observations to make on item 4(c).

MR SMITH: I'll return to Mr Standing.

MR STANDING: Thank you, sir. So Ben Standing for Thurrock Council. On to point (c), so it's the relationship between the DCO and the plans and the control documents.

Our concern isn't so much, at this stage, social relationship between them, except the way that these can be updated. So we're aware that the applicant has suggested that there will be at least a two-year delay in commencing the project, and we're concerned that with this long delay period that some of these documents may become significantly outdated. The applicant has told us during our negotiations, consultations with them that they're based on a reasonable worst-case scenario, and we accept that, as control documents, they're not

something that want to be regularly reviewed and regularly updated, but we do live in very much changing times.

Things have changed dramatically since the pandemic. We've got the drive towards net zero, and we think there are circumstances, although they're exceptional circumstances, that would justify a review of those documents, and we think they should be built in to the DCO. There is the ability, if things really do change, and if there has been a significant delay in implementing the project, to revisit key documents, so that we don't pursue a project that we actually know that the assumptions it's based on have become outdated and things have moved on.

MR SMITH: Okay. Clear submissions. Now returning, then, very briefly to the central representation for Thurrock. Mr Edwards, anything that you need to say to wrap that up.

MR EDWARDS: No, sir. Nothing further from us, unless we can be of any further assistance to you at this stage.

MR SMITH: Thank you very much. In which case, I'm then going to ask for Mr Bedford KC for Gravesham to come in finally on this matter, and when you've spoken, before we go to the applicant, I'll just check to see if my panel member colleagues have any further points. Mr Bedford.

MR BEDFORD: Thank you, sir. Michael Bedford KC for Gravesham Borough Council. I'm going to start with some submissions in relation to matter 4(d), and then I've got some more submissions in relation to matter 4(c).

On the question of the appropriate discharging authority, sir, first of all you will note that section 120, subsection 2, is very broad. It doesn't seek to reserve discharging to the Secretary of State. It can be the Secretary of State – section 2, on matters which are not falling within subsection 2A, and for subsection 2A, effectively, it says a requirement can do that which would otherwise be dealt with by a planning condition or similar condition of other regulatory consents, and the implication, albeit not spelt out in that subsection, is that it should follow the same pattern as it would for a planning condition, and, obviously, with a planning condition, the normal expectation would be it would be the local planning authority – would be the discharging body.

So the statue with respect to some of the submissions made in the explanatory memorandum, our submission doesn't give, as it were, a steer that

you should go in one direction or another. My submission is do what is fit for purpose or the particular development consider order that you are considering.

So far as then moving from the legislative framework position to the arguments that are made that for some reason highways orders, or this particular highways order, needs to have the Secretary of State for reasons of consistency and efficiency, first you will note that even on the applicant's approach that is not universal. In relation to traffic regulation order matters, applicant has recognised that there are matters that should fall within the remit of the local highway authorities for them to approve certain works [inaudible], being a matter that can only be elevated up to the Secretary of State's decision level.

Secondly, there is a particular incidence in the requirements – and this is the requirement 13. It's already been mentioned in relation to the replacement facility where Thurrock, the local planning authority, is brought to bear. So there shouldn't really be any argument, in reality, about the principle. The principle to be that it should be what is fit for purpose for the particular requirements, meeting the particular order.

Then the applicant also makes reference to the Secretary of State's bespoke unit, and says, 'Well, there we are. We set up a unit, or the Secretary of State set up a unit, specifically in relation to highways orders, and there would be a wasteful duplication of resources if local authorities also had the same function.' Well, with respect, we don't share that view. As a general point, we do have some concern about the question of independence.

We note that it is the Secretary of State's unit and we don't, at the moment, have a sufficient confidence in the independence between the Secretary of State who regulates National Highways and has a role in this project as the approver, and what would give us assurance is this: if National Highways could give us some examples from other projects promoted by National Highways where it has been necessary for the bespoke unit to consider the discharge of requirements – if National Highways could give us some examples where the bespoke unit has rejected submissions that have been put forward by National Highways, with an example of what that was and why, that might give us some, as it were, confidence that this isn't a process that simply involves, effectively, one part of government talking to another part of government, but does involve thorough scrutiny.

MR SMITH: Mr Bedford, just briefly there, I think I'll direct that particular point to the applicant and its responses on this agenda item, and it does make me wonder if I was sort of insufficiently clear in my own introduction to the question. I did refer to, essentially, a concern in the examining authority about governance, and what I meant to say there, essentially, was that we have some assurance that a system is established here that does not, in very crude terms, allow the undertaker to secure its homework being marked by itself, or somebody so closely associated with itself, as an A grade will always issue.

That is essentially, in a nutshell, the point you have just been making, and how the applicant addresses that remains important in the mind of this examining authority, because we do note the governance distinction between the role of the Secretary of State being advocated here, albeit that it has also emerged in a number of made highways orders, and a more general approach in a range of other orders, where there is a separation of powers, where the decision maker is not the undertaker. There is an independence, and that's the point that I think we are seeking some more assurance on.

MR BEDFORD: Absolutely, sir. We echo those points and, as I say, I think I've made that point, so I'll move on to the next, as it were, aspect. This is the point that was made by the applicant, that as of the bespoke unit, it's, as it were, wasteful of public resources for local authorities to double up by setting up their own regime for discharging requirements. That sounds superficially as though it might have something in it, but, with respect, it doesn't, because when you actually look at what is envisaged here, the local authorities have very important roles in the discharge of requirements.

Firstly, they have an important role as is envisaged by requirement – sorry. 20, in terms of the consultation. Sorry, I had mental block there and I was thinking about requirement 18, which I've got a different point on. So the requirement 20 is clearly viewed by everybody as important and obviously for consultation to be effective, the consultee has to adequately inform itself about the matters on which it is being consulted. So the local authorities are going to have to engage with the detail of the project in order to be able to make informed consultation responses under the applicant's proposals. The only thing that they're not being allowed to do is be the decision maker, but everything else

they have to grapple with. So that's the first point. They will need to have the resources to be able to engage productively in the consultation process.

The second point, which is, as it were, allied to that – so far as, assuming that a particular requirement has been satisfactorily discharged by gaining an approval, as far as compliance with that discharge – that's to say the enforcement responsibility – that clearly rests with the relevant planning authorities, in terms of if there is a breach of any of the requirements, it's not the Secretary of State that comes running after National Highways. It is the relevant planning authority. Now, the relevant planning authority is not going to be in a position to properly discharge its enforcing function, potentially including prosecution, under section 160 or 161 unless, again, it is all over the detail of what it is that is being the subject of the submission, what it is that is then required to be done, by whom and by when.

So the local authorities are going to have to, as it were, resource themselves, or be aided by the applicant to resource themselves to deal with the discharge of requirements and to the policing of the enforcement of the discharge of requirements in any event, even under the applicant's proposals. So, as I say, the resource point is a nonpoint, because actually the local authorities will need [inaudible] get into the detail in order to discharge those functions.

Then the next point is a separate point, and we echo absolutely the points made by Mr Edwards and by Mr Standing on behalf of Thurrock, that it's local authorities that do have detailed knowledge of their areas, and are aware of, as it were, the interconnectivity between different issues, which may be community issues in relation to traffic or noise, may be issues in relation to cumulative effects of a number of things happening at the same time or in the same place, but that degree of local knowledge clearly doesn't rest with the bespoke unit, and so there is an efficiency in allowing, as it were, the person with the most knowledge to make the decision, and then the fifth point is that the problems with the applicant's approach are compounded by the weaknesses of requirement 18. I know that's a separate requirement, but you do need to see these as –

MR SMITH: In the round.

MR BEDFORD: Absolutely, and requirement 18 has as a general default – in requirement 18, sub paragraph 2 – that if the Secretary of State doesn't make a

decision within time, there is a deemed approval. There is then a caveat for that in paragraph 3 in relation to where there are to be materially different environmental effects, but the basic point is that the Secretary of State – if he doesn't make decisions promptly – there are deemed approvals, and that is irrespective of, as it were, whatever was said in the consultation responses and however vehemently consultees explained why whatever was being proposed was not acceptable, and so our concerns – and of course we also note that the unit – the bespoke unit – is of course on – as National Highways has said – responsible for a wide variety of highways projects, and there's no mechanism in what the applicant is putting forward as to, as it were, project management, together with other projects.

So there is no way of knowing how many different highways projects will be submitting submissions for approval at the same time to the one bespoke unit, or indeed to what extent – even on an individual project – the particular promoter will be submitting a raft of submissions to the Secretary of State's bespoke unit for approval, all at the same time. So there's no mechanism in here for coordination or phasing or structuring. So again, as we see it, this is an instance where the protections given [inaudible] are limited because of that default approval mechanism. So we don't see that as a check.

Then the sixth point. In terms of the issue about consultation and the applicant strongly emphasises to you we don't just have to consult; we have to give due regard to the results of the consultation and we have to provide the consultation responses to the Secretary of State with effectively a consultation report. But with respect – due regard – first of all, clearly any lawful consultation has to give regard to the results of the consultation, so that isn't offering us anything other than the bare legal minimum, but secondly, due regard is a very low threshold. All it really means is that the applicant does not have to ignore – that's to say, not even read – the consultation responses. Provided the applicant reads the consultation responses, it will have given them due regard.

It is no safeguard to us that they will actually act on our representations – and we will cover it more in our written submissions, but we can consider, for example, analogous to some of the examples where, for example, Natural England is consulted by local planning authorities on certain types of planning applications with certain types of environmental effects. If, having been

consulted, the local authority wishes to take a decision which differs from the advice they've received from the consultee, then the consultee has to be further notified that that is the case to allow Natural England in that instance to make direct representations to the Secretary of State, and again, we can see a mechanism of that nature might give us some more comfort, but as matters are worded in [inaudible], we think that that is too weak.

So other than – I think echoing the wider points made by Thurrock about why a bespoke approach suits this particular development consent order is appropriate and also endorsing the view that – are some differences because of local government governance between a unitary authority and a district council, we do see ourselves as a natural home for the discharge of requirements. But we're perfectly happy, as it were, to listen to views that, 'Well, this one we shouldn't do,' or 'That one we shouldn't do,' for particular reasons.

Can I then turn briefly to the 4(c) matters? And there are just two points we want to draw out. Whilst – as it were – in principle we don't see a direct issue with the approach taken with this development consent order of – if I can put it this way – leaving a lot of the detail to the control documents rather than putting them into the articles or the requirements, that does then put a very high degree of importance on the content of the control documents and that also brings us back to the issue of who is to be the approver of the final version of the control documents, which is the discharge of requirements point. So there is a linkage there, but what we do see as very important to see written into the control documents, is going to be the monitoring of measures in those control documents and the reporting on the monitoring of those measures [inaudible] we think something that should be reported to the Secretary of State.

MR SMITH: And can I just explore that as well because there is a linkage there between that monitoring function and reporting and indeed the picking up of enforcement obligations under the order. So if those are remaining with local authorities then there is a need for data, shall we say.

MR BEDFORD: Absolutely. That was my point. As I say, it's not just a case of telling the Secretary of State what you've done when you've monitored under the control documents, it's telling the local authorities, particularly as you say, because they have the enforcing role in due course [inaudible]. And then the second point on 4(c) is perhaps a more narrow point, but it's again the approach

that's taken to documentation and particularly on the plans and drawings side of the documentation, we don't directly have a problem with the structural way in which it's been done – which is conventional – we do find the complexity of the drawings – particularly the engineering drawings – in relation, so far as we're concerned, to the A2/A122 Lower Thames Crossing junction, which is a very complex junction.

We do find the way that the material is presented, extremely difficult for us to be sure that we have understood all of those implications. We're very grateful for the fact that as part of your earlier preprocedural decisions, the applicant has provided its PDBB-003 is, as it were, a composite plan, which stitches together all of the different bits of the engineering drawing to at least give us, in plan form, that junction on one plan. But what that doesn't do is allow us to see vertical alignments and heights of structures, and when you look at the engineering drawings for that level of detail, we find that it's very difficult to understand fully what is intended, and again, this is effectively a request through you to the applicant.

Is it possible, at the very least, to provide cross sections through key parts of the junctions together with the surrounding land, so that we can actually more clearly understand how that works, and in an ideal world – because we already know that the applicant outside of the examination has produced a fly through 3D visual model of the project – we would ask, is it possible to produce 3D images of key elements of the junction arrangement so that spatially, we can actually see how the different bits fit together? Because at the moment, we do find that the engineering drawings don't really give us an adequate handle on that, which obviously then throws up issues as to what the impacts are visually and in landscape terms for the affected parts of the development. So those are our concerns in relation to 4(c), and as I say, I've made our overarching points in relation to 4(d). Thank you very much.

MR SMITH: Thank you very much. Okay, well, that draws to a close the submissions from interested parties on this item, but before I return to the applicant, I will just check, I believe my colleague Ms Laver had a point that she wished to raise. So, Ms Laver.

MS LAVER: Thank you, Mr Smith. I had quite a few points to raise, but Mr Bedford for Gravesham covered off a few of those, so I don't – as with all other IPs, I'm

not going to repeat some of the concerns he expressed. I'm not really going to go into the governance issue – whether it's Secretary of State discharging or local authorities, that will play out through the examination – but it does come back to requirement 20 of the order, which is the details of the consultation – and I'm looking this way because it's on my screen – and that provision states the undertaker will provide those people who need to be consulted with 28 days. And there's an extra provision in there which says that could be extended to 42, not to be unreasonably withheld and details of the consultation responses will need to be taken into account by the Secretary of State.

But my question is, what if the consultee doesn't respond? Is it taken that there's no concern, no objection? That to me is a bit of an issue, particularly when we look at the potential for adverse effects by a consultant, particularly an authority – possibly who is under resourced or someone's on holiday and doesn't get a response out in time – I really need to understand what that then means – what a 'no response' means – because really that can't be 'no objection' to a particular issue. So I would like that to be also picked up by the applicant through this process. Now, there may be something in the order that covers that, but I haven't come across it and it certainly hasn't come up yet from the applicant today.

MR SMITH: Okay, any further issues you want to draw out at this stage, Ms Laver, before I put that one back to the applicant? I do see a hand from Michael Humphries KC for Kent. I will just check. Mr Humphries, is that a hand, wishing to come in at this point?

MR HUMPHRIES: Yes, sir. It was an intentional hand. Michael Humphries for Kent. It's a general point I want to just make. In the preliminary meeting we made clear we had a number of points we would want to raise on the drafting of the DCO, and it was made very clear to all parties – including us – that today's session was not for that. Today's session was for the examining authority to ask questions and having done so, that other parties might comment on that. Now, actually, apart from the question that was a moment ago, the examining authority hasn't been able to ask questions. I make no complaint about that.

It's been very, very helpful and parties have set out their positions, but just because Kent County Council has not raised points, I do not want you to think that we haven't got points. We are just following what we were told very clearly

in the preliminary meeting, and I've waited for a number of agenda items under 4 to go past before making this point in case it was just 4(a) that was like this, but so far, the entire agenda has been like that. So if you could just note that we obviously do have points. We're not raising them today for the reasons that you explained in the preliminary meeting.

MR SMITH: Yes, and I will be very, very clear on this. We wanted to service issues that had appeared to us. We did feel that it was appropriate to provide reasonably fulsome opportunities for interested parties to comment on those issues. We, however, did make very, very clear at the preliminary meeting that this was intended to be an unpacking process where we serviced issues and that deadline 1 has not come. Deadline 1 is your principal opportunity to make your written representations and that still holds good and there's nothing that can take that away. So this is about us all orienting ourselves in the face of a very high level of complexity and not taking away anybody's right to make their principal submissions at the right time and the right place in the process, and the timetable which remains from deadline 1, and there will be subsequent development consent order issue-specific hearings where we will deal with the detail that emerges at that time.

MR HUMPHRIES: Thank you. I made the point. I don't need to elaborate it and thank you for the clarification.

MR SMITH: Indeed, thank you very much. In which case, what I'm going to indicate is I'm going to return to the applicant for observations on this point. In doing so, I am going to note the time. Apologies, Mr Pratt. Did you wish to come in before I did? You're on mute, sir.

MR PRATT: I'll get used to these computers one day, I'm afraid, Mr Smith. It's Ken Pratt here as a panel member. If I can just make one slight interject. The discussion recently has been about section 20, but also, it's been primarily within the local authority's sphere. I think we've only had the lady from the Environment Agency to pick up other parties, and one thing that I have noticed – and that the applicant may like to comment upon – is the likes of the lead local flood authority functions, the IDBs, the Environment Agency and other regulators.

They do tend to have their own legislation, which the DCO might be looking to amend, but they're only allowing some of those organisations 14 days

to make comments and whatever, where under the likes of the Land Drainage Act, it's two months. The Water Resources Act is a lot longer for those organisations to be able to respond in any business. So what I really felt was necessary is really just opening out from just purely planning into the wider specialisms, if you like, Mr Smith, and I apologise for interrupting at this late stage.

MR SMITH: No, no apologies needed. I mean, it's a relevant point. Now, I am seeing a raising of a hand by Laura Calvert as well. Now, I'm conscious that I do want to wrap all of this before lunch, and I would like to then return to the applicant, but given that we have the MMO on this point, Ms Calvert?

MS CALVERT: Hi. Yeah, Laura Calvert from the MMO. I assume that this point is probably better raised later on when we get onto the deemed marine licence, but it was a little bit more just in response to Mr Pratt's comments there in relation to timeframes that are proposed within the DCO. So the Marine Management Organisation do have issues with regards to the timeframes that we have included in the deemed marine licence, so I just wanted to highlight it here as something that we can pick up on later on.

MR SMITH: Okay, thank you very much. That's very kind of you, and we will be coming to DML positions after lunch, and what I'm then going to do, is I'm going to put those back to the applicant. Now, can I just get an indication, Mr Latif-Aramesh, about the likely time that you need to make your responses on those points? I guess it might be more than four or five minutes.

MR LATIF-ARAMESH: Mustafa Latif-Aramesh for the applicant. I was anticipating speaking for about 15 minutes or so.

MR SMITH: In which case I think we've reached a point where we ought to break, hold the lunch break and allow you to return to those points after the lunch break. Now, looking then at the order after the lunch break, we will hear direct responses from the applicant on (c) and (d). I'm then very alive to the request for amended order from Thurrock Council. So we will then go to item (j) immediately after the concluding submissions from the applicant on items (c) and (d), and then I'll be asking parties at that point for an indication of prioritisation on the remaining issues, because what I don't want to do is have people sitting around literally to the end of the day if we can adjust the order of the agenda in ways that assist a more general conversation. So it is now 1.20.

Let us resume at 2.00, and I'm going to say 2.10. I'm going to chop 10 minutes off the lunch break – 2.10 p.m. – with the applicant in response on agenda items 4(c) and (d) together. Thank you very much, ladies and gentlemen.

(Meeting adjourned)

MR SMITH: Good afternoon, ladies and gentlemen, and welcome back to the resumed afternoon session of this issue specific hearing number 2 into the draft development consent order for the Lower Thames Crossing project. My name is Rynd Smith, and I'm the panel lead. Just before we move back into the main items of business for this afternoon, if I could just remind all of those participating in today's hearing to keep your microphones muted and your cameras switched off, please, until you are drawn in to speak on a particular item. We don't want to inadvertently record elements of the background in your office or your home, and in that respect, can I just check with the case team that the recordings have started and the livestream has returned to people's screens?

MS CHURCH: Yes, that should all be working now.

MR SMITH: Thank you very much, Ms Church. Okay, with no further ado, as promised, we will amend the agenda order and move to agenda item 4(j). Now, this refers to a set of specific observations that were set out in annex A to the agenda, and I don't propose to speak in detailed terms to those items, because you have read them; you've seen them in advance. You know what they are, so what I'm actually then going to do is I'm going to ask for an initial set of observations on them, but just before I do, I do notice I have a hand from my colleague, Ms Laver, so before I invite the applicant in to speak to us on those items, apologies, Ms Laver.

MS LAVER: Mr Smith, when we adjourned at lunchtime we didn't come back to the applicant on items (c) and (d), so I think, yeah, he's waiting to come in on that.

MR SMITH: Thank you very much, excellent reminder. Yes, of course, Mr Latif-Aramesh, I'm very sorry. We did promise you 15 minutes on your concluding remarks on (c) and (d). Ladies and gentlemen, one of these days I'll work out how to run a hearing; in the intervening time, Mr Latif-Aramesh.

MR LATIF-ARAMESH: Thank you, sir, and thank you, madam. I'll try and keep my remarks to less than 15 minutes. I should flag that Mr Henderson will be dealing

with the comments that were made by Mr Holland, the representations from DP World, as well as some comments from other bodies which are not local authorities. I think, to turn then to the substance of the last two agenda items, we wanted to deal with a few points as preliminary matters. I think at the very start of your remarks, sir, you mentioned that was there anything unique about this project which justified departing from the practice of the Department for Transport in relation to DCOs for the strategic road network, and you alluded to the presence of the utility NSIPs. Just on that point, very briefly, we don't consider that it does. Again, the A428 project – which had both a gas pipeline and a highways NSIP – was proposed to be discharged by a single Secretary of State.

It is also worth bearing in mind that this is not the first National Highways DCO which has significant utilities works which don't quite meet the threshold of an NSIP but are, nonetheless, significant in scale and complexity. By way of example, the M42 junction 6 project, the A19 Testo's projects, they had significant utilities works and the Secretary of State remained the discharging authority for those matters.

The next contextual comment I'd just like to make is to really put the functions and the parameters of what's involved in the discharge of requirements squarely into focus. The discharge of the requirements is intended to control the parameters of the authorised development as consented. It follows an extensive pre-application consultation, extensive detailed engagement up until this point, this examination itself – should the order be granted – and then only following all of that would the requirements then be discharged. What the requirements do is then secure, effectively, a further bite of the cherry in allowing the relevant parties to comment again on outlined documents that have been the subject of this examination. We think that context is important, because it addresses Mr Bedford KC's comments around the need to have sufficient knowledge for the purposes of enforcement, but it also gives a flavour as to why the consultative role of local authorities is appropriate. I think it also addresses the points around ensuring that adequate regard is had to local authorities in the process, and the process doesn't start when a DCO is granted. The process must be taken as a whole, and in our view that supports the line of – or the approach that we've taken to the Secretary of State as the discharging authority.

We're mindful that a number of bodies have raised questions about the independence of the process in – the independence of the parties involved, and what I would say here is that it's in that context that I've just spoken about that these decisions have to be looked at, and the department and the applicant are mindful of this, and have set up processes to ensure the decisions that are undertaken are fair and reasonable. There are information barriers involved and particular handling arrangements involved at the Department for Transport's unit, which ensure that decisions are taken fairly, transparently, and without any question as to the independence. Again, this is a well-trodden ground, precedented, and so as you'd expect, the department has experience of having to deal with this particular concern.

Moving then to the substance of the discharging authority, the essential point about the consistency of decision-making is that it is eminently possible and likely that we will have works that traverse multiple local authority boundaries, and the inconsistent decision-making that could arise is in relation to the same thing. It is not a case of one aspect of the project not having due regard to the local environment. It's that inconsistent decision-making is likely to arise. In those circumstances, in order to avoid an impediment to the delivery of the project, there would have to be an appeals process, but that goes back to the point that I made at the start of my submissions that the purpose of the planning act is to streamline the delivery of national significant infrastructure projects.

And in the case of this particular project, the engagement that has been carried out to date, as well as the further engagement that will be undertaken as part of the detailed design process and the examination itself, as well as post-discharge forums leads to the conclusion that the Secretary of State should be the appropriate discharging authority so that an appeals process is not constantly engaged. And I think that addresses the point from Mr Edwards KC on, 'Why don't we disaggregate parts of the project which could go to the Secretary of State and those which can't?' It is difficult to disaggregate the project in that way, given how integrally linked all the disparate elements are. It's also worth saying that having to go through that appeals process would itself lead to further time and costs for all parties involved.

I'll now turn to the points made by Thurrock Council on precedent. Now, Mr Henderson referred to, in his early remarks, advice note 15, which specifically says that regard should be had to the relevant department's practice, and we think that's sufficient to deal with some of the other examples that were raised, but there are also a handful of non-strategic road network DCOs which refer to local planning authorities. We have set out our position to Thurrock Council that those precedents are wholly different from this project, not only because of the SRN – strategic road network – element of those projects, but in at least two of the cases that have previously been highlighted to us by Thurrock Council, they are private developers, and in our view the combination of different factors on those projects are just not relevant. They are site-specific rail freight projects. They are local highway authority projects that do not traverse other local authorities, and the enabling arrangements that we have discussed do not exist for those projects.

So on the matter of precedent, we would strongly stress that the appropriate approach is the one that the applicant has taken, and again, just to re-emphasise, the only precedent that I wanted to highlight to you in my opening remarks, in circumstances where the examining authority on the A303 Sparkford to Ilchester scheme recommended that the local authority should be the discharging authority, this was very quickly followed up by a correction order substituting the Secretary of State, so we don't think there's any merit in the precedents that are relied upon. It is correct, as we have accepted, to say that each project needs to be examined on its own ground, but for all the reasons that I set out and that we've laid out, we think there are project-specific reasons that would lead to a significant imposition on the delivery of the project.

On the point from both Gravesham Borough Council and Thurrock Council that there are provisions in the order which require local authority approval, well that goes to my point that I made in my earlier remarks, which is we have stress-tested the positions on where we can reasonably accommodate local authority approvals, but there is a line, and the line is the discharge of the requirements in schedule 2, with the exception of the travellers' site which is site-specific, and, as we'll go on to detail later on, has been the subject of significant engagement that gives us confidence that there'll be no impediment to the delivery of that replacement site.

Gravesham Borough Council specifically refer to the traffic regulation provisions which require local highway authority approval. Again, what we would say about those is that where the order sets out the requirements of the project – so, for example, where temporary traffic regulations – traffic restrictions – are required in connection with the project, and are listed in schedule 4 to the order, only consultation is required. The approval function kicks in where it has not been the subject of all the documentation so far, which again goes to the point I made around the context, so we have very specifically heard where local authorities want to have approval functions. We have considered, on the merits of this projects, where we are able to accommodate it, but we have not heard anything which leads us to wanting to change the overall approach to schedule 2. On the request from Gravesham about the instances where there may have been rejections at the discharge position, we'll have to take that away and come back on that point in writing. Needless to say that the comments I made earlier around independence and bias are applicable, and the applicant does not consider there is a suggestion that the decisions are made inappropriately, and several SRN DCOs have been delivered under those arrangements successfully.

I wanted to move on then to the next substantive item which was the general comments around consultation, and specifically paragraph 20 of schedule 2, which sets out what needs to be carried out. The first point to pick up on in Ms Laver's comment that – what happens in instances where there is no response? And I think, again, I'd highlight the comments I've made around the context, which is what we're dealing with at the discharge of requirements stage are the parameters; in addition – and so all of the comments that have led up to that point have been considered, and local authorities will have had opportunity to comment on designing, on leading to the delivery of the project, but there's two other specific things in response to Ms Laver's comments.

The first is that paragraph 28 – sorry, paragraph 20 secures 28 days at least, and that can be extended, so the circumstances of someone being on leave or something to that effect, we think, are adequately dealt with, but there is another point, which I think goes to the points made by both Thurrock Council and Gravesham Borough Council. The applicant proposes to utilise the local authority permit schemes. Now, the lead in times for these are much longer, and

what it requires is the preparation of an application, submission to a local authority, and then an approval granted by the local authority. Again, this is an example of where we have stretched where we're able to accommodate in terms of local authority approvals, but that process, because it takes several months, I think eliminates, at least insofar as the [inaudible] of the local road network are concerned, that particular issue. We also don't think that an increase in the period would be appropriate, because it would start to significantly impede the delivery of the project, and lead to longer construction programmes which would have the effect of causing further disruption to local communities, and the functioning of the highway network.

I think on three specific points – so the first from the London Borough of Havering, which was specifically about requirement 9 relating to the archaeological remains, I think it's worth saying that subparagraph 1 relates to the more detailed plan that is submitted for approval, and in connection with those, the time periods that we've discussed – at least 28 days, with the potential to increase it to 42 days – applies. What subparagraph 4 is dealing with is a highly precautionary provision in the event that remains which were not previously identified are then found. There is then a subsequent provision that says that the local planning authority may make representations on that particular issue, so it's not the case that there'd be no consultation around that particular issue.

Turning to the specific comments from Gravesham Borough Council on paragraph 20, we do not agree that paragraph 20 merely requires reading the responses to the consultation and forwarding them on. The provision specifically requires that the application includes copies of the representation so the Secretary of State would be able to take their own view, but it also says it must include a written account of how any such representations have been taken into account. The applicant would therefore have due regard – a phrase that is used in the planning act itself – have to prepare an application, prepare the written account, and then the Secretary of State would take a decision having the full representations available to them, so we don't consider that that process is weak or inappropriate. In fact, in goes beyond a lot of other highways DCOs in that regard.

TfL made comments on the confirmation that it was included in the relevant plans after confirming that it had no issues with the Secretary of State being the discharging authority. What I would just say to Mr Rheinberg is, if it would be helpful, TfL is identified in the relevant plans, specifically table 2.1 of the code of construction practice; TfL is identified as a consultee. Table 2.1 of the wider network impacts management and monitoring plan, TfL is identified as a consultee, and table 2.1 of the outlined construction traffic management plan, TfL is identified as a consultee. So even though TfL is not specifically named on the face of the order, all of those consultative bodies are adequately secured because the provisions – i.e. requirements 4.10 and 14 – cross-refer to the tables in those documents, and the tables include TfL.

And then there are – there was one other comment from Thurrock Council which I will briefly address, which is that Mr Standing said that there should be an ability for the management plans to be updated. To a certain extent, this is already baked in, because we have outline plans at this stage, and then the approval that will be sought if the order is granted relates to a second iteration of the plan, and so this iterative process of evolution – taking into account the detailed design stage and the construction programme – at the appropriate stage will be considered. I think more generally, the comment that's made is around the appropriateness of the assessments. In the applicant's view, the assessments are robust and valid, and they include assumptions which effectively reflect a reasonable worst-case scenario, and so to the extent that the mitigations and controls fall out of that assessment, they are appropriate at this stage. It would be a highly novel to go down the route which Thurrock Council is suggesting, and we think it would have a significant impact on the delivery of infrastructure projects, not just this one, but any that then was held by the same standard.

I'm going to conclude, and then I'll hand over to Mr Henderson who will address those other submissions made by other authorities, but what I wanted to reiterate is that the question of the discharging authority for National Highways DCOs is a matter that has been examined on a number of occasions on the merits of projects of varying types, including complex ones akin to this project. We set out at this start that there were positions that were settled as far as the applicant was concerned, and this is – we have not heard anything today which has not previously been considered, and which has not led to the balance between

needing to have appropriate local authority input, and the need for consistency and effective and efficient decision-making in connection with the discharge of requirements, and on that note I will hand over to Mr Henderson who will deal with those remaining submissions, unless you had any questions.

MR SMITH: Yeah, there's just one question, Mr Latif-Aramesh, which it may turn out Mr Henderson is in due time going to address in any case, and if that's the case, just pass it on to him, and that was that one of the points that was specifically raised in the tail-end of this morning's business related to the question around monitoring and enforcement. And there was a proposition that was put to you which was that whilst you had argued that there was a resource efficiency in terms of the use of public resources in concentrating discharge in the bespoke unit run for the Secretary of State, certain of the councils were then coming back and saying, 'Well that doesn't really save any public resources', because in order to be able to enforce in circumstances where we might need to, they, as local authorities, believe they would need to have staff deployed onto and reviewing and monitoring and understanding performance under the order in any case, so their argument was that there was no saving there.

Now essentially, I was then going to throw back to you and say if there's a bespoke unit for discharge for very large-scale, nationally significant national highway projects, is then a possible argument for a bespoke unit for monitoring and enforcement too at the Secretary of State level? It would deliver the consistency that maybe you are looking for. Now, I'm very conscious that would be a novel provision, and that is something that nobody has done before, but the logic seemed to be at least worth throwing on the table and testing before we go any further.

MR LATIF-ARAMESH: Thank you, sir. I think that would be one that we have to take away and come back in writing, but I would just make two general comments. One is that we refer to the fact that the outline traffic management plan for construction, for example, has a traffic management forum. The outline landscape and ecology management plan has a working group relating to landscape matters. The code of construction practice will secure a community liaison group. We think that responds to that concern around monitoring, and ongoing engagement past the point of discharge. The second thing that I would note is that monitoring is baked into other –

MR SMITH: Apologies, we had a joiner at that point. Please, just recap of that last couple of seconds of your submissions.

MR LATIF-ARAMESH: So the management plans, but also other commitments secure appropriate monitoring, and we draw your attention, for example, to requirement 14, which requires monitoring plan to be submitted to the Secretary of State, and so we've considered, again, project-specific appropriate junctures where that might be acceptable, but we'll come back to you in more detail on your more specific question.

MR SMITH: Thank you very much. Okay, so it's over to Mr Henderson.

MR HENDERSON: Thank you, sir. Good afternoon. I'll sweep up relatively briefly the comments and queries that were raised separately to the point about the discharge of requirements, and I'll take them in reverse order. There are four to address, as I noted it down. The question from Mr Pratt, as I understood it, was around the extent to which other statutory bodies should be listed as consultees in the requirements, and I think Mr Latif-Aramesh has effectively answered that [inaudible] to commitments to engage with bodies, schedule 2 requirements which obviously reference obligations to consult with local authorities, but where other statutory bodies have asked to be a consultee, and we've considered it appropriate, we have added those. So you'll note, for instance, that requirement 7 contains a commitment also to engage with – or consult with Natural England, and similarly requirement obliges us to consult with the Environment Agency, so those provisions aren't limited to local authorities. But more importantly, at the next tier down, the control document level, there are various commitments that Mr Latif-Aramesh outlined, where a number of other bodies get the benefit of engagement and consultation through the delivery stage, so we trust that's the answer to the question that Mr Pratt was raising.

The next question relates to Gravesham Borough Council's comments about the A2 junction and information about vertical alignments. Now, just wanted to signpost –

MR SMITH: Can I just briefly interject, Mr Henderson? Apologies, I wasn't quite as swift on the draw as I should have been there, but in relation to Mr Pratt's question to you, there was also a question about timing, the 14-day period as against the time that might normally be allowed on special legislative

discharges, bodies associated with water, consenting lead local flood authority duties, etc. Does that ring any bells?

MR HENDERSON: If I might just confer for a moment on that, sorry.

MR SMITH: Yes. No, by all means do.

MR HENDERSON: The answer to that one, sir, is that there are protected provisions for flood authorities in the EA which do secure longer forms of approval, so we can address that in writing, but hopefully that gives you a short answer to that one.

MR SMITH: Thank you very much, and, look, we will remain alive to it. I know Mr Pratt will probably wish to follow it up in written questions as well, if needs be. Okay, move on.

MR HENDERSON: So moving through – so the matter of the A2/M2 junction and vertical alignments, we just draw attention to a couple of documents that hopefully will assist. Firstly, application document APP 033 contains section drawings which show the vertical alignments of carriageways through that junction, and in addition to that, the application contains photomontages, the location of which were agreed with Gravesham Borough Council in 2019, and that agreement is documented in chapter 7 of the ES, which is APP 145, but the specific photomontages can be found in APP 244. And in addition to that, something that sits outside of the application but we think will assist interested parties, is that the applicant has published, digitally, a flythrough of the project in – the latest one being January 2023, so there's information there which is useful to engage with in so far as the look and feel of the project. But what we would say is if Gravesham Borough Council would welcome some further engagement to talk them through the questions they have around that junction, then obviously we'd be happy to do that, so that's our answer on that point.

Then we had the submissions from Mr Holland, and as I noted, that related to the potential for engagement with affected landowners in relation to the discharge of requirements. Now, our main submission here is that we don't think it would be appropriate for landowners to be listed as consultees under requirements, given the nature and function of requirements. That's not something we've seen in other development consent orders and we wouldn't think that would be appropriate here, but what we can point Mr Holland to is the code of construction practice, which is secured by requirement 4 and at paragraphs 5.2, 5.3 and 5.2.6 contains commitments to engage with affected

landowners, including through community liaison groups. I mean that applies generally to parties that are affected by works, but of course if a landowner is directly affected by the implementation of the scheme through temporary possession or compulsory acquisition, then of course we would have to engage with them in the normal way in advance of exercising those powers. So that's our answer to the submissions that were made by Mr Holland.

And then finally, comments were made by DP World, again, as I noted it down, in relation to the potential for future developments on roads approaching the port, and the implications of that for the application. And I'd return us to the comments made by Dr Wright yesterday, the applicant's approach to wider network impacts and the strategy that set out in the application, and in so far as therefore that's connected to the assessments we've undertaken, we have of course undertaken a cumulative affects assessments in the environmental state within accordance with advice note 17. So our position there is to the extent there were future interventions in this locality, those would obviously be subject to their own consenting processes and, if appropriate, environmental impact assessments. So I appreciate that's a slightly different topic and we'll – we'd expect to return to that later in the process, but those are our answers to the other points that were raised.

MR SMITH: Mr Henderson, thank you very much. Right, I'm just going to check the room and check my colleagues. Unless there are any other wishes to speak on this item, we will finally move on to item 4(j). Now, here I am going to ask for the applicant's observations first, then I'm going to go to the room and provide the applicant with a right of response. We will not recite these matters, because we have committed ourselves in writing in advance, so I do trust that we're able to take annex A to the agenda as read, that everybody has seen that we've identified – running from number 1, novel drafting, all the through to number 25, suspension of road user charging – a range of initial questions arising in relation to the drafting of the order, and some limited commentary in relation to specific drafting on requirements.

Now, there's a lot of detail there, folks, and what I would say is that to a degree, we're in advance of ourselves here, because we would normally include that sort of detail in an examining authority's commentary on a draft about the consent order if necessary, but it did strike us as we had had an extended

pre-examination period that we should show some initial workings, show some initial thoughts first, and provide opportunities to engage. But in terms of speaking around the room on this, do be conscious of the fact that we are not expecting you to have complete or resolved answers on these points as interested parties, because we still do have written representations to be formed, and there will be later issue-specific hearings on the development consent order.

What we're looking for at this stage is a high-level engagement, initially from the applicant, on these points that we have raised, with an opportunity to test the waters with the parties in the room, but not necessarily at a finally resolved level of detail, recognising that those carefully considered comments can of course come in in due time. So at this juncture, then, can I ask who will be leading this for the applicant?

MR LATIF-ARAMESH: Hello, sir. It's Mustafa Latif-Aramesh for the applicant. We will be splitting these up between myself and Mr Henderson. However, we did have a suggestion which was – we read annex A, and we prepared a very detailed 70-page response to the items mentioned, and in the interests of allowing other parties to speak, would you be content if we were in listening mode and we committed to providing our detailed responses in writing, commenting on other interested parties' submissions where necessary, but it would only be by exception that we provided you a reading of our 70-page tome?

MR SMITH: A 70-page tome, crikey. Yeah, well, look, certainly that's an initially productive suggestion, Mr Latif-Aramesh. Can I then check, is there anybody else in the room wishing to speak on this item who strenuously would object to that, bearing in mind that you will then see that document? My suggestion, though, would be if that document has already been prepared, that – I mean the first available deadline for it to come in is deadline 1, but – yeah, so does anybody object to that in principle proposal? I'm seeing Michael Humphries' hand and I'm seeing Michael Bedford, so I'm going to go to Michael Humphries first for Kent, and then Michael Bedford for Gravesham.

MR HUMPHRIES: Sir, I've got no objection at all to the principle of that, save that on one of the provisions I've got – which I wanted to ask through you – a question about what the applicant understands one of its provisions to mean, and it would be useful to have an answer to that today, because that will obviously determine how, at deadline 1, we frame certain of our submissions.

MR SMITH: Yes, and I have to say I think you've outlined a generally applicable principle here which runs to Mr Latif Aramesh's by exception point, and that is if it is any interested party's view that they don't understand something and would like something explained by the applicant in terms of the applicant's proposed response, I would like the applicant then to immediately provide an oral response on that particular point, so that proper submissions can be made at deadline 1. Does that address your point, Mr Humphries?

MR HUMPHRIES: Completely.

MR SMITH: Excellent, in which case, let us – sorry, Mr Humphries. Mr Bedford, can I move to you, please?

MR BEDFORD: Thank you, sir. Sir, clearly I entirely understand that if the applicant's document goes in at deadline 1, we will have an opportunity to respond to it at deadline 2, but clearly our local impact report would normally be the – where we would set out the concerns that we've got about the development consent order in terms of we would normally have an annex which indicates the key provisions that we're concerned [about by?] deadline 1, and what I – in the sense I'm just thinking from a resource point of view of the council. I don't want us to have to do the work twice. If the applicant's document currently already exists, this 70-page note responding to your points, obviously you have a discretion to receive things outside of a deadline, and I'm just wondering whether it might be more efficient, if it currently exists – if it was provided by the end of this week, the parties would actually have the opportunity to take that into account when they're working on their deadline 1 submissions.

MR SMITH: That's an interesting take. I tell you what, I'm going to put that straight back to the applicant, and then I'm going to just briefly confer behind the scenes with my panel colleagues to see if that is a discretion that we might be prepared to exercise, but before I even think about that, let's hear from the applicant on that point.

MR LATIF-ARAMESH: Thank you, sir. Mustafa Latif-Aramesh for the applicant. I think there's two parts to this. One is if there's anything by exception that we can comment on today, we'd be more than happy to do that to reduce the issue that Mr Bedford has said. But alternatively, if you're willing to accept the document two weeks from now, we could put it in at that point, but we're conscious that doesn't fit in to the timetable as currently anticipated.

MR SMITH: No, it doesn't. I mean we do retain a general discretion to accept documents out of timetable order. We've been very clear in our procedural decisions that we are not prepared to accept unsolicited documents out of timetable order, because that makes a case very difficult for us to manage. However, if there is a very good, broadly public interest reason for accepting a document to support the examination, then we can do so, so I'm just very briefly going to confer with my panel colleagues quietly behind the scenes. And I will indicate that I have a positive, all members assent to that proposal. We will receive that document a fortnight from today, and if it is then provided, and it's that document for that purpose, we will give it positive consideration, with a view to acceptance and publication before deadline 1, and we'll note that as an action in the action list.

In which case, Mr Latif-Aramesh, you're proposing to be in listening mode, so can I now see indications by raised hands of those who wish to speak to the matters raised in this table at annex A, and if at all possible if we could have them in the order that the table runs in. I'm seeing Ms Dablin. I'm seeing Thurrock Council. The hands are coming up. Mr Humphries, Ms Dillistone, Samantha Woods, Daniel Douglas, Mike Holland, and we have Michael Bedford now for Gravesham, and Alastair Lewis. What I'm going to suggest we do is maybe we start with the ports. I will then go to the local authorities, and then we will pick up other authorities and bodies and individual interested parties at the end, so can I go first to Alex Dillistone, please?

MS DILLISTONE: Good afternoon, sir. The point to which we – sorry, Alex Dillistone for the Port of London Authority. The point that we wanted to talk to was about flexibility operation, which is matter 2 on the table, so I'm happy to take it now or happy to take it in the order which –

MR SMITH: Yeah. No, I'm going to run through individual speakers, but what I'd like you to do is to then run through in table order if you've got multiple points, so I'll hear all of your points.

MS DILLISTONE: Thank you, so our key one here is the flexibility of operation. We mentioned very briefly at the preliminary meeting that during the examination, we will raise concerns about the extent of powers being sought of the tunnel, which in our view are greater than are needed, and potentially give rise to constructability issues. Now, those I don't plan on covering today because they are quite complex, and I think there is plenty of times later on in the examination.

For today, the point that we want to make is that there is a lot of flexibility built into the DCO, and in our view, looking at other projects of this sort, there is more flexibility than we would usually expect to see, even from a team of this size and complexity. The definition of authorised development, for example, is particularly wide, and we suggest that, as with other DCOs that have been made in the area of the river, that it should be restricted to the works that are identified in schedule 1. The extent and the land take and acquisition is also much greater than we would expect to see.

Now, I don't want today to go into all the detail of that, and I'm conscious that we aren't here today to provide detailed submissions, but I think it may be helpful just to give one example of the extent of flexibility that is built into this scheme, which hopefully illustrates the extent of our concerns. So we've heard earlier today about the northern outfall, and just to explain what that is, the applicant is seeking rights in relation to this outfall. The applicant is seeking to drain water from the tunnel out via the northern portal site, and from there into the River Thames. That will be both during construction and operation. Now, a typical outfall on the river would be between 400 millimetres to a metre in diameter. The temporary northern outfall will be up to 1 metre in diameter, as identified in the marine biodiversity chapter of the environmental statement, which is document reference number 147, and the environmental statement chapter 9.

According to the applicant, the northern outfall will be located somewhere within an area, which is in a – which is approximately 176 square metres, and that falls predominantly within plot 1664[?]. That itself is quite large for an outfall, but we have noted that the applicant is seeking to provide flexibility in the design, and to some extent we would expect that. However, the area in the draft DCO over which the applicant is seeking the rights needed for this outfall, which covers four different plots, is an area of over 158,000 metres squared. That's according to our rough [GIS drawings?].

Now, what that means is that the area over which the applicant is seeking rights for the outfall is over 900 times greater than the area in which the applicant might put the outfall. Now, I have done that calculation several times because I was not sure about the number, but colleagues do reassure me that that is how it checks out, and so that – a number that is 900 times – acquiring rights over an

area of land which is over 900 times greater than the area in which you might want to put a 1-metre diameter – sorry, my voice is going – which is over 900 times greater than the area in which might want to put a 1-metre diameter outfall, seems to us a very large area of flexibility.

Now, we do all know that flexibility is needed, and I'm sure that the applicant will make that point, and the applicant has made that point, but the question is one of degree. Now, I should say that the PLA is in active discussions with the applicant on the geographical extent of their powers, and we hope that the applicant will be able to make some movement on this point, but as drafted, we are concerned that the flexibility being sought is greater than that is needed.

MR SMITH: I think it is also worth flagging, Ms Dillistone, that there are potentially – in relation to the acquisition of land or rights here – CA tests, points that bear as well, and the question about whether an acquisition is proportionate, having regard to the need, or whether it's potentially an over-acquisition. Now, we won't be examining that today, obviously, but I will just lay it on the table so that the applicant is alive to it. Now, that was given by way of illustration. My sense would be that you've probably got other such points, but that you're going to come to us in writing on those.

MS DILLISTONE: We will indeed, sir. Thank you.

MR SMITH: Thank you very much. In which case, I will go to Alison Dablin, and then I will go to Mr Shadarevian, and just so that they are alive to the fact that we have not forgotten their request to speak before 3.30, I will then move to Thurrock Council once we're through the ports, so, Ms Dablin.

MS DABLIN: Thank you. I intend to speak in relation to item 3 which is about article 3, subsection 3, then number 6, statutory undertakers and apparatus, then number 13, disapplication or amendment of legislation and statutory provisions, and then finally article 18, powers in relation to relevant navigations or watercourses, and I am just going to preface this by saying that the Port of Tilbury is entirely in agreement with the PLA in respect to the concerns about the dredging depth.

In relation to article 3, subsection 3, from an initial assessment, this provision would appear to allow an extraordinary amount of interreference with the Port of Tilbury's powers, all of which have a statutory footing in local legislation. The Port is the harbour authority under a number of statutes, most

recently of which is the Port of Tilbury (Expansion) Order 2019, in relation to Tilbury2. The immediate effect of this provision would appear to be to make any activity of the Port of Tilbury subject to the provisions of the Lower Thames Crossing DCO. This is not acceptable. It would also impact upon the port's ability to apply and enforce its by-laws, and at best this would be uncertain. At worst, it would have a serious impact on the ability of the Port of Tilbury to carry out its statutory undertaking. When combined with other provisions in the DCO, in particular article 18 which I will come to, the power which the draft DCO grants the applicant over the port is excessive, essentially unfettered, and it is difficult to see how this can be considered to be proportionate or necessary.

I'm going to come to item 6 next, as you requested these in order. The Port of Tilbury are a statutory undertaker, and they have statutory duties as harbour authority. The Port of Tilbury is therefore seeking protection from the use of compulsory acquisition and temporary possession powers over its operational land and land that is held by the Port of Tilbury, London Ltd, for the purposes of its statutory undertaking unless agreement of the port is given due to its operation as a statutory undertaking. In particular, the Port of Tilbury is concerned to ensure that the movement of utilities does not restrict or inhibit the future development of the Port of Tilbury, the freeport, or other infrastructure projects that are planned for port-owned land. The Port of Tilbury is therefore seeking to be a party to any easements or wayleaves, etc., that will impact upon its land. The Port of Tilbury – we understand that the applicant is drafting a framework agreement of which this will form part, and we do look forward to receiving this as soon as possible. However, as set out in our relevant representation which is number RR0863, without these controls in place, the Port of Tilbury's position is that a serious detriment to its undertaking is caused and that, pursuant to section 127 of the Planning Act, such powers should not be granted.

Turning to point 13 on the disapplication or amendment of legislation and statutory provisions, article 55, subsection 5 of the draft DCO sets out that there will be no breach of the requirements of the Port of Tilbury (Expansion) Order where this is caused by the works that are authorised under the draft Lower Thames Crossing order. However, it is not clear how this will work in practice, in particular with regard to some ongoing obligations that are contained within

the Tilbury 2 expansion order requirements. For example, there is a requirement for ongoing air quality monitoring. The port does not understand how, in the event of a breach of the air quality monitoring, it will be possible to identify whether or not this is due to the Lower Thames Crossing or the actions that are taking place on the port.

The drafting also seeks to protect the Port of Tilbury from prosecution for breach of the DCO, but it does not extend to any other licence, permit, or other protection such as those for protected species. There is no obligation on Lower Thames Crossing to restore a breach quickly, nor to provide additional mitigation during any period of breach. This is particularly relevant as some of the proposals would directly interfere with the land on which the ecological mitigation for Tilbury 2 is located, and at present the drafting does not provide comfort to the Port of Tilbury that the interaction with the requirements and the associated licences and permits of the Tilbury expansion order will be satisfactory, and again, the port is seeking clarification by way of a framework agreement which it will then feed into revised drafting of the protected provisions.

And then finally, turning to point 24, which is in respect of article 18, as drafted, this article provides the applicant with the ability to interfere with any private rights within the River Thames. These powers are extremely broad and include altering the banks of the River Thames, removing moorings and interfering with navigation. The threshold for the use of this power is simply that it is reasonably convenient. The power is not limited geographically other than to the entire River Thames. The power therefore extends into the Port of Tilbury and Tilbury 2, as well as providing the applicant with the power to interfere with the navigation in the river that is required for vessels visiting the port. No limitation on this power is included within the protective provisions for the Port of Tilbury.

We requested that an amendment to exclude the extent of the Port of Tilbury and Tilbury 2 was included in the draft DCO. We requested this on 15 March and followed it up in a meeting on 27 April. However, to date, the applicant has not responded on this point, and I'm just going to also note that we have not yet received the draft framework agreement, despite – we have sent a structure of the proposed legal agreements to the applicant again in March. So

whilst we have had a number of meetings on this, we are potentially struggling to make as much progress as we would have anticipated in the absence of a framework agreement.

MR SMITH: Can I just ask one very brief supplementary question on that?

MS DABLIN: Absolutely.

MR SMITH: That is the question of the degree to which those article 18 points bear also on safe navigation and the maintenance of safe navigation, and I'm going to admit to a hole in my reading here. Has this already been taken up – the applicant might be able to answer this – via a navigational risk assessment, if necessary, or are we alternatively taking the view that it doesn't need to be?

MR LATIF-ARAMESH: Mustafa Latif-Aramesh for the applicant. The application documents do include a preliminary navigational risk assessment, which the Port of Tilbury and the Port of London Authority helpfully took part in producing.

MR SMITH: Yes, I'm very conscious of that, but I'm just asking the specific point about the possible exercise of powers under that article and whether there are particular navigational risks that might emerge from it or outcomes that might emerge from it, whether they've been taken into account.

MR LATIF-ARAMESH: They have been taken into account, and specifically, the Port of London Authority's protective provisions includes a requirement for the production of plans which would be submitted for their approval. That includes navigational risk assessments in connection with any specified function, which includes article 18.

MR SMITH: Okay, I'm clear, then, that it's not been forgotten in that respect. Ms Dablin, does that conclude your position?

MS DABLIN: That does conclude my submissions. Thank you.

MR SMITH: Thank you very much. In which case, I will go to Mr Shadarevian for DP World.

MR SHADAREVIAN: Sir, thank you. Sir, thank you very much. As you know from the submissions which I made yesterday and this morning, our position is entirely contingent upon the outcome of the assessment on the junctions and its impact on the operation of both the port and the park. If there is found to be a need to incorporate mitigation, that will have potentially profound effects on the scope of the order and what is needed in order to introduce those mitigations and the procedures needed to bring them about, and in those circumstances, I foresee

there will be a need to review some of the provisions of the draft order and to assess what attendant changes might be needed in order to incorporate measures that guarantee the delivery of those measures. That will include, I anticipate, reviewing schedule 2, part 1, in order to understand how conditions or other obligations might be imposed in order to regulate the DCO development whilst bringing about those mitigations. So that's as high as I could put it at the moment.

MR SMITH: Yeah, and I take it that that is a very high-level position, but it's clear and it gives us a steer. So thank you very much, Mr Shadarevian. Okay, so we've heard from River Thames and port interests. I am now going to move directly to the host local authorities, and I am going to start with Thurrock Council because of course they did request that we hear them before 3.30.

MR EDWARDS: Thank you very much indeed. So can I begin? As far as [inaudible] we have some observations on all of the matters that are set out at your table. So as you are aware from the communication this morning, Mr Stratford has to be away by no later than 3.30 this afternoon due to other engagements. So with your permission, what I propose to do is to take things slightly out of order because there are two particular matters that Mr Stratford has a direct input in. So what I propose – again, with your permission – is to deal firstly with the observations on requirements which begins in terms of the agenda today on page 22, and also to deal with that part of matter 2 concerning works [inaudible] requirement 13, which is [inaudible] because those are matters that [inaudible].

MR SMITH: Yes. Just before he begins, can I just make clear that the sound quality from your main room, I'm afraid, is not good? So, Mr Edwards, if there's anything that can be done to slightly improve sound quality, that would be much appreciated.

MR EDWARDS: I'm sorry about that. [Inaudible]. We've been asked to move rooms between the morning session and the afternoon session. I think the best I could do at this stage –

MR SMITH: It might just be a case of sitting closer to the microphone if you can.

MR EDWARDS: Indeed. Yeah, what I'm going to do, sir, is ask Mr Stratford to sit a bit closer to the microphone for these matters, and then I will move, [inaudible]. Can I ask Mr Standing to begin and take the lead on those two matters?

MR SMITH: Absolutely, please do.

MR STANDING: Thank you very much. So moving on to requirement 1, which is preliminary works, which is the new definition of preliminary works which is being included. This wasn't in the previous draft version of the DCO. I note the comments of the examining authority on whether they're the justification for having these, and we just wanted to highlight how broad some of these were and the fact that it includes legislative clearance, access works. Concerned about why these need to be carved out of the main process in requirement 4. So we're just generally concerned we haven't really been consulted on this. We're not quite sure of the rationale behind it, and we'd be really grateful for more information from the applicant as to why this concept is required and the concept of the preliminary works EMP[?]. Chris, did you have anything you wanted to add on that one?

MR STRATFORD: No, not at all. The document at 339, I've not seen before. I don't believe we've been consulted on it. I mean, the surveys are less of a concern, but the clearance might be because it's a blanket provision.

MR STANDING: Perfect, thank you. So moving on to requirement 3, which is the detailed design. So this is where you the examining authority have set out your comments about the fact that the development has to be designed in accordance with the design principles. Although there's the exception in relation to materially new or materially different environmental effects.

We have touched on this, but this is a concern of the council. The focus on how it doesn't then relate to non-environmental effects and the carve-out of a slightly different definition of a materially new or materially different effects [inaudible] – what unintended consequences are you having, whereas one thing might be less of an adverse effect, but is there a greater adverse effect on something else because of it, and we just think there needs to be significantly more understanding of that. In relation to non-environmental effects, it's things such as how it affects other people's land ownership, the economic effects of that. Obviously, lots would be included within the environmental effects, but it does seem to be an unnecessary limitation.

Moving on to – so you've got two boxes here talking about substantially in accordance with and reflecting the relevant mitigation measures. The council understands the problem which is being addressed here and that you have outlined documents and then an iterative process as the applicant set out is how

you move towards the main document and obviously the documents do need to be in accordance with – taking into account – the outline documents, but they're not designed to be binding. They are obviously outline documents. You've mentioned your concerns about 'substantially in accordance with' being uncertain and imprecise. I agree that it might not be perfect. Maybe better wording would be 'to reflect' or just 'in accordance with,' but it doesn't seem to be unusual wording, or we can understand why that's being used. In relation to requirement 13, which is the travellers' site –

MR STRATFORD: Do you mind if I come in there?

MR STANDING: Yes, you can, Chris.

MR STRATFORD: If I may, Mr Smith, I'm going to break with tradition from Thurrock and actually make some positive comments about our relationship with National Highways here. The travellers' site, we have been engaging with National Highways for the better part of 18 months now, and the result of that engagement has been positive in the sense that the council is satisfied that the location and/or design of the travellers' re-provision is covered both in the design principles secured through an indicative plan and indeed covered by requirement 13. I'm not going to comment on the legality of the point you raised in the early part of this particular annex.

Not for my competence, really, but this week, also, we have received confirmation from National Highways that they will add an additional commitment within the stakeholder actions and commitments register – SACR – which says – and we haven't yet seen the wording – but it says effectively that the new site will be fully provided before the old site is vacated, which is acceptable, subject to the wording. They've also sent us an 80-page design report which sets out the full story of our last 18 months or so of engagement. I asked them whether that would be submitted as part of the application – indicating that that would be our preference – and was told, 'No, it's not.' So obviously the council would like that to be submitted because it does register exactly what's happened between the council, subject to our comments on it as we've only just received it. So all I'm saying is it's a fairly rosy picture from the council's point of view regarding the location, design and planning circumstances surrounding this re-provision.

MR STANDING: Thank you, Chris.

MR SMITH: Can I just briefly ask you there in relation to that point, because – I mean, one of the implications of this is – as we have read requirement 13 – so far, is of course, that you end up with a traveller site authorised under the made order, if it is made, and therefore not benefiting from planning permission and not having conditions that would apply in the normal way or enforcement measures that would apply in the normal way. They would proceed under the Planning Act of 2008. Is that at all a concern to you in relation to the operation of a facility that may give rise to ongoing planning management considerations?

MR EDWARDS: Can I seek to respond to that matter? It's a matter we'll deal with in a little bit of detail in the local impact report. Thurrock's position is that in principle, no, the ability to address any matters that arise insofar as enforcement is engaged through the powers of the 2008, that would be satisfactory. The extent to which there needs to be any additional provision provided by way of a commission or a control is a matter that we'll deal with through the Local Impact Report. I think my instructions are at the moment no, in the sense that they don't need to be the kind of conditions that are occasionally seen in the context of gypsy and travellers' sites in terms of what the perceived conditions are or anything of that nature. So I'll take final instructions on that and ask for a liaison of the planning development and control and departmental counsel and hopefully it will be fully in the benefit of having [inaudible].

MR SMITH: Thank you very much.

MR EDWARDS: Thank you.

MR SMITH: Please continue.

MR STANDING: Just slightly down from Chris's very positive position is that I am concerned about the – and you've mentioned this in the report, about the deemed consent. As an authority, we're concerned – both in this requirement but in general within the DCO – about the consent. We have discussed this with the applicant. In our opinion, the consent doesn't work in the public interest. We understand that it's there to incentivise and to get local authorities to deal with things, respond to things and make decisions quickly. But in the event that something is missed, something isn't responded to in time, then it doesn't get that consent process which is envisaged by the DCO and instead is just deemed to be approved.

We don't consider that that is in the public interest. Obviously, as part of this process, it's been determined that there should be some examination of these consents and the consents given, and therefore it would be better to have a deemed refusal – again, a novel position. We understand where the main body of precedent is going in relation to this in highways DCOs, but in this particular circumstance, we just don't see how that is positive. Also, in relation to that point, is there is quite tight – there's 28 days – in relation to all the deemed consents if we don't respond.

We have suggested – and we've discussed this with the applicant – the ability to agree mutually agreed time extensions, maybe up to a cap to when additional information is required or when we're trying to work collaboratively in the same way that we would in usual planning applications. We note the applicant's position that we could just refuse it and therefore they'd have to come back, address our concerns, and resubmit it. We still don't believe that would be the most efficient way of dealing with it.

We think there would be some benefit to being able to agree an extension, but ultimately, we don't think there should be deemed consent at all. It should be, if anything, deemed refusal and ideally, if we don't respond, then it should be the ability to go straight to the secretary of state in the same way it would be with planning. So Chris, I'm conscious of your time. Was there anything else you wanted to comment on in relation to requirements before I go back to the top of this document?

MR STRATFORD: It was only just to involve myself in that last part. I don't have any further comments. In fact, the other point is dealt with earlier under item 4(d), I think it was, on the discharge. So thank you and my gratitude for allowing this re-timetabling to happen. It's been very helpful.

MR SMITH: Well, I mean, the least we could do in the circumstances, and it sends, I think, a message more broadly to interested parties, which is we do have to maintain an orderly procedure. We have to try and keep our own thought processes around the complexity in this examination in a logical order. However, if we can facilitate people's involvement, we will always try and do so. Now, then, are there other points that Thurrock need to make before closing out on this particular agenda item for your authority?

PARTICIPANT: I'm afraid so. There are a number of points.

MR SMITH: I thought there probably were.

PARTICIPANT: Unless Mr Standing has any views to the contrary, we go back to the top, as it were, at the start.

MR STANDING: That's correct. I started again at the top. It was very exciting to get to the end, but now we've got to go to the beginning. So I also have – it doesn't sound like mine was quite as long as the applicant's – but I also have a detailed note of all my points. I propose to go through these relatively rapidly, but still in enough detail so that you understand our concerns and our positions. In most of these, we actually agree with your position. A lot of it is asking for further detail and understanding how this is going to work and getting more information from the applicant. So in relation to the first matter and the novel drafting, we've mentioned this before, but just to reemphasise, just because it has been in other DCOs – and just because it has been in other DCOs promoted by National Highways – doesn't mean that that is a settled position, that that is the appropriate position in every circumstance.

Everything needs to be justified. It may well be that in other applications, it wasn't really a key point that anybody took, and it just then became part of the DCO. Whereas lots of these things are more relevant – or may be more relevant – in relation to this case, especially given the size and complexity, which we've heard quite a lot about already. But this is a big scheme, and this is a scheme that may require a degree of novel drafting, but whatever the novel drafting is – and the departure from what's been agreed before – it needs to be adequately justified, and a key example of that for me is the order limits.

So we have some very detailed points and provisions setting out the order limits, and then you've got article 6.3, which essentially says that these order limits broadly – slight exception to that – but broadly, don't apply if there's not a materially different environmental effect that's being considered. The problem with that is it has to be a balance between flexibility and a degree of certainty, especially geographic certainty and I wonder why such broad powers in the order limits are required. It's obviously flexibility.

We understand that the scheme isn't fully designed, that there needs to be some movement, but having some things open ended as that, in our opinion, isn't helpful and isn't in the public interest because you don't know who needs to be part of these examinations. You don't know who's going to be impacted. Yes,

there is a bit of a limit in relation to the material and new environmental factors, but it still doesn't put a limit to it, and you would have thought that the order limits themselves could be the limit of that variation.

Moving on to your specific comments on the materially new or materially different environmental effects, and again, it's the bespoke definition within article 2.10, which causes concern, which I mentioned before, simply because it's not having adverse effect on one thing, is it having adverse effect on other things, and also what is the impact on non-environmental factors, which just don't seem to be taken into account. I'll now move on to article 27, which is time limits. Now, if I may bring in my colleague, Mr Church, who will talk to this point.

MR SMITH: Indeed. Can we have Mr Church on screen, please, if possible?

MR CHURCH: Yes. Just take me to the page, Ben, please.

MR STANDING: On the document that you've got in front of you, Henry, it could be page 5, the one that I sent you.

MR CHURCH: Right, so could you ask the question again just so I can absolutely answer it correctly?

MR STANDING: Yeah, so this is our comments in relation to article 27, which is to do with the time limits and the amount of time which has been set in relation to compulsory acquisition and the fact that there's a consistent time period.

MR CHURCH: In particular, this relates to the temporary occupation of land and that the period identified, whilst it is temporary in the fact that it isn't permanent, it's a very substantial period in all instances, and the implications of that on the residents of the borough – bearing in mind that much of that temporary occupation is of land that is currently used as open space – is very significant, and that is not addressed. The loss of the provision is not addressed, and that bites to the core of section 19 of the Acquisition of Land Act. Had the land been permanently acquired, the applicant would have been required to make alternative provision, but it seems to rely on the fact that there's temporary possession, not a permanent acquisition to make no provision for that at all, and I consider – we consider – the council considers – that deeply unsatisfactory.

MR STANDING: Thank you, Mr Church. Sir, so moving on to – we'll deal with some of the points of article 28 later, but on article 56 regarding planning permission, we note the insertion of provisions which are there to deal with the Hillside case.

So we understand why this has been put in and the council doesn't object to this, and the reason for this is although it's not a restatement of the law, it has been in planning terms something of a – has caused some concerns in changes to the way that things were previously interpreted where it might have been slightly more grey is now slightly more certain and the judgment does cause some issues.

So I've certainly dealt with similar things in relation to HS2 and the impacts of that on planning permissions. So actually, we consider that it is probably something that can be included, and its addition probably makes the situation clearer for the council, but there is less uncertainty on that point. So we don't have an objection to that because it seems to make the situation clearer, which is probably going to be useful. The next point goes on to the travellers' site, but we've already dealt with that, so I'll move over that one, and then we move on to matter 2, which is the flexibility of operations.

So we understand the need for flexibility, as we said before, but of course, that needs to be within defined parameters as [inaudible]. I've mentioned about the order limits and our concern about that. I also would be grateful for further information from the applicant as to why article 3 now specifically removes the limitation in relation to undertaking the development within order limits, and this is something which is of concern in that we don't know why it's been removed from the previous version of the development consent order that we saw.

So moving, then, on to matter 3, this is all about the disapplication of – so article 3.3 – and the disapplication of provisions applying to land. So in theory, we agree with the NCIPs and the project taking precedence. As with you, we are concerned about the understanding of what that is and looking at it on a more granular level to see what the effect is going to be, and also we're concerned about how specific – the words in there 'adjoining or sharing a common boundary' doesn't then set the depth, and we're concerned that that's not necessarily precise enough, which is obviously something which you have picked up as well, but I wanted to emphasise that we were also concerned, and it'd be good to see more information about that and potentially rewording in relation to the limit of that.

So I've already mentioned the – I don't think I have mentioned, actually – this is going on to the conversation we had earlier about the schedule 1

significant infrastructure project for electric lines and gas transporter pipelines. So we're not going to comment on the legality of including [inaudible]. It has already been picked up by Mr Edwards KC, but we would have expected to see more detail in this process of separating out the different drawings to really understand the separate parts of the M6 and in particular, we haven't seen anything. We've made comments on the two other types of NCIPs, and we haven't really seen these comments reflected how the applicant has dealt with them.

So we would like to see an understanding of how our comments on the gas and electrical diversions have been taken into account, if indeed they have been taken into account, which of course we hope that they have. Moving on to matter 4, which is – I'm going to bring my colleague, Henry, in again, in a minute – we've got article 66, compulsory acquisition and temporary possession. So we agree with the general observations in relation to this, but, Henry, do you have any further comments on this part? This is on matter 4, article 66.

MR CHURCH: This principally relates to crown land, but I think just picking up on two points, just relating back to the temporary land point before, it's not clear to us whether temporary possession is a single event or a multiple event. That is, can the applicant go on to the land, come off the land, go back on again? Clearly, that would have some benefits to the residents in the borough in that they would be, for instance, able to access their public open space.

So that would be quite helpful, and secondly, the other point is that because of the lack of project design, the parameters for compulsory purchase – the compulsory acquisition of land and the temporary possession of land – are drawn extremely wide. The benefit of not having designed the scheme as far as they might have done sits with the applicant. The disbenefit of that sits with the residents of the borough who could potentially see very significant areas of the borough being lost, and that could directly impact upon their immunity and our representations cover the potentially adverse ill effects on health.

MR EDWARDS: And I would emphasise this is not the only place at all where we're going to be delving into that. You'll be conscious that we haven't even yet notified any compulsory acquisition hearings, but it is absolutely clear that there will be some, and we will start that process in September.

MR STANDING: Thank you, sir. If we can move on to article 27, which is again you, Henry, so don't disappear too quickly, the time limits for the exercise of compulsory acquisition powers. Mr Church.

MR CHURCH: Yeah, sorry, just turning myself back on again. The point here is that – I mean, this ties into some of the precedent point that whilst the applicant has reduced the number of years for which it requires the powers from 10 to eight, that is still a very significant time. I mean, it seeks to rely on precedent in many instances, and surely if you look hard enough, you can find instances where parameters have been stretched, but I don't think working down from a top-down process is ideal. The ill effects of this sit – as we've already alluded to – with the residents of the borough, and from their point of view, the shorter the period which the authority has to use those powers to get on and do the work has to be preferred. Eight is an extraordinarily long time for that period. It does bring a question as to the prematurity of seeking powers if you need that long to use them.

MR EDWARDS: And again, I will emphasise that these are matters in our thinking, but we will be exploring these through a compulsory acquisition hearing, I think, rather than here.

MR SMITH: Okay.

MR STANDING: And Mr Church, do you want to also explain how we're thinking of maybe the land could be limited, more granular analysis of the different time frames for different plots of land?

MR CHURCH: Well, Mr Standing, this goes back to the point around the level of design and the extent to which – in the absence of design – the applicant can make any case for the acquisition of a land, let alone a compelling case. The net is cast wide, and it hedges its bets, and as we alluded to – and without the risk of cutting into the compulsory acquisition hearings that will follow – the disbenefits is for the borough, the residents of the borough.

MR SMITH: Yeah, these are well-made points. However, Mr Standing and Mr Church, I am conscious of the passage of time, and I am also conscious of the need to ensure that others with no doubt equally compelling points are not timed out by the run of this afternoon. So, Mr Standing, could I ask you to consider ways in which you might be able to up the pace a little? And, again, do bear in mind this

is high level; this is strategic. We can take the detail in writing and a number of other parties have indicated that they will be doing so.

MR STANDING: Yes, of course. I can say we can agree – as we work through this – there are a number of things that we agree with you on. So in article 28, broadly, we agree with you. We'll put some more details as to that when we respond. We also agree in relation to articles 35 and 36. We think these are very well raised questions and we agree with that, and we have some more points that we will make in relation to those in writing. In relation to article 40 – the special category land – this is another area where we agree with your points, and we can build on those slightly as well. So in the interests of time, as you say, sir, I won't go through all of these.

I think in relation to the two main final points is – so the works on highways is something which causes us concern. So we've heard already from the applicant that they're going to be using a permitting procedure, but there are some significant modifications to that. So I'm looking in relation to general work on highways, we've got matter 11, which is the stopping up of streets, the ability for diversions to be made, for works to be undertaken, and works in article 9, things such as the timing, the ability to control the timing being restricted. We've been discussing this with the applicant, and we've agreed that a traffic management forum would be really useful to understand that the works to local roads are properly coordinated.

We haven't yet seen the heads of terms in that and had the details of that, and absent that, we are still very concerned that works will be done, and they will not be properly coordinated. There could be some negative impacts in terms of traffic flow. Specifically, we're concerned about diversions. There's a part in article 12 which talks about diversions not having to be on a higher standard road, but we're concerned that diversions may be inappropriate. I think there needs to be some degree of control over that. There are also the deemed consent provisions which are relatively short.

So we normally get 90 days to make a decision in relation to this when works are applied to be done on the highway. This is a major development that's going to be requiring some significant works, and yet our time period is cut short to 28 days, and if we don't respond in time, there's deemed consent, and we feel there's a real risk of harm to local roads. So we really implore the applicant to

give us some details of the traffic management form, but it's this area we would urge the examining authority to look at because this could be going on for a better part of a decade, and if we haven't got automated works to the local roads, it's going to have a huge economic disbenefit, but also associated health issues and associated delay.

MR SMITH: Mr Standing, I am going to ask you to wrap up if you can now. I'm conscious of not wishing to cut you off at the knees, but equally, I am conscious that I have a large number of additional parties – including other local authorities – who do wish to speak to this item before the end of the afternoon, and there is other business on the agenda to be completed.

MR STANDING: That's fully understood, sir.

PARTICIPANT: I think Mr Standing has confirmed that he's dealt with the main points in these matters. So as you've indicated, the detail around the additional points will be dealt with, but [inaudible].

MR SMITH: Thank you.

MR STANDING: Thank you very much.

MR SMITH: Well, in which case, we will draw a line under Thurrock Council's presentation on these matters. At risk of injecting even greater slowing of pace into this, it is 3.41. Let us break now and resume at 3.55 p.m. and then we will turn to Michael Humphries QC for Kent County Council. Thank you very much, ladies and gentlemen.

(Meeting adjourned)

MR SMITH: Good afternoon, everybody, and welcome back to the final afternoon session of issue-specific hearing 2 into the draft development consent order for the Lower Thames Crossing. Just before we resume, you will see that we have been rejoined by our panel colleague Mr Ken Taylor, and this is because we are about to do a rotation, and Janine Laver, who has been carefully dealing with a broad range of issues in the hearing so far will be moving to the background for a brief rest period, so Mr Taylor will be taking over her place in the hearing.

Let's then move back to agenda item 4(j), where with no further ado I am going to ask Mr Michael Humphries to speak for Kent County Council.

MR HUMPHRIES: Good afternoon, sir. Michael Humphries, Kent County Council. Clearly, the council will want to raise a whole range of issues on the DCO in due course, on potential amendments and new provisions and so on. We're literally in the first few days of the examination. We will develop those over the course of the examination. There's one point, though, I seek clarification on today, because that will allow us to decide how we respond to certain things. It relates to your annex A, agenda item 2, which is flexibility. It's not directly raised there, but that's the best place for me to raise it, and it relates to the concept which you talk about there of commence and preliminary works. Not going to raise the point about how wide the preliminary works are or anything of that sort. It's a very different type of point.

The term 'commence', sir, is defined in schedule 2, paragraph 1, which is page 119 of the PDF, and you will see what it says there. It means, 'Beginning to carry out material operations as defined in the 1990 Act, forming part of the authorised development, other than preliminary works,' and commencement has a similar meaning. If you look on the next page, you can see – you'll be familiar with it – 'Preliminary works means a number of things but includes, for example, archaeological works, environmental surveys…' and that's what you've referred to on page 8 of Annex A as the carve-out. That's a sensible way of doing it. A lot of DCOs have the carve-out in the definition of commence itself. I think, perfectly sensibly here, the promoter has defined it separately and put it like that.

No problem with that at all, but the next point is when we look at requirement 2, which is page 120 of the PDF version. You'll see, 'The authorised development must begin no later than the expiration of five years' notice,' not used the word 'commence' as most previous DCOs have, but the word 'begin', and begin has a particular meaning in the structure of the Act. I won't take you through all the legislation, but if one was to look at section 154 and 155, and the Infrastructure Planning Interested Parties and Miscellaneous Provisions Regulations, the net effect of all that is that preliminary works, i.e. the carve-out, are enough to begin the development, and we can see that that is the intention of this order by looking at the explanatory memorandum.

On the explanatory memorandum – it's PDF page 72, paragraph 6.10.2 – it says, 'Requirement to [inaudible] the authorised development must not begin later than five years from the date of the order coming into force.' It then refers

to the Tidal Lagoon case which Mr Edwards and myself were involved in, but ends by saying, 'The term begin is used rather than commence, as the carrying out of preliminary works is adequate for the purpose of discharging the requirement.' So in other words, requirement 2, when the work must begin, could be discharged by, for example, some archaeological works or some ecological works, things of that sort.

Now, the rest of schedule 2 however – with one exception which I'll mention – but, for example, requirements 4, 8, 9, 10 and 11, all contain pre-commencement requirements. 'You can't commence until you have discharged this.' The one exception, and I suspect it's a typo, is requirement 7, which uses the word 'begin', rather than 'commence'. I suspect we'll be told that's a mistake, it should be commence. But the net effect of that is once a preliminary work has been carried out, requirement 2 – the time requirement – has been discharged. The DCO then has effect forever. It endures, and there is no requirement on when the development must commence.

In other words, my understanding – this is where I want confirmation from National Highways that this is their intention – that those pre-commencement requirements – 4, 8, 9, 10, 11 and, I suspect, 7 – could be discharged after 10 years, and commencement could start after 12 years, which sits uneasily, sir, because there is no time limit on when you can commence, only when you can begin. Sits uneasily with your comments in annex A on article 27 that was discussed just now when you were saying, 'Well, look, you've extended compulsory acquisition from five years to eight years.' Here, the drafting appears, subject to National Highways confirming or otherwise, that commencement could happen at any time.

Now, sir, the simple clarification is either a) 'Yes, Mr Humphries, that's absolutely correct. That's what is intended. Commencement can happen at any time once you have begun,' or 'No, that's not correct, and this is why that's not correct.' Whichever way we go then, I and other parties – not now, but the next deadline or whenever – can make any representations we want to on there. So that's the point, the simple point, that I think I would like to know, and I suspect others would as well.

MR SMITH: Yes. No, that is a very clearly made submission and we look forward to the applicant's response to it. Confirm in writing at deadline 1. Thank you very much. Were there any other points?

MR HUMPHRIES: No, sir, that actually doesn't really work. They know what their order means. They can tell us now, 'Mr Humphries, yes, you're right, or Mr Humphries, no,' so that we and others can make our own submissions at deadline one. If we don't find out until deadline one, then we get into subsequent deadlines. It's a simple yes/no answer.

MR SMITH: No, good point. Well, we will revert to the applicant on that particular point, then. Okay, any other matters before I move to Gravesham Council? Now, I do note for Gravesham that we have two hands up. We have Alastair Lewis, who I take it is instructing solicitor for Michael Bedford KC. Which one of you is coming in?

MR BEDFORD: So me briefly, but only to effectively introduce Mr Lewis. But there were a couple of comments that I was going to make, if that's convenient, but then Mr Lewis was going to raise, again similarly, points of clarification where we would welcome a response from the applicant, preferably this afternoon, but if not in their revised – the note that's been referred to, the 70-page note. We were looking at this part of the agenda, and bearing in mind your comments about using time effectively, that we weren't going to now provide our detailed comments on the various points in your annex. What we were going to do was to reserve that to what we submit at deadline one, when we will have been informed, we hope, by the applicant's 70-page document, which will shed light on some of their thinking and may remove some of our queries or questions. So that was the overarching point.

The second point, I would absolutely echo the point that's just been made to you by Mr Humphries, about wanting that clarification, and preferably wanting it this afternoon, but if not this afternoon, again in the written note that apparently is in draft. Just adding to it from a Gravesham perspective, and the point's already been made by Thurrock, we are very concerned, as it were, about the shadow that the DCO casts over planning in Thurrock for as long as there's some uncertainty about, 'When is it going to happen? When are all these impacts actually going to be experienced in Thurrock?' And therefore the, as it were, more is through the terms of the DCO, we say, the better, to enable proper

planning in Gravesham, to allow Gravesham to then cope properly with what's ahead. So that was the overarching point and the reason why Mr Humphries' question is very, very pertinent to us.

But now turning [inaudible], I know he's got a couple of points on specific provisions where, again, clarification would be appreciated.

MR SMITH: Okay. Let us then hear those points.

MR LEWIS: Thank you, sir. Alastair Lewis from Sharpe Pritchard, for Gravesham Council. I just have three points, I think – because some of the ones I was going to mention have already been dealt with and, as Mr Bedford said, they're points of clarification. The first one is in your section 1, which is novel drafting, and in particular it's at article 56.3. This is the article about interface between existing planning permissions and the DCO works. On this one, it's really a point of clarification, really. Before they come to a conclusion on whether they support this article or not, it would be really helpful if the applicant has carried out an analysis of what existing planning permissions actually are in place which they think will be subject to this article. If they could provide that list, preferably with the document which they promised before, in the next couple of weeks.

The second point I want to make is really following on from your point 7. Again, it's on article 56. It's the interface between existing planning permissions and future planning permissions as well, and the DCO works. It's not a point you actually raised directly – slightly different. The council's unclear at this stage whether some development that might follow as a consequence of the DCO development will be brought forward under the powers of the DCO, or later, under a town and country planning application.

And an example of this, a specific example I've been asked to raise, of public facilities that may be provided at the proposed Chalk Park open space – and as a point of clarification which hopefully can be met if not in the promised paper, otherwise offline – the council would welcome some clarity from the applicant about what they have in mind for the park in terms of facilities, whether it be cafeterias or whatever, that would normally require planning permission, and whether they intend to bring them forward somehow within the scope of the DCO or later on in a planning application.

And then my third and final point, really arisen during the course of this day, and it's in relation to ancillary works in schedule 1. Having had another

look at the introductory words to the long list of different types of ancillary works which are authorised under the second part of schedule 1 on page 115 of the order, if that helps, I'm not clear in my mind whether the revised drafting which has appeared in version 2 of the DCO restricts the geographical area within which the ancillary works can take place in the way that perhaps the applicant wished to restrict it, or maybe they have different intentions. But, for me, it was very clear in the first draft of the DCO that ancillary works could only take place within the order limits. But with the redrafted introductory words to the list of ancillary works, in my mind anyway, it's not so clear. So I'd quite like the applicant, if possible, to answer that question today, or if not in their written submissions – and those are all the points I was going to make today, sir.

MR SMITH: Thank you very much. Right, let us move on. I'm conscious that we have Daniel Douglas for Havering.

MR DOUGLAS: Good afternoon, sir, and good afternoon, everybody. Daniel Douglas, London Borough of Havering. As with other interested parties, we'll be providing more detailed comments at deadline one, sir, so I don't propose going through all our points. I will just offer yourself and the panel three broad observations that you may want to consider during the examination.

The first point is in relation to deemed consent. Now, the point's already been made by other interested parties around the length of time – the 28 days that's currently referenced. Havering feels that that's too short and it should be a longer period, and I'd just signpost the panel to the M25 junction 28 development consent order that was approved by the Secretary of State on 16 May 2022 – order number 573 – where there was a similar circumstance, where the applicant, National Highways, had put forward a 28-day consultation period and the Secretary of State approved the order on a 42-day basis. So I just point the panel to that particular point.

The other two points I wanted to raise were in relation to references, particularly in relation to requirement 3, detailed design, and requirement 9, fencing, as well as other requirements and articles that refer to consultation with the local planning authority. As was referenced by colleagues from Transport for London earlier on today, around consultation with them, we do think it needs to be quite clear in each requirement where there is going to be consultation with local authorities. Reference does need to be made to both the local planning

authority and/or local highway authorities because, with the exception of unitary authorities, in the case of Havering we are the local planning authority, but for some of our network, Transport for London is the local highway authority. I think it just needs to be clear within the requirements that there are different authorities with different responsibilities that may need to be consulted.

The final point I would just like to raise is in relation to the point that the panel's raised in relation to the phrase 'substantially in accordance with,' in relation to several of the requirements – 4, 5, 10 and 11. Havering's position is – and we did refer to this in our relevant representation – we feel the word 'substantially' is quite a loose term, and we feel that the phrase, 'substantially in accordance with' is open to interpretation, and we would like the word 'substantially' removed from those various articles that refer to, in particular, management plans being substantially in accordance with outline management plans. We don't feel that phrase gives us the surety that we need that final management plans will be in accordance with those outline plans.

And again, I just refer the panel in particular to the M25 junction 28 development consent order, and in particular paragraph 9.3.22 of the examining authority's report, and paragraph 135 of the Secretary of State's decision letter, where the word 'substantially' was removed from the various requirements and articles within that order. And I would also just cite the panel to page 195 of the examining authority's report into that order, where they've also cited the Southampton to London Pipeline Order 2020, where the phrase 'in accordance' was used, instead of 'substantially in accordance with'. So we would submit to the panel that there are several development consent orders that have been granted where there is precedent for the word 'substantially' to be removed in this context. Thank you.

MR SMITH: Thank you very much. Can I now ask Mr Mike Holland to speak? Mr Holland, can you introduce yourself and…

MR HOLLAND: Thank you, sir. Mike Holland, Holland Land & Property, on behalf of landowners and also, in brackets, their development partners. In the interest of time I'm going to whizz through, as quickly as I can, the points that I want to make, and they come from a private landowner's perspective, which is often not made at these junctures. One overarching point I would make, and it turns to the way in which we try and interpret the draft wording, is the fact that in a lot

of cases the three classes of land use during the works and as part of the scheme – be that temporary, temporary with permanent rights, and permanent acquisition – tend to be all grouped together in the context of reference to land within the order limits.

That creates some confusion, I feel, and in particular regard I might draw you to the – bear with me. I'll try and make sure I get this in the right order – the way in which restrictive covenants are imposed and burden that land. For example, I would like further clarification within the draft wording as to how restricted covenants and, indeed, under article 56 in relation to planning permissions, what the effect of that drafting is on land that is temporarily acquired and then is returned to the landowner. For example, if you take the planning permission point, my basic reading – not being from the legal profession – is that where planning consents are ceased to have effect, is that still the position at the point at which they revert back to the landowner after that use has been done with by the applicant.

I then just want to turn to some specifics, in relation to article 5, maintenance of drainage works, the drafting refers to 'the person responsible'. The point I'm making there is that obviously land drainage is quite key for those landowners across the scheme, and I want to ensure that whilst the wording of the draft DCO refers to that responsibility being maintained – and in the case of private landowners, of course they are responsible for land drainage as it is – but there is no limitation on the applicant to do what is necessary to ensure that their scheme links with retained land drainage schemes, to ensure that they are properly working and that the costs of dealing with that are not burdened on the private landowner, despite the fact the draft wording of the DCO sticks the responsibility still with the owner of that drainage scheme as it might be now.

The next point I want to make, if I may, relates to article 8, I think it is, or 7, which is the consent to transfer the benefit of the order. There is, of course, a general concern as to who landowners are dealing with. Despite the reference to compensation still being the responsibility of the applicant, I can see a situation arising from the draft wording where we as advisors – whether that be myself as an agent or legal representatives – find ourselves dealing with a whole raft of different undertakers and parties, which only adds to the cost and the issues that landowners have to deal with.

There's a sub-point to that, which is I note in article 8.5, where they list a whole raft of undertakers, but specifically those who would fall as co-operators, and again, it goes back to the distinction between temporary land with permanent rights and what is being permanently acquired. Where it is land with permanent rights, I would like clarification that those rights that are permanent, whether they fall within the code or not. Those that understand land will be well aware of the issues that that particular new code has had for the land ownership sector over the last few years.

The next point I wish to make, and again trying to stick to the drafting of the wording, refers to article 13, the use of private roads. The draft DCO doesn't say this, but the explanatory memorandum does, where it refers, and I quote, 'In common with other permitted users,' and I'd like to seek clarification as to whether the draft DCO really ought to be more explicit in that respect. For example, the best example I can cite across the scheme is the Lea Bridge Road, which is coloured blue and has a multiple number of users that exist at the moment, and how that fits with the use of that road, by way of example, by LTC during their works and potentially post construction, and where that right extends to and the limitation of it.

I'll make my point in relation to the time limit for exercise of CA powers in our written note, and obviously we will deal with that in the compulsory acquisition hearings, but to suffice to say I opened my file on this project in 2014, and if I work through my timetable of the time it will take to achieve consent without legal challenge – the proposed eight years – add to that the construction period, I can well see a period of 28 years or so, a generation of uncertainty for landowners, and I make that point on their behalf. More specifically, Mr Humphries made this point much more eloquently than I can, but it's quite clear there is a disconnect, it seems, between the relationship of the wording in article 27 and that in schedule 2, requirement 2, in terms of beginning, commencing, and the time periods that are being referred to in the drafting.

The next point that I'd like to make – and again, it's a specific drafting point – relates to temporary possession, and specifically article 30.5.4, where I can see issues arising from the definition of what we regard as completion of works. For example, where land is being temporarily occupied, how do we

know when those works have been completed? What control mechanisms are in place to ensure that the occupation of that land isn't continued for an unreasonable period of time? The most extreme example of which I can find is to assume that there is a welfare unit or some machinery that's being conveniently stored on a piece of land by the contractor, which frustrates the reversion of that land back to the landowner where the other works have finished.

MR SMITH: On these particular matters of detail – I mean, important though they are, Mr Holland, I will flag that we are going to have a number of Compulsory Acquisition Hearings, and so we will be looking carefully at two sets of issues. Firstly, the applicant's justification for its broad request for both compulsory acquisition and temporary possession powers. Why are they seeking the powers, for what purpose, and are they justified? But then we'll also be providing an opportunity for individual affected persons to make their points about those. I guess I just wanted to look at the remainder of your submissions and the degree to which you are making detailed drafting points on essentially temporary possession or compulsory acquisition points, where there will be a forum to bring them forward, and maybe to use the time to actually focus on the ones that don't fit into that slot.

MR HOLLAND: Well, thank you very much, sir, and you're right. You'll be pleased to know I only have one more point to raise, so I'm about to finish. Well, I do appreciate – what I'm trying to do here is stick to the draft wording of the DCO, in the knowledge that the detail of the compulsory acquisition matters that flow from it will be dealt with elsewhere. But just another point of general observation, which is the power to override easements etc under article 66, and I'm particularly interested there to raise the flag as to the effect of the draft wording on those that have a third-party interest in land – for example, developers who hold an option agreement – where it seems that those interests are extinguished or affected, and what that means when that land reverts. So, again, yes, I appreciate it's a compulsory acquisition point, but it's also a drafting point as to how you link all this together.

Last point being that I note the applicant's reference to other documents. I totally understand that. I get that, but it's devilishly difficult to understand

what power those documents have, and how they knit together with the consent order itself, and how we read those together. Thank you for your time.

MR SMITH: And thank you for your submissions, and apologies for trying to hurry you through at a point when you'd almost finished. Just before we move to Ms Samantha Woods – and please bear with us – Mr Taylor, I believe, had a point that he needed to bring out. Mr Taylor.

MR TAYLOR: Yes, sorry, just a very quick one from Mr Douglas, from having –

MR SMITH: Mr Taylor, are you still with us? We seem to be having some internet problems. I tell you what, let us move back to Ms Woods, and then if Mr Taylor's internet corrects itself, we can bring him back in. Ms Woods, apologies, you are the lucky last.

MS WOODS: Thank you. Samantha Woods, on behalf of Northumbrian Water Limited. I will make these comments very quick, particularly noting what you said about other hearings that will be available for these kinds of points, but I would just like to speak very briefly on matter 6 in your annex A, regarding statutory undertakers, land and apparatus, and specifically sections 127 and 138 of the Planning Act. The position for Northumbrian Water Limited is that a large number of its assets are impacted by the Lower Thames Crossing scheme. Its engineers have been working closely with the applicant for a number of years in relation to the diversions that will be required.

Nonetheless, Northumbrian Water Limited do have outstanding concerns, particularly in relation to their Linford[?] well site, which is a principal asset that is within the border[?] limits. Our concerns with this have been briefly outlined in our relevant representation and procedural deadline B submission. I won't go into any of the detail of the concerns, but they include issues about the potential of the temporary occupation of the site, including hand-back date and also about potential contamination of the asset. As to specifically section 127, although our initial view is this is not engaged in relation to the temporary occupation only of the site, nevertheless we would stress that Northumbrian Water is extremely concerned about the site and so reserve our opportunity to set out in full our thoughts on that point and the other issues in writing at deadline one.

MR SMITH: Thank you very much. That is clear. Now then, to the applicant on those elements of this where, by specific request or exception, and we do have the

point raised particularly by Michael Humphries KC, it would be useful if we could have an immediate response.

MR LATIF-ARAMESH: Thank you, sir. Mr Latif-Aramesh, for the applicant. On the specific query that was raised in relation to commence versus begin, the short answer is that beginning the development would satisfy or discharge that requirement. It is deliberate, and it has been included so that there is only a requirement to begin the development within the time period mentioned. Two brief comments on that. One is that the compulsory acquisition period does not have the same time frame, so that the points around impacts on landowners are not at issue, because of the drafting of requirement 2. That's a precedented approach that we've taken. DA-428[?] again supports the approach that we've taken.

The other point I would just make is that in order to assist interested parties with this, and in response to some comments that were made by the Port of London Authority, a definition of begin is going to be inserted, which is one of the amendments that Mr Henderson referred to at the start of today's proceedings. I wondered, sir, if you would find it helpful for us to provide some, at this juncture, some balancing statements. We're not proposing to go into any great detail, but just to give you a flavour –

MR SMITH: Yes. No, it absolutely would, because I think otherwise we would be in a situation where we'd have heard the arguments of others, but not got a sense or flavour of the high-level positions from the applicant, and our whole rationale for holding this type of hearing this early in the piece was to get a balanced overview. So, yes, that would be helpful.

MR LATIF-ARAMESH: In which case, what we would propose to do is go through the interested parties in the order that they've spoken. This will be split between myself and Mr Henderson. I think on – so starting with the Port of London Authority, who raised concerns around the flexibility, and specifically the flexibility that's been sought in relation to the outfall. As Ms Dillistone noted, we're in discussions with them, we've provided with a provision that specifically restricts the power that they're concerned about, and we await to hear from them.

On Thurrock Council's comments – so these will be split between myself and Mr Henderson – the first point to note is that the interpretive provision on

'materially new and materially different' is not, in our view, a bespoke or new definition of materially new and materially different. It merely seeks to confirm what the Secretary of State has said in other decisions. On the subject of 'substantially in accordance with', we've made submissions earlier today that on the A47 project, which was more recent than the M25 junction 28 decision matter, it was considered to inappropriately fetter the discretion of the Secretary of State. We'll provide more submissions on that in due course.

Thurrock Council also raised the provision of a report relating to the replacement traveller site. We were not proposing to submit that in this examination, because that report is effectively the workings-out of what is in the design principle that I referred to earlier. So we wouldn't propose to submit that in the absence of any request from you, sir.

They raised concerns around the extent of article 3, and specifically why the phrase 'within the order limits' was removed. It was removed because of the correction order that was granted on the A303 Stonehenge, prior to the quashing of that order, where the Secretary of State, in our view rightly, noted that the authorised development is defined as the works in schedule 1, but also the other articles of the order which relate to works which could go outside of the order. And on that point, I think we consider that definition of authorised development is heavily precedented, and we wouldn't deviate from it.

On the subject of article 6.3, which is the provision which allows the variation of limits of deviation, and more generally on the phrase 'materially new and materially different', we heard earlier that if an effect arises in one area but not in another, it might seemingly get through. Well, in our view, materially new or materially different has a clear meaning, and new environmental effects would clearly fall into that bracket. The flexibility that's sought there is appropriate, based on the fact that the application is for a preliminary scheme design and it's necessary to maintain that level of flexibility in order to ensure the project is delivered both cost-effectively but as efficiently as possible.

There was also – and this is my final point. Then I'll hand over to Mr Henderson. There was a point raised around the temporary possession of open space. In the applicant's view, section 131 and 132 of the Planning Act are not engaged where there is no compulsory acquisition, so the straightforward answer is, if temporary possession is proposed, then those provisions are not engaged.

Section 18 and 19 of the Acquisition of Land Act have no application to this project. It's section 131 and 132, and for the reason I've set out they're not engaged here.

MR SMITH: Thank you very much.

MR HENDERSON: Good afternoon, sir. Again, like Mr Latif-Aramesh, I'll just address a handful of points that various parties raised. Not all of the points that we heard, but just some where we think –

MR SMITH: Can I just arrest you for a brief moment, because I have seen Mr Humphries hand go up. I'm very conscious that it's likely to be in relation to that point of response that Mr Latif-Aramesh provided, and so therefore I don't want to go too far beyond it if we have a supplementary on that. So Mr Humphries.

MR HUMPHRIES: Yes. Michael Humphries, Kent County Council, and I'm grateful to Mr Latif-Aramesh for what he said. He said that preliminary works will discharge requirement 2. Yes, I understand that. To make sure we're absolutely explicit on this, my understanding is that the consequence of that is that the development can be commenced – i.e. the substantial works, not just the preliminary works – at any time. 10 years, 15 years, 20 years –

MR SMITH: It is the spade in the ground rule.

MR HUMPHRIES: Yes, so once an environmental investigation has happened within five years, the construction of the crossing can start 15 years later, and I just want to make absolutely clear – it was said that this drafting is deliberate. I want to be absolutely clear that I've not misunderstood. Is it deliberate in that very specific sense as opposed to deliberate in the kind of small 'd' sense of referring to the distinction between begin and commence in the way that Mr Latif-Aramesh did?

MR SMITH: No, that's a very necessary clarification, so can I just throw that back to Mr Latif-Aramesh.

MR LATIF-ARAMESH: Thank you. Mr Latif-Aramesh, for the applicant. Yes, that is the effect of the provision as you said, sir. It's the spade in the ground rule. And just to add one further point of clarification, Mr Humphries helpfully referred to requirement 7, which relates to protected species, and queried whether the use of the word begin might have been a typographical error. It is not. It is deliberate, on the basis that we intend the preliminary works to be caught by requirement 7.

MR SMITH: Okay. Well, look, we've surfaced[?] Mr Humphries' point. We are at a very, very early stage in this examination, but rest assured we are going to enquire further into that point – and it won't be in this hearing, but it will come out in the remainder of the examination. Apologies, then, let's return to the applicant and hear the remainder of their responses. Mr Henderson.

MR HENDERSON: Thank you, sir. Just to briefly, then, pick up on a few of the points that will hopefully assist interested parties in their responses in due course. In response to the Port of Tilbury's comments, we would just observe that we are engaging positively and regularly with the Port of Tilbury, and we recognise the mutual interest in the framework agreement that was referred to. But just to balance what was said, we would observe that we have included a set of protected provisions for the benefit of the port in the development consent order. Those were shared in advance of submission of the application. They do include a plan approval mechanism in favour of the port for certain specified works, and we haven't at this stage received any comments in respect of those protected provisions.

And we also wanted to note that we'd made positive progress in relation to land agreements with the port. Three leases have been executed with the port relating to land required for the construction phase of the project, and an option agreement is also agreed for permanent land-take at the port, so we just wanted to balance what was said with the fact that we have made positive progress and, as I say, we continue to work positively with them.

I won't comment on the submissions of DP World. We'll await to see the submissions they make. We understand the points that they've raised today. Moving on to some of the other points that Thurrock Council raised. Comments were made in respect of preliminary works. Now, Mr Latif-Aramesh has responded to the commence/begin point here, but we know other parties have raised this point and indeed, sir, you raised them in your comments, the extent of preliminary works. We thought it would be helpful just to spend two or three minutes just articulating our position on this, because we do understand it's a point of particular interest.

I think the first thing to say – it was mentioned, 'When did these come in? Were they consulted upon?' Well, the answer to that is, they were. They were included in the community impacts consultation in the pre-application stage, as

part of the draft COCP. Now, following that process and moving into the application of the DCO, we significantly strengthened the way in which we've dealt with this, so a preliminary works environmental management plan was created as a control document, and preliminary works REAC commitments were established. So in answer to Thurrock's points there, we reflected on what happened in the consultation and we strengthened our approach and our control around these preliminary works, and there was a slight change to the drafting, which perhaps is the point that they haven't picked up on through the process.

But just to explain our position here, as requirement 4.1 states, the preliminary works must be carried out in accordance with the preliminary works environmental management plan. So this ensures that for works carried out prior to the discharge of requirement 4.2, appropriate controls are in place at the point such works are proposed to be carried out. And this is an approach that's not novel to this scheme. It's been already accommodated in other schemes, for instance the M42 junction 6 DCO, which is consented, and the A303 Stonehenge order, which obviously has been quashed but was not challenged on this point when it was made.

The purpose of the preliminary works process is to facilitate the expeditious delivery of the construction programme, and these works have been identified as works that may be carried out early in the construction programme, and have been assessed as having a negligible or relatively minor environmental impact, and all of those things, in answer to your question, were taken account of in the environmental impact assessment process. The only works that can be undertaken, and their specific locations, are listed in table 1.1 of the preliminary works EMP. And importantly, as I said, these must be undertaken in accordance with the preliminary works REAC.

What that does is identify some 28 REAC commitments which are relevant to the control of those preliminary works, and additionally any ecological activities associated with the new works will require their own protected species license where those controls are engaged, thereby adding another layer of control. So, in summary, I think the key point to get across here is that the preliminary works EMP is a secure document, and essentially will be certified as final, unlike other outline documents, if this DCO is granted consent. So, in other words, we're providing the detail upfront now, the control plan at

this stage, and inviting it to be secured through the DCO process to control those preliminary works at the point at which they're implemented, rather than then going through the control plan process post consent. So I hope that provides an overview of the logic and rationale. I think we've temporarily lost sound at our end, sir.

MR SMITH: You haven't, I hope. Can you hear me now?

MR HENDERSON: I can, yes.

MR SMITH: Excellent. So does that draw you to a conclusion on your remarks on item (j)?

MR HENDERSON: It does, yes.

MR SMITH: Now then, everybody, very conscious of the time pressing against us, and I think, as with yesterday, it would be inappropriate to sit on much later than about 5.15 to 5.30 at the absolute latest. Now, I'm looking at the agenda items we still have in play, which are for (e), (f), (g), (h) and (i). I'm very conscious that we have the Marine Management Organisation, who've been sitting very patiently in the background, who will wish, I suspect, to make observations on DML[?] matters, and that we have a range of parties in the room who probably wish to make representations in relation to item (h) on protected provisions. Can I just see then a show of hands – is there anybody with particular points that they wish to put in relation to (e), (f) or (g)?

The EXA had some specific questions there that we can ask, but equally I'm very conscious here of wanting to be in listening mode and not wasting the time of parties in this room. Our questions can proceed later if needs be. Now, I do see Alex Dillistone on, presumably, item (e) Is that correct, Ms Dillistone? And Protected Provisions probably as well.

MS DILLISTONE: Alex Dillistone, for the Port of London Authority. Yes, that is correct, sir. We have a contribution to make and query in relation to item (e) which is tunnelling provisions, which I imagine will take no more than a minute.

MR SMITH: Excellent. Right. Now, looking at the other hands that are raised – Mr Bedford, can I just have a very brief summary of what you're wishing to raise on (e), (f) or (g)?

MR BEDFORD: Thank you, sir. Michael Bedford, Gravesham Borough Council. (e), it's really a reprise of the point we've already heard about in terms of the tunnel boring machines and control, but it's a very small point. And then (g), it's a new

point so far as the session is concerned, but on road charging. It's a point in our relevant representation about the extent of discounts and who they're offered to.

MR SMITH: Okay. And then if I can just check with Mr Douglas for London Borough of Havering.

MR DOUGLAS: Good afternoon, sir. Daniel Douglas, London Borough of Havering. Yes, my point was in relation to item (g), road user charging provisions. The panel will be aware from our relevant rep that we have made a submission in relation to the nature of the discounts that have been raised.

MR SMITH: So we will draw you in and Ms Dablin then finally.

MS DABLIN: Thank you. It's just a point on the protective provisions really, particularly as they've just been mentioned by Mr Henderson.

MR SMITH: Okay. Well, we will definitely be going to those protective provisions before we close. Can I then just finally ask, is there anybody who desperately has to leave early? I do see a hand Ms Dillistone. How is the MMO? I'm not seeing any –

MS CALVERT: Sorry. Laura Calvert from the MMO. Yeah, I could stay on the line a bit longer to discuss anything to do with the deemed marine licence.

MR SMITH: Yeah. Okay. Well, do you mind if we leave you then in agenda order, and then we'll – because I think Ms Dillistone is anxious to leave? So let us then return to agenda item (e). Remember here, the Examining Authority will reserve its points and will raise them later. So I will go to Ms Dillistone on agenda item (e) first.

MS DILLISTONE: Thank you so much – appreciated. Alex Dillistone for the Port of London Authority. The question is really related to the tunnel construction. So the applicant plans to construct the tunnel at the depth shown on the plans. Now there is an issue with depths. So, working up from the level of the tunnel shown on the plans, above the level of the tunnel shown on the plans is the tunnel deviation – the upwards limit of deviation, and above that there is the tunnel cover that is required, as set out in the environmental statement. Now working downwards, the navigational channel must be maintained to a depth of 12. 5 metres, with a 0.5 metre over-dredge, as set out in paragraph 99 of schedule 14 for a DCO.

According to our calculations, if the applicant exercises the upwards limits of deviation to the full extent, and wants to keep the tunnel cover that it has

identified as being necessary in the environmental statement, then the PLA will not be able to dredge to the extent that the applicant has suggested. One of these things will have to give. Now, at the moment, it is not clear to us which of those elements will take precedent, but we are concerned that the PLA's hand will be forced into scaling down its future dredging plans. We have been told by the applicant that this is not a concern, but we would appreciate a detailed explanation from the applicant as to how they have reached this conclusion.

MR SMITH: Yes, and in respect of that observation, I would mark that it is not a small remark, and it is not a small point because, potentially, the interposition of the tunnel as a threshold depth restriction for dredging, that reduced the ability of PLA to dredge to the extent that it had viewed itself as being capable of dredging to, is prospectively an economic constraint on the operation and growth of a range of port facilities at large, and could have really quite substantial consequences. So, if it turns out that that is where we are, we will need to bottom that out very swiftly in the examination process, and we will also have to consider more broadly what its economic and strategic planning consequences for the ports might be. Anything further on that, Ms Dillistone?

MS DILLISTONE: No, thank you, sir.

MR SMITH: Anything else from anybody else on item E? I am seeing one more hand. I see Michael Bedford. Michael Bedford, for Gravesham.

MR BEDFORD: Thank you, sir. Michael Bedford, Gravesham Borough Council. So the point we heard yesterday, I think from Mr Forrest, about the position that [inaudible] decision is to use one tunnel boring machine. Nonetheless, all of the workings will effectively be from the north. That is to say, all of the material will come in from the north in terms of the construction material and all of the slurry and spoil will go out from the north. We're told that that is clearly the applicant's intention. Clearly that is also the method of working if there were to be two tunnel boring machines, both starting from the north.

We see, therefore, that this a matter of importance because of the potential impacts on Gravesham were that the case, and therefore our preference would be that there should be a requirement encapsulating what the applicant has said is the intention. Now we're less favoured with burying it in a control document. We think it is a simple enough point. It can be expressed as a requirement. We will [inaudible] some wording as necessary in our post-hearing submissions.

MR SMITH: Thank you very much. In which case, I believe we can move on and just check again, by show of hands, for agenda item (f). Now I do see the applicant wishing to come in there. Is there anybody other than the applicant who wishes to speak on that item? I will turn just briefly to the applicant then, please.

MR LATIF-ARAMESH: Thank you, sir. It will be brief indeed. Mr Latif-Aramesh for the applicant. On the points raised by the Port of London Authority, we have separately provided them with a provision which specifically says that, even where scour protection is required, the depths would be maintained at the levels that they've requested. We're awaiting feedback from them on that provision. In addition, we provide an analysis which shows that from our perspective scour protection is unlikely to be required and so we think we've provided adequate assurance, but we're in ongoing discussions with the PLA on that point. On the suggestion from Mr Bedford KC on a commitment, we will consider that and we thank him for raising it.

MR SMITH: Thank you very much and apologies. I was getting in advance of myself at that point. Those were responding submissions on agenda item 4(e). So if I can now see hands for 4(f). Does anybody wish to raise any remaining matters? I am seeing no hands, so we are moving, then, on to 4(g) where I'm conscious that we did have folk who wish to speak. So can I see hands raised in relation to 4(g)? I do see Mr Douglas of the London Borough of Havering, and Michael Bedford for Gravesham Council. I will go to Mr Douglas first, please.

MR DOUGLAS: Good afternoon, sir. Daniel Douglas, London Borough of Havering. There are two main points that I'd like to raise in relation to road-user charging provisions. The first one is in relation to the policy compliance rationale for introducing charging for this particular project. Now, in the road-user charging statement, which is document APP-517, there's a reference within the document, particularly in relation to why the discounts, or why the charge is being applied in terms of trying to manage traffic demand in the area, and the importance of introducing a charge to make sure that there's not a particular traffic reassignment to one particular crossing. So obviously you've got the Dartford Crossing nearby.

Furthermore, the document also refers to the charge being introduced to make it consistent with – I think it's paragraph 3.25 of the national policy statement for national networks around funding charging schemes. We don't

feel that the road-user charging does meet policy compliance for paragraph 3.25 of the national policy statement for national networks. I think it's clear from Havering's point of view that the charge is being put in place to manage demand. It's not being used to directly fund the project. Yes, it is true that when someone pays the fee for using the new crossing, the money will go to the Treasury, but it's not being used to directly fund the project, and certainly I'd probably invite the panel just to look at paragraphs 3.23, 3.24 and 3.25 of the national policy statement of national networks, which provides a broader context for the Government's position, where they're quite clear that any tolls that are introduced for new crossings, in particular river crossings, need to be for funding the project directly. So I'll just signpost the panel to maybe consider those paragraphs during the examination.

The other that I'll make is in relation to the local resident discount scheme. Now the road user charging statement makes it quite clear that the charge, or the resident discount, is applied for residents of Gravesham and Thurrock, and that the rationale for that is to provide a consistency with the Dartford Crossing, where there is a similar discount, known as the Dart charge, for residents of Thurrock and Dartford, and the rationale around it is, the charge is applied for the boroughs at the portal – in the case of the Lower Thames Crossing, the tunnel portals are located.

I think Havering would put forward to the panel for consideration that the key difference between the Lower Thames Crossing project and the Dartford Crossing is that the crossing were confined to Thurrock and Dartford authorities. Clearly, with the Lower Thames Crossing project, the project goes much wider than that. It goes down to the M2, down in Kent, and it goes up to junction 29 of the M25, and further north up towards junction 28, and as a local host authority, where there is going to be significant disruption for our residents as a result of the scheme and construction of the scheme, our view is that, as a local authority, our residents should be entitled to the same level of discounts as will be in place for the residents of Thurrock and Gravesham. We'll provide more detail around the rationale for that in our submissions at deadline 1.

MR SMITH: In relation to that, just very briefly, is it your proposition that, if we're considering that, then, of fairness, we're considering an equivalent proposition

for all host authorities – anyone who has works within their local authority boundary? Is that where it ends up?

MR DOUGLAS: I think from a consistency point of view, our view would be, all host local authority should be entitled to a discount. We don't think that you can just apply it to one or two host local authorities. There needs to be a consistency approach across the whole project.

MR SMITH: Okay, that's clear. The applicant will no doubt respond on that point. Further points – or has that led you to the end of this matter?

MR DOUGLAS: That's all the points I want to make, sir. Thank you.

MR SMITH: Thank you very much. In which case I will go to Mr Bedford, for Gravesham.

MR BEDFORD: Thank you, sir. Well, I'm grateful to London Borough of Havering for introducing the topic because it's made, in a sense, clear what the current arrangements are in relation to users of the existing Dartford Crossing that say the Dart charge – a discount – is available to the residents on either side in Thurrock and in Dartford, but not to anybody else. It's proposed, in relation to the Lower Thames Crossing, that the residents' discounts are available to residents of Thurrock and Gravesham as users of the Lower Thames Crossing, but not as users of the Dartford Crossing.

Obviously, so far as a Thurrock resident is [inaudible] because they already get the benefit of a discount if they use the Dartford Crossing, but for a Gravesham resident that isn't the case. Gravesham residents are only going to be given a discount for the use of one of these two crossings, but the reality is that the network, as it were, works, as a whole – there will be a myriad of origins and destinations of Gravesham residents, some of whom will be users of the Dartford Crossing.

We see the impacts on Gravesham as being sufficient, both during the construction period and subsequently, that they certainly have a case for being given a discount in relation to the Dartford Crossing, in addition to the Lower Thames Crossing. Obviously that will require some revision to the legislation which regulates the Dart charge, but that would be within the gift of this DCO, because it can disapply or amend any other legislation, and so what we are proposing is that residents of Gravesham are given a resident's discount for using either crossing, and not merely [inaudible]. Because the impacts will be

experienced by residents of Gravesham during the construction period, as well as thereafter, we are suggesting that the discount to Gravesham residents should be available in relation to the Dart crossing from the start of construction of the Lower Thames Crossing. Obviously it can't apply to the Lower Thames Crossing until it physically exists and is open to traffic, so that will be at a later stage, but that's our essential point.

I can see that it's in a sense interesting to speculate, 'Well, how wide should it go?' What I would say is that each local authority clearly makes representations on its own behalf. We make what we think is a powerful case for our residents. We're not really going to be drawn on whether or not [inaudible] similar to Havering, or what, but I say, we think that there is a strong case for residents of Gravesham.

MR SMITH: Yes, and you do nail the one question I will allow to creep through from the questions of the EXA that aren't necessarily being asked right at this present time, but it is that I did ask it to Havering and the reason I did was because, certainly in terms of the thought processes of this Examining Authority, I think it would be very hard for us to suggest that we might have a particular provision in relation to charging for Borough A, but not Borough B because they didn't quite get round to asking for it, even though their circumstances are the same.

I guess what we're hunting for here is whether there is a consistency of principle, even though that may not be your instruction. You're instructed to act for the residents of Gravesham, but – yeah. If we're looking at the application of this, one of the things we will need to think about is fairness and the application of a consistent principle across the piece, and we'll of course be listening very carefully to what the applicant says on this point as well. Do you want to make any observations on that at all, or are you going to –

MR BEDFORD: Just two points, sir. One, in terms of, yes, consistency is a relevant factor, but so is proportionality of impact, and so one could certainly see a rationale for drawing a distinction somewhere between some authorities and others by reference to proportionality of impacts, and I don't, at the moment, say where that line should draw, but I certainly think that is a point that you could well draw.

The second point is that, whilst consistency is an admirable principle in general terms, I suspect that if you were to go through the protective provisions

of the schedules of this particular DCO, you would find, because of the different, as it were, treatment – different statutory undertakers – that there are manifest inconsistencies of treatment in the protective provisions, which simply reflect the fact that different statutory undertakers make different requests as to what they see as being appropriate to protect their interests. [Inaudible] in the sense, the DCO doesn't seek to adopt a consistent approach to protective provisions across the piece. It recognises that each, as it were, person putting [inaudible] case, makes their case, and there's either an accommodation with the disagreement, which is resolved by the Examining Authority, but there isn't, as it were, a drive to ensure that it must be consistent, as between different protective provisions. So that's, again, just a general point that I would make. Thank you, sir.

MR SMITH: Thank you very much. Okay. Can I return to the applicant then on such points as they wish to respond to of necessity, bearing in mind that again there will be full written submissions? So, to the applicant.

MR LATIF-ARAMESH: Thank you, sir. Mr Latif-Aramesh for the applicant. We consider the matters relating to road user charging will be dealt with appropriately further in the examination, but one point to note briefly, and we're happy to submit this into the examination, is that we have consulted with the DFT in its capacity as the proposed charging authority, who have confirmed that the proposed road user chargings align with government policy.

So that was just to address Mr Douglas's comments about –

MR SMITH: A headline in an NPS point – okay. Well, if you can, I guess, illustrate that in your written submissions, that would be much appreciated because that is a point that we will want to turn our minds to, to assure ourselves whether there is or is not a policy variance. Anything else you want to add before I move to agenda item H?

MR LATIF-ARAMESH: No, thank you. Thank you, sir.

MR SMITH: Right. Now, folks, we have approximately half an hour at maximum of hearing time remaining, so I will ask for a raising of hands for contributions on protective provisions, and I see five hands. Okay. Well, I've tended to go to the ports early on some of these matters and so, of fairness, I'm going to reverse the order then. Mr Rheinberg, for TfL, would you be content to open on this item?

MR RHEINBERG: Yes, no problem, sir. Matthew Rheinberg from Transport for London. It's just a point about protected provisions for Transport for London, which we are seeking as part of this order. So in the May DCO for the recent M25 junction 28 improvements project, there was a situation in that case where the applicant's project made changes to the Transport for London Road network which resulted in substantial costs for Transport for London associated with the delivery of the applicant's project and with the ongoing maintenance of those assets. In that case the Secretary of State provided protected provisions for Transport for London's costs and a commuted sum to be agreed with the applicant to cover future maintenance, and the situation is essentially the same with this project.

So we're seeking a similar set of protected provisions in this case, particularly associated with a large walking, cycling and horse-riding bridge over the A127, and the reason why protected provisions for TfL, specifically as a local highway authority, are needed is because TfL, unlike most other local highway authorities, does not receive any government funding for the ongoing maintenance of its highway network. So payment of a commuted sum wouldn't result in any double counting or duplication of payments to TfL, and in the absence of protected provisions, we would therefore need to find the additional costs of maintenance from own budget, which is highly constrained.

So we would be prepared to consider these matters as part of a side agreement with National Highways, should that be deemed appropriate, which would be another way of ensuring the infrastructure delivered by the project that TFS is to become responsible for can be maintained, but to date, the applicant has been unwilling to consider this. So therefore we are seeking protected provisions essentially to cover that issue.

MR SMITH: Thank you very much. Those are clear submissions, Mr Rheinberg. Is there anything else you need to add or shall I move on?

MR RHEINBERG: You may move on. Thank you.

MR SMITH: Let us then stay in London, and I will go back to Mr Douglas for London Borough of Havering.

MR DOUGLAS: Good afternoon, sir. Daniel Douglas, London Borough of Havering. The point that I wanted to make about protected provisions in relation to the highway network – Havering's seeking protected provisions for the interfaces

that the project will have on our road network. We also have a non-motorised user link that will go over the railway line, linking footpath 252, where the applicants approached us about taking on maintenance responsibilities for the section of that route that goes over the railway line in our borough.

As with comments that Mr Rheinberg's made in relation to budgets, Havering doesn't have the financial capacity to pick up additional maintenance of structures that are introduced by third parties, so we're seeking protected provisions in relation to that particular structure and there is dialogue with the applicants in relation to this particular matter and there will be further discussions with the applicants next month, I believe, on that matter, and we'll be able to update the panel in due course on that particular point.

The other matter that I did just want to bring to the panel's attention is, we have been approached by the applicant, agreeing a side agreement to cover matters such as dealing with defects and maintenance and various other matters related to our network and how the project interfaces with that network. Whilst we are working with the applicants and we have provided the applicant with comments on that side agreement – and the applicant has provided some comments back to us on it and we are in the process of digesting those and we'll be continuing to have dialogue with them on that – we have made clear to the applicant that we feel that from Havering's point of view, we really need these matters secured through protected provisions through the DCO, not through a side agreement. We don't feel that that gives us the surety that we need on these matters.

We're also concerned that any side agreement is not part of this DCO process and, at the very least, we would want to see – if we can't secure protect revision through the DCO, we would at least like to see the side agreement scrutinised as part of this examination. If nothing else, I think my concern is how it may be perceived by other interested parties or members of the public that these sorts of matters are being discussed and agreed between a local highway authority and the applicant, without proper scrutiny being put in place. So, if we're not able to secure protected provisions for our network, we'd at least want the side agreement that's been discussed to be scrutinised as part of the DCO application. Thank you.

MR SMITH: Thank you very much. Okay. So, having been in London, we are now going to go to the Environment Agency, so can I ask for Carol Bolt to submit on their behalf, please?

MS BOLT: Good afternoon, sir. Carol Bolt, the Environment Agency. I'll be as quick as I can, sir. I'm mindful of time.

MR SMITH: Well, I'm conscious of the amount of time you've been sitting waiting for this.

MS BOLT: Patience is a virtue. Just briefly, we've been having discussions on disapplication of the legislation that's within our remit with National Highways for some considerable time now and, as they said, that's well progressed. We would agree with that to the point where we think we're quite close to agreement now, with the exception of one particular paragraph in the protected provisions, which appear in the version of the draft DCO which you referred us to – the second version – and we may be nearly there with pretty much everything else. Mr Brown, at BDB, did email me recently regarding a couple of outstanding points, which National Highways have kindly conceded, so I think we are pretty much there on everything else.

The issue that we do have dispute with is on page 367 of the draft DCO within the draft provisions for the Environment Agency, and it's section 116, subsection 5 of the protected provisions. It is, as far as I'm aware, a novel provision and it relates to the Environment Agency's waste permitting remit. We don't agree to it. The applicant has asked us to discuss it further, which we are going to do and are happy to do that, but I have to say that, as it stands, it's unlikely that our position will change on that, so that is a point of dispute and obviously, if we can't agree, it will be for the applicant to decide whether they want to try to persuade you to include it.

There is an issue, sir, which I can see that that has been picked up by the panel in the agenda. You're obviously aware that that section 150 of the Planning Act provides that Environment Agency consent's required to disapply any permit that's within our remit and we regularly do disapply permits under the flood risk activity permitting machine, if we are given acceptable protective provisions, which these basically are.

The provision in dispute is a little bit different because it's not exactly a disapplication as such, but my colleague, who's a waste law expert who will be

talking to National Highways, did say that she thought it might be a disapplication by the back door, and that that's obviously open to interpretation. We will discuss further with National Highways and, if we can come to agreement, we will, but we're just saying that we're not confident that that will happen and it might be a point that we have to agree to disagree on.

So that's sort of most of what I've got to say, sir. Just a couple of small points we've got –

MR SMITH: Just before you move on from that point – I mean, if you end up agreeing to disagree, so to speak, I think it's worth me making clear what this Examining Authority's process will be, because it will be the same for you, as indeed for any other interested party in the same circumstance. We will essentially then provide a final mechanism, whether that be in writing, in terms of responses to the DCO commentary by us or, alternatively, at the last development consent order issue-specific hearing that we hold for the contested position to be put by you and by the applicant, and at the end of the day I've often referred in previous examinations to the kind of [inaudible] method. It's put in the can. We click the shutter. We take it away. We look at it, and we deal with that as a subsidiary matter in our recommendation to the Secretary of State.

So that's how we end up dealing with material that remains a dispute at the end of the examination period. I think it's worth you, and indeed everybody involved in this process, being alive to that, with the emphasis that, in fact, we have six months in front of us and we only want to go there if we can't conclude productive conversations that lead to roundtable agreed positions that are also broadly in the public interest and policy compliant.

MS BOLT: Thank you, sir. That's helpful clarification. Thank you for that. We understand where you're coming from on that, sir. Thank you. I only have a couple of quick points, apart from what I've just said, and one of them is just to deal briefly with the deemed refusal, deemed consent issue. It is an issue in our protected provisions and we've always insisted that it should be deemed refusal, and indeed that's one of the points that National Highways recently conceded in relations for our protected provisions, and indeed that's what appears in our protected provisions in the A66 DCO, where the examination recently concluded.

As I'm sure you'll be aware, that's been a bit of a flagship DCO under the Project Speed project, so we think that that deemed refusal is appropriate and we would agree with Thurrock Council that it's not in the public interest to have deemed consent. Then finally, sir, there's a long list of local legislation which the applicant wishes to disapply. The agency doesn't have the benefit of Section 150 for that legislation insofar as it's relevant to us, but I do think it's important that the appellant – sorry. I was in a planning appeal, earlier in the week.

MR SMITH: It's late in the day.

MS BOLT: Indeed it is. Yes, but I do think it's important that they should explain, in relation to that legislation, why they want to disapply it because it may well be that – I'm not suggesting this is the case, but it may well be that it's simply a list of all the legislation they think might be relevant. So I think that it should be a little bit more than that and that's all I've got to say. Thank you, sir.

MR SMITH: Thank you very much. Okay. Well, in which case, let us then move on to Samantha Woods, please.

MS WOODS: Thank you, sir. Samantha Woods on behalf of Northumbrian Water Limited. I can keep these really brief and I thank you, sir, for the comments you just made about the ultimate process of what would happen if there are still points of disagreement. Essentially, Northumbrian Water Limited has been working with the applicant for quite a while in order to ensure there are sufficient protections in place for its statutory undertaking. I would say that we are not yet in an agreed position and there are outstanding concerns which will be drawn out over the course of the examination, and I was simply going to end by saying that of course we'd be very happy to help the Examining Authority further along the line with the detail of that, but we don't propose to go into any of the drafting of the protected provisions today.

MR SMITH: Okay, and then finally, with thanks for forbearance and waiting until the end, Ms Dablin.

MS DABLIN: Thank you. Just to go back to Mr Henderson's point, we agree that we have had a number of meetings and these have been fairly productive. Mr Henderson then referred to the fact that we haven't returned comments on the protective provisions and I think it would be of assistance to the Examining Authority if we explained why we have not done so.

The purpose of the protected provisions is to work in collaboration with a framework agreement to provide a backstop position for the protections that are proportionate and relevant to the impacts that the scheme is having on the statutory undertaker. As I'm sure you picked up from a number of my submissions over the last couple of days, there are a number of areas in which the Port of Tilbury is not entirely clear as to the extent of the interaction and how this will be managed. As such, the focus of the Port of Tilbury has been very much on trying to work with LTC to identify the extent of the interaction and how it can best be managed by the protocols, and only with that context do we feel that it will be the correct time to then turn to the protective provisions to identify the extent that the current drafting may fall short, and which are the provisions we seek to add.

So, in this respect, I think it's also important to say that we have provided the applicant with a fairly comprehensive structure of what we're seeking in terms of legal agreements, and we have also provided a detailed traffic protocol which was subject to the meeting. I believe it was last Monday, and we are making progress and we feel that, with the information that we have provided, the applicant is fully aware of our concerns and our positions and, as such, we do not think it is an impediment to provisions and we think it would in fact be premature to do so without clarification as to the scale of the interaction. They would potentially be excessive or disproportionate, and may in fact hamper ongoing negotiations by taking too firm a step, if that makes sense. Thank you.

MR SMITH: It certainly does. No, thank you for those submissions. We'll obviously take those carefully into account. Now I'm going to ask the applicant again for summary and high-level responses on all of those submissions on agenda item H, noting that, of course, you will be coming back to us in writing. So, to the applicant.

MR HENDERSON: Thank you, sir. Tom Henderson, for the applicant. We can be very brief. Generally, in the interests of efficiency for the examination and the amount of paperwork, we'll be submitting updated statements of common ground, as we discussed in earlier hearings, at the next appropriate deadline, and these will all address the status of protected provisions, so we don't propose to go into any detail now.

MR SMITH: Excellent, good.

MR HENDERSON: Just in relation to Transport for London, Mr Rheinberg's comments are well understood and we reserve our position on that at the moment. Then in relation to the comments from the London Borough of Havering, we agree with the matter in which was set out the progress on the agreement and we remain of the view that side agreement is the appropriate way to proceed with that, but we continue to discuss that with them. Mr Latif-Aramesh is just going to make a few submissions on the Environment Agency.

MR SMITH: Thank you very much. Mr Latif-Aramesh for the applicant.

MR LATIF-ARAMESH: Mr Latif-Aramesh for the applicant. Thank you, sir. Again, very briefly on the EA submissions, we're grateful for Ms Bolt's comments and we share her assessment that all but one of the issues on the protected provisions are agreed. On Ms Dablin's comments, I think just one point of clarification. We refer to the protected provisions in the context of the comments made about the wide extent of the powers in article 18, for example. We don't think you can look at the powers in article 18 without looking at the protected provisions, but we agree with Ms Dablin that there are productive discussions ongoing about further interface issues and, as Mr Henderson referred to earlier, we've had productive and useful progress on those issues with the port recently. Thank you.

MR SMITH: Thank you very much. In which case, ladies and gentlemen, this takes us now to the final agenda item of substance here today, which is for (i) and the deemed marine licence. Now, I know that there will be some observations that the Marine Management Organisation may wish to put. Does anybody else wish to speak on this item, apart from obviously a response from the applicant? I'm seeing no other hands, so I'm going to move directly to the MMO.

MS CALVERT: Hi. Laura Calvert from the Marine Management Organisation. This shouldn't take too much time at all, and it is something that the MMO will be setting out within our written submissions. Essentially the MMO will [inaudible] that the drafting of the deemed marine licence, and the DCO itself really, doesn't prevent us from undertaking our duties in accordance with the Marine and Coastal Access Act 2010. Once a marine license is deemed within a DCO, the MMO's the delivery body responsible for everything post consent, so that includes enforcement and discharging conditions, any variations. So, as

such, the MMO needs to ensure that the provisions that are drafted in the deemed marine licence enable us to fulfil these obligations.

So we've had to look through and, at the moment, I've just got two things that I really want to raise. The first thing is arbitration, which is at paragraph 23 of the deemed marine licence, and I think it's article 64 of the draft DCO as well. So the MMO should really be considered as the overall decision maker in disputes regarding licensable activities in the marine area. So the MMO disputes the requirement for an arbitrary, or for any matters which the MMO are the enforcement body for and, as such, we would request that this paragraph is removed from the draft deemed marine licence. I see it's still in the version that's been circulated today.

MR SMITH: It is, and in fact, in that respect, it's worth flagging for the applicant that this is a matter that has been addressed at considerable length in a number of Examining Authority recommendation reports, mainly in my experience actually in the energy field, rather than transport. But there has been extensive commentary on this and there have also been a number of Secretary of State decisions around essentially removing the umbrella of arbitration from bodies that would normally be public authority decision bodies of final resort themselves. That's a point that doesn't just bear on the MMO. It bears on a few others as well.

MS CALVERT: Yeah, and I can see that. I think it's 21 in the Examining Authority's observations.

MR SMITH: Yeah.

MS CALVERT: It looks like it was something that you'd thought about and agreed with –

MR SMITH: We've already raised it, yes.

MS CALVERT: Yeah, brilliant. Thank you. The other thing is something which has been raised by an awful lot of the local planning authorities as well. It's just in relation to time scales. So within the deemed marine licence there are a number of areas that propose timeframes for the approval of documents which are just unrealistic for the MMO to meet. I think they are at paragraphs 10, 11 and 22. Just in order for the MMO to fulfil our obligations post consent, we need to ensure that we've got sufficient time to consider the documents and consult as well where needed.

There might be instances where we need to go out to certain expert advisors to gain their insight, to determine whether we could actually discharge that document and therefore we just request that these timeframes are amended to 13 weeks. I think at the minute it's 30 business days. We'll obviously endeavour to approve documents as soon as possible, but we just can't agree to the current 30 business days, and also linked to that, and as also linked to conversations that have already been had in relation to a lack of response being determined, is there not being any issue. So the MMO doesn't agree with this.

There's a paragraph – paragraph 20 – in the deemed marine license which notes that a lack of request for further information by the MMO after six weeks indicates that the MMO agree with the information that's been provided, and we don't agree with that. Obviously restricting or preventing the flow of information, or preventing the MMO from making a determination after six weeks will just slow down the process and essentially it might actually lead to the MMO rejecting that document, which will just increase time in the long run.

MR SMITH: Okay.

MS CALVERT: So we would propose that that's removed.

MR SMITH: Okay, and again in that respect, I mean we are obviously going to pay considerable attention to the whole issue of deemed consent or deemed refusal and time scales. So we are going to have, as I say, very careful regard to all those issues. Does that bring you to the end of your issues, because there was one possible question that, given that you're here and you've spent all of this time waiting, I might still allow to flow through to you, and that was simply to ask: on the question that you've heard us canvas with the Port of London Authority about dredge and dredge depth and cover for the tunnel and possible overlap between upward limits of deviation in terms of the tunnelling provisions, and the furthest depth of dredge that PLA can really consider themselves as being able to undertake in the Thames, is that a matter on which the MMO has any observations at all within the framework provided by the DML, and is there applicable marine plan policy that we need to be alive to here?

MS CALVERT: Yes –

MR SMITH: – and if you want to take that on notice, then by all means do.

MS CALVERT: Yeah, we can take that away and comment on it further. We don't have any issues at the moment and there will be a relevant marine plan policy that

will need to be looked at, and all of that information's available on the MMO's website.

MR SMITH: Okay. Well, do turn your minds to it in your written submission because essentially there's a strategic planning for the river and the use and viability of port facilities that does emerge there, and in your role as the strategic plan-maker, plus licensing authority under a DML. I'm just, I guess, trying to resolve in my mind whether that's a set of issues that you view yourselves as buying into and making submissions on, or not.

MS CALVERT: Yeah, that's something we can take away.

MR SMITH: Okay, thank you very much. In which case, I think I need to return to the applicant then for final observations on DML matters.

MR LATIF-ARAMESH: Thank you. Mr Latif-Aramesh, for the applicant. We've received the updated DML with comments from the MMO and we expect to be in a position to provide an update very shortly, but we don't anticipate, outside of the deemed consent provision, matters being unagreed at the end of the examination.

MR SMITH: Okay. Right. In which case we are now down to agenda item 4(k). Now, what I'm going to flag again is that the Examining Authority will roll any remaining items under that into later processes, be those written questions and, or a later development consent order hearing. On an urgent point only, please, does anybody else need to raise anything orally, that if it isn't raised now, means that we're likely to forget something quite serious? Remember, we do have further hearings. We do have deadline one. Those are a lot of opportunities to become involved. I am seeing no hands raised on agenda item (k).

In which case then, we will proceed to agenda item 5, next steps. Now the first item that I will cover in relation to this will be the fact that we do have an action list and my colleague Mr Pratt has been working very hard behind the scenes to keep a note of actions. Mr Pratt, we obviously do have an action list. We've got 11 items on it. I wasn't proposing to ask for any detail on that because I was just going to say that we will issue it as soon as we practically can early next week. Is that fine with yourself?

MR PRATT: I can go through all 12 or 13 items minutely if you prefer –

MR SMITH: No.

MR PRATT: – but I suggest we agree to go out as soon as practicable. But at this time on a Thursday, it will be next week at some point.

MR SMITH: Okay – noted. Thank you very much for your endeavours. This then, ladies and gentlemen, has been issue-specific hearing number 2, and reference to the notice for hearings will identify that we did have time reserved to continue this hearing tomorrow, had it not managed to reach a conclusion, but I think we're very clear now that we have reached a conclusion. There are no other matters remaining on the agenda, so there will be no carryover business on issue-specific hearing two held tomorrow, to remind people in the room, however, that we do have carryover business from issue-specific hearing number one, that will be held tomorrow, commencing at 10.00, and that will relate to agenda item 4(h), and then moving through to item 5 and closure of that hearing. I very much hope that we will not need any more than an hour and a half or two hours to resolve that matter tomorrow morning.

Okay, in terms of other business in these examinations to be alive to, there are two open-floor hearings that I will draw to your attention. Open-floor hearing number two will proceed on Wednesday 28 June 2023, and the 29th, if required, from 10.00, and that will be held in person at Orsett Hall in Essex. It will also be held as a virtual event, so it's a blended event, in effect. Interested parties can still request to be heard until 23.30 tonight. Registration closes in 23.59. Be safe. Be in before 23.30.

Open-floor hearing three will proceed on Wednesday 5 July 2023, and 6 July if required, again from 10.00. That is also in person, at Dartford Bridge Hilton Hotel in Dartford, Kent. So open-floor hearings being held north of the river in Essex, south of the river in Kent, and interested parties there can still request to be heard on the Planning Inspectorate's website until Thursday 29 June 2023.

I will also remind you that if you want to be heard at forthcoming hearings in the examination, including open-floor hearings, but had not managed to register for open-floors two or three, then please put your request to be heard in a deadline one/procedural deadline D on Tuesday 18 July. This will be the last occasion on which we will ask for, in principle, requests to speak at such hearings.

If you are an interested party who was interested in the discussions held yesterday at issue-specific hearing number one, or today at issue-specific hearing number two, you have until deadline one on Tuesday 18 July to provide us with any written comments, and this is also the deadline for anybody here today to provide their written summary of oral submissions, excepting only that we have indicated, and will clarify in the action list, that we will be seeking some specific submissions from the applicant within a fortnight, and we propose to exercise discretion to accept those. We will make clear in that published action list what we are looking for there.

Now, moving then on, there will be further hearings held obviously in September, October and November hearing windows and we will be issuing an examination timetable in a confirmed form under a rule 8 letter, and that will be published on our website next week, and so please do take a look at that.

I'm going to thank everybody attending today and for all of your contributions, all very much valued, and we are very grateful for the amount of time that you contributed to informing us as thoroughly as you have. I will also thank the case team for supporting everybody throughout this hearing as well as they have.

So, unless there is anything else there's anybody wishes to raise now, and I will just check the room to see if I see any final rising of yellow hands. I am now just going to ask my fellow panel member colleagues to come onto camera and we will say goodbyes. If I could start with Mr Pratt.

MR PRATT: Goodbye everybody, and we'll maybe see you in the flesh in a week or two.

MR SMITH: Then Mr Taylor.

MR TAYLOR: Goodbye everyone. See some of you tomorrow, or next week.

MR SMITH: Thank you very much to both of my colleagues. I will now wish you all goodbye and inform you that issue-specific hearing too is now closed.

(Meeting concluded)