

17 July 2023

The Planning Inspectorate
National Infrastructure Planning
Temple Quay House
2 The Square
Bristol
BS1 6PN

**A122 LOWER THAMES CROSSING (REF: TR010032)
DEADLINE 1 WRITTEN REPRESENTATIONS**

MELVILLE HAMILTON LOWE MOTT – AFFECTED PARTY REFERENCE: AP1308

C H L MOTT & M MOTT – AFFECTED PARTY REFERENCE: AP1369

THE OWNERS OF [REDACTED]: RR 2003579

On behalf of our above clients, the Mott family, we write further to the Relevant Representations submitted on 20 February 2023.

Our clients are owners and farmers of land and property at [REDACTED], East Tilbury.

The Plan attached to these submissions shows our client's ownership edged red with the land areas within the Order limits shaded yellow.

We have not repeated those Relevant Representations in this submission to reflect the ExA's advice to avoid repetition.

We also refer the ExA to the separate Deadline 1 written representations in respect of the draft DCO that we have submitted on behalf of all clients who we represent. Those should be read in conjunction with these submissions.

We have also submitted a separate request to make oral representations at the Compulsory Acquisition Hearings as scheduled in the timetable annexed to the Rule 8 letter dated 27 June 2023 (as amended on 3 July 2023).

[REDACTED]

We confirm that we are negotiating a Statement of Common Ground with the Applicant and this will be submitted to the ExA in due course.

References to 'the Project' are to the Lower Thames Crossing.

A summary of the headline issues contained in these Representations has been submitted as a separate attachment.

B MAIN REPRESENTATIONS

1. APPLICANT'S RELIANCE ON DETAILED DESIGN & BUILD PHASE & THE IMPOSITION OF RESTRICTIVE COVENANTS/PERMANENT RIGHTS

1.1 We have noted in the draft application documents and further comments made by the Applicant through the Examination responses and through our ongoing negotiations with the Applicant directly, that there is a significant emphasis placed on the Design and Build Phase of the Project to provide detail that, in our opinion, is required for us to fully assess the impact of the Project.

1.2 This is of particular relevance to land to be temporarily possessed but with the acquisition of permanent rights.

2. WCH – NEW ADDITIONAL ROUTES

2.1 With reference to the Applicant's Project Design Report – Part E – Design for Walkers, Cyclists and Horse Riders (APP-512) – Section 4.3 (WCH routes in Tilbury Marshes and North Portal), our client's land interest is affected by the following:

- (i) Tilbury Fields routes (plots 16-39, 20-67, 20-81)
- (ii) Heritage Trail (plots 22-40, 22-59, 22-93, 22-95)
- (iii) Goshems Link (plots 22-28, 22-40)
- (iv) Station Road WCH Track (plots 22-26, 22-115, 23-172, 23-173)
- (v) FP200 south (plots 19-03, 19-18, 19-25)
- (vi) FP200 north (plots 20-64, 20-70, 20-74, 23-113, 23-106)

2.2 Our client objects to the proposed permanent acquisition of any WCH route.

2.3 Our client also objects to the upgrading of footpaths to bridleways, the reasons for which have been submitted in our client's consultation submissions.

2.4 We also attach a copy of our written submission to the ExA at PDC3 in respect of WCH routes and would request that this matter is considered in detail by the ExA, the Applicant and affected parties as to the effects of these proposals here and more widely along the Project route at a specific hearing or at the Compulsory Acquisition hearings.



- 2.5 We consider that the extensive nature of the WCH proposals by the Applicant and the significant issues that could be created by these on landowners will need to be addressed in an oral hearing.
- 2.6 Without prejudice to our client's objection to the permanent acquisition of WCH routes, as a matter of principle we consider that land required could be dedicated for this purpose with the freehold ownership remaining with our client to avoid 1) ransom strip and severance issues and 2) to allow our clients to demonstrate that they have a sufficient interest in the freehold land to propose any necessary amendments to those routes as may be required as part of future strategic development at East Tilbury or other reasons why a footpath may need to be diverted.
- 2.7 On behalf of our client and our client's development partner, Mulberry Strategic Land Ltd (AP1581), they object to any new WCH which severs or prevents proper access for future strategic development.
- 2.8 Specifically, the Station Road WCH Track, referred to above, creates a ransom strip between Station Road as the adopted highway and our client's land to the north and south of Station Road (principal plots 22-03, 22-12, 22-17, 23-129, 23-159); all of which is under option to Mulberry Strategic Land Ltd.
- 2.9 Furthermore, the Goshems Link effectively divides land which is not in the Order Limits and is in our client's ownership and also under option to Mulberry Strategic Land. This land forms part of a phase of development under emerging plans for strategic development at East Tilbury and under Thurrock Council's Local Plan objectives.

3. ECOLOGICAL MITIGATION LAND

- 3.1 The Applicant has proposed to permanently acquire land (principally Plots 35-12 and 38-27) as ecological mitigation land.
- 3.2 Without prejudice to our client's objection to the loss of this land, we are in active discussions with the Applicant through the preparation of a Statement of Common Ground to establish the means by which this land could be managed in accordance with the Project's objectives and prescriptions with the freehold remaining in our client's ownership.
- 3.3 As a matter of principle, we consider that this would provide the most appropriate way forward for the management and good husbandry of this land.

- 3.4 Areas such as our client's land holdings suffer many instances of unauthorised access. A change from arable farming to grassland habitats (for example) will lead to instances of unauthorised access increasing unless the land is managed and kept secure. The prospect of the land being owned/managed by a third party increases the risks of these instances occurring and therefore increases the same risks to our client's adjoining retained land and property.
- 3.5 In respect of the management skills required, we consider that our clients are well placed to meet these requirements and therefore we ask the ExA to consider a general presumption in favour of this approach where landowners are prepared to enter into management agreements for the term required by the Project.
- 3.6 The above could for example be delivered under an agreement subject to Section 253 of the Highways Act 1980 or under a similar form of environmental land management agreement.
- 3.7 The extent of ecological mitigation land is significant on our client's land contributing to an approximate loss of 67% of their total land holding (including the northern portal area and Tilbury Fields) at East Tilbury. This poses a significant risk to our client's business and future family generations.
- 3.8 Our client will wish to raise matters concerning the justification of the extent of mitigation land proposed in this area at an oral hearing with representation from their own ecology advisors.
- 3.9 In order to mitigate the impact of the proposed ecological mitigation land on areas that are less sensitive to current farming operations and future strategic development, we have proposed alternative replacement land (June 2022). This offer of replacement land has only recently (June 2023) been responded to by the Applicant having seemingly refused to engage in any meaningful discussions throughout the whole master planning of the Project as to how to minimise the impact and ensure placement of mitigation land is appropriate in terms of scale and location.
- 3.10 We are considering the options available to us as part of our ongoing negotiations with the Applicant. However, for the purposes of the Examination, our client continues to object in the absence of any formal agreement.
- 3.11 The proposed ecological mitigation land designations appear to our client as an example of the Applicant having little regard to the cumulative effect of the Project as a whole on our client's land and business.



4. NORTHERN PORTAL ACCESS TRACK

4.1 Land take exceeding what is necessary

- 4.1.1 The Applicant proposes to permanently acquire land to construct a private access road (Work 5D) to provide access for a turnaround facility and emergency/maintenance access from the operational access (Work 5E) on the east of the portal and provide access to the tunnel services utility building (Work 5A). Our client owns the freehold of the relevant land but has not been approached in respect of any voluntary agreement.
- 4.1.2 The Applicant propose to temporarily possess land to the west of the portal in order to construct a temporary works access route (the SW section of MU27) from the Port of Tilbury ('the Port') (of which part will be used as a construction / storage compound) to join up with the permanent access route (Work 5D). Our client is concerned this should not in fact proceed as the development of a link road to the Port.
- 4.1.3 Section 122 of the Planning Act 2008 only enables compulsory acquisition where the land is required for the development, is required to facilitate or is incidental to the proposed development or is replacement land.
- 4.1.4 The proposal is for our client's land to be used for utility diversions and a form of temporary access for emergency and maintenance vehicles. Neither of these proposals require the landowner to be permanently deprived of their land and doing so has not been justified.
- 4.1.5 It should be noted by the ExA that not only is this route required for access to land to be retained by our client on the western side of the Project alignment post construction but is also required to provide for continued access for our client to their land which is subject to an existing Section 106 Agreement between our client, Thurrock Council and Ingrebourne Valley Limited. This land is shown shaded blue on the attached Plan and sits outside of the Applicant's Order Limits.

4.2 Acquisition in anticipation of the link road

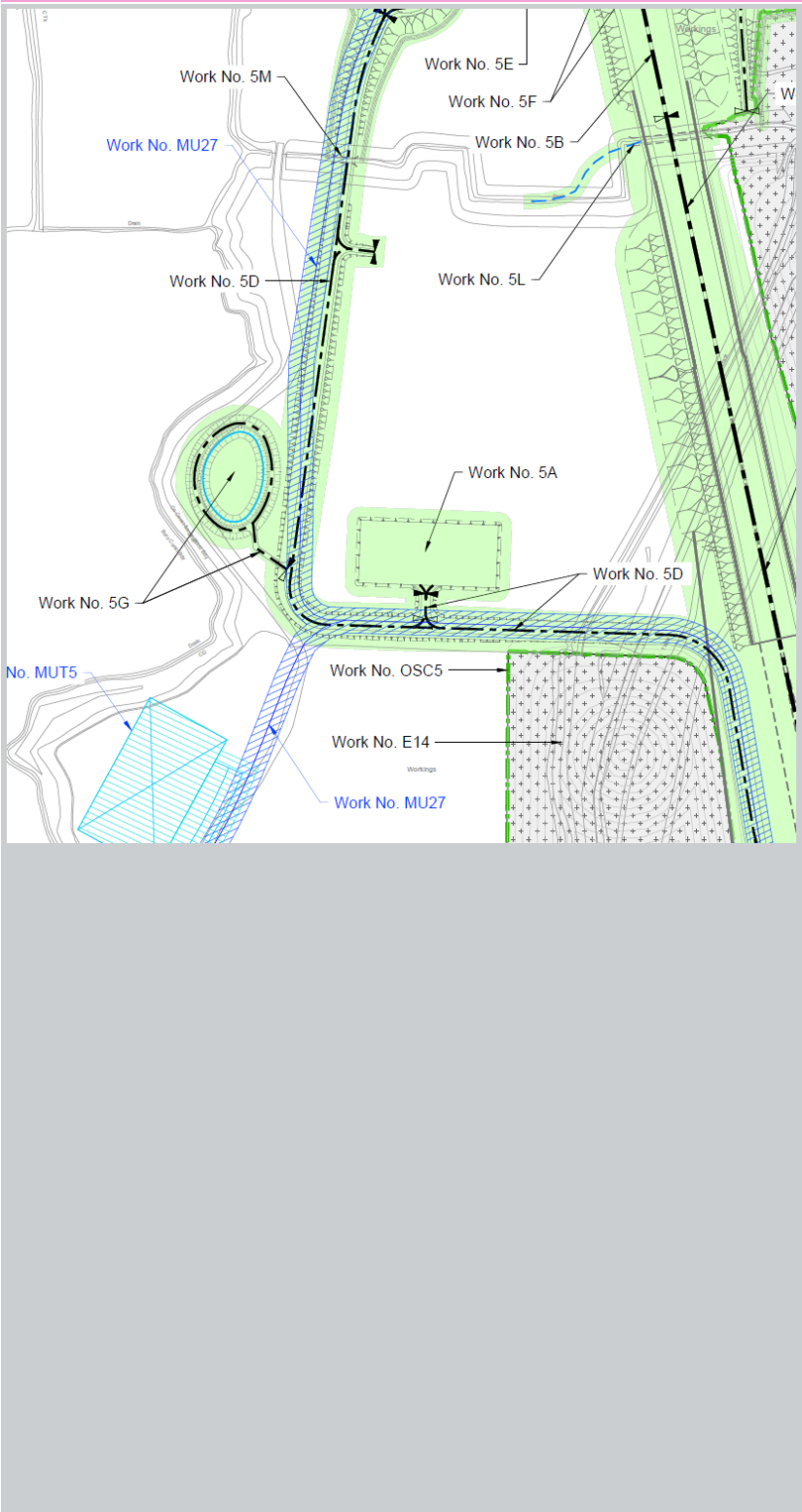
- 4.2.1 We accept a general need to access the Northern Portal.
- 4.2.2 However, it is apparent from the Statement of Common Ground with the Port (and a number of background documents) that the Port consider that the Tilbury Link Road should have been included in the DCO Scheme, and that their proposed approach was to dedicate (and then designate) the temporary accesses built under the DCO Scheme as public highway. However, the Tilbury Link Road has ultimately been removed from the DCO Scheme.



- 4.2.3 Despite the Tilbury Link Road not being part of the DCO scheme it would appear that the DCO is proceeding in the shadow of this proposed future development, evidenced by the permanent land take proposed for our client's land. The potential future use of the temporary access proposed on our client's land does not constitute justification for that land take.
- 4.2.4 Should a Link Road be proposed in the future, that should be kept entirely separate from the LTC DCO scheme. There is no justification for any potential future development of that nature to influence the design of or rights sought for any temporary access in this area. Our clients have a continuing need for access across this area and there is no justification for them to lose or have reduced control of their present interest in that land.
- 4.2.5 The Applicant cannot seek powers of acquisition for what is likely to be a different future purpose from what is described in the body of the DCO and the ExA should be on inquiry to ensure no such powers are confirmed that would operate in that way. This includes any development the purpose of which would be to facilitate the Tilbury Link Road coming forward thereafter. Acquisition for that purpose could not properly be described as required for the development within the meaning of section 122.

The above points are developed further by reference to the following extracts from the scheme plans (see over page)



#	Screenshot	Issues / concerns
1		<p>The Link Road</p> <p>The concern here is based on a combination of Work No. MU27 that is focused on the diversion/installation of underground utilities –</p> <p><i>“as shown on sheets 16, 20, 21 and 23 of the works plans and being the diversion of multi-utilities, to include installation or diversion of underground utilities within a multi-utility corridor, along the new construction area Work No. CA5, to provide permanent connection to the North Portal (Work No. 5A)” and Work 5D (the black-dashed line on <u>screenshot 1</u>) –</i></p> <p><i>“as shown on sheets 16 and 20 of the works plans and being the construction of a new private means of access, to include the construction of a new private means of access to provide for a turnaround facility and emergency and maintenance access from the new operational access</i></p>

(Work No. 5E) to the tunnel north portal and for access to the tunnel services building (Work No. 5A), as shown on sheets 16 and 20 of the rights of way and access plans”

Whilst use of the route of Work 5D in support of a permanent link road from the Port to the new A122 would require changes to the DCO from private to public access that potential future use cannot be justified to support compulsory acquisition of freehold land.

It is unclear what type/standard of track NH have in mind to build here, notwithstanding it can be noted from [screenshot 2](#) that the route of MU27 is shown as a “Main works access route” by the mauve line.

Our client’s concerns on these points take into account that the Applicant’s SoCG with the Port, items 2.1.25 and 2.1.26, which indicates that the pressure for a link road is coming from the Port rather than the Applicant and the reference in Part 6 of the Applicant’s 5.1

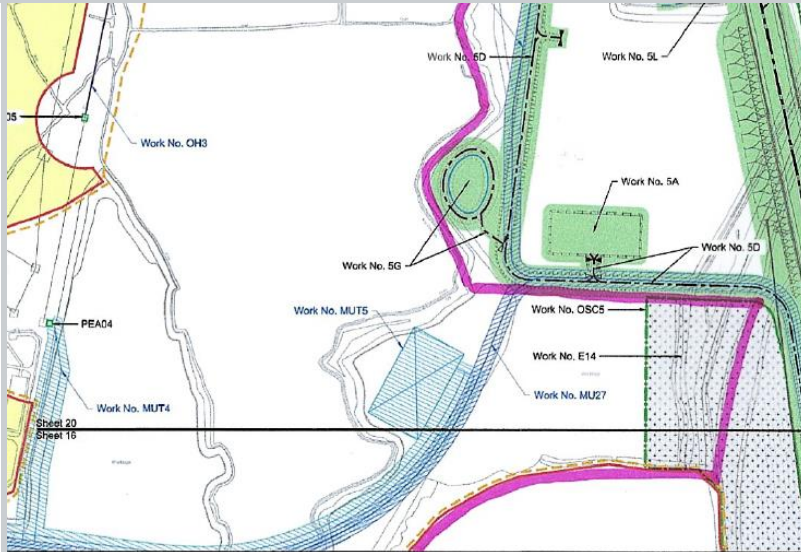
2



Consultation Report (APP-069) which at CNR20 (page 4874 states: *“Following the Local Refinement Consultation, the Applicant amended the proposed operational access arrangements for the Project in the Tilbury area. These changes include the provision of a bridge over the Project for operational and emergency access. These design changes would not preclude construction of a junction at Tilbury connecting the Project to the wider road network, should this be pursued later.”*

Our client is also aware that a Tilbury Link Road was detailed in RIS2 as a pipeline project for RIS3 period, which runs from 2025-2030, indicative of some the Applicant’s appetite for a link road.

3



Land Ownership

The boundary of our client's land in question here is the purple line in screenshot 3.

Construction access along the route of MU27 intersects with our client's land and any suggestion of the haul road being left in situ with anyone other than our client remaining the landowner with full control over access to this land would leave our client with no certainty as to access and in a fundamentally weaker position in respect of control over future use of this land.

4.3 Negotiation

- 4.3.1 The reasonableness of negotiation to date should consider the minimum rights needed to secure an access track (Work 5D) on our clients' land and that they have consistently been prepared to negotiate an agreement in relation to use of the land for that purpose.
- 4.3.2 Correspondence that has taken place by which the Applicant has offered commitments to preserve our clients' access to their retained land does not engage with these concerns, as they presume that the freehold will have been acquired from them rather than grant of the minimum necessary rights only having been negotiated.

5. ACCESS TO LAND SOUTH OF STATION ROAD FOR DEVELOPMENT PURPOSES

- 5.1 Our client's land shaded green on the attached Plan forms part of a phase of development under emerging plans for strategic development at East Tilbury and under Thurrock Council's Local Plan objectives; being promoted by Mulberry Strategic Land Ltd.
- 5.2 This land is outside of the Applicant's Order Limits (with the exception of plot 22-28 as referred to above under 2.9).
- 5.3 We have previously raised this with the Applicant's delivery team, who have suggested that access from the road network within the proposed development under planning application 16/01232/OUT (part of which falls on our clients land) could be accommodated along the eastern edge of compound CA5 (general route shown as a blue arrowed line on the attached Plan) in order that the land shaded green on the Plan is not prevented from being brought forward for development and linked to the transport network comprised in planning application 16/01232/OUT.
- 5.4 In order that the Project's impact on our client's development proposals is mitigated, we request that the CA5 compound boundaries are specifically amended to make provision for this route.
- 5.5 This provision is currently included in the draft Statement of Common Ground negotiations with the Applicant but would request specific comfort in the DCO that this provision is permitted.

6. LINFORD BOREHOLE & WATER PIPELINE

- 6.1 The Applicant's proposals for the Linford Borehole and Water Pipeline affect our clients land (plots 23-161, 22-08, 22-14, 22-05, 22-06, 22-10, 23-153, 23-151, 23-157, 23-133).
- 6.2 Our client objects to any permanent rights over this land for these purposes and cannot see the justification for such rights to be granted for what is a temporary use of the pipeline for the purposes of constructing the Project.
- 6.3 We also refer the ExA to our separate Deadline 1 submissions in respect of the draft DCO under Article 28.

7. RIVER THAMES JETTY/WHARF ACCESS

- 7.1 Our client's existing jetty and wharf complex is situated on the river frontage (as shown marked 'Jetties' on the attached Plan over plots 16-41, 16-42).



- 7.2 Our clients have been consistent in their representations to the Applicant's consultations and in discussions with the Applicant that provision for access to the jetty complex is provided as part of the Applicant's scheme design.
- 7.3 To date no such undertaking has been provided and the design of Tilbury Fields, despite at one stage in discussions being shown to include a route of access, does not include an access route in the formal application documents.
- 7.4 The omission of an access provision is a significant severance issue.
- 7.5 Our client holds a wharf licence from the Port of London authority and their land restoration lessees, Ingrebourne Valley Limited, a licence for the current active jetty.
- 7.6 The jetty complex is in active and continual use for the disposal of inert material on the Goshems Farm land restoration site; activities permitted by Thurrock Council and the Environment Agency.
- 7.7 The current jetty and wharf complex would continue to serve its purpose as a means of moving materials along the River Thames avoiding significant traffic impacts, where the Project provides for proper, unrestricted access to it.
- 7.8 Our client's retained land outside of the Order Limits would continue to benefit from this jetty access, providing an alternative transport option for any future uses of our client's retained land which either a) sits outside of the Applicant's Order Limits, b) land which is not to be compulsorily acquired by the Applicant but which is owned by our client or c) land owned by third parties who may wish to utilise the jetty access in the future.

8. SPECIAL CATEGORY LAND

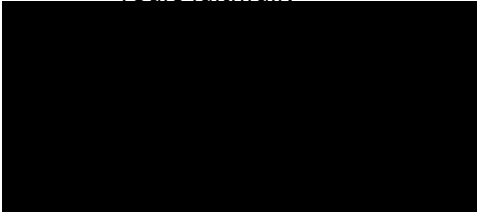
- 8.1 We have referred to this in our general Deadline 1 submissions to the ExA on the draft DCO. However, this is of fundamental importance to our client and we therefore set out in full on his specific behalf the representations we have made elsewhere.
- 8.2 The provision for the designation of land as special category land where the proposed replacement land in the ownership of our client is currently unencumbered by such designations is not acceptable.
- 8.3 In respect of our client, we refer specifically to the proposed designation and permanent acquisition of plots 20-70 and 23-117 as replacement special category land for Tilbury Green common land as defined under Article 40 (*see APP-013 Special Category Land Plans – Sheet 20 and APP-014 Special Category Land Plans – Sheet 23*).

8.4 We can see no justification for 1) the imposition of a common land designation on the freehold land of our client, who has no freehold interest in the existing Tilbury Green common land and 2) the consequent acquisition of the freehold interest in the replacement land depriving our client of their land.

8.5 Sections 131(4) and 132(4) of the Planning Act 2008 provide for the giving of replacement land in exchange for the order right where the replacement land is land that is vested in the owner of the order land.

We look forward to working with the ExA and the Applicant during the Examination to address the above issues.

Yours faithfully



M R Holland MRICS
Director
HOLLAND LAND & PROPERTY LTD
(Agents for the above-named Affected Parties)

