

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**

REPRESENTATIONS ON THE APPLICANT'S DRAFT DEVELOPMENT CONSENT ORDER

We write on behalf of all our clients affected by the Lower Thames Crossing in respect of the Applicant's draft Development Consent Order. Set out below are the relevant Affected Party references for which this submission is made:

AP1308, AP1369, RR20035279, AP1717, AP1663, AP1305, AP1235, RR20035237, AP1450, AP1631, AP1581, AP1266, RR20035735, AP1539

As these main representations exceed 1500 words, we have also submitted a separate summary of the headline representations as requested.

DRAFT DEVELOPMENT CONSENT ORDER COMMENTS

The following representations are based on the Draft Development Consent Order ('dDCO') – Version 2 (ref: AS-038 & AS-039) as published by the ExA on 22 December 2022.

1. ARTICLE 2

Article 2(10)

- 1.1 We have noted the Applicant's response to the ExA's observations on the drafting effect with reference to 'materially new or materially different environmental effects', a reference which appears in various parts of the draft DCO.



- 1.2 We refer to the Applicant's response, 'the ability to take approaches that emerge through the detailed design of the Project to deliver it in a way that is less harmful to the environment and /or gives rise to greater beneficial environmental effects'.
- 1.3 This appears on first reading to pay no regard to a test of necessity or reasonableness where additional environmental mitigation requires proper scrutiny.
- 1.4 Without that scrutiny, it risks the loss of further land without the justification of that land take being tested. It seems to go beyond what should be a reasonable expectation of the Project requirements for environmental mitigation and risks 'gold-plating' of the environmental mitigation strategy.
- 1.5 The loss of further land (if that is the natural conclusion of this approach) risks business viability and prevents landowners from progressing legitimate strategies for the alternative use of their land; which would otherwise contribute to the local community and local/national economy through continual use for agriculture, use for environmental land management under either new Government schemes and/or private agreements or other non-Project related development.
- 1.6 Furthermore, the response from the Applicant in seeking to avoid undermining relationships with key stakeholders, which if we read this and the above comments correctly, seems to overlook the fact that private landowners are in themselves key stakeholders and their position should not be undermined or overlooked in this process.

2. ARTICLE 5

Maintenance of drainage works

- 2.1 We refer to 5(1). In this context we read the proposed wording of this article as meaning that the responsibility for maintenance of drainage would remain with the '*person responsible*'.
- 2.2 Where an existing land drainage scheme is interrupted during the works or where a new connection is required because the undertaker's works have severed private drainage, we assume that the undertaker will be required to make good those connections at their cost and to an agreed specification.
- 2.3 Our issue is that the wording of the draft article should require that the undertaker continues to be responsible where those remediation works are not sufficient or where issues with drainage arising from the undertaker's works arise subsequently.
- 2.4 We propose that there should be a 'fit for purpose' requirement to ensure that the applicant's works do not leave private landowners with additional cost to rectify existing drainage schemes either during or post construction and furthermore that the applicant's works allow for sufficient capacity of future drainage scheme connections and if they are deemed not to be sufficient that this is remedied by the Applicant.



- 2.5 Furthermore, we consider that the applicant should provide sufficient comfort in the dDCO that these issues would be addressed at their cost, without limitation on the date on which issues become known to the affected party, where an issue has arisen due to the undertakers works.
- 2.6 We have a concern that limitation rules would apply where it could be some time between the reversion of part of the authorised development and completion of the whole Project.

3. ARTICLE 8

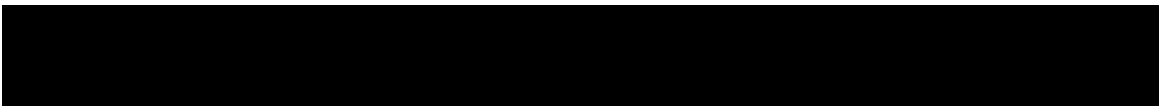
Consent to transfer benefit of Order

- 3.1 Noting the list of bodies under Article 8 (5) a-x to whom the applicant could transfer or grant the benefit of the Order to, there is a general concern of landowners as to the number of entities they and their advisers will end up dealing with during the scheme and the significant cost that could arise in dealing with multiple parties in addition to the undertaker.
- 3.2 We also note specifically a number of code operators referenced under Art. 8 (5). How do landowners ensure that code powers for telecommunications purposes have not inadvertently been granted over land that was occupied temporarily but where permanent rights are to be granted under the Order (which are at present unclear to their extent and where those rights may fall within the Electronic Communications Code ('the Code') (Digital Economy Act 2017 Schedule 3A)?
- 3.3 The ExA and applicant will be well aware that the Code has caused significant issues in recent years and we consider that there is a need to avoid Code agreements 'by the back door'.

4. ARTICLE 13

Use of Private Roads

- 4.1 The Explanatory Memorandum (APP-057) ('the EM') refers to '*in common with other permitted users*' but the dDCO does not reference this under Article 13. We consider that the draft DCO should be explicit in this respect to avoid any concern of existing users who have legal rights over the private access routes being impeded from the use of those routes and for all purposes.
- 4.2 In some circumstances, those routes are proposed to be used for development purposes by landowners and their developer partners. For example, in respect of the Medebidge Road, this will serve as a primary route of access for the strategic development of land at South Ockendon. Use by the applicant of that route has the potential of interrupting and/or delaying development of that land; land that is not within the applicant's order limits.



- 4.3 The effect of the scheme proposals could, in those circumstances, frustrate the ability of land, that is outside of the applicant's order limits, to come forward for development.


5. ARTICLE 27

Time Limit for Exercise of CA Powers

- 5.1 The applicant's proposals have already had a significant impact on the ability for landowners to plan and implement land uses that in the absence of LTC would otherwise have progressed.
- 5.2 The 8-year period proposed extends that uncertainty as to what may or may not be ultimately acquired and in our opinion goes well beyond what would be considered reasonable. It would further stifle business investment.
- 5.3 The EM refers to Article 45 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 and Article 21 of the National Grid (Hinkley Point C Connection Project) Order 2016 as precedents for an 8 year period to be adopted.
- 5.4 It is our contention that these provide little or no weight to the applicant's proposals and do not reflect the extent of land that this scheme is affecting. The ExA will be aware that this scheme covers a significantly large area of land which is an important area for new housing and employment zones, notwithstanding the ability of landowners to carry on their day to day business and the need to invest in the normal course of that business.
- 5.5 It is unreasonable to expect landowners to continue to be prevented from exercising their rights as private owners for such a significant length of time.
- 5.6 The ability of landowners to adopt strategic plans for their property in the normal course of business has been severely hampered since the announcement of the Government's preferred route option in 2017.
- 5.7 The period should start from the date of the order not the expiry of a legal challenge period or the final determination of any legal challenge as currently proposed. The time limit from for exercising CA powers should be as short as possible and no more than 5 years.

6. ARTICLE 28

Restrictive Covenants and Transfer

- 6.1 Article 28 provides for the acquisition of rights and imposition of restrictive covenants. Whilst Schedule 8 provides a general description of the reasons for such rights and covenants (referenced to plot numbers), there remains a significant concern as to the effect of such rights on the use of land for existing or future alternative uses.
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For example:

Linford Borehole & Water pipe

(principal plot references 23-121, 23-133, 23-136, 23-139, 23-153, 23-157, 23-161, 24-136, 24-150, 24-168, 24-174)

We have sought further explanation from the applicant as to why permanent rights are required; the explanation provided recently (4 July 2023) is as below:

'The detailed nature of the permanent rights is not yet known and is a matter for the detailed design stage (this, as there may be specific matters that modify the proposals such as unforeseen increases in pipeline depth or specific agreed access locations etc.).

LTC therefore offers the detail below as being 'envisaged' so far as we currently know and is provided on a strictly subject to contract / subject to change / subject to other approvals and design development basis.

The Statement of Reasons has summary detail but Schedule 8 of the DCO contains the following text regarding the rights (as known currently) albeit Plot 24-136 is one of the Plots for example, not necessarily the plot in which the whole pipeline resides:

<i>(1) Plot Reference Number shown on Land Plan</i>	<i>(2) Purpose(s) for which rights over land may be acquired or restrictive covenants may be imposed</i>
	the rights and restrictive covenants to construct, protect, operate, access and maintain those utility works
24-136	Utility works, including the installation or diversion of underground utilities within a multi-utility corridor, and the rights and restrictive covenants to construct, protect, operate, access and maintain those utility works; and provision for access for Overhead lines diversion works, and the rights for access to maintain those overhead line diversion works

In addition, and in keeping with Essex & Suffolk Water's boiler plate text, LTC would envisage the following:

Underground Assets (Electricity, Gas, Communications and Water SU's)	
<i>Minimum depth of apparatus</i>	<i>900mm to crown of pipe</i>
<i>Permitted Surface User</i>	<i>For agricultural operations including arable farming</i>



<i>Easement dimensions</i>	<ul style="list-style-type: none"> • <i>Greater than 300mm, up to and including 600mm 4.5m either side of extreme edge of pipe</i>
<i>Excluded works</i>	<i>Not to carry out any works within easement without Essex & Suffolk Water permission</i>
<i>Proximity zones</i>	<i>Not to carry out any works within easement without Essex & Suffolk Water permission</i>

LTC envisages the protective provisions as agreed between E&SW and NH to be in force (if E&SW own and operate the pipeline) and for all other interested parties, the provisions to be in accordance with the Water Industry Act – other developers may require a suitable asset protection agreement to be in place, however this is not anticipated to be overly onerous.

In simple terms, LTC expects the right to be of 9.4m width based centrally on the pipeline, with rights to pass over the land in which the asset resides to construct, maintain, operate and replace the pipeline. The right will also give the ability to restrict development within that corridor, until such point that the pipeline is removed – at which point the rights would be relinquished.

Please also note that a determination has not yet been reached as to whether the asset will be owned and operated by E&SW (as a beneficiary of the transfer of the Order) or whether NH will obtain those rights and be the pipeline owner/operator. As this has implications, when it is determined, we shall let you know.

6.2 The ‘Permitted Surface User’ referenced under the extract ‘Underground Assets (Electricity, Gas, Communications and Water SU’s’ and the reference to restriction on development until the pipeline is removed, if adopted, could restrict use of land for alternative development purposes and delay that development; for example, as proposed in respect of land at Linford subject to an existing planning application submitted to Thurrock Council (planning ref: 16/01232/OUT) the imposition of permanent rights would be on land which would be used for the SUDS scheme serving that development.

6.3 We should add that in the example above, the applicant’s *Minor Refinement Consultation* issued on 15 May 2023 has proposed a realignment of the water pipeline in specific locations but has stated a requirement for permanent rights to be acquired. Whilst the affected parties for whom we act are in agreement with the realignment of the pipeline and the changes to the land area required by the Applicant for temporary possession (as



part of the utilities works area), they continue to query the acquisition of permanent rights for the purposes of the temporary pipeline.

7. ARTICLES 25-34

Compulsory Acquisition (CA), Temporary Possession (TP) and related powers

7.1 We agree with the ExA Panel's observations on drafting (as annexed to the ISH2 Agenda on 22 June 2023) where the ExA states

'Where the applicant wishes to create and compulsorily acquire new rights over land, those rights should be fully, accurately and precisely defined for each relevant plot and the compulsory acquisition should be limited to the rights described. This could be done by drafting which limits the compulsory acquisition of new rights to those described in a schedule in the DCO or to those described in the book of reference. There should be no accidental over-acquisition.'

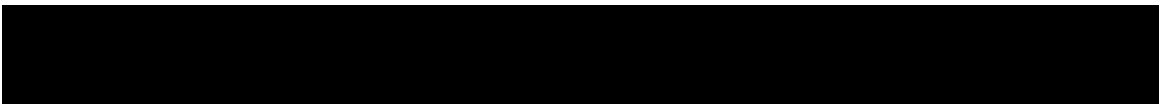
7.2 In this respect, whilst requests have been made for further information on works under the land use designation 'temporary possession of land and permanent acquisition of rights', we have not received any details on the proposed easements or wayleaves for new or diverted utilities. We are therefore unable to fully assess the impact of these potential restrictions on the future use of land.

7.3 This issue equally bears on the issues raised above under Article 2(10) in respect of changes to environmental mitigation strategies and the justification for the same if additional land is acquired for those purposes.

7.4 We note from the Applicant's response to the ExA's questions on drafting of the DCO (dated 6 July) that they consider the Book of Reference, Land Plans and Schedule 8 descriptions provide for a 'high degree of accuracy and precision'.

7.5 However, in respect of the Linford borehole/water pipeline, for example, we can find no specific reference to the plot numbers affected by this proposed pipeline (for example, 23-121, 23-139, 23-153) in Schedule 8 or reference to the pipeline for these purposes other than the route being shown on the Works Plans. The Book of Reference does not specify the works in these plots and the Land Plans simply show the route. We are therefore unclear what new rights the applicant is seeking, particularly given that we understand that the pipeline is as a temporary source of water for construction only. What permanent rights are therefore sought and for what purposes?

7.6 We have reviewed the references to MUT6 but can find no reference in any of the submitted documents to the specific use for the Linford borehole/water pipeline in the definition of MUT6 in the draft DCO (Schedule 1, Part 1).



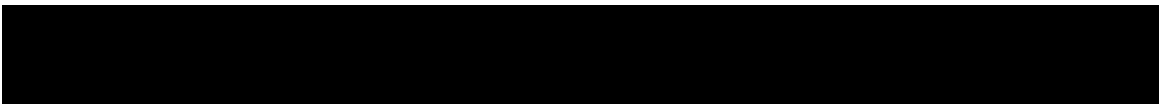
Article 25

- 7.7 The scope of land where the Applicant may impose restriction covenants or acquire rights is wide. The Applicant in their response to the ExA's observations on the draft DCO state that the lesser power of the imposition of restrictive covenants limits the extent of land to be acquired and therefore lessens the impact on landowners.
- 7.8 However, with a reliance on the design and build phase of the Project to provide the level of detail required that would enable full assessment of that impact, what routes of challenge would a landowner have where consent has already been granted pursuant to the Order? This appears to avoid a lack of scrutiny and does not seem to provide a reasonable opportunity for those impacted to consider the restrictive covenant to be imposed.
- 7.9 Whilst there may be compensation provisions, in some cases, money cannot solve all ills.

8. ARTICLES 35-36

Temporary Possession & Temporary Use of land for maintaining the authorised development

- 8.1 Article 35(4) sets out the provisions to restrict the occupation of land by the undertaker on the completion of part of the authorised development (as specified in Schedule 11).
- 8.2 Our concern is that there could be ambiguity as to how completion of works is defined under that provision.
- 8.3 How would a landowner exercise any degree of control in regaining possession without better defined parameters to confirm that that part of the authorised development has been completed?
- 8.4 To use an extreme example to illustrate the issue, if a welfare unit and some machinery remained situated on an area of land because it is convenient, (but which is not necessary), for storage or access to other land where works are still being carried out but the works on the subject land have finished, how would a landowner enforce removal of machinery, equipment (for example) and is it reasonable to expect a landowner to have to take that action at a cost to them in enforcing it? There is a need to ensure that situations where the works have been completed but an unreasonable amount of time is taken to demobilise an area of land thereby delaying the reversion of the land to the landowner, are avoided.
- 8.5 Furthermore, the provisions of Article 36 in providing authority to access land during a maintenance period of 5 years following the date on which that part of the authorised development has been first opened for use, could add yet further significant delays to landowners use of their land.

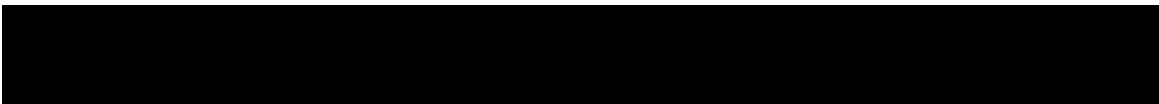


- 8.6 In the case where the subject land is then to be revert to the landowner and form part of alternative development plans, delays in handing land back could lead to significant cost or loss of value.
- 8.7 To illustrate the issue, for example, plot 23-126 forms part of the applicant's major works compound CA5. This land continues to be promoted as part of Thurrock Council's strategic development zone at Linford/East Tilbury providing a major contribution to meeting those objectives. The cost and loss of value implications of an unreasonable delay in handing this land back would be potentially significant.
- 8.8 A further example is that the commencement of development on land comprised in planning application ref: 16/01232/OUT could be significantly delayed where access to land is prevented within the time limit for commencement that will be set out in a consent for that scheme when determined i.e. if consent for the development scheme under 16/01232/OUT is obtained in 2023/24, then the 3 year commencement condition in that consent would expire in 2026/27.

9. ARTICLE 40

Special Category Land

- 9.1 The provision for the designation of land as special category land where the proposed replacement land, in the ownership of a third-party landowner, is currently unencumbered by such designations is not acceptable.
- 9.2 In this case, 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*).
- 9.3 We can see no justification for 1) the imposition of a common land designation on the freehold land of a third-party landowner 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 that landowner of their land.
- 9.4 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.



10. ARTICLE 56

Planning Permission

- 10.1 The Applicant has provided a response to the query we raised at the ISH2. However, it seems not to address a key issue where the effect of the Order means a planning permission ceases to have effect on temporary possession land which then reverts to the landowner on the cessation of that occupation.
- 10.2 How does the Applicant intend to protect that planning permission – particularly in cases where the scheme for which planning has been granted has not been commenced due to the Applicant’s Project?

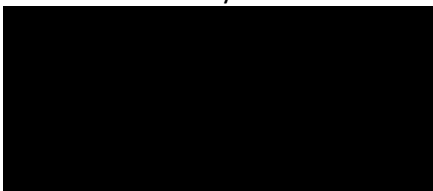
11. ARTICLE 66

Power to override easements etc.

- 11.1 We agree with the ExA Panel’s observations on drafting (as annexed to the ISH2 Agenda on 22 June 2023) and with specific reference to land temporarily occupied (Art.66 (6)(c)).
- 11.2 Where an interest or right is interfered with or where a restriction is breached by the Project (referred to by the ExA Panel) on land subject to temporary possession and temporary possession with acquisition of rights, how is that to be reinstated on reversion of the land to the landowner?

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)

