

Lower Thames Crossing

9.47 Schedule of Changes to the draft Development Consent Order during Examination

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Provision	Changes made to the draft Development Consent Order	Explanation for Change
Deadline 1 – 18 July 2023		
Article 2(1)	The following definition has been added: “begin” means beginning to carry out any material operation (as defined in section 56(4) (time when development begun) of the 1990 Act) forming part of the authorised development including preliminary works (as defined in Schedule 2 of this Order);’	This change has been made to include a definition for when development has begun. This is to explicitly distinguish it from ‘commence’. The justification for this has been provided in the Explanatory Memorandum [APP-057] at paragraph 6.10.2.
Article 2(8)	The reference to article 8 has been changed to ‘consent to transfer the benefit of Order’	Amendment of a typographical error. This amendment now accurately reflects the title of article 8.
Article 2(10)	‘In this Order, references to materially new or materially different environmental effects in comparison with those reported in the environmental statement must shall not be construed so as to include the avoidance, removal or reduction of an adverse environmental effect that was reported in the environmental statement as a result of the authorised development’	This change from ‘shall’ to ‘must’ reflects the Office for Parliamentary Counsel guidance on the use of the word ‘shall’.
Article 6(2)(g)	‘laterally’ has been changed to ‘vertically’.	Amendment of a typographical error. The relevant subparagraph refers to heights so should refer to vertical limits of deviation, rather than lateral limits of deviation.
Article 6(2)(o)	The words ‘ subject to paragraph 99(1) of Schedule 14 of this Order, ’ has been inserted at the start of the provision.	This change ensures that the limits of deviation in connection with the tunnels will take effect subject to, and without limitation to, the agreed depth of the tunnels (see further commentary on paragraph 99(1) of Schedule 14 below). This amendment removes any residual doubt that the limits of deviation would conflict with the agreed depth of the tunnels, and therefore the ability of the Port of London Authority (PLA) and others to use the navigable channel. Please see further the Applicant’s response to matters raised in Annex A of the Agenda for Issue Specific Hearing 2 submitted on 6 July 2023 [Document

Provision	Changes made to the draft Development Consent Order	Explanation for Change
Article 6(2)(p)	The words ' subject to paragraph 99(1) of Schedule 14 of this Order, ' has been inserted at the start of the provision.	Reference 9.49], as well as its written submission in respect of Issue Specific Hearing 2 [Document Reference 9.11].
Article 8(5)	Changes to company details for organisations listed therein.	This reflects updated information obtained from Companies House in respect of the organisations named in article 8(5).
Article 8(6)	Without limitation on paragraph (5), the consent of the Secretary of State under this article is not required where the powers of article 28(1) (compulsory acquisition of rights and imposition of restrictive covenants) are, with the consent of the undertaker given under article 28(3), proposed to be exercised by a statutory undertaker or any other person rather than by the undertaker.	This change has been made in response to a question raised by the Examining Authority in Annex A of the Agenda for Issue Specific Hearing 1. In particular, the change ensures consistency between article 28 and article 8, and ensures that only statutory undertakers are able to benefit from the exemption provided in article 8(6).
Article 8(8)	Insertion of new paragraph (8): The Secretary of State must consult the MMO before giving consent under paragraph (1) to the transfer or grant to another person of the benefit of the provisions of the deemed marine licence.	This amendment requires consultation with the Marine Management Organisation (MMO) prior to the transfer of the benefit of any provision of the Order. This amendment is made following discussions with the MMO.
Article 10(2)	Subject to paragraphs (3) and (4), where a highway (other than a trunk road or special road) is altered or diverted under this Order, the altered or diverted part of the highway must, when completed to the reasonable satisfaction of the local highway authority in whose area the street lies and, unless otherwise agreed in writing with the local highway authority, that part of the highway, including any culverts or other structures laid under it, must be maintained by and at the expense of the local highway authority from its completion.	This change makes clear that the altered or diverted part of a highway must be completed to the satisfaction of the local highway authority.
Article 15(1)(f)	the public rights of way and permissive paths described in Part 6 (other public rights of way and permissive paths) of Schedule 5 will be of the type described in column (1) to the extent described in column unless otherwise agreed with the relevant planning local highway authority.	This change specifies that any agreement in relation to public rights of way and permissive parts as set out in the provision must be with the local highway authority as it is the local highway authority that will have responsibility for such matters.

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Article 28(4)	Where in consequence of paragraph (3), a person statutory undertaker other than the undertaker exercises the powers in paragraph (1) in place of the undertaker, except in relation to the payment of compensation the liability for which must remain with the undertaker, that person is to be treated for the purposes of this Order and by any person as being the undertaker in relation to the acquisition of the rights and the imposition of the restrictive covenants in question.	This change ensures consistency with article 28(3) which only refers to statutory undertakers. This change has been made in response to a question raised by the Examining Authority in Annex A of the Agenda for Issue Specific Hearing 1.
Article 33(2)(b)	The words ' subject to paragraph (8), ' have been inserted at the start of the sub-paragraph.	Following discussions with the PLA, this provision has been agreed. The provision qualifies the ability to acquire easements and restrictive covenants in, on, over or under the river Thames which are outside of the tunnels under paragraph (2)(b) of this article on the basis that article 48 (Protection of the tunnel area) provides the necessary protections. This does not prejudice the acquisition of the subsoil for the tunnels. Paragraph (8) has been agreed with the PLA.
Article 33 (8)	A new sub-article (8) has been inserted: (8) The undertaker may not acquire easements or other new rights or impose restrictive covenants under paragraph (2)(b) on, over or under the river bed of the river Thames for the protection of the tunnels.	
Article 40	The word ' specified ' has been inserted before 'special category land' (in article 40(1), (2)(a)-(b), (3), (6) and (8)).	This change has been made in response to a question raised by the Examining Authority in Annex A of the Agenda for Issue Specific Hearing 1 for additional clarity. The definition provides further clarity, and is intended to make clear that the 'specified special category land' encompasses those plots in respect of which reliance is placed on sections 131(4) and 132(4) of the Planning Act 2008.
Article 40(6)(a)	must not conflict comply with outline LEMP; and	This change has been made in response to a question raised by the Examining Authority in Annex A of the Agenda for Issue Specific Hearing 1. Please note plot changes which reflect updated plots have given rise to updated references in article 40.

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Article 43(1)	Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any licensee to take , use, enter upon or in any manner interfere with any land or rights of any description—	This change has been made in response to a question raised by the Examining Authority in Annex A of the Agenda for Issue Specific Hearing 1.
Article 43(1)	All references to ‘Her Majesty’ have been replaced with ‘His Majesty’.	This change has been made following the coronation of Charles III.
Article 44(1)	(1) The undertaker may operate and use the tunnel area in its capacity, and for the purposes of its functions, as a highway authority.	This ensures that the power to operate and use the tunnels is exercised in relation to this capacity, and for the purposes, of its role as a highway authority. This provision has been requested and agreed with the PLA.
Article 46 (7)	In this article “emergency” means any circumstance whether existing or imminent, which the undertaker Secretary of State considers is likely to cause danger to persons or property, or the environment.	The definition of emergency in this article has been amended so that it is the Secretary of State, rather than the undertaker, as the Secretary of State is the charging authority for the purposes of article 45 and 46.
Article 55	The heading of article 55 has been amended to add ‘etc.’, to the end so it reads: ‘Application of local legislation etc. ’	This change has been made in response to a question raised by the Examining Authority in Annex A of the Agenda for Issue Specific Hearing 1 as the article relates to both local legislation, and other byelaws.
Article 56 (4)	Any development or any part of a development within the Order limits which is constructed or used under the authority of a permission granted under section 57 of the 1990 Act including permissions falling under sub-paragraph (1) or (3) or otherwise, is deemed not to be a breach of, or inconsistent with, this Order and does shall not prevent the authorised development being carried out or used or any other power or right under this Order being exercised	Amendment of typographical error. This change has been made in response to a question raised by the Examining Authority in Annex A of the Agenda for Issue Specific Hearing 1. In addition, the change from ‘shall’ to ‘does’ reflects the Office for Parliamentary Counsel guidance on the use of the word ‘shall’.

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Article 64 (2)	A new sub-article 64 (2) has been inserted: 'Any matter for which the consent of approval of Secretary of State is required under any provision of this Order is not subject to arbitration.'	This change has been made in response to a question raised by the Examining Authority in Annex A of the Agenda for Issue Specific Hearing 1. This provision ensures that any matter for which the consent or approval of the Secretary of State is required is not subject to arbitration.
Schedule 1: Works No. 1C	Work No. 1C – as shown on sheets 3 and 4 of the works plans and being the construction of the new A2 eastbound link road, to include— the construction of a new section of highway of two-lane link road, between the eastbound carriageway of the existing A2 mainline and the northbound carriageway of the existing A289, approximately 2,580 metres in length, as shown on sheets 3 and 4 of the rights of way and access plans (reference points 2/11 and A5); the construction of a new section of local road, single carriageway, approximately 75 metres in length, as shown on sheet 3 of the rights of way and access plans (reference points 4/4, to 4/6 and 4/10);	This ensures consistency between Schedule 1 and the Rights of Way and Access Plans [APP-024 , APP-025 and AS-032] in connection with the proposed work.
Schedule 1: Work No. 5V	Work No. 5V – as shown on sheets 3 and 4 of the works plans and being the construction of an improved section of the existing M2 and the improvement works to the A2, to include – as shown on sheet 23 of the works plans and being the diversion of an existing public right of way, to include—	Amendment of typographical error. The deleted text is not relevant to Work No. 5V.
Schedule 1: Work No OHT5	The repeated word 'and' is deleted.	Amendment of typographical error. The erroneously repeated word has been deleted.

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<p>Schedule 2 – Requirements Paragraph 1 (1)</p>	<p>The definition of “preliminary works” has been amended as follows: “preliminary works” means operations consisting of archaeological investigations and pre-construction ecological mitigation (including in connection with those investigations or mitigation vegetation clearance), environmental surveys and monitoring, investigations for the purpose of assessing and monitoring ground conditions and levels, erection of any temporary means of enclosure, receipt and erection of construction plant and equipment for advanced compound areas, diversion and laying of underground apparatus (except any excluded utilities works) for advanced compound areas, vegetation clearance and accesses for advanced compound areas (and vegetation clearance in connection with those accesses), and the temporary display of site notices or information;</p>	<p>The text has been amended to make clear that vegetation clearance can only be carried out in connection with the specific works (i.e. in connection with the surveys, mitigation and access for advanced compound areas).</p>
<p>Schedule 2 – Requirements Paragraph 3 (1)</p>	<p>The authorised development must be designed in detail and carried out in accordance with the design principles document and the preliminary scheme design shown on the engineering drawings and sections, and the general arrangement drawings, unless otherwise agreed in writing by the Secretary of State following consultation by the undertaker with the relevant planning authority and, in respect of the authorised development comprising highways other than a special road or a trunk road, the relevant local highway authority on matters related to its functions, provided that the Secretary of State is satisfied that any amendments to those documents showing departures from the preliminary scheme design would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.</p>	<p>This ensures that where the local planning authority and local highway authority are different, any amendments to the preliminary scheme design which involve a local road would be the subject of consultation with the local highway authority.</p>

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Schedule 2 – Requirements Paragraph 8 (1)	Surface and foul water drainage 8.—(1) No part of the authorised development is to commence until for that part written details of the surface and foul water drainage system, reflecting the mitigation measures set out in the REAC including means of pollution control, have been submitted and approved in writing by the Secretary of State following consultation by the undertaker with the relevant planning authority and the relevant highway authority on matters related to its their functions.	This requires consultation with a local highway authority on matters related to their functions, in addition to the local planning authority. This change is made at the request of Transport for London.
Schedule 2 – Requirements Paragraph 12	Fencing 12.—(1) Any permanent and temporary fencing and other means of enclosure for the highway works comprising the authorised development must be constructed and installed in accordance with Volume 1, Series 0300 of the Manual of Contract Documents for Highway Works unless— (a) otherwise specified in the REAC; or (b) any departures from that manual are agreed in writing by the Secretary of State in connection with the authorised development, following consultation by the undertaker with the relevant planning authority or, in respect of the authorised development comprising highways other than a special road or a trunk road, the relevant local highway authority on matters related s to its their functions.	This requires consultation with the local highway authority instead of the local planning authority where fencing in connection with local roads is proposed to be constructed and installed contrary to the Manual of Contract Documents for Highway Works. This change is made following representations from Transport for London at Issue Specific Hearing 2.
Schedule 2 – Requirements Paragraph 13 (1)	The replacement of the Gammon Field travellers’ site in Thurrock (Work No. 7R) must not commence until details of its layout and design have been submitted and approved in writing by the local planning authority, such approval not to be unreasonably withheld or delayed, following consultation by the undertaker with the local planning authority and any persons it considers appropriate the occupiers of the existing Gammon Field travellers’ site.	This change has been made in response to a question raised by the Examining Authority in Annex A of the Agenda for Issue Specific Hearing 2. It ensures that the occupiers of the existing site, as well as the local planning authority, are consulted prior to the submission of the details for approval to the local planning authority. In addition, it adds the name of the travellers’ site.

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Schedule 2 – Requirements 14 (1)	Before the tunnel area is open for traffic, the undertaker must submit written details of an operational traffic impact monitoring scheme substantially in accordance with the wider network impacts management and monitoring plan for approval by the Secretary of State following consultation by the undertaker with highway authority and where different, the relevant planning authority and other bodies identified in Table 2.1 of the outline traffic management plan for construction wider network impacts management and monitoring strategy.	Amendment of typographical error. The relevant document for the purposes of this Requirement is the Wider Network Impacts Management and Monitoring Plan [APP-545].
Schedule 2 – Requirements 16 (4)	A CEP (Third Iteration) must be submitted to and approved in writing by the Secretary of State as soon as reasonably practicable at developed and completed by the end of the construction, commissioning and handover stage of any part of the authorised development, in accordance with the process set out in the CEP (First Iteration).	This amendment ensures consistency between the provisions of the draft Development Consent Order and paragraph 3.9.2 of the Carbon and Energy Management Plan [APP-552]. In effect, the ‘third iteration’ would be the subject of an approval by the Secretary of State.
Schedules 3 and 5	Updates to references to specified rights of way and their related points on the Rights of Way and Access Plans.	Amendment of typographical errors and the amendments ensure consistency between Schedule 1 and the Rights of Way and Access Plans in connection with the proposed work.
Schedules 8, and 11	Plot updates	These changes comprise changes to plots where these have been the subject of an update in the Book of Reference [AS-042]. These amendments do not connote any new use, but merely reflect plot changes following the provision of the updated Book of Reference.
Schedule 14 – Protective Provisions Paragraph 97 and 98.	The following definition has been inserted: “begin” means beginning to carry out any material operation (as defined in section 56(4) (time when development begun) of the 1990 Act) forming part of the authorised development including preliminary works (as defined in Schedule 2 of this Order) and any ground investigations in the river Thames;’	These amendments confirm that ground investigation works in the river Thames are caught by the provisions in Paragraph 98(1). This amendment has been agreed with, and is made at the request of, the PLA.

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<p>Schedule 14 – Protective Provisions Paragraph 99 (1)</p>	<p>Paragraphs 99(1)-(2) have been deleted and replaced with the following text: ‘The detailed design and construction of the tunnelling works in the river Thames must— provide for a protected dredged navigational channel depth of 12.5m below chart datum with an additional 0.5m to allow for over-dredging attributable to standard dredging methodology; and ensure that that channel depth can be maintained where scour protection is required.</p>	<p>This provision ensures that the tunnels forming part of the Project are constructed in a manner to ensure and provide for protected dredged navigational channel depth of 12.5m below chart datum with an additional 0.5m to allow for over-dredging attributable to standard dredging methodology (even where scour protection is required). Please see responses to Annex A of the Agenda for Issue Specific Hearing 2 (submitted on 6 July 2023) for further information.</p>
<p>Schedule 14 – Protective Provisions Paragraph 104(4)</p>	<p>New provision: (4) The undertaker’s powers of temporary possession and compulsory acquisition of rights and imposition of restrictive covenants under this Order above the river bed of the river Thames in connection with the temporary outfall, permanent outfall, the new water inlet with self-regulating valve and ground investigation works is limited to what is reasonably necessary for the undertaker safely to construct the authorised development.</p>	<p>This provision provides additional assurance that temporary possession and the acquisition of rights for those works above the river bed of the river Thames will be limited to what is reasonably necessary to safely construct the authorised development.</p> <p>The wording in this provision is based on article 30(2) of the Silvertown Tunnel Order 2018 except that (i) it does not refer to a prohibition on taking possession of the ‘<i>entire width of the river Thames</i>’ as, unlike that Order, there are no powers to take temporary possession of the entire width of the river Thames under the draft Development Consent Order and (ii) it extends this to permanent rights which are sought in connection with works above the river bed of the river Thames.</p> <p>At the time of writing this document, the PLA have been provided with the proposed provision but have not responded.</p>

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Schedule 14 – Protective Provisions Paragraph 120 (1)	The reference to sub-paragraph 6 has been amended to refer to sub-paragraph 5.	This has been updated to refer to the correct sub-paragraph.
Schedule 14 – Protective Provisions Environment Agency	Various amendments.	With the exception of paragraph 116(5), the Applicant can now confirm that the Protective Provisions (as amended) are now agreed between the Environment Agency and the Applicant. The amendments reflect the agreement reached between the parties.
Schedule 15 – Deemed Marine Licence	Minor updates and insertion of the following at paragraph 24: “(3) The provisions of sections 72 (variation, suspension, revocation and transfer) of the 2009 Act apply to this licence except that the provisions of section 72(7) and (8) relating to the transfer of the licence only apply to a transfer not falling within article 8 (Consent to transfer benefit of Order).”	These updates have been made following comments by the MMO on the Deemed Marine Licence. The newly inserted provision confirms that transfers of the benefit of the Deemed Marine Licence are dealt with under the 2009 Act except insofar as explicitly addressed in article 8.
Schedule 16 – Documents to be Certified	Updates to document references which are proposed to be certified.	These update the relevant documents referenced to ensure they are aligned with the most recent iteration of the relevant documents.

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