

# Lower Thames Crossing

## 9.71 Applicant's response to IP comments made on the draft DCO at Deadline 2

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#### List of contents

	<b>Page number</b>
1 Introduction.....	1
1.1 Introduction .....	1
2 Emergency Services and Safety Partners Steering Group.....	2
2.1 Requirement 14 (traffic monitoring) .....	2
3 Gravesham Borough Council .....	3
3.1 Article 2 and Paragraph 2 of Schedule 2 (definition of “begin”).....	3
4 London Borough of Havering.....	4
4.1 Protective Provisions .....	4
5 Natural England.....	5
5.1 Article 64 (Arbitration) .....	5
6 Port of London Authority.....	6
6.1 Article 2 and Paragraph 2 of Schedule 2 .....	6
6.2 Article 6 (limits of deviation and depth of the tunnels).....	6
6.3 Paragraph 104(4) of Schedule 14 to the draft DCO .....	6
6.4 Article 53(4) (Disapplication of river works licensing regime).....	7
7 Thurrock Council .....	8
7.1 Statement of Common Ground .....	8
8 Transport for London.....	9
8.1 Requirements 5 and 6.....	9
8.2 Other matters.....	9

# 1 Introduction

## 1.1 Introduction

- 1.1.1 A number of Interested Parties provided comments on the draft Development Consent Order (DCO) at Deadline 2. As these comments were provided in a number of different submissions, the Applicant has reviewed all the comments and provided a response to them in this document for ease of reference.
- 1.1.2 Interested Parties who provided comments were:
- a. Emergency Services and Safety Partners Steering Group in their Comments on the Applicant's amended DCO [[REP2-103](#)]
  - b. Gravesham Borough Council in their Comments on Written Representations and Local Impact Reports [[REP2-080](#)]
  - c. London Borough of Havering in their Comments on the Applicant's amended DCO [[REP2-087](#)]
  - d. Natural England in their Comments on Written Representations and Local Impact Reports [[REP2-090](#)]
  - e. Port of London Authority (PLA) in their Comments on documents and submissions made at Deadline 1 [[REP2-091](#)]
  - f. Thurrock Council in their Comments on the Applicant's amended DCO [[REP2-093](#)]
  - g. Transport for London in their Comments on Applicant's submissions at Deadline 1 and Written Representations [[REP2-095](#)]

## 2 Emergency Services and Safety Partners Steering Group

### 2.1 Requirement 14 (traffic monitoring)

#### Consultee role

- 2.1.1 The Deadline 2 submission from the Emergency Services and Safety Partners Steering Group [REP2-103] sets out that they consider they should be a consultee on the traffic impact monitoring scheme secured under Requirement 14. The Applicant does not consider this appropriate. The purpose of this monitoring scheme is to monitor the impacts of the Project and other changes on traffic on the local and strategic road networks. If the monitoring identifies issues or opportunities related to the road network because of traffic growth or new third-party developments, then highways authorities would be able to use this as evidence to support scheme development and case making through existing funding mechanisms and processes.
- 2.1.2 Bringing forward such schemes is not the function nor responsibility of the Emergency Services and Safety Partners Steering Group. This is the position in relation to existing parts of the road network across the country, and there is no sound reason for the position to be altered in connection with the Project.

#### Document Reference

- 2.1.3 The Deadline 2 submission from the Emergency Services and Safety Partners Steering Group notes the document reference in Requirement 14 needs to be corrected. This change to the document reference has been included in the draft DCO submitted at Deadline 3.

## 3 Gravesham Borough Council

### 3.1 Article 2 and Paragraph 2 of Schedule 2 (definition of “begin”)

- 3.1.1 In their Deadline 2 submission [[REP2-080](#)], Gravesham Borough Council considers there should be a time limit for the Project “commencing” and not just “beginning” (the latter of which includes preliminary works). The Applicant’s position on this matter is set out in the Applicant’s response to IP comments made on the draft DCO at Deadline 1 [[REP2-077](#)]. The Applicant further refers to its responses in ISH2 Discretionary Submission Annex A Responses [[AS-089](#)] and Post-event submissions, including written submission of oral comments, for ISH2 [[REP1-184](#)]. Given the scale of activities involved in “beginning” the development, it is considered sufficient and adequate for this to discharge the Time Limits requirements. The Applicant emphasises that the compulsory acquisition period should not be conflated with the time period which is the subject of Requirement 2.

## 4 London Borough of Havering

### 4.1 Protective Provisions

- 4.1.1 The Deadline 2 submission [[REP2-087](#)] puts forward Protective Provisions for local highway authorities. The Applicant's position on this matter is set out in the Applicant's response to IP comments made on the draft DCO at Deadline 1 [[REP2-077](#)]. The Applicant will review the proposed Protective Provisions in the context of its negotiations on the side agreement relating to highways matters.

## 5 Natural England

### 5.1 Article 64 (Arbitration)

- 5.1.1 Natural England's Deadline 2 submission [[REP2-090](#)] disagrees with the Applicant's insertion of article 64(2) which prevents decisions of the Secretary of State being subject to arbitration. This change was made following a request from the Examining Authority (in Annex A of the Agenda for Issue Specific Hearing 2 [[EV-015](#)]), noting that an equivalent provision had been included in recent DCOs. The Applicant does not agree the provision should be removed as the Secretary of State is competent in matters relating to *ecology and landscape impacts* (i.e., those matters which Natural England considers give rise to the need for an arbitrator).

## 6 Port of London Authority

### 6.1 Article 2 and Paragraph 2 of Schedule 2

6.1.1 The PLA has raised queries in relation to article 2 and paragraph 2 of Schedule 2 in their Deadline 2 submission [[REP2-091](#)] relating to whether the Project should be required to “commence” (as defined in article 2) and not just “begin” (as defined in article 2 and as currently required by Requirement 2). Please see response Gravesham Borough Council above.

### 6.2 Article 6 (limits of deviation and depth of the tunnels)

6.2.1 The Applicant does not consider any new matters have been raised in relation to the draft DCO drafting which are not addressed in the Applicant's response to IP comments made on the draft DCO at Deadline 1 [[REP2-077](#)]. In short, the limits of deviation under article 6 take effect subject to the agreed dredging levels. This represents a legally binding constraint on the limits of deviation, and it is not clear on what basis this is described as ‘*unusual*’.

6.2.2 The Applicant can confirm it has carried out a Flotation Sensitivity Check. An early iteration of this document was shared with the PLA and their comments have been taken into account. The analysis shows that the upwards limits of deviation are capable of being achieved without affecting the agreed dredging levels and depths. A further sensitivity analysis was also carried out showing that even where scour protection is required, those parameters can be met.

6.2.3 The Applicant met with the PLA on 9 August 2023 and continues to engage with the PLA on this issue. The Applicant is currently seeking to provide further comfort to the PLA on this issue. At Deadline 3, the Applicant submitted a Tunnel Depth Report which provides further information on this matter.

### 6.3 Paragraph 104(4) of Schedule 14 to the draft DCO

6.3.1 At Deadline 2, the Applicant inserted the following provision into paragraph 104 of Schedule 14:

*‘(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’*

6.3.2 The PLA queries the intention of this provision. The intent of this provision is to limit the Applicant's powers in relation to use of and acquisition of rights over the River Thames, and minimise the interference with the PLA's functions.

6.3.3 The Applicant had been engaging with the PLA on a provision which would include a similar proviso in addition to limiting the powers of acquisition in connection with the permanent outfall in the River Thames. The PLA maintained their position that the area shown in “blue” (i.e., subject to permanent rights) in the Land Plans in connection with that outfall should be reduced. The Applicant acceded to this request (see amendment EA03 in the Applicant's Second Notification of Proposed Changes to the Planning Inspectorate [[PD-024](#)]). Whilst



the need for a provision which restricts the powers of acquisition for the permanent outfall is therefore obviated by that proposed amendment EA03, the Applicant nonetheless wishes to provide the PLA, and the Secretary of State, comfort that the Applicant's use of the river will be minimised via the insertion of paragraph 104(4) in Schedule 14 for other activities in the river Thames.

6.3.4 The Applicant notes that the PLA asserted in their Written Representation that the temporary possession powers could be exercised '*indefinitely*'. The Applicant does not agree for the reasons set out in the Applicant's response to IP comments made on the draft DCO at Deadline 1 [[REP2-077](#)] but considers that the insertion of paragraph 104(4) in Schedule 14 positively responds to the requests for assurance.

6.3.5 The PLA also specifically queries why this has been placed in paragraph 104 of Schedule 14. This is simply because the comfort the Applicant is seeking to provide relates to the navigable river. As the location of the provision does not affect its legal or substantive effect, the Applicant is happy to move this provision into another paragraph in the Protective Provisions if the PLA provides their specific view on this matter.

## 6.4 Article 53(4) (Disapplication of river works licensing regime)

6.4.1 The PLA's comments are addressed by the amendment to article 53(4) which was made at Deadline 2. The Applicant awaits the PLA's response following its review of these provisions.

## 7 Thurrock Council

### 7.1 Statement of Common Ground

- 7.1.1 Thurrock Council's Deadline 2 submission [[REP2-093](#)] notes that the Council seeks to update the Statement of Common Ground with issues raised in their Local Impact Report, including those relating to the draft DCO. The Applicant can confirm it continues to work with the Council on the development of the Statement of Common Ground. No other issues relating to the draft DCO have been raised at Deadline 2 in relation to the draft DCO.

## 8 Transport for London

### 8.1 Requirements 5 and 6

8.1.1 Transport for London requests in its Deadline 2 submission [[REP2-095](#)] that it is added as a consultee in relation to Requirements 5 and 6. The Applicant has made the change in relation to Requirement 6, and will also update the list of consultees in Table 2.1 of the outline Landscape and Ecology Management Plan to include Transport for London in due course. The Applicant therefore considers these matters closed.

### 8.2 Other matters

8.2.1 Transport for London notes its support for submissions made by London Borough of Havering. The Applicant refers to its response to IP comments made on the draft DCO at Deadline 1 [[REP2-077](#)].

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