Gravesham Borough Council (Registration ID Number: 20035747)

Lower Thames Crossing (Scheme Ref: TR010032)

Deadline 3

Gravesham Borough Council's response to Applicant's response to ISH2 (DCO) Post Hearing Submissions and ExA's Observations on Drafting (Annex A to the Agenda for ISH2)

Deadline 3: 24 August 2023

Deadline 3: Table in response to the Applicant's response to Gravesham Borough Council's (GBC) Post Hearing Submissions after ISH2 on the draft Development Consent Order

Note: The structure of the Submissions follows the order of the ISH2 Agenda Items and Appendix but within each Agenda Item, the Submissions begin by identifying the main points of concern to GBC and then turn to more detailed matters.

Note 2: If a point mentioned in the "GBC's Response" column is not mentioned in the "GBC's further response" column, it does not mean that the point has been met to GBC's satisfaction

ExA's Agenda Item / Question	GBC's Response	Applicant's response	GBC's further response
1. Welcome, introductions, arrangements for the Hearing			
2. Purpose of the Issue Specific Hearing			
3. Applicant's Drafting Approach			
The Applicant will be asked to explain its approach to the drafting of the dDCO.	**GENERAL POINT: Gravesham Borough Council (GBC)** has yet to complete a detailed line by line review of the DCO and are likely to make detailed points on the draft at a later stage, with key topics of concern being addressed in the Local Impact Report (LIR). The points made at ISH2 and in this note are mainly general in nature but the comments in Annex A respond to the specific matters raised by the ExA in the Annex to the Agenda for ISH2. As the draft DCO evolves GBC will make further comments.	Noted	Detailed points have been made below. Any further detailed points will be taken up directly with the Applicant and reported as necessarily at later stages.
a) The structure of the dDCO	See agenda item 4	See below	See below

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b) The powers sought and their relationship to the project	See agenda item 4	See below	See below
c) The relationship between the dDCO and plans securing the construction and operational performance of the proposed development **• the design principles document** **• the environmental masterplan** **• The Environmental Management Plan (EMP) and iterations** **• The Landscape and Ecology Management Plan (LEMP) (outline and full)** **• Any other relevant plans and documents**	See agenda item 4	See below	See below
d) The discharging role of the Secretary of State and other local and public authorities	See agenda item 4	See below	See below
e) Matters to be secured by alternative methods **• Planning obligations** **• Other forms of agreements**	GBC has submitted to the Inspectorate a Suggested Section 106 Asks document [AS-070] covering a variety of issues, namely public transport, highways mitigation measures, environmental health, economy, community impact, climate change and environment. The Applicant has also submitted draft s106 Heads of Terms [APP-505] covering skills, education and employment; community funds;	See below	See below

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	officer support contributions, and pedestrian crossing improvements. There is obviously some distance between the parties but GBC are pleased that the Applicant has recognised in principle that a s106 agreement is appropriate in this case. Refs: GBC section 106 Asks [AS-070] Applicant draft s106 Heads of Terms [APP-505]		
f) Ongoing work with implications for the dDCO **• The change application** **• Any other intended changes to the dDCO**	GBC has responded to the minor refinement consultation. In relation to the proposal for a single tunnel boring machine option, GBC are most concerned that the DCO should secure that whichever option is adopted, all spoil and tunnel boring machine equipment and tunnel linings etc. should be removed from or brought in through the northern portal. This could be achieved in the main body of the Order or as a Requirement.	This is proposed to be secured via the Code of Construction Practice (CoCP) of which Chapter 7 is the Register of Environmental Actions and Commitments (REAC). The commitment has the reference MW009. This has been submitted at Deadline 1, and is applicable whether one or two TBMS are utilised. The CoCP and REAC commitments are secured by Requirement 4 of the dDCO. The nature of the commitment means it is suitable for the CoCP, rather than as a bespoke Requirement in its own right. The Applicant considers that this provides an appropriate safeguard which GBC has requested.	GBC welcomes the commitment in principle but needs to have further information about the tunnelling proposals before it can say it is satisfied on this point.
4. ExA's Questions on the dDCO			
The ExA will ask questions about the dDCO and seek observations from IPs present. Noting that this hearing is in the earliest stages of the Examination, the primary		.	

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purpose of this Agenda item will be for the ExA to raise its own initial questions. Other IPs will be welcome to participate but will not be expected to frame their own detailed positions until the submission of their Written Representations, Local Impact Reports and participation in a DCO ISH in September 2023. **The Applicant will be provided with a right of reply.**			
a) The structure of the dDCO	GBC is generally content with the structure of the DCO, which reflects other precedents. The list of works in Schedule 1 is unusual in the respect that there is no indication, as is normally the case, of which local authority area each work is situated in. This is normally achieved by the use of sub-headings. Although it is possible to work out the location by reference to the Works Plan numbers, it would be better if sub-headings showing local authority areas were also included.	Schedule 1 is not considered "unusual" in this respect (see, for example Schedule 1 to the A19 Downhill Lane Junction Development Consent Order 2020, the A585 Windy Harbour to Skippool Highway Development Consent Order 2020 and the A417 Missing Link Development Consent Order 2022). Precedent reflects a range of approaches and there is no set rule or convention. In the case of the Project dDCO, the Applicant has not disaggregated the works in the schedule to aid understanding of the relevant works and local authority separation would make the Schedule difficult to understand given the integration of a number of works. The Applicant refers to the Works Plans, which include local authority boundaries	GBC understands that the precedents mentioned involved schemes which were less complex, there were fewer works involved, and fewer local authorities. The works plans span many pages and works cross from one page to another, making cross-referencing difficult.
b) The powers sought and their relationship to the project	Article 3 grants development consent for the "authorised development" which is defined in article 1 in standard terms	The Applicant's position is set out in its responses to Annex A of the agenda for Issue Specific Hearing 2 [ISH2	GBC's position is unchanged. On the ancillary works point, the Applicant refers to only one precedent.

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	as "the development described in Part 1 of Schedule 1 (authorised development) and any other development authorised by this Order, or any part of it, which is development within the meaning of section 32 (meaning of development) of the 2008 Act." Part 1 of Schedule 1 includes a long list of "Ancillary works" which is authorised by article 3. Whilst it is noted that none of this development may give rise to any materially new or materially different environmental effects to those assessed in ES, GBC will be analysing the list in detail and may have comments later. At this stage it is noted that paragraph (m) (construction compounds and working sites) includes a range of potentially significant development including "construction-related buildings". GBC also notes that Article 2(10) seeks to limit what are "materially new or materially different environmental effects" so that they cannot include any measure concerned with "the avoidance, removal or reduction of an adverse environmental effect". GBC has some concerns about this approach, as currently drafted, because it is unclear whether the limitation would apply to an avoidance/removal/reduction measure in relation to one adverse environmental effect (for example reducing an adverse noise impact by	Discretionary Submission Annex A Responses] [AS-089] and its post-event submissions, including written submission of oral comments, for ISH2 [REP1-184]. In relation to the suggested words for the preamble of the ancillary works, the Applicant does not consider an amendment is necessary (see page 23 of responses to Annex A of the agenda for Issue Specific Hearing 2 [ISH2 Discretionary Submission Annex A Responses]. The Applicant notes that the Ancillary Works in Schedule 1 are limited (i.e., they only authorise works which do not entail a "materially new or materially different" environmental effect from that set out in the environmental statement). This provides appropriate control. In relation to article 2(10), the Applicant's position is set out in the aforementioned documents, but would note that where a proposed element of the scheme gives "rise to separate [likely significant] environmental effects (for example landscape, heritage, or visual amenity)" that would itself be a materially new adverse impact and would therefore not be permitted.	(Stonehenge). GBC is unaware of any other precedent where ancillary works are authorised outside the order limits. It is no answer to say that powers of CA and TP are limited to the order limits as the Applicant could acquire land by agreement outside them (and has done so). A prohibition on materially new or materially different environmental effects does not mean there will be no effects. People who may be affected may have understandably assumed that the works authorised by the DCO are limited to the order limits. GBC's position on article 2(10) is unchanged.

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	installing an acoustic barrier or increasing the height of a proposed acoustic barrier) but which gave rise to separate environmental effects (for example landscape, heritage, or visual amenity). GBC considers that a holistic approach needs to be taken and that Article 2(10) as currently worded is too broad. So far as GBC is aware, the approach in Article 2(10) is not precedented. GBC has a drafting point in the introductory words – to make it clearer that the ancillary works can only be carried out in the Order limits, the words "in the Order limits" could be better placed after "or related development" The CPO powers, highways powers and other powers in the DCO appear to be in standard format for DCOs of this nature and all bear a relationship to the project. As mentioned, GBC may have detailed points on the drafting. Powers which could be said to be indirectly rather than directly related to "the project" are the powers to take and use land for e.g. nitrogen deposition and replacement open space. GBC is supportive of both being included in principle as mitigation, but may have comments on the detail. **Post-ISH2 Note:** GBC welcomes Action Point 4 from ISH2 and is co-operating in the preparation of a Joint Note.		

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c) The relationship between the dDCO and plans securing the construction and operational performance of the proposed development	The DCO (article 6) contains standard provisions which require the works listed in Schedule 1 to be constructed within lateral limits shown on the works plans and allows vertical deviation upwards and downwards from the levels shown on the engineering drawings and sections, up to certain identified limits. Because of the complexity of the A122 LTC and A2 junction, the relevant volume of the Engineering Drawings and Sections (Volume D) is difficult to interpret. At the very least, cross-sections of the vertical alignment of key parts of the junction and preferably a virtual or real 3-D model of the junction and/or pictorial representations of the junction would be helpful to understand the overall height. In addition, GBC is concerned to ensure that, given that so much of the detail is not spelt out in the proposed Requirements but is left to be regulated by one of more of the control documents, the control documents that are to be secured by the Requirements need to include adequate arrangements for the monitoring of the provision/implementation of measures to deliver what is required by those control documents, and that such monitoring is not merely reported to the Secretary of State but is reported to the relevant planning authorities so they	The Applicant is preparing further cross sections to assist Interested Parties, and these have been submitted at Deadline 2. In relation to the comments concerning monitoring, the Applicant considers that appropriate monitoring has been incorporated in the outline management plans themselves. In short, the Code of Construction Practice secures a Community Liaison Group, the outline Traffic Management Plan for Construction secures a Traffic Management Forum, the outline Landscape and Ecology Management Plan secures an Advisory Group, and further requirements require consultation and engagement with relevant local authorities. GBC is proposed to be a member of all these groups, and will be consulted further. Specific provision is made for monitoring outputs to be shared. GBC is requested to particularise their concerns around monitoring following their review of the outline management plans.	The cross sections are helpful in some respects but do not enable a proper overall view to be taken. Q13.1.20 (ExQ1) asks local authorities about openness in the Green Belt, which a 3D model would help parties, including the Applicant, to assess. GBC notes the response and will make further comments. One point is that GBC considers that a single document setting out what needs to be monitored, at what stages and at what frequency would be helpful.

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	are adequately informed of progress with the implementation of the measures for the purposes of being able to undertake their enforcement functions. **Post-ISH2 Note:** GBC welcomes Action Point 2 from OFH2 and will respond further once it has seen and considered the requested vertical cross-sections of the A2/M2/LTC intersection.		
d) The discharging role of the Secretary of State and other local and public authorities	As mentioned in its Principal Areas of Disagreement Summary (PADS) [AS-069], GBC is of the view that the relevant local planning authority should be the discharging authority rather than the Secretary of State. The reasons for this include: (a) the local planning authority has greater local knowledge and is therefore better placed to deal with requirements which relate to local issues (b) GBC query whether it is appropriate for the Secretary of State to be the discharging authority in respect of applications made by own of its own agencies (c) there is no right of appeal against the decisions of the Secretary of State (d) consequential on that point, where the SoS fails to give a decision on an application within the given time, it is	The Applicant's position is set out in its responses to Annex A of the agenda for Issue Specific Hearing 2 [ISH2 Discretionary Submission Annex A Responses] and [REP1-184] but set out further comments where relevant below. The Applicant does not consider GBC have raised any issues with the proposed approach to discharging which are covered by those submissions, not any points which have not been considered in previous examinations of SRN DCOs.	GBC's position is unchanged.

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	deemed to have been granted. In DCOs where the LPA is the discharging authority there would normally be a right of appeal for the applicant (d) precedent: in most other DCOs, the discharging authority is the local planning authority, and this includes some highways DCOs where the applicant is the local highway authority (see the Silvertown Tunnel Order 2018, the Great Yarmouth Third River Crossing Development Consent Order 2020; the Lake Lothing (Lowestoft) Third Crossing Order 2020). It is also noteworthy that the local planning authorities are the discharging authorities for some of the most complex, multi-jurisdictional DCO schemes, examples being the Southampton to London Pipeline Development Consent Order 2020 and the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014. If the ExA were to recommend that the SoS remain as the discharging authority, with GBC as a consultee, GBC must be given sufficient time to consider the relevant documents properly and all its costs should be met by the Applicant. GBC notes the justification provided by the Applicant in its Explanatory Memorandum which was summarised by the Applicant at ISH2. GBC is not persuaded by that justification and at	The Applicant does not consider the limited examples raised by GBC are comparable or relevant to the Project in this context. In particular: • the Lake Lothing (Lowestoft) Third Crossing Order 2020 and the Great Yarmouth Third River Crossing Development Consent Order 2020 – precedents which are not appropriate because it involves a scheme which is promoted by a local authority, and does not traverse multiple local authorities, or pertain to the strategic road network. Unlike the Project, Reasons, 1, 2, 3, 4, 5, 8 and 9 set out in the EM do not apply to this DCO precedent. • the Silvertown Tunnel Order 2018 whilst it is acknowledged this project traverses local authorities (albeit a more limited number compared with the Project), Reasons 2, 3, 4, 5, 8 and 9 set out in the EM do not apply to this precedent. • Southampton to London Pipeline Development Consent Order 2020 and the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 -), Reasons 2, 3, 4, 5, 8 and 9 set out in the EM do not apply to these precedents. The relevant Department does not have a case unit team.	This response does not address the point that the precedents show that: • local planning authorities (LPAs) have been the discharging authority on a number of DCOs for linear and other schemes spanning multiple LPA areas: the fact that on SRN cases they haven't should be given limited weight and appears to be more about the fact that DfT has agreed to be the competent authority for SRN schemes. • LPAs have dealt with highways DCO schemes (and non DCO schemes): the fact that they were not strategic road schemes should be given limited weight for the reasons above.

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	ISH2 made the following over-arching submissions. On the question of the appropriate discharging authority, first of all, section 120(2) of the Planning Act 2008 is very broad. It doesn't seek to reserve discharging of requirements to the Secretary of State. The discharging authority can be the Secretary of State (or indeed any other person) under subsection (2)(b) on matters so far as they are not falling within subsection (2)(a), and for subsection (2)(a), 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. The implication, albeit not spelt out explicitly in that subsection, is that discharge of such requirements should follow the same pattern as it would for a planning condition (or other regulatory consent), and, obviously, with a planning condition, the normal expectation would be it would be the local planning authority that would be the discharging body. So, with respect to some of the submissions made in the Applicant's explanatory memorandum, the statute doesn't give a clear steer that you should go in one direction or another. GBC's submission is that the answer is to do what is fit for purpose for the particular development consent order that the ExA are considering.	The Applicant considers that these limited examples stand in contradistinction to the full set of SRN DCO precedents on this matter and which are outlined in [REP1-184]. It is indicative of GBC's approach that the precedents highlighted do not relate to the SRN.	

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	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 in this draft DCO that is not universal. In relation to traffic regulation order matters, the applicant has recognised in Articles 10(1), 12(5), and 17(2) that there are matters that should fall within the remit of the local highway authorities or local traffic authorities for them to approve certain works or restrictions, it not being claimed that these are matters that can only be elevated up to the Secretary of State's decision level. Secondly, there is a particular instance in the requirements – and this is Requirement 13. It's already been mentioned in relation to the replacement facility where Thurrock, the local planning authority, is brought to bear as the discharging authority. So there shouldn't really be any argument, in reality, about the principle that Requirements can be suitably discharged by someone other than the Secretary of State. The principle to apply should be that it should be what is fit for purpose for the particular requirements, meeting the particular order.		

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	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, GBC don't share that view. As a general point, GBC 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 of it and the bespoke unit, 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 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.	The Applicant notes GBC raise "the question of independence" of this unit. The Applicant set out its position on this in its responses to Annex A of the agenda for Issue Specific Hearing 2 [ISH2 Discretionary Submission Annex A Responses] and [REP1-184]. The Applicant finds it inappropriate to make an unsubstantiated assumption that the Secretary of State, as a public authority, would not discharge its functions lawfully and properly. The Applicant notes the absence of any evidence to support a proposition that the DfT is not independent on these matters, and the absence of any successful legal claim to that effect. The Applicant would note that the precedents cited by GBC (in particular, the Great Yarmouth Third River Crossing Development Consent Order 2020 and Lake Lothing (Lowestoft) Third Crossing Order 2020) are in fact precedents where the discharging authority has the same legal personality as the promoter of those DCOs which, it is submitted, does not assist GBC's position on this matter.	GBC notes that the Applicant has provided no examples where the bespoke unit has rejected submissions that have been put forward by National Highways.

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	There is also the point that was made by the applicant, that because of the bespoke unit, it's 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 20, in terms of the consultation. So 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 in any event. The second point, which is allied to that – so far as, assuming that a particular requirement has been satisfactorily discharged by gaining an approval, as		

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	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 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 the resource point is a non-point, because actually the local authorities will need to get into the detail in order to discharge those functions. Then the next point is a separate point, and GBC echo absolutely the points made by Mr Edwards KC 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 the interconnectivity between		

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	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 the person with the most knowledge to make the decision. The fifth point is that the problems with the applicant's approach are compounded by the weaknesses of Requirement 18. GBC recognise that's a separate requirement, but you do need to see these in the round. Requirement 18 has as a general default – in Requirement 18, 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 whatever was said in the consultation responses and however vehemently consultees explained why whatever was being proposed was not acceptable. We also note that the bespoke unit – is of course – as National Highways has	The Applicant considers that Paragraph 18 is appropriate. In circumstances where there is no consultee reporting that there are materially new or materially different effects, it is considered appropriate for the Applicant to proceed. Leaving aside that Project-specific justification, the Applicant would note that virtually every SRN DCOs includes this provision. GBC's comments would be applicable to any other such scheme, but the Secretary of State has deemed it acceptable. Whilst the Project dDCO needs to be appropriate justified (and the Applicant considers it has been), this comment is a question of principle and that principle has been accepted by the Secretary of State.	This response does not address the point made by GBC.

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	said – responsible for a wide variety of highways projects, and there's no mechanism in what the applicant is putting forward as to 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 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 consideration" 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 consideration – first of all, clearly any lawful consultation has to give consideration to the results of the consultation, so that isn't offering us anything other than the bare legal	This provision (paragraph 20 of Schedule 2 to the dDCO) specifically requires the Applicant to provide a written account to the Secretary of State of how any representations received had been taken into account. The Applicant would therefore need to have due regard – a phrase that was used in the 2008 Act itself – to responses received. It is not considered that this is weak. The Applicant reiterates its comments about the specific parameters which Schedule 2 is dealing with (see paragraph 1.3.21 of	GBC does not consider its suggestion would lead to significant delay in the context of a scheme which is already being delayed by 2 years, which has an 8 year period from the date of disposal of any legal proceedings for exercising CPO powers and, as drafted, enables the Applicant to carry out preliminary works, such as clearing vegetation, and then do nothing else without breaching requirement 2 (time limits).

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	minimum, but secondly, due consideration 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 consideration. It is no safeguard to us that they will actually act on our representations. In the event that GBC is not to be the discharging authority, GBC wishes to see a safeguard, whereby if the applicant is minded to make an application for discharge of a Requirement that is not in accordance with GBC's consultation response, that GBC is given advance notice of that intention, so giving GBC the opportunity to make either further representations to the applicant or to make direct representations to the discharging authority. Examples of such an arrangement can be seen in the guidance on hazardous substances consent where the determining authority wishes not to follow the advice of the COMAH competent authority (see Planning Practice Guidance ID39-047-20161209), and by analogy in the terms of the Town & Country Planning (Development affecting Trunk Roads) Direction 2018 where the local planning authority does not intend to follow the advice of National Highways, and the	responses to Annex A of the agenda for Issue Specific Hearing 2 [ISH2 Discretionary Submission Annex A Responses]. In those circumstances the suggestion from GBC that there should be another consultation is considered both disproportionate, and excessive, and to the Applicant's knowledge, highly novel in the DCO context (where the preliminary scheme design or the outline management plans are approved, but the details are left subject to further approvals). The Applicant is firmly of the view that the suggested approach would add delay, as well as cost, contrary to the public interest as well as Government policy on streamlining the delivery of nationally significant infrastructure projects.	

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	matter is then to be referred to the Secretary of State, and by analogy in the terms of the Planning (Listed Buildings and Conservation Areas) Regulations 1990, where (under Regulation 13) if a local planning authority wishes to authorise demolition or alteration of certain listed buildings contrary to the consultation response of Historic England the matter must be referred to the Secretary of State. This safeguard could be achieved by revising Requirement 20(1) so as to (a) delete "and" at the end of paragraph (a); (b) insert a new paragraph (ba) as follows: "(ba) where it intends to make an application which is not in accordance with the representations made by that authority or statutory body, give no less than 21 days notice to that authority or statutory body before submitting the application and give due consideration to any further representations received; and" (c) insert "(including any further representations made under sub-paragraph (1)(ba))" after "the proposed application".		

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e) Tunnelling provisions	GBC refers to its response to the Minor Refinement Consultation and in particular the proposal that there may be a single tunnel boring machine (TBM). GBC remains concerned that using one TBM might have a greater impact on Gravesham than using two (it is difficult to know in the absence of any proper assessment). It is important that whichever tunneling option is taken, there is no doubt that the spoil arising should be removed from the northern end and tunnelling materials, including the tunnel sections, should also be brought in from the northern end. GBC considers that there is justification for there to be a requirement to this effect in the DCO. Such a Requirement could be worded as follows: "In carrying out Work No. 4, the undertaker shall ensure that all construction activity utilising one or more tunnel boring machines and the servicing or supplying of any such machines, including all provision of construction materials and all removal of spoil or other materials (but not including the transportation of personnel) is undertaken only via the north bank of the River Thames."	Please see above in relation to the commitment relating to the tunnel boring machinery.	See response above.
f) Traffic regulation provisions	GBC has no comments at this stage	Noted	
g) Road charging provisions	Schedule 12 to the DCO aligns charges and other details of the charging regime with those at the Dartford Crossing,	Government has previously taken a decision on the residents discount scheme for the Dartford Crossing and it	GBC remains of the view that a discount should be available for Gravesham residents and that it is open to the ExA to

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	such as hours in which the charges apply, discounts and exemptions. Paragraph 5 of Schedule 12 enables the Secretary of State for Transport to apply a local resident discount for charges imposed under the DCO to residents of Gravesham and Thurrock. The current arrangements in relation to users of the existing Dartford Crossing are that, for 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 concerned, 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 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. There is no evidence that the traffic modelling has taken account of how Gravesham residents' decisions as to which crossing to use may be affected by the higher toll on the Dartford	is not for the Applicant to re-open that decision. A consistent approach to discounts has been applied, namely with reference to the local authority landing points of the two crossings. The charging authority for the Dartford Crossing is the Secretary of State, and it is not considered appropriate to vary the charges on that crossing as part of the Project dDCO. Without prejudice to the decision on the DCO, the DfT has endorsed the proposed charging regime, for which it will be charging authority (see Annex B of [REP1-184]).	make a recommendation to the Secretary of State to that effect. If the ExA considers it helpful, GBC can draft some wording for the DCO. GBC considers that if Thurrock residents can use both crossings with a reduction, then in fairness, so should Gravesham (and Dartford) residents. The limited LTC-only discount for Gravesham residents could lead to distorted travel patterns and unnecessarily longer journeys in that a Gravesham resident with a destination best served by the Dartford Crossing may instead route via the LTC to avoid paying the full Dart Charge so increasing journey length and emissions. Whilst the Applicant has referred to not wanting to encourage greater use of the Dartford Crossing (by offering Gravesham residents a discount) it is not clear whether the LTAM modelling has included the charges for the LTC in its assignments/distribution of traffic so there is no evidence to show that a Dart Charge discount would increase traffic beyond what has already been modelled.

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	Crossing. We see the impacts on Gravesham as being sufficient in both magnitude and duration, 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 (as it does in Article 53), and so what we are proposing is that residents of Gravesham are given a resident's discount for using either crossing, and not merely for the LTC. This could be achieved by amending the definition of "local resident" in article 2 of the A282 Trunk Road (Dartford-Thurrock Crossing Charging Scheme) Order 2013 as amended. 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.		

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	GBC does not seek to comment on whether discounts should be offered to residents of other local authorities adversely affected by the LTC but it does see the unavoidable residual impacts within Gravesham as significant in their extent so as to justify a particular compensatory measure to offset those impacts.		
h) Protective provisions	GBC has no comments on the protective provisions in the DCO as none relate to it. GBC is not seeking any protective provisions for itself at this stage.	Noted, the Applicant welcomes this confirmation.	
i) The Deemed Marine Licence	GBC has no comments	Noted, the Applicant welcomes this confirmation.	
j) ExA observations on drafting (see Annex A)	See separate document with selected comments on the ExA observations in Annex A.	Please see the Applicant's response to this separate submission below.	
k) Any other matters relating to the dDCO	GBC may have more detailed drafting points in due course but some which have arisen so far: Precedents for article 23(2) (felling or lopping of trees and removal of hedgerows) often contain a requirement to take steps to avoid a breach of the provisions of the Wildlife and Countryside Act 1981 and the Conservation of Habitats and Species Regulations 2017 (for example article 42(2)(c) of the A1428 Black Cat to Caxton Gibbet Development Consent Order 2022). The Applicant should	In relation to article 23(2), the Applicant does not consider these suggested provisions necessary. There is a requirement to "carry out" landscaping works to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice (see Requirement 5).	The response does not answer the specific point made about the 1981 Act and 2017 regulations.

ExA's Agenda Item / Question	GBC's Response	Applicant's response	GBC's further response
	explain why it is not included in the dDCO.		
	Article 24(2)(b) (trees subject to tree preservation orders) disapplies the duty under s.206(1) (replacement of trees) of the Town and Country Planning Act 1990 to replace TPO trees if removed. There are three areas of woodland in Gravesham listed in Schedule 7 to the dDCO which are subject to article 24. In other highways DCOs (for example article 43(3)(b) of the A1428 Black Cat to Caxton Gibbet Development Consent Order 2022 this is accompanied by the words "although where possible the undertaker must seek to replace any trees which are removed". GBC considers it would be appropriate to include similar words in this case unless the Applicant can demonstrate that the trees are to be replaced due to some other provision in the draft dDCO and/or control documents.	In relation to article 24, replacement woodland and trees are secured via the Environmental Masterplan as well as the outline Landscape and Ecology Management Plan (under Requirement 5). Requirement 3 also secures the General Arrangements which shows ecological mitigation areas. No further amendment is therefore considered necessary.	The Environmental Masterplan only shows areas of woodland planting, and the outline LEMP provides descriptions of the types of woodland and other planting envisaged, but neither appears to indicate numbers of trees to be planted and lost. It would be helpful to have an indication of where that information can be found.
	Article 58(2) (defence to proceedings for statutory nuisance) appears to be unprecedented in highways DCOs. It says that compliance with the controls and measures described in the Code of Construction Practice or any environmental management plan approved under paragraph 4 of Schedule 2 to the DCO will be sufficient, but not necessary, to show that an alleged nuisance could not reasonably be avoided. GBC thinks that this	In relation to article 58(2), this provision is necessary to clarify the scope of the defence of statutory authority arising from the grant of the Order. The Code of Construction Practice and management plans will reflect the set of appropriate measures and controls endorsed by the Secretary of State (if consent is granted). In the case of the management plans, these would be subject to further	The Applicant has failed to demonstrate any special circumstances which apply in this case to require art. 58(2). GBC would be interested to hear whether its absence has caused difficulties for the Applicant on other projects.

ExA's Agenda Item / Question	GBC's Response	Applicant's response	GBC's further response
	provision represents an unwelcome and unnecessary fettering of the discretion of the courts in dealing with statutory nuisance cases. So far as GBC know, it is precedented in only two other (non highways) DCOs and GBC are unaware of any particular local need for it. The Applicant should be put to strict proof as to why it is needed, giving examples of other made highway DCOs where it would have been necessary (not just convenient) to have had. GBC welcomes in principle the inclusion of article 61 (stakeholder actions and commitments register) which as the Applicant says, is unprecedented. However GBC is concerned that the article says the Applicant will only "take all reasonable steps" to deliver the commitments in the register. GBC would welcome an explanation of why those words are used. It is particularly concerned to ensure that the words do not water down any commitments which appear in the register and which may, for example, impose on the Applicant a higher level of commitment than taking all reasonable steps. GBC is also concerned about article 61(1)(b) which enables the undertaker to revoke, suspend or vary the application of a commitment on the register by applying to the Secretary of State (albeit after consultation with the	approval by the Secretary of State. It is not reasonable or appropriate for there to be a claim of statutory nuisance circumstances where there is compliance with plans which have been approved, and are intended to manage matters related to statutory nuisances. This provisions provides certainty for all parties and ensures clarity that measures approved in a management plan are comprehensive in controlling the impacts of the Project. As is noted by GBC, the provisions are necessary and stand for the proposition that there is no "in principle" objection to them. In relation to article 61, the drafting of article 65(1) (and indeed, the underlying rationale) is based on the undertaking provided in the context of HS2 "Register of Undertakings and Assurances". The Secretary of State utilises that language in connection with those undertakings, which are of substantially similar nature, and it is considered appropriate in this context. In relation to article 61(1)(b), the measures secured in the SAC-R are explained and discussed with interested parties and Article 61 clearly forms part of	GBC remains concerned that the requirement is only to "take reasonable steps" to deliver commitments in the register. If commitments have been given, they should be complied with. The individual commitments can set out the burden of compliance (whether "reasonable steps" or otherwise) on the Applicant. GBC remains to be convinced that art 61(1)(b) as drafted is appropriate and in

ExA's Agenda Item / Question	GBC's Response	Applicant's response	GBC's further response
	beneficiary of the commitment). That beneficiary may not have been aware of the possibility of this happening when entering into the commitment. At the very least there should be a requirement that beneficiaries of commitments should be alerted to this possibility by the Applicant during the process of negotiating or offering the commitment. Also, there appears to be nothing in the article which requires the Secretary of State to even consider taking into account the written views of the beneficiary other than through the Applicant's report of the consultation, and there is no appeal mechanism.	the examination. The Applicant notes that under article 61(1)(b) further consultation would be required where a measure is proposed to revoked or varied. A decision of the Secretary of State can, further, be legally challenged.	particular the lack of a specific requirement on the Secretary of State to consider the views of the affected party.
	Finally on article 61, paragraph (3) says that when an application has been made to vary, revoke or suspend a commitment, then the commitment is treated as being suspended until the Secretary of State has determined the application. But that could result in permanent damage being done during the period of suspension, even if the Secretary of State ultimately decides that the application should be refused. There is no provision in article 61 for compensation in those circumstances (or at all) and GBC queries whether that is fair, and potentially raises article 1 protocol 1 ECHR issues.	In relation to article 61(3), the Applicant has removed the suspension of the measure in its dDCO at Deadline 2.	Noted. GBC are satisfied with this change.
	In the ancillary works part of Schedule 1, GBC has already commented on the unusual new introductory words which	In relation to Schedule 1, this comment is addressed above.	

ExA's Agenda Item / Question	GBC's Response	Applicant's response	GBC's further response
	enable works to take place anywhere outside the Order limits. On the detailed design requirement (paragraph 3 of Schedule 2), GBC note the equivalent requirement in the Black Cat DCO included a requirement for a submission of a report to the Secretary of State demonstrating that there had been engagement with local stakeholders about detailed design. GBC would wish to explore the possibility of a similar provision in this case. This comment is without prejudice to GBC's point that the local planning authority should be the discharging authority for requirements and is subject to a more detailed analysis of the requirements.	In relation to Requirement 3, the Applicant would welcome a particularisation of the mischief which GBC is seeking to remedy in terms of detailed design to understand whether an amendment can be made. The Applicant has, unlike other precedents, provided a Design Principles document ensuring further engagement and consideration during the detailed design stage.	The Black Cat Order requirement referred to a scheme design approach and design principles document. GBC would welcome confirmation on whether that document was similar to the Design Principles document in this case. But in any event, so far as GBC understands it, there is no specific requirement to engage the local planning authority on most elements of the detailed design in the Design Principles Document. Despite the fact that the principles themselves are quite broadly drafted, as local planning authority, GBC considers it is appropriate for its modest suggestion for an engagement report to be included.
5. Next Steps			
6. Closing			

Gravesham Borough Council (GBC)

Comments on Applicant's response to GBC's comments on the ExA's Observations on Drafting (Annex A to the Agenda for ISH2)

Note: if a point mentioned in the "GBC comment" column is not mentioned in the "GBC's further response" column, it does not mean that the point has been met to GBC's satisfaction

ExA Point	GBC Comment	Applicant's response	GBC's further response
1. Novel drafting			
Article 2(10)			
This is apparently novel drafting which seeks to amend the meaning of "materially new or materially different environmental effects in comparison with those reported in the ES" to exclude effects which would avoid, remove or reduce an adverse environmental effect reported in the ES. **The phrase "materially new or materially different environmental effects" is used several times in the DCO, including in the definition of maintain, the limits of deviation and requirements securing essential mitigation. The drafting here appears to provide that it is acceptable for work which has the effect of avoiding, reducing or removing an adverse effect to be**	GBC agrees that the Applicant has taken a different course from that adopted on recent Highways DCOs by introducing paragraph 2(10) in version 2.0 of the draft DCO. Most recent highways DCOs do not include this paragraph, the effect of which is that references in the DCO to materially new or materially different environmental effects in comparison with those reported in the environmental statement 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	The Applicant's position is set out in its responses to Annex A of the agenda for Issue Specific Hearing 2 [ISH2 Discretionary Submission Annex A Responses] and [REP1-184]. Please see further responses to GBC's ISH2 Post-Hearing Representations. A new likely significant effect would not be permitted, and therefore the concern that "a consequential adverse effect" could arise is unfounded.	GBC maintains its position.

ExA Point	GBC Comment	Applicant's response	GBC's further response
undertaken without further scrutiny, even if the effect is materially different from that assessed in the ES. Views are sought on the degree to which that approach is being provided for here and, if it is, is acceptable? **If it is considered acceptable, then there is an argument in favour of amending drafting in this provision and elsewhere in the dDCO to ensure consistency. Slightly different phraseology is used throughout the dDCO in relation to material new and materially different environmental effects – for example, see the definition of 'maintain', Article 6(3), ancillary works preamble and (p), In Requirements 3, 8, 18, and in the Protective provisions.**	GBC are concerned about the potential for unintended consequences of excluding from the definition effects which would avoid, remove or reduce any adverse environmental effects. For example, if the Applicant were able to do something which it would otherwise have been prevented from doing without article 2(10), it could have a consequential adverse effect which may not be materially new or different but which nonetheless is of importance to those affected. An example where this might arise, mentioned by the ExA, is in relation to Ancillary works, described in Schedule 1 to the Order, and where the wording is used in the new preamble to the list of Ancillary works, and in paragraph (p) of the list. GBC notes the explanation given by the Applicant for the inclusion of article 2(10) in its cover letter in response to section 51 advice [AS-001], and also in its Annex A responses [AS-089]. In the latter, the Applicant says that for completeness, GBC's point is addressed by its responses, but GBC is unconvinced that it is. If the Applicant is to proceed with this drafting, then GBC suggests that the Applicant be requested to provide a detailed explanation as to why it considers that		

ExA Point	GBC Comment	Applicant's response	GBC's further response
	GBC's concerns about unintended consequences are unfounded. GBC agrees with the ExA's suggestion (whether or not article 2(10) is retained) that the phraseology used for "materially new or materially different" should be consistent throughout the DCO, to avoid confusion.		
Article 27 – time limits for CA, start date			
Article 27 – See comments in section 4 below re novel approach to start date and extent of time limits for Compulsory Acquisition (CA).	See later	See below.	See below.
Article 28 – extent of imposition of transfer of CA powers without consent			
Article 28 – See comments in section 4 below re novel approach/ precedent for the extent of imposition of restrictive covenants and the transfer of benefit of imposed covenants.	See later	See below.	See below.
Article 56(3), (4) planning permission etc.			
The Applicant states that this novel provision is required as a result of the Supreme Court judgement in Hillside Parks Ltd v Snowdonia	GBC note the submissions provided by the Applicant in its Annex A responses on the implications of the *Hillside* case.	The Applicant's position is set out in its responses to Annex A of the agenda for Issue Specific Hearing 2 [ISH2 Discretionary Submission	GBC notes that the Applicant has not responded to its suggestion that a list of consents be provided, in order for GBC to be able to

ExA Point	GBC Comment	Applicant's response	GBC's further response
National Park Authority 2022 UKSC [30] ('Hillside') **The ExA does not currently understand why the Applicant considers this provision to be necessary. We understand that Hillside confirmed the existing position established in case law, that a planning permission incapable of being implemented is of no effect. On the basis that Hillside is not understood by the ExA to be a statement of new law, then the rationale for the provisions drafted here is not understood.** **The Applicant is requested to:** • **provide detailed legal submissions explaining why it considers these provisions are necessary and to detail the section of PA 2008 which empowers the inclusion of this provision in the dDCO; and** • **provide details of any planning permissions within the order limits that this provision would apply to.** **Consideration will be given as to whether it is permissible or within the purposes and policy relevant to a DCO to include a provision**	GBC suggested at the hearing that if the Applicant is able to identify and provide a list of which existing planning permissions are at issue, then GBC would be better able to say whether article 56(3) and (4) are acceptable to them. The Applicant has referred to Application Document APP-550, which lists a number of Interrelationships with other Nationally Significant Infrastructure Projects and Major Development Schemes in GBC's area. It is not comprehensive because it does not cover all existing planning permissions that come within the scope of the article. The Gravesham example cited in the Applicant's response to the Annex, is also given in the Explanatory Memorandum. It is planning permission reference 20191217 which contains a condition requiring National Highways to restore land at Marling Close, which is included within the Order Limits and is required for use as a site compound during the construction phase, to its former condition by 9 July 2021. In fact, the PP referred to was followed up by a later one (20210675) which requires restoration by 31 December 2023. GBC would wish to ensure that compliance with that condition was not affected by the DCO, so is supportive of article 56(3) and 56(4) so far as they	Annex A Responses] and [REP1-184] and it is not considered that GBC has raised any new matters. For completeness, the Applicant notes that GBC wishes to "ensure that compliance with that condition which are inconsistent with the Order are not the subject of enforcement action, an outcome that would be wholly undesirable. The Applicant notes that this provision has been welcomed by the London Borough of Havering and Thurrock Council.was not affected by the DCO". The provision ensures that conditions	comment fully on the art. 56(3) and (4).

ExA Point	GBC Comment	Applicant's response	GBC's further response
preventing the taking of enforcement action by a local planning authority in a DCO. The views of the relevant local planning authorities will be sought on this point.	would apply to that case. But as mentioned above, it would assist GBC greatly if a list of other relevant existing permissions were provided by the Applicant before providing a final view.		
Work No. 7R – Traveller site & Requirement 13			
Work No. 7R is described in part as "re-provision of a traveller site". In effect, it provides for the grant of consent for change of use of a plot of land within the order limits to use as a Traveller site, which appears to be a use of land that is residential in nature. The ExA's primary question is about whether this is intra vires, within the powers of a DCO. **It is arguable that the proposed work is not a matter that a DCO may in principle provide for, having regard to PA2008 s 120(3), (4) and Part 1 of Schedule 5.** **Further, the proposed work does not appear to be part of the NSIP or NSIPs for which development consent is sought, as (per PA2008 s 115(1)(c)) the development does not appear to be 'related housing**	There are no points on Work No. 7R and Requirement 13 from GBC at this stage, given they relate to matters outside Gravesham. Nonetheless, GBC have a potential interest in the subject matter because of the need to address the private traveller sites along the A226 that will be impacted by construction	No travellers' site other than the Gammons Field Way Travellers' site is proposed to be relocated so it is not considered that this provision relates to any other travellers site.	Noted, but the impacts on the A226 sites remains a concern. This has been pointed out to the Applicant at every stage of the consultation process.

ExA Point	GBC Comment	Applicant's response	GBC's further response
development'. It appears that it may not be capable of being consented as associated development, as (per PA2008 s 115(2)) associated development is development that amongst other characteristics 'does not consist of or include the construction or extension of one or more dwellings'. **The Applicant is requested to provide detailed legal submissions explaining the statutory basis upon which it is possible to include a provision in a DCO granting consent for change of use of land to a traveller site, with particular reference to whether it is considered to be 'related housing development', or associated development with a residential element. Consideration should be given to whether the provision of pitches and related facilities on a traveller site fall under the definition of a dwelling (which is expressly excluded from the definition of associated development).** **If the change of use to the proposed use arising from Work No. 7R is permissible within a DCO, then the Applicant is requested to consider further drafting for inclusion in the dDCO to secure the change of use of land and to impose those conditions**			

ExA Point	GBC Comment	Applicant's response	GBC's further response
on that new use that would be normal for such a consent, such as limiting the use of the land to Gypsies and Travellers etc.. Observations from the local planning authority about the nature of the conditions that would normally be applied to such a change of use will also be sought. **Further consideration will also need to be given to the appropriateness of any such conditions being within a DCO (and thus only capable of being changed via a change to the DCO) or whether an alternative approach might be that the applicant submits an application for planning permission to the LPA (under the Town and Country Planning Act 1990) seeking approval before works can take place on the existing traveller site, or any CA of that land is authorised. The views of the local planning authority on applicable policy and process for such an approach will be sought, as will views on timing, certainty (or otherwise) of outcome and the effects of a refusal or delay on the deliverability of the dDCO proposed development overall.**			

ExA Point	GBC Comment	Applicant's response	GBC's further response
2. Flexibility of operation			
Articles 2, 4, 5, 6 and generally – Definitions, maintenance and limits of deviation **Requirement 4(1) – "carve out" for preliminary works (The Preliminary Works EMP)**			
As a general point, the extent of flexibility provided by the dDCO should be fully explained, such as the scope of maintenance works and ancillary works, limits of deviation and any proposed ability of discharging authorities to authorise subsequent amendments. Drafting which gives rise to an element of flexibility should provide clearly for unforeseen circumstances but also define the scope of what is being authorised with sufficient precision. **One established DCO drafting approach to managing flexibility whilst providing clarity about and security for what is consented is to limit the works (or amendments to them) to those that would not give rise to any materially new or materially different environmental effects to those identified in the environmental statement. Section 17 of Advice Note 15 provides advice on tailpieces that is also relevant.**	GBC made a point at ISH2 that the preamble to the list of ancillary works in Schedule 1 to the DCO (which was not in the first version of the DCO) appeared to allow ancillary works to be carried out outside the Order limits. In its response to Annex 1 [AS-089], the Applicant has confirmed that to be the case and has provided an explanation, saying that its powers of temporary possession and compulsory acquisition cannot be exercised outside the order limits, that the powers cannot be utilised where they give rise to materially new or materially different environmental effects and that there are other controls secured in the dDCO that are considered sufficient to provide appropriate protection in the use of the ancillary powers (e.g. Requirement 3 which only permits carrying out the authorised development in accordance with the preliminary scheme design which is secured in the relevant plans and drawings). Only one precedent is cited (Stonehenge) but GBC are not aware of any others.	In relation to the preamble, there is no particularisation of GBC's position or response to the Applicant's position is set out in its responses to Annex A of the agenda for Issue Specific Hearing 2 [ISH2 Discretionary Submission Annex A Responses] and [REP1-184]. The Applicant maintains its position on this issue for the reasons set out therein. GBC state that this provision would "could theoretically allow for development anywhere in Gravesham (or anywhere in England for that matter)" and also state the Applicant can "acquire land compulsorily". The Applicant considers this to be unfounded. The Applicant can only utilise the powers of acquisition under Part 5 of the DCO in relation to the Order limits. The controls on land acquisition (i.e., that it must be inside the Order limits), land use (e.g., the condition which it can take temporary possession), the preliminary scheme design (as per Requirement 3) and the proviso that no works can be carried out if they entail materially	There was an error in GBC's original comments: GBC meant to say that the Applicant can acquire land voluntarily outside the Order limits (and has done so). It is correct to say that the ancillary works powers can theoretically be exercised anywhere, so long as the Applicant has the necessary rights in the land and subject to the proviso that no works can be carried out if they entail materially new or materially different effects. This is highly unusual, seemingly precedented in only one DCO. It would be helpful if the Applicant were to explain why it changed the drafting from the application version of the DCO, and if it has any particular examples in mind where the power will be used outside the limits.

ExA Point	GBC Comment	Applicant's response	GBC's further response
Observations on novel drafting in Article 2(10) above are relevant here. **In relation to the flexibility to carry out preliminary works, the nature and extent of the works in the Preliminary Works EMP and hence of the "carve out" in Requirement 4(1) from the definition of "commencement" needs to be fully understood and justified. It should be demonstrated that all such works are de minimis and do not have environmental impacts which are unassessed or materially different from those assessed and or would themselves need to be controlled by requirement (see section 21 of Advice Note 15). None should be works the advance delivery of which could defeat the purpose of this or any other Requirement.** **Submissions from hearing participants on the adequacy and appropriateness of provisions providing flexibility will be sought.**	GBC maintain their concern about the breadth of this provision. The Applicant can, of course, acquire land compulsorily, and the fact that the exercise of the powers must not give rise to materially new or materially different environmental effects does not mean that there will be no effect. It would be the usual expectation in any planning application (and DCO) that the geographical extent of development would be subject to a "red line" of some sort, whereas the wording here could theoretically allow for development anywhere in Gravesham (or anywhere in England for that matter). GBC are examining the DCO carefully and where necessary will seek clarity of what precisely is being permitted (along with mitigation and compensation) to ensure it is all appropriately controlled. GBC are concerned to make sure that the definition of "preliminary works" is not too broad. GBC will continue to carefully consider it in detail, together with the contents of the preliminary works EMP. The definition of "preliminary works" in the requirements is important because of the way it interlinks with the definition of "commence" – "Commence" means beginning to carry out any material operation …. Forming part of the	new or materially different effects provide appropriate controls. In relation to the definition of "preliminary works", the Applicant's position is set out in its responses to Annex A of the agenda for Issue Specific Hearing 2	GBC refers to its comments about the interrelationship between "commence" and the carrying out of preliminary works. With the DCO drafted as it is, minimal vegetation clearance would suffice to

ExA Point	GBC Comment	Applicant's response	GBC's further response
	authorised development other than preliminary works" In turn, a number of the recommendations begin "No part of the authorised development is to commence until …". Paragraph 6.6 of the Explanatory Memorandum [APP-057] says: "the list of activities excluded from the definition of commencement closely follows the definition contained in the M42 Junction 6 Development Consent Order 2020, with the exception that (i) excluded utilities works would constitute commencement (which is defined); and (ii) site clearance and accesses is only permitted for advanced construction compounds (identified in the Code of Construction Practice)". In addition to the identified exceptions, the draft Order departs from the precedent by allowing vegetation clearance as part of preconstruction ecological mitigation. GBC are considering the implications of this.		"commence" the development under requirement 2.

ExA Point	GBC Comment	Applicant's response	GBC's further response
3. Development consent etc granted by the order			
Article 3(3) – General disapplication of provisions applying to land			
The intent of this article is to avoid inconsistency with other relevant statutory provisions applying in the vicinity and is precedented in highways made Orders. The drafting in its current form has the effect of a general disapplication of other statutory provisions applying to land, including land lying beyond the Order land. However, the proposed development in this instance and the extent of the Order land are very large and understood to be larger than the extent of Order. It follows that the potential effect of the disapplication sought could be very large. **Notwithstanding other precedents, as much information as possible should be provided about "any enactments applying to land within, adjoining or sharing a common boundary" together with clarification about how far from the Order limits**	GBC are concerned about the geographical extent of the disapplication of legislation, and do not consider that the Applicant's response to the Annex [AS-089] meets its concerns. In particular the wording used is different from the usual precedents in that it refers to "adjoining or sharing common boundary" rather than "adjacent to". If there were a large plot of land outside the order limits and only a small part of its boundary shared a common boundary with the order land, then arguably the whole of the plot might fall within the article.	The Applicant's position is set out in its responses to Annex A of the agenda for Issue Specific Hearing 2 [ISH2 Discretionary Submission Annex A Responses] and [REP1-184]. GBC states that "the wording [in article 3(3)] used is different from the usual precedents in that it refers to "adjoining or sharing common boundary" rather than "adjacent to"". This departure from the precedent was made at the request of the PLA, and follows the Silvertown Tunnel Order 2018. As set out in the Explanatory Memorandum, the Applicant does not consider this changes the legal effect of the provision. GBC's scenario would apply under either forms of drafting, and it is considered appropriate that any enactment takes effect subject to the DCO. If the plot was 'only a small part', then the extent any	GBC disagrees with this response. If a large plot had only a short coterminous boundary with the order limits, then the whole plot would fall within article. This would not be the case if the usual drafting was adopted (i.e. "land adjacent to the Order limits"). In that case, only that part of the plot which is adjacent to the Order limits would be included, not the whole plot. The PLA may have asked for this drafting, but GBC notes that in the latest version of the DCO, article 3(4) has been added, excluding the PLA's main legislation from the operation of the whole article.

ExA Point	GBC Comment	Applicant's response	GBC's further response
the provision might take effect. Additional diligence on and justification for the disapplications sought are required, as in general terms a statutory disapplication is a matter that is specifically examined, to avoid the possibility of inadvertent adverse effects or frustration of the intent of Parliament arising from a disapplication of statutory provisions.		enactment would take 'subject to' the DCO would similarly be limited.	
Schedule 1 – Authorised Development Part 1 – Authorised Works			
The authorised works are stated as being co-equally a nationally significant infrastructure project (NSIP) arising under PA2008 s 16 (electric lines), s 20 (gas transporter pipelines, and s 22 (highways). **Having regard to the definition of an electric line NSIP in PA2008 s 16, is it clear that the proposed electric line works meet that definition? Is there any reason why alternatively the electric line works could not proceed as associated development (under PA2008 s 115) to the highway NSIP?** **Having regard to the definition of a gas transporter pipeline NSIP in PA2008 s 20, is it clear that the proposed gas transporter pipeline works meet that definition? Is there**	This point is being addressed in the joint legal note that is being produced by the applicant and local authorities. See above for GBC's comments on the geographical scope of Ancillary Works, which the Applicant has addressed in this section.	A joint legal note was included in the Applicant's post-hearing submissions for Issue Specific Hearing 2 [REP1-184]. On the geographical scope of the ancillary works, see above.	No further comment at this stage.

ExA Point	GBC Comment	Applicant's response	GBC's further response
any reason why alternatively the gas transporter pipeline works could not proceed as associated development (under PA2008 s 115) to the highway NSIP?			
4. Compulsory acquisition and extinguishment of rights			
Articles 25 – 34, Articles 35 – 36, Article 66 – Compulsory Acquisition (CA), Temporary Possession (TP) and related powers			
These provisions (and any relevant plans) should be drafted in accordance with the guidance in Advice Note 15, in particular sections 23 (extinguishment of rights) and 24 (restrictive covenants). **The effect of the drafting discussed here will be tested in Compulsory Acquisition Hearing 1 (CAH1) and may be the subject of oral or written submissions by Affected Persons. The purpose of this hearing will be to examine the basis for the drafting approach taken.** **As a general observation, compulsory acquisition (CA) of an interest in land held by or on behalf of the Crown cannot be authorised through an article. Ensuring clarity**	No comments at this stage. GBC does have land which is subject to compulsory acquisition and will raise any concerns later at the appropriate time.	Noted.	

ExA Point	GBC Comment	Applicant's response	GBC's further response
on this can be achieved through various means, for example: **• by expressly excluding all interests held by or on behalf of the Crown in the book of reference land descriptions for relevant plots (where the DCO is drafted to tie compulsory acquisition powers to the book of reference entries);** **• by excepting them from the definition of the Order land (if 'Order land' definition is not used for other purposes in the DCO); or** **• by drafting the relevant compulsory acquisition article to expressly exclude them.** **Where an applicant wishes to CA some other person's interest in the same land where there is a Crown interest, that can still only be done if the appropriate Crown authority consents to it under s135(1) of the Planning Act 2008.** **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**			

ExA Point	GBC Comment	Applicant's response	GBC's further response
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. **In all respects (including in relation to the book of reference), the applicant should follow Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land published by DCLG (now MHCLG) in September 2013.**			
Article 27 time limit for the exercise of CA powers			
Article 27(1), time limit for the exercise of CA powers, allows 8 years for the powers to be exercised. This is longer than the normal 5 years which has been standard for most DCOs to date. The applicant will need to justify the requirement for an additional 3 years to exercise the CA powers in consideration of the additional interference with the rights of persons with an interest in the land and the possibility of blight. **Additionally, Article 27(3) defines the start date for the 8-year period as being the date after the expiry of the period within which a legal challenge**	GBC consider that the usual 5 years is ample time for the exercise of compulsory powers and submits that a longer period should only be allowed in exceptional circumstances, in order to avoid the further continuing uncertainty and continuing blight that landowners would face. In its response to Annex A [AS-089], The Applicant cites the scale and complexity of the development as the reason for the 8 year period, and refers to Thames Tideway and the Hinkley Point C connection DCOs as precedents. These were exceptional cases, and GBC is not convinced that	The Applicant's position is set out in its responses to Annex A of the agenda for Issue Specific Hearing 2 [ISH2 Discretionary Submission Annex A Responses] and [REP1-184]. The period of works for the Project is 6 years alone which is not comparable to the precedents cited by GBC. The Applicant further notes that the construction programmes for those precedents with longer compulsory acquisition periods is comparable to the Project's and in some cases longer.	The length of the construction period should have no bearing on the CPO period. The CPO powers can be exercised when funding for the scheme is secured and the extent of the required land take is determined, both of which should be achievable within 5 years from the date of the Order. If there is to be a prolonged construction period, then notices to treat can be served on landowners, with entry taking place at a later date when the land is required.

ExA Point	GBC Comment	Applicant's response	GBC's further response
could be made under s118 PA 2008, or after the final determination of any legal challenge made under that section. The more normal, certain and precedented drafting in DCOs to date is for a 5-year period to commence on the date of the making of the Order. This amended definition of the start date could have the effect of significantly adding to the 8-year period within which persons with an interest in land will have their land burdened with the threat of CA before it is compulsorily acquired. This represents an additional interference with their rights (over and above those that normally arise from CA) which must be justified. The start date definition adds an additional element of uncertainty, as it is not possible to know how long any challenge may take to be finally determined – and it is not impossible that one running through an appeal to the Court of Appeal and thence to the Supreme Court might take a long time. **Are these approaches to drafting acceptable, considering their effect on the rights of persons with an interest in land and the possibility of blight?**	the scale of the works proposed for the LTC is any greater than some of the other DCOs that have been promoted by the Applicant, for example the A14, Black Cat and Stonehenge. The initial time limit for Phases One and Two of HS2 was 5 years and the power to extend has not been used. GBC considers that given the effects of ongoing blight, great care should be taken in allowing for an extension to standard accepted time limits for compulsory acquisition, because to do otherwise may lead to it becoming the norm for NSIPs. GBC understands that a time limit of more than 5 years is unprecedented for a highways DCO, some of which have involved lengthy linear projects with multiple junction arrangements. GBC agrees with the concerns of ExA on the start date being tied to the date on which any legal challenge is finally determined, particularly as the date of ultimate disposal of a legal challenge can never be certain, and the combination of this with the proposed 8 year period would lead potentially to a period of uncertainty and blight being extended to over ten years from the date of the making of the DCO. The Applicant cites only one precedent (Manston). GBC is aware of no others,		

ExA Point	GBC Comment	Applicant's response	GBC's further response
	either in DCOs or other regimes which authorise compulsory purchase.		
Article 28 restrictive covenants and transfer			
Article 28(1) of this order contains a wide power to impose undefined restrictive covenants over all of the order land (save for land contained in schedule 11 – see article 35(10)(a)). The Secretary of State for Transport's decision in the M4 Motorway (Junctions 3 to 12) (Smart Motorway) DCO) should be noted: "to remove the power to impose restrictive covenants and related provisions as he does not consider that it is appropriate to give such a general power over any of the Order land as defined in article 2(1) in the absence of a specific and clear justification for conferring such a wide-ranging power in the circumstances of the proposed development and without an indication of how the power would be used" (paragraph 62). **Other DfT decisions have included similar positions, eg, the A556 (Knutsford to Bowdon Improvement) DCO and the Lancashire County Council (Torrisholme to the M6 Link**	GBC have sympathy with the concern of ExA as regards the scope of article 28(1) but are keen to ensure that the DCO includes sufficient powers to ensure that mitigation areas are properly managed in cases where they remain under the ownership and/or control of third parties. That could be achieved by the imposition of covenants. GBC would be keen to ensure that the Applicant has the ability to retain power to do so in cases where article 28 is intended to enable preservation of mitigation areas. On the second point about consistency between article 8 and article 28, GBC agrees that if the principle is accepted that statutory undertakers should be able to exercise the powers to impose covenants, then ultimately the liability to pay compensation remains with the Applicant and GBC notes that the Applicant has agreed to address this.	The Applicant welcomes these submissions.	

ExA Point	GBC Comment	Applicant's response	GBC's further response
(A683 Completion of Heysham to M6 Link Road)) DCO. **The applicant has not explained in the Explanatory Memorandum (EM) (see para 5.122 – 5.130) [APP-057] why undefined restrictive covenants are justified in this case. The EM only contains a short justification for rights and restrictive covenants taken together and does not appear to provide reasons to justify a departure from the SoS' previous positions on this matter.** **Article 28 (3) and (4) purport to enable the power to acquire rights and impose restrictive covenants compulsorily to be transferred to a statutory undertaker (defined by reference to s127 PA 2008), save for the requirement to pay compensation. This provision is linked to the approach taken to the transfer of benefit article (Article 8), but the two provisions do not appear to be fully consistent in their drafting. The drafting of Article 8(3) may require amendment to reflect Article 28(3) and (4). It will be very important to ensure that the drafting of the DCO ensures that the undertaker always remains liable for all compensation for CA. If the DCO is to permit CA powers to be exercised by unknown individuals or**			

ExA Point	GBC Comment	Applicant's response	GBC's further response
statutory undertakers whose ability to meet CA costs has not been examined, there is potential for a power to acquire to be transferred to a person who is not 'good' for the related liability in compensation. Precision of intent and effect are very important here. **At present Article 8(6) implies that article 28(3) enables the CA powers to be transferred to be exercised by persons other than statutory undertakers. Article 28(3) as presently drafted only permits the transfer of CA powers to statutory undertakers. If 28(3) reflects the correct intention, article 8(6) should be amended to remove reference to "any other person".**			
Articles 35 & 36 – Temporary Possession			
These articles follow a well-precedented form. However, Article 35(1)(a)(ii) and Article 36 (1)(b) enable Temporary Possession (TP) to be taken of any Order land (subject only to limited exceptions). The proposed development in this instance and the extent of the Order land are very large. It follows that the potential effect of the TP powers sought could be very large and could	No comment from GBC at this stage	Noted	

ExA Point	GBC Comment	Applicant's response	GBC's further response
arise in locations in respect of which persons may not expect it to arise. **Notwithstanding other precedents, as much information as possible should be provided about land potentially capable of being subject to TP. Additional diligence on and justification for the extent of TP sought are required, as in general terms possession of land is a matter that is specifically examined, to avoid the possibility of inadvertent adverse effects.**			
Article 66 – power to override easements etc.			
Article 66 grants a wide power for the undertaker or those acting on its behalf, to interfere with interests and rights and breach restrictions on any land within the order limits either temporarily or permanently. Despite the inference in the EM that it only applies to land vested in the undertaker, the power is not limited to land subject to CA but applies to all land within the Order limits (including but not limited to that subject to temporary possession). It follows that it creates a class of acquisition applicable to persons who may not be aware that they are	No comments from GBC at this stage	Noted	

ExA Point	GBC Comment	Applicant's response	GBC's further response
subject to it over a very large area of land. **As with any such general powers, diligence and care is required to ensure that unintended or unjustified consequences do not flow from the operation of this power and that compensation can be paid at the right time and to the right persons.** **Are all such persons considered to be Category 3 Persons. Are they all identified in the Book of Reference at Part 2?**			
5. Special category land			
If it is argued that Special Parliamentary Procedure (SPP) is not to apply (before authorising CA of land or rights in land being special category land), full details should be provided to support the application of the relevant subsections in PA2008 Sections 130, 131 or 132, for example (in relation to common, open space or fuel or field garden allotments) : **• where it is argued that land will be no less advantageous when burdened with the order right, identifying specifically the persons**	Land designated by GBC as open space is subject to acquisition under the order (at Shorne Woods Country Park). Provision is made for replacement land under the Order. GBC is concerned to ensure that the replacement land is secured by the DCO and will be properly managed as open space thereafter. In that regard, GBC notes the unusual wording of article 40(1), which requires the replacement land to have been "acquired in the undertaker's name or is otherwise in the name of the persons who owned the special category land"	Article 40(1) requires the replacement land to have been "acquired in the undertaker's name or is otherwise in the name of the persons who owned the special category land". This is to ensure that the replacement land is in the ownership of the undertaker, or in name of the person who would then be responsible for the replacement land (i.e., the owner of the existing special category land) at the point acquisition of the special category land occurs. For the avoidance of	It is still not clear what "in the name of" means. If it is meant to mean "in the ownership of" then that is what it should say.

ExA Point	GBC Comment	Applicant's response	GBC's further response
in whom it is vested and other persons, if any, entitled to rights of common or other rights, and clarifying the extent of public use of the land **• where it is argued that any suitable open space land to be given in exchange is available only at prohibitive cost, identifying specifically those costs.** **Article 40(1) prevents the special category land from vesting in the undertaker until the replacement land has been acquired and the SoS has certified that a scheme has been received from the undertaker for provision of the replacement land. The second element of this provision (certification by the SoS that a scheme has been received) appears to permit the undertaker to CA the special category land and rights without the scheme having been at that time fully implemented and the replacement land vested in those with rights in the special category land. The ExA asks whether this is sufficiently secure to enable the SoS to certify that replacement land will be given in exchange for the order land or right in accordance with s.131(4) and s.132(4)?**	which appears to be unprecedented. GBC would welcome an explanation as to why this wording was used, particularly what the words "in the undertaker's name" contemplate and whether "otherwise in the name of the person" is intended to be "otherwise in the ownership of the person". Also in the second part of the requirements in article 40(1) is that the Secretary of State merely needs to have certify that they have received (but not approved) a scheme for the provision of the replacement land. GBC considers that there ought to be a requirement for approval, even though there is a requirement that the scheme must not conflict with the outline LEMP. This is brought into focus by the requirement in article 40(1) for the local planning authority to be consulted. Given that there is no requirement for approval, it is not clear what the LPA would be consulted about. GBC notes the Applicant's response to Annex A [AS-089] on the ExA's concerns that the scheme might not be implemented before the special category land vests. The Applicant says that there is no legislative provision in sections 131/132 which requires the replacement land to be laid out prior to acquisition of the replacement land. That is true but those sections are not	doubt, article 40(3) then ensures that the land is vested in the appropriate owner in accordance with a certified scheme. For completeness, it is not correct to say that this drafting is unprecedented (see, for example, article 37 of Port of Tilbury (Expansion) Order 2019). The Applicant does not consider that "certification" needs to be changed to "approval". Approval for the purposes of section 131/132 will be provided on the date of a decision on development consent (if granted). This is heavily precedented, and the provision ensures that the scheme includes "a timetable for the implementation of the scheme has been received from the undertaker". The local authority would be consulted on the contents of the scheme, and that timetable. The Applicant considers that its acquisition of special category land, including prior to the laying out of replacement land, is compliant with policy and the legal requirements for s131/132 for the reasons set out in	GBC disagrees with the Applicant about the "certification" point. In other cases in the Order where the Secretary of State has a certification role, the Secretary of State has to certify the document as being the relevant document. In the case of article 40(1), the Secretary of State only has to certify that they have received a document. Article 40(1) should at the very least require the Secretary of State to certify that article 40(6) has been complied with. The Applicant does not appear to have addressed GBC's point in relation to the implementation of the scheme needing to be completed before the special category land

ExA Point	GBC Comment	Applicant's response	GBC's further response
Although Article 40(3) provides that the applicant must implement the certified scheme, and that once it is implemented the replacement land must vest in the persons with an interest in the special category land, it would still appear to allow the undertaker to CA the special category land before the replacement land is available to use and without any particular security or limitation preventing or confining the prolongation of the time between the certification of a scheme and the completion of the transfer of the replacement land. If the undertaker did not then implement the scheme or delays implementing the scheme it could fall to the LPA to seek to enforce this provision, which could take a significant time, during which persons would be deprived of access to the special category land. This does not seem to align in spirit with the intention of the legislative provisions on special category land, which seek (amongst other provisions) its replacement without a period of delay. **The drafting of Article 40 generally is confusing and the ExA remains unsure of whether it meets the intention of the applicant. For example, Article 40(1) refers to the "special category land" which**	about setting requirements for what has to happen per se when special category land is proposed to be taken, instead they set out the requirements that must be met to avoid Special Parliamentary Procedure. It is open for the ExA to recommend that the scheme should be implemented before the special category land vests. Article 40(1) also talks of rights "vesting" under the Order, which would suggest a reference to existing rights, not new ones, which are surely "acquired", if that is the intention.	Appendix D to the Planning Statement [APP-495].	vests. Instead it talks about the replacement land not needing to be acquired until the scheme is implemented. It does not appear that the Applicant has addressed the ExA's point here either in its response to GBC or in its responses to Annex A of the agenda for Issue Specific Hearing 2 [ISH2 Discretionary Submission Annex A Responses] and [REP1-184]. GBC notes there is no response to the point about vesting of rights.

ExA Point	GBC Comment	Applicant's response	GBC's further response
appears to be defined in the article as including all the special category land; however Article 40(1) is presumably only intended to apply to the special category land which requires replacement land to be given in exchange (i.e not including "excepted land"). The applicant should consider revised drafting where possible to simplify this provision and clarify its intention. **Article 40(6)(a) provides that the certified scheme "must not conflict with the outline LEMP". (The outline LEMP refers to the Outline Landscape and Ecology Management Plan). In general terms, such drafting should by preference be positive and provide that it "must comply with the outline LEMP".**			
6. Statutory undertakers and apparatus: Articles 37 & 38			
Where a representation is made by a statutory undertaker (or some other person) that engages section 127(1) of the Planning Act 2008 and has not been withdrawn, the Secretary of State will be unable to authorise compulsory acquisition powers relating to that statutory undertaker land unless satisfied of specified matters set out in section 127. If the	No comments from GBC	Noted.	

ExA Point	GBC Comment	Applicant's response	GBC's further response
representation is not withdrawn by the end of the examination, the ExA will need to reach a conclusion whether or not to recommend that the relevant statutory test has been met in accordance with s.127. **The Secretary of State will be unable to authorise removal or repositioning of apparatus (or extinguishment of a right for it) unless satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the order relates in accordance with section 138 of the Planning Act 2008. Justification will be needed to show that extinguishment or removal is necessary.**			
7. Planning permission: Article 56			
This article is intended to allow development not authorised by the DCO to be carried out within the Order limits pursuant to planning permission. This would appear to obviate the need, in such circumstances, to apply to change the DCO (through section 153 of the Planning Act 2008). This article should be justified.	As mentioned at the hearing, GBC are unclear at this stage whether some development that may follow as a consequence of the development will be brought forward under the powers of the DCO or later under a TCPA planning application, The example given was public facilities that may be provided at the proposed Chalk Park. The Applicant has provided	The Applicant notes that GBC is reserving its position. In relation to the "the two traveller sites affected in GBC's area"; it is considered these are unaffected by the provision which merely seeks to ensure that inconsistencies between planning permissions and the DCO do not lead to enforcement action being taken.	Noted

ExA Point	GBC Comment	Applicant's response	GBC's further response
	further details in its response to Annex A as to what is proposed for Chalk Park, which GBC will consider further, and will discuss any further similar points on other sites in its area with the Applicant. In the meantime, GBC reserves its position on this issue. GBC acknowledges that obtaining an amendment to a DCO as a material or non-material change is not straightforward, but GBC is concerned that this article could give the Applicant reason for not dealing with some difficult issues, such as the two traveller sites affected in GBC's area.		
8. Classification of roads; 9. Clearways, prohibitions and restrictions; 10. Speed restrictions; Articles 15, 16 and 17			
Variation of the application of provisions in these articles is apparently possible using extensive means including by agreement. Arguably, this has the effect of disapplying PA2008 section 153 which provides a procedure for changing a DCO. Is this approach necessary and justified? There may be precedent in other made DCOs for the same drafting, but the Applicant needs to be clear under which section 120 power these articles are made and if necessary provide	No comment from GBC at this stage	Noted.	

ExA Point	GBC Comment	Applicant's response	GBC's further response
justification as to why the provisions are necessary or expedient to give full effect to any other provision of the DCO.			
11. Temporary stopping up and restriction of use of streets			
Notwithstanding other precedents, justification should be provided as to why the power is appropriate and proportionate having regard to the impacts on pedestrians and others of authorising temporary working sites in these streets. **The power to temporarily stop up streets and use as a temporary working site in article 12 is not limited to streets within the Order limits. To the extent that this can take effect outside the Order limits this is a wide power that needs to be justified. It is also uncertain in effect.** **Article 14 relates to permanent stopping up of streets. Should 14(4)(e) be a new paragraph (5)?**	No comment from GBC at this stage	Noted.	
12. Power to alter layout of streets: Articles 53 & 55			
This is a wide power – authorising alteration etc. of any street within the Order limits. It should be clear why this power is necessary and consideration given to whether or	No comment from GBC at this stage	Noted.	

ExA Point	GBC Comment	Applicant's response	GBC's further response
not it should be limited to identified streets, locations or in relation to specific Works.			
13. Disapplication or amendment of legislation/ statutory provisions: Articles 53 and 55			
The guidance in section 25 of Advice Note 15 should be followed and, if not already provided, additional information sought such as **• the purpose of the legislation/statutory provision** **• the persons/body having the power being disapplied** **• an explanation as to the effect of disapplication and whether any protective provisions or requirements are required to prevent any adverse impact arising as a result of disapplying the legislative controls** **• (by reference to section 120 of and Schedule 5 to the Planning Act 2008) how each disapplied provision constitutes a matter for which provision may be made in the DCO.** **Where the consent falls within a schedule to the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed**	GBC have not yet considered in detail the impact of the disapplication of the local enactments listed in article 55. GBC will examine: Kent County Council Act 1981 Channel Tunnel Rail Link Act 1996 Thong Lane Sportsground Byelaws 1970	Noted.	GBC will report to the Applicant if it considers there to be any issues with disapplying these local enactments.

ExA Point	GBC Comment	Applicant's response	GBC's further response
Provisions) Regulations 2015 evidence will be required that the regulator has consented to removing the need for the consent in accordance with s.150 Planning Act 2008. **Article 55 is headed the application of local legislation, but it is actually an article excluding the application of enactments, orders and byelaws where they are inconsistent with the order.**			
14. Crown rights - Article 43			
The word "take" should be removed from this article.	No comment	Noted	
15. Felling or lopping of trees and removal of hedgerows **16. Trees subject to tree preservation orders** **Articles 23 & 24**			
The guidance in section 22 of Advice Note 15 should be followed. If it hasn't been followed justification should be provided as to why this is the case. **If the 'felling or lopping' article is drafted to allow such actions to trees both within and 'near' the Order limits, should consideration be**	GBC will want to make sure that all the relevant trees have been identified in the ES, and that proper investigations have been carried out in that regard. Therefore, more research is to be done by GBC on the National Highways environmental surveys and whether it is	Noted. The Applicant notes that a number of documents show the relevant assets (see Hedgerow and Tree Preservation Order Plans [Application Documents APP-053 to APP-055], Existing Tree Constraints Plan which shows the trees subject to TPOs [REP1-147] and [REP1-	Noted

ExA Point	GBC Comment	Applicant's response	GBC's further response
given to amending that, so that it only applies to trees within or 'encroaching upon' the Order limits?	sufficiently detailed and will liaise with Woodland Trust.	149] and the Environmental Masterplan.	
17. Procedure for discharge of requirements: Article 65 – Schedule 2 Part 2			
Advice Note 15 provides standard drafting for articles dealing with discharge of requirements. If this guidance hasn't been followed justification should be provided as to why this is the case. **In the South Humber Energy Bank Centre DCO BEIS Secretary of State removed an article which sought to apply the s.78 and s.79 TCPA 1990 appeal provisions to the discharge of requirements and replaced it with a specific appeal procedure in the article itself. BEIS Secretary of State explained in their decision letter that the specific appeal procedure was the "preferred approach for appeals".** **Advice Note 15 suggests that the specific appeal procedure should be included in a schedule to the DCO rather than in the article itself. Although the Secretary of State in South Humber did include the specific procedure in the article itself, the decision letter refers to the specific appeal procedure being the**	There are no rights of appeal in relation to requirements in Schedule 2 part 2, either for the Applicant or for the local planning authority. The latter is one of the reasons GBC considers that the LPA should be the discharging authority. More generally on discharge of requirements, the time limits for responding to consultations under paragraph 20 of Schedule 2 must be sufficient to allow GBC to consider and provide a proper response. It is likely that a number of applications will be made together or in short succession. Paragraph 20 gives 28 days at present with an ability for an agreement to be made to extend that period, agreement not to be unreasonably withheld. But of course there can be no guarantee of an agreement. GBC considers that the period should be extended to 42 days. In a similar vein, in order to assist the process, GBC considers that the DCO should be amended, or a commitment	The Applicant's position on the discharging authority is set out above, and in its responses to Annex A of the agenda for Issue Specific Hearing 2 [ISH2 Discretionary Submission Annex A Responses] and [REP1-184]. It is not considered that 10 business days under the appeals provision is insufficient time in the specific context of the appeals process. At that stage, any appeal party would have had the benefit of the extensive engagement up until the end of the examination, it would have seen the relevant application (which would have been refused and would be the subject of an appeal), and then provided with further time to consider the submissions from the Applicant. The same time frame of 10 days is given for counter-submissions and for the appointed person to make their decision. These timescales are precedented (see, for example, article 52 of the M25 Junction 28 Development Consent Order 2022).	GBC maintains its position on the time limits, notification and appeals, etc. GBC would be happy to provide suggested drafting to the ExA if requested. GBC would like to know whether the statistics for the backlog of cases mentioned are national or local, and if national, whether the Applicant has considered statistics in the Council's area.

ExA Point	GBC Comment	Applicant's response	GBC's further response
preferred approach rather than the inclusion of it in the article. It is therefore considered acceptable for the specific appeal procedure to be set out in a schedule to the DCO as set out in the Advice Note. **It is also worth noting that the South Humber decision is from BEIS Secretary of State and does not necessarily reflect the views of any other Secretary of State.** **Article 65 permits a number of appeals to the SoS, including from an LPA decision under certain articles and a notice issued under the Control of Pollution Act. I have not seen this provision before and query whether the SoS will want to undertake this role? In relation to appeals from notices under the Control of Pollution Act the applicant will need to explain why it is necessary for the provisions in the DCO to replace the existing appeal procedures under the Control of Pollution Act and explain any discrepancies between the procedures set out in the DCO and those that would normally apply. A direct comparison between the two may be helpful.**	given by the Applicant so that local planning authorities will be properly consulted in advance, and a running future timetable of applications and consultations is maintained so applications and consultations do not arrive without notice. GBC notes the response of the Applicant to the ExA's query about article 65. GBC's main concern about article 65 is about paragraph (1)(d) which would replace the existing section 60 and 61 Control of Pollution Act appeals procedure (by which appeals could be made by the Applicant against the local authorities' decisions to the magistrates' court) with an appeal to the Secretary of State. This is another example where GBC considers that there are questions about the independence of the process being sought by the Applicant and, in this case, there appear to be very few precedents. Only two highways DCOs are mentioned by the Applicant in its response to Annex A [AS-089], and it is noted that the Secretary of State removed the provision in another case. The Applicant argues that an appeal process to the Secretary of State provides more certainty as regards timescales but provides no evidence of the magistrates' courts process having	In relation to the request for timetables, the Applicant notes that Schedule 2 requires a register to be maintained. In relation to article 65(1)(d), and the appeal to the Secretary of State in respect of the Control of Pollution Act 1974, the Applicant notes that there is a significant backlog in the Magistrates Court. The Law Society notes that In the Magistrates' Court, the situation continues to deteriorate. 1,666 cases were added to the backlog in February 2023, bringing the total to 343,519. It is not considered that a nationally significant infrastructure project should be subject to such delays. As is acknowledged by GBC, the ability to appeal to the Secretary of State in respect of the Control of Pollution Act 1974 is precedented. The provision is therefore considered necessary and justified.	

ExA Point	GBC Comment	Applicant's response	GBC's further response
	caused difficulties on other DCOs where it hasn't been disapplied, or of the local courts in this case being a cause for concern. The Applicant should be put to strict proof of the need for this provision.		
18. Benefit of the Order: Article 7			
Where this article is drafted so as to allow any transfer of benefit by the applicant (undertaker) to any other named person or category of person without the need for the Secretary of State's consent, then the applicant should provide full justification as to why a transfer to such person is appropriate. Where the purpose of the provision is to enable such person(s) to undertake specific works authorised by the DCO the transfer of benefit should be restricted to those works. If the provision seeks to permit transfer of compulsory acquisition powers the applicant should provide evidence to satisfy the Secretary of State that such person has sufficient funds to	GBC notes this point and its main concern would be to ensure that all the obligations on the Applicant (including obligations contained in documents other than the DCO), as well as the powers, where it is appropriate, would be transferred to the transferee. So for example, this might include obligations in a section 106 agreement.	The Applicant notes that the dDCO explicitly sets out that "the exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker" (as per article 8(3)).	Noted. In relation to the s.106 agreement, GBC will consider this point in negotiations.

ExA Point	GBC Comment	Applicant's response	GBC's further response
meet the compensation costs of the acquisition. **See 23 below in relation to references to arbitration in this article.**			
19. Discharge of Water: Article 19			
The applicant should be aware of and mindful of section 146 of the Planning Act 2008.	No comment from GBC at this stage	Noted	
20. Temporary Possession: Articles 35 & 36			
Temporary possession is not itself compulsory acquisition. **Articles giving temporary possession powers will be considered carefully to check whether or not they allow temporary possession of any land within the Order limits, regardless of whether or not it is listed in any Schedule to the DCO which details specific plots over which temporary possession may be taken for specific purposes listed in that Schedule. If they do, then the applicant should justify why those wider powers (which also allow temporary possession of land not listed in that Schedule) are necessary and appropriate and explain what steps they have taken**	On the issue of notice, GBC notes that in other schemes, Promoters have agreed to longer than 28 days. On Phase 2a of HS2, for example (a scheme that is considerably more complex) the Promoter committed to a period of 3 months' notice (see paragraph 6.1.2 of the Phase 2a Farmers and Growers Guide). GBC sees no reason why the period should not be extended further in the case of the Lower Thames Crossing, particularly considering that the period for which land could be occupied could extend to a number of years.	The Applicant's position is that in the case of the Project, there is no sound argument for an extension to 3 months for the temporary possession. In particular, the Applicant does not consider a 3 month notice period is appropriate or proportionate for the Project. The Applicant notes that complex projects such as the A14 Cambridge to Huntingdon project have provided 14 days (which the dDCO exceeds by 100%). The 28 day period must be seen in the context that landowners and occupiers have been consulted on land use over numerous consultations; will have an opportunity to take part in the examination process; and the	Response noted.

ExA Point	GBC Comment	Applicant's response	GBC's further response
to alert all landowners, occupiers, etc. within the Order limits to this possibility. **If not already clearly present, consideration should also be given to adding in a provision obliging the applicant (undertaker) to remove from such land (on ceasing to occupy it temporarily) any equipment, vehicles or temporary works they carry out on it (save for rebuilding demolished buildings under powers given by the DCO), unless, before ceasing to occupy temporarily, they have implemented any separate power under the DCO to compulsorily acquire it.** **Given the parliamentary approval to the temporary possession regime under the Neighbourhood Planning Act 2017 ('NPA 2017'), which were subject to consultation and debate before being enacted, should any provisions relating to notices/counter notices which do not reflect the NPA 2017 proposed regime (not yet in force) be modified to more closely reflect the incoming statutory regime where possible? As examples:** **• The notice period that will be required under the NPA 2017 Act is 3 months, longer than the 28 days**		Applicant will be required to publish a notice under section 134 of the Planning Act 2008. A 28 day period is consistent with the government's desire to ensure nationally significant infrastructure projects can be expeditiously delivered. There are no SRN DCOs which have a 3 month period, and in light of the extensive engagement to date, it is not considered appropriate for that period to apply to the Project.	

ExA Point	GBC Comment	Applicant's response	GBC's further response
required under article 35. Other than prior precedent, what is the justification for only requiring 28 days' notice in this case? **• Under the NPA 2017, the notice would also have to state the period for which the acquiring authority is to take possession. Should such a requirement be included in this case?** **• Powers of temporary possession are sometimes said to be justified because they are in the interests of landowners, whose land would not then need to be acquired permanently. The NPA 2017 Act provisions include the ability to serve a counter-notice objecting to the proposed temporary possession so that the landowner would have the option to choose whether temporary possession or permanent acquisition was desirable. Should this article make some such provision – whether or not in the form in the NPA 2017?** **Article 36(13) defines the maintenance period as the period of 5 years beginning with the date on which that part of the authorised development is first opened for use – is it sufficiently clear what this means? Will it be obvious what**			

ExA Point	GBC Comment	Applicant's response	GBC's further response
constitutes a "part" and when that "part" is "first open for use"?			
21. Arbitration: Article 64			
Whilst arbitration provisions have been a dynamic field of practice in dDCO drafting, recent decisions suggest that it is unlikely that a consenting Secretary of State will allow the arbitration provision wording to apply arbitration to decisions s/he, or, if relevant the Marine Management Organisation ('MMO') may have to make on future consents or approvals within their remit. **By way of example:** **The Secretary of State for BEIS included the following drafting in the arbitration article in the Norfolk Vanguard Offshore Windfarm DCO and the draft Hornsea Three Offshore Windfarm DCO (published with a minded to approve decision) to remove any doubt about the application of arbitration to decisions of the Secretary of State and the MMO under the DCO:**	GBC notes the Applicant's response to Annex A [AS-089] on this point and in particular the prospect that unless there were an exclusion, then article 64 could apply to decisions of the Secretary of State, and in particular, decisions or approvals which the Secretary of State may be called upon to give under the dDCO, for example under the Requirements in Schedule 2 to the dDCO. GBC have expressed concerns elsewhere about the lack of any appeal mechanism in Schedule 2, so would be averse to the arbitration provision being amended in the way proposed by the Applicant if to do so would close down a dispute mechanism for GBC in relation to discharge decisions (assuming that the DCO would continue to provide that the Secretary of State is the discharging authority). No other comment from GBC at this stage	The Applicant has adopted the amendment suggested by the Examining Authority. The Applicant notes that the Secretary of State's decisions will be amenable to judicial review, but there is no reason to grant credence to an assumption that the Secretary of State would not act lawfully and properly.	The response reinforces GBC's concerns about the identity of the discharging authority and connected issue of the lack of appeals in relation to requirements.

ExA Point	GBC Comment	Applicant's response	GBC's further response
Any matter for which the consent or approval of the Secretary of State or the Marine Management Organisation is required under any provision of this Order shall not be subject to arbitration. **The Secretary of State for BEIS also agreed with an ExA recommendation to remove reference to arbitration in the transfer of the benefit article and the deemed marine licences (DMLs) in the Hornsea and Norfolk Vanguard DCOs. The Hornsea ExA recommendation report at 20.5.9 details the reasons for removal from the transfer of benefit article, and at 20.5.17 – 20.5.24 regarding removal from the DMLs. The Thanet Extension, East Anglia ONE North and East Anglia TWO Examinations addressed similar considerations. Whilst these are all energy cases, the same point appears to apply, that an arbitration provisions should not apply to the exercise of decision-making powers by a duly constituted and authorised public authority or Minister of the Crown.** **It should also be noted that the Secretary of State removed the following from the arbitration clause in both DCOs:**			

ExA Point	GBC Comment	Applicant's response	GBC's further response
Should the Secretary of State fail to make an appointment under paragraph within 14 days 42 of a referral, the referring party may refer to the Centre for Effective Dispute Resolution for appointment of an arbitrator.			
22. Defence to proceedings in respect of statutory nuisance: Article 58			
Are the controls on noise elsewhere in the DCO sufficient to justify the defence being provided by this article to statutory nuisance claims relating to noise? If the defence has been extended to other forms of nuisance under section 79(1) Environmental Protection Act 1990, the same question will apply to those nuisances.	GBC notes that recent highways DCOs (Black Cat, Wisley and Silvertown, for example) limit the scope to paragraph (g) only - noise from premises - and would like to know why in this case it is thought necessary to extend beyond that The Applicant has included the following paragraphs of section 79(1) within the scope of article 58 and GBC considers that the Applicant should fully justify each, by reference to precedent and examples from any other schemes where not including them has caused difficulties: (d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance; (e) any accumulation or deposit which is prejudicial to health or a nuisance;	The Applicant's position is set out in its responses to Annex A of the agenda for Issue Specific Hearing 2 [ISH2 Discretionary Submission Annex A Responses] and [REP1-184]. Article 38 of the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order 2016 references paragraphs (c), (d), (e), (fb), (g), (ga) and (h) of section 79(1) the Environmental Protection Act 1990 in the equivalent provision. Other DCOs contain references to a longer list of nuisances (e.g. article 39 of the Drax Power (Generating Stations) Order 2019) and others contain a shorter list (e.g., Cleve Hill Solar Park Development Consent Order 2020). In the case of the Order, the Applicant has narrowed the list of references to those nuisances which are considered to be potentially engaged. The Statement of Statutory Nuisance [Application	GBC notes that the Applicant claims to have "narrowed" the list of references to those nuisances which are considered to be potentially engaged, when in fact they have expanded the list compared with other roads DCOs, with no detailed explanations to why for each item in the list.

ExA Point	GBC Comment	Applicant's response	GBC's further response
	(fb) artificial light emitted from premises so as to be prejudicial to health or a nuisance;] (g) noise emitted from premises so as to be prejudicial to health or a nuisance; (ga) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street .	Document APP-489] included with the Application sets out the forms of nuisance that are potentially engaged by the proposals (including but not limited to noise), and explains how the suite of application documents secure measures to avoid or minimise the risk of those forms of nuisance arising. The Applicant considers that these are sufficient to justify the defence to the relevant forms of nuisance provided by article 58. However, there is an important wider context to this question. Section 158 of the Planning Act 2008 provides statutory authority as a general and comprehensive defence to any civil or criminal proceedings for nuisance. Hence Parliament, in enacting the 2008 Act, has endorsed the general principle of a defence of statutory authority for nationally significant infrastructure projects. Where section 158 applies, it should be noted that section 152 provides a right of compensation. Section 158 also allows for contrary provision to be made in a dDCO. As the Explanatory Memorandum [Application Document APP-057] states at paragraph 5.247, article 58 represents such a contrary provision in respect of the matters	

ExA Point	GBC Comment	Applicant's response	GBC's further response
		in that article. It makes that contrary provision in respect of proceedings under section 82(1) of the Environmental Protection Act 1990, in line with precedent in the vast majority of "made" DCOs. It provides a more detailed regime for the circumstances in which the statutory nuisance defence is engaged under section 82.	
23. Deemed Marine Licences (DMLs)			
N/A	GBC has no comments on the DML	Noted	
24. Powers in relation to relevant navigation and watercourses: Article 18			
N/A	GBC has no comments on this article	Noted	
25. Suspension of road user charging: Article 46			
Article 46(1) provides that the SoS may suspend the operation of any road user charge imposed under article 45 if they consider it necessary to do so in the event of an emergency… However, 46(7) defines "emergency" as any circumstance which the undertaker considers is likely to cause danger… Should 46(7) say SoS instead of undertaker?	No comment from GBC at this stage on this particular provision. GBC makes separate representations on the question of a Gravesham residents discount for the existing Dartford Crossing.	Noted. On the local residents discount, please see the Applicant's responses to GBC's Written Representations.	

ExA Point	GBC Comment	Applicant's response	GBC's further response
Or should 46(1) refer to the undertaker instead of the SoS?			
Observations on Requirements			
Requirement 1 Preliminary works			
These works are permitted prior to discharge of any requirement. Consideration should be given to whether it is permissible to undertake these works before discharge of the requirements which secure essential mitigation	See comments earlier in relation to point 2, flexibility of operation.		
Requirement 3 Detailed design			
The requirement firstly states that the authorised development must be designed in accordance with the design principles scheme etc but then contains a tailpiece which essentially permits the SoS to amend these documents. Although this is limited to amendments which do not give rise to any material new or materially different environmental effects, consideration should be given to whether this flexibility is necessary and acceptable.	GBC also notes that any departure from the design principles scheme etc can only be made following consultation with the local planning authority. That provides some comfort but GBC agrees that there must be proper justification for any such departure. Some of the design principles conflict with one another (as would be expected for general ones) – for example, detailed design of Green Bridges where the best place for planting may not be optimum for ecology or the footpath link. On a matter of detail, this provision and others refer to the "relevant planning authority" which is defined in article 2 as	See above.	

ExA Point	GBC Comment	Applicant's response	GBC's further response
	the planning authority for the area to which the provision relates. Whilst it may be said to be easy to imply that this should be GBC in its area, the point is that Kent County Council (KCC) are also a planning authority in respect of various functions, so the definition could be tighter. This point is dealt with in GBC's post-hearing written representations.		
Requirements 4, 5, 10,11			
The phrase "substantially in accordance with" is uncertain and imprecise.	GBC sympathises with the ExA's assessment and notes the Applicant's response [AS-089]. GBC understands the point made by the Applicant about the need to allow some differential between successive versions of a document and would be happy to explore alternative wording. The removal of the word "substantially" is one possibility.	The Applicant's position is set out in its responses to Annex A of the agenda for Issue Specific Hearing 2 [ISH2 Discretionary Submission Annex A Responses] and [REP1-184].	Response noted.
Requirements 7,8,9,10,11,16			
The requirements permit discharge for part of the authorised development. Is it sufficiently clear what a "part" of the authorised development is?	GBC has no comments on this issue at this stage.	Noted	
Requirement 9			

ExA Point	GBC Comment	Applicant's response	GBC's further response
Is the phrase "reflecting the relevant mitigation measures" sufficiently certain?	GBC has no comments at this stage but will continue to review this wording as the examination progresses.	Noted	
Requirement 13: Travellers' site			
See comments above on Work 7R and questions regarding the acceptability of provision of the site via the DCO in principle. **This requires replacement of a Traveller site. The only consultation required is consultation of "any person the undertaker considers appropriate". The ExA understands that the existing traveller site is currently occupied and the closure of it may represent an interference with Human Rights Act 1998 (HRA1998) Schedule 1 Part 1 Article 8 rights of the occupants, as caravans may be their only home. The ExA's starting point is that the undertaker should be required to consult with all occupants, the LPA and the highways authority on their proposal for the replacement site.** **Should there also be a requirement to replace like for like the facilities and number of pitches on the existing site?**	The travellers' site is not in the area of GBC	Agreed	

ExA Point	GBC Comment	Applicant's response	GBC's further response
It also contains a deemed approval provision which seems unlikely to be appropriate when the undertaker is in effect applying for approval of permission for a number of homes for travellers. **Should there be a further provision in the DCO granting a specific planning permission for use of works number 7R as a traveller site to ensure that it will remain as a traveller site in perpetuity and to ensure that it is controlled by the appropriate conditions. Or if this is not permissible (see comments above) then should there be a requirement to submit a planning permission application to the LPA?**			
Requirement 15 Thurrock Flexible Generation Plant			
N/A	GBC has no comment on this Requirement	Noted	
Part 2, discharge of requirements Requirement 18			
Is it permissible or appropriate to have a deemed discharge provision relating to the discharge of	On the first point (which refers to paragraph 18(2) of Schedule 2)), GBC acknowledges that there must be some provision in the DCO to cater for cases	The Applicant's position on the discharging authority is set out above, and in its responses to Annex A of the agenda for Issue	GBC was unable to find a paragraph 1.3.21 in the responses to Annex A

ExA Point	GBC Comment	Applicant's response	GBC's further response
requirements that secure essential mitigation? **Is it clear that the Secretary of State is content with the extent of the discharging powers provided to them by the Order?** **Where the Secretary of State is the discharging authority, are there any circumstances in which there should be additional obligations to seek the views of other local and public authorities before discharge?** **Is there any argument that persons other than the Secretary of State (including local and other public authorities) should be the discharging authorities for any particular requirements and if so which ones?**	where no decision is made by the discharging within the relevant time frame set out in the DCO. In most DCOs, where the LPA is the discharging authority, there would be a right of appeal for the applicant. This is another reason for GBC's view that the LPA should be the discharging authority. GBC has no comment on the second point: it is for the Secretary of State. On the third point, GBC would suggest that if the SoS is to be the discharging authority then the SoS should be required to seek the views of the LPA if for example an application has been made for discharge which is not in accordance with the response given by the LPA in a consultation. Whilst this would not meet GBC's fundamental objection to the SoS being the LPA, it would provide some additional comfort. GBC refers to its written submissions relating to ISH2 where this topic is covered.	Specific Hearing 2 [ISH2 Discretionary Submission Annex A Responses] and [REP1-184]. In relation to second point, noted. In relation to the third point, and in respect of paragraph 18, the Applicant reiterates its comments about the specific parameters which Schedule 2 is dealing with (see paragraph 1.3.21 of responses to Annex A of the agenda for Issue Specific Hearing 2 [ISH2 Discretionary Submission Annex A Responses]. In those circumstances the suggestion from GBC that there should be another consultation is considered both disproportionate, and excessive, and to the Applicant's knowledge, highly novel in the DCO context (where the preliminary scheme design or the outline management plans are approved, but the details are left subject to further approvals). The Applicant is firmly of the view that the suggested approach would add delay (effectively requiring two consultation exercises), as well as cost, contrary to the public interest as well as Government policy on streamlining the delivery of nationally significant infrastructure projects.	of the agenda for Issue Specific Hearing 2. GBC suggests that its proposal is not as onerous as the Applicant suggests, given the overall construction period and delayed start time for this project. In cases where the planning authority is the discharging authority, the Applicant is given a right of appeal where decisions go against it. There is no equivalent for the LPA where the Secretary of State's decision goes against its comments or recommendations, and GBC's suggestion is a measured response to that issue.