national highways

Lower Thames Crossing

9.102 Applicant's response to IP's comments made on the dDCO at Deadline 3

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1.1 Introduction

1.1.1 A number of Interested Parties provided comments on the draft Development Consent Order (dDCO) at Deadline 3. As these comments were provided in a number of different submissions, National Highways (the Applicant) has reviewed all the comments and provided a consolidated response to them in this document for ease of reference.

1.1.2 Interested Parties who provided comments were:

a. Gravesham Borough Council (GBC) provided comments on the dDCO in the form of two tables in [**REP3-167**].

b. Holland Land and Property provided comments on the dDCO in [**REP3-169**].

c. London Borough of Havering (LBH) provided comments on the dDCO in a table in [**REP3-183**].

d. Kent County Council restated its position in [**REP3-179**].

e. Port of London Authority (PLA) provided comments on the dDCO in [**REP3-218**].

f. Port of Tilbury London Limited provided comments on the dDCO in [**REP3-195**].

g. Thurrock Council provided comments on the dDCO in [**REP3-211**] and in the table in [**REP3-210**].

h. Shorne Parish Council provided comments on the dDCO in [**REP3-201**].

i. Transport for London provided (TfL) comments on the dDCO in [**REP3-215**].

1.1.3 These are responded to in turn below.

2 Gravesham Borough Council

2.1 Responses to comments on the dDCO

2.1.1 Gravesham Borough Council provided a table of comments on the dDCO in two tables [REP3-167]. In respect of a number of matters, the Council has either maintained its position or not provided any further comments.

2.1.2 The Applicant is mindful that, given the scale and complexity of the Project, there is a need for information submitted into the examination to be provided in a manner which is proportionate and accessible for all Interested Parties, the Examining Authority (ExA) and the Secretary of State (SoS) to allow for appropriate consideration.

2.1.3 In that spirit, the Applicant has not sought to repeat the detailed responses which it has given previously in relation to many of the matters raised by the Council, but would simply signpost to its responses to Annex A of the agenda for Issue Specific Hearing 2 (ISH2) [AS-089] and its Post-event submissions, including written submission of oral comments, for ISH2 [REP1-184], which the Applicant considers address the issues raised and/or clarifies the Applicant's position without the need for further elaboration. The Applicant is happy to address the Examining Authority's questions on these matters should they find it appropriate or necessary

2.1.4 The table below therefore sets out responses to new comments, or where a response goes beyond what has previously been addressed by the Applicant.

Table 2.1 Response to Gravesham Borough Council

ExA's Agenda Item / Question	GBC's response	Applicant's response	GBC's further response at Deadline 3	Applicant's further response
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	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.	Noted.

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	(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.			
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	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.	Noted. The Applicant will continue to engage on these matters with the Council.

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		this provides an appropriate safeguard which GBC has requested.		
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	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.	The Applicant does not agree that the schemes cited are not relevant. The Applicant considers that the Works Plans provide an adequate and accessible graphical representation of the Project. It would of course be very difficult for a Project of this scale and complexity to avoid producing plans which "*span many pages*" with "*works* [which] *cross from one page to another*". The Applicant is happy to provide any specific explanation of any aspect the Council would like to understand further.

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		Works Plans, which include local authority boundaries		
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 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	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 [**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 [**AS-089**]). 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*	GBC's position is unchanged. On the ancillary works point, the Applicant refers to only one precedent. (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.	The Applicant considers that its previous response (in column 3, and [**AS-089**], [**REP1-184**] and [**REP2-077**]) addresses the further response submitted by the Council at Deadline 3. The Council's comment is an in principle objection to the use of the preamble to the ancillary works but the fact that the approach is precedented indicates that the Council's objection should be given limited weight. If there are no materially new or materially different environmental effects, and no landowners would be prejudiced, the Applicant considers the flexibility offered by the provision is reasonable, proportionate and necessary. As regards article 2(10), the Applicant notes the Council has not

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	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 <u>cannot</u> 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 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	*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.	GBC's position on article 2(10) is unchanged.	responded to the Applicant's position that there would in fact be no scope for a new materially different environmental effect to arise.

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	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 eg nitrogen deposition and			

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	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.			
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	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	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.	The Applicant notes that at ISH3, the ExA stated that "*There is a principle of our evidence that it must be, essentially, fixed in time so that the secretary of state does have certainty about which he or she is making a judgment upon. So we ended up concluding that we had to carry on using fixed representations, rather than asking for dynamic access to a large area digital model*." The Applicant agrees and considers that appropriate information has been provided in the application and as part of the examination, and does

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	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 are adequately informed of progress with the implementation of the measures for the purposes	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.		not consider further information is necessary.

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	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	The Applicant's position is set out in its responses to Annex A of the agenda for Issue Specific Hearing 2 [**AS-089**] 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 strategic road network (SRN) DCOs. The Applicant does not consider the limited examples raised by GBC are comparable or	GBC's position is unchanged. 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.	The Applicant considers that its previous response (in column 3, and [**AS-089**], [**REP1-184**] and [**REP2-077**]) addresses the Council's further comments at Deadline 3. The Applicant restates those submissions in full. The Applicant notes that the Council continues to rely upon DCOs which do not relate to the SRN in support of its position. The Applicant's previous responses noted a range of reasons why those DCOs are not relevant. The Applicant would further add that, if it were to adopt the approach suggested by the Council in relation to non-SRN

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	(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 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	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	• 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.	DCOs (e.g. Great Yarmouth, Lake Lothing), the equivalent discharging authority would in fact be the Applicant itself. This directly conflicts with the case put forward by the Council. The Applicant would add that it is not appropriate, necessary, or proportionate to place the functions of the Applicant in relation to the SRN in the hands of local authorities.

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	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 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	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. 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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	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			

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	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. 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			

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	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. Then the applicant also makes reference to the			

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	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	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 [**AS-089**] 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 Department for Transport (DfT) is not independent on these	GBC notes that the Applicant has provided no examples where the bespoke unit has rejected submissions that have been put forward by National Highways.	The Applicant considers that its previous response (in column 3, and [**AS-089**], [**REP1-184**] and [**REP2-077**)) addresses the further submissions made by the Council. The discharge requirements relate to detailed elements of the Project, and involve an iterative process. This ensures a proper, fair and efficient process. It is simply not appropriate to assume that the Secretary of State would act unlawfully and improperly.

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	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. 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	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.		

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	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.			

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	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 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			

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	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 different issues, which may be community issues in relation to traffic or noise, may be issues in relation to cumulative effects of a			

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	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	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	This response does not address the point made by GBC.	The Applicant disagrees and considers its response in column 3 remains robust and valid.

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	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 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	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.		

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	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	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).	The Applicant does not agree. The Applicant considers that its response in column 3 remains robust and would add that it is anticipated that discharge would in some cases occur outside of the two year delay. The Applicant does not consider the compulsory acquisition period nor the ability to carry out preliminary works (and the related Time Limits provision) to be relevant to the comments about paragraph 20 (i.e. about

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	isn't offering us anything other than the bare legal 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	responses to Annex A of the agenda for Issue Specific Hearing 2 [**AS-089**]. 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.		the process for consultation) or the original concerns raised that paragraph 20 does not purportedly require meaningful consultation.

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	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 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			

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	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-			

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	paragraph (1)(ba))" after "the proposed application".			
g) Road charging provisions	Schedule 12 to the DCO aligns charges and other details of the charging regime with those at the Dartford Crossing, 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	Government has previously taken a decision on the residents discount scheme for the Dartford Crossing and it 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**]).	GBC remains of the view that a discount should be available for Gravesham residents and that it is open to the ExA to 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	The Applicant considers its response (in column (3)) addresses why the provision is justified in the case of the Project. The Applicant reiterates that the DfT has endorsed the proposed charging regime, for which it will be charging authority (see Annex B of [**REP1-184**]). For the avoidance of doubt, road user charging has been considered in the modelling (see Section 6.2 of the Combined Modelling and Appraisal Report Appendix C: Transport Forecasting Package [**APP-522**]).

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	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 Crossing. We see the impacts on Gravesham as being sufficient in both magnitude and duration, both during		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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	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			

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	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. 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.			
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	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	The response does not answer the specific point made about the 1981 Act and 2017 regulations.	The Applicant does not consider the additional requirements referenced by the Council are necessary because appropriate and wide-ranging controls are

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	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 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	standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice (see Requirement 5). 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.	already secured via the REAC under Requirements 4 and 5. The Applicant refers to its submissions made at Issue Specific Hearing 6, and the additional information which will be submitted into the examination in due course. The Applicant considers the information in the Environmental Masterplan and General Arrangements is sufficient to understand the extent of tree planting proposed.

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	"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. 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 provision represents an unwelcome and unnecessary fettering of the	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 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	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.	The Applicant considers its response (in column (3)) addresses why the provision is justified in the case of the Project.

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	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	been approved, and are intended to manage matters related to statutory nuisances. This provision 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	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.	The Applicant considers its response (in column (3)) addresses why the provision is justified in the case of the Project.

ExA's Agenda Item / Question	GBC's response	Applicant's response	GBC's further response at Deadline 3	Applicant's further response
	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 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	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 the examination. The Applicant notes that under article 61(1)(b) further consultation would be required where a measure is proposed to be revoked or varied. A decision of the Secretary of State can, further, be legally challenged.	GBC remains to be convinced that art 61(1)(b) as drafted is appropriate and in particular the lack of a specific requirement on the Secretary of State to consider the views of the affected party.	Article 61 explicitly sets out that "*Paragraph 20 of Schedule 2 (requirements) applies to an application to the Secretary of State for revocation, suspension or variation under paragraph (1)(b) as though it were a consultation required under that Schedule.*" This ensures that the representations will be considered, as well as provided to the Secretary of State for its consideration.

ExA's Agenda Item / Question	GBC's response	Applicant's response	GBC's further response at Deadline 3	Applicant's further response
	written views of the beneficiary other than through the Applicant's report of the consultation, and there is no appeal mechanism.			
	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.	Noted.
	In the ancillary works part of Schedule 1, GBC has already commented on the unusual new introductory	In relation to Schedule 1, this comment is addressed above.		See above.

ExA's Agenda Item / Question	GBC's response	Applicant's response	GBC's further response at Deadline 3	Applicant's further response
	words which 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.	The dDCO secures alignment to a Design Principles document, and considers it provides appropriate and equivalent protection to the A427 Black Caxton DCO. The Applicant refers to its response to EXQ1 16.1.1 to 2. It is simply not correct to say that there is inadequate engagement provided for by the DCO in relation to detailed design.

Table 2.2 Table 2

ExA point	GBC comment	Applicant's response	GBC's further response	Applicant's further response
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 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.**	GBC note the submissions provided by the Applicant in its Annex A responses on the implications of the *Hillside* case. 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	The Applicant's position is set out in its responses to Annex A of the agenda for Issue Specific Hearing 2 [**AS-089**] 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	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 comment fully on the art. 56(3) and (4).	The Applicant considers that its previous response (in column 3, [**REP1-184**] and [**REP2-077**]) addresses the further response given by the Council at Deadline 3. The Applicant notes again that other host authorities have endorsed this provision based on the information provided. The Applicant notes that this provision has been welcomed by the London Borough of Havering and Thurrock Council

ExA point	GBC comment	Applicant's response	GBC's further response	Applicant's further response
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 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.**	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 would apply to that case. But as mentioned above, it would assist GBC greatly if			

ExA point	GBC comment	Applicant's response	GBC's further response	Applicant's further response
	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.	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 Gammon Field 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.	This is not a matter relevant to the drafting of the dDCO. The Applicant's position on the substantive issue raised by the Council is contained in page 99 of the Applicant's response to the Council's LIR [**REP2-058**].
2. Flexibility of operation				
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	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	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 [**AS-089**] and	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	The Applicant considers that its previous response (in column 3, and [**AS-089**], [**REP1-184**] and [**REP2-077**]) addresses the Council's further response at Deadline 3. The Council's comment is an

ExA point	GBC comment	Applicant's response	GBC's further response	Applicant's further response
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.** **Observations on novel drafting in Article 2(10) above are relevant here.**	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. GBC maintain their concern about the breadth of this	[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 new or	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.	in principle objection to the use of the preamble to the ancillary works but the fact that the approach is precedented indicates that the Council's objection should be given limited weight. If there are no materially new or materially different environmental effects, and no landowners would be prejudiced, the Applicant considers the flexibility offered by the provision is reasonable, proportionate and necessary. The Applicant reiterates that the suggestion that works could be carried out "*anywhere in England*" (and again that they could be carried out "*anywhere*") is a gross overstatement given the controls identified.

ExA point	GBC comment	Applicant's response	GBC's further response	Applicant's further response
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**	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	materially different effects provide appropriate controls. In relation to the definition of "preliminary works", the Applicant's	GBC refers to its comments about the	The Applicant considers that its previous response (in column 3, and [AS-089], [REP1-184] and [REP2-077]) address the matters raised by the Council in its further response at Deadline 3.

ExA point	GBC comment	Applicant's response	GBC's further response	Applicant's further response
provisions providing flexibility will be sought.	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 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	position is set out in its responses to Annex A of the agenda for Issue Specific Hearing 2	interrelationship between "commence" and the carrying out of preliminary works. With the DCO drafted as it is, minimal vegetation clearance would suffice to "commence" the development under requirement 2.	

ExA point	GBC comment	Applicant's response	GBC's further response	Applicant's further response
	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.			
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	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	The Applicant's position is set out in its responses to Annex A of the agenda for Issue Specific Hearing 2 [**AS-089**] 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*	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	The Applicant considers that its previous response (in column 3, and [**AS-089**], [**REP1-184**] and [**REP2-077**]) addresses the matters raised by the Council in its further response at Deadline 3. The Applicant does not share the interpretation of what

ExA point	GBC comment	Applicant's response	GBC's further response	Applicant's further response
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 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**	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.	*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 form 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 enactment would take 'subject to' the DCO would similarly be limited.	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.	the Council refers to as the "usual wording".

ExA point	GBC comment	Applicant's response	GBC's further response	Applicant's further response
possibility of inadvertent adverse effects or frustration of the intent of Parliament arising from a disapplication of statutory provisions.				
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 could be made**	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 scale of the works proposed for the LTC is any	The Applicant's position is set out in its responses to Annex A of the agenda for Issue Specific Hearing 2 [**AS-089**] 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.	The Applicant finds the suggestion that "*the length of the construction period should have no bearing on the CPO period*" to be unusual, and detached from the reality of DCO drafting convention. On the suggestion that land could simply be acquired and accessed later, this ignores the Applicant's approach to minimise interference with land. In particular, the Applicant would take temporary possession to carry out the works, and then only acquire land that was necessary following the conclusion of those works. This approach allows the Applicant to reduce the extent of

ExA point	GBC comment	Applicant's response	GBC's further response	Applicant's further response
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	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			land-take required, which is in the public interest.

ExA point	GBC comment	Applicant's response	GBC's further response	Applicant's further response
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 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, either in DCOs or other regimes which authorise compulsory purchase.			
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	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.	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	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.	The Applicant confirms "in the name of" means "in the ownership". The Applicant does not consider an amendment is necessary, noting that the drafting is precedented and that all parties appear to be clear as to its meaning (including the Council, whose interpretation of the wording is correct).

ExA point	GBC comment	Applicant's response	GBC's further response	Applicant's further response
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 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**	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" 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 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 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*	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)	The Applicant notes that the use of "certification" in article 40 is well precedented and is unrelated to the "certification" of documents required under article 62. A requirement to certify that the plan has been complied with is also unnecessary as an obligation to implement the plan is already in the provision itself.

ExA point	GBC comment	Applicant's response	GBC's further response	Applicant's further response
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)? **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**	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 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	*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 Appendix D to the Planning Statement [**REP3-108**].	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 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	The Applicant's reference to Appendix D to the Planning Statement [**REP3-108**] addresses the point about the timing of the acquisition of special category land, and how this has shaped the provision of replacement land. The Applicant considers it appropriate for the special category land to vest prior to the Project being implemented. This is justified for the reasons

ExA point	GBC comment	Applicant's response	GBC's further response	Applicant's further response
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,	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.		response to GBC or in its responses to Annex A of the agenda for Issue Specific Hearing 2 [**AS-089**] and [**REP1-184**]. GBC notes there is no response to the point about vesting of rights.	set out in Appendix D, and it would not be proportionate to prevent land or rights being acquired where the provision of replacement land has been secured. Leaving aside this Project-specific justification, this approach is precedented (see, for example, article 38 A30 Chiverton to Carland Cross Development Consent Order 2020). The Applicant considers the use of the word "vesting" is clear, and precedented (see, for example, article 38 A30 Chiverton to Carland Cross Development Consent Order 2020).

ExA point	GBC comment	Applicant's response	GBC's further response	Applicant's further response
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 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**				

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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".				
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 **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.**	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.	Noted.
17. Procedure for discharge of requirements: Article 65 – Schedule 2 Part 2				
Advice Note 15 provides standard drafting for articles dealing with discharge of	There are no rights of appeal in relation to requirements in Schedule 2 part 2, either for the	The Applicant's position on the discharging authority is set out above, and in its	GBC maintains its position on the time limits, notification and appeals, etc. GBC would	The Applicant considers that its previous response (in column 3, and [**AS-089**], [**REP1-**

ExA point	GBC comment	Applicant's response	GBC's further response	Applicant's further response
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**	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	responses to Annex A of the agenda for Issue Specific Hearing 2 [**AS-089**] 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	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.	**184**] and [**REP2-077**]) addresses the matters raised by the Council in its further response at Deadline 3. The statistics noted are national but the Applicant considers they support the principle that the delivery of this nationally significant infrastructure project should not be impeded because of backlogs in the current system. As the precedents show, the Secretary of State has competence to deal with such matters.

ExA point	GBC comment	Applicant's response	GBC's further response	Applicant's further response
procedure in the article itself, the decision letter refers to the specific appeal procedure being the 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**	should be amended, or a commitment 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	Development Consent Order 2022). 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		

ExA point	GBC comment	Applicant's response	GBC's further response	Applicant's further response
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.	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 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.	Pollution Act 1974 is precedented. The provision is therefore considered necessary and justified.		
21. Arbitration: Article 64				
Whilst arbitration provisions have been a dynamic field of practice in dDCO drafting, recent decisions suggest that it	GBC notes the Applicant's response to Annex A [**AS-089**] on this point and in particular the prospect that unless there were an	The Applicant has adopted the amendment suggested by the Examining Authority. The Applicant notes that the	The response reinforces GBC's concerns about the identity of the discharging authority and connected issue of the	The Applicant notes that decisions of the Secretary of State would be amenable to judicial review. The Council's

ExA point	GBC comment	Applicant's response	GBC's further response	Applicant's further response
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. **. […]** **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.**	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	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.	lack of appeals in relation to requirements.	concern does not conflict or in any way undermine the Applicant's extensive reasons for saying that the Secretary of State is the appropriate discharging authority.
22. Defence to proceedings in respect of statutory nuisance: Article 58				
Are the controls on noise elsewhere in the DCO	GBC notes that recent highways DCOs (Black Cat,	The Applicant's position is set out in its responses	GBC notes that the Applicant claims to have	The Council has failed to engage with the

ExA point	GBC comment	Applicant's response	GBC's further response	Applicant's further response
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.	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; (fb) artificial light emitted from premises so as to be prejudicial to health or a nuisance;]	to Annex A of the agenda for Issue Specific Hearing 2 [**AS-089**] 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	"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.	response provided which sets out how it has been narrowed compared to other precedents, and how it specifically relates to the nuisances identified in the Statement of Statutory Nuisance [**APP-489**].

ExA point	GBC comment	Applicant's response	GBC's further response	Applicant's further response
	(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	Nuisance [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		

ExA point	GBC comment	Applicant's response	GBC's further response	Applicant's further response
		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 [**REP1-045**] states at paragraph 5.247, article 58 represents such a contrary provision in respect of the matters 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.		

ExA point	GBC comment	Applicant's response	GBC's further response	Applicant's further response
Part 2, discharge of requirements Requirement 18				
Is it permissible or appropriate to have a deemed discharge provision relating to the discharge of 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**	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 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	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 [**AS-089**] 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 [**AS-089**]). 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	GBC was unable to find a paragraph 1.3.21 in the responses to Annex A 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.	Apologies, the reference should have been to paragraph 1.3.21 of [**REP1-184**]. The Applicant does not agree. The Applicant considers that its response in column 3 is robust and would add that it is anticipated that discharge would in some cases occur outside of the two year delay. The Applicant notes that decisions of the Secretary of State would be amenable to judicial review.

ExA point	GBC comment	Applicant's response	GBC's further response	Applicant's further response
particular requirements and if so which ones?	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.	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.		

3 Holland Land and Property

3.1 Article 8

3.1.1 In their Deadline 3 submission, Holland Land and Property reiterate their concern regarding "*the unexpected consequences of a transfer of benefits of the Order to Code Operators under the Digital Economy Act 2017.*" The dDCO does not affect the operation or otherwise of the Digital Economy Act 2017. It is not clear what further information the Interested Party is seeking.

3.2 Article 13

3.2.1 Holland Land and Property raise if the explanations of Article 13 in the Explanatory Memorandum are legally binding. The Applicant notes Holland Land and Property have directed a question to the ExA in this section. For completeness, the Explanatory Memorandum does not give an undertaking in this context, it merely explains that the power is in fact an attempt to preserve the position of other users. Nonetheless, whilst the Explanatory Memorandum does not have any particular legal status, courts are likely to consider it to be relevant for the purposes of interpreting the provisions contained in a DCO.[1]

3.3 Articles 28 & 25-34

3.3.1 The Applicant considers that its previous response (in column 3, and [**REP1-184**] and [**REP2-077**]) addresses this matter. The Applicant would draw attention to the new provisions in Article 37 which require the extinguishment of the rights in connection with the apparatus referred to by Holland Land and Property. This will be a legally binding requirement on the Applicant. Enforcement of DCO provisions is a matter for local planning authorities under Part 8 of the Planning Act 2008.

3.4 Article 40

3.4.1 The Applicant notes Holland Land and Property have directed a question to the ExA in this section. For completeness, the Applicant considers that its acquisition of special category land and the replacement land, is compliant with policy and the legal requirements of section 131/132 for the reasons set out in Appendix D to the Planning Statement [**REP3-108**].

[1] See paragraph 35 of Regina v. Montila [2004] UKHL 50 at paragraph [35]: "*There is a further point that can be made. In Pickstone v Freemans Plc [1989] AC 66, 127 Lord Oliver of Aylmerton said that the explanatory note attached to a statutory instrument, although it was not of course part of the instrument, could be used to identify the mischief which it was attempting to remedy: see also Westminster City Council v Haywood (No 2) [2000] 2 All ER 634, 645, para 19 per Lightman J. In Coventry and Solihull Waste Disposal Co Ltd v Russell [1999] 1 WLR 2093, 2103, it was said that an explanatory note may be referred to as an aid to construction where the statutory instrument to which it is attached is ambiguous. In R (Westminster City Council) v National Asylum Support Service [2002] 1 WLR 2956, 2959B-C, Lord Steyn said that, in so far as the Explanatory Notes that since 1999 have accompanied a Bill on its introduction and are updated during the Parliamentary process cast light on the objective setting or contextual scene of the statute and the mischief at which it is aimed, such materials are always admissible aids to construction. It has become common practice for their Lordships to ask to be shown the Explanatory Notes when issues are raised about the meaning of words used in an enactment.*"

4 London Borough of Havering

4.1 Responses on dDCO

4.1.1 The London Borough of Havering provided comments on the dDCO in [REP3-183]. The table below reproduces the table provided, and set outs further responses in the final column.

Provision in DCO	Content	Previous comments of London Borough of Havering and response of the Applicant	Response of London Borough of Havering	Applicant's response
i Articles				
Article2 (1)	**NEW COMMENT** The addition of a definition of "begin".		Section 155 of the Planning Act 2008 identifies when development authorised by an NSIP is taken to begin. It provides that development is taken to begin on the earliest date on which any material operation begins to be carried out. Material operation is defined in s.155 and, currently, includes any operation except for the marking out of a road. That definition is different from the definition in s.56(4) of the 1990 Act. It is not clear why the 1990 Act definition has been used rather than the 2008 Act. LBH is considering whether there any ramifications of this (and there may not be) but	The Applicant does not consider the use of the definition in section 56 of the Town and Country Planning Act 1990 has any material impact on the appropriateness of the controls in place. The Applicant would note that utilising the definition in the Town and Country Planning Act 1990 provides further specificity on the works which would constitute 'commencing' development. Across its DCO portfolio, the Applicant has adopted utilising

Provision in DCO	Content	Previous comments of London Borough of Havering and response of the Applicant	Response of London Borough of Havering	Applicant's response
			would wish to understand why the PA 2008 definition has not been used.	the definition in section 56 of the Town and Country Planning Act 1990 (see, for example, the A303 (Amesbury to Berwick Down) Development Consent Order 2023, A47 Wansford to Sutton Development Consent Order 2023 and the A417 Missing Link Development Consent Order 2022 for recent examples).
Article 2 (10)	This provision states: "In this Order, references 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	**LBH comment** This overarching provision is intended to enable subsequent approval of details even though the likely consequential environmental effects are materially new or materially different from that which was assessed, if the difference is an avoidance, removal or reduction "of an adverse effect". The concern with this provision is that the wording used may not encompass all of the consequences of the material change. Whilst "an adverse effect" might be avoided, removed or reduced that may in itself cause a different	The amendment provides flexibility by enabling approval of details with materially new or different effects, if the difference is an avoidance, removal or reduction of an adverse effect. That general approach is understood. However, as drafted, the materially new or materially different environmental effects which are sanctioned by this provision may include not only the avoidance	The Applicant considers these comments to be misconceived. In short, the "unassessed effects" and the "adverse noise effect" referenced in the hypothetical example could in fact be separate "materially new or materially different" environmental effects, provided they fall to be considered as such in the assessment

Provision in DCO	Content	Previous comments of London Borough of Havering and response of the Applicant	Response of London Borough of Havering	Applicant's response
	the environmental statement as a result of the authorised development"	effect which has not been assessed and could be sanctioned by this provision. It is suggested that the following wording be added to the end of the existing wording: *"provided that there is no new or materially different adverse environmental effect in comparison with those identified in the environmental statement caused by the avoidance, removal or reduction of such adverse environmental effect"* **Applicant's response** The Applicant's justification for this provision is included in the Explanatory Memorandum [**REP1-045**]. The purpose of the provision is to enable environmentally better outcomes which fall within the Applicant's environmental assessments. The amendment proposed by LBH would obviate the purpose of the interpretive provision.	removal or reduction of an adverse effect reported in the environmental statement, but also will include other unassessed effects where the measures taken to secure the avoidance removal or reduction of an adverse effect have separate, adverse, effects. Taking a hypothetical example, details could be approved which reduce the height of some earth mounds from that assessed in order to reduce an adverse visual effect of those mounds identified in the ES. That would be sanctioned by this provision. Those mounds may also be needed to be at a certain height for noise mitigation and without them there might be an adverse noise effect. Nonetheless, because the reduction of the mounds resulted in the reduction of an adverse effect identified in the ES, it would be sanctioned by this provision irrespective of the collateral noise impacts.	process. The Applicant reiterates its comments in in the Explanatory Memorandum [**REP1-045**]. The purpose of the provision is to enable environmentally better outcomes which fall within the Applicant's environmental assessments. The amendment proposed by LBH would obviate the purpose of the interpretive provision.

Provision in DCO	Content	Previous comments of London Borough of Havering and response of the Applicant	Response of London Borough of Havering	Applicant's response
			That is the basis for the suggested additional drafting. NH have not engaged with that point in their response.	
Article 5 (1)	Maintenance of drainage works	**LBH comment** Part 3 of Schedule 14 contains Protective Provisions for the Protection of Drainage Authorities which contain provisions as to maintenance. It is suggested that the following words are inserted at the beginning of the article to acknowledge this and make it clear that the specific provisions of the protective provisions prevail, as is the case in the drafting of Article 18: *"Subject to the provisions of Schedule 14 (protective provisions)"* **Applicant's response** The Applicant is happy to make this amendment; and this has been implemented in the updated dDCO at Deadline 2.	LBH is content with the amendment made in response to its comments.	Noted
Article 6	Limits of Deviation	**LBH comment** In Article 6 (3) a deviation from the LoD is permissible if it is demonstrated to the satisfaction of the Secretary of State, after consultation, that it would not give rise to a new or materially different environmental effect. There	LBH is content with the amendment made in response to its comments.	Noted

Provision in DCO	Content	Previous comments of London Borough of Havering and response of the Applicant	Response of London Borough of Havering	Applicant's response
		are the following concerns with this article: (1) The article is not clear as to whether the consultation will be undertaken by the Secretary of State or the undertaker. That is in contrast to other provisions (such as in the requirements in Sch 2) where the undertaker is identified as being responsible for carrying out the consultation. It would seem sensible to align this article with those other provisions and explicitly require consultation by the undertaker, by the insertion of the words "by the undertaker" after the words "following consultation". There is then no doubt that, Article 6(4) and paragraph 20 of Sch 2 will apply, and the undertaker will be obliged to apply the process in paragraph 20 to any submission to the Secretary of State under this article. (2) The requirement in Article 6 (3) is to consult with, inter alia, "the relevant local highway authority" and yet there is no definition of that term – in contrast to "the relevant planning authority" which is defined. If a definition of "relevant local highway authority" is		

Provision in DCO	Content	Previous comments of London Borough of Havering and response of the Applicant	Response of London Borough of Havering	Applicant's response
		included, it should refer to the authority in whose area those works are being carried out and also any adjacent highway authority whose highways may be impacted. **Applicant's response** • The Applicant is happy to make an amendment clarifying consultation will be by the undertaker, and this has been implemented in the updated dDCO at Deadline 2. • The Applicant is happy to insert a definition of "relevant local highway authority", and this has been implemented in the updated dDCO at Deadline 2.		
Article 10	Construction and maintenance of streets	**LBH comments** As explained later, in section iv of this document, LBH wish to see the insertion of protective provisions for the protection of the local highway authority in relation to construction and maintenance of lengths of highway for which it is responsible. In the event of those protective provisions being included then this article should be expressed as being subject to those protective provisions. An update with	See section iv regarding the insertion of protective provisions. LBH is content with the amendment made in response to its comments.	See below. The Applicant has inserted Protective Provisions for the benefit of Local Highway Authorities in the DCO submitted at Deadline 4 [**Document Reference 3.1 (6)**].

Provision in DCO	Content	Previous comments of London Borough of Havering and response of the Applicant	Response of London Borough of Havering	Applicant's response
		regards to LBH and NH discussions on this matter is included in section iv. This article uses the term "local highway authority" and also refers to "highway authority in whose area the street lies". The term "relevant local highway authority" is used in Article 6. It is suggested the drafting approach should be the same throughout the DCO unless there is intended to be a distinction. **Applicant's response** The Applicant does not consider it appropriate to include protective provisions for highway authorities in the Order. This would be a highly novel approach for DCOs for the Strategic Road Network, and we are aware of only one precedent. Article 10 sets out that newly constructed or altered highways must be handed over to the reasonable satisfaction of the highway and it is considered this provides appropriate control to LBH. Nonetheless, the Applicant is engaging with LBH on further protections which can be provided. The Applicant happy to insert a definition of relevant highway authority, and the references to "highway authority in whose area the highway		

Provision in DCO	Content	Previous comments of London Borough of Havering and response of the Applicant	Response of London Borough of Havering	Applicant's response
		lies" will be deleted and replaced with "relevant local highway authority." This has been implemented in the updated dDCO at Deadline 2.		
Article 10 (2)	**NEW COMMENT** Requirement for local highway to be completed to reasonable satisfaction of the local highway authority prior to maintenance responsibility passing		Under this article the completion of works to a local road to the reasonable satisfaction of the local highway authority results in the maintenance of those works being transferred to the local highway authority. It is therefore important that the point of reasonable satisfaction is identified and agreed in writing. This is dealt with in the draft Protective Provisions supplied to NH but not yet accepted by them. In the absence of those provisions the words *"as evidenced in writing"* should be inserted between *"the street lies"* and *"and,unless…."* in order that there be a written record of when that point is reached. Alternatively, a cross reference could be made to the issue of the Final	The Applicant's position in respect of the proposed Protective Provisions is set out below. The wording of Article 10, including Article 10(2), is well precedented in numerous other DCOs. The Applicant is not aware of any legal ambiguity or uncertainty caused by this drafting for local highway authorities in terms of identifying the point of reasonable satisfaction. Nonetheless, the Protective Provisions for the benefit of Local Highway Authorities set out further procedural requirements, which

Provision in DCO	Content	Previous comments of London Borough of Havering and response of the Applicant	Response of London Borough of Havering	Applicant's response
			Certificate in respect of those works under the relevant paragraph of the Protective Provisions.	includes a Provisional Certificate being signed by the Local Highway Authority. The Applicant therefore considers that appropriate safeguards are in place to deal with the substantive point raised by the London Borough of Havering.
Article 11	Access to works	**LBH comment** This article is very broad and would, as drafted, allow interference with the part of the highway network the responsibility for which lies with LBH, without any prior knowledge of LBH. Where the new or improved access affects highways for which LBH is responsible then LBH should be consulted in advance and the works should be subject to the protective provisions referred to in section iv of this document. **Applicant's response** The Applicant considers the powers are necessary and proportionate. Indeed, the power is intended to put the Project on an equivalent footing with schemes authorised under the	NH have missed the point of the comment. LBH are not seeking to restrict the power which NH have sought to justify but are simply asking that LBH be consulted on, and in advance of, any currently unidentified accesses being implemented. As NH consistently stress this is a big project. It is not fully designed with there being acknowledged to be a likelihood of, currently unidentified, access works – which may distinguish this project from some of the projects referred to in the NH response.	As previously stated by the Applicant, the Council will be consulted in respect of the proposed accesses (which are currently indicatively shown) as part of consultation on the Traffic Management Plan for Construction, submitted under Requirement 10, as well as part of the Environmental Management Plan under Requirement 4. In addition, the Protective Provisions for Local Highway

Provision in DCO	Content	Previous comments of London Borough of Havering and response of the Applicant	Response of London Borough of Havering	Applicant's response
		Highways Act 1980 which would benefit from the wide power contained in section 129 of that Act. This power is necessary because the location of all accesses has yet to be determined. Whilst every effort has been made to identify all accesses and all works required to those accesses, it is possible that unknown or informal accesses exist or the need to improve an access or lay out a further access will only come to light at the detailed design stage, once the full construction methodology has been determined. For example, the precise layout of accesses to construction compounds will need to take into account factors such as the swept path of the construction vehicles together with appropriate landscape mitigation which cannot be fixed at this stage. In addition, accesses may change because of developments which are themselves not yet consented or anticipated. The exercise of the power would be subject to the requirements, in particular requirement 4 which secures compliance with the measures in the Code of Construction Practice, and (the updated) requirement 10 which requires compliance with the outline Traffic Management Plan for	Consultation on the Traffic Management Plan or the Environmental Management Plan does not address the issue since those documents deal with how the works are to be carried out and not what works are to be authorised by the DCO. It is simply appropriate that, where the new or improved accesses previously not identified affect highways for which LBH is responsible, then LBH should be consulted in advance – as they would have been consulted had those accesses been identified as part of the scheme at the application stage. The works should also be subject to the protective provisions referred to in section iv of this document.	Authorities inserted into the DCO at Deadline 4 [**Document Reference 3.1 (6)**] secure design input in relation to local roads. This further secures the consultation which the London Borough of Havering is seeking.

Provision in DCO	Content	Previous comments of London Borough of Havering and response of the Applicant	Response of London Borough of Havering	Applicant's response
		Construction. Accesses are indicatively shown in the latter document. The Council will be consulted on both the Traffic Management Plan submitted under requirement 10, and the Environmental Management Plan under requirement 4. The Secretary of State has confirmed that this is acceptable across a wider number of highway DCO projects akin to the Project (see article 15 of the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order 2016, article 14 of the A19/A184 Testo's Junction Alteration Development Consent Order 2018, article 18 of the M42 Junction 6 Development Consent Order 2020, article 18 of the A19 Downhill Lane Junction Development Consent Order 2020, article 17 of the A1 Birtley to Coal House Development Consent Order 2021, article 17 of the A303 Sparkford to Ilchester Dualling Development Consent Order 2021). The Applicant sees no reason to depart from this practice.		
Article 12(7)	**NEW COMMENT** Temporary alternative routes		An amendment has been made to the dDCO at D2 regarding the suitability of temporary alternative routes.	The Applicant had made this change in the DCO submitted at Deadline 4

Provision in DCO	Content	Previous comments of London Borough of Havering and response of the Applicant	Response of London Borough of Havering	Applicant's response
			The purpose of the amendment is welcomed by LBH however the amendment appears to have a word missing. It is suggested the word *"uses"* be inserted between *"traffic as"* and *"that street"*.	[**Document Reference 3.1 (6)**].
Article 12	Temp closure of streets etc. – deemed consent	**LBH comment** This article provides for deemed consent of an application to a street authority for a closure, diversion etc if the street authority has not notified its decision "before the end of the period of 28 days beginning with the date on which the application was made". There are several concerns: (1) The term "application was made" is vague and LBH suggest it is replaced by "application was received by the street authority" – as is the case with the deemed consent provisions in articles 17, 19 and 21. (2) The period of 28 days is considered too short and LBH see no reason why the period of 42 days cannot be inserted instead, which has precedent in the recently approved M25 Junction	LBH is content with the replacement of "made" with "received" in paragraph (8). The amendments made in response to LBH's other points on deemed refusal are disappointing. They purport to deal with the LBH points but do not adopt the drafting suggested by LBH. As a result • there is an error in the new 12(9) of a reference to paragraph (11) which does not exist (cut and pasted incorrectly from amendment to Article 17?); • critically the new paragraph (9) does not prevent the deemed consent operating in the absence of the existence of the deemed refusal being brought to the	The Applicant considers that the proposed wording does deal with LBH's points in respect of deemed consent provisions and that the drafting proposed, save for a typographical error in the reference to paragraph (11) (which should be to paragraph (8)), is appropriate. The Applicant has made amendments to a series of provisions which relate to deemed consent from local authorities, which ensure that the deemed consent will only apply where the

Provision in DCO	Content	Previous comments of London Borough of Havering and response of the Applicant	Response of London Borough of Havering	Applicant's response
		28 Development Consent Order 2022 SI No. 573, Article 13. (3) If 42 days is considered too long, then LBH would wish the drafting of the article to be changed so that, for the deemed approval to apply, the deemed consent provisions need to be explicitly drawn to the attention of the street authority on submission of the application. That could be achieved by: (a) inserting "then, if paragraph (9) applies" before "it is deemed to have granted consent" in paragraph (8); and (b) inserting a new paragraph (9) stating "This paragraph applies to any application for consent under paragraph (5) which is received by the street authority and is accompanied by a covering letter with the application, which includes a statement that deemed consent provisions under paragraph (8) apply to the application and that failing a response within 28 days of receipt of the application it will	attention of the street authority, indeed it is not clear what the consequences are of failing to comply with paragraph (9); and • the amendment does not require the deemed refusal provisions to be given any prominence in any application made to the street authority to ensure that they are appropriately drawn to the attention of the authority. The drafting suggested by LBH addresses the above points and should be preferred – no explanation is given by NH for not adopting the suggested drafting. Accordingly, LBH reiterate that the following changes should be made: In para (8) *"then, if paragraph (9) applies"* should be inserted before *"it is deemed to have granted consent"*; and The new paragraph (9) should state: *"This paragraph*	relevant statement is included. The Applicant does not consider it appropriate, nor necessary, to prescribe the form of the statement provided. The Applicant is a public body and must exercise the powers of the DCO reasonably, and is not aware of any issues with the operation of the deemed consent provisions. The Applicant would reiterate its comments that the engagement secured under the Traffic Management Forum as well as the Protective Provisions mean substantively the Council will have appropriate safeguards in place in respect of the delivery of the authorised development.

Provision in DCO	Content	Previous comments of London Borough of Havering and response of the Applicant	Response of London Borough of Havering	Applicant's response
		be deemed to have been consented" Both (2) and (3) above are precedented in deemed approval provisions included in The West Midlands Rail Freight Interchange Order 2020 SI No. 511. In that DCO the deemed consent in the street works provision referred to a period of 42 days (Article 11). In the case of NH approvals in that DCO, in response to an objection from NH that 28 days was too short a period, a two-stage provision of 28 days plus a further 28 days before consent was deemed to have been given was included (Sch 13, Part 2, Paragraph 15). Alternatively, it would be possible to refer to a deemed refusal instead by replacing the words "granted consent" with "refused consent" at the end of Article 12 (8). The provisions of Article 65 (appeals to the Secretary of State) would then apply, and the undertaker would immediately have a route to a decision. **Applicant's response** • The Applicant is happy to make this amendment and this has been made in the dDCO submitted at Deadline 2.	*applies to any application for consent under paragraph (5) which is received by the street authority and is accompanied by a covering letter with the application, which includes a statement that deemed consent provisions under paragraph (8) apply to the application and that failing a response within 28 days of receipt of the application it will be deemed to have been consented"* The general points made by NH regarding deemed consent are noted, although it is also known that NH have on several occasions, when responding to DCO promoted by others, objected to the principle of deemed consent being applied to itself as it is a statutory authority. All DCO relate to projects which are nationally significant and involve extensive engagement. Unlike NH previously, LBH are not arguing against the principle of deemed consent	

Provision in DCO	Content	Previous comments of London Borough of Havering and response of the Applicant	Response of London Borough of Havering	Applicant's response
		• The Applicant does not consider 42 days to be appropriate in the circumstances of the Project. The period must be seen in the context of the extensive engagement, as well as the extensive controls and ongoing engagement and involvement of the local authorities in the context of the design and construction phases of the Project (for example, the Traffic Management Forum secured via the outline Traffic Management Plan for Construction). • The Applicant is happy to add a provision which requires drawing attention to the deemed consent provision. This has been implemented in the updated dDCO at Deadline 2. On deemed consent generally, the Applicant's position is as follows. Deemed consent provisions are, in our submission, plainly reasonable and necessary, having regard to the significance of this Project and the far reaching consequences which a failure to reach a decision in an expeditious manner could have on its delivery. The Applicant has proposed a reasonable period of time for the Council to determine such requests for approval	but are simply seeking to ensure that all involved in key decisions are aware of the deemed consent provisions. LBH do not understand to what "at para 31 of the October Report" in the NH response is referring.	

Provision in DCO	Content	Previous comments of London Borough of Havering and response of the Applicant	Response of London Borough of Havering	Applicant's response
		(i.e., 28 days). The provision also needs to be seen in the context of: • The Project is a nationally significant infrastructure project, and a Government project which will relieve the Dartford Crossing. Prolonging the programme would have a detrimental effect on the delivery of this programme and risk the inefficient and wasteful use of public funds for construction contractors to be put on standby whilst a consent is provided. • The Council, and other authorities, will have had time during the consultation and examination of the Project to understand better (compared to any usual approval unrelated to a DCO) the particular impacts and proposals forming part of the DCO. It is for this reason that the reference to the 3 months period for a new Traffic Regulation Order (at paragraph 31 of the October Report) is inappropriate. • The fact that deemed consent provisions take effect in relation to a failure to reach a decision, not a failure to give consent. It is, of course, open to the Council and other local authorities, if so minded,		

Provision in DCO	Content	Previous comments of London Borough of Havering and response of the Applicant	Response of London Borough of Havering	Applicant's response
		to refuse consent or to request further information within the time periods specified. • The concept of deemed consent is well precedented including on complex projects: see, for example, article 15(6) of the A30 Chiverton to Carland Cross Development Consent Order 2020, article 13(8) of the Southampton to London Pipeline Development Consent Order 2020 and article 15(6) of the A303 Sparkford to Ilchester Dualling Development Consent Order 2021.		
Article 17, 19, 21	Other deemed consents	**LBH comment** The same changes are requested for these articles as for Article 12. **Applicant's response** As above.	As above	See above.
Article 15 (1) (f)	**NEW COMMENT** Provision of PROW		Consistently the figure *"(2)"* has been omitted from this provision and needs to be inserted after the word *"column"* in the penultimate line. LBH would also like to ascertain whether there is a commitment for diverted lengths of PROW or replacement lengths to be in	The Applicant has inserted reference to column (2). This provision deals with the classification of the relevant roads. The stopping up of the existing roads is a matter which is dealt with in Articles 12

Provision in DCO	Content	Previous comments of London Borough of Havering and response of the Applicant	Response of London Borough of Havering	Applicant's response
			place before the existing PROW are closed and, if so, where it can be found. LBH are concerned that there may be no commitment.	(temporary closures, etc.) and 14 (permanent stopping up) Both of those provisions set out the timing requirements for a relevant substituted Public Right of Way. The Applicant would further note that the outline Traffic Management Plan requires that "*Temporary diversion routes, where required, will be subject to engagement with the relevant authority to ensure the measures put in place are fully informed".* The Protective Provisions for Local Highway Authorities further secure that "traffic management" is an element of the "detailed information" in relation to local roads which will be the subject of engagement

Provision in DCO	Content	Previous comments of London Borough of Havering and response of the Applicant	Response of London Borough of Havering	Applicant's response
				and input from the Council.
Article 45	Road User Charging	See comments in Section iii in respect of Schedule 12 below.	See below	See below.
Article 53	Disapplication of legislative provisions	**LBH comment** Article 53(7) states that "Nothing in this Order is to prejudice the operation of, and the exercise of powers and duties of the undertaker, a statutory undertaker or the Secretary of State under the 1980 Act, the 1991 Act, the 2000 Act….". It is not clear why statutory undertakers are in the list of those whose powers are not to be prejudiced and yet local highway authorities are not – who also have duties under the acts mentioned. In the absence of justification LBH would wish to see highway authorities added. **Applicant's response** Statutory undertakers are proposed to have the benefit of the Order transferred to them to carry out works. This is not intended for local highway authorities. No amendment is therefore considered necessary or appropriate.	The response of NH is not understood. Article 53(7) is a freestanding provision which simply states that nothing in the Order affects the exercise of statutory powers in specific legislation by specified bodies. This article does not apply purely to works being carried out by parties having the benefit of the order as implied by the NH response. The issue is that including some bodies and not others, such as the local highway authority who also have powers under one of the statutory powers referred to, implies that there may be, an unspecified, restriction on the bodies not referred to. Those bodies include LBH as local highway authority who have powers and duties under the 1980 Act.	Article 53(7) is only intended for the benefit of those bodies who have or may have specific powers under the proposed Order to ensure that the exercise of such powers would not prejudice the relevant body's statutory duties and powers. This will include the Secretary of State and, for the purposes of Article 8 dDCO (Transfer of benefit), the statutory undertakers. As previously stated, this is not intended for local highway authorities and therefore, no amendment is considered necessary or appropriate.

Provision in DCO	Content	Previous comments of London Borough of Havering and response of the Applicant	Response of London Borough of Havering	Applicant's response
			Clarification is once again requested.	
Article 56	Planning Permission Etc	**LBH comment** LBH believe that provision of this nature is highly desirable. • in order to remove any doubt as to the effect of the Hillside judgement; and • to enable a planning permission, issued following the implementation, and in the knowledge, of the DCO, to be implemented without the risk of criminal liability under s.160 of the PA 2008. Similar provisions have been commonly included in DCO. **Applicant's response** The Applicant is grateful for this confirmation.		N/A
Article 61	Stakeholder action and commitments	**LBH comment** It is not clear what the basis is for the inclusion of commitments in the "stakeholder actions and commitments register" (APP-554) rather than in requirements themselves or other documents referred to in the requirements, such as the Code of Construction Practice.	In cases where the commitments in the SAC-R avoid the need for individual side agreements in respect of individual issues and aid transparency then the NH justification for the article is accepted. However, that does not appear to be the basis for some of the commitments – such as the	The Applicant considers that its previous response (in column 3, and [REP1-184] and [REP2-077]) addresses these comments. The Applicant would note that the commitment relating to public access (and it being

Provision in DCO	Content	Previous comments of London Borough of Havering and response of the Applicant	Response of London Borough of Havering	Applicant's response
		For example, why can the commitments in relation to construction not be included in the Code of Construction Practice, as is the REAC? It seems unnecessarily confusing to have some commitments dealt with in an article and some, of a similar nature, dealt with in the requirements. LBH would like to understand the rationale. It is noted that the Explanatory Memorandum confirms that this is an article with no precedent, so it is important to understand the basis for it. The Explanatory Memorandum (APP-057), at page 63, states that the article is intended to cover commitments "which do not naturally sit within the outline management documents or other control documents secured under Schedule 2." However, there are only four commitments all of which appear to be commitments during construction. Why can these not be included as freestanding requirements or in the Code of Construction Practice? It is noted that NH intends to add a further item to the stakeholder actions and commitments register in relation to a requirement that Ockendon Road be	first commitment relating to public access to land and the second commitment which is project wide. If there is a role for the document, then why is it different from the other control documents and dealt with in an Article rather than applied through a requirement? In respect of the drafting - LBH maintains its objection to the use of "take all reasonable steps" in relation to the commitments where those commitments are clearly within the control of NH. - LBH is content with the amendment to Article 61((3) in dDCO v4 submitted in response to its comments.	secured in the SAC-R) was agreed with the relevant stakeholder (Natural England). The Articles of the Order are, in the same way as requirements, enforceable provisions of the Order. In short, the Applicant does not consider that the Council's concerns have been substantiated. In relation to the drafting which requires the Applicant to "take all reasonable steps", the Applicant reiterates its previous comments.

Provision in DCO	Content	Previous comments of London Borough of Havering and response of the Applicant	Response of London Borough of Havering	Applicant's response
		closed for a maximum of 10 months (See NH/LBH SoCG to be submitted at D1 pp 64/65). It is not clear why that cannot be the subject of a requirement, directly or within the CoCP. As regards the drafting of the article itself, the following comments are made: (1) LBH do not believe it appropriate to use the term "take all reasonable steps" when dealing with commitments. Commitments, the performance of is within the gift of NH, should be firm, unqualified, commitments. For example, the commitments dealing with accesses during construction (SACR-003 and SACR-004) are deliverable through the control NH has over its Main Works Contractor – there is no reason for them to be qualified. (2) In 61(3), if an undertaker submits an application to the Secretary of State to revoke, vary or suspend a commitment the commitment is suspended until that application is determined. It does not seem appropriate for the simple act of making an application to be sufficient to suspend the		

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		commitment – such a device could be abused. It is suggested that (3) (a) and (b) should be deleted. **Applicant's response** The rationale for the Stakeholders Actions and Commitments Register [REP1-176] is provided in section 2.2 of the document itself. Further explanation is provided in section 5.253 to 5.255 of the Explanatory Memorandum [REP1-045]. The reason that commitments contained in the SAC-R could not be included in the REAC is that the latter reflects the commitments contained within and output of the Environmental Statement. The SAC-R, instead, reflects commitments made to individuals rather than essential mitigation required as part of the delivery of the Project. The reason why the Code of Construction Practice could not be utilised is that the Code of Construction Practice provides a framework on which EMP2 will be based, rather than specific commitments. It is not the Applicant's experience that the provision of commitments in the SAC-R has confused interested parties; it has instead been welcomed as a useful tool to provide legally binding		

Provision in DCO	Content	Previous comments of London Borough of Havering and response of the Applicant	Response of London Borough of Havering	Applicant's response
		commitments without the time, cost and expense of negotiating individual legal agreements. It also provides the Examining Authority and the Secretary of State with visibility on these commitments. This tool is expected to be utilised throughout the examination as interested parties raise further requests for commitments. The Applicant notes that following Deadline 1, further commitments have been included in the SAC-R. On the detailed comments: • 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 wording mirrors that undertaking, and this is considered appropriate as it is intended to deal with substantially similar commitments. No amendment is considered necessary. • We are happy to remove paragraph (3)(a), but not (b) and (c). We will modify paragraph (b) insofar as it relates to (a). Clearly, if the Secretary of State agrees to modify the commitment, it should be taken		

Provision in DCO	Content	Previous comments of London Borough of Havering and response of the Applicant	Response of London Borough of Havering	Applicant's response
		as being modified (which is the effect of (3)(b)).		
Article 62	Correction of Plans	**LBH comment** This article includes a procedure, unsurprisingly not precedented in other DCO, which allows for changes to plans to be agreed by justices rather than through the formal Correction Order (Sch 4 PA 2008) or the process of applying for a non-material or material amendment to the DCO (Sch 6 PA 2008). Article 62 (4) applies this procedure to a plan which "is inaccurate" and Article 62(5) refers to a "wrong description" through "mistake or inadvertence". The way in which changes are to be considered is provided for in the PA2008, as indicated above. A wrong description or inaccuracy can be dealt with immediately after the approval of the Order as a correctable error or, if spotted later, can be dealt with by an application for a non- material amendment to the DCO. The processes involved ensure that the local authorities are made aware of the request for a change and the views of any party that might contest the view that the change requested is merely an inaccuracy will be	The NH justification for Article 62(4) appears to be based on an assertion that the provision relates only to plans and therefore does not conflict with the processes in the Planning Act 2008 which provide for corrections and changes to an Order as distinct from plans. That is false distinction. As Article 64 makes clear, the amendment provisions relate only to certified plans – as referred to in Schedule 16 of the dDCO. If a certified plan needs changing then that results in a new plan being produced with a new revision number which in turn would result in a required change to Schedule 16, which is a correction/change for which there are prescribed processes under the Planning Act 2008. The process would either be by way of a correction order, if noticed in time, or subsequently by way of an	The Applicant does not consider any justification has been provided as to why the correction of an inaccuracy or mistake in the plans would fall within the provisions dealing with a correction, or material, or non-material, amendment to the Order. Insofar as the comments on certified documents are concerned, the operation of article 62(6) would mean that no amendment to the Order would be required. As noted in the Explanatory Memorandum [REP1-045], these provisions are included in section 52 of the Crossrail Act 2008. They also find precedent in section 54 of the High Speed

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		considered. That is the process intended to apply and it is not appropriate for a DCO to include its own bespoke process which avoids the processes prescribed by the PA 2008 specifically to deal with amendments. The distinction between this provision and the amendments under Sch 4 and 6 referred to in the Explanatory Memorandum is not accepted. The process in Sch 6 is available to make any non-material amendment to a DCO and does not exclude errors arising by mistake or inadvertence. If Article 62 (4) is to remain then it should be a requirement that the relevant authorities are consulted (as they would be for a correctable error under Sch 4) and their views submitted to the magistrates along with the application (similar to paragraph 20 in Sch 2 in relation to appeals to the Secretary of State). The relevant authorities and all affected persons should be informed of the progress of any application, including any hearings before the justices.	application for a non-material or material change. These are the same processes that would apply to any inadvertent errors in other wording of the DCO which need to be addressed. It is the case therefore that NH is replacing prescribed processes in the Panning Act 2008 which apply to all corrections/changes with its own process. There is no precedence for this provision in DCO and the availability of the processes in the Planning Act to deal with corrections/changes distinguishes this Order from the Acts of Parliament referred to. The article is therefore objected to as a matter of principle. As regards the drafting change – what is suggested falls far short of what was requested by LBH. It simply requires NH to tell the relevant local planning authority of the change but	Rail (West Midlands - Crewe) Act 2021, section 53 of the Channel Tunnel Rail Link Act 1996, and section 43 of the Dartford-Thurrock Crossing Act 1988. It is considered that the Project, being of a similar scale and complexity to those projects, should incorporate these provisions on a precautionary basis to minimise a potential delay to the delivery of the Project in the unanticipated event that there is an error. It is not relevant that the projects which have included these provisions to date have been promoted by Acts of Parliament; rather it is affirms the principle that it would be disproportionate to require subsequent instrument (be it an

		Applicant's response A correction order under the Planning Act 2008 is a correction to the made Order, not to plans themselves. The nature of the corrections which could be made under the proposed provisions is therefore materially different. For that reason, it is not considered that these provisions conflict with the process for corrections. For the avoidance of doubt, the proposed provisions in the dDCO do not permit textual amendments to the Order (if made). In relation to non-material and material amendments, these provisions do not circumvent or modify the application of Schedules 4 and 6 of the Planning Act 2008 as they relate to inadvertent errors, (material or non- material) amendments to the works authorised under the Order or anything authorised by the Order. They are therefore not "changes". As noted in the Explanatory Memorandum [**REP1-045**], these provisions are included in section 52 of the Crossrail Act 2008. They also find precedent in section 54 of the High Speed Rail (West Midlands - Crewe) Act 2021, section 53 of the Channel Tunnel Rail Link Act 1996, and section 43 of the Dartford-Thurrock Crossing Act 1988. It is considered that the Project, being of a similar scale and	provides no process for responses or the consideration of those responses by the justices. As previously stated, not only should the local planning authority be notified, they should have time to consider and respond and any response should be submitted to the Justices with the application – as with consultation responses under requirements, as provided for in requirement 20 (1). To achieve that the following drafting is suggested in Article 62: (1) If a plan certified under sub-paragraph (1) is inaccurate, the undertaker may apply to two justices having jurisdiction in the place where any land affected is situated for correction of the plan (2) Prior to making an application referred to in sub-paragraph (4) the undertaker must (a) notify the relevant local planning authority the owners and occupiers of any	amendment Order or an Act of Parliament) to deal with manifest errors (as distinct from 'changes' to an application). It is the Applicant's view that this provision is capable of being included in the dDCO under section 120(3) of the Planning Act 2008. The existing processes under the Planning Act 2008 are not intended to prevent the ability to ensure inadvertent errors or mistakes in certified plans delay a nationally significant infrastructure project. The Applicant has increased the period of notification to 28 days, and inserted a new provision which requires representations to be provided to the justices in line with the Council's request.

Provision in DCO	Content	Previous comments of London Borough of Havering and response of the Applicant	Response of London Borough of Havering	Applicant's response
		complexity to those projects, should incorporate these provisions on a precautionary basis to minimise a potential delay to the delivery of the Project in the unanticipated event that there is an error. It is not relevant that the projects which have included these provisions to date have been promoted by Acts of Parliament; rather it is affirms the principle that it would be disproportionate to require subsequent instrument (be it an amendment Order or an Act of Parliament) to deal with manifest errors (as distinct from 'changes' to an application). It is the Applicant's view this provision is capable of being included in the dDCO under section 120(3) of the Planning Act 2008. The existing processes under the Planning Act 2008 are not intended to prevent the ability to ensure inadvertent errors or mistakes in certified plans delay a nationally significant infrastructure project. The Applicant is happy to include a requirement to notify the local authority, and this is reflected in the dDCO submitted at Deadline 2.	land affected and any other persons it considers appropriate; (b) provide the parties consulted with not less than 28 days from the provision of the plan being consulted upon and prior to the submission of the application for any response to the plan; and (c) include with its application to the justices under sub-paragraph (4) copies of all responses made by the parties consulted in respect of the plan which is the subject of the application. Sub -paragraph (5) would be re- numbered (6) and so on.	
Article 65	Appeals to the Secretary of State	**LBH comment** There are several drafting difficulties with this article:		In relation to (3) the Applicant maintains its position that 10

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		(1) Article 65(2) (b) refers to copies of appeal documentation being referred to "the local authority". There is also reference elsewhere in the article to the local authority. The local authority, however, is not the party responsible for all the refusals which may be subject to the process. For example, an appeal arising from a refusal under article 12 (5) involves the street authority and an appeal under article 17 (2), the traffic authority. It is therefore not sufficient to use that term as a generic term (which may, for example, not include the street authority in question). (2) In article 65 (2)(c) and elsewhere in the article, the expression "the appeal parties" is used but is not defined. (3) Article 65((2)(d) refers to "business days" which is not defined. That term is defined in provisions elsewhere within the DCO (e.g. Sch 2 Para 19 (5)) but expressly only for the purposes of that provision. (4) In addition, Article 65 allows the undertaker 42 days in which to prepare and submit an appeal but	(1) LBH is content with the amendment made in response to its comment. (2) The NH response is noted and LBH has no further comment. (3) LBH is content with the amendment made in response to its comment. (4) LBH still maintains that 10 business days within which to provide a response is too short for the reasons given. (5) LBH is content with the amendment made in response to its comment. (6) LBH is content with the amendment made in response to its comment.	business days is sufficient 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 application (which would have been refused), and then provided with further time to consider the submissions from the Applicant. As previously noted, the Applicant has 42 days in which to make an appeal. These timescales are heavily precedented (see, for example, article 52 of the M25 Junction 28 Development Consent Order 2022).

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		provides the local authorities with only 10 business days within which to provide a response. This is insufficient time, and it is suggested that the period of 10 business days should be replaced with 20 business days in Article 65 (d) to ensure that not all relevant staff are absent for the entire period. (5) Article 65 (13) allows the appointed person to make a direction on costs and paragraph (14) requires the appointed person to "have regard to" the guidance on costs. The concern is paragraph (13) does not explicitly confine an award of costs to circumstances of unreasonable behaviour. It should be clear that costs are not awarded except in the case of unreasonable behaviour as provided for in the guidance. (6) The list in 65 (1) (a) should include a refusal of the LPA under para 9 (6) of Sch 2 regarding the LPA refusal to agree details in respect of the investigation and recording of archaeological remains.		

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		Applicant's response • We will amend this article to make clear that, for the purposes of this provision, "local authority" means a relevant planning authority, relevant local highway authority and street authority (where the latter is also a highway authority). This has been implemented in the dDCO submitted at Deadline 2. • This term should be given its plain and ordinary meaning. This has posed no issue in the various precedents which utilise the same drafting as far as the Applicant is aware and therefore no amendment is proposed. • The Applicant will insert a definition of business days in article 2. • It is not considered that 10 business days 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 application (which would have been refused), and then provided with further time to		

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		consider the submissions from the Applicant. For the avoidance of doubt, the Applicant has 42 days in which to make an appeal. These timescales are heavily precedented (see, for example, article 52 of the M25 Junction 28 Development Consent Order 2022). • The Applicant has made the suggested amendment. • The Applicant is happy to add this reference to Article 65. Please see related amendments to Requirement 9 below.		
ADDITIONAL ARTICLE	Implementation Group	**LBH comment** LBH feel that it would be appropriate for NH to establish a group equivalent to the Silvertown Tunnel Implementation Group which would include representatives of relevant public bodies and provide a structure for ongoing consultation and engagement. It would include engagement on the mitigation and monitoring strategy as suggested in the additional requirement in Schedule 2, requested below. A provisional drafting for the new Article is set out in **Appendix A**. It is based on Article 66 (page 50) of the Silvertown Tunnel DCO. It will need	The concerns of LBH are not related to traffic management or other aspects of the project to which the groups referred to in the NH response relate. These groups primarily relate to construction. The concern relates to the lack of a body overseeing the monitoring and mitigation of the implementation and operation of the development with particular reference to the ongoing Wider Network Impacts Management and Monitoring Strategy/Plan	The Applicant's response did not relate solely to traffic management. The Applicant's approach to Wider Network Impacts is set out in further detail in its post-hearing submissions for ISH4 submitted at Deadline 4 [**Document Reference 9.84**]. The reference to private sector developments is not considered relevant or appropriate

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		further consideration to ensure it captures all the appropriate topics and is very much a starting point. It hoped that NH will see the benefits and include an article such as this in its draft DCO in due course. The article refers to a monitoring and mitigation strategy which it is believed should be capable of being drafted based on the contents of the application documents submitted. **Applicant's response** The Applicant does not consider this suggestion to be appropriate for the Project. Control documents legally secured under the Requirements secure and require relevant forums, groups and working arrangements. Unlike the Silvertown Tunnel project, the interests of various parties differ depending on the subject matter of the relevant control. The Code of Construction Practice [REP3-104] secures a Community Liaison Group, the outline Traffic Management Plan for Construction [REP3-120] secures a Traffic Management Forum, the outline Landscape and Ecology Management Plan [REP3-106] secures an Advisory Group, the Framework Construction Travel Plan [APP-546] secures the Travel Plan Liaison Group, and further	(referred to in paragraph 14 Sch2 of the dDCO). It is not accepted that this DCO can be distinguished from Silvertown on the basis suggested by NH in their response. It is not unusual for DCO to have such bodies for monitoring and governing aspects of the operational development. See Requirement 4(6) and Sch 16 of The Northampton Gateway Rail Freight Interchange Order 2019 which required a Sustainable Transport Working Group to be established which has various roles in relation to monitoring traffic movements when the development is operational. The West Midlands Rail Freight Interchange Order 2020 also provides for a Transport Working Group for similar purposes, as does the East Midlands Rail Gateway Rail Freight interchange and Highway Order 2016.	where there are established frameworks for the delivery of highway investment across the country. The Applicant would further note that under its licence it is already legally required to "*Cooperate with other persons or organisations for the purposes of coordinating day-to-day operations and long-term planning*", and "*Take account of local needs, priorities and plans in planning for the operation, maintenance and long-term development of the network (including in the preparation of route strategies*". These route strategies already include appropriate engagement. The Applicant would note,

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		requirements require consultation and engagement with relevant local authorities. LBH is proposed to be a member of all these groups, and will be consulted further. The requirement for a further group is considered unnecessary, is likely to lead to duplication of work, further officer time and therefore not considered to be in the public interest of a good use of taxpayer funds. The Applicant further notes that there are mechanisms to ensure an 'overarching framework' is adequately provided for via the Joint Operations Framework and the requirement for the Traffic Management Manger to act as the interface between the Community Liaison Team and the Traffic Management Forum Group.	LBH would argue that the scale and potential impacts of the Lower Thames Crossing make it even more important that there is a body created to ensure appropriate monitoring of operational traffic, as was the case with Silvertown Tunnel. This is particularly the case given that NH are accepting that there will be adverse impacts resulting from operational traffic that will require mitigation but intend only to be involved in the monitoring of operational traffic to identify the impacts which need mitigation but will not be responsible for securing the delivery of that mitigation.	for example, that as part of the recent London Orbital Route Strategy "*more than 300 different stakeholder organisations provided important feedback on the network during the evidence collection period. There were also more than 370 individual members of the public who contributed information. In total, around 2,700 individual points were raised by external stakeholders*".
ii Schedule 2 - Requirements				
Para 1	Interpretation	**LBH comment** In respect of the definitions of "preliminary works" and the "preliminary works EMP" LBH are in the process of reviewing whether there are adequate safeguards in place for the entirety of the preliminary works,	LBH is still considering the definition proposed	Noted

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		as defined, to proceed in advance of approvals. **Applicant's response** Noted.		
Para 2	Time limits	**LBH comment** The only time limit imposed by this requirement is a requirement to "begin" the development within 5 years of the date that the Order comes into force. There is no definition of "begin" however it is understood from ISH2 that NH intend to insert one. This will presumably be based on s.155 of the PA which provides that development is taken to begin on the earliest date on which any material operation begins to be carried out. Material operation is defined in s.155 and, currently, includes any operation except for the marking out of a road. As identified in ISH2, the effect of having a separate commencement stage (which is defined) is that all that is required to be started within 5 years is the preliminary works. Accordingly, beginning to carry out part of the preliminary works within five years will be sufficient to satisfy Requirement 2. The preliminary works need not be completed, nor do the remainder of the	LBH notes that the NH response did not deal with the issue of the relevance and rigour of the environmental assessment which was the main point of the LBH response. A response on this point is requested.	In relation to environmental assessments and the commencement of development, the Applicant refers to [AS-086] where similar principles apply.

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		authorised works need to be commenced, within any time period. The relevance, and rigour, of the environmental assessment to which the scheme has been subject will reduce the longer the gap between the baseline conditions, against which impact has been assessed, and the carrying out of the works. It is suggested there should be more rigour in Requirement 2 with it identifying the phases of works and in the event of those phases not having been commenced by a certain date, the undertaker being required to re-visit the environmental assessment, revise if necessary and identify and implement updated mitigation. There is precedence for this approach in Requirement 2(3) of The York Potash Harbour Facilities Order 2016 which, in the event of the second phase of development not being commenced within a certain period, required the undertaker to reassess the baseline conditions and update the assessment and produce a further environmental report and agree any additional mitigation measures required.		

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		Applicant's response The rationale of this provision is to ensure that the DCO works are carried out, and not held in abeyance longer than a standard 5 year period. The Applicant's position is that given the definition of preliminary works, it is appropriate for the Time Limits requirement to be discharged following the carrying out of the preliminary works. This is no different to the "spades in the ground" rule referred to by the Examining Authority at ISH1 which applies to any DCO or a conventional planning permission. The controls suggested are unprecedented for a Strategic Road Network DCO. By contrast, the Applicant's approach is precedented (see the A428 Black Caxton to Gibbet Development Consent Order 2022). For completeness, the Applicant would note that a definition of "begin" was inserted into the dDCO at Deadline 1.		
Para 3	Detailed Design	**LBH comment** See comments below in section iv with regard to the need for protective provisions which are relevant to the process of agreeing the detailed design.	LBH is content with the amendment made to requirement 3. This does not obviate the need for protective provisions.	Noted.

Provision in DCO	Content	Previous comments of London Borough of Havering and response of the Applicant	Response of London Borough of Havering	Applicant's response
		The requirement to consult is limited to "the relevant local planning authority on matters related to its functions". That then excludes consultation on highway matters. The relevant local highway authority should also be consulted. **Applicant's response** An amendment at Deadline 1 was made which addresses this issue. In particular, the dDCO requires consultation with the local highway authority on matters related to its functions.		
Para 4	Construction – EMP	**LBH comment** With regard to (1) LBH are not content with the level of detail in the preliminary works EMP, in particular with regard to archaeological matters and compounds. In paragraphs (5) – (7) reference is made to EMP3 being developed and completed which includes key long term commitments (sub - para (6)). In contrast to EMP2 this document is not required to be consulted upon or be approved by any party. This document must be subject to scrutiny and should be subject to the same processes as EMP2.	The NH response is noted but is not accepted for the reasons previously given. LBH has no further comment except to refer to the inconsistency with CEP (Third Iteration) which is also a handover document, but which is required to be submitted and approved.	The Applicant's position is also as previously stated. The distinction between the CEP (Third Iteration) and EMP (Third Iteration) is that the former relates to carbon management, and the latter relates to the Applicant's day to day, and business as usual, functions as the

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		Applicant's response The Applicant's position on the preliminary works EMP is set out in Post-hearing submissions for ISH1 [REP1-183]. In particular, the preliminary works EMP has looked at preliminary activities, and identified relevant mitigation measures and controls which should apply to those provisions. It is not appropriate for the EMP3 to be subject to consultation. The Applicant is a strategic highways authority appointed by the Secretary of State, and operational matters fall within its day to day operational matters. Insofar as the road is a local highway, this will be handed back to the relevant highway authority. The position adopted is consistent with a long line of precedents (see Requirement 4(6) of the M42 Junction 6 Development Consent Order 2020, Requirement 4(4) of the A63 (Castle Street Improvement, Hull) Development Consent Order 2020, Requirement 4(5) of the A585 Windy Harbour to Skippool Highway Development Consent Order 2020, Requirement 4(16) of the A303 (Amesbury to Berwick Down) Development Consent Order 2023). The Project does not give		strategic highway authority.

Provision in DCO	Content	Previous comments of London Borough of Havering and response of the Applicant	Response of London Borough of Havering	Applicant's response
		rise to any material distinguishing features which justify departing from that approach.		
Para 5	Landscape and ecology – LEMP	**LBH comment** Whilst the Explanatory Memorandum states that this is a standard provision it bears some consideration. Why is only a reasonable standard for the landscaping required, rather than, say, good? If the point of the article is to secure compliance with the British Standard, then that is what it should say and the words "to a reasonable standard" should be deleted. If the intention is to impose a standard on the quality of landscaping, then it should be "good" rather than "reasonable". See also comments below, in respect of paragraph 10 with regard to the inclusion of the word "substantially" which equally apply here. **Applicant's response** The 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 applies to the method of carrying out the works, not to the quality of the	The NH response is noted but is not agreed with for the reasons previously given.	Noted, the Applicant's position is as previously stated.

Provision in DCO	Content	Previous comments of London Borough of Havering and response of the Applicant	Response of London Borough of Havering	Applicant's response
		landscaping itself. The wording itself is considered appropriate in ensuring that good practice is followed, and the quality of the landscaping required is secured under Requirement 5(1). Leaving aside this Project-specific justification, the Applicant notes this provision is heavily precedented (see, for example, A428 Black Cat to Caxton Gibbet Development Consent Order 2022, A47/A11 Thickthorn Junction Development Consent Order 2022, M25 Junction 28 Development Consent Order 2022, A57 Link Roads Development Consent Order 2022, M42 Junction 6 Development Consent Order 2020, A63 (Castle Street Improvement, Hull) Development Consent Order 2020, A585 Windy Harbour to Skippool Highway Development Consent Order 2020, A19/A184 Testo's Junction Alteration Development Consent Order 2018 amongst many others). On the phrase "substantially in accordance with", see response to Requirement 10 below.		
Para 6	Contamination	**LBH comment** Para 6(2) allows the undertaker alone to determine whether or not remediation of contaminated land not	The NH response circles around the very simple point being made. Irrespective of all the other references made to contamination in the other	The Applicant does not agree that the undertaker unilaterally decides whether remediation of

Provision in DCO	Content	Previous comments of London Borough of Havering and response of the Applicant	Response of London Borough of Havering	Applicant's response
		previously identified is required. Only if the undertaker decides unilaterally that remediation is necessary then is anyone else involved. Where such contamination is found the undertaker should compile a report stating its response in circumstances both where it considers remediation is not necessary and where it considers it is necessary. That report should be consulted upon and then be the subject of approval by the Secretary of State with paragraph 20 applying. **Applicant's response** It is not considered appropriate to amend paragraph 6(2). The Applicant would emphasise that paragraph 6(2) must be seen in the context of paragraph 6(1) which requires "*the undertaker must complete a risk assessment of the contamination in consultation with the relevant planning authority and the Environment Agency*". In addition, this provision should not be read in isolation. Requirement 4(2) sets out a requirement for EMP2 to include plans for the management of contaminated land (which would be subject to consultation with local authorities). In addition, the REAC (which is secured under Requirement 4) includes	documents referred to by NH, the fact is that, under this requirement as currently drafted, it is the undertaker who unilaterally decides whether remediation of previously unidentified contaminated land is necessary and, if the undertaker decides it is not, then nothing further is required to be done in respect of the remediation of that land no matter how contaminated. The reference to *"undertaker"* in the first line of Requirement 6(2) should be replaced by *"Environment Agency and/or the relevant local planning authority"*	previously unidentified contaminated land is necessary. This conclusion is incorrect and overlooks the controls which are provided for under the Order with appropriate safeguards (e.g. Requirement 6 which requires risk assessments, and engagement on these matters with the EA and local authorities) and when taken as a whole provide robust and proportionate measures in respect of remediation of contaminated land. Therefore, the Applicant maintains that no further amendment to Requirement 6 is necessary. The Applicant notes that its approach, justified for this Project, is well-precedented and

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		measures related to contaminated land. By way of example, GS001 sets out that "*If, during further intrusive ground investigations, drilling is required in areas underlain with contaminated soils, drilling and excavation techniques in line with the latest versions of BS 5930:2015 Code of practice for ground investigations (British Standards Institution, 2020) and BS 10175:2011 Investigation of potentially contaminated sites – Code of Practice (British Standards Institution, 2017) (e.g. use of environmental seals) would be adopted to reduce the risk of creating pollutant pathways. The Contractors would provide ground investigation method statements for acceptance of National Highways in consultation with the Environment Agency and relevant Local Authorities prior to commencement of the works*". Together, these controls are considered appropriate and proportionate and therefore no further amendment to Requirement 6 is considered necessary.		endorsed on other transport projects of a similar scale (see, for example, the A428 Black Cat to Caxton Gibbet Development Consent Order 2022, and the A303 (Amesbury to Berwick Down) Development Consent Order 2023).
Para 7	Protected Species	**LBH comment** LBH would wish to be consulted in relation to any scheme and would therefore wish consultation with		Noted.

Provision in DCO	Content	Previous comments of London Borough of Havering and response of the Applicant	Response of London Borough of Havering	Applicant's response
		relevant local planning authority in additional to NE. **Applicant's response** The dDCO has been amended with this suggestion	LBH is content with the amendment made in response to its comment.	
Para 8	Drainage	**LBH comment** The requirement to consult is again limited to "the relevant local planning authority on matters related to its functions". In view of the topic the relevant local highway authority and Lead Local Flood Authority should also be consulted. **Applicant's response** An amendment was made at Deadline 1 which includes the relevant highway authority. The Applicant has also added the LLFA in its updated dDCO submitted at Deadline 2.	LBH is content with the amendments made in response to its comment.	Noted
Para 9	Historic Environment	**LBH comment** LBH are not content that there is an appropriate archaeological management strategy secured in the application documentation. There is insufficient detail in relation to assets likely to be impacted and mitigation. Commitments in this respect need to be added to the various control documents.	LBH notes the NH response however it maintains its concerns regarding the adequacy of the archaeological management strategy and welcomes the further engagement with LBH advisors referred to in the NH response. LBH notes that in its response NH state that they	The Applicant does not agree that the archaeological management strategy is insufficient. This is a matter which is addressed in further detail in relation to LBH's comments in their Local Impact Report, where the

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		Para 9 (2) allows for an approved scheme to be amended or dispensed with by agreement with the Secretary of State without any consultation. The mechanism included in Paragraph 8(2) for consulting on amended provisions should apply. Paragraph 9 (5) refers to the service of a notice under paragraph (4) however paragraph (4) does not require the service of any notice. It is suggested that paragraph (4) be amended by relacing "reported" with "notified". In paragraph (5) the words "any notice served" should be replaced by "notification". It is also not appropriate for the pause provision in (5) to be simply set aside by the Secretary of State without consultation or process. The 14 day period within (5) is insufficient and should be changed to 28 day to ensure the relevant personnel are available. The provision in (6), whereby the requirement for local planning authority approval is given with one hand and taken away with the other, by the words "unless otherwise agreed by the Secretary of State", is unacceptable and those words should be deleted.	would make the requested changes to Requirement 9 (5) however, as set out in the LBH comments, this also requires the amendment to Requirement 9 (4) and neither amendments appear to have been made to the dDCO submitted at D2. LBH note that NH are still considering the requested amendment to Requirement 9(2) The period of 14 days is considered inadequate – all periods should be in excess of 14 days to allow for holidays of relevant personnel. LBH note and welcome the deletion of "unless otherwise agreed in writing by the Secretary of State" from (5) and (6) and the related amendment to Article 65(1)(a)	Applicant makes clear that the draft AMS-OWSI [**APP-367**] will be updated in consultation with London Borough of Havering's archaeological advisors to set out appropriate mitigation prior to consent. The Applicant has made the amendments to paragraphs (4) and (5) requested. The period of 14 days is appropriate, and well precedented, as set out in the Applicant's previous response ([**REP1-184**] and [**REP2-077**]).

Provision in DCO	Content	Previous comments of London Borough of Havering and response of the Applicant	Response of London Borough of Havering	Applicant's response
		The approval from the local planning authority, if not forthcoming, should be added to the provisions to which the appeal provisions in article 65 apply and therefore added to article 65 (1)(a). **Applicant's response** The Applicant does not agree that the archaeological management strategy is insufficient. This is a matter which is addressed in further detail in relation to LBH's comments in their Local Impact Report, where the Applicant makes clear that the draft AMS-OWSI [APP-367] will be updated in consultation with London Borough of Havering's archaeological advisors to set out appropriate mitigation prior to consent. The Applicant will make the requested amendment to paragraph 9(5). It is considered appropriate for the Secretary of State, who has competence in such matters, to agree to dispense with the prohibition. Similarly, the 14 day is considered appropriate given the discrete nature of the considerations involved and the need for the Project to be delivered expeditiously. The Applicant will remove "*unless otherwise agreed with the Secretary of*		

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		State" from paragraph 9(6), and update the appeals provision to make reference to a refusal under paragraph 9(6). The Applicant is considering whether the requested change to Requirement 9(2) should be made.		
Para 10	Traffic Management	**LBH comment** LBH do not believe that the outline traffic management plan for construction is sufficient to appropriately govern the preliminary works or provides a sufficient framework for the subsequent traffic management plans. As mentioned previously, despite the use of the term, there is no definition of relevant highway authority. LBH see no reason why, in sub para (2), the requirement to comply with the outline traffic management plan for construction should be qualified by the word "substantially". The inclusion of that word injects uncertainty and subjectivity into the application of what are supposed to be control documents. LBH would wish this DCO to follow the approach in The M25 Junction 28 Development Order 2022 SI No.573. In that DCO the use of the word substantially in a similar context was	The NH response but is not agreed with for the reasons previously given. As regards particularisation of LBH's position with regard to the sufficiency of the outline traffic management plan please see Section 12 page 127 onwards of the LBH Local Impact Report (REP1-247). The quote in the NH response from the A47 Wansford to Sutton Decision Letter contains the entirety of the relevant text, contained in a bullet point list of amendments to the DCO. It is at variance with the Secretary of State's view set out in the M25 DCO where the issue was specifically discussed and adjudicated upon – see the references in	The Applicant does not consider that the fact the Secretary of State's clear statement is contained in a bullet point removes any weight which should be attached to it. The Applicant reiterates that the A47 is more recent, and therefore a more accurate articulation of the Secretary of State's approach. The Applicant further notes that all transport DCOs granted since the M25 Junction 28 DCO affirm the use of the phrase "*substantially in accordance with…*" (see, in particular,

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		specifically considered and adjudicated upon by the Examining Authority and Secretary of State and found not to be appropriate and deleted. (See para 9.3.22 Examining Authority's report and paragraph 135 of the Secretary of State Decision Letter). **Applicant's response** The Applicant notes there is no particularisation of LBH's position and considers the outline Traffic Management Plan for Construction appropriately controls the construction-related traffic matters in regard to the Project. A definition of "relevant highway authority" will be inserted (as explained above). The Applicant considers the word "substantially in accordance with" to be sufficiently clear, and its usage in other DCOs (including on projects of significant scale and size, see for example Schedule 2 to the A428 Black Cat to Caxton Gibbet Development Consent Order 2022) supports this conclusion. In terms of specific justification for the Project, the use of the phrase is necessary and appropriate because the relevant outline management plans for the	the LBH initial comments. It is suggested that the comments in the M25 DL where it was considered more particularly are more relevant.	A47/A11 Thickthorn Junction Development Consent Order 2022, A417 Missing Link Development Consent Order 2022, A428 Black Cat to Caxton Gibbet Development Consent Order 2022, A47 Blofield to North Burlingham Development Consent Order 2022, A57 Link Roads Development Consent Order 2022, Manston Airport Development Consent Order 2022, A303 (Amesbury to Berwick Down) Development Consent Order 2023 and A38 Derby Junctions Development Consent Order 2023). The Applicant's justification for this Project is as stated in its previous response (see column 3) and it would note that it has been explicitly

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		Project will be in outline form and will require development following the DCO (if granted). We wish to draw the Examining Authority's specific attention to the A47 Wansford to Sutton decision letter. That project was promoted by the Applicant. The Secretary of State reinstated the phrase as "the Secretary of State considers its omission is an inappropriate fettering of his discretion". There are no circumstances which distinguish that project from the Project in this context. We would respectfully submit therefore that the Secretary of State's discretion is not fettered. Whilst one DCO has removed this drafting, it is considered that this represents the Secretary of State's current (and more well-established) view.		endorsed by the Secretary of State, not just in the precedents cited above, but in the decision letter for the A1 Birtley to Coal House DCO ("*The Applicant states that "substantially in accordance with" achieves the desired aims of both parties by providing an appropriate amount of certainty and flexibility given the potential for slight variations at detailed design, for example in relation to drainage at Bowes Railway and access to the SM (ER 9.6.27)... This approval of the final details will ensure that archaeological interests potentially affected by the Development, including the Bowes Railway SM, would be appropriately protected. The ExA*

Provision in DCO	Content	Previous comments of London Borough of Havering and response of the Applicant	Response of London Borough of Havering	Applicant's response
				are therefore satisfied with the inclusion in Requirement 9 of "substantially in accordance with", as set out the Revised DCO (ER 9.6.28). ***The Secretary of State agrees***"). The Council's reliance on a single precedent is in the Applicant's view telling when the Secretary of State has provided a specific rationale for that wording, and has then consistently followed that practice.
Para 11	Construction Travel Plan	**LBH comment** LBH do not believe that the framework construction travel plan provides a sufficient framework for the approval of subsequent travel plans. The reference to the undefined term and objection to the insertion of the word "substantially" referred to in respect of paragraph 10 above applies equally to this requirement.	As above - the particularisation of LBH's position with regard to the sufficiency of the framework construction travel plan is also contained in Section 12 page 127 onwards of the LBH Local Impact Report (REP1-247).	The Applicant's position remains the same for the reasons previously stated.

Provision in DCO	Content	Previous comments of London Borough of Havering and response of the Applicant	Response of London Borough of Havering	Applicant's response
		Applicant's response The Applicant notes there is no particularisation of LBH's position, and considers the Framework Construction Travel Plan appropriately controls the workforce travel arrangements in regard to the Project. The Applicant's position on the phrase "substantially in accordance with" is provided above, and the Applicant does not consider it appropriate to fetter the Secretary of State's discretion in relation to this matter.		
Para 12	Fencing	**LBH comment** The requirement to consult is limited to "the relevant local planning authority on matters related to its functions". That then excludes consultation on fencing which may affect and be relevant to the local highway therefore the relevant local highway authority should be consulted. **Applicant's response** An amendment made to the dDCO at Deadline 1 now addresses this point.	LBH is content with the amendment made.	Noted
Para 14	Traffic Monitoring	**LBH comment** LBH view the wider network impacts management and monitoring plan as wholly unsatisfactory in addressing impacts arising from the development	For reasons set out in LBH's written representations (REP1-253), specifically Appendix 1, the approach of NH, of monitoring and	The Applicant strongly rejects the suggestion that the Project is not compliant with the NPSNN. The relevant

Provision in DCO	Content	Previous comments of London Borough of Havering and response of the Applicant	Response of London Borough of Havering	Applicant's response
		given that it secures none of the mitigation that it may identify is needed. Notwithstanding that general concern, there are several comments on the drafting of the requirement: (1) The typographical error in line four needs to be corrected and it made clear which highway authority it is referring to – perhaps by use of a defined term of "relevant highway authority", as mentioned above. (2) The use of the word "substantially" is objected to for reasons previously mentioned in relation to paragraph 10. (3) Sub-paragraph (1) only requires submission of an operational traffic impact monitoring scheme prior to the tunnel area being open for traffic. There is no requirement for it to be approved within a certain period or even implemented within a certain period. The requirement should be amended to provide for the scheme to be both approved and operational before the tunnel is open for traffic. (4) The ability, in sub paragraph (3), for the Secretary of State to simply	identifying necessary mitigation but not then securing its delivery, does not accord with the NPSNN. In respect of the drafting points: (1) LBH is content with the amendments made to 14(1) and (2). There is however an inconsistency in that there is reference to a *"wider network impacts management and monitoring strategy"* in para 14 whereas the related definition and reference in Schedule 16 refer to a *"wider network impacts management and monitoring plan"* (2) LBH maintain its objection to the use of the word substantially for the reasons previously given. (3) The NH response does not deal with the point. If a scheme needs to be submitted before the tunnel opens (as	parts of the NPS are considered in this context in detail in Transport Assessment Appendix F: Wider Network Impacts Management and Monitoring Policy Compliance [**APP-535**]. The Planning Statement [**APP-495**] contains an assessment of the Project against the draft National Policy Statement for National Networks (NPSNN) (Chapter 6 of the Planning Statement [**APP-495**], supported by Appendix A [**APP-496**]), and in the light of emerging and adopted local planning policy (Chapter 7 [**APP-495**], supported by Appendix C [**APP-498**]). On the detailed drafting points, the Applicant welcomes (1); on (2) the

Provision in DCO	Content	Previous comments of London Borough of Havering and response of the Applicant	Response of London Borough of Havering	Applicant's response
		dispense with the implementation of the scheme at any time and for any reason is completely unacceptable. If such a tailpiece is to remain it should be accompanied by the additional wording in paragraph 8(2). **Applicant's response** The Applicant acknowledges that there will be increased traffic flows in some locations following the opening of the A122 Lower Thames Crossing but considers this needs to be considered against the overall benefits resulting from the better connections and improved journey times resulting from the Project, as set out in Transport Assessment Appendix F: Wider Network Impacts Management and Monitoring Policy Compliance [APP-535]. In response to the detailed drafting points: • The Applicant will amend the provision to include reference to "the" highway authority. Please note that "relevant highway authority" has not be used as this provision cross-refers to the WNIMMP which sets out the relevant consultation bodies.	required by sub-paragraph (1)) then it is self evidently needed prior to opening. There therefore should be a requirement that it be approved and implemented prior to the tunnel being opened. – If the WNIMMP strategy secures all that is required from the operational traffic impact monitoring scheme then why is the later document needed at all? – Requirement 14(1) requires the operational traffic impact monitoring scheme to be approved and 14(2) sets out what that scheme should cover and Requirement 14(3) provides that the scheme be implemented. LBH is simply requesting	Applicant considers the preamble ("Before the tunnel area is open for traffic") applies to both submission and approval and so it will be implemented before the opening of the tunnels; (3) the WNIMMP secures the ability to add further locations at the time of the submission and approval of the plan (and therefore provides safeguards in relation to monitoring); (4) is welcomed.

Provision in DCO	Content	Previous comments of London Borough of Havering and response of the Applicant	Response of London Borough of Havering	Applicant's response
		• The Applicant's position on the use of the phrase "substantially in accordance with" is set out above. • No amendment is considered necessary as the Wider Network Impacts Management and Monitoring strategy [**APP-545**] sets out that "*In order to establish a baseline, data collection would be undertaken at least one year prior to the opening of the Project (mainline). This period would align with the last year of construction.*" It further provides that "*the pre-opening traffic monitoring would be realigned to be collected across the last full year of construction*" where the opening year changes. This document is, in turn, secured under Requirement 14(1). • The Applicant proposes to amend the provision so that before a dispensation is provided, consultation with the relevant authorities is carried out. It is not appropriate to replicate requirement 8(2) as the monitoring itself does not give rise to environmental effects.	that a timing requirement be added to ensure that the scheme is approved and is in place before the tunnel is open and before movement of the traffic it is supposed to be monitoring. (4) LBH is content with the amendment made in response to its comment.	
Additional Requirement	Monitoring and Mitigation Strategy	**LBH comment** LBH has set out in its written representation its concerns regarding	For reasons set out in LBH's written representations (REP1-253), specifically	The Applicant strongly rejects the suggestion that the Project is not

Provision in DCO	Content	Previous comments of London Borough of Havering and response of the Applicant	Response of London Borough of Havering	Applicant's response
		the lack of mitigation in respect of impacts on the wider road network. LBH would wish consideration to be given to the inclusion of a requirement imposing an effective monitoring and mitigation regime and would refer to requirement 7 of The Silvertown Tunnel Order 2018 SI No. 574 as an appropriate approach. That requirement is set out on page 65 of the approved DCO and in **Appendix B** to this document. That requirement makes reference to a monitoring and mitigation strategy which could be prepared on the basis of the information available with the application. The requirement then sets out the process for determining whether mitigation needs to be delivered after appropriate monitoring and how it is then to be delivered – both in respect of pre-opening and post opening. A draft requirement, based on requirement 7 of The Silvertown Tunnel DCO, should be included in the DCO.	Appendix 1, the approach of NH, of not providing necessary mitigation on the basis of an overall benefit of the project, does not accord with the NPSNN. LBH do not agree that the circumstances of Silvertown Tunnel are materially different – both schemes are NSIP and governed by DCO and NPS. LBH therefore reiterate its request that a requirement similar to requirement 7 of the Silvertown DCO be inserted in the dDCO. See also response to Additional Article on page 25 above where it is explained that the reliance on monitoring and then the transfer of the responsibility to mitigate onto local highway authorities makes it even more imperative that there be a requirement such as this and a group involving those authorities to oversee it.	compliant with the NPSNN. The relevant parts of the NPS are considered in this context in detail in Transport Assessment Appendix F: Wider Network Impacts Management and Monitoring Policy Compliance [**APP-535**]. The Planning Statement [**APP-495**] contains an assessment of the Project against the draft National Policy Statement for National Networks (NPSNN) (Chapter 6 of the Planning Statement [**APP-495**], supported by Appendix A [**APP-496**]), and in the light of emerging and adopted local planning policy (Chapter 7 [**APP-495**], supported by Appendix C [**APP-498**]). The Applicant does not consider that the

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		Applicant's response The Applicant does not consider this is an appropriate provision to include in the Project dDCO. The circumstances of the Silvertown Tunnel, a scheme delivered by Transport for London, which is not subject to the same processes for the development of road schemes on the Strategic Road Network. The Applicant acknowledges that there will be increased traffic flows in some locations following the opening of the A122 Lower Thames Crossing, but considers this needs to be considered against the overall benefits resulting from the better connections and improved journey times resulting from the Project, as set out in 7.9 Transport Assessment Appendix F Wider Network Impacts Management and Monitoring Policy Compliance [APP-535]		Silvertown Tunnel is comparable, or the approach adopted necessary for the reasons set out above.
Para 18	Applications to the Secretary of State	**LBH comment** Under 18 (3) a deemed refusal applies where the Secretary of State does not determine an application within 8 weeks and the application was accompanied by a report from a consultee to the effect that, if approved, the application would give	LBH welcomes the amendment to paragraph 20 albeit LBH prefers the drafting suggested by LBH since it is more explicit in stating precisely what the effect of 18(3) is	The Applicant welcomes LBH's confirmation regarding amendments to paragraph 20 and considers that the wording proposed is sufficiently clear as to the effect of 18(3).

Provision in DCO	Content	Previous comments of London Borough of Havering and response of the Applicant	Response of London Borough of Havering	Applicant's response
		rise to a materially new or different environmental effect. However, otherwise, under 18(2), if there is no decision within 8 weeks, the Secretary of State is deemed to have granted/approved that application. That would include in circumstances where consultees have objected but without explicitly stating that the application would result in new or materially different environmental effects. Accordingly, there should be another pre-condition to deemed approval with the following added to (3): (d) the consultees required to be consulted by the undertaker under the requirement were informed in writing when consulted that if they consider it likely that the subject matter of the application would give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement then, in order to prevent the possibility of a deemed consent under this paragraph, they must say so in their consultation response.		

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		Applicant's response The Applicant will make an amendment which has an equivalent effect to the amendment proposed by LBH. In particular, paragraph 20(1) of Schedule 2 to the dDCO will be amended so that it states that the undertaker must "*(a) notify the authority or statutory body of the effect of paragraph 18(3) of this Schedule*"		
Para 20	Details of Consultation	**LBH comment** This provision provides for a minimum consultation period of 28 days. In 20 (1)(a) it should be made clear that the 28 day consultation should expire prior to the submission of any application. That is implied by 20 (1) (b) but not required. **Applicant's response** No amendment is considered necessary. The Requirements make clear that the applications must follow consultation, and the requirement to include consultation responses makes any other result non-compliant.	LBH does not agree and would wish the words *"and not less than 28 days prior to any proposed application being submitted"* to be inserted after *"consulted upon"* in paragraph 20(1)(b).	The Applicant's position is as previously stated for the reasons given.
iii Schedule 12				
Para 1.	Definition of "local resident"	**LBH comment** LBH is concerned as to the area to which the local residents discount scheme applies, as is expanded upon	The response from NH stresses alignment with the Dartford Crossing on the	The Applicant considers its previous response addresses the issues raised. The

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		in the LBH LIR. The rationale for the identification of the local residents to benefit from a discount scheme is set out in paragraph 2.2.5 of the Road User Charging Statement (APP-517). The justification is simply based on replicating the Dartford situation whereby it applies only to the residents of boroughs within which the tunnel portals are situated. Whilst LBH in general terms advocate equivalence with the Dartford Crossing charging provisions, it is not logical in the case of the Lower Thames Crossing to confine the discount scheme to residents of the boroughs within which the tunnel portals sit. The works for the Dartford Crossing were confined to the boroughs within which the tunnel portals sit. That is not the case here. At the moment the definition of "local resident" (who are the persons eligible for the local residents' discount scheme) is "a person who permanently resides in the borough of Gravesham or Thurrock". Eligibility is therefore irrespective of proximity to the tunnels or the impacts of the scheme. There are residents of Thurrock who live further away from the tunnel portals	basis that the discount is given to the boroughs within which the portals are located. The response fails to deal with the material difference identified by LBH, being that the works for the Dartford Crossing were confined to the boroughs within which the portals sit, which is not the case here. In addition, NH fail to respond to the point that there are residents of LBH who will not get the discount who are more proximate to the portals than some residents of Thurrock who will have the benefit of the discount.	Applicant would reiterate that the discounts offered in relation to the Project reflect government policy, and the government has confirmed this (see Annex B of [**REP1-184**] in which the Department for Transport endorses, in its capacity as the charging authority, that "*this would offer the same type of discount arrangements as are offered on the Dartford Crossing LRDS scheme. It would be aligned with the Dartford LRDS by being offered to residents of the boroughs in which the tunnel portals would be situated (Gravesham and Thurrock for LTC, Dartford and Thurrock for the Dartford*

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		than residents of the London Borough of Havering. The definition of "local residents" should therefore be changed to add the London Borough of Havering and other host authorities with similar extent of scheme within their area. **Applicant's response** The Applicant welcomes that LBH states it is in "*general terms* [an] *advocate equivalence with the Dartford Crossing charging provisions*". The Applicant is confident that in replicating the regime at the Dartford Crossing reflects Government policy as set out in its Post-event submissions, including written submission of oral comments, for ISH1 [**REP1-183**]. That submission contained a letter from the Department for Transport confirming that the Applicant's approach to discounts reflected government policy. It is not considered appropriate to extend the discount to residents of LBH as the purpose of alignment is to ensure that road users utilise the crossing which is most suitable for their journey. This matter is addressed in further detail in response to LBH's Local Impact Report.		*Crossing)*". The Applicant notes the unsubstantiated position that charging discounts were not provided at Dartford *because* this is not where construction occurred for the Dartford Crossing.

Provision in DCO	Content	Previous comments of London Borough of Havering and response of the Applicant	Response of London Borough of Havering	Applicant's response
iv Schedule 14 – Additional Protective Provisions				
		LBH comment There are extensive interfaces between the authorised works and the local highway network, the latter being the responsibility of LBH as local highway authority. Currently the protection of those assets is wholly inadequate in the DCO. As with other assets owned by bodies with statutory duties LBH would wish its highway assets to be protected by the inclusion of protective provisions which ensure that the local highway network is appropriately considered and protected. There is precedence for such protective provisions, such as those included in The A303 Sparkford to Ilchester Dualling Development Consent Order 2021. That is a DCO applied for by NH which included protective provisions in favour of the local highway authority (Somerset County Council) both in respect of vehicular and non-vehicular highways. A side agreement has been the subject of discussion with NH which contains some of the protective provisions required but not all of them.	Draft protective provisions were submitted by LBH at Deadline 2 (REP2-087) having previously been sent to NH and other local highway authorities. LBH has an objection in principle to matters being dealt with solely in a side agreement on the basis of lack of transparency. LBH also sees no reason why the matters to be included in the side agreement should not be included in protective provisions. Indeed, the draft side agreement provided to LBH by NH appears to have used the A303 Sparkford to Ilchester DCO protective provisions as a precedent. The A303 provisions are evidence that there can be no objection in principle to the inclusion of protective provisions for the benefit of local highway authorities and, given that the side agreement proposed by NH deals with	Whilst the Applicant's position remains that the proposed side agreement provides sufficient and appropriate protection for the local highway network, the Applicant recognises that, given the position of LBH, there is some uncertainty as to whether a side agreement will be completed before the examination ends. To deal with this uncertainty, the Applicant has prepared a set of protective provisions in favour of local highway authorities for inclusion in the dDCO submitted at Deadline 4 [**Document Reference 3.1 (6)**]. The proposed protective provisions in respect of the Project reflect a

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		In LBH's written summary of oral comments made at ISH 1 and 2, submitted at D1, LBH has reported that discussions with NH on protected provisions are ongoing, with further discussions taking place in late July 2023. Subject to these discussions, it is LBH's intention to submit draft protected provisions to the Examining Authority at D2 on the 3rd August 2023. **Applicant's response** The Applicant does not consider it necessary to include protective provisions for the benefit of LBH. It is not a standard practice to have protective provisions for the benefit of relevant highways authorities (LHAs) in DCOs. Such protective provisions have rarely been included in either recent National Highways DCOs or non-National Highways DCOs; the A303 Sparkford to Ilchester Dualling Development Consent Order 2021 being an exception rather than the rule. The proposed DCO already provides protection for LHAs, including the LBH, by incorporating approval powers and maintenance functions directly within the works powers – for example, see Articles 9 and 10 of the dDCO. These	same issues as the A303 protective provisions there surely cannot be an objection to the substance of them. The distinction regarding statutory undertakers in the NH response is not accepted – there are statutory protections directly built into the Order for statutory undertakers – (see for example Article 18, 19 and 37). In addition, NH itself benefits from protective provisions in orders promoted by others notwithstanding the inclusion in those DCO of Articles such as 9 and 10 referred to in the NH response (See The East Midlands Gateway Rail Freight Interchange and Highway Order 2016, The Northampton Gateway Rail Freight Interchange Order 2019 and The West Midlands Rail Freight Interchange Order 2020) In addition, it is the case that side agreements, acknowledged to be needed by NH, are not agreed and	number of provisions in the highways side agreement being negotiated by the parties and also reflect, as appropriate, provisions in the LBH's version of the proposed protective provisions. If the proposed side agreement is completed then the Applicant's position is that protective provisions for the protection of LBH would not be necessary. If that agreement is not completed then the Secretary of State may decide to include them in the DCO as made. The Applicant will continue to engage with LBH regarding the proposed side agreement in an attempt to resolve any outstanding concerns.

Provision in DCO	Content	Previous comments of London Borough of Havering and response of the Applicant	Response of London Borough of Havering	Applicant's response
		provisions make a discrete set of protective measures unnecessary. Statutory undertakers do not have those protections directly built into the order powers, so they do need separate protection. The dDCO enables the Applicant and the LHAs to enter into agreements fleshing out the protections within the Order. Therefore, a side agreement is a more appropriate and suitable instrument and the best place to address the specifics and deal with different LHAs' circumstances. The Applicant considers that the proposed side agreement provides sufficient and appropriate protection for the local highway network. The Applicant will continue to engage with LBH regarding the proposed side agreement in an attempt to resolve any outstanding concerns	there are significant outstanding areas of disagreement. It will not be possible for those areas to be adjudicated upon by the Examining Authority if they are contained within a side agreement however it will be possible if those matters are contained in protective provisions which are subject to scrutiny by the Examining Authority. LBH can confirm that the draft protective provisions it submitted (REP2-087) had been previously sent to all five highway authorities. Discussions have taken place with the other Highway Authorities and have agreed the need for protective provisions	
End				

5 Kent County Council

5.1 Signposting responses to comments on the dDCO

5.1.1 Kent County Council in their Deadline 3 submission note that it "*has reviewed the above documents in relation to the draft DCO and it should be noted that we do not agree with the position taken by the Applicant. The reasons for this are outlined within our original Written Representation*". The Applicant's responses ([**AS-089**], [**REP1-184**] and [**REP2-077**]) are considered robust and complete and no further comment is provided.

5.1.2 Kent County Council also raise the need for Protective Provisions for Local Highway Authorities. The Applicant has included these in its Deadline 4 version of the dDCO [**Document Reference 3.1 (6)**].

6 Port of London Authority

6.1 Definition of "authorised development"

6.1.1 The Applicant's view remains that the heavily precedented definition of "authorised development" is appropriately used in connection with the Project. As set out in [REP2-077], the Applicant has used this definition of "authorised development" because the development authorised by the Order entails development outside the scope of Schedule 1 (e.g., the power to carry out protective works under article 20). The Applicant's view is therefore that the starting position is that precedents are not the definitive starting point (even though they support the Applicant's approach) because it is simply reflective of the fact that the development authorised entails development outside the ambit of Schedule 1. The position does not turn on the presence of a harbour authority or otherwise.

6.1.2 Nonetheless, the Applicant highlighted that such provisions are included in DCOs which entail significant harbour works and gave the example of the Great Yarmouth Third River Development Consent Order 2020. The PLA in their Deadline 3 submission states that "*Interference with the River Yare is not comparable in terms of the impacts*" of the Project. The Applicant wishes to highlight that on that scheme full powers were taken to extinguish public rights of navigation over the River Yare (see article 44 of that Order). There are many other precedents which involve significant harbour works where the same definition of authorised development is used (see, for example, the Able Marine Energy Park Order 2014 and Hinkley Point C Connection Order 2016) and indeed, harbour DCOs themselves include the identical definition (see the Port of Tilbury (Expansion) Order 2019).

6.1.3 This issue is addressed in the Statement of Common Ground (SoCG) [APP-100] at item 3.1.21 (Definition of authorised development in DCO) and is listed as a "Matter Not Agreed". The Applicant is therefore content that both the Examining Authority and the Secretary of State have sufficient information to make a determination on whether well-established precedent which reflects the powers sought under the terms of this specific DCO should be utilised, but is happy to provide any further information which may be helpful to the Examining Authority.

6.2 Article 3(3) & (4)

6.2.1 The Applicant has made the amendment (in the dDCO submitted at Deadline 4 [**Document Reference 3.1 (6)**]) suggested by the PLA in connection with article 3(3) and considers this matter resolved.

6.3 Article 8

6.3.1 The PLA states that they "*cannot see why it is necessary for the completion of a road scheme to transfer powers to such a wide range of bodies*" and that "*in a number of cases.* [the] *current business* [of the statutory undertakers listed in article 8] *is an indication, rather than a guarantee, of what their future business will entails*." It is acknowledged that the list of undertakers is relatively longer than many other DCOs, but this reflects the fact that the scale of the Project

means a number of assets and utility undertakers are likely to require diversions or works. If the business of a statutory undertaker changes, it will not alter the fact that they are only permitted to be transferred powers related to the authorised development relating to their undertaking.

6.3.2 The Applicant considers that this provision, insofar as it relates to the PLA, cannot be seen in isolation from the robust protective provisions included for the benefit of the PLA. In particular, the Applicant notes that so far as a work is a "specified work", or a "specified function" (which is defined broadly) under the terms of the PLA's protective provisions, the PLA would have appropriate safeguards. This protection therefore means that if a power was transferred, it would still be subject to the PLA's protective provisions.

6.4 Article 18

6.4.1 In their Deadline 3 submission, the PLA welcomes the limitation of article 18 but states that "*interference can still occur* [under article 18] *anywhere within the river and this power should be limited to within the Order limits*". The Applicant does not consider that any further limitation is required as it is already limited to being required "*in connection with the carrying out and maintenance of the authorised development*". On its face therefore, it could not be exercised "*anywhere within the river*" as the scope of the power will necessarily be spatially limited by the requirement that it be in connection with the authorised development.

6.4.2 The Applicant further notes that the powers under this provision which fall within the definition of "specified function" under the PLA's protective provisions, and the PLA therefore has an approval function in connection with the exercise of this power. The Applicant therefore considers that the provision is appropriately drafted, and subject to proportionate controls.

6.5 Article 28

6.5.1 The Applicant provided updated coordinates for the temporary outfall at Deadline 2, and these are reflected in the dDCO (since Deadline 2).

6.6 Article 35

6.6.1 The Applicant considers that its temporary possession powers are appropriate and justified. The PLA states that the Applicant's assurance that it would not increase its liability to pay compensation in this manner in light of its licence requirements to ensure proper use of public funds, and would not as a reasonable public authority seek to take possession of the river bed longer than necessary, is not sufficient. The Applicant does not agree and notes that no reasons have been provided for not relying on the statutory functions and status of the Applicant.

6.6.2 In any event, the Applicant would further note the Applicant inserted a provision in the PLA's protective provision at Deadline 1 which explicitly sets out that "*The undertaker's powers of temporary possession and compulsory acquisition of rights and imposition of restrictive covenants under this Order above the river bed of the river Thames in connection with the temporary outfall, permanent outfall, the new water inlet with self-regulating valve and ground investigation*

works is limited to what is reasonably necessary for the undertaker safely to construct the authorised development."

6.6.3 In their Deadline 3 response, the PLA suggest "*the Applicant's exercise of those* [temporary possession] *powers will cease no later than a fixed period of time, such as within 2 years from the Applicant last having carried out any activity in, over or under the land to which those powers relate*". For the reasons set out above, the Applicant does not agree. In addition, such a restriction cannot be guaranteed as a detailed construction programme has not been established at the current time.

6.6.4 For completeness, the PLA also raises the hypothetical scenario "*where land is temporarily possessed for an extended period of time where authorised works remain incomplete*". Leaving aside the protections noted in the paragraphs above, the Applicant would note that the protective provisions also cater for this scenario because they explicitly require that the "*undertaker must carry out all operations for the construction of any specified work or the specified function without unnecessary delay and to the reasonable satisfaction of the PLA so that traffic in, or the flow or regime of, the river Thames, and the exercise of the PLA's functions, do not suffer more interference than is reasonably practicable*".

6.6.5 The Applicant would further note that specified works are subject to an approval under paragraph 98 of the PLA's protective provisions. Those provisions explicitly allow the PLA to include conditions on "*the programming of temporary works or the exercise of the specified function*" as well as specifying "*the expiry of the approval if the undertaker does not commence construction or carrying out of the approved specified work or exercise of the specified function within a prescribed period.*"

6.6.6 In light of these protections, no amendment is therefore considered necessary or appropriate.

6.7 Article 37

6.7.1 In their Deadline 3 submission, the PLA raise a concern that "*Art. 37(1) is currently not subject to Art. 33 - and specifically Art. 33(8) - which limits the Applicant's ability to acquire easements or other new rights or impose restrictive covenants on, over or under the river bed of the river for the protection of the tunnels*". The Applicant's submitted dDCO at Deadline 4 [**Document Reference 3.1 (6)**] includes the same limitation in article 37 which is included in article 33(8). For completeness, Article 37 cannot be used in relation to land subject to temporary possession only (as per article 35(10)) but the Applicant has provided a confirmatory provision to this effect at Deadline 4.

6.7.2 Insofar as the concern relates to the acquisition of rights above the river bed, the Applicant would refer to the PLA's protective provisions which set out that the "*undertaker's powers of temporary possession and compulsory acquisition of rights and imposition of restrictive covenants under this Order above the river bed of the river Thames in connection with the temporary outfall, permanent outfall, the new water inlet with self-regulating valve and ground investigation works is limited to what is reasonably necessary for the undertaker safely to construct the authorised development.*"

6.7.3 The Applicant would welcome confirmation that this matter is resolved.

6.8 Article 48

6.8.1 In their Deadline 3 submission, the PLA note that the 'commencement' of Work No. 5A and CA5 would have been a more appropriate trigger for the disapplication of the explosive licence but that as the term is not used in article 2, they have suggested the trigger should be the 'permanent construction' works associated with Work Nos. 5A and CA5 starting. The Applicant does not consider the latter suggestion would be appropriate as CA5 is a temporary construction compound. Nonetheless, the Applicant has adopted the PLA's preferred approach by including a bespoke definition of commencement (which cross-refers to the definition in Schedule 2) and changing the trigger to 'commenced'.

6.8.2 The Applicant would welcome confirmation that this matter is resolved.

6.9 River Safety Lighting Management Plan

6.9.1 In their Deadline 3 submission, the PLA states that "*it is conceivable that the contractor could consider that lighting will not adversely affect the river and not be obliged to produce a* [river safety lighting management plan (RSLMP)]".

6.9.2 In the first instance, it should be noted that the Applicant's Contractors must act reasonably in considering whether an RSLMP is required, and contends that its Contractors will be able to make such a determination. The Applicant would further reiterate that prior to EMP2 being approved, the PLA will be consulted and will be able to raise representations on the scope of the management of lighting. In addition, the Code of Construction Practice requires "*RSLMP must be the subject of engagement with Port of London Authority, and Thurrock Council. The Contractor must have due regard to representations made by the Port of London Authority and Thurrock Council*".

6.9.3 If the pre-EMP2 engagement, and the requirements relating to the RSLMP mentioned above are not considered sufficient, the Applicant further notes paragraph 112 of the PLA's protective provisions also require that "*the undertaker must comply with any reasonable directions issued from time to time by the Harbour Master with regard to the lighting of— (a) a specified work; or (b) the carrying out of a specified function or the use of apparatus for the purposes of such a function, or the screening of such lighting, so as to ensure that it is not a hazard to navigation on the river Thames*". Appropriate protections are therefore considered to be in place and no further amendments are considered necessary.

6.10 Protective Provisions

6.10.1 The Applicant is actively engaging with the PLA on their Protective Provisions and continues to seek to resolve the limited number of outstanding issues.

6.10.2 The Applicant can confirm that paragraph 97 has been amended, and the Applicant has also sought to address concerns in relation to paragraph 99 through the insertion of a new provisions in paragraph 99 and paragraph 100. The Applicant will continue to engage with the PLA on these provisions.

7 Port of Tilbury London Limited

7.1 Response to comments on the dDCO

7.1.1 In their Deadline 3 submission, the Port of Tilbury London Limited raise a small number of points. These relate to Articles 6, 13 and 18. The Applicant considers that the updated Protective Provisions provide comfort on these points as they are within the scope of a "specified function" insofar as relevant to the Port (and in respect of which there are plan and/or approval requirements).

7.1.2 The Applicant notes that the Port is considering updates to article 55 and 56 and looks forward to receiving these comments.

7.1.3 The Port also requests clarity on the suggested amendments to the Requirements in Schedule 2. The Applicant will continue dialogue with the Port on these matters in the context of the ongoing negotiation of the protective provisions and the Framework Agreement. The Applicant is confident that agreement on these can be reached before the end of the examination.

8 Thurrock Council

8.1 Introduction

8.1.1 The Applicant notes that Thurrock Council provided a table in [REP3-210] which sets out its comments on the dDCO. The Applicant notes that in respect of matters with the reference (in column 1 of that table) 1, 2, 3, 4, 11, 12, 13, 14, 15, 18, 19, 21, 22, 24, 26, 27, 28, 29, 34, 35, 36, 38, 40, Thurrock Council has simply and substantively repeated its position.

8.1.2 The Applicant is mindful that, given the scale and complexity of the Project, there is a need for information submitted into the examination to be provided in a manner which is proportionate and accessible for interested parties, the Examining Authority and the Secretary of State, to allow for appropriate consideration.

8.1.3 In that spirit, the Applicant has not sought to produce further material and repeat its position, but would simply signpost to its responses to Annex A of the agenda for Issue Specific Hearing 2 [AS-089] and its Post-event submissions, including written submission of oral comments, for ISH2 [REP1-184] which the Applicant considers address the issues raised. The Applicant is happy to address the Examining Authority's questions on these matters should they find it appropriate or necessary.

8.1.4 The Applicant has taken a precautionary approach in applying this approach so in respect of some of the issues addressed below, the Examining Authority will note that the issue raised has been substantively addressed but the Applicant wishes to provide confidence that these issues have been seriously considered. Notwithstanding this approach, there are also some entries which contain a repetition of issues, but new issues or arguments in others. The Applicant's approach to addressing these is set out in the next section.

8.1.5 In respect of matters with the reference 6, 17, 23, 33, (in column 1 of the table in [REP3-210]), Thurrock Council has confirmed their agreement to the relevant provisions. In respect of these matters, the Applicant welcomes this, and provides no further comment. In respect of matters where new issues or arguments have been raised, these are addressed below.

8.2 Use of precedent

8.2.1 The Applicant notes that in [REP3-211], Thurrock Council repeats its generalised claim that "*the applicant's focus on precedent is not helpful, where to do so distracts from the analysis of what is most appropriate for LTC*". The Applicant wishes to put on record its approach to precedent.

8.2.2 The Applicant has provided in the Explanatory Memorandum [REP1-045] (as well as in correspondence with Thurrock Council) an enhanced level of appropriate and proportionate Project-specific rationale for the inclusion of the provisions below without prejudice to the requirement to do the same on any of its other projects. Nonetheless, the Applicant is mindful that across a number of recent highways DCOs, the Secretary of State has made clear that there should be a degree of consistency across made highways DCOs (see, for example, the reference to "*maintain*[ing] *consistency with highways DCOs*" in the M25

Junction 28 decision letter, the rationale for refusing a correction in relation to the A303 Stonehenge scheme was "*the Secretary of State's preferred drafting and ensures a consistency of approach across transport development consent orders*").

8.2.3 It is accepted that the substantive need for any powers sought does need to be appropriately justified for the Project, and in the Applicant's view this has been justified, but the Council do not appear to have taken into account the principles and drafting which have been the subject of explicit endorsement by the Secretary of State. In addition, precedent is useful for affirming whether something is *in principle* acceptable. In many instances the Council raises *in principle* objections to provisions or approaches which have been endorsed by the Secretary of State.

8.2.4 Where in principle objections have been raised, the Applicant has sought to provide appropriate and enhanced Project-specific rationale and justification (to the extent of being concerned about the proper use of public funds and precedent being set by the extent of justification being sought), but the Applicant's firm view is that references to precedents are useful to rebut the contention that provisions are in principle objectionable. The references to precedent are therefore provided to respond to that nature of objection, and to affirm the Project-level rationale and justification provided.

8.3 Responses to comments on dDCO

8.3.1 In line with the approach above, the table below sets out the Applicant's responses to the Council's comments. The Applicant has included extracts of the relevant items from the Council's table where they contain new or refined arguments made by the Council.

Article issue		Extract of Thurrock Council's comments at Deadline 3	Applicant's response
5	**6: Limits of deviation**	The Council notes NH's points, however, it is of the opinion that these do not adequately address the Council's concerns. The flexibility given to NH is not in the Council's opinion proportionate because it does not provide certainty as to the limits within which the project will be constructed. The fact that similar wording has previously been approved not mean it is the most appropriate wording in this instance. Whilst NH refers to the extent of the CPO powers, this is not prohibit land being purchased by agreement. This uncertainty means that there could be impacts which do not entail a materially new environmental effect (such as impact on businesses, traffic congestion and other future development), which would not be taken into account. The uncertainty caused by this provision makes it more difficult for those potentially impacted by the proposal to know whether or not they need to make representations during the examination process. The Council considers a compromise and should be agreed whereby the extent of the limits of deviation, even if this covers a relatively large area, should be clearly set out.	The Applicant's view is that this comment largely restates the position which the Council has provided previously during the course of the examination, and which the Applicant has responded to. In short, Article 6(3) would permit the Applicant to vary the limits of deviation in Article 6(1)(a) and (2)(a)-(o) but only with the Secretary of State's approval, and only where that variation would not entail materially new or materially different environmental effects. As explained in the EM, the purpose of this well precedented provision is to provide the Applicant with a proportionate degree of flexibility when constructing the Project, reducing the risk that the Project as approved cannot later be implemented for unforeseen reasons but at the same time ensuring that any flexibility will not give rise to any materially new or materially different environmental effects. The Applicant considers this to be an acceptable compromise and the fact that the provision has been included in a number of DCOs would indicate that the Secretary of State is also persuaded of its acceptability. Article 6(3) is identical to article 6(2) of the M42 Junction 6 Development Consent Order 2020, and equivalent provision is included in all of the last dozen or so

Article issue		Extract of Thurrock Council's comments at Deadline 3	Applicant's response
			development consent orders granted for which the Applicant was the promoter. The limits of deviation for works are not to be conflated with the land interests required – in this regard, land and land rights are dealt with under Part 5 of the dDCO and importantly no compulsory acquisition of land outside of the Order Limits is sought (nor would such compulsory acquisition be permissible) under the terms of the dDCO. There is therefore no prejudice to any landowner. The comments on acquiring land by agreement are therefore misconceived. Insofar as the Council has a concern about non-materially new or non-materially new environmental effects outside of the parameters of the environmental statement, the provision does not enable a unilateral variation of limits of deviation, and any deviation sought must be approved by the Secretary of State following consultation with the local authorities, including the Council. The Applicant refers to its response in [**REP1-184**] and [**REP2-077**] which provides a full justification for these provisions.
7	**9: Application of NRSWA**	The Council remains concerned that a project of this size, without following the unmodified permitting scheme, is going to have a significant negative effect on the operation of the local highway network. However, the Council notes that we are close to agreeing for support officers to be provided, which would assist the Council is processing applications. Before being able to agree to this provision, the Council does need to understand the terms of reference for the Traffic Management Forum, and how in certain circumstances this could delay LTC	The Applicant refers to its response in [**REP1-184**] and [**REP2-077**] which provides a full justification for these provisions. The disapplications of NRWSA appear in every transport DCO granted to the Applicant. The Protective Provisions further set out a process in connection with works to provision of information of traffic management information. The outline Traffic Management Plan for Construction

Article issue		Extract of Thurrock Council's comments at Deadline 3	Applicant's response
		construction work briefly to ensure that the local road network continues to function safely and effectively.	[REP3-120] further secures a Traffic Management Forum which local authorities would be invited to.
8	**10: Construction and maintenance of new, altered or diverted streets and other structures**	NH's response fails to grapple with the Council's primary concern, which is that the assets being transferred to the Council are not of sufficient quality. Whilst the ongoing responsibility and maintenance of the roads which are going to form part of the local highway network is not disputed, this does not mean that the Council should be forced to prepare defects in construction (which is not accounted for in the funding provided to the Council). The concept of the Council not excepting responsibility for defective roads is well established. It is unclear why NH considers it appropriate in this instance.	The Protective Provisions for Local Highway Authorities submitted at Deadline 4 [**Document Reference 3.1 (6)**] secure a process for the handover of local roads back to the Council, and make provision for defects to remedied and the Council to input into this process. The Applicant's view is that this addresses the Council's concern and provides appropriate safeguards, including as to traffic management as well as including provisions relating to local operating agreements at the implementation stage. The Applicant would further note that the use of the Council's permitting scheme, as well as the measures in the outline Traffic Management Plan for Construction (and the further consultation on the Traffic Management Plan as required by Requirement 10(2)), provide appropriate safeguards.
9	**12: Temporary closure, alteration diversion and restriction of use of streets**	The Council has previously requested details of how the Traffic Management Forum would operate. NH needs to provide these details to allow the Council to understand their effectiveness.	The Applicant would refer to Plate 3.3 of the outline Traffic Management Plan for Construction [REP3-120] which shows the overarching process for the Traffic Management Forum. It is difficult to respond to the Council's unparticularised concern, but the Applicant would note that traffic management is included within the scope of the Protective Provisions for Local Highway Authorities submitted at Deadline 4. The Applicant would further note that the use of the Council's permitting scheme, as well as the measures in the outline Traffic Management

Article issue		Extract of Thurrock Council's comments at Deadline 3	Applicant's response
			Plan (and the further consultation on the Traffic Management Plan as required by Requirement 10(2)), provide appropriate safeguards. The Applicant is considering whether further updates to the outline Traffic Management Plan for Construction are necessary.
20	**27: Time limit for exercise of authority to acquire land compulsorily**	The points raised by NH do not address why they need both an extended 8-year time period and an extended start date. The Council has already indicated that they do not consider the examples provided for DCOs with 8-year limits as comparable. In any event, those 8-year time limit DCOs do not include the extended start date. NH continues to fail to engage meaningfully with the Council's suggestion that some areas of the Order Limits could be subject to a shorter time limit. There is no explanation as to why this would cause significant uncertainty about the interconnection between the works. The Council considers NH should already be at a stage where they are able to provide sufficient certainty in relation to development timetabling. NH has used novel drafting at various points in this dDCO. Therefore, the reference to the Council's 'novel and unprecedented suggestion' sits at odds with their evidence in support of its own novel drafting. The Council does not consider its suggestion is at all controversial as a concept. Different DCOs specify different time limits according to the size of the project. On a project covering this size of land area, it is an entirely logical extension of this concept that different time limits might apply to different parts of the land.	The Applicant considers that this response is largely a restatement of the Council's position which the Applicant has responded to. The Applicant refers to its response in [**REP1-184**] and [**REP2-077**] which provides a full justification for these provisions. In short, as regards the novel and unprecedented suggestion that different compulsory acquisition periods should be applied to different parcels of land, this is not considered necessary or proportionate and would give rise to significant uncertainty about the interconnection between the works. The Applicant apprehends that this would result in greater uncertainty for landowners. The uncertainty would be caused because the interconnection between the works would mean that the Applicant would be forced to artificially include many if not most plots within periods which would be relatively longer because of the uncertainty about when the works which they were connected with would be carried out. The Applicant is at the preliminary design stage, and there is no detailed or precise construction programme. The Applicant would not unreasonably refuse to exercise its powers of compulsory acquisition because its liability for compensation would increase in respect of land

Article issue		Extract of Thurrock Council's comments at Deadline 3	Applicant's response
			taken temporarily. Moreover, the provisions of the Code of Construction Practice relating to community liaison and the establishment of Community Liaison Groups would provide landowners and the local community with a mechanism for ongoing engagement about the works. In contrast to the Council's suggestion, the 'start date' being tied to the legal challenge period is precedented (see the Manston Airport Development Consent Order 2022). The council suggests its view is not controversial for a project of this scale, but no other significant DCO project such as the Hinkley Point C Connection, the Southampton to London pipeline, nor the A14 Cambridge to Huntingdon which are of a similar scale proposed the highly restrictive approach. The Applicant notes that the Council itself has not put forward any plots which could be subject to this level of control at this stage, and nor would they reasonably be able to in light of the design stage of the Project. On the use of 'novel provisions', see the Applicant's response in [**REP1-184**] and [**REP2-077**]. The response above applies in respect of the Council's comments (in row 25 of its table) in respect of article 35(1)(a).
25	**35: Temporary use of land for carrying out the authorised development**	35(3) – In relation to NH comment, we can confirm that 'excepts' should read as 'accepts'. The Council's comments remain. The wording at 35(3) identifying a 'potential risk' can be interpreted extremely	The Applicant has amended 'potential risk' to 'risk'. Though the Applicant does not consider this necessary or would affect how the Applicant would act in practice, the Applicant is willing to

Article issue		Extract of Thurrock Council's comments at Deadline 3	Applicant's response
		broadly. The Council considers this still warrants further clarification in the EM.	accommodate the change to reduce the areas of disagreement. For completeness, the Council has simply repeated its position or alternatively stated the Applicant has 'not addressed' its position without elaboration in respect of artificially disaggregating plots, notice requirements, notice periods and article 35(13). The Applicant considers its previous responses ([REP1-184] and [REP2-077]) address the issues raised. The Applicant welcomes the Council's confirmation in respect of the drafting of article 35(7) and article 35(11).
30	**44: Power to operate, use and close the tunnel area**	NH needs to explain why the 7-day notice period is appropriate, as such a short notice period could have significant impacts on the Council. Whilst NH's position is precedented, this does not mean that the 7-day notice period is appropriate in this instance.	The tunnel area will form part of the strategic road network and it is not considered appropriate for the Applicant's powers to be unduly limited. In other words, the Applicant has no such obligation in other DCOs in relation to the strategic road network. In any event, the Applicant, as part of its licence obligations, is required to cooperate with other bodies in the operation of the road network. Seven days is considered appropriate in those circumstances. It is to be noted that the seven day period is precedented (see A303 Amesbury to Berwick Down Development Consent Order 2023 as well the Silvertown Tunnel Order 2018).
31	**53: Disapplication of legislative provisions, etc.**	The Council notes the reasons given in the EM. Has any further analysis been undertaken of the specific impacts of these disapplication's, and whether any area specific mitigation is required? The Council will leave Natural England to comment on the response to the Council's concerns pursuant to the Wildlife and Countryside Act, 1981.	The Applicant considers appropriate analysis has been signposted and the Council should particularise any further information it would find helpful. The Applicant notes the Council's position in relation to the Wildlife and Countryside Act 1981.

Article issue		Extract of Thurrock Council's comments at Deadline 3	Applicant's response
32	**55: Application of local legislation**	The Council notes NH's comment and analysis in the EM. Has NH identified any negative impacts that need to be mitigated? For example, due to the disapplication of byelaw provisions? Please can NH provide the Council with the reasons and analysis.	The Applicant has not identified any negative impacts associated with this provision. No further mitigation or provision is required as a result of the analysis other than those contained within article 55. The Applicant considers appropriate analysis has been signposted and the Council should particularise any further information it would find helpful
37	**66: power to override easements etc.**	The Council's concerns remain in relation to this issue. The power provided by this provision, is equivalent to the use of S203 of the Housing and Planning Act. Where S203 is used, the Council would expect an authority to have clear understanding ahead of time, as to exactly the nature of rights they were seeking to override. The Council recognises the 'lacuna' presented by the NH but considers the evidencing behind this power needs to be expanded.	The Applicant's position is set out in its responses to Annex A of the agenda for Issue Specific Hearing 2 [**AS-089**] and [**REP1-184**]. The Applicant has identified, as part of its due diligence requirements, third party rights and interests in the Book of Reference [**REP3-085**]. If the Council is concerned about any of those rights being extinguished, this should be particularised and specified. If there are none, and the Council maintains its position, the Application would note that there may be other interest which may arise after the Order is made (should development consent be granted) or which are reasonably incapable of being identified as part of its due diligence obligations. The Applicant considers there is a risk that, where the general position under article 29 of the dDCO is not engaged, the rights of third parties would be preserved and, in principle at least, enforceable. This situation would be highly unsatisfactory, since the preservation and enforceability of conflicting rights and restrictions over land has the potential to frustrate the delivery of the Project.

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			Leaving aside this Project-specific justification, this provision is highly precedented (see, for example, The A303 (Amesbury to Berwick Down) Development Consent Order 2023, The A428 Black Cat to Caxton Gibbet Development Consent Order 2022, The Portishead Branch Line (MetroWest Phase 1) Order 2022, The Great Yarmouth Third River Crossing Development Consent Order 2020, The Lake Lothing (Lowestoft) Third Crossing Order 2020, The West Midlands Rail Freight Interchange Order 2020, The Northampton Gateway Rail Freight Interchange Order 2019, The Silvertown Tunnel Order 2018). The Council's generalised objection would apply to any of those schemes, but the Secretary of State considered it appropriate to make those Orders with the equivalent provision. Noting that the Applicant has provided Project-specific rationale for the inclusion of this article, the Applicant is being asked to produce a justification which is disproportionate in these circumstances.
39	**Schedule 2**	Requirement 6 – The Council has not engaged with the Council's suggestion for a new Requirement. Requirement 6 is to address unidentified contamination encountered during construction. The Council require more ground investigation in advance of construction to ensure that the control methods employed will adequately manage the exposure to third parties and environment. Whilst the current wording of GS0001 does commit NH to doing more ground investigations on their identified medium and high-risk sites (Section 6.1 of the ROA), the wording could be taken to mean a method statement on what technique to prevent creating pollution pathways. This will not tell us how	In relation to Requirement 6, the Applicant considers that the Council's comments largely restate its position. The Applicant considers its previous responses ([**REP1-184**] and [**REP2-077**]) addresses this matter. The Council states that its suggested provision is intended to "*address unidentified contamination*" but Requirement 6 explicitly states that it relates to contamination "*which was not previously identified in the environmental statement*". The Council states that the measures secured under REAC [**REP3-104**]

Article issue		Extract of Thurrock Council's comments at Deadline 3	Applicant's response
		much and the nature of the data to be collected. Also, as a hang up from the previous wording it could be taken to only address release to controlled waters and the Council require atmospheric release controlled. Accordingly, the Council either require the new Requirement (as previously proposed), or GS001, GS003, GS006 and GS 027 needs to be worded so the Council see the additional ground investigations and agree the identification of what is unacceptable risk.	Item GS0001, which provides for further ground investigation works, "*will not tell us how much and the nature of the data to be collected*". The Applicant disagrees with this contention that the REAC does not provide adequate protection. As set out in GS0016: *"Where supplementary investigation is undertaken to assess residual contamination risks in accordance with GS001, appropriate assessment in accordance with LCRM (Environment Agency, 2021) would be undertaken, and where unacceptable risks are identified, the Contractors would develop proposals for site-specific remediation strategies and implementation plans in consultation with the relevant local authorities prior to implementation. The Contractors would have regard for ES Appendix 10.11, Remediation Options Appraisal and Outline Remediation Strategy* [**REP1-165**]*, which identifies techniques that could be implemented by the Contractors for the remediation of contamination."* The REAC therefore not only secures the carrying out of assessments in line with appropriate standards, but also secures further engagement, as well as measures in the Outline Remediation Strategy. For completeness, the Council has simply repeated its position or alternatively stated the Applicant has 'not addressed' its position without elaboration in respect of Requirement 3 (though see comments on article 6 above), Requirements 4, 14, 16, 18, deemed consent,

Article issue		Extract of Thurrock Council's comments at Deadline 3	Applicant's response
			the appropriate discharging authority, and the updating of control documents. The Applicant considers its previous responses address this matter. The Council has signalled its agreement to Requirement 13, and 15. The Applicant welcomes this and provides no further response.
41 (new)		The Council has a particular concern about which drawings are approved and therefore must be complied with. The key issue is that not all 'certified documents' (as listed in Schedule 16 of the DCO and which is in accordance with Paragraph 11 of the PINS Advice Note 15 (AN15)) appear to be control documents, as they are not secured within the DCO. Please refer to Section 8 of the Council's Deadline 3 submission for further information.	The Applicant considers that certified documents are already appropriately secured. In particular, relevant certified documents are referred to in the requirements. It would not be appropriate to have a "general requirement" referred to because some documents do not contain measures relating to the way in which works are carried out. The Applicant stresses, again, that the council is raising suggestions which conflict with the established practice for DCOs on the basis of *in principle* objections that would apply to *any* DCO project

9 Shorne Parish Council

9.1 Signposting to responses to comments on the dDCO

9.1.1 Shorne Parish Council in their Deadline 3 submission (section 2b) raise queries about the shallowness of the tunnels. The Applicant's position on this has been set out and justified in its post-hearing submissions in respect of Issue Specific Hearing 5 [**Document Reference 9.85**].

9.1.2 Shorne Parish Council asks for an answer on a "*question regarding relevance to the Project and precedent for dis-application of the International Laws intended to protect Ramsar Sites*" The dDCO does not disapply any international laws intended to protect Ramsar sites. There is a disapplication relating to SSSIs (see Section 8.1 of [**REP2-077**]). The Applicant reiterates that there is no adverse impact on the integrity of any protected site, a position with which Natural England agrees, arising out of the ground protection tunnel.

10 Transport for London

10.1 Signposting to responses to comments on the dDCO

10.1.1 The Applicant notes that its position on matters raised in TfL's Deadline 3 submission insofar as related to the dDCO are addressed in other Deadline 4 submissions. In particular:

a. The Applicant's position on the inappropriateness of replicating the Silvertown Tunnel approach is set out in the Applicant's post-hearing submissions in respect of ISH4 [**Document Reference 9.84**].

b. The Applicant's position on commuted sums is provided in the Applicant's post-hearing submissions in respect of ISH7 [**Document Reference 9.87**].

c. The Applicant's position on Protective Provisions is set out in the Applicant's post-hearing submissions in respect of ISH7 [**Document Reference 9.87**]. The Deadline 4 iteration of the DCO [**Document Reference 3.1 (6)**] includes Protective Provisions for Local Highway Authorities.

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