

# Lower Thames Crossing

## 9.81 Post-event submissions, including written submission of oral comments, for CAH1

Infrastructure Planning (Examination  
Procedure) Rules 2010

Volume 9

**DATE: September 2023**  
**DEADLINE 4**

Planning Inspectorate Scheme Ref: TR010032  
Examination Document Ref: TR010032/EXAM/9.81

**VERSION: 1.0**

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# 1 Introduction

Please note: this document contains the Applicant’s oral summary of evidence and post-hearing comments on submissions made by others at Compulsory Acquisition Hearing 1 held on 15 September 2023.

Where the comment is a post-hearing comment submitted by National Highways, this is indicated. This document uses the headings for each item in the agenda published for Compulsory Acquisition Hearing 1 [EV-047] by the Examining Authority on 14 September 2023.

## 1.1 Welcome, introductions, arrangements for the Hearing

- 1.1.1 National Highways (the Applicant), which is promoting the A122 Lower Thames Crossing (the Project), was represented at Compulsory Acquisition Hearing 1 (CAH1) by Andrew Tait KC (AT).
- 1.1.2 The following persons were also introduced to the Examining Authority (ExA):
  - a. Isabella Tafur, Counsel (IT)
  - b. Tom Henderson, BDB Pitmans, Partner (TH)

## 2 Purpose of the Compulsory Acquisition Hearing

2.1.1 The Applicant did not make any submissions under this Agenda Item.

## 3 ExA Questions on: The Applicant's Case for the Compulsory Acquisition (CA) & Temporary Possession (TP) of Land and Rights

### 3.1 Item 3(a) The relationship between the design approach, the extent of land sought and the Applicant's initial CA & TP request

#### Item 3(a)(i)

##### *Item 3(a)(i) The extent of land sought to be subject to CA*

- 3.1.1 AT explained that at application submission, there were 4,204 plots included in application (covering both compulsory acquisition and temporary possession). Of those, 723 were owned by the Applicant. AT explained that the position at Deadline 4 (D4) will be updated to take account of the proposed change accepted by the ExA, and minor amendments which do not entail changes. The updated position is that there are 4,207 plots of land, of which 746 are owned by Applicant. AT noted that these numbers are partly due to changes in land interests on the Land Registry.
- 3.1.2 AT explained that of the total 1,677 category 1 and category 2 persons, 689 category 1 and category 2 persons have an interest which is limited to a half width only, where there is unregistered highway, and of those 1,677 affected persons, 415 have an interest which is limited to a category 2 interest only.
- 3.1.3 In relation to the extent of the land required for compulsory acquisition, AT noted that the position at application was 1,486.72 hectares. At D4, AT explained that this will be reduced to 1,448.58 hectares. With respect to permanent acquisition of subsoil and rights without temporary possession of land, the Applicant's position has not changed since application, so the figure remains 36.36 hectares, and where there is also temporary possession of land, the figure is 11.16 hectares. AT explained that where there is permanent acquisition of rights and temporary possession of land, the figure has been updated from 439.56 to 424.98 hectares, as set out in the Statement of Reasons [\[REP3-081\]](#) and to be set out at D4.
- 3.1.4 In response to the ExA's query, AT confirmed that the Applicant is continuously seeking to refine the extent of both land and rights required, both through internal scrutiny and external dialogue. To address Agenda Item 3(a)(ii), AT noted that Annex A of the Statement of Reasons [\[REP3-083\]](#), the Applicant sets out why compulsory powers are necessary in relation to each individual plot of land within the Order Limits, with reference to the relevant DCO works numbers, and the nature of the works as set out in Schedule 1 to the draft DCO [\[REP3-077\]](#).
- 3.1.5 AT referenced the compulsory purchase guidance ("Planning Act 2008 Guidance related to procedures for the compulsory acquisition of land") at paragraph 11 which reflects the policy tests under section 122(2) of the Planning Act 2008 (PA 2008): i) that the land is needed for the development and is no more than is reasonably required; ii) in relation to mitigation and

compensation, the land to be taken is no more than is reasonably necessary for the purpose and is proportionate; and iii) in relation to exchange land, where the land forms part of open space to be lost, the Applicant does not hold other land in the area which may be a suitable alternative. AT noted that in relation to the section 122(2) policy tests, the compulsory purchase guidance provides the example of where land may be needed for the purposes of landscaping and the Secretary of State (SoS) will need to be satisfied that the development could only be landscaped to a satisfactory standard if the land identified were to be compulsorily acquired. AT noted that in relation to replacement land, the principle applies notwithstanding that the Applicant may have other ambitions for its land, including those which may be of a benevolent nature, such as land at Hole Farm.

3.1.6 AT explained that the Order Limits are required to be drawn as tightly as possible to minimise land requirement, which has involved a twofold process for the Applicant: firstly internal multidisciplinary workshops to investigate and consider the extent to which land is necessary in response to representations made, which was carried out prior to the application being made, and secondly external consultation with stakeholders, both formally and informally, which continue and have influenced refinements made to the Order Limits.

3.1.7 **[Post-hearing note: The Applicant’s multi-disciplinary reviews included detailed consideration of the following:**

- a. **The justification for and extent to which the plot was required, to ensure that only land that was absolutely required to deliver the Scheme was included within the Order limits. Where land requirements could be minimised by reconfiguration of the design, this was undertaken where possible.**
- b. **Review of plot land use and ownership to understand the impacts resulting from the inclusion of a given plot on the individual’s land ownership and business.**
- c. **Review of plot areas and shape to refine the design within existing field, landownership and land use boundaries to configure the design to contain it within one land area to minimise the impact on multiple landowners or uses.**

3.1.8 **As a result of the above process of challenge and scrutiny, balancing the requirement for each individual plot against its anticipated impacts on the existing landowners and occupiers, the Applicant is satisfied that the powers of compulsory acquisition and temporary possession sought in the DCO are necessary, proportionate and justified. The culmination of this process has been the production of the Statement of Reasons [\[REP3-084\]](#) and, in particular, Annex B which sets out the particular uses for each parcel of land within the Order Limits.]**

- 3.1.9 AT further explained that Article 25 of the DCO permits lesser powers to be engaged following the detailed design process, which is consistent with the Order Limits being refined throughout the process by the Applicant. AT noted that the Design Principles in [\[REP3-110\]](#) specifically require engagement of the Order Limits refinement process, in order to minimise the footprint of the works in a number of different locations.
- 3.1.10 **[Post-hearing note: this forms the basis for the justification of the powers in article 28. In particular, that provisions allows the Applicant to acquire existing rights and create new rights over any of the Order land (excluding land subject to temporary possession only). Although the Applicant has sought to identify all of the plots which are to be subject to the acquisition or creation of rights and has set these out in the Book of Reference, Land Plans and Schedule 8 of the Order, this provision ensures that the Applicant retains the flexibility to acquire or create rights/restrictive covenants over land where that land might otherwise have to be acquired outright. Without the inclusion of this article, the Applicant would have no alternative but to acquire the land outright if an alternative agreement could not be reached by private agreement. The Applicant's position on the appropriateness and proportionality of its approach to the drafting of article 28(1) is provided in its responses to Annex A of the agenda for Issue Specific Hearing 2 [\[AS-089\]](#)].**
- 3.1.11 AT noted that section 122(3) of the PA 2008 is a requirement for there to be a compelling case in the public interest, which the Applicant sets out in the Statement of Reasons [\[REP3-081\]](#), and gives due regard to the availability of compensation.
- 3.1.12 In referencing paragraph 8 of the compulsory acquisition guidance, AT explained that the Applicant has considered the three aspects of this: i) alterations to the design and composition of all categories of land, including mitigation, compensation and replacement land (a record of engagement was submitted at Deadline 3 in Annex B of the Statement of Reasons [\[REP3-084\]](#); ii) acquisition by agreement, which the Applicant has considered in the Statement of Reasons [\[REP3-081\]](#) which notes that within the Order Limits, there are 76 residential properties and of those, 43 have been acquired by agreement, with a commitment in relation to a further four; and iii) whether mitigation and compensation can be secured by means other than compulsory purchase. AT highlighted that the Applicant's broad position is that in relation to the mitigation of compensation land, it is necessary to compulsorily acquire that land to ensure that the land is maintained to a satisfactory standard for the purposes for which it is envisaged.
- 3.1.13 AT noted that there are exceptions to that, for example in relation to Kent County Council (KCC) and some mitigation land adjacent to Shorne Woods where a section 253 agreement has been entered into, due to KCC having the appropriate experienced personnel to manage this land. However, AT emphasised that the Applicant's general position is that the section 253 route is not appropriate for this purpose, and is only appropriate in certain circumstances.

- 3.1.14 In response to the ExA, AT confirmed that there is a difference in respect of the Applicant's position in relation to land acquisition within and outside the Order Limits. AT explained that within the Order Limits, there are a number of instances where parties have wished their interest to be acquired.
- 3.1.15 In response to the ExA, AT confirmed that in relation to ecological mitigation and compensation, the Applicant has been in consultation with Natural England (NE), and the guidance NE has offered has been very closely considered. AT noted that the way in which the ancient woodland compensation proposals and the nitrogen deposition reduction, has been in collaboration with NE following a reconsideration of the extent to which ecological connectivity can be retained. AT further confirmed the ExA's query in relation to the importance of considering connectivity with existing networks, notwithstanding that another parcel of land might deliver an equivalent biodiversity outcome. In relation to landscape, AT explained that it has been carefully crafted and is extensively justified in the evidence provided by the Applicant. AT noted that there are other areas such as ponds, which have been considered in terms of site-specific considerations.
- 3.1.16 In response to submissions made by Thurrock Council (TC), AT confirmed that there is no reason in principle why the Applicant could not acquire land in advance from TC. AT explained that TC have asked for an agreement which regulates the temporary possession in particular, and which specifies relevant periods of time. In addition, TC have requested that in relation to highway land, that there is specificity about the condition in which the land is returned, which AT noted is regulated by Article 10 of the draft DCO [\[REP3-077\]](#). The Applicant notes that Protective Provisions for local highway authorities secure further provisions on handover, as well as land transfer (cf. the Applicant's post-hearing submission for CAH2).
- 3.1.17 AT noted that TC had been requesting a binding legal agreement in relation to land use. In effect, TC seeks to bind the Applicant into the indicative and illustrative information shown in Appendix H of Thurrock's Local Impact Report (LIR) [\[REP1-289\]](#) (and, for the avoidance of doubt, that document speaks to the extensive engagement on TC's land interests and, in the Applicant's view, has been the vehicle by which the discussions have been protracted).
- 3.1.18 **[Post-hearing note: on the request for a legal agreement, the Applicant does not agree that the illustrative timings should be the subject of a legal agreement. The project is currently at the preliminary design stage, and neither a detailed construction programme nor methodology have been finalised. The document is illustrative for that very reason, and seeking to secure timings for works would be highly novel, and curtail the flexibility required under the Order. The Applicant does not consider that a legal agreement would reflect those circumstances, and the required flexibility would simply obviate the certainty that would be provided by a legal agreement. The Applicant is aware of no precedent – DCO or otherwise – which binds a public sector body delivering a nationally significant infrastructure project in this manner. The Applicant would highlight that the dDCO contains controls on the purposes for which temporary possession can be taken, and the DCO application documents set out a justification for the proposed land use. Further controls on the works,**



**including strict requirements to return the land on the completion of the works, are included. A draft legal agreement will therefore not be provided, the Applicant has provided an MoU (which would reflect the flexibility, and design development stage).]**

- 3.1.19 AT also explained that there is a draft memorandum of understanding being discussed between the parties which, given that the precise highway boundaries are not fixed, the stage of development being the preliminary design (and the associated need for limits of deviation), is considered by the Applicant to be appropriate, as it sets out the position in Appendix H to the Thurrock LIR [REP1-289]. **[Post-hearing note: please see the Applicant's post-hearing submissions for CAH2 [Document Reference 9.82] on the acquisition of highway land, as well as provisions relating to pre-construction surveys].**
- 3.1.20 In response to submissions made by IPs regarding approach to compulsory acquisition, AT confirmed that the approach is in the context of multifunctional roles with respect to land required. AT also confirmed that Annex B of the Statement of Reasons [REP3-084] sets out an updated catalogue of engagement that has occurred to date, which includes the meeting on 23 August 2023 with Orsett Golf Club.
- 3.1.21 AT noted TC's suggestion that TC and the Applicant provides a position statement at particular deadlines in order to reflect the updates in the parties' positions. AT confirmed that the Applicant would in principle agree with this suggestion and it reflects the Applicant's attempts to engage with TC over a long period. AT clarified that the Applicant has sought to proactively acquire land by agreement, not only to respond to requests to do so. In relation to TC, AT explained that TC has not been willing to engage on the sale of its land interests until it has further details on timescales, which the Applicant is unable to definitively provide at this preliminary design stage.

### **Item 3(a)(ii)**

**Item 3(a)(ii) Whether statutory tests for CA are met on all land: - whether the purposes for which the compulsory acquisition (CA) powers are sought comply with s122(2); - whether the 'compelling case in the public interest' test under s122(3) is met on all land sought.**

- 3.1.22 The Applicant addressed this Agenda Item at Agenda Item 3(a)(i), as directed by the ExA.

### **Item 3(a)(iii)**

**Item 3(a)(iii) Consideration of reasonable alternatives to CA.**

- 3.1.23 The Applicant addressed this Agenda Item at Agenda Item 3(a)(i), as directed by the ExA.

### **Item 3(a)(iv)**

**Item 3(a)(iv) The extent of land sought to be subject to TP.**

- 3.1.24 AT explained that at DCO application stage, approximately 420.11 hectares of land was thought to be required for temporary possession, but at D4 this will reduce to 414.59 hectares. AT noted that there is the provision for similar

flexibility under Article 35(1) of the draft DCO [REP3-077] to deploy temporary possession in circumstances where this is appropriate as an alternative to compulsory acquisition, having regard to the appropriate principles and precedents. In summary, the Applicant's position is that land sought to be subject to temporary possession is required for the construction of the development only (to ensure the permanent works can be constructed safely) and not required for the development in use.

- 3.1.25 In response to the submission made by the Port of London Authority (PLA) that article 37 extended to land subject to temporary possession, AT noted that Article 35(10) of the draft DCO [REP3-077] provides that temporary possession land cannot be subject to compulsory acquisition, but that the Applicant is also proposing at D4 some further drafting to relate to Article 37, which will make this explicit and also result in the same Article 33 restrictions applying to article 37.
- 3.1.26 In response to the submission made by the Port of Tilbury London Ltd (PoTLL), AT confirmed that the Applicant does not consider that there is too much flexibility in the land sought. AT explained that there has been discussion around two small parcels of land in Plot 21-10 that the Applicant is proposing to remove, which is consequent upon the construction of road infrastructure rendering the two parcels redundant. In relation to the ExA's comment, the Applicant is conscious of the protection that statutory undertakers get under sections 127 and 138 of the PA 2008, the tests pursuant to which the Applicant has applied and considers are met. AT added that the Applicant's view is that with a project of this scale, the boundaries of the project should not be drawn too tightly, in order to avoid any adverse effects.

### Item 3(a)(v)

#### Item 3(a)(v) The justification for land sought to be subject to TP

- 3.1.27 This Agenda Item was addressed at Agenda Item 3(a)(iv), as directed by the ExA.

## 3.2 Item 3(b) Requests by the Applicant for additional land and/or rights

#### Item 3(b)(i) Additional land or rights sought under the change request notified as [AS-083] and the application of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010

- 3.2.1 In relation to accepted changes, AT noted that MRC01 is wholly reductive and MRC02 has no implications in terms of land take. MRC03, the third of the proposed changes which have been accepted, is a package of changes affecting the Applicant's utilities proposals in East Tilbury. The effect of these changes is that it is reductive in terms of the amount of land required to deliver the utility works in this location, moving construction works away from potentially impacted residents. AT explained that there is a related land designation change in respect of a small number of plots of land to accommodate the relocation of the Linford bore pipeline. AT continued to explain that the effect of this is that the plots of land, which were previously subject to temporary possession only, will now be sought to be subject to permanent rights and these plots have been identified in the notification of

proposed changes. AT explained that the Compulsory Acquisition Regulations (CA Regulations) apply to MRC03.

3.2.2 AT explained that targeted non-statutory consultation had been carried out, however, as set out in the Applicant's change application, no consents from affected parties were received in response. The Applicant has also given notice of a "proposed provision" and it is anticipated that the statutory notices will be placed in the week beginning 2 October 2023, with the period of relevant representations opening around 10 October.

3.2.3 In respect of the second formal application, AT noted that the Applicant had also submitted two further changes to be accepted into examination, EC01 and EC02. AT noted that these changes also appear to engage the CA Regulations. The Applicant suggests that subject to the ExA's acceptance of these further changes, MRC03, EC01 and EC02 could, for the purposes of efficiency and ease of understanding for all concerned, form the basis of a combined representation period under the CA Regulations.

**Item 3(b)(ii) Whether the statutory conditions and policy on additional land is met?**

3.2.4 AT stated the Applicant's short answer is yes. AT added that there have also been two further notifications of proposed changes, EC03 and EC04, neither of which would involve acquisition of interests or rights over additional land.

3.2.5 The Applicant noted the proposed amendment arising from the tunnel depth report in relation to the insertion of ordnance datum (Newlyn) as the reference point for the acquisition of subsoil in the PLA's plots in the river Thames. The Applicant intends to submit a formal notification of this proposed amendment. The Applicant does not consider that this is a "change" for the purposes of Advice Note 16, nor a proposed provision but has been proceeding on a precautionary basis in the event the ExA considers the CA Regulations are engaged. AT noted that the PLA and National Grid had already agreed to this in principle, and that the Applicant is anticipating full consent from Telewest Communications Cable Limited (now operating as Virgin Media O2 UK Limited). AT confirmed in response to the ExA that this position includes those parties' successors. AT further confirmed that these notifications are limited in geographic extent and so principally affect the interests of PLA and river users.

3.2.6 The Applicant appreciates and AT acknowledged that any proposed change submissions would need to be made quickly, so as to avoid conflict with the examination period. **[Post-hearing note: the notification of this proposed amendment has been submitted to the ExA. The Applicant's rationale for why it does not consider the amendment to be a proposed provision is set out therein.]**

**Item 3(b)(iii) Progress on project design – are there any likely additional land requests over and above that of which the ExA is already aware?**

3.2.7 This Agenda Item was addressed under Agenda Item 3(b)(ii), as directed by the ExA.

### 3.3 Item 3(c) Land and rights no longer required

**Item 3(c) Land or rights originally sought but in respect of which change requests notified as [\[PD-023\]](#), [\[PD-024\]](#), [\[AS-082\]](#), [\[AS-083\]](#) and [\[AS-090\]](#) seek to exclude.**

- 3.3.1 In response to the PoTLL submission, AT confirmed that the Applicant intends on removing two plots of land at a future deadline, which are two parcels within plot 21-10.

### 3.4 Item 3(d) The purpose and adequacy of the funding statement (FS)

- 3.4.1 In response to the ExA, AT confirmed that the Applicant is government-owned and funded, and so is in a different position to private developers in respect of the reasonable prospect test set out in paragraph 9 of the Compulsory Acquisition guidance. In addition, AT noted that the funding mechanism exists through the RIS process, and RIS2 confirms that the Project is committed and therefore funded. AT further noted that the written ministerial statement dated 9 March deals with the delay issue noted by the ExA, and also confirms the government's commitment to the Project (see [\[AS-086\]](#)). As further noted in [\[AS-086\]](#), further Ministerial Statement confirmed the same in March 2023 (*"I want to be very clear with my hon. Friend: we remain committed to delivering it. This is a two-year delay on construction, not a cancellation"*). AT noted that the Project is no different to any other project of its nature, and there are no circumstances under which it can be reasonably envisaged that the Applicant/the government will not be in a position to address the compensation issues.

### 3.5 Item 3(e) Whether there is a compelling case in the public interest for the compulsory acquisition and temporary possession provisions overall?

- 3.5.1 The Applicant did not make any submissions under this Agenda Item.

## 4 ExA Questions on: Special Provisions, Land & Rights

### 4.1 Item 4(a) Statutory Undertaker's land and rights

**Item 4(a)(i) The Applicant's current position in respect of PA2008 s127 and s138 including progress on negotiations and those remaining which have not been withdrawn?**

- 4.1.1 AT noted that the ExA's written questions 15.1.3 and 15.1.4 relate to the current position of ongoing negotiations, which AT confirmed the Applicant would be responding to in writing.
- 4.1.2 AT explained that there are 44 statutory undertakers within the Order Limits, 43 of which relate to sections 127 and 138 of the PA 2008. AT noted that 25 of these did not make any representations in relation to CAH1, and in relation to the remaining 18, three have been withdrawn (Anglian Water, Southern Gas Networks and Cadent Gas), leaving 15 statutory undertakers. Of those 15, 12 relate to matters relevant to sections 127 and 138 of the PA 2008, as some others are not relevant to land matters, and of those 12, three appear twice, effectively leaving nine statutory undertakers.
- 4.1.3 In relation to the nine statutory undertakers, AT confirmed that the Applicant has overall confidence that agreement on all matters will be reached during examination period, as there has been very extensive dialogue.
- 4.1.4 AT briefly set out the position in relation to each of the relevant bodies. AT noted that in relation to Essex and Suffolk Water (part of Northumbrian Water), there are discussions relating to an agreement in relation to further arrangements for the protection of their apparatus, which is at an advanced stage in discussions. AT also noted that London and Continental Railways have not objected, and HS1 only have a holding objection. Lumen Technologies UK Limited matters do not relate to section 138, with the only discussion relating to varying statutory deferment of renewal costs, which the Applicant is confident will be resolved.
- 4.1.5 Discussions with National Gas, National Grid Electricity and National Grid plc are very advanced. In relation to Network Rail, there are some interface matters being discussed and a draft agreement in circulation. AT noted that the PLA can explain the position from their point of view but that the Applicant understands matters to be advanced in relation to seeking to agree residual issues. There is also a draft agreement in circulation with PoTLL, with the main issue being to ensure that there is no detrimental effect on its statutory functions. Royal Mail have no known objections to the Project.
- 4.1.6 The Applicant is currently in advanced discussions with Southern Water Services in relation to water quality, pollution and contamination. The Applicant believes that the objection submitted by Thames Water Utilities has been withdrawn following the conclusions of agreements between the parties. Finally, in relation to Thurrock Flexible Generation, there are ongoing discussions about the scope of powers, with protective provisions having been put forward.

- 4.1.7 AT confirmed in response to the ExA that the Thurrock Flexible Generation Plant DCO is now in its implementation stage, so the Applicant is carrying out its discussions with Thurrock Flexible Generation in this context.
- 4.1.8 In response to the PLA's submission, AT noted that Part 8 of Schedule 14 of the draft DCO [REP3-077] already has provisions in relation to approval, detailed design and paragraphs 98(4) and (5) include expiry provisions in the event the undertaker does not commence construction or the carrying out of approved specified works, or the exercise of the specified functions within the prescribed period. AT added that paragraph 98(8) deals with timing, including a requirement to carry out work without unnecessary delay. The Applicant does not consider any further amendment is required. [Post-hearing note: this matter is explained in more detail in the Applicant's "responses to comments on the dDCO submitted at Deadline 3" [Document Reference 9.102] (submitted at Deadline 4).
- 4.1.9 In response to PoTLL's submission, AT clarified that there is no suggestion that matters have been completely agreed between PoTLL and the Applicant. The Applicant understands that there is a protected provisions draft circulating between the parties which has not yet been agreed, but that the Applicant is keen to progress.

#### Item 4(a)(ii)

**Item 4(a)(ii) The condition of negotiations, and whether there are unresolved concerns relating to statutory undertaker's land, rights and apparatus.**

- 4.1.10 This Agenda Item was addressed under Agenda Item 4(a)(i), as requested by the ExA.

## 4.2 Item 4(b) The Crown

**Item 4(b)(i) The need for and progress towards consent under PA2008 s135**

- 4.2.1 In response to the ExA, AT noted that the Applicant has not identified during its land referencing processes, that there may be an issue with respect to potential Crown land, but AT noted that the Applicant will take the query away and consider the land ownership, which as it currently understands, the PLA owns. AT suggested that the Applicant submits a summary of the position in respect of this land, jointly with the PLA.
- 4.2.2 AT explained that the Applicant has been in dialogue with the Crown more generally, and so far as the Crown estate is concerned, this deals with interests arising from dissolved companies (bona vacantia), in respect of which the Crown has confirmed there are three companies split over 17 plots and that two of these have been disclaimed and that the Crown has no vested interest in the other plots.



- 4.2.3 AT further explained that the Duchy of Lancaster has one bona vacantia interest in respect of a dissolved company and that the Applicant is in dialogue with their solicitor in order to obtain disclaimers for these interests. In relation to land owned by the SoS for Transport and leased to HS1, there is a draft tripartite agreement in circulation, and the Applicant anticipates that section 135 consent will follow. AT further noted that there are various other plots that the SoS owns, with legal agreements being discussed with a view to obtaining section 135 consent. AT reminded the ExA that in relation to the SoS for Health and Social Care, section 135 consent has been confirmed. In relation to discussions with Defra/Forestry England, AT confirmed that discussions are ongoing, but that these are advanced and a draft Statement of Common Ground is in circulation.

### 4.3 Item 4(c) Commons, open spaces etc.

#### **Item 4(c)(i) The condition of negotiations, and whether there are unresolved concerns relating to PA2008 ss 131, 132 and / or 139?**

- 4.3.1 AT explained that in terms of progress, the Applicant has reached a degree of agreement in principle as to the replacement land for landowners with special category land. More specifically, AT noted that Kent County Council confirmed that it complies with the relevant tests, that TC would set out its position in CAH2 and that Forestry England are generally satisfied with the proposals. AT noted in summary, that there is common ground in relation to the adequacy and appropriateness of the replacement land, in relation to the landowners from whom the land will be taken.
- 4.3.2 In relation to Cranham, AT noted that there is a voluntary agreement with Cranham Solar Limited and discussions are ongoing with Cranham Golf Course. AT noted that Hole Farm is land owned by the Applicant.
- 4.3.3 AT added that in relation to Claylane Wood, this land was characterised as open space on a precautionary basis at the point of application. The landowner has now confirmed it is private land and erected signage. It is therefore not classed as open space, and so section 131 of the PA 2008 is not engaged.

## 5 ExA Questions on: Human Rights and Equalities

### 5.1 Item 5(a) The Human Rights Act (ECHR)

5.1.1 This matter was not addressed at CAH1, as directed by the ExA.

5.1.2 **[Post-hearing note: The Applicant has considered the potential infringement of convention rights as a result of the compulsory acquisition powers proposed in the dDCO. Section 6.1 of the Statement of Reasons [REP3-081] sets out how the Applicant has approached the issue of human rights.**

#### *Relevant provisions of the ECHR*

5.1.3 **The Applicant acknowledges that the exercise of compulsory acquisition and temporary possession powers would engage the human rights of persons with an interest in land. Article 1 of the First Protocol and Article 8 are qualified rights. This means that interference with those rights can be justified in certain circumstances.**

5.1.4 **Article 1 of the First Protocol precludes the deprivation of a person's possessions 'except in the public interest and subject to the conditions provided by law...'. Interference with**

5.1.5 **Article 8 rights will be lawful provided that it is 'in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country...'.**

#### *Application of the provisions to the Project's compulsory acquisition proposals*

5.1.6 **The Applicant considers that the purposes for which it seeks powers of compulsory acquisition and temporary possession are legitimate and sufficient to justify interfering with the human rights of those with an interest in the affected land. It considers that:**

- a. **There is a compelling case in the public interest for the compulsory acquisition powers included within the draft DCO [REP3-077].**
- b. **All affected persons will have the right to be heard by the Examining Authority.**
- c. **Any decision to authorise the use of compulsory purchase and temporary possession powers will be in accordance with the law.**
- d. **The interference with human rights is proportionate and justified.**

5.1.7 **The Applicant recognises that the Project may have an impact on individuals but considers that the significant public benefits that will arise from the Project, as set out in this Statement, outweigh any harm to those individuals. The draft DCO [REP3-077] strikes a fair balance between the public interest in seeing the Project proceed (which is unlikely to happen in the absence of the DCO) and the interference of private rights which may be affected by the compulsory acquisition.**



- 5.1.8 In relation to both Article 1 and 8, the compelling case in the public interest for the compulsory acquisition powers included within the draft DCO [REP3-077] has been demonstrated in Chapter 5 of the Planning Statement [APP-495].
- 5.1.9 The Applicant has sought to achieve a balance between minimising land take and securing sufficient land to ensure delivery of the Project, noting that the detailed design of the Project has yet to be developed. In that context, the limits of the land to be acquired or used has been drawn as tightly as possible so as to avoid unnecessary land take. In that way, the proposed land take is proportionate, justified and necessary.
- 5.1.10 In relation to a proportionality test for individual plots, during review of the land requirements for the Project, over the course of two workshops, each plot was reviewed individually based on a consideration of the practical engineering requirements against the individual impacts that would occur at the local level. This process of checks and balances, carried out by the Applicant to challenge the proposed land take requirements as the Project design evolved following consultation, allowed the Applicant to refine the land requirements and, wherever possible, to mitigate the effects of the Project on landowners. The Applicant's multi-disciplinary reviews included detailed consideration as set out above.
- 5.1.11 In relation to Article 6, the Applicant is content that the proper procedures have been followed for both the consultation on the Project and in determining the compulsory acquisition powers included within the draft DCO [REP3-077]. Throughout the development of the Project, the Applicant has given persons with an interest in the land a full opportunity to comment on the proposals, both in a statutory and non-statutory capacity, and the Applicant has endeavoured to engage with landowners. The Applicant has had regard to landowner feedback in both the initial design of the Project and in iterative design changes throughout the life of the Project.
- 5.1.12 Furthermore, any individuals affected by the draft DCO [REP3-077] may submit representations by way of an objection to the application in response to any notice given under section 56 of the 2008 Act, the examination of the application by the Examining Authority, any written representations procedures which the Examining Authority decides to hold and in particular, any compulsory acquisition hearing held under section 92 of the 2008 Act, at which each affected person is entitled to make oral representations about the compulsory acquisition request.]

## 5.2 Item 5(b) The Public Sector Equality Duty (PSED)

- 5.2.1 This matter was not addressed at CAH1, as directed by the ExA.
- 5.2.2 [Post-hearing note: The Applicant has prepared an integrated Health and Equalities Impact Assessment [APP-539] as part of its submission documents. Appendix B of the HEqIA comprises the National Highways Equalities Impact Assessment document [APP-541] and Appendix C [APP-542] provides a comprehensive baseline which covers protected characteristics as defined in the Equality Act 2010. The HEqIA includes a

**Project-wide assessment of impacts as they relate to a range of topics, including for example, severance, accessibility and environmental change. Where relevant, specific sites or locations potentially affected by the Project during construction or operation phases have been identified, together with appropriate mitigation.**

- 5.2.3 **Chapter 6 of the Statement of Reasons [REP3-081] sets out further considerations of how the Applicant has had due regard to duties under the Equality Act 2010, in relation to the acquisition of residential properties and travellers affected.**
- 5.2.4 **The assessment provided in the Health and Equalities Impact Assessment includes information on mitigation and other measures that would help minimise or eliminate potential adverse equality effects and how equality of opportunity for protected characteristics can be enhanced. Measures undertaken and/or in process:**
- a. **Engagement leading up to the DCO submission has included groups and individuals with protected characteristics under the Equality Act 2010 who may be impacted by the Project. Details of stakeholders consulted during the development of the Project can be found in the Consultation Report [APP-064 to APP-069] and its appendices.**
  - b. **Specific engagement activities of relevance to the PSED (for example with travellers or representatives of other sites potentially affected by the Project) is set out in detail on pages 19 and 20 of Appendix B to the HEqIA [APP-541].**
  - c. **A range of mitigation measures would be in place during construction to reduce impacts on equalities groups, as set out in the Code of Construction Practice, First Iteration of Environmental Management Plan [REP3-104]. For example in relation to engagement and communications during the construction period, paragraph 5.2.3 references the Engagement and Communications Plan to be produced by Contractors for the construction phase which states that ‘the Contractors will take reasonable steps to engage with the local community, particularly focusing on those who may be impacted by construction, including local residents, businesses, landowners and the specific needs of people with protected characteristics (as defined in the Equality Act 2010)’.**
  - d. **The outline Traffic Management Plan for Construction [REP3-120] includes groups such as schools, care homes and places of worship within Table 2.3, identifying how such groups might be affected by the Project, their requirements, and areas that the Traffic Management Plan would address as a minimum.]**

## 6 Next Steps and Closing

6.1.1 The Applicant did not make any submissions under this Agenda Item.

## Glossary

Term	Abbreviation	Explanation
<b>A122</b>		The new A122 trunk road to be constructed as part of the Lower Thames Crossing project, including links, as defined in Part 2, Schedule 5 (Classification of Roads) in the draft DCO (Application Document 3.1)
<b>A122 Lower Thames Crossing</b>	<b>Project</b>	A proposed new crossing of the Thames Estuary linking the county of Kent with the county of Essex, at or east of the existing Dartford Crossing.
<b>A122 Lower Thames Crossing/M25 junction</b>		New junction with north-facing slip roads on the M25 between M25 junctions 29 and 30, near North Ockendon.
<b>A13/A1089/A122 Lower Thames Crossing junction</b>		Alteration of the existing junction between the A13 and the A1089, and construction of a new junction between the A122 Lower Thames Crossing and the A13 and A1089, comprising the following link roads: <ul style="list-style-type: none"> <li>• Improved A13 westbound to A122 Lower Thames Crossing southbound</li> <li>• Improved A13 westbound to A122 Lower Thames Crossing northbound</li> <li>• Improved A13 westbound to A1089 southbound</li> <li>• A122 Lower Thames Crossing southbound to improved A13 eastbound and Orsett Cock roundabout</li> <li>• A122 Lower Thames Crossing northbound to improved A13 eastbound and Orsett Cock roundabout</li> <li>• Orsett Cock roundabout to the improved A13 westbound</li> <li>• Improved A13 eastbound to Orsett Cock roundabout</li> <li>• Improved A1089 northbound to A122 Lower Thames Crossing northbound</li> <li>• Improved A1089 northbound to A122 Lower Thames Crossing southbound</li> </ul>
<b>A2</b>		A major road in south-east England, connecting London with the English Channel port of Dover in Kent.
<b>Application Document</b>		In the context of the Project, a document submitted to the Planning Inspectorate as part of the application for development consent.
<b>Construction</b>		Activity on and/or offsite required to implement the Project. The construction phase is considered to commence with the first activity on site (e.g. creation of site access), and ends with demobilisation.
<b>Design Manual for Roads and Bridges</b>	<b>DMRB</b>	A comprehensive manual containing requirements, advice and other published documents relating to works on motorway and all-purpose trunk roads for which one of the Overseeing Organisations (National Highways, Transport Scotland, the Welsh Government or the Department for Regional Development (Northern Ireland)) is highway authority. For the A122 Lower Thames Crossing the Overseeing Organisation is National Highways.

<b>Term</b>	<b>Abbreviation</b>	<b>Explanation</b>
<b>Development Consent Order</b>	<b>DCO</b>	Means of obtaining permission for developments categorised as Nationally Significant Infrastructure Projects (NSIP) under the Planning Act 2008.
<b>Development Consent Order application</b>	<b>DCO application</b>	The Project Application Documents, collectively known as the 'DCO application'.
<b>Environmental Statement</b>	<b>ES</b>	A document produced to support an application for development consent that is subject to Environmental Impact Assessment (EIA), which sets out the likely impacts on the environment arising from the proposed development.
<b>Highways England</b>		Former name of National Highways.
<b>M2 junction 1</b>		The M2 will be widened from three lanes to four in both directions through M2 junction 1.
<b>M2/A2/Lower Thames Crossing junction</b>		New junction proposed as part of the Project to the east of Gravesend between the A2 and the new A122 Lower Thames Crossing with connections to the M2.
<b>M25 junction 29</b>		Improvement works to M25 junction 29 and to the M25 north of junction 29. The M25 through junction 29 will be widened from three lanes to four in both directions with hard shoulders.
<b>National Highways</b>		A UK government-owned company with responsibility for managing the motorways and major roads in England. Formerly known as Highways England.
<b>National Planning Policy Framework</b>	<b>NPPF</b>	A framework published in March 2012 by the UK's Department of Communities and Local Government, consolidating previously issued documents called Planning Policy Statements (PPS) and Planning Practice Guidance Notes (PPG) for use in England. The NPPF was updated in February 2019 and again in July 2021 by the Ministry of Housing, Communities and Local Government.
<b>National Policy Statement</b>	<b>NPS</b>	Set out UK government policy on different types of national infrastructure development, including energy, transport, water and waste. There are 12 NPS, providing the framework within which Examining Authorities make their recommendations to the Secretary of State.
<b>National Policy Statement for National Networks</b>	<b>NPSNN</b>	Sets out the need for, and Government's policies to deliver, development of Nationally Significant Infrastructure Projects (NSIPs) on the national road and rail networks in England. It provides planning guidance for promoters of NSIPs on the road and rail networks, and the basis for the examination by the Examining Authority and decisions by the Secretary of State.
<b>Nationally Significant Infrastructure Project</b>	<b>NSIP</b>	Major infrastructure developments in England and Wales, such as proposals for power plants, large renewable energy projects, new airports and airport extensions, major road projects etc that require a development consent under the Planning Act 2008.

Term	Abbreviation	Explanation
<b>North Portal</b>		The North Portal (northern tunnel entrance) would be located to the west of East Tilbury. Emergency access and vehicle turn-around facilities would be provided at the tunnel portal. The tunnel portal structures would accommodate service buildings for control operations, mechanical and electrical equipment, drainage and maintenance operations.
<b>Operation</b>		Describes the operational phase of a completed development and is considered to commence at the end of the construction phase, after demobilisation.
<b>Order Limits</b>		The outermost extent of the Project, indicated on the Plans by a red line. This is the Limit of Land to be Acquired or Used (LLAU) by the Project. This is the area in which the DCO would apply.
<b>Planning Act 2008</b>		The primary legislation that establishes the legal framework for applying for, examining and determining Development Consent Order applications for Nationally Significant Infrastructure Projects.
<b>Project road</b>		The new A122 trunk road, the improved A2 trunk road, and the improved M25 and M2 special roads, as defined in Parts 1 and 2, Schedule 5 (Classification of Roads) in the draft DCO (Application Document 3.1).
<b>Project route</b>		The horizontal and vertical alignment taken by the Project road
<b>South Portal</b>		The South Portal of the Project (southern tunnel entrance) would be located to the south-east of the village of Chalk. Emergency access and vehicle turn-around facilities would be provided at the tunnel portal. The tunnel portal structures would accommodate service buildings for control operations, mechanical and electrical equipment, drainage and maintenance operations.
<b>The tunnel</b>		Proposed 4.25km (2.5 miles) road tunnel beneath the River Thames, comprising two bores, one for northbound traffic and one for southbound traffic. Cross-passages connecting each bore would be provided for emergency incident response and tunnel user evacuation. Tunnel portal structures would accommodate service buildings for control operations, mechanical and electrical equipment, drainage and maintenance operations. Emergency access and vehicle turn-around facilities would also be provided at the tunnel portals.

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Registered office Bridge House, 1 Walnut Tree Close, Guildford GU1 4LZ

National Highways Limited registered in England and Wales number 09346363