

# Lower Thames Crossing

## 9.87 Post-event submissions, including written submission of oral comments, for ISH7

Infrastructure Planning (Examination  
Procedure) Rules 2010

Volume 9

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

Planning Inspectorate Scheme Ref: TR010032  
Examination Document Ref: TR010032/EXAM/9.87

**VERSION: 1.0**

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# 1 Introduction

This document summarises the case put forward by National Highways (the Applicant) in relation to the A122 Lower Thames Crossing (the “Project”) at Issue Specific Hearing 7 (ISH7) which took place virtually on Monday 11 September 2023.

Where the comment is a post-hearing comment submitted by the Applicant, this is indicated. This document uses the headings for each item in the agenda published for ISH7 by the Examining Authority (ExA).

## 1.1 Agenda item 1: Welcome, introductions, arrangements for the hearing

1.1.1 Mustafa Latif-Aramesh (Mr Latif-Aramesh), Partner and Parliamentary Agent of BDB Pitmans, introduced himself on behalf of and for the Applicant.

1.1.2 Mr Latif-Aramesh noted that he would be introducing Dr Tim Wright (TW) who would be speaking on a number of matters on behalf of the Applicant.

## 1.2 Agenda item 2: Purpose of the issue specific hearing

1.2.1 The Applicant did not make any submissions under this agenda item although Mr Latif-Aramesh clarified that the most recent version of the draft Development Consent Order (dDCO) was submitted at Deadline 3 [[REP3-077](#)].

## 1.3 Agenda item 3: ExA’s questions on the dDCO

### Item 3(a) changes proposed to the dDCO since ISH2

1.3.1 Mr Latif-Aramesh noted that the Applicant had been providing a “Schedule of Changes to the DCO” document at each Deadline, and the most recent version was [[REP3-137](#)]. That document explained the changes so that could be referenced as an ongoing log of amendments. As explained at ISH2, the dDCO is an advanced draft Order which has been the subject of significant engagement with Interested Parties (IP). Since ISH2, the Applicant has had detailed meetings with local authorities, as well as correspondence with other stakeholders.

1.3.2 Mr Latif-Aramesh noted that in general terms, changes to the dDCO since ISH2 fall into four categories:

- a. Changes which give effect to Change Applications before the ExA
- b. Changes to plot references which reflect updated information at the Land Registry
- c. Minor corrections or non-substantive changes
- d. Substantive changes to the provisions.

1.1.2 Mr Latif-Aramesh noted that he proposed to focus on substantive changes.

- 1.1.3 Mr Latif-Aramesh noted that the Applicant had listened to and carefully considered requests from parties which had led to the addition of local highway authorities (LHA) in the scope of Requirements 3, 6, 7, 8 and 12, as requested by Transport for London (TfL) and the London Borough of Havering (LBH). It was noted that LBH had also requested a definition of ‘LHA’, which has been incorporated and had a knock-on effect on articles 10, 15, 17, 21 and 65.
- 1.1.4 Mr Latif-Aramesh noted that Requirement 8 had been amended to include a requirement to consult the EA and the Lead Local Flood Authority.
- 1.1.5 Mr Latif-Aramesh noted that, following the ExA’s steer, Requirement 13 had also been amended to make clear that consultation in relation to the replacement of Gammon Field travellers’ site should include the occupiers of the existing travellers’ site. More generally, the Applicant had inserted “on matters relevant to their functions” in respect of consultation with local authorities and other bodies to make clear the scope of any consultation.
- 1.1.6 Mr Latif-Aramesh noted that all provisions which apply a deemed consent have been amended so that notification of the operation of the deemed consent provision in question is notified. The Applicant notes that LBH has suggested that the deemed consent provision only takes effect if the notification is provided. Mr Latif-Aramesh noted that the Applicant was considering this point and would provide an update at Deadline 4. **[Post-hearing note: in line with the request from the London Borough of Havering, this change has been made.]**
- 1.1.7 Mr Latif-Aramesh noted that a definition of “begin” had been inserted at article 2, in order to clearly distinguish the commencement of the Order, from the works beginning. The former excludes preliminary works, but the latter includes preliminary works. Given the scale of activities involved in “beginning” the development, it is considered sufficient and adequate for this to discharge the Time Limits requirements.
- 1.1.8 The Applicant emphasises that the compulsory acquisition period should not be conflated with the time period which is the subject of Requirement 2. This is no different to the “spades in the ground” rule referred to by the ExA, and the explicit use of “begin” is endorsed (see, for example, Requirement 2 of the A428 Black Cat to Caxton Gibbet Development Consent Order 2022).
- 1.1.9 Further justification has been provided in the Explanatory Memorandum [\[REP1-045\]](#) at paragraph 6.10.2. The overarching approach to controlling preliminary works is provided in [\[AS-089\]](#).
- 1.1.10 Mr Latif-Aramesh noted that Requirement 7 had also been amended to make clear that surveys can be carried out without causing an issue, given the definition of “begin” includes those surveys.
- 1.1.11 Mr Latif-Aramesh noted that the Applicant had submitted an ES Addendum at Deadline 3. The definition of ES has been amended so that it refers to both the ES and the Addendum which is an important point as where the ES is referenced, it is intended to include a reference to the Addendum.

- 1.1.12 Mr Latif-Aramesh noted that article 3 (Development consent, etc. granted by the Order) had been amended to exclude some enactments from the scope of article 3(3) which makes other enactments subject to the Order. This was requested by the Port of Tilbury London Limited (PoTTL). The Applicant noted that the Port of London Authority (PLA) had requested an amendment to article 3(3) in its Deadline 3 submission so that the reference to the enactments relevant to the River Thames are removed in article 3(3) (on the basis this is now dealt with in article 3(4)). Mr Latif-Aramesh confirmed that change would be made at Deadline 4.
- 1.1.13 Mr Latif-Aramesh noted that article 6 (Limits of deviation) (2)(o) and (p) had been amended since ISH2 so that they take effect subject to the depth of tunnels which had been agreed with the PLA in relation to dredging levels to maintain the future operation of the port.
- 1.1.14 Mr Latif-Aramesh noted that article 8 (Consent to transfer benefit of Order) had been amended to provide for consultation with the Marine Management Organisation (MMO), where the powers relating to deemed marine licence are transferred over to any other party pursuant to those provisions.
- 1.1.15 Article 8 has also been amended to include the PoT in the list of bodies in respect of which the SoS's consent is not required. This amendment has been made at the request of the PoT.
- 1.1.16 Mr Latif-Aramesh noted that articles 12 (Temporary closure, alteration, diversion and restriction of use of streets) and 13 (Use of private roads) had been amended following comments from the PoT with regard to their scope. It is now specified that a temporary diversion must be suitable for use by the same type of traffic.
- 1.1.17 The Applicant has also amended the power to use private roads so that it is confined to construction and excludes maintenance in response to a request from the PoT. The Applicant continues to engage with the PoT on construction traffic management protocols and is confident a solution will be agreed by the end of the Examination.
- 1.1.18 Mr Latif-Aramesh noted that article 18 (Powers in relation to relevant navigations or watercourses) had been amended in response to comments from the PoT and the PLA. The scope of the powers, which relate to interference with watercourses and the River Thames, has been narrowed so that they can only be exercised where it is reasonably necessary in connection with authorised development. The ability to use the powers where 'reasonably convenient' has been removed, as has the phrase 'where it appears [to the undertaker]' to provide further certainty.
- 1.1.19 Mr Latif-Aramesh noted that article 32 (Modifications of the 2017 Regulations) has been amended following comments from National Grid (NG). The Applicant considers it fundamentally important that it is able to expedite land acquisition for third parties – for example, in relation to utility works as well as local roads – and has proposed amendments which would allow the direct vesting of land and rights in those third parties. The Applicant understands that this provision is now agreed with NG and notes that Thurrock Council (TC) has also recently confirmed that it agrees with the provision.

- 1.1.20 Mr Latif-Aramesh noted that amendments have been made to article 33 (Acquisition of subsoil or airspace only) to confirm that the Applicant’s power to acquire easements or other new rights or impose restrictive covenants under paragraph (2)(b) on, over or under the riverbed of the River Thames for the protection of the tunnels is limited.
- 1.1.21 This is on the basis that article 48 (Protection of the tunnel area, etc.) provides the necessary protections. This does not prejudice the acquisition of the subsoil for the tunnels. Paragraph (8) has been agreed with the PLA.
- 1.1.22 Mr Latif-Aramesh noted that, in response to concerns raised by landowners, the Applicant has inserted provisions which require the Applicant to remove the certain multi-utility and overhead line works following the completion of distinct, specified works. By way of explanation, Mr Latif-Aramesh noted that the authorised development comprises “ABC” diversions, i.e., where existing apparatus is diverted from A to B and then, later, to C. In such cases, these provisions confirm that the “B” apparatus, and the rights acquired in connection with that apparatus, would be removed.
- 1.1.23 In addition, where rights are acquired in connection with utility connections for construction compounds, and those compounds are completed, the apparatus and the associated rights would be removed. This provides certainty for landowners of the Applicant’s intention that such apparatus and rights would be removed (unless otherwise agreed with both the landowner and the relevant statutory undertaker).
- 1.1.24 Mr Latif-Aramesh noted that article 43 (Crown rights) has been to remove the reference to ‘taking’ land in the Crown rights provision.
- 1.1.25 Mr Latif-Aramesh noted that article 44 (Power to operate, use and close the tunnel area) has been amended to ensure that the Applicant’s power to operate and use the tunnels is exercised in relation to this capacity, and for the purposes, of its role as a highway authority. This provision has been requested and agreed with the PLA.
- 1.1.26 Relatedly, the PLA requested that the disapplication of the Port of London Act 1968 in article 53 (Disapplication of legislative provisions, etc.) be limited only in the context of the Applicant’s functions of the highway authority. This amendment has been made. The Applicant is awaiting proposed wording from the PLA but is confident this matter can be agreed swiftly.
- 1.1.27 Mr Latif-Aramesh noted that article 48 (Protection of the tunnel area, etc.) had been amended such that the explosive licence referenced will only be disappplied on the relevant works being carried out. The Applicant notes that the PLA has also requested that this provision is amended so that it broadly aligns with when the works are ‘commenced’ and intends to introduce that amendment which seeks to provide for that at Deadline 4.
- 1.1.28 Mr Latif-Aramesh noted the PoT had suggested some amendments to article 55 (Application of local legislation etc), which the Applicant has accommodated. The Applicant understands that the PoT may have some further suggested amendments and is waiting for further detail in that regard. However, it is understood that the parties are agreed on the intention of the provision.

- 1.1.29 Mr Latif-Aramesh noted that article 61 (Stakeholder actions and commitments register) has been amended so that where an application is made to the SoS to request a variation of a measure which is secured under the stakeholder actions and commitments register, it is not suspended. This amendment has been made in response to comments from LBH and Gravesham Borough Council (GBC).
- 1.1.30 Mr Latif-Aramesh noted that LBH had requested an amendment to article 62 (Certification of documents, etc.) to require notification to the local planning authority in connection with applications to the Magistrate’s Court in connection with the correction of plans. Mr Latif-Aramesh also noted that LBH had requested further amendments at Deadline 3 which the Applicant was considering. **[Post-hearing note: in line with the request by the London Borough of Havering, the Applicant has increased the period of notice to 28 days, and has inserted a requirement to include any representations from a local authority.]**
- 1.1.31 Mr Latif-Aramesh noted that article 64 (Arbitration) had been amended following the ExA’s steer relating to arbitration as far as the SoS is concerned. In effect, it confirms that any matter for which the consent of approval of SoS is required under any provision of the Order is not subject to arbitration. **[Post-hearing note: Natural England has initially suggested that they objected to this provision but the Applicant notes that at Issue Specific Hearing 7, Natural England withdrew this objection.]**
- 1.1.32 Mr Latif-Aramesh noted that Requirement 9 (Historic environment) has been amended following a request from LBH that any refusals under that paragraph by the local authority be dealt with via the appeals process rather than a bespoke tailpiece provision. On that basis, article 65 (Appeals to the Secretary of State) has also been amended to refer to the local authority’s determination under Requirement 9, sub-paragraph 4 and 5.
- 1.1.33 Mr Latif-Aramesh noted that Requirement 16 (Carbon and energy management plan) has been amended to the effect that the ‘third iteration’ would be submitted to the SoS for approval.
- 1.1.34 Mr Latif-Aramesh noted that Requirement 20 (Details of consultation) has been amended to refer to “persons or bodies” rather than statutory bodies, to reflect the Applicant’s intention that the Emergency Services and the existing occupiers of the travellers’ site should fall within the scope of the Requirement.
- 1.1.35 Mr Latif-Aramesh noted that a series of changes have also been made to the Protective Provisions, primarily in relation to the ongoing dialogue and progress between the Applicant and the PLA and PoT. The Applicant is considering comments from the PLA and is actively engaging with the PoT, with a view to agreeing their Protective Provisions. **[Post-hearing note: the Applicant’s responses to the Port of Tilbury and PLA in respect of their comments on the dDCO can be found in the Applicant’s responses to comments on the dDCO at Deadline 3 [Document Reference 9.102].]**
- 1.3.3 [Applicant’s responses to matters raised by IPs]



- 1.1.36 KCC, GBC and TC, made comments in relation to the definition of ‘begin’ in the dDCO, noting that the definition includes the carrying out of preliminary works. The councils argued that this could create uncertainty, and that the definition of ‘begin’ should be linked to the carrying out of more substantive works. Mr Latif-Aramesh responded by stating that the Applicant’s position on this issue is set out in [\[AS-089\]](#), [\[REP2-077\]](#).
- 1.1.37 Mr Latif-Aramesh noted the Applicant does not consider that the Swansea Bay Tidal Lagoon judgment precludes the Applicant’s approach with regard to the definition of ‘begin’. Further, following the High Court judgment, which was affirmed by Court of Appeal, the A428 Black Cat DCO adopted exactly the same approach. As such, the Applicant does not consider there to be an in-principle issue with its proposed approach.
- 1.1.38 LBH raised an issue in relation to the use of the word ‘substantially’ in Requirement 10 (Traffic management), which provides that the traffic management plan which is to be submitted to and approved by the SoS prior to the commencement of any part of the authorised development, is to be substantially in accordance with the outline Traffic Management Plan for Construction [\[REP3-120\]](#). LBH set out its position that the word ‘substantially’ was not sufficient and allowed too much flexibility to remain.
- 1.1.39 Mr Latif-Aramesh responded to the point raised by LBH, noting that the Applicant’s position in this regard has been dealt with in its written submissions in [\[AS-089\]](#), [\[REP1-184\]](#) and [\[REP2-077\]](#). Mr Latif-Aramesh noted that a number of DCOs had been made which use the phrase ‘substantially in accordance with’ since the M25 Junction 8 DCO, which had been referred to by LBH.
- 1.1.40 As noted by Mr Latif-Aramesh, there is a clear statement in the decision letter for the A47 Wanstead to Sutton DCO which states that removing that phrase would fetter the discretion of the SoS. The Applicant considers that there are appropriate safeguards in place, given the process of discharging the requirements which requires consultation and approval by the SoS. As such, reliance on the sole precedent referred to by LBH should not prevent the much more precedented approach being taken by the Applicant.
- 1.1.41 In response to points raised by the PLA in relation to article 18 (Powers in relation to relevant navigations or watercourses), Mr Latif-Aramesh noted that the Applicant considers the relevant provisions to be appropriately controlled and proportionate. The power does not permit the use of any part of the River Thames for any reason; it has to be in connection with the authorised development. To that extent, the power is spatially controlled. Further and in any event, the exercise of the power in article 18 is controlled by the PLA’s Protective Provisions as is it a “specified function”. As such, the PLA’s approval would be sought in accordance with paragraph 98 of the Protective Provisions.
- 1.1.42 The Applicant noted that it would consider what further assurance could be given in relation to a point raised by GBC with regard to the use of the word ‘or’ in Requirement 12 with regard to consultation on variations to fencing.  
**[Post-hearing note: in line with the request from GBC, the dDCO has been amended to require consultation with the local planning authority ‘and’ the local highway authority (in connection with roads on their network).]**



- 1.1.43 In response to a point raised by the PoT in relation to the structure of articles 53 (Disapplication of legislative provisions, etc.) and 55 (Application of local legislation etc.) that the intention of the former appeared to be that it was related to public legislation, whereas the latter relates to local legislation, Mr Latif-Aramesh clarified that was not the case. As noted by Mr Latif-Aramesh, article 53 is intended to deal with legislation generally, which is why “etc” appears in the title of the article. It was not confined to public legislation, but specifically related to the extent and nature of disapplication. These provisions have been agreed with the PLA and it is not considered appropriate to move them in light of the significant engagement with the PLA on these provisions.
- 1.3.4 Mr Latif-Aramesh further explained that the reason the Port of London Act 1968 had been included within article 53 was that, following negotiations with the PLA, the Applicant had carefully crafted the preamble to the disapplication, but also the ongoing disapplication, whereas article 55 deals with inconsistent pieces of local legislation in a different manner (i.e., it would disapply the legislation where inconsistent with any powers under the Order in relation to construction, operational and maintenance periods).

### **Agenda Item 3(b) Changes not yet submitted but under consideration**

- 1.3.5 Mr Latif-Aramesh noted that he wanted to highlight three changes to the dDCO which the Applicant would be making.
- 1.3.6 The first change which Mr Latif-Aramesh set out was that the Applicant would be inserting Protective Provisions for the benefit of local highway authorities (LHAs) into the dDCO. The Applicant considers that the Protective Provisions reach an appropriate balance between ensuring local authority input, and protection and the delivery of the nationally significant infrastructure project.
- 1.3.7 Mr Latif-Aramesh noted that the Protective Provisions would include: a mechanism for design input permitted by LHAs on local roads; provision of “detailed information” relating to local roadworks; a maintenance period of 12 months from a provision certificate being issued within which the Applicant will be required to remedy defects or incomplete works; a requirement to allow for testing of material; a requirement to carry out road safety audits; and a requirement to transfer land required for roads to the LHA.
- 1.3.8 Mr Latif-Aramesh noted the Applicant's position that approval rights and commuted sums would not be included within the scope of the Protective Provisions. The Applicant will continue to engage on side agreements where LHAs would prefer to deal with matters that way, but the Applicant is mindful that the ExA would want to know the Applicant's view on these matters and this point was therefore made for clarity.
- 1.3.9 Accordingly, insofar as the Project involves the Council incurring expense for the management of the Local Road Network (LRN), this is a matter between the Department for Transport (DfT) and the Council, particularly in the context of the significant capital contribution from the Applicant in delivering new or altered assets. Introducing a new funding mechanism for the road network separate from these existing processes is not considered appropriate in the context of the Project.

- 1.3.10 The next change which Mr Latif-Aramesh set out relates to tunnel depths. The Applicant is proposing to amend article 33 which deals with the acquisition of subsoil. In essence, the depths – which set where subsoil can be acquired – will be worked out by reference to Ordnance Datum Newlyn, a static measurement so that there is certainty about the subsoil that can be acquired. The basis for this is set out in the Tunnel Depth Report [[REP3-146](#)]. The Applicant has discussed these changes with the PLA, who have confirmed their agreement in principle but the Applicant is engaging with them on the detailed drafting; and NG, who have an asset in proximity to the relevant plots and who have confirmed their agreement. The Applicant was awaiting comments from a telecommunications company, but again the Applicant notes that the relevant asset is not in the relevant plots.
- 1.3.11 The third change which Mr Latif-Aramesh set out related to a new provision on the interface with waste operation permits. As noted at ISH2, the Applicant was pleased to report that all but one paragraph of the Protective Provisions with the Environment Agency (EA) had been agreed. To move matters forward, the Applicant is proposing to remove that sole unagreed paragraph from the Protective Provisions and insert a new article which provides further information on this.
- 1.3.12 By way of background, Mr Latif-Aramesh explained that there are a limited number of instances where the authorised development would overlap with sites which are subject to environmental permits for waste operations. These are existing operations, but where the Project proposes to use part of the land. The Applicant is not proposing to disapply the requirement to obtain an environmental permit in respect of its own works.
- 1.3.13 Instead, it is seeking to manage the interface between the proposed works and existing operations. The paragraph, as it is currently in the dDCO, in the EA's Protective Provisions seeks to 'disapply' the permit insofar as it is inconsistent with the powers under the DCO.
- 1.3.14 This is not simply a lift and shift of the previous provision (currently in paragraph 116(5) of Schedule 14) into the main body of the dDCO. Instead, the Applicant has listened to the concerns of the EA and existing permit holders, and is proposing a new article in the dDCO which would set out further specificity about the permits which are proposed to be disapplied and provide further protection by requiring the Applicant to produce a written scheme setting out equivalent protections including on monitoring and access, as well as measures for the avoidance of pollution risk specific to the sites in question.
- 1.3.15 The Applicant is actively engaging with the EA and a number of interested parties with permits, but wanted to provide sight to the ExA on these provisions as soon as possible.
- 1.3.16 In short, this new article aids certainty in three key areas:
- a. Ensuring the EA has clarity on its enforcement powers under the Environmental Permitting (England and Wales) Regulations 2016
  - b. Ensuring there is clarity about the controls which apply to land inside the Order Limits, notwithstanding overlaps with an area subject to any existing permits

- c. Ensuring that operators whose site and operations are carried out outside of the Order Limits can continue in their operations without the risk of enforcement action in respect of the Applicant's works.
- 1.3.17 Mr Latif-Aramesh noted that a fuller legal justification of these provisions would be provided and this is now included in the Explanatory Memorandum **[Document Reference 3.2 (3)]** submitted at Deadline 4.
- 1.3.18 Finally, Mr Latif-Aramesh noted it was likely that the Applicant would be updating Protective Provisions in response to ongoing dialogue with the PLA and the PoT. **[Post-hearing note: following discussions with the PLA, the Applicant has inserted provisions relating to the management and consultation with the PLA on construction risks arising from the tunnelling works. The Applicant understands the PLA welcomes these provisions but awaits the PLA's formal feedback on these provisions at the time of drafting this note.]**
- 1.3.19 In response to comments from the EA with regard to the proposed new article relating to waste operation permits, Mr Latif-Aramesh confirmed that a meeting between the Applicant and the EA had taken place the week before to discuss introductory points and added that the Applicant would be providing further detail in the updated version of the dDCO to be submitted at Deadline 4 **[Document Reference 3.1 (6)]**.
- 1.3.20 In response to comments from LBH with regard to draft Protective Provisions, Mr Latif-Aramesh confirmed that the Applicant had decided to include its preferred set of Protective Provisions, which would be submitted at Deadline 4.
- 1.3.21 Finally, Mr Latif-Aramesh agreed with comments made by the PLA in relation to the scope of the disapplication in article 53 that the principle (i.e., river works licences being required for activities wholly outside the Applicant's functions as a highway authority) is agreed by the Applicant; the Applicant is waiting for some drafting to be inserted into the Protective Provisions to close out the issue but does not anticipate that being a protracted matter.

### **Agenda item 3(c) dDCO matters arising from other Issue Specific Hearings (ISHs 3 – 6)**

#### **ISH3 – Protective Provisions for LHAs and commuted sums**

- 1.3.22 In relation to commuted sums, Mr Latif-Aramesh set out that the Applicant is a strategic highways company and is not responsible for the local highway network, which is the responsibility of the local highway authority. Under National Highway's licence issued by the Secretary of State, it has statutory responsibility for the strategic road network (SRN). In particular, in exercising its functions and duties in relation to the SRN, the Applicant must act in a manner which it considers is best calculated to ensure efficiency and value for money (paragraph 4.2(d)) and must demonstrate how it has achieved value for money (paragraph 5.12(c)). Accordingly, the Applicant does not consider it appropriate for a public sector body, delivering nationally significant infrastructure which will have significant economic benefits, to be liable for payment of commuted sums or ongoing maintenance costs.

- 1.3.23 The Applicant notes that funding for the operation and maintenance of the LRN is a matter which ordinarily forms part of DfT funding decisions. The Applicant considers it appropriate that the maintenance of roads which will form part of the LRN is a function which is proposed to be discharged by the local highway authority. The maintenance of both local highways and the SRN is funded by the DfT. Local highway funding is mainly based on a formula linked to the total mileage of A roads, B and C roads, and unclassified roads in each area, together with the numbers of bridges, lighting columns, cycleways and footways. This funding is refreshed regularly to take account of changes in road length and number of highway structures.
- 1.3.24 Accordingly, as local highway works are carried out under the DCO, the amount of funding that each local highway authority receives will be amended to recognise these additional responsibilities. Given that this process already exists, it is not appropriate to require the Applicant to provide funding for the maintenance of parts of the local network out of the money given to it to maintain the SRN. The Applicant notes that it is making a significant and substantial capital contribution to the delivery of these assets (i.e., the entirety of the capital funding for these assets), and in light of the existing funding arrangements, it is not appropriate for the Applicant to have an ongoing and indeterminate responsibility.
- 1.3.25 The Applicant notes that this position has been endorsed, with limited and rare exceptions, on a number of transport DCOs (see, for example, article 14 of the M42 junction 6 Development Consent Order 2020; article 12 of the A428 Black Cat to Caxton Gibbet Development Consent Order 2022; and article 9 of the A303 (Amesbury to Berwick Down) Development Consent Order 2023).
- 1.3.26 In response to a question from the ExA as to whether there had been any instances of the Applicant being responsible for the management of the local highway network and paying commuted sums, Mr Latif-Aramesh noted that the A303 Sparkford to Ilchester and M25 J8 projects have a limited set of provisions relating to commuted sums. However, for the reasons given, the Applicant still considers that the proposed approach for the Project is appropriate.
- 1.3.27 **[Post-hearing note: Action Point 3 from the ExA requests that the Applicant “Provide examples from made DCOs where commuted sums have been paid to Local Highway Authorities in respect of the maintenance of new structures.” The Applicant would comment as follows:**
- 1.3.28 **There have been a number of schemes where commuted sums have not been imposed or required where there are in fact local road interfaces and ‘handovers’ of local roads / public rights of way, for example:**
- a. A19/A184 Testo’s Junction Alteration Development Consent Order 2018**
  - b. A63 (Castle Street Improvement, Hull) Development Consent Order 2020**
  - c. A19 Downhill Lane Development Consent Order 2020**
  - d. M42 Junction 6 Development Consent Order 2020**

- e. **A47/A11 Thickthorn Junction Development Consent Order 2022**
- f. **M54 to M6 Link Road Development Consent Order 2022**
- g. **A47 North Tuddenham to Easton Development Consent Order 2022**
- h. **A57 Link Roads Development Consent Order 2022**
- i. **A47 Blofield to North Burlingham Development Consent Order 2022**
- j. **A47 Wansford to Sutton Development Consent Order 2023**
- k. **A38 Derby Junctions Development Consent Order 2023**
- l. **A303 (Amesbury to Berwick Down) Development Consent Order 2023**

- 1.3.29 **The overwhelming majority of the precedents therefore support the Applicant’s provision that no requirement for commuted sums should be imposed under the terms of the DCO (cf. comments on the inappropriateness of relying on private sector developments). The Applicant notes no local highway authority is claiming that most DCOs support its position. Instead, local highway authorities are arguing for their position based on the only two precedents: the M25 Junction 28 Development Consent Order 2022 and the A303 Sparkford to Ilchester Development Consent Order 2020. Unlike those cases, the Project involves the provision of enhanced structures and Public Right of Way network, and significant investments in the LRN. These precedents do not therefore affect Applicant’s position for the reasons set out above, and in light of the fact the Applicant is providing a significant capital contribution to assets on the LRN.**
- 1.3.30 **Without prejudice to this position, the Applicant notes that Association of Directors of Environment, Economy, Planning & Transport (“ADEPT”) has published guidance on ‘Commuted Sums for Maintaining Infrastructure Assets’. That ADEPT Guidance makes clear that “*It is not appropriate to seek commuted sums where other specific sources of funding are provided to cover ongoing maintenance*” and further that “*commuted sums for ‘standard’ network adoptions are not appropriate to be charged regardless of the recognised increased liabilities that the [local highway authority] will incur*”. Whilst the Guidance goes on to suggest circumstances where commuted sums may be appropriate for non-standard assets for developers of conventional developments (not strategic highway authorities promoting Government-backed projects), the Applicant notes that even in that context it is limited to non-standard assets. In light of the Applicant’s substantial investment in local roads in the case of this Project, it is not considered either necessary or appropriate to include provision for any further commuted sums even in that context.]**



- 1.3.31 Mr Latif-Aramesh proceeded to provide detail with regard to maintenance liability for green bridges specifically. Under article 10 of the dDCO, there are provisions which relate to the transfer of maintenance liability, in respect of both structures and the LRN. Article 10 sets out how the maintenance liability for roads is proposed to operate. In effect, the Applicant would have the maintenance liability for the SRN, as well as structures over the SRN. Local authorities would have the maintenance liability for local roads, as well as the structures themselves which project over local roads. Those latter roads, which are effectively handed back to the local highway authority, must be provided to them to their reasonable satisfaction.
- 1.3.32 Mr Latif-Aramesh noted that the Applicant would be submitting Protective Provisions which include a further layer of process around this handover process, noting its understanding that there had been a specific concern about the maintenance liability for green bridges.
- 1.3.33 Mr Latif-Aramesh explained that the Applicant would be responsible for maintaining the structure of green bridges over the SRN. The local highway authority would be responsible for maintaining the surface of the highway. That obligation is augmented by the prospective Protective Provisions, which will allow for design input into those highways at the detailed design and implementation stage. The outline landscape and ecology management plan, which is secured under Requirement 5 of the DCO, would be capable of being delivered through agreements which may be reached with local highway authorities.
- 1.3.34 The Applicant notes that article 10 is explicit in transferring the liability of the highway, and separately, the surface of the highway. In the Applicant's view, this does not extend to planting and vegetation either side of the highway. In other words, the liability for these elements will be secured, and the legal requirement to maintain them in accordance with the landscape and ecology management plan will fall to the Applicant in the absence of any agreement with the local authorities.
- 1.3.35 In response to queries from the ExA regarding the future certainty with regard to the Applicant's intentions in relation to article 10 and whether further clarification was required, Mr Latif-Aramesh confirmed that the Applicant would consider whether any amendments could be made to article 10 which would provide the assurances being sought. **[Post-hearing note: the dDCO has been updated to include a provision confirming that the maintenance responsibility in relation to planting and vegetation on green bridges would not be transferred to local highway authorities (unless otherwise agreed with them).]**
- 1.3.36 In response to comments made by KCC in relation to the draft revised National Policy Statement for National Networks (NPSNN), Mr Latif-Aramesh noted that the Applicant's position on this point had been set out by Andrew Tait KC, Counsel for the Applicant, the week before. Mr Latif-Aramesh noted that there was a written question on this point which would be submitted at Deadline 4. In short, the Applicant does not consider that the draft NPS (which does not have effect in relation to the Project and is currently subject to consultation, and therefore amendment) changes the position outlined above.



- 1.3.37 In response to comments made by TfL in relation to precedents where the Applicant has sought commuter sums from other DCO developers, including the East Midlands Gateway Rail Freight Interchange and Highway Order 2016. It is correct that the Applicant seeks commuted sums from private sector developers, but that is not the case for the projects promoted as part of the Road Investment Strategy where existing funding provisions are in place, and where the Applicant is making significant capital contributions to the LRN. Mr Latif-Aramesh explained that other precedents, which are directly relevant, support the Applicant's position and the use of private sector DCOs was not appropriate to rely upon.

#### **Walking, cycling and horse-riding bridge over A127**

- 1.3.38 Mr Latif-Aramesh responded to comments made by TfL in relation to maintenance funding arrangements for the new walking, cycling and horse-riding bridge over the A127 that is being provided by the Applicant. As noted by Mr Latif-Aramesh, the bridge did not always form part of the Project and was included by the Applicant primarily in response to a request from TfL and LBH in order to provide connectivity for non-motorised users, and to deal with a historic absence of safe/grade separated crossing at this location. On that basis, and in response to a query from the ExA, Dr Tim Wright for the Applicant confirmed that the application does not include a calculation how many new additional people would be using the new crossing to access Hole Farm and other works in the area.
- 1.3.39 Mr Latif-Aramesh reiterated that the reason the proposed approach has been taken forward for this scheme is the significant capital cost as well as the existing funding arrangements that are in place. The Applicant agrees with the questions and comments from Mr Young (panel member of the ExA) on the betterment provided as a result of particular assets, and the Applicant considers that is relevant in the context of the inappropriateness of commuted sums in the case of the Project.

#### **Design approach to the A13/A1089 intersection / Orsett Cock Roundabout**

- 1.3.40 Mr Latif-Aramesh responded to a number of points which had been raised by interested parties with regard to the Orsett Cock Junction. As noted by Mr Latif-Aramesh, the Applicant considers the issue of Orsett Cock should be disaggregated from the general wider network impacts approach, and in that vein, can see a clear benefit in the ExA's suggestion of holding workshops to discuss Orsett Cock, and not conflating it with the wider general point. **[Post-hearing note: the Applicant is arranging this workshop at the time of drafting this note, with a view to submitting a note relating to Orsett Cock at Deadline 5].**
- 1.3.41 Mr Latif-Aramesh noted that the Applicant had addressed many of the comments which had been raised at ISH4 relating to the strategic model and VISSIM. Mr Latif-Aramesh noted that the Applicant would be supplementing its comments within its written submissions at Deadline 4 **[Post-hearing note: please see the Applicant's post-hearing submissions for ISH4 [Document Reference 9.84].** Mr Latif-Aramesh noted there was one specific point which he asked Dr Tim Wright (TW) to comment on.

- 1.3.42 TW responded to the submission from TC, who had put forward the position that if the Tilbury Link Road were to be part of the Project, that that would have the consequence of reducing land take and impacts at Orsett Cock. Dr Tim Wright explained that the Applicant does not agree with that position. The Applicant considers that the junction at Orsett Cock, and indeed all of the connections between the Lower Thames Crossing, the A13, and the A1089, are fundamental to the Project, and that is regardless of the delivery now or in the future of the Tilbury Link Road.
- 1.3.43 TW referred back to a discussion at an earlier ISH4 where the position had been put to TC to explain which links could be potentially removed. TW noted that the Applicant is comfortable with the position it put forward. All those links are required for the delivery of the Project, and therefore there is no superfluous land-take.
- 1.3.44 Mr Latif-Aramesh noted that the Applicant would be willing to setup a workshop in relation to the issues at Orsett Cock Junction and to submit a joint note at Deadline 5 setting out which matters had been agreed, on the basis that it understands the concerns and is focused on trying to provide information on the Applicant's position and to reach further common ground.
- 1.3.45 Mr Latif-Aramesh noted that, for the reasons TW had explained at ISH4, the Applicant considers its approach to wider network impacts accords with policy, having regard to existing government frameworks and funding mechanisms. As this was a DCO hearing, Mr Latif-Aramesh did not repeat those comments but noted that Appendix F of the Transport Assessment contains the assessment against relevant policies against this approach.
- 1.3.46 Turning to precedents which the Applicant had deferred to ISH7 in ISH4, Mr Latif-Aramesh noted that the Applicant considered it would be useful, before discussing the Silvertown Tunnel, to discuss the other precedents. For reasons Mr Latif-Aramesh went on to explain, these precedents are in many cases more comparable and relevant to the Applicant and the Project itself.
- 1.3.47 In this context, the Applicant considers that there is a consistent line of decisions from the SoS. The particular circumstances of the Project gives rise to the need for particular management strategies in light of both the scale of the Project, the particular nature of the impacts, but also the availability of wider strategies for the SRN, as well as the major road network (MRN) and LRN.
- 1.3.48 A428 Black Caxton (DCO granted in 2022) - A number of interested parties raised concerns about the impacts on the wider road network, including the LRN. The examination considered effects at specific junctions, including at the A428 Madingley Mulch Junction - A1303 West of Cambridge - M11 Junction 13 Corridor, where it found there were potential traffic concerns and where future investment through RIS3 and other schemes could not be guaranteed.
- 1.3.49 The end result can be found in Requirement 23 in the DCO "Operation phase local traffic monitoring" which functions in a similar manner to Requirement 14 of the dDCO for the Project. On that scheme, the Applicant proposed a Monitor and Manage approach where it would monitor conditions at a selected number of junctions to inform future decisions about funding (ExA Report 6.4.89-90). The LHAs had stated that they required from the Applicant, a method for monitoring operational traffic flows and the security of unlimited funding for any corresponding interventions on the LRN that they considered necessary. (6.4.92).

- 1.3.50 In relation to the SRN, the ExA found:
- a. *“6.4.99 The ExA accepts that the Applicant, as Strategic Highway Authority for the SRN, is required under its Operating Licence, to monitor its own network in order to appropriately manage it. Therefore, the ExA do not consider it necessary to propose a Requirement in relation to the Applicant’s intended Monitor and Manage approach on the SRN because it would simply repeat a statutory duty that is already imposed on the Applicant by the SoS.”*
  - b. However: *“The ExA agrees with the LHAs that the absence of monitoring of traffic effects during operation, would lead to a void in the LHAs’ understanding of the Proposed Development’s effects on traffic on the LRN and how it should be managed.”* (6.4.100)
- 1.3.51 The ExA did not think it appropriate that the burden of this monitoring fell on the LHAs and, accordingly found that a Requirement requiring a monitoring approach was necessary (6.4.101). Accordingly, no mitigation or further intervention was required or secured under the terms of the Order. Indeed, the ExA’s recommendation report (with which the SoS agreed) stated: “ExA does not consider it appropriate to require the Applicant to provide surety of funding for any subsequent, undefined intervention, considered necessary as a result of the proposed traffic monitoring.”
- 1.3.52 This is a relevant precedent because, like the Lower Thames Crossing, the A428 is a complex infrastructure project which entails a significant intervention in the SRN with potential consequences for the surrounding network, and there are existing mechanisms on the SRN and LRN for bringing forward and managing such consequences. “Complex infrastructure project” is a defined term which relates to specific projects in the Applicant’s portfolio. The fact that this is a recently made DCO is also relevant.
- 1.3.53 The ExA raised a query regarding the comparability between A428 Black Cat and the Project, given the fact that the infrastructure for the former was operating within a reasonably well understood and defined context and whether, in circumstances where the Project would create connectivity between places via a new route, some additional understanding and mitigation of effects might be justified. Mr Latif-Aramesh set out that this went to a general comment that the Applicant does not want to get into trading precedents as it acknowledges that each scheme has its own features and assets that it will leave the wider road network with. However, Mr Latif-Aramesh noted that the principles endorsed in the example given (as well as those below) supported the Applicant’s proposed approach.
- 1.3.54 *A47 Blofield to North Burlingham (DCO granted 2022) - Norfolk County Council were concerned about impacts on “the trunk and local road network throughout the day.” The ExA on this project concluded that “The congestion issue at the A47 / Brundall roundabout featured in some of my written questions [PD-006] and discussions at ISH3 [EV-30 to EV36] [and they are] satisfied that the cause of congestion would not be solely as a result of the Proposed Development. Additionally, any improvement works to this roundabout is outside the scope of the application and would be a matter for the Applicant and NCC to address*

*separately. The Applicant indicated it would discuss the potential for future monitoring of the roundabout with NCC [REP4-051] and NCC welcomed this, accepting that the Applicant cannot commit to improvement works at this time [REP4-061]”. Again, this is an example of an impact which the Applicant was not required to secure interventions in respect of impacts arising as a result of the Project.*

- 1.3.55 A47 Wansford to Sutton (DCO granted 2022) - on this scheme, the decision letter plainly records: “The Secretary of State agrees that it is for the Applicant to put forward the application it considers best meets the relevant legal, policy and guidance tests [ER 5.6.1]. While the Secretary of State has considered that the Proposed Development will not address existing problems at [a particular segment of the road network]] and that there could be further impacts that may occur as a result of the Proposed Development on [that segment of the road network], he is of the view that additional substantial works such as suggested by WPC and other IPs during the examination fall outside of the scope of the Application”
- 1.3.56 Importantly, the Secretary of State went on to state the Proposed Development would not [...] *prevent works to the roundabout being taken forward as part of a separate scheme in future [and...] the existing issues at this roundabout will be raised with NH’s Operations Team for consideration as a future improvement project during the identification and prioritisation process for future road periods*”. Again, there is an impact, and no specific intervention in response to that impact secured under the terms of the DCO, in reliance on the wider framework.
- 1.3.57 *A14 Cambridge to Huntingdon Improvement Scheme (2016)* - in this scheme, there is importantly not a requirement to deliver the mitigation on scheme opening, the specific requirement is for a scheme to be submitted which includes “*a mechanism for the future agreement of mitigation measures.*” Nonetheless, the Project is not proposing to provide a similar requirement. This is because the A14 project was prepared and submitted in late December 2014 by the Highways Agency, prior to the creation of Highways England, now National Highways. The framework for managing the SRN was changed in early 2015 by the passing of the Infrastructure Act 2015, which created the new Strategic Highways Company – then Highways England and now National Highways. The licence for National Highways was issued in April 2015. This Act also introduced the funding frameworks that are now in place. Consequently, the position of the Applicant for the A14 reflected the early position of a nascent framework, and the nature of the proposals addressed a different and more localised set of network impacts. Since then, the funding framework, and the understanding of the National Highways licence and how it dovetails with DCO process, has matured.
- 1.3.58 As noted by Mr Latif-Aramesh, the Applicant considers these precedents are all relevant, and are consistent with the approach that the Project has taken in ensuring impacts are monitored, but also that severance effects are mitigated. The precedents show SRN DCOs align with the approach taken for the Project; the availability of different investment frameworks leads to different requirements. These precedents support the position that the DCO cannot and should not be a mechanism to circumvent existing national frameworks for

bringing forward upgrades and investments in the SRN or LRN, and nor should a DCO seek to bind governments on what are sensitive decisions on spending priorities for the wider road network.

- 1.3.59 Before moving to Silvertown Tunnel, the Applicant also wanted to be clear about which projects are not comparable to the circumstances of the Project or the position of the Applicant. References had been made the week before to private developer projects which are not comparable because the developers in those cases are not statutory highways authorities with responsibility to manage the wider road network. Nor are there overarching frameworks, like the Road Investment Strategy, which are open for those kinds of projects to use or rely on.

### Silvertown Tunnel

- 1.3.60 Mr Latif-Aramesh noted that the Applicant acknowledges the approach taken in the Silvertown Tunnel both in terms of the management of impacts, but also the established of the Silvertown Tunnel Implementation Group, the “STIG” as it is affectionally known.
- 1.3.61 Mr Latif-Aramesh noted the Examination had heard the week before about the specific nature of funding for Transport for London, that they are a different organisation operating under a form of devolved powers pursuant to the Greater London Act 1998, in comparison to the Applicant, which works under the DfT pursuant to the Infrastructure Act 2015, and so that different funding arrangement provides for a different set of arrangements that can properly be required.
- 1.3.62 The difference is that the management framework, instead of being structured within the DCO, as it is at Silvertown, is linked into the national funding frameworks put in place by the DfT. As these are already in existence and designed to meet the government priorities and intentions, the Applicant does not consider it appropriate to provide an alternative framework. Any alternative framework would, through the requirement for specific funding from the DfT, circumvent national processes and reduce the DfT’s ability to deliver the wider investment framework that it already has in place to prioritise funding.
- 1.3.63 On the question of the STIG, 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 Requirements require consultation and engagement with relevant local authorities. LBH, for example, 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 is therefore not considered to be in the public interest of a good use of taxpayer funds.



- 1.3.64 But there is another reason why this is inappropriate in the context of the operational monitoring and management. National Highways, in its capacity as the strategic highways authority, already does this.
- 1.3.65 Under the Applicant’s licence, secured under the Infrastructure Act 2015, the Applicant is required to *“periodically prepare and publish route strategies covering the whole of the network, to develop and maintain an appropriate evidence base on the state and performance of the network, and issues affecting these, to inform the setting of Road Investment Strategies (as set out in Part 6) and the Licence holder’s ongoing management and development of the network when planning and carrying out its activities.”* So even before the four-step process for establishing Road Investment Strategies, National Highways prepares “Route Strategies” which are effectively considering the traffic network in particular regions. These documents are the subject of significant engagement with local stakeholders on a regional basis.
- 1.3.66 The Applicant notes, for example, as part of the last 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”*. In the most recent one, regional workshops were held. Attendees included local authorities, airports and port authorities, transport operators, and other key route-based interested parties, such as major businesses. Views were specifically sought on how the routes interacted with the MRN, local roads, public transport, walking and cycling, and links to the wider SRN.
- 1.3.67 To provide further assurance on the scope, another recent example is the Route Strategy Initial Overview Report for the Kent Corridors to M25. This was published in 2023 to assist with the evidence base for the next Route Investment Strategies. One of the “route objectives” for that next period established following that engagement is to *“improve resilience of routes from Dover, Sheerness, Tilbury and Thames Gateway Ports to the M25. Provision of safe, suitable, and efficient routes to further improve resilience between the M20/A20 - M2/A2 corridors and A13/ A1089, improving journey time reliability and reducing impact on the Local Road Network”*.
- 1.3.68 These Route Strategies not only show why the establishment of a specific group is merely duplicating what the Applicant does as a responsible custodian of the SRN, but again supports the point that there are wider frameworks in place for managing wider road impacts. For those reasons, the Applicant’s view is that Silvertown Tunnel should not be considered at the expense of the other precedents which the Applicant has highlighted.
- 1.3.69 Mr Latif-Aramesh handed over to TW to address the ExA’s questions in relation to uncertainty and how that has been considered by the Applicant. TW explained that the Applicant felt it was important to set out its position on uncertainty and flagged two key issues.
- 1.3.70 Firstly, TW noted that the transport analysis guidance, which is set out as a requirement to follow under paragraph 4.7 of the NPS provides clear guidance on how you need to consider uncertainty. That happens both through the setting out of an uncertainty process, clearly talking around uncertainty in relation to developments in proximity in the region, and through the provision of



standardised elements by the government, such as the traffic growth forecast or national trip end model. Through that framework, the transport analysis guidance considers this factor of uncertainty and sets out very clearly for the applicant and all parties to understand how that needs to be considered.

- 1.3.71 Secondly, TW referred to the fact that, unlike other developers, the Applicant does not cease to have obligations after consent has been granted and a project has been constructed. Under licence, National Highways has an ongoing duty with respect to its planning function, both regarding specific local proposals and the development of local plans, and that dovetails into the route strategy work which Mr Latif-Aramesh had set out. Therefore, the Applicant has a longevity in the way it deals with the road network that sets it apart from many other developers.
- 1.3.72 Mr Latif-Aramesh concluded that for the reasons set out, whilst the Applicant would be happy to participate in discussions and workshops regarding Orsett Cock, it did not consider that a workshop on this issue would necessarily be fruitful. Mr Latif-Aramesh noted that the Applicant would continue with its ongoing dialogue and engagement with LHAs on their specific concerns around the wider network impacts, but the Applicant's approach remained as before and as had been set out during the hearing.
- 1.3.73 In response to comments made by KCC and queries raised by the ExA in relation to the draft revised NPSNN, Mr Latif-Aramesh made the following points:
- a. paragraph 4.10 of the existing NPS makes clear that requirements should only be sought where they are necessary to make proposals acceptable in planning terms; the Applicant does not consider the Project to give rise to any unacceptable impacts. As such, the Applicant does not agree with the suggestion that the Project must impose a requirement because there is an unacceptable impact.
  - b. the reference to mitigating some impacts shows how National Highways has been discerning about interpreting relevant policy requirements. Many instances are due to severance and the tests on severance in the existing NPS are clear, whereas the points which were now being made were not the subject of the same type of policy. The Transport Assessment sets out why the Applicant's approach is compliant with relevant policy and strategies.
  - c. Mr Latif-Aramesh also noted that the draft revised NPSNN is out for consultation and, whilst the Applicant acknowledges that, depending on its final form, it may be an important and relevant document at the decision-making stage, the existing NPS is the appropriate tool to decide applications submitted before designation of the revised NPSNN and therefore applies to the Project. Again, the Applicant notes EXQ1 specifically has a question around the application of paragraph 5.280 of the draft NPS.

- 1.3.74 In consideration of the points set out above, the Applicant does not consider that the points raised by KCC challenged any of the Applicant's points.
- 1.3.75 In response to a query from the ExA regarding the impacts at Bluebell Hill and the Applicant's assertion that there were no unacceptable impacts, Mr Latif-Aramesh noted that whilst it is correct that the Transport Assessment identified adverse impacts at this location, this is not to be conflated with unacceptable impacts.
- 1.3.76 In response to comments made by GBC with regard to paragraph 5.214 of the existing NPS, Mr Latif-Aramesh that that paragraph relates to strategic rail freight interchange projects and should therefore be treated carefully. The sections which deal with highways talk about proportionate and reasonable mitigation.
- 1.3.77 Mr Latif-Aramesh also noted that the Applicant had fully complied with the EIA Regulations in response to comments raised by a number of IPs which the Applicant considered were wholly misplaced.
- 1.3.78 In response to a comment from LBH that the Applicant had not referred to any specific paragraphs within the NPS in its submissions, Mr Latif-Aramesh noted that Dr Wright and Mr Tait KC went through this in detail at ISH4.
- 1.3.79 In response to points raised by the PoT with regard to impacts on the Asda roundabout, Mr Latif-Aramesh noted that the Applicant would wait to see PoT's submissions on this point and respond in writing.
- 1.3.80 The PoT also made comments in relation to the North Portal Junction, setting out that, whilst the PoT accepts that the Tilbury Link Road is not part of the Project, the PoT considers that the DCO should not prevent the Tilbury Link Road being brought forward in the future. As noted by Mr Latif-Aramesh in response, the Applicant has sought not to frustrate any future scheme based on the available information. It is difficult for the Applicant to give firm commitments where elements are not yet final, but it has sought to do so where possible.

#### **ISH5 - Protective Provisions for the benefit of the PLA**

- 1.3.81 The PLA made comments in relation to the outstanding matters to be agreed between the parties with regard to the PLA's oversight of the tunnel design, construction methods and remedial works. Mr Latif-Aramesh responded, noting that as set out at ISH5, the parties have been making progress and having productive discussions. Mr Latif-Aramesh also noted that the points raised by the PLA had been discussed during the break and the Applicant was optimistic that the parties would be able to resolve outstanding points of disagreement. **[Post-hearing note: as set out above, provisions dealing with construction risks in relation to tunnelling works have been inserted into the dDCO at Deadline 4.]**

#### **Agenda Item 3(d) any other matters relating to the dDCO**

- 1.3.82 The Applicant did not make any submissions in relation to this agenda item.

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

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