

# Lower Thames Crossing

## 9.118 Applicant's responses to IPs comments made on the dDCO at Deadline 4

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# 1 Introduction

## 1.1 Introduction

- 1.1.1 At Deadline 4, a number of Interested Parties provided comments on the draft Development Consent Order (dDCO) [[REP4-094](#)]. As these comments were provided across a number of submissions, the Applicant has reviewed all the comments and provided a response to them in this document for ease of reference.
- 1.1.2 Interested Parties who provided comments were:
- a. Essex County Council (ECC) provided comments on the dDCO in [[REP4-286](#)]
  - b. Gravesham Borough Council (GBC) provided comments on the dDCO in [[REP4-301](#)] and [[REP4-303](#)] and proposed amendments in [[REP4-302](#)] and [[REP4-305](#)]
  - c. London Borough of Havering (LBH) provided comments on the dDCO in [[REP4-318](#)]
  - d. Kent County Council (KCC) provided comments in [[REP4-308](#)]
  - e. Port of London Authority (PLA) provided comments on the dDCO in [[REP4-345](#)]
  - f. Port of Tilbury London Limited (PoTLL) provided DCO drafting proposals in [[REP4-350](#)]
  - g. Thurrock Council provided comments on the dDCO in [[REP4-352](#)]
  - h. Transport for London (TfL) provided comments on the dDCO in [[REP4-359](#)]
- 1.1.3 These are responded to in turn below.

## 2 Response to Action Point 1 of ISH7

### 2.1 Introduction

2.1.1 Action Point 1 of ISH7 [EV-046e] sets out the following action:

*“Can the local authorities provide a copy of the Swansea Bay case judgment in the Court of Appeal and cite the relevant parts it seeks to rely upon in any submissions in respect of the definition of ‘begin’ in the dDCO.*

*[The Applicant] To review the submissions and provide a response.”*

2.1.2 The Applicant's response and position on this matter, and the consideration of the judgment of the High Court in *Tidal Lagoon (Swansea Bay) Plc v Secretary of State for Business Energy and Industrial Strategy* [2021] EWHC 3170 (Admin) and Court of Appeal in *Tidal Lagoon (Swansea Bay) Plc v Secretary of State for Business Energy and Industrial Strategy* [2022] EWCA Civ 1579, is set out below.

### 2.2 Applicant's position on the *Tidal Lagoon* case

2.2.1 By way of background, section 154 of the Planning Act 2008 provides:

*“(1) Development for which development consent is granted must be begun before the end of –*

*(a) the prescribed period, or*

*(b) such other period (whether longer or shorter than that prescribed) as is specified in the order granting the consent.*

*(2) If the development is not begun before the end of the period applicable under subsection (1), the order granting development consent ceases to have effect at the end of that period.” (emphasis added)*

2.2.2 The “prescribed period” referred to in section 154(1)(a) is set out in regulation 6 of the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015 (the 2015 Regulations). Under the heading “Duration of order granting development consent”, regulation 6 provides:

*“(1) Development for which development consent is granted must be begun before the end of a period of five years beginning on the date on which the order granting development consent is made.”*

2.2.3 Section 155 of the Planning Act 2008, under the heading “When development begins”, provides:

*“(1) For the purposes of this Act ... development is taken to begin on the earliest date on which any material operation comprised in, or carried out for the purposes of, the development begins to be carried out.*

*(2) “Material operation” means any operation except an operation of a prescribed description.”*

2.2.4 For context, pursuant to section 154(1)(b) of the Planning Act 2008, the Swansea Tidal Lagoon Order 2015 included a specific definition of “commence”. In particular, Article 2(1), defined “commence” as “*begin[ning] to carry out any material operation (as defined in section 56(4) of the [Town and*

Country Planning Act 1990] (*the 1990 Act*) forming part of the authorised development other than operations consisting of site clearance, demolition work, investigations for the purpose of assessing ground conditions, the diversion and laying of services, the erection of any temporary means of enclosure and the temporary display of site notices or advertisements; and ‘commencement’ must be construed accordingly”.

- 2.2.5 The specific definition in that DCO, as the High Court noted, excluded ‘pre-commencement’ preparatory works from the definition of commence. This contrasts with the position in section 155 of the Planning Act 2008 which contains no such exclusion. Section 155 provides that development is “*taken to begin on the earliest date on which any material operation comprised in, or carried out for the purposes of, the development begins to be carried out*”.
- 2.2.6 The promoter of the Swansea Tidal Lagoon had not carried out any operations which would constitute “commencement” as specifically defined under that Order, and so the effect of the judgments of the High Court and Court of Appeal was to confirm that the powers under that DCO had expired. The argument presented to the courts was that “*the DCO contained a quite different time limit requiring that the development should be “commenced” within a stated period, leaving the requirement that it be “begun” within the prescribed period in section 154(1) extant*”. In other words, the promoter was seeking to argue that its definition of “commence” did not dislodge the time limit requirement in section 155. This argument was rejected by the courts.
- 2.2.7 Plainly, in contrast to the Swansea Tidal Lagoon DCO, the Lower Thames Crossing dDCO contains a specific definition of “begin” which the Applicant considers is clear, displaces the ordinary period that would apply under section 155, and is therefore distinguishable from the Swansea Tidal Lagoon case. The Applicant does not consider that the judgment of the High Court in *Tidal Lagoon (Swansea Bay) Plc v Secretary of State for Business Energy and Industrial Strategy* [2021] EWHC 3170 (Admin) or the Court of Appeal in *Tidal Lagoon (Swansea Bay) Plc v Secretary of State for Business Energy and Industrial Strategy* [2022] EWCA Civ 1579 precludes the approach taken in the dDCO. Indeed, in the context of the A428 Black Cat to Caxton Gibbet Development Consent Order 2022, which followed the High Court’s judgment (affirmed by the Court of Appeal), the very approach in the Lower Thames Crossing dDCO was endorsed by the Secretary of State.
- 2.2.8 GBC highlights that the Court of Appeal noted that “*the underlying purpose of the time limits provided for by both sections 154 and 155 and by Requirement 2 is to prevent the life of an unimplemented development consent order from surviving for an unknown and possible lengthy period without a start being made on the ground.*” The approach adopted in the Lower Thames Crossing dDCO – accepted by the Secretary of State in the A428 Black Cat to Caxton Gibbet Development Consent Order 2022 and the Able Marine Energy Park Development Consent Order 2014 – cannot appropriately be said to conflict with this identified underlying purpose. The Applicant’s view is that the definition of “begin” adopted for the purposes of Requirement 2 (i.e., “material operations including those comprised in preliminary works”) is sufficient to discharge that requirement. This is no different to the “spades in the ground” rule referred to by the Examining Authority at ISH2.

- 2.2.9 Moreover, the use of “begin” in article 2 of the dDCO in this context means that it is in fact closer to the reference to “begin” in section 155 (which comprises any material operation) than the definition of “commence”. In other words, if the entirety of Requirement 2 (Time Limits) of Schedule 2 to the dDCO was deleted, and the existing statutory provision – endorsed by Parliament – was left to operate, the position would be comparable to the approach already adopted in the dDCO. It would therefore be perverse to suggest that such a situation is in some way unacceptable or novel.
- 2.2.10 This position is affirmed by the High Court’s judgment where it is clear that there was a contrary result that could have been achieved through alternative drafting:
- “In my judgment, the failure to say [section 155 was excluded] expressly, either in the Order or in the Explanatory Memorandum, for example, is a factor which supports the Company’s case, as it would have been helpful to do so if that were the intention. Schedule 5 contains examples of where such an indication has been thought to be helpful. As Mr Humphries QC submits, it is a matter of good drafting, and, incidentally, would have avoided much if not all of the argument in the present case.”*
- 2.2.11 There was no in-principle concern with making a contrary provision to section 155, but it was a specific issue in the drafting of the Swansea Tidal Lagoon DCO which in turn meant a Requirement was not satisfied in the case of that project. The Applicant’s dDCO as well as the Explanatory Memorandum explicitly made clear the distinction between “begin” and “commence” because of these passages of the judgment.
- 2.2.12 For completeness, the Applicant does not consider the use of the definition of “material operation” by reference to section 56 of the Town and Country Planning Act 1990 has any material impact on the arguments presented above, or the appropriateness of the controls in place. The Applicant would note that utilising the definition in the Town and Country Planning Act 1990 provides further specificity in relation to the works which would constitute “beginning” development. The use of that definition of “material operation” therefore does not detract from the position outlined above.
- 2.2.13 The Applicant notes that Thurrock Council states that an *“illogical and dysfunctional outcome would be seen here [i.e., in the Project dDCO] if the drafting remains as it is at present”* in reference to the distinct periods in Requirement 2 and Article 27 (which sets out the time period for compulsory acquisition). With respect, the view that a distinction between the compulsory acquisition and the Time Limit is illogical and dysfunctional finds no support in the approach to DCO drafting which has consistently been adopted and approved by the Secretary of State. There are clear examples of differing periods, e.g. the compulsory acquisition period in the Thames Tideway Tunnel Order 2014 is 10 years, but the requirement to begin development is five years; and an example of the converse situation where the former period is shorter is the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022 in which the compulsory acquisition period is five years, but the requirement to commence development is seven years.



## 3 Essex County Council

### 3.1 Article 10

- 3.1.1 In their Deadline 4 submission [[REP4-286](#)], ECC refers to its Deadline 7 submission on the A12 Chelmsford to A120 Widening Scheme DCO project. This requests the insertion of “(f) the agreement of the local highway authority that any highway assets to be transferred to it are in a condition that meets its reasonable satisfaction” into a provision of the dDCO<sup>1</sup>. Having looked at ECC’s submission on the A12 scheme, this provision was suggested in relation to a detrunking provision and not the equivalent of Article 10. No detrunking is proposed on this Project. In addition, Article 10 already secures that the highway must be provided to the reasonable satisfaction of the local highway authority. No amendment is therefore considered necessary.
- 3.1.2 The Applicant’s position on commuted sums is provided in the Applicant’s post-hearing submissions in respect of ISH7 [[REP4-183](#)].

### 3.2 Requirement 3

- 3.2.1 In their Deadline 4 submission [[REP4-286](#)], ECC set out that Requirement 3 “should also explicitly include the principles of the Environmental Masterplan to ensure it explicitly says that the Applicant complies with the environment attributes of their preliminary design.”
- 3.2.2 The Applicant considers that appropriate security is already provided: the Environmental Masterplan [[REP4-124](#), [REP3-098](#), [REP2-018](#), [APP-162](#), [REP4-127](#), [REP4-129](#), [REP2-024](#) to [REP2-031](#)] is secured under Requirement 5 of Schedule 2 to the dDCO. The Applicant notes that there is no need to duplicate a commitment which is already provided, and such superfluous drafting would fall foul of the Office of Parliamentary Guidance which the Applicant considers is relevant in this context.
- 3.2.3 ECC also suggests that additional provisions securing further consultation on the detailed design should be included. The Applicant has included Protective Provisions for local highway authorities which secure design input into new or altered local roads. The Applicant is considering whether further commitments should be provided, and will provide an update at Deadline 6.

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<sup>1</sup> Essex County Council (2023). A12 Chelmsford to A120 Widening Project, Deadline 7 – Summary of Essex County Council’s position. Accessed September 2023. <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010060/TR010060-002876-Essex%20County%20Council%20-%20Other-%20Deadline%207%20-%20Summary%20of%20ECC%20position.pdf>.



### 3.3 Article 36 / Requirement 5

- 3.3.1 ECC notes that Requirement 5 and Article 36 refer to a five-year period and that this should be increased to 10 years. The Applicant does not consider this necessary: the period under article 36 is explicitly tied to the periods secured under the Landscape and Ecology Management Plan (which will be based on the outline Landscape and Ecology Management Plan [\[REP4-140\]](#) which secures longer establishment periods). The reference to five years in Requirement 5 is the minimum, and provides a backstop rather than a superseding provision on the terms relating to maturity and maintenance in the outline Landscape and Ecology Management Plan [\[REP4-140\]](#). The requirement for appropriate long-term aftercare is therefore secured.

### 3.4 Paragraph 20 of Schedule 2

- 3.4.1 ECC requests that it is provided a copy of any application made to the Secretary of State under the Schedule 2 requirements of the dDCO. The Applicant does not consider this necessary as Paragraph 21 secures the requirement for the undertaker to maintain a public register of requirements which would ensure appropriate access to information relating to discharges. The Applicant considers that this provides appropriate assurance, and its experience of the public register is positive.

## 4 Gravesham Borough Council

### 4.1 Requirement 3

- 4.1.1 The Applicant is grateful for the specific suggestion in the context of further design input based on the A57 Link Roads Development Consent Order 2022. The Applicant would note that the suggestion may not be appropriate in the context of the Project. For example, the suggested insertion at subparagraph (4) of Requirement 3 requiring submission to a design panel is already adequately secured under the Design Principles [\[REP4-146\]](#) (see Clause No. PRO.01 which provides “*The Project shall engage with the National Highways Design Review Panel (NHDRP) on the development of the detail design. The design proposals shall be developed with regard to comments raised by the NHDRP*”). In addition, the Applicant has included Protective Provisions for local highway authorities which secure design input into new or altered local roads.
- 4.1.2 The Applicant is considering whether further design input commitments should be provided in relation to some sensitive assets and sites, and will provide an update at Deadline 6 in relation to this matter.

### 4.2 Amendments to Requirements in Schedule 2

#### Tunnelling

- 4.2.1 GBC has suggested a new requirement ensuring that spoil arising from tunnelling excavation under the River Thames is removed from the North Portal and all the tunnelling infrastructure and equipment is brought in through the North Portal. GBC states, without explanation, that they “*are not content with the relevant commitment in the REAC*”.
- 4.2.2 To assist the Examining Authority, the Applicant has prepared the table below which compares the proposed requirement with the commitments in the REAC. The second column also explains why the proposed requirement is not necessary.

GBC’s suggested Requirement	Existing REAC commitments (submitted at Deadline 5)
The tunnel boring machinery must be serviced from the North Portal of the tunnel. All material excavated from the tunnel by the tunnel boring machinery will be generated as a slurry and this will be transferred by pipeline through the tunnel to the North Portal for placement. All other tunnel spoil will be transferred through the tunnel to the North Portal for placement. All tunnel	MW009: “ <i>The tunnel boring machinery will be serviced from the North Portal. Material excavated by the tunnel boring machinery will be generated as a slurry and this will be transferred by pipeline through the tunnel to the North Portal for placement. Similarly, tunnel segments and major services required to operate the tunnel boring machinery and erect the tunnel segments will be supplied from the North Portal where major services comprise slurry feed and return pipelines, main and auxiliary power cables, cross passage dewatering wastewater pipeline, fire mains and the temporary tunnel lighting system.</i> ”

<b>GBC's suggested Requirement</b>	<b>Existing REAC commitments (submitted at Deadline 5)</b>
<p>segments and major services required to operate the tunnel boring machinery and erect the tunnel segments must be supplied from the North Portal.</p>	<p>The sole difference is that GBC's drafting includes "<i>All other tunnel spoil will be transferred through the tunnel to the North Portal for placement</i>" but this is already secured because MW009 explicitly states that "<i>Material excavated by the tunnel boring machinery will be generated as a slurry and this will be transferred by pipeline through the tunnel to the North Portal for placement.</i>" The Applicant will engage with the Council to seek to understand whether and how further assurance can be provided.</p>
<p>No worksites to the south of the River Thames are to be used for the storage of materials, plant or machinery to be used in the construction of the tunnel.</p>	<p>MW017: "<i>There will be no storage of concrete tunnel segments on the ground surface at the southern tunnel entrance compound.</i>" The GBC requirement applies to all "<i>materials, plant or machinery</i>" without limitation or definition. The Applicant's proposed suggestion defines the specific assets it understands to be the key concern. The Applicant will engage with the Council to understand whether further assurance can be provided.</p>

## Drainage

- 4.2.3 GBC suggests that the drainage requirement (Requirement 8) should be aligned to the A303 Stonehenge DCO in explicitly including "management of flood risk". This amendment is not considered necessary as the REAC secures appropriate commitments in relation to the management of flood risk (secured under the requirements of Schedule 2 including Requirement 8), and Requirement 8 requires consultation with flood authorities (unlike the A303 Stonehenge DCO) thereby allowing flood management issues to be raised and considered appropriately.

## Thong Lane Car Park

- 4.2.4 GBC requests the removal of Work No. 1P from Schedule 1 to the Order, and changes to various other documents such as the works and engineering plans and design principles document. The Applicant does not agree. The Applicant considers that proposals for a new car park at Thong Lane (operational following use of the site as a construction compound) is beneficial, and has developed Design Principle S2.11 (Thong Lane Car Park) which – subject to development of detail – will secure landscape treatment to fit contextually within the existing landscape. Throughout the evolution of the design, plans for woodland planting around the car park have been increased to provide better woodland connectivity between Thong Lane green bridge and Shorne Woods Country Park.

- 4.2.5 The Applicant refers to item 2.1.5 in the Statement of Common Ground with Kent County Council (KCC) [REP1-103] (the matter is “agreed”) in which the Applicant and KCC agree that the use of the A2 compound as an operational car park is appropriate, and has been designed to appropriate standards for the benefit of its users, KCC, and Shorne Woods Country Park. Routes for walkers, cyclists and horse riders (WCH) have been connected to and from the car park as far as technically possible (within the site constraints).
- 4.2.6 For completeness, GBC states that “*other ‘facilities’ including buildings, could be brought forward under the DCO*” because ‘facilities’ are listed in the ancillary works. The Applicant would emphasise that the ancillary works can only be carried out where they would entail no materially different or materially new environmental effects.

### Chalk Park

- 4.2.7 The Applicant is grateful to GBC for raising a concern about the absence of Chalk Park from the Engineering Drawings. The Applicant will submit these updated drawings at Deadline 6, and considers no DCO amendment will be necessary.

## 4.3 Wider Network Impacts

- 4.3.1 The Applicant notes the submissions made in respect of the Wider Network Impacts and strongly rejects the suggestion that the Project is not compliant with the National Policy Statement for National Networks (NPSNN)<sup>2</sup>. The relevant parts of the NPSNN are considered in this context in detail in Transport Assessment Appendix F: Wider Network Impacts Management and Monitoring Policy Compliance [APP-535]. The Planning Statement [APP-495] contains an assessment of the Project against the draft National Policy Statement for National Networks (NPSNN) (Chapter 6 of the Planning Statement [APP-495], supported by Appendix A [APP-496]), and in the light of emerging and adopted local planning policy (Chapter 7 [APP-495], supported by Appendix C [APP-498]). The Applicant has explained how its approach aligns with precedented principles, and has explained in [REP4-183] why it does not consider Silvertown Tunnel an appropriate comparator to the Project.
- 4.3.2 In accordance with the Action Points issued in respect of ISH4 and ISH7, the Applicant has provided without prejudice drafting where it has been requested to do so. In the course of holding the relevant workshops relating to Orsett Cock, Asda Roundabout, and Blue Bell Hill (pursuant to those Action Points), the Applicant has identified a need for further engagement. The Applicant is therefore proposing to have those meetings, with a view to providing a further position statement on Wider Network Impacts at Issue Specific Hearing 10 (Traffic and Transport), with the permission of the ExA. The Applicant will then provide an updated “Wider Network Impacts Management Position Statement” which will, among other things, further address the Silvertown Tunnel model.

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<sup>2</sup> Department for Transport (2014). National Policy Statement for National Networks.  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/387223/npsnn-web.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/387223/npsnn-web.pdf)

- 4.3.3 The Applicant does however wish to provide one specific comment in relation to GBC's Deadline 4 submissions. The Applicant is surprised to read GBC's claim that paragraph 5.214 of the NPSNN is relevant to road projects despite it clearly falling under the heading of "strategic rail freight interchange projects". GBC makes this claim because there is purportedly "an unclear use of subheadings". With respect, the Applicant considers this to be a highly questionable claim: the subheading is clear, and the specific paragraph clearly falls before the section relating to road and rail.
- 4.3.4 GBC raises an apparent and alleged reliance on paragraph 5.214 in the context of the proceedings in relation to the Applicant's A47 Wansford to Sutton DCO project. GBC cites selective parts of the Recommendation Report where the Examining Authority notes that reference was made to paragraph 5.214 by the Applicant. With respect, this point is wholly misplaced. The Applicant's Legal Opinion referenced in those paragraphs of the Recommendation Report merely notes paragraph 5.214. The Legal Note makes clear (at paragraph 35) what "each of the relevant NPSNN paragraphs outlined in this Note" are, and importantly paragraph 5.214 is not referenced.<sup>3</sup> This accords with the Applicant's "accordance" table for that project where paragraph 5.214 is deliberately omitted (because it does not apply to road projects). The Applicant was not therefore relying on paragraph 5.214 on the A47 Wansford to Sutton project, and for the reasons outlined in the paragraph above, it would be misplaced and contrary to the clear intention of the policy to suggest it applies to road projects (including the Project). This clear conclusion was not lost on the Examining Authority for the A47 Wansford to Sutton Scheme where they in fact explicitly state at 6.5.54 of the Recommendation Report:
- "The reference quoted by the Applicant to paragraph 5.214 of the NPSNN relates to Strategic Rail Freight Interchanges **not to Road and Rail Developments.**"*
- 4.3.5 The unusual suggestion put forward by GBC is therefore not only inconsistent with the clear wording of the subheading for the NPSNN, the Applicant's case on the A47 Wansford, the Applicant's case for this Project but also the ExA's Recommendation Report on the A47.
- 4.3.6 GBC also cite paragraph 5.280 of the draft NPSNN (which remains draft, subject to revision following the DfT's consultation, and would not have effect under section 104 in relation to the Project). The Applicant's view on this matter is set out in [REP4-189], in response to ExQ1\_Q4.2.1, and is also set out in paragraph 1.3.73 of [REP4-183]. For completeness, the Applicant has also addressed why the A14 Cambridge scheme is not comparable in paragraph 1.3.57 of [REP4-183].

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<sup>3</sup> Highways England (2022). A47 Wansford to Sutton Dualling, 9.23 Applicant's Further Response to Actions from Hearings – Annexes. Accessed September 2023. <https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/TR010039/TR010039-000782-National%20Highways%20-%209.23%20Applicant's%20Further%20Response%20to%20Actions%20from%20Hearings%20-%20Annexes.pdf>

## 4.4 Signposting for GBC

- 4.4.1 The Applicant refers to section 2 above which sets out the Applicant's position on the definitions, and uses of, the terms "begin" and "commence."
- 4.4.2 GBC supports LBH's comments in relation to the use of "substantially in accordance with". Please see the response on this provided to LBH below.
- 4.4.3 The Applicant notes that GBC requested an amendment to Requirement 12 (Fencing). This was implemented at Deadline 4 and the Applicant considers this matter closed.
- 4.4.4 The Applicant supports statements from Kent Country Council on clarity around maintenance for green bridges. An amendment to article 10 was provided at Deadline 4 which confirms that planting and vegetation either side of a highway on a green bridge will be maintained by the Applicant (unless otherwise agreed) and considers this matter to be resolved.
- 4.4.5 The Applicant notes the comments from GBC in relation to the A229 Blue Bell Hill, and their proposed Requirement, and refers to the joint submission on this project, ISH7 action point 7 – Blue Bell Hill [**Document Reference 9.112**], submitted at Deadline 5.
- 4.4.6 GBC reiterates its unprecedented position in relation to strategic road network (SRN) DCOs regarding the appropriate discharging authority. The Applicant has outlined its detailed reasons, as well as the consistent line of precedents supporting its position, in [[AS-089](#)] and its Post-event submissions, including written submission of oral comments, for ISH2 [[REP1-184](#)] and the Applicant's previous responses to IP comments made on the dDCO [[REP2-077](#)], and [[REP4-212](#)]. No matters have been raised by GBC which alter the Applicant's position, nor which have not been considered in detail in the precedents cited by the Applicant.
- 4.4.7 GBC also raises comments in relation to consultation under Schedule 2, ancillary works, discounts for Gravesham residents, tree felling (article 24), article 27, article 56, and article 61. The Applicant appreciates that GBC will not have seen the Applicant's Deadline 4 submission responding to comments on the dDCO [[REP4-212](#)], but the Applicant considers that its comments therein address why no further amendments are required in relation to those provisions.



## 5 London Borough of Havering

### 5.1 Article 2(10)

- 5.1.1 LBH reiterates its request that *“provided that there is no new or materially different adverse environmental effect in comparison with those identified in the environmental statement caused by the avoidance, removal or reduction of such adverse environmental effect”* be added to the end of the interpretive provision on *“materially new and materially different environmental effects”* in article 2(10).
- 5.1.2 As the Applicant explained on pages 64 to 65 of [\[REP4-212\]](#), the Applicant believes the underlying basis for this request is misconceived. In particular, LBH has previously raised *“a hypothetical example”* where *“mounds may ... be needed to be at a certain height for noise mitigation and without them there might be an adverse noise effect. Nonetheless, because the reduction of the mounds resulted in the reduction of an adverse effect identified in the ES, it would be sanctioned by this provision irrespective of the collateral noise impacts.”* The Applicant does not consider this to be the effect of the provision; *“collateral noise effect”* referenced in the hypothetical example would in fact be a separate *“materially new or materially different”* environmental effect.
- 5.1.3 Leaving aside the fact that the underlying rationale for such wording is flawed, the specific additional wording proposed by LBH also specifically uses the phrase *“new or materially different adverse environmental effect”* which the Secretary of State has indicated is not their preferred drafting practice. In addition, the wording would prevent environmentally better solutions because it uses the phrase *“materially different adverse environmental effect”*. For example, in a hypothetical scenario where a reduction of a landscape effect was entirely avoided by a variation, but there was also an associated reduced (but ‘different’) noise effect (which would still be adverse because it merely reduced the effect from ‘major’ to ‘moderate’), LBH’s suggested provision would preclude that variation. It is for this reason that the Applicant has resisted the insertion, and stated the proposed variation would obviate the need and rationale for the provision itself.
- 5.1.4 The Applicant restates its specific submissions in relation to this issue (reflected in sections 5.16 to 5.19.4 of the Explanatory Memorandum [\[REP4-096\]](#)) in full. The Applicant considers the inclusion of the drafting is imperative so is willing to amend the Explanatory Memorandum to make clear the effect of the provision does not extend to the scenario posited by LBH but would welcome confirmation from LBH, having considered the explanation and example above, as to whether this would satisfy LBH’s concerns before it undertakes this step.

### 5.2 Deemed consent

- 5.2.1 For completeness, LBH refer to a “deemed refusal”. The Applicant does not accept the need for a “deemed refusal”, and the provisions in question are deemed consent provisions. The Applicant updated the dDCO at Deadline 4 making clear that the operation of those deemed consent provisions is conditional on the notification of the provisions, in line with the request from LBH. The Applicant does not consider it necessary to specify that the notice



would be in a cover letter as that is overly prescriptive and there may not in fact be a covering letter which accompanied the relevant application. The substantive control (notification, tying the deemed consent to that notification) is considered appropriate and goes well beyond the precedents the Applicant has cited.

## 5.3 Signposting in respect of other comments on the dDCO

- 5.3.1 In respect of Articles 61 and 62 and Requirement 10, LBH has repeated its concerns, which the Applicant considers are addressed in the responses provided in respect of those provisions in [\[REP4-212\]](#). The Applicant wishes to emphasise that the reliance on the sole precedent in relation to the drafting of the words “substantially in accordance” is misplaced. LBH dismisses the clear statement that such wording would fetter the discretion of the Secretary of State (in the A47 Wansford to Sutton decision letter) as well as the consistent practice since the precedent it relies on (and makes no mention of the additional precedent where the Secretary of State explicitly considered equivalent wording as noted in [\[REP4-212\]](#)). The Applicant therefore wishes to highlight the response provided on pages 109 to 112 of [\[REP4-212\]](#). The Applicant also wishes to emphasise that flexibility in implementing a scheme is necessary and could assist with the safe and expeditious delivery of the Project in an environmentally sensitive manner (e.g., references to guidance documents in the REAC [\[REP4-138\]](#) could be updated in the final plan to be approved by the Secretary of State). The process of the Secretary of State, along with the requirement for consultation, should provide comfort that appropriate safeguards are in place in relation to this flexibility.
- 5.3.2 The Applicant’s position on commuted sums is provided in the Applicant’s post-hearing submissions in respect of ISH7 [\[REP4-183\]](#). The Applicant emphasises that the reliance on two precedents at the expense of all other SRN DCOs is unwarranted, and does not account for the significant capital contribution the Applicant is making in delivering a Nationally Significant Infrastructure Project with substantial benefits and betterments provided.
- 5.3.3 The Applicant notes the submissions made in respect of the Wider Network Impacts and strongly rejects the suggestion that the Project is not compliant with the NPSNN. The relevant parts of the NPSNN are considered in this context in detail in Transport Assessment Appendix F: Wider Network Impacts Management and Monitoring Policy Compliance [\[APP-535\]](#). The Planning Statement [\[APP-495\]](#) contains an assessment of the Project against the draft National Policy Statement for National Networks (NPSNN) (Chapter 6 of the Planning Statement [\[APP-495\]](#), supported by Appendix A [\[APP-496\]](#)), and in the light of emerging and adopted local planning policy (Chapter 7 [\[APP-495\]](#), supported by Appendix C [\[APP-498\]](#)). The Applicant has explained how its approach aligns with precedented principles, and has explained why it does not consider Silvertown Tunnel an appropriate comparator to the Project in [\[REP4-183\]](#).

- 5.3.4 In accordance with the Action Points issued in respect of ISH4 and ISH7, the Applicant has provided without-prejudice drafting where it has been requested to do so. In the course of holding the relevant workshops relating to Orsett Cock, Asda Roundabout, and Blue Bell Hill (pursuant to those Action Points), the Applicant has identified a need for further engagement. The Applicant is therefore proposing to have those meetings, with a view to providing a further position statement on Wider Network Impacts at Issue Specific Hearing 10 (Traffic and Transport), with the permission of the ExA. The Applicant will then provide an updated “Wider Network Impacts Management Position Statement” which will, among other things, further address the Silvertown Tunnel model.

## 6 Kent County Council

### 6.1 Requirement 5

6.1.1 KCC has suggested an amendment to Requirement 5 which would require the following matters to be secured in the landscape and ecology management plan (LEMP):

(a) -the LEMP must “*demonstrate that the LEMPS prepared for other areas within the North/South of the Thames have been reviewed and correspond with the requirements within those approved (submitted to and approved by the LPA as a requirement) or prepared (produced but not yet submitted to the LPA as a requirement) LEMPS. The submitted information must include a plan showing the areas where LEMPS have been produced and reviewed, and where relevant, include the local planning authority planning application number*”

(b) “*Details must be provided as to how the LEMP will be funded in the interim and long term.*”

6.1.2 The Applicant strongly disagrees that these additions are required to Requirement 5. The provision of the landscape and ecological design of any LEMP submitted to the Secretary of State would be based on the outline Landscape and Ecology Management Plan (oLEMP) [REP4-140]. The oLEMP details the habitat typologies, suggested species mix, outline prescriptions and outline measures of success. The oLEMP already provides detailed levels of differentials between different sites and this is important where habitat creation has different goals (for example wetland habitat creation vs ancient woodland compensation planting). In that context, the Applicant is unclear on the purpose of looking to ensure that individual sites identified in the oLEMP “correspond” with each other.

6.1.3 In addition to this the oLEMP Advisory Group (such as Natural England and KCC) who would have an overview of the LEMP documents developed, and the ongoing monitoring and management requirements. However, in response to these comments, the Applicant is content to introduce new wording into the oLEMP addressing the issue of consistency and coherence across the Order Limits where appropriate. This wording will be implemented for Deadline 6.

6.1.4 The Applicant notes that the ExA’s action point requested KCC had “*regard to the likelihood that the LEMPS will be produced and then delivered by multiple contractors.*” The Applicant wishes to emphasise that it would be responsible for the implementation of all works across the Project, and ensuring that Requirement 5 was discharged and the obligations were met.

6.1.5 The suggestion on funding is also considered to be unnecessary. The Applicant has provided a Funding Statement for the Project, and the obligations both under the DCO and under its licence in relation to meeting its environmental and legal obligations are adequately secured. For completeness, the Applicant is unclear on the purpose of additional controls suggested by the second part of item D which would require the provision of plans and planning application references. There is no intention to use separate planning applications to undertake the works detailed in the Development Consent Order.

## 6.2 A229 Blue Bell Hill

- 6.2.1 The Applicant notes the submissions made in respect of the Wider Network Impacts at the A229, and strongly rejects the suggestion that the Project is not compliant with the NPSNN. The relevant parts of the NPSNN are considered in this context in detail in Transport Assessment Appendix F: Wider Network Impacts Management and Monitoring Policy Compliance [APP-535]. The Planning Statement [APP-495] contains an assessment of the Project against the draft National Policy Statement for National Networks (NPSNN) (Chapter 6 of the Planning Statement [APP-495], supported by Appendix A [APP-496]), and in the light of emerging and adopted local planning policy (Chapter 7 [APP-495], supported by Appendix C [APP-498]). The Applicant has explained how its approach aligns with precedented principles, and has explained why it does not consider Silvertown Tunnel an appropriate comparator to the Project, in [REP4-183].
- 6.2.2 In accordance with the Action Points issued in respect of ISH4 and ISH7, the Applicant has provided without-prejudice drafting where it has been requested to do so. In the course of holding the relevant workshops relating to Orsett Cock, Asda Roundabout, and Blue Bell Hill (pursuant to those Action Points), the Applicant has identified a need for further engagement. The Applicant is therefore proposing to have those meetings, with a view to providing a further position statement on Wider Network Impacts at Issue Specific Hearing 10 (Traffic and Transport), with the permission of the ExA. The Applicant will then provide an updated “Wider Network Impacts Management Position Statement” which will, among other things, further address the Silvertown Tunnel model.
- 6.2.3 The Applicant further refers to the joint submission on the A229 Blue Bell Hill project, ISH7 action point 7 – Blue Bell Hill [Document Reference 9.112], submitted at Deadline 5.

## 7 Port of London Authority

### 7.1 Protective Provisions

- 7.1.1 In their Deadline 4 Post-hearing submissions, the PLA raises points relating to constructability, construction risks, and arbitration provisions. The Applicant provided revised wording to the PLA on these matters on 12 September 2023 and awaits the PLA's feedback. In the absence of feedback from the PLA, the Applicant submitted these amendments at Deadline 4. These amendments specifically address construction risks (including the PLA's concern that the Approval in Principle provided under paragraph 99 does not deal with construction risks), unexploded ordnance, arbitration, ongoing coordination during construction to ensure liaison (akin to the 'working group' suggestion from the ExA) as well as notification requirements relating to tunnelling works. The Applicant looks forward to hearing from the PLA.
- 7.1.2 The existing provisions also deal with the removal of temporary works and protective works, and no specific suggestions for refining those have been put forward by the PLA. For completeness, "specified function" and "specified works" are broadly defined (and would include tunnelling works), but the Applicant agrees that the approvals are those required under paragraph 98 (which exclude tunnelling works), and not 99 of the PLA's Protective Provisions. Nonetheless, the Applicant considers the PLA's Protective Provisions (as amended) provide for a robust set of protections and approvals.
- 7.1.3 The Applicant is awaiting drafting from the PLA in relation to its preferred mechanism for dealing with apparatus in the tunnel area. The principle is agreed between the parties so once the drafting is provided by the PLA can be resolved swiftly in the Applicant's view.
- 7.1.4 Further information on the current status of the Protective Provisions is contained in the Applicant's response to ISH5 Action Point 2 – Impact on the navigation of river traffic [**Document Reference 9.119**].

### 7.2 Article 6 / Paragraph 99

- 7.2.1 The PLA, in its Deadline 4 submission, posits the view that there is a need to read "Art. 6, paragraph 99 and the Tunnel Depth Report [[REP3-146](#)] in the round". The Applicant wishes to state unequivocally that the commitment in paragraph 99 to ensure the depths agreed with the PLA, is firm and would be legally secured (if development consent is granted). The Applicant's view is that the ExA can be assured that the future use of the River Thames at those depths (provided by the PLA) is therefore legally secured.
- 7.2.2 The PLA further states that "*The Applicant has indicated that it intends to make future amendments to paragraph 99; subject to which, the PLA cannot be certain whether further amendments will be required to Art. 6*". For the avoidance of doubt, the referenced amendments to paragraph 99 seek to address the PLA's concerns on construction risks and notification. The Applicant has no intention of making an amendment to paragraph 99(1), which contains the firm commitment on the depths of the tunnel, and ensures the future use of the River Thames in accordance with those depths provided by the PLA.

## 7.3 Article 37

- 7.3.1 In its Deadline 4 submission, the PLA states that Article 37 “*has the effect that the Applicant could acquire land that is identified for temporary possession on a permanent basis*”. This is incorrect: article 35(10) makes clear that “*the undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i)*” except where specifically authorised to do so under article 28 or 33. The reference to article 35(1)(a)(i) is a reference to land which is subject to temporary possession only. Article 37 cannot therefore be used in the manner suggested by the PLA.
- 7.3.2 The PLA further states that “*the Applicant could for example impose restrictive covenants on, over or under the river bed by means of Art. 37.*” Article 33(8) specifically applies the same carve-out in relation to rights / restrictive covenants which may be acquired under article 28 (agreed by the PLA) in article 33. The PLA states that “*The Applicant has made various amendments to Art. 37 but has not to date incorporated the PLA’s suggested amendment: that Article 37(1) is subject to Art. 33*” but that is the effect of article 33(8). The Applicant is accordingly concerned that the suggestions would fall foul of the Office of Parliamentary guidance that only necessary provisions be included, but has nonetheless adopted the insertion in an effort to provide comfort to the PLA.
- 7.3.3 Noting therefore that the scope of the article is not as wide as suggested by the PLA, and article 33(8) provides the relevant protection sought by the PLA in relation to the river, the Applicant does not consider any further amendment is necessary. In more general terms, the Applicant notes that the provision – article 37(1) (i.e., the provision in relation to which the PLA is raising a concern) – is heavily precedented (see A47 Wansford to Sutton Development Consent Order 2023, A428 Black Cat to Caxton Gibbet Development Consent Order 2022, A47/A11 Thickthorn Junction Development Consent Order 2022, M25 Junction 28 Development Consent Order 2022, A57 Link Roads Development Consent Order 2022, M42 Junction 6 Development Consent Order 2020, A63 (Castle Street Improvement, Hull) Development Consent Order 2020, A585 Windy Harbour to Skippool Highway Development Consent Order 2020, A19/A184 Testo's Junction Alteration Development Consent Order 2018, among many others).

## 7.4 Signposting to responses on the dDCO

- 7.4.1 The Applicant’s position on Article 18 is contained in Section 6.4 of [\[REP4-212\]](#). No new matters have been raised by the PLA in its Deadline 4 submission.
- 7.4.2 The Applicant, as signalled in ISH5 and ISH7, has made the amendment to Article 3(3) requested by the PLA as well as the new paragraph title for an existing provision (what was previously paragraph 104(4) and is now paragraph 106). The Applicant’s response to the suggestion of a new provision relating to time periods is provided in [\[REP4-212\]](#).
- 7.4.3 On Article 48(9), the Applicant committed to providing an equivalent to the PLA’s suggested amendment, and this was included in the version submitted at Deadline 4.



## 8 Port of Tilbury London Limited

### 8.1 Proposed Requirement – Asda Roundabout

8.1.1 The Applicant has submitted a response to Action Point 8 of ISH7 which specifically addresses the Asda Roundabout. The Applicant notes that the ExA did not request that the Applicant provide ‘without-prejudice’ drafting. The Applicant is continuing to engage with the Port of Tilbury London Limited (PoTLL) in relation to whether any refinements to the outline Traffic Management Plan for Construction could provide additional assurances. Nonetheless, the Applicant wishes to take the opportunity to note that it does not consider the drafting proposed by PoTLL to be necessary, or proportionate. The table below sets out how each of the provisions in the suggested amendment are already required under the provisions of Requirement 10.

PoTLL’s suggested provision	Existing position under the dDCO and oTMPfC
<i>“No part of Work No. CA5 or CA5A is to be commenced until a scheme of construction traffic mitigation for Work No. CA5 and CA5A has been prepared in accordance with the provisions of this paragraph and has been submitted to and approved in writing by the Secretary of State.”</i>	Requirement 10 is that no part of the authorised development (which would include Work Nos. CA5 and CA5A) may commence until a traffic management plan for that part has been submitted to the Secretary of State for approval, following consultation with the bodies identified in Table 2.1 of the oTMPfC <a href="#">[REP4-160]</a> (which includes PoTLL).
[The scheme must include] <i>“details of the routes on the highway network that are to be used by construction workers in connection with Work No. CA5 and CA5A,”</i>	Illustrative routes are set out in Section 4.1 of the oTMPfC <a href="#">[REP4-160]</a> . Paragraph 4.2.10 sets out that <i>“The routes to site mentioned in this section would be adhered to as far as reasonably practicable”</i> ; and paragraph 4.2.11 sets out that <i>“Alternative routes would be contained in the TMP submitted to the SoS following consultation”</i> .
[The scheme must include] <i>“an assessment (including junction modelling) of the impacts on the highway network of the proposed construction worker routes and construction traffic related to Work No. CA5 and CA5A... the locations on the highway network where the assessment demonstrates there is likely to be a material worsening of traffic conditions as a result of the construction of the authorised development”</i>	Paragraph 2.4.14 of the oTMPfC <a href="#">[REP4-160]</a> requires that <i>“Baseline data will be established prior to commencement on any part of the project. The monitoring will continue until the end of decommission of the compounds associated with the project”</i> ; paragraph 2.4.17 requires <i>“Data recorded at monitoring sites may include traffic flow, traffic composition, journey times (limited), traffic safety (collision) data”</i> and Asda roundabout is identified as a specific location for monitoring” (see paragraph 2.4.19).



PoTLL’s suggested provision	Existing position under the dDCO and oTMPfC
<p>The scheme must also include:  <i>“(e) the measures which the undertaker proposes to mitigate the impacts of such a worsening of traffic conditions; and                      (f) a programme for the implementation of those measures.”</i></p>	<p>Paragraph 2.4.20 identifies that <i>“it may be deemed appropriate that junction modelling is carried out prior to works. The TMP will list the junctions to be modelled if and where required. The list of locations would be discussed with [the local highway authority] at the TMF.”</i> It is anticipated that Asda roundabout would be such a location.</p> <p>Under paragraph 2.4.21 of the oTMPfC [REP4-160], as a result of the monitoring and modelling, the Applicant will be required to:</p> <p><i>“c. Identify unexpected or unanticipated effects on the road network.                      d. Enable the project traffic manager, in consultation with the affected Highway Authority and the proposed Traffic Management Forum (TMF), to plan future works and to develop determine and implement appropriate mitigation for any localised traffic and traffic-related impacts which arise as a result of construction the project. It will also enable Lessons Learnt to be captured and used it the development of future mitigation and operating guidance.                      e. Enable effective engagement and communication by the traffic manager with local residents and other stakeholder regarding traffic impacts and network performance during the construction period (including publishing reporting via public facing website, social media channels etc)”</i></p> <p>Paragraphs 2.4.23 and 2.4.24 set out that: <i>“The Contractor would support interventions and/or changes to traffic management measures required to ensure that disruption is kept to a minimum, at the time of planning, and would identify where continuous improvements need to be implemented.</i></p> <p><i>Where requests for traffic measures to be modified arise during feedback from the TMF, National Highways would give due consideration to any such request, and where necessary, obtain appropriate approvals for any modifications.”</i></p>

PoTLL's suggested provision	Existing position under the dDCO and oTMPfC
<p>The scheme must include:  <i>"a report on the consultation carried out by the undertaker under sub-paragraph (3) that includes—</i>  <i>(i) the undertaker's responses to the consultation responses received by it; and</i>  <i>(ii) if any consultation responses are not reflected in the scheme for construction traffic mitigation for Work No. CA5 and CA5A submitted for the Secretary of State's approval, a statement setting out the undertaker's reasons for not including them."</i></p>	<p>Paragraph 20 of Schedule 2 to the draft DCO [REP4-094] requires the Applicant's <i>"application to the Secretary of State [to include] copies of any representations made by that person or body about the proposed application, and a written account of how any such representations have been taken into account in the submitted application."</i></p>
<p><i>(3) Prior to submitting the scheme of construction traffic mitigation for Work No. CA5 and CA5A the undertaker must consult [LTCIG] on a draft scheme of construction traffic mitigation for Work No. CA5 and CA5A and must have regard to any consultation responses received.</i></p>	<p>Paragraph 20 of Schedule 2 to the Order requires the Applicant to have <i>"due consideration to any representations made by that person or body about the proposed application"</i> including those made under Requirement 10.</p>
<p><i>(4) The undertaker must implement the scheme of construction traffic mitigation for Work No. CA5 and CA5A approved by the Secretary of State.</i></p>	<p>Requirement 10(3) requires <i>"The authorised development must be carried out in accordance with the traffic management plan"</i> approved by the Secretary of State, including those relating to Works Nos. CA5 and CA5A.</p>

8.1.2 The Applicant notes that the outline Traffic Management Plan for Construction [REP4-160] is secured under Requirement 10 of Schedule 2 to the dDCO, and there are appropriate safeguards to ensure that the final traffic management plan includes the relevant matters (i.e., the requirement for consultation, the requirement for due regard to be had to responses, and the Secretary of State's approval which will have the benefit of all representations provided (pursuant to paragraph 20 of Schedule 2 to the dDCO [REP4-094])). The Applicant does not consider the provision is materially different from the controls which are already in place. The Applicant refers to its joint statement on Asda Roundabout submitted at Deadline 4. The Applicant will continue to engage with PoTLL with a view to providing further assurance where appropriate.

## 8.2 Proposed Requirement – Orsett Cock

8.2.1 The Applicant has, in accordance with the request in Action Point 5 of ISH7, provided the Applicant's proposed draft Requirement in relation to the impacts at Orsett Cock. As explained in the response to Action Point 5, the Applicant is proposing to insert this requirement into its dDCO at Deadline 6. This provision is therefore not included on a 'without prejudice' basis. The Applicant refers to its response to Action Point 6 of ISH7.

8.2.2 It is noted that PoTLL submitted its preferred provision in the DCO Drafting Proposals [REP4-350]. The Applicant considers the requirement proposed by PoTLL to be overly prescriptive on the aspects to be included in the Project, and the Applicant does not consider it necessary to fetter the discretion of the Secretary of State. The Applicant's drafting refers to an outcome (i.e., minimising traffic flows and optimising traffic conditions), thereby allowing flexibility to deliver potential measures to address the specific concern raised by stakeholders.

8.2.3 The Applicant would note that its preferred drafting is similar to Requirement 14 of the M25 Junction 28 Development Consent Order 2022 which provides as follows:

*“Operation of M25 Junction 28 Roundabout*

*14.—(1) No part of the new loop road forming Work No. 6 is to be opened for traffic until a plan for the M25 Junction 28 roundabout containing details of the proposed operation of traffic signal timings or such other related measures as may be reasonably practicable to prevent any increase in delays for traffic on the A1023 Brook Street entering the M25 Junction 28 roundabout arising as a result of the authorised development has been submitted to and approved in writing by the Secretary of State, following consultation with the highway authorities within the Order limits.*

*(2) The authorised development must be operated in accordance with the approved plan referred to in sub-paragraph (1) or such amended plan following consultation with the highway authorities within the Order limits.”*

8.2.4 While the circumstances are not identical, the concern there was specifically in relation to increase in delays on A1023 Brook Street entering the M25 junction 28 roundabout and so the Applicant considers it to be relevant. The Applicant would note that, under its drafting, consultation would allow the Applicant to consider any responses from consultees (including PoTLL) and would allow the Secretary of State to consider whether any further information or measures need to be included within the Project.

## 8.3 Proposed Requirement – Tilbury Link Road

8.3.1 The Applicant is grateful to PoTLL for submitting a preferred requirement in relation to passive provision for the Tilbury Link Road. It is welcome that PoTLL acknowledges that the proposed Tilbury Link Road does not form part of the Project, and is being progressed as a pipeline scheme separate to this DCO.

- 8.3.2 The Applicant has given detailed consideration to this issue, noting the nascent and preliminary stage of the proposed Tilbury Link Road. The Applicant has amended the dDCO submitted at Deadline 5 to include a provision which provides assurance that so far as compatible with the Order, passive provision will be provided for a Tilbury link road.
- 8.3.3 There are three key differences between the Applicant's drafting and the drafting suggested by PoTLL. First, the Applicant's drafting ensures the requirement attaches to a particular period. It would be unreasonable and impractical, for example, to have to reconstruct or modify works which have commenced. It is therefore appropriate to limit the requirement to considering the available information at the point of the detailed design stage. Second, the Applicant has used a different definition of the proposed Tilbury Link Road. It is not appropriate for the Applicant to set out any design parameters, unrelated to the Project, and so utilising the definition of a "wide single carriageway" has been replaced by reference to the scheme which is either declared as part of a preferred route announcement, or any other proposal which the Applicant reasonably considers is likely to be the proposed Tilbury Link Road. Finally, the Applicant considers the use of the "relevant national and local design standards" to be imprecise and so it has suggested using the Design Manual for Roads and Bridges<sup>4</sup> instead.

## 8.4 Proposed Requirement - Silvertown

- 8.4.1 The Applicant notes the submissions made in respect of the Wider Network Impacts, and strongly rejects the suggestion that the Project is not compliant with the NPSNN. The relevant parts of the NPSNN are considered in this context in detail in Transport Assessment Appendix F: Wider Network Impacts Management and Monitoring Policy Compliance [[APP-535](#)]. The Planning Statement [[APP-495](#)] contains an assessment of the Project against the draft National Policy Statement for National Networks (NPSNN) (Chapter 6 of the Planning Statement [[APP-495](#)], supported by Appendix A [[APP-496](#)]), and in the light of emerging and adopted local planning policy (Chapter 7 [[APP-495](#)], supported by Appendix C [[APP-498](#)]). The Applicant has explained how its approach aligns with precedented principles, and has explained why it does not consider Silvertown Tunnel an appropriate comparator to the Project in [[REP4-183](#)].
- 8.4.2 In accordance with the Action Points issued in respect of ISH4 and ISH7, the Applicant has provided without-prejudice drafting where it has been requested to do so. In the course of holding the relevant workshops relating to Orsett Cock, Asda Roundabout, and Blue Bell Hill (pursuant to those Action Points), the Applicant has identified a need for further engagement. The Applicant is therefore proposing to have those meetings, with a view to providing a further position statement on Wider Network Impacts at Issue Specific Hearing 10 (Traffic and Transport), with the permission of the ExA. The Applicant will then provide an updated Wider Network Impacts Management Position Statement which will, among other things, further address the Silvertown Tunnel model.

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<sup>4</sup> National Highways (2023). Design Manual for Roads and Bridges.  
<https://nationalhighways.co.uk/suppliers/design-standards-and-specifications/design-manual-for-roads-and-bridges-dmrb/>

## 9 Thurrock Council

### 9.1 Introduction

- 9.1.1 In its Deadline 4 submissions, Thurrock Council raises the use of the words “substantially in accordance with” (see the related response to LBH above) Maintenance of green bridges, and Commuted sums. In addition, Thurrock Council has substantively repeated a number of its concerns in a table in the section entitled “agenda item 3d” (page 326 onward of their Deadline 4 submission [[REP4-352](#)]) with the reference 2, 4, 5, 6, 7, 8, 10 (of 10).
- 9.1.2 In respect of these identified matters, the Applicant is mindful that, given the scale and complexity of the Project, there is a need for information submitted into the Examination to be provided in a manner which is proportionate and accessible for interested parties, the Examining Authority and the Secretary of State, to allow for appropriate consideration.
- 9.1.3 In that spirit, the Applicant has not sought to produce further material and repeat its position, but would simply signpost to its responses to Annex A of the agenda for Issue Specific Hearing 2 [[AS-089](#)] and its Post-event submissions, including written submission of oral comments, for ISH2 [[REP1-184](#)] and the Applicant’s previous responses to IP comments made on the dDCO [[REP2-077](#)], and [[REP4-212](#)] which the Applicant considers address the issues raised. The Applicant is happy to address any questions which the Examining Authority may have in respect of these matters.
- 9.1.4 The Applicant has taken a precautionary approach in responding to comments raised by Thurrock Council. In particular, in relation to matters 1, 3 and 9, the Applicant considers it has addressed the substantive positions raised but Thurrock Council has added additional detail which the Applicant has responded to below to provide comfort that these issues have been the subject of its serious consideration. The Applicant remains willing to engage on any new matters raised by Thurrock Council, and would highlight the significant engagement undertaken to date (see the list of changes made in response to interested parties since Examination in the Schedule of Changes to the dDCO (submitted at Deadline 5) as well as the pre-application engagement noted in its Post-event submissions, including written submission of oral comments, for ISH2 [[REP1-184](#)]).

### 9.2 New matters raised

#### Article 6(3)

- 9.2.1 Thurrock Council repeats and reiterates its concerns relating to Article 6(3) of the dDCO. For context, Thurrock Council has previously raised concerns about the ability to vary the limits of deviation. The comments raised are substantively addressed in the Applicant’s responses to Annex A of the agenda for Issue Specific Hearing 2 [[AS-089](#)] and its Post-event submissions, including written submission of oral comments, for ISH2 [[REP1-184](#)] and the Applicant’s previous responses to IP comments made on the dDCO [[REP2-077](#)], and [[REP4-212](#)]. The Applicant would specifically signpost to page 134 to 135 and page 39 to 40 of [[REP4-212](#)].



- 9.2.2 However, Thurrock Council now supplements its previous remarks by stating that “*The effect of this provision is to effectively remove the non-material amendment procedure as set out in Planning Act 2008 (Schedule 6)*” and that it could lead to “*Residents not taking part in this Examination process as they are outside of the Order Limits, only to find they are later impacted, but not consulted.*”
- 9.2.3 In response to the generalised claim that this heavily precedented provision circumvents the material and non-material amendment process under the Planning Act 2008, this provision is not an impermissible “tailpiece” provision as the limits of deviation referred to in this article and shown on the application plans have been taken into account in the preparation of the Environmental Statement and any variations would be so limited. The Applicant emphasises that it is only permitted to exceed the limits specified in this article if it can demonstrate to the Secretary of State’s satisfaction that no materially new or materially different environmental effects would arise. Article 6(3) is identical to article 6(2) of the M42 Junction 6 Development Consent Order 2020 (and is otherwise heavily precedented), but has been amended to require more consultation with a local highway authority where a variation is sought for a road other than a trunk road or special road (as per the A428 Black Cat to Caxton Gibbet Development Consent Order 2022).
- 9.2.4 The purpose of this provision is to provide the Applicant with a proportionate degree of flexibility when constructing the Project, reducing the risk that the Project as approved cannot later be implemented for unforeseen reasons but at the same time ensuring that any flexibility will not give rise to any materially new or materially different environmental effects.
- 9.2.5 In response to the specific suggestion about landowners not being consulted, the Applicant would simply note that the ability to vary the limits of deviation does not increase, or otherwise modify, the fixed and static compulsory acquisition or temporary possession powers. It would therefore be unlawful to use land outside of the Order Limits without the permission of the landowner. Leaving aside the Project-specific justification provided, the council’s point of view on this matter could be applied to any Nationally Significant Infrastructure Project but it is heavily precedented even beyond those cited above (see M42 Junction 6 Development Consent Order 2020, the A428 Black Cat to Caxton Gibbet Development Consent Order 2022 and the A57 Link Roads Development Consent Order 2022 for recent examples). None of those precedents reference the Order Limits in the equivalent article dealing with the limits of deviation.
- 9.2.6 The Applicant considers its comments on the sole case cited by Thurrock Council in relation to Requirement 3 below are also relevant in this context. It is therefore considered that Thurrock Council’s concerns are unfounded, and that in circumstances where landowner consent is provided, no prejudice is suffered and appropriate safeguards (i.e., no materially new or materially different environmental effects, the requirement of the approval of the Secretary of State, and consultation with local authorities) are in place.

## Article 10

- 9.2.7 Thurrock Council raises three new points in relation to article 10 (identified as matter 3 in the section entitled “agenda item 3d”).
- 9.2.8 The first relates to a defect correction period. The Applicant considers this matter can be considered resolved on the basis that the Protective Provisions for local highway authorities in the dDCO submitted at Deadline 4 secure a defects correction period.
- 9.2.9 The second relates to article 10(4), and why the phrase “reasonable satisfaction” is not used. The Applicant considers that the Protective Provisions for local highway authorities provide protection in relation to the handover of these assets. In particular, paragraph 146 requires defects to be corrected; paragraph 147-8 requires the provision of certificates including the reasonable opportunity to inspect the relevant works in readiness for the issue of a final certificate; and the Applicant has given due consideration and acted accordingly in respect of any representations made by the local highway authority in respect of the works. No further amendment is therefore considered necessary.
- 9.2.10 The third relates to a query as to why private roads are maintained by the street authority. In short, the street authority for private roads would be the relevant persons or landowners. The term ‘street authority’ is defined specifically by reference to the New Roads and Street Works Act 1991.

## Requirement 3 / “materially new or materially different”

- 9.2.11 Thurrock Council has also raised a new argument in relation to the use of the phrase “materially new or materially different” in the context of Requirement 3. In particular, the council states that “*The effect of the provision in the dDCO is to effectively remove the nonmaterial amendment procedure as set out in the Planning Act 2008*” and “*The impact of this from the Council’s perspective is that less consultation and publication of potential amendments will need to be carried out*”.
- 9.2.12 The council prays in aid the case of *R (on the application of Midcounties Co-Operative Ltd) v Wyre Forest District Council* [2009] EWHC 964 (Admin) but does not explain its relevance. In the Applicant’s view, this offers no assistance to the Council in making the arguments it seeks to make. Notwithstanding that it related to a planning permission under the Town and Country Planning Act 1990, in that case, the specific condition which was found to fall foul of the requirements on tailpieces simply allowed for a variation where it was “agreed in writing with the Local Planning Authority”. No other requirements or limitations were included in the condition in that case. The High Court specifically held it would be permissible to allow for variations but this particular condition was not permitted because it would enable development “*very different in scale and impact from that applied for, assessed or permitted and it enables it to be created by means wholly outside any statutory process*”.



- 9.2.13 This is simply not comparable to the dDCO and requirement 3 is not an impermissible “tailpiece” provision because it is specifically limited by reference to the environmental impacts and it explicitly precludes “materially new or materially different” environmental effects from arising. It would not, therefore, enable “very different” effects from those assessed, and, noting the process provided for in terms of the approvals and consultation under the terms of the DCO (a piece of secondary legislation) which are subject to enforcement provisions under Part 8 of the Planning Act 2008, does not exist “wholly outside any statutory process”.
- 9.2.14 It is acknowledged that article 2(10) is to date unprecedented, but for the reasons the Applicant has explained, it is not just considered necessary, and proportionate, but merely confirmatory of the Secretary of State’s position that environmentally better solutions should be permitted within the scope of the environmental assessment. The Applicant restates its specific submissions in relation to this issue (reflected in Sections 5.16 to 5.19.4 of the Explanatory Memorandum [REP4-096]) in full.

### 9.3 Further clarifications

- 9.3.1 The Applicant does also wish to comment on one further matter relating to a Detailed Local Operating Agreement (DLOA). For the avoidance of doubt, the DLOA would be agreed at the implementation stage. The outline Traffic Management Plan for Construction specifically secures a process for this (see paragraph 3.2.2 of the outline Traffic Management Plan for Construction [REP4-160]) and the Protective Provisions for local highway authorities further confirm this (see paragraph 143 of the dDCO [REP4-170]). The Applicant provided the Council with an indication of what this operating agreement could look like to assist them and in response to a request, but this is not intended to be entered into at this stage.
- 9.3.2 Thurrock Council’s Deadline 4 comments in relation to the preliminary works are addressed in the Applicant’s responses to Annex A of the agenda for Issue Specific Hearing 2 (ISH2) [AS-089], its Post-event submissions, including written submission of oral comments, for ISH2 [REP1-184], and the Applicant’s previous responses to IP comments made on the dDCO [REP2-077], [REP4-212]. For completeness, Thurrock Council has repeated its claim that they “have not been consulted on this document (ES Appendix 2.2, Annex C)”. That document is the Preliminary Works EMP and it formed part of the Community Impacts Consultation (specifically, see Section 3 of the Code of Construction Practice included in the materials for that consultation<sup>5</sup>). Thurrock Council provided comments on that document which were in fact helpful to the revision (i.e., moving Section 3 into a separate document in Annex C of ES Appendix 2.2 as well as expanding it significantly).

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<sup>5</sup> Highways England (2021). Community Impacts Consultation – Code of Construction Practice, First Iteration of Environmental Management Plan. Version 0.2. Accessed September 2023.  
[https://highwaysengland.citizenspace.com/ltc/community-impacts-consultation-2021/supporting\\_documents/Code%20of%20Construction%20Practice%20Including%20the%20REAC.pdf](https://highwaysengland.citizenspace.com/ltc/community-impacts-consultation-2021/supporting_documents/Code%20of%20Construction%20Practice%20Including%20the%20REAC.pdf).

- 9.3.3 The Applicant's position on commuted sums is provided in the Applicant's post-hearing submissions in respect of ISH7 [\[REP4-183\]](#). The Applicant emphasises that the reliance on two precedents at the expense of all other SRN DCOs is unwarranted (as is the reliance on trip-generating private developments), and does not account for the significant capital contribution the Applicant is making in delivering a Nationally Significant Infrastructure Project with substantial benefits and betterments provided.
- 9.3.4 Thurrock Council's Deadline 4 submissions in relation to "begin" / "commence" are addressed in Section 2 of this document.

## 10 Transport for London

### 10.1 Wider Network Impacts / Silvertown Tunnel

- 10.1.1 The Applicant notes the submissions made in respect of the Wider Network Impacts and strongly rejects the suggestion that the Project is not compliant with the NPSNN. The relevant parts of the NPSNN are considered in this context in detail in Transport Assessment Appendix F: Wider Network Impacts Management and Monitoring Policy Compliance [APP-535]. The Planning Statement [APP-495] contains an assessment of the Project against the draft National Policy Statement for National Networks (NPSNN) (Chapter 6 of the Planning Statement [APP-495], supported by Appendix A [APP-496]), and in the light of emerging and adopted local planning policy (Chapter 7 [APP-495], supported by Appendix C [APP-498]). The Applicant has explained how its approach aligns with precedented principles, and has explained why it does not consider Silvertown Tunnel an appropriate comparator to the Project in [REP4-183].
- 10.1.2 In accordance with the Action Points issued in respect of ISH4 and ISH7, the Applicant has provided without-prejudice drafting where it has been requested to do so. In the course of holding the relevant workshops relating to Orsett Cock, Asda Roundabout, and Blue Bell Hill (pursuant to those Action Points), the Applicant has identified a need for further engagement. The Applicant is therefore proposing to have those meetings, with a view to providing a further position statement on Wider Network Impacts at Issue Specific Hearing 10 (Traffic and Transport), with the permission of the ExA. The Applicant will then provide an updated “Wider Network Impacts Management Position Statement” which will, among other things, further address the Silvertown Tunnel model.

### 10.2 Requirement 10

- 10.2.1 In their Deadline 4 submission, TfL supports LBH’s comments in relation to the use of the phrase “substantially in accordance with”. The Applicant refers to its response provided to LBH above in respect of that matter but wishes to highlight one further matter.
- 10.2.2 The Applicant notes that TfL’s example at ISH4 supported the Applicant’s position that the flexibility, and governance arrangements, relating to construction traffic control was appropriate. In that example, a proposed closure was withdrawn because of feedback from engagement. In their Deadline 4 submission, TfL suggests that this example supports removing the phrase “substantially in accordance with”.
- 10.2.3 TfL states that “*TfL would suggest that the final outcome was achieved in spite of, rather than because of, the governance process, which National Highways had seemingly initially attempted, at least in part, to circumvent.*” No evidence is provided to substantiate that statement, and the fact that outcome was specifically achieved because, in TfL’s words, “*in response to objections from TfL, the London Borough of Havering... National Highways eventually conceded that the prolonged full closure would be inconsistent with the DCO*” shows how the Applicant engages constructively and with an open mind in proposing traffic management measures.

## 10.3 Commuted sums

- 10.3.1 The Applicant's position on commuted sums is provided in the Applicant's post-hearing submissions in respect of ISH7 [REP4-183]. The Applicant emphasises that the reliance on three precedents (one of which is a private sector, trip-generating development) at the expense of all other SRN DCOs is unwarranted, and does not account for the significant capital contribution the Applicant is making in delivering a Nationally Significant Infrastructure Project with substantial benefits and betterments provided.
- 10.3.2 For completeness, TfL suggests that the A127 bridge is provided because of *"the severance caused by the new direct links between the M25 to the south and the A127 to the east and west, that require the east-west route for pedestrians and cyclists to move to the northern side of the junction."* This is not the Applicant's position. Located west of the M25 junction 29, the bridge over the A127 for walkers, cyclists and horse riders is proposed to address historic severance and concerns raised by London Borough of Havering over connectivity in this area. While the Applicant recognises the potential benefits of the non-motorised user route proposed by the London Borough of Havering, this is not required to mitigate issues arising because of the Project. For those reasons, paragraph 5.216 of the NPSNN is not directly relevant in this context.
- 10.3.3 NPSNN paragraph 5.205 is relevant, and provides that promoters should use *"reasonable endeavours to address any existing severance issues that act as a barrier to non-motorised users"*. The Applicant is doing just that, and paragraph 5.205 should not be read as requiring commuted sums (and such a position would be peculiar given the multitude and overwhelming precedent which supports the non-provision of commuted sums). For the reasons explained in the Applicant's post-hearing submissions in respect of ISH7 [REP4-183], the Applicant considers the provision of these assets (at its own cost) to be highly relevant to judging the appropriateness of commuted sums in the case of the Project.

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