

The Planning Act 2008

LOWER THAMES CROSSING

Examining Authority's Commentary
on the draft Development Consent Order
(the dDCO)

14 November 2023

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OVERVIEW

File Ref: TR010032

This document has been prepared and published by the Examining Authority (ExA) appointed to examine the application for development consent for the Lower Thames Crossing. It contains the ExA commentary on the draft Development Consent Order (dDCO) and the Control Documents (CDs) for consultation. Responses to it are sought by the Applicant and Interested Parties (IPs) at **Deadline 8** on 5 December 2023. Comments on responses may be submitted at **Deadline 9** on 15 December 2023.

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1. INTRODUCTION

- 1.1.1. The Application for the Lower Thames Crossing (the Proposed Development) TR010032 was submitted by National Highways (the Applicant) to the Planning Inspectorate under section 37(2) of the Planning Act 2008 (PA 2008), received on 31 October 2022 and accepted for Examination under section 55 of the PA 2008 on 28 November 2022 [[PD-001](#)].
- 1.1.2. The Application proposes the development of a highway connecting the A2/ M2 at Gravesham in Kent to the M25 at junction 29 on the boundary between the London Borough of Havering (LBH) and Essex. In summary terms the highway is proposed to pass through land in the Borough of Gravesham, under the River Thames in a pair of bored tunnels and through Thurrock, LBH and Borough of Brentwood Council areas. It would constitute a nationally significant infrastructure project (NSIP) under sections 14 and 22 of the Planning Act 2008 (PA2008) and would require NSIP development under sections 16 (electric lines) and 20 (gas transporter pipelines) of PA2008 to enable the construction of the proposed highway alignment. It would provide a second strategic road network dual carriageway crossing of the Thames estuary east of Greater London, downstream from the existing M25/ A282 Dartford Crossing.
- 1.1.3. An Examination of the Application is in progress. The Examination process is due to be completed no later than 20 December 2023, after which the Examining Authority (ExA) will prepare a Recommendation Report to the Secretary of State for Transport (SoST), providing its recommendation on whether and if so, subject to what provisions and requirements, development consent might be granted for the Proposed Development. The Recommendation Report will be considered by the SoST before their decision on the Application is made.
- 1.1.4. As a normal part of the NSIP Examination process, the Applicant has prepared and revised a draft Development Consent Order (dDCO), a draft Statutory Instrument (SI) providing a legal basis for the grant of development consent and framing the provisions and requirements that would apply. If the SoST determines to grant development consent, then effect will be given to that decision by making a Development Consent Order, based on the dDCO that has been examined. This commentary has been prepared on the basis of the most recent version of the dDCO and of the documents pertinent to DCO drafting as follows:
- the draft Development Consent Order v8.0 (clean) [[REP6-010](#)]
 - the Explanatory Memorandum v4.0 (clean) [[REP6-012](#)]
 - the Consents and Agreements Position Statement v6.0 (clean) [[REP6-014](#)]; and
 - the Schedule of Changes to the draft Development Consent Order during Examination v5.0 (clean) [[REP5-070](#)].
- Paragraph and page references to those documents are to the versions listed above.
- 1.1.5. As is established practice in dDCOs prepared for highway development, the dDCO in this instance is accompanied by a range of Control Documents (CDs). These are documents proposed to have a statutory status by being documents required to be certified by the SoST under the Development Consent Order should it be made. The CDs frame the construction and environmental performance standards to be met by the Proposed Development. Prepared as outline documents to facilitate a detailed design process in due course, further iterations of the CDs are subject to subsequent approval and would then provide the basis for delivery and operation of

the proposed development. This document has been prepared with reference to the CDs as described in Section 5.

1.1.6. Regardless of the recommendation that the ExA might make to the SoST on the planning merits of the Proposed Development, it is under a duty to accompany its recommendation with a dDCO and to refer to CDs which, in its view, on the balance of considerations, represent the best drafts that can be obtained for the SoST's consideration. The examination of the dDCO seeks to obtain those draft documents. The ExA may recommend changes to the Applicant's dDCO and CDs as part of that process. Before making any such recommendations however, it is normal practice for an ExA to publish a commentary on the dDCO during the later part of the Examination period. The purposes of this commentary are as follows:

- To raise and seek any outstanding issues relevant to dDCO and CD drafting;
- To flag potentially significant options for change to the dDCO or CDs for consideration by the Applicant and IPs, enabling them to be aware of the drafting considerations as the ExA provisionally sees them;
- To seek responses to inform the Examination process; and
- To enable the ExA to form its recommendations on the dDCO and CDs for inclusion in its Recommendation Report in due course.

1.1.7. **This document contains questions relating to dDCO and CDs.** To distinguish these questions from questions arising from the Report on the Implications for European Sites (the RIES) and from written Examination Questions in rounds 1, 2 or 3 (ExQ1, ExQ2 or ExQ3), these questions have been drafted in ***red, underlined italic text***. Each question has an ID number containing the reference 'D' indicating that it arises from this dDCO Commentary and a number. The ExA would be grateful for responses from parties on these questions. It is stressed that responses to other matters discussed in this commentary are equally welcomed. In responding to the questions, please refer to the ID number.

1.1.8. **This document has been prepared for comment.** It does not present the concluded position of the ExA, the Applicant or any IP at this stage in the Examination. All positions set out within it are rebuttable or amendable for reasons. The Applicant and IPs are encouraged to respond to this document in ways that fully address the matters raised within it that are relevant to their respective positions. Where changes are sought to the dDCO and/ or to the positions set out in this document, relevant evidence and/or reasoning should be provided.

1.1.9. Comments on the matters raised in this document should be submitted as follows:

Table 1: Opportunities to comment on this document

Examination Deadline	Opportunities for Comment and Response
Deadline 8 5 December 2023	<ul style="list-style-type: none"> • Comments on this document by the Applicant • Comments on this document by Interested Parties (IPs) • Comments on this document by any additional Interested Parties (aIPs)¹ joining the Examination process on 10 November 2023

¹ Additional Interested Parties (AIPs) are persons registering and making Relevant Representations by the deadline of 10 November 2023 in relation to proposals by the Applicant to seek additional land and rights by Compulsory Acquisition (CA) under the

Examination Deadline	Opportunities for Comment and Response
<p>Deadline 9 15 December 2023</p>	<ul style="list-style-type: none"> • Responses to comments on this document submitted by IPs and aIPs at Deadline 8, by the Applicant • A final/ preferred dDCO, taking Deadline 8 comments into account, submitted by the Applicant in both .pdf and Microsoft Word formats, accompanied by: <ul style="list-style-type: none"> ○ a Statutory Instrument (SI) validation report; ○ a table of documents proposed to be certified by the SoST; ○ final/ preferred drafts of all CDs and any other documents proposed to be certified by the SoST; and ○ final/ concluded versions of any planning obligations or other legal agreements relied upon as security for the delivery of aspects of the Proposed Development. • Responses to comments on this document submitted by the Applicant at Deadline 8 by IPs and aIPs

1.1.10. Comments and responses can be entered or uploaded to the ‘[make a submission](#)’ tab on the National Infrastructure Planning website Lower Thames Crossing landing page by the relevant deadline. Responses can be sent by email to the [Lower Thames Crossing project mailbox](#) or sent by post, marked for the attention of the Case Manager, Lower Thames Crossing Examination, National Infrastructure Planning at The Planning Inspectorate, Temple Quay House, 2 The Square, Bristol, BS1 6PN. Any material sent by post should be timed for delivery before the expiry of the relevant deadline.

Infrastructure Planning (Compulsory Acquisition) Regulations 2010. Where reference in this Commentary is made to the group of ‘IPs’ it should be read as inclusive of the group of AIPs.

2. THE TITLE OF THE dDCO

- 2.1.1. The dDCO is proposed to be entitled 'The A122 (Lower Thames Crossing) Development Consent Order 202[]'.
- 2.1.2. The ExA is broadly content that this title provides a clear and an accurate description of the purpose of the dDCO.

QD1: Do any IPs have any submissions to make on the title of the dDCO?

3. THE STRUCTURE OF THE dDCO

3.1.1. This section of the dDCO Commentary addresses the structure of the dDCO in the following terms:

- the structure of the dDCO itself, in terms of its contents and the type and nature of provisions contained within it; and
- the structure of its relationship with certified documents and particularly with Control Documents (CDs) which frame the standards to be met in construction and in the operational stage of the Proposed Development.

3.2. THE dDCO TABLE OF CONTENTS AND PROVISIONS

3.2.1. The dDCO [[REP6-010](#)] table of contents divides the draft Order into the following constituent parts:

- A preamble reciting the procedure undergone by the Application, the Examination process and decision-making by the Secretary of State, framing particular powers exercised by the Order and by the Secretary of State in deciding the Order.
- 67 Articles, framing the powers necessary for the carrying out and operation of the Proposed Development, laid out in 5 Parts which broadly following a conventionally established order deal successively with
 - Preliminary matters;
 - Principal powers of the Order;
 - Powers relating to streets;
 - Supplemental powers (relating mainly to navigations and watercourses, water, protection of land and buildings, surveys and investigations, human remains, trees and hedgerows);
 - Acquisition and possession of land;
 - Operation of the Proposed Development; and
 - Miscellaneous and general powers (including inter alia disapplication and application of general and local legislative provisions, provision for a Deemed Marine Licence (DML), provision for a Stakeholder Actions and Commitments Register (SACR), arbitration and appeals provisions.
- 16 Schedules making detailed provision for:
 - Schedule 1: A description of the Authorised Development and Authorised Works;
 - Schedule 2: Requirements, broadly setting the standards to be met by the Proposed Development in construction and operation, and the procedure for the discharge of Requirements;
 - Schedule 3: Temporary closures and alterations of streets and private accesses;
 - Schedule 4: Permanent stopping up of streets and private accesses;
 - Schedule 5: Classification of roads;
 - Schedule 6: Traffic regulation measures;
 - Schedule 7: Trees subject to Tree Preservation Orders (TPOs);
 - Schedule 8: Land of which only new rights etc. may be acquired;
 - Schedule 9: Modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants;
 - Schedule 10: Land in which only subsoil or new rights in and above subsoil and surface may be acquired;
 - Schedule 11: Land of which temporary possession may be taken;
 - Schedule 12: Road user charging provisions for use of the Lower Thames Crossing;

- Schedule 13: Lower Thames Crossing Byelaws;
 - Schedule 14: Protective Provisions benefitting 10 relevant undertakers;
 - Schedule 15: A Deemed Marine Licence controlling works in tidal waters subject to the jurisdiction of the Marine Management Organisation (MMO); and
 - Schedule 16: Documents to be certified by the Secretary of State (in turn including the proposed CDs).
- An Explanatory Note (which is not formally part of the dDCO in legal terms but is annexed to it).

3.2.2. The ExA has considered the form of the dDCO, the explanations for provisions provided in the Explanatory Memorandum (EM) [[REP6-012](#)] and submissions on the form of the Order. It is broadly content that the form of the dDCO is appropriate and follows well-precedented and well-understood practice. It does not give rise to any high-level concern that its structure is inappropriate or would not be understood by those charged with its interpretation or implementation, should it be made.

QD2: Do any IPs have any submissions to make on the structure or broad function of the provisions in the dDCO?

3.3. CERTIFIED AND CONTROL DOCUMENTS

3.3.1. Schedule 16 of the dDCO sets out a list of documents to be certified by the Secretary of State pursuant to Article 62 which in broad terms comprise the following:

- Plans which define the land and the works forming the Proposed Development (including revisions emerging in Examination):
 - Location Plan
 - Land Plans (Volumes A, B & C)
 - Crown Land Plans (Volumes A, B & C)
 - Special Category Land Plans (Volumes A, B & C)
 - General Arrangement Plan
 - Works Plans (Volumes A, B & C)
 - Rights of Way and Access Plans (Volumes A, B & C)
 - Streets Subject to Temporary Restrictions of Use (Volumes A, B & C)
 - Engineering Drawings and Sections (Volumes A, B, C, D, E, F, G & H)
 - Traffic Regulation Measures Plans (Volumes A, B & C)
 - Classification of Roads Plans
 - Tunnel Area Plan
 - Structures Plans (Volumes A, B & C)
 - River Restrictions Plan
 - Tunnel Limits of Deviation Plans
 - Drainage Plans (Volumes A, B & C)
 - Temporary Works Plans (Volumes A, B & C)
 - Hedgerows and Trees Preservation Order Plans (Volumes A, B & C)
- Documents relevant to the compulsory acquisition (CA) or temporary possession (TP) of land (including revisions emerging through ongoing diligence and in Examination):
 - Book of Reference
- The Environment Statement (ES) (including revisions emerging in Examination);
 - Errata Report

- Environmental Statement – Main Report (excluding Chapter 6)
 - Environmental Statement – Main Report (Chapter 6)
 - Environmental Statement – Figures (excluding Figures 2.1, 2.2, 2.3 2.4, 2.5, 5.5, 6.6, 7.4, 7.8 7.16, 7.20, 7.23, 7.24, 10.2, 11.1, 13.3 and 14.4)
 - Environmental Statement – Figures (Figures 2.3, 2.4, (excluding sections 1, 2, 5, 6, 9 and 10 of 10), 2.5 5.5, 6.6, 7.4, 7.8, 7.16, 7.19, 7.20, 7.23, 7.24, 10.2, 11.1, 13.3 and 14.4))
 - Environmental Statement – Figures (Figures 2.1, Figure 2.2 Figure 2.4 (sections 1, 2, 5, 6, 9 and 10 of 10))
 - Environmental Statement – Appendices (excluding Appendix 2.1, Appendix 2.2, Appendix 5.3, Appendix 6.7 (Part 1), Appendix 6.10, Appendix 7.8, Appendix 7.11, Appendix 10.11, Appendix 11.3, Appendix 12.4 and Appendix 14.6)
 - Environmental Statement – Appendices (Appendix 2.1, Appendix 5.3, Appendix 6.7 (Part 1), Appendix 6.10, Appendix 7.8, Appendix 7.11, Appendix 10.11, Appendix 11.3, Appendix 12.4 and Appendix 14.6)
 - Environmental Statement Addendum
- Control Documents (CDs) and other documents including:
 - Errata Report
 - Code of Construction Practice (CoCP) (excluding Annex A, Annex B and Annex C)
 - Code of Construction Practice (CoCP) (Annex A)
 - Code of Construction Practice (CoCP) (Annex B and C)
 - Habitats Regulations Assessment (HRA)
 - Statutory Nuisance Statement
 - Outline Landscape and Ecology Management Plan (oLEMP)
 - Design Principles Document
 - Road User Charging Statement
 - Wider Network Impacts Management and Monitoring Plan
 - Framework Construction Travel Plan (fCTP)
 - Outline Traffic Management Plan for Construction (oTMP-C)
 - Preliminary Navigational Risk Assessment (pNRA)
 - Community Impact Report
 - Interrelationship with other Nationally Significant Infrastructure Projects and Major Development Schemes
 - Carbon and Energy Management Plan
 - Stakeholder Actions and Commitments Register (SACR)

3.3.2. The ExA has considered whether there are any documents provided to the Examination or which could be developed that would usefully augment the set of certified documents and specifically the CDs. It has also considered whether any of the current set appear to be superfluous and should be removed.

3.3.3. In terms of additions, the ExA highlights the Mitigation Road Map document [\[REP4-203\]](#) as having been useful and as a valuable potential addition to the CDs. The purpose of such an addition and the means by which it might be given effect is discussed further in Section 5 of this Commentary.

3.3.4. The ExA does not propose to delete any documents from the proposed set of certified documents and CDs.

QD3: Are there any documents that have been submitted to the Examination that should be certified but are not recorded in the dDCO?

QD4: Are there any documents are recorded in the dDCO as to be certified but which are superfluous?

3.3.5. At present, the documents proposed to be certified are set out in a single table in the order recorded above. Some previous made Orders for other NSIP developments (for example those for East Anglia ONE North Offshore Wind Farm and East Anglia TWO Offshore Wind Farm) subdivide the equivalent of Schedule 16 into more than one table, distinguishing the documents comprising the ES from the 'other' certified documents. This approach appears to be the beginning of useful progress towards categorising the certified documents by type and function, just as for example Articles and Requirements are categorised), assisting the users of a made Order in due course to find and use the document(s) that they need to implement or enforce the Order.

3.3.6. This is a large scheme with at present in excess of 40 certified documents. As the Applicant is increasingly making use of fewer and more generalised requirements supporting a larger number of more specialised CDs (which are certified documents and which also undergo cycles of iteration and approval with each project stage) to regulate the design, construction and operational stages of highway projects, the ExA considers that it would be useful to restructure Schedule 16 into parts enabling relevant documents of particular functional types to be found more easily.

3.3.7. A possible re-structuring of Schedule 16 might be as follows:

- PART 1: Plans;
- PART 2: Documents Relevant to Compulsory Acquisition and Temporary Possession;
- PART 3: The ES;
- PART 4: The Control Documents; and
- PART 5: Other Certified Documents.

QD5: Should Schedule 16 be restructured to set out the proposed certified documents in functional groupings?

3.3.8. The Code of Construction Practice (CoCP) is included within the group of CDs in Schedule 16. At present the CoCP is listed with reference only to its main volume and its Annexes. A key component of this document group is the Register of Environmental Actions and Commitments (REAC). The REAC is an iterated CD with a life beyond the construction stage of the Proposed Development. Whilst in the pre-construction and construction stages the REAC does need to be used in a manner that is integrated with the CoCP. However, it is a working document that is intended to be used in both construction and operation to set standards applicable to the Proposed Development, which in turn means that persons responsible for the discharge and enforcement of Requirements in Schedule 2 will need to refer to it beyond construction, after the remainder of the CoCP is likely to have ceased to be widely used.

3.3.9. The ExA notes submissions from the Applicant that it has become to some extent established practice that made Orders for NSIP highways include the REAC within the CoCP in the manner proposed here. However, that approach to document structure does not make the REAC easy to locate or use. For example, a key word search against the current dDCO [REP6-010] discloses only three specific references to the REAC, each in Schedule 2 Part 1 (Requirements); one providing interpretation and two providing security for it in individual requirements. There is no direct reference to it as a certified document or as a CD in Schedule 16. Even though it is secured more extensively as a consequence of references to the CoCP (of which it is a part) in the Requirements, there are possible interpretational concerns about the life of such references (and security based up them) beyond the first iteration of the EMP. This is a matter to which the ExA returns in the commentary on Schedule 2 (Section 4.3) below. However, irrespective of the merits

or otherwise of that concern, there are general ‘useability’ and ‘adequacy of security’ points about the REAC, which are that despite its evident importance it is seldom directly referred to in the dDCO and linkages between the security for project standards and the REAC are hard to find. In the busy life of project governance and delivery, might the REAC perhaps become a little too easy to overlook?

- 3.3.10. For these reasons, the ExA considers that the REAC should be individually identified in Schedule 16 and its full title should be set out there, assisting relevant persons to locate it throughout all relevant phases of the Proposed Development. Returning to the Mitigation Road Map, the ExA observes that this might become part of or sit alongside the REAC.

QD6: Should the REAC be individually identified in Schedule 16 (certified documents)?

QD7: Should the Mitigation Road Map be included as part of the REAC, as a separate CD or certified document or not at all?

QD8: Do any IPs have any further submissions to make on the manner in which certified documents and specifically CDs are recorded in the dDCO?

- 3.3.11. The Applicant has been invited to submit its preferred dDCO at Deadline 9 on 15 December 2023, taking account of its own responses to this document and to comments on this document received from IPs at Deadline 8. The Applicant is requested to provide its final set of preferred draft certified documents with its preferred dDCO at Deadline 9 and to ensure that Schedule 16 makes reference to the titles and structures of all such documents as proposed to be submitted at that time.

4. THE CONTENT OF THE dDCO

4.1.1. This section of the dDCO Commentary addresses the content of the dDCO in the following terms:

- the function and content of the Articles; and
- the function and content of the Schedules.

4.2. ARTICLES

4.2.1. The following table identifies specific matters and questions that the ExA wishes to raise in relation to the content of Articles. References to Articles are abbreviated as 'A'.

4.2.2. The ExA also seeks responses to the following general questions which arise in relation to the Articles.

QD9: Are there any further matters that have been raised in the Examination that should be provided for in an Article but which are not? If so, please provide reasons and evidence for your position.

QD10: Are there any matters provided for in an Article which are superfluous? If so, please provide reasons and evidence for your position.

QD11: Are there Articles that the ExA has not yet commented on in respect of which a change in drafting is sought? If so, please provide reasons and evidence for your position.

Table 2: Commentary on Articles

Provision	Examination Issue	ExA Reasoning & Questions
Articles	Deemed consents	<p>Several Articles provide for deemed consent in favour of the undertaker from relevant authorities and other persons if an application or request made by the undertaker is not responded to within a specified period. At present, the default value for these is on the expiration of a 28-day period for the granting of express permission (or refusal where relevant), after which consent is deemed to have been granted to the undertaker if an express response has not been provided.</p> <p>There is a generally appropriate justification for time-limited deemed consents in a DCO, which is that NSIP development is carried out to meet national need in the public interest and that a failure to decide relevant applications from and requests by the undertaker in a timely manner can cause substantial additional delay to and cost for a project and for the public as a whole.</p> <p>That being observed, the ExA’s view on the fairness and operability of deemed consent provisions over such a period is that whilst 28 days will be fair and operable for some consenting bodies, it may not be so for others. Matters such as:</p> <ul style="list-style-type: none"> • the scale and complexity of the decision sought, • the degree to which design considerations or conditions are relevant and need to be developed and applied, • the degree to which local authority governance processes require committee approvals and the time necessary to achieve these, • the degree to which additional persons internal or external to the consenting body need to be consulted, • the availability of the skills and resources to support decision-making, and • in some circumstances the degree to which the (for example non-professional/ non-public body) consenting body is even alive to its role and aware of its legal obligations, <p>may need to be considered in reaching a fair view. Other considerations may also be relevant to individual circumstances.</p>

Provision	Examination Issue	ExA Reasoning & Questions
		<p>The ExA is seeking final views from all bodies subject to deemed consent provisions about the reasonableness of the specific provisions applicable to them, whilst also noting that unless there are particular justifications for process and timing variance between such provisions, there is also value in consistency and simplicity, as proposed by the Applicant in this case.</p> <p>Individual questions relating to specific deemed consent provisions in Articles are asked below, but respondents are also requested to consider the balance of possible approaches to such provisions, the justification for expedition, the value of consistency of approach and whether, on balance, the approach that they are proposed to be subject to is fair and reasonable.</p> <p><u>QD12: All prospective consenting bodies subject to deemed consent provisions with a time-limit are asked to consider the appropriateness of a provision for deemed consent and of the time limit. If these are not considered to be appropriate then they are asked to explain why and how these provisions might be varied.</u></p>
A2	<p>Interpretation of “begin” A2 defines the term as follows: “begin” means beginning to carry out any material operation (as defined in section 56(4) (time when development begun) of the 1990 Act) forming part of the authorised development including preliminary works (as defined in Schedule 2 to this Order), and “begun” and “beginning” are to be construed accordingly;</p>	<p>The ExA is seeking clarity in general terms about provisions including A2 which regulate when the Proposed Development commences or begins and set time limits within which relevant aspects of commencement or beginning occur. Related questions arise in relation to the time limit for the compulsory acquisition of land or rights. The commentary here should be read alongside that for:</p> <ul style="list-style-type: none"> • A27 Time limit for exercise of authority to acquire land compulsorily • Schedule 2 R1 Interpretation • Schedule 2 R2 Time limits <p>There is currently a complex interplay of both definitions (‘begin’ versus ‘commence’) and time limits (5 years for development commencing when the Order is made, 8 years for CA powers commencing when legal challenges are exhausted, and the degree to which a broad and inclusive definition of ‘begin’ makes a time limit for development of</p>

Provision	Examination Issue	ExA Reasoning & Questions
		<p>little practical effect). The ExA seeks a rationalisation of this and related provisions, to clarify and where possible simplify the drafting and its effect.</p> <p>Drafting proposed for the definition of the term “begin” in A2 is extracted to the left of this reasoning. A2 of the dDCO does not define the terms 'commence' or 'preliminary works'. Extensive reference to other made Orders nevertheless finds these to be commonly employed terms to address the functions for which the term ‘begin’ is defined here. ‘Begin’ is not widely used for such purposes and appears to the ExA to be novel drafting.</p> <p>The ExA has considered the Applicant’s oral submissions at ISH7 into the dDCO [EV-046d at pg 14] and post event submissions for ISH7 [REP4-183] on this provision. The intention and basis for the use of a definition of ‘begin’ and subsequent references to that term in the dDCO, and for the non-definition and non-use of the more conventional term ‘commence’ with appropriate carve-outs for ‘preliminary works’ are noted. It is intended by the Applicant that works that more typically would be viewed as being of a preliminary nature are works that will ‘begin’ the authorised development and will result in development consent becoming concrete and enduring.</p> <p>That being said, the ExA retains the following concerns:</p> <ul style="list-style-type: none"> • That an earlier than normal beginning might have the effect of making development consent concrete and enduring at the start of preliminary works, which may still be before the full funding authorisation and intentional commencement of the development in real terms. This could possibly result in additional blighting effects on Affected Persons (such as inability to obtain secured finance for property repairs, improvements or investments) earlier than normal, at a point when there is still no firm decision to deliver the Proposed Development or the timescale of delivery is still not firmly committed to. • That the departure from extensively established practice that this proposed drafting represents may not be well understood by users of the DCO, if the Order is made. Because it is not founded in well-established practice, it may suffer from lower interpretational certainty and hence increase the likelihood of disputes, mediations

Provision	Examination Issue	ExA Reasoning & Questions
		<p>and litigation that the more certain application of the term ‘commence’, with appropriate carved out definitions relating to ‘preliminary works’ that need to be taken forward before formal commencement would not.</p> <p>There is a related matter which arises from Requirement 1 (R1) in Schedule 2 which is also dealt with here. R2 (Interpretation) does define (and the Requirements do employ) the term ‘commence’ and the term ‘preliminary works’ as follows:</p> <p>“commence” means beginning to carry out any material operation (as defined in section 56(4) (time when development begun) of the 1990 Act) forming part of the authorised development other than preliminary works and “commencement” is to be construed accordingly; “contaminated land” has the same meaning as that given in section 78A of the Environmental Protection Act 1990(a).</p> <p>“preliminary works” means operations consisting of archaeological investigations and pre-construction ecological mitigation (including in connection with those investigations or mitigation vegetation clearance), environmental surveys and monitoring, investigations for the purpose of assessing and monitoring ground conditions and levels, erection of any temporary means of enclosure, receipt and erection of construction plant and equipment for advanced compound areas, diversion and laying of underground apparatus (except any excluded utilities works) for advanced compound areas, accesses for advanced compound areas (and vegetation clearance in connection with those accesses), and the temporary display of site notices or information.</p> <p>These definitions are within what the ExA would view as the mainstream approach of definition of these terms in multiple made Orders. They clarify that there are carved-out ‘preliminary works’ that of necessity need to be undertaken before the Proposed Development is commenced and hence the authorised development described in Schedule 1 Part 1 becomes concrete and consented on an enduring basis.</p> <p>The ExA notes that the term 'begin' is not further defined in Schedule 2 R1, but yet it is still employed in R2 (Time Limits) and R7 (Protected Species).</p>

Provision	Examination Issue	ExA Reasoning & Questions
		<p>The ExA remains concerned about the fact that the term ‘begin’ as defined in A2 and the term ‘commence’ defined in R1 for Schedule 2 are broadly the same in terms of relying on section 56(4) (time when development begun) of the 1990 Act. But they appear to be fundamentally at odds with each other in that the A2 definition of begin incorporates the Schedule 2 R1 definition of ‘preliminary works’ as nested within the term ‘begin’, whereas Schedule 2 R1 defines ‘preliminary works’ as distinct from the term ‘commence’, notwithstanding that both terms rely on the same foundation in the 1990 Act. This has distinct potential to cause circularity and confusion. The relationship between these two sets of definitions requires to be substantially more clearly explained, or alternatively the drafting should be amended to return to the more conventionally used and understood approach of defining ‘commence’ and ‘preliminary works’ in A2.</p> <p>A final matter for consideration relates to the 1990 Act foundation-stone of both of these definitions. Is it possible that greater clarity might be lent to definitions if A2 was to provide broadly as follows:</p> <p>“commence” means the first carrying out of any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised project other than preliminary works [which would be separately defined].</p> <p>This has the apparent benefit of referring the meaning of commencement to PA2008 - the parent statute for the dDCO, and to a definition that was crafted by Parliament with the intent of clarifying commencement for the purposes of NSIP delivery under PA2008. This drafting has been employed in made Orders. However this is resolved, the ExA considers that it is generally desirable that the same statutory foundation stone should be used for the definition of ‘commence’ in both the Articles and the Requirements if that can be achieved.</p> <p><u>QD13: The Applicant is requested to explain more fully the inter-relationship between this provision, A27, Schedule 2 R1 and R2. Is there an argument for a simplified and harmonised approach to the relevant time limits for development and for CA?</u></p>

Provision	Examination Issue	ExA Reasoning & Questions
		<p><u><i>QD14: The Applicant is asked to explain more fully why it is necessary to employ a definition of 'begin' as opposed to the more conventional approach of defining 'commence' with a carve-out for 'preliminary works'.</i></u></p> <p><u><i>QD15: The Applicant is requested to review the basis for and the relationship between the definitions of 'begin' in A2 and 'commence' and 'preliminary works' in Schedule 2 R1, to assure the ExA that apparent circularity has been removed. Could re-basing these definitions on s155 PA2008 assist this task?</i></u></p> <p><u><i>QD16: What would be the effect for the Proposed Development of a return to the more conventional drafting approach of defining 'commence' with a carve-out for 'preliminary works' in A2, with all subsequent references in the dDCO amended as necessary?</i></u></p>
A2	<p>Interpretation of “watercourse”</p> <p>A2 defines the term as follows:</p> <p>“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, winterbournes, sewers and passages through which water flows except a public sewer or drain</p>	<p>This is somewhat of a catch-all definition which places natural systems watercourses with their attendant water quality and biodiversity considerations through to sewers and passages into a common definition (with all other species of watercourses in between). This is a well precedented definition. However, there may be an argument that precision in the dDCO might be assisted by reframing this definition to refer to such other, pre-existing statutory definitions that are available (for example but not limited to the application of the term “watercourse” in the Land Drainage Act 1991, or of the term “public sewer” in the Water Industry Act 1991) which would ensure that the functionality, biological and chemical characteristics of relevant watercourses are not inadvertently confused.</p> <p><u><i>QD17: The Applicant, the Environment Agency (EA) and other water environment and industry stakeholders are asked to consider whether a more specific group of definitions of a watercourse would be justified and the possible drafting benefits of making such a change.</i></u></p>

Provision	Examination Issue	ExA Reasoning & Questions
A6	Limits of deviation	<p>Lack of precision in relation to certain vertical limits of deviation can be justified as providing appropriate operational flexibility, in turn enabling minor vertical adaptations to unexpected ground conditions and assisting in controlling the cost of major projects. However, lack of precision can also have unforeseen consequences and costs, for example:</p> <ul style="list-style-type: none"> • In general terms, where a ‘limitless’ approach is employed without a caveat that it must not give rise to environmental effects materially more adverse than those assessed in the ES (leading to possible breaches of the Rochdale Envelope); or • Specifically, in terms referred to in multiple submissions by the Port of London Authority (PLA) in relation to vertical upward limits of deviation in relation to tunnelling works in the River Thames and their possible intersection with operational considerations such as maintenance dredging or the application of scour protection in the bed of the river (see most recently [REP4-345]). <p>In relation to the general consideration identified above, A6 (2) (f), (g), (h) and (i) still express downward vertical limits of deviation as being ‘...to any extent downwards as may be found to be necessary or convenient;’ without any caveat to limit materially adverse effects to the extent assessed in the ES.</p> <p><u>QD18: The Applicant and relevant statutory undertakers are asked to consider the effect of the remaining ‘limitless’ downward vertical limits of deviation. Should these be subject to a caveat limiting the materially adverse effects of downward variation to that assessed within the ES?</u></p> <p>Turning to the concerns of the PLA, the ExA seeks a clear statement as to whether the drafting in A6 in relation to the tunnel upwards limits of deviation beneath the River Thames is now fully agreed between the PLA and the Applicant and, if not, what further refinements are sought. If there is a read across between drafting here and (for example) the Protective Provisions, this should be made clear.</p>

Provision	Examination Issue	ExA Reasoning & Questions
		<u>QD19: The Applicant and the PLA are asked to clarify the latest position on the drafting of the upwards limits of deviation for tunnelling beneath the Thames.</u>
A10	Construction and maintenance of new, altered or diverted streets and other structures	<p>A10 addresses the maintenance of structures including bridges. As currently drafted it is not fully clear that it engages fully with the maintenance of proposed Green Bridges which in whole or part may not necessarily carry a highway or a street.</p> <p><u>QD20: Are the Local Highway Authorities content that A10 adequately provides for the maintenance of Green Bridges? If full agreement has yet to be reached then final submissions on drafting for comment between the parties should be made.</u></p>
A12	<p>Temporary closure, alteration, diversion and restriction of use of streets and private means of access</p> <p>Extent of power and deemed consent</p>	<p>The power in A12 to temporarily stop up streets and to use them as a temporary working site is not limited to the streets identified for closure in Sch 3 and does not appear to be limited to streets within the Order limits. This is a wide power that needs to be justified.</p> <p><u>QD21: The Applicant is asked to explain more fully why this power needs to apply to streets outside the Order limits. Could the power be limited to land within the Order limits and what would the effect of such a change be?</u></p> <p>Where a street is not identified in Sch 3 as a street that may be subject to closure, the consent of the relevant street authority is required for the closure. A12(8) makes this subject to deemed consent after 28 days.</p> <p><u>QD22: IPs who are street authorities are asked whether a 28-day deemed consent provision in A12(8) is reasonable. If not, please propose and justify an appropriate alternative provision.</u></p>
A17	Traffic regulation – local roads Deemed consent	Subject to the prior notice to and consent of the relevant traffic authority and to prior notice to the relevant Chief Officer of Police, the undertaker may extensively amend the operating conditions of local roads. The power provided in this Article includes substantial requirement for prior notification by the undertaker. However, if the relevant

Provision	Examination Issue	ExA Reasoning & Questions
		<p>traffic authority does not determine an application before it within 28 days (A17(11)) then consent is deemed to be granted.</p> <p><u>QD23: Traffic authorities and emergency services bodies (consultees) are asked whether the deemed consent period of 28 days in A17(11) is appropriate and, if not, to propose and justify an appropriate alternative provision.</u></p>
A18	Powers in relation to relevant navigations or watercourses	<p>A18 permits the undertaker to, amongst other things, remove or relocate any moorings so far as it may be reasonably necessary for the purposes of carrying out and maintaining the authorised development, regardless of any interference with any private rights.</p> <p>Are there any implications for the operation of the River Thames as a navigation or on the operation of existing or proposed port or jetty facilities that flow from this drafting?</p> <p>Are there any circumstances in which this would lead to the relocation of a houseboat? If so, this could represent interference with ECHR article 8 rights, with no apparent mechanism for the person affected to challenge the applicant's decision that the interference is reasonably necessary, to the extent that the undertaker considers it to be necessary or reasonably convenient. Notwithstanding precedent cited in the EM [REP6-012], the ExA needs to consider the acceptability of this.</p> <p><u>QD24: The Port of London Authority (PLA), Port of Tilbury London Ltd (PoTLL), DP World London Gateway Port (LGP) and any other IP operating vessels on the Thames are asked for final positions on this drafting.</u></p> <p><u>QD25: The Applicant is asked to identify whether this power actually does or could apply to a houseboat mooring. Could a caveat to the power be added to limit its effect on a residential mooring and what would the effect of such a change be?</u></p>
A19	Discharge of water uncertainty and deemed consent	<p>Whilst the drafting in A19(3) is in reasonably standard form, the ownership of watercourses and thus the relevant consenting body for the purposes of this provision</p>

Provision	Examination Issue	ExA Reasoning & Questions
		<p>can often be very difficult to determine. There can also be valid question about the effects of a discharge on adjacent riparian owners that may need to be considered.</p> <p><u>QD26: The Applicant is asked whether the consenting power under A19 should include seeking consent from or consulting the appropriate drainage authority.</u></p> <p>A19(8) and (9) provide an expedited deemed consent procedure for discharge approvals. Given the circumstances identified above, although the need to retain delivery of NSIP development to project timescales is an important consideration, is 28 days an adequate period for the express discharge of such consents?</p> <p><u>QD27: The Applicant and any prospective consenting bodies are asked whether the deemed discharge consent period of 28 days under A19 is appropriate and, if not, what an appropriate period might be.</u></p>
A21	<p>Authority to survey and investigate the land Deemed consent</p>	<p>Relevant highway and street authorities are provided with a consenting power in relation to trial holes and boreholes under A21(4). This is subject to a 28-day deemed consent provision.</p> <p><u>QD28: The Applicant and any prospective consenting bodies are asked whether the deemed trial hole consent period of 28 days under A21 is appropriate and, if not, what an appropriate period might be.</u></p>
A27	<p>Time limit for exercise of authority to acquire land compulsorily</p>	<p>A27(1) sets a time limit for the exercise of CA powers of 8 years. This is longer than the time limit of 5 years set for development in Schedule 2 R2 (see Schedules commentary below). It is also longer than the normal 5 years which has been standard for most DCOs to date, although it should be noted that larger projects including new nuclear power stations (Hinkley) and offshore wind farms (Dogger Bank Teesside A & B) have proposed equivalent time extensions and the relevant SoS has accepted the need for those based on the scale of the Proposed Development, but subject to limitations applying to specific Works of up to ten years (in the case of Hinkley) and for all works and CA of eight years (for Dogger). The Applicant needs to fully justify the requirement for an additional 3 years to exercise the CA powers in consideration of the additional</p>

Provision	Examination Issue	ExA Reasoning & Questions
		<p>interference with the rights of persons with an interest in the land and the possibility of blight, and also explain how this is useful when the development time limit is set at 5 years.</p> <p>In A27(3) the Applicant defines the start date for the 8-year period as being the date after the expiry of the period within which a legal challenge could be made under s.118 PA 2008, or after the final determination of any legal challenge made under that section. The standard drafting in DCOs to date is for the 5-year period to commence on the date of the order. This definition of start date could have the effect of adding to the 8-year period within which persons with an interest in land will have their land burdened with the threat of CA before it is in fact compulsorily acquired. This represents an additional or abnormal interference with their rights which must be justified. The approach taken to the start date definition adds an element of uncertainty as it is not possible to know how long any challenge may take to be determined. The ExA needs to consider whether this approach is acceptable, giving consideration to the rights of persons with an interest in land burdened by this provision that is not typically found in made Orders.</p> <p>The Applicant is also referred to the commentary for A2 (above) and for Schedule 2 R1 and R2 below.</p> <p><u>QD29: The Applicant is asked to provide a full justification for the extended time period of 8 years. What would be the effect of returning this to the standard 5 year period? Alternatively, if the scale and complexity of the project justifies an extended period for CA, should this be harmonised with the time limit for the authorised development to begin of 5 years, set in Schedule 2 R2?</u></p> <p><u>QD30: The Applicant is asked to provide a full justification for re-basing the start of this period to the end of any legal challenge period or the end of any legal challenge. What would be the effect of returning this to the standard provision where time runs from the making of the Order?</u></p>

Provision	Examination Issue	ExA Reasoning & Questions
A28	Compulsory acquisition of rights and imposition of restrictive covenants	<p>A28(1) contains a wide power to impose undefined restrictive covenants over all of the order land (save for land contained in schedule 11 – see article 35(10)(a)). The Secretary of State for Transport’s (SoST’s) decision in the M4 Motorway (Junctions 3 to 12) (Smart Motorway) DCO at paragraph 62 to remove an equivalent power from a DCO should be noted. The SoST decided “<i>to remove the power to impose restrictive covenants and related provisions as he does not consider that it is appropriate to give such a general power over any of the Order land [...] in the absence of a specific and clear justification for conferring such a wide-ranging power in the circumstances of the proposed development and without an indication of how the power would be used</i>”.</p> <p>Other SoST decisions have included similar positions, including the A556 (Knutsford to Bowdon Improvement) DCO and the Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) DCO. The ExA does not consider that the Applicant has explained why undefined restrictive covenants are justified in this case in the EM [REP6-012] (see paras 5.122 – 5.130). The EM contains a short justification for rights and restrictive covenants together and does not provide the fully articulated reasons that the ExA considers would justify a departure from the SoS’ previous positions on this matter.</p> <p><u>QD31: The Applicant is asked to provide a full justification for the broad extent of this power, or alternatively to find a means of limiting it to more precisely defined locations. What would be the effects of removing this power?</u></p>
A48	Protection of the tunnel area, etc. Deemed consent	A 28-day deemed consent period under this Article is applicable to the Applicant/ the undertaker. The ExA considers that the Applicant will have considered the process implications of this provision and so is not asking a question directly on this point. This note is provided for consistency of the management of this with other deemed consent provisions in this Commentary.
A53 & A55	Disapplication of legislative provisions, etc and	A DCO under PA2008 is empowered to disapply and amend other legislation as required to give effect to the consent provided for NSIP development.

Provision	Examination Issue	ExA Reasoning & Questions
	Application of local legislation, etc	<u><i>QD32: Does any IP have any concern that the draft provisions unreasonably or inappropriately seek to disapply or modify other applicable legislative provisions? If so, what changes are sought to this provision or the dDCO more generally and why?</i></u>
A58	Defence to proceedings in respect of statutory nuisance	<p>A58 provides a defence to proceedings in respect of statutory nuisance relating to construction or maintenance of the project and that the nuisance cannot reasonably be avoided. The Applicant has provided a statutory nuisance statement [APP-489].</p> <p><u><i>QD33: Does any IP have any concern that the proposed defence unreasonably seeks to safeguard the undertaker against poor or inappropriate practices or insufficient mitigation in either construction or operation? If so, what changes are sought to this provision and why?</i></u></p>
A64 & A65	Arbitration and Appeals to the Secretary of State	<p>In contrast with a number of recent submitted dDCOs, the arbitration provisions here are relatively simple and well precedented. However, with reference to both A65 and Schedule 2 Part 2, it is important to note that appeals to the SoST only lie in respect of decisions by local authorities. Most decisions arising from Requirements directly are taken by the SoST. There appears to be no appeal from a decision taken by the SoST pursuant to Schedule 2 Part 2, and A64(2) specifically provides that ‘[a]ny matter for which the consent or approval of the Secretary of State is required under any provision of this Order is not subject to arbitration.’</p> <p><u><i>QD34: Does any statutory body with formal decision-making powers have any concern that the proposed arbitration mechanism unduly affects their statutory role or powers? If so, what changes are sought and why?</i></u></p> <p><u><i>QD35: What does the undertaker do if the SoST refuses to grant the discharge of a Requirement and there is no means of dispute resolution? One answer is that the decision of the SoST is final and that must suffice, but is that the intended</i></u></p>

Provision	Examination Issue	ExA Reasoning & Questions
		<u><i>position?</i></u>
A66	Power to override easements and other rights	<p>On an equivalent matter to that raised in relation to A28, A66 grants a wide power for the undertaker, or those acting on their behalf, to interfere with interests and rights and breach restrictions on land within the order limits. Despite the inference in the EM [REP6-012] that it only applies to land vested in the undertaker, the power is not limited to land subject to CA but appears to apply to all land within the order limits including that subject only to temporary possession and that in respect of which the undertaker would not take possession. The EM does not provide the fully articulated reasons that the ExA considers would justify the broad application of this power.</p> <p><u><i>QD36: The Applicant is asked to provide a full justification for the broad extent of this power, or alternatively to find a means of limiting it to more precisely defined locations. What would be the effects of removing or reducing the scope of this power?</i></u></p>

4.3. SCHEDULES

4.3.1. The following table identifies specific matters and questions that the ExA wishes to raise in relation to the content of Schedules.

4.3.2. The ExA also seeks responses to the following general questions which arise in relation to the Schedules:

QD37: Are there any further matters that have been raised in the Examination that should be provided for in a Schedule but which are not? If so, please provide reasons and evidence for your position.

QD38: Are there any matters provided for in a Schedule which are superfluous? If so, please provide reasons and evidence for your position.

QD39: Are there Schedules that the ExA has not yet commented on in respect of which a change in drafting is sought? If so, please provide reasons and evidence for your position.

4.3.3. In respect of these questions, the ExA asks all IPs to consider the Authorised Development provisions in Schedule 1, Requirements (and possibly missing matters that could be provided for in requirements) and the means by which they are discharged in Schedule 2 and to the function and content of certified documents and particularly CDs in Schedule 16. Affected Persons subject to requests for the CA and or TP of land or rights may wish to consider Schedules 8 to 11 inclusive. Highway authorities and transport interests may wish consider Schedules 12 and 13. Statutory Undertakers and equivalent bodies benefitting from Protective Provisions in Schedule 14 are requested to address those. The Marine Management Organisation is requested to consider Schedule 15. There are individual questions on the individual Schedules and provisions within them below.

Table 3: Commentary on Schedules

Provision	Examination Issue	ExA Reasoning & Questions
SCHEDULE 1 – AUTHORISED DEVELOPMENT		
The Authorised Development	Suggested minor drafting amendment	<p>Subject to one exception in relation Work No.7R, the ExA is generally content with the content and effect of Schedule 1.</p> <p>In reaching this position it has noted and supports the specific provision that the lettered ancillary works (see page 119) are permitted only to the extent that they are ‘not likely to give rise to any materially new or materially different environmental effects to those assessed in the environmental statement’.</p> <p>In relation to those ancillary works, the ExA suggests a minor drafting revision for clarity: ‘[f]or the purposes of or in connection with the construction of any of the works and other development in the Order limits, ancillary or related <u>works and other</u> development...’ (<u>Underlined</u> text proposed to be added.)</p> <p><u>QD40: Does the Applicant agree?</u></p> <p><u>QD41: Do IPs have any further and final observations on the drafting of this Schedule including on the description of the individual numbered Works and their relationship with the Works Plans?</u></p>
Work No. 7R	Re-provision of a travellers’ site and associated landscaping	<p>Please see comments on R13 below. However additionally, the ExA is still unclear whether works on this site are related housing development, in particular how they comprise the construction of dwellings for the purpose of PA2008 ss115(1)(c) and 115(4B).</p> <p><u>QD42: The Applicant is requested to provide legal submissions on this point.</u></p>

Provision	Examination Issue	ExA Reasoning & Questions
SCHEDULE 2 – REQUIREMENTS		
Requirements generally	Security for the REAC	<p>Specific provision securing implementation of measures included in the REAC can be found in R4 (Construction and handover environmental management plans) and R8 (Surface and foul water drainage). Given the importance of the REAC as a record of commitments which a broad range of stakeholders will consider important and necessary for delivery should the Proposed Development be consented, there is an argument that it should be more extensively referenced in other requirements.</p> <p><u>QD43: Local Planning and Highway Authorities, Port Authorities and Operators, Natural England, the Environment Agency and the Marine Management Organisation as asked whether the REAC commitments are sufficiently secured. If not, what specific additional references to the REAC are required in any of the existing draft Requirements, or are any additional Requirements sought (and if so reasons for their inclusion and drafts should be provided)?</u></p>
Requirements generally	Security for other CDs	<p>Do the requirements provide adequate security for the performance of the project as described in other CDs?</p> <p><u>QD44: Local Planning and Highway Authorities, Port Authorities and Operators, Natural England, the Environment Agency and the Marine Management Organisation as asked whether the other CDs are sufficiently secured? If not, what specific additional references to specific CDs are required in any of the existing draft Requirements, or are any additional Requirements sought (and if so reasons for their inclusion and drafts should be provided)?</u></p>
Schedule 2 R1	<p>Interpretation of “commence”</p> <p>Interpretation of “preliminary works”</p>	<p>The Applicant is referred to the commentary on Articles above and specifically to that on the definition of “begin” in A2. Commentary above (A27) and below (R2) on time limits is also relevant.</p>

Provision	Examination Issue	ExA Reasoning & Questions
		<p>As the ExA identified in the commentary on A2, there is an apparent conflict between the definitions of “begin” there and “commence” and “preliminary works” here. It appears as if a novel drafting approach (defining “begin”) has been introduced to the dDCO Articles, but the logic and effect of the drafting have not been fully considered and have not been driven through the drafting in the remaining parts of the dDCO.</p> <p><u><i>QD45: The Applicant is requested to review and harmonise its responses to each of the questions in relation to A2 with reference to this provision also. What if any drafting changes are necessary to simplify and harmonise the drafting on interpretation and definitions?</i></u></p> <p><u><i>QD46: What approach do other IPs consider should be taken to these definitions and why?</i></u></p>
R2	Time limits (for the authorised development)	<p>The Applicant is referred to the commentary on Articles above and specifically to that on the definition of “begin” in A2, on time limits for exercise of authority to acquire land compulsorily (A27).</p> <p>The ExA seeks views on two potential approaches to this provision:</p> <ul style="list-style-type: none"> • That time limits are harmonised as 5 years, starting with the date on which the Order is made (or starting on another date for reasons); and/ or • That time limits are agreed to extend above 5 years, for reasons. <p>The Proposed Development is a major project. A term of 8 years has already been sought in relation to CA powers. On major projects such as Hinkley Point C new nuclear power station (with periods up to 10 years for specific Works) or Dogger Bank Teesside A & B offshore wind farm (with 8 years for CA powers), project scale and complexity have been accepted by other Secretaries of State as justifications for time limits that are greater than 5 years. The common theme in such cases appears to be that the additional time is limited to that reasonably required (having regard to the public interest</p>

Provision	Examination Issue	ExA Reasoning & Questions
		<p>in reducing the extent, duration and effects of blight and uncertainty due to major development).</p> <p><u>QD47: Should time limits applicable to beginning/ commencing the Proposed Development and time limits for the exercise of CA powers be harmonised?</u></p> <p><u>QD48: Is there a justification for time limits of longer than 5 years? What is that justification?</u></p>
R3	Detailed Design	<p>Detailed design is driven by the design principles document [REP6-046], an important CD. Gravesham Borough Council seeks amendments to it [REP6-135].</p> <p><u>QD49: Are the design principles guiding the Proposed Development adequately secured and do any of the principles need to be amended? If amendments are sought, why are they required?</u></p>
R4	Construction and handover environmental management plans	<p>R4 sets out the process whereby the EMP and the CoCP are iterated by stages of the Proposed Development, iterations are approved by the SoS and then content within those documents is secured. The CoCP sets out the iteration process.</p> <p>Preliminary works must be carried out in accordance with the preliminary works EMP [REP6-043]. The REAC is not expressly referenced.</p> <p>The REAC as a source for the EMP (second iteration) is secured in R4(3), which is required also to include specific measures to manage site waste (substantially in accordance with the outline site waste management plan (oSWMP) [REP6-040], materials handling (with the outline materials handling plan (oMHP) [REP5-050], noise and vibration, air quality, cultural heritage, ecology, soils, contaminated land, substances hazardous to health and pollution prevention controls. The construction of relevant parts of the authorised development must then meet the EMP (second iteration) measures.</p>

Provision	Examination Issue	ExA Reasoning & Questions
		<p>An EMP (third iteration) is then required to be prepared to govern operation and maintenance of the proposed development. This must contain a smaller range of specific measures including: the environmental information need for future maintenance and operation; the long term commitments to aftercare, monitoring, maintenance and mitigation; and a record of relevant consents, commitments and permissions. The authorised development must then meet the EMP (third iteration) measures in this stage.</p> <p><u>QD50: Is the iteration and approval process sufficiently clear? Does it provide adequate security for initial stage commitments and for the REAC? If amendments are sought, why are they required?</u></p> <p><u>QD51: Should any specific consultations prior to approval by the SoS be secured?</u></p>
R5	Landscaping and ecology	<p>Landscape provisions at each stage are separately set out in a Landscape and Ecology Management (LEMP) approved by the SoS based on the outline LEMP [REP4-140 to 143]. A LEMP must be prepared for each part of the Proposed Development prior to the opening of that part, substantially in accordance with the oLEMP. Each LEMP does secure the design principles document and relevant mitigation measures in the REAC, as well as the environmental masterplan (annexed to the ES) [REP4-124 to 129]. Specific details are required of:</p> <ul style="list-style-type: none"> • location, number, species mix, size and planting density of any proposed planting; • cultivation, importing of materials and other operations to ensure plant establishment; • existing trees and vegetation to be retained, with measures for their protection during the construction period; • proposed finished ground levels; • implementation timetables for landscaping works; • commitments to aftercare, monitoring and maintenance activities relating to the landscaping and ecological features; and

Provision	Examination Issue	ExA Reasoning & Questions
		<ul style="list-style-type: none"> measures for the replacement, in the first available planting season, of any tree or shrub planted that dies, becomes seriously diseased or is seriously damaged in the construction of the authorised development. <p>Construction and maintenance must be carried out in accordance with the relevant LEMP for that part of the development.</p> <p>The measures here appear to be robust.</p> <p><u>QD52: Is the approval process sufficiently clear? Does it provide adequate security for initial stage commitments and for the REAC? If amendments are sought, why are they required?</u></p> <p><u>QD53: Should any specific consultations (and the timing for those consultations) prior to approval by the SoS be secured?</u></p>
R6, R7, R8 and R9	Contaminated land and groundwater, Protected species, Surface and foul water drainage. and Historic environment	<p>The specific interests of the Environment Agency (R6 & R8), Natural England (R7) and Historic England (R9) are managed by these requirements. The REAC is specifically secured in R8 but not in the other requirements. Differing consultative requirements apply to SoS approval.</p> <p>Having created a definition of ‘begin’ in the dDCO that aims to include preliminary works, R7 authorises environmental surveys and monitoring works that begin before the Proposed Development begins. (Please refer back to questions on A2 and Sch 2 R1 in responding to this issue).</p> <p>R9 provides security on archaeological matters via the Outline Written Scheme of Investigation (oWSI). Specific security is not provided in relation to any historic building actions. Given questions in EXQ2 and ExQ3 about the management of historic buildings proposed to be removed, are any particular recording or relocation measures needed?</p> <p><u>QD54: Do the Environment Agency, Natural England and Historic England consider that the approval process is sufficiently clear? Does it provide adequate</u></p>

Provision	Examination Issue	ExA Reasoning & Questions
		<u><i>security for initial stage commitments and for the REAC? If amendments are sought, why are they required?</i></u>
R10, R11, R14, R17, R18	Traffic management, Construction travel plan, Traffic monitoring, Passive provision for Tilbury link road and Operation of the Orsett Cock roundabout.	The subject matters of these Requirements have been discussed at ISHs into traffic and transportation matters and positions are not yet agreed. Subject to consideration of submissions at D6A which are likely to be relevant and may clarify positions, the ExA proposes to examine these provisions orally at forthcoming ISH13 (Traffic & Transport) and ISH14 (dDCO). Revised Agendas for those hearings will be published once the D6A documents have been considered by the ExA.
R13	Re-provision of Gammonfields Travellers' Site in Thurrock	<p>This requirement secures the re-provision of a site to replace the Gammon Field travellers' site in Thurrock (Work No. 7R). A key question is whether R13 as currently drafted provides Thurrock Council with an equivalent measure of control and enforceability in relation to possible future use and development on the operational re-provided site as would be the case via conditions to a TCPA planning permission; or that desired/ desirable changes to the operational site can then subsequently be managed under the TCPA (if they should be) as distinct from needing to be the subject of a post consent material change application to the made DCO in order to develop on the site? The following questions for Thurrock Council and the Applicant emerge.</p> <p><u><i>QD55: R13 appears to provide for the development of a replacement Travellers' site but the ExA is not clear that it also adequately provides for the lawful ongoing use of the site, or ensures that use or development not expressly contemplated in clause S11.12 of the Design Principles document can be adequately managed.</i></u></p> <p><u><i>QD56: Does R13(3) (which provides security for the carrying out of works to provide the replacement Travellers' site) provide any security for the ongoing use of the operational site as provided?</i></u></p> <p><u><i>QD57: Could a new R13 (4) (with renumbering thereafter) provide that on completion of Work No.7R the land must be used as a Travellers' site and the</i></u></p>

Provision	Examination Issue	ExA Reasoning & Questions
		<p><u><i>development must be maintained generally in accordance with any plans or details submitted and approved under R13 (2)?</i></u></p> <p><u><i>QD58: Is there argument to include another new provision that, notwithstanding the process for obtaining consent for operational development for a Travellers' site provided under R13, any subsequent application for change of use, new development or any further enforcement proceedings or appeals in relation to any of these should proceed under relevant provisions of the TCPA, with the consent for use and development provided under the made Order being deemed to be a conditional lawful use or a planning permission for the purposes of TCPA decision-making, subject to a need to consult the LTC undertaker on any such application, proceeding or appeal? The aim of such a change would be to use the DCO regime to re-provide the site, but not to govern its operation. Could such a provision form part of A56 or should it be dealt with in R13 or another new Article and or Requirement? The Applicant is requested to provide a drafted response.</i></u></p>
R15	Carbon and energy management plan	<p>Does the proposed plan and its iterations address carbon and energy control adequately?</p> <p><u><i>QD59: IPs final submissions are sought. Reasons for any proposed changes must be provided.</i></u></p>
SCHEDULE 3 – TEMPORARY CLOSURE, ALTERATION, DIVERSION AND RESTRICTION OF USE OF STREETS AND PRIVATE MEANS OF ACCESS		
General	See A12 above and the Streets Subject to Temporary Restrictions of Use Plans [REP4-052 , 054 and 056]	<p>This Schedule and the related plans describe each street or private means of access to be closed, altered, diverted or restricted pursuant to the power provided in A12.</p> <p><u><i>QD60: Final submissions on the appropriateness and/ or accuracy of the proposed descriptions, extents and representation of temporary restrictions on plans identified in Schedule 3 are sought from Local Highway Authorities and IPs</i></u></p>

Provision	Examination Issue	ExA Reasoning & Questions
		<u><i>affected by the proposals. Reasons for any requested amendments must be provided.</i></u>
SCHEDULE 4 – PERMANENT STOPPING UP OF STREETS AND PRIVATE MEANS OF ACCESS		
General and Parts 1 and 3	See A14 and Rights of Way and Access Plans [REP4-046 , 048 and 050]	<p>This Schedule and the related plans describe proposals for the permanent stopping up of streets and private means of access pursuant to the power provided in A14. Parts 1 and 3 relate to stopping up where a described alternative is proposed to be provided.</p> <p><u><i>QD61: Final submissions on the appropriateness and/ or accuracy of the proposed descriptions, extents and representation of permanent stopping up on plans and of the proposed substitutes(s) identified in Schedule 4 are sought from Local Highway Authorities and IPs affected by the proposals. Reasons for any requested amendments must be provided.</i></u></p>
Parts 2 and 4	Highways, other streets or private means of access to be stopped up for which a substitute is not to be provided	<p>Specific attention is drawn to Parts 2 and 4 of this Schedule which identify proposals for permanent stopping up where a substitute is not to be provided.</p> <p><u><i>QD62: Final submissions on the appropriateness and/ or accuracy of the proposed descriptions, extents and representation of permanent stopping up on plans identified in Schedule 4 are sought from Local Highway Authorities and IPs affected by the proposals. Are individual proposals to stop up without substitution appropriate? Reasons for any requested amendments must be provided.</i></u></p>
SCHEDULE 5 – CLASSIFICATION OF ROADS, ETC.		
General	See A15 Classification of roads, etc. and the Classification of Roads Plans [REP3-061].	Schedule 5 sets out the classification of roads etc. affected by the Proposed Development, with reference to the Classification of Roads Plans.

Provision	Examination Issue	ExA Reasoning & Questions
Part 6	Other public rights of way (PRoWs) and permissive paths (PPs)	<p>To the extent that representations were made at CAH3 (Agenda Items e) to l)) [EV-057 and 060] and ISH10 [EV-076 and 081] that certain proposed bridleways should not be so designated because the harm to agriculture and private interests caused could outweigh the public benefit arising from their creation, the makers of those submissions are asked to identify specific PRoWs that they are requesting to be re-classified in Schedule 5 Part 6.</p> <p><u>QD63: Final submissions on the reclassification of certain bridleway PRoWs are sought from Mr Mike Holland for clients, Mr Tom Benton, and Mr Jeremy Finnis for client. With reference to Schedule 5 Part 6 and to the Classification of Roads Plans, please identify each Bridleway proposed to be differently classified, what its revised proposed classification would be and a summary reason for the change.</u></p> <p><u>QD64: Applicant, Local Highway Authorities and IPs affected by the proposals are invited to respond at the following deadline.</u></p>
SCHEDULE 6 – TRAFFIC REGULATION MEASURES		
General	See A16 Traffic regulation measures	<p>Schedule 6 is divided into Part 1 setting speed limits for particular existing and proposed roads, Part 2 defining existing and proposed roads subject to clearway and other special restrictions (including the prohibition of pedestrians, cyclists etc on elements of the existing and proposed roads) and Part 3 varying or revoking existing Traffic Regulation orders (TROs) (in relation to width, weight and equivalent restrictions).</p> <p><u>QD65: Final submissions on the appropriateness and/ or accuracy of the proposed descriptions and extents of the proposed speed limits, clearway provisions and TRO amendments in Schedule 6 are sought from Local Highway Authorities and IPs affected by the proposals. Reasons for any requested amendments must be provided.</u></p>

Provision	Examination Issue	ExA Reasoning & Questions
Without prejudice HRA response	Amended speed limits	<p>If it should become appropriate to make additional use of speed limits as a measure to avoid air quality effects on European Sites (please cross refer to the ExA's Report on the Implications for European Sites (RIES) also published on 14 November 2023), would relevant measures be given effect in this Schedule?</p> <p><u>QD66: Without prejudice to submissions on HRA and effects of European Sites more generally, the Applicant is invited to indicate whether (and if so how) relevant air quality impact reductions might be secured by speed limits. Would such controls be given effect to in this Schedule and if so, how would the Schedule be changed?</u></p>
SCHEDULE 7 – TREES SUBJECT TO TREE PRESERVATION ORDERS		
General	See A24 Trees subject to tree preservation orders (TPOs) and Schedule 1 (Works)	<p>This schedule identifies trees subject to TPOs where felling is proposed to be carried out in the Borough of Gravesham, Thurrock and the London Borough of Havering.</p> <p><u>QD67: Final submissions on the appropriateness and/ or accuracy of the proposed descriptions, extents and effects of the proposed tree works in Schedule 7 are sought from Local Authorities. Reasons for any requested amendments must be provided.</u></p>
SCHEDULE 8 – LAND OF WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED		
General	See A28 Compulsory acquisition of rights and imposition of restrictive covenants and the Land Plans [REP5-004 , 006 and 008]	<p>This Schedule identifies land (with reference to Plot reference numbers on the Land Plans) and the purpose(s) for which rights over land may be acquired or restrictive covenants may be acquired. This is a matter which the ExA is also examining via the Compulsory Acquisition Hearings (CAH) process, through which it is inviting all objectors to CA and TP proposals to be heard. Responses to this question from persons who have been heard may cross refer to written and oral submissions already provided and do not need to repeat submitted material unless circumstances have changed.</p>

Provision	Examination Issue	ExA Reasoning & Questions
		<p><u>QD68: Final submissions on the appropriateness and/ or accuracy of the proposed descriptions, extents and purposes of the proposed acquisitions in Schedule 8 are sought from Affected Persons. Reasons for any requested amendments must be provided.</u></p>
<p align="center">SCHEDULE 9 – MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS AND IMPOSITION OF RESTRICTIVE COVENANTS</p>		
General	See A28 Compulsory acquisition of rights and imposition of restrictive covenants	<p>This Schedule is a well-precedented provision in made Orders, modifying a range of statutory provisions relevant to compensation and compulsory purchase for the purposes of the Proposed Development. This is a matter which the ExA is also examining via the Compulsory Acquisition Hearings (CAH) process, through which it is inviting all objectors to CA and TP proposals to be heard. Responses to this question from persons who have been heard may cross refer to written and oral submissions already provided and do not need to repeat submitted material unless circumstances have changed.</p> <p><u>QD69: Final submissions on the appropriateness and effect of the proposed modifications in Schedule 9 are sought from Affected Persons. Reasons for any requested amendments must be provided.</u></p>
<p align="center">SCHEDULE 10 – LAND IN WHICH ONLY SUBSOIL OR NEW RIGHTS IN AND ABOVE SUBSOIL AND SURFACE MAY BE ACQUIRED</p>		
General	See A33 Acquisition of subsoil or airspace only and the Land Plans [REP5-004, 006 and 008]	<p>This Schedule identifies land (with reference to Plot reference numbers on the Land Plans) and the depth at and purpose(s) for which the subsoil and new rights and restrictive covenants may be acquired. This is a matter which the ExA is also examining via the Compulsory Acquisition Hearings (CAH) process, through which it is inviting all objectors to CA and TP proposals to be heard. Responses to this question from persons who have been heard may cross refer to written and oral submissions already provided and do not need to repeat submitted material unless circumstances have changed.</p>

Provision	Examination Issue	ExA Reasoning & Questions
		<u>QD70: Final submissions on the appropriateness and/ or accuracy of the proposed descriptions, extents and purposes of the proposed acquisitions in Schedule 10 are sought from Affected Persons. Reasons for any requested amendments must be provided.</u>
SCHEDULE 11 – LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN		
General	See A35 Temporary use of land for carrying out the authorised development and the Land Plans [REP5-004, 006 and 008]	<p>This Schedule identifies land (with reference to Plot reference numbers on the Land Plans) of which the Applicant seeks Temporary Possession (TP). This is a matter which the ExA is also examining via the Compulsory Acquisition Hearings (CAH) process, through which it is inviting all objectors to TP proposals to be heard. Responses to this question from persons who have been heard may cross refer to written and oral submissions already provided and do not need to repeat submitted material unless circumstances have changed.</p> <p><u>QD71: Final submissions on the appropriateness and/ or accuracy of the proposed descriptions, extents and purposes of the proposed TP in Schedule 11 are sought. Reasons for any requested amendments must be provided.</u></p>
SCHEDULE 12 – ROAD USER CHARGING PROVISIONS FOR USE OF THE LOWER THAMES CROSSING		
General	See A45 Road user charging (A46 Suspension of road user charging) and the A282 Trunk Road (Dartford-Thurrock Crossing Charging Scheme) Order 2013 which this Schedule seeks to amend.	<p>Schedule 12 is particular to the LTC Proposed Development. It seeks broadly to integrate a road charging regime for the proposed LTC tunnels with that for the existing Dartford Crossing, subject to broadly the same payment of charges and enforcement provisions as are applicable to the existing Dartford Crossing.</p> <p><u>QD72: Is the ExA correct in assessing the basis for this provision as avoiding differential approaches to charging which might differentially attract vehicles to one or the other crossing?</u></p> <p><u>QD73: Are IPs content that the proposed charging regime is within the powers of a DCO (with reference to PA2008 s120 and Schedule 5)? If not, please explain why</u></p>

Provision	Examination Issue	ExA Reasoning & Questions
		<p><u>not.</u></p> <p><u>QD74: Are there any final observations on the operation of Payments for local residents (para 5)?</u></p> <p><u>QD75: Are there any final observations on the effect of the balance of these provisions? Responses to these questions are specifically sought from the host Local Authorities for the proposed LTC. Reasons should be provided for any changes sought.</u></p>
SCHEDULE 13 – LOWER THAMES CROSSING BYELAWS		
General	See A51 Lower Thames Crossing byelaws	<p>Schedule 12 is particular to the LTC Proposed Development. A51 empowers the Order to make byelaws for the LTC. The substantive content of the proposed byelaws apply restrictions in the tunnel area and enable those restrictions to be enforced.</p> <p><u>QD76: Are IPs content that all of the proposed byelaws are within the powers of a DCO (with reference to PA2008 s120 and Schedule 5)? If not, please explain why not.</u></p> <p><u>QD77: Are there any final observations on the effect of these provisions? Responses to this question are specifically sought from the host Local Authorities for the proposed LTC. Reasons should be provided for any changes sought.</u></p>
SCHEDULE 14 – PROTECTIVE PROVISIONS		
General	See Art 59 Protective Provisions Finalisation of the Protective Provisions	<p>Schedule 14 sets out the following sets of Protective Provisions:</p> <ul style="list-style-type: none"> • Part 1 – for the protection of electricity, gas, water and sewerage undertakers • Part 2 – for the protection of electronic communications code operators • Part 3 – for the protection of drainage authorities

Provision	Examination Issue	ExA Reasoning & Questions
		<ul style="list-style-type: none"> • Part 4 – for the protection of railway interests • Part 5 – for the protection of specified gas undertakers • Part 6 – for the protection of National Grid Gas plc as gas undertaker • Part 7 – for the protection of National Grid Electricity Transmission plc as gas undertaker • Part 8 – for the protection of Port of London Authority • Part 9 – for the protection of the Environment Agency • Part 10 – for the protection of the Port of Tilbury London Ltd <p><u>QD78: Are the named beneficiaries of the Protective Provisions content that the provisions drafted for their benefit are appropriate and correct? If not, please explain why not.</u></p> <p><u>QD79: Further to changes to the structure of the National Grid group of companies, should the beneficiary of Part 6 be National Gas?</u></p> <p><u>QD80: Do any other IPs and specifically statutory undertakers affected by the Proposed Development consider that they should benefit from Protective Provisions? If so, why and what ought the provisions to contain?</u></p> <p><u>QD81: Are there any other requests for amendments to Protective Provisions? If so what changes are sought and why?</u></p>
SCHEDULE 15 – DEEMED MARINE LICENCE		
Form and Conditions generally	Deemed Marine Licence (DML)	<p>A DML is required to authorise works in and beneath tidal waters subject to the jurisdiction of the Marine Management Organisation (MMO).</p> <p><u>QD82: Are there any final observations on the form or effect of the DML? Responses to this question are specifically sought from the MMO. Reasons</u></p>

Provision	Examination Issue	ExA Reasoning & Questions
		<u><i>should be provided for any changes sought.</i></u>
DML REAC and CDs	Security for the REAC and other CDs	<p>Are there any additional references to the REAC or other CDs required in order to adequately secure the performance and enforceability of the Proposed Development in and under the River Thames?</p> <p><u><i>QD83: The MMO is asked whether the REAC commitments or other CDs are sufficiently secured. If not, what specific additional references to the REAC or to specific CDs are required in any of the existing draft Requirements, or are any additional Requirements sought (and if so reasons for their inclusion and drafts should be provided)?</i></u></p>
SCHEDULE 16 – DOCUMENTS TO BE CERTIFIED		
General	Submission of documents to be certified in their final form.	<p>Section 3.3 of this Commentary above ask questions from the ExA about the documents to be included in this Schedule. Paragraph 3.3.11 above invites the Applicant to submit its preferred dDCO at Deadline 9 on 15 December 2023, taking account of its own responses to this document and to comments on this document received from IPs at Deadline 8. The Applicant is requested to provide its final set of preferred draft certified documents with its preferred dDCO at Deadline 9 and to ensure that Schedule 16 makes reference to the titles and structures of all such documents as proposed to be submitted at that time. Section 5 of this Commentary below discusses the content of the certified documents. Any changes to the documents arising from any of these discussions must be reflected in the Deadline 9 submission.</p>

5. THE CONTROL DOCUMENTS

5.1. WHAT ARE THE CONTROL DOCUMENTS?

5.1.1. The Control Documents (CDs) are documents prepared by the Applicant to guide and control actions by the undertaker (the entity or entities who would design in detailed terms and/ or construct the Proposed Development if development consent is granted) and the operator (the entity or entities who would manage the operational highway if the Proposed Development is constructed and commissioned).

5.1.2. The CDs obtain legal force and effect because they are documents prepared under the framework provided by the Environmental Statement (ES) and secured in the DCO (the 'Rochdale Envelope').

5.1.3. The CDs have been designed to be iterated, for two main reasons:

- To provide a measure of adaptive design and management, in which the detailed form, delivery and operation of the Proposed Development can be adapted within the framework provided by the ES and secured in the DCO to meet particular circumstances that are currently unknown or unresolved but may be found or need to be resolved or amended during the design, construction and operational phases; and
- To ensure that the programme for delivery and operation remains up to date and able to avail itself of relevant innovations and efficiencies that would not entail a material change to the Proposed Development.

5.1.4. The stages of iteration proposed for the CDs over time are as follows:

- Examination (the current stage)
- Detailed design
- Construction
- Operation



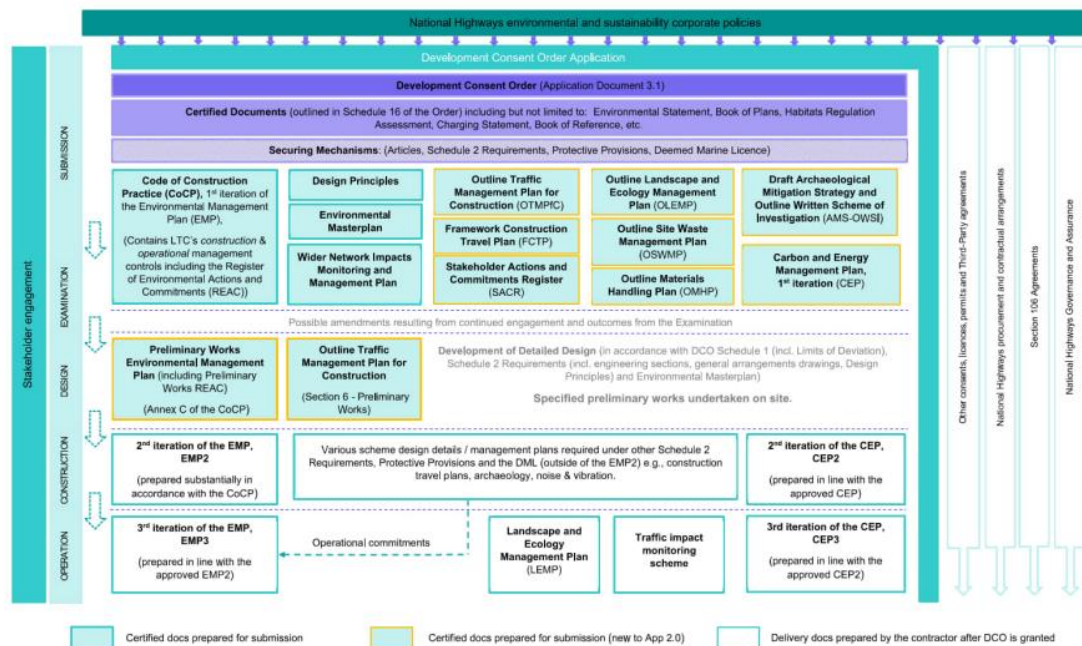
5.1.5. The provision, iteration and approval of the CDs and their iterations are secured by relevant provisions in the dDCO. The ExA has asked questions about the structure of the certified document set and the CDs within them above in Section 3.3 (structure) and 4.3 (schedules) of this commentary. In addition to those questions:

QD84: Do any IPs have any final concerns about the functions of and relationships between the proposed certified documents and the CDs as a subset of them? Are the proposed iterations clear and justified? If any changes are sought, please explain these.

5.2. UNDERSTANDING AND USING THE CONTROL DOCUMENT SET

5.2.1. The ExA has found the Applicant's Mitigation Road Map [REP4-203] to be a useful document. It explains the proposed structure of and relationships between the CDs, their iterations and approval mechanisms through the anticipated stages of the Proposed Development. A key explanatory illustration is reproduced as **Figure 1** below.

Figure 1: The Control Document Set



Source: Lower Thames Crossing Mitigation Route Map [REP4-203] Plate 2.1 page 3. Author – National Highways, September 2023.

5.2.2. The ExA has already set out questions in section 3.3 about the relationship between the CDs and particularly the CoCP and the initial versions of the REAC. It has asked whether the REAC should have a life as a freestanding CD, independent of the CoCP, because the REAC will endure and become a regular reference for those implementing the DCO in both construction and operation, long after a CoCP, which conceptually in functional terms relates to construction practice. The ExA has asked in section 4 whether the commitments in the REAC are adequately secured. We have also asked, having regard to the usefulness of the Mitigation Road Map and its potential relationship with the CDs and the REAC, whether it should also be certified and whether it should be incorporated into the REAC.

5.2.3. Additional observations about the function, relationships and content of the CDs are sought by the ExA, together with final reasoned submissions setting out any requests for amendments to these.

QD85: Do any IPs have any final submissions to make on the CDs and their content?

- **Is there superfluous content that could be removed?**
- **Is there additional content that should be added?**
- **Are there any other documents that should be certified and should form part of the CDs?**

Any responses to this question should be accompanied by an explanation of the changes sought and the reasons for them.

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