

Lower Thames Crossing

9.180 Applicant's responses to Interested Parties' comments on the draft DCO at Deadline 6

Infrastructure Planning (Examination
Procedure) Rules 2010

Volume 9

DATE: November 2023
DEADLINE: 7

Planning Inspectorate Scheme Ref: TR010032
Examination Document Ref: TR010032/EXAM/9.180

VERSION: 1.0

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1 Introduction

1.1 Introduction

1.1.1 A number of Interested Parties (IPs) provided comments on the draft Development Consent Order (DCO) at Deadline 6. 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. Local highway authorities: London Borough of Havering on behalf of itself, Kent County Council, Thurrock Council and Transport for London (TfL) in [\[REP6-142\]](#)
- b. Glenroy Estates in [\[REP6-191\]](#)
- c. Gravesham Borough Council (GBC) in [\[REP6-132\]](#)
- d. Marine Management Organisation (MMO) in [\[REP6-148\]](#)
- e. Port of London Authority (PLA) in [\[REP6-159\]](#)
- f. Port of Tilbury London Limited (PoTLL) in [\[REP6-163\]](#)
- g. Thurrock Council in [\[REP6-164\]](#) and [\[REP6-166\]](#)
- h. Transport for London in [\[REP6-170\]](#)

1.1.3 These are responded to in turn below.

2 Response to Local Highway Authorities' Joint Submission on Protective Provisions

2.1 Introduction

- 2.1.1 The London Borough of Havering submitted a 'joint response' on behalf of itself and the other local highway authorities (LHAs) (Kent County Council, Essex County Council, Thurrock Council, and TfL) proposing amendments to the Protective Provisions for LHAs (the **Joint Response**). The Applicant has updated the Protective Provisions in Part 11 of Schedule 14 to the draft DCO (dDCO) [**Document Reference 3.1 (9)**] to accommodate some of these suggestions, but is unable to accept others because they are inappropriate, unnecessary or would impose significant and disproportionate costs on the Applicant, in circumstances where the dDCO already provides appropriate protection and safeguards. The Applicant sets out its position on these matters below.
- 2.1.2 The Applicant wishes to highlight that it has agreed, in deference to the local highway authorities, to the inclusion of Protective Provisions in the dDCO. This position goes well above all but two strategic road network (SRN) DCO precedents and the Applicant has now sought to accommodate as many of the suggestions in the Joint Response as possible. However, as the Joint Response has not been drafted with sufficient clarity nor in accordance with best practice for statutory drafting (and in some cases even uses narrative or contractual drafting), even where a matter is substantively agreed and accommodated, the Applicant's drafting may differ from the suggestions in the Joint Response. The non-standard drafting approach means that adoption of part or all of the proposed Protective Provisions in the Joint response would result in a material risk of unintended consequences.
- 2.1.3 As a result, the Applicant strongly requests that in the absence of compliant and appropriate statutory drafting, the Examining Authority (ExA) does not recommend the Joint Response suggestions are included in any Order. Given this context, the Examining Authority is politely requested to identify, without prejudice to its recommendation, any drafting which it is considering adopting from the Joint Response in order to allow the Applicant to comment (on a without prejudice basis) on that drafting and so avoid such an outcome. The Applicant stresses that it has not made this request in the context of other drafting submitted by Interested Parties, even when unagreed.

2.2 Design input

- 2.2.1 The Applicant's proposed Protective Provisions secure the following in paragraph 145 of Schedule 14 to the Applicant's dDCO [**REP6-010**]:
- '(1) The undertaker will allow and facilitate an appropriately qualified officer or officers of the local highway authority that has been nominated by the local highway authority (each being a "nominated officer") to participate in the design process for the detailed design for the works and will have reasonable regard to any representations of the nominated officer in finalising its detailed design proposal...*

(2) Participation under sub-paragraph (1) will be in the form of invitations (given at least 10 business days in advance and sent by email) to attend design meetings relating to relevant works and the provision to the nominated officer of such drawings, cross/long sections, design proposals and other information as is reasonably required to allow the nominated officer to provide an informed response on the detailed design proposals to the undertaker.

(3) Nominated officer will have no less than 10 business days from the date on which the undertaker supplies information pursuant to sub-paragraph (2) to provide the undertaker with any comments upon any information provided to that officer pursuant to sub-paragraph (2).

(4) No part of the works may commence until , the undertaker has provided to the local highway authority the detailed information relating to that part of the works (without prejudice to the undertaker providing parts of the detailed information insofar as it relates to the operation of the local highway at a later date provided the provision of that information is subject to this sub-paragraph and sub-paragraphs (5) to (7)).

(5) The undertaker will give the local highway authority at least 10 business days to comment and provide representations by email on the detailed information provided to it under sub-paragraph (4).

(6) The undertaker will have reasonable regard to any comments, representations and recommendations made by the local highway authority under paragraph (5) (and, without limitation, the undertaker is able to refuse implementation of any representation or recommendation which would cause a breach of this Order, conflict with a permit issued under a permit scheme or would entail materially new or materially different environmental effects from those reported in the environmental statement) and will endeavour to provide the local highway authority with reasons for non-acceptance of any representation or recommendation as soon as reasonably practicable upon receipt of a request from the local highway authority in writing within 10 business days of its decision.'

2.2.2 This provision importantly secures design input from local highway authorities and ensures their comments are duly considered in the detailed design stage. Such an obligation goes well beyond the overwhelming majority of highways DCO precedents (even accounting for projects which have limited interface with the local road network).

2.2.3 The Joint Response seeks to protract this process by introducing additional requirements for a 'series of meetings', then followed by 21 business days from the production of the 'detailed information' for comments, then followed by a further 21 business day process in which further recommendations can be made, a requirement to provide responses in 10 working days, followed by a requirement prior to the construction of the works to reach agreement on commuted sums, temporary diversions and maintenance, followed by an ability within 10 business days to refer the matter to arbitration.

2.2.4 Even assuming there is no arbitration, only one meeting is held and all the matters which require 'agreement' take less than one day, this leads to a period which equates to three to four months. Assuming arbitration, a 'series of meetings' as well as protracted discussions on the areas for agreement, this could rise to well over six months. By way of comparison, the respective timelines are as follows.

Table 2.1 Comparison of timescales for design input

Stage	Applicant's approach	Joint Response approach [REP6-142]
Design meetings	Included. 10 business days' notice for design meetings.	Included, but requires 'allowing for iterations of the detailed design in response to such meeting'. Assume 4 weeks (2 weeks for notice, and then 2 meetings held in each successive week).
Design meeting feedback	Included, responses to be provided in 10 business days.	Included, responses to be provided in 21 business days.
Detailed information provided	Included, responses to be provided in 10 business days.	Included, responses to be provided in 21 business days.
Due regard, and response to representations in writing by Applicant	Included.	Included.
Further provision of detailed information before commencement	Not included on the basis that the above process is considered proportionate.	Included, and responses from local highway authority must be provided within an additional 21 business days.
Requirement for agreement, as part of the design input stage, on commuted sums, maintenance and temporary access	Not included. However, the Applicant does not agree to commuted sums being payable, and considers that maintenance and temporary access during the construction phase is adequately and appropriately addressed through the operation of the Traffic Management Forum (secured under Requirement 10), requirements relating to maintenance during construction (under paragraphs 149 and 152) and the requirement to enter into a local operating agreement (under paragraph 143).	Included. These matters could become protracted, and prevent commencement of works notwithstanding commuted sums relate to the operational phase. Assume 2–4 weeks to reach 'agreement'.
Due regard, and response to representations in writing by Applicant	Not included for the reasons set out above.	Included, responses must be provided within 10 business days (2 weeks).
Arbitration preventing commencement of works	Not included.	Included. Assume this would, conservatively, take the same period as

Stage	Applicant's approach	Joint Response approach [REP6-142]
		the appeal timescales in article 65 (thereby adding a potential 4–6 weeks).

- 2.2.5 With respect, as should be apparent from the above, the Joint Response approach is completely disproportionate and wholly inappropriate for any nationally significant infrastructure project (NSIP), given that the preliminary scheme design will have been approved as part of the DCO application, the Applicant is itself a highway authority, and design input is already secured. There is simply no justifiable or proportionate reason to include such a protracted process. It is no surprise therefore that there is no SRN DCO which contains such an elongated process.
- 2.2.6 It is important to stress that as the preliminary scheme would be 'fixed', the detailed design process is circumspect in what it seeks to achieve. As noted in the table above, a number of matters will also be appropriately addressed as part of the Traffic Management Plan and Traffic Management Forum secured under Requirement 10. Temporary diversions, for example, will be subject to their own engagement and approval by the Secretary of State, giving rise to a concern about conflicting decisions with approvals granted by the Secretary of State even leaving aside the additional time and public expense incurred.
- 2.2.7 To reiterate, the scope and purpose of the detailed design process is to refine the preliminary design (as presented in the Engineering Drawings and Sections [\[REP4-058, REP6-006, APP-032, APP-033, REP4-062, REP1-035, APP-036\]](#) and [APP-037](#)) and the General Arrangement Plans [\[REP4-028, REP4-031, REP5-016\]](#)), and provide more definition of its component parts (such as specific materials, planting species, interfaces and details). The Design Principles [\[REP6-046\]](#) secure further and separate engagement on a number of specific design matters:
- a. Clause PRO.01 – the Project has committed to utilising the National Highways Design Review Panel. Further details on this are provided in response to ExQ1_11.5.4 [\[REP4-194\]](#).
 - b. Clause PRO.06 – the emergency services will be consulted on the proposed suicide prevention measures as part of the detailed design process.
 - c. Clause S1.08 – the design of the new woodland east of Shorne Woods will be developed through collaboration and engagement with Shorne Woods Country Park, Natural England, Kent Downs Area of Outstanding Natural Beauty and relevant local stakeholders.
 - d. Clause S3.20 / Clause S9.21 – the detailed design and layout of Rendezvous Points will be subject to consultation with the emergency services.
 - e. Clause S3.21 / Clause S9.23 – the detailed design and layout of the helicopter landing area will be developed in consultation with the emergency services.

- f. Clause S3.22 / Clause S9.24 – the detailed design and layout of emergency muster points will be developed in consultation with the emergency services.
- g. Clause S6.01 – this secures consultation with the emergency services on Fixed Fire-Fighting Systems and cross-passage widths.
- h. Clause S9.02 – the landscape at the Tilbury Fields will be designed in consultation with Natural England so that public access to the informal footpaths and viewing points would be appropriately screened to prevent significant visual intrusion to waterbirds using the Thames Estuary.
- i. Clause S11.12 – the layout and design of the replacement travellers' site must be designed in consultation with Thurrock Council and the travellers occupying the existing site (this is also secured under Requirement 13).
- j. Clause 12.05 – in relation to Work No. 8B, where the Project crosses the statutory main rivers Mardyke, Orsett Fen Sewer and Golden Bridge Sewer, to protect river banks and facilitate access by the Environment Agency to these watercourses to undertake maintenance activities, a bankside access track shall be incorporated into the design of the crossings, the width of which would be subject to consultation with the Environment Agency.

2.2.8 Outside of the Design Principles, there are a range of other commitments within the DCO that may influence the detailed design process and engagement, such as those contained in the Register of Environmental Actions and Commitments (REAC) (within Environmental Statement (ES) Appendix 2.2: Code of Construction Practice [REP6-038]), the Stakeholder Actions and Commitments Register (SAC-R) [REP6-050] and the outline Traffic Management Plan for Construction (oTMPfC) [REP6-048]. With respect to the utility networks, the detailed design will then be further influenced by those provisions contained within article 6 (Limits of deviation) of the draft DCO [REP6-010], as well as, where relevant, article 59, Schedule 14 Protective Provisions, namely Part 1 (For the protection of electricity, gas, water and sewerage undertakers), Part 5 (For the protection of specified gas undertakers), Part 6 (For the protection of National Grid Gas PLC as gas undertaker) and Part 7 (For the protection of National Grid Electricity Transmission PLC as electricity undertaker), where consultation will be undertaken and agreements sought during the development of the detailed design to ensure that the Project design accords with those protective measures required by those parties, as to not give rise to a detrimental impact to their benefits, rights and interests. Furthermore, the presence of utility networks will influence the Landscape and Ecology Management Plan, as communicated in paragraph 2.1.12 of the outline Landscape and Ecology Management Plan [REP4-140], to ensure those proposals can be delivered safely, and that the Project and those utility networks can operate safely whilst they are operational.

2.2.9 The Applicant has also provided yet further assurance at Deadline 7 on design input in relation to specific assets, including project enhanced structures and

green bridges as well as the materials palette. The Applicant refers to the updated Design Principles document submitted at Deadline 7 [**Document Reference 7.5 (5)**]. In circumstances where this level of engagement and design coordination are secured, the Applicant cannot therefore reasonably agree to the amendments proposed in the Joint Response, and respectfully asks that the Examining Authority consider whether such a process is compatible with providing value for money and the government's clear desire to ensure that matters addressed post-consent are dealt with expeditiously, and do not give rise to increased costs in delivering nationally significant infrastructure projects (see, for example, the NSIP Action Plan, Growth Plan).

2.3 Maintenance and defects

2.3.1 The Applicant's drafting provides a clear regime to regulate the handover to local highway authorities of local highways that are built by the Applicant. As part of this regime, the Applicant must ensure that any defects are remedied before the local highway authority takes over responsibility. That regime works as follows: Paragraph 150 enables the Applicant to serve a provisional certificate when it considers that the local roads are ready for public use. The Applicant then retains responsibility for maintenance of those roads for a period of 12 months (or such other period as may be agreed). Under paragraph 149, the Applicant must remedy any defects that arise during this period to the local highway authority's reasonable satisfaction. When the local highway authority is satisfied that the defects have all been remedied, it issues a final certificate under paragraph 152 and becomes responsible for the local highways. The issue of the final certificate is important in this context because the local highway authority only issues the final certificate where all of the following conditions are met:

(a) the maintenance period has passed; and

(b) all identified defects requiring remediation... have been remedied to the local highway authority's reasonable satisfaction; and

(c) the undertaker has given the local highway authority a reasonable opportunity to inspect the relevant works in readiness for the issue of a final certificate and has given due consideration and acted accordingly in respect of any representations made by the local highway authority in respect of the works; and

(d) the undertaker has provided the local highway authority with a health and safety file in respect of the relevant works to the local highway authority's reasonable satisfaction; and

(e) the undertaker has provided the local highway authority with such detailed information as the local highway authority has requested (acting reasonably) in relation to the relevant works as built; and

(f) any sewers which the local drainage authority consider should be constructed to dispose of soil and surface water drainage in connection with the relevant Works and in order to make them appropriate for public use have been constructed

- 2.3.2 The drafting in the Joint Response seeks to extend this regime to latent defects which are identified up to 12 years following the issue final certificate. This misses the point of the regime under paragraphs 149 to 152, which is to ensure that the local highway authorities do not take on responsibility for works carried out by the Applicant until they are satisfied with the standard of construction. Such a regime is not necessary after the final certificate been issued and the local highway authority become responsible for the works. After this period, the ordinary principles of liability for defective work would apply, including the principles in relation to limitation periods for latent defects.
- 2.3.3 The Joint Response has not given any reason why these principles should be set aside, and there is no precedent in any made highways DCOs for these principles to be set aside as proposed in the Joint Response. For instance, neither the protective provisions for local highway authorities in the A303 Sparkford to Ilchester Development Consent Order 2021 or the M25 Junction 28 Development Consent Order 2022 sets aside the normal rules for dealing with latent defects. Nor is the 12 year period one which the Applicant seeks when it is affected by development promoted by third party private sector developer DCOs. The absence from made DCOs is an endorsement of the principle that such matters are not necessary in principle.
- 2.3.4 The amendments to paragraph 147 (as shown in the Joint Response) are unprecedented, unnecessary and unjustified, and are therefore not transposed in the Applicant's dDCO.

2.4 Commuted sums and costs

- 2.4.1 The Applicant has set out its position on commuted sums and it does not repeat those submissions. For ease of reference, the Applicant's position on commuted sums is provided in the Applicant's Post-hearing submissions in respect of ISH7 [[REP4-183](#)] and Section 10 of the Applicant's responses to IP's comments on the dDCO at D5 [[REP6-085](#)]. This position applies in relation to the broad costs proposals.
- 2.4.2 The Applicant would note that it is making provision for officer contributions through its section 106 negotiations, and considers those costs to be sufficient. The proposed insertion of paragraphs 153 and 154 (as shown in the Joint Response) has therefore been rejected.

2.5 Other amendments in the Joint Response

Table 2.2 Responses to other suggestions on the LHA Protective Provisions

Provision	LHA proposal	Applicant's response
Definition of 'as built drawings'	'as built drawings' means (a) as constructed drawings in both PDF and AutoCAD DWG formats; (b) list of suppliers and materials used and CCTV surveys; (c) product data sheets, technical specifications for all material used; (d) as constructed information for any utilities discovered installed or	The Applicant has inserted a definition which is more appropriate covering items which are relevant and proportionate to the operation of the road network. The Applicant would further note that there is a requirement to provide ' <i>the local highway authority with such detailed information as the local</i>

Provision	LHA proposal	Applicant's response
	<p>moved during the relevant works (e) method statements for works carried out; (f) in relation to road lighting, signs and traffic signals any information required by Series 1400 of the Specification for Highway Works; (g) plan of temporary signage indicating new road layouts; (h) organisation and methods manuals for all products used in the construction of the relevant works; (i) as constructed programme; (j) Health and Safety file;</p>	<p><i>highway authority has requested (acting reasonably) in relation to the relevant works as built'</i> already in the Applicant's proposed Protective Provisions. The detail is therefore not considered necessary.</p> <p>The Applicant considers that the Joint Response definition of 'as built drawings' is excessive and a number of matters are wholly unrelated to the operation of the road network, or are already secured. Just by way of example, the rationale for providing as built drawings is to assist with the ongoing operation of the road network and it is not clear why, for example, a 'constructed programme' and 'method statements' are relevant in that context. Another example of superfluous drafting is the inclusion of the 'Health and Safety file' in the definition of 'as built' but there is already a requirement to provide '<i>the local highway authority with a health and safety file in respect of the relevant works to the local highway authority's reasonable satisfaction</i>' in both the Applicant's drafting and the Joint Response. Examples such as this are contained throughout the Joint Response and they do not just lead to unnecessary drafting, but in some cases create conflicting requirements on <i>when</i> the information should be provided creating confusion and ambiguity where none exists.</p> <p>The Applicant notes that the rare DCOs which do have Protective Provisions for local highway authorities (e.g. A303 Sparkford, and even non-transport projects such as the Hinkley Point C Connection DCO) do not contain such a definition.</p>
<p>Local operating agreement</p>	<p>Before commencing the construction of, or the carrying out of any relevant work the undertaker must agree with the relevant local highway authority a local operating agreement covering the following</p>	<p>The Applicant does not consider it reasonable to have an absolute obligation to 'agree' the local operating agreement. The Applicant's approach is that it should be required to use reasonable endeavours to agree a local operating agreement. In circumstances where agreement cannot be reached, it is considered disproportionate to delay</p>

Provision	LHA proposal	Applicant's response
		<p>the commencement of works, given the extensive controls that already apply to the authorised development. Under the Joint Response approach, the matter would be extremely difficult to resolve via arbitration and it would simply mean the Project was paralysed from commencing notwithstanding the works had been authorised. In the Applicant's submission this is inappropriate where a nationally significant infrastructure project has already secured development consent.</p> <p>The outline Traffic Management Plan for Construction [REP6-048] specifically secures a process for this (see paragraph 3.2.2). In particular, where an agreement is not reached, the Secretary of State will approve the relevant controls under a Traffic Management Plan. This provides appropriate control, whilst imposing a positive obligation to seek and reach agreement.</p>
<p>Detail contained in local operating agreement</p>	<p>The Joint Response suggests that the local operating agreement provides further detail on a number of matters.</p>	<p>The Applicant would note that for these matters, the purpose of the obligation in paragraph 146 is to set the framework for what should be agreed as part of a local operating agreement. This will differ depending on the local area and the proposed works. The Joint Response seeks to add disproportionately prescriptive requirements, which in some cases is to detriment of particular local highway authorities. In particular, the Joint Response requires every single listed element to be included in every local operating agreement whether it is relevant to the works in question or not, whereas the Applicant's drafting only requires relevant elements to be included in an agreement.</p> <p>The Applicant has substantively accepted the changes to subparagraphs (a) (b), (d), and (f) (as shown in the Joint Response) though it has made changes for certainty (e.g. the Joint Response defines the zone of influence as '<i>everything outside of the works area</i>' which would, in theory, be limitless).</p>

Provision	LHA proposal	Applicant's response
		<p>In relation to proposed subparagraph (c), this drafting is not compliant with statutory drafting requirements, and also includes matters which are already dealt with (e.g. <i>'This is also to include the contractor defining a approach to incremental hand-back of as built asset data as per the Asset Data Management Manual, and for the contractor to undertake rectification of damage or defect where applicable'</i> but this duplicates requirements already contained in the Applicant's proposed Protective Provisions).</p> <p>In relation to proposed subparagraph (e) (i.e. the requirement for <i>'routine maintenance during the construction periods... prior to provisional certificate'</i>) – this is a matter which is already addressed under paragraph 146 of the Protective Provisions.</p> <p>Proposed subparagraph (g), is a matter which is already secured and regulated by article 9 and the outline Traffic Management Plan for Construction.</p> <p>Proposed subparagraph (j) is an example of information which is not appropriate for statutory drafting and uses unhelpful and ambiguous terms such as <i>'key activities'</i>.</p> <p>Another example is the proposed amendment to subparagraph (i) which adds <i>'This is to include identification of incidents and provision of recovery vehicles within the free recovery area, responding to incidents within the zone of influence when required by the relevant local highway authority and responding to incidents within the works area'</i>. The existing subparagraph already requires <i>'arrangements for dealing with and recording incidents during the construction period and the maintenance period'</i>. On this occasion the Applicant has accommodated some of this request with statutory compliant drafting and removing the duplication.</p> <p>To reiterate, the obligation under the Applicant's paragraph 143 is to impose a proactive obligation to seek to agree a local operating agreement. The effect of these suggestions is to usurp what</p>

Provision	LHA proposal	Applicant's response
		the Applicant considers to be the appropriate role of the Secretary of State where agreement cannot be reached, and to excessively prescribe granular details.
Survey Reinstatement	The Joint Response sets out the following new provision: 'The undertaker must reinstate to the reasonable satisfaction of the relevant local highway authority any part of the local highway which has been temporarily used for survey or investigation purposes by the undertaker to the condition and level it was in on the date on which the survey or investigation began or such other condition as may be agreed in writing by the relevant local highway authority.'	The Applicant has accommodated this change but has made reference to the relevant articles of the dDCO: 21 (survey and investigation) and 35 (temporary use of land for construction).
Inspections and testing of materials	The Joint Response has asked for access for inspections, timescales for testing information to be provided and the deletion of the requirement that the local highway authority pay sums where they caused un-doing of works where there was a reasonable opportunity to avoid such an un-doing of works.	The Applicant has accepted the proposed amendments in paragraphs 145(1) and (2) (as shown in the Joint Response). The Applicant has also proposed 10 business days to provide information requested. The Applicant does not consider it appropriate to delete the final subparagraph. In circumstances where works have been undone, and the local highway authority had an opportunity to avoid that outcome, it is sensible to require payment in those circumstances.
Road safety audits	The Joint Response wishes to allow local highway authorities to 'raise concerns' about the road safety auditor appointed, and wishes to have involvement in the road safety audits.	The Applicant is the strategic highways authority in England. It has ample experience in conducting road safety audits, and there is an explicit requirement for the auditor to be 'appropriately qualified'. Local highway authority involvement is already secured because the measures must carry out the measures ' <i>to the reasonable satisfaction of the local highway authority</i> '. The measures, under the Applicant's drafting, must be carried out where necessary (with a requirement that the Applicant acts reasonably in that context).
Warranties	The Joint Response requires that warranties are provided in favour of the local highway authority.	The Applicant is undergoing procurement and cannot make commitments to procure matters from Contractors at this stage. The Applicant

Provision	LHA proposal	Applicant's response
		notes that the two precedents which include Protective Provisions do not contain such a requirement.
Arbitration	The Joint Response changes the arbitrating authority from the Secretary of State to some other individual.	The Applicant considers the Secretary of State, who will have full oversight over the construction traffic management plans approved under Requirement 10, is the appropriate arbitrating authority. The nature of disagreements in this case relate to highway works which is plainly relevant to the functions of the Secretary of State for Transport. The Applicant further notes that some authorities had requested that the Secretary of State be the appeal body in respect of matters which relate to highways works or measures under article 65.

3 Glenroy Estates

3.1 Schedule 8 and 11

- 3.1.1 Glenroy Estates' Deadline 6 submission set out their request that the land be downgraded to temporary possession and permanent rights, from outright acquisition. The Applicant set out its justification for the acquisition of the land owned by Glenroy Estates in Post-event submissions, including written submission of oral comments, for CAH3 [\[REP6-087\]](#). The Deadline 6 submission makes specific suggestions on changes to the dDCO and the Applicant is therefore responding in this document. In particular, to give effect to the 'downgrading' of land interference, they suggest the plots currently in their ownership should be moved into Schedule 8 and 11 (i.e. those relating to temporary possession and permanent rights).
- 3.1.2 The Applicant considers that its case for the acquisition of land is compelling. The reason why the land is proposed for outright acquisition is because the land is proposed as ancient woodland compensation. This requires ongoing monitoring and management in accordance with the outline Landscape and Ecology Management Plan [\[REP4-140\]](#) (secured under Requirement 5). The level of interference is such that outright acquisition is appropriate. The situation is not comparable to a situation where mitigation is placed on land which minimally affects the land, or does not require the same management regime (e.g. land required for bat boxes only). The Applicant notes the approach adopted for the Project is heavily precedent.

4 Gravesham Borough Council

4.1 Signposting for Gravesham Borough Council

4.1.1 In their Comments on National Highways Deadline 5 Documents relating to the DCO [REP6-132], Gravesham Borough Council include a table of comments on the dDCO (from page 2 onwards). The Applicant does not consider there are substantive new matters. 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. These are set out below.

Table 4.1 Responses to GBC comments from Deadline 6 on the dDCO

Matter raised	Applicant's response
Swansea Tidal Lagoon case	Please see Section 2.2 of Applicant's responses to IP's comments on the dDCO at Deadline 4 [REP5-089]. The Applicant notes that the council states that the Applicant's position ' <i>largely corresponds with GBC's</i> '.
Requirement 3	<p>The Applicant does not consider the suggested amendment to PRO.01 in the Design Principles [REP6-046] to be necessary. The design principle in question secures engagement with the National Highways Design Review Panel.</p> <p>In terms of details about this panel, under the terms of the Applicant's licence it is stipulated that '<i>The membership of the Design Panel includes representation from credible experts and relevant stakeholders, as appropriate</i>'. The Applicant refers to the Guide which is available (see https://nationalhighways.co.uk/media/0k0pltds/design-review-at-national-highways_a-guide.pdf), which confirms a number of features and attributes which ensure appropriate safeguards are in place. For examples on how this has worked in practice, including its independent membership, the Applicant refers to On the road to good design, Sections 4 and 5 (available at https://nationalhighways.co.uk/media/qwublaml/on-the-road-to-good-design_design-review-at-national-highways.pdf).</p>
Tunnelling	<p>The council requests two changes to REAC [REP6-038] measures.</p> <p>In relation to MW009, the Applicant does not consider an amendment necessary because it seeks to introduce a requirement in relation to worksites which is already addressed via MW0017. In addition, it seeks to regulate other excavated material, but it is not clear that this is relevant or what material is being referred to. The primary 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>'</p> <p>In relation to MW0017, the council requests a wider commitment which is ambiguous in relation to storage. The Applicant has made clear there are construction compounds south of the river, and the broad commitment could apply to activities which are not related to tunnel machinery, which the</p>

Matter raised	Applicant's response
	Applicant understands is the council's primary concern. The Applicant considers that there is sufficient safeguard and security provided by the commitment that <i>'There will be no storage of concrete tunnel segments on the ground surface at the southern tunnel entrance compound.'</i>
Requirement 8	<p>The council <i>'wishes to understand better which provisions in the REAC are referred to by the Applicant'</i> in relation to why it does not seek to add <i>'management of flood'</i> to the scope of Requirement 8. The Applicant confirms that the relevant REAC items are RWDE001 to RWDE058 which cover the road drainage and water environment mitigation measures. In addition, Requirement 4(2) requires plans for the management of flood. The Applicant further signposts to paragraphs 6.10.7 to 6.10.8 of the Code of Construction Practice [REP6-038] which contain further measures. In light of all of these safeguards, the proposed amendment is not required.</p> <p>The council also refers to consultation with the local planning authority. Requirement 8 of the dDCO already secures consultation with the local planning authority.</p>
Thong Lane Car Park	Thong Lane Car Park is to be removed from the scope of the DCO application.
Chalk Park	The Applicant provided the revised Engineering Drawings and Sections in relation to Chalk Park at Deadline 6 [REP6-006] .
Wider Network Impacts	<p>With respect, the Applicant finds the council's position that the heading directly above paragraph 5.214 of the National Policy Statement for National Networks (NPSNN) – which states <i>'Strategic Rail Freight Interchanges'</i> – is <i>not</i> a clear and unequivocal statement that the paragraph applies to strategic rail freight projects wholly without merit. The council previously sought to argue that this unusual suggestion was supported by the A47 Wansford project. The Applicant explained why this was without merit in the Applicant's responses to IP's comments on the dDCO at Deadline 4 [REP5-089], both in relation to the Applicant's position as well as the clear statement from the ExA on that project that <i>'paragraph 5.214 of the NPSNN relates to Strategic Rail Freight Interchanges not to Road and Rail Developments'</i>. The Applicant finds it remarkable that the council now <i>'accepts the Applicant's response in relation to the A47 Wansford to Sutton scheme'</i> but it still maintains its position.</p>
Green Bridges	The Applicant's position on this matter is set out in Section 3.1 of Applicant's Responses to IP's Comments on the dDCO at D5 [REP6-085] .

5 Marine Management Organisation

5.1 Article 8 and paragraph 24 of the Deemed Marine Licence

- 5.1.1 The MMO in their Deadline 6 submission make two related submissions. First, the Applicant should remove article 8(8), which requires that '*The Secretary of State must consult the MMO before giving consent under paragraph (1) to the transfer or grant to another person of the benefit of the provisions of the deemed marine licence.*' The MMO also requests the exclusion of the ability to transfer the deemed marine licence (DML) under article 8(1). Second, the MMO requests the removal of paragraph 24(3) of the DML in the dDCO. That provision states '*The provisions of sections 72 (variation, suspension, revocation and transfer) of the 2009 Act apply to this licence except that the provisions of section 72(7) and (8) relating to the transfer of the licence only apply to a transfer not falling within article 8 (Consent to transfer benefit of Order).*' The MMO requests these changes because '*The MMO rejects any circumstances in which transfers can operate outside the [Marine and Coastal Access Act 2009] MCAA.*'
- 5.1.2 In accordance with paragraph 24(3) of the DML, section 72 continues to apply to the DML in respect of *variations* which would be subject to the process under section 72 of the MCAA. However, all *transfers* of the DCO are not captured by this process. Under the Applicant's proposed drafting, where article 8 applies (i.e. the Applicant seeks to transfer the DCO or part of it), the provisions of s72(7) and (8) do not apply, but the Secretary of State still needs to consult the MMO in accordance with article 8(8). If, during that consultation, the Secretary of State is not satisfied that the MMO had received the information they require to transfer the licence, then it is likely that such consent would be refused.
- 5.1.3 It is proportionate to allow a transfer of the powers under the DML as it avoids a disparate process being in place for works authorised under the DCO. There are proportionate safeguards in that the Secretary of State must consent to the transfer under article 8(1) and the MMO is specifically consulted under article 8(8). These provisions are not unprecedented, and the Applicant notes that the principle of these provisions has been endorsed very recently by the Secretary of State (see, by way of example, Sizewell C Nuclear Power Station Development Consent Order 2022 (see article 9(3)) and Hornsea Four Wind Farm Order 2023 (see article 5(6))).

6 Port of London Authority

6.1 Update on progress with the Port of London Authority

Table 6.1 Update on PLA Protective Provisions

Matter raised by the PLA in [REP6-159]	Applicant's update
Temporary possession (paragraph 2.1)	The Applicant made the amendment concerning temporary possession at Deadline 6. As this wording was provided prior to Deadline 6, the Applicant was able to confirm that the PLA considers the change to be acceptable.
Article 53 (paragraph 2.2)	The Applicant has, at Deadline 7, updated article 53 of the dDCO to confirm that the river works licensing regime applies to utility apparatus unrelated to the Project and unrelated to the functions of the Applicant as a highway authority (see the newly inserted article 53(5)).
Paragraphs 98, 99 and 100 of Schedule 14 (paragraphs 2.3 to 2.4)	<p>The Applicant has now further updated paragraph 99 and 100 of Schedule 14 following comments from the PLA on revised wording provided to them prior to Deadline 6. The Applicant is happy to confirm that with the exception of one matter, the provisions are now agreed.</p> <p>The sole matter relates to paragraph 99(6) of Schedule 14. The PLA has requested the removal of the paragraph 99(6) of Schedule 14. This provision allows the Secretary of State to consent to the commencement of tunnelling works which are in dispute between the Applicant and the PLA. The PLA considers that <i>only</i> the arbitration provision should apply. In the Applicant's view, it is necessary to ensure that the Project can be commenced in circumstances where the arbitration becomes protracted or is delayed. Arbitration may impose a delay costing significant time and cost at public expense. In the Applicant's view, the Secretary of State for Transport, as the Government department for ports (and highways), is competent to discharge this function. Any suggestion that the Secretary of State (who has functions relating to ports) is not competent should be rejected by the Examining Authority. The requirement for Secretary of State approval (and a requirement to provide the PLA's representations) ensures appropriate safeguards are in place in the case of a dispute.</p>
Article 37 (Section 3)	It is welcomed that the PLA accepts that their proposed wording is ' <i>in certain respects not in keeping with the Office of the Parliamentary Counsel's Drafting Guidance</i> '. The Applicant considers this matter to be resolved as this requested amendment has been made, but would seek to make clear for the benefit of the Applicant's future schemes that 'consistency' does not give rise to a need for this amendment in any event given the clear drafting contained in article 35(10).

7 Port of Tilbury London Limited

7.1 Requirement 17 (Tilbury Link Road)

- 7.1.1 The Port of Tilbury suggests a number of amendments to Requirement 17. The Applicant has made all of these changes to Requirement 17 with three exceptions. First, it has maintained the use of 'reasonably' as it is proportionate to ensure practical considerations in the extent to which the proposed Tilbury Link Road can be accommodated (e.g. ensuring that the extent of the passive provision which is secured is consistent with the powers under the dDCO, and also taking into account the details available at that stage).
- 7.1.2 Second, the Port of Tilbury's suggestion would include within the definition of '*the proposed Tilbury link road*' any route published in any documentation published by Thurrock Council under Regulation 17 of the Town and Country Planning (Local Planning) (England) Regulations 2012. The Applicant wishes to ensure that weight is only attached to a plan which has been found to be sound and has therefore amended the reference to a local plan which is adopted pursuant to Regulation 26 of those regulations.
- 7.1.3 Third, whilst a scoping opinion may reflect a degree of certainty about the proposals, the Applicant has added a tailpiece to ensure that the Secretary of State has discretion to direct the Applicant not to consider such a proposal to constitute the proposed Tilbury Link Road noting that, whilst unlikely, a scoping opinion (if pursued under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017) could be made which may not reflect the Secretary of State's proposals. The Applicant stresses in this context that provision is already made to give weight to a scheme which does not meet any of formal criteria but which is reasonably considered to comprise the proposed Tilbury Link Road (see the final subparagraph of the definition of "the proposed Tilbury Link Road" in Requirement 17).

7.2 Requirement 18 (Orsett Cock)

- 7.2.1 The Port of Tilbury's Deadline 6 submission includes a proposed Requirement relating to Orsett Cock which is endorsed by DP World, and Thurrock Council (in principle). The Applicant welcomes and highlights the confirmation that "The draft Requirement has been agreed by PoTLL and DPWLG as suitable to address their concerns with the impacts to this junction potentially caused by LTC." The Deadline 6 submission helpfully highlights six differences between the Applicant's preferred drafting (already in the dDCO) and the suggested Requirement (at paragraph 3.18 of their Deadline 6 submission). These are addressed in the table below. Whilst the Applicant has made amendments in response to these comments, for the reasons set out below, it does not consider the suggested amendment to be necessary or appropriate.

Table 7.1 Addressing the “differences” between PoTTL and the Applicant’s drafting

PoTTL submission [REP6-163]	Applicant’s response
<p>The Applicant’s drafting ‘does not allow for the detailed design of the junction to be carried out in a way that avoids impacts arising, instead focusing wholly on the way the design is to be implemented;’</p>	<p>The Applicant has amended Requirement 17 to refer to both the detailed design, and the construction of the works at the Orsett Cock roundabout.</p>
<p>The Applicant’s drafting ‘does not update the baseline, nor use objective measures for intervention, reducing certainty for all parties;’</p>	<p>The Applicant has amended Requirement 18 to ensure it is based on, and informed by, appropriate pre-construction monitoring. The Applicant would note that the scheme in relation to the Orsett Cock Roundabout must be submitted to the Secretary of State following consultation with PoTTL as well as DP World and Thurrock Council. If the parties do not consider sufficient information has been provided in relation to the measures secured in the scheme, they can raise these in their representations. It will then be for the Secretary of State to determine whether the scheme should be approved. In this context, the Applicant refers to paragraph 22 which provides assurance on the form of the consultation and paragraph 21 which enables the Secretary of State to seek further information. No further amendment is therefore considered necessary unless it is inappropriately assumed that the Secretary of State would not fulfil their functions properly.</p>
<p>The Applicant’s drafting ‘relies on signalisation and ‘related measures’, limiting the availability of mitigation options available to National Highways;’</p>	<p>This is not the intention of the provision. The Applicant amended the provision’ to prevent any misunderstanding that ‘other measures’ can also be included.</p>
<p>The Applicant’s drafting ‘is limited to only what ‘may be reasonably practicable’, offering no certainty for key stakeholders that the design will be effective;’</p>	<p>The Applicant has strengthened the wording to “reasonably necessary” The Applicant considers that the use of the term ‘reasonably is wholly appropriate where there are practical considerations as well as requirement to ensure that the Applicant’s licence conditions relating to value for money and working in a manner which is environmentally sensitive are met. The Applicant notes that the drafting in this context is similar to Requirement 14 of the M25 Junction 28 Development Consent Order 2022.</p>
<p>The Applicant’s drafting ‘provides no ongoing monitoring;’</p>	<p>Inssofar as the operational phase is concerned, monitoring is secured under Requirement 14 and the A13 and Orsett Cock are identified as locations for ongoing monitoring. Nonetheless, a new paragraph has been inserted to confirm this location will be monitored under paragraph 14. In addition, the Requirement secures measures, based on appropriate monitoring information, which are reasonably necessary to minimise traffic flows and optimise the functioning of the roundabout.</p> <p>Inssofar as the construction phase is concerned, these measures are, in the Applicant’s view already, sufficiently secured under Requirement 10: paragraph 2.4.14 of the</p>
<p>The Applicant’s drafting ‘does not secure further mitigation in the event the proposals are insufficient to provide effective operation of this key junction.’</p>	

PoTLL submission [REP6-163]	Applicant's response
	<p>oTMPfC [REP6-048] 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).</p> <p>Paragraph 2.4.20 has further been amended at Deadline 7 to strengthen and further secure localised junction modelling, as well as taking ongoing and iterative steps in monitoring and managing the impacts. It is anticipated that Orsett Cock roundabout would be such a location but the Applicant has nonetheless amended Requirement 17 to provide assurance on this issue.</p> <p>Under paragraph 2.4.22 of the oTMPfC [REP6-048], as a result of the monitoring and modelling, the Applicant will be required to: '<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>'. Paragraph 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>

7.3 New Requirement for Asda Roundabout

- 7.3.1 The Applicant sets out its position on how the construction traffic impacts at Asda Roundabout could be reduced in [[REP6-123](#)]. In particular, that document sets out how operational controls developed during the detailed design stage would be sufficient to appropriately mitigate any adverse impacts. In addition, Table 4.2 of that document sets out how the requests from the Port of Tilbury London Limited are already accounted for, and safeguarded, in the outline Traffic Management Plan for Construction [[REP6-048](#)]. The document sets out how the processes in producing a Traffic Management Plan will ensure adverse impacts are minimised. The Applicant therefore does not consider the Requirement contained in Appendix 3 of the Port of Tilbury London Limited's Deadline 6 submission [[REP6-163](#)] to be necessary.

7.4 New Requirement for Wider Network Impacts

- 7.4.1 The Applicant refers to its Wider Network Impacts Position Paper [[REP6-092](#)]. The Applicant considers its approach accords with policy and precedent and the Applicant does not consider the requirement suggested by the Port of Tilbury London Limited is necessary or proportionate in light of the wider frameworks in place to address ongoing interventions across the road network. The Applicant has, in its Deadline 6 submissions, proposed a without prejudice provision.

7.5 Protective Provisions

- 7.5.1 In response to the specific matters raised by the PoTLL in its Summary of Oral Submissions [[REP6-163](#)], the Applicant would respond as follows:

Future Port operations

- 7.5.2 PoTLL's latest submissions rely on the findings of the ExA who considered the application for the Lake Lothing Third Crossing DCO. Emphasis is placed on the need to look at existing and future operations. The Applicant has already extended the definition of 'Port' within the Protective Provisions proposed for PoTLL to include any land designated as a Thames Freeport Tax Site under the Designation of Freeport Tax Sites (Thames Freeport) Regulations 2021. Thus, land that is not even within PoTLL's ownership but that may be in the future in connection with its undertaking has also been captured by the scope of the plan approval provisions being proffered, giving PoTLL a right of consent over plans (as widely defined therein) for aspects of the authorised development that might be situated there. As such, extensive protection in the form of plan approval for the existing and future operation of the Port has been proposed.

Utilities works

- 7.5.3 With regards to utilities works within the Port, the Protective Provisions were also updated at D6 to incorporate utilities works within the boundaries of the Port (as widely defined – see above) within the scope of the plan approval rights. In addition, provision has also been added within the dDCO submitted at D7 [**Document Reference 3.1 (9)**] to enable PoTLL to exercise plan approval rights over works which might involve the grant of an easement strip that encroaches into Port land by virtue of any exclusion or protection zone alone. This means that the Port will have the opportunity to consent to the plans for any utilities work that might affect the Port, even where the extent of that effect is limited to easement provisions only.

Consent provision

- 7.5.4 PoTLL notes that it would not be at liberty to simply block the Project were the consent provision to be granted. However, this is not the Applicant's concern. The Applicant's position, as set out at D6 is that the consent provisions being sought are both (i) unnecessary because of the works protections being proffered and (ii) run the risk of commercial disagreements dictating the progression of the Project, which again is unnecessary given the tried and tested approach available in the context of compulsory purchase law and practice.

7.5.5 At paragraph 2.17 of its submissions, PoTLL seeks to identify other provisions within the draft Lower Thames Crossing Order arguing that these provisions demonstrate that PoTLL is being treated differently to other statutory undertakers. The Applicant strongly disagrees with this suggestion. The provisions PoTLL has cited relate to the acquisition of apparatus and associated easements and land interests not a general obligation to secure consent for the exercise of land powers of the type PoTLL is seeking. The consents/agreements proffered in those cases are closely linked to the Applicant's obligation to ensure that, before any proposal to remove electricity, gas or other essential apparatus can be exercised, replacement apparatus and associated rights and facilities must be provided. This is quite distinct to the position with regards Port land, which is more comparable to, for instance, railway land. The Protective Provisions for railway undertakers do not contain a consent provision of the type being sought by PoTLL.

7.5.6 PoTLL has pointed to many precedents of consent provisions being included within Protective Provisions. The Applicant has also cited precedents. The Applicant would further direct the ExA to the decision letter of the Secretary of State in respect of the previously cited Hinkley Point C Connection Project Development Consent Order 2016 where the specific matter of the appropriateness of including a consent provision was considered in the context of railway land (although note that that Order also does not include consent provisions for the benefit of the Port of Bristol notwithstanding that the scheme in question passed through the operational port). Paragraph 95 of the Secretary of State's decision letter reads:

'The first area relates to NRIL's request that provisions should be included in the Order that would ensure that the Applicant could not exercise powers of compulsory acquisition in relation to railway property without consent from Network Rail. The Applicant argued that this provision could compromise its ability to deliver the Development. The ExA noted that NRIL has not objected in principle to the proposal and not presented any evidence to suggest that the proposals would be incompatible with the efficient and safe operation of the railway. The ExA therefore concluded that this provision was not necessary or reasonable and could compromise the Applicant's ability to deliver the Development [ER 8.5.230]. The Secretary of State sees no reason to disagree with this conclusion.'

7.5.7 The Applicant therefore maintains its position that the provisions being sought by PoTLL in respect of the exercise of the land powers are unnecessary and would be unduly detrimental to the delivery of the Project.

Indemnity provisions

7.5.8 Progress has been made with regards to the form of indemnity being proffered to PoTLL and the Applicant has proposed an updated form of indemnity in the latest iteration of the dDCO. However, the Applicant does not agree with PoTLL's request that indirect or consequential losses, including loss of profits be indemnified. In this regard, the Applicant notes that the provisions cited at paragraph 2.20.1 of PoTLL's representations actually support the Applicant's position on this point. None of the Lower Thames Crossing provisions cited include the recovery of loss of profits as is being sought by PoTLL but instead

refer to losses incurred '*by reason or in consequence of*' the relevant works. In fact, this wording has always appeared in the provision proposed for the benefit of the PoTLL. In fact, none of the provisions being cited from other Orders include this wording either. Indeed, the Applicant notes that PoTLL's own recent DCO, the Port of Tilbury (Expansion) Order 2019, does not include such provision for the benefit of any statutory undertaker. The Applicant therefore wholly disagrees with the suggestion made by PoTLL that the inclusion of indirect consequential losses including loss of profits is standard practice or appropriate.

- 7.5.9 Accordingly, the Applicant remains of the view that there are two matters which are unlikely to be agreed between the Port of Tilbury London Limited and the Applicant in the context of the Protective Provisions: the approval of land powers, and the proposed indemnity. The Applicant's position on these matters is set out in Section 3.3 and Annex B of Post-event submissions, including written submission of oral comments, for CAH3 [\[REP6-087\]](#). The Applicant continues to engage with the Port of Tilbury London Limited and will provide a further update at Deadline 8.

8 Thurrock Council

8.1 Signposting responses on the dDCO

- 8.1.1 In its Deadline 6 submissions, Thurrock Council has repeated, with no elaboration or new arguments, its position on a number of points. 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.
- 8.1.2 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 on the dDCO [[REP2-077](#), [REP3-144](#), [REP4-212](#), [REP5-089](#) and [REP6-085](#)] 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.
- 8.1.3 The Applicant has taken a precautionary approach in responding to comments raised by Thurrock Council and its previous responses had identified new matters raised and responded to these. These are addressed in the following sections.

Table 8.1 Signposting for Thurrock Council

Matter in [REP6-164]	Signposting
Swansea Tidal Lagoon case	Please see Section 2.2 of the Applicant's responses to IP's comments on the dDCO at Deadline 4 [REP5-089]. The council has merely highlighted a paragraph which was specifically dealt with by the Applicant in paragraph 2.2.13 of [REP5-089]. The Applicant reiterates that its position is no different to how section 155 of the Planning Act 2008 would operate if the Applicant simply deleted Requirement 2 so the suggestion that this is somehow unacceptable should be given no weight.
Article 6(3)	Please see pages 134 to 135 of the Applicant's responses to IP's comments on the dDCO at Deadline 3 [REP4-212] and Section 9.2 of the Applicant's responses to IP's comments on the dDCO at Deadline 4 [REP5-089]. The council repeats its claims about the effect on landowners which was specifically addressed in paragraph 9.2.5 of [REP5-089]. The Applicant considers the request for a definition of 'environmental effects' to reflect a failure to understand what has now become widely understood and utilised successfully in the context of DCOs and the Examining Authority is requested to give no weight to these representations.
Article 10	Please see Section 9.2 of the Applicant's responses to IP's comments on the dDCO at Deadline 4 [REP5-089], as well as the

Matter in [REP6-164]	Signposting
	updates to article 10 submitted at Deadline 6 (which the Applicant considers resolves this matter).
Requirement 3	Please see Section 9.2 of the Applicant's responses to IP's comments on the dDCO at Deadline 4 [REP5-089] . The Applicant specifically refers to paragraph 9.2.3 which explains why the reliance on a case provides no support whatsoever to the council's position. The council has copy and pasted its submissions on the heavily precedented provisions somehow circumventing the material/non-material amendment process. This is an example of where the council is making an in principle argument, and the existence of a multitude of precedents is relevant in refuting the unusual submissions. For completeness, a project-specific justification has been provided in Section 9.2 of [REP5-089] .
'Comments on securing mechanisms' – 'substantially in accordance with' / 'reflect' / 'based on'	Please see Section 4.3 of the Applicant's Responses to IP's Comments on the dDCO at D5 [REP6-085] . The Applicant considers its comments therein also address the comments in relation to the use of the widely precedented phrases 'reflect' and 'based on'. The Applicant considers these terms to be sufficiently clear (a position supported by the multitude of precedents). The Applicant is aware of no issues in implementing its portfolio of DCOs as a result of these terms (and the Applicant notes Thurrock Council has not provided any evidence to the contrary). Indeed, they provide appropriate flexibility for the implementation of projects. The Applicant reiterates that the council, amongst others, will be consulted on the relevant plans and schemes and the Secretary of State will decide whether they are appropriate. Leaving aside the project-specific justification provided, the Applicant considers this to be an example of an 'in principle' argument which would apply to any of the other precedents, but which the Secretary of State has nonetheless endorsed the Applicant's approach.
'Comments on securing mechanisms' – article 61	Notwithstanding the Applicant does not agree with the council's comments, the Applicant has amended article 61 at Deadline 7 because of the inclusion of the Skills, Education and Employment (SEE) strategy in the SAC-R [Document Reference 7.21 (5)]. This removes the reference to 'all reasonable steps' and puts a positive obligation to 'implement' the measures in the SAC-R. The Applicant considers this matter closed.
'Comments on securing mechanisms' – references to Schedule 16 and other plans (at the end of Table 3.1).	Please see page 143 of Applicant's response to IP's comments made on the dDCO at Deadline 3 [REP4-212] .

8.2 New matter raised by Thurrock Council: article 35

- 8.2.1 In its Post Event Submissions for Issue Specific Hearings (ISH8 – ISH10) [REP6-166], Thurrock Council make a new highly novel and disproportionate suggestion that '*Article 35 is amended so that the applicant submits a restoration scheme for approval of the relevant landowner within 6 months of taking temporary possession of a piece of land*'. The Applicant considers this unprecedented suggestion to be wholly unnecessary: article 35 already requires the reinstatement of the land to the landowners' reasonable satisfaction. This is supplemented – over and above the precedents – by specific commitments in the REAC such as GS002 [REP6-038] which in the case of construction compounds requires repeat surveys. This is further supplemented by specific protections in Protective Provisions (e.g. the PLA's Protective Provisions set out specific requirements in relation to land subject to temporary possession).
- 8.2.2 In this context, the production of a 'scheme' is disproportionate to provide appropriate assurance to landowners. The requirement that it be six months before the handover is likely to make things worse (not better) for landowners by introducing new delay into the handover process. The suggestion that this should be subject to landowner approval of that scheme is not only unprecedented for any transport DCO, it also introduces a new and burdensome requirement on the Applicant as a public sector development delivering a government-funded scheme. The Applicant notes this suggestion has been made by no other local authority, nor landowner, to date.
- 8.2.3 Thurrock Council further sets out that article 35(5)(g) should include a requirement '*that any agreement to leave temporary works on the land must be in accordance with the ES*'. The Applicant does not agree. As explained in the Applicant's post-hearing submissions for ISH8 [REP6-089], this provision is intended for the circumstance where a landowner obtains planning permission for some activity, in which instance the Order would not require restoration which would contradict the owner's aspirations for the land. The Applicant would need to be satisfied that any alternative use pursuant to article 35(5)(g) was lawful. Thurrock Council's suggestion would mean that where planning permission is sought outside of the DCO (and which would be subject to its own environmental assessment), it would have to be removed. Thurrock Council's suggestion would lead to a requirement to remove works, and then reconstruct them, in circumstances where a planning approval had been given. Leaving aside the Project-specific justification, the Applicant would highlight again that there is no 'in principle' argument that can be made against the provision (see, just by way of example, article 37(4)(g) of the A428 Black Cat to Caxton Gibbet Development Consent Order 2022).
- 8.2.4 For completeness, Thurrock Council's comments on article 35 (as well as Requirement 13 and Requirement 17) have all been copy and pasted into their other Deadline 6 submission [REP6-164]. The Applicant has not repeated its submissions to ensure a proportionate level of information is provided to the Examining Authority and the Secretary of State. The Applicant now turns to the new matters raised in that submission.

8.3 New matter raised by Thurrock Council: Requirement 13 (travellers' site)

- 8.3.1 Thurrock Council have suggested, at Deadline 6, that Requirement 13(1) should be amended so that the details of the 'use and operation' are included as a matter to be approved. Thurrock Council explain *'these amendments would secure that it continued to be used as a travellers' site and, in particular, used for the provision of permanent residential accommodation to travellers, as is the intention of all parties and, to enable any use of the replacement site that is not in accordance with approved details relating to the site's use and operation to be subject to enforcement action under the Planning Act 2008.'*
- 8.3.2 The is surprised that these comments are being raised in light of the fact that all the provisions in Requirement 13 (except the deemed consent) have been agreed between the parties for some time following constructive engagement with the council and the travellers' community. Insofar as the 'use' is concerned, this is already authorised under Schedule 1 (Work No. 7F). The authorisation of that work and its the use, in turn, is given effect by Article 3 which permits the construction and operated of the "authorised development" which includes the works in Schedule 1. Insofar as enforcement is concerned, the council has previously confirmed that no conditions are required. The current site has no such conditions. The operational matters are enforced and managed utilising the council's powers as a landowner. It should be noted that the approval of any provisions concerning 'operations' under Requirement 13 would not bind Thurrock Council (but the Applicant) so its insertion in this context offers no assistance even if they wished to place conditions . However, the Applicant notes the ExA has made suggestions in how this issue may be addressed in the Examining Authority's Commentary on the draft Development Consent Order and will respond, as requested, by Deadline 8.

8.4 New matter raised by Thurrock Council: Requirement 17 (Tilbury Link Road)

- 8.4.1 The Applicant wishes to emphasise that it has adopted most of the amendments suggested by the Port of Tilbury London Limited in the dDCO submitted at Deadline 7 [**Document Reference 3.1 (9)**] and considers those amendments to be reasonable and appropriate.
- 8.4.2 The Applicant does not consider Thurrock Council's suggestions for Requirement 17 appropriate for three reasons. First, the suggested requirement makes reference to the North Portal junction as well as indirectly presupposing scheme objectives for the Tilbury Link road (e.g. the reference to a requirement that *'the junction caters for forecast future port and future traffic growth to 2045'*). No final decision has been made on the location or requirements of the proposed Tilbury Link Road and it would be inappropriate for a DCO to pre-empt that decision by deeming that it would be in the location of the North Portal junction. The effect of the suggested amendment would in fact be to *limit* the operation of the passive provision to the North Portal junction provided by Requirement 17. Second, it duplicates the security provided by Requirement 3 in connection with the General Arrangements, thereby falling foul of the Office for Parliamentary Guidance on legislative drafting. Third, it introduces entirely

new requirements for the Tilbury Link Road which are unrelated to the proposed Tilbury Link Road such as '*an east-west oriented route for walking, cycling and public transport which connects with Station Road to the east of Work No. [North Portal Junction]*'. The Applicant has proposed established routes for walkers, cyclists and horse riders, including significant and substantial enhancements, and considers these are already secured under Requirement 3.

8.5 New Requirements

- 8.5.1 Thurrock Council proposes a new Requirement relating to air quality [[REP6-085](#)]. It provides no justification for why this is necessary. As the Applicant has explained on a number of occasions, the Applicant is not proposing to monitor NO₂ during construction as the air quality modelling and assessment work assesses that the construction of the Project would not result in significant air quality effects. The air quality assessment has concluded there are no significant air quality effects during the operational stage, and consequently there is no requirement for mitigation or monitoring.
- 8.5.2 For completeness, comments on Requirements relating to the Wider Network Impacts and the Asda Roundabout are addressed in this document in Section 7 addressing the Port of Tilbury's submissions.

9 Transport for London

9.1 Signposting for TfL

Wider Network Impacts / Silvertown

- 9.1.1 In relation to the Wider Network Impacts, the Applicant refers to its Deadline 6 submission, Wider Network Impacts Position Paper [REP6-092], and further within the response to TfL's submissions in Applicant's responses to Interested Parties' post-event submissions at Deadline 6 submitted at Deadline 7 [Document Reference 9.177] addresses the suggestion that the Silvertown Tunnel approach is 'funds-based'.
- 9.1.2 The Applicant would note that the TfL appear to suggest in the context of the 'STIG' (on the Silvertown project), that the '*Terms of Reference for the TMF indicate that there would be minimal duplication between these two proposed groups*' [REP6-169]. This is a misunderstanding of the Applicant's position. The groups which are secured under the Applicant's approach are appropriate for different phases. To have an additional group, as suggested, would duplicate the functions of the groups being provided.

Commuted sums / rationale for inclusion of A127

- 9.1.3 In relation to the A127, the Applicant maintains that the bridge addresses historic severance and refers to its response to TfL's submissions in Applicant's responses to Interested Parties' post-event submissions at Deadline 6 submitted at Deadline 7 [Document Reference 9.177].

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

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