London Borough of Havering Response at Deadline 7 to dDCO submitted at Deadline 6

INTRODUCTION

1. This note contains the response of the London Borough of Havering (LBH) to the Applicant's response (**REP6-085**) to LBH's comments on the draft DCO (dDCO) contained in (**REP5-107**).

2. This document records, in tabulated form, the up-to-date position regarding the various comments made by LBH on the dDCO where those comments remain unresolved. For the avoidance of doubt, where there is text under a heading "NH Response" (all of which has been included in previous versions of this note) the text included is the full response of NH.

3. Unlike previous versions of the table, matters that have been resolved or are not being pursued further, are not included, however there is a **new item added on page 5.**

4. This note should be read in conjunction with the comments submitted at D7 by LBH on the Applicant's written submissions on oral comments at ISH 10 in relation to the Wider Networks Impacts Update (Item 3 **REP6-091**) and the Applicant's Wider Network Impacts Position Paper (**REP6-092**). Also of relevance is the response of LBH at D7 to the Applicant's Consents and Agreements Position Statement (**REP6-014**).

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i ARTICLES				
Article 2 (10)	This provision states: "In this Order, references to materially new or materially different environmental effects in comparison with those reported in the environmental statement shall not be construed so as to include the avoidance, removal or reduction of an adverse environmental effect that was reported in the environmental statement as a result of the authorised development"	**LBH Comment** This overarching provision is intended to enable subsequent approval of details even though the likely consequential environmental effects are materially new or materially different from that which was assessed, if the difference is an avoidance, removal or reduction "of an adverse effect". The concern with this provision is that the wording used may not encompass all of the consequences of the material change. Whilst "an adverse effect" might be avoided, removed or reduced that may in itself cause a different effect which has not been assessed and could be sanctioned by this provision. It is suggested that the following wording be added to the end of the existing wording: *"provided that there is no new or materially different adverse*	**LBH Comment** The amendment provides flexibility by enabling approval of details with materially new or different effects, if the difference is an avoidance, removal or reduction of an adverse effect. That general approach is understood. However, as drafted, the materially new or materially different environmental effects which are sanctioned by this provision may include not only the avoidance removal or reduction of an adverse effect reported in the environmental statement, but also will include other unassessed effects where the measures taken to secure the avoidance removal or reduction of an adverse effect have separate, adverse, effects.	This issue is unresolved and, on the basis of the Applicant's latest response, will remain so. LBH see no reason why the additional words proposed by LBH cannot be added for the avoidance of any doubt.

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		environmental effect in comparison with those identified in the environmental statement caused by the avoidance, removal or reduction of such adverse environmental effect" **NH Response** The Applicant's justification for this provision is included in the Explanatory Memorandum [**REP1-045**]. The purpose of the provision is to enable environmentally better outcomes which fall within the Applicant's environmental assessments. The amendment proposed by LBH would obviate the purpose of the interpretive provision.	Taking a hypothetical example, details could be approved which reduce the height of some earth mounds from that assessed in order to reduce an adverse visual effect of those mounds identified in the ES. That would be sanctioned by this provision. Those mounds may also be needed to be at a certain height for noise mitigation and without them there might be an adverse noise effect. Nonetheless, because the reduction of the mounds resulted in the reduction of an adverse effect identified in the ES, it would be sanctioned by this provision irrespective of the collateral noise impacts. That is the basis for the suggested additional drafting. NH have not engaged with that point in their response.	

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			NH Response The Applicant considers these comments to be misconceived. In short, the "unassessed effects" and the "adverse noise effect" referenced in the hypothetical example could in fact be separate "materially new or materially different" environmental effects, provided they fall to be considered as such in the assessment process. The Applicant reiterates its comments in in the Explanatory Memorandum [**REP1-045**]. The purpose of the provision is to Enable environmentally better outcomes which fall within the Applicant's environmental assessments. The	

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			amendment proposed by LBH would obviate the purpose of the interpretive provision	
Article 8	**NEW COMMENT** Consent to transfer the benefit of Order	N/A	N/A	At D7 LBH has set out the current position with regard to the s.106 Obligation under discussion between LBH and the Applicant in LBH's response to the Consents and Agreements Position Statement which had been submitted by the Applicant at D6. That response explains that the Applicant has now accepted that some of the matters which were proposed to be included in the s.106 Agreement do not comply with the legal requirements of s.106 (1). The obligations that remain are proposed to be secured on very small parcel of land within the LBH. To properly secure the position, it is suggested there should be some drafting included in Article 8 of the dDCO to ensure that those obligations apply to any successor undertaker given the very limited role of the land concerned. This has

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				precedence in Article 9 (7) of the Sizewell C (Nuclear Generating Station) Order 2022. The proposed amendment to Article 8 is included at Appendix A.
Article 10	Construction and maintenance of streets	**LBH Comment** As explained later, in section iv of this document, LBH wish to see the insertion of protective provisions for the protection of the local highway authority in relation to construction and maintenance of lengths of highway for which it is responsible. In the event of those protective provisions being included then this article should be expressed as being subject to those protective provisions. An update with regards to LBH and NH discussions on this matter is included in section iv. This article uses the term "local highway authority" and also refers to "highway authority in whose area the street lies". The term "relevant local highway authority" is used in Article 6. It is suggested the drafting	**LBH Comment** See section iv regarding the insertion of protective provisions. LBH is content with the amendment made in response to its comments. **NH Response** See below. The Applicant has inserted Protective Provisions for the benefit of Local Highway Authorities in the DCO submitted at Deadline 4 [**Document Reference 3.1 (6)**].	At D6 all five Local Highway Authorities (LHAs) submitted a set of revisions to the Protective Provisions proposed by the Applicant which have been agreed between the LHAs (**REP6 – 142**) A meeting has been requested with the Applicant to discuss the Protective Provisions and, at the time of writing, alternative dates for a meeting are awaited from the Applicant.

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		approach should be the same throughout the DCO unless there is intended to be a distinction. **NH Response** The Applicant does not consider it appropriate to include protective provisions for highway authorities in the Order. This would be a highly novel approach for DCOs for the Strategic Road Network, and we are aware of only one precedent. Article 10 sets out that newly constructed or altered highways must be handed over to the reasonable satisfaction of the highway and it is considered this provides appropriate control to LBH. Nonetheless, the Applicant is engaging with LBH on further protections which can be provided. The Applicant happy to insert a definition of relevant highway authority, and the references to "highway authority in whose area the highway lies" will be deleted and replaced with "relevant local highway authority." This has been		

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		implemented in the updated dDCO at Deadline 2.		
Article 10 (2)	Requirement for local highway to be completed to reasonable satisfaction of the local highway authority prior to maintenance responsibility passing		**LBH Comment** Under this article the completion of works to a local road to the reasonable satisfaction of the local highway authority results in the maintenance of those works being transferred to the local highway authority. It is therefore important that the point of reasonable satisfaction is identified and agreed in writing. This is dealt with in the draft Protective Provisions supplied to NH but not yet accepted by them. In the absence of those provisions the words "*as evidenced in writing*" should be inserted between "*the street lies*" and "*and,unless …..*" in order that there be a written	This issue should be resolved by appropriately worded Protective Provisions.

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			record of when that point is reached. Alternatively, a cross reference could be made to the issue of the Final Certificate in respect of those works under the relevant paragraph of the Protective Provisions. **NH Response** The Applicant's position in respect of the proposed Protective Provisions is set out below. The wording of Article 10, including Article 10(2), is well precedented in numerous other DCOs. The Applicant is not aware of any legal ambiguity or uncertainty caused by this drafting for local highway authorities in terms of identifying the point of reasonable satisfaction. Nonetheless, the Protective Provisions for the benefit of Local Highway Authorities	

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			set out further procedural requirements, which includes a Provisional Certificate being signed by the Local Highway Authority. The Applicant therefore considers that appropriate safeguards are in place to deal with the substantive point raised by the London Borough of Havering.	
Article 11	Access to works	**LBH Comment** This article is very broad and would, as drafted, allow interference with the part of the highway network the responsibility for which lies with LBH, without any prior knowledge of LBH. Where the new or improved access affects highways for which LBH is responsible then LBH should be consulted in advance and the works should be subject to the protective provisions referred to in section iv of this document. **NH Response**	**LBH Comment** NH have missed the point of the comment. LBH are not seeking to restrict the power which NH have sought to justify but are simply asking that LBH be consulted on, and in advance of, any currently unidentified accesses being implemented. As NH consistently stress this is a big project. It is not fully designed with there being acknowledged to be a likelihood of, currently unidentified, access works – which may distinguish	This issue should be resolved by appropriately worded Protective Provisions.

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		The Applicant considers the powers are necessary and proportionate. Indeed, the power is intended to put the Project on an equivalent footing with schemes authorised under the Highways Act 1980 which would benefit from the wide power contained in section 129 of that Act. This power is necessary because the location of all accesses has yet to be determined. Whilst every effort has been made to identify all accesses and all works required to those accesses, it is possible that unknown or informal accesses exist or the need to improve an access or lay out a further access will only come to light at the detailed design stage, once the full construction methodology has been determined. For example, the precise layout of accesses to construction compounds will need to take into account factors such as the swept path of the construction vehicles together with appropriate landscape mitigation which cannot be fixed at this stage. In addition, accesses may change because of	this project from some of the projects referred to in the NH response. Consultation on the Traffic Management Plan or the Environmental Management Plan does not address the issue since those documents deal with how the works are to be carried out and not what works are to be authorised by the DCO. It is simply appropriate that, where the new or improved accesses previously not identified affect highways for which LBH is responsible, then LBH should be consulted in advance – as they would have been consulted had those accesses been identified as part of the scheme at the application stage. The works should also be subject to the protective	

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		developments which are themselves not yet consented or anticipated. The exercise of the power would be subject to the requirements, in particular requirement 4 which secures compliance with the measures in the Code of Construction Practice, and (the updated) requirement 10 which requires compliance with the outline Traffic Management Plan for Construction. Accesses are indicatively shown in the latter document. The Council will be consulted on both the Traffic Management Plan submitted under requirement 10, and the Environmental Management Plan under requirement 4. The Secretary of State has confirmed that this is acceptable across a wider number of highway DCO projects akin to the Project (see article 15 of the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order 2016, article 14 of the A19/A184 Testo's Junction Alteration Development Consent Order 2018, article 18 of the M42 Junction 6	provisions referred to in section iv of this document. **<u>NH Response</u>** As previously stated by the Applicant, the Council will be consulted in respect of the proposed accesses (which are currently indicatively shown) as part of consultation on the Traffic Management Plan for Construction, submitted under Requirement 10, as well as part of the Environmental Management Plan under Requirement 4. In addition, the Protective Provisions for Local Highway Authorities inserted into the DCO at Deadline 4 [**Document Reference 3.1 (6)**]	

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		Development Consent Order 2020, article 18 of the A19 Downhill Lane Junction Development Consent Order 2020, article 17 of the A1 Birtley to Coal House Development Consent Order 2021, article 17 of the A303 Sparkford to Ilchester Dualling Development Consent Order 2021). National Highways sees no reason to depart from this practice.	secure design input in relation to local roads. This further secures the consultation which the London Borough of Havering is seeking.	
Article 45	Road User Charging	See comments in Section iii in respect of Schedule 12 below.	**LBH Comment** See below **NH Comment** See below	See below
Article 53	Disapplication of legislative provisions	**LBH Comment** Article 53(7) states that "Nothing in this Order is to prejudice the operation of, and the exercise of powers and duties of the undertaker, a statutory undertaker or the Secretary of State under the 1980 Act, the 1991 Act, the 2000 Act …..".	**LBH Comment** The response of NH is not understood. Article 53(7) is a freestanding provision which simply states that nothing in the Order affects the exercise of statutory powers in specific legislation by specified bodies. This article does not apply purely to works being carried	The response is noted however, despite the intention the drafting of Article 53(7), does not restrict the applicability of this article to bodies who have or may have specific powers under the order.

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		It is not clear why statutory undertakers are in the list of those whose powers are not to be prejudiced and yet local highway authorities are not – who also have duties under the acts mentioned. In the absence of justification LBH would wish to see highway authorities added. **NH Response** Statutory undertakers are proposed to have the benefit of the Order transferred to them to carry out works. This is not intended for local highway authorities. No amendment is therefore considered necessary or appropriate.	out by parties having the benefit of the order as implied by the NH response. The issue is that including some bodies and not others, such as the local highway authority who also have powers under one of the statutory powers referred to, implies that there may be, an unspecified, restriction on the bodies not referred to. Those bodies include LBH as local highway authority who have powers and duties under the 1980 Act. Clarification is once again requested. **NH Response** Article 53(7) is only intended for the benefit of those bodies who have or may have specific powers under the proposed Order to ensure that the exercise of such	

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			powers would not prejudice the relevant body's statutory duties and powers. This will include the Secretary of State and, for the purposes of Article 8 dDCO (Transfer of benefit), the statutory undertakers. As previously stated, this is not intended for local highway authorities and therefore, no amendment is considered necessary or appropriate.	
Article 61	Stakeholder action and commitments	**LBH Comment** It is not clear what the basis is for the inclusion of commitments in the "stakeholder actions and commitments register" (APP-554) rather than in requirements themselves or other documents referred to in the requirements, such as the Code of Construction Practice. For example, why can the commitments in relation to construction not be included in the	**LBH Comment** In cases where the commitments in the SAC-R avoid the need for individual side agreements in respect of individual issues and aid transparency then the NH justification for the article is accepted. However, that does not appear to be the basis for some of the commitments – such as the first commitment relating to public access to land	LBH continues to object to the obligation on the Applicant being simply to "take all reasonable steps" when dealing with matters which are under its control, whether through its contractors or otherwise. This has become even more important given that NH now has realised it cannot deal with obligations in relation to the Skills Education & Employment Strategy

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		Code of Construction Practice, as is the REAC? It seems unnecessarily confusing to have some commitments dealt with in an article and some, of a similar nature, dealt with in the requirements. LBH would like to understand the rationale. It is noted that the Explanatory Memorandum confirms that this is an article with no precedent, so it is important to understand the basis for it. The Explanatory Memorandum (APP-057), at page 63, states that the article is intended to cover commitments "which do not naturally sit within the outline management documents or other control documents secured under Schedule 2." However, there are only four commitments all of which appear to be commitments during construction. Why can these not be included as freestanding requirements or in the Code of Construction Practice?	and the second commitment which is project wide. If there is a role for the document, then why is it different from the other control documents and dealt with in an Article rather than applied through a requirement? In respect of the drafting - LBH maintains its objection to the use of "take all reasonable steps" in relation to the commitments where those commitments are clearly within the control of NH. - LBH is content with the amendment to Article 61((3) in dDCO v4 submitted in response to its comments. **NH Response**	(SEE Strategy) and the Community Fund under s.106 and has decided instead to include them in the SAC-R. It is necessary for these to be hard, enforceable, commitments and not merely aspirations. Also see LBH's response, submitted at D7, to the Consents and Agreements Position Statement which was submitted by the Applicant at D6 (REP6-14).

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		It is noted that NH intends to add a further item to the stakeholder actions and commitments register in relation to a requirement that Ockendon Road be closed for a maximum of 10 months (See NH/LBH SoCG to be submitted at D1 pp 64/65). It is not clear why that cannot be the subject of a requirement, directly or within the CoCP. As regards the drafting of the article itself, the following comments are made: (1) LBH do not believe it appropriate to use the term "take all reasonable steps" when dealing with commitments. Commitments, the performance of is within the gift of NH, should be firm, unqualified, commitments. For example, the commitments dealing with accesses during construction	The Applicant considers that its previous response (in column 3, and [**REP1-184**] and [**REP2-077**]) addresses these comments. The Applicant would note that the commitment relating to public access (and it being secured in the SAC-R) was agreed with the relevant stakeholder (Natural England). The Articles of the Order are, in the same way as requirements, enforceable provisions of the Order. In short, the Applicant does not consider that the Council's concerns have been substantiated. In relation to the drafting which requires the Applicant to "take all reasonable steps", the Applicant reiterates its previous comments.	

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		(SACR-003 and SACR-004) are deliverable through the control NH has over its Main Works Contractor – there is no reason for them to be qualified. (2) In 61(3), if an undertaker submits an application to the Secretary of State to revoke, vary or suspend a commitment the commitment is suspended until that application is determined. It does not seem appropriate for the simple act of making an application to be sufficient to suspend the commitment – such a device could be abused. It is suggested that (3) (a) and (b) should be deleted. **NH Response** The rationale for the Stakeholders Actions and Commitments Register [**REP1-176**] is provided in section 2.2 of the document itself. Further explanation is provided in section		

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		5.253 to 5.255 of the Explanatory Memorandum [**REP1-045**]. The reason that commitments contained in the SAC-R could not be included in the REAC is that the latter reflects the commitments contained within and output of the Environmental Statement. The SAC-R, instead, reflects commitments made to individuals rather than essential mitigation required as part of the delivery of the Project. The reason why the Code of Construction Practice could not be utilised is that the Code of Construction Practice provides a framework on which EMP2 will be based, rather than specific commitments. It is not the Applicant's experience that the provision of commitments in the SAC-R has confused interested parties; it has instead been welcomed as a useful tool to provide legally binding commitments without the time, cost and expense of negotiating individual legal agreements. It also provides the Examining Authority and the		

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		Secretary of State with visibility on these commitments. This tool is expected to be utilised throughout the examination as interested parties raise further requests for commitments. The Applicant notes that following Deadline 1, further commitments have been included in the SAC-R. On the detailed comments: • The drafting of article 65(1) (and indeed, the underlying rationale) is based on the undertaking provided in the context of HS2 "Register of Undertakings and Assurances" The wording mirrors that undertaking, and this is considered appropriate as it is intended to deal with substantially similar commitments. No amendment is considered necessary. • We are happy to remove paragraph (3)(a), but not (b) and (c). We will modify paragraph (b) insofar as it relates to (a). Clearly, if the Secretary of State agrees to modify the commitment, it should be taken		

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		as being modified (which is the effect of (3)(b)).		
Article 62	Correction of Plans	**LBH Comment** This article includes a procedure, unsurprisingly not precedented in other DCO, which allows for changes to plans to be agreed by justices rather than through the formal Correction Order (Sch 4 PA 2008) or the process of applying for a non-material or material amendment to the DCO (Sch 6 PA 2008). Article 62 (4) applies this procedure to a plan which "is inaccurate" and Article 62(5) refers to a "wrong description" through "mistake or inadvertence". The way in which changes are to be considered is provided for in the PA2008, as indicated above. A wrong description or inaccuracy can be dealt with immediately after the approval of the Order as a correctable error or, if spotted later, can be dealt with by an application for a non-material amendment to the DCO.	**LBH Comment** The NH justification for Article 62(4) appears to be based on an assertion that the provision relates only to plans and therefore does not conflict with the processes in the Planning Act 2008 which provide for corrections and changes to an Order as distinct from plans. That is false distinction. As Article 64 makes clear, the amendment provisions relate only to certified plans – as referred to in Schedule 16 of the dDCO. If a certified plan needs changing then that results in a new plan being produced with a new revision number which in turn would result in a required change to Schedule 16, which is a correction/change for which there are prescribed processes under the Planning Act 2008.	It is important that it is clear to the Examining Authority that this article is providing a new, separate, process for changing a DC, and the works authorised by it, from that provided for in the Planning Act 2008 (which includes provision for changes due to inaccuracies or errors). It is, unsurprisingly, unprecedented in DCO and it is notable that the Applicant still only seeks to justify it by reference to Acts of Parliament which do not have the benefit of the relatively straightforward process of a change application as provided in the Planning Act 2008. This is important because the safeguards built into the processes under the Planning Act 2008 will be circumvented. The drafting changes to this Article in response to the comments of LBH are welcome but do not overcome the objection in principle to the

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		The processes involved ensure that the local authorities are made aware of the request for a change and the views of any party that might contest the view that the change requested is merely an inaccuracy will be considered. That is the process intended to apply and it is not appropriate for a DCO to include its own bespoke process which avoids the processes prescribed by the PA 2008 specifically to deal with amendments. The distinction between this provision and the amendments under Sch 4 and 6 referred to in the Explanatory Memorandum is not accepted. The process in Sch 6 is available to make any non-material amendment to a DCO and does not exclude errors arising by mistake or inadvertence. If Article 62 (4) is to remain then it should be a requirement that the relevant authorities are consulted (as	The process would either be by way of a correction order, if noticed in time, or subsequently by way of an application for a non-material or material change. These are the same processes that would apply to any inadvertent errors in other wording of the DCO which need to be addressed. It is the case therefore that NH is replacing prescribed processes in the Panning Act 2008 which apply to all corrections/changes with its own process. There is no precedence for this provision in DCO and the availability of the processes in the Planning Act to deal with corrections/changes distinguishes this Order from the Acts of Parliament referred to.	creation of a separate regime for making amendments from that provided for in the Planning Act 2008.

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		they would be for a correctable error under Sch 4) and their views submitted to the magistrates along with the application (similar to paragraph 20 in Sch 2 in relation to appeals to the Secretary of State). The relevant authorities and all affected persons should be informed of the progress of any application, including any hearings before the justices. **NH Response** A correction order under the Planning Act 2008 is a correction to the made Order, not to plans themselves. The nature of the corrections which could be made under the proposed provisions is therefore materially different. For that reason, it is not considered that these provisions conflict with the process for corrections. For the avoidance of doubt, the proposed provisions in the dDCO do not permit textual amendments to the Order (if made).	The article is therefore objected to as a matter of principle. As regards the drafting change – what is suggested falls far short of what was requested by LBH. It simply requires NH to tell the relevant local planning authority of the change but provides no process for responses or the consideration of those responses by the justices. As previously stated, not only should the local planning authority be notified, they should have time to consider and respond and any response should be submitted to the Justices with the application – as with consultation responses under requirements, as provided for in requirement 20 (1). To achieve that the following drafting is suggested in Article 62:	

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		In relation to non-material and material amendments, these provisions do not circumvent or modify the application of Schedules 4 and 6 of the Planning Act 2008 as they relate to inadvertent errors, (material or non-material) amendments to the works authorised under the Order or anything authorised by the Order. They are therefore not "changes". As noted in the Explanatory Memorandum [**REP1-045**], these provisions are included in section 52 of the Crossrail Act 2008. They also find precedent in section 54 of the High Speed Rail (West Midlands - Crewe) Act 2021, section 53 of the Channel Tunnel Rail Link Act 1996, and section 43 of the Dartford-Thurrock Crossing Act 1988. It is considered that the Project, being of a similar scale and complexity to those projects, should incorporate these provisions on a precautionary basis to minimise a potential delay to the delivery of the Project in the unanticipated event that there is an	*(4) If a plan certified under sub-paragraph (1) is inaccurate, the undertaker may apply to two justices having jurisdiction in the place where any land affected is situated for correction of the plan* *(5) Prior to making an application referred to in sub-paragraph (4) the undertaker must* *(a) notify the relevant local planning authority the owners and occupiers of any land affected and any other persons it considers appropriate;* *(b) provide the parties consulted with not less than 28 days from the provision of the plan being consulted upon and prior to the*	

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		error. It is not relevant that the projects which have included these provisions to date have been promoted by Acts of Parliament; rather it is affirms the principle that it would be disproportionate to require subsequent instrument (be it an amendment Order or an Act of Parliament) to deal with manifest errors (as distinct from 'changes' to an application). It is the Applicant's view this provision is capable of being included in the dDCO under section 120(3) of the Planning Act 2008. The existing processes under the Planning Act 2008 are not intended to prevent the ability to ensure inadvertent errors or mistakes in certified plans delay a nationally significant infrastructure project. The Applicant is happy to include a requirement to notify the local authority, and this is reflected in the dDCO submitted at Deadline 2.	*submission of the application for any response to the plan; and* *(c) include with its application to the justices under sub-paragraph (4) copies of all responses made by the parties consulted in respect of the plan which is the subject of the application.* Sub -paragraph (5) would be re-numbered (6) and so on. **NH Response** The Applicant does not consider any justification has been provided as to why the correction of an inaccuracy or mistake in the plans would fall within the provisions dealing with a correction, or material,	

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			or non-material, amendment to the Order. Insofar as the comments on certified documents are concerned, the operation of article 62(6) would mean that no amendment to the Order would be required. As noted in the Explanatory Memorandum [**REP1-045**], these provisions are included in section 52 of the Crossrail Act 2008. They also find precedent in section 54 of the High Speed Rail (West Midlands -Crewe) Act 2021, section 53 of the Channel Tunnel Rail Link Act 1996, and section 43 of the Dartford-Thurrock Crossing Act 1988. It is considered that the Project, being of a similar scale and complexity to those projects, should incorporate these provisions on a precautionary basis to	

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			minimise a potential delay to the delivery of the Project in the unanticipated event that there is an error. It is not relevant that the projects which have included these provisions to date have been promoted by Acts of Parliament; rather it is affirms the principle that it would be disproportionate to require subsequent instrument (be it an amendments Order or an Act of Parliament) to deal with manifest errors (as distinct from 'changes' to an application). It is the Applicant's view that this provision is capable of being included in the dDCO under section 120(3) of the Planning Act 2008. The existing processes under the Planning Act 2008 are	

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			not intended to prevent the ability to ensure inadvertent errors or mistakes in certified plans delay a nationally significant infrastructure project. The Applicant has increased the period of notification to 28 days, and inserted a new provision which requires representations to be provided to the justices in line with the Council's request.	
Article 65	Appeals to the Secretary of State	**LBH Comment** There are several drafting difficulties with this article: (1) Article 65(2) (b) refers to copies of appeal documentation being referred to "the local authority". There is also reference elsewhere in the article to the local authority. The local authority, however, is not the party responsible	**LBH Comment** (1) LBH is content with the amendment made in response to its comment. (2) The NH response is noted and LBH has no further comment. (3) LBH is content with the amendment made in	LBH maintains its objection to the 10 day response time for the reasons previously given

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		for all the refusals which may be subject to the process. For example, an appeal arising from a refusal under article 12 (5) involves the street authority and an appeal under article 17 (2), the traffic authority. It is therefore not sufficient to use that term as a generic term (which may, for example, not include the street authority in question). (2) In article 65 (2)(c) and elsewhere in the article, the expression "the appeal parties" is used but is not defined. (3) Article 65((2)(d) refers to "business days" which is not defined. That term is defined in provisions elsewhere within the DCO (e.g. Sch 2 Para 19 (5)) but expressly only for the purposes of that provision.	response to its comment. (4) LBH still maintains that 10 business days within which to provide a response is too short for the reasons given. (5) LBH is content with the amendment made in response to its comment. (6) LBH is content with the amendment made in response to its comment. **NH Response** In relation to (3) *[4?]* the Applicant maintains its position that 10 business days is sufficient time in the specific context of the appeals process. At that stage, any appeal party would have had the benefit of the extensive engagement up	

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		(4) In addition, Article 65 allows the undertaker 42 days in which to prepare and submit an appeal but provides the local authorities with only 10 business days within which to provide a response. This is insufficient time, and it is suggested that the period of 10 business days should be replaced with 20 business days in Article 65 (d) to ensure that not all relevant staff are absent for the entire period. (5) Article 65 (13) allows the appointed person to make a direction on costs and paragraph (14) requires the appointed person to "have regard to" the guidance on costs. The concern is paragraph (13) does not explicitly confine an award of costs to circumstances of unreasonable behaviour. It	until the end of the examination, it would have seen the application (which would have been refused), and then provided with further time to consider the submissions from the Applicant. As previously noted, the Applicant has 42 days in which to make an appeal. These timescales are heavily precedented (see, for example, article 52 of the M25 Junction 28 Development Consent Order 2022).	

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		should be clear that costs are not awarded except in the case of unreasonable behaviour as provided for in the guidance. (6) The list in 65 (1) (a) should include a refusal of the LPA under para 9 (6) of Sch 2 regarding the LPA refusal to agree details in respect of the investigation and recording of archaeological remains. **NH Response** • We will amend this article to make clear that, for the purposes of this provision, "local authority" means a relevant planning authority, relevant local highway authority and street authority (where the latter is also a highway authority). This has been implemented in the dDCO submitted at Deadline 2. • This term should be given its plain and ordinary meaning. This has posed no issue in the various precedents which utilise the same		

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		drafting as far as the Applicant is aware and therefore no amendment is proposed. • The Applicant will insert a definition of business days in article 2. • It is not considered that 10 business days is insufficient time in the specific context of the appeals process. At that stage, any appeal party would have had the benefit of the extensive engagement up until the end of the examination, it would have seen the application (which would have been refused), and then provided with further time to consider the submissions from the Applicant. For the avoidance of doubt, the Applicant has 42 days in which to make an appeal. These timescales are heavily precedented (see, for example, article 52 of the M25 Junction 28 Development Consent Order 2022).		

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		• The Applicant has made the suggested amendment. • The Applicant is happy to add this reference to Article 65. Please see related amendments to Requirement 9 below.		
ADDITIONAL ARTICLE	Implementation Group	**LBH Comment** LBH feel that it would be appropriate for NH to establish a group equivalent to the Silvertown Tunnel Implementation Group which would include representatives of relevant public bodies and provide a structure for ongoing consultation and engagement. It would include engagement on the mitigation and monitoring strategy as suggested in the additional requirement in Schedule 2, requested below. A provisional drafting for the new Article is set out in **Appendix A**. It is based on Article 66 (page 50) of the Silvertown Tunnel DCO. It will need further consideration to ensure it captures all the appropriate topics	**LBH Comment** The concerns of LBH are not related to traffic management or other aspects of the project to which the groups referred to in the NH response relate. These groups primarily relate to construction. The concern relates to the lack of a body overseeing the monitoring and mitigation of the implementation and operation of the development with particular reference to the ongoing Wider Network Impacts Management and Monitoring Strategy/Plan (referred to in	LBH maintains its view, shared with others, that a Silvertown Tunnel approach to monitoring and mitigation is appropriate and necessary and that it should include an Implementation Group. See LBH response submitted at D7 to the Wider Network Impacts Position Paper (**REP6-092**)

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		and is very much a starting point. It hoped that NH will see the benefits and include an article such as this in its draft DCO in due course. The article refers to a monitoring and mitigation strategy which it is believed should be capable of being drafted based on the contents of the application documents submitted. **NH Response** The Applicant does not consider this suggestion to be appropriate for the Project. Control documents legally secured under the Requirements secure and require relevant forums, groups and working arrangements. Unlike the Silvertown Tunnel project, the interests of various parties differ depending on the subject matter of the relevant control. The Code of Construction Practice [**REP1-157**] secures a Community Liaison Group, the outline Traffic Management Plan for Construction [**REP1-174**] secures a Traffic Management Forum, the outline Landscape and Ecology Management Plan [**REP1-173**]	paragraph 14 Sch2 of the dDCO). It is not accepted that this DCO can be distinguished from Silvertown on the basis suggested by NH in their response. It is not unusual for DCO to have such bodies for monitoring and governing aspects of the operational development. See Requirement 4(6) and Sch 16 of The Northampton Gateway Rail Freight Interchange Order 2019 which required a Sustainable Transport Working Group to be established which has various roles in relation to monitoring traffic movements when the development is operational. The West Midlands Rail Freight Interchange Order 2020 also provides for a Transport Working Group for similar purposes, as does the East Midlands Rail Gateway Rail	

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		secures an Advisory Group, the Framework Construction Travel Plan [**APP-546**] secures the Travel Plan Liaison Group, and further requirements require consultation and engagement with relevant local authorities. LBH is proposed to be a member of all these groups, and will be consulted further. The requirement for a further group is considered unnecessary, is likely to lead to duplication of work, further officer time and therefore not considered to be in the public interest of a good use of taxpayer funds. The Applicant further notes that there are mechanisms to ensure an 'overarching framework' is adequately provided for via the Joint Operations Framework and the requirement for the Traffic Management Manger to act as the interface between the Community Liaison Team and the Traffic Management Forum Group.	Freight interchange and Highway Order 2016. LBH would argue that the scale and potential impacts of the Lower Thames Crossing make it even more important that there is a body created to ensure appropriate monitoring of operational traffic, as was the case with Silvertown Tunnel. This is particularly the case given that NH are accepting that there will be adverse impacts resulting from operational traffic that will require mitigation but intend only to be involved in the monitoring of operational traffic to identify the impacts which need mitigation but will not be responsible for securing the delivery of that mitigation. **NH Response**	

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			The Applicant's response did not relate solely to traffic management. The Applicant's approach to Wider Network Impacts is set out in further detail in its post-hearing submissions for ISH4 submitted at Deadline 4 [**Document Reference 9.84**]. The reference to private sector developments is not considered relevant or appropriate where there are established frameworks for the delivery of highway investment across the country. The Applicant would further note that under its licence it is already legally required to "*Cooperate with other persons or*	

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			organisations for the purposes of coordinating day-today operations and long-term planning", and "*Take account of local needs, priorities and plans in planning for the operation, maintenance and long-term development of the network (including in the preparation of route strategies*". These route strategies already include Appropriate engagement. The Applicant would note, for example, that as part of the recent London Orbital Route Strategy "*more than 300 different Stakeholder organisations provided important feedback on the network during the evidence collection period. There were*	

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			also more than 370 individual members of the public who contributed information. In total, around 2,700 individual points were raised by external stakeholders".	
ii SCHEDULE 2 - REQUIREMENTS				
Para 2	Time limits	**LBH Comment** The only time limit imposed by this requirement is a requirement to "begin" the development within 5 years of the date that the Order comes into force. There is no definition of "begin" however it is understood from ISH2 that NH intend to insert one. This will presumably be based on s.155 of the PA which provides that development is taken to begin on the earliest date on which any material operation begins to be carried out. Material operation is defined in s.155 and, currently, includes any operation except for the marking out of a road. As identified in ISH2, the effect of having a separate commencement	**LBH Comment** LBH notes that the NH response did not deal with the issue of the relevance and rigour of the environmental assessment which was the main point of the LBH response. A response on this point is requested. **NH Response** In relation to environmental assessments and the commencement of development, the Applicant refers to [**AS-086**] where similar principles apply.	LBH cannot see that AS-086 addresses the point. The point is not relating to a re-phasing. It relates to the ability to start work, sufficient to keep the DCO approval alive, and then stopping it and picking it up again years later when environmental conditions could be very different.

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		stage (which is defined) is that all that is required to be started within 5 years is the preliminary works. Accordingly, beginning to carry out part of the preliminary works within five years will be sufficient to satisfy Requirement 2. The preliminary works need not be completed, nor do the remainder of the authorised works need to be commenced, within any time period. The relevance, and rigour, of the environmental assessment to which the scheme has been subject will reduce the longer the gap between the baseline conditions, against which impact has been assessed, and the carrying out of the works. It is suggested there should be more rigour in Requirement 2 with it identifying the phases of works and in the event of those phases not having been commenced by a certain date, the undertaker being required to re-visit the environmental assessment, revise if necessary and		

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		identify and implement updated mitigation. There is precedence for this approach in Requirement 2 (3) of The York Potash Harbour Facilities Order 2016 which, in the event of the second phase of development not being commenced within a certain period, required the undertaker to reassess the baseline conditions and update the assessment and produce a further environmental report and agree any additional mitigation measures required. **NH Response** The rationale of this provision is to ensure that the DCO works are carried out, and not held in abeyance longer than a standard 5 year period. The Applicant's position is that given the definition of preliminary works, it is appropriate for the Time Limits requirement to be discharged following the carrying out of the preliminary works. This is no different		

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		to the "spades in the ground" rule referred to by the Examining Authority at ISH1 which applies to any DCO or a conventional planning permission. The controls suggested are unprecedented for a Strategic Road Network DCO. By contrast, the Applicant's approach is precedented (see the A428 Black Caxton to Gibbet Development Consent Order 2022). For completeness, the Applicant would note that a definition of "begin" was inserted into the dDCO at Deadline 1.		
Para 4	Construction - EMP	**LBH Comment** With regard to (1) LBH are not content with the level of detail in the preliminary works EMP, in particular with regard to archaeological matters and compounds. In paragraphs (5) – (7) reference is made to EMP3 being developed and completed which includes key long term commitments (sub - para (6)). In contrast to EMP2 this document is	**LBH Comment** The NH response is noted but is not accepted for the reasons previously given. LBH has no further comment except to refer to the inconsistency with CEP (Third Iteration) which is also a handover document, but which is required to be submitted and approved.	LBH has no further comment to make

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		not required to be consulted upon or be approved by any party. This document must be subject to scrutiny and should be subject to the same processes as EMP2. **NH Response** The Applicant's position on the preliminary works EMP is set out in Post-hearing submissions for ISH1 [REP1-183]. In particular, the preliminary works EMP has looked at preliminary activities, and identified relevant mitigation measures and controls which should apply to those provisions. It is not appropriate for the EMP3 to be subject to consultation. The Applicant is a strategic highways authority appointed by the Secretary of State, and operational matters fall within its day to day operational matters. Insofar as the road is a local highway, this will be handed back to the relevant highway authority. The position adopted is consistent with a long line of precedents (see Requirement 4(6) of the M42	**NH Response** The Applicant's position is also as previously stated. The distinction between the CEP (Third Iteration) and EMP (Third Iteration) is that the former relates to carbon management, and the latter relates to the Applicant's day to day, and business as usual, functions as the strategic highway authority	

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		Junction 6 Development Consent Order 2020, Requirement 4(4) of the A63 (Castle Street Improvement, Hull) Development Consent Order 2020, Requirement 4(5) of the A585 Windy Harbour to Skippool Highway Development Consent Order 2020, Requirment 4(16) of the A303 (Amesbury to Berwick Down) Development Consent Order 2023). The Project does not give rise to any material distinguishing features which justify departing from that approach.		
Para 5	Landscape and ecology - LEMP	**LBH Comment** Whilst the Explanatory Memorandum states that this is a standard provision it bears some consideration. Why is only a reasonable standard for the landscaping required, rather than, say, good? If the point of the article is to secure compliance with the British Standard, then that is what it should say and the words "to a reasonable standard" should be deleted. If the intention is to impose a standard on	**LBH Comment** The NH response is noted but is not agreed with for the reasons previously given. **NH Response** Noted, the Applicant's position is as previously stated.	Agreement to differ

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		the quality of landscaping, then it should be "good" rather than "reasonable". See also comments below, in respect of paragraph 10 with regard to the inclusion of the word "substantially" which equally apply here. **NH Response** The requirement to "carry out" landscaping works to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice applies to the method of *carrying out* the works, not to the quality of the landscaping itself. The wording itself is considered appropriate in ensuring that good practice is followed, and the quality of the landscaping required is secured under Requirement 5(1). Leaving aside this Project-specific justification, the Applicant notes this provision is heavily precedented (see, for example, A428 Black Cat to		

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		Caxton Gibbet Development Consent Order 2022, A47/A11 Thickthorn Junction Development Consent Order 2022, M25 Junction 28 Development Consent Order 2022, A57 Link Roads Development Consent Order 2022, M42 Junction 6 Development Consent Order 2020, A63 (Castle Street Improvement, Hull) Development Consent Order 2020, A585 Windy Harbour to Skippool Highway Development Consent Order 2020, A19/A184 Testo's Junction Alteration Development Consent Order 2018 amongst many others). On the phrase "substantially in accordance with", see response to Requirement 10 below.		
Para 6	Contamination	**LBH Comment** Para 6(2) allows the undertaker alone to determine whether or not remediation of contaminated land not previously identified is required. Only if the undertaker decides unilaterally that remediation is	**LBH Comment** The NH response circles around the very simple point being made. Irrespective of all the other references made to contamination in the other documents referred to by NH,	It is not understood how the Applicant can assert that the conclusion reached by LBH on reading Requirement 6(2) is *"incorrect and overlooks the controls provided".*

PROVISION IN DCO	CONTENT	PREVIOUS COMMENTS OF LONDON BOROUGH OF HAVERING AND RESPONSE OF NATIONAL HIGHWAYS	FURTHER RESPONSE OF LONDON BOROUGH OF HAVERING (REP3-183) AND RESPONSE OF NATIONAL HIGHWAYS (REP4-212)	LBH RESPONSE
		necessary then is anyone else involved. Where such contamination is found the undertaker should compile a report stating its response in circumstances both where it considers remediation is not necessary and where it considers it is necessary. That report should be consulted upon and then be the subject of approval by the Secretary of State with paragraph 20 applying. **NH Response** It is not considered appropriate to amend paragraph 6(2). The Applicant would emphasise that paragraph 6(2) must be seen in the context of paragraph 6(1) which requires "the undertaker must complete a risk assessment of the contamination in consultation with the relevant planning authority and the Environment Agency". In addition, this provision should not be read in isolation. Requirement 4(2) sets out a requirement for EMP2 to include plans for the management of contaminated land (which would be	the fact is that, under this requirement as currently drafted, it is the undertaker who unilaterally decides whether remediation of previously unidentified contaminated land is necessary and, if the undertaker decides it is not, then nothing further is required to be done in respect of the remediation of that land no matter how contaminated. The reference to "*undertaker*" in the first line of Requirement 6(2) should be replaced by "*Environment Agency and/or the relevant local planning authority*" **NH Response** The Applicant does not agree that the undertaker unilaterally decides whether remediation of previously unidentified	The wording of the requirement is clear. Under 6(1) if contaminated land is found which was not previously identified, the undertaker is required to report it to and undertake a risk assessment and consult with various parties. However, under 6(2), the decision as to whether to remediate is entirely left to the undertaker. The fact that this wording is precedented may simply mean that it has not been the subject of any specific consideration. LBH notes the latest response by the Applicant contained in paragraph 4.2 of **REP6-085**. Specifically, it is noted that the Applicant is no longer contesting that the effect of the article is that they can unilaterally decide whether remediation of previously unidentified contaminated land is necessary, and instead avers that it is appropriate that the decision should lie with the undertaker.

PROVISION IN DCO	CONTENT	PREVIOUS COMMENTS OF LONDON BOROUGH OF HAVERING AND RESPONSE OF NATIONAL HIGHWAYS	FURTHER RESPONSE OF LONDON BOROUGH OF HAVERING (REP3-183) AND RESPONSE OF NATIONAL HIGHWAYS (REP4-212)	LBH RESPONSE
		subject to consultation with local authorities). In addition, the REAC (which is secured under Requirement 4) includes measures related to contaminated land. By way of example, GS001 sets out that "If, during further intrusive ground investigations, drilling is required in areas underlain with contaminated soils, drilling and excavation techniques in line with the latest versions of BS 5930:2015 Code of practice for ground investigations (British Standards Institution, 2020) and BS 10175:2011 Investigation of potentially contaminated sites – Code of Practice (British Standards Institution, 2017) (e.g. use of environmental seals) would be adopted to reduce the risk of creating pollutant pathways. The Contractors would provide ground investigation method statements for acceptance of National Highways in consultation with the Environment Agency and relevant Local Authorities prior to commencement of the works". Together, these controls are	contaminated land is necessary. This conclusion is incorrect and overlooks the controls which are provided for under the Order with appropriate safeguards (e.g. Requirement 6 which requires risk assessments, and engagement on these matters with the EA and local authorities) and when taken as a whole provide robust and proportionate measures in respect of remediation of contaminated land. Therefore, the Applicant maintains that no further amendment to Requirement 6 is necessary. The Applicant notes that its approach, justified for this Project, is well precedented and endorsed on other transport	It is noted that in its latest response the Applicant has again pointed to precedents but provided no detail of any specific consideration of the provision in a DCO Examination.

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		considered appropriate and proportionate and therefore no further amendment to Requirement 6 is considered necessary.	projects of a similar scale (see, for example, the A428 Black Cat to Caxton Gibbet Development Consent Order 2022, and the A303 (Amesbury to Berwick Down) Development Consent Order 2023).	
Para 9	Historic Environment	**LBH Comment** LBH are not content that there is an appropriate archaeological management strategy secured in the application documentation. There is insufficient detail in relation to assets likely to be impacted and mitigation. Commitments in this respect need to be added to the various control documents. Para 9 (2) allows for an approved scheme to be amended or dispensed with by agreement with the Secretary of State without any consultation. The mechanism included in	**LBH Comment** LBH notes the NH response however it maintains its concerns regarding the adequacy of the archaeological management strategy and welcomes the further engagement with LBH advisors referred to in the NH response. LBH notes that in its response NH state that they would make the requested changes to Requirement 9 (5) however, as set out in the LBH comments, this also requires the	LBH welcomes the amended drafting but still maintains its objection to the period of 14 days.

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		Paragraph 8(2) for consulting on amended provisions should apply. Paragraph 9 (5) refers to the service of a notice under paragraph (4) however paragraph (4) does not require the service of any notice. It is suggested that paragraph (4) be amended by relacing "reported" with "notified". In paragraph (5) the words "any notice served" should be replaced by "notification". It is also not appropriate for the pause provision in (5) to be simply set aside by the Secretary of State without consultation or process. The 14 day period within (5) is insufficient and should be changed to 28 day to ensure the relevant personnel are available. The provision in (6), whereby the requirement for local planning authority approval is given with one hand and taken away with the other, by the words "unless otherwise	amendment to Requirement 9 (4) and neither amendments appear to have been made to the dDCO submitted at D2. LBH note that NH are still considering the requested amendment to Requirement 9(2) The period of 14 days is considered inadequate – all periods should be in excess of 14 days to allow for holidays of relevant personnel. LBH note and welcome the deletion of "unless otherwise agreed in writing by the Secretary of State" from (5) and (6) and the related amendment to Article 65(1)(a) **NH Response** The Applicant does not agree that the Archaeological management strategy	

PROVISION IN DCO	CONTENT	PREVIOUS COMMENTS OF LONDON BOROUGH OF HAVERING AND RESPONSE OF NATIONAL HIGHWAYS	FURTHER RESPONSE OF LONDON BOROUGH OF HAVERING (REP3-183) AND RESPONSE OF NATIONAL HIGHWAYS (REP4-212)	LBH RESPONSE
		agreed by the Secretary of State", is unacceptable and those words should be deleted. The approval from the local planning authority, if not forthcoming, should be added to the provisions to which the appeal provisions in article 65 apply and therefore added to article 65 (1)(a). **NH Response** The Applicant does not agree that the archaeological management strategy is insufficient. This is a matter which is addressed in further detail in relation to LBH's comments in their Local Impact Report, where the Applicant makes clear that the draft AMS-OWSI [**APP-367**] will be updated in consultation with London Borough of Havering's archaeological advisors to set out appropriate mitigation prior to consent. The Applicant will make the requested amendment to paragraph 9(5). It is considered appropriate for the Secretary of State, who has competence in such matters, to agree	is insufficient. This is a matter which is addressed in further detail in relation to LBH's comments in their Local Impact Report, where the Applicant makes clear that the draft AMSOWSI [**APP-367**] will be updated in consultation with London Borough of Havering's Archaeological advisors to set out appropriate mitigation prior to consent. The Applicant has made the amendments to paragraphs (4) and (5) requested. The period of 14 days is appropriate, and well precedented, as set out in the Applicant's previous response ([**REP1-184**] and [**REP2-077**]).	

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		to dispense with the prohibition. Similarly, the 14 day is considered appropriate given the discrete nature of the considerations involved and the need for the Project to be delivered expeditiously. The Applicant will remove "unless otherwise agreed with the Secretary of State" from paragraph 9(6), and update the appeals provision to make reference to a refusal under paragraph 9(6). The Applicant is considering whether the requested change to Requirement 9(2) should be made.		
Para 10	Traffic Management	**LBH Comment** LBH do not believe that the outline traffic management plan for construction is sufficient to appropriately govern the preliminary works or provides a sufficient framework for the subsequent traffic management plans.	**LBH Comment** The NH response but is not agreed with for the reasons previously given. As regards particularisation of LBH's position with regard to the sufficiency of the outline traffic management plan please see Section 12 page 127	See paragraphs 1.9 – 1.17 LBH ISH 7 Post Hearing Submission. (REP4-318). The NH response, contained at para 4.3 in **REP6-085** is noted, in particular the specific reference to the phrase "substantially in accordance with" within the Decision Letters of the A47 Wansford to Sutton DCO and the A1

PROVISION IN DCO	CONTENT	PREVIOUS COMMENTS OF LONDON BOROUGH OF HAVERING AND RESPONSE OF NATIONAL HIGHWAYS	FURTHER RESPONSE OF LONDON BOROUGH OF HAVERING (REP3-183) AND RESPONSE OF NATIONAL HIGHWAYS (REP4-212)	LBH RESPONSE
		As mentioned previously, despite the use of the term, there is no definition of relevant highway authority. LBH see no reason why, in sub para (2), the requirement to comply with the outline traffic management plan for construction should be qualified by the word "substantially". The inclusion of that word injects uncertainty and subjectivity into the application of what are supposed to be control documents. LBH would wish this DCO to follow the approach in The M25 Junction 28 Development Order 2022 SI No.573. In that DCO the use of the word substantially in a similar context was specifically considered and adjudicated upon by the Examining Authority and Secretary of State and found not to be appropriate and deleted. (See para 9.3.22 Examining Authority's report and paragraph 135 of the Secretary of State Decision Letter).	onwards of the LBH Local Impact Report (REP1-247). The quote in the NH response from the A47 Wansford to Sutton Decision Letter contains the entirety of the relevant text, contained in a bullet point list of amendments to the DCO. It is at variance with the Secretary of State's view set out in the M25 DCO where the issue was specifically discussed and adjudicated upon – see the references in the LBH initial comments. It is suggested that the comments in the M25 DL where it was considered more particularly are more relevant. **<u>NH Response</u>** The Applicant does not consider that the fact the Secretary of State's clear	Birtley to Coal House DCO which contrasts with the reasoned position set out by the Secretary of the State in relation to the M25 J28 DCO. LBH maintains the view that the ability to go beyond the framework set by the framework documents undermines the approach of setting the boundaries now within which various designs can come forward. Accordingly, LBH believe the Secretary of State should prefer the approach that was taken by the Secretary of State in relation to the M25 J28 DCO.

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		NH Response The Applicant notes there is no particularisation of LBH's position and considers the outline Traffic Management Plan for Construction appropriately controls the construction-related traffic matters in regards to the Project. A definition of "relevant highway authority" will be inserted (as explained above). The Applicant considers the word "substantially in accordance with" to be sufficiently clear, and its usage in other DCOs (including on projects of significant scale and size, see for example Schedule 2 to the A428 Black Cat to Caxton Gibbet Development Consent Order 2022) supports this conclusion. In terms of specific justification for the Project, the use of the phrase is necessary and appropriate because the relevant outline management plans for the Project will be in outline form and will require development following the DCO (if granted). We wish to draw the Examining Authority's specific attention to the A47	statement is contained in a bullet point removes any weight which should be attached to it. The Applicant reiterates that the A47 is more recent, and therefore a more accurate articulation of the Secretary of State's approach. The Applicant further notes that all transport DCOs granted since the M25 Junction 28 DCO affirm the use of the phrase "*substantially in accordance with…*" (see, in particular, A47/A11 Thickthorn Junction Development Consent Order 2022, A417 Missing Link Development Consent Order 2022, A428 Black Cat to Caxton	

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		Wansford to Sutton decision letter. That project was promoted by the Applicant. The Secretary of State reinstated the phrase as "the Secretary of State considers its omission is an inappropriate fettering of his discretion". There are no circumstances which distinguish that project from the Project in this context. We would respectfully submit therefore that the Secretary of State's discretion is not fettered. Whilst one DCO has removed this drafting, it is considered that this represents the Secretary of State's current (and more well-established) view.	Gibbet Development Consent Order 2022, A47 Blofield to North Burlingham Development Consent Order 2022, A57 Link Roads Development Consent Order 2022, Manston Airport Development Consent Order 2022, A303 (Amesbury to Berwick Down) Development Consent Order 2023 and A38 Derby Junctions Development Consent Order 2023). The Applicant's justification for this Project is as stated in its previous response (see column 3) and it would note that it has been explicitly endorsed by the Secretary of State, not just in the precedents cited above, but in the decision letter for the A1 Birtley to Coal House DCO ("*The*	

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			Applicant states that "substantially in accordance with" achieves the desired aims of both parties by providing an appropriate amount of certainty and flexibility given the potential for slight variations at detailed design, for example in relation to drainage at Bowes Railway and access to the SM (ER 9.6.27)... *This approval of the final details will ensure that archaeological interests potentially affected by the Development, including the Bowes Railway SM, would be appropriately protected. The ExA are therefore satisfied with the inclusion in Requirement 9 of "substantially in*	

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			accordance with", as set out the Revised DCO (ER 9.6.28). ***The Secretary of State agrees***"). The Council's reliance on a single precedent is in the Applicant's view telling when the Secretary of State has provided a specific rationale for that wording, and has then consistently followed that practice.	
Para 11	Construction Travel Plan	**LBH Comment** LBH do not believe that the framework construction travel plan provides a sufficient framework for the approval of subsequent travel plans. The reference to the undefined term and objection to the insertion of the word "substantially" referred to in respect of paragraph 10 above applies equally to this requirement.	**LBH Comment** As above - the particularisation of LBH's position with regard to the sufficiency of the framework construction travel plan is also contained in Section 12 page 127 onwards of the LBH Local Impact Report (REP1-247). **NH Response** The Applicant's position remains the same for the reasons previously stated.	Agree to disagree

PROVISION IN DCO	CONTENT	PREVIOUS COMMENTS OF LONDON BOROUGH OF HAVERING AND RESPONSE OF NATIONAL HIGHWAYS	FURTHER RESPONSE OF LONDON BOROUGH OF HAVERING (REP3-183) AND RESPONSE OF NATIONAL HIGHWAYS (REP4-212)	LBH RESPONSE
		NH Response The Applicant notes there is no particularisation of LBH's position, and considers the Framework Construction Travel Plan appropriately controls the workforce travel arrangements in regards to the Project. The Applicant's position on the phrase "substantially in accordance with" is provided above, and the Applicant does not consider it appropriate to fetter the Secretary of State's discretion in relation to this matter.		
Para 14	Traffic Monitoring	**LBH Comment** LBH view the wider network impacts management and monitoring plan as wholly unsatisfactory in addressing impacts arising from the development given that it secures none of the mitigation that it may identify is needed. Notwithstanding that general concern, there are several comments on the drafting of the requirement:	**LBH Comment** For reasons set out in LBH's written representations (REP1-253), specifically Appendix 1, the approach of NH, of monitoring and identifying necessary mitigation but not then securing its delivery, does not accord with the NPSNN. In respect of the drafting points:	Please see paragraphs 3.1 – 3.9 LBH ISH 7 Post Hearing Submission. (REP4-318). Also see Appendix 1 of LBH Written Representations (REP1-253) LBH have responded to this issue at D7 in its response to the Applicant's Wider Network Impacts Position Paper submitted at D6 (**REP6-092**).

PROVISION IN DCO	CONTENT	PREVIOUS COMMENTS OF LONDON BOROUGH OF HAVERING AND RESPONSE OF NATIONAL HIGHWAYS	FURTHER RESPONSE OF LONDON BOROUGH OF HAVERING (REP3-183) AND RESPONSE OF NATIONAL HIGHWAYS (REP4-212)	LBH RESPONSE
		(1) The typographical error in line four needs to be corrected and it made clear which highway authority it is referring to – perhaps by use of a defined term of "relevant highway authority", as mentioned above. (2) The use of the word "substantially" is objected to for reasons previously mentioned in relation to paragraph 10. (3) Sub-paragraph (1) only requires submission of an operational traffic impact monitoring scheme prior to the tunnel area being open for traffic. There is no requirement for it to be approved within a certain period or even implemented within a certain period. The requirement should be amended to provide for the scheme to be both approved	(1) LBH is content with the amendments made to 14(1) and (2). There is however an inconsistency in that there is reference to a "*wider network impacts management and monitoring <u>strategy</u>*" in para 14 whereas the related definition and reference in Schedule 16 refer to a "*wider network impacts management and monitoring <u>plan</u>*" (2) LBH maintain its objection to the use of the word substantially for the reasons previously given. (3) The NH response does not deal with the point. If a scheme needs to be submitted before the tunnel opens (as	

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		and operational before the tunnel is open for traffic. (4) The ability, in sub paragraph (3), for the Secretary of State to simply dispense with the implementation of the scheme at any time and for any reason is completely unacceptable. If such a tailpiece is to remain it should be accompanied by the additional wording in paragraph 8(2). **NH Response** The Applicant acknowledges that there will be increased traffic flows in some locations following the opening of the A122 Lower Thames Crossing but considers this needs to be considered against the overall benefits resulting from the better connections and improved journey times resulting from the Project, as set out in 7.9 Transport Assessment Appendix F Wider Network Impacts	required by sub-paragraph (1)) then it is self evidently needed prior to opening. There therefore should be a requirement that it be approved and implemented prior to the tunnel being opened. If the WNIMMP strategy secures all that is required from the operational traffic impact monitoring scheme then why is the later document needed at all? Requirement 14(1) requires the operational traffic impact monitoring scheme to be approved and 14(2) sets out what that scheme should cover and Requirement 14(3)	

PROVISION IN DCO	CONTENT	PREVIOUS COMMENTS OF LONDON BOROUGH OF HAVERING AND RESPONSE OF NATIONAL HIGHWAYS	FURTHER RESPONSE OF LONDON BOROUGH OF HAVERING (REP3-183) AND RESPONSE OF NATIONAL HIGHWAYS (REP4-212)	LBH RESPONSE
		Management and Monitoring Policy Compliance [**APP-535**]. In response to the detailed drafting points: • The Applicant will amend the provision to include reference to "the" highway authority. Please note that "relevant highway authority" has not be used as this provision cross-refers to the WNIMMP which sets out the relevant consultation bodies. • The Applicant's position on the use of the phrase "substantially in accordance with" is set out above. • No amendment is considered necessary as the Wider Network Impacts Management and Monitoring strategy [APP-545] sets out that "In order to establish a baseline, data collection would be undertaken at least one year prior to the opening of the Project (mainline). This period would align with the last year of construction." It further provides that "the pre-opening traffic monitoring would be realigned to be collected across the last full year of construction" where the opening	provides that the scheme be implemented. LBH is simply requesting that a timing requirement be added to ensure that the scheme is approved and is in place before the tunnel is open and before movement of the traffic it is supposed to be monitoring . (4) LBH is content with the amendment made in response to its comment. **<u>NH Response</u>** The Applicant strongly rejects the suggestion that the Project is not compliant with the NPSNN. The relevant parts of the NPS are considered in this context in detail in Transport Assessment	

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		year changes. This document is, in turn, secured under Requirement 14(1). • The Applicant proposes to amend the provision so that before a dispensation is provided, consultation with the relevant authorities is carried out. It is not appropriate to replicate requirement 8(2) as the monitoring itself does not give rise to environmental effects.	Appendix F: Wider Network Impacts Management and Monitoring Policy Compliance [**APP-535**]. The Planning Statement [**APP-495**] contains an assessment of the Project against the draft National Policy Statement for National Networks (NPSNN) (Chapter 6 of the Planning Statement [**APP-495**], supported by Appendix A [**APP-496**]), and in the light of emerging and adopted local planning policy (Chapter 7 [**APP-495**], supported by Appendix C [**APP-498**]). On the detailed drafting points, the Applicant welcomes 1); on (2) the Applicant considers the preamble ("Before the tunnel	

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			area is open for traffic") applies to both submission and approval and so it will be implemented before the opening of the tunnels; (3) the WNIMMP secures the ability to add further locations at the time of the submission and approval of the plan (and therefore provides safeguards in relation to monitoring); (4) is welcomed.	
Additional Requirement	Monitoring and Mitigation Strategy	**LBH Comment** LBH has set out in its written representation its concerns regarding the lack of mitigation in respect of impacts on the wider road network. LBH would wish consideration to be given to the inclusion of a requirement imposing an effective monitoring and mitigation regime and would refer to requirement 7 of The Silvertown Tunnel Order 2018 SI No. 574 as an appropriate approach. That requirement is set out on page	**LBH Comment** For reasons set out in LBH's written representations (REP1-253), specifically Appendix 1, the approach of NH, of not providing necessary mitigation on the basis of an overall benefit of the project, does not accord with the NPSNN. LBH do not agree that the circumstances of Silvertown Tunnel are materially different –	Please see paragraphs 4.1 – 4.4 LBH ISH 7 Post Hearing Submission. (REP4-318). LBH have responded to this issue at D7 in its response to the Applicant's Wider Network Impacts Position Paper submitted at D6 (**REP6-092**).

PROVISION IN DCO	CONTENT	PREVIOUS COMMENTS OF LONDON BOROUGH OF HAVERING AND RESPONSE OF NATIONAL HIGHWAYS	FURTHER RESPONSE OF LONDON BOROUGH OF HAVERING (REP3-183) AND RESPONSE OF NATIONAL HIGHWAYS (REP4-212)	LBH RESPONSE
		65 of the approved DCO and in **Appendix B** to this document. That requirement makes reference to a monitoring and mitigation strategy which could be prepared on the basis of the information available with the application. The requirement then sets out the process for determining whether mitigation needs to be delivered after appropriate monitoring and how it is then to be delivered – both in respect of pre-opening and post opening. A draft requirement, based on requirement 7 of The Silvertown Tunnel DCO, should be included in the DCO. **NH Response** The Applicant does not consider this is an appropriate provision to include in the Project dDCO. The circumstances of the Silvertown Tunnel, a scheme delivered by Transport for London, which is not subject to the same processes for the development of road schemes on the Strategic Road Network. The	both schemes are NSIP and governed by DCO and NPS. LBH therefore reiterate its request that a requirement similar to requirement 7 of the Silvertown DCO be inserted in the dDCO. See also response to Additional Article on page 25 above where it is explained that the reliance on monitoring and then the transfer of the responsibility to mitigate onto local highway authorities makes it even more imperative that there be a requirement such as this and a group involving those authorities to oversee it. **NH Response** The Applicant strongly rejects the suggestion that the Project is not compliant with the NPSNN. The relevant parts of the NPS are considered in this context in detail in Transport Assessment	

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		Applicant acknowledges that there will be increased traffic flows in some locations following the opening of the A122 Lower Thames Crossing, but considers this needs to be considered against the overall benefits resulting from the better connections and improved journey times resulting from the Project, as set out in 7.9 Transport Assessment Appendix F Wider Network Impacts Management and Monitoring Policy Compliance [**APP-535**]	Appendix F: Wider Network Impacts Management and Monitoring Policy Compliance [**APP-535**]. The Planning Statement [**APP-495**] contains an assessment of the Project against the draft National Policy Statement for National Networks (NPSNN) (Chapter 6 of the Planning Statement [**APP-495**], supported by Appendix A [**APP-496**]), and in the light of emerging and adopted local planning policy (Chapter 7 [**APP-495**], supported by Appendix C [**APP-498**]). The Applicant does not consider that the Silvertown Tunnel is comparable, or the approach adopted necessary for the	

PROVISION IN DCO	CONTENT	PREVIOUS COMMENTS OF LONDON BOROUGH OF HAVERING AND RESPONSE OF NATIONAL HIGHWAYS	FURTHER RESPONSE OF LONDON BOROUGH OF HAVERING (REP3-183) AND RESPONSE OF NATIONAL HIGHWAYS (REP4-212)	LBH RESPONSE
			reasons set out above.	
Para 18	Applications to the Secretary of State	**LBH Comment** Under 18 (3) a deemed refusal applies where the Secretary of State does not determine an application within 8 weeks and the application was accompanied by a report from a consultee to the effect that, if approved, the application would give rise to a materially new or different environmental effect. However, otherwise, under 18(2), if there is no decision within 8 weeks, the Secretary of State is deemed to have granted/approved that application. That would include in circumstances where consultees have objected but without explicitly stating that the application would result in new or materially different environmental effects. Accordingly, there should be another pre-condition to deemed approval with the following added to (3): *(d) the consultees required to be consulted by the*	**LBH Comment** LBH welcomes the amendment to paragraph 20 albeit LBH prefers the drafting suggested by LBH since it is more explicit in stating precisely what the effect of 18(3) is. **NH Response** The Applicant welcomes LBH's confirmation regarding amendments to paragraph 20 and considers that the wording proposed is sufficiently clear as to the effect of 18(3).	LBH still prefers its drafting.

PROVISION IN DCO	CONTENT	PREVIOUS COMMENTS OF LONDON BOROUGH OF HAVERING AND RESPONSE OF NATIONAL HIGHWAYS	FURTHER RESPONSE OF LONDON BOROUGH OF HAVERING (REP3-183) AND RESPONSE OF NATIONAL HIGHWAYS (REP4-212)	LBH RESPONSE
		undertaker under the requirement were informed in writing when consulted that if they consider it likely that the subject matter of the application would give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement then, in order to prevent the possibility of a deemed consent under this paragraph, they must say so in their consultation response. **NH Response** The Applicant will make an amendment which has an equivalent effect to the amendment proposed by LBH. In particular, paragraph 20(1) of Schedule 2 to the dDCO will be amended so that it states that the undertaker must "(a) notify the authority or statutory body of the		

PROVISION IN DCO	CONTENT	PREVIOUS COMMENTS OF LONDON BOROUGH OF HAVERING AND RESPONSE OF NATIONAL HIGHWAYS	FURTHER RESPONSE OF LONDON BOROUGH OF HAVERING (REP3-183) AND RESPONSE OF NATIONAL HIGHWAYS (REP4-212)	LBH RESPONSE
		effect of paragraph 18(3) of this Schedule"		
Para 20	Details of Consultation	**LBH Comment** This provision provides for a minimum consultation period of 28 days. In 20 (1)(a) it should be made clear that the 28 day consultation should expire prior to the submission of any application. That is implied by 20 (1) (b) but not required. **NH Response** No amendment is considered necessary. The Requirements make clear that the applications must follow consultation, and the requirement to include consultation responses makes any other result non-compliant.	**LBH Comment** LBH does not agree and would wish the words *"and not less than 28 days prior to any proposed application being submitted"* to be inserted after "*consulted upon*" in paragraph 20(1)(b). **NH Response** The Applicant's position is as previously stated for the reasons given.	LBH still prefers its drafting.
iii SCHEDULE 12				
Para 1.	Definition of "local resident"	**LBH Comment** LBH is concerned as to the area to which the local residents discount scheme applies, as is expanded upon in the LBH LIR. The rationale for the identification of the local residents to	**LBH Comment** The response from NH stresses alignment with the Dartford Crossing on the basis that the discount is given to the boroughs within which the	LBH maintains its position and has nothing further to add.

PROVISION IN DCO	CONTENT	PREVIOUS COMMENTS OF LONDON BOROUGH OF HAVERING AND RESPONSE OF NATIONAL HIGHWAYS	FURTHER RESPONSE OF LONDON BOROUGH OF HAVERING (REP3-183) AND RESPONSE OF NATIONAL HIGHWAYS (REP4-212)	LBH RESPONSE
		benefit from a discount scheme is set out in paragraph 2.2.5 of the Road User Charging Statement (APP-517). The justification is simply based on replicating the Dartford situation whereby it applies only to the residents of boroughs within which the tunnel portals are situated. Whilst LBH in general terms advocate equivalence with the Dartford Crossing charging provisions, it is not logical in the case of the Lower Thames Crossing to confine the discount scheme to residents of the boroughs within which the tunnel portals sit. The works for the Dartford Crossing were confined to the boroughs within which the tunnel portals sit. That is not the case here. At the moment the definition of "local resident" (who are the persons eligible for the local residents' discount scheme) is "a person who permanently resides in the borough of Gravesham or Thurrock". Eligibility is therefore irrespective of proximity	portals are located. The response fails to deal with the material difference identified by LBH, being that the works for the Dartford Crossing were confined to the boroughs within which the portals sit, which is not the case here. In addition, NH fail to respond to the point that there are residents of LBH who will not get the discount who are more proximate to the portals than some residents of Thurrock who will have the benefit of the discount. **NH Response** The Applicant considers its previous response addresses the issues raised. The Applicant would reiterate that the discounts offered in relation to the Project reflect government policy, and the	

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		to the tunnels or the impacts of the scheme. There are residents of Thurrock who live further away from the tunnel portals than residents of the London Borough of Havering. The definition of "local residents" should therefore be changed to add the London Borough of Havering and other host authorities with similar extent of scheme within their area. **NH Response** The Applicant welcomes that LBH states it is in "general terms [an] advocate equivalence with the Dartford Crossing charging provisions. The Applicant is confident that in replicating the regime at the Dartford Crossing reflects Government policy as set out in its [Post-hearing submissions in relation to ISH1]. That submission contained a letter from the Department for Transport confirming that the Applicant's approach to discounts reflected government policy.	government has confirmed this (see Annex B of [**REP1-184**] in which the Department for Transport endorses, in its capacity as the charging authority, that "*this would offer the same type of discount arrangements as are offered on the Dartford Crossing LRDS scheme. It would be aligned with the Dartford LRDS by being offered to residents of the boroughs in which the tunnel portals would be situated (Gravesham and Thurrock for LTC, Dartford and Thurrock for the Dartford Crossing)*". The Applicant notes the unsubstantiated position that charging discounts were not provided at Dartford	

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		It is not considered appropriate to extend the discount to residents of LBH as the purpose of alignment is to ensure that road users utilise the crossing which is most suitable for their journey. This matter is addressed in further detail in response to LBH's Local Impact Report.	*because* this is not where construction occurred for the Dartford Crossing.	
iv	**SCHEDULE 14 – ADDITIONAL PROTECTIVE PROVISIONS**			
		LBH Comment There are extensive interfaces between the authorised works and the local highway network, the latter being the responsibility of LBH as local highway authority. Currently the protection of those assets is wholly inadequate in the DCO. As with other assets owned by bodies with statutory duties LBH would wish its highway assets to be protected by the inclusion of protective provisions which ensure that the local highway network is appropriately considered and protected.	**LBH Comment** Draft protective provisions were submitted by LBH at Deadline 2 (REP2-087) having previously been sent to NH and other local highway authorities. LBH has an objection in principle to matters being dealt with solely in a side agreement on the basis of lack of transparency. LBH also sees no reason why the matters to be included in the side agreement should not be included in protective	At D6 all five LHAs submitted a set of revisions to the Protective Provisions proposed by the Applicant which have been agreed between the LHAs (**REP6 – 142**). A meeting has been requested with the Applicant to discuss the Protective Provisions and, at the time of writing, alternative dates for a meeting are awaited from the Applicant.

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		There is precedence for such protective provisions, such as those included in The A303 Sparkford to Ilchester Dualling Development Consent Order 2021. That is a DCO applied for by NH which included protective provisions in favour of the local highway authority (Somerset County Council) both in respect of vehicular and non-vehicular highways. A side agreement has been the subject of discussion with NH which contains some of the protective provisions required but not all of them. In LBH's written summary of oral comments made at ISH 1 and 2, submitted at D1, LBH has reported that discussions with NH on protected provisions are ongoing, with further discussions taking place in late July 2023. Subject to these discussions, it is LBH's intention to submit draft protected provisions to	provisions. Indeed, the draft side agreement provided to LBH by NH appears to have used the A303 Sparkford to Ilchester DCO protective provisions as a precedent. The A303 provisions are evidence that there can be no objection in principle to the inclusion of protective provisions for the benefit of local highway authorities and, given that the side agreement proposed by NH deals with same issues as the A303 protective provisions there surely cannot be an objection to the substance of them. The distinction regarding statutory undertakers in the NH response is not accepted – there are statutory protections directly built into the Order for statutory undertakers – (see for example Article 18, 19 and 37). In addition, NH itself benefits	

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		the Examining Authority at D2 on the 3rd August 2023. **<u>NH Response</u>** The Applicant does not consider it necessary to include protective provisions for the benefit of LBH. It is not a standard practice to have protective provisions for the benefit of relevant highways authorities (LHAs) in DCOs. Such protective provisions have rarely been included in either recent National Highways DCOs or non-National Highways DCOs; the A303 Sparkford to Ilchester Dualling Development Consent Order 2021 being an exception rather than the rule. The proposed DCO already provides protection for LHAs, including the LBH, by incorporating approval powers and maintenance functions directly within the works powers – for example, see Articles 9 and 10 of the dDCO. These provisions make a discrete set of protective measures unnecessary. Statutory undertakers do not have those protections	from protective provisions in orders promoted by others notwithstanding the inclusion in those DCO of Articles such as 9 and 10 referred to in the NH response (See The East Midlands Gateway Rail Freight Interchange and Highway Order 2016, The Northampton Gateway Rail Freight Interchange Order 2019 and The West Midlands Rail Freight Interchange Order 2020) In addition, it is the case that side agreements, acknowledged to be needed by NH, are not agreed and there are significant outstanding areas of disagreement. It will not be possible for those areas to be adjudicated upon by the Examining Authority if they are contained within a side agreement however it will be possible if those matters are contained in protective provisions which are subject to	

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		directly built into the order powers, so they do need separate protection. The dDCO enables National Highways and the LHAs to enter into agreements fleshing out the protections within the Order. Therefore, a side agreement is a more appropriate and suitable instrument and the best place to address the specifics and deal with different LHAs' circumstances. The Applicant considers that the proposed side agreement provides sufficient and appropriate protection for the local highway network. The Applicant will continue to engage with LBH regarding the proposed side agreement in an attempt to resolve any outstanding concerns	scrutiny by the Examining Authority. LBH can confirm that the draft protective provisions it submitted (REP2-087) had been previously sent to all five highway authorities and LBH has been advised by all those highway authorities that they support in principle the inclusion of such protective provisions. **NH Response** Whilst the Applicant's position remains that the proposed side agreement provides sufficient and appropriate protection for the local highway network, the Applicant recognises that, given the position of LBH, there is some uncertainty as to whether a side agreement will be	

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			completed before the examination ends. To deal with this uncertainty, the Applicant has prepared a set of protective provisions in favour of local highway authorities for inclusion in the dDCO submitted at Deadline 4 [**Document Reference 3.1 (6)**]. The proposed protective provisions in respect of the Project reflect a number of provisions in the highways side agreement being negotiated by the parties and also reflect, as appropriate, provisions in the LBH's version of the proposed protective provisions. If the proposed side agreement is completed then the Applicant's position is that protective provisions for the protection of LBH would not be necessary. If that agreement is not	

PROVISION IN DCO	CONTENT	PREVIOUS COMMENTS OF LONDON BOROUGH OF HAVERING AND RESPONSE OF NATIONAL HIGHWAYS	FURTHER RESPONSE OF LONDON BOROUGH OF HAVERING (REP3-183) AND RESPONSE OF NATIONAL HIGHWAYS (REP4-212)	LBH RESPONSE
			completed then the Secretary of State may decide to include them in the DCO as made. The Applicant will continue to engage with LBH regarding the proposed side agreement in an attempt to resolve any outstanding concerns.	

APPENDIX A

The following sub paragraph should be added to Article 8 of the dDCO to address the points made in Appendix 1 of the response of LBH to the Consents and Agreements Position Statement submitted by LBH at Deadline 7.

(X) Subject to paragraph (Y) the obligations of the undertaker under the Deeds of Obligation are enforceable against any person to whom the power to carry out and operate the authorised development has been transferred or granted under this article for so long as that person benefits from the power to carry out or operate the authorised development and such transferee or lessee shall be treated for all purposes as the undertaker who entered into the Deeds of Obligation with the other parties.

(Y) Paragraph (y) shall not apply to a transferee or lessee referred to in sub-paragraph (5) in respect of works being carried out by those parties relating to their undertakings.

Definition of "Deeds of Obligation" to be populated when Deeds completed – as per the definition on page 8 of the Sizewell DCO.