

TRANSPORT FOR LONDON

LOWER THAMES CROSSING – RESPONSE TO EXAMINING AUTHORITY’S COMMENTARY ON THE DRAFT DEVELOPMENT CONSENT ORDER

DEADLINE 8: 5 DECEMBER 2023

This document provides Transport for London’s (TfL’s) responses to the Examining Authority’s (ExA’s) commentary on the draft Development Consent Order (dDCO) for the proposed Lower Thames Crossing (LTC) scheme (the Project), issued on 14 November 2023 (examination reference PD-047). Responses have been provided in the table below to the questions directed to all interested parties (IPs) or local highway authorities where relevant to TfL’s interests or positions on the Project.

TfL is broadly content with the structure, provisions, and powers laid out in the Order and appreciates the amendments that the Applicant has made over the course of the Examination to address some of TfL’s concerns, such as ensuring TfL will be consulted on matters relevant to its role as a local highway authority. However, there are still some outstanding issues of concern that have yet to be addressed in the dDCO by the Applicant. The most significant of these are:

- a commitment to securing mitigation of traffic and environmental impacts of the Project, supported by additional monitoring of said impacts;
- protective provisions for the benefit of local highway authorities that meet TfL’s needs and address its unique funding situation, including a commuted sum for maintenance and costs; and
- the need for an extended time limit for deemed consent provisions.

ID	Issue	Question	TfL Response
QD1	Title of the dDCO	Do any IPs have any submissions to make on the title of the dDCO?	TfL has no concerns about the title of the dDCO.
QD2	Table of contents and provisions	Do any IPs have any submissions to make on the structure or broad function of the provisions in the dDCO?	<p>TfL is broadly content with the document structure, subject to inclusion of agreed protective provisions (PPs) for the benefit of local highway authorities (LHAs) (Schedule I4, Part II).</p> <p>The protective provisions for the protection of local highway authorities are missing from the dDCO table of contents linked in the ExA commentary (examination reference REP6-010) but are included in the dDCO version submitted at Deadline 7 (examination reference REP7-090). The Applicant has updated the protective provisions in Schedule I4 to accommodate some of the local highway authority suggestions but not others. The local highway authorities are submitting a further joint response at Deadline 8 to update the version of the protective provisions included by the Applicant in the most recent dDCO submitted at Deadline 7. The local highway authorities have compromised on several points with a view to reaching agreement on these with the Applicant by the end of the examination.</p>
QD3	Certified and control documents (CDs)	Are there any documents that have been submitted to the Examination that should be certified but are not recorded in the dDCO?	<p>TfL and other Interested Parties have made a range of representations setting out the need for a more robust approach to the mitigation of traffic and associated environmental impacts than currently included in the Wider Network Impacts Management and Monitoring Plan. This would require an additional requirement in a similar way to Requirement 7 in the Silvertown Tunnel DCO. A Monitoring and Mitigation Strategy was included as a certified document for the Silvertown Tunnel DCO. However, TfL recognises that such a document has not been prepared by the Applicant and submitted to the Examination and therefore cannot be included in the dDCO. Instead, should the ExA agree that a more robust</p>

			approach to mitigation is needed, a requirement needs to be included in the DCO for the Project which requires the preparation of such a document in consultation with the relevant local highway authorities. TfL supports the requirement put forward by the Port of Tilbury London Ltd at Deadline 6 (REP6-I63 Appendix 6) as suitable drafting.
QD4	Certified and control documents (CDs)	Are there any documents [that] are recorded in the dDCO as to be certified but which are superfluous?	TfL does not consider any of the proposed certified documents to be superfluous.
QD5	Restructuring of Schedule I6: Documents to be certified by the Secretary of State	Should Schedule I6 be restructured to set out the proposed certified documents in functional groupings?	TfL considers that this would have value in terms of improved document accessibility/legibility.
QD6	Register of Environmental Actions and Commitments (REAC)	Should the REAC be individually identified in Schedule I6 (certified documents)?	TfL supports the REAC being included in Schedule I6 as a standalone certified document for the reasons set out by the ExA, i.e., to aid its location and future use during both the construction and operational phases of the Project.
QD7	Register of Environmental Actions and Commitments (REAC)	Should the Mitigation Route Map be included as part of the REAC, as a separate CD or certified document or not at all?	TfL considers this document has value to include as a certified document as it gives stakeholders and affected authorities an effective overview of the various controls and measures that will be secured to address the impacts of the Project. It would also aid understanding of the relationship between the various control documents, articles, and requirements in the DCO during the construction and operational phases. TfL sees no need for the Mitigation Route Map to be part of the REAC but would not have any objection to it being so.
QD8	Register of Environmental Actions and Commitments (REAC)	Do any IPs have any further submissions to make on the manner in which certified documents and specifically CDs are recorded in the dDCO?	TfL has no further comments to make on this matter.
Questions in relation to Articles			

QD9	Articles generally	Are there any further matters that have been raised in the Examination that should be provided for in an Article but which are not? If so, please provide reasons and evidence for your position.	TfL does not see a need for any new articles unless this is considered necessary to secure the mitigation of traffic impacts associated with the Project. This article could take a similar form to Article 66 in the Silvertown Tunnel DCO.
QD10	Articles generally	Are there any matters provided for in an Article which are superfluous? If so, please provide reasons and evidence for your position.	TfL does not consider any of the articles currently included in the dDCO to be superfluous.
QD11	Articles generally	Are there Articles that the ExA has not yet commented on in respect of which a change in drafting is sought? If so, please provide reasons and evidence for your position.	TfL is not seeking a change in drafting for any other articles that the ExA has not commented on.
QD12	Deemed consents	All prospective consenting bodies subject to deemed consent provisions with a time-limit are asked to consider the appropriateness of a provision for deemed consent and of the time limit. If these are not considered to be appropriate then they are asked to explain why and how these provisions might be varied.	<p>TfL comments on deemed consent provisions with a time limit for Articles 12, 17 and 19 specifically in response to QD22, QD23 and QD27 below. In each case, TfL is seeking an increase in the time limit from 28 to 42 days.</p> <p>TfL also made representations about this time-limited deemed consent provision with regard to consultation on the discharge of requirements (Schedule 2 Paragraph 22 (l) (b)) (see REPI-303 Paragraph 3.6). The Applicant subsequently added Paragraph 22 (2) which allows the undertaker to consent for this period to be increased to 42 days upon request, such consent not to be unreasonably withheld, provided that request is made within 21 days of receiving the relevant documents. Given the scale and complexity of the Project, TfL considers that a similar ability to extend the deadlines where reasonably requested should be applied to all relevant deemed consent provisions with a 28-day limit. Where necessary, this would allow TfL the time needed to consider the information provided in sufficient detail, consult with relevant colleagues across the organisation as required, and prepare an evidence-based response.</p>
QD16	Interpretation of “begin”	What would be the effect for the Proposed Development of a return to the more conventional	TfL has no comments to make on the definitions and use of 'begin' and 'commence'.

		drafting approach of defining ‘commence’ with a carve-out for ‘preliminary works’ in A2, with all subsequent references in the dDCO amended as necessary?	
QD18	Limits of deviation	The Applicant and relevant statutory undertakers are asked to consider the effect of the remaining ‘limitless’ downward vertical limits of deviation. Should these be subject to a caveat limiting the materially adverse effects of downward variation to that assessed within the ES?	The works relevant to TfL which would have 'limitless' downward vertical limits of deviation are utility works on or adjacent to the A127 west of M25 Junction 29. TfL considers that a caveat is required to limit materially adverse effects to the extent assessed in the Environmental Statement (ES). While TfL accepts that a problematic situation arising is unlikely, without any such caveat there is a risk that significant adverse environmental impacts could arise that have not been assessed, should utility works require excavation considerably deeper than expected in preparation of the ES.
QD20	Construction and maintenance of new, altered or diverted streets and other structures	Are the Local Highway Authorities content that A10 adequately provides for the maintenance of Green Bridges? If full agreement has yet to be reached then final submissions on drafting for comment between the parties should be made.	TfL has no comments – there are no Green Bridges in London.
QD22	Temporary closure, alteration, diversion and restriction of use of streets and private means of access	IPs who are street authorities are asked whether a 28-day deemed consent provision in A12(8) is reasonable. If not, please propose and justify an appropriate alternative provision.	TfL considers that a 42-day deemed consent provision would be more appropriate than only 28 days, as requested in TfL's response to Action Point 6 from Issue Specific Hearing 2 (ISH2) (see REPI-303 Table I). This would allow TfL the time needed to consider the information provided in sufficient detail, consult with relevant colleagues across the organisation as required, and prepare an evidence-based response. The Applicant responded to state that it considered longer than 28 days to be unnecessary as this period is for a more discrete matter than the period for consultation on discharge of requirements which can be extended to 42 days on request (REP2-077 Table I2.I). TfL remains of the view that a 42-day period is justified for Article 12 (8) given the complexity of matters that may arise associated with the

			temporary closure, alteration, diversion or restriction of use of streets.
QD23	Traffic regulation – local roads	Traffic authorities and emergency services bodies (consultees) are asked whether the deemed consent period of 28 days in A17(II) is appropriate and, if not, to propose and justify an appropriate alternative provision.	TfL considers that a 42-day deemed consent provision would be more appropriate than only 28 days, as requested in TfL's response to Action Point 6 from Issue Specific Hearing 2 (ISH2) (see REPI-303 Table I). This would allow TfL the time needed to consider the information provided in sufficient detail, consult with relevant colleagues across the organisation as required, and prepare an evidence-based response. The Applicant responded to state that it considered longer than 28 days to be unnecessary as this period is for a more discrete matter than the period for consultation on discharge of requirements which can be extended to 42 days on request (REP2-077 Table I2.I). TfL remains of the view that a 42-day period is justified for Article I2 (8) given the complexity of matters that may arise associated with amending the operating conditions of local roads.
QD27	Discharge of water	The Applicant and any prospective consenting bodies are asked whether the deemed discharge consent period of 28 days under A19 is appropriate and, if not, what an appropriate period might be.	TfL considers that a 42-day deemed consent provision would be more appropriate than only 28 days, as requested in TfL's response to Action Point 6 from Issue Specific Hearing 2 (ISH2) (see REPI-303 Table I). This would allow TfL the time needed to consider the information provided in sufficient detail, consult with relevant colleagues across the organisation as required, and prepare an evidence-based response. The Applicant responded to state that it considered longer than 28 days to be unnecessary as this period is for a more discrete matter than the period for consultation on discharge of requirements which can be extended to 42 days on request (REP2-077 Table I2.I). TfL remains of the view that a 42-day period is justified for Article I2 (8) given the complexity of matters that may arise associated with considering a request to discharge water into its drainage system.

QD28	Authority to survey and investigate the land	The Applicant and any prospective consenting bodies are asked whether the deemed trial hole consent period of 28 days under A2I is appropriate and, if not, what an appropriate period might be.	Unlike the matters addressed by QD22, QD23 and QD27 above, TfL considers that a 28-day deemed consent provision does provide sufficient time to consider requests to make trial holes or boreholes on land located within a highway boundary. Such requests are likely to be less complex to review than for closures or changing the operating conditions of roads, or discharge of water.
QD32	Disapplication of legislative provisions and application of local legislation	Does any IP have any concern that the draft provisions unreasonably or inappropriately seek to disapply or modify other applicable legislative provisions? If so, what changes are sought to this provision or the dDCO more generally and why?	TfL has no comments to make about the disapplication or modification of any legislative provisions.
QD33	Defence to proceedings in respect of statutory nuisance	Does any IP have any concern that the proposed defence unreasonably seeks to safeguard the undertaker against poor or inappropriate practices or insufficient mitigation in either construction or operation? If so, what changes are sought to this provision and why?	TfL has no comments to make about defence to proceedings in respect of statutory nuisance.
QD34	Arbitration and appeals	Does any statutory body with formal decision-making powers have any concern that the proposed arbitration mechanism unduly affects their statutory role or powers? If so, what changes are sought and why?	TfL has no comments to make about the proposed arbitration mechanism.
Questions in relation to Schedules			
QD37	Schedules generally	Are there any further matters that have been raised in the Examination that should be provided for in a Schedule but which are not? If so, please provide reasons and evidence for your position.	A new requirement to secure the mitigation of traffic and associated environmental impacts of the Project. TfL support this taking the form of the requirement set out in Appendix 6 of the Port of Tilbury London Ltd’s submission REP6-I63). The reasons why this additional requirement is necessary are set out in representations by TfL and other Interested Parties (see, for example, REPI-304 and REP4-359) and are due to the risks that the Project will cause significant traffic and environmental impacts that were not or could not have been foreseen when it becomes

			<p>operational approximately ten years after the modelling supporting the DCO application was prepared.</p> <p>Commutated sums for new highway assets which are proposed to become the maintenance responsibility of the relevant local highway authority should be provided for in Schedule I4, Part II (protective provisions for the protection of local highway authorities).</p>
QD38	Schedules generally	Are there any matters provided for in a Schedule which are superfluous? If so, please provide reasons and evidence for your position.	TfL believes there are none.
QD39	Schedules generally	Are there Schedules that the ExA has not yet commented on in respect of which a change in drafting is sought? If so, please provide reasons and evidence for your position.	TfL believes there are none as the Examination has covered all pertinent topics.
QD41	Authorised Development drafting amendment (Schedule I)	Do IPs have any further and final observations on the drafting of this Schedule including on the description of the individual numbered Works and their relationship with the Works Plans?	TfL has no comments having reviewed track changes in the latest version and not finding anything relating to TfL’s areas of responsibility.
QD43	Security for the REAC	Local Planning and Highway Authorities, Port Authorities and Operators, Natural England, the Environment Agency and the Marine Management Organisation as asked whether the REAC commitments are sufficiently secured. If not, what specific additional references to the REAC are required in any of the existing draft Requirements, or are any additional Requirements sought (and if so reasons for their inclusion and drafts should be provided)?	TfL does not have any major concerns about the REAC commitments being insufficiently secured. However, TfL acknowledges that more extensive reference to the REAC in the requirements could be helpful to ensure there is no lack of clarity about where the actions and commitments in the REAC are relevant. TfL has no specific amendments to the drafting that it is seeking on this matter.
QD44	Security for other CDs	Local Planning and Highway Authorities, Port Authorities and Operators, Natural England, the Environment Agency and the Marine Management Organisation as asked whether the other CDs are sufficiently secured? If not, what specific additional references to specific CDs are required in any of the	TfL's only concern about security of the control documents is with regard to Requirement I0 and the Traffic Management Plan for Construction. TfL remains of the view that this control document should be "in accordance with" the outline version of the plan, not just "substantially in accordance with". TfL's position on this

		existing draft Requirements, or are any additional Requirements sought (and if so reasons for their inclusion and drafts should be provided)?	matter was initially set out in its response to Action Point 6 from Issue Specific Hearing 2 (ISH2) (see REPI-303 Table I). Without this change in wording, it will be difficult to determine whether the plan is sufficiently in accordance with the outline plan. The Applicant responded to state that it considered the wording "substantially in accordance with" to be justified, citing precedents from other made DCOs and that removing the word "substantially" could fetter the Secretary of State's discretion (see REP2-077 response to comments by the London Borough of Havering in Table 7.1 Section ii, row for Paragraph I0). TfL continues to believe that the word "substantially" should not be included because with it the undertaker could make substantive changes to the traffic management arrangements with local highway authorities having limited ability to influence these. TfL made further representations on this at ISH4 - see REP4-359 Paragraphs 3.16 to 3.18.
QD46	Interpretation of terms	What approach do other IPs consider should be taken to these definitions [of “begin”, “commence” and “preliminary works”] and why?	TfL has no comments to make on the definitions and use of 'begin' and 'commence'.
QD47	Time limits (for the authorised development)	Should time limits applicable to beginning/commencing the Proposed Development and time limits for the exercise of CA powers be harmonised?	TfL has no comments to make on the time limits applicable to beginning or commencing the Proposed Development, or time limits for the exercise of compulsory acquisition powers. TfL looks forward to reviewing the revised compulsory acquisition time limit to be provided by the Applicant at Deadline 8, as submitted orally at ISH14.
QD48	Time limits (for the authorised development)	Is there a justification for time limits of longer than 5 years? What is that justification?	TfL has no comments to make on the time limits.
QD49	Detailed Design	Are the design principles guiding the Proposed Development adequately secured and do any of the principles need to be amended? If amendments are sought, why are they required?	No amendments are proposed by TfL at this stage of the examination.

QD50	Construction and handover environmental management plans	Is the iteration and approval process sufficiently clear? Does it provide adequate security for initial stage commitments and for the REAC? If amendments are sought, why are they required?	TfL has no comments.
QD51	Construction and handover environmental management plans	Should any specific consultations prior to approval by the SoS be secured?	TfL has no comments.
QD52	Landscaping and ecology	Is the approval process sufficiently clear? Does it provide adequate security for initial stage commitments and for the REAC? If amendments are sought, why are they required?	TfL is satisfied with the approval process and security of commitment in the REAC. TfL welcomes that it will be consulted on the Landscape and Ecology Management Plan prior to it being submitted to the Secretary of State, as TfL is listed as a relevant stakeholder in Table 2.1 of the plan.
QD53	Landscaping and ecology	Should any specific consultations (and the timing for those consultations) prior to approval by the SoS be secured?	TfL has no comments.
QD59	Carbon and energy management plan (CEP)	IPs final submissions are sought. Reasons for any proposed changes must be provided.	TfL would reiterate its position that the CEP should include measures to address, manage, and mitigate operational carbon emissions from road users to help achieve net zero and decarbonisation objectives at the London and national level. TfL set out its position on this in its Written Representation (REPI-304 Paragraphs 3.34 to 3.37). Through the CEP, the Applicant could take further steps to influence user carbon, such as flexible road user charging. Paragraph 16 (5) of the Schedule 2 requirements could be modified to add specific reference to user carbon emissions to ensure these are considered in the CEP.
QD60	Streets Subject to Temporary Restrictions of Use Plans	Final submissions on the appropriateness and/ or accuracy of the proposed descriptions, extents and representation of temporary restrictions on plans identified in Schedule 3 are sought from Local Highway Authorities and IPs affected by the	TfL has no comments.

		proposals. Reasons for any requested amendments must be provided.	
QD61	Rights of Way and Access Plans	Final submissions on the appropriateness and/ or accuracy of the proposed descriptions, extents and representation of permanent stopping up on plans and of the proposed substitute(s) identified in Schedule 4 are sought from Local Highway Authorities and IPs affected by the proposals. Reasons for any requested amendments must be provided.	TfL has no comments.
QD62	Highways, other streets or private means of access to be stopped up	Final submissions on the appropriateness and/ or accuracy of the proposed descriptions, extents and representation of permanent stopping up on plans identified in Schedule 4 are sought from Local Highway Authorities and IPs affected by the proposals. Are individual proposals to stop up without substitution appropriate? Reasons for any requested amendments must be provided	TfL has no comments.
QD65	Traffic regulation measures	Final submissions on the appropriateness and/ or accuracy of the proposed descriptions and extents of the proposed speed limits, clearway provisions and TRO amendments in Schedule 6 are sought from Local Highway Authorities and IPs affected by the proposals. Reasons for any requested amendments must be provided	TfL has no comments.
QD68	Compulsory acquisition of rights	Final submissions on the appropriateness and/ or accuracy of the proposed descriptions, extents and purposes of the proposed acquisitions in Schedule 8 are sought from Affected Persons. Reasons for any requested amendments must be provided.	TfL has no comments.
QD69	Compulsory acquisition of rights	Final submissions on the appropriateness and effect of the proposed modifications in Schedule 9 are sought from Affected Persons. Reasons for any requested amendments must be provided.	TfL has no comments.

QD70	Acquisition of subsoil or airspace only	Final submissions on the appropriateness and/ or accuracy of the proposed descriptions, extents and purposes of the proposed acquisitions in Schedule 10 are sought from Affected Persons. Reasons for any requested amendments must be provided.	TfL has no comments.
QD71	Temporary use of land	Final submissions on the appropriateness and/ or accuracy of the proposed descriptions, extents and purposes of the proposed TP in Schedule 11 are sought. Reasons for any requested amendments must be provided.	TfL has no comments.
QD73	Road user charging	Are IPs content that the proposed charging regime is within the powers of a DCO (with reference to PA2008 s120 and Schedule 5)? If not, please explain why not.	TfL has no comments.
QD76	Byelaws	Are IPs content that all of the proposed byelaws are within the powers of a DCO (with reference to PA2008 s120 and Schedule 5)? If not, please explain why not.	TfL has no comments.
QD78	Protective Provisions	Are the named beneficiaries of the Protective Provisions content that the provisions drafted for their benefit are appropriate and correct? If not, please explain why not.	<p>Protective provisions for the protection of local highway authorities are particularly important as there will be material changes and additions to the local highway network, the safety and maintenance of which will be the responsibility of the local highway authorities following the completion of works.</p> <p>The local highway authorities have reviewed the Applicant’s response to changes to the proposed protective provisions included in the latest draft version of the dDCO (examination reference REP7-190) and are submitting a further revised version at Deadline 8. The local highway authorities have compromised on several points.</p> <p>As currently drafted, TfL considers that the protective provisions for the protection of local highway authorities submitted by the Applicant at Deadline 7 are not wholly</p>

			appropriate in respect of several matters and, crucially, commuted sums for maintenance where there is a disagreement with the Applicant on what should be provided.
QD80	Protective Provisions	Do any other IPs and specifically statutory undertakers affected by the Proposed Development consider that they should benefit from Protective Provisions? If so, why and what ought the provisions to contain?	See response to QD78.
QD81	Protective Provisions	Are there any other requests for amendments to Protective Provisions? If so what changes are sought and why?	See response to QD78.
Questions in relation to Control Documents (CDs)			
QD84	CDs generally	Do any IPs have any final concerns about the functions of and relationships between the proposed certified documents and the CDs as a subset of them? Are the proposed iterations clear and justified? If any changes are sought, please explain these.	TfL has no comments.
QD85	CDs generally	Do any IPs have any final submissions to make on the CDs and their content? <ul style="list-style-type: none"> • Is there superfluous content that could be removed? • Is there additional content that should be added? • Are there any other documents that should be certified and should form part of the CDs? Any responses to this question should be accompanied by an explanation of the changes sought and the reasons for them. 	TfL has not identified any superfluous content that could be removed or additional content that should be added.