

Lower Thames Crossing

9.193 Applicant's response to Interested Parties' comments on the dDCO at D7

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1 Introduction

1.1 Introduction

- 1.1.1 A number of Interested Parties provided comments on the draft Development Consent Order (dDCO) at Deadline 7. As these comments were provided across a number of submissions, the Applicant has reviewed all the comments and provided a response to them in this document for ease of reference.
- 1.1.2 This document responds to the following:
- a. Gravesham Borough Council's Comments on Development Consent Order Draft v8.0 and National Highways' Deadline 6 Documents relating to the Development Consent Order [[REP7-195](#)]
 - b. London Borough of Havering's (LBH's) Comments on Applicant's submissions at D6 - Response to (REP6-085) LBH's comments on the draft DCO (dDCO) contained in (REP5-107) [[REP7-206](#)]
 - c. Kent County Council's Comments on Applicant's submissions at Deadline 6 [[REP7-198](#)]
 - d. Port of London Authority's (PLA's) Comments on Applicant's submissions at Deadline 6 [[REP7-225](#)]
 - e. Port of Tilbury London Limited's Comments on Applicant's submissions at Deadline 6 [[REP7-226](#)]
 - f. Thurrock Council's Comments on Applicant's submissions at Deadline 6 [[REP7-228](#)]
 - g. Thames Crossing Action Group's Comments on Applicant's submissions at Deadline 6 [[REP7-272](#)]
 - h. Transport for London's (TfL's) Comments on Applicant's submissions at Deadline 6 [[REP7-229](#)]
- 1.1.3 These are responded to in turn below.

2 Gravesham Borough Council

2.1 Resolution of matters and signposting for Gravesham Borough Council

- 2.1.1 In its Comments on Development Consent Order Draft v8.0 and National Highways' Deadline 6 Documents relating to the Development Consent Order [REP7-195], Gravesham Borough Council included a table of comments on the dDCO (from page 2 onwards). The Applicant does not consider there are substantive new matters contained in that submission. In respect of these identified matters, the Applicant is mindful that, given the scale and complexity of the Project, there is a need for information submitted into the Examination to be provided in a manner which is proportionate and accessible for interested parties, the Examining Authority (ExA) and the Secretary of State, to allow for appropriate consideration. These are set out in Table 2.1.

Table 2.1 Applicant's response to Gravesham Borough Council's comments on the dDCO at Deadline 7

Matter raised	Applicant's response
Article 10	The Council had previously raised comments about the clarity of the provisions relating to the maintenance of green bridges. The Applicant explained that the provisions were clear, and should be read alongside the Protective Provisions for Local Highways Authorities in the dDCO. The Council now confirms that it <i>"is content with the Applicant's explanation"</i> . It is therefore considered that this matter is now closed.
Article 56	The Applicant considers that its previous response ([AS-089] and [REP2-077]) addresses the further response given by the Council at Deadline 3. The Applicant notes again that other host authorities have endorsed this provision based on the information provided. The Applicant notes the ExA has not queried this in their commentary on the dDCO either, and the Applicant therefore considers it has acted proportionately.
Article 61	At Deadline 7, the Applicant amended article 61 to provide comfort that the measures, including the SEE Strategy, would be "implemented". The previous drafting requiring "all reasonable steps" has been removed, and the Applicant considers this matter to be closed.
Article 62	The Council had previously sought safeguards in connection with the provisions concerning the correction of plans. The Applicant has accommodated these requests and the Council now confirms that it <i>"considers this matter closed"</i> .
Article 65	The Council maintains its objection to the Secretary of State, and not the Magistrates' Courts, hearing an appeal relating to the Control of Pollution Act 1974. The Applicant has explained that there is a significant backlog in the Magistrates' Court. The Law Society notes that in the Magistrates' Court, the situation continues to deteriorate. The number of cases added to the backlog in February 2023 was 1,666, bringing the total to 343,519. The Applicant considers these figures to be representative, and provided an example of claims in the Magistrates' Court taking well in excess of six months. The Council does not dispute this but states that the example provided is "not a civil appeal", notwithstanding this has no bearing on the capacity of the local

Matter raised	Applicant's response
	<p>Magistrates' Courts, nor the representative national figures. The Council also notes that these provisions have been removed on occasion. None of this detracts or undermines the Project-specific justification provided in the Explanatory Memorandum [REP7-092] (at paragraphs 5.275 to 5.278). Nonetheless, and importantly, the Council fails to acknowledge that the schemes in which the provision has been removed are fundamentally 'online' schemes, or schemes in which the full suite of outline control documents (which the Project has provided), are not present.</p>
<p>Article 65(1)</p>	<p>The Council has previously proposed drafting to address the fact that the appeal provisions applied to control documents, and the Stakeholders Actions and Commitments Register. The Applicant explained how drafting was not necessary. At Deadline 7, the Council provides new drafting. In this drafting, the Council states, "<i>There is no reference in article 61 to a 'document, scheme or plan'. Article 61 refers to 'measures' contained in the register.</i>" This is incorrect: The document in question refers to the Stakeholder Actions and Commitments Register, which requires approval from a local authority pursuant to article 6. The Applicant further notes that the Council's drafting adds the ability for "<i>any other person</i>", but there are no measures in the Stakeholder Actions and Commitments Register which provide for an appeal route. The Applicant considers no amendment is necessary to article 65.</p>
<p>Schedule 1</p>	<p>The Council objects to the precedented preamble to the ancillary 'lettered' works in Schedule 1. The Applicant's position on this matter is set out in paragraphs 3.4.3 to 3.4.6 of the Applicant's Responses to IP's comments on the draft DCO at Deadline 5 [REP6-085]. For the reasons set out in that response, the Applicant politely submits that the Council is grossly overstating the case that this is a "change". The Applicant notes that the ExA and Interested Parties have had full sight of this amendment to the dDCO, and no other party – as far as the Applicant is aware – has raised any objection to this precedented drafting. The Applicant stresses that the provision does not have the effect which the Council claims and, in particular, works are limited by reference to "<i>materially new or materially different environmental effects</i>". The dDCO contains no powers to acquire compulsorily land outside of the Order Limits, and there cannot be said to be any prejudice to landowners. The Applicant does not see why a limitation on flexibility is required in circumstances where land rights are limited to the Order Limits, and works powers are limited to the scope of the environmental assessments. The position put forward by the Council runs counter to all Government policy, which is cited by the Applicant in the Explanatory Memorandum [REP7-092] in connection with article 2(10).</p>
<p>Discharging authority</p>	<p>The Council maintains its objection to the Secretary of State for Transport, who has been the discharging authority for all Strategic Road Network (SRN) DCOs but one, and which has specific arrangements in place, being the discharging authority. No new matters are raised by the Council which have not been addressed (and in addition, no matters have been raised which have not been fully addressed and considered in other SRN DCO examinations by Examining Authorities and the Secretary of State). The Applicant restates its full case set out in paragraph 6.3 of the Explanatory Memorandum [REP7-092], which justifies why the Secretary of State is the appropriate discharging authority.</p>

3 London Borough of Havering

3.1 Introduction

- 3.1.1 At Deadline 7, London Borough of Havering (LBH) submitted [\[REP7-206\]](#), which contains a tabular response to matters relating to the dDCO.
- 3.1.2 In that document, LBH state, “where there is text under a heading ‘NH Response’ (all of which have been included in previous versions of this note) the text included is the full response of NH”. It is not clear that this is in fact the case. The Applicant would note, for example, that Row 1 (which deals with article 2(10)) does not include the Applicant’s full and most recent submissions in paragraphs 5.1.1 to 5.1.4 of Applicant’s responses to IP’s comments on the dDCO at Deadline 4 [\[REP5-089\]](#). In addition, the table references “[\(REP3-183\)](#)” and “[\(REP4-212\)](#)” in the column heading. The Applicant would therefore respectfully request that the ExA considers the Applicant’s position in respect of these matters, rather than rely on the table prepared by LBH.
- 3.1.3 The Applicant has otherwise provided the table below, which responds to the most recent comments, providing a summary of the submissions to date to assist the ExA.

3.2 Response to comments on the dDCO

Table 3.1 Responses to LBH positions at Deadline 7

Provision	LBH position at Deadline 7 (summary)	Applicant’s response
Article 2(10)	<p><i>“This issue is unresolved and, on the basis of the Applicant’s latest response, will remain so.</i></p> <p><i>LBH see no reason why the additional words proposed by LBH cannot be added for the avoidance of any doubt.”</i></p>	<p>The Applicant has explained why the suggested amendment was not appropriate in Section 5.1 of Applicant’s responses to IP’s comments made on the dDCO at Deadline 4 [REP5-089]. LBH have not responded to the Applicant’s offer in relation to the Explanatory Memorandum, but the Applicant nonetheless updated the Explanatory Memorandum to make clear that the drafting does not have the effect of enabling a variation, which gives rise to an additional, materially worse environmental effect. As noted above, LBH’s Deadline 7 submission does not appear to reference or extract the Applicant’s response on this point.</p>
Article 8	<p><i>“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.”</i></p>	<p>LBH refers to Sizewell C Nuclear Power Station as a precedent for its suggestion that a Section 106 Agreement should be secured under the terms of the DCO. The distinction is that on that scheme, the land was not owned by the promoter. In this case, there is clearly land which the Section 106 Agreement can bind to. The Section 106 will be secured, either by agreement or unilateral undertaking, and there is no suggestion the Applicant would not fulfil its legal obligations under either of those mechanisms.</p>

Provision	LBH position at Deadline 7 (summary)	Applicant's response
Protective Provisions for Local Highway Authorities (Articles 10, 11)	In most cases, LBH has stated that comments on the provisions from the main body referenced " <i>should be resolved by appropriately worded Protective Provisions</i> ". LBH also refers to a requested meeting.	<p>The Applicant's position on the Joint Response Protective Provisions is contained in the Applicant's Response to Interested Parties' comments on the dDCO at Deadline 6 [REP7-190].</p> <p>Responses to specific articles are otherwise provided in the Applicant's response to IP's comments made on the dDCO at Deadline 3 [REP4-212].</p> <p>The Applicant promptly provided dates for a meeting, but this was cancelled by the local authorities to enable them to have a meeting (without the Applicant) to discuss the Applicant's response.</p>
Article 53	LBH makes an unprecedented suggestion to include local authorities in the scope of article 53(7).	<p>Article 53(7) is only intended for the benefit of those bodies who have or may have specific powers under the proposed dDCO, to ensure that the exercise of such 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 (Consent to transfer benefit of Order) of the dDCO, the statutory undertakers. As previously stated, this is not intended for local highway authorities and, therefore, no amendment is considered necessary or appropriate.</p> <p>The Applicant further notes that the powers of local authorities under the New Roads and Street Works Act 1991 are in fact modified under article 9 of the dDCO, and so would introduce new confusion to include local highway authorities in the scope of article 53(7)).</p>
Article 61	LBH object to the use of the phrase " <i>take all reasonable steps</i> " in article 61(1).	The Applicant amended this provision at Deadline 7 so that it requires the Applicant to " <i>implement</i> " the measures, thereby strengthening the requirement.
Article 62	LBH objects to the process which enables the correction of plans.	No new matters have been raised by LBH, and the Applicant's position is set out in page 87 of [REP4-212] .
Article 65	LBH objects to the 10-day period.	No new matters have been raised by LBH, and the Applicant's position is set out on page 90 of [REP4-212] .
New Requirement: 'Implementation Group' / Wider Network Impacts / Requirement 14	LBH proposes a Silvertown Tunnel-type implementation group.	The Applicant's position on this matter is set out in its Wider Network Impacts Position Paper [REP6-092] . The Applicant's 'without prejudice' provision would secure a Network Management Group.

Provision	LBH position at Deadline 7 (summary)	Applicant's response
Requirement 2	LBH objects to the use of the term "begin" in Requirement 2.	No new matters have been raised by LBH; the Applicant's position is set out in [AS-089], [REP1-184] and [REP2-077]. The Applicant further refers to its response to Action Point 1 of ISH7 in the Applicant's responses to IP's comments on the dDCO at Deadline 4 [REP5-089]. This matter was also raised in the ExA's commentary on the dDCO, and the Applicant refers to its responses to QD13 to QD16 on this matter submitted at Deadline 8 [Document Reference 9.194].
Requirement 4	LBH desires the Environmental Management Plan (EMP) (Third Iteration) to be subject to approval.	It is not appropriate for the EMP3 to be subject to approval. The Applicant is a strategic highways authority appointed by the Secretary of State, and operational matters fall within its day-to-day operational responsibilities. 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 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, and Requirement 4(16) of the A303 (Amesbury to Berwick Down) Development Consent Order 2023). The Project does not give rise to any materially distinguishing features which justify departing from that precedented approach.
Requirement 6(2)	LBH objects to the precedented position that under the provision, the undertaker determines whether or not remediation of contaminated land not previously identified is required.	No new matters are raised by LBH, and the Applicant's position is set out in Section 4.2 of Applicant's Responses to IP's comments on the draft DCO at Deadline 5 [REP6-085]. For the avoidance of doubt, the Applicant has never suggested that any person other than the undertaker would make the determination. Instead, it has referenced a number of overlapping controls which provide comfort in relation to the issue of contaminated land (e.g. under the Register of Environmental Actions and Commitments (REAC) [REP7-122], 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).
Requirement 9	LBH maintains its objection to 14-day period in this provision.	As explained on page 107 of [REP4-212], the 14-day period is considered appropriate given the discrete nature of the considerations involved and the need for the Project to be delivered expeditiously. It is also highly precedented (see The A19/A184 Testo's Junction Alteration Development Consent Order 2018, The A19 Downhill Lane Junction Development

Provision	LBH position at Deadline 7 (summary)	Applicant's response
		Consent Order 2020, The A63 (Castle Street Improvement, Hull) Development Consent Order 2020, The A1 Birtley to Coal House Development Consent Order 2021, The A57 Link Roads Development Consent Order 2022, The M54 to M6 Link Road Development Consent Order 2022, and The A47 Wansford to Sutton Development Consent Order 2023).
Various	LBH maintains its objection in relation to the use of “ <i>substantially in accordance with</i> ” drafting.	No new matters are raised and the Applicant refers to its response in Section 4.3 of Applicant's Responses to IP's comments on the draft DCO at Deadline 5 [REP6-085] .
Paragraph 18 / 20	LBH “ <i>prefers its drafting</i> ” in relation to notification of a deemed consent, where consultation is carried out under Schedule 2 and the drafting in relation to the period provided for consultation.	The Applicant notes LBH does not identify that the Applicant's drafting achieves the effect which LBH seeks to achieve. No amendment is therefore considered necessary, and the Applicant considers its drafting is clear that the deemed consent provision will be notified to consultees and that 28 days at minimum will be provided.
Schedule 12	LBH wants the local resident's discount extended to LBH residents.	No new matters have been raised by LBH, and the Applicant would reiterate that the discounts offered in relation to the Project reflect Government policy, and the Government has confirmed this (see Annex B of [REP1-184] in which the Department for Transport (DfT) endorses, in its capacity as the charging authority, that “ <i>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)</i> ”). The Applicant notes the unsubstantiated position that charging discounts were not provided at Dartford because this is not where construction occurred for the Dartford Crossing.

4 Kent County Council

4.1 A229 Blue Bell Hill Requirement

- 4.1.1 Kent County Council put forward a Requirement to secure funding in relation to the A229 Blue Bell Hill improvement scheme. The Applicant has set out its position in the Joint Position statement: Blue Bell Hill [REP5-083]. The Applicant maintains that a commitment to fund works at Blue Bell Hill would not be appropriate, as it would bypass the existing processes through which the Secretary of State makes decisions (and is already considering) regarding the funding of road improvements there. Kent County Council received approval on 27 October 2023 from the DfT to progress to the Outline Business Case stage. The Applicant considers that this demonstrates the process working appropriately.

5 Port of London Authority

5.1 Update on discussions on the dDCO with the PLA

- 5.1.1 The Port of London Authority (PLA) has taken the opportunity to helpfully restate the outstanding matters in relation to the dDCO in [\[REP7-225\]](#). The Applicant is pleased to confirm that all matters, except those set out below, are agreed between the parties. In respect of all matters, except paragraph 99/110 of Schedule 14, the Applicant has addressed these comments and provides a signposting table below.
- 5.1.2 In relation to the sole outstanding issue on Paragraph 99/100 of Schedule 14, the Applicant notes that the Port of Tilbury London Limited has provided more comprehensive comments, including those made by the PLA, so these are addressed in the section below responding to comments from the Port of Tilbury London Limited.
- 5.1.3 The Applicant is grateful to the PLA for the welcome and productive progress in resolving matters relating to article 18, article 32, article 48, article 53, and all matters in their Protective Provisions (except the two identified below).

Table 5.1 Applicant's update on dDCO-related matters

Matter raised by the PLA in [REP7-225]	Applicant's update
Paragraph 104 of Schedule 14 (paragraph 2.3 of the Deadline 7 submission)	<p>Paragraph 104 of the PLA's Protective Provisions deals with remedial works where there is a material change to the riverbed. The PLA does not provide which subparagraph of paragraph 104 is being referenced but the Applicant understands the PLA is referring to subparagraph (1). In particular, that provision sets out:</p> <p><i>"104.(1) If any specified work or the exercise of any specified function ... during construction or carrying out gives rise to sedimentation, scouring, currents or wave action, or other material change to the riverbed, which would be materially detrimental to traffic in, or the flow or regime of, the river Thames, then the PLA may by notice in writing require the undertaker at the undertaker's own expense to comply with the remedial requirements specified in the notice."</i></p> <p>The PLA objects to the use of the word 'material' and argues that <i>"what is material in the context of the river, may be different from what is material in the context of the project as a whole and that, from the PLA's point of view, paragraph 104 should deal with materiality so far as the river is concerned"</i>.</p> <p>The Applicant has addressed this matter in the Statement of Common Ground with the PLA [APP-100] (see Item 2.1.58). In short, the 'material' change is explicitly a change which is a <i>"material change to the riverbed"</i>, and which is <i>"materially detrimental to traffic in, or the flow or regime of, the river"</i>. There is no reference to materiality being related to the Project. No amendment is therefore considered necessary.</p>
Article 8 (paragraph 2.4)	The PLA does not explain its outstanding concern in relation to article 8; however, the Applicant understands this is the matter raised in Item 2.1.24 of the Statement of Common Ground [APP-100] . In short, the PLA raises a concern that the transfer of powers to the defined list of undertakers is too

Matter raised by the PLA in [REP7-225]	Applicant's update
	<p>broad. The Applicant's position is set out in the Statement of Common Ground (which the Applicant restates), but in short, the Applicant stresses that any powers transferred under article 8(4) are only those relating to the 'undertaking' of the relevant body. The approach of allowing such transfers to licensed operators (even unnamed) is precedented (e.g. Thurrock Flexible Generation Plant DCO), and the Applicant has taken the approach of excluding compulsory acquisition compensation from the scope of the powers over and above those precedents.</p> <p>The Applicant considers that this provision, insofar as it relates to the PLA, cannot be seen in isolation from the robust Protective Provisions included for the benefit of the PLA. In particular, the Applicant notes that so far as a work is a 'specified work', or a 'specified function' (which are defined broadly) under the terms of the PLA's protective provisions, the PLA would benefit from appropriate safeguards. This article also provides that any transfer is subject to the same liabilities and conditions as the Applicant would have imposed on it. This protection therefore means that if a power was transferred, it would still be subject to the PLA's protective provisions.</p>
<p>Definition of 'authorised development' (paragraph 2.5)</p>	<p>The PLA objects to the definition of 'authorised development' (and in particular, the reference to any other development authorised outside of Schedule 1 under the Order should be removed). The Applicant has comprehensively explained why the PLA's position is not only unusual and is not supported by the terms of the Order (which in fact does authorise development outside of Schedule 1), but that it will have unintended consequences and is not supported by the precedents (including those with significant harbour and port works). This is explained in Section 6.1 of the Applicant's response to IP's comments made on the dDCO at Deadline 3 [REP4-212] and the Applicant restates its case in full.</p> <p>In short, the Applicant's view remains that the heavily precedented definition of 'authorised development' is appropriately used in connection with the Project. As set out in [REP2-077], the Applicant has used this definition of 'authorised development' because the development authorised by the Order entails development outside the scope of Schedule 1 (e.g., the power to carry out protective works under article 20). The Applicant's view is therefore that the starting position is that precedents are not the definitive starting point (even though they support the Applicant's approach) because it is simply reflective of the fact that the development authorised entails development outside the ambit of Schedule 1. The position does not turn on the presence of a harbour authority or otherwise.</p> <p>Nonetheless, the Applicant highlighted that such provisions are included in DCOs which entail significant harbour works, and gave the example of the Great Yarmouth Third River Development Consent Order 2020. The PLA in its Deadline 3 submission states that "<i>Interference with the River Yare is not comparable in terms of the impacts</i>" of the Project. The Applicant wishes to highlight that on that scheme, full powers were taken to extinguish public rights of navigation over the River Yare (see article 44 of that Order). There are many other precedents which involve significant harbour works where the same definition of authorised development is used (see, for example, the Able Marine Energy Park Order 2014 and Hinkley Point C Connection Order 2016), and indeed, harbour DCOs themselves include the identical definition (see the Port of Tilbury (Expansion) Order 2019).</p>

Matter raised by the PLA in [REP7-225]	Applicant's update
Compulsory acquisition (paragraph 2.6)	The Applicant has received a response to the Heads of Terms provided. It is unlikely that agreement will be reached because of the significant gap between the parties on quantum, as well as provisions of the Heads of Terms which conflict with the terms of the dDCO. The Applicant will continue to engage with the PLA on a voluntary agreement, but fundamentally the Applicant maintains its position that compulsory acquisition – in connection with the tunnels required for this nationally significant infrastructure – is required, and a compelling case in the public interest has been provided for that acquisition in the Statement of Reasons [REP7-096] .
Article 53 (paragraph 2.7)	This matter is now agreed between the parties, and was agreed prior to Deadline 7.
Schedule 10 (paragraph 2.8)	The Applicant welcomes the confirmation that the ability to take temporary possession of Plot 16-70 is “ <i>acceptable to the PLA</i> ”, provided a discussion is held relating to the Mean High Water level. The Applicant is happy to explain its position on this matter, and will discuss the same at the parties' regular engagement meetings.
Definition of 'begin' (paragraph 2.9)	The PLA restates its concern about the use of 'begin' in Requirement 2 of Schedule 2 to the dDCO. The PLA states the matter “ <i>has not been addressed by the Applicant in successive iterations of the dDCO</i> ”. The Applicant wishes to clarify for the ExA that there is a distinction between (1) the PLA's concerns relating to the use of 'commence'/'begin' in the context of the PLA's Protective Provisions; and (2) the PLA's concern about the use of 'begin' in Requirement 2. The former has been addressed, and the PLA has confirmed this matter has now been addressed. In relation to the latter, strictly speaking, the PLA is correct to say that this has not been addressed “ <i>in successive iterations of the dDCO</i> ” but the substantive matter has been addressed in a number of submissions. The Applicant's position is that the use of 'begin' in Schedule 2 is appropriate and justified for the reasons which have been the subject of significant examination, and explained in [REP1-184] and [AS-089] , and its response to Action Point 1 of ISH7 in the Applicant's responses to IP's comments on the dDCO at Deadline 4 [REP5-089] . This matter was also raised in the ExA's commentary on the dDCO, and the Applicant refers to its responses to QD13 to QD16 on this matter submitted at Deadline 8 [Document Reference 9.194] .

6 Port of Tilbury London Limited and Port of London Authority

6.1 Paragraph 99/100 of Schedule 14

- 6.1.1 By way of context, the PLA had raised concerns that (1) construction-related risks were not considered as part of the processes secured under their Protective Provisions in relation to the construction of the tunnels; (2) that there was an 'automatic' referral to arbitration in the event of a disagreement; and (3) there should be notice and engagement provisions at the start and end (and during the course) of construction works. The Applicant has adopted all the amendments requested by the PLA in relation to these matters, and the Applicant is pleased that the provisions of paragraphs 99 and 100 are agreed, with the exception of the matter described below.
- 6.1.2 For context, the Protective Provisions with the PLA secure, among other things, the following:
- a. **Absolute Requirement:** There is an absolute requirement to ensure the agreed depths are secured in the detailed design, and in addition, the detailed design and construction must be provided, and that must "*take into account the need to protect the existing and future use of the river Thames, including reasonable mitigation of risks to the river Thames and the functions of the PLA during construction of the tunnelling works and operation of the authorised development*".
 - b. **Step 1:** The undertaker must consult with the PLA when preparing the detailed design and construction methodology of the tunnelling works under the river Thames, on—
 - i. the construction methodology for those works insofar as relevant to the existing and future use of the river Thames and the PLA's functions; and
 - ii. the measures to be taken in connection with those works, including in respect of unexploded ordnance in the river Thames having regard to the need to protect the existing and future use of the river Thames.
 - c. **Step 2:** The undertaker must have reasonable regard to any representations and provide a written account of how any such representations made by the PLA have been taken into account.
 - d. **Step 3:** Where the PLA are not reasonably satisfied with the written account and dispute the Applicant's approach, a senior meeting must be held.
 - e. **Step 4:** If the PLA remain unsatisfied, they can refer the matter to arbitration.

- f. **Step 5:** If, and only if a matter is referred to arbitration, the Applicant is restricted from carrying out the works in dispute until the arbitration is determined.

6.1.3 The steps above are all agreed. The sole matter in dispute between the Applicant and the PLA and the Port of Tilbury London Limited in relation to paragraphs 99 and 100 is the text in paragraph 99(5) and (6) shown in red below:

“(5) Unless sub-paragraph (6) applies, in the event that a matter is referred to arbitration under paragraph (4), the undertaker must not begin any tunnelling work to which a dispute under paragraph (4) relates until such arbitration is settled by the arbitrator (and where sub-paragraph (6) applies, the arbitrator must ensure its decision does not conflict with the Secretary of State’s decision under that sub-paragraph).”

“(6) This sub-paragraph applies where the undertaker provides the Secretary of State with PLA’s representations, and the written account required under subparagraph (3) and agrees any tunnelling work to which a dispute under subparagraph (4) relates can begin.”

6.1.4 The additional wording (shown in red above) allows the Applicant to proceed with the works in Step 5 where the approval of the Secretary of State is provided. In the Applicant’s view, it is necessary to ensure that the Project can be commenced in circumstances where the arbitration becomes protracted or is delayed. Arbitration may impose a delay involving significant time and cost at public expense. In the Applicant’s view, the Secretary of State for Transport, as the Government department for ports (and highways), is competent to discharge this function. Indeed, UK-wide maritime transport policy is managed by the DfT. Any suggestion that the Secretary of State for Transport (who has functions relating to ports) is not competent should be rejected by the ExA, and would be contrary to clear functions of the Secretary of State. The requirement for Secretary of State approval (and a requirement to provide the PLA’s representations) ensures appropriate safeguards are in place in the case of a dispute.

6.1.5 The Port of Tilbury London Limited raise the following substantive objections [\[REP7-226\]](#):

- a. The disputed provisions “*fundamentally undermine the arbitration process and the very purpose of the PLA’s protective provisions*” and their preferred approach enables them “*to be confident that the PLA has adequate oversight to protect the interests of users of the river Thames*”.
- b. The disputed provisions contain “*a requirement that the appointed arbitrator must ensure that their decision ‘does not conflict’ with the decision of the Secretary of State [and this] fetters and interferes with the independence and expertise of the arbitrator and is contrary to the purpose of arbitration as a mechanism for dispute resolution*”.

- c. The disputed provisions are not required because “*commercial arbitrations are typically conducted to a very rapid timescale. Any delay to the commencement of tunnelling would be correspondingly brief*”.

- 6.1.6 The Applicant is not persuaded by these arguments. In the Applicant's submission, it is appropriate for the Secretary of Transport – who as mentioned above is charged with the functioning of the operation of the Government department responsible for both highways and ports – to make a competent and technical decision. The Applicant would note that under section 60 of the Port of London Authority Act 1968, which relates to dredging, the Secretary of State for Transport is given an approval function in connection with “*material ...deposited below the level of mean high water springs*”.¹ Under section 69, it is the Secretary of State who determines any appeal in relation to a refusal, variation or revocation of a river works licence. Various other provisions engage the Secretary of State for Transport in connection with works in the river Thames (e.g. sections 76, 78, 79, and 88). The suggestion that the Secretary of State would have the technical functions to discharge its role under these provisions, but not in this instance, is highly questionable.
- 6.1.7 Indeed, the Port of Tilbury London Limited explicitly acknowledges that, in their view, “*the Secretary of State would decline to authorise tunnelling to commence without the benefit of the arbitration decision, setting out the full technical considerations behind the arbitrator's decision as to the acceptability of the plans*” [REP7-226]. If that is the case, there is simply no reason or justification for removing the disputed provisions. It is simply not appropriate to suggest that the Secretary of State's decision would not adequately, appropriately and properly consider the matters in dispute, and so the first two reasons (summarised above) should be given no weight. In circumstances where the Secretary of State does make a decision, it would simply not be appropriate for an arbitrator to make a contrary decision.
- 6.1.8 On the third reason, the Applicant notes the suggestion that arbitration would be concluded swiftly. The Applicant notes that the ICE's Arbitration guidance suggests that even a relatively simple matter could take a significant amount of time (leading to up to two to three months before a decision is made). With respect, adding this level of delay in circumstances where Steps 1 to 5 above have been followed (in addition to the absolute requirement being secured), is simply not appropriate. The Applicant has sought to accommodate Steps 1 to 5 to provide reasonable comfort but is unable to accede to the request to remove the disputed provisions from its drafting.
- 6.1.9 It was also suggested at Issue Specific Hearing 14 (ISH14) that specific and prescribed procedures for arbitration could be inserted. The Applicant does not consider that it would be appropriate to prescribe a fixed procedure as the nature of the disputes may be simple, or complex, and therefore specific timescales on timing may have the perverse effect of contracting or protracting the appropriate time for consideration.

¹ Section 60 gives this power to the 'Board of Trade' but as the PLA's notes under that section make clear, “*The powers of the Board of Trade are now exercised by and all references to the Board of Trade are now to be construed as a reference to the Secretary of State for Transport*”. (Port of London Authority, n.d.)

- 6.1.10 The Port of Tilbury London Limited also raises a point that “*the Applicant’s proposals are entirely novel and without precedent*”. With respect, the bulk of Steps 1 to 5 are also entirely novel and without precedent. The Applicant notes the absence of the prevention of commencement of works in the equivalent provision in the Silvertown Tunnel Order 2018 (paragraph 35 of Schedule 13 to that Order). The Silvertown Tunnel, in fact, only secures Step 1 and 4. The Applicant therefore considers it has gone above and beyond what the precedents require.
- 6.1.11 For completeness, the Port of Tilbury London Limited also raises a comment on the drafting and they claim that “*the drafting appears to state that it is the undertaker who must agree that tunnelling work may begin, presenting that agreement to the Secretary of State*”. The Applicant does not agree that is the effect of the drafting (nor is it the intention), but will amend the drafting to make this abundantly clear.
- 6.1.12 The Applicant considers its response above addresses the objection of the PLA in relation to this sole disputed matter in relation to paragraph 99/100. For completeness, it is noted that the PLA additionally state [\[REP7-225\]](#) that the disputed provision “*provides the Applicant with an unwarranted degree of control over dispute resolution*”. This is incorrect: the Applicant would not be able to proceed, and control would be placed in the hands of the Secretary of State, not the Applicant. For the reasons set out above, the Applicant considers that approach to be an appropriate balance between appropriate safeguards and ensuring the Project is not the subject of protracted delays.

7 Thurrock Council

7.1 Signposting to previous responses on the dDCO

- 7.1.1 In its Deadline 7 submission [[REP7-228](#)], Thurrock Council has repeated, with no elaboration or new arguments, its position on a number of points. In respect of these identified matters, the Applicant is mindful that, given the scale and complexity of the Project, there is a need for information submitted into the Examination to be provided in a manner which is proportionate and accessible for interested parties, the ExA and the Secretary of State, to allow for appropriate consideration.
- 7.1.2 In that spirit, the Applicant has carefully considered the Deadline 7 submission [[REP7-228](#)] and in respect of all of the identified matters, the Applicant has already provided responses which it considers fully address the matters.
- 7.1.3 The Applicant has previously provided specific signposting to assist Thurrock Council. All the matters raised, with the exception of the matters identified below, are appropriately addressed in the signposting previously provided and so it is not repeated here. Instead, please see the signposting tables on page 19 of the Applicant's Responses to IP's comments on the draft DCO at Deadline 5 [[REP6-085](#)], and page 25 of the Applicant's responses to Interested Parties' comments on the draft DCO at Deadline 6 [[REP7-190](#)].
- 7.1.4 The Council claims that the Applicant has failed to engage or address matters. This is unsubstantiated, refuted in the strongest possible terms, and the suggestion is swiftly dispelled by simply looking at the cross-references in the previous signposting. In other instances, the Council has failed to address the detailed explanations already provided by the Applicant (e.g., on contaminated land, limits of deviation, or defined the well understood and widely used phrase 'environmental effects' which, in any event, the Applicant has explained to the Council), or mischaracterises the Applicant's position (e.g. in relation to the use of precedent where the Council suggests the Applicant is somehow not justifying the provisions appropriately despite, as explained on numerous occasions, the provisions being justified above and beyond precedents).
- 7.1.5 The Applicant considers that the ExA already has sufficient information to understand both the Applicant's and the Council's position on the matters raised, but the Applicant remains open to answering any queries from the ExA on any matters relating to the dDCO. The Applicant wishes to make clear that the outstanding suggestions from Thurrock Council are highly novel, and would be detrimental not just to the delivery of this Nationally Significant Infrastructure Project, but the delivery of UK infrastructure generally (and on that basis, wholly inconsistent with Government policy identified in the Explanatory Memorandum [[REP7-092](#)] in paragraphs 5.18 and 5.19).

7.2 New comment raised by Thurrock Council at Deadline 7: Housing Requirement

- 7.2.1 Thurrock Council, having seen the draft requirement proposed by Gravesham Borough Council, is requesting an equivalent article for Thurrock. The Applicant stresses that the Project is not assessed to result in a substantial or significant effect on housing provision. Any requirement would therefore fall foul of the need for DCO Requirements to be necessary and proportionate.
- 7.2.2 Nonetheless, the Applicant has recognised that there is uncertainty and is sympathetic to the Council's position regarding pre-existing pressures on housing services, which are largely as a result of structural public funding issues and the wider economic environment. It is for that reason that proportionate and reasonable controls have been placed in the Framework Construction Travel Plan (FCTP) [REP7-146] (which is secured by the dDCO). The Workers Accommodation Report (WAR) [APP-551] and the FCTP [REP7-146] summarise how monitoring, governance and interventions will be developed and implemented collaboratively to avoid adverse effects.
- 7.2.3 The proposals create an agile framework to cater for the uncertainty, and to work closely with local authorities to respond quickly if issues arise (and to look ahead to potential issues and avoid them before they manifest). The approach aims to address impacts should they arise, based on evidence provided by the Project's monitoring (and look-ahead information) and local authority data. This enables solutions to be fit-for-purpose, based on the specific issues that could occur. The full list of measures is set out in paragraph 5.4.13 and 5.4.14 of the FCTP [REP7-146], and the Applicant notes specifically that there is a commitment *"to propose further reasonably practicable measures which encourage a higher proportion of locally employed workers (thereby reducing demand for accommodation) and incentivise workers to live in areas which have higher capacity or less sensitivity"*.
- 7.2.4 The Applicant believes that the proactive monitoring of worker accommodation need, including a 12-month look ahead that has been proposed, will allow the Applicant to anticipate and manage impacts within the context of the housing market at that time. The Applicant has also updated the FCTP in order to strengthen this position, and also make explicit provision for financial contributions in the unlikely event that triggers are breached. The Applicant's view is therefore that there are appropriate controls in place which are commensurate with the assessed impact.
- 7.2.5 Commentary on the comments on the Applicant's without prejudice Network Management Group is provided in the Applicant's comments on Interested Parties' submissions regarding Wider Network Impacts at Deadline 7 [Document Reference 9.208] which has been submitted alongside this document at Deadline 8.

8 Thames Crossing Action Group

8.1 Response to comments on the dDCO

- 8.1.1 Paragraphs 57 to 63 of the Thames Crossing Action Group's (TCAG's) Deadline 7 submission [[REP7-272](#)] provide some commentary on the dDCO.
- 8.1.2 On the discharging authority, TCAG state that they are concerned about ensuring information provided to the Secretary of State is "independent" and subject to scrutiny. To provide assurance, the Applicant would highlight paragraph 22 of the dDCO [[REP7-090](#)], which ensures that representations from consultees are provided to the Secretary of State. Schedule 2 requires consultation, and paragraph 22 also requires appropriate consideration of any consultation responses. The Applicant is confident that the processes – secured across its DCO portfolio – are robust, proportionate, and ensure the Project will be delivered appropriately for the reasons set out in the Explanatory Memorandum [[REP7-092](#)].
- 8.1.3 TCAG states that the Applicant's previous representations show a "*lack of willingness to add specific mention as to who would be responsible for the management and maintenance of the green bridges not only highlights that NH are not properly listening to other IPs*". The provision of the dDCO being referenced relates to an addition the Applicant made to the dDCO to confirm that maintenance of Green Bridges would be undertaken by the Applicant. The insertion of this provision shows the Applicant's positive confirmation that it will maintain the vegetation and planting on Green Bridges. Kent County Council had requested "for the avoidance of doubt" drafting, which the Applicant considers does not meet the best practice guidance on the drafting of legislative provisions and does not detract from that position.

9 Transport for London

9.1 Signposting for Transport for London (TfL)

- 9.1.1 In relation to the proposed A127 bridge, the Applicant maintains that the bridge addresses historic severance, and refers to its response at Deadline 7 at [\[REP7-188\]](#). The Applicant's view is that the delivery of the A127 bridge is clearly a substantial benefit and enhancement, and the Applicant is providing this, above and beyond mitigation for the Project in accordance with the National Policy Statement for National Networks (DfT, 2014) and covering the capital costs of doing so. In those circumstances, commuted sums are not appropriate. There is nothing in policy or law which requires the payment of commuted sums in these circumstances.
- 9.1.2 The Applicant does not consider anything in TfL's submissions relating to commuted sums affects the Applicant's position set out in Section 10.1 of [\[REP6-085\]](#). The Applicant considers it is telling that TfL confirms that it can, and has, access to funding arrangements. Since Deadline 7, the Applicant notes that the Government has released funding for TfL in relation to highways maintenance. In particular, the Government has set out that it is providing £2.8 billion for local authorities in the East of England, South East, South West and, importantly, London. Table 2: Local Authority Allocations, shows maintenance funding between 2023 and 2034 of £235,804,000 (DfT, 2023). The suggestion that the Government is not well-seized of matters relating to local road maintenance and its funding, should therefore be wholly rejected.
- 9.1.3 In relation to wider network impacts, the Applicant considers comments made by TfL in the context of commuted sums are telling. TfL notes that "*TfL can bid for funding, primarily in the case of the Government's Major Roads Network (MRN) fund*" but also states "*it must compete with other highway authorities and therefore does not have certainty on funding being made available to it*" [\[REP7-229\]](#). In the Applicant's view, this reflects the fact that funding is a Ministerial and political decision based on spending priorities. It is right for the overall management of the network and the associated use of public funds to be subject to that Ministerial decision-making, and it is not appropriate for a DCO for an individual scheme to compromise the Government's ability to make these political decisions on spending priorities. The Applicant refers to the Applicant's comments on Interested Parties' submission regarding Wider Network Impacts at Deadline 7 [**Document Reference 9.208**] which has been submitted alongside this document at Deadline 8 for further information in this context.

References

Department for Transport (2014). National Policy Statement for National Networks.

Department for Transport (2023). Local highways maintenance: additional funding from 2023 to 2034. Accessed November 2023.

<https://www.gov.uk/government/publications/highways-maintenance-funding-allocations/local-highways-maintenance-additional-funding-from-2023-to-2034>.

Port of London Authority (n.d.). Port of London Act 1968. Accessed December 2023.

[REDACTED]

Glossary

Term	Abbreviation	Explanation
A122		The new A122 trunk road to be constructed as part of the Lower Thames Crossing project, including links, as defined in Part 2, Schedule 5 (Classification of Roads) in the draft DCO
A122 Lower Thames Crossing	Project	A proposed new crossing of the Thames Estuary linking the county of Kent with the county of Essex, at or east of the existing Dartford Crossing.
Application Document		In the context of the Project, a document submitted to the Planning Inspectorate as part of the application for development consent.
Construction		Activity on and/or offsite required to implement the Project. The construction phase is considered to commence with the first activity on site (e.g. creation of site access), and ends with demobilisation.
Development Consent Order	DCO	Means of obtaining permission for developments categorised as Nationally Significant Infrastructure Projects (NSIP) under the Planning Act 2008.
Development Consent Order application	DCO application	The Project Application Documents, collectively known as the 'DCO application'.
Environmental Statement	ES	A document produced to support an application for development consent that is subject to Environmental Impact Assessment (EIA), which sets out the likely impacts on the environment arising from the proposed development.
National Highways		A UK government-owned company with responsibility for managing the motorways and major roads in England. Formerly known as Highways England.
National Policy Statement	NPS	Set out UK government policy on different types of national infrastructure development, including energy, transport, water and waste. There are 12 NPS, providing the framework within which Examining Authorities make their recommendations to the Secretary of State.
National Policy Statement for National Networks	NPSNN	Sets out the need for, and Government's policies to deliver, development of Nationally Significant Infrastructure Projects (NSIPs) on the national road and rail networks in England. It provides planning guidance for promoters of NSIPs on the road and rail networks, and the basis for the examination by the Examining Authority and decisions by the Secretary of State.
Nationally Significant Infrastructure Project	NSIP	Major infrastructure developments in England and Wales, such as proposals for power plants, large renewable energy projects, new airports and airport extensions, major road projects etc that require a development consent under the Planning Act 2008.
North Portal		The North Portal (northern tunnel entrance) would be located to the west of East Tilbury. Emergency access and vehicle turn-around facilities would be provided at the tunnel portal. The tunnel portal structures would accommodate service buildings for control operations, mechanical and electrical equipment, drainage and maintenance operations.
Operation		Describes the operational phase of a completed development and is considered to commence at the end of the construction phase, after demobilisation.

Term	Abbreviation	Explanation
Order Limits		The outermost extent of the Project, indicated on the Plans by a red line. This is the Limit of Land to be Acquired or Used (LLAU) by the Project. This is the area in which the DCO would apply.
Planning Act 2008		The primary legislation that establishes the legal framework for applying for, examining and determining Development Consent Order applications for Nationally Significant Infrastructure Projects.
Project road		The new A122 trunk road, the improved A2 trunk road, and the improved M25 and M2 special roads, as defined in Parts 1 and 2, Schedule 5 (Classification of Roads) in the draft DCO.
Project route		The horizontal and vertical alignment taken by the Project road.
South Portal		The South Portal of the Project (southern tunnel entrance) would be located to the south-east of the village of Chalk. Emergency access and vehicle turn-around facilities would be provided at the tunnel portal. The tunnel portal structures would accommodate service buildings for control operations, mechanical and electrical equipment, drainage and maintenance operations.
The tunnel		Proposed 4.25km (2.5 miles) road tunnel beneath the River Thames, comprising two bores, one for northbound traffic and one for southbound traffic. Cross-passages connecting each bore would be provided for emergency incident response and tunnel user evacuation. Tunnel portal structures would accommodate service buildings for control operations, mechanical and electrical equipment, drainage and maintenance operations. Emergency access and vehicle turn-around facilities would also be provided at the tunnel portals.

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