

# LONDON BOROUGH OF HAVERING (LBH) – RESPONSE TO EXAMINING AUTHORITY’S COMMENTARY ON THE DRAFT DEVELOPMENT CONSENT ORDER (PD-047)

## Introduction

1. This document responds to the commentary on the draft DCO (dDCO) produced by the ExA. However, to avoid duplication it also includes the entirety of the LBH position on the provisions in the dDCO with sign posting where necessary to any documents containing justification. Accordingly, no separate response to the D7 revised dDCO will be submitted.
2. The contents are dealt with under the headings of the questions posed in the ExA dDCO Commentary. Where a question is not included, it means that LBH has no response to make in response to the question.

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

3. The strong view of LBH is that any measures to improve the visibility, and location, of the REAC would be welcome. It should preferably be a separate document to aid transparency and to reflect the fact that it is not wholly concerned with construction.

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

4. LBH has identified a number of amendments/additions it believes should be made to the Articles in its previous submissions, as follows:

- 4.1 **Article 8** needs two additional sub-paragraphs to satisfactorily ensure that the planning obligations continue to bind an undertaker to whom the benefit of the Order is transferred. This is explained in LBH’s Post Hearing Submissions in respect of Part 1 of ISH 12 submitted at D8.

Further justification for this is set out in LBH’s response to the Consents and Agreements Position Statement submitted by the Applicant at D6 (REP6-14), which was submitted by LBH at Deadline 7 (REP7-213), and LBH’s response at Deadline D7 to the dDCO (REP7-206, pages 5 and 6). The proposed amendment is set out at Appendix A of that document on page 75.

- 4.2 **Article 61** is the means by which the SAC-R is applied to the authorised development. LBH has concerns with regard to this Article, particularly in respect of Parts 2 and 3 which were added to the SAC-R at D7 (SEE Strategy and Community Fund).

There is a particular consequence of this moving from S.106 to Article 61 for the local authorities. If the SEE Strategy and Community Fund provisions

had remained in the s.106 Agreements and were then amended, the local authorities would have control over amendments. The movement to Article 61 means that, in circumstances where changes to those provisions are proposed which the local authority does not agree with, an application may be made to the Secretary of State and the local authority is only a consultee in that process.

The consideration of any changes appears to be loaded with the Secretary of State being specifically required to “consider the safe and expeditious delivery of the authorised development” in 61((2), along with items (a) – (c). It is suggested that changes should be made to 61(2) to reflect a more balanced consideration.

It is suggested that “*the safe and expeditious delivery of the authorised development*” be deleted from (2) since the primacy given to those considerations suggest that all other considerations are subjugated to them. The concern being that the Applicant could point to obligations in the current SAC-R, which it advises it is currently committed to, causing delay to the scheme and justify a revocation, suspension or removal on the basis of that delay.

As set out in the Post Hearing Submissions for ISH 12 submitted by LBH, there are concerns regarding the content of the Community Fund SAC-R. Those concerns are set out in those submissions. There are also concerns regarding the SEE Strategy and the way in which both the Community Fund and SEE Strategy have been moved across into the SAC-R.

**Appendix 1 and 2** of this document contain suggested amendments to Parts 2 and 3 of the SAC-R which reflect the concerns expressed. The Applicant has been aware of these concerns since before Parts 2 and 3 were included in the SAC-R. The Applicant was not prepared to provide Word versions of Parts 2 and 3 and so those parts have had to be converted from pdf to Word to enable changes to be clearly shown on them which accounts for the formatting issues encountered.

**Appendix 3** contains an explanatory note of the necessary changes to Parts 2 and 3.

4.3 Whilst not strictly within the scope of this question, LBH would reiterate that **Article 62** should not be included in the DCO because there are processes within the Planning Act 2008 to enable errors to be corrected which provide the necessary safeguards of consultation and consideration by an appropriately experienced decision maker. The reasons for this are set out in LBH’s response at Deadline D7 to the dDCO (REP7-206, pages 21 to 28).

4.4 LBH maintains its view that a period of 10 business days referred to in **Article 65(2)(d)** is too short to ensure the authority can provide a meaningful

response. A period of 20 business days has been requested to ensure that not all relevant staff are absent for the entire period.

- 4.5 Additions/amendments to requirements and the other Schedules which do not come within the scope of this question are dealt with in response to relevant questions below.

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

5. Please see paragraph 4.3.

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

6. Please see paragraphs 4.1, 4.2 and 4.4.

**QD12: All prospective 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 limits. If these are not considered to be appropriate then they are asked to explain why and how these provisions might be varied.**

7. The only time limits which LBH is seeking to change in the dDCO, as currently drafted, is the time limit in Article 65 (see paragraph 4.4 above) and Paragraph 9 of Schedule 2 (see paragraph 10.3 below)

**QD20 [Green Bridges]**

8. Since no Green Bridges are proposed within Havering, the Council has no comment to make.

**QD22: IPs who are street authorities are asked whether a 28 day deemed consent provision in A12(8) is reasonable. If not, please propose and justify an appropriate alternative.**

**QD23: Traffic authorities and emergency services bodies (consultees) are asked whether the deemed consent period of 28 days in A17(11) is appropriate and, if not, to propose and justify an appropriate alternative provision.**

**QD28: The Applicant and any prospective consenting bodies are asked whether the deemed trial hole consent period of 28 days under A21 is appropriate and, if not, what an appropriate period might be.**

9. LBH is content with the deemed consent provisions.

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

10. LBH has identified a number of amendments/additions to the Schedules in its previous submissions, as follows:

- 10.1 LBH believes that a “**Silvertown Type**” requirement should be added for the reasons set out in in the LBH Response to Wider Network Impacts Position Paper (REP7–207). Securing the funding of works identified as being required to mitigate the impacts of the scheme is vital to the success and sustainability of the scheme. From paragraphs 4.8 of REP7-207 it is apparent that without some Silvertown Type requirement, there can be no comfort whatsoever that funds would be available to LBH.

The LBH Response to Wider Network Impacts Position Paper (REP7–207) sets out (on page 7) some suggested amendments to the Applicant’s proposed requirement, the basis for which are explained, in paragraph 4 .5, as “*seeking to make the best of it (it being better than nothing) rather than endorsing it*”.

Since drafting that response, LBH has seen the response of the Port of Tilbury who have put forward a requirement based more closely on the Silvertown Tunnel requirement (REP6-137). It is understood that Thurrock Council will, at D8, submit a further version of a Silvertown Type requirement which LBH has seen. LBH consider both those requirements to be appropriate and more comprehensive and robust than that suggested by LBH. Only in the event of both of them being rejected, would it still seek to advance its version on page 7 of REP7-207, since it would then still be better than nothing.

- 10.2 For the reasons set out in LBH’s response at Deadline D7 to the dDCO (REP7-206, pages 51 - 56), objection is taken to the use of the phrase “substantially in accordance with” in the requirements in this case, given the heavy reliance on framework documents which already have a large amount of flexibility (and hence uncertainty built into them). This applies to **Requirements 4, 5, 10, 11, 14 and 16**. LBH believes that the approach taken by the Secretary of State in the M25 J28 DCO should be preferred, given the extent of flexibility already provided within the framework documents in respect of this scheme.
- 10.3 The period of 14 days in **Requirement 9(5)** is considered inadequate as previously explained in LBH’s response at Deadline D7 to the dDCO (REP7-206, pages 48-51). LBH would suggested 28 days to allow time for proper consideration. As a minimum, the 10 days should be changed to 10 business days.
- 10.4 Although not the intention, the drafting of **Requirements 10 and 11** has the effect of requiring the undertaker to comply only with the first plan to be approved, notwithstanding that the plans will be updated from time to time. It is not clear that Paragraph 19 applies to plans which are updated from time to time without the express approval of the Secretary of State. It is suggested that the words “as updated from time to time” should be added to the end of Paragraph 10 (3) and 11(2).

- 10.5 As referred to in LBH's response at Deadline D7 to the dDCO (REP7-206, pages 67 - 70), LBH sees no reason why the area to which the local residents discount applies should not include Havering. Therefore, it is suggested that the definition of "local resident" in **Schedule 12** should be changed to add residents of the London Borough of Havering.
- 10.6 In respect of the Protective Provisions for the benefit of Local Highway Authorities contained in **Part 11 of Schedule 14**, a joint response with suggested compromise drafting is being submitted at D8. That response represents a substantial compromise on the part of the LHA and, as explained in the response, the drafting seeks no more (indeed less) protection for the local highway network assets than the Applicant insists upon for its highway assets affected by works authorised by a DCO.

**QD43: Local Planning and Highway Authorities.....are asked whether the REAC commitments are sufficiently secured. If not, what specific 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)?**

11. LB Havering considers that the commitments contained within the REAC are sufficiently secured.

**QD44: Local Planning Authorities and Highway Authorities.....are asked whether the other CD's are sufficiently secured? If not, what specific additional references to specific CDs are required in any of the existing draft Requirements, or are any additional Requirements sought (and if so reasons for their inclusion and drafts should be provided)?**

**QD:78 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.**

12. Please see paragraph 10.6 above.

**QD 84: 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.**

13. Please see paragraph 4.2 above in relation to the SAC-R.

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

14. Please see paragraph 4.2 above in relation to the SAC-R.

## APPENDIX 1

### AMENDMENTS TO PART 3 OF THE SAC-R SEE STRATEGY

#### Interpretation

- 1.1 In this Part 2 the following terms and expressions have the following meanings unless otherwise stated:

<b>Application</b>	means the application submitted by National Highways to the Secretary of State on 31 October 2022, pursuant to section 37 of the 2008 Act for the Order to grant development consent for the Authorised Development;
<b>Area Plan</b>	means the plan included with this Part 2
<b>Commencement</b>	means the carrying out of a material operation as defined in section 155 of the 2008 Act comprised in the Authorised Development and the words 'Commence' and 'Commenced' and cognate expressions shall be construed accordingly <del>but shall exclude any preliminary works as defined in Schedule 2 of the Development Consent Order</del>
<b>Commencement Date</b>	means the date of Commencement of the Authorised Development pursuant to the Development Consent Order [See App 3]
<b>Construction Period</b>	means the period between the Commencement Date and the date when both tunnels comprised in the Authorised Development to be constructed beneath the River Thames are open for use by the public;
<b>Contractor</b>	means the body or bodies contracted by National Highways to deliver the Authorised Development which bodies may alternatively be referred to as "Delivery Partners"
<b>Delivery Partners</b>	means the body or bodies contracted by National Highways to deliver the Authorised Development which bodies may alternatively be referred to as "Contractors"
<b>Development Consent Order</b>	means the development consent order entitled The A122 (Lower Thames Crossing) Development Consent Order which may be made by the Secretary of State pursuant to the application submitted by National Highways to the Secretary of State on 31 October 2022, pursuant to section 37 of the 2008 Act for the Authorised Development;
<b>the Website</b>	means the National Highways Lower Thames Crossing website: <a href="https://nationalhighways.co.uk/our-roads/lower-thames-crossing/environment/sustainability-report/">https://nationalhighways.co.uk/our-roads/lower-thames-crossing/environment/sustainability-report/</a>

<b>Working Group</b>	means an employment and skills working group to be established pursuant to paragraph 3 of this Schedule;
<b>Employment and Skills Plan</b>	means the annual employment and skills plan or plans created by the Contractor or Contractors pursuant to the provisions of the SEE Strategy and this Part 2;
<b>EE Strategy</b>	means the Skills, Education and Employment strategy at Appended to this Part 2 that sets out how National Highways will provide sustainable benefits to local communities by providing skills, education and employment opportunities in connection with the Authorised Development and which is to be reviewed and updated pursuant to this Part 2;
<b>SEE Targets</b>	means the minimum skills, education and employment targets as set out in paragraph 5 of this Part 2;
<b>SMEs</b>	means small and medium enterprises.

## 2 Skills Education and Employment Strategy (the SEE Strategy)

### 2.1 National Highways ~~commit~~covenants to: -

2.1.1 ensure that the SEE Strategy as it is updated pursuant to this Part 2 is aligned with the following overarching objectives:

- (a) to create a skills legacy by addressing the skills gap, creating a higher skilled community and by changing training standards for building low carbon infrastructure.
- (b) to bring people closer to jobs by creating life changing opportunities for local people through new inclusive jobs and placements.
- (c) to inspire future careers by assembling the next generation of talent through effective engagement with local students and educators.
- (d) to support business growth by providing local businesses and SMEs with the tools to win new work and maximise economic benefits during and after construction.

2.1.2 ~~use its best endeavours to~~ implement perform and comply with the provisions of the SEE Strategy (or procure the same) from the date the first actions and measures referred to in the SEE Strategy are to be undertaken and/ or implemented until the end ~~for the duration~~ of the Construction Period;

2.1.3 review and update the SEE Strategy, including the SEE Targets, in consultation with the Working Groups at least every two years, from the date the Development Consent Order comes into force until the end ~~for the duration~~ of the Construction Period providing that any updates do not make the SEE minimum targets any less demanding.

2.1.4 maintain as a minimum and at its expense the following two roles (whether or not the roles have the titles mentioned in ~~sub-~~ paragraphs (a) and (b) below) to oversee the SEE Strategy and its implementation from the date the Development Consent Order is granted until the end for the duration of the Construction Period;

- (a) Head of Benefits with overall responsibility for the implementation and updating of the SEE Strategy;
- (b) Supply Chain Lead with responsibility for engagement with the supply chain (including local and SMEs suppliers) to the Authorised Development and assurance of implementation of supply chain strategies put in place by National Highways with a view to achieving the SEE targets.

### 3 Employment and Skills Working Group

3.1 National Highways commitseovenants: -

3.1.1 to establish a Working Group for the area north of the River Thames shown shaded in [ ] on the Area Plan at least six months prior to the Commencement Date (the “**Northern Area**”) comprising those mentioned in sub-paragraphs (a), (b) and (c) below and inviting those mentioned in sub-paragraphs (d) to (f) also to be members of it

- (a) the Head of Benefits (as referred to in paragraph 2.1.4 (a));
- (b) the Supply Chain Lead (as referred to in paragraph 2.1.4 (b));
- (c) a representative from each of Brentwood Borough Council, Essex County Council, The London Borough of Havering and Thurrock Council;
- (d) a representative from each of the Contractor for the Northern Area and the Contractor for the tunnels and approaches the said representatives with responsibility for the implementation of the SEE Strategy (or parts thereof) and for the development of Employment and Skills Plans;
- (e) A representative from the South East Local Enterprise Partnership;



(f) A representative from the Construction Industry Training Board.

3.1.2 to establish a Working Group for the area south of the River Thames shown shaded in [ ] on the Area Plan at least six months prior to the Commencement Date (the “**Southern Area**”) from comprising those mentioned in sub-paragraphs (a), (b) and (c) below and inviting those mentioned in sub-paragraphs (d) to (f) also to be members of it:

(a) the Head of Benefits (as referred to in paragraph 2.1.4 (a));

(b) the Supply Chain Lead (as referred to in paragraph 2.1.4

(c) a representative from each of Gravesham Borough Council, Kent County Council and Medway Council;

(d) A representative from each of the Contractor for the Southern Area and the Contractor for the tunnels and approaches the said representatives with responsibility for the implementation of the SEE Strategy (or parts thereof) and for the development of Employment and Skills Plans;

(e) A representative from the South East Local Enterprise Partnership;

(f) A representative from the Construction Industry Training Board.

3.1.3 to operate the Working Groups according to paragraphs 3.2 to 3.7 below and with the purposes set out in paragraph 3.8.

3.2 The Supply Chain Lead (as referred to in paragraph 2.1.4 (b) above) shall chair the Working Groups and in his or her absence meetings will be chaired by another member of the relevant Working Group employed by or representing National Highways.

3.3 The chair of the Working Group will set the agenda for meetings of each Working Group and invite proposals for agenda items from members of the Working Group which proposals should be submitted to the secretariat at least five Working Days before a scheduled meeting of the Working Group. All proposals must be included in the agenda.

- 3.4 The chair of the Working Group may invite others at his or her discretion to attend a meeting or meetings of the Working Group in order to assist the members of the Working Group in their consideration of any matter.
- 3.5 Each Working Group will meet at least every two months unless otherwise agreed between all members of the Working Group referred to in paragraph 3.1.1 (a) to (c) in the case of the Working Group for the north of the River Thames and paragraph 3.1.2 (a) to (c) in the case of the Working Group for the north of the River Thames.
- 3.6 National Highways will provide the secretarial and administrative support necessary for the efficient functioning of the Working Groups and endeavour to circulate an agenda to all members of the relevant Working Group at least two Working Days before a scheduled meeting of that Working Group and the business of the meeting shall be confirmed to the items thereon.
- 3.7 Each member of a Working Group may by notice in writing to the chair of the Working Group appoint a deputy representative from the same organisation as the relevant member to attend meetings of the Working Group where the relevant member is unable to do so.
- 3.8 The purpose of the Working Groups will be to assist in identifying opportunities for developing skills and for providing employment opportunities for local people so as to assist in the SEE Targets being met and to otherwise meet the objectives in the SEE Strategy in order to benefit the local economy and to;
- 3.8.1 share expertise and insights about emerging local priorities and act as a consultee in order to enable National Highways to create opportunities through the development of the SEE Strategy and through Employment and Skills Plans;
- 3.8.2 support National Highways and its~~the~~ Contractors to deliver initiatives that meet the aspirations and targets in the SEE Strategy;
- 3.8.3 work in partnership with members of other working groups establish by National Highways in respect of the Authorised Development to develop and deliver initiatives that support sustainable skills and employment outcomes for local communities and the local economy; and
- 3.8.4 to identify, promote and champion local skills and employment initiatives to enable local communities to maximise benefits through effective communication and engagement channels.

#### 4 Implementation and performance of the SEE Strategy

- 4.1 National Highways ~~commits~~venants to require its Contractors to ~~use best endeavours to~~ work collaboratively with National Highways to implement

the SEE Strategy including (but without prejudice to the generality of the foregoing) in accordance with paragraphs 4.1.1 to 4.1.3 below:-

- 4.1.1 By requiring the contractors to develop and update at least annually Employment and Skills Plans in consultation with the relevant Working Group for that part of the Authorised Development they are contracted to deliver that explains how the SEE Targets will be met for the Authorised Development as a whole, working collaboratively with other Contractors as appropriate.
- 4.1.2 By undertaking regular reporting to National Highways in order to monitor progress against SEE Targets during the Construction Period.
- 4.1.3 By ensuring that the outcomes from the reporting described in paragraph 4.1.2 are discussed at meetings of the Working Group at least bi-annually and National Highways Annual Report will be reported on the Website.

## 5 SEE Targets

- 5.1 National Highways commitsvenants to require its Contractors to use their best endeavours to:
  - 5.1.1 achieve a target of at least 20% of people working on the Authorised Development to be local people who usually reside within the boroughs of Gravesham, Medway, Thurrock, Havering or Brentwood immediately prior to obtaining work on the Authorised Development, and who continue to do so on starting work on the Authorised Development.
  - 5.1.2 achieve a target of at least 45% of people working on the Authorised Development whose main place of residence is within 20 miles of the Authorised Development (including employees within the boroughs mentioned in paragraph 5.1.1); and
  - 5.1.3 achieve the minimum targets in the table in this paragraph 5.1.3 for the Authorised Development as a whole (working collaboratively as needs be) the targets being for the total number of people employed for the activities specified in theis tableparagraph 5.1.3 over the whole of the Construction Period:

Activity	Minimum target
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Training for local communities	350 people
Sector skills qualification	500 people
Apprentices	437 people
Graduates/trainees	291 people
Newly employed	500 people
Pre-employment programmes	650 people
Education engagement	5,000 people
Support to educators	2,000 hours
Work placements	470 people
<del>SMEs spend</del>	<del>£1 in every £3</del>
<del>Business upskilling</del>	<del>1,000 businesses</del>
<del>Supply chain payment</del>	<del>Within a maximum of 30 Business Days</del>

5.1.4 ensure that opportunities to apply for employment in connection with the Authorised Development are advertised in advertising media across all the administrative areas of the authorities referred to in paragraph 3.1.1 (c) and 3.1.2 (c) and information in relation to such opportunities disseminated to the appropriate bodies, such as JobCentres, situated throughout those areas.

## 6 Contractor Liability

- 6.1 National Highways ~~commits~~~~venants~~ to ~~taking~~ timely and proportionate action to enforce against its Contractors any material breach of the obligations imposed upon them under or in accordance with this Part 2.

## APPENDIX 2

### AMENDMENTS TO PART 3 OF THE SAC-R

#### COMMUNITY FUND

#### 1 Interpretation

1.1 In this Part 3 the following terms and expressions have the following meanings unless otherwise stated:

<b>Administration Agreement</b>	means a deed between National Highways and Kent Community Foundation and separately with Essex Community Foundation providing for the administration and application of the Community Fund by the Kent Community Foundation and Essex Community Foundation (as the case may be) for the purpose of mitigating the intangible and residual impacts of the Authorised Development by enhancing the quality of life of communities within the Affected Wards the agreement also to provide for the payment of an additional sum by National Highways to meet the administrative expenses incurred by the Essex Community Foundation and the Kent Community Foundation (as the case may be) in discharging their responsibilities in administering and applying the Community Fund.
<b>Affected Councils</b>	means the local councils that host the Affected Wards.
<b>Affected Wards</b>	<p>In the case of the Community Fund to be administered by the Kent Community Foundation, the Affected Wards are as follows:</p> <p>(a) Gravesham – Chalk, Higham, Instead Rise, Northfleet South, Painters Ash, Riverside, Riverview, Shorne, Cobham and Luddesdown, Singlewell, Westcourt, and Woodlands.</p> <p>(b) Medway – Cuxton and Halling, Strood North, Strood</p>

	<p>Rural, Strood South.</p> <p>In the case of the Community Fund to be administered by the Essex Community Foundation, the Affected Wards are as follows:</p> <p>(a) Thurrock – Belhus, Chadwell St Mary, Chafford and North Stifford, Corringham and Fobbing, East Tilbury, Little Blackshots, Little Thurrock Rectory, Ockendon, Orsett, South Stifford, Stanford-le-Hope West, Stanford East and Corringham Town, Stifford Clays, The Homesteads, Tilbury St Chads and West Thurrock.</p> <p>(b) Havering – Cranham, Harold Wood, and Upminster.</p> <p>(c) Brentwood – South Weald and Warley.</p>
<b>Annual Instalments</b>	<p>means the following instalments from the Community Fund:</p> <p>(a) £90,000 to the Kent Community Foundation; and</p> <p>(b) £180,000 to the Essex Community Foundation.</p> <p><u>both sums being subject to indexation as provided for in clause 2.11.</u></p>
<b>Annual Report</b>	<p>means a report to be produced annually by National Highways.</p>
<b>Commencement</b>	<p>means the carrying out of a material operation as defined in section 155 of the 2008 Act comprised in the Authorised Development and the words ‘Commence’ and ‘Commenced’ and cognate expressions shall be construed accordingly. <del>but shall exclude any preliminary works as defined in Schedule 2 of the Development Consent Order.</del></p>
<b>Commencement Date</b>	<p>means the date of Commencement of the Authorised Development pursuant to the Development Consent Order.</p>
<b>Community Fund</b>	<p>means <u>the total of the First Instalment and the Annual Instalments payable under the provisions of this Part 3 total fund in the sum of £1,890,000 established</u> by National Highways for the purpose of mitigating the intangible and residual impacts of the Development on the communities in the Affected Wards through providing Grants for schemes, measures and projects which promote the economic, social or environmental well-being of those communities and enhance their quality of life.</p>
<b>Community Fund Period</b>	<p><u>means the period between the Commencement Date and the first anniversary of the date when both tunnels comprised in the Authorised Development to be constructed beneath the River Thames are open for use by</u></p> <p><del>the public means the period of seven years from the</del></p>

<b>Deed of Transfer</b>	means a deed to be entered into between National Highways and the Kent Community Foundation (in respect of the Affected Wards within its area) and a separate deed with Essex Community Foundation (in respect of the Affected Wards within its area) providing for the payment of some or all of the Community Fund in accordance with this Part 3.
<b>Development Consent Order</b>	means the application submitted by National Highways to the Secretary of State on 31 October 2022, pursuant to section 37 of the 2008 Act for the Order to grant development consent for the Authorised Development.
<b>Essex Community Foundation</b>	means the registered charity of that name whose registered charity number is 1052061 and whose company number is 03062567 and any successor organisation.
<b>Essex Community Fund Panel</b>	means a decision-making body established by the Administration Agreement and Deed of Transfer to administer the Essex Community Fund and any appointed successors.
<b>First Instalment</b>	means the first instalments of the Community Fund being: (a) £90,000 to Kent Community Foundation; and (b) £180,000 to Essex Community Foundation. <u>both sums being subject to indexation as provided for in clause 2.11.</u>
<b>Grants</b>	means the payments to be funded by the Community Fund.
<b>Kent Community Foundation</b>	means the registered charity of that name whose registered charity number is 1084361 and whose company number is 04088589 and any successor organisation.
<b>Kent Community Fund Panel</b>	means a decision-making body established by the Administration Agreement and Deed of Transfer to administer the Kent Community Fund.
<b>Panels</b>	means The Essex Community Fund Panel and the Kent <u>Community Fund Panel</u> .
<b>the Website</b>	means the National Highways Lower Thames Crossing website: <a href="https://nationalhighways.co.uk/our-roads/lower-thames-crossing/environment/sustainability-report/">https://nationalhighways.co.uk/our-roads/lower-thames-crossing/environment/sustainability-report/</a> .

## 2 Community Fund

- 2.1 National Highways ~~commits~~venants to regulate the administration of the Essex Community Fund and Kent Community Fund in accordance with the provisions of this Part 3 by using its best endeavours to enter into an

appropriate agreement or agreements (which may include an Administration Agreement and a Deed of Transfer) with:

2.1.1 Kent Community Foundation; and separately with

2.1.2 Essex Community Foundation.

2.2 Subject to paragraphs 2.3 and 2.4, National Highways shall pay the following instalments from the Community Fund:

2.2.1 the First Instalment on or before Commencement Date;

2.2.2 the Annual Instalment on the date which is 12 months after the Commencement Date and thereafter at 12 monthly intervals until the end of the Community Fund Period.

2.3 ~~Subject to paragraph 2.11~~ the total amount payable under paragraph 2.2 shall not exceed the total amount of the Community Fund and once the Community Fund has been exhausted no further payments under this paragraph are due.

2.4 On the written and reasoned request of the Kent Community Foundation or the Essex Community Foundation, in the final quarter of each 12 month period ~~(subject to paragraph 2.2)~~, up to 10% of the following year's funding can be brought forward subject to approval in writing from National Highways.

2.5 The fund administered by the Kent Community Foundation shall apportion its funding towards Grants that benefit the communities in the relevant Affected Wards in the following proportions:

2.5.1 Gravesham – 75%

2.5.2 Medway – 25%

2.6 The fund administered by the Essex Community Foundation shall apportion its funding towards Grants that benefit the communities in the relevant Affected Wards at the following proportions:

2.6.1 Thurrock – 75%

2.6.2 Havering – 15%

2.6.3 Brentwood – 10%

2.7 Sums from the Community Fund shall be used to provide Grants in accordance with this Part 3 and for no other purpose.

2.8 Any sums paid from the Community Fund to the Kent Community Fund that have not been used in making Grants by the end of the Community Fund Period shall be returned forthwith to National Highways.

2.9 Any sums paid from the Community Fund to the Essex Community Fund that have not been used or committed to be used in making Grants by the end of the Community Fund Period shall be returned within a period of 56



Business Days from the end of the Community Fund Period forthwith to National Highways.

~~2.10 In the event that the agreements contemplated in this Part 3 are not reached by the Commencement Date National Highways shall establish the Essex Community Fund Panel or the Kent Community Fund Panel (as the case may be) and administer the Community Fund in accordance with this Part 3 with National Highways (or a representative thereof) taking the place of the Kent Community Foundation Trustee and/or the Essex Community Foundation Trustee (as the case may be).~~

2.10 If at any time that monies are due to be paid to the Essex Community Foundation and/or the Kent Community Foundation no Administration Agreement is in place and operative then subject to paragraph 2.11 below those monies shall be paid promptly to the Affected Councils in the proportions referred to in paragraphs 2.5 and 2.6.

2.11 National Highways shall not be committed to pay money to any Affected Council under the provisions of paragraph 2.10 until that Affected Council has made a commitment to National Highways that such monies:

2.11.1 will be used solely for the purpose of mitigating the intangible and residual impacts of the Development on the communities in the Affected Wards through providing Grants for schemes, measures and projects which promote the economic, social or environmental well-being of those communities and enhance their quality of life; and

2.11.2 will be repaid if not used or committed to be used in making Grants by the end of the Community Fund Period shall be returned within a period of 56 Business Days from the end of the Community Fund Period to National Highways.

2.12 The payments made under this Part 3 shall be index linked as from the date of the Development Consent Order coming into force by reference to the Retail Prices Index and should that index cease to exist at any time then by reference to another index to be agreed between National Highways and the Affected Councils.

### 3 **Awarding Panels**

3.1 National Highways shall use its ~~best~~**reasonable** endeavours to ensure that the Administration Agreements entered into pursuant to paragraph 2.1 shall provide as follows:-

3.2 In the case of the Kent Community Fund:

3.2.1 That the Kent Community Fund Panel for determining applications for

Grants shall comprise:

- (a) One Kent Community Foundation Trustee.
  - (b) One representative from National Highways.
  - (c) One representative from each of Kent County Council, Medway Council and Gravesham Borough Council.
  - (d) Four representatives from the local community, with at least one member representing Kent, one member representing Medway and one member representing Gravesham.
- 3.2.2 The Kent Community Foundation Trustee shall act as the chair of the Kent Community Panel and have the casting vote if the voting on any particular issue is tied.
- 3.2.3 A meeting of the Kent Community Fund Panel shall not be quorate unless five of its members are present at it, the five to include the chair-person and in respect of decisions relating to the distribution of funds for a purpose within a particular Borough it shall not be quorate unless the representative of that Borough is present.
- 3.2.4 The members of the Kent Community Fund Panel representing National Highways, the representatives from each of Kent County Council, Medway Council and Gravesham Borough Council and the Kent Community Foundation shall (by each having a vote if agreement cannot be reached) appoint the four representatives of the local community and shall invite applications for those positions from residents in the relevant Affected Wards.
- 3.2.5 The Kent Community Fund Panel shall develop and approve annually (following a vote) detailed eligibility criteria for making Grants based upon the themes mentioned in paragraph 3.4.1 of this Part 3 and subject to the criteria in paragraphs 3.4.2 to 3.4.10 of this Part 3.
- 3.2.6 No member of the Kent Community Fund Panel may serve for a period of more than three years.
- 3.2.7 A member of the panel may not participate in the determination of an application in which that Panel member has a conflict of interest.
- 3.3 In the case of the Essex Community Foundation:
- 3.3.1 That the Essex Community Fund Panel for determining Grant applications shall comprise:
- (a) One Essex Community Foundation Trustee;

(b) One representative from National

Highways;

(c) One representative from each of Thurrock Council, Essex County Council, London Borough of Havering and Brentwood Borough Council;

(d) Four representatives from the local community comprising two members representing Thurrock, one member representing Havering and one member representing Brentwood.

3.3.2 The Essex Community Foundation Trustee shall act as the chair of the Panel and have the casting vote if the voting on any particular issue is tied except that in respect of decisions relating to the distribution of funds to a body within the area of a particular Affected Council;

(a) there will be weighted voting whereby the vote of the representative of the Affected Council concerned will be worth 6 votes; and

(a)(b) the representative of the Affected Council concerned shall have the casting vote.

3.3.3 ~~The members of the Essex Community Fund Panel representing National Highways, the representatives from each of Thurrock Council, Essex County Council, London Borough of Havering and Brentwood Borough Council and the Essex Community Foundation Trustee shall each appoint (by each having a vote if agreement cannot be reached) at the four representatives from the Affected Wards local community and shall invite applications for those positions from residents in the relevant Affected Wards;~~

3.3.4 A meeting of the Essex Community Fund Panel shall not be quorate unless five of its members are present at it, the five to include the chair-person and in respect of decisions relating to the distribution of funds for a purpose within the area of a particular Affected Council Borough it shall not be quorate unless the representative of that Affected Council Borough is present.

3.3.5 ~~The Essex Community Fund Panel shall develop and approve annually (following a vote) detailed eligibility criteria for making Grants based upon the themes mentioned in paragraph 3.4.1 of this Part 3 and subject to the criteria in paragraphs 3.4.2 to 3.4.8 of this Part 3.~~

3.3.6 No member of the Essex Community Fund Panel may serve for a period of more than three years.

- 3.3.7 A member of the Panel may not participate in the determination of an application in which that Panel member has a conflict of interest.

## Criteria

3.4 National Highways shall use its ~~best~~reasonable endeavours to ensure that the Administration Agreements entered into pursuant to paragraph 2.1 shall ~~enable~~vest such powers as may be necessary in the Panels so as to enable the Panels to take into account that the degree and severity of impact varies across the geography of the Affected Wards and when considering applications for Grants shall that when the criteria for the application of the respective Community Funds to provide the Grants are developed, they are able to reflect this and give priority to those schemes, measures and projects which:

3.4.1 Relate to one or more of the following four

themes:

- (a) Mental health and wellbeing;
  - (b) Local skills and employment;
  - (c) Connecting communities; and
  - (d) Environment.
- 3.4.2 Do not obviate or duplicate mitigation or compensation measures secured by the Development Consent Order or within this agreement;
- 3.4.3 Are in areas where they can be readily accessed by people resident within the Affected Wards;
- 3.4.4 Do not fund services or projects that are the statutory duty of an organisation to provide as part of their usual operation unless such funding is not available;
- 3.4.5 Are not inconsistent with local plans including neighbourhood plans of relevant Affected Wards;
- 3.4.6 Are considered by the Essex Community Panel or the Kent Community Panel (as the case may be) to be deliverable within a period of 24~~42~~ months from receipt of the relevant Grant;
- 3.4.7 Can demonstrate overall value for money in terms of cost and effectiveness; and

3.4.8 Are provided by a registered charity, voluntary organisation, parish council, community group, social enterprise or public body.

3.5 The amount of a Grant awarded pursuant to an application for funds from the Community Fund shall not exceed £240,000.

#### 4 **Monitoring**

4.1 National Highways shall publish on the Website an Annual Report for each year within the Community Fund Period and for the year thereafter, based on results and relevant data provided by the Essex Community Foundation and the Kent Community Foundation with reference to their respective responsibilities under this Part 3.

4.2 The Annual Report will set out details of Grants made, for what purpose and to which bodies.

#### 5 **Ward Boundary Changes**

5.1 If the boundaries of the Affected Wards change after the date of this agreement then other wards may be added to or discarded from the definition of Affected Wards by agreement in writing between National Highways and the Essex Community Foundation as regards wards in Essex and between National Highways and the Kent Community Foundation as regards wards in Kent and following any such agreement the definition of Affected Wards shall be construed as amended accordingly.

## APPENDIX THREE

### EXPLANATORY NOTE OF CHANGES TO PARTS 2 AND 3

#### **REQUIRED CHANGES TO DRAFTING OF SEE STRATEGY PROVISIONS**

<b>Provision</b>	<b>Subject Matter</b>	<b>Justification</b>
Definition	Definition of “Commencement”	This definition is not correct. By excluding the preliminary works, it excludes a period during which the SEE Strategy applies. As provided for in para 2.1.2, the commitment to implement the SEE Strategy applies <i>“from the date the first actions and measures referred to in the SEE Strategy are to be undertaken and/ or implemented”</i> . The SEE Strategy is clear that it applies during the period of the preliminary works, and even before works commence. The exclusion of preliminary works has therefore been deleted.
Para 2.1,3.1, 4.1,5.1 and 6.1	Commits rather than Covenant	The term covenant is not appropriate given that these provisions are no longer in a s.106 obligation binding land but are simply commitments enforceable under the DCO.
Para 2.1.2 and 4.1	”best endeavours”	There is no reason why NH should not commit to implement, perform and comply with the provisions of the SEE Strategy (2.1.2) or only require its contractors to use best endeavours (para 4.1). The Strategy itself is full of soft measures rather than hard commitments and thereby allows for any barrier to implementation. It is difficult to be certain in this context to understand how a best endeavours obligation would operate having regard to the fact that such an obligation only requires a person to allows a party to act prudently and having regard to their own interests.
Para 2.1.2, 2.1.3 and 2.14	Construction Period	Replacing <i>“for the duration”</i> with <i>“until the end”</i> reflects the fact that the beginning of the Construction Period is not the period during which the obligation applies – as paragraph 2.1.2 itself makes clear, the obligation starts <i>“from the date the first actions and measures referred to in the SEE Strategy are to be undertaken and/ or implemented”</i> .

		<p>In respect of 2.1.3 the obligation starts “<i>from the date the Development Consent Order comes into force</i>” which will be before the beginning of the Construction Period as defined.</p> <p>In respect of 2.1.4 the obligation starts “<i>from the date the Development Consent Order is granted</i>” which will also be before the beginning of the Construction Period as defined.</p>
Para 3.5	Working Group – agreement re frequency of meetings	Words have been added to make it clear which parties agreement has to be reached with if the frequency of meetings is to be changed from the position set out in this paragraph.
Para 3.8.2	Purpose of Working group	Reference to NH included given that they are responsible under the provisions of this Part 2.
Para 4.1.3	Reporting Working Group	Reports should be bi-annual rather than only once every 12 months. This should not be onerous given that the contractors are under obligation to report regularly to NH (para 4.1.2).
Para 5.1.3	Table of targets	<p>Revised drafting suggested for clarity.</p> <p>Last three entries deleted since they do not relate to employment number as referred to in 5.1.3.</p>
Para 5.1.4	Targeting of Employment opportunities	New paragraph to try and ensure that employment opportunities are accessible throughout the Affected Areas and the targets are not simply met from a small geographical area convenient to the contractor concerned.

## **REQUIRED CHANGES TO DRAFTING OF COMMUNITY FUND PROVISIONS**

The changes below do not incorporate the points regarding quantum or percentage split of the Community Fund which is the Collective Position of the Local Authorities in the submission of Thurrock in [REP1-288] Whilst drafting amendments to Part 3 LBH do not incorporate those LBH still supports the quantum and percentages put forward in that document.

<b>Provision</b>	<b>Subject Matter</b>	<b>Justification</b>
Definition	“Annual Instalment”	Indexation has been added.
Definition	“Commencement”	Change made to delete exclusion of preliminary works given that there is no reason why that element of construction should not give rise to payment of the impact fund.
Definition	“Community Fund” and “Community Fund Period”	Changes made to convert payment to a fixed annual payment rather than overall sum which relates to a seven year period (of 6 years construction plus 1). The change to the definition of Community Fund Period means that the fund should apply throughout the construction period rather than a fixed 7 year period which may be exceeded.
Definition	“First Instalment”	Indexation has been added.
Para 2.1	Commits rather than Covenant	The term covenant is not appropriate given that these provisions are no longer in a s.106 obligation binding land but are simply commitments enforceable under the DCO.
Para 2.3 and 2.12	Indexation	<p>These provisions apply indexation to the Community Fund. If not applied the value of the fund is depleted. It has already been depleted given the expiry of time between that sum first being put forward by NH in 2022 and the date that the DCO will come into force.</p> <p>For consistency, the index referred to is the index chosen by NH to apply to the Officer Payments in the s.106 Agreement. The indexation applies to the monies to be paid to the Foundations rather than the individual schemes and so it is not feasible to apply differential indexation between the capital and other schemes.</p>
Para 2.9	Re-payment	<p>Amendments to ensure monies which have been committed to applicants for Grants but not paid will not need to be repaid at the end of the Community Fund Period.</p> <p>Period for repayments after the end of the Community Fund Period specified.</p> <p>It is noted that there is no security for the repayment of the Fund monies by the</p>



		Foundations since no obligations can be imposed on the Foundations in advance of the Administration agreements being entered into.
Paras 2.10 and 2.11		<p>The para 2.10 drafting of NH provides that, if no agreement is entered into with the Foundation then the Community Fund will be operated by NH which is clearly unacceptable. Sensible provisions in default of agreement with the Foundations is essential.</p> <p>Replacement paragraphs provide for the monies to be paid to the Affected Councils if the appropriate agreements are not in place with the Foundations by the time that the first monies are due to be paid.</p> <p>Paragraph 2.11 ensures that the Affected Councils are required to use the money for generally the same purposes as the Foundations would have been and to repay it if not spent or committed.</p>
Para 3.1 and 3.4	“best endeavours”	The expression “reasonable endeavours” has been changed to best endeavours” to avoid inconsistent commitments.
Para 3.3.2	Voting of Foundations	<p>These amendments seek to ensure that the voting on schemes includes a weighting for the Affected Council whose share of the Fund is being spent. This is on the basis that the Affected Councils know their areas best.</p> <p>This is particularly of concern to LBH given that the connections between Havering and the Shire County of Essex is not strong.</p>
Para 3.3.3	Local Representatives	<p>Having the entire membership of the Foundation choose four local representatives seems cumbersome and inappropriate.</p> <p>The drafting provides that one local representative is nominated by each of the Affected Councils, who are best placed to chose such a representative.</p>
Para 3.3.4	Quorate	Suggested amended drafting for clarity.
Para 3.3.5	Criteria for Grants	This paragraph is deleted since it seems excessively cumbersome and bureaucratic for a

		<p>further set of criteria to be developed over and above those contained in para 3.4.</p> <p>This would inject uncertainty and be likely to delay the distribution of Grants.</p>
Para 3.4	Administration Agreement	See para 3.3 and 3.4 above. Other amendments to aid clarity.
Para 3.4.4	Criteria – statutory bodies	Amendment made to avoid exclusion of projects which are theoretically the responsibility of a statutory body but for which in reality no funding is available.
Para 3.4.6	Time period for delivery of projects	24 months is suggested as a more realistic time period than 12 months.
Para 3.5	Cap on individual Grant	LBH is concerned that a cap of £10,000 may mean in practice that some bodies will simply be unable to commit the time for a relatively small grant and it may rule out some very worthwhile projects.
Para 4.2	Annual Report	Suggested new clause to specify contents of the Annual Report which are otherwise not dealt with.