

Lower Thames Crossing

9.188 Post-event submissions, including written submission of oral comments, for ISH12

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1 Introduction

- 1.1.1 Please note: this document contains National Highways' (the Applicant's) oral summary of evidence and post-hearing comments on submissions made by others at Issue Specific Hearing 12 (ISH12) held on 23 November 2023.
- 1.1.2 Where the comment is a post-hearing comment submitted by the Applicant, this is indicated. This document uses the headings for each item in the agenda published for ISH12 [[EV-085](#)] by the Examining Authority.

1.2 Welcome, introductions, arrangements for the Hearing

- 1.2.1 National Highways (the Applicant), which is promoting the A122 Lower Thames Crossing (the Project), was represented at Issue Specific Hearing 12 (ISH12) by Mr Andrew Tait KC (AT).
- 1.2.2 The following persons were also introduced to the Examining Authority (ExA):
- a. Mustafa Latif-Aramesh, BDB Pitmans, Partner and Parliamentary Agent (MLA)
 - b. Suki Coe, Lower Thames Crossing, DCO and Planning Manager (SC)
 - c. Emily Dawson, Lower Thames Crossing, Head of Benefits (ED)
 - d. Lucy Neale, Lower Thames Crossing, Deputy Negotiations Lead (LN)
 - e. Mark Challis, BDB Pitmans, Partner (MC)
 - f. Isabella Tafur, Counsel (IT)
 - g. Adrian Dawes, Lower Thames Crossing, Environmental Advisor (AD)
 - h. Alistair Kean, Lower Thames Crossing, Carbon Lead (AK)
 - i. Clare Donnelly, Lower Thames Crossing, Architect (CD)
 - j. Barney Forrest, Lower Thames Crossing, Environmental Lead (BF)

2 Purpose of the Issue Specific Hearing

2.1.1 The Applicant did not make any submissions under this Agenda Item.

3 Social, Economic and Land-Use Effects

3.1 Item 3(a) Replacement Open Spaces

Item 3(a)(i) Recreational/Sports Facility Replacement

Whether Chalk Park is a suitable replacement for the impact to sports facilities in the Gravesham area, specifically the lost Southern Valley Golf Course and the impact on the Swing Rite facilities (noting that we do not need to replay the discussion held at CAH3)?

The ExA would like an update from the Applicant and Gravesham Borough Council on the proposed 9-hole golf course land at the rear of Cascades Leisure Centre in light of Gravesham's D6 submission [REP6-125] following CAH3 discussion.

- 3.1.1 AT noted that in its response to the ExA's first set of written questions, Gravesham Borough Council (GBC) [REP4-288] welcomed the Chalk Park proposals, and in relation to the National Policy Statement for National Networks (NPSNN) (Department for Transport, 2014), paragraph 5.174 deals specifically with whether the land is surplus to requirements or the Secretary of State (SoS) determines that the benefits of the project, including need, outweigh the potential loss of such facilities, taking into account any positive proposals made by the applicant to provide new, improved or compensatory land or facilities. AT added that paragraph 5.174 of the NPSNN does not say that one needs to provide identical or similar provision.
- 3.1.2 SC noted that Southern Valley Golf Club (SVGC) is closed and has been purchased by the Applicant, adding that Chalk Park is proposed to be an open space, with open access for all members of the community to enjoy recreational activities. SC explained that whilst Chalk Park is not a replacement for SVGC in terms of a golf facility, it provides a recreational facility for informal recreation over a wider site area, with walking routes. Access is from Thong Lane in a number of locations, as well as access via the A226 Rochester Road and links to Shorne Woods Country Park.
- 3.1.3 SC referenced the plan in Project Design Report Part D: General Design South of the River [APP-509] which shows the full extent of Chalk Park and how it integrates with the wider area. The road and the South Portal can be seen on the plan, noting that Chalk Park is on both sides of Project road and extends beyond the area that was SVGC.
- 3.1.4 The Applicant would contend that this provides for an opportunity for the broad community to the east of Gravesham. It is also an opportunity to utilise an area of enhanced landscaping and habitat creation and mitigation for the Project. The Applicant is therefore demonstrating its commitment to reduce the land required to mitigate and manage the impacts of the Project. SC noted that further detail can be found in Planning Statement Appendix G: Private

Recreational Facilities, in particular at paragraphs G.4.15 and G.4.16 [\[APP-502\]](#).

- 3.1.5 The benefits of the Project (including the need for the Project) outweigh the loss of SVGC taking into account the positive proposal made by the Project to create Chalk Park, which is an entirely new recreational site to be created in the same locality. SC added that the park can be used for plenty of active participation by a broad number of people, with no fee to pay. SC added that Sport England have made no representations relating to the loss of SVGC or the provision of Chalk Park. SC noted paragraph G.4.16 of Planning Statement Appendix G [\[APP-502\]](#): “*Whilst this provision is not an identical substitution for the loss of private golf facilities, it would significantly improve the general provision of green infrastructure and recreational facility in the same locality to counterbalance the loss of green infrastructure and recreational facility caused by the loss of Southern Valley Golf Club*”.
- 3.1.6 In response to the ExA’s query regarding the closing of SCGV, SC confirmed the SVGC was closed before the submission of this Development Consent Order (DCO) application, in August 2022. SC noted that SVGC had proposed the site as being suitable for residential development in the call for sites for GBC’s Local Plan. In response to the ExA’s further query regarding the possibility of the Project not going ahead, SC confirmed that there is no longer a clubhouse due to antisocial behaviour in the location, and in such circumstances, the Applicant would dispose of it and would approach the local authority in respect of the best use of that land, noting that it could well be used as a golf course again.
- 3.1.7 In response to the ExA, AT noted that there is the new open space provided, as well as having regard to the overriding need in paragraph 5.174 of the NPSNN. AT added that at paragraph G.4.16 of Planning Statement Appendix G [\[APP-502\]](#), the appropriate management and maintenance agreements in relation to this new area are currently being discussed with the local authority. AT noted that other opportunities for this area open to the public can be discussed as suggested by GBC.
- 3.1.8 AT noted that there have been discussions since Compulsory Acquisition Hearing 3 (CAH3) with GBC, noting that both the area identified, the principle and the financial side is agreed with GBC. AT confirmed that these elements will be carried through into an agreement between the Applicant and GBC, and that detailed drafting matters are still under consideration. However, the parties have now reached a common position. In respect of the matter which arose in ISH11, AT confirmed that this agreement is intended to address the quality of the land at Action Point 18 from ISH11. In response to the ExA, AT confirmed that it is expected that an agreement will be completed by the end of the Examination and that the Applicant is hopeful that by Deadline 8, it will at least have written confirmation that the parties have reached agreement.
- 3.1.9 **Post-hearing note:** The Applicant has received written confirmation from GBC that the parties have reached a financial settlement with respect to the replacement recreational provision, in principle. The Applicant is preparing formal Heads of Terms to be sent to GBC for agreement. As per 9.174 Deadline 7 Hearing Actions [\[REP7-185\]](#), CAH3 Hearing Action Point 2, both parties have

“agreed to negotiate terms with the intent of formalising an agreement prior to the end of examination”.

Item 3(a)(ii) Review of Open Space Delivery

The ExA would like to hear the latest positions from the Applicant and Local Planning Authorities in relation to the timing, form, and function of any open space replacement/new provision and whether the National Policy Statement’s tests for replacement land have been met. National Highways submissions [REP3-109] and [REP6-097] may assist this discussion, along with the various responses provided to EXQ1 Q13.1.10.

- 3.1.10 AT noted that Planning Statement Appendix D: Open Space [REP7-136] was updated at D7, and that it specifically deals with the point raised by GBC regarding plot 13-03, which was the use of a linear route around Swing Rite (raised in GBC’s submission [REP4-287]). AT noted that the Applicant responded to GBC’s submission after CAH3 [REP6-087], indicating that the Applicant would on a precautionary basis include provision for the potentially public open space in this location. AT explained that, following discussions with GBC, there is now provision for alternative open space, in a similar linear form, which is greater in area and serves the same function. AT noted that there is no disagreement on this with GBC as to the appropriateness of that provision, so the Applicant has included an update to Planning Statement Appendix D [REP7-136] to address this point. AT also noted the Planning Statement Appendix D: Open Space Addendum [REP6-097], which deals with the further timing commitments bringing part of or all of the replacement land earlier in the programme, as raised by Thurrock Council (TC) at CAH2, relating to the Ron Evans Memorial Field, Thames Chase and Folkes Lane Woodland.
- 3.1.11 SC explained that the early delivery of a proportion of the open space on those three sites is secured by the Stakeholder Actions and Commitments Register [REP7-152] (SACR) at SACR-014, 015 and 016, and through article 61 of the draft Development Consent Order (dDCO) [REP7-090] which has been revised to ensure that it is about implementation of the SACR rather than about the best practical means or reasonable endeavours, noting that it is now a firm commitment to secure early delivery.
- 3.1.12 SC further noted that there is extensive agreement between landowners and the Applicant in relation to existing special category land for the replacement land that the Applicant is providing. SC explained that this is reported through the Statements of Common Ground (SoCGs) with the landowners. Specifically, in relation to Shorne Woods Country Park, there is an agreement with Kent County Council (KCC); in relation to the common land at Tilbury Green, there is an agreement with the Cole family; in relation to Thames Chase, there is an agreement with Forestry England and Essex County Council (ECC); and at Folkes Lane Woodland, there is an agreement with Forestry England. SC explained that the matter is still in discussion, and summarised the position at each of the remaining sites: at Orsett Fenn, the Applicant is in discussions with the Cole family, noting that Natural England, the body responsible for common

land regulation, has this matter in agreement; in relation to the Ron Evans Memorial Field, the Applicant is still awaiting confirmation from TC that the revised commitments are acceptable; and in relation to the Gravesham Golf Centre, the parties are in agreement.

- 3.1.13 AT added that, in relation to Ron Evans Memorial Field and Thurrock, TC have confirmed that the quantity and quality of replacement land is acceptable, and they acknowledge the earlier provision, which is the subject of the SACR, will partially mitigate the loss of the public open space, as reported in the SoCG between the Applicant and TC at item 2.1.324 [REP6-030].
- 3.1.14 In relation to London Borough of Havering (LBH), AT confirmed that the SoCG [REP6-028] confirms that Folkes Lane Woodland replacement at Hole Farm meets the section 131 test under the Planning Act 2008. SC added that the Applicant has confirmed to LBH that designated funds have been made available to improve the bridge and the concerns about the height of the parapets are being addressed. SC confirmed that the designated funds will be used to deliver these improvements before 31 March 2025, due to the designated fund commitment.
- 3.1.15 In relation to TC and the Ron Evans Memorial Field, AT noted that timing has been a factor, which is referred to expressly at paragraph D.5.54 of Planning Statement Appendix D [REP7-136] in part to justify the additional 10,000 square metres of replacement land over that which is taken (92,000 compared to 82,000). AT noted that this is in addition to the 33,000 square metres being available before any loss. SC added that the Applicant is making an additional commitment within the SACR following discussions with TC relating to funding for community engagement officers, focussing on the construction period, for raising awareness and capacity building within local communities, particularly within the seven wards along the Project route. SC added that this is proposed to encourage and enable residents to take part in active recreation.
- 3.1.16 SC also noted that the Applicant has already provided funding towards a feasibility study for the improvement of open spaces in Thurrock, one in particular being King George's Park, approximately 250 metres south of Ron Evans Memorial Field. This would enable an improvement of that open space as part of wider recreational activity. The Applicant is unable to release more of the Ron Evans Memorial Field early because of the need to construct the road, move the utilities and have a utility compound, which is the constraint the Applicant is working within.
- 3.1.17 **Post-hearing written submissions:** These are included in Annex A and include:
- a. Section A.2 Hearing Action Point 2 Southern Valley Golf course – replacement recreation land and potential land contamination

3.2 Item 3(b) Funding for Residual Impacts and Other Planning Obligations

Item 3(b)(i) Community Funds

The ExA would like to discuss the following:

- Whether the quantum of Community Funds identified in the S106 Heads of Terms document [REP4-145] are sufficient;
- Whether the value of the fund should be fixed at the point of a signed agreement or appropriately indexed, and if indexed what index is suggested, e.g. Retail Price Index (RPI), the Consumer Price Index (CPI), the Building Cost Information Service (BCIS);
- Whether the fund should be split into identified amounts for each local authority area affected by the route alignment, and if so what percentage split is appropriate;
- What types of schemes may be funded;
- Should the remit of the fund be expanded?

3.2.1 In response to GBC, AT confirmed that the fourth member of the awarding panel for the community fund is currently unidentified, in order to retain some flexibility, although the Applicant is open to adjusting this if appropriate, which AT confirmed it will consider. In response to TC in relation to the SACR and its extension to £25,000 in exceptional circumstances, AT confirmed that the Applicant is open to making that adjustment and will revert by the next deadline. Similarly, AT confirmed that the Applicant will reflect on the flexibility of timing in respect of the deliverability in a 12-month period.

3.2.2 AT noted that the Applicant understands that GBC is broadly content with the quantum of the fund, but that TC and LBH are not. ED explained fund is split north and south of the river and equates to £1.26m for communities north of the river and £630,000 for communities in the south, to be distributed over a seven-year period. The scale of the proposed Community Fund was increased following workshops held with local authorities in 2022 and in response to feedback that the fund should be available for the year after the new road opened for traffic. As a result, the total fund value increased from £1.5million to £1.89 million. ED added that the fund aims to fund small-scale community-led projects that address the more residual and intangible impacts of road construction rather than direct impacts (which if significant are required to be mitigated directly). This is because the Applicant considers those direct, significant impacts would be addressed through mitigation outlined in the Environmental Statement and other Application Documents.

3.2.3 ED explained that the Applicant's position is that there is no standard methodology that can be used to set the overall value of Community Funds given the scope, scale, type, and location of developments and their effects; the

socio-economic environment within which each project is set; and the approach to direct mitigation. The value of the funds has therefore been set based on the value of the contracts that are entered into with main works contractors. This is in line with National Highways' experience of operating and planning similar funds on other major road schemes. The value compares generously to these other major roads projects delivered by National Highways, which were similarly calculated based on these construction costs, such as the A14 Cambridge to Huntingdon Improvement scheme, the A303 Stonehenge Tunnel and the A428 Black Cat to Caxton Gibbet Improvement scheme.

- 3.2.4 ED noted that the Community Funds are to be spent on projects that are linked to the residual adverse effects of the Project that are not mitigated through other means. The Applicant believes that, as a result of the mitigation and compensation secured elsewhere in the application, the likely residual effects of the Project won't be significant nor therefore warrant similar fund values provided by other major projects. The Applicant's position is that it therefore would not follow that levels of funding should be increased based on the cost of, and funds provided by, other projects.
- 3.2.5 ED explained that the local transport and environmental benefits of the Project once operational will, for the most part, be felt by the communities close to the route alignment. ED added that journeys starting or ending in the Lower Thames area (including Thurrock, Gravesham, Havering, Brentwood, Medway and Dartford) account for 48% of the transport benefits generated by the Project, so local communities will benefit from faster, more reliable journey times, leading to improved productivity for local businesses and positive long-term impacts on the local economy.
- 3.2.6 ED explained that, in relation to whether the value of the fund should be fixed or index linked, as this is derived from precedents set on other road schemes and the amount proposed is not fixed to a specific project, and in line with those other road schemes, the Applicant is proposing that it is a lump sum and not to be index linked. This will provide the Applicant with certainty of the funding required, allowing it to control costs and manage public money effectively.
- 3.2.7 AT added that GBC indicated that they had no issue regarding the split of the fund between north and south of the river, and TC welcomed the concept. ED clarified that the request received by the Applicant in March 2023 asked to exclude Brentwood from the split. The Applicant has proposed a split which is based on 36 affected wards highlighted in the Community Impact Report [[REP2-032](#) to [REP2-038](#)], where the Applicant stipulates that successful applicants will need to demonstrate that their proposals relate to an impact on the community in one of those wards due to the Project's construction. ED explained that it is for this reason that the Applicant did not agree to exclude Brentwood from the community fund allocations because the Applicant's view is that the alignment to the affected wards in that report is the correct way forward.
- 3.2.8 In terms of the split across local authority areas, ED explained that north of the river 75% (£135,000 per year) will be allocated for projects in Thurrock, 15% (£27,000 per year) for those in Havering and 10% (£18,000 per year) for those in Brentwood. To the south of the river, 75% (£67,500 per year) for Gravesham and 25% (£22,500 per year) in Medway. In terms of the types of schemes that may be funded, ED explained that at the stakeholder workshops held by the

Applicant in 2022, four broad themes were developed and agreed as the basis for the criteria: mental health and well-being, local skills and employment support, projects that connect communities and projects that enhance the environment. ED explained that mental health and well-being was highlighted as being a key area of concern, which the Applicant was able to incorporate, and heritage was one of the initial proposals that was removed as a result of that engagement. ED noted that there was no consensus as to the level of definition that could and should be given to the fund criteria at this point in time, ahead of otherwise unforeseeable impacts being realised. The themes have therefore been left intentionally broad to ensure that they may be applied in the future in a way that reflects the needs of local communities at that future point in time. The Applicant, based on previous experience and running a pilot initiative, successfully awarded 55 projects £250,000 to test this. The Applicant confirmed that it will provide this in writing as requested by the ExA (refer to Annex B.9 of this document).

3.2.9 In response to the ExA regarding delay concerns, ED confirmed that the Applicant's position is that the residual impacts will have been addressed within the seven-year period allocated for the fund. ED reiterated that the other projects referenced by the ExA and Interested Parties (IPs) are different and have different levels of mitigation, taking place in different areas of the country, with different impacts on local communities and the environment.

3.2.10 In relation to the benchmarking exercise referred to by TC, AT explained that there are distinct circumstances in this case, in terms of local community impacts available with substantial local benefits from the operation of the Project, noting that at Sizewell and Hinkley Point C it was contended that there were few local community benefits from the operation of those projects.

Item 3(b)(iii)¹ S106 – Current Heads of Terms and Omissions

The ExA would like to hear from the Applicant and the Local Authorities on the status of discussions on s106 Agreements (separate to the discussion on item b) i above). The ExA is specifically interested to understand the matters which are settled and agreed between the parties and the matters which remain outstanding or not agreed and the reasons for the lack of agreement. Document [REP4-145] will assist this discussion.

3.2.11 In response to the ExA's query regarding matters outstanding in relation to section 106, AT noted that these included the Skills, Employment and Education (SEE) strategy and the community funds in terms of how these do not attach to land. In addition, there have been comments from local authorities in relation to the community funds not being allocated to them for distribution. AT confirmed that these matters had been moved into the SACR in the D7 submission [[REP7-152](#)].

3.2.12 AT explained that the section 106 agreements now contain provision in relation to severance, as identified in the Environmental Statement, officer contributions, and in the case of KCC, the Area of Outstanding Natural Beauty (AONB)

¹ Note within the agenda for ISH12 [[EV-085](#)] there is no Item 3(b)(ii).

compensation enhancement fund and funds for Heavy Goods Vehicle (HGV) restrictions on Henhurst Road. AT added that the position in relation to funding for measures in relation to Brennan Road is agreed with TC, and that the position on Valley Road is close to agreement with KCC. In relation to Henhurst Road, this provides for a feasibility study and funds for implementation, which as AT noted, is broadly in accordance with KCC's request.

- 3.2.13 AT confirmed that, in relation to community funds, the position is that there is some agreement with local authorities. AT reiterated that the SEE strategy has not changed.
- 3.2.14 AT noted that in relation to officer contributions, there is agreement with Brentwood, no disagreement with ECC and it is understood that KCC are minded to agree, noting that the Applicant understands that the LBH, GBC and TC are not in agreement, in respect of sums primarily.
- 3.2.15 AT noted that the current positions had been submitted at D7 noting that there had since been an accompanying side note produced by the Applicant which amends the figures in the D7 submissions, and has been provided to the local authorities.
- 3.2.16 Post-hearing note: The Applicant has provided updated financial offers for officer posts to all impacted local authorities and settled S106's or unilateral undertakings to be submitted at Deadline 9.
- 3.2.17 The Applicant has adopted a systematic and structured approach to pinpoint additionality where there is additional work by reason of the Project. AT explained that the costs have been assessed with reference to market research on a consistent basis. AT added that LBH's disagreement relates to the quantum of time; GBC's disagreement to the extent of additional roles required, noting that GBC is also requesting a homelessness prevention officer, a parking enforcement officer and a community safety contributions officer. AT noted that the Applicant's position is that there is disagreement in relation to the provision of those additional roles due to the need to consider proportionality and in applying the fair and reasonable test. The Applicant understands that TC's outstanding issue relates to salaries assumed and the on-costs, i.e. pensions and redundancy payments.
- 3.2.18 AT noted a further change that is not included in the s106 agreements, notably the annual sums that are to be provided and the related start period. AT explained that the current position is that the annual sums would be triggered from two months before the input date (when authorities are first asked to engage, not including the preliminary environmental works), and end following six months after the opening of the tunnel. In response to the ExA, AT confirmed that this would not apply to preliminary works, save insofar as they fall within the two months before the input date. The Applicant does not envisage that this provision would involve significant officer time in relation to the more limited functions, bearing in mind that the Preliminary Works Environmental Management Plan (ES Appendix 2.2 Annex C [\[REP6-042\]](#)) is not a document that has many further approvals within it.
- 3.2.19 In response to the ExA, AT confirmed that KCC and ECC have requested funds for particular officer roles, the details of which are included in the draft's106 agreements with these local authorities.

- 3.2.20 In response to the ExA, AT confirmed that the Applicant has undertaken a benchmarking exercise where there is an issue of principle remaining with the relevant party. AT explained that if there is no agreement reached, the particular matter would be converted into a unilateral agreement, and so the SoS could take into account the matters that the Applicant considers to be appropriate. AT reiterated that the Applicant is still proceeding on the basis of draft agreements, on the basis that it is still seeking to agree matters. In response to the ExA, AT confirmed that the Applicant has indicated the benchmarking information to TC, but will provide further detail.
- 3.2.21 Post-hearing note: This is provided within Section B.3.
- 3.2.22 In response to the ExA regarding benchmarking of salaries, AT confirmed that the benchmarking information will be provided to all local authorities. In relation to TC, AT confirmed that the posts have been agreed, the issue is principally the benchmarking, noting that the officer contributions would be index linked. In relation to preliminary works, AT explained that these are defined within the dDCO [REP7-090] as minor works essentially, and not for the construction of the main compounds, so applying the proportionality principle, it is not considered by the Applicant that this would provide additional burdens on local authorities. AT explained that article 61 of the dDCO [REP7-090] has been converted into an absolute commitment at D7 submission, and that in relation to the agreements, there is provision in each that, if the local authority considers the authorised development has or will cause it to incur cost over and above those mentioned in the document, then they can make a fully reasoned request to the Applicant in writing for reimbursement. AT confirmed that the Applicant would use its reasonable discretion in deciding whether or not to reimburse any such costs requested in full or in part.
- 3.2.23 In response to the ExA, AT confirmed that indexing is proposed for officer contributions, and in relation to severance payments, these are one-off payments and timing is identified in the agreements, which has been factored into the sums offered because they are envisaged to occur towards the end of the construction period.
- 3.2.24 In relation to the position at Shorne Woods Country Park, AT confirmed that there have been discussions with KCC subsequent to the CAH on the advanced payment framework, which is quite a complex process as it requires an evidence-based approach and a structure in relation to how payments are to be quantified or returned. The Applicant is due to provide this to KCC imminently.
- 3.2.25 AT noted that in relation to wider network impacts, as previously explained to KCC, the section 106 agreement is not intended to replicate control documents or matters that are already in the dDCO [REP7-090]. In relation to officer contributions, AT noted that the compensation enhancement fund is included in the section 106 agreement with KCC and that KCC has reverted to confirm that they do not wish to consider low noise surfacing, which has subsequently been removed from section 106 discussions.
- 3.2.26 AT explained that in relation to GBC, there is some disagreement around the number of posts, albeit with some agreement on the full-time posts, which the Applicant considers is a matter of proportionality, taking into consideration the sums of money that would be paid on an annual basis during a period before the input date up until a period after tunnel construction. AT confirmed that the

Applicant would set out its position in writing in relation to the number of posts issue. In relation to the question around funding for health issues, this does not appear to the Applicant to be necessary or proportionate, but the Applicant appreciates that in relation to that and worker accommodation, there is an opportunity to address this at ISH14.

- 3.2.27 In response to LBH, AT noted that in relation at Sizewell issue, the Applicant had to incorporate the s106 elements into the DCO because it was understood that there was no land to which to attach a section 106 agreement. The Applicant has adopted the section 106 route, as an appropriate existing vehicle with legal force, subject to the two matters (the SEE and the Community Fund) which are to be incorporated into the SACR.
- 3.2.28 In response to the ExA's query relating to dialogue with the Integrated Care Board (ICB), AT confirmed that the Applicant will provide its position in writing but that the ICB is happy with the approach that has been taken in the Register of Environmental Actions and Commitments (REAC) commitment PH002 [Document Reference 6.3 ES Appendix 2.2 (8)].

3.3 Agenda Item 3(c) Local Plan Commitments

- 3.3.1 The Applicant acknowledges the ExA's request to address this item in writing.
- 3.3.2 **Post-hearing notes:** it is noted this agenda item was directed to local authorities and not the Applicant (Hearing Action Point 14)
- 3.3.3 **Post-hearing written submissions:** these are included in Annex B and include:
- a. Section B.2 Hearing Action Point 8: S106 Agreements – Blue pencil clauses
 - b. Section B.3 Hearing Action Point 9: S106 Agreements – Benchmarking evidence for officer posts
 - c. Section B.4 Hearing Action Point 10: S106 Agreements – Index linking of severance packages
 - d. Section B.5 Hearing Action Point 11: S106 Agreements – funded posts for Local Authorities
 - e. Section B.6 Hearing Action Point 12: Shorne Woods Side Agreement (Revenue Compensation)
 - f. Section B.7 Hearing Action Point 13: Integrated Care Boards
 - g. Section B.8 Hearing Action Point 5: SACR
 - h. Section B.9 Hearing Action Point 16: Community Fund “Pilot Scheme” Detail

4 Project Delivery and Control Documents

4.1 Agenda Item 4(a) The approach to project control

Item 4(a)(i) The ExA will ask the Applicant to provide an overview of the operation of the proposed Control Documents with reference to the Lower Thames Crossing Mitigation Route Map [REP4-203] (MRM). It will be asked to explain its in-principle approach to the Control Document set and to set out:

- Documents submitted with the application or in Examination;
- Documents to be submitted subsequently; and
- Managing stages – the iteration process;
- Whether there are any other documents that need to be discussed in addition to those identified in the MRM in order to understand the operation of the Control Document set?

This item is to inform subsequent discussions and the ExA will not be seeking submissions about the merits of individual documents at this stage.

4.1.1 IT explained that the documents that set out the approach to control mechanisms are the Mitigation Route Map [REP4-203] and Chapter 14 of the Introduction to the Application [REP4-002]. IT noted that those documents demonstrate that the Applicant has adopted a conventional and well-precedented approach to securing mitigation through a suite of “control” documents secured by requirements in Schedule 2 to the dDCO [REP7-090]. IT added that these documents also show that the Applicant has applied and developed controls that respond to the specific circumstances of the Project, resulting in a substantial set of control documents that secure the extensive mitigation measures that have been proposed. The Applicant is confident that this suite of documents comprehensively addresses the impacts and there is no requirement for any additional control document.

4.1.2 IT continued to explain that the inclusion of control documents reflects the fact that the nature, content and level of detail for commitments is better suited to control document outside of the DCO, albeit secured through the DCO. IT noted that there are essentially two types of control document: “Finalised” control documents at point of DCO decision and “Future” control documents, which are subject to SoS approval. The “Finalised” control documents include the Engineering Drawings and Sections (Requirement 3), General Arrangement Plans (Requirement 3), Design Principles (Requirements 3 and 13), Preliminary Works Environmental Management Plan (EMP) (Requirement 4), REAC (Requirements 4, 5, 8 and 12), archaeological mitigation strategy

(Requirement 9), and the SACR (article 61). The “Future” control documents are subject to further approval by the SoS, and generally have an outline document with which they must be substantially in accordance with or based on. IT gave the examples of the EMP2 which must be substantially in accordance with the CoCP, the outline Site Waste Management Plan, the outline Materials Handling Plan, and the outline Landscape and Ecology Management Plan, among others.

- 4.1.3 In response to the ExA query, IT noted that the Applicant’s approach is a well-trod path and one with which the Applicant is highly familiar. IT also confirmed that the Applicant considers it preferable to include the greater details in the secondary control documents rather than on the face of the DCO, to avoid the DCO becoming unwieldy. The Applicant considers the details are sufficiently secured by the requirements in the DCO without being reproduced in the DCO itself.
- 4.1.4 In response to the ExA’s question as to the applicability of paragraph 4.9 of the NPSNN (Department for Transport, 2014), IT noted that the requirements securing the control documents, as well as the contents of those control documents, would be subject to the tests set out in the NPSNN, namely that they should be necessary, relevant to planning, relevant to the development to be consented, enforceable, precise and reasonable in all other respects. IT added that in relation to the well-precedented infrastructure of securing appropriate controls, the contents of a number of the Applicant’s control document go above and beyond other precedents, for example the preliminary works EMP, the preliminary works traffic management plan, the SACR, and the detail within those control documents. In response to the ExA, IT confirmed that some documents would not require further approval as they are finalised at this stage, noting that the Applicant’s outline documents contain more detail than a comparable supporting document in other projects.
- 4.1.5 IT stated that some of the outline documents themselves will entail a multi-stage process that continues beyond the construction phase, for example, the EMP and the Carbon and Energy Management Plan [REP7-150], and added that all control documents approved under Schedule 2 of the dDCO [REP7-090] are capable of being updated and replaced under Requirement 19. IT added that in line with convention, requirements are capable of being discharged in relation to “parts” of the works, stages or phases of the development (see paragraph 1(3) of Schedule 2).
- 4.1.6 In relation to non-compliance with a control document, this would constitute a breach of the relevant requirement which requires production and adherence to the control documents, and so would be subject to enforcement under Part 8 of the Planning Act 2008. IT added that a number of the control documents contain processes to address matters in dispute or not agreed, which can be escalated, for example through the Joint Operations Forum (JOF) under the outline Traffic Management Plan for Construction (oTMPfC) [REP7-148].
- 4.1.7 IT noted that control documents and forums are proposed to address topic-specific areas, but that their outputs and interfaces would be coordinated internally within the Project to manage them effectivity and to increase opportunities for reducing overall impacts on communities and stakeholders. The Applicant would establish the JOF and the chairs of each of the relevant

forums would attend the JOF, to assist with a coordinating function. Outside of this, the Applicant has extensive experience in delivering major construction projects and processes internally to engage with members of the public, stakeholders and internally to ensure efficient coordination between various control documents, to promote a united approach to the delivery of the Project.

- 4.1.8 In response to IP submissions in respect of the “substantially in accordance with” wording, the Applicant has responded to that issue at Section 4.3 of the Applicant’s Responses to IP’s Comments on the dDCO at D5 [\[REP6-085\]](#), in which the Applicant explains that the SoS has previously given explicit consideration to this issue and approved use of the wording in other DCOs. IT referred in particular to the A47 Wansford to Sutton decision letter, where the ExA had recommended taking out this phrase, but the SoS reinserted it as he considered it to be an inappropriate fetter on his discretion to remove the wording. In response to a comment on behalf of TC, IT confirmed that the A47 DCO was made after the Supreme Court judgment in *Hillside Parks Ltd v Snowdonia National Park Authority* [2022] UKSC 30.
- 4.1.9 In relation to the Mitigation Route Map, IT confirmed that this could be included as a certified document in Schedule 16 to the DCO, should the ExA consider that appropriate. It provided an ‘umbrella’ document which directs readers to the relevant control documents as an aid to navigation. However, the Applicant does not believe that it would be appropriate to repeat every requirement from the REAC, the SACR and all outline documents, into the Mitigation Route Map. The Applicant’s view is that this would be unwieldy and cumbersome to navigate. In response to the ExA, the Applicant’s understanding is that the Thames Tideway Tunnel mitigation route map was not a certified document and was not secured by any requirement in that DCO.
- 4.1.10 IT responded to TC’s request for a number of documents to be identified as control documents, including the Book of Reference and the Crown Land Plans, which are documents, in the Applicant’s view, that do not control anything, so the Applicant has resisted that suggestion. The Applicant’s view is that the existing control documents are appropriate, adequate and properly secured through the DCO.

4.2 Item 4(b) Code of Construction Practice (CoCP) (1st Iteration)

Item 4(b)(i) The ExA will ask the Applicant about the relationship between the CoCP and dDCO: what is the basis for security for this document?

- **Are relevant IPs clear about security?**
- **Is security viewed as appropriate?**

4.2.1 The Applicant noted the ExA’s request to submit its response in writing to this Agenda Item.

4.2.2 **[Post-hearing note:** the Applicant notes that the CoCP is secured under Requirement 4(2) of Schedule 2 to the dDCO. The Applicant considers that the content of the CoCP is based on well-trodden ground, and in many respects

goes above and beyond precedents in the level of control it provides. The CoCP sets out a framework for the mitigation and management of environmental effects during construction and operation. The REAC is included within Chapter 7 of the CoCP [REP7-122]. It lists the mitigation measures proposed in the ES and related Application Documents and identifies how these are secured in the dDCO. It has been included within the CoCP as its detail is integral to the overarching management framework provided by the CoCP. These two elements combine to provide a complete Environmental Management Plan.]

Item 4(b)(ii) The ExA will ask the Applicant about the management of stages through the CoCP – the iteration process

- **Are relevant IPs clear about the iteration process?**
- **Are any revisions to the process sought?**

4.2.3 The Applicant noted the ExA’s request to submit its response in writing to this Agenda Item.

4.2.4 **[Post-hearing note:** The CoCP is the first iteration, or stage, of the Environmental Management Plan and follows the process detailed in Table 2.2 of Design Manual for Roads and Bridges (DMRB) LA 120 (Highways England, 2020). It was submitted as part of the DCO Application and is being updated as the Examination proceeds to secure commitments made by the Applicant. The control measures it outlines will be refined during detailed design and implemented as follows:

- a. The second iteration of the Environmental Management Plan (EMP2) will be implemented by the Contractors to provide control of construction works.
- b. The third iteration of the Environmental Management Plan (EMP3) will be implemented by National Highways to provide control over future management and operation of the Project.

4.2.5 Works defined as preliminary works in the dDCO must be carried out in accordance with the Preliminary Works EMP, which will be discussed separately later in the agenda for today. The relationship of the documentation for these three iterations is described in Table 1.1 of the CoCP and illustrated on Plate 1.2 alongside their relationship to other plans and documents in the wider Control Plan. The process for progression of the EMP from CoCP to EMP2 to EMP3 with engagement with relevant stakeholders is described in paragraphs 2.3.1 and 2.3.6 of the CoCP [REP7-122].

Item 4(b)(iii) The ExA will ask IPs about the content of the CoCP

- Is content appropriate?
- Are any revisions sought?
- How should the REAC be managed – should it become a freestanding control document?

- 4.2.6 IT explained that the rationale behind the inclusion of the REAC in the CoCP [REP7-122] is that it is an integral part of the overarching management framework provided in the CoCP. IT noted that DMRB LA 120 (Highways England, 2020) indicates that the REAC should be included within the CoCP. IT confirmed that the Applicant does not intend to submit the REAC as a separate document but will amend the title of the CoCP to make it clear that it includes the REAC.
- 4.2.7 AD explained that the CoCP is secured through the requirements under Schedule 2, Requirement 4 of the dDCO [REP7-090]. AD explained that the CoCP works through a series of three iterations, with the CoCP being the first iteration, which was submitted with the Application and is being updated through the Examination, followed by the EP 2 which will be the second iteration and will be implemented by Contractors to provide control over construction works, followed by a third iteration of the EMP which will be implemented by the Applicant with the controls of the future management and operation. The relationship of the documentation for these three iterations is described in Table 1.P and illustrated on Plate 1.2 of the CoCP [REP7-122], which demonstrates their relationship to other plans and documents in the wider Control Plan. AD added that there is a separate EMP for preliminary works.
- 4.2.8 AD noted that there is information in the CoCP regarding the progression of the plan from CoCP to EMP2, through to EMP3, as set out in paragraphs 2.3.1 and 2.3.6 of the CoCP. AD explained that the REAC sets out various commitments around requirements for staff roles, general site practice and management, information on working hours, communication and community engagement, linking to the other consents and permits.
- 4.2.9 On decision-making, AD explained that paragraph 2.1.3 of the CoCP explains the process for consultation required under Schedule 2 of the DCO, which includes Requirement 4 (Construction and handover environmental management plans). It is explained in paragraph 2.3.5 of the CoCP that other plans forming part of the EMP, such as Site Waste Management Plans, Materials Management Plans and other and topic management plans, are to be approved by the SoS having regard for stakeholder engagement. AD added that the process for preparing the EMP3, building on the EMP2 and LEMP and engaging with relevant stakeholders, is set out in paragraph 2.3.6 of the CoCP.
- 4.2.10 In terms of management and enforcement, AD explained that paragraphs 2.2.1 and 2.2.2 of the CoCP explain that this is to be integrated within an Environmental Management System compliant with ISO 14001 standards. Paragraph 2.3.3 of the CoCP requires the Contractors to set out their procedures for monitoring compliance with the mitigation measures required by the CoCP including the REAC in the EMP2. AD noted that paragraph 2.7.7 of

the CoCP explains that local planning authorities, the Environment Agency and Natural England will be given access to attend and observe site inspections and audits as well as receiving the results of such inspections and audits.

- 4.2.11 AD also noted that in response to the ExA’s comment in relation to points of detail, these are addressed within the D7 version of the CoCP [\[REP7-122\]](#). AD added in response to comments made by IPs, the Applicant has submitted at D7 the Applicant’s comments on Interested Parties’ responses to ExQ2 at Deadline 6 [\[REP7-186\]](#).
- 4.2.12 In response to GBC’s request for a document which sets out references to topics, IT noted the Applicant’s view is that the REAC already does this by providing commitments arranged in topic areas (such as air quality and noise).
- 4.2.13 In response to GBC’s comment regarding “wriggle room” in the CoCP, IT noted that the document against which compliance will be enforced, will be the EMP2, as this must be substantially in accordance with the CoCP and will regulate and govern the subsequent phase. EMP2 will be subject to approval by the SoS, who will have the opportunity to consider the precise wording that will be included, following consultation. The Applicant’s position is that the level of wording included currently is entirely appropriate and necessary, considering the need to retain an element of flexibility.
- 4.2.14 In response to TC’s query regarding their involvement once the DCO is granted, IT explained that Requirement 4 of the dDCO [\[REP7-090\]](#) provides that no part of the authorised development can commence until the EMP2 has been approved by the SoS following consultation by the undertaker with the relevant planning authorities, among others identified in Table 2.1 of the CoCP [\[REP7-122\]](#). IT added that paragraph 2.1.3 of the CoCP explains what will happen where consultation is required, noting that Contractors will provide a draft submission of the material to the identified consultees in advance of submission, requesting comments. IT noted that any feedback received would have to be considered and provided to the SoS, alongside a written account of how any representations have been taken into consideration, which is also secured in Requirement 22 of the dDCO [\[REP7-090\]](#). In respect of EMP3, paragraph 2.3.6 of the CoCP requires consultation to be undertaken with the relevant bodies identified in Table 2.1 of the CoCP, thereby securing appropriate consultation.
- 4.2.15 In response to TC’s concern regarding the Environmental Management System and ISO 14001, IT noted that this is incorporated in the CoCP in Section 2.2, which explains that the Applicant will operate an Environment Management System, aligned with and capable of certification under ISO 14001. In response to TC, IT confirmed that this is also a requirement of DMRB LA 120 for it to be included in the CoCP. In response to concerns raised by TC about HGV monitoring, IT confirmed that paragraph 2.4.10 of the oTMPfC [\[REP7-148\]](#) makes provision for real-time monitoring of vehicle movements and the oTMPfC makes provision for any intervention or remedial steps that may prove to be necessary in response to such monitoring.
- 4.2.16 In response to the Port of London Authority (PLA) regarding documents required pursuant to EMP2, IT confirmed that EMP2 will be covered by the consultation requirements with the identified bodies, which includes the PLA. IT noted that the SoS will be the ultimate arbiter, in having regard to this issue

and to ensure that the document contains the appropriate control mechanisms for the next phase. IT noted that following this, there will be continued community liaison, including with the PLA, to further finesse the documents, noting that ultimate approval will be secured by the SoS. In response to PLA's comments regarding the River Safety Lighting Management Plan, IT confirmed that this is covered by paragraphs 6.8.5 to 6.8.7 of the CoCP [REP7-122], so the Contractors are required to consider lighting in accordance with specified guidance, so as to ensure the night-vision of mariners is not impeded, or existing navigational lights are not masked. Provision is also made in paragraph 112 of the PLA's Protective Provisions that the undertaker must comply with any reasonable directions issued by the Harbour Master with regard to lighting so as to ensure that it is not a hazard to navigation on the River Thames. Regarding the PLA's concern regarding their involvement in environmental incident control, the Applicant's position is that this is dealt with in the Protective Provisions, paragraph 100 of which require the Applicant to provide to the PLA a river use and Comm emergency response plan which the PLA then has the opportunity to comment on and engaged in the escalation process set out in the Protective Provisions, in the event of non-agreement.

4.2.17 In response to Port of Tilbury London Limited's (PoTLL's) concern regarding preliminary work, IT explained that the definition of preliminary works and of advanced compound areas is contained in Schedule 2 of the dDCO [REP7-090]. IT confirmed that preliminary works in respect of the advanced compound areas, only covers access to advanced compound areas and vegetation clearance in connection with access. IT noted therefore that limited works can be undertaken and that these will be governed by the EMP for preliminary works. Regarding concerns about the approval of EMP3, IT explained that the EMP3 is intended to deal with the operational stage, which relates to National Highways' wider operational powers and is therefore not appropriate for regulation through the DCO process, but rather under the terms of National Highways' licence under the Highways Act 1980. IT explained that DMRB LA 120 sets out standard processes for EMP3 and makes provision for further consultation, with EMP3 having to be in accordance with that standard. IT added that non-approval of the third iteration of the EMP is very well precedented, including in the A19 Testo's junction DCO, among others. Regarding the phrase "reflecting the mitigation measures in the REAC", the Applicant has found numerous examples of this wording being used which it can provide in writing.

4.2.18 **[Post-hearing note:** the phrase "reflecting the mitigation measures in the REAC" is used in:

- a. The M25 Junction 10/A3 Wisley Interchange Development Consent Order 2022
- b. The A57 Link Roads Development Consent Order 2022
- c. The A585 Windy Harbour to Skippool Highway Development Consent Order 2020
- d. The A63 (Castle Street Improvement, Hull) Development Consent Order 2020

- e. The M42 Junction 6 Development Consent Order 2020
- f. The A19/A184 Testo's Junction Alteration Development Consent Order 2018
- g. The A47/A11 Thickthorn Junction Development Consent Order 2022
- h. The A47 Blofield to North Burlingham Development Consent Order 2022
- i. The A47 North Tuddenham to Easton Development Consent Order 2022
- j. The A47 Wansford to Sutton Development Consent Order 2023
- k. The M54 to M6 Link Road Development Consent Order 2022
- l. The A19 Downhill Lane Junction Development Consent Order 2020].

4.3 Item 4(b)² Design Principles

- 4.3.1 IT noted that Requirement 3 of the dDCO [[REP7-090](#)], which the Applicant understands TC confirmed they have accepted, requires that the authorised development must be designed and carried out in accordance with the Design Principles, noting that there is also a reference in Requirement 5 to the Landscape and Ecology Management Plan (LEMP) which must reflect the Design Principles. IT noted that any departure from the Design Principles would be a breach of requirement in the normal way, albeit there is a provision for the SoS to allow amendments, subject to the caveat that they do not give rise to materially new or different environmental effects, which is a very well-precedented provision. IT noted that the Applicant has dealt with concerns raised by TC in relation to the certainty of Requirement 3 in Section 9.2 of the Applicant's responses to IPs comments made on the dDCO at Deadline 4 [[REP5-089](#)].
- 4.3.2 In relation to use of the word “reflect” in the relevant requirements, this was covered earlier in ISH12 and is a well-precedented provision.
- 4.3.3 CD explained that the Applicant has made extensive provision of further design in the detailed design of green bridges, including clause STR.08 (a Project-wide Design Principle applying to all green bridges across the Project) and clause S1.04 (specific to Brewers Road green bridge). CD also noted the more recent Design Principle additions, including for habitat connectivity at the ends of green bridges in the AONB (at clause S1.23). The Applicant has aimed to balance the needs of ecology and the non-motorised users at each bridge through the wording of the Design Principles.
- 4.3.4 IT added that at D7, the Design Principles [[REP7-140](#)] were updated to include clause PRO.07 which provides that the key elements of the detailed design should be subject to structured stakeholder engagement on their spatial arrangement, user experience, appearance, integrated with the surrounding context and where relevant, signage and interpretation. IT noted that in Appendix D of the Design Principles, there is provision for the detailed design

² Note within the agenda for ISH12 [[EV-085](#)] there are two items labelled 4(b).

multi-disciplinary workshop terms of reference, which have recently been included.

4.3.5 PRO.07 Detailed design:

“Key elements of the detailed design shall be subject to structured stakeholder engagement on their spatial arrangement (within the parameters of the DCO), user experience, appearance (‘look and feel’), integration with the surrounding context and, where relevant, signage and interpretation. These elements are:

- *The consistent design approach as outlined in Design Principle STR.07*
- *Project Enhanced Structures as outlined in Design Principles STR.02 to STR.06 inclusive and STR. 15:*
 - *Thong Lane green bridge north (Work No. 3B)*
 - *South Portal (Work No. 3C)*
 - *North Portal (Work No. 5A)*
 - *North Portal operational access bridge (Work No. 5E)*
 - *Orsett Fen Viaduct (Work No. 8B)*
 - *Mardyke Viaduct (Work No. 8B)*
 - *Thames Chase WCH bridge (Work No. 9O)*
- *Chalk Park (Work No. OSC4)*
- *Tilbury Fields (Work No. OSC5)*
- *Green bridges:*
 - *Brewers Road green bridge (Work No. 1D)*
 - *Thong Lane green bridge south (Work No. 1H)*
 - *Thong Lane green bridge north (Work No. 3B)*
 - *Muckingford Road green bridge (Work No. 6B)*
 - *Hoford Road green bridge (Work No. 6C)*
 - *Green Lane green bridge (Work No. 7M)*
 - *North Road green bridge (Work No. 8D)*

There shall be multi-disciplinary workshops with relevant stakeholders before and after the National Highways Design Review Panel (NHDRP) (Design Principle PRO.01). Comments made on the designs/ design approach by the attendees shall be duly considered and responded to in the detailed design in writing and in accordance with the terms of reference in Appendix D.”

4.4 Item 4(c) Outline Traffic Management Plan for Construction (oTMPfC)

4.4.1 The Applicant noted the ExA’s submission that this Agenda Item was covered at ISH14.

4.5 Item 4(d) Framework Construction Travel Plan (FCTP)

4.5.1 The Applicant noted the ExA’s submission that this Agenda Item was covered at ISH14.

4.6 Item 4(e) Stakeholder Actions and Commitments Register (SACR)

- 4.6.1 IT noted that the CoCP contains the REAC [\[REP7-122\]](#), and that the Applicant is currently considering whether it will remain this way, noting that this is subject to a secondary approval process, so there is further ongoing consultation with stakeholders on the CoCP which will result in the submission of a plan for approval to the SoS. This EMP2 will reflect the commitments made in the REAC, as set out in Requirement 4 of the dDCO [\[REP7-090\]](#). IT explained that the SACR is different as it reflects commitments that have been made to particular stakeholders and is not subject to a further round of consultation and approval, noting that those are the commitments. The Applicant's position, therefore, is that there should be a different provision for the REAC and for it to be engaged upon, with each party having the opportunity to make their submissions to the SoS in the event of non-agreement.
- 4.6.2 In response to TC's concern in relation to commitments in the SACR which are expressed in "reasonable endeavours" or "best endeavours" language, IT explained that this represents the current stage of the Application which is yet to reach detailed design, acknowledging that they are absolute commitments. In respect of the language used in the two particular commitments identified as of concern to TC (namely those relating to the Gammon Field travellers' site and the Ron Evans Memorial Field), these are expressed in language which requires their delivery, and are not expressed using the "reasonable endeavours" or "best endeavours" language.
- 4.6.3 **Post-hearing note:** TC is the beneficiary of two commitments in the SACR [\[REP7-152\]](#). These include commitments relating to the provision of a replacement Gammon Field travellers' site before specified works affecting the existing site are undertaken (SACR-008) and the provision of some replacement open space for Ron Evans Memorial Field before specified works affecting the existing open space are undertaken (SACR-014). Both commitments are drafted in clear terms. Neither commitment uses language such as "reasonable endeavours" or "best endeavours"
- 4.6.4 In response to LBH's concern raised, the Applicant understands that LBH will submit this in writing at D8 and that the Applicant will consider and respond in due course.

4.7 Item 4(f) Outline Landscape and Ecology Management Plan (oLEMP)

- 4.7.1 IT noted that Requirement 5 of the dDCO [\[REP7-090\]](#) requires the submission and approval of an LEMP substantially in accordance with the oLEMP. In terms of the oLEMP [\[REP7-134\]](#), BF noted that the Applicant has an advisory group in the terms of reference which allows for change to occur over time, in the event that the habitat is not developing in the way that is intended.
- 4.7.2 In response to concerns raised by PoTLL, IT explained that article 55(5) of the dDCO deals with extent to which there is any inconsistency or conflict with existing planning permissions. Furthermore, paragraph 131 of the Protective Provisions in favour of PoTLL prevents the Applicant from carrying out any specified functions (as defined in paragraph 130) without the approval of

PoTLL. In relation to PoTLL's request to be identified as a consultation party, this is the subject of ongoing discussion and engagement between the Applicant and PoTLL.

- 4.7.3 BF added that the oLEMP secured the creation of an advisory group, the terms of reference of which allow for relevant interested groups to be involved in the group, including PoTLL and affected landowners. BF also noted that the PoTLL is identified as a stakeholder to be involved in the multi-disciplinary workshops as part of the design of Tilbury Fields.

4.8 Item 4(g) Outline Site Waste Management Plan (oSWMP)

- 4.8.1 IT noted that there is REAC commitment, MW007 [REP7-122], which secures adherence to the waste hierarchy, and there is specific provision for this at paragraph 6.1.12 of the oSWMP [REP7-124]. There is also specific provision for the appointment of a Materials and Waste Manager to ensure that the waste hierarchy is implemented and that further opportunities to reduce waste generation or improve recovery/recycling rates are identified.

4.9 Item 4(h) Outline Materials Handling Plan (oMHP)

- 4.9.1 IT explained in response to TC, that Section 8 of the oMHP [REP7-127] deals with non-road transport options, including rail and river. The Applicant's position is that the addition it has made at paragraph 8.3.3 was added to the oMHP at D7 to address concerns raised by Port of London Authority (PLA) as to the use of the river. That paragraph provides that "*The Project recognises the benefit of reducing impacts from vehicle movements by using rail and/or river facilities as part of a multimodal approach to transport materials. As such, the Project commits to seek to maximise the use of rail and/or river facilities as part of the multimodal transport of bulk aggregates to the whole scheme. Where the use of a rail and/or river facility is proven to be an environmentally better option which allows the delivery of a competitive, value for money Project, and that does not cause disproportionate delay to the programme, then the Project commits to the use of that facility to transport the material.*" The Applicant confirmed that it would consider whether paragraph 8.3.3 should be amended to replace the words "environmentally better" with "environmentally equivalent". IT noted that the other factors, value for money and disproportionate delay, are entirely appropriate considerations in determining the most appropriate means of transport. IT added that paragraph 8.3.4 of the oMHP provides that the MHP submitted to the SoS for approval must include an explanation of how multimodal solutions have been included and implemented or discounted where they do not meet the criteria in paragraph 8.3.3, which means that the SoS will be the arbiter of whether appropriate provision is made in the MHP for river transport.
- 4.9.2 In regard to the derogation process, IT noted that paragraph 6.2.18 of the oMHP provides that there will be a sub-group of the TMF whose purpose will be to monitor the supply of material delivered using port facilities and discuss derogation requests, and that paragraph explains that the Applicant will be required to give due regard to stakeholder comments and ensure the derogation

is implemented as per the terms of the derogation notice. The process for derogation is set out in Plate 6.1 of the oMHP.

- 4.9.3 In response to an issue raised by PoTLL regarding the Better than Baseline Commitment, the Applicant's position is that paragraph 6.2.12 of the oMHP provides that in realising this objective, certain factors have to be considered including adverse impacts on the road network, particularly the A1089 and the Asda roundabout, as compared to the traffic and environmental assessments. IT added that there is also provision at paragraph 4.3.24 of the oMHP, requiring engagement with aggregate suppliers and PoTLL collaboratively to seek opportunities to use the port and develop a strategy to reduce material movement by road. IT noted that the Applicant's position is that there is appropriate means via the draft traffic management protocol with the Port of Tilbury by which to address any concerns from PoTLL as to the risk of vehicle stacking at the entrance of Port of Tilbury facilities.

4.10 Item 4(i) Draft Archaeological Mitigation Strategy and Outline Written Scheme of Investigation (dAMS-oWSI)

- 4.10.1 The Applicant welcomed confirmation from both LBH and TC as to their satisfaction with the dAMS-oWSI, subject to the provision of an additional appendix in relation to Palaeolithic archaeology, which is currently in preparation and will be shared with LBH as soon as it has been finalised.

4.11 Item 4(j) Carbon and Energy Management Plan (1st iteration)

- 4.11.1 AK explained that the Carbon and Energy Management Plan (First Iteration) is secured through Requirement 16 of Schedule 2 of the dDCO [[REP7-090](#)]. This requirement states under sub-paragraph (1) that no part of the authorised development must commence until the Carbon and Energy Management Plan (Second Iteration) for that part has been submitted to and approved in writing by the SoS and under sub-paragraph (2) that the Carbon and Energy Management Plan (Second Iteration) must be substantially in accordance with the First Iteration.
- 4.11.2 AK explained that the Carbon and Energy Management Plan (First Iteration) was submitted as part of the DCO Application and has been updated (Version 2 of the First Iteration) in the D7 submission [[REP7-150](#)] to secure a commitment made by the Applicant to reduce the maximum carbon emissions from the construction phase. The reduction was achieved by embedding carbon in the procurement of the three design and build contracts, in line with the commitment made in the Carbon and Energy Management Plan.
- 4.11.3 AK added that the actual pathway to achieve this reduced maximum limit and anticipated further reductions would be determined by the Contractors and their designers when developing the detailed design, procurement strategy, and construction methodologies. AK explained that this process would be facilitated by and managed through the mechanisms included as carbon commitments in the Carbon and Energy Management Plan. These include formal regular collaborative carbon workshops with representatives of all Contractors and PAS 2080 carbon management system certification of the Project. The Carbon and

Energy Management Plan (Second Iteration) would reflect the results of this process.

- 4.11.4 In terms of the content, AK explained that the Carbon and Energy Management Plan (First Iteration) sets out the Applicant's carbon ambitions for the Project and the mechanisms that it will use to deliver them. The Applicant has quantified its carbon impact in line with PAS 2080, covering the construction and operational phases. The plan focuses on construction and maintenance emissions as these are under its control. It also covers emissions from energy, water and waste in the operational phase. AK noted that the plan contains a register of 22 carbon commitments that reflect the mechanisms used to deliver the Applicant's carbon ambitions. This is the first time that a Carbon and Energy Management Plan has been incorporated into a National Highways DCO. The Applicant considers its approach to be industry leading and one that will help to accelerate the transition to net zero.
- 4.11.5 AK explained that the Second Iterations must be developed substantially in accordance with the First Iteration, which will be developed by the Contractors, relate to the construction phase and provide the detailed approach to reducing emissions including (a) how the Contractors will comply with the maximum level of emissions secured as part of the First Iteration and (b) the further measures and proposals Contractors will deploy during the construction phase to reduce emissions below this maximum level. AK noted that commitments in the First Iteration which relate to the construction of the authorised development will need to be reflected in the Second Iteration.
- 4.11.6 In terms of decision making within the control document, AK noted that this lies substantially with the Applicant. The carbon limit sets the maximum emissions, and the Carbon and Energy Management Plan, used in combination with the management systems set up in compliance with PAS 2080, ensure that an auditable sequence of events serves to push emissions even lower.
- 4.11.7 It is noted by the Applicant, however, that if specific low-carbon technologies and/or infrastructure would be proposed by the Contractors, these would require additional consents or permits and would need to be obtained by the Contractors. The Applicant has achieved PAS 2080 verification in 2022, and again in 2023. In addition, the Project, and each of the three Contractors, and their directly appointed subcontractors, will also be required to obtain PAS 2080 verification, and undertake annual PAS 2080 audits to maintain their verification throughout construction. AK noted that these are secured as carbon commitments CBN13, CBN14 and CBN15.
- 4.11.8 AK explained that there is a regular project to comply with the requirements of PAS 2080 and the Applicant has also made a commitment in CBN16 and CBN17 that the Contractors will create their own annual reports, which will be collated into an annual report, which will be published, following independent review, and made public. This will include forecast lifecycle carbon emissions, carbon reductions, progress against carbon commitments and key actions and targets for the following year. In terms of enforcement, AK explained that this would be in line with Requirement 16 of Schedule 2 of the dDCO, whereby no part of the authorised development must commence until a Carbon and Energy Management Plan (Second Iteration) for that part has been submitted to and approved in writing by the SoS. In accordance with sub-paragraph (3) of

Requirement 16 of Schedule 2 of the dDCO, the construction of each part of the authorised development must be carried out in accordance with the Carbon and Energy Management Plan (Second Iteration) approved for that part under subparagraph (1) of Requirement 16. In summary, the Applicant's position is that this is a huge step forwards in the way that carbon is dealt with, and this should set a precedent for carbon reduction on other major projects in the UK.

- 4.11.9 In response to the ExA, AK explained that PAS 2080 must be audited by a verified auditor, and if the Applicant does not pass this audit, they would no longer be PAS 2080 verified. National Highways is also required to report in a public forum their achievements and progress against the long-term carbon target for the Project. AK explained that failure to achieve the level required would be contract failure and its associated penalties, noting that it is also a DCO commitment to achieve the carbon targets. AK explained that the carbon limit is set as an absolute limit for the Project, and the Applicant is convinced that there are many more carbon savings to come from future work. The Applicant's position is that it is highly unlikely that it would not achieve its carbon target, noting that it has already achieved a reduction without pushing into the realms of highly innovative solutions. AK added that in the detailed design, there will be many other opportunities for the Contractors to reduce emissions further through value engineering.
- 4.11.10 IT confirmed that appropriate control is secured by Requirement 2 of the dDCO [\[REP7-090\]](#), which prevents any part commencing until a Carbon and Energy Management Plan (Second Iteration) has been approved. IT noted that this needs to include reasonable measures for management and minimisation of carbon during construction, and to specify measures to take in the event of any failure to meet a target set out in the First Iteration, including remedial steps. IT explained that there is also a requirement for a Third Iteration that must be submitted to and approved by the SoS, which contains long-term commitments to manage and minimise carbon emissions during operation and maintenance of the authorised development. IT noted that within the Carbon and Energy Management Plan itself, there is a requirement on the Applicant to report annually, but also to have set steps and measures prospectively, noting that the Project as a whole will involve some years of construction, so the annual reporting mechanism will provide an appropriate means by which to secure any necessary remedial action.
- 4.11.11 AK added that the budgets are broken down into considerable detail in the Carbon and Energy Management Plan and are based on the bill of quantities for the Project. AK noted that these details are subject to change as the Contractors go through their own designs. In terms of management procedures and how the Applicant is reporting, AK noted that this will be a combination of detail around carbon emissions and auditing. AK added that, as previously discussed with TC, carbon emissions are not purely a local issue and so local budgets have no basis in law in respect of target decisions. The Applicant's position is that, in terms of road users, it is the national government's strategy to reduce emissions from the use of road vehicles and so it is not within the power of the Contractors through their Carbon and Energy Management Plan to do so.
- 4.11.12 Post-hearing written submissions: these are included in Annex C and include:
- a. Section C.2 Hearing Action Point 17: Mitigation Route Map

- b. Section C.3 Hearing Action Point 18: Register of Environmental Actions and Commitments (REAC)
- c. Section C.4 Hearing Action Point 19: Preliminary Works and Environmental Management Plan (EMP) Iterations
- d. Section C.5 Hearing Action Point 20: EMP and the REAC
- e. Section C.6 Hearing Action Point 21: DCO/Control Document Enforcement Powers
- f. Section C.7 Hearing Action Point 22: Lighting and shipping navigation.

References

Department for Transport (2014). National Policy Statement for National Networks.
Highways England (2020). Design Manual for Roads and Bridges (DMRB), LA 120 Environmental Management Plans. Revision 1. Accessed December 2023.
<https://www.standardsforhighways.co.uk/search/a3a99422-41d4-4ca1-bd9e-eb89063c7134>.

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 (Application Document 3.1)
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.
Design Manual for Roads and Bridges	DMRB	A comprehensive manual containing requirements, advice and other published documents relating to works on motorway and all-purpose trunk roads for which one of the Overseeing Organisations (National Highways, Transport Scotland, the Welsh Government or the Department for Regional Development (Northern Ireland)) is highway authority. For the A122 Lower Thames Crossing the Overseeing Organisation is National Highways.
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.
Highways England		Former name of National Highways.
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.

Term	Abbreviation	Explanation
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.
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 (Application Document 3.1).
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.

Annexes

Annex A Post-hearing submission on Agenda Item 3 Social Economic and Land-Use Effects – Replacement Open Space

A.1 Introduction

A.1.1 This section provides the post-hearing submissions and hearing actions for Agenda Item 3(a), from Issue Specific Hearing 12 (ISH12) [[EV-085](#)] on 23 November and 28 November 2023 for the A122 Lower Thames Crossing (the Project).

A.2 Hearing Action Point 2: Southern Valley Golf Course – replacement recreation land and potential land contamination

- A.2.1 Action Point 2 requests “*The Applicant and Gravesham Borough Council to provide a written update on matters raised in Action Point 19 from ISH11. The Applicant is to set out if (and how) the dDCO and related control documents would secure further land contamination investigation (and then any necessary remediation, identified as being necessary) which would be provided to GBC as replacement recreation land*”.
- A.2.2 Land adjacent to Cascades Leisure Centre, shown on Plate 5.13 of the outline Landscape and Ecology Management Plan [[REP7-132](#)], is proposed to be provided to Gravesham Borough Council by the Applicant as a replacement recreational area in exchange for the loss of the closed 9-hole golf course at Gravesham Golf Centre.
- A.2.3 Clause S3.17 of the Design Principles [[REP7-140](#)] requires: “*A replacement recreational area shall be provided adjacent to Cascades leisure centre and shall be developed in coordination with Gravesham Borough Council*”. This allows Gravesham Borough Council the flexibility necessary to determine a specific end use and configuration for the site that meets their operational requirements in the context of the emerging development proposals for Cascades Leisure Centre.
- A.2.4 The replacement recreational area is located in the western corner of the closed Southern Valley Golf Course.
- A.2.5 In terms of the relevant contamination risk assessment of the Southern Valley Golf Course, this is set out in Environmental Statement (ES) Chapter 10: Geology and Soils [[APP-148](#)] and supporting appendices ES Appendix 10.6: Preliminary Risk Assessment Report [[APP-427](#)], ES Appendix 10.9: Generic Quantitative Risk Assessment Report for the Phase 2 Investigation (1 of 3)

[[APP-430](#)] and ES Appendix 10.11: Remediation Options Appraisal and Outline Remediation Strategy [[REP1-165](#)].

- A.2.6 The assessments of the Southern Valley Golf Course did not identify significant contamination of concern. However, a precautionary approach is taken in terms of recommendations for remediation given the scale of earthworks proposed, and it is assessed as a medium risk site on this basis. The assessment did not specifically focus on the potential end use of the replacement recreational land, and there is the potential for localised contamination with anecdotal evidence of imported fill. However, based on the evidence to date, the Applicant does not anticipate the requirement for significant or bespoke remediation; rather, this is most likely to comprise hotspot removal/clean cover (which could form part of the proposed development).
- A.2.7 The handover of the replacement recreational land would form part of the land agreement between the Applicant and Gravesham Borough Council. Matters related to land contamination would be subject to the detailed drafting of the agreement and would be reflective of the proposed end use of the land. It is expected that an agreement will be completed by the end of the Examination.
- A.2.8 The Applicant proposes to include a new commitment in the Stakeholder Actions and Commitments Register to be submitted at Deadline 9 as a fallback in the event that the Applicant and Gravesham Borough Council do not reach agreement before the end of Examination. The new commitment would apply to the replacement recreational area. It would require the Applicant to work with Gravesham Borough Council to assess whether there is any contamination risk and agree any required remediation on the land to a standard suitable for the intended use by Gravesham Borough Council as a recreational facility. Remediation, where necessary, would be undertaken before the formal legal transfer of the land to Gravesham Borough Council.

Annex B Post-hearing submission on Agenda Item 3(b) Social Economic and Land-Use Effects – Funding for Residual Impacts and Other Planning Obligations

B.1 Introduction

B.1.1 This section provides the post-hearing submissions and hearing actions for Agenda Item 3(b), from ISH12 [EV-085] on 23 November and 28 November 2023 for the Project.

B.2 Hearing Action Point 8: S106 Agreements – blue pencil clauses

B.2.1 Action Point 8 requests the Applicant and local authorities to “*please provide a view on the potential use of ‘blue pencil clauses’ in S106 agreements. In responding, please make reference to their use in the context of NSIP applications*”.

B.2.2 The Applicant understands that the notion of a “blue pencil” clause, as suggested by the London Borough of Havering at ISH12, would involve the agreement containing alternative provisions as regards the level of officer contributions payable. One provision would set out the level of contributions as proposed by the Applicant, the alternative the level of contributions considered appropriate by the Council. The Secretary of State would decide which figures should be used.

B.2.3 Such an approach is not acceptable to the Applicant as the party making the contributions. In making the contributions, the Applicant recognises that the local authorities will benefit from additional resources in order to deal in a timely manner with the demands that will be placed upon them by the Applicant in respect of the Project, given its scale and complexity. This will allow the Council to play its part in the timely and efficient delivery of the Project by the Applicant. That is not the same as the Applicant undertaking to meet the Councils’ full costs in dealing with the Project whatever they may be. The contributions need to be fair and proportionate in this context and the Applicant is satisfied that is the case as regards the level of contributions it is willing to make.

B.3 Hearing Action Point 9: S106 Agreements - Benchmarking evidence for officer posts

B.3.1 Action Point 9 requests the Applicant “*to provide Thurrock Council and the London Borough of Havering with their information in respect of any benchmarking for salaries and on-costs for officer posts to be funded through*

S106 Agreements. Note: this information should not be submitted into the Examination, but solely shared with the relevant local planning authorities”.

- B.3.2 The London Borough of Havering and Thurrock Council have contested the annual salary rates applied by the Applicant with respect to the Network Management Officer role. Thurrock Council requested (at ISH12) benchmarking evidence carried out by the Applicant specific to this role.
- B.3.3 The Applicant confirms that s106 benchmarking evidence for the Network Management Officer was provided to the London Borough of Havering on 27 November 2023 (meeting) and Thurrock Council on 27 November 2023 (email). A meeting between the Applicant and London Borough of Havering took place on the 29 November 2023 to discuss the Network Management Offer role annual salary.
- B.3.4 On 15 November 2023 (meeting), Thurrock Council requested information relating to officer contributions on-costs associated with the Applicant’s offer dated 17 November 2023. The Applicant confirms that the requested on-costs for officer posts were provided to Thurrock Council on 27 November 2023 (email).
- B.3.5 On 21 November (email), the London Borough of Havering requested information relating to officer contributions on-costs associated with the Applicant’s offer dated 17 November 2023. The Applicant confirms that the requested on-costs for officer posts were provided to the London Borough of Havering on 23 November 2023 (email).

B.4 Hearing Action Point 10: S106 Agreements – Index linking of severance packages

- B.4.1 Action Point 10 requests the Applicant “*to provide an update in respect of including an index link mechanism in the relevant S106 Agreements for the severance packages of the funded posts*”.
- B.4.2 The Applicant confirms that the severance contributions (in the relevant planning obligations) are now index linked.

B.5 Hearing Action Point 11: S106 Agreements – funded posts for Local Authorities

- B.5.1 Action Point 11 requests the Applicant to “*provide an update on the scope/number of funded posts at individual Local Authorities. Please include details on the mechanism for the funding of a work package/post that would not equate to a full-time position and/or where there is uncertainty as to the officer time likely to be required*”.

- B.5.2 Kent County Council has 5no. number funded posts. 2no. are funded as full-time roles and 3no. are funded at a pro rata rate.
- B.5.3 Gravesham Borough Council has 4no. funded posts. 2no. are funded as full-time roles and 2no. are funded at a pro rata rate.
- B.5.4 Thurrock Council has 6no. funded posts. 4no are funded as full-time roles and 2no. are funded at a pro rata rate.
- B.5.5 London Borough of Havering has 8no. funded posts. None is funded as a full-time role.
- B.5.6 Essex County Council has 5no. funded posts. None is funded as a full-time role.
- B.5.7 Brentwood Borough Council has 4no. funded posts. None is funded as full-time role.
- B.5.8 The Applicant has sought to make a fair and proportionate contribution to the councils based on work arising from the provisions of the DCO and the anticipated scale to the individual councils. The agreements will allow the councils to ask for more funds, but it is not the Applicant's position that it should meet in full whatever costs are incurred by the councils in dealing with all aspects of the Project. The Applicant would emphasise that it is not normal or typical for an SRN to provide *any* funding.

B.6 Hearing Action Point 12: Shorne Woods Side Agreement (Revenue Compensation)

- B.6.1 Action Point 12 requests the Applicant "*to submit [revenue compensation agreement] asap to Kent County Council. Subsequently [for Deadline 9] the Applicant and Kent County Council should provide confirmation whether this side agreement has been agreed by the parties. Any matters that the parties rely upon in terms securing a relevant important consideration should be provided in outline form*".
- B.6.2 A draft agreement prepared by the Applicant is being discussed with Kent County Council. The Applicant is hopeful that it will shortly be settled whereupon the Examining Authority can be informed in accordance with this action point.

B.7 Hearing Action Point 13: Integrated Care Boards

- B.7.1 Action Point 13 requests the Applicant "*to provide an update on the Applicant's discussions with the Integrated Care Boards and whether those discussions have specifically covered the need for the provision of additional health care services for the existing local community in addition to additional health provision for the workers associated with the development*".

- B.7.2** Engagement with the Integrated Care Boards (ICBs) prior to submission of the DCO included the following:
- a. The NHS Mid Essex Clinical Commissioning Group (since replaced by the Mid and South Essex ICB) was an attendee of the Community Impacts and Public Health Advisory Group (CIPHAG) meetings held by the Applicant on a regular basis to discuss potential areas of issue relating to health and wellbeing.
 - b. Information about the Project was presented to the Dartford, Gravesham & Swanley ICB in August 2022. The meeting included discussion of potential areas of concern/impact and a description of Project interventions to overcome these, together with commitments relating to Project healthcare provision.
- B.7.3** Engagement with the ICBs following submission of the DCO has continued in the period up to, and during, Examination. Statements of Common Ground (SoCGs) have been prepared with the NHS Kent and Medway ICB, the NHS Mid and South Essex ICB, and the NHS North East London ICB.
- B.7.4** Discussions with the ICBs have primarily focused on concerns about the provision of healthcare services for the construction workforce and the role that this would play in terms of not adding to existing healthcare pressures for local residents.
- B.7.5** Recent engagement activity with individual ICBs is summarised in Table B.1.

Table B.1 Recent engagement with ICBs

Integrated Care Board	Date	Overview of engagement activities
NHS Kent and Medway ICB	08 June 2023 – 24 July 2023	Email correspondence to discuss the possibility of drafting an SoCG with the ICB.
	08 September 2023	Introductory meeting with the ICB.
	13 September 2023	Meeting to discuss SoCG matters and explain the DCO deadline process
	29 September 2023	Catch-up on the issues raised in the SoCG and the Applicant’s response to the points raised.
	16 November 2023	Meeting with ICB, alongside North East London ICB with the Project’s technical lead to run through Health and Equalities Impact Assessment.
	17 November 2023	Meeting with ICB to discuss final submission of SoCG.

Integrated Care Board	Date	Overview of engagement activities
NHS Mid and South Essex ICB	08 June 2023 – 24 July 2023	Email correspondence to discuss the possibility of drafting an SoCG with the ICB.
	09 August 2023	Meeting with the ICB to discuss the DCO Application material, the Examination process and the SoCG.
	20 September 2023	Meeting with the ICB to discuss authoring of the SoCG.
	26 September 2023	Catch-up call to discuss progress with the SoCG and to discuss the ICB’s request for an update to REAC commitment PH002.
	24 November 2023	Catch-up call to update on progress relating to REAC commitment PH002 and remaining matters outstanding.
NHS North East London ICB	06 June 2023	Meeting to discuss the Rule 6 Letter and timings for the DCO process, including Examination, and how NHS North East London ICB can take part.
	03 July 2023	Meeting to finalise the draft SoCG for Examination Deadline 1.
	20 September 2023	Joint meeting with North East London ICB to discuss the SoCG.
	27 September 2023	Meeting with North East London ICB to discuss progress with the SoCG.
	25 October 2023	Meeting to discuss the Applicant’s response to SoCG items and arrange meeting to discuss traffic flows and air quality concerns.
	16 November 2023	Meeting to discuss air quality and traffic issues.

B.7.6 In response to concerns raised by the ICBs, the Applicant has updated Register of Actions and Commitments (REAC) commitment PH002 [**Document Reference 6.3 ES Appendix 2.2 (8)**] to include a commitment to engage with and have regard for the views of the ICBs in relation to the medical and occupational healthcare services to meet the needs of the construction workforce, and to share information relating to uptake of services by the construction workforce and relevant incident data with ICBs on a six-monthly basis. The Applicant is hopeful that this will resolve the majority of the ICBs’ concerns in their SoCGs to be submitted at Deadline 9.

B.8 Hearing Action Point 15: SACR

B.8.1 Action Point 15 requests the Applicant “to provide an update on potential alterations to the SACR [REP7-152]. To include:

- *Potential adjustments/clarification to 4th (currently unidentified) voting person/organisation in Part 3, Paragraph 3.2.1(d).*
- *Potential increase of individual project funding from £10,000 – £20,000.*
- *Potential increase to the current 12 month time limit for the completion of a funded project.*
- *Reconsideration of the current lack of index linking for the SACR funding”.*

B.8.2 The Applicant has accepted the request from Gravesham Borough Council to amend Part 3, paragraph 3.2.1(d) of the Stakeholder Actions and Commitments Register (SAC-R) [[REP7-152](#)] and has revised the text accordingly. The fourth representative from the local community will represent Gravesham.

B.8.3 The Applicant has considered Thurrock Council’s individual project funding request and revised Part 3, paragraph 3.5 of the SAC-R. The SAC-R now provides for awards to be made, exceptionally, up to £25,000; however, awards over £10,000 must be approved by National Highways.

B.8.4 The Applicant has revised Part 3, paragraph 3.4.6 of the SAC-R to increase the time limit for the completion of a funded project from 12 months to 24 months, as per the request from Thurrock Council.

B.8.5 The Applicant has accepted the Examining Authority’s request to consider index linking and has amended Part 3, paragraph 1.1 of the SAC-R to provide for the Community Fund, First Instalment, and the Annual Instalments to be index linked to the Consumer Price Index.

B.8.6 The revised SAC-R has been submitted at Deadline 8 [**Document Reference 7.21 (6)**].

B.9 Hearing Action Point 16: Community Fund “Pilot Scheme” Detail

B.9.1 Action Point 16 requests the Applicant to provide “*information in relation to National Highways’ current Community Fund “Pilot Scheme” to be provided in writing, for the purpose of evidencing the type of projects that could receive funding through the LTC Community Fund*”.

B.9.2 Between January and April 2023, National Highways ran a pilot of the Community Fund with Essex Community Foundation and Kent Community Foundation. £250,000 was awarded to local charities, not-for-profit community groups and schools. They could apply for grants up to £10,000, and 146 applications were received in total.

- B.9.3 To be successful, applicants needed to show how their project would deliver against one or more of the outcomes listed below. These were derived the National Highways' designated funds criteria, from which the funding for the pilot was secured;
- a. Improve the health and wellbeing of local communities
 - b. Improving signage and/or way-markings to increase accessibility for walkers, cyclists and horse-riders
 - c. Help communities to connect with their heritage
 - d. Increase the use of technology to help local communities better understand the LTC proposals and inspire future careers in construction
 - e. Support local priority groups to secure permanent employment in the wider LTC potential supply chain
- B.9.4 £85,000 was distributed by Kent Community Foundation. Forty applications were received and 15 were successful, including five in Medway. The average award value was £5,666.
- B.9.5 £165,000 was distributed by Essex Community Foundation. One hundred and six applications were received and 40 were successful, including six in Havering. The average award value was £4,125.
- B.9.6 A breakdown of all grants awarded can be found in Appendix A.

Appendix A – Community Fund Breakdown

Summary

LTC Community Fund - March 2023

Essex:	£165,000 - funding awarded (40 awards)
	£899,216 - total applications (106 applications)
Kent:	£84,956 - funding awarded (15 awards)
	£341,562 - total applications (40 applications)

Essex and Kent award total: £249,956

Essex and Kent application total: £1,242,778

LTC Community Fund - Awards (March 2023)
Essex & Kent Community Foundations

Community Foundation	CF Ref	Organisation	Summary	Ward(s)	Local Authority	Objective/Theme(s)	Award amount
Kent	OGA404276	Bread of Life Ltd	Purchase of a pergola sun shade to allow users of the community micro-bakery in Strood (Medway) to make use of outdoor meeting space, reducing isolation and improving health and well-being.	Strood	Medway	Improve the health and wellbeing of local communities	£6,750
Kent	OGA404828	Friends of Broomhill	Providing access and improvements to paths at the Old Orchard in Strood, a public nine acre extension of Broomhill Park, for less able-bodied and disabled people, increasing physical activity and improving health and well-being.	Strood	Medway	Encourage physical activity and increase use of local green spaces Improve the health and wellbeing of local communities	£8,750
Kent	OGA407090	Medway Sport (Medway Council)	Facility improvements of Strood Sports Centre, including the purchase of a new cricket net, to enable delivery of 18 weeks of free community cricket sessions to targeted groups, improving physical and mental health.	Strood	Medway	Encourage physical activity Improve the health and wellbeing of local communities	£8,000
Kent	OGA406868	Oasis Domestic Abuse Service Ltd	Purchase of equipment, including laptops and phones, to enable peer mentors to run an employability programme 'Blossom' to support those in the Medway community affected by domestic abuse to rebuild their lives and re-enter the workplace.	Medway wards	Medway	Improve the health and wellbeing of local communities Support local communities to secure permanent employment in the wider Lower Thames Crossing potential supply chain	£5,661
Kent	OGA403253	Thames And Medway Canal Association	Purchase of a welfare cabin to be used as a central hub for Thames and Medway Canal Association, to promote and improve the access and quality of the areas around the canals, encouraging physical activity and improving health and well-being for the local community in Medway.	Medway wards	Medway	Encourage physical activity Improve the health and wellbeing of local communities Improving signage and/or way markings to increase accessibility for walkers and cyclists Help communities connect with their heritage	£9,000

Annex C Post-hearing submission on Agenda Item 4 Project Delivery and Control Documents

C.1 Introduction

C.1.1 This section provides the post-hearing submissions and hearing actions for Agenda Items 4(a) to 4(m), from ISH12 [[EV-085](#)] on 23 November and 28 November 2023 for the Project.

C.2 Hearing Action Point 17: Mitigation Route Map

C.2.1 Action Point 17 requests the “*Applicant to confirm that the Mitigation Route Map document would be a Certified Document. In addition, consider, and then confirm, what alterations/updates would assist in providing clarity as to which control document is relevant to each issue/topic. This should give consideration to the ease of use for a user who may not be familiar with the development/DCO process. In addition, consider and provide commentary, whether a further iteration of this document (post consent) should be provided to add additional detail*”.

C.2.2 The Applicant can confirm that the Mitigation Route Map (as submitted at Deadline 4 [[REP4-203](#)]) will be submitted as a certified document at Deadline 9.

C.2.3 Chapter 2 of the Mitigation Route Map gives an overview of the individual control plan documents that comprise the overall control plan framework. Chapter 3 provides an audit trail to show how the mitigation measures relied on in the ES have been incorporated within the control plan documents. This is presented separately for each environmental topic reported on in the ES. This enables a user seeking to understand how mitigation in relation to climate, for example, is secured can refer to Table 3.2: Climate of the Mitigation Route Map, and see how the various mitigation measures have been provided for in the REAC or Carbon and Energy Management Plan or as Design Principles, for example.

C.2.4 The Applicant is keen to avoid possible confusion caused by duplicating the commitment details within the control documents referenced in the Mitigation Route Map and so does not intend to update the Mitigation Route Map to incorporate this detail which is already provided in documents for certification.

C.2.5 The Applicant regards this document as one intended to help the Examining Authority and Interested Parties during the Examination to understand the approach taken in developing the control plan and the mechanisms by which commitments in respect of environmental mitigation are secured. It is not intended necessarily to form the basis for a ‘live’ document to reflect future changes in detail. That will not detract from the security provided to the

commitments detailed in the source control documents set out in Table 2.1 of the Mitigation Route Map.

C.3 Hearing Action Point 18: Register of Environmental Actions and Commitments (REAC)

- C.3.1 Action Point 18 requests the “*Applicant to consider whether the REAC could/should be provided as a standalone document*”.
- C.3.2 Following discussion in ISH12, the Applicant has considered whether it would be appropriate to separate the REAC from its current location in Chapter 7 of the Code of Construction Practice [REP7-122] and present it as a standalone document to be listed in Schedule 16 of the dDCO and certified in its own right in accordance with article 62 of the dDCO.
- C.3.3 The reasons for such a change mentioned in ISH12 would be to improve visibility of the REAC, for example to make it easier to find in the Examination Library, and because it contains matters relating to operation of the Project in addition to matters related to its construction.
- C.3.4 The approach currently adopted by the Applicant is consistent with that set out in the relevant standard, DMRB LA 120 Environmental Management Plans (Highways England, 2020).
- C.3.5 DMRB LA 120 requires that the Environmental Management Plan (EMP) for a project shall set out the control of environmental effects through three stages as set out in Table C.1.

Table C.1 Stages of the EMP

Project stage	EMP iteration
Design	First iteration of EMP produced during the design stage.
Construction	Second iteration of EMP refined during the construction stage for the consented project, in advance of construction.
End of Construction	Third iteration of EMP building on the construction EMP refined at the end of the construction stage to support future management and operation.

- C.3.6 DMRB LA 120 states that the EMP shall include a register of environmental actions and commitments.
- C.3.7 The Applicant sees no advantage in departing from this standard procedure for the Project.
- C.3.8 Nevertheless, mindful of the importance of visibility and the discussion at ISH12, the Applicant will rename the CoCP document to make it clear that it

contains the REAC and to facilitate searches for the REAC within an electronic library.

- C.3.9 The current full title of the document is 6.3 Environmental Statement Appendices Appendix 2.2 – Code of Construction Practice, First Iteration of Environmental Management Plan. This has been amended at Deadline 8 to 6.3 Environmental Statement Appendices Appendix 2.2 – Code of Construction Practice including Register of Environmental Actions and Commitments (REAC), First Iteration of Environmental Management Plan [**Document Reference 6.3 ES Appendix 2.2 (8)**].

C.4 Hearing Action Point 19: Preliminary Works and Environmental Management Plan (EMP) Iterations

- C.4.1 Action Point 19 requests the Applicant to “*provide clarity on what constitutes preliminary works and what works are covered in each EMP iteration. In responding, please confirm what works relate to the provision of construction compounds at each stage and indicate how this is secured in the dDCO and related control documents*”.
- C.4.2 Preliminary works are those that would be undertaken between the DCO coming into effect and commencement of construction as defined by the draft DCO [[REP7-090](#)].
- C.4.3 They have been identified as works that would have negligible or relatively minor environmental impacts, that may be carried out early in the construction programme.
- C.4.4 Preliminary works are defined for these purposes in Paragraph 1 of Schedule 2 to the draft DCO:

“*Preliminary works*” means operations consisting of archaeological investigations and pre-construction ecological mitigation (including in connection with those investigations or mitigation vegetation clearance), environmental surveys and monitoring, investigations for the purpose of assessing and monitoring ground conditions and levels, erection of any temporary means of enclosure, receipt and erection of construction plant and equipment for advanced compound areas, diversion and laying of underground apparatus (except any excluded utilities works) for advanced compound areas, accesses for advanced compound areas (and vegetation clearance in connection with those accesses), and the temporary display of site notices or information”
- C.4.5 The only preliminary works that can be undertaken, and their locations, are listed in Table 1.1 of the Preliminary Works EMP [[REP6-042](#)]. With regard to works associated with compounds, the intent behind the drafting is to provide

for some preparatory works at selected advance compounds to allow the Contractors to take possession of land, erect fencing to secure the site and have equipment delivered ready to start construction of the compounds. The specific activities identified in Table 1.1 relating to compounds set out in Table C.2.

Table C.2 Preliminary works relating to construction compounds

Preliminary work	Location
Erection of temporary means of enclosure	Sitewide
Receipt and erection of plant and equipment	Advance compound areas at A2 compound, southern tunnel entrance compound, northern tunnel entrance compound, Brentwood Road compound, Stifford Clays Road compound East, M25 compound
Diversion and laying of underground apparatus (except for excluded utilities work)	Services to compounds A2 compound, southern tunnel entrance compound, northern tunnel entrance compound, Brentwood Road compound, Stifford Clays Road compound East, M25 compound
Vegetation clearance and construction of accesses for advanced compound areas	Advance compound areas at A2 Compound, southern tunnel entrance compound, northern tunnel entrance compound, Brentwood Road Compound, Stifford Clays Road Compound East, M25 Compound
Temporary display of site notices or information	Site-wide

C.4.6 These activities would be subject to the controls set out under the Preliminary Works EMP secured under Requirement 4(1) of the dDCO.

C.4.7 All other works to develop works compounds would be subject to an EMP (Second Iteration) secured under Requirement 4(2) of the dDCO.

C.5 Hearing Action Point 20: EMP and the REAC

C.5.1 Action Point 20 requests the Applicant to “*provide commentary/justification for the use of the wording “reflect” instead of other wording such as “substantially in accordance with” in requirement 4 of the dDCO in relation to the REAC and EMP (2nd iteration). In addition, please provide examples where similar wording has been used in made DCOs*”.

C.5.2 The Applicant considers that “reflect” is the appropriate drafting to use in the context that the REAC contains location, or impact-specific, measures. In those circumstances, it is appropriate for the drafting to ensure that relevant measures are incorporated into the EMP (Second Iteration). The Applicant does not consider there is any lesser security provided by using the word “reflect”, and would emphasise that the EMP (Second Iteration) would be the subject of

consultation secured under Requirement 4(2) of the dDCO and would be subject to the approval of the Secretary of State. If Interested Parties considered that measures should be included, this would be considered by both the Applicant and the Secretary of State pursuant to paragraph 22 of Schedule 2 of the dDCO.

C.5.3 Leaving aside the Project-specific justification provided above, the Applicant notes that the text (“reflecting the mitigation measures in the REAC”) is heavily precedented, and appears in the following made DCOs:

- a. The A19/A184 Testo's Junction Alteration Development Consent Order 2018
- b. The A19 Downhill Lane Junction Development Consent Order 2020
- c. The A585 Windy Harbour to Skipool Highway Development Consent Order 2020
- d. The M42 Junction 6 Development Consent Order 2020
- e. The A63 (Castle Street Improvement, Hull) Development Consent Order 2020
- f. The M25 Junction 10/A3 Wisley Interchange Development Consent Order 2022
- g. The A57 Link Roads Development Consent Order 2022
- h. The A47/A11 Thickthorn Junction Development Consent Order 2022
- i. The A47 Blofield to North Burlingham Development Consent Order 2022
- j. The A47 North Tuddenham to Easton Development Consent Order 2022
- k. The M54 to M6 Link Road Development Consent Order 2022
- l. The A47 Wansford to Sutton Development Consent Order 2023

C.5.4 The suggestion that the drafting is therefore in-principle objectionable, or that it does not appropriately secure the REAC, should therefore be dismissed as the consistent practice by the Secretary of State shows.

C.6 Hearing Action Point 21: DCO/ Control Document Enforcement Powers

C.6.1 Action Point 21 requests the Applicant to “*Provide clarity on responsibilities (in particular in relation to enforcement matters) between the different local authority departments (such as Planning Vs Highways) and from which legislative provisions those enforcement powers are drawn*”.

- C.6.2 The Applicant has considered the comments made regarding enforcement in addressing this action. The Applicant understands the request to be to provide clarity on the responsibilities between different highway authorities, specifically in relation to enforcement, and what enforcement provisions are at their disposal.
- C.6.3 The Applicant would note that the dDCO explicitly highlights where a matter involves a local planning authority, or a local highway authority (or a street authority or traffic authority). This, in accordance with the Action Point, provides the delineation “*between the different local authority departments (such as Planning Vs Highways)*” which would be involved in the relevant provisions. This is presented in Table C.3.

Table C.3 Involvement of local authority departments

Provision of the dDCO	Local Planning Authority	Local Highway Authority (or street or traffic authority)
Article 6(3)	Consulted	Consulted
Article 10 and Protective Provisions for Local Highway Authorities	N/A	Highways handed back to their “reasonable satisfaction”
Article 12(7)	N/A	Consent required
Article 17(2)	N/A	Consent required
Article 21(4)	N/A	Consent required
Article 40(1)	Consulted	N/A
Article 61	Measure dependent	Measure dependent
Article 62	Consulted	N/A
Requirements 3, 4, 5, 6, 8, 10, 11, 12, 14	Consulted	Consulted
Requirements 7, 9	Consulted	N/A
Requirement 13	Consent required	N/A
Requirement 18	N/A	Consulted

- C.6.4 Different Local Planning Authorities will have differing internal structures, but the dDCO uses the defined statutory terms for each of the authorities to ensure that each relevant authority is properly referred to.
- C.6.5 Enforcement, however, is a matter which is distinct. The Action Point requests that the Applicant provide “*from which legislative provisions ... enforcement powers are drawn*”. The Applicant notes that Part 8 of the Planning Act 2008 sets out the statutory enforcement regime for granted DCOs, and provides the following:

- a. It is an offence to carry out development which requires a DCO without development consent (as per section 160) and it is also an offence to breach the terms of a DCO (as per section 161).
- b. The “relevant local planning authority” is provided powers under sections 163 and 164 to enter “any land” if they have reasonable grounds for suspecting an offence under sections 160 or 161 are being committed.
- c. The “relevant local planning authority” is provided powers under sections 167 and 168 to require information if it appears that an offence under sections 160 or 161 has been committed “on or in respect of the land”.
- d. The “relevant local planning authority” is empowered to serve notices which require works to be carried out, or execute such works themselves, under sections 169 and 170, or apply to a court for an injunction in connection with a prohibited activity under section 171.

C.6.6 The “relevant local planning authority” is defined under section 173 of the Planning Act 2008 as follows:

C.6.7 *“(2) The relevant local planning authority in relation to any land is the local planning authority for the area in which the land is situated. This is subject to subsections (3) to (5).*

C.6.8 *(3) Subsections (4) and (5) apply if the land is in an area for which there is both a district planning authority and a county planning authority.*

C.6.9 *[...]*

C.6.10 *(5) In any other case, the relevant local planning authority is the district planning authority.”*

C.6.11 In effect, this means that wherever the term ‘relevant local planning authority’ is used, it relates to land within a local authority’s jurisdiction and, where there is both a county authority and a district planning authority, it means only the district planning authority. The Applicant does not propose to amend or otherwise alter the effect of the enforcement regime which Parliament deemed appropriate in connection with matters secured under a DCO.

C.6.12 In practical terms, therefore, notwithstanding that the dDCO provides consultation or approval roles to either local planning authorities or local highway authorities (or, as the case may be, traffic authorities as defined in the Road Traffic Regulation Act 1984 or street authorities as defined in the New Roads and Street Works Act 1991), the enforcement powers under the Planning Act 2008 (described above) in connection with the DCO lay with the “relevant planning authority”.

- C.6.13 The Applicant would note that it is important the relevant matters which would be enforced are those obligations or requirements imposed under the DCO. For example, in the context of Requirements 4(2), 5, 10, the Applicant is required to implement the relevant plan approved by the Secretary of State. It will therefore be clear what the specific obligations/requirements on the Applicant are, and which matters are capable of being enforced against. The local planning authority will also have enforcement powers where other obligations exist (e.g., the requirement to deliver the works inside the limits of deviation secured under article 6, or to implement the measures secured under the SAC-R under article 61).
- C.6.14 The Applicant would note that, following discussions with Thurrock Council, it has carried over conditions from the existing travellers' site to the replacement travellers' site. For these specific conditions, the enforcement powers which will be available will be those under the Town and Country Planning Act 1990 (see further QD55 to QD58 of the Applicant's response to the ExA's commentary on the dDCO [**Document Reference 9.194**]). However, the requirement to implement the layout and details under Requirement 13(1) will be subject to the Planning Act 2008 enforcement regime noted above.

C.7 Hearing Action Point 22: Lighting and shipping navigation

- C.7.1 Action Point 22 requests the Applicant to *“discuss with the PLA, the manner in which lighting, and its potential associated impacts on shipping/navigation on the River Thames, would be secured. This should include the extent to which the PLA would be formally consulted and the interaction between matters secured in the Code of Construction Practice and the Protective Provisions proposed for the PLA. Applicant to provide an update and the PLA to provide any further comments”*.
- C.7.2 The Applicant has had extensive discussions with the PLA on this matter to date. The PLA have stated that because the River Safety Lighting Management Plan (RSLMP) is required *“insofar as that lighting is reasonably expected to adversely affect any vessels using the River Thames”*, this means that the PLA is not consulted and that the Applicant could avoid the need for an RSMLP.
- C.7.3 In the first instance, it should be noted that the Applicant's Contractors must act reasonably in considering whether an RSLMP is required and contends that its Contractors will be able to make such a determination. The Applicant would further reiterate that, prior to EMP2 being approved, the PLA will be consulted and will be able to raise representations on the scope of the management of lighting.

- C.7.4 In addition, the Code of Construction Practice [\[REP7-122\]](#) requires “*RSLMP must be the subject of engagement with Port of London Authority, and Thurrock Council. The Contractor must have due regard to representations made by the Port of London Authority and Thurrock Council*”. The CoCP also confirms that:
- C.7.5 “... *the contractors will consider lighting of any such development alongside the bank of the River Thames in accordance with “A Guide to Good Practice on Port Marine Operations, Prepared in conjunction with the Port Marine Safety Code 2018 (Department for Transport, 2018)” so as to ensure that the night vision of mariners is not impeded, or that existing navigation lights, either ashore, on the foreshore or onboard vessels, are not masked or made less obvious. As is the case for the Project, the RSLMP must also confirm that lighting will comply with the Institute of Lighting Professionals Guidance Notes for the Reduction of Obtrusive Light GN01/20 (2020) and the provisions of BS EN 12464 2014 Light and lighting of workplaces – Part 2- outdoor workplaces, where applicable.*”
- C.7.6 If the pre-EMP2 formal consultation under Requirement 4(2) of the dDCO, further consultation secured under the terms of the CoCP, requirements to consider the standards and guidance noted above, and the requirements relating to the RSLMP mentioned above are not considered sufficient, the Applicant further notes that paragraph 112 of the PLA’s Protective Provisions [\[REP7-090\]](#) also require that “*the undertaker must comply with any reasonable directions issued from time to time by the Harbour Master with regard to the lighting of— (a) a specified work; or (b) the carrying out of a specified function or the use of apparatus for the purposes of such a function, or the screening of such lighting, so as to ensure that it is not a hazard to navigation on the river Thames*”.
- C.7.7 In addition, paragraph 98 of the PLA’s Protective Provisions provide for an approval for “specified works”, and this is broadly defined as a work which “*may affect the river Thames or any function of the PLA*”. Accordingly, if the work was going to affect the river Thames or the function of the PLA – whether related to lighting or otherwise – paragraph 98(1) provides yet further control.
- C.7.8 The Applicant has not identified any adverse significant effect arising from lighting, and the Preliminary Navigational Risk Assessment [\[REP5-058\]](#) has not identified an issue in this context, and in these circumstances, the above controls are considered proportionate. Appropriate protections are therefore considered to be in place and no further amendments are considered necessary.

C.8 Part 2 Hearing Action Point 4: Draft Archaeological Mitigation Strategy and Outline Written Scheme of Investigation (AMS-oWSI)

- C.8.1 Part 2 Action Point 4 requests the Applicant to provide an “*update on matters in discussion with the London Borough of Havering and Thurrock Council in respect of the AMS-oWSI*”.
- C.8.2 The Applicant has completed discussions on the location of mitigation sites and proposed mitigation types. These were finalised in two Teams meetings on 27 November 2023 – one with Essex Place Services who provide archaeological advice to Thurrock Council, and one with the Greater London Archaeological Advisory Service (GLAAS) who advise the London Borough of Havering – and a subsequent exchange of emails. The completed tables showing the mitigation sites and types appear as Table B.3 and Table B.4 of the dAMS-OWSI [REP7-128].
- C.8.3 GLAAS had been in longer discussions with the Applicant over Palaeolithic archaeology with particular reference to the Ockendon Channel. An additional REAC commitment CH009 had been presented at Deadline 7 [REP7-122], and an Outline Palaeolithic Written Scheme of Investigation is presented as Annex C in the dAMS-OWSI submitted at Deadline 8 [Document Reference 6.9 (5)].

C.9 Part 2 Hearing Action Point 6: REAC – GS021

- C.9.1 Part 2 Action Point 4 requests the Applicant to “*consider whether commitment GS021 in the REAC should be extended to include preliminary works effect*”.
- C.9.2 Commitment GS021 [REP7-122] does not need to be included in the Preliminary Works REAC table within the Preliminary Works EMP [REP6-042]. Preliminary works are defined for these purposes in Paragraph 1 of Schedule 2 to the draft DCO [REP7-090]. The only preliminary works that can be undertaken, and their locations, are listed in Table 1.1 of the Preliminary Works EMP. These do not include the works at the North Portal that GS021 would provide mitigation for. The Preliminary Works EMP therefore does not apply. These works would be subject to an EMP2 under Requirement 4(2) of the dDCO for which GS021 is relevant and would apply.

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