

Lower Thames Crossing

9.191 Post-event submissions, including written submission of oral comments, for ISH14

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1 Introduction

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 14 (ISH14) held on 28 November 2023.

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 ISH14 [[EV-088a](#)] by the Examining Authority.

1.1 Welcome, introductions, arrangements for the Hearing

- 1.1.1 National Highways (the Applicant), which is promoting the A122 Lower Thames Crossing (the Project), was represented at Issue Specific Hearing 14 (ISH14) by Mustafa Latif-Aramesh, BDB Pitmans LLP, Partner and Parliamentary Agent (MLA).
- 1.1.2 The following persons were also introduced to the Examining Authority (ExA):
 - a. Dr Tim Wright, Head of Consents, Lower Thames Crossing, (TW)
 - b. Andrew Tait KC, Counsel (AT)
 - c. Barney Forrest, Lower Thames Crossing, Environment Lead (BF)
 - d. Graham Stevenson, Lower Thames Crossing, Transport Planning Lead (GS)
 - e. Mohammed Halli, Lower Thames Crossing, Construction Lead (MH)

2 Purpose of the Issue Specific Hearing

- 2.1.1 MLA noted that by way of update, the Applicant has reached agreement with the Environment Agency (EA) on Article 68 of the dDCO [[REP7-090](#)]. The current form will be superseded by that which is submitted at Deadline 8 to reflect the agreed position between the parties.

3 ExA questions on: Responses to the dDCO Commentary: Matters where guidance is sought

3.1 Item 3a) Discussion of and guidance on dDCO Commentary matters

Item 3(a)(i)

The ExA will provide an opportunity for IPs to seek guidance on dDCO Commentary Matters.

Matters flagged by IPs as being unclear or in dispute may be discussed.

- 3.1.1 MLA confirmed that the Applicant will respond in writing to IP submissions in response that parties' submissions at Deadline 8, where the matters have been addressed already or where the Applicant's position can be seen.
- 3.1.2 In response to comments made by Thurrock Council (TC), London Borough of Havering (LBH) and Gravesham Borough Council (GBC) relating to the limits of deviation and the associated Article 2(10), which is the interpretive provision on materially new and materially different, MLA explained that the Applicant has set out its position on why it believes that this is an appropriate balance, but noted that a new matter has arisen since **[post-hearing note: please see the Explanatory Memorandum [REP7-092] which sets out the full justification for article 2(10).]** MLA explained that the Government recently published a document "Getting Great Britain Building Again" (Department for Levelling Up, Housing & Communities, 2023) and within that document it sets out "*under the status quo, developers are required to apply for additional planning permission if they propose project amendments that have 'materially new or materially different environmental effects'.*" MLA noted that the document continues to state "*to make sure that project changes that will deliver positive impacts for projects, communities, and the environment can be approved more quickly.*" The Applicant's view is that the approach taken positively responds to that. The Applicant has previously set out its position on the discharging authority, the use of "substantially in accordance with", and the discharge of EMP3.
- 3.1.3 In relation to the register of requirements being online or in person, the Applicant acknowledged the ExA's confirmation that it expects that there will be a digital version of the document available, and that a physical copy would be available in closer location than Guilford in addition.
- 3.1.4 **Post-hearing note:** the Applicant has amended Article 62 as well as the Explanatory Note at the end of the dDCO **[Document Reference 3.1[10]]** to confirm this. Refer to Annex A.2 of this document for more information.
- 3.1.5 In relation to the existing paragraph 23, MLA noted that there had been suggestions by IPs that the Stakeholder Actions and Commitments Register (SACR) **[REP7-152]** should also be brought within the scope of paragraph 23 of the register of requirements. MLA explained that under Article 61 of the dDCO **[REP7-090]**, the SACR already is within this scope, noting that the final subparagraph states that an electronic version should be provided. MLA noted

that the Applicant had previously provided an example of the register of requirements that the Applicant publishes, noting that often in column 2 of that register, there are links to relevant documents already. In relation to physical locations where application documents could be provided, MLA noted that the Applicant would consider this, highlighting the sheer volume of documents that this would involve.

- 3.1.6 MLA added that on the Port of London Authority's (PLA's) comment regarding dredging, the Applicant had a discussion with the PLA and Port of Tilbury London Limited (PoTLL) to address this issue, which the Applicant is confident it can resolve through amends to the Protective Provisions in the dDCO [[REP7-090](#)], as suggested by the PLA.
- 3.1.7 **Post-hearing note:** The Applicant does not consider there to be any dredging associated with the Project, but acknowledges that the definition of dredging in the Port of London Authority Act 1968 is broad and could cover the excavation associated with the outfall works in the river Thames. The Applicant notes that activity is authorised under the dDCO (including Schedule 1 and the Deemed Marine License). The Applicant has amended the definition of specified works in the PLA's Protective Provisions to make clear that excavation in connection with the outfall works are covered by the Protective Provisions.
- 3.1.8 In response to PoTLL's submissions, the Applicant agrees that progress is being made between the Applicant and PoTLL. The Applicant's position in relation to the two issues outstanding, namely the indemnity and the consent provisions, is set out in the Applicant's responses to Interested Parties' comments on the dDCO at Deadline 6 [[REP7-190](#)], where the Applicant makes clear that regarding precedents and the issue of indemnity, the precedents are not uniformly in one direction.
- 3.1.9 **Post-written submissions:** These are contained within Annex A and include:
- a. Annex A.2 Hearing Action Point 1: Register of Requirements

4 ExA questions on: Issues from the dDCO Commentary: Matters of particular concern

4.1 Item 4a) Definition of ‘Commence’ and ‘Begin’

Item 4(a)(i)

The definition of the term ‘commence’ excludes ‘preliminary works’, whereas submissions on the term ‘begin’ have suggested that intentionally it does not, but yet this division does not appear to be clear on the face of the dDCO as drafted.

Clarity about the effect of these terms is important in terms of understanding the inception of works for the purposes of the Control Documents (CDs).

4.1.1 Are any further drafting refinements proposed by the Applicant?

MLA noted that the Applicant’s position is set out in response to the ExA’s action point from CAH3 [\[REP5-089\]](#). The Applicant considers that it has reached an appropriate balance on the definitions, noting that there is a distinction between what “commence” is trying to control and what “begin” is regulating. The use of “commence” is to ensure that the works are subject to the relevant controls in Schedule 2 of the dDCO [\[REP7-090\]](#), and “begin” is preserving the position under sections 154 and 155 of the Planning Act 2008 on when development must start. The Applicant has explained in the Applicant’s responses to IP’s comments on the dDCO at Deadline 4 [\[REP5-089\]](#), that the position reflects the requirements in the Planning Act 2008 in terms of material operation being sufficient to start the development. In relation to the scope of the preliminary works, MLA noted that the definition in the dDCO [\[REP7-090\]](#) does not cover all activities associated with advanced compound areas; it is limited. MLA noted that Annex C of the Code of Construction Practice [\[REP6-042\]](#) sets out the activities specifically covered by the preliminary works Environmental Management Plan (EMP). In response to the PLA, MLA provided the A248 Black Cat to Caxton Gibbet DCO (Planning Inspectorate, 2022) as a precedent, which was made following the High Court judgment in the Swansea Tidal Lagoon case. [Post-hearing note: Thurrock Council noted that the Court of Appeal judgment was given after the A428 decision. The Applicant would merely note that the Court of Appeal affirmed the High Court’s judgment, and for the reasons set out in response to Action Point 1 within Post-event submissions, including written submission of oral comments, for CAH3 [\[REP6-087\]](#), this makes no difference to the Applicant’s position.]

4.2 Item 4b) Time limits

Item 4(b)(i)

The time limits for the commencement/ beginning of the authorised development and the compulsory acquisition of land or rights are different and the basis for and effect of the difference are not clear.

Are any further drafting refinements proposed by the Applicant?

- 4.2.1 MLA noted that in considering the ExA's comments on the draft Order, the Applicant has reconsidered the position on the compulsory acquisition (CA) period start date being the end of the judicial review period. MLA noted that in the Applicant's experience of other DCO promotions and ongoing judicial review, in many cases, National Highways does not commence the development. MLA explained that the judicial review process takes up CA time, thereby pushing back the works period. The Applicant's fundamental justification is to address that problem, which the Applicant has experienced on a number of recent schemes. The Applicant understands the concern around certainty and so the Applicant is therefore proposing to amend Article 27 of the dDCO [[REP7-090](#)] so that it runs from the earlier of the year after the DCO is made or the end of the determination of any judicial review. This provides further certainty but addresses the Applicant's concern regarding CA being delayed.
- 4.2.2 MLA highlighted that the Applicant has given clear precedents for where the CA period is different from the time limit requirement, noting that there are some orders with CA periods which are longer than the time limit, and some where this is shorter. [Post-hearing note: for example, there are clear examples of differing periods, e.g. the compulsory acquisition period in the Thames Tideway Tunnel Order 2014 is 10 years, but the requirement to begin development is five years; and an example of the converse situation where the former period is shorter is the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022 in which the compulsory acquisition period is five years, but the requirement to commence development is seven years.]
- 4.2.3 The Applicant's position therefore, is that the suggestion that this is unprecedented should be rejected by the ExA. MLA reiterated that the time limit is based on sections 154 and 155 of the Planning Act 2008. MLA noted that a material operation should be sufficient to discharge a requirement on expeditiously starting the Project, noting that the CA period has a different rationale, which is the period required to compulsorily acquire land, which in the case of the Project, is necessarily different from other projects given the complexity of the works. MLA provided the example that usually construction periods for a Nationally Significant Infrastructure Project (NSIP) such as those of National Highways, is two to three years, accompanied by a five-year CA period, due to public benefit, as National Highways exercises powers of temporary possession to enter land and carry out works. Once complete, National Highways acquires the as-built design, in effect, reducing the amount of CA required. MLA explained that if the period was altered, the Applicant

would risk having to acquire early, in respect of land which may not be required as part of the detailed design stage. The limits of deviation are appropriate for this stage, but the Applicant operates in a way to minimise land interference further.

4.3 Item 4c) Dispute resolution for DCO processes

Item 4(c)(i)

Procedure for discharge of Requirements (Sch 2 Part 2)

What happens if the SoS refuses a discharge application?

Item 4(c)(ii)

Arbitration

The role of the SoS

The role of other statutory authorities

- 4.3.1 MLA noted that the Applicant set out its position on the discharging authority in full at ISH2. The Applicant's position is set out in Section 6.3 of the Explanatory Memorandum [\[REP7-092\]](#). In relation to the question regarding consent not being provided by the SoS, the Applicant agrees that it would fall back on the Applicant to ensure it could discharge the requirements in order to proceed with the development. The Applicant would not be able to commence the relevant works without the discharge. Regarding independence, the Applicant's position is that it is inappropriate to suggest that the SoS would not act appropriately, independently and with the relevant requirements relating to procedural fairness. MLA noted that the Post-event submissions, including written submission of oral comments, for ISH2 [\[REP1-184\]](#) contains arrangements that have been put in place to ensure independence.
- 4.3.2 In response to PoTLL and the PLA, MLA noted that paragraphs 99 and 100 of Schedule 14 of the dDCO [\[REP7-090\]](#) deals with the depths of the tunnel, which, in the earlier stages of the Examination, was an outstanding issue with the PLA. MLA highlighted that other than subparagraph 6 in paragraph 99, the position is agreed and the Applicant is grateful to the PLA for the comments provided over the course of Examination which seek to secure the future aspirations in the River Thames. MLA noted that the PLA has said the Applicant's ability to go to the SoS substantially weakens the protection that is provided, with the PoTLL supporting this position by stating that the provisions relating to the ability to go to the SoS are without precedent. MLA noted in response that the SoS for Transport is responsible for both highways and ports, so the Applicant's position is that any comment that the SoS is not competent to deal with a matter relating to a highways scheme under the River Thames should be dismissed.
- 4.3.3 In response to PoTLL regarding arbitration, MLA noted that in such cases, it is clear that there is scope for protracted delay. MLA noted that PoTLL's D7 submissions suggest that the chance of the SoS granting consent in these circumstances is extremely limited, which in fact supports that the SoS would

consider the matter very carefully before deciding to allow the works to proceed. In response to PoTLL’s submission regarding precedent, MLA confirmed that it is correct to say that subparagraph 6 of paragraph 99 is not precedented, but nor are any of the other protections in that provision. MLA noted that the Silvertown Tunnel DCO 2018 on which the protective provisions for the PLA are based, contains an agreed depth and provisions which require the production of a report followed by arbitration. In response to the PLA on arbitration, MLA highlighted that in paragraph 99, a five-step process is set out, which is not in the Silvertown Tunnel DCO, so the Applicant’s position is that the totality of protections go above and beyond the precedents, which is why the Applicant has inserted at subparagraph 6, that there is an ability to go to the government department responsible for both ports and highways to ensure an expeditious determination of the relevant dispute. The Applicant’s position is that a number of other arbitration provisions are overly complicated, imposing time limits, which the Applicant does not believe is appropriate, rather the SoS who would be well seized on the matters of dispute would assist with commencement. [Post-hearing note: the Applicant would refer to its response to commencement on the dDCO at Deadline 7, submitted at Deadline 8 **[Document Reference 9.193]** , for further submissions on this issue. The Applicant would highlight in particular that the Secretary of State already does have competence in this area under provisions of the Port of London Authority Act 1968.]

- 4.3.4 In response to PoTLL’s submission on street authorities, MLA referred to paragraph 132 of PoTLL’s protective provisions in the dDCO [[REP7-090](#)], which regulate the exercise of street powers over port land, explaining that it is not correct to state that there is no protection in place.
- 4.3.5 [Post-hearing submission: the Applicant has amended paragraph 99(3) and 99(6) of the draft DCO **[Document Reference 3.1 [10]]** to provide further clarity, notwithstanding it does not agree with PoTLL that the provision as drafted required the undertaker’s – not the Secretary of State’s – consent.]
- 4.3.6 In response to PoTLL, MLA noted that in relation to para 99(6), SoS is missing and confirmed that the Applicant will insert this at Deadline 8. In relation to paragraph 132, the Applicant’s position is that there is appropriate protection in place in respect of exercising street powers. The plan approval powers also extend to specified works and specified functions and MLA noted that this is the subject of live negotiations on the scope of the Protective Provisions.

4.4 Item 4d) Re-provision of Gammon Field (R13)

Item 4(d)(i)

The ExA wishes to discuss the matters that it has identified in the dDCO Commentary with the Applicant and the Local Planning Authority

Clarity on the effects of managing a site consented under the NSIP regime is sought

Item 4(d)(ii)

The ExA has requested a legal view from the Applicant on the effect of PA2008 115 (1) (c) and (4B)

Emerging considerations and views (if any) from the Local Planning Authority will also be explored

- 4.4.1 MLA noted that in relation to conditions and the future operation of the provision, the Applicant's position is that Article 56 of the dDCO [\[REP7-090\]](#) provides that the future planning permissions, which overlap with land within the Order Limits, are to be given effect and are not deemed to be a breach of the Order. The Applicant notes that this matter is agreed with TC. MLA added that while this provision does not reference the replacement travellers' site, it applies to it, and so if a future planning permission was sought, this provision would ensure that the usual Town and Country Planning Act 1990 (TCPA) process would apply.
- 4.4.2 In relation to the issue of conditions, the Applicant's understanding is that TC has previously stated that there are none, but if TC does identify any, the Applicant would consider these and assess whether they are appropriate for accommodation within the terms of the Order. The Applicant's current position is that because of the operation of Article 56 of the dDCO [\[REP7-090\]](#), there is provision for future development through the TCPA, because an amendment to the dDCO in order to secure any changes would not be an appropriate route.
- 4.4.3 MLA noted that there is the separate question relating to enforcement, and as stated by the Applicant at OFH5, there are currently no issues with compliance. The Applicant appreciated the need to deal with the hopefully rare instance where enforcement action is necessary, and in such circumstances, the Applicant would refer to the enforcement powers under the Planning Act 2008, which allow local planning authorities to take an enforcement action where the use is contrary to the term in the DCO.
- 4.4.4 [Post-hearing note: please see responses to QD55 to 58 on the Applicant's response to the ExA's commentary on the dDCO [\[Document Reference 9.194\]](#) which updates the position provided above, and ensures that relevant conditions are carried over, and enforcement can be undertaken under the Town and Country Planning Act 1990.]
- 4.4.5 In response to the ExA's query on the applicability of the Planning Act 2008, MLA acknowledged this and noted that the Applicant is not resisting a potential

change; noted that the Applicant and TC are in discussions on this matter and that it should be possible to find resolution by Deadline 8.

4.4.6

On section 115 and the related housing development provisions, AT noted six points:

- a. The Planning Act 2008 does not define the word “dwellings”. The expression must therefore be given its plain and ordinary meaning, applied to its statutory context.
- b. The plain and ordinary meaning of “dwelling” is a “house, flat or other place of residence” (OED,). The key characteristic of this definition is private domestic residence and thus distinct from hotels, hostels and similar uses which do not have the physical characteristics of private residence.
- c. This ordinary meaning of “dwelling” is consistent with the case law in the context of both the Town and Country Planning Act 1990 and the Planning Act 2008. In *Gravesham Borough Council v Secretary of State for the Environment* (1984) 47 P. & C.R. 142 at 146, it was held that the distinctive characteristic of a dwellinghouse was its ability to “*afford the facilities required for day-to-day private domestic existence.*” In *Innovia Cellophane Ltd v Infrastructure Planning Commission* [2011] EWHC 2833 (Admin) at [27] to [29] it was held that this meaning should apply also to the expression “dwellings” in the Planning Act 2008, where it is used at section 115(2)(b). There is no basis for applying any different meaning in respect of section 115(4B).
- d. It is not appropriate to have recourse to any narrower application of the expression “dwelling-house” where those appear in the Town and Country Planning Act 1990. Thus, in *Rectory Homes Ltd v SSCLG* [2020] EWHC 2098 (Admin) the High Court at [47] (and following) rejected the argument that the expression “dwellings” where it appeared in a policy should be restricted to the definition of “dwelling-houses” where that appears in Class C3 of the Town and Country Planning (Use Classes) Order 1987. The Court went on at [53] to re-state the relevant principle as follows: “***it has become well-established that the terms ‘dwelling’ or ‘dwelling house’ in planning legislation refer to a unit of residential accommodation which provides the facilities needed for day-to-day private domestic existence***”. There is no requirement that the residential unit be a “building”.
- e. Applying this test, it is plain that the proposals for the replacement travellers’ site comprise ‘units of residential accommodation’ and will provide the facilities needed for their day-to-day domestic existence. Each unit has private amenities with the only shared element being the communal recreation area. This is wholly different from the circumstances of the worker accommodation in *Innovia* with its single rooms, with other facilities shared. As observed by the Court of Appeal in *Moore v Secretary*

of State for the Environment [1998] EWCA Civ 235, albeit in a different context, the fact that parking facilities were shared did not mean that the units of accommodation were other than separate dwellings. The Court noted that it is the physical characteristics, not the frequency or regularity of occupation, that is of relevance.

- 4.4.7 The proposal set out in S11.12 of the Design Principles [\[REP7-140\]](#), requiring construction in accordance with the indicative plan, therefore falls squarely within the ambit of section 115(4B)(a).

4.5 Item 4e) Operation and decommissioning of construction compounds

Item 4l(i)

The ExA will seek views on Gravesham BC's draft requirement in relation to worker housing [\[REP6-132\]](#)

- 4.5.1 MLA noted that regarding the Workers Accommodation Report [\[APP-551\]](#), the Applicant notes that nothing has been said by IPs which the Applicant considers fundamentally questions the findings. The Applicant's position is that this is a robust report, noting that Chapter 6 of the report sets out identification of other projects within a 60-minute drive time from the northern and southern tunnel entrance compounds, to stress-test the potential impacts on the local housing market. MLA explained that this has resulted in considering all projects referred to in Table 6.17 of the report happening at the same time as the Project. The Applicant's position therefore is that this is a very robust stress test of the impacts on local housing provision. MLA noted that the results are shown on Tables 6.25 and 6.26 of the report and are not significant. The reason the Applicant has resisted replicating other controls referenced by IPs is because it is not necessary or proportionate to do so in light of the specific impacts that are being reported in the Project. In the context of Gravesham, MLA flagged that the assessment suggests that at the peak of the Project construction, there would be 74 workers in the private rental sector, which is less than 1% of the market. In relation to the measures secured, it is therefore in the specific context of the impacts the Applicant is forecasting and that it has assessed, that necessarily must be taken into account in deciding what is necessary and proportionate for this Project.
- 4.5.2 Secondly, MLA noted that it is not correct to say the only measure secured is the working group under the terms of the Framework Construction Travel Plan [\[REP7-146\]](#) or that the only measure was the one referenced by GBC in encouraging further use of measures where reasonably practicable to do so. In the Framework Construction Travel Plan, there is a list of measures including an accommodation database, an accommodation helpdesk, the group itself, visitor accommodation utilisation measures that the Applicant has secured, collaborative opportunities with other projects being delivered at the same time, as well as further measures. The Applicant acknowledges the concern from local authorities which is why it has suggested these measures, notwithstanding that the Applicant does not find a forecasted significant effect.

- 4.5.3 At Deadline 8, MLA confirmed, there will be an update to the Framework Construction Travel Plan (**Document reference 7.13 [5]**), which currently says formal monitoring secured would be reported monthly and provided in a suitable format for review to the worker accommodation working group, to enable proactive management of interventions. MLA explained that the working group would review the Project's non-local workforce in the private rental sector and visitor accommodation at a local authority scale, alongside a 12-month forward-look. MLA added that if it is anticipated that the Project will exceed the estimates included in the Workers Accommodation Report, the contractor must implement further interventions. MLA explained that the Applicant is adding *...which, if agreed by the workers accommodation working group (WAWG), may include proportionate financial contribution to increase the availability of accommodation supply and/or provide measures to support the resilience of a local authority's statutory housing service where pressure may be increased. These measures would not include direct delivery of new housing or permanent officer posts. Any contribution must be supported by evidence (including agreed "triggers") and be deliverable, proportionate and compliant with Managing Public Money (HM Treasury, 2023), as well as with National Highways' licence (Department for Transport (DfT), 2015) and may only be applied if reasonable interventions provided to manage the workforce n-line with paragraphs 5.4.13 and 5.4.14 of this FCTP have been exhausted".* The Applicant's position therefore is that it is creating a failsafe for further financial contributions, which is a proportionate response to the impacts reported in the Workers Accommodation Report [[APP-551](#)].
- 4.5.4 In response to GBC's submissions regarding methodology, MLA reiterated that the sensitivity test was carried out which assumed that a number of projects were being carried out at the same time as the Project, so that the Applicant could stress-test the methodology.
- 4.5.5 In response to TC regarding flexibility, MLA explained that the Applicant does not agree that the additional wording in the Framework Construction Travel Plan [[REP7-146](#)] is egregious flexibility, and submits that the Applicant is managing public money appropriately.

Item (e)(ii)

The ExA will seek views on the approach to managing the decommissioning and restoration of construction compounds and whether any additional provision is required in the dDCO?

- 4.5.6 MLA explained that in response to the ExA, Article 35(5) of the dDCO [[REP7-090](#)] should not be looked at in isolation. Requirement 5 refers to the carrying out and delivery of the authorised development in accordance with the Environmental Statement Figure 2.4: Environmental Masterplan [[REP4-124](#), [REP7-116](#), [REP7-118](#), [APP-162](#), [REP7-120](#), [REP4-129](#), [REP2-024](#) to [REP2-031](#)], which shows the environmental features as well as arrangement of the Project assets in the operational phase and so there is a requirement to restore or lay out land in accordance with those plans.
- 4.5.7 Secondly, on the specific suggestion of a landowner scheme, MLA noted that the Applicant has responded to that in Section 8.2 of the Applicant's responses to Interested Parties' comments on the dDCO at Deadline 6 [[REP7-190](#)]. On the

Thames Tideway provisions, their equivalent article is article 35(5) which says “*before giving up possession of land in respect of which temporary possession has been taken, unless otherwise agreed by the owners of land, the undertaker shall either acquire the land or remove all works.*” MLA added that the article also contains a paragraph list that appears very similar to that in the dDCO [REP7-090]. MLA noted that the temporary possession article allows the same landowner agreement to avoid the removal of temporary works. The Applicant is aware that there are some schemes which relate to ecological features, but that is no different from what is set out in requirement 5 of the dDCO. MLA added that Article 35, paragraph (g) is preceded, with the M42 and A428 DCOs containing the same provisions.

4.5.8 In response to the submission made relating to local authority permission, MLA referred to the Applicant’s ISH8 post-hearing submission at 3.2.5 and 3.2.7 [REP6-089], noting that AT set out the Applicant’s intention that paragraph (g) is used where, for example, planning permission has been obtained. The Applicant would need to be satisfied that on handing the land over, it had the absolute permissions. [Post-hearing note: in response to the ExA’s suggestion that planning permission should be obtained to secure this intent, the dDCO has been amended at Deadline 8.]

4.5.9 **Post-written submissions:** These are contained within Annex A and include:

- a. Annex A.3 Hearing Action Point 2: Commence and begin
- b. Annex A.4 Hearing Action Point 3: Arbitration process with the Port of London Authority
- c. Annex A.5 Hearing Action Point 6: Worker Housing
- d. Annex A.6 Hearing Action Point 7: Removal of temporary works

5 ExA questions on: Review of dDCO positions relating to traffic and transport

5.1 Item 5a) Content and effect of Requirements with traffic and transport effects

Item 5(a)(i)

With reference to the implications for the dDCO of submissions at D6A and to discussion of these in ISH13, the ExA will wish to review the drafting of:

R10 – Traffic management

R11 – Construction travel plans

R17 – Passive provision for Tilbury link road

R18 – Operation of the Orsett Cock roundabout

Any other provision in the dDCO for Ports and local access

- 5.1.1 In relation to the request made by the ExA to share with the relevant local authorities the wording that is intended to be added into the Framework Construction Travel Plan, MLA confirmed that the Applicant can share this with GBC and TC as requested. [Post-hearing note: this was provided to Thurrock Council, Gravesham Borough Council and London Borough of Havering on 28 November 2023.]
- 5.1.2 In relation to Article 35(5)(g) of the dDCO [REP7-090], MLA confirmed that the Applicant will make the amends necessary to reflect the intent that the ExA suggested should be secured. [Post-hearing note: in response to the ExA's suggestion that planning permission should be obtained to secure this intent, the dDCO has been amended at Deadline 8 **[Document Reference 3.1[10]].**]
- 5.1.3 MLA noted that Plate 3.3 of the oTMPfC [REP7-148] shows that an iterative process is secured, through engagement with the local highways authorities, engagement with traffic management forums and the final submission to the SoS in respect of a traffic management plan, which would be subject to consultation. Where there is an update required, this is mentioned on the bottom of the plate.
- 5.1.4 MLA noted that Requirement 10 should not be looked at in isolation. MLA added that the Protective Provisions inserted for local highway authorities in the dDCO [REP7-090] secure a requirement on the Applicant to provide detailed information which includes durations of works, traffic management etc., and that then flows through into the process of engagement secured under the protective provisions.
- 5.1.5 In relation to an integrated plan, MLA referenced paragraph E.4.23 of the oTMPfC [REP7-148] which imposes a requirement to ensure that the traffic management plans proposed are integrated as a whole.

- 5.1.6 MH explained that the Applicant has sought to require work on an approved Traffic Management Plan (TMP). In the event that the measures implemented prove ineffective, requiring additional measures beyond the scope of the approved TMP, an update of this would be carried out, as detailed in para 3.3.23 of the oTMPfC [REP7-148]. The Applicant has also looked to secure a comprehensive monitoring system and paragraphs 2.4.22 to 2.4.25 set out the process and parameters for monitoring which will ensure measures are brought forward. MH added that where those measures necessitate an updated TMP, a further TMP must be submitted to the SoS. There is also an explicit requirement in the oTMPfC (para 2.4.25) which states “*where requests for traffic measures to be modified arise during feedback from the TMF [Traffic Management Forum], National Highways would give due consideration to any such request, and where necessary obtain appropriate approvals for any modifications.*” The Applicant is confident that the proposed measures are proportionate and go above and beyond precedents set by other projects.
- 5.1.7 In response to comments made by PoTLL, MLA noted that the purpose of the preliminary works was to provide comfort that controls would be in place for early preliminary works. The reason it is relatively short is because the table that is under Section 6.31 cross-references to other parts of the oTMPfC [REP7-148] to secure relevant controls. Under that table, the Applicant would be required to establish a Traffic Management Forum, which secures consultation as part of the preliminary works, and reference is made to the establishment of the forum and states that it will be made up of local authorities, utility companies, highway authorities, public transport operators, emergency services, and other maintenance providers. MLA reiterated that these controls should not be looked at in isolation. Under the Applicant’s draft Order, there are plan approval rights over land which is port land, and in this context it provides comfort to PoTLL because they are raising a specific concern about utility works being carried out as part of the preliminary works, that there are safeguards and appropriate checks and balances already secured.
- 5.1.8 MLA, in response to PoTLL’s submission regarding consultation not being on face of the Order, noted that the Applicant has identified preliminary works and controls are in place which are commensurate to those preliminary works. MLA noted that the consultation and engagement is secured through the Traffic Management Forum, which is required under Section 6.3 of the oTMPfC [REP7-148]. The Applicant does not agree that there should be a further iteration, noting that this is the plan that will be secured if the Order is made in this form. In relation to the issues around the plates and whether the Traffic Management Forum is engaged, MLA referred to the terms of reference which go into detail about how the plate works with the engagement with the Traffic Management Forum, noting that there is no inconsistency there. MLA explained that the Traffic Management Forum feeds into the TMP, noting that the SoS approval is the far end, and so the forum’s input is secured prior to submission of a TMP. Monitoring is considered once a TMP is secured. MLA added that the preliminary works is in itself an example of an innovation proposed by the Applicant, noting that in a typical DCO, a preliminary works TMP would usually be excluded from the terms of the equivalent requirement, so this is going above and beyond already.

- 5.1.9 [Post-hearing submission: the Applicant has updated the management plan to add an ‘arrow’ to confirm the intent that the TMF would provide input into Traffic Management Plans (**Document reference 7.14 [8]**).]
- 5.1.10 In response to TC, MLA noted that paragraph 3.23 of the oTMPfC [\[REP7-148\]](#) addresses where the further Traffic Management Plan will be progressed. MLA also noted that in response to LBH, the oTMPfC itself requires iteration, monitoring and further TMPs in particular circumstances. This is made very clear under the terms of reference. MLA noted that o oTMPfC that the Applicant has produced for other projects also set out this process. MLA added that it is also inherent in the use of the term “part”, noting that paragraph 1 of Schedule 2 of the dDCO [\[REP7-090\]](#) refers to “no part”, assuming that traffic management plans could be produced for different parts.
- 5.1.11 IT responded to LBH in relation to coordination between the traffic manager and the travel plan manager, noting that there are various groups that have been set up, each governed by their own terms of reference. There will be coordination between them. IT explained that the Joint Operations Forum (JOF) is the overseeing body, and the travel plan manager and traffic manager will inevitably engage with one another. The Applicant understands that the concern raised by LBH is that they would not come together other than formally through the JOF. The Applicant believes that it is appropriate to have a single overseeing forum for the formal discussion, without prescribing separate groups to dictate how they engage.
- 5.1.12 In relation to inter-compound movements, IT notes that this is specifically referenced in the Framework Construction Travel Plan [\[REP7-146\]](#) in paragraph 5.4.24 onwards, which explains that there is likely to be very limited inter-compound movement, but there will be some, and there is provision for how this will be carried out, including various steps that have been set out in this section.
- 5.1.13 In relation to a matter raised by LBH relating to targets, IT explained that the Framework Construction Travel Plan [\[REP7-146\]](#) itself does not contain targets, because of the necessity for flexibility at this stage of development. IT added that the Framework Construction Travel Plan does recognise that when site-specific travel plans are produced, there will be targets, and they are discussed in paragraph 7.1.5. IT noted that this explains that targets will be ‘SMART’ target: specific, measurable, attainable, realistic and timebound,
- 5.1.14 In response to PoTLL’s submission, IT explained that provision requiring consultation with the port is already secured in the framework agreement with them and does not need to be replicated. The Applicant is hopeful that this will provide a satisfactory mechanism for PoTLL’s concerns. Further, the Applicant does not consider it appropriate to mandate workers to arrive at work via specific routes at this stage, but that this could be considered in the site specific travel plans. IT noted that the Applicant has produced modelling that is highly precautionary, which does not, for example, take account of any modal shift associated with the travel plan or any features identified in the Framework Construction Travel Plan [\[REP7-146\]](#). In response to PoTLL’s specific concern regarding the Asda roundabout, this has been addressed in detail in the Applicant’s submissions on construction impacts and management at Asda roundabout [\[REP6-123\]](#).

- 5.1.15 In response to PoTLL’s submission relating to environmental outcome reports, MLA confirmed that the Applicant can consider some drafting but noted that the drafting at subparagraph 3(d) of Schedule 2, paragraph 17 of the dDCO [REP7-090] was to account for the fact that the circumstances in subparagraphs (a)-(c) may not exist, and so in the Applicant’s view, this is covered by (d). Secondly, in relation to subparagraph (c), PoTLL had suggested a reference to regulation 19 rather than 26 of the Town and Country Planning (Local Planning) (England) Regulations 2012. The Applicant’s view is that something should have gone through the process of a local plan in order to meet the definition of a proposed Tilbury Link Road. MLA noted the comments from PoTLL that proposals in an emerging plan are given limited weight in the NPPF. MLA explained that is precisely why the reference to regulation 19 documentation is not appropriate: such proposals may be found to be unsound, and the definition in Requirement 17 does not allow “limited weight” but requires “full weight” be given to the proposals (i.e., PoTLL’s suggestion would require the Applicant to consider any proposal as the proposed Tilbury Link Road with no ability to disregard it if, for example, the proposal in the documentation was not accepted as the proposed Tilbury Link Road). In response to the ExA, MLA noted that a regulation 19 proposal could be reasonably considered to constitute the Tilbury Link Road and Requirement 17 did not preclude such a proposal from being considered the proposed Tilbury Link Road under paragraph 17(3)(d) of the dDCO [REP7-090].
- 5.1.16 In response to Natural England (NE) regarding material consideration, MLA noted that provisions like this have existed in other DCOs, such as the Galloper Wind Farm having passive provision for Sizewell C, and the Thurrock Flexible Generation Plant DCO having passive provision for the Lower Thames Crossing. The Applicant’s view it that passive provision cannot be used in this way when the Applicant is seeking to provide passive provision, to the extent that it can, within the terms of the DCO, noting that the proposed Tilbury Link Road would be the subject of its own optioneering appraisal.
- 5.1.17 In response to TC submissions regarding their proposed wording amendment so that the proposal is endorsed by the SoS following consultation, MLA confirmed that the Applicant will revert in writing on that, noting that it would have some concern over introducing an administrative step before the Applicant can consider a proposal, and that this may be unnecessary as paragraph 17(3)(d) of the dDCO [REP7-090] already requires the Applicant’s consideration. It is correct to say that the Applicant would make the determination under subparagraph (d), but this is considered appropriate as it is the strategic highways company for England and the requirement does say “reasonably considered”, with the decisions being amenable to challenge. [Post-hearing note: for the reasons provided, no change is proposed. The Applicant does not consider further consultation and approval is required in connection with that should be a relatively simple matter of determining whether a proposal constitutes the Tilbury Link Road.]
- 5.1.18 In relation to the Asda roundabout, the Applicant noted that the ExA raised a query regarding usability of management documents, and the Applicant’s position is that creating a requirement to deal with construction traffic alongside an existing construction traffic requirement would not aid usability. MLA explained that Table 4.2 of [REP6-123] addressed each requirement proposed

by the PoTLL and other IPs on the Asda roundabout, explaining this is secured in the oTMPfC [REP7-148]. While it is important to consider impacts on the Asda roundabout and its appropriate management, the wider considerations need to be taken into account too, and producing a requirement has the potential to run afoul of the comments made about usability.

- 5.1.19 IT noted in response to the point made by PoTLL regarding variables and assumptions in construction traffic modelling, that the Applicant's position is that the assumptions that have been used in the model are all highly conservative. While there are a number of variables and assumptions, there is a suite of measures to control these, set out in the oTMPfC [REP7-148]. IT added that the forum is to be held monthly, involving relevant stakeholders. The contractor is required to manage a monitoring system that ensures measures are effective including arrival and departure times from compounds, and in the event for example, that arrival or departure times are causing unforeseen problems, there will be mechanisms in place to further control and mandate these, as in paragraph 2.4.9 of the oTMPfC. IT added that this explains that the data gathered in the monitoring which will be reported monthly to the traffic management forum, will then be used to guide resolutions to any unforeseen issues. The Applicant's position therefore, is that there is a very robust process to identify controls, monitor them and (subject to engagement with relevant stakeholders) ensure that remedial steps/actions are taken.
- 5.1.20 TW stated that in response to the submission from Kent County Council relating to a proposed requirement for Blue Bell Hill [REP7-198], the proposal goes further than that put forward by GBC in their submission in [REP4-302], placing an absolute obligation on the DfT to fund the Blue Bell Hill improvement scheme. The proposed requirement would remove the ability for the DfT to make separate decisions for two proposed projects, which would be inappropriate.
- 5.1.21 **Post-hearing written submissions:** These are contained in Annex A and include:
- a. Annex A.7 Hearing Action Point 8: Construction Traffic Management

6 ExA questions on: Other DCO business arising from November Hearings

6.1 Item 6a) Matters arising from ISHs 11 – 13, OFH5 or CAH5

Item 6(a)(i)

Issues and questions if and as required

- 6.1.1 The Applicant understood the ExA's suggestion that the ExA submits the questions under this item into an action point following ISH14.

6.2 Item 6b) The Applicant's preferred dDCO and Control Documents submission

Item 6b)(i)

Arrangements for final submissions and responses to them

- 6.2.1 MLA confirmed that at Deadline 8 the Applicant will provide the documents requested, noting that arrangements will be made to provide the relevant IPs with the documents once ready. MLA also requested that the parties reciprocate this and provide the documents to be submitted at Deadline 9 directly to the Applicant.
- 6.2.2 **Post-hearing written submissions:** These are contained in Annex A and include:
- a. Annex A.8 Hearing Action Point 11: Whitecroft Care Home
 - b. Annex A.9 Hearing Action Point 12: Brentwood Enterprise Park
 - c. Annex A.10 Hearing Action Point 13: Mee Land and Business
 - d. Annex A.11 Hearing Action Point 14: Blue Bell Hill and Burham
 - e. Annex A.12 Drafting Article 56(2)

7 Next Steps and Closing

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

References

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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.
A122 Lower Thames Crossing/M25 junction		New junction with north-facing slip roads on the M25 between M25 junctions 29 and 30, near North Ockendon.
A13/A1089/A122 Lower Thames Crossing junction		Alteration of the existing junction between the A13 and the A1089, and construction of a new junction between the A122 Lower Thames Crossing and the A13 and A1089, comprising the following link roads: <ul style="list-style-type: none"> • Improved A13 westbound to A122 Lower Thames Crossing southbound • Improved A13 westbound to A122 Lower Thames Crossing northbound • Improved A13 westbound to A1089 southbound • A122 Lower Thames Crossing southbound to improved A13 eastbound and Orsett Cock roundabout • A122 Lower Thames Crossing northbound to improved A13 eastbound and Orsett Cock roundabout • Orsett Cock roundabout to the improved A13 westbound • Improved A13 eastbound to Orsett Cock roundabout • Improved A1089 northbound to A122 Lower Thames Crossing northbound • Improved A1089 northbound to A122 Lower Thames Crossing southbound
A2		A major road in south-east England, connecting London with the English Channel port of Dover in Kent.
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.

Term	Abbreviation	Explanation
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.
M2 junction 1		The M2 will be widened from three lanes to four in both directions through M2 junction 1.
M2/A2/Lower Thames Crossing junction		New junction proposed as part of the Project to the east of Gravesend between the A2 and the new A122 Lower Thames Crossing with connections to the M2.
M25 junction 29		Improvement works to M25 junction 29 and to the M25 north of junction 29. The M25 through junction 29 will be widened from three lanes to four in both directions with hard shoulders.
National Highways		A UK government-owned company with responsibility for managing the motorways and major roads in England. Formerly known as Highways England.
National Planning Policy Framework	NPPF	A framework published in March 2012 by the UK's Department of Communities and Local Government, consolidating previously issued documents called Planning Policy Statements (PPS) and Planning Practice Guidance Notes (PPG) for use in England. The NPPF was updated in February 2019 and again in July 2021 by the Ministry of Housing, Communities and Local Government.
National Policy Statement	NPS	Set out UK government policy on different types of national infrastructure development, including energy, transport, water and waste. There are 12 NPS, providing the framework within which Examining Authorities make their recommendations to the Secretary of State.
National Policy Statement for National Networks	NPSNN	Sets out the need for, and Government's policies to deliver, development of Nationally Significant Infrastructure Projects (NSIPs) on the national road and rail networks in England. It provides planning guidance for promoters of NSIPs on the road and rail networks, and the basis for the examination by the Examining Authority and decisions by the Secretary of State.
Nationally Significant Infrastructure Project	NSIP	Major infrastructure developments in England and Wales, such as proposals for power plants, large renewable energy projects, new airports and airport extensions, major road projects etc that require a development consent under the Planning Act 2008.
North Portal		The North Portal (northern tunnel entrance) would be located to the west of East Tilbury. Emergency access and vehicle turn-around facilities would be provided at the tunnel portal. The tunnel portal structures would accommodate service buildings for control operations, mechanical and electrical equipment, drainage and maintenance operations.
Operation		Describes the operational phase of a completed development and is considered to commence at the end of the construction phase, after demobilisation.

Term	Abbreviation	Explanation
Order Limits		The outermost extent of the Project, indicated on the Plans by a red line. This is the Limit of Land to be Acquired or Used (LLAU) by the Project. This is the area in which the DCO would apply.
Planning Act 2008		The primary legislation that establishes the legal framework for applying for, examining and determining Development Consent Order applications for Nationally Significant Infrastructure Projects.
Project road		The new A122 trunk road, the improved A2 trunk road, and the improved M25 and M2 special roads, as defined in Parts 1 and 2, Schedule 5 (Classification of Roads) in the draft DCO (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.

Annex A Post-hearing submissions on ISH14

A.1 Introduction

A.1.1 This section provides the post-hearing submissions and action points for Issue Specific Hearing 14 (ISH14) on 28 November 2023 for the A122 Lower Thames Crossing (the Project).

A.2 Hearing Action Point 1: Register of Requirements

- A.2.1 Hearing Action 1 requests “*Confirm whether additional physical locations, such as the offices of Thurrock Council, Gravesham Council and the London Borough of Havering could or would be available for the deposit of documents provided under paragraph 23 of Schedule 2 of the dDCO*”.
- A.2.2 The Applicant understands Gravesham Borough Council made two requests at ISH13: the first was a request that a copy of the certified documents mentioned in the draft Development Consent Order (dDCO) and certified in accordance with Article 62 be made available free online in accordance with the A303 Sparkford to Ilchester Order 2020. The Applicant has amended Article 62 (new subparagraph (9)) to respond to this request.
- A.2.3 The Applicant can confirm that following the DCO decision, the documents identified in Schedule 16 of the dDCO (the certified documents) [\[REP7-090\]](#) will be hosted on the Documents page of the National Highways’ Lower Thames Crossing webpage.
- A.2.4 The second request was to have a location in close proximity to allow certified documents to be inspected.
- A.2.5 The Applicant has updated the Explanatory Note within the draft Order **[Document Reference 3.1 (10)]** to confirm that at a location in close proximity to the authorised development, a hard copy of the aforementioned documents would be made available.
- A.2.6 This location could be local authority offices, community facilities (such as libraries) or a Project office or construction compound. Without an agreement in place at this time, it cannot be confirmed where this will be. The location of where these hard copies can be found following the DCO decision will be listed on the National Highways Lower Thames Crossing website. Documents will be available at this location only during the construction period.
- A.2.7 The Applicant does not understand that any request was made specifically in relation to Paragraph 23. The Applicant does not agree that a hard copy of the Register of Requirements should be provided. This is an agile tool which is updated live as requirements are discharged. As such it would be impractical to

provide updated (and soon outdated) hard copies.. This would also not comply with UK Government’s ‘digital by default’ approach set out in the Civil Service Reform Plan (HM Government, 2012).

A.3 Hearing Action Point 2: Commence and begin

A.3.1 Hearing Action 2 requests “*Provide a commentary as to any implications related to the timings for commencement/ beginning of the development and associated timings, with particular reference to environmental surveys and the updating of HRA data.*”

A.3.2 The Applicant understands this action to relate to:

- a. the carrying out of surveys in respect of “beginning” the development, and
- b. whether environmental surveys are otherwise affected by the Time Limits requirement.

A.3.3 On the first of these issues, as the Applicant has explained, “begin” is used where preliminary works are intended to be caught by the relevant provisions of the dDCO [**Document Reference 3.1 (10)**], and “commence” is used where preliminary works are intended to be excluded from being caught by the relevant provisions of the dDCO. The Applicant would note that Requirement 7 of Schedule 2 to the dDCO – which relates to pre-construction surveys – uses the phrase “begin”. This ensures that pre-construction surveys are carried out prior to preliminary works. In that context, the Applicant further notes that the Register of Environmental Actions and Commitments (REAC) within the Code of Construction Practice [**Document Reference 6.3 ES Appendix 2.2 (8)**] contains a number of measures which set out surveys to be carried out at the relevant and appropriate time (e.g. NV005, AQ007, GS023, GS025, RDWE007). This therefore ensures that appropriate surveys are carried out.

A.3.4 On the second of the issues, and in the context of the further surveys identified above, the Applicant considers its response in respect of the Written Ministerial Statement dated 9 March 2023 [[AS-086](#)] addresses this matter. As explained in response to Action Point 1 within Post-event submissions, including written submission of oral comments, for ISH7 [[REP4-183](#)], the provision is no different from that contemplated by section 154 to 155 of the Planning Act 2008.

A.4 Hearing Action Point 3: Arbitration process with the Port of London Authority

A.4.1 Hearing Action 3 requests “*Consider and update the drafting in paragraphs 99(3) and 99(6) of Schedule 14 Part 8 (Protective Provisions for the Port of London Authority) in the dDCO.*”

- A.4.2 The Applicant has updated paragraphs 99(3) and 99(6) to provide further clarity on the effect of these provisions. Those updates are reflected in the updated version of the dDCO submitted at Deadline 8 [**Document Reference 3.1 (10)**]. On the substantive issue relating to arbitration, the Applicant refers to Chapter 6 of the Applicant’s responses to Interested Parties’ comments on the dDCO at Deadline 7, submitted alongside this submission at Deadline 8 [**Document Reference 9.193**].

A.5 Hearing Action Point 6: Worker Housing

- A.5.1 Hearing Action Point 6 requests “*Applicant to provide proposed update of current provision: LAs to provide feedback at D9.*”
- A.5.2 The Applicant provided the updated wording contained in the Framework Construction Travel Plan to Thurrock Council, Gravesham Borough Council and the London Borough of Havering on 28 November 2023. Those updates are reflected in the updated version of that document submitted at Deadline 8 [**Document Reference 7.13 (5)**].

A.6 Hearing Action Point 7: Removal of temporary works

- A.6.1 Hearing Action Point 7 requests “*Consider the current drafting of Art 35(5)(g) with particular reference to landowner agreement and matters of public interest whilst also ensuring compliance with the Rochdale Envelope.*”
- A.6.2 The Applicant has updated the drafting of article 35(5)(g). The effect of that amendment is that temporary works are exempt from removal only where the landowner agrees, and a planning permission is in place. As any planning permission would have been the subject of relevant planning considerations, this ensures that matters of public interest are preserved. In addition, it ensures that any environmental considerations would have been addressed as part of that planning permission. Those updates are reflected in the updated version of the dDCO submitted at Deadline 8 [**Document Reference 3.1 (10)**].

A.7 Hearing Action Point 8: Construction Traffic management

- A.7.1 Hearing Action Point 8 requests “*consider and comment on the need for a subiteration of the CTMP covering preliminary works traffic, to be consulted upon by the ports and the highway authorities.*”
- A.7.2 The Applicant does not consider there is a need for a “sub-iteration” of the preliminary works Traffic Management Plan. Chapter 6 of the outline Traffic Management Plan for Construction has been drafted to include the relevant and appropriate controls in relation to preliminary works. Importantly, it secures a Traffic Management Forum which will ensure that consultation and engagement

is carried out, and it also secures, among other controls, the relevant measures in Table 2.3 of the outline Traffic Management Plan for Construction [[REP7-148](#)].

- A.7.3 The Applicant wishes to stress that the provision of a Traffic Management Plan for preliminary works is a positive innovation which is intended to provide assurance that works which usually fall outside the scope of traffic management plan controls in DCOs are in fact appropriately controlled. In all strategic road network DCOs, preliminary works (i.e., works which do not constitute “commencement”) are not controlled and so the Applicant is going beyond the precedents in providing proportionate controls for that stage of the works.
- A.7.4 The Applicant would further highlight that Protective Provisions, for both local highway authorities and the Port of Tilbury London Limited (PoTLL), along with the draft Framework Agreement with PoTLL, provide additional controls in respect of works to the local highway network and port land, including in relation to traffic management. As explained in the outline Traffic Management Plan for Construction [[REP7-148](#)], the Applicant also proposes to use permit schemes under the New Roads and Street Works Act 1991 (subject to the usual modifications in Article 9). This provides yet further control.
- A.7.5 The Applicant considers that a requirement to create “sub-iterations” of a preliminary Traffic Management Plan perversely disincentivises the approach adopted which is to be transparent about works which are not usually caught by controls, and provide proportionate controls in respect of those works.

A.8 Hearing Action Point 11: Whitecroft Care Home

- A.8.1 Hearing Action Point 11 requests *“If there is no agreement between the Applicant and the Owners/Operators of the Care Home by Deadline 8, at Deadline 9 please provide final submissions on any measures that the ExA should recommend to the Secretary of State (including dDCO provisions) to ensure that the public sector equality duty (PSED) can be discharged.”*
- A.8.2 The Applicant has provided Heads of Terms to the owners/operators of Whitecroft Care Home and has made clear its intent to acquire the site by voluntary agreement.
- A.8.3 The Applicant’s proposal would enable the operator of the Whitecroft Care Home to fund a replacement facility of at least the same number of bedspaces as currently (i.e. 56 bedspaces) within the Thurrock Council area. The ES Addendum submitted at Deadline 8 [**Document Reference 9.8 (8)**] has considered impacts of the proposal on care home bedspace provision. The assessment has concluded that, while there would be a short-term, temporary reduction in available care home bedspaces as a result of the temporary loss of those provided at the Whitecroft Care Home, there exists a range of

opportunities for new care home provision that are at various stages in the planning process (including provision for a new 64-bed care home, the application for which was approved by Thurrock Council in 2022). Together, the various proposals contribute towards meeting the need for bedspaces identified in the South Essex Housing Needs Assessment (June 2022) over the period 2020 to 2040. Impacts associated with the short-term temporary loss of care home bedspaces has been assessed in the ES Addendum as being slight adverse and not significant.

- A.8.4 While residents of the care home facility may experience temporary disruption associated with relocation to a new home, the acquisition of the care home ensures that residents (who exhibit protected characteristics by virtue of age and/or disability under the Equality Act 2010) would not be exposed to potential differential effects associated with construction noise activities during the construction phase of the Project. A relocation would mean that the impacts reported in the Health and Equalities Impact Assessment [REP7-144] to these protected characteristics would be lessened. The Applicant considers sufficient information and consideration has been given to PSED in line with the requirements of the Equality Act. The Applicant will amend the Health and Equalities Impact Assessment in line with these submissions at Deadline 9 in order to ensure all of the information on this matter is included in one document.
- A.8.5 In the event that an agreement is not reached, the Applicant considers that there is an existing fall-back which could be triggered through Section 8 of the Compulsory Purchase Act 1965.
- A.8.6 Under those provisions, where part of a property is proposed to be acquired by an authority – as is the case here – under the compulsory purchase regime, the owner of an interest in that property is entitled to require the authority to purchase the interest in the whole of the property unless the authority can satisfy the Upper Lands Tribunal that the part can be taken without material detriment to the remainder. In the absence of an agreement, therefore, the owners of Whitecroft Care Home could serve a counter-notice under those provisions, ensuring the site is then acquired.
- A.8.7 Without prejudice to the Applicant’s position on these matters, the Applicant would suggest that if the Examining Authority wanted to be assured these processes could be used, it could suggest a new subparagraph in Article 30:
- “(5) In respect of Plots 28/08, 29/253, 29/254, 29/258, 29/259, 29/260 and 29/261 shown in the land plans, and without limitation to the powers under article 35, section 8 of and Schedule 2A to the 1965 Act must be construed to ensure–
- (a) the freehold owner of those plots may serve a notice to require the undertaker to acquire the landowner’s interest in respect of The Whitecroft Care Home

(“the Care Home”) where any part of the authorised development has begun;
and

- (b) the undertaker must accept a notice served under paragraph (a) and thereafter serve notice of entry under section 11 (powers of entry) of the 1965 Act or a declaration under section 4 (execution of declaration) of the 1981 Act in respect of land and interests in those plots and the Care Home owned by the landowner as though it were an acceptance for the purposes of paragraph 11 of Schedule 2 to the 1965 Act.”

- A.8.8 This provision ensures that section 8 can be utilised at the point any part of the Project is begun, thereby ensuring that the Care Home will be acquired in full in the absence of an agreement. As noted above, in normal circumstances, there is a process for disputing whether material detriment is caused. Without prejudice to the Applicant’s position on the impacts to that site, the suggested provision above ensures that the Applicant would not be permitted to exercise that dispute process and the Care Home would be acquired.

A.9 Hearing Action Point 12: Brentwood Enterprise Park

- A.9.1 Hearing Action Point 12 requests “*Provide detailed measures to maintain access(es) to the Brentwood Enterprise Park during the construction phase to be secured in the Code of Construction Practice (CoCP). Landowner and Site manager to comment at D9a, alongside final positions on this matter.*”
- A.9.2 The Applicant can confirm this will be provided at Deadline 9.

A.10 Hearing Action Point 13: Mee Land and Business

- A.10.1 Hearing Action Point 13 requests “*Review the measures located in the REAC and/or CEMP to address outstanding issues, including irrigation, farm shop viability, access and how to manage land during construction, alongside the position of the two parties at the Deadline.*”
- A.10.2 In addition to commitments under SACR-005 and SACR-007 and REAC commitments RDWE016 and RDWE038, the parties are drafting a side legal agreement to give the landowner a greater degree of comfort specifically relating to Manor Farm. The agreement is fairly well advanced (the latest draft was provided 29 November 2023 with a review meeting on 30 November 2023) and covers:
- a. Access to the farm shop and premises at the farmstead
 - b. Water Supply to Farmstead and Essex Manor (i.e. the farm reservoir)
 - c. Field Accesses (engagement principles on design, use and maintenance during construction)

- d. Access Track (off Ockendon Road) – Future access rights
- e. Proposed WCH route alongside Dennis Road (a voluntary dedication agreement such that future development is not prejudiced).

A.10.3 The parties are working towards completing this agreement before the end of Examination. In the absence of an agreement, the Applicant will bring forward measures in the Stakeholder Actions and Commitments Register at Deadline 9 [Document Reference 7.21 (7)].

A.11 Hearing Action Point 14: Blue Bell Hill and Burham

A.11.1 Hearing Action Point 14 requests “*On a without prejudice basis, what amendments should be made in the REAC & DCO, if the land at Blue Bell Hill and Burham is retained within the Order land to address submissions on the adequacy of nitrogen compensation land provision within or close to the Kent Downs AONB.*”

A.11.2 On a without prejudice basis, the following amendments would be required to the dDCO (there would not need to be changes made to the REAC):

- a. The Environmental Works detailed in Schedule 1, Works No. E2 (Burham) would need to be reinserted.
- b. Schedule 8, plot numbers for the land removed at Blue Bell Hill and Burham (02-01 and 02-03) would need to be reinserted.

A.11.3 It is anticipated that a number of documents would need revert to the submitted position. This includes those figures and documents listed in Table 4.2 of the Applicant’s document, 10.4 Change Application (August 2023) [CR1-002]. These include the Environmental Masterplan (Section 1A) [REP4-124], the Design Principles [REP7-140] and the outline Landscape and Ecology Management Plan [REP7-132].

A.11.4 The Applicant is concerned that there would be a procedural fairness issue relating to the landowner of the land at Blue Bell Hill and Burham. The Applicant initiated a formal change process during the Examination and the Examining Authority accepted that change, following which the land in question was removed from the Order Limits. Consequently, the landowner has not attended any of the compulsory acquisition hearings on the basis that an agreement had been reached with the Applicant, and the removal of the land concerned was accepted. The Applicant is unaware of any precedent for land being re-introduced into the Order Limits once the Examining Authority has accepted its removal in the recommendation or decision stage.

A.11.5 The Applicant stresses, for the reasons set out in the Applicant’s document 10.4 Change Application (August 2023) [CR1-002], that it does not consider it

necessary or proportionate to re-introduce the land which was removed back into the Order Limits. Should the Examining Authority seek to recommend the re-inclusion of this land, such a recommendation would need to be supported by ecological assessment and evidence which demonstrated a compelling case in the public interest for additional compensatory habitat beyond the substantial compensation already proposed.

A.12 Drafting of Article 56(2)

- A.12.1 The Applicant engaged with Thurrock Council on amendments to Requirement 13 which addresses this matter. The Applicant refers to its responses to QD55 and QD58 on this matter.

References

HM Government (2012). Civil Service Reform Plan.
<https://assets.publishing.service.gov.uk/media/5a7e4e3c40f0b62305b82231/Civil-Service-Reform-Plan-final.pdf>

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