

# Lower Thames Crossing

## 9.194 Applicant's response to the Examining Authority's commentary on the dDCO

Infrastructure Planning (Examination  
Procedure) Rules 2010

Volume 9

**DATE: December 2023**  
**DEADLINE: 8**

Planning Inspectorate Scheme Ref: TR010032  
Examination Document Ref: TR010032/EXAM/9.194

**VERSION: 1.0**

# Lower Thames Crossing

## 9.194 Applicant’s response to the Examining Authority’s commentary on the dDCO

### List of contents

	Page number
<b>1 Introduction .....</b>	<b>1</b>
<b>2 Applicant’s Response to the Examining Authority’s commentary on the draft DCO .....</b>	<b>2</b>
<b>Glossary .....</b>	<b>43</b>
<b>Appendices .....</b>	<b>46</b>
<b>Appendix A Legal note on the provision of a replacement travellers’ site in connection with the Lower Thames Crossing.....</b>	<b>47</b>

### List of tables

	Page number
Table 2.1 Responses to Examining Authority’s commentary on the draft DCO .....	2

# 1 Introduction

- 1.1.1 This document sets out the Applicant's responses to the Examining Authority's (ExA's) questions and requests for information contained in its Commentary on the draft Development Consent Order (dDCO) [[PD-047](#)].
- 1.1.2 Responses are provided in tabular format. A number of the ExA's questions are directed to Interested Parties (IPs) for response by Deadline 8, with comments on those responses then requested at Deadline 9. The Applicant has indicated in each case where it proposes to reserve any comments until Deadline 9 pending any Interested Party comments at Deadline 8.

## 2 Applicant’s Responses to the Examining Authority’s commentary on the draft DCO

**Table 2.1 Responses to Examining Authority’s commentary on the draft DCO**

Ref. No	Provision	Proposed change (where applicable)	ExA Question	Applicant Comment
QD1	Title of dDCO	Not applicable	Do any IPs have any submissions to make on the title of the dDCO?	The Applicant shares the ExA’s view that the title of the dDCO [Document Reference 3.1 (10)] is a clear and accurate description of the purpose of the dDCO.
QD2	General	Not applicable	Do any IPs have any submissions to make on the structure or broad function of the provisions in the dDCO?	The Applicant notes that this question is directed to IPs and therefore has no comments at this stage. As requested by the ExA, where appropriate the Applicant will provide a response to any comments made by Interested Parties in relation to this question, at Deadline 9 in the Examination timetable.
QD3	Schedule 16 (documents to be certified)	Include Mitigation Route Map in Schedule 16	Are there any documents that have been submitted to the Examination that should be certified but are not recorded in the dDCO?	<p>Having reviewed, the Applicant considers that the list of documents included in Schedule 16 to the dDCO [REP7-090] is complete but proposes to (1) include the Mitigation Route Map [REP4-203]; (2) amend the title of the Code of Construction Practice to improve the visibility of the REAC and (3) remove the Interrelationship with other Nationally Significant Infrastructure Projects and Major Development Schemes [APP-550].</p> <p>As set out in the Explanatory Memorandum (EM) [REP7-092], the purpose of Schedule 16 and the certification process under article 62 of the dDCO is to identify the plans and documents to be certified as true copies if the Order is made by the Secretary of State. This is so that there can be no doubt about which document or plan was correct, should a question arise to that effect later.</p>

Ref. No	Provision	Proposed change (where applicable)	ExA Question	Applicant Comment
				<p>As the ExA notes, the list of documents in Schedule 16 comprises plans and documents identifying the land and works forming part of the Project, as well as those which secure mitigation for the effects of the Project, or which are relevant to the assessment of those effects. Broadly, these are the criteria which have been applied by the Applicant in selecting the documents and plans for inclusion in Schedule 16.</p> <p>In relation to the Mitigation Route Map <a href="#">[REP4-203]</a> referred to specifically by the ExA, the document was submitted to assist the ExA and IPs in understanding how mitigation relied upon in the Environmental Statement (ES) and related documents is secured by the dDCO <a href="#">[REP7-090]</a>. As set out in paragraph 1.2.1 of the Mitigation Route Map, the document does not have a formal status. In particular, it does not secure mitigation for the effects of the Project, nor does it speak to the assessment of the Project’s effects which is addressed in the ES.</p> <p>Nonetheless, the Applicant does propose to list the Mitigation Route Map in Schedule 16 to the dDCO in order to ensure it is part of the suite of documents which interested parties may find helpful and which is proposed to be certified.</p> <p>As noted, the Applicant is content more broadly that the list of documents and plans in Schedule 16 is accurate and complete.</p>
<b>QD4</b>	Schedule 16 (documents to be certified)	Not applicable	Are there any documents recorded in the dDCO as to be certified but which are superfluous?	The Applicant does not consider that any of the documents included in the dDCO <a href="#">[REP7-090]</a> are superfluous and / or should be removed with the exception of the Interrelationship with other Nationally Significant Infrastructure Projects and Major Development Schemes

Ref. No	Provision	Proposed change (where applicable)	ExA Question	Applicant Comment
				<p><a href="#">[APP-550]</a>. The list has been and will continue to be kept under review until the close of the Examination to ensure that all version references are correct.</p> <p>The Applicant, therefore, agrees with the ExA’s proposal not to delete any documents from the proposed set of certified documents and control documents.</p>
<b>QD5</b>	Schedule 16 (documents to be certified)	Restructuring of Schedule 16	Should Schedule 16 be restructured to set out the proposed certified documents in functional groupings?	The Applicant has considered the ExA’s suggested functional grouping at paragraph 3.3.7 of its commentary on the dDCO <a href="#">[PD-047]</a> and has reflected this in the revised dDCO submitted at Deadline 8 <b>[Document Reference 3.1 (10)]</b> .
<b>QD6</b>	Schedule 16 (documents to be certified)	Register of environmental actions and commitments to be individually identified	Should the REAC be individually identified in Schedule 16 (certified documents)?	Notwithstanding the Applicant’s view that the approach previously proposed was clear and accurate, the Applicant has modified the dDCO at Deadline 8 to improve the visibility of the Register of Environmental Actions and Commitments (REAC) in Schedule 16 to the dDCO <b>[Document Reference 3.1 (10)]</b> .
<b>QD7</b>	Schedule 16 (documents to be certified)	Include Mitigation Route Map in Schedule 16	Should the Mitigation Road Map be included as part of the REAC, as a separate CD or certified document or not at all?	<p>See the Applicant’s response to QD3. The Applicant proposes to include the Mitigation Route Map <a href="#">[REP4-203]</a> in Schedule 16 to the dDCO <a href="#">[REP7-090]</a>.</p> <p>It should be noted that the Mitigation Route Map refers to all of the controls which exist to secure environmental mitigation. The REAC is one important aspect of this. However, mitigation is contained in a number of other control documents, as detailed in Plate 2.1 and throughout the Mitigation Route Map. To append the Mitigation Route Map to the REAC in the manner suggested could therefore be misleading, and lead to unintended consequences thereby increasing confusion about what measures are secured, and under which provision.</p>

Ref. No	Provision	Proposed change (where applicable)	ExA Question	Applicant Comment
QD8	Schedule 16	Not applicable	Do any IPs have any further submissions to make on the manner in which certified documents and specifically CDs are recorded in the dDCO?	The Applicant notes that this question is directed to IPs and therefore has no comments at this stage. As requested by the ExA, where appropriate the Applicant will provide a response to any comments made by Interested Parties in relation to this question, at Deadline 9 in the Examination timetable.
QD9	General	Not applicable	Are there any further matters that have been raised in the Examination that should be provided for in an Article but which are not? If so, please provide reasons and evidence for your position.	The Applicant does not consider that there are further matters which should be provided for in an article of the dDCO and considers that all matters raised have been addressed comprehensively through the iterative updates made to the dDCO during the course of the Examination. These are set out in detail in the schedule of updates to the dDCO, the latest version of which is submitted at Deadline 8 [Document Reference 9.47 (8)] alongside the revised dDCO [ <b>Document Reference 3.1 (10)</b> ].
QD10	General	Not applicable	Are there any matters provided for in an Article which are superfluous? If so, please provide reasons and evidence for your position.	The Applicant does not consider that there are any matters provided for in an article of the dDCO [ <a href="#">REP7-090</a> ] which are superfluous. The justification and need for each article of the dDCO is set out in detail in the EM [ <a href="#">REP7-092</a> ], which has been supplemented during the course of the Examination in response to the ExA’s and IPs’ observations on the dDCO.
QD11	General	Not applicable	Are there Articles that the ExA has not yet commented on in respect of which a change in drafting is sought? If so, please provide reasons and evidence your position.	The Applicant understands this question is directed primarily to Interested Parties and does not therefore propose to comment substantively at this stage. The Applicant would, however, note that it has responded in detail during the course of the Examination to IPs’ submissions and suggestions in relation to the dDCO. The Applicant would refer in this regard to [ <a href="#">REP2-077</a> ], [ <a href="#">REP3-144</a> ], [ <a href="#">REP4-212</a> ], [ <a href="#">REP5-089</a> ] and [ <a href="#">REP6-085</a> ] as well as its equivalent submission at Deadline 8.

Ref. No	Provision	Proposed change (where applicable)	ExA Question	Applicant Comment
QD12	General	Not applicable	All prospective consenting bodies subject to deemed consent provisions with a time-limit are asked to consider the appropriateness of a provision for deemed consent and of the time limit. If these are not considered to be appropriate then they are asked to explain why and how these provisions might be varied.	<p>The Applicant notes that this question is directed specifically to consenting bodies subject to deemed consent provisions under the dDCO and so does not propose to respond substantively on this point at this stage.</p> <p>The Applicant would, however, refer to its response to IP comments made on the draft DCO at Deadline 1 <a href="#">[REP2-077]</a>, which sets out in detail the Applicant’s position regarding the widely precedented approach to the use of deemed consent provisions.</p>
QD13	Article 2 (interpretation)	Not applicable	The Applicant is requested to explain more fully the inter-relationship between this provision, A27, Schedule 2 R1 and R2. Is there an argument for a simplified and harmonised approach to the relevant time limits for development and for CA?	<p>As the ExA notes, the Applicant has incorporated two distinct definitions for “begin” (defined in article 2,) and “commence” (defined in Requirement 1) in the dDCO <a href="#">[REP7-090]</a>. The key distinction between the two is that “begin” includes material operations, including the preliminary works (defined in the dDCO), and “commence” does not. On the face of the dDCO, the Applicant has used the word “commence” and “begin” in relation to specific Requirements.</p> <p>To be clear, the time limits for the exercise of authority to acquire land compulsorily under article 27 are subject to separate timescales. The definitions of “begin” in article 2 (now Requirement 2) and “commence” in Requirement 1 do not apply in that context. The justification for those time limits is set out in the EM <a href="#">[REP7-092]</a> and is further articulated in response to QD29 and QD30 below.</p> <p>In relation to the term “begin”, that term is used on two occasions in Schedule 2, in circumstances where it would not be appropriate for the pre-commencement requirements applicable to the discharge of Requirements more generally under Schedule 2 to be engaged. Those</p>



Ref. No	Provision	Proposed change (where applicable)	ExA Question	Applicant Comment
				<p>instances are Requirements 2 and 7, because the Applicant considers that, for the purposes of Requirement 2, the carrying out of a material operation – whether it relates to a preliminary work or not – should be sufficient for the purposes of discharging the requirement on time limits. The Applicant explained its position in this regard in its post-event submissions, including written submission of oral comments, for ISH2 <a href="#">[REP1-184]</a>. The term “begin” is also used in Requirement 7 as a way of ensuring that prior to carrying out any works – whether they are preliminary works or not – pre-construction surveys must be carried out.</p> <p>On the other hand, “commence” is used in Schedule 2 where a Requirement must be discharged before the relevant works can commence. The term “commence” is employed in relation to Requirements 4(2), 8, 9, 10(2), 11, 13, 16 and 18.</p> <p>The Applicant does not agree that there is scope for interpretational uncertainty due to the use of the terms “begin” and “commence” in the manner proposed in the dDCO. In fact, in <i>Tidal Lagoon (Swansea Bay) Plc v Secretary of State for Business, Energy and Industrial Strategy</i> [2022] EWCA Civ 1579, it was in essence because those two terms had not been employed in the manner proposed in the dDCO that litigation subsequently ensued, with delay and uncertainty created for all parties as a result. The Applicant’s position on that case is set out in response to Action Point 1 of ISH7 contained in <a href="#">[REP5-089]</a>.</p> <p>It should be noted that there is a further scenario: where preliminary works are carried out, they are caught by the Preliminary Works EMP / REAC under Requirement 4(1),</p>

Ref. No	Provision	Proposed change (where applicable)	ExA Question	Applicant Comment
				<p>and the preliminary traffic management plan under Requirement 10(1). Whilst the concept of a “preliminary works EMP” which is secured at the point of the Order being made is precedented (see e.g. M42 Junction 6 DCO, A303 Stonehenge DCO), the Applicant’s approach to securing a “preliminary works” Traffic Management Plan goes above and beyond the precedented strategic road network DCOs. This approach of being able to carry out preliminary works without having to discharge the Requirements is, in the Applicant’s view, appropriate in light of the relative significance of the works, and the fact that the controls are secured. This is explained in greater detail in the Applicant’s post-event submissions, including written submission of oral comments, for ISH2 <a href="#">[REP1-184]</a>.</p> <p>Where the term “commence” is used in Requirements 4(2), 8, 9, 10(2), 11, 13, 16 and 18, the Applicant must have submitted and received approval for the relevant control plan required. In contrast to the preliminary works, these are comparatively more significant works; management plans would accordingly need to be produced based on outline documents and therefore it is appropriate that these are subject to a ‘pre-commencement’ condition preventing the works from starting.</p> <p>In the Applicant’s view, the drafting is clear in using “begin” where preliminary works should be considered (because it is sufficient for the development to have carried out a material operation to satisfy the time limit requirement), and “commence”, which excludes the preliminary works, where controls must be secured prior to starting the relevant works. The Applicant has also, in</p>

Ref. No	Provision	Proposed change (where applicable)	ExA Question	Applicant Comment
				<p>connection with the preliminary works, ensured that appropriate controls are in place.</p> <p>The Applicant therefore considers that the relationship between the definitions of “begin” and “commence” in the dDCO is clear and appropriate. The Applicant does not consider the definitions are at odds with each other but instead believes that they operate in a complementary way to ensure that the Schedule 2 requirements can function in a coherent manner. The Applicant does not therefore propose to modify the dDCO in relation to this aspect of the drafting.</p>
<b>QD14</b>	Article 2 (interpretation)	Not applicable	The Applicant is asked to explain more fully why it is necessary to employ a definition of ‘begin’ as opposed to the more conventional approach of defining ‘commence’ with a carve-out for ‘preliminary works’	The Applicant refers to its response to QD13. The term “begin” should be considered specifically in the context of Requirements 2 and 7 of the dDCO [ <a href="#">REP7-090</a> ] and has been included to ensure that those provisions can operate in the intended manner. A definition of “commence”, which includes a standard carve-out for preliminary works, has also been included and applies to many of the Schedule 2 Requirements, such that where those requirements are engaged commencement would be contingent on the production of detailed management plans for the approval of the Secretary of State.
<b>QD15</b>	Article 2 (interpretation)	Not applicable	The Applicant is requested to review the basis for and the relationship between the definitions of ‘begin’ in A2 and ‘commence’ and ‘preliminary works’ in Schedule 2 R1, to assure the ExA that apparent circularity has been removed. Could re-basing these definitions on s155 PA2008 assist this task?	<p>The Applicant refers to its response to QD13. The Applicant does not consider that there is circularity between the respective definitions, each of which has been included to fulfil a specific purpose.</p> <p>The Applicant would note that utilising the definition in the Town and Country Planning Act 1990 provides further specificity in relation to the works which would constitute “beginning” development. This is heavily precedented across the Applicant’s DCO.</p>

Ref. No	Provision	Proposed change (where applicable)	ExA Question	Applicant Comment
QD16	Article 2 (interpretation)	Not applicable	What would be the effect for the Proposed Development of a return to the more conventional drafting approach of defining ‘commence’ with a carve-out for ‘preliminary works’ in A2, with all subsequent references in the dDCO amended as necessary?	<p>The Applicant would first note that the definition of “commence” in Requirement 1 already includes a carve-out for preliminary works.</p> <p>Nevertheless, the primary effect of the ExA’s suggestion would be to link Requirement 2 and Requirement 7 of Schedule 2 to the commencement of the authorised development as opposed to beginning the authorised development.</p> <p>This approach would undermine the Applicant’s intention that the carrying out of any material operation should be sufficient to satisfy the time limits in Requirement 2 and by doing so, avoid the scenario which arose in the <i>Tidal Lagoon</i> case referred to above. The effect of this would be a risk that the requirement would not be discharged notwithstanding that material operations had been carried out. Similarly, this approach would also conflict with the Applicant’s intention that final pre-construction survey work should be required under Requirement 7 before any material operation is carried out over land. If commencement was instead the trigger under Requirement 7, then the preliminary works would in principle be authorised in the absence of such surveys. This would erode the protections which the Applicant has sought to build into the dDCO.</p>
QD17	Article 2 (interpretation)	More specific group of definitions of a watercourse	The Applicant, the Environment Agency (EA) and other water environment and industry stakeholders are asked to consider whether a more specific group of definitions of a watercourse would be justified	<p>The Applicant considers that the term “watercourse” – which as the ExA notes is well precedented – is appropriately defined in article 2 of the dDCO [<a href="#">REP7-090</a>].</p> <p>The definition relates to the Applicant’s powers in relation to watercourses under articles 18, 19 and 21 of the dDCO and is intended to ensure that the Applicant can implement the Project insofar as it relates to or requires measures to be taken in relation to any watercourses that</p>

Ref. No	Provision	Proposed change (where applicable)	ExA Question	Applicant Comment
			and the possible drafting benefits of making such a change.	<p>might be encountered on a scheme of this scale. The Applicant does not consider that an alternative grouping or categorisation of watercourses which would fall within the definition would change the scope or meaning of those powers. For example, it is not the Applicant’s intention that the powers should operate in one way for certain watercourses and in another way for others.</p> <p>To the extent that water quality and biodiversity considerations are relevant to any watercourse which would be subject to the exercise of these powers, those considerations are addressed by other mechanisms in the dDCO, including the REAC. The Applicant would also specifically highlight article 19(10) of the dDCO, which provides that “... <i>nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) ... of the Environmental Permitting (England and Wales) Regulations 2016</i>”.</p> <p>For these reasons, the Applicant does not consider that an alternative definition of the term would be justified or that there would be benefits in making such a change.</p>
QD18	Article 6 (limits of deviation)	Inclusion of a caveat limiting the downwards vertical limits of deviation	The Applicant and relevant statutory undertakers are asked to consider the effect of the remaining ‘limitless’ downwards vertical limits of deviation. Should these be subject to a caveat limiting the materially adverse effects of downward variation to that assessed within the ES?	<p>The Applicant does not consider such a caveat to be necessary.</p> <p>As set out in paragraph 2.2.21 of Environmental Statement Chapter 2 – Project Description [APP-140]: “<i>This ES and the assessments within it are based on the works proposed in the DCO application and the Order Limits (i.e., the maximum area of land anticipated as likely to be required, taking into account the LOD proposed for the Project and the flexibility of detailed design provided for in the DCO</i>” (emphasis added).</p> <p>Therefore, where any of the works set out in article 6 of the dDCO [REP7-090] are subject to ‘limitless’ downwards</p>

Ref. No	Provision	Proposed change (where applicable)	ExA Question	Applicant Comment
				<p>vertical limits of deviation, which is the case for the works described in articles 6(2)(f), 6(2)(g), 6(2)(h) and 6(2)(i) of the dDCO, the implications of this have already been considered by the Applicant and the Applicant has then satisfied itself through the assessment process that the ability to carry out those works to an as yet unspecified and (theoretically) unlimited depth would not give rise to effects which have not been assessed in the ES.</p> <p>To caveat the operation of article 6 in the manner suggested by the ExA would not therefore materially change the effect of the provision and is therefore considered to be unnecessary.</p> <p>Leaving aside the Project-specific justification provided above, the Applicant would further note this approach in relation to utilities assets is precedented (see, for example, the Thorpe Marsh Gas Pipeline Order 2016 and the River Humber Gas Pipeline Replacement Order 2016 in connection with gas pipeline works, and the National Grid (Richborough Connection Project) Development Consent Order 2017 in connection with overhead line works).</p>
<b>QD19</b>	Article 6 (limits of deviation)	Not applicable	The Applicant and the PLA are asked to clarify the latest position on the drafting of the upwards limits of deviation for tunnelling beneath the Thames.	<p>Paragraph 99 and 100 of Schedule 14 to the dDCO <a href="#">[REP7-090]</a> secure the agreed depths. Paragraph 99 is cross-referred to in the relevant parts of article 6. The Applicant is pleased to confirm that these paragraphs are agreed with the PLA, with the exception of one outstanding matter (paragraph 99(6)). The Applicant’s position on this is set out in the Applicant’s responses to comments on the dDCO at Deadline 7, which is submitted at Deadline 8 alongside this submission [<b>Document Reference 9.193</b>].</p>

Ref. No	Provision	Proposed change (where applicable)	ExA Question	Applicant Comment
QD20	Article 10 (construction and maintenance of new, altered or diverted streets and other structures)	Not applicable	Are the Local Highway Authorities content that A10 adequately provides for the maintenance of Green Bridges? If full agreement has yet to be reached then final submissions on drafting for comment between the parties should be made.	<p>The Applicant notes that this question is addressed to the local highway authorities.</p> <p>The Applicant would nevertheless highlight for clarity that specific provision is made for green bridges in article 10 of the dDCO <a href="#">[REP7-090]</a>. In particular, article 10(8) confirms that so much of each bridge as comprises highway within the meaning of the Highways Act 1980, would be maintained by the local highway authority in accordance with the general provision for the maintenance of new streets under article 10 of the dDCO. However, the planting and vegetation on either side of the highway would be maintained by the undertaker in accordance with the provisions of a landscape and ecology management plan approved under Requirement 5 of Schedule 2 to the dDCO.</p>
QD21	Article 12 (temporary closure, alteration and restriction of use of streets and private means of access)	Not applicable	The Applicant is asked to explain more fully why this power needs to apply to streets outside the Order limits. Could the power be limited to land within the Order limits and what would the effect of such a change be?	<p>The Applicant will need to take access to streets within and outside the Order Limits in order to access the authorised development for the purposes of construction. A “street” in this context includes any highway (see the definition in section 48 of the New Roads and Street Works Act 1991, to which article 2 of the dDCO <a href="#">[REP7-090]</a> refers), so would encompass the wider road network in the area which will be used by construction vehicles to access construction work sites.</p> <p>The power in article 12, therefore, ensures that a mechanism exists pursuant to which the Applicant can effectively respond to challenges which may arise on the wider road network which could present a danger to road users and / or impede the delivery of the authorised development. This could, for example, include a temporary restriction on the type of vehicles using a given street.</p> <p>If the power were not included in the dDCO, the Applicant would need to resort to existing statutory regimes, such as</p>

Ref. No	Provision	Proposed change (where applicable)	ExA Question	Applicant Comment
				<p>the Road Traffic Regulation Act 1984, to seek the powers instead. The Applicant considers it is preferable and more appropriate to include the powers in the dDCO, given the Project’s national significance and that the overarching purpose of the Planning Act 2008 was to provide a one stop shop for the consenting of Nationally Significant Infrastructure Projects.</p> <p>The Applicant’s Response to Issue Specific Hearing (ISH) 2 draft DCO <a href="#">[AS-089]</a> explained the safeguards which are drafted into article 12 of the dDCO to ensure that the exercise of the power is subject to appropriate controls. Notably, this includes the need to seek the consent of the relevant street authority under article 12(5)(b).</p> <p>The application of this provision to streets located outside the Order Limits is well precedented and has been approved by the Secretary of State on a number of occasions. Recent examples include the A47 Wansford to Sutton Development Consent Order 2023 (see article 16) and the A57 Link Roads Development Consent Order 2022 (see article 14).</p> <p>Accordingly, the Applicant does not consider that it would be appropriate to limit the application of the provision to streets and private means of access located within the Order Limits.</p>
<b>QD22</b>	Article 12 (temporary closure, alteration and restriction of use of streets and private means of access)	Not applicable	IPs who are street authorities are asked whether a 28-day deemed consent provision in A12(8) is reasonable. If not, please propose and justify an appropriate alternative provision.	<p>The Applicant notes that this question is directed to street authorities.</p> <p>The Applicant would, however, refer the ExA to paragraph 5.72 of the EM <a href="#">[REP7-092]</a>, which sets out the justification for the inclusion of a deemed consent provision and the extensive precedent which exists in support of this approach.</p>



Ref. No	Provision	Proposed change (where applicable)	ExA Question	Applicant Comment
<b>QD23</b>	Article 12 (temporary closure, alteration and restriction of use of streets and private means of access)	Not applicable	Traffic authorities and emergency services bodies (consultees) are asked whether the deemed consent period of 28 days in A17(11) is appropriate and, if not, to propose and justify and appropriate alternative provision.	<p>The Applicant notes that this question is directed to traffic authorities and emergency services bodies.</p> <p>The Applicant would, however, refer the ExA to its response to IP comments made on the draft DCO at Deadline 1 [<a href="#">REP2-077</a>], which set out the Applicant’s response to the London Borough of Havering’s concern that the period of 28 days in article 12 was too short. The Applicant remains of the view that the period of 28 days is appropriate in the context of this Order.</p>
<b>QD24</b>	Article 18 (powers in relation to relevant navigations or watercourses)	Not applicable	The Port of London Authority (PLA), Port of Tilbury London Ltd (POTLL), DP World London Gateway Port (LPG) and any other IP operating vessels on the Thames are asked for final positions on this drafting.	<p>The Applicant notes that this question is directed to Interested Parties and therefore has no comments at this stage. As requested by the ExA, where appropriate the Applicant will provide a response to any comments by Interested Parties in relation to this question, at Deadline 9 in the Examination timetable. The Applicant would note that the provision is now agreed with the PLA following amendments made to this provision.</p>
<b>QD25</b>	Article 18 (powers in relation to relevant navigations or watercourses)	Not applicable	The Applicant is asked to identify whether this power actually does or could apply to a houseboat mooring. Could a caveat to the power be added to limit its effect on a residential mooring and what would the effect of such a change be?	<p>Whilst it is the Applicant’s position that article 18 could apply to a houseboat mooring, the Applicant would stress there is no evidence of any houseboat mooring being located within the Order Limits. The PLA confirmed at ISH14 that such an eventuality is extremely unlikely given the environment of the river in this location. The Applicant would further note that the PLA has confirmed that they would not grant a mooring licence in this location. To the extent it were to prove necessary to remove such a mooring in connection with the carrying out or maintenance of the authorised development under article 18, compensation would be payable to any person who suffers loss or damage as a result in accordance with the Land Compensation Act 1961.</p>

Ref. No	Provision	Proposed change (where applicable)	ExA Question	Applicant Comment
QD26	Article 19 (discharge of water)	Not applicable	The Applicant is asked whether the consenting power under A19 should include seeking consent from or consulting the appropriate drainage authority.	Article 19(3) already requires the Applicant to seek the consent of the owner of any watercourse, public sewer or drain. This article is also well precedented in Strategic Road Networks DCOs and the Secretary of State has not required further consent or consultation, nor is the Applicant aware that the drainage authorities have previously sought this. The drainage authorities also benefit from the Protective Provisions in Schedule 14 Part 3 of the draft DCO <a href="#">[REP7-090]</a> .
QD27	Article 19 (discharge of water)	Not Applicable	The Applicant and any prospective consenting bodies are asked whether the deemed discharge consent period of 28 days under A19 is appropriate and, if not, what an appropriate period might be.	The Applicant’s position regarding the 28-day period specified in article 19 is set out in the EM <a href="#">[REP7-092]</a> . The Applicant considers the period to be appropriate and proportionate given the scale of pre-application engagement with parties and is necessary to ensure the Project can be delivered in a timely fashion. The deemed consent provision should also be read alongside the safeguard included at article 19(9).
QD28	Article 21 (authority to survey and investigate the land)	Not Applicable	The Applicant and any prospective consenting bodies are asked whether the deemed trial hole consent period of 28 days under A21 is appropriate and, if not, what an appropriate period might be.	The Applicant’s position regarding the 28-day period specified in article 21 is set out in the EM <a href="#">[REP7-092]</a> and the Applicant’s response to IP comments made on the draft DCO at Deadline 1 <a href="#">[REP2-077]</a> . The Applicant considers the period is appropriate and proportionate given the scale of pre-application engagement with parties and is necessary to ensure the Project can be delivered in a timely fashion. The deemed consent provision should also be read alongside the safeguard included at article 21(8).
QD29	Article 27 (time limit for exercise of authority to	Not Applicable	The Applicant is asked to provide a full justification for the extended time period of 8 years. What would be the effect of returning	The eight-year time limit reflects the scale of the development and is precedented for other significant, complex and large linear schemes (cf. article 45 of the Thames Water Utilities Limited (Thames Tideway Tunnel)

Ref. No	Provision	Proposed change (where applicable)	ExA Question	Applicant Comment
	acquire land compulsorily)		this to the standard 5 year period? Alternatively, if the scale and complexity of the project justifies an extended period for CA, should this be harmonised with the time limit for the authorised development to begin of 5 years, set in Schedule 2 R2?	<p>Order 2014 which includes a 10-year period, and article 21 of the National Grid (Hinkley Point C Connection Project) Order 2016 which permits an eight-year period). The Applicant initially proposed a 10-year period but following discussions with stakeholders, reduced the period to eight years. As set out in the EM <a href="#">[REP7-092]</a>, an extension to this time period is predated in DCOs of comparable complexity.</p> <p>The Applicant notes that the “Planning Act 2008: Guidance related to procedures for compulsory acquisition” recognises that, for long linear schemes, the acquisition of many separate plots of land may not always be practicable by agreement. The construction period of the Project is approximately six years. This includes establishing 18 site compounds, 15 Utility Logistics Hubs, building new structures and making changes to existing ones (including two tunnels, bridges, buildings, tunnel entrances and viaducts) and the diverting of three gas high-pressure pipelines and an overhead power line diversion that qualify as NSIPs in their own right. The complexity of these works necessitates the eight-year limit for the acquisition of land proposed.</p> <p>As a public body, the Applicant considers maximising public benefit in its decisions and ensuring value for public money. The Applicant considers the proposed extended time limit a method in which to accord with these principles. Imposing the standard five-year limit for the acquisition of land would negatively impact the public.</p> <p>The extended time period ensures the Applicant is able to identify areas of opportunity to reduce the amount of permanent acquisition land required. It would also allow General Vesting Declarations to be served based upon the</p>

Ref. No	Provision	Proposed change (where applicable)	ExA Question	Applicant Comment
				<p>actual land required once this is known, as various elements of the Project are completed, enabling a reduction in permanent land take, rather than acquiring land early. This would also ensure that public money is being spent in the most effective way possible, achieving value for money.</p> <p>The Applicant does not consider it necessary to amend the time frame in Schedule 2, Requirement 2 to eight years. This requirement sets out that the authorised development must begin no later than the expiration of five years beginning with the date that this Order comes into force. The Applicant is confident that this is achievable and refers the ExA to the justification provided in relation to Article 2 which sets out the definition of “begin”.</p> <p>The Applicant does not consider it necessary to loosen this requirement to an eight-year period. The Applicant considers that the certainty provided to the public with this shorter time frame is appropriate in this context.</p>
QD30			<p>The Applicant is asked to provide a full justification for re-basing the start of this period to the end of any legal challenge period or the end of any legal challenge. What would be the effect of returning this to the standard provision where time runs from the making of the Order?</p>	<p>The Applicant acknowledges that this article differs from other DCOs as it sets out that the eight-year period starts to run from the later of the expiry of the legal challenge period under section 118 of the Planning Act 2008, or the final determination of any legal challenge under that provision.</p> <p>The Applicant has considered the ExA's concern. The Applicant remains of the view that the possibility of legal challenge should be incorporated into this article but has made some amendments to the drafting of article 27 to ensure that there is a higher level of certainty in relation to when the eight-year period starts to run.</p> <p>The amended article retains the principle that where no challenge to the Order is made, the eight-year period</p>

Ref. No	Provision	Proposed change (where applicable)	ExA Question	Applicant Comment
				<p>starts the day after the period for legal challenge expires. In the event of a legal challenge, the Applicant has amended the dDCO so that the eight-year time period commences at the earlier of either the day after final determination of the legal challenge or the day after the one-year anniversary of the date of the expiry of the period for legal challenge. This amendment ensures that there is certainty as to when the eight-year period starts and ends. This amendment is set out in detail in the schedule of updates to the dDCO, the latest version of which is submitted at Deadline 8 [Document Reference 9.47 (8)] alongside the revised dDCO [Document Reference 3.1 (10)].</p> <p>The delaying of the start of the CA powers period to reflect any judicial review challenge brought by a third party is necessary following recent experience of legal challenges to made DCOs, which may delay the exercise of compulsory acquisition powers and in so doing reduce the length of time within which those powers may be exercised, if the period relates (as it does usually) to the date on which the Order is made.</p> <p>If the standard provision is used, instead of the Applicant’s proposed wording, the risk of inefficient use of public money is increased. With the standard wording, the trigger for the eight-year period would be when the DCO was initially made. If judicial review proceedings are brought, the time period would not be paused. This increases the probability that the Applicant would need to apply for a change to the DCO to extend the eight-year time period, following the completion of any post-decision proceedings. The Applicant considers this to be an unnecessary risk to public funds. A change to the dDCO for this reason would</p>

Ref. No	Provision	Proposed change (where applicable)	ExA Question	Applicant Comment
				<p>needlessly take resources from the Planning Inspectorate and the Applicant.</p> <p>As a public body, National Highways must seek to ensure value for public money. It is therefore considered appropriate that the time period for the exercise compulsory acquisition powers should begin once the legal challenge period has expired or the earlier of either the day after final determination of the legal challenge or the day after the one-year anniversary of the date of the expiry of the period for legal challenge.</p>
<p><b>QD31</b></p>	<p>Article 28 (Compulsory acquisition of rights and imposition of restrictive covenants)</p>	<p>Not Applicable</p>	<p>The Applicant is asked to provide a full justification for the broad extent of this power, or alternatively to find a means of limiting it to more precisely defined locations. What would be the effects of removing this power?</p>	<p>This article allows for rights/restrictive covenants over land to be acquired as well as (or instead of) the land itself, and also for new rights to be created over land. It provides for such rights and restrictive covenants as may need to be acquired by the Applicant over land which it is authorised to acquire under article 25 (compulsory acquisition of land).</p> <p>The Applicant has considered the ExA’s request to limit this power to more precise defined locations and does not consider any further limitations to be in the public benefit.</p> <p>The Applicant has sought to identify all of the plots which are to be subject to the acquisition or creation of rights and has set these out in the Book of Reference [REP7-098], Land Plans [REP7-006 to REP7-010] and Schedule 8 of the Order [REP7-090]. However, the flexibility of this Article maximises public benefit, as it ensures that the Applicant retains the flexibility to acquire or create rights/restrictive covenants over land where that land might otherwise have to be acquired outright.</p> <p>The Applicant considers that there are sufficient caveats to this power within the Article. The general power is subject</p>

Ref. No	Provision	Proposed change (where applicable)	ExA Question	Applicant Comment
				<p>to paragraph (2) which limits the power of acquisition to only acquire rights and impose restrictive covenants over the land listed in Schedule 8, and shown in blue on the land plans for the purposes stated in that Schedule. When taken together with article 28(2), the power to acquire rights or impose restrictive covenants under article 28(1) is limited to land which the Applicant seeks authorisation to acquire outright and (“pink land” in the land plans).</p> <p>This power to acquire rights or impose restrictive covenants over the "pink land" is justified on this project because it may be the case that the Applicant could achieve its aim through an alternative means, through the exercise of a lesser power to acquire rights or impose restrictive covenants, instead of acquiring the "pink land" outright and depriving the owners of that land wholly and permanently. Such a determination cannot be made at this juncture because of the stage of design development. As the Project is designed in further detail, there may be scope to delineate the rights and restrictions that it could acquire instead of outright acquisition. Having the flexibility to exercise its powers in this way, and to offer an alternative strategy to landowners where appropriate, would allow the Applicant to take this proportionate approach should the opportunity arise. The general power in article 28(1) would enable this more proportionate exercise of powers as an alternative to acquisition at a later date. Without this provision the Applicant would have no alternative but to acquire the land outright if an alternative agreement could not be reached by agreed private treaty. Alternatively, the Applicant would have to acquire the land outright, and then re-sell it back to the owner subject to the necessary rights and restrictive covenants leading to an administrative burden. This</p>

Ref. No	Provision	Proposed change (where applicable)	ExA Question	Applicant Comment
				<p>approach would also benefit preserving public funds in connection with the Project.</p> <p>Paragraphs (3) and (4) provide for the exercise of the powers in paragraph (1) by statutory undertakers with the Applicant’s prior written consent. These provisions provide a mechanism allowing those persons to benefit from the rights acquired for their benefit. The intention behind the drafting is that the liability to pay compensation to the owners and occupiers of the land burdened by the new rights or restrictive covenants would remain with the Applicant, notwithstanding that the benefit of the rights acquired would be enjoyed by parties other than the Applicant.</p> <p>There are particular circumstances which justify following this approach in the Project dDCO: for example, subject to detailed design the Applicant may seek to acquire only the land required to accommodate a viaduct but impose restrictions necessary to protect the viaduct embankments, together with the necessary rights to access the embankment for maintenance purposes, over the land on the surface that is crossed by the viaduct. This very approach is identical to the approach endorsed by the Secretary of State in the A47/A11 Thickthorn Junction Development Consent Order 2022, the Lake Lothing (Lowestoft) Third Crossing Order 2020 and the Great Yarmouth Third River Crossing Development Consent Order 2020 (all of which are Orders which have been made following the M4 Junctions 3-12 project).</p>
<b>QD32</b>	Articles 53 (disapplication of legislative provisions, etc)	Not applicable	Does any IP have any concern that the draft provisions unreasonably or inappropriately seek to disapply or modify other	The Applicant notes that this question is directed to IPs and therefore has no comments at this stage. As requested by the ExA, where appropriate the Applicant will provide a response to any comments by Interested Parties



Ref. No	Provision	Proposed change (where applicable)	ExA Question	Applicant Comment
	and 55 (application of local legislation, etc)		applicable legislative provisions? If so, what changes are sought to this provision or the dDCO more generally and why?	in relation to this question, at Deadline 9 in the Examination timetable.
<b>QD33</b>	Article 58 (defence to proceedings in statutory nuisance)	Not applicable	Does any IP have any concern that the proposed defence unreasonably seeks to safeguard the undertaker against poor or inappropriate practices or insufficient mitigation in either construction or operation? If so, what changes are sought to this provision and why?	The Applicant notes that this question is directed to IPs and therefore has no comments at this stage. As requested by the ExA, where appropriate the Applicant will provide a response to any comments by IPs in relation to this question, at Deadline 9 in the Examination timetable.
<b>QD34</b>	Articles 64 (arbitration) and 65 (appeals to the Secretary of State)	Not applicable	Does any statutory body with formal decision-making powers have any concern that the proposed arbitration mechanism unduly affects their statutory role or powers? If so, what changes are sought and why?	The Applicant notes that this question is directed to IPs and therefore has no comments at this stage. As requested by the ExA, where appropriate the Applicant will provide a response to any comments by IPs in relation to this question, at Deadline 9 in the Examination timetable.
<b>QD35</b>	Articles 64 (arbitration) and 65 (appeals to the Secretary of State)	Not applicable	What does the undertaker do if the SoST refuses to grant the discharge of a Requirement and there is no means of dispute resolution? One answer is that the decision of the SoST is final and that must suffice, but is that the intended position?	Article 64 governs what happens when two parties disagree in the implementation of any provision of the Order except where this is expressly provided for (e.g., Schedule 12 relating to the road user charge). The ExA is correct to say that a decision of the Secretary of State, under this Article, will be final and will not be subject to arbitration but would be reviewable on normal public law grounds. The Applicant would also stress that it has not required a matter to be referred to arbitration to reach agreement with Secretary of State in respect of the discharge of a requirement on any of its previous schemes.

Ref. No	Provision	Proposed change (where applicable)	ExA Question	Applicant Comment
				<p>Article 65 establishes an appeal process in relation to article 12, 17, 21, Requirement 13, permit schemes or under the documents secured under article 61 or Schedule 2 (i.e., provisions where a local authority has an approval role) and where a local authority issues a notice under section 60, or does not grant consent or grants conditional consent under section 61, of the Control of Pollution Act 1974.</p> <p>Under this article, the Secretary of State must appoint a person to consider the appeal. The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.</p>
<b>QD36</b>	Article 66 (power to override easements and other rights)	Not applicable	The Applicant is asked to provide a full justification for the broad extent of this power, or alternatively to find a means of limiting it to more precisely defined locations. What would be the effects of removing or reducing the scope of this power?	The Applicant’s detailed and full rationale for including this provision is set out in its response to ISH 2 on the draft DCO <a href="#">[AS-089]</a> . The Applicant does not consider that it would be appropriate to remove or otherwise restrict the operation of this article, which is (as set out in document <a href="#">[AS-089]</a> ) intended to address a lacuna that would not be filled by other provisions of the dDCO.
<b>QD37</b>	Schedules	Not applicable	Are there any further matters that have been raised in the Examination that should be provided for in a Schedule but which are not? If so, please provide reasons and evidence for your position.	The Applicant would refer to its response to QD10 of the ExA’s commentary on the dDCO above. The Applicant does not consider that there are matters raised during the course of the Examination which are required to be provided for in an additional Schedule to the dDCO. All relevant Schedules are already included in the dDCO and the justification for their inclusion is set out in the EM <a href="#">[REP7-092]</a> .

Ref. No	Provision	Proposed change (where applicable)	ExA Question	Applicant Comment
QD38	Schedules	Not applicable	Are there any matters provided for in a Schedule which are superfluous? If so, please provide reasons and evidence for your position.	The Applicant does not consider that there are any matters provided for in a Schedule to the dDCO which are superfluous. The justification and need for each Schedule to the dDCO [REP7-090] is set out in the EM [REP7-092]. To remove any of the Schedules would undermine the operation of the dDCO as a coherent whole.
QD39	Schedules	Not applicable	Are there Schedules that the ExA has not yet commented on in respect of which a change in drafting is sought? If so, please provide reasons and evidence for your position.	The Applicant understands this question is directed primarily to IPs and does not, therefore, propose to comment substantively at this stage but will if appropriate provide a further response at Deadline 9.
QD40	Schedule 1 – suggested minor drafting amendments	In relation to those ancillary works, the ExA suggests a minor drafting revision for clarity: ‘[f]or the purposes of or in connection with the construction of any of the works and other development in the Order limits, ancillary or related <u>works and other development...</u> ’ (Underlined text proposed to be added.)	Does the Applicant agree?	The Applicant agrees with the ExA’s suggestion and has made this change in the revised dDCO submitted at Deadline 8 [Document Reference 3.1 (10)]

Ref. No	Provision	Proposed change (where applicable)	ExA Question	Applicant Comment
QD41		Not applicable	Do IPs have any further and final observations on the drafting of this Schedule including on the description of the individual numbered Works and their relationship with the Works Plans?	The Applicant understands that this question is directed to IPs and, therefore, has no comments at this stage. As requested by the ExA, where appropriate the Applicant will provide a response to any comments by IPs in relation to this question, at Deadline 9 in the Examination timetable.
QD42	Schedule 1 – re-provision of a travellers’ site and associated landscaping	Not applicable	The Applicant is requested to provide legal submissions on this point.	The Applicant has prepared a note in response to this question, which is appended as Appendix A to this document.
QD43	Schedule 2 – security for the REAC	Not applicable	Local Planning and Highway Authorities, Port Authorities and Operators, Natural England, the Environment Agency and the Marine Management Organisation as asked whether the REAC commitments are sufficiently secured. If not, what specific additional references to the REAC are required in any of the existing draft Requirements, or are any additional Requirements sought (and if so reasons for their inclusion and drafts should be provided)?	The Applicant notes that this question is directed to IPs and therefore has no comments at this stage, however the Applicant is firmly of the view that the REAC commitments are sufficiently and appropriately secured by the dDCO, principally via Requirement 4 <a href="#">[REP7-090]</a> . As requested by the ExA, where appropriate the Applicant will provide a response to any comments by IPs in relation to this question, at Deadline 9 in the Examination timetable.
QD44	Schedule 2 – security for other CDs	Not applicable	Local Planning and Highway Authorities, Port Authorities and Operators, Natural England, the Environment Agency and the Marine Management Organisation	The Applicant notes that this question is directed to IPs and therefore has no comments at this stage, however the Applicant is firmly of the view that the REAC commitments

Ref. No	Provision	Proposed change (where applicable)	ExA Question	Applicant Comment
			as asked whether the other CDs are sufficiently secured? If not, what specific additional references to specific CDs are required in any of the existing draft Requirements, or are any additional Requirements sought (and if so reasons for their inclusion and drafts should be provided)?	are sufficiently and appropriately secured by the dDCO, principally via Requirement 4 <a href="#">[REP7-090]</a> . As requested by the ExA, where appropriate the Applicant will provide a response to any comments by IPs in relation to this question, at Deadline 9 in the Examination timetable.
<b>QD45</b>	Schedule 2 – interpretation of “commence” and “preliminary works”	Not applicable	The Applicant is requested to review and harmonise its responses to each of the questions in relation to A2 with reference to this provision also. What if any drafting changes are necessary to simplify and harmonise the drafting on interpretation and definitions?	The Applicant refers to its response to QD13 – QD16. As noted in those responses, the distinction made between the terms “begin” and “commence” throughout the dDCO is deliberate and serves to ensure that each of the Schedule 2 Requirements is subject to the appropriate trigger event. The Applicant does not consider that changes are necessary to simplify and harmonise the dDCO drafting.
<b>QD46</b>			What approach do other IPs consider should be taken to these definitions and why?	The Applicant notes that this question is directed to IPs and therefore has no comments at this stage. As requested by the ExA, where appropriate the Applicant will provide a response to any comments by IPs in relation to this question, at Deadline 9 in the Examination timetable.
<b>QD47</b>	Requirement 2 – time limits (for the authorised development)	Not applicable	Should time limits applicable to beginning/ commencing the Proposed Development and time limits for the exercise of CA powers be harmonised?	As set out in response to related questions within the ExA’s commentary, the Applicant would stress that there is no particular relationship between the time periods applicable to the compulsory acquisition of land under article 27 of the dDCO and the time limits for development to begin under Requirement 2. The purpose of the former is to ensure that persons with an interest in land affected by the Project can be certain that no land can be taken by

Ref. No	Provision	Proposed change (where applicable)	ExA Question	Applicant Comment
				<p>compulsion beyond the relevant date, which in this case is eight years following the “start date” defined in article 27(3) of the dDCO. The Applicant has set out in detail why the period of eight years provided for in article 27 is specifically justified in this case. This can be found in the EM [REP7-092], the Applicant’s response to Issue Specific Hearing (ISH) 2 draft DCO [AS-089] and the Applicant’s response to IP comments made on the draft DCO at Deadline 1 [REP2-077].</p> <p>The purpose of the latter – the time limits under Requirement 2 – is to ensure that the Applicant must take certain steps towards the implementation of the Project within the relevant period, which in this case is five years, failing which the development consent granted by the Order will lapse. The period of five years is very widely precedented in DCOs. The Applicant considers the period is appropriate in this case and is not seeking consent for a longer period in line with the precedents cited by the ExA. The provision ensures the powers to carry out the development do not endure indefinitely, which would otherwise create uncertainty for all those potentially affected by the Project. This is quite separate to the compulsory acquisition of land. Indeed, it would theoretically be possible for the Applicant to comply with the time limits under Requirement 2 of the dDCO but then for its powers to acquire land compulsorily under article 27 to elapse.</p> <p>For these reasons, the Applicant has not approached the drafting of these provisions with the objective of harmonising the time periods applicable in each case. There is a separate and distinct justification for each, and the Applicant considers that the correct balance has been achieved.</p>

Ref. No	Provision	Proposed change (where applicable)	ExA Question	Applicant Comment
QD48			Is there a justification for time limits of longer than 5 years? What is that justification?	The Applicant understands this question relates to Requirement 2 of the dDCO. However, the Applicant is not seeking time limits of longer than five years under Requirement 2, nor does it consider there would be a compelling justification for longer time limits. This is, as noted in response to QD48, a separate matter to the time limits applicable to the compulsory acquisition of land under article 27 of the dDCO <a href="#">[REP7-090]</a> .
QD49	Requirement 3 – detailed design	Not applicable	Are the design principles guiding the Proposed Development adequately secured and do any of the principles need to be amended? If amendments are sought, why are they required?	The Applicant considers the Design Principles [Document Reference 7.5 (6)] are appropriately secured by Requirement 3 of the dDCO, which provides that “ <i>the authorised development must be ... carried out in accordance with the design principles document ...</i> ”. The Design Principles are listed in Schedule 16 (documents to be certified) of the dDCO and will be certified in accordance with the process set out in article 62 of the dDCO <a href="#">[REP7-090]</a> .  The Applicant has introduced amendments to the Design Principles as the Examination has progressed. As regards the suggested amendments to the Design Principles put forward by Gravesham Borough Council at Deadline 6 <a href="#">[REP6-135]</a> , the Applicant set out why it did not consider this to be necessary in its responses to Interested Parties’ comments on the dDCO at Deadline 6 <a href="#">[REP6-085]</a> .
QD50	Requirement 4 – construction and handover environmental management plans	Not applicable	Is the iteration and approval process sufficiently clear? Does it provide adequate security for initial stage commitments and for the REAC? If amendments are sought, why are they required?	The Applicant considers that Requirement 4, which follows a standard and widely precedented format, is appropriate and sufficient to ensure that the three iterations of the Environmental Management Plan (EMP) are appropriately secured.  As regards the requirement under Requirement 4(1) for all preliminary works to be carried out in accordance with the

Ref. No	Provision	Proposed change (where applicable)	ExA Question	Applicant Comment
				preliminary works EMP, the Applicant notes the ExA’s observation that there is no reference to the REAC in that context. The Applicant does not consider that the inclusion of such a reference is necessary. This is because references to the “preliminary works EMP” in Requirement 4(1) are to be construed in accordance with Requirement 2, which defines that document as “... Annex C of the Code of Construction Practice <i>and includes the preliminary works REAC</i> ” (emphasis added). In the context of Requirement 4(1), therefore, reference should be made to the preliminary works REAC, which is secured by virtue of its inclusion within the definition of the preliminary works EMP under Requirement 2.
QD51			Should any specific consultations prior to approval by the SoS be secured?	The requirement for specific consultation is already secured by Requirement 4(2), which confirms that the second iteration of the EMP must be submitted to and approved in writing by the Secretary of State, following consultation by the Applicant with the relevant planning authorities, relevant local highway authorities and bodies identified in Table 2.1 of the Code of Construction Practice to the extent that the consultation relates to matters relevant to their respective functions.
QD52	Requirement 5 – landscaping and ecology	Not applicable	Is the approval process sufficiently clear? Does it provide adequate security for initial stage commitments and for the REAC? If amendments are sought, why are they required?	The Applicant agrees with the ExA’s comments within its Commentary on the draft Development Consent Order (dDCO) <a href="#">[PD-047]</a> that the measures provided for by Requirement 5 are robust. The Applicant also considers that the approval process in respect of any landscape and ecology management plan (LEMP) under Requirement 5 is sufficiently clear; Requirement 5 makes clear that the LEMP must be submitted to and approved in writing by the Secretary of State prior to the opening of the part of the authorised development to which that LEMP relates.



Ref. No	Provision	Proposed change (where applicable)	ExA Question	Applicant Comment
				All initial stage commitments are detailed in the outline LEMP [REP7-134] and the REAC, which are in turn secured by Requirement 5(2). Commitments relevant to the initial establishment stage of any planting to be implemented as part of the authorised development are therefore legally secured.
<b>QD53</b>			Should any specific consultations (and the timing for these consultations) prior to approval by the SoS be secured?	This is already provided for by Requirement 5(1), which states that a LEMP must be submitted to and approved in writing by the Secretary of State, following consultation by the undertaker with the bodies listed in Table 2.1 of the outline LEMP on matters related to their respective functions. Table 2.1 is in the Applicant’s view a comprehensive list of the stakeholders with an interest in the development and implementation of the LEMP.
<b>QD54</b>	Requirements 6, 7,8 and 9 – contaminated land and groundwater, protected species, surface and foul water drainage and historic environment	Not applicable	Do the Environment Agency, Natural England and Historic England consider that the approval process is sufficiently clear? Does it provide adequate security for initial stage commitments and for the REAC? If amendments are sought, why are they required?	The Applicant notes that this question is directed to IPs, however the Applicant does consider that the approval process relating to the matters addressed by Requirements 6 – 9 (inclusive) is sufficiently clear and does not require amendment. As requested, where appropriate the Applicant will provide a response to any comments by IPs in relation to this question, at Deadline 9 in the Examination timetable.
<b>QD55</b>	Requirement 13 – re-provision of Gammonfields Travellers’ Site in Thurrock	Not applicable	R13 appears to provide for the development of a replacement Travellers’ site but the ExA is not clear that it also adequately provides for the lawful ongoing use of the site, or ensures that use or development not expressly	The Applicant has prepared a note in response to this question, which is appended as Appendix A to this document.

Ref. No	Provision	Proposed change (where applicable)	ExA Question	Applicant Comment
			<p>contemplated in clause S11.12 of the Design Principles document can be adequately managed.</p>	
QD56			<p>Does R13(3) (which provides security for the carrying out of works to provide the replacement Travellers' site) provide any security for the ongoing use of the operational site as provided?</p>	
QD57			<p>Could a new R13 (4) (with renumbering thereafter) provide that on completion of Work No.7R the land must be used as a Travellers' site and the development must be maintained generally in accordance with any plans or details submitted and approved under R13 (2)?</p>	
QD58			<p>Is there argument to include another new provision that, notwithstanding the process for obtaining consent for operational development for a Travellers' site provided under R13, any subsequent application for change of use, new development or any further enforcement proceedings or appeals in relation to any of these should proceed under relevant provisions of the TCPA, with the consent for use and development provided under</p>	

Ref. No	Provision	Proposed change (where applicable)	ExA Question	Applicant Comment
			<p>the made Order being deemed to be a conditional lawful use or a planning permission for the purposes of TCPA decision-making, subject to a need to consult the LTC undertaker on any such application, proceeding or appeal? The aim of such a change would be to use the DCO regime to re-provide the site, but not to govern its operation. Could such a provision form part of A56 or should it be dealt with in R13 or another new Article and or Requirement? The Applicant is requested to provide a drafted response.</p>	
<b>QD59</b>	Requirement 15 – carbon and energy management plan	Not applicable	IPs final submissions are sought. Reasons for any proposed changes must be provided.	The Applicant notes that this question is directed to IPs and, therefore, has no comments at this stage. As requested by the ExA, where appropriate the Applicant will provide a response to any comments by IPs in relation to this question, at Deadline 9 in the Examination timetable.
<b>QD60</b>	Schedule 3 – temporary closure, alteration, diversion and restriction of use of streets and private means of access	Not applicable	Final submissions on the appropriateness and/ or accuracy of the proposed descriptions, extents and representation of temporary restrictions on plans identified in Schedule 3 are sought from Local Highway Authorities and IPs affected by the proposals. Reasons for any	The Applicant notes that this question is directed to IPs and, therefore, has no comments at this stage. As requested by the ExA, where appropriate the Applicant will provide a response to any comments by IPs in relation to this question, at Deadline 9 in the Examination timetable.

Ref. No	Provision	Proposed change (where applicable)	ExA Question	Applicant Comment
			requested amendments must be provided	
<b>QD61</b>	Schedule 4 – permanent stopping up of streets and private means of access	Not applicable	Final submissions on the appropriateness and/ or accuracy of the proposed descriptions, extents and representation of permanent stopping up on plans and of the proposed substitutes(s) identified in Schedule 4 are sought from Local Highway Authorities and IPs affected by the proposals. Reasons for any requested amendments must be provided.	The Applicant notes that this question is directed to IPs and, therefore, has no comments at this stage. As requested by the ExA, where appropriate the Applicant will provide a response to any comments by IPs in relation to this question, at Deadline 9 in the Examination timetable.
<b>QD62</b>			Final submissions on the appropriateness and/ or accuracy of the proposed descriptions, extents and representation of permanent stopping up on plans identified in Schedule 4 are sought from Local Highway Authorities and IPs affected by the proposals. Are individual proposals to stop up without substitution appropriate? Reasons for any requested amendments must be provided.	The Applicant notes that this question is directed to IPs and, therefore, has no comments at this stage. As requested by the ExA, where appropriate the Applicant will provide a response to any comments by Interested Parties in relation to this question, at Deadline 9 in the Examination timetable.
<b>QD63</b>	Schedule 5 – classification of roads, etc.	Not applicable	Final submissions on the reclassification of certain bridleway PRowS are sought from Mr Mike Holland for clients, Mr Tom Benton, and Mr Jeremy	The Applicant notes that this question is directed to IPs and, therefore, has no comments at this stage. As requested by the ExA, where appropriate the Applicant will provide a response to any comments by IPs in relation to this question, at Deadline 9 in the Examination timetable.

Ref. No	Provision	Proposed change (where applicable)	ExA Question	Applicant Comment
			Finnis for client. With reference to Schedule 5 Part 6 and to the Classification of Roads Plans, please identify each Bridleway proposed to be differently classified, what its revised proposed classification would be and a summary reason for the change.	
<b>QD64</b>			Applicant, Local Highway Authorities and IPs affected by the proposals are invited to respond at the following deadline.	The Applicant notes the request and will provide a response at Deadline 9 to any comments from Interested Parties in respect of QD63.
<b>QD65</b>	Schedule 6 – traffic regulation measures	Not applicable	Final submissions on the appropriateness and/ or accuracy of the proposed descriptions and extents of the proposed speed limits, clearway provisions and TRO amendments in Schedule 6 are sought from Local Highway Authorities and IPs affected by the proposals. Reasons for any requested amendments must be provided.	The Applicant notes that this question is directed to IPs and, therefore, has no comments at this stage. As requested by the ExA, where appropriate the Applicant will provide a response to any comments by IPs in relation to this question, at Deadline 9 in the Examination timetable.
<b>QD66</b>		Not applicable	Without prejudice to submissions on HRA and effects of European Sites more generally, the Applicant is invited to indicate whether (and if so how) relevant air quality impact reductions might be secured by speed limits. Would such controls be given	The speed limits on M25 are controlled and regulated under a variable speed limit variation. This allows for a variation of the speed limit on the M25 in the event that the Secretary of State considers the without prejudice mitigation is required. The relevant speed limit would not be inserted into Schedule 6 to the dDCO [ <a href="#">REP7-090</a> ], but would instead be required under the REAC secured under Requirement 4.

Ref. No	Provision	Proposed change (where applicable)	ExA Question	Applicant Comment
			effect to in this Schedule and if so, how would the Schedule be changed?	The Applicant has addressed how the REAC would be updated in response to ExQ1_Q11.11.2, which can be found in <a href="#">[REP4-194]</a> .
<b>QD67</b>	Schedule 7 – trees subject to tree preservation orders	Not applicable	Final submissions on the appropriateness and/ or accuracy of the proposed descriptions, extents and effects of the proposed tree works in Schedule 7 are sought from Local Authorities. Reasons for any requested amendments must be provided.	The Applicant notes that this question is directed to IPs and, therefore, has no comments at this stage. As requested by the ExA, where appropriate the Applicant will provide a response to any comments by IPs in relation to this question, at Deadline 9 in the Examination timetable.
<b>QD68</b>	Schedule 8 – land of which only new rights etc. may be acquired	Not applicable	Final submissions on the appropriateness and/ or accuracy of the proposed descriptions, extents and purposes of the proposed acquisitions in Schedule 8 are sought from Affected Persons. Reasons for any requested amendments must be provided.	The Applicant notes that this question is directed to IPs and, therefore, has no comments at this stage. As requested by the ExA, where appropriate the Applicant will provide a response to any comments by IPs in relation to this question, at Deadline 9 in the Examination timetable.
<b>QD69</b>	Schedule 9 – modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants	Not applicable	Final submissions on the appropriateness and effect of the proposed modifications in Schedule 9 are sought from Affected Persons. Reasons for any requested amendments must be provided.	The Applicant notes that this question is directed to IPs and, therefore, has no comments at this stage. As requested by the ExA, where appropriate the Applicant will provide a response to any comments by IPs in relation to this question, at Deadline 9 in the Examination timetable.

Ref. No	Provision	Proposed change (where applicable)	ExA Question	Applicant Comment
QD70	Schedule 10 – land in which only subsoil or new rights in and above subsoil and surface may be acquired	Not applicable	Final submissions on the appropriateness and/ or accuracy of the proposed descriptions, extents and purposes of the proposed acquisitions in Schedule 10 are sought from Affected Persons. Reasons for any requested amendments must be provided.	The Applicant notes that this question is directed to IPs and, therefore, has no comments at this stage. As requested by the ExA, where appropriate the Applicant will provide a response to any comments by IPs in relation to this question, at Deadline 9 in the Examination timetable.
QD71	Schedule 11 – land of which temporary possession may be taken	Not applicable	Final submissions on the appropriateness and/ or accuracy of the proposed descriptions, extents and purposes of the proposed TP in Schedule 11 are sought. Reasons for any requested amendments must be provided.	The Applicant notes that this question is directed to IPs and, therefore, has no comments at this stage. As requested by the ExA, where appropriate the Applicant will provide a response to any comments by IPs in relation to this question, at Deadline 9 in the Examination timetable.
QD72	Schedule 12 – road user charging provisions for use of the Lower Thames Crossing	Not applicable	Is the ExA correct in assessing the basis for this provision as avoiding differential approaches to charging which might differentially attract vehicles to one or the other crossing?	This is correct, as is more fully explained in the Road User Charging Statement <a href="#">[APP-517]</a> .
QD73			Are IPs content that the proposed charging regime is within the powers of a DCO (with reference to PA2008 s120 and Schedule 5)? If not, please explain why not.	The Applicant notes that this question is directed to IPs but the Applicant’s firm position is that the proposed charging regime is within the powers of a DCO, for the reasons set out in the EM <a href="#">[REP7-092]</a> . In particular, paragraph 18 of Schedule 5 to the Planning Act 2008 specifically provides that the matters for which provision may be made by a DCO include ‘charging tolls, fares (including penalty fares) and other charges’. As requested

Ref. No	Provision	Proposed change (where applicable)	ExA Question	Applicant Comment
				by the ExA, where appropriate the Applicant will provide a response to any comments by IPs in relation to this question, at Deadline 9 in the Examination timetable.
<b>QD74</b>			Are there any final observations on the operation of Payments for local residents (para 5)?	As requested by the ExA, where appropriate the Applicant will provide a response to any comments by IPs in relation to this question, at Deadline 9 in the Examination timetable.
<b>QD75</b>			Are there any final observations on the effect of the balance of these provisions? Responses to these questions are specifically sought from the host Local Authorities for the proposed LTC. Reasons should be provided for any changes sought.	The Applicant notes that this question is directed to IPs and therefore has no comments at this stage. As requested by the ExA, where appropriate the Applicant will provide a response to any comments by IPs in relation to this question, at Deadline 9 in the Examination timetable.
<b>QD76</b>	Schedule 13 – Lower Thames Crossing byelaws	Not applicable	Are IPs content that all of the proposed byelaws are within the powers of a DCO (with reference to PA2008 s120 and Schedule 5)? If not, please explain why not.	The Applicant notes that this question is directed to IPs and therefore has no further substantive comments at this stage, but is nevertheless content that all of the proposed byelaws are within the powers of a DCO by virtue of section 120(3) and paragraph 32A of Schedule 5 to the Planning Act 2008. As requested by the ExA, where appropriate the Applicant will provide a response to any comments by IPs in relation to this question, at Deadline 9 in the Examination timetable.
<b>QD77</b>			Are there any final observations on the effect of these provisions? Responses to this question are specifically sought from the host Local Authorities for the proposed LTC. Reasons should be provided for any changes sought.	The Applicant notes that this question is directed to IPs and therefore has no comments at this stage. As requested by the ExA, where appropriate the Applicant will provide a response to any comments by IPs in relation to this question, at Deadline 9 in the Examination timetable.



Ref. No	Provision	Proposed change (where applicable)	ExA Question	Applicant Comment
QD78	Schedule 14 – protective provisions	Not applicable	Are the named beneficiaries of the Protective Provisions content that the provisions drafted for their benefit are appropriate and correct? If not, please explain why not.	The Applicant notes that this question is directed to IPs and therefore has no comments at this stage. As requested by the ExA, where appropriate the Applicant will provide a response to any comments by IPs in relation to this question, at Deadline 9 in the Examination timetable.
QD79			Further to changes to the structure of the National Grid group of companies, should the beneficiary of Part 6 be National Gas?	The Applicant can confirm that references to National Grid Gas Plc in the dDCO were amended to National Gas Transmission Plc in the version of the dDCO submitted at Deadline 7 [ <a href="#">REP7-090</a> ].
QD80			Do any other IPs and specifically statutory undertakers affected by the Proposed Development consider that they should benefit from Protective Provisions? If so, why and what ought the provisions to contain?	The Applicant notes that this question is directed to IPs and therefore has no comments at this stage. As requested by the ExA, where appropriate the Applicant will provide a response to any comments by IPs in relation to this question, at Deadline 9 in the Examination timetable.
QD81			Are there any other requests for amendments to Protective Provisions? If so what changes are sought and why?	The Applicant continues to negotiate the terms of protective provisions with third parties and is hopeful that agreement will be reached with the majority of third parties in due course. The Applicant will set out its final position in relation to negotiations with third party undertakers at Deadline 9.
QD82	Schedule 15 – deemed marine licence	Not applicable	Are there any final observations on the form or effect of the DML? Responses to this question are specifically sought from the MMO. Reasons should be provided for any changes sought.	The Applicant considers the Deemed Marine Licence (DML) now agreed, subject to the outstanding points below: <ul style="list-style-type: none"> <li>Paragraph 20 of the DML (Further information regarding return): The MMO do not agree to the deemed consent provisions within para 20(2) of the DML. The Applicant</li> </ul>

Ref. No	Provision	Proposed change (where applicable)	ExA Question	Applicant Comment
				<p>seeks inclusion of deemed consent provisions to ensure that there are no delays to its ability to implement the scheme. 30 business days to request further information is considered a reasonable period. Deemed consent provisions such as those in para 20 have been included in DMLs in other DCOs, for example The Great Yarmouth Third River Crossing DCO 2020.</p> <ul style="list-style-type: none"> <li>• Paragraph 22 of the DML (Notice of determination): The MMO do not agree to determine applications within 30 business days. The Applicant considers this a reasonable period of time to make a decision, particularly given the limited nature of works in the marine area. Paragraph 22(3) also permits the MMO to make a decision later than 30 business days if it cannot reasonably make an earlier decision. The Applicant therefore considers this drafting reasonable. The Applicant’s approach is in line with that on the Silvertown Tunnel Order 2018.</li> <li>• Paragraph 24(3) of the DML (Changes to the Deemed Marine Licence), Article 8 DCO (Consent to transfer benefit of the Order): The MMO disagree with the Applicant’s interpretation of this DML paragraph and believe that sections 72(7) and (8) of the Marine and Coastal Access Act 2009 should continue to apply, even to transfers of the DCO unconnected to the MMO’s remit. The Applicant has supplied a technical note to the MMO to clarify its position but it seems that the parties are unable to reach an agreement. The Applicant’s preferred drafting appears in Schedule 11 (Deemed Marine Licence under the 2009 Act – Generation Assets), Part 1, para 7 of The Hornsea Four Offshore Wind Farm Order 2023.</li> </ul>

Ref. No	Provision	Proposed change (where applicable)	ExA Question	Applicant Comment
				<p>The Applicant is considering further amendments to the DML. A meeting is set up with the MMO to go over these amendments.</p> <p>In summary, the Applicant is seeking the following amendments:</p> <ul style="list-style-type: none"> <li>• Self-service marine licensing: The Applicant will discuss a potential amendment to clarify that works which involve removing sediment are to be incorporated within the DML. The Applicant does not consider such works to be dredging and so any such work would ordinarily be consented by the self-service marine licensing route. The Applicant considers this necessary to ensure there is clarity on which works are included within the scope of the DML.</li> </ul> <p>Should an amendment be agreed with the MMO, it will form part of an updated DML to be submitted at a later deadline.</p>
QD83		Not applicable	The MMO is asked whether the REAC commitments or other CDs are sufficiently secured. If not, what specific additional references to the REAC or to specific CDs are required in any of the existing draft Requirements, or are any additional Requirements sought (and if so reasons for their inclusion and drafts should be provided)?	<p>The Applicant notes that this question is directed to the MMO and therefore has no comments at this stage but is content that all commitments are sufficiently secured by the DML or other controls referred to in the dDCO <a href="#">[REP7-090]</a>.</p> <p>As requested by the ExA, where appropriate the Applicant will provide a response to any comments by IPs in relation to this question, at Deadline 9 in the Examination timetable.</p>

Ref. No	Provision	Proposed change (where applicable)	ExA Question	Applicant Comment
QD84	Control documents	Not applicable	Do any IPs have any final concerns about the functions of and relationships between the proposed certified documents and the CDs as a subset of them? Are the proposed iterations clear and justified? If any changes are sought, please explain these.	The Applicant notes that this question is directed to IPs and therefore has no comments at this stage. As requested by the ExA, where appropriate the Applicant will provide a response to any comments by IPs in relation to this question, at Deadline 9 in the Examination timetable.
QD85			<p>QD85: Do any IPs have any final submissions to make on the CDs and their content?</p> <p>Is there superfluous content that could be removed?</p> <p>Is there additional content that should be added?</p> <p>Are there any other documents that should be certified and should form part of the CDs?</p> <p>Any responses to this question should be accompanied by an explanation of the changes sought and the reasons for them.</p>	The Applicant notes that this question is directed to IPs and therefore has no comments at this stage. As requested by the ExA, where appropriate the Applicant will provide a response to any comments by IPs in relation to this question, at Deadline 9 in the Examination timetable.

## Glossary

Term	Abbreviation	Explanation
<b>A122</b>		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)
<b>A122 Lower Thames Crossing</b>	<b>Project</b>	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.
<b>A122 Lower Thames Crossing/M25 junction</b>		New junction with north-facing slip roads on the M25 between M25 junctions 29 and 30, near North Ockendon.
<b>A13/A1089/A122 Lower Thames Crossing junction</b>		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"> <li>• Improved A13 westbound to A122 Lower Thames Crossing southbound</li> <li>• Improved A13 westbound to A122 Lower Thames Crossing northbound</li> <li>• Improved A13 westbound to A1089 southbound</li> <li>• A122 Lower Thames Crossing southbound to improved A13 eastbound and Orsett Cock roundabout</li> <li>• A122 Lower Thames Crossing northbound to improved A13 eastbound and Orsett Cock roundabout</li> <li>• Orsett Cock roundabout to the improved A13 westbound</li> <li>• Improved A13 eastbound to Orsett Cock roundabout</li> <li>• Improved A1089 northbound to A122 Lower Thames Crossing northbound</li> <li>• Improved A1089 northbound to A122 Lower Thames Crossing southbound</li> </ul>
<b>A2</b>		A major road in south-east England, connecting London with the English Channel port of Dover in Kent.
<b>Application Document</b>		In the context of the Project, a document submitted to the Planning Inspectorate as part of the application for development consent.
<b>Construction</b>		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.
<b>Design Manual for Roads and Bridges</b>	<b>DMRB</b>	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.
<b>Development Consent Order</b>	<b>DCO</b>	Means of obtaining permission for developments categorised as Nationally Significant Infrastructure Projects (NSIP) under the Planning Act 2008.

Term	Abbreviation	Explanation
<b>Development Consent Order application</b>	<b>DCO application</b>	The Project Application Documents, collectively known as the ‘DCO application’.
<b>Environmental Statement</b>	<b>ES</b>	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.
<b>Highways England</b>		Former name of National Highways.
<b>M2 junction 1</b>		The M2 will be widened from three lanes to four in both directions through M2 junction 1.
<b>M2/A2/Lower Thames Crossing junction</b>		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.
<b>M25 junction 29</b>		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.
<b>National Highways</b>		A UK government-owned company with responsibility for managing the motorways and major roads in England. Formerly known as Highways England.
<b>National Planning Policy Framework</b>	<b>NPPF</b>	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.
<b>National Policy Statement</b>	<b>NPS</b>	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.
<b>National Policy Statement for National Networks</b>	<b>NPSNN</b>	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.
<b>Nationally Significant Infrastructure Project</b>	<b>NSIP</b>	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.
<b>North Portal</b>		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.
<b>Operation</b>		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
<b>Order Limits</b>		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.
<b>Planning Act 2008</b>		The primary legislation that establishes the legal framework for applying for, examining and determining Development Consent Order applications for Nationally Significant Infrastructure Projects.
<b>Project road</b>		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).
<b>Project route</b>		The horizontal and vertical alignment taken by the Project road.
<b>South Portal</b>		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.
<b>The tunnel</b>		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.

# Appendices



# Appendix A Legal note on the provision of a replacement travellers’ site in connection with the Lower Thames Crossing

## 1 Introduction

- 1.1 This document is a note on matters related to the proposed replacement Gammon Field travellers’ site (Work No. 7F) in connection with the proposed Lower Thames Crossing (the Project). It provides specific responses to QD55 to QD58 in the Examining Authority’s Commentary on the draft Development Consent Order (the dDCO).
- 1.2 The Project would involve demolition of the Gammon Field travellers’ site which lies within the Order Limits. The residents of Gammon Field have requested that the replacement travellers’ site is located within the surrounding area close to existing schools, healthcare and community facilities and has a similar pitch orientation. The proposed travellers’ site is located east of the existing site area, and accessible to existing facilities. The replacement travellers’ site would have the same access off Long Lane or Gammonfields Way as at present with pedestrian access to public transport which runs along the A1013. The site would be designed to ensure safe access and egress onto the road network and is not located within the flood zone. The replacement site would have essential services provided before it is occupied. The replacement site is equivalent to the existing in terms of size, quality and access arrangements from Long Lane.

## 2 Does the proposed replacement travellers’ site comprise the “construction of dwellings”?

- 2.1 The Examining Authority in Examining Authority’s Commentary on the draft Development Consent Order sets out that ‘...the ExA is still unclear whether works on this site are related housing development, in particular how they comprise the construction of dwellings for the purpose of PA2008 ss115(1)(c) and 115(4B)’. The Applicant’s position on this matter is set out below.

- 2.2 The relevant part of section 115(4B) provides:

*(4B) “Related housing development” means development which—*

*(a) consists of or includes the construction or extension of one or more dwellings...*

- 2.3 In response to the specific question about how they ‘comprise the construction of dwellings’, the following points are made:

(1) 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: *Innovia Cellophane Limited v Infrastructure Planning Commission* [2012] PTSR 1132 at [26]. (2) As stated in Post-event Submissions, Including Written Submission of Oral Comments, for ISH8 [REP6-089] at para. 4.16, the plain and ordinary meaning of “dwelling” is a “house, flat or other place of residence” (OED, xx edn.). 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.

(3) 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* 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).

(4) It is not appropriate to have recourse to any narrower applications 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 references in paras 4.16 and 4.18 of [\[REP6-089\]](#) to the difference from the ordinary planning regime is to such a narrower application; in this context, there is a misprint in the last sentence of para. 4.18 which should refer to the Town and Country Planning Act 1990, not the Planning Act 2008).

(5) Importantly, in *Rectory Homes* 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*”.

(6) 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, the fact that parking facilities were shared did not mean that the units of accommodation were other than separate dwellings.

(7) Nothing turns on whether the proposals comprise “buildings” or not. As stated in [\[REP6-089\]](#) at para. 4.1.6, the meaning of “dwelling” is not constrained to “bricks and mortar”. The proposals comprise “units of residential accommodation” within the ambit of *Rectory Homes*. In any event, the proposals comprise the construction of a chalet/bungalows with associated individual amenity blocks which are buildings in an ordinary sense, together with individual touring caravan spaces for each unit (as noted in [\[REP6-089\]](#) at para. 4.1.8).

(8) Nothing turns either on the frequency or regularity of occupation of the units or whether they are occupied by different persons. The Court of Appeal in *Moore* rejected the relevance of these factors in a similar context. It is the physical characteristics of private residence that are critical.

2.4 In relation to the other limbs of the test for related housing development, the Applicant refers to the Explanatory Memorandum [REP7-092] which provides a detailed legal justification for how the proposed site complies with section 115, as well as the Government guidance on related housing development. The Applicant stresses that Thurrock Council has confirmed its agreement to the inclusion of the replacement site as related housing development, and it has made clear that the replacement travellers’ site does comprise the “construction of dwellings”.

2.5 It should be noted that if the position set out above was rejected, the travellers’ site could still be provided as “associated development”. This is because if it was not a dwelling, then the restriction in section 115(2)(b) on providing “dwellings” would not apply.

**3 QD55: R13 appears to provide for the development of a replacement Travellers' site but the ExA is not clear that it also adequately provides for the lawful ongoing use of the site, or ensures that use or development not expressly contemplated in clause S11.12 of the Design Principles document can be adequately managed.**

**QD56: Does R13(3) (which provides security for the carrying out of works to provide the replacement Travellers' site) provide any security for the ongoing use of the operational site as provided?**

3.1 Insofar as the ‘use’ is concerned, the Applicant does not consider an amendment to Requirement 13 necessary for the following three reasons:

3.1.1 The use of the proposed replacement site is already authorised under Schedule 1 (Work No. 7F). The authorisation of Work No. 7F and its use, in turn, is given effect by Article 3 which permits the construction and operation of the “authorised development” which includes the works in Schedule 1.

3.1.2 The Applicant would note that authorising the ‘use’ of any other work contained in Schedule 1 is no different in this context. For example, the authorisation of the ‘use’ of replacement open space or even a diverted overhead line is given effect under article 3.

3.1.3 The Applicant notes that under section 33(1)(a) of the Planning Act 2008, where development consent is provided, a separate planning permission is not required.

3.1.4 The Applicant further notes that this conclusion is supported by other DCOs where replacement facilities are provided and there is not a ‘standalone’ provision authorising the use of the replacement facility (e.g., the M42 Junction 6 Development Consent Order 2020 included Work No. 68 which comprised a replacement facility for the Gaelic Athletics Association).

3.2 While the Applicant does not therefore consider any amendment of Requirement 13 is necessary, if the Examining Authority is unpersuaded by these submissions, without prejudice to the Applicant’s position, it is suggested that article 3(1) is amended so that it states “*the undertaker is granted development consent for the authorised development to be carried out, used and operated.*”

- 3.3 In relation to ongoing management of the site, Thurrock Council had previously stated that there were no conditions on the existing planning permission. However, Thurrock Council have now obtained a copy of the planning permission from 1994 and have suggested that the Requirement 13 is amended to 'carry over' the relevant conditions subject to the terms of an approval under Requirement 13. The conditions to be carried over have been agreed with Thurrock Council. These can be seen in amended version of Requirement 13 submitted at Deadline 8 (and below).
- 4 QD57: Could a new R13 (4) (with renumbering thereafter) provide that on completion of Work No.7R the land must be used as a Travellers' site and the development must be maintained generally in accordance with any plans or details submitted and approved under R13 (2)?**
- 4.1 As noted above, the Applicant has amended Requirement 13 to include a requirement to maintain the site. The condition which is imposed in this context replicates the existing planning permission. Thurrock Council have agreed to the inclusion of these conditions. The Applicant would further note that introducing a provision which required maintenance under the terms of the dDCO (rather than, as proposed, a condition under section 70 as proposed in the Deadline 8 version of the dDCO) could introduce uncertainty as to whether an amendment to the dDCO (via a material or non-material amendment) would be required.
- 5 QD58: Is there argument to include another new provision that, notwithstanding the process for obtaining consent for operational development for a Travellers' site provided under R13, any subsequent application for change of use, new development or any further enforcement proceedings or appeals in relation to any of these should proceed under relevant provisions of the TCPA, with the consent for use and development provided under the made Order being deemed to be a conditional lawful use or a planning permission for the purposes of TCPA decision-making, subject to a need to consult the LTC undertaker on any such application, proceeding or appeal? The aim of such a change would be to use the DCO regime to re-provide the site, but not to govern its operation. Could such a provision form part of A56 or should it be dealt with in R13 or another new Article and or Requirement? The Applicant is requested to provide a drafted response.**
- 5.1 The Applicant agrees that if future development which does not itself comprise a Nationally Significant Infrastructure Project should proceed by way of a planning application under the Town and Country Planning Act 1990, it would be inappropriate and disproportionate to seek an amendment to the Order to deal with such development. As set out above, the effect of article 56 is to avoid that outcome or scenario raised by the ExA. Nonetheless, the Applicant proposes the following amendments to address these matters to provide assurance that article 56(3) and (4) apply to the development.

## Travellers’ site in Thurrock

- 1.—(1) The replacement of the Gammon Field travellers’ site in Thurrock (Work No. 7R) must not commence until details of its layout and design have been submitted and approved in writing by the local planning authority, such approval not to be unreasonably withheld or delayed, following consultation by the undertaker with the local planning authority and the occupiers of the existing Gammon Field travellers’ site.
- (2) The details submitted and approved under paragraph (1) must be in accordance with—
- (a) clause no. S11.12 of the design principles; and
  - (b) any plans, details or schemes approved by the Secretary of State under this Schedule.
- (3) Work No. 7R must be carried out in accordance with the details approved under paragraph (1) or determined under an appeal under article 65 (appeals to the Secretary of State) of this Order.
- (4) If the local planning authority which receives an application for approval under sub-paragraph (1) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted approval.
- (5) From the date the replacement site is provided pursuant to subparagraph (1), the following conditions will apply to that site as though they were imposed under section 70(1) of the 1990 Act—
- (a) the site must be used solely as a residential Gypsy and/or Traveller caravan site and there must be no storage of scrap or other commercial vehicles, or open storage of hazardous materials, scrap materials, domestic or commercial waste or other such goods of any kind on the site;
  - (b) no more than 42 caravans are to be sited on the site at any time;
  - (c) the site must at all times be kept and maintained in a neat and tidy condition, and no activities must be allowed to take place which would be likely to give rise to noise, smell or other disturbances to the detriment of other occupiers of the site or other disturbance to nearby residential dwellings;
  - (d) notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, no structures of any description are to be erected at any time on site save for those whose details have been approved under paragraph (1);
  - (e) the area of land forming each pitch, other than the hard standing area, will be used only as a garden area and not for the storage of any materials or any other purpose save for those whose details have been approved under paragraph (1);
  - (f) there must be no direct vehicular or pedestrian access to the A1089 or A13 trunk road for any vehicle or person at any time; and
  - (g) any access (vehicular and or pedestrian) and any physical barriers to control access to the site, including those whose details have been approved under paragraph (1), must be regularly maintained and kept in full working order.
- (6) The conditions imposed under paragraph (5) are capable of being the subject of any enforcement action under Part VII of the 1990 Act and, without limitation, article 56(3) and (4) will apply to that site.
- (7) The undertaker must as soon as reasonably practicable after the provision of the replacement site in accordance with paragraph (1) exercise article 20 (compulsory acquisition of land) as applied by article 31 (application of the 1981 Act) and 32 (modification of the 2017 Regulations) of this Order to directly vest in the relevant planning authority land which may be necessary for the maintenance and operation of the site provided under subparagraph (1).
- (8) In this paragraph
- “caravans” means caravans within the meaning of Section 29(1) (a) of the Caravan Sites and Control of Development Act 1968; and
  - “Gammon Field travellers’ site” means the travellers’ site located at Long Lane, Grays, Thurrock, RM16 2QH.

- 5.2 In relation to enforcement, noting the comments from the Examining Authority on the local planning authority's familiarity of the enforcement regime under the Town and Country Planning Act 1990, a new provision has been inserted to allow enforcement action to be brought in connection with the conditions imposed under the Town and Country Planning Act 1990. The Applicant considers this to be permissible under section 120(3) and would note that the modification of planning conditions – which are then still subject to enforcement under the Town and Country Planning Act 1990 – is precedented (see, for example, article 6(5) of the Riverside Energy Park Development Consent Order 2020). These provisions have been discussed with Thurrock Council, and is now able to confirm that the provision is agreed.

If you need help accessing this or any other National Highways information, please call **0300 123 5000** and we will help you.

© Crown copyright 2023.

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence:

visit [www.nationalarchives.gov.uk/doc/open-government-licence/](http://www.nationalarchives.gov.uk/doc/open-government-licence/)

write to the **Information Policy Team, The National Archives, Kew, London TW9 4DU**, or email [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

Mapping (where present): © Crown copyright and database rights 2023 OS 100030649. You are permitted to use this data solely to enable you to respond to, or interact with, the organisation that provided you with the data. You are not permitted to copy, sub-licence, distribute or sell any of this data to third parties in any form.

If you have any enquiries about this publication email [info@nationalhighways.co.uk](mailto:info@nationalhighways.co.uk) or call **0300 123 5000\***.

\*Calls to 03 numbers cost no more than a national rate call to an 01 or 02 number and must count towards any inclusive minutes in the same way as 01 and 02 calls.

These rules apply to calls from any type of line including mobile, BT, other fixed line or payphone. Calls may be recorded or monitored.

Printed on paper from well-managed forests and other controlled sources when issued directly by National Highways.

Registered office Bridge House, 1 Walnut Tree Close, Guildford GU1 4LZ

National Highways Limited registered in England and Wales number 09346363