

Lower Thames Crossing

9.222 Deadline 9 Hearing Actions

Infrastructure Planning (Examination
Procedure) Rules 2010

Volume 9

DATE: December 2023
DEADLINE: 9

Planning Inspectorate Scheme Ref: TR010032
Examination Document Ref: TR010032/EXAM/9.222

VERSION: 1.0

Lower Thames Crossing

9.222 Deadline 9 Hearing Actions

List of contents

		Page number
1	Introduction	1
	1.1 Introduction and purpose	1
	1.2 Structure of this document	1
2	CAH4	2
	2.1 Introduction	2
	2.2 Update	2
3	CAH5	3
	3.1 Introduction	3
	3.2 Update	3
4	ISH9	7
	4.1 Introduction	7
	4.2 Hearing Action Point 23 Hole Farm – TCPA Application	7
5	ISH12	8
	5.1 Introduction	8
	5.2 Part 1 Hearing Action Point 12 Shorne Woods Side Agreement (Revenue Compensation)	8
	5.3 Part 1 Hearing Action Point 23 – Suite of Energy National Planning Policy Statements (NPSs)	8
	5.4 Part 2 Hearing Action Point 1 Control documents – detailed drafting	8
	5.5 Part 2 Hearing Action Point 2 Outline Site Waste Management Plan (oSWMP) 9	
	5.6 Part 2 Hearing Action Point 3 Outline Materials Handling Plan (oMHP)	9
	5.7 Part 2 Hearing Action Point 5 Illustrative Plans	10
	5.8 Update	11
6	ISH13	14
	6.1 Introduction	14
	6.2 Hearing Action Point 7: Thames Freeport (Ports and Thurrock Council): Collaborative development of draft Requirement 18	14
7	ISH14	17
	7.1 Introduction	17

7.2	Hearing Action Point 11: Whitecroft Care Home.....	17
7.3	Hearing Action Point 12: Brentwood Enterprise Park	17
7.4	Update on Hearing Action Point 13: Mee Land and Business	18
	Glossary	19

List of tables

	Page number
Table 1 ISH12 Deadline 9 Update	12

1 Introduction

1.1 Introduction and purpose

- 1.1.1 The purpose of this document is to provide the hearing actions for Deadline 9 or where commitments were made within the Deadline 7 Hearing Actions at Deadline 7, Deadline 8 Hearing Actions or Post-event submission at Deadline 8 to provide an update at Deadline 9.

1.2 Structure of this document

- 1.2.1 This document is structured as follows:
- a. Section 2 covers Compulsory Acquisition Hearing 4 (CAH4)
 - b. Section 3 covers Compulsory Acquisition Hearing 5 (CAH5)
 - c. Section 4 covers Issue Specific Hearing 9 (ISH9) on Environment and Biodiversity
 - d. Section 5 covers Issue Specific Hearing 12 (ISH12) on Social and Economic Issues & Control Documents
 - e. Section 6 covers Issue Specific Hearing 13 (ISH13) on Traffic & Transportation
 - f. Section 7 covers Issue Specific Hearing 14 (ISH14) on the draft Development Consent Order (dDCO)
- 1.2.2 There are no actions or commitments outstanding from:
- a. Open Floor Hearing 5
 - b. Issue Specific Hearing 11

2 CAH4

2.1 Introduction

- 2.1.1 There are no outstanding hearing actions from CAH4. However, the Applicant committed to providing an update at Deadline 9 within 9.174 Deadline 7 Hearing Actions [[REP7-185](#)] to Action Point 5, which relates to negotiations with Essex & Suffolk Water, and which is provided below.

2.2 Update

- 2.2.1 CAH4 Action Point 5 requests of the Applicant and Essex & Suffolk Water: *“Please provide final positions and closing arguments. (This may be accomplished using the SoCG and/or PADS processes).”*
- 2.2.2 The Applicant responded to this at Deadline 7 within Section 3.3 of 9.174 Deadline 7 Hearing Actions [[REP7-185](#)]. At this time the Applicant has no further update to provide to the Examining Authority. The Applicant continues to work with Essex & Suffolk Water to resolve all outstanding matters between the parties, to be secured through separate agreements, which are in their final stages.
- 2.2.3 The Applicant is confident that these matters will be concluded prior to the end of the Examination period and will report its closing position within Application Document 9.218 Closing Submissions at Deadline 10.

3 CAH5

3.1 Introduction

3.1.1 There are no outstanding hearing actions from CAH5. However, in relation to negotiations with HS1 Ltd, the Applicant committed to providing an update at Deadline 9 within Post-event submissions, including written submissions of oral comments, for CAH5 [REP8-109]. This is provided below.

3.2 Update

3.2.1 Paragraph 3.5.4 within Post-event submissions, including written submissions of oral comments, for CAH5 [REP8-109] states at paragraph 3.5.4: “It was agreed that if PPs cannot be settled between the parties by Deadline 8, HS1 will submit its preferred form of PPs, which the Applicant will respond to at Deadline 9”.

3.2.2 This note is in response to the Position Statement submitted by HS1 [REP8-178] in response to Action Point 5 of CAH5. It sets out the position of the Applicant on the outstanding points on the rail Protective Provisions relating to HS1.

Consent provision

3.2.3 The Proposed Development will interface with the operational railway of HS1 in a number of locations. As such, the effect of HS1’s proposed amendments to paragraph 4 of the Protective Provisions would be that the Applicant would not be able to acquire the interests it needs to implement the Proposed Development without first securing HS1’s consent.

3.2.4 The Applicant does not agree with HS1’s request that it must reserve an ability to exercise a right of consent, or veto over the exercise of compulsory acquisition or temporary possession powers in respect of its land interests. The Applicant does not agree as it considers that such a provision: (i) is unnecessary; and (ii) would risk compromising the efficient and effective exercise of those powers.

3.2.5 The inclusion of the ‘consent provision’ is unnecessary because the Protective Provisions included at Schedule 14 to the draft DCO [Document Reference 3.1 (11)] for HS1’s benefit already provide HS1 and its undertaking with ample protection.

3.2.6 The Applicant is required to secure HS1’s approval before carrying out any ‘specified work’ on railway property; this means that HS1 already has an effective means of controlling those aspects of the authorised development that will interact with its undertaking.

3.2.7 Further, the protections being afforded to HS1 go beyond what is typically offered, with HS1’s consent also being required in respect of any ‘protective works’ being the exercise of a number of DCO powers (as set out in that definition in the protective provisions) where exercised in relation to railway property. Through these controls, HS1 therefore already enjoys adequate control over the construction of the authorised development and it is not clear why a right of consent over compulsory acquisition powers is considered to be

necessary to achieve this – not least given that the Applicant will only be acquiring interests in land that reflect the detailed design of the authorised development as constructed, which in turn HS1 can already exercise a right of consent over under the provisions of Schedule 14 as proposed.

- 3.2.8 Secondly, the Applicant is concerned to ensure it retains unfettered land powers. Having to secure consent to the exercise of those powers could prove protracted if the Applicant and HS1 are unable to agree commercial matters relating to their exercise. The compulsory acquisition process already allows for any disagreements on commercial matters to be resolved in a tried and tested way, through the referral of compensation disputes to the Upper Tribunal to be determined in accordance with the compensation code. It would not necessarily be unreasonable for HS1 to take a different view to the Applicant in respect of commercial matters as both parties' interests are not necessarily going to be aligned, however the Applicant is concerned that any dispute on commercial matters could delay or preclude the exercise of the land powers to the detriment of the timely and efficient delivery of a critical Nationally Significant Infrastructure Project.
- 3.2.9 The Applicant is cognisant that there are many DCOs which include a consent provision in respect of land powers. The Applicant would further direct the ExA to the decision letter of the Secretary of State in respect of the previously cited Hinkley Point C Connection Project Development Consent Order 2016 where the specific matter of the appropriateness of including a consent provision was considered in the context of railway land (although note that that Order also does not include consent provisions for the benefit of the Port of Bristol notwithstanding that the scheme in question passed through the operational port). Paragraph 95 of the Secretary of State's decision letter reads:
- “The first area relates to NRIL’s request that provisions should be included in the Order that would ensure that the Applicant could not exercise powers of compulsory acquisition in relation to railway property without consent from Network Rail. The Applicant argued that this provision could compromise its ability to deliver the Development. The ExA noted that NRIL has not objected in principle to the proposal and not presented any evidence to suggest that the proposals would be incompatible with the efficient and safe operation of the railway. The ExA therefore concluded that this provision was not necessary or reasonable and could compromise the Applicant’s ability to deliver the Development [ER 8.5.230]. The Secretary of State sees no reason to disagree with this conclusion.”*
- 3.2.10 This is not an abnormal finding. The Applicant would note that the issue was considered again in the Hornsea Three DCO project. In particular, the Recommendation Report noted that: *“In particular, we note that the Applicant’s preferred protective provisions would require full engineering details of any works carried out by the undertaker within 15m of any railway property to be approved by NR. We consider that this is an important point when assessing whether there would be serious detriment to NR’s undertaking”*. The ExA went on to state that it preferred the promoter’s drafting (which did not have a consent requirement). The Secretary of State agreed.
- 3.2.11 In addition, what is not clear from examining these precedents alone is the private arrangements that are likely to have been reached via legal agreements

not in the public domain – to effectively document the giving of consent in advance such that the risk of commercial matters delaying the development in question has already been resolved.

- 3.2.12 The Applicant's approach to land acquisition is that voluntary acquisition is preferable where possible. However, it has and will not prove possible to reach agreement with all affected parties. It is on this basis that the Applicant is seeking Order powers to ensure it is able to compulsorily acquire land and interests in land where it has not been possible to reach agreements.
- 3.2.13 The Applicant must retain compulsory acquisition powers in respect of land where voluntary agreement has not yet been obtained or in the circumstance where voluntary agreement may later prove to have granted insufficient rights. Moreover, compulsory powers are more readily enforceable so reducing additional risk, cost and delay. The Applicant may consistently and uniformly enforce compulsory powers to deliver the Proposed Development in a comprehensive manner in relation to all persons with an interest in land. Providing HS1 with a veto right in respect of compulsory acquisition and temporary possession would put the delivery of the Project (especially being a linear scheme) at unnecessary risk.
- 3.2.14 There is no provision within the Planning Act 2008 which requires an applicant to secure HS1's consent to the exercise of Order powers (in contrast with for instance, the position of the Crown where such provision has been made in section 135 of the Planning Act 2008) and the Applicant is not persuaded of any basis on which such consent ought to be required. To the contrary, the Applicant is concerned that the inclusion of such a provision will enable HS1 to dictate not only the nature of the interest in land granted for the Proposed Development but also the commercial terms on which such an interest may be granted. The Applicant's position is that it has submitted its case in support of the land interests it requires through the submission of the DCO and supporting documentation. HS1 has not objected in principle to the Proposed Development or presented any evidence to suggest that the proposals are incompatible with the efficient and safe operation of the railway.
- 3.2.15 The rail Protective Provisions in the Order apply to both HS1 and Network Rail. Both rail parties are being treated exactly the same and therefore HS1's assertion that they are being treated differently is wrong.
- 3.2.16 As Protective Provisions are already provided in the Order there can be no serious detriment to HS1's undertaking under section 127 of the 2008 Act.

Form of indemnity

- 3.2.17 On the second outstanding matter, the Applicant has already proposed an appropriate form of indemnity. The indemnity ensures the Applicant will be liable for remedying any damage caused to HS1's property as a result of a 'specified work'. This is sufficient to avoid serious detriment to HS1's undertaking, and therefore meets the requirements of section 127 of the 2008 Act.
- 3.2.18 The Applicant cannot agree to offer HS1 an additional indemnity for consequential losses in the manner proposed by HS1. To the extent such loss was attributable to the authorised development and recoverable in law it would be open to HS1 to pursue it in the usual way and that entitlement is of course

not changed by the indemnity. It is at the Applicant's discretion to seek to limit the scope of the indemnity and that is what the Applicant is seeking to do here. Express provision has been included in limbs 14 (a) and (b) to enable HS1 to claim for loss of profits, this goes further than equivalent indemnities provided in the Order. As such the absence of a reference to consequential losses does not diminish or reduce HS1's rights in law but rather protects the Applicant against a presumption that such losses were recoverable. It is not industry standard in DCOs for third parties to be able to claim for indirect and consequential loss and loss of profits and the Applicant is seeking to make that clear in the indemnity.

4 ISH9

4.1 Introduction

- 4.1.1 There is one Hearing Action which requires a response at Deadline 9, provided below. There is no other commitment to provide an update regarding ISH9 at Deadline 9.

4.2 Hearing Action Point 23 Hole Farm – TCPA Application

- 4.2.1 This hearing action requests the Application to “*provide an update on the status of the TCPA planning application at Hole Farm, once a decision has been made (or if any other significant changes to the status of the application have occurred)*”.
- 4.2.2 Forestry England submitted three planning applications for the proposed development of a community woodland at Hole Farm, Hole Farm Lane, Great Warley, Essex, CM13 3JD:
- a. Outline planning application for the Hole Farm Community Woodland development submitted 12 July 2023 (application reference 23/00862/FUL)
 - b. Application for listed building consent for the demolition of grain and agricultural machinery store associated with the Hole Farm Community Woodland development submitted 12 July 2023 (application reference 23/00863/LBC)
 - c. Application for advertisement consent for signage associated with the Hole Farm Community Woodland development submitted 25 August 2023 (application reference 23/01058/ADV).
- 4.2.3 All the above planning applications were granted planning consent by Brentwood Borough Council as local planning authority for the application site 8 December 2023. The planning permissions can be found on the Council’s online planning register.

5 ISH12

5.1 Introduction

- 5.1.1 There are six Hearing Actions which required a response at Deadline 9. The Applicant also committed to providing an update on four matters within Post-event submissions, including written submission of oral comments, for ISH12 [[REP8-111](#)]. These are provided below.

5.2 Part 1 Hearing Action Point 12 Shorne Woods Side Agreement (Revenue Compensation)

- 5.2.1 This hearing action requests *“Applicant to submit asap to Kent County Council. Subsequently the Applicant and Kent County Council should provide confirmation whether this side agreement has been agreed by the parties. Any matters that the parties rely upon in terms securing a relevant important consideration should be provided in outline form.”*
- 5.2.2 An agreement has not been reached between the Applicant and Kent County Council for the reduction of the potential impacts of the Project and the mechanism for the compensation of business losses caused by the Project.
- 5.2.3 Discussions are still progressing on how benchmarking data and variance will be assessed and the duration in which compensation claims can be made. However, in the event that an agreement is not reached, it is noted that Kent County Council still have the right to claim compensation business losses caused by the Project under Section 10 of the Compulsory Purchase Act 1965.

5.3 Part 1 Hearing Action Point 23 – Suite of Energy National Planning Policy Statements (NPSs)

- 5.3.1 This hearing action requests *“Provide comments on the most recent suite of draft Energy National Planning Policy Statements in respect of any matters you consider important and relevant to this development. If the suite of Energy NPSs are designated prior to the close of the Examination, provide any updated comments in respect of the designated versions of the NPSs. In providing comments, at both deadlines, please have regard to the transitional arrangements in the NPSs and indicate what weight you consider should be given to the new NPSs compared to the current policy framework”*.
- 5.3.2 The Applicant has responded to this within document Applicant’s response to ExA ISH 12 AP23 on Suite of Energy National Policy Statements [**Document Reference 9.211**] which is being submitted at this deadline.

5.4 Part 2 Hearing Action Point 1 Control documents – detailed drafting

- 5.4.1 This hearing action requests *“Provide an update on any detailed matters of drafting in respect of the control documents, or suggested amendments to them, in writing which, in your view, remain at issue. The Applicant may respond at D9”*.

- 5.4.2 The Applicant has reviewed the Deadline 8 submissions received by Interested Parties relating to control documents. The Applicant has no overarching comments to make, but has responded to some specific comments within Applicant's comments on Interested Parties' D8 Submissions [**Document Reference 9.214**].

5.5 Part 2 Hearing Action Point 2 Outline Site Waste Management Plan (oSWMP)

- 5.5.1 This hearing action requests Thurrock Council *“To provide any detailed comments relating to the oSWMP. Applicant to respond at D9”*.
- 5.5.2 The Applicant has reviewed Thurrock Council's responses at Deadline 8 and notes that the Council are largely content with the oSWMP [[REP7-125](#)].
- 5.5.3 The Applicant has adopted an appropriate and robust approach to waste and material management, demonstrating a strong commitment to establishing comprehensive controls in this area. The Applicant's approach aligns with the core principles of a circular economy and the waste hierarchy, forming the backbone upon which the oSWMP [[REP7-125](#)] has been developed. The oSWMP has been developed in collaboration with regulatory bodies and local authorities, with no major objections with the Applicant's approach. Utilising proven methods, the Applicant has taken good practices from projects of similar scale and complexity in the development of these control plans. In addition the control plans are supplemented by the inclusion of commitments outlined in the Register of Actions and Commitments (REAC) [**Document Reference 6.3 ES Appendix 2.2 (9)**], which specify targets and appropriate controlling limits, related to waste and material management. The detailed design has not been completed yet so the Applicant is not in a position to provide the exact detail on how or when the approaches to the management of the wastes will be delivered. As set out in Chapter 6 of the oSWMP [[Document Reference 6.3 ES Appendix 2.2 Annex A (4)]the Contractor will be required to provide the detailed Construction Site Waste Management Plan (CSWMP) and report monthly predictions, actual waste arisings and waste management routes for the Project. It would not be appropriate to provide a detailed CSWMP when the Project is still at planning stage.
- 5.5.4 The Applicant has responded to Thurrock Council's queries with regard to REAC MW007 and setting individual recycling rate within document Deadline 6 Submission - 9.138 Applicant's Response to Comments Made by Thurrock Council at D4 and D5 [[REP6-096](#)].

5.6 Part 2 Hearing Action Point 3 Outline Materials Handling Plan (oMHP)

- 5.6.1 This hearing action requests the following from Applicant, Port of London Authority (PLA) and Thurrock Council: *“These parties to continue to discuss refinements to the wording of the oMHP in respect of the commitments for multi-modal transport for the transportation of materials. In particular, the applicant is to consider adding wording to refer to ‘environmentally equivalent’ in addition to, or instead of, ‘environmentally better’ when non-road transportation is being considered”*.

- 5.6.2 The Applicant has taken on board comments from the PLA and has updated the oMHP at Deadline 9 so the wording at paragraph 8.3.3 now reads ‘environmentally *equivalent or better*’.

5.7 Part 2 Hearing Action Point 5 Illustrative Plans

- 5.7.1 This hearing action requests the Applicant to “*Provide a complete list of illustrative plans which the Applicant does not intend to be certified documents. This can be submitted with the final version of draft DCO*”.
- 5.7.2 The following are illustrative plans which the Applicant does not intend to secure. They are, nonetheless, all certified documents under Schedule 16 of the dDCO [**Document Reference 3.1 (11)**]:
- a. Location Plan [**Document Reference 2.1 (5)**]
 - b. Structures Plans [[REP7-068](#) and [REP1-039](#)]
 - c. Drainage Plans [**Document Reference 2.16 (5)**]
 - d. Temporary Works Plans [**Document Reference 2.17 Volume A (5), Volume B (5), Volume C (7)**]
 - e. Hedgerow and Tree Preservation Order Plans [**Document Reference 2.18 Volume A (5), Volume B (4), Volume C (5)**] (though the relevant trees and hedgerows to be retained are contained in the Environmental Masterplan) [**Document Reference 6.2 ES Figure 2.4 Sections 1 and 1a (4), Section 2 (5), Section 3 (4), Section 4 (2), Section 9 (6), Section 10 (4), Section 11 (3), Section 12 (3), Section 13 (3), Section 14 (3)**].
- 5.7.3 These plans are not secured because they are illustrative, and appropriate plans and controls are in place to ensure the delivery of the Project is appropriately controlled.
- 5.7.4 It would not be appropriate to secure the plans above as it would lead to excessively prescriptive requirements at the implementation stage. The Applicant stresses that because they are illustrative, these plans are usually either not provided at all as part of DCO applications (and the Applicant has provided them in order to assist with the understanding of the Project), or in the rare occasions where they are provided, not secured under the terms of a DCO.
- 5.7.5 The Applicant sees no reason for departing from that practice in the case of the Project. For the avoidance of doubt, the environmental assessment has been carried out on the basis of a reasonable worst-case scenario, accounting for the flexibility sought. Appropriate controls are in place through the control document framework, secured plans, as well as the purposes for which land can be subject to temporary possession and Protective Provisions for various stakeholders.

5.8 Update

- 5.8.1 Within Post-event submissions, including written submission of oral comments, for ISH12 [\[REP8-111\]](#), the Applicant committed to providing documents or updates at Deadline 9. Table 5.1 below provides an update on these.

Table 5.1 ISH12 Deadline 9 Update

Reference – Post-event submissions, including written submission of oral comments, for ISH12	Commitment made at ISH12	Updated at Deadline 9
3.2.16	The Applicant has provided updated financial offers for officer posts to all impacted local authorities and settled section 106 agreements or unilateral undertakings are to be submitted at Deadline 9.	The Applicant can confirm that either settled section 106 agreements or unilateral undertakings have been submitted at Deadline 9. Refer to Section 1.11 of the Cover Letter [Document Reference 9.210] for more information.
A.2.8	The Applicant proposes to include a new commitment in the Stakeholder Actions and Commitments Register to be submitted at Deadline 9 as a fallback in the event that the Applicant and Gravesham Borough Council do not reach agreement before the end of Examination. The new commitment would apply to the replacement recreational area. It would require the Applicant to work with Gravesham Borough Council to assess whether there is any contamination risk and agree any required remediation on the land to a standard suitable for the intended use by Gravesham Borough Council as a recreational facility. Remediation, where necessary, would be undertaken before the formal legal transfer of the land to Gravesham Borough Council.	The Applicant can confirm that the Stakeholder Actions and Commitments Register [Document Reference 7.21 (7)] has been updated and submitted at Deadline 9 to include a new commitment SACR-025 to address this point.

Reference – Post-event submissions, including written submission of oral comments, for ISH12	Commitment made at ISH12	Updated at Deadline 9
B.7.6	The Applicant is hopeful that this will resolve the majority of the concerns of Integrated Care Boards (ICBs) in their SoCGs to be submitted at Deadline 9.	The Applicant can confirm that that update made to the Register of Actions and Commitments (REAC) at Deadline 8, commitment PH002 [Document Reference 6.3 ES Appendix 2.2 (8)] to include a commitment to engage with and have regard for the views of the ICBs in relation to the medical and occupational healthcare services to meet the needs of the construction workforce, and to share information relating to uptake of services by the construction workforce and relevant incident data with ICBs on a six-monthly basis, was agreed and accepted by the ICBs and resolves the majority of their concerns.
C.2.2	The Applicant can confirm that the Mitigation Route Map (as submitted at Deadline 4 [REP4-203]) will be submitted as a certified document at Deadline 9.	The Applicant can confirm that schedule 16 of the draft DCO [Document Reference 3.1 (11)] has been updated to include the Mitigation Route Map.

6 ISH13

6.1 Introduction

6.1.1 There is one hearing action point for Deadline 9. There are no other commitments on which to provide an update regarding ISH13 at Deadline 9.

6.2 Hearing Action Point 7: Thames Freeport (Ports and Thurrock Council): Collaborative development of draft Requirement 18

6.2.1 This action point requests: *“By Deadline 9, please engage to seek a further revised draft of Requirement 18 in which the objectives to be met and definitions of terms and outcomes sought to secure the proper functionality of the Orsett Cock are (as far as possible) agreed. Provide a draft that sets out all matters agreed. If necessary, provide reservations and statements of individual or group positions on matters not agreed.”*

6.2.2 The Applicant identified in Post-event submissions, including written submissions of oral comments, for ISH13 [\[REP8-113\]](#) para A.6.2 that a meeting was being held on 4 December 2023.

6.2.3 The Applicant can confirm this meeting went ahead. The Applicant had considered representations made by the Interested Parties at ISH13, and made some modifications to Requirement 18, which were shared with the Interested Parties prior to the meeting, and included in the draft DCO submitted at Deadline 8 [\[REP8-006\]](#).

6.2.4 At the meeting, further representations were made by the Interested Parties, which were further considered by the Applicant, and a revised wording prepared and issued to Interested Parties for information prior to inclusion in the draft DCO submitted at Deadline 9 [\[Document Reference 3.1 \(11\)\]](#).

6.2.5 At Deadline 8, Thurrock Council, DP World London Gateway, Port of Tilbury London Limited and Thames Enterprise Park submitted a Joint Statement responding to the drafting shared on 4 December (page 190 to 198 of Thurrock Council Comments on Applicant's Submissions at Deadline 6A and Deadline 7 (D6A and D7) [\[REP8-166\]](#)). Within that submission, the parties recommended that Requirement 18 be amended to define the objective as:

“ensure reliable and efficient traffic journeys through the Orsett Cock roundabout having due regard to journeys from the Port of Tilbury and London Gateway Port to the strategic road network and the importance of the Orsett Cock and Manorway roundabouts for port operations; avoid significant adverse impacts to Orsett Cock village; minimise traffic delays on the highway network; and, avoid causing significant highway safety issues, including the safe and efficient passage of movement for cyclists and pedestrians across this local junction.”

6.2.6 The Applicant has made amendments to the proposed drafting to ensure that the Project has regard to the impact on Orsett Village. The Applicant does not consider it necessary to explicitly state the requirement to avoid significant highways safety issues, or to include for safe and efficient passage of

movement for cyclists and pedestrians as any design would be developed in accordance with the Design Manual for Roads and Bridges which would require consideration of walkers and cyclists, and would require that the design be subject to a Road Safety Audit. The Applicant considers that the other objectives are addressed by the proposed drafting.

6.2.7 The following matters have also been considered by the Applicant, but not agreed for inclusion in the revised Requirement:

- a. Provision of a performance threshold for the roundabout within the Requirement – the Applicant considers that it is not appropriate to define a performance threshold. The Applicant has set out its position with regard to the use of thresholds with respect to the wider network impact monitoring and mitigation considerations (within both the Wider Network Impacts Position Paper [[REP6-092](#)] and the Applicant's comments on Interested Parties' submissions regarding Wider Network Impact at D7 [[REP8-123](#)]). Similarly to that argument, the Applicant considers that the appropriate performance for the Orsett Cock roundabout is a matter of professional judgment and adequately secured through the definition within Requirement 18 of the objective via sub-paragraphs (2)(b)(ii) and (7), the required supporting information for the scheme, defined via sub-paragraph (2)(a).
- b. Provision of a two stage approval process, whereby a threshold is proposed by the Applicant, consulted and approved by the Secretary of State, prior to the preparation of the required scheme – the Applicant considers this unnecessary. As set out above, definition of a threshold is inappropriate, and the supporting information for the scheme will set out the performance of the proposed scheme, which is subject to consultation with the Interested Parties who may make representations on the adequacy.
- c. Provision of a performance threshold for the roundabout post-opening, and an obligation to provide mitigation in the event that the roundabout fails to meet the performance threshold – the Applicant again considers the application of a threshold to be inappropriate, for the reasons set out above. It should also be noted that the written representations from Thurrock Council and DP World London Gateway make reference to proposed expansion. DP World London Gateway identify that “2.5.2 *The Logistics Park is the subject of a proposed second LDO ('LDO2') to extend the life of LDO1 (with an up to-date assessment process) to realise the development potential of the Logistics Park in line with the original and continuing objectives.*”

This demonstrates that there is substantial proposed development that could impact on the operation of Orsett Cock roundabout, and this is also acknowledged in the joint position statement referenced above. In accordance with the National Planning Policy Framework, any such development would need to bring forward any necessary mitigations or

interventions on the highways network to account for any related traffic. Were the Applicant required to set a performance threshold, and to guarantee that such a threshold be met through the provision of further works at Orsett Cock roundabout, the Applicant could be held accountable for mitigation of traffic arising from third-party developments, the extent of which is unknown at the current time, and which in any event is a matter for those third parties to address.

- 6.2.8 Further commentary can be found in the Applicant's responses to IP's comments on the dDCO at Deadline 8, submitted at Deadline 9 alongside this submission [Document Reference 9.213].

7 ISH14

7.1 Introduction

- 7.1.1 There are two hearing action points identified for Deadline 9. There is one commitment within Post-event submissions, including written submissions or oral comments, for ISH14 [\[REP8-114\]](#) for Deadline 9.

7.2 Hearing Action Point 11: Whitecroft Care Home

- 7.2.1 This hearing action requests “*If there is no agreement between the Applicant and the Owners/Operators of the Care Home by Deadline 8, at Deadline 9 please provide final submissions on any measures that the ExA should recommend to the Secretary of State (including dDCO provisions) to ensure that the public sector equality duty (PSED) can be discharged.*”
- 7.2.2 The Applicant responded to this at Deadline 8 within section A.8 of Post-event submissions, including written submissions of oral comments, for ISH14 [\[REP8-114\]](#). The Applicant has no further comments on make and refers the Examining Authority to the Deadline 8 submission as the Applicants final position.
- 7.2.3 The Applicant can confirm that as committed to within A.8.4, the Health and Equalities Impact Assessment [**Document Reference 7.10 [2]**] has been submitted at Deadline 9.

7.3 Hearing Action Point 12: Brentwood Enterprise Park

- 7.3.1 This hearing action requests “*Provide detailed measures to maintain access(es) to the Brentwood Enterprise Park during the construction phase to be secured in the Code of Construction Practice (CoCP). Landowner and Site manager to comment at D9a, alongside final positions on this matter.*”
- 7.3.2 The determination of the proposed Brentwood Enterprise Park (BEP) planning application is expected in December 2023. Should consent be granted the Applicant understands that BEP construction may commence in summer 2026.
- 7.3.3 The Applicant and St Modwen Developments Limited (SMDL), the promoters of BEP, together with the landowner, Mr Padfield, have been progressing terms for a Land and Works Agreement (LWA) over the course of 2023. The terms for the LWA are almost agreed and the parties anticipate signing the agreement in early 2024. Under the terms of the LWA, SMDL shall write to the Examining Authority to confirm that the agreement has been completed.
- 7.3.4 The terms of the LWA are comprehensive and cater for the various scenarios and interfaces that there may be between the Project and BEP depending on the timing and construction phasing of each project. The agreement also contains detailed measures regarding access to the BEP site.
- 7.3.5 The Applicant is therefore confident that the interfaces between the two projects will be appropriately managed to ensure that they can both be delivered in conjunction with one another, or separately as the case may be. The Applicant’s position that there is no reason or requirement to secure any additional measures within the CoCP.

7.4 Update on Hearing Action Point 13: Mee Land and Business

- 7.4.1 Section A.10 of Post-event submissions, including written submissions or oral comments, for ISH14 [\[REP8-114\]](#) commented on measures to address impacts on Mr Mee’s land and business in response to Hearing Action 13. The Applicant identified that *“In the absence of an agreement [with Mr Mee], the Applicant will bring forward measures in the Stakeholder Actions and Commitments Register at Deadline 9 [Document Reference 7.21 (7)].”*
- 7.4.2 The Applicant can confirm that commitments SACR-028 to SACR-32 have been added to the Stakeholder Actions and Commitments Register at Deadline 9 **[Document Reference 7.21 (7)]** to address the above point.

Glossary

Term	Abbreviation	Explanation
A122		The new A122 trunk road to be constructed as part of the Lower Thames Crossing project, including links, as defined in Part 2, Schedule 5 (Classification of Roads) in the draft DCO (Application Document 3.1)
A122 Lower Thames Crossing	Project	A proposed new crossing of the Thames Estuary linking the county of Kent with the county of Essex, at or east of the existing Dartford Crossing.
A122 Lower Thames Crossing/M25 junction		New junction with north-facing slip roads on the M25 between M25 junctions 29 and 30, near North Ockendon.
A13/A1089/A122 Lower Thames Crossing junction		Alteration of the existing junction between the A13 and the A1089, and construction of a new junction between the A122 Lower Thames Crossing and the A13 and A1089, comprising the following link roads: <ul style="list-style-type: none"> • Improved A13 westbound to A122 Lower Thames Crossing southbound • Improved A13 westbound to A122 Lower Thames Crossing northbound • Improved A13 westbound to A1089 southbound • A122 Lower Thames Crossing southbound to improved A13 eastbound and Orsett Cock roundabout • A122 Lower Thames Crossing northbound to improved A13 eastbound and Orsett Cock roundabout • Orsett Cock roundabout to the improved A13 westbound • Improved A13 eastbound to Orsett Cock roundabout • Improved A1089 northbound to A122 Lower Thames Crossing northbound • Improved A1089 northbound to A122 Lower Thames Crossing southbound
A2		A major road in south-east England, connecting London with the English Channel port of Dover in Kent.
Application Document		In the context of the Project, a document submitted to the Planning Inspectorate as part of the application for development consent.
Construction		Activity on and/or offsite required to implement the Project. The construction phase is considered to commence with the first activity on site (e.g. creation of site access), and ends with demobilisation.
Design Manual for Roads and Bridges	DMRB	A comprehensive manual containing requirements, advice and other published documents relating to works on motorway and all-purpose trunk roads for which one of the Overseeing Organisations (National Highways, Transport Scotland, the Welsh Government or the Department for Regional Development (Northern Ireland)) is highway authority. For the A122 Lower Thames Crossing the Overseeing Organisation is National Highways.
Development Consent Order	DCO	Means of obtaining permission for developments categorised as Nationally Significant Infrastructure Projects (NSIP) under the Planning Act 2008.

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

Term	Abbreviation	Explanation
Order Limits		The outermost extent of the Project, indicated on the Plans by a red line. This is the Limit of Land to be Acquired or Used (LLAU) by the Project. This is the area in which the DCO would apply.
Planning Act 2008		The primary legislation that establishes the legal framework for applying for, examining and determining Development Consent Order applications for Nationally Significant Infrastructure Projects.
Project road		The new A122 trunk road, the improved A2 trunk road, and the improved M25 and M2 special roads, as defined in Parts 1 and 2, Schedule 5 (Classification of Roads) in the draft DCO (Application Document 3.1).
Project route		The horizontal and vertical alignment taken by the Project road.
South Portal		The South Portal of the Project (southern tunnel entrance) would be located to the south-east of the village of Chalk. Emergency access and vehicle turn-around facilities would be provided at the tunnel portal. The tunnel portal structures would accommodate service buildings for control operations, mechanical and electrical equipment, drainage and maintenance operations.
The tunnel		Proposed 4.25km (2.5 miles) road tunnel beneath the River Thames, comprising two bores, one for northbound traffic and one for southbound traffic. Cross-passages connecting each bore would be provided for emergency incident response and tunnel user evacuation. Tunnel portal structures would accommodate service buildings for control operations, mechanical and electrical equipment, drainage and maintenance operations. Emergency access and vehicle turn-around facilities would also be provided at the tunnel portals.

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/

write to the **Information Policy Team, The National Archives, Kew, London TW9 4DU**, or email 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 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