

Lower Thames Crossing

5.4.1.7 Final Agreed Statement of Common Ground between (1) National Highways and (2) Port of London Authority (Tracked Changes Version)

APFP Regulation 5(2)(g)

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VERSION: 2.0

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Revision history

| <u>Version</u> | <u>Date</u> | <u>Submitted at</u> |
|-----------------------|--------------------------------|-------------------------------|
| <u>1.0</u> | <u>31 October 2022</u> | <u>DCO Application</u> |
| <u>2.0</u> | <u>15 December 2023</u> | <u>Deadline 9A</u> |

Status of the Statement of Common Ground

This is the Final Agreed Statement of Common Ground between (1) National Highways (the Applicant) and (2) the Port of London Authority (PLA).

Both parties have reached agreement on the status of all 66 matters. Of the 66 matters contained within, 44 matters are agreed, 19 matters are not agreed and three will remain under discussion as they are points for the detailed design or construction stages or are subject to completion of a private agreement (between the PLA and the Applicant).

On behalf of the Applicant

| | |
|---------------------|------------------------------|
| <u>Name</u> | [REDACTED] |
| <u>Position</u> | <u>Lower Thames Crossing</u> |
| <u>Organisation</u> | <u>National Highways</u> |
| <u>Signature</u> | [REDACTED] |

On behalf of the Port of London Authority

| | |
|---------------------|---------------------------------|
| <u>Name</u> | |
| <u>Position</u> | |
| <u>Organisation</u> | <u>Port of London Authority</u> |
| <u>Signature</u> | |

Lower Thames Crossing

5.4.1.7 Final Agreed Statement of Common Ground between (1) National Highways and (2) Port of London Authority (Tracked Changes Version)

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List of contents

| | Page number |
|---|-------------|
| 1 Introduction | 1 |
| 1.1 Purpose of the Statement of Common Ground | 1 |
| 1.2 Principal Areas of Disagreement | 1 |
| 1.3 Terminology | 1 |
| 2 Matters..... | 1 |
| 2.1 Final position on matters | 1 |
| Appendix A Engagement activity | 111 |
| Appendix B Glossary..... | 112 |

List of tables

Page number

Table 2.1 Final position on matters.....3

Table A.1 Engagement activities between the Applicant and Port of London Authority since the DCO Application was submitted on the 31 October 2022111

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Table C.1 Summary of engagement activities between National Highways and Port of London Authority 41¶
Table C.2 Detailed record of engagement activities between National Highways and PLA 41¶
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1 Introduction

1.1 Purpose of the Statement of Common Ground

1.1.1 This Statement of Common Ground (SoCG) has been prepared in respect of the Development Consent Order (DCO) application for the proposed A122 Lower Thames Crossing (the Project) made by National Highways Limited (the Applicant) to the Secretary of State for Transport (the Secretary of State) under section 37 of the Planning Act 2008 on 31 October 2022.

1.1.2 The SoCG has been produced to confirm to the Examining Authority where agreement has been reached between the Applicant and the Port of London Authority (PLA), and where agreement has not been reached.

1.1.3 This final version of the SoCG has been submitted at Examination Deadline 9A.

1.2 Principal Areas of Disagreement

1.2.1 On 19 December 2022 the Examining Authority made some early Procedural Decisions to assist the Applicant, potential Interested Parties and themselves to prepare for the Examination of the Application.

1.2.2 One such Procedural Decision was to use a tracker recording Principal Areas of Disagreement in Summary (PADS).

1.2.3 The PADS Tracker would provide a record of those principal matters of disagreement emerging from the SoCG and should be updated alongside the SoCG as appropriate throughout the Examination with the expectation that a revised PADS Tracker should be submitted following amendments or updates made to the document.

1.2.4 This SoCG should be read in conjunction with the Port of London Authority (PLA) PADS Tracker.

1.3 Terminology

1.3.1 In the 'Final position on matters' table in section 2 of this SoCG, "Matter not agreed" indicates agreement on the matter could not be reached following engagement, "Matter agreed" indicates where the issue has now been resolved and "Matter Under Discussion*" where further discussion may need to take place during the detailed design or construction stages of the Project to finalise detail or is subject to a private agreement (between the PLA and the Applicant).

2 Matters

2.1 Final position on matters

2.1.1 Following submission of the previous version of this Statement of Common Ground between the Applicant and the PLA, further discussions on the outstanding matters have taken place. These discussions are summarised in 1.1.1a in Appendix A and the outcome of these discussions is summarised below.

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This SoCG has been prepared in respect of the Project by (1) National Highways, and (2) Port of London Authority (PLA).¶

National Highways became the Government-owned Strategic Highways Company on 1 April 2015. It is the highway authority in England for the strategic road network and has the necessary powers and duties to operate, manage, maintain and enhance the network. Regulatory powers remain with the Secretary of State. The legislation establishing National Highways made provision for all legal rights and obligations of the Highways Agency, including in respect of the Project, to be conferred upon or assumed by National Highways.¶

Port of London Authority (PLA) is a statutory harbour authority established by The Port of London Act 1908 to govern the Port of London. Its statutory powers and duties are mainly to be found in the Port of London Act 1968 ("the 1968 Act"). The PLA's responsibilities extend over the tidal River Thames and its tidal tributaries from the landward limits at Teddington to its tidal limits in the outer estuary. The PLA maintains and supervises navigation to ensure navigational safety along the tidal Thames, sharing its marine, environmental, planning and other expertise to promote use of the river and safeguard its unique marine environment.¶

The PLA has a number of statutory duties, including river traffic control, security, navigational safety (including buoys, beacons, bridge lights and channel surveys), conservancy (including dredging and improvement), encouraging both commercial and leisure uses of the river, and protecting its environment. To assist it in its statutory duties the PLA has various anchorages located within its area. Three of these anchorages: Chapman (1, 2 and 3), Mucking Bight and Higham Bight are designated explosives anchorages. Higham Bight (Licence no, 9/92[...])

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A summary of the meetings and correspondence undertaken between the two parties in relation to the Project is outlined in Appendix C.¶

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- 2.1.2 Table 2.1 details and presents the matters which have been agreed, not agreed, or are under discussion between (1) the Applicant and (2) the PLA.
- 2.1.3 In Table 2.1, relevant issues relating to the dDCO articles and Requirements in Schedule 2 to the dDCO have been identified under the heading 'DCO and Consents'.
- 2.1.4 In the column 'Item No' in Table 2.1, 'RRN' indicates a matter entered into the SoCG as a result of content in the Relevant Representation, and 'RRE' indicates an existing SoCG matter that was also raised in the Relevant Representation.
- 2.1.5 Since the previous version of this SoCG was submitted the following matters have moved from 'Matter Not Agreed' to 'Matter Agreed': 2.1.23, 2.1.25, 2.1.47, 2.1.57, 2.1.59.
- 2.1.6 Since the previous version of this SoCG was submitted the following matters have moved from 'Matter Under Discussion' to 'Matter Agreed': 2.1.5, 2.1.6, 2.1.8, 2.1.9, 2.1.10, 2.1.11, 2.1.14, 2.1.15, 2.1.16, 2.1.17, 2.1.18, 2.1.29, 2.1.41, 2.1.45, 2.1.47, 2.1.54.
- 2.1.7 Since the previous version of this SoCG was submitted the following matters have moved from 'Matter Under Discussion' to 'Matter Not Agreed': 2.1.21, 2.1.22, 2.1.24, 2.1.31, 2.1.35, 2.1.36, 2.1.37, 2.1.38, 2.1.39, 2.1.43, 2.1.44, 2.1.46, 2.1.48, 2.1.49, 2.1.50, 2.1.56, 2.1.58.
- 2.1.8 Further to the matters raised in the original SoCG, the PLA submitted further comments on the DCO application which has led to new matters being included in Table 2.1.
- 2.1.9 The new matters are: 2.1.60, 2.1.61, 2.1.62, 2.1.63, 2.1.64, 2.1.65, 2.1.66.
- 2.1.10 At Examination Deadline 9A there are 66 matters in total of which 44 are agreed, 19 are not agreed and three that will remain under discussion because they are points for the detailed design or construction stages or are subject to completion of a private agreement (between the PLA and the Applicant). These matters are indicated by a (*).
- 2.1.11 This is the final Statement of Common Ground between the Applicant and the PLA.

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Table 2.1 Final position on Matters

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| DCO and Consents | | | | | |
| Exclusion of ground investigation (GI) from protective provisions | 2.1.1 RRE | <p>Definition of "commence" as defined by Article 2 (<i>interpretation</i>) in the dDCO, excludes ground investigation meaning that it would not be covered by the Protective Provisions. The PLA has suggested a drafting amendment to address this point <u>which we understood was agreed but we note that the definition of "commence" has been removed from Article 2 of the submission version of the dDCO and is included only at Sch 2 to the dDCO and consequently has application only to requirements.</u></p> <p>April 2023 <u>The PLA and National Highways are discussing an amendment to the PLA's protective</u></p> | <p><u>The Applicant</u> disagrees with this interpretation. Ground Investigation (GI) works are within the scope of the Protective Provisions.</p> <p><u>On 02 February 2022, the PLA provided a draft amendment to paragraph 98(1) of the Protective Provisions: "the undertaker must not exercise any specified function or commence the construction of any specified work" and this has been incorporated by the Applicant.</u></p> <p><u>"Commence" is no longer defined in Article 2, but is defined in Schedule 2 to the draft DCO.</u></p> <p>The definition of "commence" is not a free-standing authorisation of any works (including GI). Instead, the definition sets out what does and does not constitute commencement. So</p> | Draft Development Consent Order [Document Reference 3.1 (11)], | Matter Agreed |

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| | | <p><u>provisions to address this point.</u></p> <p>August 2023 <u>At deadline 1 an amendment was made to the PLA's protective provisions to include a definition of "begin." The definition of begin includes ground investigations in the river Thames. Paragraph 98(1) has also been amended to refer to 'begin and to specify, given that there was some discussion around this point, that ground investigations within the river Thames do form part of the preliminary works in Schedule 2. The PLA is therefore content that this matter has been satisfactorily resolved.</u></p> | <p>notwithstanding GI is excluded from commencement, GI works in the <u>River</u> Thames can only be carried out under article 18 (power to interfere in watercourses etc.) or article 21 (authority to survey and investigate land). <u>The Applicant</u> has no other power under the draft DCO to carry out GI in the <u>River</u> Thames. The exercise of <u>Articles</u> 18 and 21 powers is controlled by the Protective Provisions, as they are specified functions (see definition in the Protective Provisions). <u>At Deadline 1, the Applicant inserted a definition of "begin" in the PLA's Protective Provisions which explicitly confirms that GI works in the River Thames are covered.</u></p> | | |
| Interpretation of Article 36 DCO on temporary use of land for maintenance | 2.1.2 | <u>The PLA requires</u> confirmation on approach to River Works Licences – what would be required from the end of the | The parties have discussed the approach towards River Works Licences. Following the maintenance period, article 52(3) applies: | Article 36, Draft Development Consent Order <u>Document Reference 3.1 (11)</u> | Matter Agreed |

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| | | <p>maintenance period. The DCO must provide protection for the PLA in form equivalent to Silvertown Protective Provisions (paragraph 50). Article 36 (temporary use of land for maintaining the authorised development) should be restricted to enable the passage of river traffic and suspend the public right of navigation as with Article 29 (temporary use of land for carrying out the authorised development) of the Silvertown DCO.</p> | <p>“Following the expiry of any maintenance period defined in article 36(13), the requirement under the [Port of London Act 1968] to obtain a works licence under section 66 (licensing of works) of that Act does not apply to anything done within any structure forming part of the authorised development in connection with the operation or maintenance of the authorised development or any other function of the undertaker.”</p> | | |
| <p>Interpretation of Article 44 DCO on when tunnel is open for use/commencement of powers</p> | <p>2.1.3 <u>RRE</u></p> | <p>The commencement of the Order is not subject to any further provisions. The power to operate, use and close the tunnels (Article 44) (power to operate, use and close the tunnel area)) should only apply from when the tunnel is first opened for public use.</p> | <p><u>The Applicant</u> has agreed to update the drafting as requested. <u>The Applicant understands that, although the requested amendment to the drafting has been made, the PLA would like to keep this open while a commercial point is settled with the Applicant around cables being installed in the tunnels without the PLA's licensing regime</u></p> | <p>Article 44, Draft Development Consent Order [Document Reference 3.1 (11)].</p> | <p>Matter Agreed</p> |

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| | | <p>April 2023 <u>The PLA and National Highways have discussed inclusion of wording at Art 44(1) which restricts the operation to being only in the undertaker's capacity as a highway authority.</u></p> <p>August 2023 <u>The drafting of Art. 44(4) means the power to operate and close the tunnel area only applies and has effect from the date the tunnel area is completed and open for public use.</u> <u>The PLA is therefore content that this matter has been satisfactorily resolved.</u></p> | <p><u>applying. The PLA had already confirmed to the Applicant that the provisions of the Port of London Act 1968 will not apply within the tunnels, otherwise the PLA would have powers to evacuate the tunnel and the Applicant would need to make significant disapplication of the Port of London Act 1968.</u> <u>The Applicant has amended both article 44 and 53 at Deadline 1 & 2 respectively to make clear that it applies in the context of the functions of the undertaker in its capacity as a highway authority.</u></p> | | |
| Interpretation of Article 53 DCO on disapplication of legislation, status of 1968 Act post maintenance period. | 2.1.4 | PLA requested that for maintenance, the disapplication of the enactments should apply only to a specified and limited maintenance period. | <u>The Applicant has made this amendment to the draft DCO which confirms that the disapplication is for specified purposes.</u> | Article 53, Draft Development Consent Order [Document Reference 3.1 (11)]. | Matter Agreed |

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| Code of Construction Practice (CoCP) | 2.1.5 | <p>The CoCP and Development Consent Order (DCO) Schedule 2 requirements state that EMP2 must be substantially in accordance with the CoCP but the Control plan says it is prepared in line with the approved CoCP – these could be seen as two different bars that need to be met.</p> <p>December 2022 Both the Control Plan and Schedule 2 requirements now say EMP2 must be prepared substantially in accordance with the CoCP</p> | <p>The control plan, following the PLA's comments, has been reviewed and updated to ensure consistency is maintained between the draft DCO Schedule 2 requirements and the <u>Code of Construction Practice (CoCP)</u>. The Applicant awaits the PLA's comments to finalise this issue.</p> | <p>Draft Development Consent Order [Document Reference 3.1 (11)] Code of Construction Practice [Document Reference 6.3 ES Appendix 2.2 (9)].</p> | Matter Agreed |
| Right of National Highways to discharge and deemed consent provisions in Protective Provisions | 2.1.6 | <p>PLA do not accept deemed consent provisions relating to discharge in the DCO.</p> <p>PLA seeks parity between this paragraph 101 (discharges etc.) in the Protective Provisions and</p> | <p>The Applicant is seeking to maintain its deemed consent provisions, as the PLA has 35 days to review proposals to grant such consent. Other schemes (e.g. Silvertown) have had similar deemed consent provisions. The Applicant understands that the PLA has considered</p> | <p>Article 48, Draft Development Consent Order [Document Reference 3.1 (11)].</p> | Matter Agreed |

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| | | Article 48 (<u>protection of tunnels, etc.</u>). Article 48 (<u>protection of tunnels, etc.</u>) as amended as of September 2022 provides for deemed consent. As such the PLA can agree to deemed consent in relation to discharge. | deemed consent on the Applicant's obligations under Article 48 (<u>protection of tunnels, etc.</u>) and as those are now agreed, the deemed consent provisions in paragraph 101(3) of the Protective Provisions are agreed. | | |
| Definition of " <u>River Works Licence</u> " and " <u>River Dredging Licence</u> " | 2.1.7 | The definition of "river works licence" is incorrect. A river works licence is a licence granted under section 66 (<u>licensing of works</u>) of the 1968 Act. It does not include "a [...] permission or any other form of approval granted by the PLA under section 66 of the 1968 Act". These additional words should be removed for the submission version of the dDCO. The PLA has agreed with National Highways that the reference to "a permission" will be relevant if and when the HRO amending the 1968 | <u>The Applicant</u> has amended the definitions in the draft DCO to reflect the PLA's comments, and the PLA's latest Harbour Revision Order which proposes to change "licences" to "permits". This response was provided to the PLA in September 2021, and <u>the Applicant believes</u> that this matter should now be agreed. <u>The Applicant requests that the PLA provides details of when it expects the Harbour Revision Order to be made as the Secretary of State may require these definitions if it has been made prior to the decision on the DCO.</u> | <u>Article 2 and Article 48 Draft Development Consent Order Document Reference 3.1 (11)</u> . | Matter <u>Agreed</u> . |

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| | | <p><u>Act is made. The PLA is currently promoting this HRO but it has not yet been made. The dDCO as submitted should address any laws as they exist today, not as they may exist at some future time.</u></p> <p>The same goes for a river dredging licence.</p> <p>August 2023</p> <p><u>Whilst Article 48 was changed and square brackets used, Article 2 (Interpretation) has not been updated.</u></p> <p><u>The timetable for the HRO is determined by the MMO.</u></p> <p><u>The PLA is happy to share with National Highways and the Examining Authority the timetable for the HRO once we receive it from the MMO.</u></p> <p><u>The PLA's view is that the drafting of the Order should be based on the law as it exists today. We</u></p> | | | |

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| | | <p><u>suggest that if by the time the Examination closes the PLA HRO has not been made, that a note is provided to the SoS detailing the consequential changes that will be required to the DCO.</u></p> <p>November 2023 <u>At DL3 square brackets were added around 'permit' and the definition of river mooring permission in Article 2 (Interpretation). The wording in square brackets should be removed if the DCO is made before the HRO. The progress of the HRO was also discussed at ISH7. We have had no further update from the MMO as to the status of the HRO since that time.</u></p> <p><u>The PLA will provide an update to the ExA on the HRO's progress prior to</u></p> | | | |

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| | | <p><u>the closure of the hearings.</u></p> <p>December 2023 <u>The PLA has received no further indication as to when the HRO is likely to be made, so the ExA and the SoS will want to consider whether the wording in square brackets needs to be removed, depending on whether the HRO is made.</u></p> | | | |
| Definition of the tunnels in DCO | 2.1.8 | <p>PLA need to see works plans before commenting on the definition of tunnels.</p> <p><u>As of September 2022, the definition has been changed by National Highways to “the tunnel” and continues to make reference to the tunnel area plan. The PLA awaits sight of the plan and reserves further comments until it has reviewed this.</u></p> | <p><u>The Applicant has provided an updated tunnel area plan to the PLA and the matter is now agreed.</u></p> | <p><u>Draft Development Consent Order [Document Reference 3.1 (11)]</u> <u>Tunnel Area Plan [Document Reference 2.12 (2)]</u></p> | <p>Matter Agreed</p> |

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| | | December 2022 The PLA has reviewed the tunnel area plan and has no further comments on the definition of "the tunnel" | | | |
| Definition of tunnel approaches in DCO | 2.1.9 | PLA require tunnel approaches to be defined with reference to a plan. The definition of tunnel approaches has been changed and, due to the distance of the approaches from the River, they are no longer of relevance to the PLA. | The Applicant has refined the definition. | Draft Development Consent Order [Document Reference 3.1 (11)], | Matter Agreed, |
| Article 3 – Development Consent Granted by the Order | 2.1.10 | PLA require River Thames to be carved out of 3(3) (development consent, etc. granted by the Order) in the same way that it was for Silvertown, see italics: "Any enactment applying to land within, adjoining or sharing a common boundary with the Order Limits (other than land comprising part of the | An amendment has already been made to this provision, following an earlier request from the PLA, as follows: "Any enactment applying to land within, adjoining or sharing a common boundary with the Order limits has effect subject to the provisions of this Order." | Draft Development Consent Order [Document Reference 3.1 (11)], | Matter Agreed, |

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| | | <p><i>river Thames outside of the Order Limits) has effect subject to the provision of this Order".</i></p> <p><u>Apart from a minor drafting issue (missing the word 'with') the wording in the latest version of the dDCO is agreed by the PLA.</u></p> <p>August 2023 <u>Article 3(4) has been introduced at the request of one of the other interested parties. The new paragraph (4) overlaps with the wording we had proposed in italics. They are intended to achieve the same goal, so we suggest you delete the words in italics (which will not apply to the other interested party) and keep Article 3(4).</u></p> <p>September 2023 <u>The Applicant advised at ISH7 that they were content to make the drafting amendment that the PLA proposed: removing the wording in</u></p> | <p><u>The Applicant does not believe that further amendments are required.</u></p> | | |

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| Topic | Item No. | Port of London Authority comment | Applicant's response | Document Reference | Status |
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| | | brackets in Art. 3(3) due to the introduction of Art 3(4). This amendment was formally submitted to the ExA at DL4 and the PLA is content that this matter has been satisfactorily resolved. | | | |
| Interpretation of Articles 4 (maintenance of authorised development) and 5 (maintenance of drainage works) | 2.1.11 | PLA request refinement of maintenance paragraphs to restrict powers to those which would not give rise to materially new or different environmental effects. At the end of the construction and maintenance period, normal river works licensing should resume. See comments on Article 53. | The Applicant has provided the PLA with updated drafting. The draft DCO clearly excludes a River Works Licence during construction and for the duration of any maintenance period. This is set out in article 53 (disapplication of legislative provisions, etc.) of the dDCO. The definition of "maintenance" in relation to any part of the authorised development has been updated to include inspection, repair, adjustment, alteration, removal or reconstruction, and excludes any activities that would give rise to materially new or materially different environmental | Draft Development Consent Order [Document Reference 3.1 (11)], | Matter Agreed, |

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| | | | impacts in comparison with those reported in the environmental statement, any derivative of "maintain" is to be construed accordingly to the extent assessed in the environmental statement. | | |
| Article 6 - Limits of deviation (DCO) | 2.1.12 <u>RRE</u> | The PLA considers that full justification must be provided for the proposed depth of the tunnel under the River including any upward limits of deviation. The depth of the tunnel must be sufficient to accommodate both current and future river trade. PLA expect to see any agreed plan forming part of the DCO submission along with appropriately drafted text in the DCO. <u>December 2022</u> <u>See comments in relation to 'Route alignment, tunnel depth and tunnel protection zone'</u> <u>August 2023</u> | <u>The Applicant</u> is proposing that the tunnel is at a depth sufficient to allow the PLA to maintain the navigable channel to a depth of at least 12.5m below chart datum with 0.5m over dredge and <u>the Applicant has</u> amended article 6 to accommodate the PLA's concerns. <u>The Applicant believes</u> that this reasonable amendment should address the PLA's concern with <u>regard</u> to the depth of the tunnel and upward limits of deviation. <u>Significant progress has been made on the drafting of paragraph 99 and 100 which are now agreed between the parties. This is reflected in the latest version of the DCO. The Applicant considers any concerns around paras 99/100 resolved with one</u> | Draft Development Consent Order [Document Reference 3.1 (11)], <u>Tunnel Depth Report [REP7-165]</u> | Matter <u>Agreed</u> |

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| | | <p><u>The reference design of the tunnel (i.e. with no upwards limits of deviation exercised) has less tunnel cover than is normal. The details provided in the Application have not demonstrated adequately that it is possible to construct the tunnel on the alignment shown. The upwards limits of deviation should be reduced from its current limit of 6m to a level which meets the Applicant's need for a reasonable degree of flexibility while also removing the potential for the conflicts identified by the PLA.</u></p> <p>September 2023 <u>Following review of the Tunnel Depth Report (and subject to the further updates as discussed with the Applicant) the PLA is much more</u></p> | <p><u>exception relating to the ability of the Secretary of State to determine a dispute.</u></p> | | |

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| | | <p>reassured that the tunnel can be constructed.</p> <p>December 2023</p> <p>The PLA had previously stated that it could not agree Article 6 (limits of deviation) until the wording of sub-paragraph 1 of paragraph 99 of the protective provisions and any potential new sub-paragraphs of paragraph 99 was settled. While paragraph 99 is not settled in its entirety (notably in relation to the outstanding objection to the Applicant's highly unusual and undesirable approach to arbitration with the PLA), the PLA can accept that Article 6 is settled because it is not linked to the outstanding areas of disagreement on paragraph 99.</p> | | | |
| Interpretation of Article 18 DCO on powers in relation to relevant navigations or watercourses | 2.1.13 RRE | The scope of article 18 (powers in relation to relevant navigations or watercourses) allows wide powers to interfere with navigation – the | The Applicant has proposed a provision for inclusion in the Protective Provisions to address PLA's concern about the scope of article 18. The Applicant has also amended | Draft Development Consent Order [Document Reference 3.1 (11)] , | Matter Agreed |

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| | | <p>current drafting does not address this.</p> <p>The PLA objects to the catch-all allowing National Highways to interfere with relevant navigations and watercourses and “in such manner and to such extent as <i>may appear to it to be necessary or convenient.</i>” This gives National Highways very wide scope to interfere with navigation in the river. For example, on moorings, rather than designing the scheme to preserve existing moorings, National Highways could decide it was more convenient to relocate moorings, which would cause disruption and the location for the relocated moorings may not be suitable in size or characteristics (e.g. water depth and ability to handle explosives).</p> | <p>Article 18 so it no longer refers to "interference with any public rights" such as rights of navigation.</p> <p>The PLA has sufficient protection in the protective provisions. If the Applicant, sought to relocate moorings, the protective provisions would apply. The Applicant does, not consider any further amendment necessary, but has agreed to amend article 18 to replace reasonably convenient with "reasonably necessary in connection with the carrying out and maintenance of the authorised development." The Applicant awaits the PLA's feedback to resolve this issue.</p> | | |

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| | | <p>August 2023 <u>The PLA remains concerned about the extent of the powers sought by Article 18 particularly in the light of the Applicant’s response (EV-015) which advises that the power in relation to moorings is needed to address circumstances where a mooring is established in the period between the examination and the implementation of the Order. The drafting should be adjusted to enable the Applicant to interfere with any moorings during that time period, rather than the much wider interference that is currently envisaged by Art.18</u></p> <p>November 2023 <u>Following discussions between the PLA and the Applicant, an agreed amendment was made to Article 18 at DL6 to narrow the scope of the Article to the river Thames within the Order</u></p> | | | |
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| | | <u>limits or which may be affected by the authorised development. The PLA is content that this matter has been satisfactorily resolved.</u> | | | |
| Interpretation of Article 19 DCO on discharge of water | 2.1.14 | <p>PLA reject use of deemed approval in article 19 <u>(discharge of water)</u>.</p> <p>PLA seeks parity between this and Article 48 <u>(protection of tunnels etc.)</u>.</p> <p><u>The PLA has agreed that article 19 and Article 48 (protection of tunnels, etc.) are now both subject to deemed approval.</u></p> | <p><u>The Applicant</u> has provided Protective Provisions to protect <u>the</u> PLA's position and <u>continues</u> to discuss the deemed consent provisions with the PLA.</p> <p><u>The Applicant</u> understands that the main elements of article 48 are now agreed. Article 48 incorporates deemed consent provisions for the benefit of the PLA; <u>the Applicant</u> therefore awaits PLA's confirmation that concern around deemed consent for discharge <u>may</u> be resolved.</p> | Draft Development Consent Order [Document <u>Reference 3.1 (11)</u>]. | Matter <u>Agreed</u> . |
| Interpretation of Article 21 DCO on applicability to the River Thames | 2.1.15 <u>RRE</u> | PLA requested that the "land" that can be surveyed and investigated including the carrying out of <u>ground investigations</u> , should not include the river. | Please refer to 2.1.23 (Definition of commence) where this drafting has been agreed in the Protective Provisions: | Article 21, Draft Development Consent Order [Document <u>Reference 3.1 (11)</u>]. | Matter <u>Agreed</u> . |

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| | | <p>Although National Highways have said GI is covered in the Protective Provisions this intent does not seem to be reflected in the current drafting. This is because "commence" as defined in Article 2 excludes GI. This problem could be solved by changing the start of paragraph of 3(1) as follows:</p> <p>"The undertaker must not exercise any specified function or commence the construction of any specified work..."</p> <p>But we would be open to other drafting suggestions.</p> <p><u>The linked issue of "commence" and works covered by it remains outstanding (see item Exclusion of ground investigation (GI) from</u></p> | <p>The definition of "commence" is not a free-standing authorisation of any works (including GI). Instead, the definition sets out what does and does not constitute commencement. Therefore, notwithstanding GI is excluded from commencement, GI works in the River Thames can only be carried out under article 18 (power to interfere in watercourses etc.) or article 21 (authority to survey and investigate land). The Applicant has no other power under the DCO to carry out GI in the River Thames. The exercise of Articles 18 and 21 powers is controlled by the Protective Provisions, as they are specified functions (see definition in the Protective Provisions).</p> <p>In the interests of reaching an agreement with the PLA, the Applicant has amended the Protective Provisions at paragraph 98 to resolve the PLA's concerns.</p> | | |

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| | | <p><u>Protective Provisions, 2.1.1 above).</u></p> <p>August 2023 <u>At deadline 1 an amendment was made to the PLA's protective provisions to include a definition of "begin." The definition of begin includes ground investigations in the river Thames. Paragraph 98(1) has also been amended to refer to 'begin and to specify, given that there was some discussion around this point, that ground investigations within the river Thames do form part of the preliminary works in Schedule 2. The PLA is therefore content that this matter has been satisfactorily resolved.</u></p> | | | |
| <u>Interpretation of Article 25 DCO on definition of replacement land.</u> | <u>2.1.16</u> | <u>Replacement land not defined.</u> | <u>Replacement land is defined in Article 40, and a cross-reference has been inserted.</u> | <u>Articles 40 Draft Development Consent Order [Document Reference 3.1 (11)]</u> | <u>Matter Agreed</u> |

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| <u>Time limit for implementing compulsory acquisition powers in Article 27 DCO (and Article 30)</u> | | | | | |
| <u>Time limit for implementing compulsory acquisition powers in Article 27 DCO (and Article 30) and compulsory acquisition of rights in Article 28</u> | 2.1.63 | <p>10 years is an exceptionally long period for the exercise of compulsory powers. Silvertown tunnel, which is the most recent road tunnel under the river, only required five years. PLA cannot see the justification for that time frame being doubled.</p> <p>Additionally the period of time that National Highways can remain in possession "temporarily" would appear to be indefinitely.</p> <p>April 2023 <u>The PLA accepts that National Highways cannot remain in possession of</u></p> | <p><u>The Applicant</u> has amended the time period for compulsory acquisition powers to eight years. <u>The Applicant</u> considers this is an appropriate period for a project of this scale. The Lower Thames Crossing is a significantly more complex scheme than the Silvertown Tunnel.</p> <p>Temporary possession is limited in the draft DCO and <u>the Applicant</u> does not agree that powers are indefinite. Article 35 (temporary use of land) is subject to article 27.</p> <p><u>The Applicant understands the PLA's concerns. The Applicant must vacate land one year after completion of works on the land (Article 35(4)(a)). It would be</u></p> | Articles 25,27 & 30, Draft Development Consent Order [Document Reference 3.1 (11)] | Matter Agreed |

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| | | <p><u>land it has temporarily possessed for longer than one year following completion of the works for which the land was sought. However, the PLA remains concerned about the possibility of circumstances where land is temporarily possessed, but works are not completed as provided for in the dDCO, with the practical effect that the land may be occupied indefinitely.</u></p> <p>August 2023 <u>The PLA's point about the lack of a back-stop date to the exercise of the Applicant's powers of temporary possession and compulsory acquisition of rights and imposition of restrictive covenants remains. The PLA has proposed to the Applicant that it specify that the exercise of those temporary powers shall cease no later than a</u></p> | <p><u>unreasonable to expect a scheme of this scale to limit its temporary possession period before any works have been carried out. The Secretary of State has endorsed such powers on numerous DCOs and the Applicant is not aware of any DCOs which limit temporary possession in the manner proposed by the PLA. Any restriction on the Applicant's temporary possession powers risks interfering with the Applicant's ability to implement the Project and bring about the significant public benefits that arise as a result.</u></p> <p><u>Any decision by the Applicant to remain on land for an excessive period of time could be subject to judicial review.</u></p> <p><u>The Applicant has also inserted a provision in the PPs which ensures that temporary possession is limited to what is necessary. This provides further assurance.</u></p> | | |

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| | | <p><u>fixed period of time, such as that the Applicant's powers of temporary possession and compulsory acquisitions of rights and imposition of restrictive covenants shall cease within 2 years from the Applicant last having carried out any activity in, over or under the land to which those powers relate.</u></p> <p>November 2023</p> <p><u>Following discussions between the PLA and the Applicant, additional text was added to paragraph 98(5)(b) of the PLA's protective provisions relating to the timing and management of giving up temporary possession and the PLA considers that this matter has now been satisfactorily resolved.</u></p> | | | |
| Article 35 – temp use of land – navigation and riverbed | 2.1.17 | National Highways should not have the powers to suspend the public right of navigation in the channel and stop vessels | As <u>the Applicant has</u> , explained in previous exchanges on DCO comments, article 35 (1)(a)(ii) is subject to article 35(11) | Draft Development Consent Order [Document Reference 3.1 (11)] | Matter Agreed |

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| | | <p>from entering and leaving the port. They should not have the powers to take temporary possession of the whole width of the river Thames. The powers should be limited in terms of what is necessary both in duration and extent.</p> <p>September 2022 <u>Removal of wording relating to the temporary possession of the River and suspension of the public right of navigation 35(11) excludes temporary possession of surface of the land for River plots: 12-18 12-19 13-45 13-46</u></p> <p>December 2022 <u>Submission version of the dDCO excludes temporary possession of surface of the land for River plots</u></p> | <p>which excludes the ability to take temporary possession of the river Thames plots (except for the outfall area/ water inlet with self - regulating valve). <u>The Applicant</u> is therefore not taking temporary possession over the <u>riverbed</u>. No public right of navigation is proposed to be suspended and no suspension is so authorised.</p> <p><u>The Applicant has also inserted a provision in the PPs which ensures that temporary possession is limited to what is necessary. This provides further assurance.</u></p> | | |

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| Article 48 – Protections of the tunnels (DCO) | 2.1.18 RRE | <p>The PLA provided to National Highways a list of activities to be exempted re. article 48 (<i>protection of tunnels, etc</i>) and various comments regarding how the Article would work in practice.</p> <p>September 2022 Following discussions between the PLA and National Highways the wording of Article 48(1) up to and including 48 (4) is agreed. See item 2.1.20 in relation to the remainder of Article 48 and the explosives anchorage.</p> <p>August 2022 At deadline 1 the River Restrictions Plan (REP1-41) was updated to allow for a sideslope to the top of the 1st protection zone to the north of the channel buffer zone. This resolves an issue with the plan which did not previously account for the</p> | <p>The Applicant has approved the list of activities sought by the PLA within the latest version of article 48. The Applicant understands that the explosive licence exclusion remains under discussion but the remainder of Article 48 is agreed.</p> | Article 48, Draft Development Consent Order [Document Reference 3.1 (11)]. | Matter Agreed |

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| | | <u>sideslopes that are required when dredging the riverbed.</u> | | | |
| <u>Article 53 (disapplication of legislative provisions, etc.) - Disapplication of provisions of PLA Harbour Revision Order (HRO) relating to the 1968 Act, on mooring licences, lighting.</u> | 2.1.19 <u>RRE</u> | <p>PLA maintain the position that National Highways should not disapply Section 80A (permanent lights on works) of proposed HRO or the byelaws (Article 53). <u>The PLA maintains that work carried out under the Order after the maintenance period should be licensable under a River Works Licence.</u></p> <p><u>December 2022</u> <u>The PLA has no interest in the use of the tunnel area in accordance with its role as a strategic road network, what the PLA does have an interest in is anything that NH or the statutory undertakers may do that takes it outside of being a strategic road network and would</u></p> | <p><u>The Applicant</u> is seeking to disapply Section 80A of the proposed <u>Harbour Revision Order</u>, since lighting of works <u>is</u> covered in the Protective Provisions .</p> <p><u>The Applicant has already confirmed to the PLA that ground investigations etc., in the River Thames post the maintenance period would be subject to river works licences in the normal way. However, the PLA does not have any control over the tunnel area itself which is part of the Strategic Road Network, and not part of the River Thames.</u></p> <p><u>Byelaws are not subject to disapplication and this point has been accepted by the PLA.</u></p> <p><u>In order to resolve any outstanding concerns of the PLA, the Applicant offered to amend article 53(4) by incorporating "in its capacity as a highway authority" after</u></p> | Draft Development Consent Order [Document <u>Reference</u> 3.1 <u>(11)</u>]. | Matter <u>Agreed</u> |

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| Topic | Item No. | Port of London Authority comment | Applicant's response | Document Reference | Status |
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| | | <p><u>normally require a RWL from the PLA.</u> <u>The wording in Article 53 carves out the need for a RWL after the maintenance period for anything in the tunnel for a wide range of activities given the wording "or any other function of the undertaker" therefore if the undertaker was a data provider, data could be conveyed through the tunnel without a RWL – taking the tunnel outside the realms of the strategic road network.</u> <u>Notably the Silvertown tunnel DCO dealt with this in an appropriate way at Article (3)(4) so that a RWL was not required for anything done within any structure forming part of the authorised development in connection with its operation or maintenance or any other function of TfL.</u></p> | <p><u>any other function of the undertaker.</u> <u>The Applicant has now included amended wording in the draft Development Consent Order by incorporating a new article 53(5), adopting drafting recommended by the PLA.</u> <u>The Applicant now considers this point resolved.</u></p> | | |

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| | | <p>November 2023 <u>The PLA has proposed alternative drafting to the Applicant, which retains the requirement for any party installing utility apparatus not required directly or solely for the purposes of the new highway to apply for a river works licence. This requirement will apply during construction and maintenance as well as after the maintenance period. Following some modification by the Applicant, this drafting has been agreed with the Applicant and should be submitted at Deadline 7.</u></p> <p>December 2023 <u>The Applicant included the agreed wording in its Deadline 7 submission and as such the PLA considers this matter to be satisfactorily resolved.</u></p> | | | |

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| <p><u>Article 48 (protection of the tunnel area, etc.)</u>. Disapplication of explosives licence at Higham Bight anchorage</p> | <p>2.1.20 <u>RRE</u></p> | <p>The tunnel would be located directly <u>under</u> the PLA's Higham Bight explosives anchorage which is licensed to handle up to 70 tonnes of explosives and has a size limit of 100m LOA.</p> <p><u>Although it is not used often when it is used it is critically necessary</u>. It would be inappropriate to lose the facility, particularly given <u>it is located some distance away from existing</u> explosives anchorages and <u>its</u> potential future use, <u>including increased use</u> associated with the Freeport.</p> <p><u>April 2023</u> National Highways cannot simply disapply the explosives licence in whole or in part → the potential for the anchorage to be moved needs to be discussed.</p> | <p><u>The Applicant</u> understands that this anchorage is infrequently used by vessels <u>carrying</u> explosives, although considered significant by the PLA to its operations. To clarify, <u>the Applicant is</u> not looking to remove the anchorage but <u>to</u> disapply the explosives licence associated with the anchorage, due to safety purposes. <u>The Applicant</u> has drafted Article 48 with respect to disapplying relevant parts of the explosive licence to afford an appropriate level of safety during construction and operation.</p> <p><u>The Applicant</u> is working with the Health and Safety Executive (HSE) to attain a safe solution during <u>construction</u>, and operation of the <u>Project</u>, HSE has been briefed and <u>has</u> endorsed article 48.</p> <p><u>The Applicant</u> commission a third-party expert consultant to undertake an independent</p> | <p>Article 48, Draft Development Consent Order [Document <u>Reference 3.1 (11)</u>].</p> | <p>Matter Under Discussion *</p> |

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| | | <p>The PLA has undertaken an initial assessment and a feasibility study <u>has been completed</u> with National Highways. <u>A consultant is being engaged to progress outcomes from the study.</u></p> <p>August 2023 <u>The consultant was engaged in August 2023. It is hoped to provide an update on the first stage of work at deadline 4</u></p> <p>September 2023 <u>The PLA welcomes the Applicant's agreement at ISH7 to the PLA's suggested wording in relation to the timing 3232 of the explosives licence. The consultant is trying to secure a meeting with the HSE to discuss a new licence for an alternative location. Once this meeting has taken place a further update will be provided.</u></p> | <p>Feasibility Study to identify potential alternative anchorage locations where an explosives licence could be held (subject to consultation with / application to the Health and Safety Executive).</p> <p><u>the Feasibility Study has been finalised and the report was shared with the Harbour Master on 10 March 2023 and with the Deputy Director of Planning on 15 March 2023.</u></p> <p><u>The PLA has engaged (with the Applicant's agreement, July 2023) a consultant to further assess the alternative location identified in the Feasibility Study. The first stage of this is to further understand the likely timeframes for licensing process and approval. The Applicant included text in its deadline 7 version of the draft DCO.</u></p> | | |

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| | | <p>December 2023 <u>Initial contact has now been made with the HSE and the HSE's advice was to submit an application. This is being prepared. The position under the dDCO is that the Applicant will be authorized to disapply an explosives anchorage without having secured an alternative location, potentially leaving the PLA without a strategically essential explosives anchorage. The Applicant should not be authorized to disapply the explosives anchorage without having secured a suitable replacement.</u></p> | | | |
| Definition of authorised development in DCO | 2.1.21 | <p>PLA considers the definition goes further than other orders that have affected the PLA and the river Thames and would like the definition of "authorised development" to be</p> | <p>Refer to item 2.1.22 (Definition of "specified work") and use of the term "authorised development".</p> <p>The fact that previous DCOs referring to the PLA did not adopt this definition of authorised development is</p> | <p>Draft Development Consent Order [Document Reference 3.1 (11)].</p> | Matter Not Agreed |

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| | | restricted so the authorised development is only what is described in Schedule 1 (<i>authorised development</i>) of the Order, otherwise it leaves uncertainty as to what development will be authorised, which is a concern as the Port will remain operational and needs to understand the impact on its operations. | irrelevant as the PLA <i>is</i> protected by the Protective Provisions and it is well precedented drafting required to consent the <i>Project</i> as a whole (<i>i.e. the drafting of authorised development applies to the whole scheme rather than just the PLA</i>), including all authorised works and powers referred to in the DCO. | | |
| Definition of "specified work" and use of the term "authorised development". | 2.1.22 | PLA would like the definition of "authorised development" to be restricted so the authorised development is only what is described in Schedule 1 (<i>authorised development</i>). We appreciate that this is not National Highways' previous approach, but it has been the standard approach for DCOs that affect the river Thames in order to protect the PLA and river users. The Order, otherwise, leaves uncertainty as to what development will be | <i>The Applicant</i> is not proposing to amend its definition of "Authorised Development" which has been endorsed by the Secretary of State of numerous DCOs. The PLA <i>has</i> the benefit of Protective Provisions which protect them against specified works (i.e. parts of the authorised development which may affect the river Thames or any function of the PLA). <i>The Applicant's</i> view is that this provides the PLA with sufficient protection. | Draft Development Consent Order [Document Reference 3.1 (11)], | Matter Not Agreed |

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| | | authorised, which is a concern as the Port will remain operational and needs to understand the impact on its operations. | | | |
| Definition of commence in DCO | 2.1.23 | <p>PLA noted that the list of exclusions from commencement was extensive in the draft DCO. The mitigation works and remedial works go further than the investigations and monitoring that are usually excluded from the commencement of development. Likewise, for construction preparations, apparatus works, demolition and enabling works. A reasonable justification should be provided for excluding all these.</p> <p><u>The PLA notes also that this definition has been removed from the version of the dDCO as applied for.</u></p> | <p><u>The Applicant has</u> refined the definition of commence in the Protective Provisions and <u>does</u> not consider any further refinements necessary in light of the Protective Provisions available to the PLA. Reasonable justifications for the powers sought will be set out in the Explanatory Memorandum.</p> <p><u>The definition of commence is now in Schedule 2 to the DCO. A new definition of "begin" has been added to the Protective Provisions, following discussions with the PLA.</u></p> <p><u>The definition of "commence" does not apply in connection with the PLA's Protective Provisions.</u></p> | <p>Draft Development Consent Order [Document Reference 3.1 (11)],</p> <p>Explanatory Memorandum [Document Reference 3.2 (7)],</p> | Matter Agreed |

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| | | <p><u>December 2022</u> <u>A definition of "commence" in Schedule 2 does not apply to protective provisions.</u></p> <p><u>April 2023</u> <u>NH has discussed including relevant wording in the PLA's protective provisions.</u></p> <p><u>August 2023</u> <u>At deadline 1 an amendment was made to the PLA's protective provisions to include a definition of "begin." The definition of begin includes ground investigations in the river Thames. Paragraph 98(1) has also been amended to refer to 'begin' and to specify, given that there was some discussion around this point, that ground investigations within the river Thames do form part of the</u></p> | | | |

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| Topic | Item No. | Port of London Authority comment | Applicant's response | Document Reference | Status |
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| | | <u>preliminary works in Schedule 2. The PLA is therefore content that this matter has been satisfactorily resolved.</u> | | | |
| Interpretation of Article 8 DCO on transfer of powers | 2.1.24 RRE | <p>The PLA need reassurance that the transfer would only be to a suitable party, and that the tunnel would not be left half built or poorly maintained.</p> <p>Article 8 (<u>consent to transfer benefit of Order</u>) allows the transfer of any or all the Order powers to any or all of the 22 parties listed so far as they relate to that party's undertaking. We do not know what each of those companies may take within the scope of its business undertaking in future, so the PLA has little certainty on what powers may be passed on. We have suggested that it is made clear what powers/assets will be</p> | <p>The powers in Article 8 are only transferrable to those specified undertakers "in respect of works relating to their undertaking". The construction of the highway/tunnel itself will therefore not be something transferrable to these undertakers.</p> <p>Article 8(5) permits statutory undertakers and other parties to exercise compulsory acquisition of rights over Order land.</p> <p>Article 28(3) refers to the relevant owners who may exercise this power at Part 3 of Schedule 4.</p> <p>As <u>the Applicant</u> may be unable to acquire rights and then transfer them to a party who needs them, it is reasonable to require such a provision in the DCO.</p> | Draft Development Consent Order [Document Reference 3.1 (11)], | Matter Not Agreed |

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| Topic | Item No. | Port of London Authority comment | Applicant's response | Document Reference | Status |
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| | | <p>transferred to each undertaking.</p> <p>Article 8(5) allows <i>anyone</i> authorised by National Highways to exercise compulsory acquisition of rights under the Order. This is not appropriate; the rights should be exercised by National Highways as the undertaker.</p> | <p>The PLA's interests continue to be protected by robust protective provisions. <u>The Applicant does</u>, not consider any amendment necessary.</p> | | |
| Inclusion of conditions in the DCO for works in the river Thames | 2.1.25 | <p>Works carried out in the river by National Highways should be subject to conditions, including that the suspension of the public right of navigation should apply to no more of the river than is necessary in the circumstances and keeping any suspension to a minimum.</p> <p><u>National Highways has agreed that there can be no interference with public rights of navigation under Article 18 (powers</u></p> | <p><u>The Applicant</u> considers that the PLA's concerns are dealt with through the Protective Provisions.</p> | <p>Draft Development Consent Order [Document Reference 3.1 (11)],</p> | <p>Matter Agreed</p> |

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| | | <i>in relation to relevant navigations or watercourses).</i> | | | |
| <u>Inconsistencies and uncertainties in the Environmental Statement</u> | <u>2.1.64</u> <u>RRN</u> | <p><u>Inconsistencies and uncertainties in the Environmental Statement</u> The PLA has identified general inconsistencies and inaccuracies across the chapters of the Environmental Statement (doc ref 6.1) and with the register of environmental actions and commitments (doc ref 7.11).</p> <p>August 2023 The PLA has set out more information in its Written Representation on the inconsistencies and uncertainties in the ES and confirms that the issues identified by the PLA have not been addressed through the Environmental Statement Addendum submitted at Deadline 1.</p> <p>December 2023</p> | <p>The Applicant undertook a review of the identified inconsistencies noted by the PLA in their Written Representation. The inconsistency in paragraph 22.14 has been addressed by a modification to REAC entry MB001, submitted at Deadline 7, which has been modified to clarify that works must "where reasonably practicable be undertaken in the dry."</p> <p><u>Inconsistencies related to the characterisation of the level of cover were considered, and the Applicant provided a commentary on these matters in the Tunnel Depth Report, including confirmation that the inconsistencies did not affect either the assessments or the ability to deliver the tunnel within the limits of deviation while protecting the depth of the dredged navigable channel.</u></p> | <p><u>PLA Responses to comments on Written Representations [REP3-217]</u> <u>Environmental Statement Addendum submitted at Deadline 5 [REP5-062]</u> <u>ES Appendix 2.2: Code of Construction Practice [REP7-122]</u> <u>Tunnel Depth Report [REP7-165]</u> <u>Preliminary Navigational Risk Assessment [Document Reference 7.15 (3)]</u> <u>Responses to the Examining Authority's ExQ1 Appendix C: 5. Air Quality [REP4-190]</u></p> | <u>Matter Not Agreed</u> |

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| Topic | Item No. | Port of London Authority comment | Applicant's response | Document Reference | Status |
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| | | <p><u>The Applicant has provided a response to a limited number of inconsistencies and uncertainties identified by the PLA and consider this matter to be resolved. The PLA considers there still to be inconsistencies and uncertainties. For example, the PLA identified one such inconsistency at paragraph 22.23 of its Written Representation relating to Chapter 13 of the Environmental Statement – Population and Human Health. The inconsistencies identified by the PLA relating to Chapter 13 have not been addressed during the course of the examination. Due to the inconsistencies and uncertainties identified by the PLA, the PLA cannot agree to this matter being marked as agreed.</u></p> | <p><u>In relation to paragraphs 22.2 and 22.3, the Preliminary Navigational Risk Assessment (PNRA) has set out the justification for screening out the assessment of emissions from river vessels used in connection with the Project. As explained in the PNRA, marine imports are already being made to existing established facilities. The Project's position is that it would be operating within the permitted capacity of the Port of Tilbury and using a small proportion of that capacity. The Project would not be generating additional river trips. On this basis, the assessment of emissions from river vessels was screened out. Further detail on the Applicant's justification to the appropriateness of screening out river use during construction is set out in its response to ExQ1_Q5.1.12.</u></p> | | |

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| Production and approval of a marine biodiversity security plan | 2.1.65 RRN | <p>There is uncertainty in respect of the production and approval of a marine biodiversity security plan. The archaeological written scheme of investigation (doc ref 3.3 Appendix 6.9) does not specifically consider the River, nor any maritime archaeology therein, or require the PLA's approval. There is also confusion in the Application documents as to whether dredging is proposed in the Order scheme.</p> <p>August 2023</p> <p>The PLA has set out more information in its Written Representation on these matters and confirms that the issues identified by the PLA have not been addressed through the Applicants submission at Deadline 1.</p> <p>November 2023</p> | <p>In relation to marine biodiversity, the Applicant notes Table 9.13 of Chapter 9 of the Environmental Statement which concludes no significant effects are likely. Nonetheless, the Applicant has proposed suitable controls and approvals (in the Deemed Marine Licence, which will be subject to the Marine Management Organisation's approval, as well as the Protective Provisions for the PLA). In addition, the REAC contained within the Code of Construction Practice includes measures related to marine biodiversity (see REAC Items, MB001 to MB006). In relation to archaeology, the Applicant emphasises that works above the river bed of the River Thames are limited, and it has provided a full assessment against cultural heritage in Chapter 6 of the Environmental Statement. The Applicant is engaging</p> | <p>ES Chapter 9: Marine Biodiversity [APP-147] Code of Construction Practice [Document Reference 6.3 ES Appendix 2.2 (9)] ES Chapter 6: Cultural Heritage [REP4-116] Draft Archaeological Mitigation Strategy and Outline Written Scheme of Investigation [Document Reference 6.3 ES Appendix 6.9 (6)]</p> | Matter Agreed |

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| Topic | Item No. | Port of London Authority comment | Applicant's response | Document Reference | Status |
|-------|----------|--|--|--------------------|--------|
| | | <p><u>At DL1 the applicant submitted document 9.4 Relevant Representations Report [REP1-180] signposting the PLA to the REAC and specifically REAC MB006 which requires the preparation and implementation of a Marine Biodiversity Security Plan ahead of any marine works.</u></p> <p><u>At DL6 the draft Archaeological Mitigation Strategy and Outline Written Scheme of Investigation [REP6-045] was updated to include details of how all works that have the potential to impact on cultural heritage assets will require an SSWSI, which will be carried out to the relevant standards, including where appropriate guidance on marine archaeology. The Port of London Authority will be consulted on any SSWSI with a marine,</u></p> | <p><u>with the PLA to understand the PLA's specific concerns. Dredging is a matter under item 2.1.7 of this document which the Applicant believes should be agreed. REAC MB006 requires a marine biosecurity plan to be prepared by the Applicant. The Applicant therefore considers this element of the PLA's concern resolved.</u></p> <p><u>The draft Archaeological Mitigation Strategy and Outline Written Scheme of Investigation has been updated to address concerns around the River not being considered.</u></p> <p><u>The Applicant appreciates that the PLA's interpretation of dredging is significantly wider than the ordinary usage. The Applicant has made further amendments to accommodate the PLA's definition.</u></p> | | |

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| Topic | Item No. | Port of London Authority comment | Applicant's response | Document Reference | Status |
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| | | <p><u>tidal or inter-tidal component.</u></p> <p><u>The Applicant has informed the PLA that dredging will not be carried out, but the PLA's reading of the application documents is that they do authorise and envisage dredging. The PLA understands from the Applicant that it appreciates why the PLA holds this view and that changes may be forthcoming.</u></p> <p><u>December 2023</u></p> <p><u>Following the PLA's deadline 9 submission, the Applicant and the PLA have reached agreement on wording within the PLA's protective provisions to make it clear that if dredging is to be carried out that it would be a specified work:</u></p> <p><u>"specified work" means any part of the authorised development</u></p> | | | |

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| Topic | Item No. | Port of London Authority comment | Applicant's response | Document Reference | Status |
|-----------------------------|----------|--|----------------------|--------------------|--------|
| | | <p><i>(which for this purpose includes the removal of any part of the authorised development), which— is, may be, or takes place in, on, under or over the surface of land below the level of mean high water forming part of the river Thames; or may affect the river Thames or any function of the PLA, including any projection over the river Thames by any authorised work or any plant or machinery or any dredging (as defined in the 1968 Act) wet cofferdam excavation in the river Thames;</i></p> <p><i>It is understood that this amendment will be made in the dDCO for deadline 10 and on this basis the PLA is content that this matter has been satisfactorily resolved.</i></p> | | | |
| Need for the project | | | | | |

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| Project objectives | 2.1.26 | PLA supports <u>LTC</u> in principle in its proposed location and acknowledges that there is a case for a crossing that facilitates freight transport by river. | <u>The Applicant</u> notes the PLA's comment and welcomes the support for the Project. | <u>Need for the Project [APP-494]</u> | Matter Agreed |
| Consultation and engagement | | | | | |
| Engagement | 2.1.27 | The PLA has been in regular discussions with the Applicant <u>and their consultants</u> , having on average, meetings every six weeks. These discussions have been useful given the scope of the development that is proposed. | <u>The Applicant</u> welcomes PLA's proactiveness and willingness to engage during project development. Regular meetings with PLA will continue. | <u>N/A</u> | Matter Agreed |
| List of consultees | 2.1.28 | The PLA needs to be added to the list of consultees that the undertaker has to consult (to the extent it relates to matters relevant to our functions) prior to the SoS making a decision. <u>The PLA understands (but awaits sight of the updated document) that</u> | The PLA <u>is</u> listed as a relevant stakeholder in the CoCP and therefore will be consulted by the undertaker regarding matters relevant to their functions. | <u>Code of Construction Practice [Document Reference 6.3 ES Appendix 2.2 (9)]</u> | Matter Agreed |

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| Topic | Item No. | Port of London Authority comment | Applicant's response | Document Reference | Status |
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| | | <p><u>National Highways has added this to Table 2.1 of the CoCP. Schedule 2 Part 1 4(2) (construction and handover environmental management plans) would therefore require the PLA to be consulted on EMP (Second Iteration) to the extent that it relates to matters relevant to the PLA's functions.</u></p> <p>December 2022 <u>The PLA has been added to table 2.1.</u></p> | | | |
| Detailed programme | 2.1.29 | <p>PLA has requested a detailed programme of applications expected from National Highways.</p> <p><u>Initial high level programme has been produced by National Highways and shared with PLA, and will be updated throughout the DCO process as necessary.</u></p> | <p><u>The Applicant</u> has provided a <u>programme</u> of applications. In addition, <u>the Applicant</u> updates PLA on progress at regular meetings.</p> | N/A | Matter <u>Agreed</u> |

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| Land and Compulsory acquisition | | | | | |
| Development Boundary - General | 2.1.30 <u>RRE</u> | <p>The Order Limits should be the minimum necessary to deliver the project and should be capable of full justification and assessment</p> <p>- The DCO application should clearly delineate the different possessions and acquisitions that are sought. Any rights of possession sought over the navigable channel should also be specifically justified.</p> <p><u>Article 33(2) (acquisition of subsoil or airspace only) limits the acquisition of land in Schedule 10 (land in which only subsoil or new rights in and above subsoil or new rights in and above subsoil and surface may be acquired) to subsoil and 'such easements or other new rights and the imposition of restrictive covenants in the</u></p> | <p>The Statement of Reasons and its associated annexes, sets out why each plot of land is required by the Project, and why the Applicant seeks compulsory acquisition powers to ensure delivery.</p> <p>All of the land subject to compulsory acquisition and temporary possession powers is necessary to construct, operate, maintain or mitigate the Project. The extent of the Land sought is reasonable and proportionate.</p> <p>There is a compelling case in the public interest to include the compulsory acquisition powers sought by the Applicant in the draft DCO. The compulsory acquisition powers sought by the Applicant are necessary and proportionate to the extent that interference with private land and rights is required.</p> <p><u>The Applicant has also inserted a provision in the PPs which ensures that temporary possession is</u></p> | <p>Statement of Reasons <u>Document Reference 4.1 (8)</u> <u>River Restrictions Plan Document Reference 2.14 (3)</u></p> | Matter Agreed |

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| | | <p><u>remaining subsoil and over the surface of the land'. This conflicts with Article 48 (protection of the tunnels, etc.) and the PLA can see no compelling case in the public interest for National Highways to have the powers to impose restrictive covenants etc on the riverbed. The PLA understands from engagement meetings with National Highways that it is not National Highways' intent to impose restrictive covenants or conflict with Article 48 (protection of the tunnels, etc.) and have requested revised drafting in the dDCO to reflect this.</u></p> <p><u>Schedule 10 (land in which only subsoil or new rights in and above subsoil or new rights in and above subsoil and surface may be acquired) limits the acquisition of subsoil to a certain depth</u></p> | <p><u>limited to what is necessary. This provides further assurance.</u></p> <p><u>The Applicant understands that the PLA's concern is that Article 33(2) could permit it to take rights at surface level which would be unacceptable to the PLA.</u></p> <p><u>The Applicant responded to this comment from the PLA on 23.9.2021 by amending the wording of Article 33(2) to include "for the purposes specified in relation to that land in column (3) of that Schedule [10]" This should alleviate any PLA concerns about powers being taken at the riverbed and the PLA should consider the purposes set out in Schedule 10.</u></p> <p><u>In addition, the Applicant has added a provision to article 33 which restricts the acquisition of easements and restrictive covenants.</u></p> <p><u>This approach also goes further than the Silvertown Tunnel Order 2018 which did not specify purposes for its acquisition of subsoil. The</u></p> | | |

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| Topic | Item No. | Port of London Authority comment | Applicant's response | Document Reference | Status |
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| | | <p><u>below the surface of the land. This depth is therefore fixed, provided that the surface of the land does not change. However, where the surface of the plot of land is the riverbed, the surface of the land will change, and the PLA is able to change the surface of the land under Article 48 (protection of the tunnels, etc.) by dredging the River. There is therefore uncertainty in the drafting because it is not clear whether the subsoil which can be acquired is measured from the pre- or post-dredge surface level. The PLA's position is that the surface of the land should be measured from the post-dredge level and that this should be clarified in the drafting of the dDCO.</u></p> <p>December 2022 Whist noting NH response, this does not</p> | <p><u>Applicant is therefore confident that the Secretary of State will be able to endorse its wider and more open approach towards acquisition of subsoil.</u></p> <p><u>There is no conflict between Article 33(2) and Article 48. However, to avoid any further confusion and bring this matter to a close, the Applicant has expressly updated its Statement of Reasons to make clear that it will rely upon Article 48 for the necessary controls over this area.</u></p> <p><u>On the depth of the subsoil set out in Schedule 10 to the DCO, the PLA should first consider Article 33(7) which defines the level of the surface of the land. Schedule 10 to the DCO includes the depth of acquisition. Regardless of whether the PLA has dredged the land or not, the PLA will only be permitted to dredge within the limits (datum) set out on the River Restrictions Plan. This means that the Applicant will</u></p> | | |

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| Topic | Item No. | Port of London Authority comment | Applicant's response | Document Reference | Status |
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| | | <p><u>alleviate the PLA's concerns because Schedule 10 column 3 states for the relevant plots "for construction of a twin bore tunnel, one tunnel bore for northbound traffic and one tunnel bore for southbound traffic with a three-lane carriageway in each direction..."</u></p> <p><u>No indication is given of what rights/restrictive covenants NH may consider they need and NH Statement of Reasons shows on plate 5.1 and accompanying paragraph 1.1.3 that NH would be seeking to acquire rights and impose restrictive covenants in the 'zone of protection' (shaded blue on plate 5.1 and extending to 'ground level').</u></p> <p>April 2023 <u>Discussion with National Highways has indicated its willingness to include a</u></p> | <p><u>be able to acquire subsoil (for the tunnels etc) from the surface level at the time of its acquisition. This is in line with the approach in the Silvertown Tunnel Order 2018 which has already been approved by the Secretary of State.</u></p> | | |

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| Topic | Item No. | Port of London Authority comment | Applicant's response | Document Reference | Status |
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| | | <p><u>provision which excludes imposition of restrictive covenants over the river bed; the PLA require this exclusion to be extended to the acquisition of other rights, easements, etc to correspond with the powers sought at Art.33(2)(b): "such easements or other new rights and the imposition of restrictive covenants" which clearly distinguishes between restrictive covenants and other rights.</u></p> <p>August 2023 <u>At deadline 1 an amendment was made to Art. 33 to include a new sub paragraph (8) which states that the undertaker may not acquire easements or other new rights or impose restrictive covenants under paragraph (2)(b) on, over or under the river bed of the river Thames for the protection of the</u></p> | | | |

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| Topic | Item No. | Port of London Authority comment | Applicant's response | Document Reference | Status |
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| | | <p>tunnels. This drafting is agreed.</p> <p>The matter relating to Schedule 10 and the riverbed level remains. The difference between the current river bed levels and future dredge levels is up to 4m (this is substantially different to Silvertown). As set out in the PLA's Relevant Representation if the PLA was to dredge before the Order comes into force there is a risk that the Applicant would not be able to acquire the extent of the subsoil required to construct the tunnel.</p> <p>September 2023</p> <p>Following discussions between the Applicant and the PLA, a drafting amendment has been submitted [AS-100] which seeks to change the datum for the acquisition of the subsoil rights to Ordnance Datum for the riverbed plots that relate</p> | | | |

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| Topic | Item No. | Port of London Authority comment | Applicant's response | Document Reference | Status |
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| | | <u>to the tunnel. Discussions are also taking place regarding the use of OD in relation to the dredge depth and whether there are any implications from the changing line of mean high water.</u> | | | |
| Compulsory Acquisition powers in favour of National Highways | 2.1.31 | <p>PLA is opposed to compulsory acquisition powers being exercised over its interests. LTC to clarify the extent/limitations of the CA powers. The PLA needs confirmation that CA does not extend to the riverbed, the level of which needs to be defined as the maximum depth to which the PLA can dredge to. It cannot be right that the maximum depth to which the PLA may dredge will fall under someone else's (i.e. National Highways') ownership.</p> <p><u>The PLA has explained at 2.1.34 (route alignment,</u></p> | <p><u>The Applicant</u> must retain compulsory acquisition powers, even where an agreement is reached, as there may be unknown or third party interests which need to be extinguished <u>or the agreement could be defective. The Applicant</u> will continue to seek an agreement on land acquisition with the PLA.</p> <p>Plans have been provided to the PLA setting out the relevant depths of acquisition. Schedule 10 (<u>land in which only subsoil or new rights in and above subsoil and surface may be acquired</u>) to the dDCO sets out how far the surface acquisitions of subsoil will be below the surface. The level is based</p> | <p>Draft Development Consent Order [Document Reference 3.1 (11)] <u>River Restrictions Plan [Document Reference 2.14 (3)]</u></p> | Matter Not Agreed |

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| | | <p><u>tunnel depth and tunnel protection zones) the importance of datum points in providing a consistent, measurable point of reference.</u></p> <p>December 2022 <u>The difference between pre and post dredge levels in Silvertown is vastly different to those involved in LTC.</u></p> | <p>upon the level of the surface of the ground covered by water (see article 33(7)).</p> <p><u>The Applicant does not believe datum points are necessary in light of this clear definition. This is also the approach taken on the Silvertown project.</u></p> <p><u>The PLA's right to dredge is safeguarded by Article 48 (protection of the tunnels, etc.).</u></p> <p><u>As per the Applicant's response to item 6, Article 48 and the River Restrictions Plan are connected to datum points already. The depth of land that the Applicant is limited to being beneath the surface in metres. This is the approach endorsed by the Secretary of State on the Silvertown DCO.</u></p> <p><u>The Applicant is in discussion with the PLA on a draft agreement. An amended draft was sent by PLA on 10 November 2023 and the</u></p> | | |

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| | | | Applicant responded on 16 November 2023. | | |
| Construction | | | | | |
| Crossing type | 2.1.32 | PLA is supportive in principle of the proposed crossing type (bored tunnel) compared to the other forms considered (cut and cover tunnel and bridge) in terms of navigational safety and river regime subject to route alignment, tunnel depth and protection of the tunnel. | The Applicant welcomes PLA's support. | Development Consent Order [Document Reference 3.1 (11)]. | Matter Agreed |
| Navigational Risk Assessment (NRA) para 3(3) of detailed design | 2.1.33 | PLA proposed alternative drafting to the phrase "substantially in accordance with" regarding the preliminary Navigational Risk Assessment (NRA) to acknowledge that it must be in accordance in all aspects i.e. "in all material respects". With National Highways' proposed drafting, the final NRA for the Scheme could overall be substantially in | The Applicant has agreed to this alternative drafting, replacing "substantially based on" with "in all material respects" subject to checks on any consequential amendments this creates. | Draft Development Consent Order [Document Reference, 3.1 (11)]. | Matter Agreed |

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| | | accordance with the preliminary NRA, but still be completely different as it relates to the PLA. Our alternative drafting addresses this issue. | | | |
| Route alignment, tunnel depth and tunnel protection zones. | 2.1.34 <u>RRE</u> | <p>The depth of the tunnel below the <u>riverbed</u> is an issue of critical importance due to the potential implications for users of the River. The PLA seeks to ensure the tunnel would be of sufficient depth to accommodate both current and future river trade and that the tunnel does not compromise the future development of the port or navigation.</p> <p>The PLA seeks certainty in the DCO regarding the depth of the tunnel / limits of deviation and for the removal of the ability in the DCO for LTC to exceed the maximum vertical upwards limits of deviation.</p> | <p>The Applicant has agreed that the navigable channel of the River Thames can be maintained by the PLA to a depth of at least 12.5m below chart datum and that the undertaker must allow for potential over-dredge of 0.5m. Restriction on upward LoD for tunnel alignment has been agreed.</p> <p>Article 6 (<u>limits of deviation</u>) of the <u>dDCO</u> has been amended to prevent any upward vertical change in the limits of deviation under the river <u>and the latest tunnel limits of deviation plans have been made available to the PLA.</u></p> <p><u>Article 6 has also been amended so that paragraph 99(1) of the Protective Provisions, which protects the agreed dredged navigational</u></p> | <p>Development Consent Order [Document Reference 3.1 (11)].</p> <p>River Restrictions Plan [Document Reference 2.14 (3)].</p> | Matter Agreed. |

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| | | <p><u>Article 6 (limits of deviation) refers to the tunnel limits of deviation plans. In principle the revised wording of Article 6 (limit of deviation) provided in the latest dDCO is agreed but this is subject to review of the 'tunnel limits of deviation plans'.</u></p> <p>December 2022 <u>A review of the 'tunnel limits of deviation plans' shows a 'limit of deviation on bored tunnel' and an 'upper limit of deviation for bored tunnel' From the PLA's initial calculations the difference between the two levels is up to approximately 6m at the navigable channel. The PLA considers that the details as currently shown on the 'tunnel limits of deviation plan' is not what was agreed with NH in a meeting and does not show a scheme that is implementable as it would</u></p> | <p><u>channel depth, takes precedent over the application of the LoDs,</u></p> | | |

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 National Highways has considered PLA's comments and made changes as appropriate. National Highways feels this matter is now agreed.

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| | | <p><u>not be possible to build the tunnel on the alignment shown or utilising the upward limit of deviation because it would not achieve the minimum cover required for the tunnel without detrimentally impacting on the PLA's ability to dredge the channel to the agreed depth of 12.5m (+0.5m overdredge)</u></p> <p>August 2023 <u>Whilst discussions continue with National Highways regarding this matter the PLA maintains its position that the dDCO provides a greater degree of flexibility than is necessary, in terms of the extent of vertical deviation of the tunnel that it seeks to authorise. The reference design of the tunnel (i.e. with no upwards limits of deviation exercised) has less tunnel cover than is normal and no</u></p> | | | |

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| | | <p><u>justification is provided by the Applicant for this. Any exercise of the upwards limits of deviation would therefore reduce the tunnel cover even further.</u></p> <p>September 2023</p> <p><u>Following review of the Tunnel Depth Report (and subject to the further updates as discussed with the Applicant) the PLA is much more reassured that the tunnel can be constructed. Discussions are now focusing on approvals and mitigation of construction risks.</u></p> <p>December 2023</p> <p><u>While paragraph 99 is still not settled in its entirety (notably in relation to the outstanding objection to the Applicant's highly unusual and undesirable approach to arbitration with the PLA), the PLA can accept that Article 6 is settled because it is not linked to the outstanding</u></p> | | | |

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| | | <u>areas of disagreement on paragraph 99.</u> | | | |
| Constructing the LTC | 2.1.35 | <p>The PLA want clarity on what activities would take place within the river area shown as construction sites. There seem to be multiple designations in the river which overlap and which include construction elements which could not – and which the PLA would not want – to take place in the river, such as temporary buildings and storage areas.</p> <p><u>It has been agreed as of September 2022 between the PLA and National Highways that wording is to be added to the PLA's protective provisions to make it clear what the proposed works would be in the River. The dDCO as applied for by National Highways does not relate to the specific works that the PLA was anticipating and this remains to be</u></p> | <p>The Project is not proposing to construct any temporary buildings or storage areas in the river Thames.</p> <p>Proposed works in the river area:</p> <p>The construction and decommissioning of a drainage discharge for the construction phase, from the northern <u>tunnel entrance</u>, compound which may include a buried pipe within the foreshore and a subtidal outfall structure at the discharge point that would terminate in a precast outfall or diffuser head on the subtidal riverbed slope.</p> <p>The construction of a drainage discharge for the tunnel operation, from the <u>North</u>, portal site which may include, an outfall structure located at mean high water including the installation of a flap valve type outfall structure.</p> | Development Consent Order [Document <u>Reference 3.1 (11)</u>]. | Matter <u>Not Agreed</u> . |

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| | | <p><u>discussed with National Highways.</u></p> <p>December 2022 <u>The PLA had thought that agreement had been reached regarding the addition of wording to the PLA's protective provisions – an agreement that NH no longer appear to wish to proceed with.</u> <u>NH appear to have overlooked that the PLA is the owner of the riverbed and is responsible for navigational safety and that the Port of London Act gives the PLA the power to consent works – as such it is entirely appropriate for the PLA to know what is proposed within its area and to consent it. The purpose of the PP's is to replicate the parts of the PLA Act that NH is seeking to disapply through the dDCO.</u></p> | <p>A water inlet with self-regulating valve to be built at Coalhouse Point for habitat creation and to secure the water supply to the ecology mitigation area. Protective provisions have been provided to protect the PLA's position, requiring their consent for works in the river Thames. <u>The tunnelling works are defined with reference to Work No. 4A in the Protective Provisions.</u></p> <p><u>The remaining works in the river, which are consented by the Marine Management Organisation rather than the PLA who have no power to authorise licensable marine activities, are set out in the Deemed Marine Licence at Schedule 15 to the DCO, at paragraph 5.</u></p> | | |

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| Construction Logistics Plan | 2.1.36 <u>RRE</u> | Code of Construction Practice <u>paragraph 6.1</u> The contractors will produce Construction Logistics Plans but there seems to be no sign off <u>process for</u> these plans. <u>In order to fully comment on the CoCP the PLA will need to see an updated version of it. There needs to be clear targets to be met in relation to River use and a transparent mechanism for investigating, securing and reporting on river use. In practice, the PLA has found that third party contractors on projects are responsible both for investigating the feasibility of River transport and for delivering the options for transport from the site in the most cost-effective manner. The PLA's experience is that these two positions are not necessarily compatible.</u> | The Code of Construction Practice (CoCP) introduces the requirement for the Contractor to produce a Construction Logistics Plan. The purpose of this plan is to outline the management arrangements for logistics and the implementation of the following standards: Construction Logistics Community Safety, Freight Operator Recognition Scheme and Driving for Better Business. This plan is not subject to a requirement for consultation or approval, and is intended to provide supporting information on construction logistics to subcontractors and their suppliers. This Construction Logistics Plan is separate to the requirements to produce, consult on and have approved Traffic Management Plans and Site Specific Construction Travel Plans, and the need to consider the use of multi-modal transport including use of the River Thames as | Code of Construction Practice <u>[Document Reference 6.3 ES Appendix 2.2 (9)]</u> <u>Outline Materials Handling Plan [Document Reference 6.3 ES Appendix 2.2 Annex B (5)]</u> | Matter <u>Not Agreed</u> |

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| | | <p><u>There should be an obligation on National Highways to involve the PLA and local authorities in the evaluation of the feasibility of River transport.</u></p> <p>August 2023 <u>Further comments on this matter as set out in the PLA's Written Representation.</u></p> <p>December 2023 <u>The PLA set out at ISH12 and in its Deadline 8 submission its concerns about the lack of review of CLP's by interested parties. This concern remains.</u></p> | <p>required by the Outline Materials Handling Plan (oMHP),</p> <p>EMP2, which must be substantially based on the CoCP, is approved by the Secretary of State. EMP2 will set out a framework for the Construction Logistics Plan.</p> <p><u>The Applicant notes the PLA's comment in the PADS document (item 13). As described above, the CoCP sets out the process and framework.</u></p> <p><u>To provide a transparent mechanism for the management of the river use commitment and the exemptions that could apply, a derogation process has been added to the oMHP in section 6. This process relies on the TMF subgroup for stakeholder input on applications for derogations by the Contractor. The PLA has been engaged to refine the contents of this process and the changes the Applicant has incorporated</u></p> | | |

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| | | | <p><u>are including the PLA to the permanent attendees of the TMF subgroup for river use [Appendix E of oMHP]. Additionally, the Applicant has added a review and feedback process as recommended by the PLA [oMHP].</u></p> <p><u>The PLA has also requested that the Applicant make it clear in the oMHP that it is possible for Contractors to use riparian facilities on the north and south of the River Thames to serve compounds on their respective sides of the river. The Applicant relayed the intent for promotion of the most sustainable solution for transporting materials as part of the multimodal transport commitment which already existed under paragraph 8.3.3. However, the Applicant has made several additions and amendments in an attempt to make this intent clear. Paragraphs 8.2.20, 8.2.21, 8.3.2, 8.3.3 and 8.3.4 of the oMHP have all been amended or added to do this.</u></p> | | |

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| | | | <p><u>The definition of 'bulk aggregates' in paragraph 6.2.13 of the oMHP was amended to make it clear that precast concrete elements were included within the commitment.</u></p> <p><u>PLA's concern at the lack of a commitment to moving waste by water was also clarified in the meeting as well as in the oMHP. Paragraph 1.3.6 was amended to read 'no excavated material is expected to go offsite, if contaminated material is discovered then these facilities may also be suitable...' referring to facilities on the river. It was mentioned that waste would also be subject to the multi-modal transport commitment and the movement of any waste would have to be moved in the most sustainable way.</u></p> | | |

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| Process for making requests for design information | 2.1.37 | <p>As the drafting currently stands, "design of tunnel works" provides for a 20 day response period but drafting goes straight to arbitration. If the PLA can require design, it will enable them to be more collaborative and therefore hopefully avoid arbitration.</p> <p>December 2022 <u>The PLA has explained based on its experience at Silvertown how the paragraph is interpreted by those who benefit from the Order to mean that the only option is arbitration. To quote from the formal submission made to the PLA responding to the PLA's RFI) "In accordance with the timescales established within paragraph 35, the PLA may refer the project to arbitration within 20 business days of this</u></p> | <p><u>The drafting in the Protective Provisions at paragraph 99(5) currently reflects the drafting of the Silvertown Tunnel Order 2018. The Applicant would seek to avoid any arbitration claim by the PLA, and is open to the PLA making further requests – or to deleting the paragraph entirely. Arbitration is only an option available to the PLA; "it may within 20 business days..."</u>. The Applicant has previously discussed the prospect of incorporating bespoke arrangements into a side agreement (e.g. reasonable endeavours to share plans early) as they are not appropriate for protective provisions which are not drafted as an agreement. However, the PLA has rejected this and has not provided any preferred wording for the Protective Provisions.</p> <p><u>The Applicant has introduced an intermediary escalation procedure into paragraphs 99</u></p> | <p><u>Draft Development Consent Order [Document Reference 3.1 (11)],</u></p> | <p>Matter Not Agreed</p> |

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| | | <p><u>submission (25/01/22) should it not be reasonably satisfied that the 'design requirement' detailed within paragraph 35 has been met"</u></p> <p><u>The drafting is not being interpreted by those using it as allowing for further requests rather that the 'may' is the option for the PLA to go to arbitration (if its not satisfied it may also decide not to go to arbitration).</u></p> <p><u>As explained to NH the PLA wishes for everything related to its protective provisions to be clear on the face of the Order for transparency for its stakeholders and customers and to prevent precedents being created which do not reflect reality because the real detail is contained within confidential side agreements.</u></p> <p>November 2023</p> | <p><u>and 100, allowing for resolution without arbitration.</u></p> | | |

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| | | <p><u>Discussions are taking place between the PLA and the Applicant regarding amendments to paragraph 99 so that arbitration is not the first and only resort. The Applicant's drafting suggestion is that referring the matter to the Secretary of State should be an alternative to arbitration in certain circumstances for disputes relating to tunnelling design and construction. The PLA does not think this is appropriate because it does not provide a step in the process before arbitration and because the Secretary of State is not the appropriate body to be taking decisions that are of such a highly technical nature.</u></p> <p>December 2023</p> <p><u>The Applicant has made it clear in discussions with the PLA and at ISH14</u></p> | | | |

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| Topic | Item No. | Port of London Authority comment | Applicant's response | Document Reference | Status |
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| | | <u>that it is content with the drafting of the dDCO as it on this subject and the highly unusual approach it has applied to the PLA when it comes to arbitration. As a consequence, the PLA submitted its alternative drafting at Deadline 8, which reproduces the accepted standard Arbitration Schedule included within recent DCOs and manages the mischief that the Applicant has stated that it is seeking to avoid, i.e. concerns about the timing of the arbitration process.</u> | | | |
| Design of Tunnelling Works | 2.1.38 | The obligation in the Order needs to be wider than considering only the navigational channel. There are features in the river (such as unexploded ordnance and abandoned works) which are outside the navigational channel but do nevertheless need to be considered in the tunnel design. The | <u>The Applicant believes</u> that the current protective provisions should adequately protect the PLA. <u>The Applicant acknowledges</u> that the PLA <u>has</u> an issue with the wording in <u>its</u> preferred precedent, Silvertown, however the provisions of paragraph 98(1) of the protective provisions give the PLA control over | Draft Development Consent Order [Document Reference 3.1 (11)], | Matter <u>Not Agreed</u> |

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| | | <p>Silvertown wording if followed to the letter means that National Highways has no requirement to consider construction effects that would affect river users outside the navigational channel.</p> <p>August 2023 <u>The amendments to paragraph 99 do not deal with the specific point that the detailed design and construction of the tunnelling works in the river Thames must consider more than just the navigable channel depth. The PLA has experience at Silvertown that when it raised issues relating to the design of the tunnelling works which were outside of the navigable channel that it was told that there was no requirement for the undertaker to consider</u></p> | <p>commencement of construction of specified works. The protective provisions also contain general protections for the PLA relating to navigation.</p> <p><u>The PLA should note the amended para 99 of the protective provisions which seek to clarify this point (i.e., it applies to both construction and design) as well as the aspects addressed in paragraph 100.</u></p> | | |

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| | | <p><u>matters outside of the navigable channel.</u> <u>One way to address this point would be to link paragraph 99 to the river restrictions plan so that the areas outside of the navigational channel are also considered in the design and construction of the tunnel.</u></p> <p><u>November 2023</u> <u>Discussions are taking place between the PLA and the Applicant regarding amendments to paragraph 99 so that arbitration is not the first and only resort. The Applicant's drafting suggestion is that referring the matter to the Secretary of State should be an alternative to arbitration in certain circumstances for disputes relating to tunnelling design and construction. The PLA does not think this is</u></p> | | | |

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| Topic | Item No. | Port of London Authority comment | Applicant's response | Document Reference | Status |
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| | | <p><u>appropriate because it does not provide a step in the process before arbitration and because the Secretary of State is not the appropriate body to be taking decisions that are of such a highly technical nature.</u></p> <p>December 2023</p> <p><u>The Applicant has made it clear in discussions with the PLA and at ISH14 that it is content with the drafting of the dDCO as it on this subject and the highly unusual approach it has applied to the PLA when it comes to arbitration. As a consequence, the PLA submitted its alternative drafting at Deadline 8, which reproduces the accepted standard Arbitration Schedule included within recent DCOs and manages the mischief that the Applicant has stated that it is seeking to avoid, i.e.,</u></p> | | | |

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| Topic | Item No. | Port of London Authority comment | Applicant's response | Document Reference | Status |
|-------------------------|--------------------------|---|---|--|--------------------------|
| | | <u>concerns about the timing of the arbitration process.</u> | | | |
| Commitment to river use | 2.1.39 RRE | <p>The DCO application needs to be clear what commitment is being made to river use, including what materials will be transported and what has been discounted and why.</p> <p>September 2022 <u>PLA comment remains and will be reviewed following receipt of updated CoCP and oMHP which will be read alongside the dDCO</u></p> <p>December 2022 <u>The PLA remains concerned that there is insufficient clarity and commitment in respect of sustainable transport of construction materials and construction workers, as set out in the application documents.</u></p> | <p><u>The Applicant</u> had initially considered the use of the East Tilbury Jetty; however, this has now been removed from the Order Limits. <u>The Applicant</u> is discussing use of the river for transporting materials with the Port of Tilbury.</p> <p>Management of materials will form part of EMP2. <u>The Applicant agrees</u>, the PLA will be consulted on this post-DCO.</p> <p><u>The oMHP</u>, will be included Schedule 16 as a Certified Document.</p> <p>Draft text from the <u>oMHP</u>, has been shared with the PLA for comment, regarding commitments to the use of the river and port facilities, including a baseline and better than baseline commitment.</p> | <p>Draft Development Consent Order [<u>Document Reference 3.1 (11)</u>],</p> <p><u>ES Appendix 2.2: Annex B Outline Materials Handling Plan</u> [<u>Document Reference 6.3 ES Appendix 2.2 Annex B (5)</u>]</p> <p><u>Outline Traffic Management Plan for Construction</u> [<u>Document Reference 7.14 (9)</u>]</p> <p><u>Framework Construction Travel Plan</u> [<u>Document Reference 7.13 (6)</u>],</p> | Matter Not Agreed |

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| Topic | Item No. | Port of London Authority comment | Applicant's response | Document Reference | Status |
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| | | <p>November 2023 <u>Further discussions are being held between the PLA and the Applicant as to further commitments that the Applicant may be able to make with regards to use of the river. The PLA will update the ExA on progress at the next appropriate hearing or deadline.</u></p> <p>December 2023 <u>The PLA will provide its final position on this matter in its submissions before the end of the Examination. A meeting between the PLA, the Applicant and Thurrock Council took place following ISH12 and Deadline 8. Despite the Applicant's submissions at ISH12, the Applicant has subsequently said that it is not willing to make any further amendments to the relevant paragraphs of</u></p> | <p><u>The oMHP has been updated to include a complete process for movement of material. A requirement to forecast the quantity of aggregate was inserted together with the requirement to monitor, and then the output from the reporting element in the outline Traffic Management Plan for Construction (oTMPfC) was amended to include reporting on the transported quantity of aggregates. The TMPs would be shared with stakeholders and these monitoring reports would be shared with stakeholders at the TMF to provide transparency in what is proposed and what is then being achieved by the Contractor.</u></p> <p><u>A mechanism for the management of the river use commitment and the exemptions that could apply was added after feedback received by the Applicant. A derogation process was added to the oMHP in section 6. This process relies on the</u></p> | | |

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| Topic | Item No. | Port of London Authority comment | Applicant's response | Document Reference | Status |
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| | | <p><u>the oMHP (paragraph 8.3.3 and 8.3.4) in order to make a meaningful commitment to the use of river facilities. As such this matter is not agreed.</u></p> | <p><u>TMF subgroup for stakeholder input on applications for derogations by the Contractor. The PLA has been engaged to refine the contents of this process and the changes the Applicant has incorporated are, including the PLA to the permanent attendees of the TMF subgroup for river use [Appendix E of oTMPfC]. Additionally, the Applicant has added a review and feedback process as recommended by the PLA [oMHP].</u></p> <p><u>The PLA has also requested that the Applicant make it clear in the oMHP that it is possible for Contractors to use riparian facilities on the north and south of the River Thames to serve compounds on their respective sides of the river. The Applicant relayed the intent for promotion of the most sustainable solution for transporting materials as part of the multimodal transport commitment which already existed under paragraph</u></p> | | |

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| | | | <p><u>8.3.3, however, the Applicant has made several additions and amendments in an attempt to make this intent clear. Paragraphs 8.2.20, 8.2.21, 8.3.2, 8.3.3 and 8.3.4 of the oMHP have all been amended or added to do this.</u></p> <p><u>The definition of 'bulk aggregates' in paragraph 6.2.13 of the oMHP was amended to make it clear that precast concrete elements were included within the commitment.</u></p> <p><u>PLA's concern on the lack of a commitment to moving waste by water was also clarified in the meeting as well as in the oMHP. Paragraph 1.3.6 was amended to read 'no excavated material is expected to go offsite, if contaminated material is discovered then these facilities may also be suitable...' referring to facilities on the river. It was mentioned that waste would also be subject to the multi-modal transport commitment and the movement of any</u></p> | | |

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| Topic | Item No. | Port of London Authority comment | Applicant's response | Document Reference | Status |
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| | | | <p>waste would have to be moved in the most sustainable way.</p> <p>The Applicant has amended the Framework Construction Travel Plan (at paragraph 6.4.4) to confirm that a workforce shuttle bus from the Grays hub would serve the Tilbury ferry pier and a service from the Gravesend hub would serve the Gravesend ferry pier.</p> <p>The submitted DCO application provides finalised documents, and the Applicant feels this has been dealt with appropriately and proportionately.</p> | | |
| Scour Protection | 2.1.40 | An assessment should be carried out by the Applicant of the risk to the river and river users of any reduction in navigable depth that might occur as a result of scour protection. The PLA would expect this matter to be addressed in the river restrictions plan and draft DCO text. | <p>The Applicant does not intend to carry out any activities that would cause scour above the tunnel or in the navigable channel.</p> <p>See items 2.1.12 (Article 6 - Limits of deviation) and 2.1.34 (Route alignment, tunnel depth and tunnel protection zones).</p> | Draft Development Consent Order [Document Reference 3.1 (11)] | Matter Agreed |

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| | | <p>The PLA has requested National Highways confirm whether they will put any scour protection in the River. This is a separate issue from National Highways' confirmation that they do not intend to carry out activities that would cause scour above the tunnel.</p> <p>December 2022 <u>The PLA's review of the plans and LoD alongside the stated requirements within the application documents for a certain amount of cover above the tunnel have led the PLA to conclude that what NH is proposing will not meet its minimum cover requirements for the tunnel (as set out in the ES) to prevent the potential need for additional fill or scour protection over the tunnel.</u></p> | <p>The Project design does not include the requirement for scour protection. <u>The Applicant has engaged extensively with the PLA on how scour protection could be delivered on a precautionary basis, and understands this matter is now agreed.</u></p> | | |

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| Topic | Item No. | Port of London Authority comment | Applicant's response | Document Reference | Status |
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| | | <p><u>National Highways must demonstrate that the tunnel will be at a sufficient depth that safeguards dredging of the navigable channel to the agreed depth and designs out the need for scour protection. If scour protection is required it must be ensured that there is sufficient space to install the necessary scour protection and maintain the agreed dredge limits, and that installation of scour protection is appropriately environmentally assessed.</u></p> <p>August 2023 <u>The Flotations Sensitivity Report provided to the PLA by National Highways omits the details of the scour protection study and therefore there is no confidence that the 0.5m scour protection included within the report would be</u></p> | | | |

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| Topic | Item No. | Port of London Authority comment | Applicant's response | Document Reference | Status |
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| | | <p><u>sufficient, noting that the over dredge allowance is 0.5m and the scour protection must address all potential flow rates</u></p> <p>November 2023 <u>The Tunnel Depth Report [REP6-076] submitted at DL6 includes provides further information on the Applicant's consideration of scour protection including vessel propellor forces and includes for the placement of 1.3m of scour protection. The PLA considers this matter has now been appropriately considered for this point in the project and does not intend to make further submissions to the Examination about scour protection.</u></p> | | | |
| Works within the river | 2.1.41 | The applicant must confirm the tunnel protection zones, if any, around the tunnel and whether there would be any limitations in the | The tunnel protection zone (first and second protection zones) <u>has</u> been agreed with the PLA, providing protection to the tunnel, and allowing the PLA to undertake 'business | River Restrictions Plan [Document Reference 2.14 (3)] | Matter Agreed |

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| | | <p>area. Any extinguishment should be justified and be the minimum necessary. The list of things that the PLA can and cannot do means that the PLA will not be able to carry out business as usual.</p> <p>It is also possible for National Highways to review any consent granted and vary, suspend, revoke or terminate the consent. This gives the PLA and river users no certainty as to what activities can be undertaken within the protection zones .</p> <p>See comments on drafting of Article 48 and 'Route alignment, tunnel depth and tunnel protection zones.'</p> <p>September 2022 Following discussions between the PLA and National Highways the</p> | <p>as usual' activities in the second protection zone. These exclusions are covered in Article 48. The Applicant, accepted all of the amendments proposed by the PLA to the last version of article 48 and it remains unclear why the PLA would still be unable to carry out business as usual.</p> <p>The Applicant has received a response to Article 48 (protection of the tunnels, etc.) and considers this matter agreed.</p> | <p>Draft Development Consent Order [Document Reference 3.1 (11)],</p> | |

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| | | <u>wording of Article 48(1) (protection of the tunnels, etc.) up to and including 48 (4) is agreed.</u> | | | |
| Ground investigations: licensing | 2.1.42 <u>RRE</u> | When National Highways carried out LTC ground investigation works in the river in 2019 a 4 metre part of a borehole casing snapped off in the river bed and has been left in situ. Any works in the river bed are required under the PLA Act to be licenced, and since completion of the borehole works the PLA has regularly asked National Highways to apply for a retrospective licence to regularise the ongoing responsibilities for National Highways' abandoned work. <u>As of September 2022, no application has been received from National Highways and the borehole casing remains unlicensed in the riverbed.</u> | <u>The Applicant notes</u> , that the PLA <u>is</u> concerned with a snapped -off borehole casing left in situ on the riverbed. While this is a matter <u>the Applicant</u> will consider with the relevant contractor, <u>the Applicant does</u> , not consider this to be relevant to the determination of the DCO and <u>does</u> , not consider it suitable for insertion in this SoCG. <u>The Applicant has submitted an application to the PLA on 26 June 2023 under an application to retain the borehole casing.</u> | N/A | Matter Under Discussion* |

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| | | <p><u>December 2022</u> The PLA considers it to be appropriate for this matter to remain in the SoCG until such time that NH makes an application and is granted consent to retain the works – it is of note that it is an offence under the PLA Act for these works to be unconsented and it is concerning that so far it has taken NH three years to consider the matter</p> <p><u>August 2023</u> The PLA confirms that a river works licence application has been received and is being processed.</p> <p><u>November 2023</u> The river works licence application has been approved in principle and a licence is being drafted.</p> | | | |

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| Environmental Considerations | 2.1.43 <u>RRE</u> | <p>The PLA responded to the 2017 Scoping outlining the need for National Highways to consider habitat connections, and fully assess Air Quality in the ES. The PLA had further comments on Biodiversity, Marine Archaeology, Noise, Road drainage, Climate, People and communities. We expect to be updated on this.</p> <p><u>The ES has recently been made available to the PLA for review along with the other application documents. The PLA will review this and may need to make further comments.</u></p> <p>December 2022 <u>Following review of the ES the PLA has a number of comments regarding the adequacy of the ES.</u></p> | <p><u>The Applicant</u> provided the PLA with <u>the</u> Development Consent Order application documents in December 2020. These documents detailed the approach, framework, methodology and assessments regarding environmental considerations.</p> <p><u>The Applicant updated the Environmental Statement Addendum v7.0 at Deadline 7. The Applicant is happy to work with the PLA on any specific comments.</u></p> | <p><u>Environmental Statement Addendum [REP7-154]</u></p> | <p>Matter <u>Not Agreed</u></p> |

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| Ground Preparation/Treatment | 2.1.44 | <p>It should be confirmed whether any ground preparation/treatment is proposed where the tunnel passes under the river. The PLA needs to know what is planned to be undertaken in the river and have confirmation that these will stay an appropriate depth under the riverbed.</p> <p><u>Whilst acknowledging that the specific method of ground treatment is a matter for detailed design, as a general point it is not uncommon for the ground to be treated, particularly in order to allow for the breaking through of the tunnel bores to form the cross passages. In order to facilitate the ground treatment, pipes or other equipment may need to be placed within the riverbed.</u></p> <p><u>The use of ground treatment needs to be assessed in the ES and any ground treatment that</u></p> | <p>The Project's bored tunnel is work no. 4A (this includes both tunnels and all the cross passages) and that definition of tunnelling works is limited to <u>the elements</u> of Work No. 4A <u>that are</u> carried out wholly under the <u>riverbed</u>.</p> <p>The ground protection tunnel (work no. 4B) is not located under the bed of the river Thames.</p> <p><u>The Applicant has since agreed to update paragraph 99 of the protective provisions, which ensure that the PLA are consulted on construction methodology for the tunnelling works, and may request tunnel monitoring, construction and baseline monitoring data. In addition, amendments to the Environmental Statement are captured in the Environmental Statement Addendum v7.0. The Applicant considers this point resolved.</u></p> | <p>Works Plans [Document Reference 2.6 <u>Volume A (5), Volume B Composite (6), Volume B Utilities (5), Volume C (7)</u>] <u>Environmental Statement Addendum [REP7-154]</u></p> | <p>Matter <u>Not Agreed</u></p> |

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| | | <p><u>is proposed needs to meet the agreed requirements of Article 6 (contaminated land and groundwater) ensuring that the ground treatment (e.g. freezing / grouting etc) and any equipment to facilitate the ground treatment all are capable of being provided within the vertical upward limits of deviation shown on the tunnel limits of deviation plans. Further, the PLA would expect National Highways' submission to the PLA of the documents finalizing the tunnel design pursuant to paragraph 99 (design of tunnelling works) of the PLA's protective provisions to address this point.</u></p> <p>December 2022 <u>The Stability Report advises that there are a variety of methods that may be employed to reduce and control</u></p> | | | |

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| | | <u>ground movements along the alignment of the tunnel and that these would be selected by the main works Contractors, this includes grouting. The WFD and Chapter 14 of the ES advises that for the construction of the cross passages grouting or ground freezing would occur. The PLA reiterate its points regarding the need for the ES to consider this matter along with any submission pursuant to paragraph 99 of the PLA's protective provisions.</u> | | | |
| Interaction with other DCO's | 2.1.45 | Given the number of DCO applications being progressed and have been granted in this part of the Thames, a drawing should be submitted with any DCO application showing the proposed development boundary for LTC, T2 and the flexible generation plant DCO. | The Project <u>produced</u> the <u>following</u> document for submission: <u>Interrelationship</u> with other Nationally Significant Infrastructure Projects and Major Development Schemes. This document describes the interrelationships of the Project with other Nationally Significant Infrastructure Projects (NSIPS) and major | <u>Interrelationship</u> with other Nationally Significant Infrastructure Projects and Major Development Schemes <u>[APP-550]</u> . | Matter <u>Agreed</u> . |

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| | | <u>December 2022</u> <u>An interrelationship document has been submitted (ref 7.17)</u> | development schemes in the Lower Thames area. The Interrelationship Document describes how <u>the Applicant has</u> , worked with third-party project promoters and stakeholders to design out and control project interfaces, where necessary, to avoid prejudicing the successful delivery of other projects. It documents the work undertaken to ensure proposals are designed, consented, and delivered in a coordinated way to support Government's vision for the Lower Thames Area. <u>Section 2.1.5 of</u> The Interrelationship Document provides a snapshot of project interfaces at the time of submission. | | |
| Compensation for temporary works | 2.1.46 | PLA would prefer for compensation to be included on the face of the Order so that it is clear that this is standard practice for the PLA. <u>August 2023</u> <u>In respect of the other land and rights the project</u> | <u>The Applicant does</u> , not consider the PLA's bespoke compensation provisions to be appropriate for inclusion in the protective provisions as they are outside the scope of the DCO process. Claims for compensation are matters for the Upper Tribunal. Such provisions may form part of a | N/A | Matter Not Agreed |

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| | | <u>requires on a temporary basis for the period of construction, the PLA are looking to adopt a similar arrangement as agreed on the Silvertown Tunnel and Thames Tideway Tunnel being to charge a fee in much the same way as would be charged for a temporary licence. An earlier version of the dDCO contained the same provisions as the Silvertown Tunnel but this was later removed by National Highways.</u> | compensation agreement between the parties but this is outside the scope of the DCO. | | |
| Navigational Risk Assessment (NRA) | 2.1.47 | A draft NRA must be produced and submitted in support of the DCO application. The NRA will need to take into consideration the full range of activities that take place in this part of the river and during the construction phase it will be necessary to ensure that there is minimum disruption to normal port operations and | <u>The Applicant</u> is producing a preliminary Navigational Risk Assessment that will be developed into an NRA at construction phase (required to be approved by the PLA via the Protective Provisions). The production of a preliminary Navigational Risk Assessment at this stage of the project is agreed as appropriate with the PLA. The Protective Provisions provide protection to the PLA under Approval of Detailed | Preliminary Navigational Risk Assessment [Document Reference 7.15 (3)] | Matter Agreed |

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| | | <p>continuous engagement with the PLA.</p> <p>As currently drafted the PLA's Protective Provisions do include for the production of NRA(s) but this requirement is only engaged on commencement. As currently drafted, pre commencement activities such as in river ground investigations are not captured by the PLA's Protective Provisions. The PLA has suggested drafting to address this point.</p> <p>September 2022 <u>See item 20 (exclusion of ground investigation from the protective provisions) above:</u></p> <p><u>In the interests of reaching an agreement with the PLA, National Highways have amended the protective provisions at paragraph 98(3)</u></p> | <p>Design (para 3(1)), whereby the undertaker must not exercise any specified function or commence the construction of any specified work until plans of the work or function have been approved in writing by the PLA (with the exception of tunnelling works). A Navigational Risk Assessment (NRA) is required as part of this approval of detailed design. In light of this, <u>the Applicant considers</u> this matter agreed. <u>The Applicant</u> awaits the PLA's confirmation or clarification on this matter. <u>The Applicant will further assess the pNRA issue and respond accordingly.</u></p> <p><u>The changes agreed were submitted at Deadline five.</u></p> | | |

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| | | <p><u>(approval of detailed design) to resolve the PLA's concerns.</u></p> <p>April 2023 <u>There remains uncertainty in respect of application of a navigational risk assessment specifically in respect of ground investigation work. Paragraph 98(3) of the PLA's protective provisions provides that where works in the River require a NRA that NRA must be undertaken in all material respects in accordance with an existing pNRA (dated 2019). The pNRA however states that ground investigation works must be undertaken in accordance with an existing NRA, and consequently it is unclear which is the governing document.</u></p> <p>August 2023</p> | | | |

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|--|----------|--|---|--|--------------------------|
| | | <p><u>The PLA and National Highways have agreed wording to be added to the PLA's protective provisions which provides clarity in relation to the definition of pNRA. Once this wording is added to the dDCO the PLA is content that this matter will have been satisfactorily resolved.</u></p> <p>September 2023 <u>Drafting amendments were made at DL3 and the PLA considers this matter to be satisfactorily resolved.</u></p> | | | |
| Wider Network Impacts | | | | | |
| Traffic modelling and impact on Highways Network | 2.1.48 | Ports in England and Wales handle 95% of total volume of UK trade and 75% of its value. Tilbury and London Gateway make significant and essential contributions to the UK trade and the economy in addition to their environmental benefits. | The Project's transport model (the Lower Thames Area Model (LTAM)) has been built specifically to assess the forecast impacts of a Lower Thames Crossing on the highway network, particularly in and around the Lower Thames area, where the Ports of Tilbury and DP World London Gateway <u>are situated</u> . | Combined Modelling and Appraisal Report [APP-518] | Matter Not Agreed |

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| | | <p>The deficiencies in the transport modelling and significant concerns raised by London Gateway regarding the impact of LTC on the highways network adjacent to London Gateway must be addressed.</p> <p>December 2022 As explained to NH in meetings, the PLA is supporting one of its largest stakeholders who have set out and maintained their concerns about the transport modelling and issues such as congestion at manorway junction; and congestion and rat running at Orsett Cock junction. The PLA will continue to support London Gateway in its position to ensure that appropriate access/egress to this</p> | <p>The LTAM has been built in line with DfT's Transport Analysis Guidance (TAG), and has been assured by the Applicant's independent assessor.</p> <p><u>The Applicant has requested details from the PLA on the "deficiencies" in traffic modelling, however these have not been provided. Instead, the Applicant understands traffic modelling is a concern of other parties whom the PLA supports and that the PLA has no substantive comments at this stage. The Applicant is prepared to discuss these matters in detail with the PLA but the PLA has stated that traffic modelling does not form part of the current discussions between the parties (despite the Applicant's willingness to discuss) and the column is therefore marked as not-agreed at the PLA's request.</u></p> | | |

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| Topic | Item No. | Port of London Authority comment | Applicant's response | Document Reference | Status |
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| | | <u>strategically important facility is maintained.</u> | <u>The Applicant has no issue with the PLA's support of other parties, but wishes to make clear to the Examining Authority that whilst this matter is marked as not agreed, there are no substantive comments on this topic from the PLA.</u> | | |
| Tilbury Link Road | 2.1.49 | The road connections on the north side of the river are crucial to maximising connectivity to both the Port of Tilbury and London Gateway. The removal of the Tilbury Link Road therefore has significant implications. The PLA fully supports both Tilbury's and London Gateway's submissions on this matter. <u>The PLA understands that, as of December 2022, discussions continue between the Port of Tilbury and National Highways regarding Tilbury Link Road.</u> | The Tilbury Link Road and junction do not form part of the Project and are not within the draft DCO. | <u>Interrelationship</u> with other Nationally Significant Infrastructure Projects and Major Development Schemes [APP-550] . | Matter Not Agreed |

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| <u>Project reporting commitments</u> | <u>2.1.66</u> <u>RRN</u> | <u>Robust commitments and reporting procedures are needed: in the PLA's experience, neither commitments nor reporting by other projects have been sufficiently robust. Nor has the Applicant has not been able to provide data to the PLA concerning reporting procedures for other DCOs that it has promoted. In addition, the Applicant's air quality commitments and management plan appear to relate only to road vehicles, and should relate to river vessels.</u> | <u>The Applicant provided the PLA with DCO Application Documents in December 2020. The Applicant has refined and enhanced those Application Documents in the submitted DCO application. These documents detail the approach, framework, methodology and assessments regarding environmental considerations (Item 2.1.43 in this document). The Applicant is not clear what are the specific concerns of the PLA in this context, and consider that the proposed controls, outline management plans, and mitigations are appropriate.</u> | | <u>Matter Not Agreed</u> |
| Sustainability | | | | | |
| Legacy | 2.1.50 | A project of the scale of the LTC presents significant legacy opportunities which should be fully explored. | <u>The Applicant</u> notes that the PLA <u>is</u> a member of the sustainable transport legacy working group, and <u>has</u> contributed to the complementary measures report which identified options for sustainable river transport. PLA <u>was</u> broadly supportive of the measures in the report, | National Highways Designated Funds Plan 2020-25 LTC Complementary Measures Report | <u>Matter Not Agreed</u> |

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| | | | <p>although many measures relate to the cross -river ferry service, which is not eligible for designated funding. Partners have therefore been asked to identify the capital elements of the proposals that could be supported and <u>the Applicant</u> would encourage the PLA to make any relevant proposals for consideration by the legacy team.</p> <p><u>The Applicant is unsure of the specific concerns the PLA has on this issue.</u></p> | | |
| Protective Provisions | | | | | |
| Interpretation of "construction" in Protective Provisions and inclusion in DCO | 2.1.51 | PLA would like "removal" included in the interpretation. The PLA's experience at Silvertown is that there are activities requiring consent/approval that will need to be removed at a later date, and that removal should also be subject to consent/approval to protect the river, e.g. monitoring equipment on | <u>The Applicant has</u> accepted PLA's amendment in the Protective Provisions. | Draft Development Consent Order [Document Reference 3.1 <u>(11)</u>]. | Matter Agreed |

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| | | river wall or equipment in the riverbed , | | | |
| Indemnity in favour of the PLA in the Protective Provisions | 2.1.52 | PLA has provided proposed indemnity wording for DCO to be agreed and obtained with National Highways. | In the interests of reaching an agreement on Protective Provisions with the PLA, the Applicant has accepted the proposed indemnity clause. | Draft Development Consent Order [Document Reference 3.1 (11)] , | Matter Agreed |
| Definition of Tunnelling Works | 2.1.53 | The PLA is unclear why Work No's 4B and 5A are included in the definition of tunnelling works when they are significant distances from the river. | Works numbers have been subject to review and amendment due to design changes. The Project's bored tunnel is work no. 4A (this includes both tunnels and all the cross passages) and that definition of tunnelling works is limited to the elements of Work No. 4A that are carried out wholly under the riverbed . | Draft Development Consent Order [Document Reference 3.1 (11)] , | Matter Agreed |
| Discharges – alternative approvals mechanism | 2.1.54 | PLA have removed “or is otherwise approved in writing by the PLA” as the only other way it could approve is through its licensing process which has been disapplied in the draft DCO. These words are superfluous because they serve no purpose: the PLA will not | The Applicant notes that this wording appears in the Protective Provisions for Silvertown, which is the PLA's preferred precedent. It is unclear to the Applicant why this reasonable addition of flexibility is not considered appropriate by the PLA on the present scheme, and the | Draft Development Consent Order [Document Reference 3.1 (11)] , | Matter Agreed |

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| | | <p>be able to "otherwise approve" discharges in writing.</p> <p><u>While the PLA does not agree with National Highways' position because it has no other mechanism to approve damage or interference with the River other than by approving a specified work as described in paragraph 101 (discharges etc.) of the protective provisions, and the PLA will therefore not be able to "otherwise approve damage in writing", the PLA concedes that the wording is unnecessary but does not change what the PLA is able to do or not do and is therefore willing to accept National Highways' drafting.</u></p> | <p><u>Applicant has</u> reinstated the wording.</p> <p><u>The Applicant welcomes the PLA's approval of this wording. The Applicant disagrees that it is unnecessary – as it is a mechanism for the PLA to approve such damage of itself. The Secretary of State has already endorsed this similar wording on the Silvertown Tunnel Order 2018 and the Applicant sees no reason why similar flexibility cannot apply to the Project.</u></p> | | |
| Method for approval of detailed design in <u>paragraph 98(2) (approval of detailed</u> | 2.1.55 | The PLA propose that they should have the opportunity to make further requests for | <u>The Applicant does</u> not consider an indefinite delay <u>to allow</u> the PLA to request further particulars to be | Draft Development Consent Order <u>[Document Reference 3.1 (11)]</u> , | Matter <u>Agreed</u> , |

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| <u>design</u> of Protective Provisions | | information if the information provided by LTC's contractors is insufficient. This should benefit both parties: it is better for the PLA to be able to request further information than for the PLA to have to refuse approval. The drafting, although in line with Silvertown, as is, does not reflect what both parties have found works in practice. PLA has suggested alternative drafting which the PLA has invited National Highways to consider, <u>and the parties are now agreed as to the process with the exception of the arbitration provisions.</u> | appropriate, reasonable, or precedented. However, <u>the Applicant is</u> , in principle agreed to permitting multiple requests for information, provided that they do not hinder the overall timeframe for approval. Wording has been added to the protective provisions to resolve the <u>PLA's</u> concerns. Such wording did not appear on the PLA's preferred precedent Silvertown, however, <u>the Applicant has</u> , added such wording in order to reach an agreement on protective provisions as soon as possible. <u>For reference Paragraph 99 states: "(7) The undertaker must, no later than three months prior to the expected commencement of the tunnelling works, provide the PLA with a point of contact for continuing liaison and co-ordination throughout the construction of the tunnelling works and the undertaker must notify the PLA of the date of— (a) the tunnelling works beginning as soon as reasonably practicable and, in any event, 28 days prior to beginning of those works; (b) the completion of the</u> | | |

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| | | | <i>tunnelling works as soon as reasonably practicable after the completion of those works; (c) the beginning and end of construction of each of the tunnel bore for northbound traffic, the tunnel bore for southbound traffic and each cross-passage connecting the two tunnels; (d) any suspension or resumption of tunnelling works which may affect the PLA's functions; (e) any changes to the planned tunnelling works which may affect the PLA's functions."</i> | | |
| River Safety Lighting Management Plan | 2.1.56 <u>RRE</u> | <p>The PLA have raised the need for a lighting management plan in the vicinity of the river, as part of EMP2 for environmental and navigational reasons with the plan being consulted on prior to sign off.</p> <p>PLA consider that the plan should be added to the Schedule 2 Part 1 (<u>requirements</u>), so that it is produced, submitted, consulted on and approved in the same way as other plans. The PLA has commented on</p> | <p>The production of a River Safety Lighting Management Plan will be required as part of EMP2 (secured via Requirement 4(2)) for the construction phase. <u>The Applicant does</u>, not consider there is any significant impact on the navigation of vessels arising from lighting during either construction or operation of the project, <u>but the Applicant is</u>, proposing to provide the PLA with comfort on this point in a proportionate manner.</p> <p>Draft wording for the <u>CoCP</u>, has been shared with the PLA, following feedback from</p> | <p>Draft Development Consent Order [Document <u>Reference 3.1 (11)</u>],</p> <p><u>Code of Construction Practice [Document Reference 6.3, ES Appendix 2.2 (9)]</u>,</p> | Matter <u>Not Agreed</u> , |

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| | | <p>the draft wording for the COCP shared by National Highways.</p> <p>December 2022 <u>The PLA continues to have concerns that the lighting management plan is submitted only to the MMO and only if 24 hour working is proposed. The PLA is constrained through the CoCP to commenting on lighting only insofar as it may adversely affect vessels (so not in relation to its environmental duties). There is no approval process for the document that the PLA is consulted on.</u></p> <p>August 2023 <u>To resolve this point, the PLA suggests that the Applicant inserts a new paragraph 4(3)(i) in Schedule 2 (Requirements) which identifies that the EMP2 will include a River Safety Lighting Management Plan.</u></p> <p>November 2023</p> | <p>the PLA, <u>and</u> the drafting has been updated to proportionately accommodate points and concerns raised by the PLA.</p> <p><u>The Applicant acknowledges PLA's comments on the PADS document.</u></p> <p><u>The Applicant feels the CoCP drafting proportionately accommodates points and concerns raised by the PLA.</u></p> | | |

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| | | <p><u>Following rejection of the PLA's August 2023 proposal, the PLA has suggested an alternative proposal to the Applicant and awaits their response.</u></p> <p>December 2023 <u>The Applicant has rejected the PLA's proposal to make it clear in EMP1 that a lighting plan must be produced and this matter is therefore not agreed. The PLA remains of the view that the Applicant should be required to produce a lighting plan to secure the safety of vessels on the river and to allow the PLA to perform its environmental functions.</u></p> <p><u>The PLA's concerns about the lighting management plan that is to be submitted to the MMO also remain (see December 2022).</u></p> | | | |

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| Requirement for a Passage Plan | 2.1.57 | <p>The draft Preliminary Navigational Risk Assessment identifies that a detailed passage plan should be produced as a risk control measure.</p> <p><u>The pNRA</u> considers that the risk control measures are legally secured within the PLA's Protective Provisions</p> <p>See PLA's comments on the Protective Provisions <u>above: item 2.1.35 (navigational risk assessment para 3(3) of detailed design etc.)</u>.</p> <p>September 2022 <u>See item 2.1.1 (exclusion of ground Investigation from the protective provisions) above: In the interests of reaching an agreement with the PLA, National Highways have amended the protective provisions</u></p> | <p><u>The Applicant</u> provided details to the PLA on how a Passage Plan will be accounted for, and a response is awaited.</p> <p>The risk controls from the preliminary Navigational Risk Assessment are secured in the protective provisions – paragraph 3(2) of the protective provisions states "Insofar as the plans submitted under paragraph (1) include a navigational risk assessment, that assessment must be in all material respects in accordance with the preliminary navigational risk assessment (including where relevant the incorporation of additional risk controls identified in the preliminary navigational risk assessment) unless otherwise agreed by the PLA."</p> <p>The Passage Plan is listed as an "embedded risk control" in the preliminary NRA so we will amend this paragraph to include "embedded risk control" measure in addition</p> | <u>Draft Development Consent Order [Document Reference 3.1 (11)]</u> , | Matter Agreed |

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| | | at paragraph 3 to resolve the PLA's concerns. | to a "additional risk controls". The Applicant awaits confirmation that this approach is satisfactory. | | |
| Reference to "material" in 8(4) and (5) (Protective action) | 2.1.58 | PLA would like the reference to "material" to address that what is material in the context of the River Thames is different to what is material in the context of the project as a whole. The PLA has also suggested the removal of "material" as the concept of materiality has already been introduced in paragraph 8(1). | The Applicant is retaining the reference as it is considered acceptable wording elsewhere in the Draft DCO. It would be for either party to show that something is material or not material in the event of a dispute. | Draft Development Consent Order [Document Reference 3.1 (11)]. | Matter Not Agreed |
| Drafting of protective action paragraph 103 (protective action) in the protective provisions. | 2.1.59 | PLA requested "scour", "heave" and "other potential effects of the works" to be added to Protective Provisions in order to capture fully the changes that might occur to the riverbed Also see Reference to "material" in paragraph 103(4) and (5) (Protective action) at item 2.1.61. There are two tests for | The Applicant has incorporated scour within the protective action element of the Protective Provisions. The Applicant notes that the PLA is disputing the reference to "other material change to the river bed". The Applicant does not consider the term "material" to be contentious and is not proposing any further amendments to this paragraph. | Draft Development Consent Order [Document Reference 3.1 (11)]. | Matter Agreed |

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| | | <p><u>materiality in this provision firstly in relation to the riverbed and secondly to traffic or the flow or regime of the river Thames. The various requirements for materiality appear to be excessive and do not provide the PLA with sufficient certainty.</u></p> <p>December 2022</p> <p><u>The PLA is not requesting that immaterial impacts be considered – the PLA is charged with maintaining navigational safety and the conservancy of the Thames and what we are seeking is that that the change in the riverbed does not have a materially detrimentally impact on the PLA's functions.</u></p> | <p><u>The Applicant notes the PLA's latest comments, but its position remains unchanged. At paragraph 103(1)(b) it is reasonable for the Applicant to require the PLA to establish that changes to the riverbed are "material" and that they would be "materially detrimental" to traffic/flow/regime of the River Thames if protective action is required. The alternative would be to allow the PLA to argue that immaterial impacts on the riverbed are "materially detrimental" to the traffic/flow/regime of the River Thames. This would be unreasonable and the Applicant has therefore added a clear control.</u></p> | | |
| <u>Permanent acquisition and temporary use of PLA's land</u> | <u>2.1.60</u> <u>RRE</u> | <u>Discussions are needed with the PLA regarding the permanent acquisition of subsoil land and temporary use of the PLA's land as shown on</u> | <u>The Applicant is currently engaging with the PLA's land agents. Discussions have been ongoing throughout the pre-application period and will continue.</u> | <u>Permanent acquisition and temporary use of PLA's land</u> | <u>Matter Agreed</u> |

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| | | <p><u>the Land Plans. Any land take should be justified and be the minimum necessary.</u></p> <p><u>Any DCO application should clearly delineate permanent and temporary areas. As a general principle a DCO should not seek to acquire more land or rights than necessary.</u></p> <p>September 2023 <u>Following the updates at DL3 in relation to temporary possession and permanent acquisition of rights in relation to the outfall plots; and the drafting added at Art. 33(8) the PLA consider this matter is satisfactorily resolved.</u></p> | | | |
| <u>Matters of Valuation Including compensation for temporary works</u> | <u>2.1.61</u> | <p><u>PLA is currently engaging with LTC's Land agents</u></p> <p>August 2023 <u>In respect of the other land and rights the project requires on a temporary</u></p> | <u>The Applicant is currently engaging with the PLA's land agents. An amended draft Heads of Terms was sent by PLA on 10th November 2023 and the applicant responded on the 16th November 2023.</u> | <u>Matters of Valuation Including compensation for temporary works</u> | <u>Matter Under Discussion*</u> |

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| | | <u>basis for the period of construction, the PLA are looking to adopt a similar arrangement as agreed on the Silvertown Tunnel and Thames Tideway Tunnel being to charge a fee in much the same way as would be charged for a temporary licence. An earlier version of the dDCO contained the same provisions as the Silvertown Tunnel but this was later removed by National Highways.</u> | | | |
| <u>Apparatus in tunnel</u> | <u>2.1.62</u> <u>RRE</u> | <u>No utilities are shown in the tunnel - PLA wish to be able to be able to charge for third party utilities in the tunnel as with Silvertown. National Highways are building a road tunnel for use by vehicles therefore any third party utilities should be licensed by the PLA in the usual way through its River Works Licensing process. The PLA notes that Article 44 (power to</u> | <u>The Applicant is currently engaging with the PLA's land agents. It is unclear to the Applicant why the PLA is seeking to exercise powers of the Port of London Act 1968 (in this case, river works licences) within the tunnel, given that the PLA had previously confirmed that powers in the Port of London Act 1968 (e.g. the right to evacuate the tunnel) do not apply within the tunnel. This is clearly a matter of compensation which</u> | <u>Apparatus in tunnel</u> | <u>Matter Agreed</u> |

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| | | <p><u>operate, use and close the tunnel area) was previously limited to the benefit of National Highways in its role as strategic highway authority and that this had been deleted. Our understanding is that this power could therefore extend to any of the transfer parties identified in Article 8 (consent to transfer benefit of order). This circumvents the normal river works licensing requirements and diminishes the PLA's powers in respect of the River Thames.</u></p> <p>April 2023 <u>The PLA and National Highways have discussed reinstating this restriction (see item 44).</u></p> <p>August 2023 <u>The Applicant and the PLA have agreed the principle that any</u></p> | <p><u>should be resolved outside the DCO sphere.</u></p> <p><u>The principle of informing third parties that they may require a licence is agreed by the Applicant and this appears in the Protective Provisions at paragraph 113, but is subject to further discussions.</u></p> <p><u>In addition, article 44 and 53 have been amended in line with the PLA's request.</u></p> <p><u>River works licensing should not apply to works within the tunnel, as the works are clearly outside the River Thames and within the strategic road network. The Applicant notes that there is clearly a commercial, non-DCO-related aim behind this topic, however the matter has now been agreed. Compensation matters are outside the scope of the DCO and the PLA should separately resolve these issues via the Upper Tribunal if the Order is made.</u></p> | | |

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| | | <p><u>cabling/utilities running through the tunnel will be subject to the PLA's River Works Licensing process. We expect to be able to mark this matter as agreed when drafting has been agreed and included in the updated dDCO.</u></p> | | | |

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| | | <p>November 2023 The PLA has proposed alternative drafting to the Applicant, which retains the requirement for any party installing utility apparatus not required directly or solely for the purposes of the new highway to apply for a river works licence. This requirement will apply during construction and maintenance as well as after the maintenance period. Following some modification by the Applicant, this drafting has been agreed with the Applicant and should be submitted at Deadline 7.</p> <p>December 2023 The agreed wording was submitted at Deadline 7 and the PLA now considers this matter to be agreed.</p> | | | |

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Appendix A Engagement activity

A.1.1 The Applicant and the PLA have been meaningfully engaged since DCO application was submitted. Significant engagement has occurred through email providing technical information exchange.

- a. Engagement activities between the Applicant and Port of London Authority since the DCO Application was submitted on the 31 October 2022.

| <u>Date</u> | <u>Overview of Engagement Activities</u> |
|-------------------------|--|
| <u>19 December 2022</u> | <u>Discussion on dDCO and Protective Provisions</u> |
| <u>06 February 2023</u> | <u>Higham Bight Anchorage – Analysis of possible locations report briefing</u> |
| <u>15 March 2023</u> | <u>Depth of tunnel and restrictions in river</u> |
| <u>04 April 2023</u> | <u>Depth of tunnel and technical plans discussion</u> |
| <u>09 August 2023</u> | <u>Tunnel and technical plans discussion</u> |
| <u>21 August 2023</u> | <u>Tunnel and technical plans discussion</u> |
| <u>18 September</u> | <u>SoCG</u> |
| <u>29 September</u> | <u>SoCG</u> |
| <u>6 October</u> | <u>Tunnel and technical plans discussion</u> |
| <u>20 October</u> | <u>Use of the river</u> |
| <u>14 November</u> | <u>Use of the river</u> |
| <u>06 December</u> | <u>Use of the river</u> |

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A summary of

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Port of London Authority Community Impact Consultation Response
Port of London Authority Local Refinement Consultation Response

Appendix B Glossary

| Term | Abbreviation | Explanation |
|--|--------------|--|
| Development Consent Order | DCO | Means of obtaining permission for developments categorised as Nationally Significant Infrastructure Projects (NSIP) under the Planning Act 2008. |
| Code of Construction Practice | CoCP | The REAC identifies the environmental commitments that would be implemented during the construction and operational phases of the Project if the Development Consent Order is granted, and forms part of the Code of Construction Practice. |
| Lower Thames Crossing | LTC | The proposed A122 Lower Thames Crossing (the Project) |
| Materials Handling Plan | MHP | The Materials Handling Plan sets out the approach and high-level principles for handling construction materials and waste on Project. |
| Navigational Risk Assessment | NRA | The objective of the Navigational Risk Assessment is to assess and quantify the navigation risk posed by the Project during its construction and operational phases. |
| Register of Environmental Actions and Commitments | REAC | The REAC identifies the environmental commitments that would be implemented during the construction and operational phases of the Project if the Development Consent Order is granted, and forms part of ES Appendix 2.2 , Code of Construction Practice. |
| Traffic Management Plan for Construction | TMPfC | The approach to carrying out temporary traffic management for the safe construction of the Project. It will also explain management measures available to our Contractor to reduce the impact on the local community (including journey time reliability, access, and safety). |
| Wider Network Impacts Management and Monitoring Plan | WNIMMP | Wider Network Impacts Management and Monitoring Plan |

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List of engagement activities¶

A summary of the meetings and correspondence undertaken between the two parties in relation to the Project is outlined in Table 2.1 below.¶

A more detailed record is presented in table C.2.¶

Summary of engagement activities between National Highways and Port of London Authority¶
Date

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