

11 April 2024

Dear Mr Bartkowiak

## **A122 Lower Thames Crossing (Reference Number TR010032)**

### **1 Response to Secretary of State letter from the 28 March 2024**

1.1.1 The Applicant is responding to the letter from the Secretary of State published on the 28 March 2024 Secretary of State published on the 28 March 2024 requesting an update on a number of matters which were outstanding at the close of the A122 Lower Thames Crossing Examination (which closed on the 20 December 2023).

### **1.2 Amendment of section 85 of the Countryside and Rights of Way (CROW) Act 2000**

1.2.1 It states within the Secretary of State letter from the 28 March 2024 that:

*The Secretary of State notes an amendment of section 85 of the Countryside and Rights of Way Act, in relation to Areas of Outstanding Natural Beauty (AONB), came into effect on the 26 December 2023.*

*The Secretary of State invites the Applicant to provide comments on the implications of this amendment, and in particular, whether and if so, why it considers the Secretary of State could be satisfied that the amended duty placed on him under section 85 would be complied with if development consent were to be given to the Proposed Development.*

1.2.2 The Applicant has responded to this in Annex A of this letter.

### **1.3 ThamesView Camping**

1.3.1 It states within the Secretary of State letter from the 28 March 2024 that:

*The Secretary of State notes that the final Schedule of compulsory acquisition and temporary possession objections [REP9-252] records Thamesview Camping as holding interests in land where the landowner objects to compulsory acquisition. Mapping provided by the Applicant indicates that the campsite operation includes land which the Book of Reference indicates as being held by the Osborne and Bower families.*

*The Secretary of State requests an update from the Applicant on whether the land interests recorded in the Book of Reference and on Sheet 22 of the Land Plan are correct with regards to this issue.*

- 1.3.2 The ThamesView Camping site was defined as a land plot using information from HM Land Registry (HMLR) and has always correctly been referred to as a "campsite". Following a change of HMLR land titles the Applicant updated its land referencing database. A data-entry error at this stage resulted in a tenant being incorrectly reassigned to a neighbouring plot of land.
- 1.3.3 To address this, the Applicant has updated the Book of Reference [**Document Reference 4.2 (9)**] to correct the land ownership on Sheet 22 of the Land Plans. A summary of the changes made to the Book of Reference is Table 1.1 below.

**Table 1.1 Summary of Changes to the Book of Reference**

<b>Plot</b>	<b>Change</b>
22-97	ThamesView Camping removed as tenant and occupier of plot. Owners of land added as occupiers of plot.
22-99	ThamesView Camping added as having a Category 2 interest in plot in relation to right of access to campsite.
22-100	Current occupiers removed from plot. ThamesView Camping added as tenant and occupier of plot

- 1.3.4 To ensure Schedule 16 of the draft DCO reflects [**Document Reference 3.1 (12)**] the correct version of the Book of Reference, the draft DCO has also been updated and included as part of this submission.
- 1.3.5 These documents have been submitted in ‘tracked changes’ and ‘clean’ versions.

## **1.4 Crown Land Consents**

- 1.4.1 It states within the Secretary of State letter from the 28 March 2024 that:

*The Secretary of State is aware that at the end of the Examination, Crown consent had not been obtained by the Applicant for compulsory acquisition and temporary possession of land in the interests of the Forestry Commission, HS1 Ltd., the Crown Estate and the Duchy of Lancaster.*

*The Secretary of State requests an update from the Applicant on if consent has been obtained with the Interested Parties identified in 1.4.1 and invites the Applicant to set out what the appropriate options are if these agreements are not provided.*

- 1.4.2 Table 1.2 below outlines the current status of Crown consent.

**Table 1.2 Crown consent status**

Crown body	Status
Forestry Commission (Secretary of State for DEFRA)	Consent confirmed in Letter of Confirmation (s135 letter) <a href="#">[REP9A-078]</a>
HS1 Limited (Estates Team within the Department for Transport)	The parties are progressing a tri-partite agreement with the Department for Transport as Freeholder to secure the necessary land and rights. The Applicant is confident that agreement will be reached, and that such agreement will be reached in advance of the statutory timescale for a decision on the application. In the unlikely event that it is not concluded before the decision is taken, article 43 of the draft DCO already provides that nothing in the Order authorises the undertaker or any licensee to use, enter upon or in any manner interfere with any Crown Land without the relevant Crown body's written consent. That means that agreement would need to be concluded pre-commencement of the relevant works which affect HS1 land.
Crown Estate	The Applicant has identified that the interest relating to Ashdown Minerals Limited (a dissolved company, and therefore reverting to the Crown Estate) has been removed from the Title Register of the affected land. The Applicant therefore understands the Crown Estate no longer holds a subsisting and enforceable interest in respect of that land.  There are no further interests in land held by the Crown Estate that are affected by the Project.
The King's Most Excellent Majesty in the Right of His Duchy of Lancaster	The Duchy of Lancaster's solicitor has confirmed there is no objection to disclaiming one outstanding interest, which they do not consider to be a bona vacantia interest. The interest (a caution on the title) is unable to be disclaimed by the Duchy as no documentation has been found. The Applicant is in contact with the current Freeholder of the land and their solicitor. They have confirmed that they have no objection to the Applicant applying for cancellation of the caution on their behalf. The Applicant is therefore undertaking this process, and the application will shortly be submitted. On the basis that the relevant interest is not considered to be a bona vacantia interest, this obviates the need for any Crown consent. The application to cancel the caution will simply tidy up the matter, for good order.

- 1.4.3 Further discussions as set out above have led to changes in the total Crown Land plots affected by the Project. Table 1.3 below updates Table 7.1 in the Statement of Reasons [REP9-114] which lists the number of Crown land plots held by Crown authorities.

**Table 1.3 Category 1 and Category 2 Crown land plots**

Crown body	No. of plots in which a Category 1 interest is held	No. of plots in which a Category 2 interest is held
The Secretary of State for Transport	106	126
The Secretary of State for Environment	52	22
The Secretary of State for Health and Social Care	0	28
The Crown Estate	0	0
The King's Most Excellent Majesty in the Right of His Duchy of Lancaster	0	0

- 1.4.4 The Applicant has updated the Book of Reference [Document Reference 4.2 (9)] and Crown Land Plans [Document Reference 2.3 (9)] to reflect the latest position in relation to matters raised by the Secretary of State's letter of 28 March 2024.
- 1.4.5 To ensure Schedule 16 of the draft DCO reflects [Document Reference 3.1 (12)] the correct version of the above-mentioned certified documents, the draft DCO has also been updated and included as part of this submission.
- 1.4.6 These documents have been included in 'tracked changes' and 'clean' versions.

## 1.5 Water Framework Directive (WFD)

- 1.5.1 The Secretary of State noted that at the conclusion of the Examination, the proposed culverting of watercourses was a point of disagreement between the Applicant and the Environment Agency and has proposed a potential new Requirement they are minded to include.
- 1.5.2 The Applicant's view on the proposed Requirement, the wording and whether this Requirement would ensure the Proposed Development is compliant with the requirements of the WFD are contained within Annex B.

## 1.6 Outstanding Agreements

- 1.6.1 The Secretary of State noted that at the close of the Examination, that agreements were being proposed between the Applicant and those identified below had not yet been reached:

- a. Essex Wildlife Trust
- b. Hill Residential Ltd

- c. Majors Office for Policing and Crime and the RSPB (as part of a tripartite agreement)
  - d. The owners and operators of Whitecroft Care Home
  - e. The Mee Family
  - f. Network Rail
- 1.6.2 The Secretary of State requests an update on these agreements and if agreement has been reached. The Applicant has responded to this within Annex C.

## 1.7 Protective Provisions

- 1.7.1 The Secretary of State notes at the close of the Examination, Protective Provisions were still to be agreed between the Applicant and Environment Agency, Southern Water, HS1 Limited, Network Rail, Port of Tilbury London Ltd and The Port of London Authority.
- 1.7.2 The Secretary of State requests an update to confirm whether agreements on these Protective Provisions have been reached. The Applicant has responded to this within Annex D.
- 1.7.3 The Applicant continues to have productive discussions with the Port of Tilbury London Limited, working to agree a revised form of Protective Provisions and a Framework Agreement.
- 1.7.4 During these discussions, the Applicant has agreed to make modifications to their Protective Provisions. Further information is provided in in Annex D and the modifications incorporated into the draft DCO [**Document Reference 3.1 (13)**] are set out in Annex E submitted with this letter.
- 1.7.5 The draft DCO [**Document Reference 3.1 (13)**] has been provided in clean and tracked change version.

## 2 Other matters

- 2.1.1 In updating Schedule 16 of the draft DCO [**Document Reference 3.1 (13)**] in response to the matters above, the Applicant identified that an incorrect version number of the Stakeholder Actions and Commitments Register was included. This should refer to version 8 of the Stakeholder Actions and Commitments Register [[REP9A-060](#)]. The Applicant has therefore updated this within the version of the draft DCO enclosed with this submission.
- 2.1.2 For completeness we have provided a tabulation of the proposed changes to the draft DCO [**Document Reference 3.1 (13)**] at Annex E.

Yours sincerely

Dr Tim Wright

Head of Consents – Lower Thames Crossing

# Annex A: Response to: Amendment of section 85 of the Countryside and Rights of Way (CRoW) Act 2000

## A.1 Outstanding issue

A.1.1 It states within the Secretary of State letter from the 28 March 2024 that:

*The Secretary of State notes the amendment of section 85 of the Countryside and Rights of Way Act, in relation to Areas of Outstanding Natural Beauty (AONB). This duty did not apply during the Examination, but it came into effect on 26 December 2023 and is now a relevant legislative consideration. The Secretary of State invites the Applicant to provide comments on the implications of this amendment, and in particular, whether and if so, why it considers the Secretary of State could be satisfied that the amended duty placed on him under section 85 would be complied with if development consent were to be given to the Proposed Development.*

## A.2 Applicant's response

A.2.1 With effect from 26th December 2023, section 85 of the Countryside and Rights of Way Act (CRoW) 2000<sup>1</sup> was amended by section 245 of the Levelling-up and Regeneration Act (LURA) 2023<sup>2</sup> to provide that: *"In exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty in England, a relevant authority other than a devolved Welsh authority **must seek to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty.**"* (our emphasis).

A.2.2 The definition of a relevant authority applies both to National Highways and to the Secretary of State as decision maker for the Development Consent Order (DCO) application. If the grant of a DCO would affect land (directly or indirectly) within an AONB (now National Landscapes), then the duty in section 85 of the 2000 Act will be engaged in relation to determination of the application.

A.2.3 The Examining Authority examined this issue, following the Levelling Up and Regeneration Bill receiving Royal Assent on 26 October 2023, during Issue Specific Hearing 11 on Environmental Matters (held on 22 November 2023).

A.2.4 The Applicant made submissions that noted the strong policy tests relating to development proposed within nationally designated areas in the National Policy Statement for National Networks (NPSNN) (Department for Transport, 2014)<sup>3</sup> and also in the National Planning Policy Framework (NPPF) (Ministry of

<sup>1</sup> <https://www.legislation.gov.uk/ukpga/2000/37/section/85>

<sup>2</sup> <https://www.legislation.gov.uk/ukpga/2023/55/section/245#section-245-7-b>

<sup>3</sup> <https://assets.publishing.service.gov.uk/media/5a7e3ce4e5274a2e8ab46b99/npsnn-print.pdf>



Housing, Communities and Local Government, 2021)<sup>4</sup>. The Applicant submitted that the new duty has a wider application beyond the planning context and is bringing the general law into line with national planning policy.

- A.2.5 Following the hearing, the Applicant provided a full response on the implications of the amendments introduced by section 245 of the LURA in its *Post-event submissions, including written submissions of oral comments, for ISH11* [[REP8-110](#)].
- A.2.6 The response below builds on that submission with reference to additional relevant matters since that submission including the consideration of this matter in the determination of the A66 Northern Trans-Pennine DCO (summarised in the decision letter of 7 March 2024)<sup>5</sup> and the publication of the revised National Networks National Policy Statement (NNNPS) in March 2024<sup>6</sup>.
- A.2.7 The overarching conclusion of the ISH11 [[REP8-110](#)] submissions remains unchanged – that the Secretary of State can be satisfied that the amended duty is complied with having regard to the meaning of the duty and having regard to compliance with relevant 2014 NPSNN policies which provide substantial protection for nationally designated areas (and have effect for decision making for the DCO).

#### Interpretation of the amended duty

- A.2.8 The amendment to section 85 is not a duty to further the purpose but to “seek to further” the purpose and the decision maker is required to exercise their duty to try to achieve these purposes when determining an application for a DCO that would affect land (directly or indirectly) within a National Park or AONB (now National Landscapes). Accordingly, a Minister is not required to exercise his functions so as to achieve those purposes in every case, but he is required to exercise them so as to try to achieve them. When determining an application for a DCO that would affect land (directly or indirectly) within a National Park or AONB. Accordingly, a Minister is not required to exercise his functions so as to achieve those purposes in every case, but he is required to exercise them so as to try to achieve them.
- A.2.9 The amendments to section 85 envisage that regulations will be made to assist in the application of the duty. No regulations have yet been produced.
- A.2.10 In the meantime, from the language of the amendments to section 85 it can be discerned that, where it is concluded that a scheme will not conserve or enhance the natural beauty, wildlife and cultural heritage of a National Park or AONB (now National Landscapes), the Secretary of State in determining the

<sup>4</sup> [https://assets.publishing.service.gov.uk/media/65a11af7e8f5ec000f1f8c46/NPPF\\_December\\_2023.pdf](https://assets.publishing.service.gov.uk/media/65a11af7e8f5ec000f1f8c46/NPPF_December_2023.pdf)

<sup>5</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010062/TR010062-002476-Secretary%20of%20State%20for%20Transport%20Decision%20Letter%20.pdf>

<sup>6</sup> <https://www.gov.uk/government/publications/national-networks-national-policy-statement>

DCO Application will need to consider whether there is anything further that reasonably could be done to avoid or mitigate any harm identified. If there is not, then he will have fulfilled his duty to seek to further those purposes.

- A.2.11 This duty reflects the 2014 NPSNN policy (which has effect for the purpose of decision making from the DCO) at paragraphs 5.130 to 5.153 which in combination have the same effect as they require the consideration of meeting the need for a scheme in a way which does not affect an AONB (National Landscape) and requires mitigation of the impacts where it cannot.
- A.2.12 The interpretation set out above is consistent with the submissions made by the Applicant on the same issue during the determination of the A66 Northern Trans-Pennine DCO. It is noted that the Secretary of State recognised the force of those submissions in his decision letter on that scheme (paragraph 311).

### **NPS Policy Compliance**

- A.2.13 It is the Applicant's position is that the Project complies with paragraphs 5.130 to 5.153 of the 2014 NPSNN, and by extension complies with section 85 of the CRoW as amended.
- A.2.14 This is set out in full in Planning Statement Appendix F [[REP9-225](#)], in summary:
- a. There are exceptional circumstances for development of the Project within the AONB (National Landscape) and to do so would be in the public interest by:
  - b. Providing a strong case for the need for the Project and the benefits of consenting
  - c. Demonstrating that there are no viable alternative route options that would meet the need and deliver those benefits
  - d. Demonstrating that the Project would provide high environment standards and incorporation of appropriate mitigation
  - e. There are compelling reasons for the Project in terms of enhancing capacity and the benefits of the Project significantly outweigh the costs
  - f. The Project would be carried out to a high environmental standard by implementing a landscape scale approach with embedded design and mitigation measures that would enhance the environment.
- A.2.15 The 2024 NNNPS was published following the close of the Examination on the 20th December 2023. Under the transitional arrangements set out in paragraphs 1.16 and 1.17 the 2014 NPSNN continues to have effect for decision making on the application. However, to aid the Secretary of State



Table A.1 below sets out the policy changes between the 2014 NPSNN which has effect and the revised 2024 NNNPS and how the application demonstrates accordance with the revised policy context. Table A.1 then applies this demonstration of policy compliance to the new duty under Section 85.

**Table A.1 Accordance with Policy**

<b>NPS NN (2014) paragraph and summary of application to AONBs (National Landscapes)</b>	<b>NPS NN (2024) paragraph and summary of application to AONBs (National Landscapes)</b>	<b>Effect of Section 85 of CRoW 2000 (as amended) duty</b>
<p><b>Paragraph 5.150</b> – provides that: <i>“Great weight should be given to conserving landscape and scenic beauty in nationally designated areas. National Parks, the Broads and Areas of Outstanding Natural Beauty have the highest status of protection in relation to landscape and scenic beauty. Each of these designated areas has specific statutory purposes which help ensure their continued protection and which the Secretary of State has a statutory duty to have regard to in decisions”.</i></p>	<p><b>Paragraph 5.170</b> – replaces the text at 5.150 with similar but revised text including reference to the duties introduced by section 245 and any regulations making provision about how the duty is to be complied with (which have not yet been provided): <i>“England’s National Parks, the Broads and National Landscapes have been confirmed by the government as having the highest status of protection in relation to landscape and natural beauty. Each of these designated areas has specific statutory purposes. The conservation and enhancement of the natural beauty of the landscape and countryside should be given great weight by the Secretary of State in deciding on applications for development consent in these areas. The Secretary of State should be satisfied that the scheme’s design and delivery complies with the duty as revised by section 245 of the Levelling Up and Regeneration Act 2023 and any regulations making provision about how</i></p>	<p>Paragraph 5.150 in the 2014 NPSNN references statutory purposes for the protection of designated areas to which the Secretary of State has a duty to <i>“have regard”</i>. That duty has changed to <i>“seek to further”</i> in the context of AONBs (National Landscapes) (as reflected in the 2024 NNNPS paragraph 5.170). However, paragraph 5.150 already requires <i>“great weight”</i> to be attached to conserving landscape and scenic beauty, which have the <i>“highest status of protection”</i>. Accordingly, the Applicant does not consider the LURA amendment to section 85 materially changes the effect of paragraph 5.150 of the 2014 NPSNN.</p>

	<p><i>the duty is to be complied with. Regard should also be had to any relevant Defra guidance”.</i></p>	
<p><b>Paragraph 5.151</b> – which provides that <i>“The Secretary of State should refuse development consent in these areas except in exceptional circumstances and where it can be demonstrated that it is in the public interest. Consideration of such applications should include an assessment of: - the need for the development, including in terms of any national considerations, and the impact of consenting, or not consenting it, upon the local economy;</i></p> <p><i>-the cost of, and scope for, developing elsewhere, outside the designated area, or meeting the need for it in some other way; and</i></p> <p><i>- any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated”</i></p>	<p><b>Paragraph 5.171</b> – retains similar wording to the 2014 NPSNN paragraph 5.151: <i>“The Secretary of State should refuse development consent in England’s National Parks, the Broads and National Landscapes unless there are exceptional circumstances, where the benefits outweigh the harm and where it can be demonstrated that it is in the public interest. Consideration of such applications should include an assessment of: - the need for the development, including any national considerations, and the impact of consenting, or not consenting it, upon the local economy • the cost of, and scope for, developing elsewhere, outside the designated area, or meeting the need for it in some other way, taking account of the policy on alternatives set out in paragraphs 4.20 to 4.22</i></p> <p><i>- any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that would be moderated”</i></p>	<p>Paragraph 5.151 replaced by paragraph 5.171 in the 2024 NNNPS establishes a rebuttable presumption against development in an AONB (National Landscape) – a high level of protection – and requires the Secretary of State to have regard to the existence of alternatives which would avoid impact on an AONB (National Landscape), and where not avoidable the acceptability of mitigation and compensation measures proposed to reduce or offset that impact. The Applicant’s view is that this balancing exercise is consistent with the duty to <i>“seek to further”</i> the purpose of conserving and enhancing the natural beauty of an AONB (National Landscape) when exercising a planning function which permits, in principle, development which may result in adverse effects in an AONB (National Landscape).</p>

<p><b>Paragraph 5.152</b> – which establishes that there is a strong presumption against any significant road widening in nationally designated landscapes, unless it can be shown there are compelling reasons for the new or enhanced capacity and with any benefits outweighing the costs very significantly.</p>	<p>Paragraph 5.172 – retains the wording as set out in the original NPSNN paragraph 5.152 (updated to refer to National Landscapes).</p>	<p>The analysis above in relation to paragraph 5.151 (paragraph 5.171 of the revised NNNPS (2024)) applies in the same way to paragraph 5.152 (paragraph 5.172 of the revised NPSNN (2024)), noting that paragraph 5.152 (paragraph 5.172 of the revised NNNPS (2024)) applies specifically to road widening in an AONB (National Landscape).</p>
<p><b>Paragraph 5.153</b> – which provides that where consent is given in nationally designated landscape, the Secretary of State should be satisfied that the applicant has ensured that the project will be carried out to high environmental standards and “where possible” includes measures to enhance other aspects of the environment. Where necessary, the Secretary of State should consider the imposition of appropriate requirements to ensure these standards are delivered.</p>	<p>Paragraph 5.173 retains the majority of the policy words, with one change removing the words ‘<i>where possible</i>’.</p>	<p>The Applicant considers that paragraph 5.153 is consistent with the revised section 85 duty. It is clear that development in AONBs (National Landscapes) must satisfy a more stringent test – “<i>high environmental standards</i>”. Furthermore, as noted above, the Applicant’s view of the practical application of “<i>seek to further</i>” is that a relevant authority must, when exercising a function, look for opportunities to further the conservation and enhancement of AONBs (National Landscapes), insofar as is possible in the context of the function being exercised.</p> <p>The Applicant has designed the project to first avoid, and then to minimise the impact – and where this has not been possible, to include enhanced mitigation including the replacement of standard road bridges with green bridges, to secure landscape scale mitigation providing enhanced biodiversity</p>

		<p>and reducing the fragmentation of characteristic woodland in the North Kent Downs AONB (National Landscape). In addition, the Applicant is providing, in agreement with the North Kent Downs AONB unit (now Kent Downs National Landscape), a fund to secure further enhancements within the AONB (National Landscape). The Applicant considers these measures in addition the embedded design measures satisfy the requirements of paragraph 5.153 of the NPSNN (2014) and 5.173 of the NNNPS (2024).</p>
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## Conclusion

- A.2.16 The Applicant recognises the strengthening of the duty to seek to further the purposes of conserving and enhancing the natural beauty of the area of outstanding natural beauty as reflected in the amendment to the Countryside and Rights of Way Act 2000 (CRoW) section 85 and reflected in the revised wording of the NPSNN (2024) and that these policy amendments may be considered by the Secretary of State to be important and relevant considerations under Section 104 of the Planning Act 2008<sup>7</sup>.
- A.2.17 While the section 85 amendment to ‘seek to further’ can be considered to be a proactive measure it is not an outcome based duty. It requires that a relevant authority must, when exercising a function, look for opportunities to further the conservation and enhancement of the AONB (National Landscape) where possible.
- A.2.18 The functions being exercised in this case are in relation to National Significant Infrastructure Projects, set out in the Planning Act 2008 (the 2008 Act), which provides that consent may be granted where a proposal is compliant with the relevant National Policy Statement and its adverse impacts are outweighed by its benefits.
- A.2.19 The Applicant considers that the A122 Lower Thames Crossing project meets the policy tests for the following reasons:
- a. The Applicant has considered alternatives to avoid development in, or harm to the AONB (National Landscape). Such alternatives do not meet the Scheme Objectives, which are described in detail in Chapter 3 Assessment of Reasonable Alternatives of the ES [APP-141] and Chapter 5 Project Evolution and Alternatives of the Planning Statement [REP9-215].
  - b. The Applicant has included in the Project design a raft of measures which has the effect of mitigating the impacts on the AONB (National Landscape), as well as providing enhancements – these include woodland planting on a landscape scale, a number of green bridges and the enhancement of walking, cycling and horse riding networks in the AONB (National Landscape). These measures are secured through the certification of the project’s Design Principles [REP9-227] of particular note are S1.03, S1.04, S1.06, S1.07, S1.08, S1.09 and S1.24.
  - c. Additionally the Applicant has reached agreement with the AONB Unit to provide a fund of £4.24 million to enable further compensatory enhancements to other aspects of the environment within the AONB (National Landscape).

<sup>7</sup> <https://www.legislation.gov.uk/ukpga/2008/29/section/104>



A.2.20 The Applicant considers, therefore, that the Secretary of State can be satisfied that on the in the absence of less harmful alternatives, and the design and enhancement commitments, that all necessary steps have been taken to seek to further the relevant purposes of the AONB (National Landscape) and to comply with the amended statutory duty.

## Annex B: Response to Water Framework Directive (WFD)

### B.1 Outstanding issue

B.1.1 It states within the Secretary of State letter from the 28 March 2024 that:

*The Secretary of State notes that at the conclusion of the Examination, the proposed culverting of watercourses was a point of disagreement between the Applicant and Environment Agency in their Statement of Common Grounds. The Secretary of State is therefore minded to include the requirement below. He invites the Applicant, the Environment Agency, London Borough of Havering Council, Thurrock Council and Kent County Council to provide any comments on the wording of this proposed requirement as well as any views on whether this requirement would ensure the Proposed Development will be compliant with the requirements of the WFD.*

*(1) The undertaker is required to prepare culvert designs that are compliant with the requirements of the Water Framework Directive or are derogation condition compliant and the scope and detailed designs are to be prepared in consultation with the Environment Agency, the relevant lead local flood authority and other relevant drainage authorities.*

*(2) No part of the authorised development is to commence until for that part the culvert designs referred to in sub-paragraph (1) have been submitted and approved in writing by the Secretary of State following consultation by the undertaker with the Environment Agency, the relevant lead local flood authority and any other relevant drainage authority, the relevant planning authority and the relevant local highway authority on matters related to their respective functions.*

*(3) The watercourse culverts are to be constructed in accordance with the culvert designs referred to in sub-paragraph (1), unless otherwise agreed in writing by the Secretary of State following consultation by the undertaker with the Environment Agency, the local lead flood authority and any other relevant drainage authority, the relevant planning authority and the relevant local highway authority on matters related to their respective functions, provided that the Secretary of State is satisfied that any amendments to the approved culvert designs would remain compliant with the requirements of the Water Framework Directive or remain compliant with any derogation condition and would not give rise to any materially new or materially different environmental effects in comparison to those reported in the environmental statement.*

## B.2 Applicant's response

- B.2.1 The Applicant does not consider that the additional requirement set out in the Secretary of State's letter dated 28 March 2024 is necessary. Further justification for this position is set out below.
- B.2.2 The Environment Agency has a formal policy against culverting and objects in principle to any development proposal that includes culverting of main rivers. This is recognised in the Statement of Common Ground between the Applicant and the Environment Agency [[REP9A-006](#)], under item 2.1.29. The policy is a general one and is not specific to this Project.
- B.2.3 However, the Applicant has worked collaboratively with the Environment Agency to reduce the use of culverting where possible and to agree designs and mitigation measures where culverts cannot be avoided. A good example of this is the Project's crossing of the West Tilbury Main watercourse, a main river in the vicinity of the North Portal. As documented in item 2.1.30 within the Statement of Common Ground [[REP9A-006](#)], although the Environment Agency does not agree with culverting in principle, they do accept a culvert is the least damaging option in this location owing to the complexity, risks and impacts associated with alternative crossing options.
- B.2.4 The Project design has evolved to reduce the length of this structure from 83m to 46m and three existing culverts on the West Tilbury Main would be removed and restored to open channel reaches by the Project. This is secured by the draft Development Consent Order (dDCO) [[REP10-005](#)] via Project commitment RDWE046 within the Code of Construction Practice [[REP9-184](#)].
- B.2.5 The draft Development Consent Order (dDCO) [[REP10-005](#)] also secures additional commitments contained within the Code of Construction Practice [[REP9-184](#)], related to culvert design features that would:
- a. aid the passage of eels and fish through the structure (RDWE030, RDWE031),
  - b. facilitate mammal passage (RDWE044),
  - c. reinstate bankside vegetation (RDWE009), and
  - d. facilitate appropriate planting and culvert entrances and exits (RDWE021).
- B.2.6 It is noted that there is a requirement for approval of the detailed designs of culverts by National Highways, following consultation with the Environment Agency.
- B.2.7 With regard specifically to the compliance of the Project with the requirements of the WFD, the Applicant prepared an assessment of the Project's compliance

against the WFD in support of the DCO Application [[APP-478](#)]. It is noted that the WFD assessment was prepared in stages, with each stage subject to review and acceptance by the Environment Agency. The Environment Agency confirmed their agreement with the conclusions of the WFD assessment that none of the activities associated with the Project would prevent or undermine future actions to bring water bodies to good status, and no instances have been identified where a Regulation 19 derogation is required. The Environment Agency's acceptance of this position is documented in Annex C.12 'Agreed Statements' of the SoCG [[REP9A-006](#)].

- B.2.8 The Applicant does not therefore consider that the inclusion of a further requirement in the terms set out in the Secretary of State's letter dated 28 March 2024 would be necessary to ensure that the Project will be compliant with the requirements of the WFD, since the assessment undertaken by the Applicant and agreed by the appropriate regulator should, in the Applicant's view, be sufficient to provide comfort to the Secretary of State that the Proposed Development would not lead to any concerns in terms of WFD compliance.
- B.2.9 It is also relevant and important to note that the dDCO includes further controls in relation to the culverting of watercourses.
- B.2.10 In particular, the Protective Provisions for the protection of drainage authorities in Part 4 of Schedule 14 of the dDCO include, at paragraph 20(1), a provision requiring the Applicant, before commencing the construction of a specified work, to submit to the drainage authority plans of that work and such further particulars as the authority may request. Paragraph 20(2) further provides that construction of the specified work must not commence until the approval of the drainage authority has been given. In this context, the reference to a "specified work" includes the erection or alteration of culverts in an ordinary watercourse.
- B.2.11 Furthermore, the Protective Provisions for the protection of the Environment Agency in Part 9 of Schedule 14 of the dDCO [**Document Reference 3.1 (13)**] include a provision in substantially the same terms in relation to main rivers or land which provides or is expected to provide flood storage capacity for a main river. As set out in Annex D of this letter, the Protective Provision for the protection of the Environment Agency are an agreed matter.
- B.2.12 Accordingly, the Applicant considers that the dDCO [**Document Reference 3.1 (13)**] already contains suitable controls for the protection of watercourses, requiring the approval of the appropriate regulator to be obtained before the construction of any culverting work begins. In their expert capacity, the drainage authorities and the Environment Agency would be very well placed to consider the implications, if any, which the construction of a proposed culvert may have in terms of the WFD. However, given the conclusions of the WFD assessment

[APP-478] submitted with the DCO Application and agreed by the Environment Agency, no concerns are anticipated to arise.

B.2.13 The Applicant is therefore of the view that, substantively, the draft requirement set out within the Secretary of State’s letter dated 28 March 2024 would duplicate controls already included in the dDCO via the protective provisions for the protection of drainage authorities and the Environment Agency, which have been agreed by those bodies. The Applicant does not therefore regard the draft requirement as necessary to ensure the Proposed Development will be compliant with the requirements of the WFD or otherwise.

**Comments on wording of proposed Requirement**

B.2.14 Without prejudice to the Applicant’s position (as stated above) that a requirement is not necessary, if the Secretary of State nevertheless reaches a conclusion that a culverting requirement is appropriate, the Applicant would propose amendments to the Secretary of State’s proposed wording as set out in the left-hand column of the table below (Table B.1). Commentary on the Applicant’s drafting amendments is set out in the right-hand column of the table:

**Table B.1 Comments on wording of the proposed Requirement**

Applicant’s Proposed Drafting Amendments	Rationale for Amendments
<p><i>(1) The undertaker is required to prepare culvert designs that are compliant with the requirements of the Water Framework Directive or are derogation condition compliant <del>and the scope and detailed designs are to be prepared in consultation with the Environment Agency, the relevant lead local flood authority and other relevant drainage authorities.</del></i></p>	<p>The Secretary of State’s proposed requirement entails two rounds of consultation as part of the discharging process – the first under sub-paragraph (1), and the second under sub-paragraph (2). The Applicant considers that this is excessively onerous and could disproportionately delay delivery of the relevant works. A single round of consultation on the proposed design, as part of the approval process, is considered sufficient and is a process consistent with other approvals under Schedule 2 to the draft DCO. Accordingly, the Applicant proposes that the consultation process under sub-paragraph (1) should be deleted as shown.</p>
<p><i>(2) No part of the authorised development is to commence until for that part the culvert designs <b>for that part</b> referred to in sub-paragraph (1) have been submitted and approved in writing by the Secretary of State following consultation by the</i></p>	<p>For precision and clarity, the Applicant proposes two substantive amendments:</p> <ul style="list-style-type: none"> <li>only culvert design approvals “for that part” should form part of the pre-commencement condition for that part – this is a form of wording</li> </ul>

<p><i>undertaker with the Environment Agency, the relevant lead local flood authority and any <b>other</b> relevant <b>internal</b> drainage <b>board authority</b>, the relevant planning authority and the relevant local highway authority on matters related to their respective functions.</i></p>	<p>consistent with other requirements in Schedule 2 to the draft DCO; and</p> <ul style="list-style-type: none"> <li>• “relevant drainage authority” is not defined in the proposed requirement. The Applicant considers that the only other “relevant drainage authority” not already listed in the drafting would be the relevant internal drainage board (if any exists for the area in question). Accordingly that party should be expressly listed as shown.</li> </ul>
<p><i><del>(3) The <b>watercourse</b> culverts are to be constructed in accordance with the culvert designs <b>approved under sub-paragraph (2)</b>, referred to in sub-paragraph (1), unless otherwise agreed in writing by the Secretary of State following consultation by the undertaker with the Environment Agency, the local lead flood authority and any other relevant drainage authority, the relevant planning authority and the relevant local highway authority on matters related to their respective functions, provided that the Secretary of State is satisfied that any amendments to the approved culvert designs would remain compliant with the requirements of the Water Framework Directive or remain compliant with any derogation condition and would not give rise to any materially new or materially different environmental effects in comparison to those reported in the environmental statement.</del></i></p>	<p>Three amendments are proposed here:</p> <ul style="list-style-type: none"> <li>• the phrase “watercourse culverts” is not used elsewhere in the requirement, and so it is suggested that “watercourse” should be omitted for consistency;</li> <li>• the second amendment is to require construction of the culvert designs “approved under sub-paragraph (2)”, rather than referred to in sub-paragraph (1). This is consistent with the drafting of other requirements in Schedule 2; and</li> <li>• finally, the amendment procedure contained in the text beginning “unless otherwise agreed...” is not necessary here. Requirement 19 already provides a mechanism to secure approval of amendments to the detailed design of culverts.</li> </ul>



## Annex C: Agreements Update

C.1.1 Table C.1 below sets out the updated position of the agreements identified in the Secretary of State letter from the 28 March 2024

**Table C.1 Updated Agreements Position**

No.	Interested Party	Agreement Type	Agreements Update	Status of Agreement on 11 April 2024
5	Essex Wildlife Trust	Commercial contracts	The Applicant confirms that agreement in principle has been reached with Essex Wildlife Trust. Positive discussions between the Applicant and Essex Wildlife Trust mean the Applicant is confident that the agreements will be executed shortly.	Draft agreements under negotiation. Agreement expected in decision stage.
6	Hill Residential Ltd.	Voluntary public right of way Dedication Agreement	The Applicant is actively engaging with Hill Residential Ltd and their agent (DWD Property & Planning Ltd). Heads of Terms have been agreed and an initial agreement drafted and circulated. The Applicant does not see an impediment to agreement being reached before the end of the decision stage.	Draft agreements under negotiation. Agreement expected in decision stage.
7	Mayor's Office for Policing and Crime (MOPAC) and RSPB	Side Agreement	The Applicant did not receive a response from the RSPB on a draft agreement which was circulated on 13 November 2024 until 3 April 2024 due to what the Applicant understands to be a change of personnel. The Applicant met with the RSPB and MOPAC on 10 April 2024, the parties are in agreement on the terms of the agreement and a revised draft is being prepared. The	Agreement expected in decision stage.

			parties are working towards completing the agreement prior to the end of the decision phase.	
8	Whitecroft Care Home	Agreement to acquire	<p>The Applicant met with representatives from Whitecroft Care Home on 8 April. Discussions regarding the purchase of the care home and potential relocation by Runwood Homes to an alternative site to serve Thurrock are progressing. Both parties are working together to ensure a satisfactory outcome given programme pressures on both sides. It is unlikely that an agreement will be concluded prior to the end of the DCO decision period. However the parties will continue to work together to ensure a satisfactory solution is achieved prior to the start of any construction works that would impact the care home.</p> <p>The Applicant considers that the current drafting of the draft DCO provides sufficient protection to the Care Home owners. However, on a without prejudice basis the Applicant set out how the draft Development Consent Order could be amended should further protection be considered necessary in the absence of an agreement being concluded (see Annex A.8 of the Applicant's post hearing submissions for ISH14 [<a href="#">REP8-114</a>]). In response to this the Care Home owners have stated at Deadline 9A that they agree that this achieves the outcome they seek [<a href="#">REP9A-143</a>]. Whilst the Applicant will continue to work toward a voluntary</p>	Agreement under negotiation.

			agreement, should further protection be considered necessary, the Applicant considers that that amendment provides an agreed, and appropriate provision to ensure the desired outcome is achieved and should not prevent development consent being granted.	
9	The Mee Family	Side Legal Agreement including a voluntary public right of way dedication agreement.	The Applicant is actively engaged with the Mee Family, their agent and solicitor in drafting a side legal agreement which further protects the landowner's interests in terms of the following: (i) farm water resources and irrigation; (ii) Manor Farm shop; (iii) field accesses; (iv) WCH routes and (v) an access track. This agreement is now at an advanced stage.	Agreement under negotiation. Agreement expected in decision stage.
10	Network Rail	Property Agreements	The Applicant is still actively engaged with Network Rail to agree the detailed terms and form of the property agreements proposed to give effect to the acquisition of interests in, [and use of,] land in respect of which Network Rail enjoys interests. See Appendix D for an update on the Protective Provisions.	Agreements under negotiation.

## Annex D: Protective Provisions Update

D.1.1 Table D.1 sets out whether the agreements on the Protective Provisions have been reached

**Table D.1 Position regarding Protective Provisions**

No.	Interested Party	Position	Status
1	Environment Agency	The Protective Provisions with the Environment Agency are agreed. The Applicant notes that Issue 2.1.5 of the Statement of Common Ground with the Environment Agency <a href="#">[REP9A-006]</a> records that “ <i>The form of protective provisions is agreed excepting paragraph 116(5) which relates to permitting issues.</i> ” Paragraph 116(5) was subsequently removed and substituted by Article 68 of the draft DCO. The Environment Agency confirms in the Statement of Common Ground (also in Issue 2.1.5) that “ <i>Following extensive engagement with the Applicant, and as detailed in item 2.1.7, article 68 is now agreed.</i> ”	Agreed.
2	Southern Water	In <a href="#">[REP10-040]</a> , Southern Water confirmed that “ <i>agreement has been reached on the terms of this agreement</i> ”. On 20 March 2024, Southern Water wrote to the Planning Inspectorate to confirm that “ <i>Southern Water and National Highways have reached agreement on suitable protective arrangements by way of a side agreement. This agreement has now been formally completed, and therefore please take this letter as confirmation that Southern Water has withdrawn its objection to the Project</i> ”. This letter has not been published on the National Infrastructure website, but was provided directly to the Planning Inspectorate with the Applicant copied in.	Agreed.

No.	Interested Party	Position	Status
3	HS1 Limited	<p>Agreement regarding Protective Provisions with HS1 Limited has been reached on all matters save in two key respects.</p> <p>Firstly, HS1 is seeking the inclusion of a provision which would require its consent to be obtained before any compulsory acquisition and temporary possession powers are exercised in respect of HS1 Limited land. The Applicant does not regard that proposal to be appropriate, for the reasons set out in full in <a href="#">[REP9-279]</a>. The Applicant does not anticipate that agreement will be reached with HS1 in relation to this issue. The Applicant would note that since those submissions, the Secretary of State has decided that equivalent ‘consent’ provisions or prohibitions on the exercise of the powers under a DCO are not appropriate in a number of recent DCO decisions (see, for example, paragraphs 6.34, 6.37, 6.40, 6.42 of the Net Zero Teesside decision letter dated 16 February 2024<sup>8</sup>, and see paragraph 6.15 of the HyNet Carbon Dioxide Pipeline decision letter<sup>9</sup>).</p> <p>Secondly, HS1 is seeking an alternative form of indemnity which would extend to include consequential losses. The Applicant has set out its position in relation to this matter in detail in <a href="#">[REP9-279]</a>. Again, the Applicant does not consider that agreement in relation to this point will be reached with HS1 Limited. In short, the Applicant cannot agree to offer HS1 an additional indemnity for consequential losses, as the draft DCO includes sufficient protection by providing for the Applicant to “<i>repay all reasonable fees, costs, charges and expenses properly and reasonably incurred by the Company. [inter alia] in constructing any part of a specified work on behalf of the undertaker</i>” and “<i>specified work</i>” in turn is drafted broadly to include “<i>so much of any of the authorised development as is, or is to be, situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property</i>”. HS1 has the option of pursuing remedies in the usual way for loss of profit, and express provision in limbs 37(a) and (b) goes beyond the protections achieved by other Order indemnities.</p>	Agreement not reached.

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<sup>8</sup> [https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010103/EN010103-002914-Decision%20Letter\\_Net%20Zero%20Teesside%20Project.pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010103/EN010103-002914-Decision%20Letter_Net%20Zero%20Teesside%20Project.pdf) - In particular, the Applicant draws the Secretary of State's attention to paragraph 6.34 of the decision letter for that project where it is stated: "In light of the conclusion that the case for CA and TP has been made out, the Secretary of State does not consider the [consent] provision to be necessary and notes that such provisions risk impeding the Applicants' ability to deliver the Proposed Development."

<sup>9</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN070007/EN070007-003062-HYCO%20-%20SoS%20Decision%20Letter%20-%20English.pdf> - please note that paragraph 6.15 endorses the ExA's view at paragraph 8.7.137 of the Recommendation Report which in turn rejects the draft Protective Provisions submitted by Encirc Limited which, in turn, themselves proposed to prevent compulsory acquisition powers being exercised as per that organisations Deadline 7 submissions ([https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN070007/EN070007-002594-Encirc%20Limited%20Protective%20Provisions%20-%20Draft%20Protective%20Provisions\(217675406.1\).pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN070007/EN070007-002594-Encirc%20Limited%20Protective%20Provisions%20-%20Draft%20Protective%20Provisions(217675406.1).pdf)). Please note that these precedents are in addition to those cited by the Applicant during the course of the examination.



4	Network Rail	<p><b>Consent provisions</b></p> <p>Whilst negotiations with Network Rail Infrastructure Limited have continued, agreement has not yet been reached on the terms of the railway protective provisions. With one exception, set out below, the Applicant's position remains as summarised in Closing Submissions from the Applicant [<a href="#">REP10-021</a>] and as explained more fully, within the final statement of common ground between the Applicant and Network Rail Infrastructure Limited [<a href="#">REP9A-024</a>].</p> <p>There are three principal areas of disagreement with regards to the Protective Provisions for railways, namely (i) the 'consent provisions', (ii) the terms of the indemnity being offered to Network Rail and (iii) whether the Applicant should be required to notify Network Rail before any application to the Secretary of State under article 8 for consent to transfer the benefit of the DCO to another party is made. The Applicant does not consider that agreement will be reached with Network Rail in respect of any of these matters.</p> <p>[With regards to item (i) the 'consent provisions', the Applicant and Network Rail continue to disagree as regards the inclusion of a detailed provision (numbered paragraph 32 in Network Rail's Deadline 10 submissions [<a href="#">REP10-027</a>]) that would require the Applicant to secure Network Rail's consent before exercising many of the powers contained within the draft DCO. The only update to the Applicant's position in relation to this 'consent' provision is set out above in relation to HS1 Limited where recent Secretary of State decisions on the appropriateness of similar consent provisions are referred to.</p> <p>The parties have also been unable to reach agreement regarding item (ii) being the proposed form of indemnity. Network Rail is seeking additions to the scope of the matters indemnified, including for indirect or consequential losses and loss of profits generally. The Applicant has already pro-offered specific provisions in relation to costs arising from contracts with train operating companies and does not agree that a general indemnity for consequential losses is appropriate nor is it normal practice for such an indemnity to be given. Network Rail is also resisting a reciprocal obligation</p>	Under ongoing discussion and negotiation
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	<p>to notify the Applicant of any contracts with train operating companies that may be relevant to those parts of the railway interacting with the Scheme. The Applicant considers disclosure of this information is a proportionate request in exchange for the indemnity being offered in respect of these particular costs and the Applicant's approach is precedented (see for instance paragraph 43(2) of Part 4 of Schedule 15 to the National Grid (Hinkley Point C Connection Project) Development Consent Order 2016 (S.I.2016/249). Visibility of these costs will also help inform the Applicant as to the implications of disruption to the operational railway in each particular interface location. In summary, the Applicant considers the form of indemnity it has offered to be appropriate.</p> <p>With regards to item (iii), the Applicant does not consider that the parties will reach agreement. The Applicant remains of the view that it is unnecessary and disproportionate for Network Rail to be given prior notification of any applications under article 8 of the draft DCO. The Secretary of State will be best placed, on receipt of such an application, to determine whether consultation with Network Rail, or any other party, is appropriate in each case. The Applicant sees no reason for Network Rail to be treated differently from other stakeholders.</p> <p>The Applicant is proposing one new addition to the protective provisions for railway. The land plans show [8] plots of operational railway land as being subject to powers of freehold acquisition (plots 23-77, 42-82, 42-95, 42-123, 44-24, 44-45, and 44-53). The Applicant confirms that it is not seeking to acquire the operational railway.</p> <p>The above plots all relate to proposed crossings of an operational railway (the London, Tilbury and Southend railway). The Applicant has proposed to Network Rail that a new provision be included within the protective provisions for rail undertakers to restrict the exercise of the powers of acquisition conferred by article 25 of the draft DCO in respect of the above plots to exclude the operational railway. The Applicant is currently in discussion with Network Rail on the detailed drafting of this provision. The Applicant considers that this matter will be agreed prior to the decision but</p>	
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No.	Interested Party	Position	Status
		the other matters detailed above will prevent the full agreement of the Protective Provisions in this timeframe.	
5	Port of Tilbury London Ltd (PoTLL)	<p>The Applicant and the Port of Tilbury London Limited (PoTLL) continue to engage in constructive discussions as regards both the form of protective provisions to be included in the Order for the benefit of PoTLL and the terms of a framework agreement between the parties. These discussions are now at an advanced stage and the Applicant is confident that agreement will be reached. [If agreement can be reached, the Applicant is hopeful that this will enable PoTLL to withdraw its representations on the matter of protective provisions.]</p> <p>Whilst the Applicant maintains its position (as set down within the final agreed Statement of Common Ground between the Applicant and PoTLL [<a href="#">REP10-008</a>]) that the Protective Provisions set down within Part 10 of Schedule 14 to the Order [<b>Document Reference 3.1 (13)</b>] are appropriate, there are two updates the Applicant would like to provide to the Secretary of State.</p> <p>The first relates to the disagreement between the Applicant and PoTLL regarding the inclusion of a 'consent' provision over land powers, namely the provision set down within paragraph 140 of PoTLL's preferred form of protective provisions (contained within Appendix 1 of its Deadline 10 submissions [<a href="#">REP10-038</a>]). The Applicant's update on this matter is set out above in relation to HS1 Limited where recent Secretary of State decisions on the appropriateness of similar consent provisions are referred to.</p> <p>The second update to provide is that the Applicant is proposing some limited amendments to paragraph 132 (<i>approval of specified easements</i>) in order to restrict the exercise of Order powers over an area of land within PoTLL's ownership known as 'area 1'. These amendments are set out in Annex E of this letter.</p>	Under ongoing discussion and negotiation

No.	Interested Party	Position	Status
6	Port of London Authority (PLA)	<p>The Protective Provisions are, with the exception of paragraph 99(5), (6) and 104, are agreed with the PLA. The Applicant reiterates its gratitude to the PLA for its engagement in reaching a position where the provisions are substantially agreed. Those outstanding matters are considered to be matters for adjudication by the Secretary of State.</p> <p>The Applicant's position on paragraph 99(5), (6), and 104 is set out on pages 194 to 197 of Closing Submissions from the Applicant [REP10-021]. In short, the Applicant considers it appropriate and necessary that the Secretary of State should be able to determine a dispute between the Applicant and the PLA. The absence of that ability may jeopardise and delay the delivery of critically important nationally significant infrastructure. The Applicant reiterates that the ability for the Secretary of State to arbitrate such matters reflects the Secretary of State's arbitrating role under the Port of London Authority Act 1968<sup>10</sup>. In relation to paragraph 104, the Applicant considers that the PLA have misunderstood the protection which is already provided in the provision.</p>	Agreed, except in relation to paragraph 99(5), (6) and 104.

<sup>10</sup> [Port of London Act 1968 \(legislation.gov.uk\)](https://legislation.gov.uk)

## Annex E Schedule of changes to the draft DCO

The proposed amendments to the draft DCO [Document Reference 3.1 (13)] are set out in Table E.1 below.

**Table E.1 Explanation of Changes to the draft Development Consent Order in this submission**

Provision	Changes made to the draft Development Consent Order	Explanation for Change
Schedule 14 – Protective Provisions  Paragraph 132	<p>The following sub-paragraphs have been inserted:</p> <p>(6) Except for the retained provisions, the provisions of this Order do not apply to, and the powers conferred by this Order are not exercisable by the undertaker or any other person in respect of, the area 1 land.</p> <p>(7) Other than as may be approved by PoTLL pursuant to the provisions of this Part of this Schedule, the undertaker must not exercise or permit the exercise of the powers conferred by this Order so as to limit PoTLL’s use, enjoyment and ability to develop, let or permit occupation of the area 1 land.</p> <p>(8) In this paragraph—</p> <p>“the area 1 land” means the land comprised in plots 16-65, 16-66, 17-08, 17-09, 21-32 and 21-34 as shown on the land plans and listed in the book of reference; and</p> <p>“retained provisions” means sub-paragraphs (6), (7) and (8) of this paragraph and paragraphs 145 and 146 of this Part of this Schedule.</p>	<p>This amendment introduces a restriction over the use of Order powers within plots 16-65, 16-66, 17-08, 17-09, 21-32 and 21-34.</p>
Schedule 16 – Documents to be Certified	<p>Updates to document references which are proposed to be certified.</p>	<p>These update the relevant documents referenced to ensure they are aligned with the most recent iteration of the relevant documents.</p>

