

Reference number: TR010032  
Document reference: TR010032/APP/11.7

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A122 Lower Thames Crossing  
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23 July 2024

Dear Mr Bartkowiak

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

### **1 Response to Secretary of State letter from 9 July 2024**

1.1 The Applicant is responding to the letter from the Secretary of State published on the 9 July 2024 requesting an update on a number of matters.

### **2 Amendment of section 85 of the Countryside and Rights of Way Act 2000**

2.1 The Secretary of State's letter of 9 July 2024 sets out that:

*1. Responses were provided by the Applicant and Natural England in relation to paragraph 3 of the Secretary of State's consultation letter of the 10 May 2024.*

*2. Noting the comments from Natural England regarding the provision of mitigation and enhancement measures respectively, the Applicant is invited to respond to these comments.*

*3. Noting the amendments proposed by the Applicant to paragraph 3 (detailed design) of Schedule 2 to the draft Development Consent Order, found at A.7.2 of their letter of 23 May, Natural England is invited to provide any comments on this.*

2.2 The Applicant provides a response to the submission made by Natural England on the 23 May 2024 in Annex A of this letter.

2.3 The letter further states:

*4. Without prejudice to the final decision and subject to the above, both parties are invited to set out what, if any, further enhancement measures they agree could be brought forward, should it be decided further measures are necessary to assure compliance with the amended duty.*

2.4 The Applicant addresses this question in Annex B of this letter

### **3 Article 62 – Certification of Documents**

3.1 The Secretary of State’s letter of 9 July 2024 sets out that:

*10. Article 62 of the draft Development Consent Order proposed by the Applicant allows for errors in certified plans to be corrected, where two justices in a magistrates court are satisfied that the error arose from a mistake or inadvertence. The Applicant’s justification for the inclusion of this is provided in the Explanatory Memorandum.*

*11. The Applicant is invited to provide further clarification for the inclusion of this Article, given that this provision is usually contained in primary legislation authorising rail projects.*

3.2 The Applicant considers that the provisions are necessary, justified, and appropriate for inclusion in the Development Consent Order (DCO) to ensure that if an inadvertent error or mistake is identified in the plans, there is a process to rectify such a mistake or inadvertence. The Applicant considers that these provisions plainly fall into the category of a “provision relating to, or to matters ancillary to, the development for which consent is granted” (under section 120(3) of the Planning Act 2008).

3.3 The Applicant, both in its experience of delivering a portfolio of DCO projects as well as the precedent of other major projects, is aware that mistakes and inadvertence in plans may cause an issue in the implementation of projects. In such circumstances, the Applicant considers that it would be appropriate, and preferable, for there to be a transparent and open acknowledgment of those mistakes and inadvertences. The process for the rectification therefore ensures independent adjudication (through the Magistrates) and appropriate notice to the local planning authority. In the absence of these provisions, the Applicant would potentially face a risk of enforcement action or have to progress through the disproportionate process to seek an amendment to the DCO. The former would be perverse, and would rely on discretion of enforcing authorities (thereby potentially delaying Project implementation). The latter (discussed further below) would entail substantial cost for both the Applicant, the Department for Transport and delay implementation of the Project.

3.4 It is acknowledged that equivalent provisions are included in section 52 of the Crossrail Act 2008. They also find precedent in section 54 of the High Speed Rail (West Midlands - Crewe) Act 2021, section 53 of the Channel Tunnel Rail Link Act 1996, and section 43 of the Dartford-Thurrock Crossing Act 1988. It is considered that the Project, being of a similar scale and complexity to those projects, should incorporate these provisions on a precautionary basis to minimise a potential delay to the delivery of the Project in the unanticipated event that there is an error. It is not relevant that the projects which have included these

provisions to date have been promoted by Acts of Parliament; rather it affirms the principle that it would be disproportionate to require a subsequent instrument (be it an amendment Order or an Act of Parliament) to deal with manifest errors (as distinct from ‘changes’ to an application) in connection with a linear project of a substantial scale.

- 3.5 In addition to the Government and Parliament’s endorsement of these provisions in the above named Acts, the Applicant further considers the provisions to be compliant with Government policy. In particular, the removal of the provisions would, in the Applicant’s view, conflict with the desire to “*speed[.] up every part of the process and hardwir[e.] a focus on delivery into every part of the system*”.<sup>1</sup> Government policy has endorsed the desire to expedite changes which would not lead to materially adverse environmental effects and the Applicant would suggest that that the same rationale would apply in these circumstances (i.e., where there is no environmental impact, and the Applicant is merely seeking certainty in complying and implementing plans secured under the Order).
- 3.6 During the course of the examination, only two Interested Parties raised queries about these provisions. First, Gravesham Borough Council requested that the provision include a notification requirement which the Applicant accommodated. This further ensures that there are safeguards and appropriate measures in place in connection with the rectification of any mistake of inadvertence (see [\[REP5-098\]](#)). As set out in section 3.2 of [\[REP6-085\]](#), following this amendment, the matter was closed between the parties. For completeness, Gravesham Borough Council confirmed that it “*considers this matter closed*” in [\[REP7-195\]](#). The Applicant considers that confirmation to be a positive indication that appropriate controls and safeguards have been placed on these provisions.
- 3.7 Second, the London Borough of Havering (see page 87 of [\[REP4-212\]](#)) had queried whether this provision was circumventing the process for a material or non-material amendment to a DCO under Schedules 4 and 6 of the Planning Act 2008. The Applicant consider this position to be misconceived. These provisions do not circumvent or modify the application of Schedules 4 and 6 of the Planning Act 2008 as they relate to inadvertent errors in the *plans*, (material or non-material) amendments to the works authorised under the Order or anything authorised by the Order could not be made through this provision. In other words, the provisions do not allow for the amendment of the *Order* but, following an independent process, the correction of a *plan*. They are therefore not “changes” which require a material or non-material amendment. No rectification of a mistake or inadvertence would affect the drafting or wording of the DCO.
- 3.8 Without prejudice to its position that the provisions are necessary, justified and wholly appropriate, if the Secretary of State were minded to agree with the

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<sup>1</sup> <https://www.gov.uk/government/publications/getting-great-britain-building-again-speeding-up-infrastructure-delivery/getting-great-britain-building-again-speeding-up-infrastructure-delivery>

London Borough of Havering, the insertion of the following provision at the end of Article 62 would address that concern: “No application for a rectification of a mistake or inadvertence under paragraph (4) may be made where that rectification would require the amendment of this Order (and the operation of paragraph (6) is not be construed as such an amendment).”

- 3.9 In light of the controls (developed in consultation with Interested Parties throughout the examination), precedents of other complex, linear projects, Government policy and the need to avoid delays in the implementation of the Project, the Applicant therefore respectfully submits that Article 62(4)-(8) are appropriate, necessary and justified in the case of the Project.
- 3.10 For completeness, the Applicant notes that the Secretary of State’s letter hyperlinks to the Explanatory Memorandum as submitted. The Applicant would request that regard is had, in relation to Article 62 (and other novel, but necessary and appropriate, provisions such as article 2(10), articles 31-32, 56 and 68) to the [updated Explanatory Memorandum](#) submitted during the examination in justifying and explaining the provisions of the dDCO.

## **4 Crown Land Consents**

- 4.1 It states within the Secretary of State’s letter of 9 July 2024 that:

*With regards to land in the interest of the Crown Estate, the evidence provided at Annex C by the Applicant in their letter of 29 May 2024 is noted. The Crown Estate and the Applicant are requested to provide confirmation that they agree with the information set out by the Applicant and that there is no Crown Interest in the land and thus consent under section 135 is not required. Any other interested party is also invited to comment on this issue should they consider that they have relevant information on this matter.*

- 4.2 Following the submission made by the Applicant on 29 May 2024, the Applicant has continued to engage with the Crown Estate. On the 26 June 2024, the Bona Vacantia division of the Treasury wrote to the Applicant confirming that no Bona Vacantia interest subsists in title number EX932756. Land plots 21-11, 21-14, 21-5, 21-16, 21-18 and 21-37, as shown on Sheet 21 of the Crown Land Plans, are all sited within this title. As such, the Applicant can confirm that these plots are no longer considered to be Crown Land. The Applicant provides copy of the letter at Annex C. To assist with the review, the Applicant has prepared a figure showing the land plots located within the area of title EX932756, which is included as Figure C.1 within Annex C.
- 4.3 In reviewing this submission the Applicant noted that there was an error in the Applicant’s submission on 11 April 2024 of the submitted Crown Land Plans Volume A, Volume B and Volume C [Document Reference 2.3 (9)], both within the clean and tracked changes versions. The submitted documents did not

include the plans, only including the introductory pages. To correct this error, these plans are resubmitted with this submission.

## **5 Update on Agreements**

5.1 The Applicant is continuing to develop agreements and has updates as set out below.

### **Essex Wildlife Trust**

5.2 Two agreements are planned with Essex Wildlife Trust. The first agreement, securing delivery of water vole habitat, has been signed by both parties.

5.3 A second agreement, securing delivery of barn owl boxes, is still under discussion.

### **Port of Tilbury London Limited**

5.4 The Applicant is continuing to work towards agreeing a framework agreement with the Port of Tilbury London Limited, addressing management of construction works within the port area, the application of temporary land powers and design interfaces the port and the A122 Lower Thames Crossing. As part of these discussions, the Applicant has agreed to a further modification to the Protective Provisions for the benefit of Port of Tilbury London Limited, clarifying the meaning of Preliminary Works. A revised draft Development Consent Order [3.1 draft Development Consent Order (rev 17.0)] has been provided to reflect this change.

### **Veolia ES Landfill Ltd**

5.5 The Applicant has now also completed a legal agreement with Veolia ES Landfill Ltd. The agreement manages the interface between the Project, and Veolia's landfill operations at their Ockendon site (which is partially situated in the proximity of Plots 30-07, 30-11, 34-01, 34-03 to 34-06, 35-01, 35-05, 36-02, 36-04 to 36-06, 38-08, 38-09, 38-11 to 38-19, 38-24, 38-38 and 39-81 (as shown in the Land Plans)). This resolves matters between the parties.

Yours sincerely

Dr Tim Wright

Head of Consents – Lower Thames Crossing

## Annex A: Response to Natural England submission

A.1.1 The Secretary of State's letter from the 9 July 2024 sets out:

*1. Responses were provided by the Applicant and Natural England in relation to paragraph 3 of the Secretary of State's consultation letter of the 10 May 2024.*

*2. Noting the comments from Natural England regarding the provision of mitigation and enhancement measures respectively, the **Applicant** is invited to respond to these comments.*

*3. Noting the amendments proposed by the Applicant to paragraph 3 (detailed design) of Schedule 2 to the draft Development Consent Order, found at A.7.2 of their letter of 23 May, Natural England is invited to provide any comments on this.*

*4. Without prejudice to the final decision and subject to the above, both parties are invited to set out what, if any, **further enhancement measures they agree could be brought forward**, should it be decided further measures are necessary to assure compliance with the amended duty.*

A.1.2 This Annex provides comments from the Applicant on the submissions by Natural England. Annex B sets out a response to the request in paragraph 4, as to what, if any, further enhancement measures could be brought forward.

A.1.3 For the purposes of this response, the former terminology of Area of Outstanding Natural Beauty (AONB) is used in place of the new term 'National Landscape', adopted in November 2023.

A.1.4 The Applicant has previously set out in full its position in terms of the amendment to Section 85 of the CRow Act 2000 in its 23 May 2024 response to the Secretary of State's [third](#) consultation letter dated 10 May 2024. The Applicant's position remains unchanged in 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).

A.1.5 The Secretary of State is directed to the Applicant's 23 May 2024 [submission](#) for its full position on these matters. This submission draws on that submission to respond specifically to the latest points made by Natural England in its [letter](#) dated 23 May 2024.

- A.1.6 The fundamental disagreement that the Applicant has with Natural England's interpretation of the amended duty is that Natural England interpret the change to the duty as meaning that an Applicant (relevant authority) must fully mitigate impacts in an AONB before they can claim to have sought to have furthered the purpose of conservation and enhancing the natural beauty in the AONB. The Applicant believes that this mischaracterises the wording of the amendment and goes significantly further than the wording of the duty intends.
- a. The Applicant believes that Natural England's response has not had sufficient regard to the numerous constraints which need to be balanced in the delivery of the Project and associated, mitigation, compensation and enhancement.
  - b. A good example of this is demonstrated by Natural England (and other stakeholders) in relation to the constraints which need to be overcome in the design and construction of a green bridge over 130m long (for Thong Lane South) or 90m long (for Brewers Road) which include construction over a live road, landings in sensitive landscapes (SSSI, Ancient Woodland and AONB) and other constraints (HS1, utilities and local highways) while balancing this against the need to reduce the construction severance associated with the closure of Thong Lane South and Brewers Road. The Applicant has optimised the benefits of these green bridges such that they provide a new green link across an already severed and urbanised landscape.
  - c. To this end the design of the green bridges has been developed iteratively; constantly challenging the extent of what is possible in terms of maximising the recreational and landscape and habitat components but also in terms of the connectivity with the wider landscape. The Applicant contends that this ongoing pursuit to optimise the design for the users of the AONB, for the landscape of the AONB and for the ecology it supports is the very definition of to *'seek to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty'*.
  - d. Optimisation of the designs has been undertaken in close collaboration with the Applicant's stakeholders, as described in the Applicant's response to the Secretary of State's letter of the 10<sup>th</sup> May 2024 (see Section A.3). Through this engagement the Applicant has made a number of changes to the design of environmental measures over the course of developing the proposals. For example, with regard to the green bridges, changes made include the width and green cover of the bridges, the links of the bridges to the surrounding landscape and the integration of walker, cyclist and horse rider routes across the bridges.

- e. Through iterative design development, the Applicant has sought to conserve, and enhance, the natural beauty of the AONB in the context of the aforementioned constraints. The design of the green bridges directly addresses the amended duty by improving on the existing situation, specifically the absence of any green link across the existing M2/A2 corridor.
- f. This does not seem to have been recognised by Natural England and other stakeholders within the nature conservation grouping. This has seemingly led to the repeated references to best practice guidance and other examples by Natural England which have been raised through the course of pre-application consultation and DCO examination, but which are not directly comparable to the proposed Lower Thames Crossing green bridges (For example, the application of the Landscape Infrastructure Guidance, if followed to the letter, would result in a much wider, more impactful bridge. The green bridge at Scotney Castle is often referenced as best practice but it is in a wholly different setting with different constraints. The Applicant set out in Annex A of the letter of the 23 May 2024 (see page 39), how the best practice referenced by Natural England had been considered, and the constraints which have informed the proposals ultimately presented.
- g. Similarly the Applicant believes the assertion by Natural England that all environmental effects should be fully mitigated before it could be considered that a Relevant Authority can then move on to 'seek to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty' is, respectfully, flawed. This line of thinking fails to acknowledge that beneficial environmental effects can occur to one environmental factor while there are still residual environmental effects which remain on a different environmental facet.
- h. The Applicant has identified a number of beneficial impacts against landscape and visual [REP9-118], ecology [REP9-120], population and human health [APP-151] and noise [APP-316] along with wide ranging improvements to walker, cyclist and horse rider access within the area affected by the Project. This mix of adverse and beneficial impacts demonstrates that consideration of only the adverse impacts is not an appropriate approach to the interpretation of the duty. The interpretation being advanced by Natural England, under which it is suggested there is a blanket need to fully mitigate a significant effect before looking to create benefits, fails to consider the wider beneficial impacts of the proposals. The Natural England proposition could be considered to be a requirement to achieve environmental net gain, which is markedly different to what the amended section 85 duty actually says.



- A.1.7 For the above reasons the Applicant is clear that the approach it has taken has had the conservation and enhancement of the natural beauty of the AONB at its core and has provided evidence of the actions taken to “seek to further” this through the design. The Applicant believes that the iterative design process has minimised impacts, maximised mitigation opportunities and will lead to beneficial impacts within the AONB, with the design iterations and control measures providing ample evidence of the fulfilment of the revised section 85 Duty.
- A.1.8 Without prejudice to the Applicant’s position that it considers the Section 85 Duty has been complied with, the Applicant sets out in Annex B additional enhancement measures which (if the Secretary of State considered it to be necessary) could further be used in connection with, as set out in Natural England’s [letter](#) of 23 May 2024, “*one or more projects [...] that deliver tangible outcomes within the adopted [...] Management Plan*”. How these additional measures would secure further tangible benefits is set out in Annex B.

## Annex B: Without prejudice consideration of further measures

B.1.1 The Secretary of State's letter from the 9 July 2024 sets out:

*5.5.1 1. Responses were provided by the Applicant and Natural England in relation to paragraph 3 of the Secretary of State's consultation letter of the 10 May 2024.*

*5.5.2 2. Noting the comments from Natural England regarding the provision of mitigation and enhancement measures respectively, the Applicant is invited to respond to these comments.*

*5.5.3 3. Noting the amendments proposed by the Applicant to paragraph 3 (detailed design) of Schedule 2 to the draft Development Consent Order, found at A.7.2 of their letter of 23 May, Natural England is invited to provide any comments on this.*

*5.5.4 4. Without prejudice to the final decision and subject to the above, both parties are invited to set out what, if any, further enhancement measures they agree could be brought forward, should it be decided further measures are necessary to assure compliance with the amended duty.*

B.1.2 This Annex sets out a response to the request in paragraph 4.

B.1.3 The Secretary of State is directed to the Applicant's [submission](#) of 23 May 2024 for its full position on these matters. Without prejudice to our position that the enhanced duty has been met, as set out in that letter, the Applicant has, in response to the Secretary of State's letter of the 9 July 2024, further considered whether any additional measures could be implemented that would deliver further enhancement.

B.1.4 As part of this process, on 17 July 2024 the Applicant met with Kent Downs National Landscape team, to discuss the Secretary of State's letter. In discussion, the Applicant and Kent Downs National Landscape team did not identify any feasible design changes to the core proposals that would lead to enhancement. Kent Downs National Landscape team did identify the possible measure of provision of a financial contribution to the programme of separate projects being delivered or administered by the Kent Downs National Landscape team in the Kent Downs AONB.

B.1.5 Following this meeting, the Applicant met with Natural England also on 17 July 2024, and similarly to discuss the Secretary of State's letter. In discussion, the Applicant and Natural England did not identify any feasible design measures

that would lead to enhancement. The Applicant set out the proposal from Kent Downs National Landscape team, that funding could be provided to separate projects. Natural England agreed that this could constitute enhancement.

- B.1.6 The Applicant has reviewed the [Kent Downs AONB Management Plan 2021 - 2026](#), and notes that the Kent Downs National Landscape team undertakes a series of projects where primary or additional funding is sought from partners. In the discussion held on 17 July 2024, three potential projects were identified by the Kent Downs National Landscape team including:
- a. [Farming in Protected Landscapes](#) where additional funding is being sought
  - b. An [access improvement programme](#) across the AONB for which funding is required
  - c. Implementation of a Super National Nature Reserve
- B.1.7 On the 18 July 2024, Kent Downs National Landscape team wrote to the Applicant, proposing that these projects should be funded, stating a total funding value of £38M over the next ten years. The Applicant does not agree with the proposed amount. In consideration of the limited geographical extent of the impacts on the Kent Downs AONB, and that the proposals comprise an upgrade to an existing highway corridor, the Applicant considers that a fund value of £38M would be disproportionate, excessive and not justifiable in planning terms.
- B.1.8 The Applicant maintains its position that the proposals as they currently stand meet the enhanced duty. Without prejudice to that position, if the Secretary of State considers that further measures are appropriate in the context of the revised duty, then the Applicant would suggest a total fund of £3M, available from commencement until 3 years after opening, which could be used for these schemes or for other schemes as agreed with the Kent Downs National Landscape team. While there are existing projects for which the Kent Downs National Landscape team are seeking funding, the Applicant considers it sensible to allow the Kent Down National Landscape team to work with the Applicant on an ongoing basis to prioritise funding and make decisions on other schemes consistent with the management plan, reflecting the changing funding streams available to that organisation.
- B.1.9 The Applicant understands that the current funding for the Farming in Protected Landscapes is of the order of £1M per year, and that the initial proposed budget (as set out on their website) for the access improvement scheme is £500K. This provides a benchmark against which the enhancement that would arise from a £3M fund can be determined. The Applicant considers that given the limited

geographic impact, and the provision of wider benefits by the core proposals, this sum would appropriately enable the provision of additional enhancement measures such as those listed above, providing tangible benefits.

- B.1.10 If the Secretary of State determines that this fund is necessary, it can be secured by adding the commitment set out below in Table 1 to the document 7.21 Stakeholder Actions and Commitments Register [\[REP9A-060\]](#).
- B.1.11 As previously set out by the Applicant in the Applicant's letter of 9 May 2024, article 62 of the draft DCO contains a mechanism to enable amendments to "certified documents" such as the Stakeholder Actions and Commitments Register, should any decision to grant development consent by the Secretary of State require such an amendment to be made as a component of that decision.

**Table 1 Commitment to fund projects in Kent Downs AONB – presented on a without prejudice basis**

Topic	SAC-R ref no.	Location	Commitment	Party Responsible	Beneficiary	Time Period
Countryside and Rights of Way Act 2000 Section 85	SACR-0XX	Kent Downs National Landscape	Having regard to the duty of Section 85 of the Countryside and Rights of Way Act 2000 (as amended), to seek to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty, National Highways will make funding available for appropriate projects to be undertaken within the Kent Downs National Landscape. A total of £3 million will therefore be made available to the Kent Downs National Landscape team to fund measures and projects that meet a funding criterion that primarily conserves and enhances the natural beauty of the Kent Downs National Landscape. Projects to be funded will be in accordance with the principles of the Kent Downs AONB Management Plan or any superseding document, and will be agreed with the Kent Downs National Landscape team.	National Highways	Kent Downs National Landscape	From commencement and up to three years following opening

# Annex C: Crown Estate correspondence and explanatory figure



# Government Legal Department

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For the attention of Anne Richards

By E-mail to [REDACTED] [@lowerthamescrossing.co.uk](mailto:[REDACTED]@lowerthamescrossing.co.uk)

**Please Quote: BV22110605/1/MPC**

**Your Reference: ORG10000058**

26 June 2024

Dear Madam,

**Ashdown Minerals Limited (Dissolved)**

**Company Number: 02615048**

**Date of Dissolution: 9th November 2004**

**Property: Land lying to the north of Tilbury Power Station, Fort Road, Tilbury**

**Entry Number 9 in Charges Register over Title Number: EX932756**

Thank you for your e-mail dated 29th May 2024, with its attachments.

The Crown does not "step into the shoes" of the dissolved company, in the way that a liquidator or administrator does, but simply takes any beneficial property and rights that were owned by the company at the date of dissolution as a successor in title.

The Treasury Solicitor is satisfied, in view of what you say, that there is no beneficial asset arising from the above entry in the Charges Register over the Title, and hence no Bona Vacantia interest vested in the Crown.

The Treasury Solicitor is therefore not in a position to either object or consent to an application made to HM Land Registry for an Order to cancel the entry in the Charges Register, nor to respond to any resulting action taken by HM Land Registry.

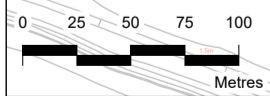
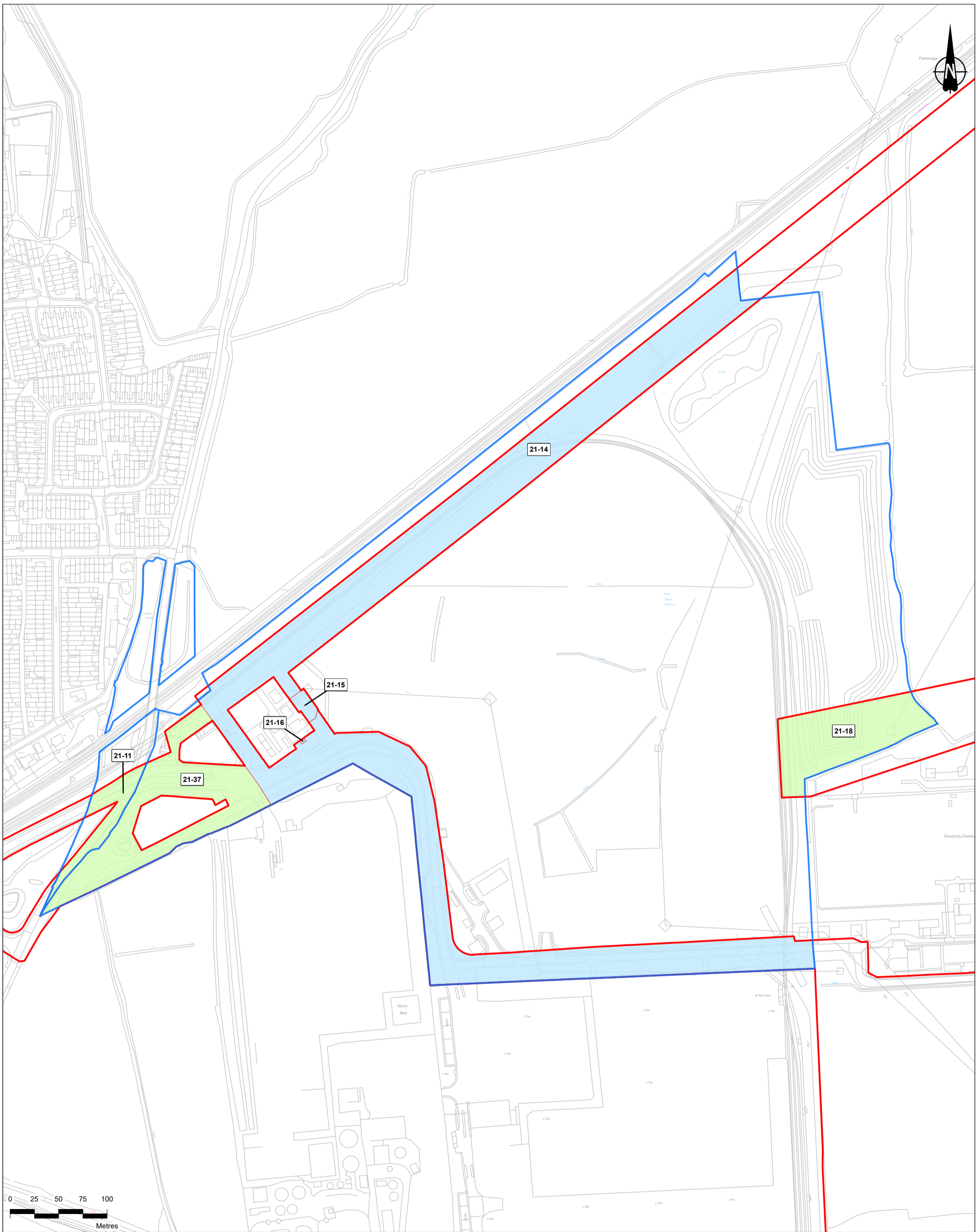
You may wish to copy this letter to HM Land Registry with your application.

Yours faithfully

**Michael P Curd**  
**for the Treasury Solicitor**

[REDACTED]  
[REDACTED]@governmentlegal.gov.uk



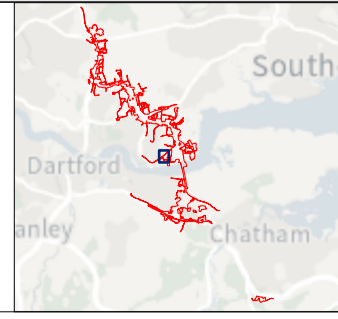


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OS AC0000827444.  
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**Legend**

- Order Limits
- Outline of Land Parcel (EX932756)
- Temporary Possession of Land
- Temporary Possession of Land and Permanent Acquisition of Rights

P01	S2	15/07/2024	For Information	LS	CH	TW
Rev	Status	Rev. Date	Purpose of revision	Drawn	Check'd	Apprv'd



Client  
**national highways**

Project  
**LOWER THAMES CROSSING**

Status	For Information	Original Size	A3	Rev	P01
Drawing Title	Figure C.1 Relationship of Title EX932756 to selected land plots				
Drawing Number	HE540039-LTC-LLO-GEN-DRA-LAP-00111				