



Meeting note

File reference	Lower Thames Crossing – TR010032
Status	Final
Author	The Planning Inspectorate
Date	26 November 2020
Meeting with	Highways England
Venue	Teams meeting
Meeting objectives	Post withdrawal of Application
Circulation	All attendees

Summary of key points discussed:

The Planning Inspectorate (the Inspectorate) advised that a note of the meeting would be taken and published on its website in accordance with section 51 of the Planning Act 2008 (the PA2008). Any advice given under section 51 would not constitute legal advice upon which applicants (or others) could rely.

The Applicant provided an update on their engagement with stakeholders since their formal withdrawal of the application. It also confirmed that they had undertaken external engagement by way of social media and their website.

The discussion noted the process and activities that had occurred during the period from application submission to when the application was withdrawn on 20 November. The meeting note can be found here:

<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010032/TR010032-Advice-00026-1-201113%20Lower%20Thames%20Crossing%20-%20Acceptance%20meetings%20FINAL.pdf>

- The application was received by the Inspectorate on 23 October 2020. On 9 November 2020, under Regulation 5(5) of The Infrastructure Planning (Applications: Prescribed Form and Procedures) Regulations 2009 the Inspectorate requested for the Applicant to provide all responses to the consultation carried out under Part 5 of the PA2008. The Inspectorate also requested for the Applicant to provide unredacted information from the Consultation Report submitted with the application in order to enable the information in the Consultation Report to be matched with the responses received under Regulation 5(5). The Applicant provided the consultation responses and the unredacted information on 11 November 2020.

- On 13 November 2020, the Inspectorate contacted Highways England to establish that the Inspectorate would be progressing to issue a decision to not accept the application and identified the main issues that had arisen from the consideration of the application. Highways England were provided with an opportunity to signpost where in the submitted application documents information relevant to the main issues were set out. Highways England provided a document that contained signposting on 17 November 2020. The Inspectorate continued to progress to issue a decision to not accept the application informing Highways England of this on 18 November 2020.
- The Inspectorate's advice during the acceptance period, that was summarised on 13 November and forwarded in full to the Applicant on Friday 20 November, is attached at Annex A.
- The document submitted by the Applicant on 17 November 2020 is appended at Annex B.

The discussion noted the content of Annex A; drawing on the themes that it contained rather than a detailed discussion of each paragraph or point noted.

The Applicant set out their initial plans for resubmission of the application.

The Applicant and the Inspectorate agreed to a regular programme of pre-application meetings that would seek to discuss the matters noted in Annex A in more detail. A note of pre-application meetings would be taken and published on the National Infrastructure website in accordance with section 51 of the Planning Act 2008 (the PA2008).

Observations from the consideration of Highways England's application for Lower Thames Crossing

Environmental effects arising from changes to levels of traffic and mitigation

Highways

- 1 The construction phase assessment provided in the Transport Assessment focuses on the M25, A2, A226 and A1089 and little information is provided on the implications of any changes in traffic flows on other local roads. Highway diversions, realignments and closures are listed in the DCO for several local roads during the construction period, but the effects arising from those during the various phases of the construction period are not quantified or considered in detail.
- 2 Construction traffic management proposals and other mitigation measures in the Transport Assessment, ES Appendix 2.1, Code of Construction Practice and Register of Environmental Actions and Commitments (REAC) relevant to construction traffic are largely generic and lacking in detail. The extent to which advice from local authorities, residents and businesses on construction traffic and related matters has been obtained or incorporated is not clear. It is not apparent whether the mitigation measures would, or could, be consistent with the traffic modelling, with the transport assessment or with the assessments of likely environmental effects in the Environmental Statement (ES).
- 3 The adequacy of the assessments of likely environmental effects arising from changes in traffic level during the construction period does not appear to have been demonstrated.
- 4 Effects during the construction period have the potential to be both wide ranging and significant, particularly in the vicinity of local roads. Such effects are often of relevance and concern to the local authorities, residents and businesses and can be substantive matters for Examinations.
- 5 Application documents should provide enough information of the likely significant effects on the environment, or that appropriate mitigation is likely to have been identified.

Navigation

- 6 The ES identifies that certain materials for the construction of the tunnels could be delivered by river transport via an existing jetty at Goshem's Farm. ES Chapter 2 paragraph 2.5.26 states that in the worst case scenario, the jetty would be refurbished and used for the transport of materials. The ES has not consistently stated how this jetty would be used and there are discrepancies within the ES as to the number of barges per day which would deliver this material, as well as some discrepancy in respect of the current usage of the jetty, which only has planning permission up until 2022. For examples of discrepancies, see para 11 and 12 below.

- 7 The application is not clear as to whether there would be an increase in barge / other river vessel movements as a result of the construction of the Proposed Development and the extent to which this might impact on the navigation of the River Thames.
- 8 Within the Scoping Opinion, the Secretary of State, Marine Management Organisation and the Port of London Authority (PLA) requested that if the River Thames is to be used to transport material, a navigation assessment should be included within the ES in order to determine the effects of these movements (in terms of both commercial and recreational craft). Statutory consultation responses from Port of Tilbury and the PLA reflect their concern at the lack of a navigation assessment.
- 9 No navigation assessment has been undertaken. Appendix 4.1 states that a navigation assessment is not required as "it is assumed that barge movements would be limited to two a day", but this contradicts other information as set out above. ES Chapter 13 in respect of a navigational assessment is noted, however this lacks detail and relates to marine and riparian assets only.
- 10 Whilst no new jetty is to be constructed, as would have been the case at the time of the Scoping Opinion, the existing one would be refurbished, used and decommissioned and navigational impacts on the River Thames remain an issue which could be assessed and presented as part of the application.
- 11 For example, ES Chapter 13 paragraph 13.6.19 suggests that there would be two barges per day during the construction period; one per tide cycle. This is also identified in ES Chapter 9 paragraph 9.6.86 and in ES Appendix 4.1. However, ES Chapter 9 paragraph 9.6.192 suggests there would be up to six barge deliveries per day, and ES Appendix 2.1 paragraph 1.3.15 suggests there would be three barges per high tide and that high tide occurs twice a day. The HRA Stage 1 Screening Report (Document 6.5) also states up to six barges per day. In addition, the ES Air Quality Chapter Paragraph 5.6.7 states that a maximum of 1,800 movements (six barges per day) would occur and this quantity of movements is also stated in Appendix 2.1. In respect of the current use of the jetty, ES Chapter 13 paragraph 13.4.26 suggests three barges in any given 12-hour shift whereas paragraph 13.6.19 suggests three barge movements per day.
- 12 ES Chapter 9 paragraph 9.6.188 states that "*Marine construction would require plant, barges, workboats and safety boats to be brought to site with movement occurring within the Order Limits during the construction phase. Once the marine works are complete and the East Tilbury jetty is operational, there would be continued marine traffic from vessels transporting materials and equipment.*"

Site Waste Management Plan

- 13 There are elements of a generic site waste hierarchy within the documentation but limited information as to the actual implications of the waste handling implications on a 23km long site with twin bore tunnels under the Thames. Even where a high percentage of materials is to be retained for reuse (in accordance with the hierarchy) would still require extensive movements of large tonnage to / from excavation to stockpile / sorting / treatment locations before reuse over an

extended area and which may or may not need to cross the river between the respective tunnel portals.

- 14 The ES considers a 'road only' outlier position but this is not a substitute for an actual handling strategy which would need to consider multi-modal approach (see TfL considerations) and this all deferred for later consideration which means that mitigations have not been fully assessed. This interfaces with the Transport Assessment and Navigation elements identified above for the construction period particularly as it sets the 'significance' threshold as being at 1% of landfill capacity in the whole of England rather within the study area. There are a number of unfinished paragraphs and missing cross reference in the Materials and Waste section of the ES which make it difficult to read fully.

Habitats Regulations Assessment (HRA)

- 15 For the supporting information to provide sufficient information to allow the competent authority to undertake an appropriate assessment, first it must be established whether the Proposed Development could result in likely significant effects on any European sites **alone or in-combination** with other plans or proposals. Paragraph 4.2.24 of the HRA Stage 1 Screening states that no in-combination assessment was carried out where changes/effects are 'negligible'. The nature of what constitutes 'negligible effects' is not evidenced, defined or quantified and therefore it is not clear on the distinction between: an impact-effect pathway not existing or being possible to completely remove by application of avoidance measures¹; and, an impact-effect pathway resulting in an effect which is less than significant. The latter effects must be assessed alone and in-combination before screening out likely significant effects. It is not therefore clear if the in-combination assessment is sufficient.
- 16 The above point also has implications for the effects considered further in a shadow appropriate assessment and therefore it is not apparent that this is sufficient.
- 17 A number of the assessments provided lack supporting evidence, in particular the assessments of recreational pressure, disturbance from noise and light, groundwater changes, surface water changes, air quality effects from construction traffic emissions (this assessment is omitted entirely), effects of invasive non-native species (this assessment is omitted entirely), and air quality effects from vessel emissions. The points made above in relation to the Transport Assessment, assessment of navigation effects, and details of construction phase mitigation also have implications for the basis of the assessments in the HRA.
- 18 The Screening and integrity matrices are not of a satisfactory standard to allow examination. In particular, a number of very different effects are grouped together in the screening and integrity matrices, which results in the supporting footnotes lacking any detail on some of the effects within the grouping. The screening matrices have some errors in the footnotes referring to unrelated paragraphs in the main report. The integrity matrices do not show either an 'x' or

¹ Noting that measures *specifically intended* to avoid or reduce adverse effects on European sites cannot be taken into account in the assessment of likely significant effects.

✓ as per the key and while the footnotes aid interpretation this makes them less clear.

Adequacy of Consultation Responses

Guidance Considerations

- 19 DCLG Application Form Guidance (2008) and DCLG Guidance on the pre-application process are relevant. Unless stated otherwise, quotes and paragraphs refer to the latter Guidance.
- 20 DCLG Guidance states that consultation should be based on accurate information that gives consultees a clear view of what is proposed including any options (paragraph 20), that consultees will need sufficient information on a project to be able to recognise and understand the impacts (paragraph 68), that to ensure consultation is meaningful, the pre-application consultation process for major infrastructure projects encourages applicants to give consultees as much information as possible on the characteristics of the proposed project (para. 92) and that, for the pre-application consultation process, applicants are advised to include sufficient preliminary environmental information to enable consultees to develop an informed view of the project (para. 93).
- 21 DCLG Guidance also states that it is good practice that those who have contributed to the consultation are informed of the results of the consultation exercise; how the information received by applicants has been used to shape and influence the project; and how any outstanding issues will be addressed before an application is submitted (paragraph 81).
- 22 DCLG Guidance states that effective pre-application consultation will lead to applications which are better developed and better understood by the public, and in which the important issues have been articulated and considered as far as possible in advance of submission of the application to the Secretary of State. This in turn will allow for shorter and more efficient examinations (para. 15).
- 23 DCLG Guidance states that without adequate consultation, the subsequent application will not be accepted when it is submitted (para 19).
- 24 Paragraph 114 of the DCLG Guidance guides that the Secretary of State's judgement about whether an application is of a satisfactory standard to be examined will, amongst other things, be based on the extent to which the Applicant has had regard to that guidance, and the overall quality of the application in terms of the ability of the Examining Authority (ExA) to be able to examine it within the maximum 6-month statutory time period.
- 25 Paragraph 6 of the DCLG Application Form Guidance (2008) states that 'the application information must be provided to a sufficient degree of detail that will enable the Secretary of State (and all interested parties) to appropriately consider the proposal'.
- 26 The Project Description and EIA Methodology advise that the 'Rochdale Envelope' has been used. Paragraph 112 of the DCLG Guidance therefore is relevant. It

notes that care should be taken to ensure that the likely environmental effects, within the defined parameters, are assessed and, where possible, mitigated against.

- 27 Concern is noted, given the scale and extent of the proposals, about the likely amount of work required to address the shortfalls identified in the application and undertake the necessary consultations. Particular attention is drawn to elements of the Guidance in respect of the sufficiency of the information given and the desirability of providing feedback on the outcomes of consultations undertaken on the scheme as successively modified.

Sufficiency of Information

- 28 The adequacy of consultation representations (AoCR) received raised issues relating to the sufficiency of the information provided and the consequent ability of consultees to be able to develop an informed view of the project and to understand its impacts.
- 29 For example, a joint AoCR from Gravesham Council, Havering LB and Thurrock Council states that, "the Councils, in their role as technical authority, consider there was a lack of adequate information within Highways England's Statutory Consultation and were not able to form reasonable conclusions of the likely effects of the scheme".
- 30 The AoCR from Kent CC states that, "the County Council felt that in some areas, in particular within the Supplementary Consultation, there was a lack of information and detail which prevented respondents being able to make meaningful detailed comments, particularly with regard to the anticipated environmental impacts and traffic modelling".
- 31 The AoCR from Havering LB states that, "there are a number of documents that Highways England have not presented to Havering to review in draft format. Despite several requests the Council was informed that such documents would not be made available until the application was accepted for examination by PINS. Specifically, Highways England made available a number of chapters from the draft Environment Statement, however they did not provide the associated appendices which made it impossible to provide any meaningful comments on the draft documents ahead of the application being submitted to Planning Inspectorate'.
- 32 Comments from the Kent AoNB Unit attached to Gravesham Council's AoCR state that, "A major issue for us, in common with the other SEBs and as previously discussed, has been concerns over the adequacy of the information available on environmental matters to make informed responses to the formal consultations. Generally there has been very limited information available which has made it difficult to comment in detail. For example, there was no draft LVIA to comment on during formal consultations". Similarly, comments from Kent County Council Archaeology state that, "we had a range of concerns about the lack of detailed assessment, evaluation and impact assessment of certain classes of heritage assets".

- 33 Appendix 3 of Gravesham Council's AoCR contains a 'Selection of comments on the PEIR made in response to the Statutory Consultation Autumn 2018'.
- 34 The Appendix records that Natural England stated that, "Based upon the information provided, and the guidance above Natural England does not consider that the PEIR contains sufficient information for us to provide detailed advice on the nature, scale and significance of the impacts to designated sites, protected landscapes, protected species and wider biodiversity at present. Similarly, we do not feel there is sufficient information for us to be able to provide in depth advice on the appropriateness or otherwise of the indicative mitigation and compensation measures".
- 35 The Appendix records that the Environment Agency stated that, "Based on the information provided the PEIR does not provide all the information that we expected. If an application for development was made using it, we would object to the application due to insufficient information,".
- 36 As an example, the joint AoCR from Gravesham Council, Havering LB and Thurrock Council states that, "The Preliminary Environmental Information Report (PEIR) did not contain a standalone assessment of human health impacts".
- 37 Specific comments on the AoCRs relate to the consideration above of environmental effects arising from changes to levels of traffic and mitigation. For example, Havering LB states that, "Highways England were unable to provide LBH with a copy of the Transport Assessment, prior to the application being submitted and the joint AoCR from Gravesham, Havering and Thurrock states that the traffic modelling output available as part of the consultation materials did not contain the level of detail that would reasonably have been required for consultees to develop an informed view of the likely significant environmental effects of the Consultation Scheme on the local networks as well as on residents, businesses, open countryside and designated environmental areas".

Feedback on consultation

- 38 The AoCRs received raised issues relating to the adequacy of informing those who have contributed to the consultation of the results of the consultation exercise, how the information received by applicants has been used to shape and influence the project; and how any outstanding issues will be addressed before an application is submitted.
- 39 For example, the AoCR from Gravesham Council states that, "insufficient feedback has been provided to consultees over the last two years as to how their comments have influenced the development of the scheme".
- 40 Gravesham Council also states that, "The failure of Highways England to supply the [Consultation Report] in advance, as recommended on page 6 of PINS Advice Note 14, is noted as not assisting the assessment process".
- 41 The AoCR from Thurrock Council states that, "it would have been beneficial for the Council to have been able to review the original full copies of the consultation responses received from statutory bodies and for Highways England to specifically respond to the Council's consultation responses".

- 42 This concern is reflected in the joint AoCR from Gravesham Council, Havering LB and Thurrock Council.
- 43 The AoCR from Kent CC states that, "it would have been helpful if the applicant had provided a summary of the consultation findings to stakeholders and the public following each round of consultation. A 'Project Update' document was published in July 2019, following the Statutory Consultation, but this provided no indication of how the design had been influenced".
- 44 Val Hyland Consulting states in Appendix 3 of Gravesham Council's AoCR that, "Extensive and detailed comments were made at all stages, but the applicant provided no method of (easily or otherwise) identifying those points which had or had not been accepted/taken forward to the subsequent design stages. This was a key issue in terms of the scope and detail, and made subsequent consultation stages difficult to interpret".

Landscape and Ecology Management Plan

- 45 The application contains an Environmental Masterplan (EM) which forms an intrinsic part of the ES and is relevant to the assessment of Landscape and Visual effects and Biodiversity effects. The REAC (LV029) makes provision for a Landscape and Ecology Management Plan (LEMP) to be secured through Requirement 5 of the Development Consent Order (DCO) for the establishment of vegetation as shown on the EM (and ecological management through Requirement 4 of the DCO). Given the scale of the Project and associated landscape and ecological works (including new tree/woodland planting, translocation of ancient woodland soils, green bridges, hedgerows and new and enhanced areas of grassland) and the importance for these to function effectively over the long term, the absence of an outline LEMP as part of the application to demonstrate how this would be achieved is a concern.

Consultees identified on a precautionary basis

Southfleet Parish Council is located in Dartford. If Dartford is a host local authority, Southfleet Parish Council should be identified as a s42(1)(a) body being a relevant parish council under Schedule 1 of the APFP Regulations.

Further explanation would be helpful to justify if the following were consulted and in what capacity:

- Commissioner of Police of the Metropolis
- Southfleet Parish Council
- Onsett Hospital Minor Injuries Unit
- Port of Gravesend
- Harlaxton Gas Networks Limited*
- Murphy Gas Networks Limited*
- Eclipse Power Network Limited*
- Energy Assets Networks Limited*
- Fulcrum Electricity Assets Limited*

- Murphy Power Distribution Limited*
- Vattenfall Networks Limited*

It is noted that the licences held by some of these bodies (those marked with `*') cover Great Britain or various smaller areas and the operational areas of each are not clear from information in the public domain.

Southern Water and Thames and Medway Canal Association are s42(1)(d) as well as s42(1)(a) bodies.

Minor errors and omissions

Book of Reference (Doc 4.2)

Environment Agency postcode is BS1 not DS1.

Coopers Shaw Road is sometimes referred to as Cooper Shaw Road e.g. at entries 20-08, 20-13 and 20-45.

Should entry 25-04 state "north of Hornsby Lane" instead of "north of Gowers Lane"?

Land Plans (Doc 2.2)

We would suggest that the Applicant undertakes a full check of the Land Plans. Some examples of errors or points for clarification are noted below:

Sheet 1: Should 1-84 be north of M2 instead of A2 as per 1-102? 1-163 cannot be located on the plan.

Sheet 2: Unlabelled blue plot between insets b and c. Unlabelled pink plot between 02-19 and 02-30.

Sheet 4: 04-36 is not clear, this could benefit from an inset.

Sheet 10: Unlabelled green plot (running west to east) between 10-13 and 10-20.

Sheet 11: Unclear whether 11-05 extends all the way up the right-hand side of inset A or if the upper section is unlabelled.

Sheet 13: Unclear whether the green plot immediately south of 13-40 should have its own label or if it is connected to plot 13-34.

Sheet 15: Five unnumbered plots between insets A and B.

Sheet 20: Coopers Shaw Road spelled incorrectly as Coppers Shaw Road on plan.

Sheet 21: Unclear whether 21-26 extends all the way to the top of the plan or if the upper section is unlabelled. Suggest another inset for clarity.

Sheet 22: Labels 22-117 and 22-118 both point to the same plot on the plan, leaving one plot without a label.

Sheet 24: Unclear whether 24-183 extends all the way down to the southwest or if the lower section (next to 24-182) is unlabelled.

Sheet 29: Blue plot on inset B next to 29-45 under 29-48 has no number. Blue plot next to/under 29-35 has no number. Unclear if the tiny triangle at the bottom of the sheet (under the label for 29-34) is part of plot 29-37.

Sheet 30: Unclear if 30-269 extends up to 30-276 alongside 30-270.

Sheet 44: Unclear if the small triangle in inset C under 44-41, next to 44-51, is a continuation of 44-41 and needs dual labelling or an unlabelled plot.

Works Plans (Doc 2.6)

We would suggest that the Applicant undertakes a full check of the Works Plans. Some examples of errors or points for clarification are noted below:

Work 1A: (i) & (ii): No start/end points shown for these particular works within the scope of the overall 1A work. (iii) & (iv): no start/end point shown for this particular work within the scope of the overall 1A work. (v): no start/end point shown, as above. (vi): not clearly labelled with 1A on map. Appears to overlap with 1C.

Work 1C (i): Appears to be some overlap with 1A at the western end of the works.

Work 1D (i) and (ii): No reference in the draft DCO to specific reference points in the rights of way and access plans. Difficult to identify on the works plans as a result.

Work 1E: (i): Work extends from sheet 2 onto sheet 4, but no start/end point for this particular work within the scope of work 1E is indicated on sheet 4. (ii) & (iii): length of work is not noted in the draft DCO.

Work 2A (iii): Difficult to find this work on the plans, as no reference number is provided for the right of way plans.

Work 2B: (i): Work as shown on plans appear shorter than the 2,310m mentioned in the draft DCO, as work 2B(ii) appears longer on the plans but is also stated to be 2,310m. (iii): the 320m work appears longer on the plan.

Work 2E: Work stated to be on sheet 2 and 4, but not labelled on sheet 2.

Work 2O: No work length indicated in the draft DCO.

Work 2P: Draft DCO states that work 2P is on sheets 2 and 4, however the work shown on sheet 4 appears self-contained and there is no work labelled 2P on sheet 2.

Work 2Q: Seems to be an overlap with Work 3B on Sheet 9.

Work 3B: Some overlap with work 2Q.

Work 3C: Difficult to pinpoint work, as the same works centre line is labelled with several different works numbers (Works 3A, 3C, 4A).

Work 4B: No clear start/end points - possibly obscured by the "major structures" black box.

Work 5B: Some start/end points are unclear.

Work 5C: No clear start/end points - possibly obscured by the "major structures" black box.

Works 5G & 5K: They don't appear to be illustrated on the plan as being within a given limit of deviation.

Work 6D: Not labelled on sheet 29, as per draft DCO.

Work 7D: No start/end point on sheet 29 (far right extreme of the work).

Work 7J: No start/end point on sheet 29 (northwest extreme of the work).

Works 9A & 9B: No start/end point on sheet 36.

Work 'OH6': Listed in the draft DCO as being on work plan nos. 21, 24, 25, 26, 30, 35 and 39, however it is also displayed on work plan no. 32.

Work 'MU11': Listed in the draft DCO as being on work plan nos. 9 and 10 however it's also displayed on plan no. 20.

Environmental Statement (Docs 6.1 and 6.2)

ES Chapter 11: a number of formatting errors, including paras 11.3.25, 11.6.12, 11.6.13, 11.6.34, 11.6.35, 11.6.43, 11.6.44, 11.6.45, 11.6.46, 11.6.47, 11.6.48, 11.6.54, 11.6.55 and 11.5.58. In addition, many page numbers are incorrect.

ES Figure 7.21: page 3 of 10 has a slight distortion on the bottom right.

ES Figure 13.1: some labels seem to be written with odd spacing which makes searching difficult eg 'Sta rIndustria lEsta te, Cha dwell'.

ES Figure 13.2: some labels seem to be written with odd spacing which makes searching difficult eg 'English Coa sta lPa th'.

ES Figure 13.3: some labels seem to be written with odd spacing making it difficult to search eg 'Ha rtshillBunga lo w, 37Tho ng La ne'.

Loading errors

Some loading errors were encountered on the following documents:

- Crown Land Plans (Doc 2.3): sheet 19
- Rights of Way and Access Plans (Doc 2.7): key plan
- Environmental Statement Figure 7.21 (Doc 6.2): page 4
- Environmental Statement Figure 7.17 - Representative Viewpoints - (Daytime) Winter and Summer Views (5 of 7), (6 of 7) and (7 of 7) (Doc 6.2)
- Environmental Statement Figure 7.21 - Indirect Effects Assessment - Affected Roads during Operational Stage within the Kent Downs AONB (Doc 6.2)
- Environmental Statement Appendix 8.20 - Draft Water Vole Conservation Licence Application (Doc 6.3)

Searchable PDFs

In order to ensure ease of searching for plots, Applicants should consider providing PDF versions of documents which can then be searched by plot number, for example:

- Land Plans (Doc 2.2)
- Crown Land plans (Doc 2.3)
- Special Category Land Plans (Doc 2.4)

For the attention of Susannah Guest

Planning Inspectorate
Temple Quay House
2 The Square
Bristol
BS1 6P

Our Ref
MLA/151216.0001
Date
17 November 2020

By Email

Dear Sirs

Application for development consent for the A122 Lower Thames Crossing (Reference: TR010032) - acceptance stage signposting queries

We write on behalf of Highways England, in relation to the application for development consent for the A122 Lower Thames Crossing (the **Project**), submitted by Highways England to the Planning Inspectorate on 23 October 2020.

The Planning Inspectorate has provided Highways England with a set of queries which we understand to represent its main concerns in determining whether to accept the application for examination, and it has asked Highways England to provide a response to these questions, signposting to the relevant information contained in the application. This letter comprises Highways England's response.

We recognise that it is entirely reasonable for an application of this size and scale to give rise to a signposting request during the acceptance period, and we are grateful for the opportunity to address the detailed queries raised. They are addressed in the numbered paragraphs which follow below, but given the nature of the questions raised, we wish to take the opportunity at the outset to make the following observations which flow from the signposting responses:

- Section 55(3) of the Planning Act 2008 sets out the basis on which the Secretary may accept an application for examination. In the context of the Inspectorate's questions, the fundamental considerations are whether, having regard to the relevant law, standards and guidance:
 - the applicant has complied with the pre-application consultation procedures in Chapter 2 of Part 5 of the Planning Act 2008 (section 55(3)(e)); and
 - the application is of a standard that the Secretary of State considers satisfactory (section 55(3)(f)).

Registered Office

One Bartholomew Close
London
EC1A 7BL
DX 339401 London Wall

50/60 Station Road
Cambridge
CB1 2JH
DX 339601 Cambridge 24

The Anchorage
34 Bridge Street
Reading, RG1 2LU
DX 146420 Reading 21

Grosvenor House
Grosvenor Square
Southampton, SO15 2BE
DX 38516 Southampton 3

T +44 (0)345 222 9222

W www.bdbpitmans.com

- Taking account of the responses provided below, including the signposting requested, Highways England's firm view is that the approach it has taken to the application (including the consultation and engagement which preceded it) demonstrably meets the "satisfactory standard" test and the pre-application consultation procedures.
- Given the nature of some of the queries raised, Highways England is concerned that the emphasis of the Inspectorate's deliberations appears to be directed towards the *form* of the information provided, rather than the *substance* of assessments, controls and other information contained in the application. Our view is that the latter is the correct procedural approach, and that in this context the Inspectorate's queries are substantively and adequately addressed within the application, as the signposting responses below demonstrate.
- Furthermore, Highways England notes that the Secretary of State's acceptance decision is informed, in part, by the extent to which the quality of the application affects the ability of the Examining Authority to be able to examine it within the maximum 6-month statutory time period (*Planning Act 2008: Guidance on the pre-Application process, paragraph 114*). The nature of the matters raised by the Inspectorate, when taking account of the signposting responses provided below, is such that any residual queries are entirely capable of being addressed properly in the pre-examination and examination stages, rather than by re-submitting the application. We submit that this is the proportionate approach to take, and one that is in the wider public interest.
- Highways England's approach in this application to the matters raised by the Inspectorate is consistent with a significant number of previous applications for development consent accepted by the Planning Inspectorate. To inform the Inspectorate's further deliberations, relevant precedents are referred to in the letter below. In the case of the precedents referred to, the equivalent issues were adequately dealt with following acceptance of the application. It follows, as a matter of procedural fairness, that this Project should be judged by the same standards as have been applied to previous applications which have been accepted and consented.

We trust that this letter addresses the matters raised by the Inspectorate, and in the light of the information provided below, we invite the Inspectorate to find that the application is of a satisfactory standard in accordance with section 55(3).

Our firm view is that this is the lawfully and procedurally correct determination to be reached, having regard to the content of the application and this letter. Conversely, we do not see that there is a sound legal basis for a decision that the Project cannot be accepted for examination, having regard to the nature of the specific concerns that have been raised and our responses.

We now turn to each of the queries raised by the Inspectorate.

1 "The Transport Assessment (Doc 7.9) does not appear to have been shared with relevant local authorities at the Pre-application stage. Is this correct?"

1.1 It is correct that a draft of the application version of the Transport Assessment (Application Document 7.9) has not been shared with local authorities during the pre-application stage.

However, the substantive matters which inform the Transport Assessment have been shared through consultation and have been the subject of comprehensive technical engagement.

- 1.2 As set out in the Transport Assessment (Application Document 7.9), this document is not a prescribed document under the 2009 Regulations. There is no requirement in law (including under the Planning Act 2008), or as a matter of case law or guidance, to produce or share the Transport Assessment with relevant local authorities. Indeed, the pre-application guidance does not mention Transport Assessments at all. Numerous applications have been accepted for examination by the Planning Inspectorate, and applications granted development consent by the Secretary of State, notwithstanding that a draft transport assessment has not been shared at the pre-application phase (see the Annex to this letter, below).
- 1.3 It is not correct to read into any relevant requirements an obligation to share a particular document (i.e., the *form* of a document). Instead, case law regarding consultation and the pre-application guidance makes clear that promoters should consult on the *substance* of impacts. The distinction between form and substance is critical in making a procedurally correct determination as to whether an application for development consent can be accepted for examination. In this context, Highways England draws the Inspectorate's attention to paragraph 115 of the pre-application guidance which sets out:

In particular, applicants should be able to demonstrate that they have acted reasonably in fulfilling the requirements of the Planning Act, including in taking account of responses to consultation and publicity. The Government recognises that applicants and consultees will not always agree about whether or how particular impacts should be mitigated. The Secretary of State is unlikely to conclude that the pre-application consultation was inadequate (on the basis that particular impacts had not been mitigated to an appropriate degree) if the applicant has acted reasonably.

- 1.4 Having set out this critical contextual backdrop, the following paragraphs demonstrate how Highways England has consulted and engaged extensively on the substantive matters that have informed the drafting of the Transport Assessment, with signposting to where this is reported in the application.

Consultation

- 1.5 Highways England has taken unprecedented steps to provide information on the transport impacts of the Project. The volume and depth of information provided as part of the consultation process attests to this and goes well beyond numerous applications accepted by the Planning Inspectorate. Highways England has provided:

- 1.5.1 As explained in paragraph 4.5.5 of the Consultation Report, as part of its 10-week statutory consultation (10 October 2018 to 20 December 2018), the following documents were published for comment:

- a. a 381-page Traffic Forecasting Report which details the Lower Thames Area Model (**LTAM**) used for the Project, the forecast years and scenarios contained in that model, the approach and findings in respect of forecast

year demands, equilibrium demand forecasts and outputs to the economic, environmental and operational assessments;

- b. a 358 page Local Model Validation Report which provides the model description/specification, data collection approach, and technical details of the model network development, the matrix development, highway model calibration, highway model validation, and variable demand models;
- c. 382 pages of detailed technical appendices to the Traffic Forecasting Report including:
 - i. A comprehensive uncertainty log setting out details of the planned land use developments included in the LTAM forecasts;
 - ii. Cross-river flow comparisons for each direction for each time period for each forecast year for each of the different growth scenarios;
 - iii. Detailed link-based journey time comparisons for the route between M2 J4 and M25 J26 in both northbound and southbound directions.
- d. details of sensitivity tests for:
 - i. traffic forecasts in low and high growth sensitivity tests for each of the forecast years;
 - ii. Flow comparisons to the core scenario comparison high and low growth scenarios;
 - iii. The operational assessment for the low and high growth sensitivity tests for each of the forecast years.
- e. a 28-page Traffic Forecast non-technical summary – presenting a non-technical summary of the transport impacts and model reported in the Transport Forecasting Report, also detailing the planned land use developments included in the LTAM forecasts;
- f. the Preliminary Environmental Information Report includes a consideration of construction traffic movements and the associated impacts.

- 1.5.2 As explained in paragraph 5.2.66 of the Consultation Report as part of its 9-week supplementary consultation (29 January – 2 April 2020), Highways England provided a 40-page Traffic Modelling Update,¹ which provided an update to the forecasts and what the model predicts. In this context, it is also worth noting that the Environmental

¹ https://highwaysengland.citizenspace.com/ltc/consultation-2020/supporting_documents/TRAFFIC%20MODELLING%20UPDATE.pdf

Impacts Update document which reported on impacts arising from construction (including construction traffic).

- 1.6 During the 4-week design refinement consultation (14 July – 12 August 2020), the design refinements consulted upon did not warrant a fresh traffic modelling update but an Environmental Impacts Update which included consideration of construction traffic and its impacts was included as set out in paragraph 5.3.30 of the Consultation Report (Application Document 5.1). Interested parties including local authorities have therefore had extensive opportunities to comment on the technical, detailed transport model and the associated impacts. Further information is contained within Section 7.4 of the Consultation Report (Application Document 5.1), which sets out the full range of issues, including those concerning traffic forecasting, raised by respondents to the Statutory Consultation and how Highways England has considered and had due regard to each response. In addition, sections 4.5.4 through to 4.5.13 of the Transport Assessment set out the responses to the Scoping Report which relate to the Transport Assessment which were received from Essex County Council, the London Borough of Havering, Thurrock Council and TfL, and how these were considered.
- 1.7 As set out in Appendix A of the Consultation Report (Application Document 5.1), local authorities were, in accordance with paragraphs 43/44 of the pre-application guidance, treated as statutory consultees in this context.

Technical Engagement

- 1.8 The preceding paragraphs detail all the formal *consultation* undertaken in relation to traffic and response matters, and the outputs. In addition to this, there has been an extensive programme of technical engagement meetings with local authorities relating to the transport model. Paragraph 5.3.37 and Table 5.15 of the Consultation Report (Application Document 5.1) sets out the engagement that took place in the 5-year period before the Design Refinement Consultation. In full accordance with paragraphs 43/44 and 82 of the pre-application guidance, this engagement, as set out in Appendix P of the Consultation Report, included meetings regarding traffic modelling and transport assessment issues. We would highlight the following examples:
- 1.8.1 Traffic Modelling Briefing (South) – with local authorities on 12/02/2015
 - 1.8.2 Traffic Modelling Briefing (North) – with local authorities on 23/04/2015
 - 1.8.3 Meeting with Transport for London on traffic modelling on 28/05/2015
 - 1.8.4 Meeting with Medway Council on traffic modelling on 13/01/2017
 - 1.8.5 Traffic Modelling meeting with Kent County Council on 15/05/2017
 - 1.8.6 Meeting with Transport for London (to discuss London traffic modelling) on 05/09/2017

- 1.8.7 Traffic modelling workshop with a number of local authorities (Thurrock Council, Essex County Council, London Borough of Havering, Kent County Council, Gravesham Borough Council, Brentwood Borough Council, Medway Council, Dartford Borough Council, Tonbridge and Malling Borough Council, Transport for London, Basildon Council, Southend-on-Sea Council) on 22/09/2017
- 1.8.8 Meeting with Transport for London on traffic modelling on 26/10/2017
- 1.8.9 Meeting with Thurrock Council on traffic modelling on 01/11/2017
- 1.8.10 Meeting with Dartford Borough Council on 25/05/2018
- 1.8.11 Meeting with Medway Council on traffic modelling on 07/06/2018
- 1.8.12 Meeting with London Borough of Havering to discuss traffic modelling on 09/08/2016
- 1.8.13 Meeting with Gravesham Borough Council and Kent County Council to discuss traffic modelling on 10/08/2018
- 1.8.14 Meeting with Medway Council to discuss traffic modelling on 17/08/2018
- 1.8.15 Meeting with Essex County Council to discuss traffic modelling on 22/08/2018
- 1.8.16 Meeting with Dartford Borough Council on traffic modelling and construction impacts on 06/09/2018
- 1.8.17 Meeting to discuss traffic modelling with Transport for London on 10/09/2018
- 1.8.18 Meeting with Thurrock Council on construction traffic on 03/10/2018
- 1.8.19 Meeting with Gravesham Borough Council to discuss construction traffic on 15/10/2018
- 1.8.20 Meeting to discuss traffic modelling with Thurrock Council on 16/11/2018
- 1.8.21 Meeting with Thurrock Council (including discussion of traffic modelling queries provided in advance) on 11/01/2019
- 1.8.22 Traffic modelling workshop with various local authorities (Kent County Council, Gravesham Borough Council, Medway Council, Dartford Council) on 17/01/2019
- 1.8.23 Meeting with Thurrock Council on construction traffic on 06/02/2019
- 1.8.24 Traffic modelling workshop with Kent County Council, and Kent local authorities (Gravesham Borough Council, Medway Council, Dartford Council) on 01/03/2019
- 1.8.25 Technical meeting on traffic modelling with London Borough of Havering on 03/04/2019

- 1.8.26 Meeting with various Kent local authorities (Kent County Council, Gravesham Borough Council, Medway Council, Dartford Council) on traffic modelling cordons on 05/04/2019
- 1.8.27 Traffic modelling meeting with Thurrock Council on 26/09/2019
- 1.8.28 Traffic modelling meeting with Thurrock Council on 05/11/2019
- 1.8.29 Meeting on construction traffic with Thurrock Council, Essex County Council, London Borough of Havering on 11/11/2019
- 1.8.30 Meeting on construction traffic with Kent County Council and London Borough of Havering on 11/11/201
- 1.8.31 Meeting on traffic modelling with Kent County Council on 21/01/2020
- 1.8.32 Construction Impacts (North) Workshop and including discussion of construction traffic modelling with various local authorities (Thurrock Council, Essex County Council, London Borough of Havering) on 06/02/2020
- 1.8.33 Construction Impacts (South) Workshop including discussion of construction traffic modelling with various local authorities (Kent County Council and Gravesham Borough Council) on 06/02/2020
- 1.8.34 Traffic modelling working group meeting with Kent local authorities (Kent County Council, Gravesham Borough Council, Medway Council, Dartford Council) on 10/02/2020
- 1.8.35 Traffic Modelling Workshop (North) with various local authorities (Thurrock Council, Essex County Council, London Borough of Havering) on 21/05/2020
- 1.8.36 Meeting with Transport for London on traffic modelling on 18/06/2020
- 1.8.37 Meeting with Transport for London on traffic data sharing on 10/09/2020
- 1.9 In our experience, the technical engagement outlined above goes well beyond that of numerous other DCO projects which have been accepted by the Planning Inspectorate and, even accounting for the scale of the Project, is clearly compliant with the pre-application guidance.
- 1.10 Highways England would also emphasise that the fundamental purpose of the Consultation Report, in line with the list of documents required by statute, and in line with the Inspectorate's Advice Note 14, is to report on rounds of formal *consultation* held (see section 37 of the Planning Act 2008), with a particular focus on compliance with the statutory consultation requirements. Put another way, there is no requirement in statute or guidance to submit a *technical engagement* report.
- 1.11 Accordingly, Appendix P of the Consultation Report already goes beyond any statutory requirements, and its purpose is to demonstrate the significant level of technical engagement

undertaken. However, Appendix P is not an exhaustive list of the engagement undertaken, and (in line with precedent set by other applications) does not provide full details on the specific matters discussed. In this context, it should be noted that it does not document all or the full extent of the technical engagement since it does not list meetings held after 13 July 2020, due to the production timescale for the Consultation Report.

- 1.12 In circumstances where the Planning Inspectorate's application acceptance deliberations appear to concern the extent of technical engagement on the Transport Assessment, Highways England asks that, as a matter of procedural fairness, the Inspectorate also has regard to additional information regarding technical engagement which is not detailed in Appendix P of the Consultation Report, but which is provided here as follows:
- 1.12.1 Meeting with Medway Council on traffic modelling on 02/04/2020
 - 1.12.2 Meeting with Kent County Council, Gravesham Borough Council, Medway Council, Dartford Council, Tonbridge and Malling Borough Council discussing traffic modelling on 06/10/2020
 - 1.12.3 Meeting with Medway Council on the traffic model on 09/10/2020
 - 1.12.4 Meeting with London Borough of Havering and Transport for London on traffic model on 29/10/2020
 - 1.12.5 Meeting with Brentwood Borough Council on traffic modelling on 04/11/2020
 - 1.12.6 Meeting with Dartford Borough Council on traffic modelling on 11/11/2020
- 1.13 Highways England emphasises this is not an exhaustive list of every meeting with local authorities where traffic and transport matters have been raised, rather it focuses on technical engagement relevant to the topics in the Transport Assessment. Furthermore, Appendix P does not detail all information shared with local authorities on traffic and transport matters (this approach is no different from many other DCO projects). Highways England shared the statutory consultation version of Traffic Cordon Model with all the Tier 1 local authorities in November 2018 / early 2019 and the DCO Cordon Model in April 2020 to allow the local authorities to assess the impacts upon their transport network. During the course of engagement process, a copy of the model output flows and volume/capacity data which is used to produce the Transport Assessment, was also shared with local authorities.
- 1.14 It should therefore be clear that any suggestion that local authorities have not been consulted about the transport impacts of the Project is unfounded. Highways England considers that it has fully, and gone well beyond, the requirements of the Planning Act 2008 and the pre-application guidance.

- 2 “An outline Construction Traffic Management Plan (CTMP) has not been provided with the submitted application and little detail has been provided in the Code of Construction Practice (CoCP) or Register of Environmental Actions and Commitments (REAC).”**
- 2.1 Although it is correct that no standalone outline CTMP document has been provided with the application, there is no legal requirement, under the 2009 Regulations or otherwise, to the effect that an application for development consent must be accompanied by a standalone outline CTMP. The fact that an outline CTMP has not been included within the submitted application, an approach which accords with a long line of DCO precedent, should not therefore attract any significant weight in the decision to accept or refuse the application for examination.
- 2.2 Further, Highways England disagrees with the statement that limited detail concerning construction traffic management has been provided in the application, when benchmarked against other projects that have been accepted for examination, even when accounting for the scale of the Project. We signpost to the relevant material in the paragraphs that follow.
- 2.3 The Code of Construction Practice (Application Document 7.11) includes legally binding commitments that the contractors will produce:
- 2.3.1 Construction Logistics Plans – as explained in paragraphs 5.1.2 of Code of Construction Practice, this will:
- (a) develop access routes taking into account the constraints and requirements in the DCO and in consultation with highway authorities;
 - (b) implement a delivery booking system, which will enable management of demand vs capacity both onsite and, where relevant, local access routes;
 - (c) provide Highways England with live access to the delivery booking system and thereby enable response to potential complaints of vehicle routing/nuisance;
 - (d) investigate the use of multimodal transport.
- 2.3.2 Traffic Management Plans – as outlined in paragraph 5.2.1 of the Code of Construction Practice these must focus on:
- (a) strategic road network traffic management including lane closures speed control and temporary road closures and diversions;
 - (b) local road network, including temporary contraflows, road closures, diversions both on-line and off-line and weekend closures;
 - (c) traffic management within the worksite, such as traffic routes and workforce pedestrian management, strategic and local road networks due to the different highway authorities.

- 2.3.3 Travel Plans – as outlined in paragraph 5.3.1 of the Code of Construction Practice, these travel plans will contain:
- (a) an assessment of the existing accessibility of the compound;
 - (b) the sustainable transport principles, as encapsulated in the Code of Construction Practice;
 - (c) targets for the Travel Plan, which will be SMART (specific, measurable, attainable, realistic and time-bound);
 - (d) measures, which are targeted to the location to enable the targets to be achieved;
 - (e) details of the management of the Travel Plan, including the appointment of a Travel Plan Coordinator;
 - (f) details of a clear monitoring programme which will establish the effectiveness of the Travel Plan measures against the targets set;
 - (g) an action plan which provides a programme for the delivery of the measures, setting this out in a clear way.
- 2.4 The matters to be considered in each plan (in a similar way to an outline CTMP) are set out in the relevant sections of the Code of Construction Practice.
- 2.5 Appendix 2.1 of the Environmental Statement (Application Document 6.3) sets out the proposed approach to construction of the Project. Within this document, Section 1.2 sets out the Construction Programme. Section 1.3 sets out the considerations for traffic, including the proposals to manage construction logistics, Heavy Goods Vehicle movements, and movements of project personnel. Section 1.5 sets out the works associated with the highways, specifically considering temporary traffic management in sections 1.5.2 and 1.5.3.
- 2.6 The REAC (Appendix 2.2 of the Environmental Statement (Application Document 6.3)) contains a number of measures across a number of topics which control construction traffic management (e.g., REAC References GS029, NV010, AQ001 – which, through mitigation of the impacts referred to, will result in controls over construction traffic).
- 2.7 The draft Development Consent Order (Application Document 3.1) contains:
- 2.7.1 a requirement in Schedule 2 which sets out that a CTMP must be prepared and approved by the Secretary of State prior to the commencement of the authorised development. This is in accordance with the procedure for the discharge of requirements agreed with the Department for Transport (see paragraph 6.3 of the Explanatory Memorandum (Application Document 3.2)); and

- 2.7.2 at Schedule 3, a list of streets and private means of access which are subject to temporary closure, alteration, diversion and restriction during construction.
- 2.8 As noted, an outline CTMP is not a prescribed document under the 2009 Regulations, nor under the Planning Act 2008, nor under guidance. The Annex to this letter sets out projects of a similar scale which have not produced outline CTMPs as part of the application submission. In accordance with this long line of established precedents (including projects comparable in construction traffic terms such as the Southampton to London pipeline project, A303 Stonehenge, A14 Cambridge to Huntingdon), Highways England has not provided an outline CTMP as part of this application.
- 2.9 Whilst Highways England considers that sufficient information has been provided for this stage of the DCO process, should the Examining Authority consider that further information is required, there is no reason why this could not be adequately addressed during the post-application phase and it is therefore not a matter that should prevent the acceptance of the application.
- 2.10 There is a recent precedent for this approach: in the Southampton to London Pipeline project, the longest linear scheme promoted under the 2008 Act regime for which consent has now been granted by the Secretary of State, an outline CTMP was not provided as part of the application submission but was subsequently provided at the fourth deadline during the examination² at the request of the Examining Authority appointed to examine that application. This is not unusual: on the M42 Junction 6 project, the Examining Authority requested various management plans to flesh out the details of the mitigation measures.³ Importantly, it is noted that the decision not to include an outline CTMP with the submitted application for the Southampton to London Pipeline Project was not subject to any discussion in the Planning Inspectorate's letter accepting the application for examination.
- 2.11 In summary therefore, the approach which has been adopted in the context of this application is proportionate, aligned with precedent, and meets the legal requirements under section 55 of the Planning Act 2008. In addition, in light of the precedents cited above, any residual matters can be adequately addressed during the pre-examination or examination phases of the Project.

² [https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN070005/EN070005-001097-8.49%20Outline%20Construction%20Traffic%20Management%20Plan%20\(CTMP\).pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN070005/EN070005-001097-8.49%20Outline%20Construction%20Traffic%20Management%20Plan%20(CTMP).pdf)

³ An outline bird strike management plan was submitted at Deadline 2: https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010027/TR010027-000448-TR010027_M42J6_8.25_Outline%20Bird%20Strike%20Management%20Plan.pdf an outline biodiversity management plan was submitted at Deadline 7: https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010027/TR010027-000815-TR010027_M42J6_8.74_Outline_Biodiversity_Management_Plan.pdf

3 “The traffic modelling does not appear to have included local developments identified by relevant local authorities. Is this correct?”

- 3.1 This statement is not correct. The list of local developments considered as part of the transport model is included in the application. Highways England refers the Planning Inspectorate to paragraph 4.1.10 of the Combined Modelling and Appraisal Report - Appendix C Transport Forecasting Package (Application Document 7.7) which lists the local authorities that were consulted for their planned developments and/or highway schemes.
- 3.2 Paragraphs 4.1.12 to 4.1.14 of that document then set out the criteria by which the developments indicated by the relevant local authorities were selected for inclusion into the traffic modelling. Local developments included in the traffic modelling core scenario are shown in Plate 4.2, and in more detail in Plates 4.3 and 4.4. Transport schemes included in the traffic modelling core scenario are shown in Plate 4.5. Annex A of the same report details all development and transport schemes included in the traffic modelling core scenario.
- 3.3 Paragraph 5.7.8 to 5.7.29 of the Transport Assessment further provide a description of how the traffic modelling has considered growth and new developments, using the DfT guidance and forecasts, and then providing more detailed information on the spatial location of this traffic growth by examining the location of new developments which have been constructed and those which have been granted planning permission.
- 3.4 In accordance with paragraph 107 of the pre-application guidance, the application has properly considered developments which are in the process of being built, permitted applications (not yet implemented), submitted applications (not yet determined), projects on the National Infrastructure’s programme of projects, etc. The full methodology for the traffic modelling is provided in Section 5 of the Combined Modelling and Appraisal Report (see Application Document 7.7).
- 3.5 In accordance with the requirements of the National Networks National Policy Statement, and with every single Highways England DCO project accepted for examination by the Planning Inspectorate, the traffic modelling is TAG compliant (this is comprehensively demonstrated in the Combined Modelling and Appraisal Report (Application Document 7.1).
- 3.6 The pre-application guidance is not intended to substitute the Department for Transport’s TAG and the approach taken in the application is firmly in line with precedents of projects accepted for examination (and “standard[s]” under section 55 of the Planning Act 2008) by the Planning Inspectorate. Interested parties, as well as the Examining Authority, are able to raise queries with the developments included as part of the modelling during the examination process (and numerous DCO examinations have raised, and dealt adequately with, the issue of developments considered in any transport modelling as part of that process).

- 4 **“These questions [above] are asked in consideration of the guidance within paras 19, 25, 43/44, 77, 81-84, 88, 107 etc. of Planning Act 2008: Guidance on the pre-application process.”**
- 4.1 Appendix A of the Consultation Report (Application Document 5.1) confirms how Highways England’s approach to the pre-application process complied with relevant paragraphs of the pre-application guidance, including paragraphs 25, 43, 44, 77, 81 – 84 and 88. We do not seek to repeat in full what is said in that Appendix but make the following additional observations, based on the information provided in Appendix A. Reference is also made by the Inspectorate to paragraphs 19 and 107 of the pre-application guidance. These paragraphs are not discussed in directly in Appendix A of the Consultation Report. However, since they have been raised, paragraph 19 of the pre-application guidance is addressed below. Evidence of how Highways England has complied with paragraph 107 of the pre-application guidance is addressed in section. 3.4 of this letter, above.
- 4.2 In respect of paragraphs 19, 25, 77 of the pre-application guidance, as set out in paragraph 2.6.1 and Table 2.2 of the Consultation Report, Highways England (and, in the early stages, the Department for Transport) has carried out unprecedented levels of consultation in relation to the Project. The volume and depth of information provided as part of the consultation process goes well beyond applications accepted for examination by the Planning Inspectorate. Highways England does not consider that a finding of inadequate consultation can reasonably be made, with reference to paragraph 19 of the pre-application guidance, having regard to the extensive programme of pre-application consultation and engagement that has been undertaken and described in the Consultation Report.
- 4.3 As noted in the Consultation Report, five substantive consultation exercises have been carried out. Chapter 3 of the Consultation Report describes the development of the Project proposals up to the point of launching a Statutory Consultation. It describes phases of consultation beginning in 2009, including consultation held by the Department for Transport as well as Highways England’s consultation in 2016 that generated over 40,000 responses from stakeholder organisations and the public.
- 4.4 A statutory consultation pursuant to sections 42, 47 and 48 was held at the end of 2018. That statutory consultation period ran for 10 weeks. Following this, further supplementary consultation exercises of 9 weeks and 4 weeks duration respectively were carried out. Highways England was acutely aware of the complex nature of this Project and the technical nature of some of the information published for comment. In line with paragraph 25 of the pre-application guidance, Highways England therefore went substantially beyond the minimum statutory requirements laid down in the 2008 Act. The 10-week statutory consultation period, supplemented by further 9-week and 4-week consultations, attests to this. The scale of consultation activity undertaken was proportionate to Highways England’s assessment of the impacts of the Project on the area and of anticipated levels of public interest, in accordance with paragraph 77 of the pre-application guidance. Local authorities’ views have also informed the consultation process throughout, including but not limited to the preparation of the statement of community consultation, as set out in paragraph 77 of the pre-application guidance.

- 4.5 As outlined in the Consultation Report (Application Document 5.1), Highways England has complied with all of its statutory duties under sections 42, 44, 47 and 48 of the Planning Act 2008. That consultation has been undertaken to a high standard, in accordance with the spirit of paragraph 88 of the pre-application guidance.
- 4.6 These consultations have produced more responses than any submitted DCO application made to date. At each stage, refinements have been made to the Project to address and agree consultees' responses to the five consultation exercises. The reduction in responses to the Project at each stage is indicative of responses being addressed and a progressive narrowing of issues.
- 4.7 The approach to pre-application consultation and engagement has been entirely thorough, effective and proportionate, in accordance with paragraph 25 of the pre-application guidance.
- 4.8 Highways England has also had regard to, and carried into effect, the good practice guidance set out in paragraphs 81-84 of the pre-application guidance. Following statutory consultation, as set out in section 5.2 of the Consultation Report, Highways England published in July 2019 a Project update,⁴ which summarised to a level of detail that was considered appropriate and understandable by a wider range of consultees, the feedback received during statutory consultation, in the form of charts and short textual summaries. A series of events was also held at that time, at which it was possible for people to attend and discuss the findings of the Project update with a member of the Project team. Further technical updates were provided to key stakeholders between Supplementary Consultation and the Design Refinements Consultation, as set out in Section 5.3.37 of the Consultation Report. This is in addition to the extensive stakeholder engagement described in Appendix P of the Consultation Report and signposted in this letter. Lastly, in each consultation Highways England was clear to articulate how and why the project had evolved since the previous round of consultation.
- 4.9 Any conclusion that this process – which elicited more public engagement than any other DCO application to date – was not thorough would impose an unduly high bar to compliance which would be inconsistent with the legal requirements and the guidance, inconsistent with precedent and would impose a disproportionate burden on promoters, including public sector bodies such as Highways England.
- 5 “The Transport Assessment (Doc 7.9, paragraphs 8.4.10-11) suggests that a navigation impact assessment has not been carried out. Is this correct? Note that the Planning Inspectorate’s Scoping Opinion considered that the impacts on navigation should be assessed and that risk mitigation methods should be identified within the Environmental**

⁴

https://s3.eu-west-2.amazonaws.com/assets.highwaysengland.co.uk/Lower+Thames+Crossing/BED19_0139+LTC+-+Project+update+-+Summer+2019+FINAL.pdf

Statement. There appear to be contradictions within the application documents about the extent to which navigation risks have been assessed.”

5.1 The navigation risks of the Project have been appropriately assessed and reported in Chapter 13 of the Environmental Statement. It should be noted that the Project has changed in this regard since the Scoping Opinion was given. In particular, it is no longer proposed to construct a new jetty as part of the Project. Accordingly, it has been possible to assess the navigation impacts of the Project without the necessity for a standalone navigation impact assessment at this stage.

5.2 The Scoping Opinion for the Project sets out as follows:

“The Scoping Report identifies the potential for impacts on navigation from the construction and use of a jetty, however the methodology in section 13.7 does not propose to assess such impacts. The Inspectorate considers that impacts on navigation for both commercial and recreational craft should be assessed within the ES. Risk mitigation methods should also be identified.”

5.3 The full extract of the Scoping Opinion makes clear that the assessments in question here related to the construction and use of a new jetty. As Appendix 4.1 of the Environmental Statement (Application Document 6.3) sets out:

“There is no longer a proposed jetty in the Project. The existing East Tilbury jetty is included within the Order Limits to allow flexibility for the Contractors to make use of it should they wish to. Reasonable assumptions have been made around its use to inform a worst-case scenario for the EIA”.

5.4 An assessment of impacts on navigation for both commercial and recreational craft arising from a newly constructed jetty is therefore redundant. In this context Highways England notes that regulation 14(3) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 states that an environmental statement should be “based on the most recent scoping opinion adopted (*so far as the proposed development remains materially the same as the proposed development which was subject to that opinion*) (emphasis added).

5.5 In the context of usage of the river for construction purposes, it is clear that the Project is not materially the same as the development which was proposed at the time of the Scoping Opinion, because there is no longer a proposal to construct a new jetty. Instead, river usage would be limited to usage of an existing operational jetty.

5.6 The navigational risk of using the existing jetty is assessed in Chapter 13 of the Environmental Statement (Application Document 6.1) which sets out at paragraph 13.6.19 that:

“The existing East Tilbury jetty at Goshem’s Farm is the most likely facility to be used during the construction phase, should this be deemed necessary. There is a potential need for some works to the temporary jetty at the start of the construction phase to extend its design life, and for decommissioning and removal at the end of the construction phase. The use of the jetty will depend on the particular approach to be

adopted by the Contractor but has been included on a precautionary basis... It is assumed that barge movements would be limited to two a day (one movement per tide cycle), which is fewer than that currently taking place at the East Tilbury jetty at Goshem's Farm in relation to the works associated with Thames Tideway (currently three barge movements per day). By using existing navigational infrastructure, no new navigational risks are created. The jetty is considered to be of very high sensitivity due to daily frequency of use; the magnitude of impact has been assessed as no change, in that there would be no observable loss or alteration to the use of the receptor as a result of the Project. Accordingly, the effect of the Project on marine and riparian assets has been assessed as neutral and not significant."

- 5.7 This provides the context for the statement in Appendix 4.1 of the Environmental Statement (Application Document 6.3) in terms of how the project has responded to this aspect of the Scoping Opinion:

"Impacts on marine and riparian assets have been considered. To the north of the River Thames, these impacts are restricted to potential jetty use during Project construction. The existing East Tilbury jetty is the most likely facility to be used during the construction phase, should this be deemed necessary. It is assumed that barge movements would be limited to two a day (one movement per tide cycle), which is lower than that currently taking place at the East Tilbury jetty in relation to the works associated with Thames Tideway (currently three barge movements per day). As such, no navigational risk assessment has been undertaken."

- 5.8 Furthermore, the protective provisions for the protection of the Port of London Authority included in the draft Development Consent Order (Application 3.1) include a provision that:

"the undertaker must not commence the construction of any specified work or the exercise of any specified function until plans of the work or function have been approved in writing by the PLA..."

- 5.9 In this context "plans" include "navigational risk assessments". Therefore prior to any specified works (any works in, on, under or over the Thames or those which may affect the Thames or PLA functions) commencing, to the extent that one is ultimately required, a navigational risk assessment would be required to be submitted for approval to the PLA.

- 5.10 All of the above must be understood in the context of the fact that the Project does not require temporary possession of the navigational channel of the River Thames (only the subsoil under it). Accordingly, the Project's impacts on navigation are limited, when compared with other projects affecting navigable rivers. If the Examining Authority considers that further information on navigational risk is required, this could be adequately addressed in the pre-examination or examination phases of the process.

- 5.11 Turning to the references to navigation in the Transport Assessment (Application Document 7.1) as highlighted by the Inspectorate, section 8.4.10 sets out that:

“This assessment is based on no construction waste being transported from site by river. Consequently, there are no construction impacts on river traffic using the River Thames.”

- 5.12 This is entirely the correct approach for the *Transport Assessment* to adopt, since it provides a worst-case assumption for the purposes of modelling construction traffic using the road network.
- 5.13 As the outputs of the Transport Assessment inform the Environmental Statement, this approach has ensured that the Environmental Statement (Application Document 6.1) is founded upon a worst-case assessment of the potential road traffic effects of the project. To assume some degree of river transport for construction would have understated the road traffic impacts, meaning that they would not be fully assessed in the Environmental Statement.
- 5.14 Separately from the assumptions made in the Transport Assessment for the purpose of traffic modelling, the Environmental Statement (Application Document 6.1) contains an assessment of the environmental effects of utilising the river for construction (see construction assumptions in this regard at 1.3.15 of Appendix 2.1 of the Environmental Statement (Application Document 6.3) and also assesses navigational risk (see extract from Chapter 13 above, which contains an assessment of navigational risk based on a scenario where the existing operational jetty is utilised).
- 5.15 Taking account of the preceding analysis, Highways England’s approach to navigational risk assessment is fully compliant with EIA legislation and appropriately addresses the issue.
- 6 “This question [*i.e. on navigation*] is asked in consideration of the guidance within paras 19, 27-29 etc. of Planning Act 2008: Guidance on the pre-application process”**
- 6.1 Highways England considers that, as far as navigational impacts are concerned, its approach to pre-application consultation is entirely consistent with the cited paragraphs of the pre-application guidance.
- 6.2 Highways England has always been clear that different options for the transportation of construction materials, including by road and / or river using new or existing infrastructure, were under consideration. This was explained and reported in the Preliminary Environmental Information Report published at Statutory Consultation. Chapter 14 of the Preliminary Environmental Information Report confirmed that, in relation to marine users and infrastructure, “*there may be potential impacts on river usage and navigation because of construction activities and subsequent use of a jetty for the transportation of construction materials and waste*”. As noted, Chapter 13 of the Environmental Statement assesses navigational risk, based on a scenario where the *existing* operational jetty is utilised.
- 6.3 There has, therefore, been appropriate and adequate pre-application consultation in relation to the different options under consideration for transportation of construction materials to site by road and / or river, as well as the environmental impacts associated with those options, for the purposes of paragraph 19 of the pre-application guidance. In accordance with paragraphs 27-29 of the pre-application guidance, this has included long-standing and timely consultation with

relevant statutory bodies and other stakeholders, including the Port of London Authority, the Port of Tilbury and the Marine Management Organisation. Appendix P of the Consultation Report (Application Document 5.1) sets out numerous meetings with those organisations, and those meetings have included engagement on these matters. There has been extensive opportunity for those bodies to comment on the Project prior to submission of the application for development consent, including in relation to matters concerning navigational impacts.

7 “The application does not appear to include an outline Site Waste Management Plan. Given the scale, nature and significance of the project, is this correct? (Planning Act 2008: Guidance on the pre-application process paras 43-44)”

7.1 There is no standalone document entitled “outline Site Waste Management Plan”. Nonetheless, proportionate and appropriate information and controls relative to the scale, nature and significance of the Project have been provided, when benchmarked against the standard of other projects that have been accepted for examination (even when accounting for the scale of the Project). This is an area where the substance of the controls included in the application should be attributed greater importance than the form of the document.

7.2 The draft Development Consent Order (Application Document 3.1) contains a requirement in Schedule 2 which sets out that an environmental management plan (second iteration) must be produced and approved by the Secretary of State (see paragraph 4 in Schedule 2). That plan must include plans for the management of site waste and materials (paragraph 4(2) of Schedule 2). This is in accordance with the procedure for the discharge of requirements agreed with the Department for Transport (see paragraph 6.3 of the Explanatory Memorandum (Application Document 3.2)).

7.3 By way of outlining what the SWMP approved under Requirement 10 will contain, there is a requirement secured via the ES Appendix 2.2 Register of Environmental Actions and Commitments (Application Document 6.3) (the REAC), reference MW009, that the contractors would produce a SWMP which will set out procedures for the characterisation, management and monitoring of waste arisings. Parameters for what this SWMP would include are set out, and the SWMP must include:

- initial forecast of construction waste listed by waste type, waste code, source and anticipated weight from detailed design;
- real-time calculation of construction waste listed by waste type, waste code and source;
- keeping records for waste arisings including final destination and, where relevant, off-site destination i.e. reuse, recycling, recovery or disposal;
- calculation of the reuse of site won materials;
- calculation of on-site recycling and reuse of demolition materials for reuse as recycled aggregate;

- calculation of off-site reuse of inert excavated materials;
- calculation of overall construction waste diverted from landfill;
- keeping records of relevant Duty of Care documentation (waste carrier registration, receiving site environmental permit number, waste transfer documentation reference) associated with the waste movement;
- the SWMP would be compatible with materials tracking element required as part of a Materials Management Plan to allow the full traceability of all materials excavated during construction.

7.4 These parameters for the SWMP in the REAC are secured via Requirement 4 of the draft Development Consent Order (Application Document 3.1). Other REAC measures would also provide additional controls in relation to site waste, and outline the parameters of the SWMP to be approved:

7.4.1 MW001: Preferentially avoiding use of primary materials

- (a) Where design specification permits, key construction materials used would include a measurable recycled or secondary content.
- (b) In line with the target set out in DMRB LA 110, 31% of aggregates used in construction would be recycled or secondary, for those applications where it is technically and economically feasible to substitute these alternative materials for primary aggregates. To facilitate compliance with this target, the Contractor would calculate the total aggregate required to achieve the detailed design, and the total where design specification dictates only primary aggregate is used. During construction, the Contractor would record the amount of primary and secondary/recycled aggregate by weight and calculate compliance with the target (offsetting the amount excluded by design specification).
- (c) In line with the target set out in DMRB LA 110, 70% recycling and reuse on site of suitable, uncontaminated concrete from demolition activities to substitute use of primary material.
- (d) Suitable uncontaminated concrete from demolition and construction activities would be processed to achieve non waste status e.g. in accordance with the Aggregates from Inert Waste Quality Protocol (WRAP, 2013).

7.4.2 MW002: Responsible sourcing

- (a) Priority would be given to sourcing primary, secondary and recycled aggregates from Kent, Essex and Greater London whenever the design specification permits and supply is available to embody the proximity principle.

- (b) The Contractor would use the BRE Framework Standard for Responsible Sourcing (BES6001) (BRE, 2008), to verify imported materials are sustainably sourced and managed, to reduce the impacts throughout the supply chain.

7.4.3 MW003: Components standardisation

- (a) The Contractors would be required to review the design and investigate opportunities to standardise (where reasonably practicable) construction components such as beam depths, abutment sizes and piers to increase efficiency of materials use in production and reduce waste production. This initiative would be progressed through detail design and documented in a material efficiency design report submitted to Highways England prior to construction.

7.4.4 MW004: Design for offsite construction

- (a) The Contractors would be required to review the design to investigate the use of pre-fabricated structures and components and encourage a process of assembly rather than construction on site where economically and technically feasible.

7.4.5 MW005: Pre-demolition surveys

- (a) Undertake pre-demolition surveys of any structures and buildings. Demolition materials would be identified and quantified including potential sources of recycled aggregate to be reused on site, as well as hazardous materials such as asbestos.

7.4.6 MW006: Site Waste manager

- (a) The Materials and Waste Manager would be responsible for ensuring compliance with waste mitigation requirements set out in the REAC and ensuring the SWMP is written and updated.

7.4.7 MW007: Reuse of excavated materials and soils

- (a) Excavated material would be managed in line with the waste hierarchy with preference given to reuse where feasible and the design allows.
- (b) Clean, naturally occurring soils would be reused on-site in line with Directive 2008/98/EC on Waste (Waste Framework Directive), Article 2.
- (c) Contractors would implement all required environmental permits, exemptions and a Materials Management Plan (in accordance with the Definition of Waste: Development Industry Code of Practice (CL:AIRE, 2011) for the reuse of made ground and contaminated soils

- (d) Material that are not suitable for reuse or is excess to requirements would likely be managed as waste.

7.4.8 MW008: Characterisation of excavated fill

- (a) A ground investigation would be used to identify material that would be excavated on site that could be used as Class I-IV fill materials or construction aggregate to reduce the need to import equivalent materials in more detail.

7.4.9 MW009: Site waste management procedures - in addition to the parameters mentioned above, also includes:

7.4.10 The SWMP would be compatible with materials tracking element required as part of a MMP to allow the full traceability of all materials excavated during construction. (REAC item MW007 refers).

7.4.11 MW010: Site waste management

- (a) All waste arisings would be characterised and monitored via the SWMP during construction.
- (b) Contractors would implement the following measures during construction in order to enhance recovery and recycling rates and minimise the quantities of waste:
 - i. All waste arisings would be characterised and recorded
 - ii. All wastes would be classified, with mirror entry code wastes sampled to determine classification, in line with the prevailing technical guidance.
 - iii. Waste management off-site would be completed under Duty of Care (Section 34 Environmental Protection Act). All waste would be transported using licensed carriers and taken only to appropriately permitted facilities. All waste movements would be accompanied by waste documentation such as Waste Transfer or Consignment Notes (dependent of waste class) which would be retained for the appropriate legal period.
 - iv. Satisfy the legal need under the Waste (England and Wales) Regulations 2011 (as amended) for pre-treatment of waste and confirm this in a written declaration on the associated waste documentation.
 - v. Demonstrate and document that sufficient space has been allowed within the construction working areas for stockpiles for; topsoil, contaminated material (for later off-site management), materials to be reused, excess clean material and imported materials for construction. This would enable the segregation of waste types, prevent the mixing of hazardous and non-hazardous wastes and enhance recovery rates by minimising degradation, damage and loss.
 - vi. Segregate hazardous and non-hazardous waste, separating waste at source by type, where reasonably practicable, providing separate skips for general waste, metal, dry recycling and timber as a minimum at each compound.

- Suitable provision would also be made for common hazardous wastes e.g. used absorbents, aerosol cans, oily rags and waste electronics.
- vii. Provide impermeable surfaces with sealed drainage for remediation, quarantine and hazardous waste storage areas to minimise cross contamination of other waste streams and surrounding ground.
 - viii. Label stockpiles and skips with contents, to prevent the mixing of hazardous and non-hazardous wastes.
 - ix. Comply with any specific waste storage and handling requirements required by legislation: e.g. for asbestos or waste electronics.
 - x. Vegetation waste should be reused on site wherever possible e.g. for ecological mitigation (unless contaminated by invasive species).
 - xi. Where possible agree with material suppliers to reduce the amount of packaging on materials or to participate in a packaging take-back scheme.
 - xii. Implement a material delivery system to avoid materials being stockpiled, which increases the risk of their damage and disposal as waste.
 - xiii. Monitor material quantity requirements to avoid over-ordering to reduce opportunity for oversupply and damage on site which would generate waste materials.
 - xiv. Prioritise off-ground storage e.g. on pallets, retention of materials in original packaging, protection from rain and collision by plant or vehicles.
 - xv. Ensure that the storage of lightweight or liquid/sludge waste materials will prevent dispersion by wind and precipitation.
 - xvi. Seal stockpiles in place for over 30 days to maintain integrity of material.
 - xvii. Seed topsoil stockpiles to reduce soil loss and maintain soil quality.
 - xviii. Prohibit the burning of waste and unwanted materials on-site.
 - xix. In line with the requirements of DMRB (LA 110), enhancement opportunities would be identified, reported and implemented during detailed design and construction to minimise the demand for material and the amount of waste sent for final disposal in landfill.

7.4.12 MW011: Re-use of materials

- (a) The Contractor would seek to achieve a target that 95% (by weight) of inert excavated materials destined for off-site waste management outside the Order Limits would be diverted from final disposal in landfill.

7.4.13 MW012: Re-use site

- (a) The Contractor would use the methodology in the Excavated Materials Assessment within ES Appendix 11.1 (Application Document 6.3) to identify re-use sites that score positively against the sustainability scoring system presented in that document.

7.4.14 MW013: Recycling and recovery of materials

- (a) The Contractor would use the methodology in the Waste Framework Directive (2008/98/EC) to demonstrate the recovery of non-hazardous construction waste, with a target of 90%. The Contractor would achieve a minimum recovery of 70% (by weight).

7.4.15 MW014: Monitoring operational phase

- (a) The road operator would provide a summary of materials used and waste generated during the first year of operation in line with requirements of DMRB, LA 110, Material Assets and Waste. This information would be reviewed against the forecast presented in ES Chapter 11, Material assets and waste (Application Document 6.3) and used to update the Environmental Management Plan for future operational years.

7.4.16 MW015: Hazardous construction waste disposal

- (a) The Contractor would seek to achieve a target of 70% (by weight) of hazardous construction waste to be diverted from landfill. It is anticipated that this would be achieved by undertaking remediation or treatment within the Order Limits or off site at third party facilities. It is acknowledged that the nature of some hazardous construction waste may preclude this. Where a hazardous construction waste cannot be diverted from landfill, the justification and evidence will be provided by the Contractor and logged by the Contractor in the SWMP.

7.5 The *substance* of the information and assessments associated with a SWMP is therefore clearly and adequately presented in the Project application. Additional information on site waste is contained in the following appendices (Application Document 6.3):

- Appendix 11.1: Excavated Materials Assessment
- Appendix 11.2: Mineral Safeguarding Assessment
- Appendix 11.3: List of third-party offsite waste infrastructure receptors
- Appendix 11.4: Material Assets Assessment Supporting Data
- Appendix 11.5: Waste Assessment Supporting Data

7.6 An outline SWMP is not a prescribed document under the 2009 Regulations, nor under the Planning Act 2008. In accordance with a long line of established precedents (see the Annex to this letter), Highways England has not provided an outline SWMP. Nonetheless, as outlined above, controls in relation to site waste management, and the outline of what the SWMP to be approved by the Secretary of State should contain is provided in the application.

7.7 Should the Examining Authority consider that further information is required, this can be adequately addressed during the post-application phase and is not a matter that should prevent the acceptance of the application.

7.8 Highways England considers sufficient information has been provided, but should the Examining Authority consider this is necessary for this Project, there is a recent precedent for

this approach in the Southampton to London pipeline project: in that scheme of (which is of a similar scale to the Project), an outline SWMP was not provided as part of the application submission and was subsequently provided at the fourth deadline during the examination⁵ and that scheme has since been successfully granted consent by the Secretary of State. As outlined above in relation to the CTMP, such action is not unusual.

- 7.9 Reference is made by the Inspectorate to Paragraphs 43 – 44 of the pre-application guidance in the context of its queries regarding the existence of an outline SWMP. Highways England understands and acknowledges the importance of local authority engagement during the pre-application process. It is for this reason that an extensive programme of engagement with local authorities has been undertaken, as described in Appendix P of the Consultation Report. This has included briefings and meetings with local authorities to discuss key elements of the draft Development Consent Order (DCO), during which there were opportunities for local authorities and other stakeholders to comment on the draft DCO and to make suggestions for additional and modified drafting, including in relation to the Requirements in Schedule 2 of the draft DCO.
- 7.10 Highways England therefore considers that its approach is entirely consistent with paragraphs 43 – 44 of the pre-application guidance, as more fully described in Appendix A of the Consultation Report.

8 “Habitats Regulations Assessment (HRA) - the Stage 1 assessment has screened out a number of matters from Stage 2 assessment e.g. increased recreational pressure on designated sites and changes in water quality. Does the application include evidence elsewhere about the matters screened out?”

- 8.1 Where the screening relies on evidence / measures from other parts of the application it is clearly signposted within the Habitats Regulations Assessment – Information to Inform Stage 1 Screening (Application Document 6.5) either in the paragraphs explaining the reasoned argument for a conclusion, or in the description of the Project (provided in the project description and assumptions sections in the screening report).
- 8.2 Where no assessment methodology exists for a particular effect pathway it is necessary to present a reasoned argument as to why it is considered that no adverse effects would occur (as opposed to a quantitative assessment against defined thresholds within published guidance). Where this is necessary, the assessment draws on the assessment work reported in other application documents where relevant, which is signposted in the text of the reasoned

⁵ An Outline CEMP for that project submitted with the application, simply noted that “A Site Waste Management Plan (SWMP) would be developed prior to construction. The contractor(s) would maintain and monitor the SWMP throughout the construction phase and oversee that any sub-contractor(s) adhere to the SWMP” see here: <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN070005/EN070005-000249-6.4%20Appendix%2016.2%20Outline%20Construction%20Environmental%20Management%20Plan.pdf> At Deadline 4 the SWMP was updated and further detail was provided: <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN070005/EN070005-001101-8.51%20Appendix%20C%20Outline%20Site%20Waste%20Management%20Plan.pdf>

arguments and assumptions. The approach taken is fully compliant with Highways England’s relevant standard DMRB LA 115.

- 8.3 During extensive consultation with Natural England, the Project team have responded to all requests for further information on the draft Stage 1 report and incorporated additional information into the submitted version of the Habitats Regulations Assessment – Information to Inform Stage 1 Screening (Application Document 6.5). The comments received from Natural England on the pre-application draft Stage 1 report (including requests for further information) and responses to those comments are presented in Appendix F.2 of the screening report. In consultation subsequent to submission, Natural England have not asked for any additional information or justification for the screening conclusions. Highways England have not yet reached an agreement with Natural England on all matters in the submitted HRA Screening report and discussions are ongoing. Highways England have however managed to gain agreement on more screening conclusions than documented in the submitted Habitats Regulations Assessment – Information to Inform Stage 1 Screening (Application Document 6.5). Highways England expect a substantially complete, if not complete, agreement with Natural England on screening conclusions during the pre-examination period.
- 8.4 Signposting of where the reasoned arguments and evidence is provided within the screening report for each effect pathway for which a conclusion of no likely significant effects is made are given below.

Screened out impacts	Signposting (unless otherwise specified the paragraph, table and figure references are to the Habitats Regulation Assessment Screening Report (Stage 1))
Vessel collision with species during construction	<p>Paragraph 8.1.4 states that no pathway between vessel collision with species during construction and any European sites exists.</p> <p>Table 4.3 sets out the zone of influence and states that there would be no appreciable change in vessel movements.</p> <p>Table 6.1 sets out the potential for likely significant effects at each European site with no potential to affect any European sites, no effects are identified for vessel collision with species.</p> <p>Table 7.2 states that Natural England agree that there is no significant effect from Vessel collision.</p>
Change in air quality – vehicle emissions – construction	Paragraph 8.1.4 states that no pathway between air quality from vehicle emissions during construction to affect any European sites.

	<p>Table 4.3 sets out the potential zone of impact and includes air quality emissions during construction and operation.</p> <p>Paragraph 5.1.10 states that a 200m buffer from the construction Affected Road Network, as shown in Figure 6, did not intersect with any European sites. Table 6.1 shows no European sites lie within the zone of influence relating to air quality. Figure 6 of the Screening Report shows that there are no European Sites within 200m of the construction Affected Road Network.</p> <p>Table 7.2 shows that the conclusion is currently under discussion with Natural England.</p> <p>The air quality chapter of the ES (chapter 5 of Application Document 6.1) paragraph 5.6.103 to 5.6.105 provides the assessment of construction related air quality on designated sites.</p>
<p>Change in air quality – vessel emissions – construction river transport</p>	<p>Paragraph 8.1.4 states that no pathway between air quality from construction vessel emissions to European sites exists.</p> <p>Furthermore, Table 4.3 identifies the guidance followed for this assessment and the risk of shipping emissions leading to exceedances of air quality objectives. The number of tugs predicted is lower than the threshold, so the potential pathway is screened out. Table 6.1 shows that no European protected sites would be affected due to the screening of this item.</p> <p>Table 7.2 states that this matter is still under discussion with Natural England.</p> <p>The air quality effects of barge movements are assessed within the Environmental Statement Air Quality Chapter 5 (Application document 6.1) paragraph 5.6.7.</p>
<p>Changes in light levels – operation</p>	<p>Paragraph 8.1.4 states that no pathway between sources of operational lighting and European sites exist.</p> <p>Table 4.3 states the Zone of Influence is limited to the area immediately adjacent to either side of the highway and does not intersect with any European sites.</p> <p>Table 6.1 shows that no European Sites would be affected.</p>

	<p>Table 7.2 shows that the matter remains under discussion with Natural England.</p>
<p>Changes in recreational pressure</p>	<p>Paragraph 8.1.4 states that there is no pathway to effects between recreational pressure and any European sites.</p> <p>Table 4.3 describes the potential pathway that has been assessed.</p> <p>Table 6.1 identifies that disturbance from recreational pressure is potentially an effect on four estuarine European sites (Benfleet, Medway, Thames and Swale).</p> <p>Paragraphs 6.3.49 to 6.3.57 outline the reasoned argument as to why the impact of recreational pressure on the identified European sites would not cause any likely significant effects. There is no assessment methodology for the assessment of recreational pressure therefore a reasoned argument has been used and is a justified approach.</p> <p>Recreational disturbance is assessed for both construction and operation. No specific assessment methodology exists for this pathway and it draws on the assessment work reported in Environmental Statement (Application Document 6.1) Chapter 13 in relation to changes in use of public rights of way and the provision of open space access opportunities shown on ES Figure 13.4 Proposed Walking Cycling and Horse-riding Links.</p> <p>Table 7.2 shows that this matter is still under discussion with Natural England.</p>
<p>Changes in surface water quality and quantity – construction and operation</p>	<p>Paragraph 8.1.4 states that there is no pathway to affect any European sites on the basis that potential impacts are managed.</p> <p>Table 4.3 shows that the project design is such that not change is anticipated. Drainage will be attenuated, and discharges permitted to comply with water quality and quantity standards.</p> <p>Changes in water quality is screened out in construction and operation as there is no pathway to an effect. The Project measures that ensure this are set out in paragraphs 4.3.8 & 4.3.9, 4.3.20 to 4.3.25 and paragraphs 4.3.27 to</p>

	<p>4.3.36. These paragraphs cross refer to more detailed information in the Environmental Statement.</p> <p>Paragraphs 6.3.63 to 6.3.65 present the reasoned argument as to why there would be no likely significant effects, this depends on the drainage design detailed in Section 4.3.</p> <p>Table 6.1 shows that there are no impacted European sites.</p> <p>Table 7.2 shows that this matter remains under discussion (Changes to key indicators (water quality)) with Natural England.</p>
<p>Invasive non-native species</p>	<p>Paragraph 8.1.4 states that no pathway between invasive non-native species and any European sites exists.</p> <p>Table 4.3 states that there would be no change to the prevalence or spread of non-native species at any of the European sites as a result of the project.</p> <p>4.3.26 and 4.3.41 identifies the measures which have been committed by the project to control the spread of invasive species. These paragraphs cross reference to industry best practice and the Environmental Statement.</p> <p>These measures are included in the REAC and referenced in the Marine Biodiversity Chapter and Road Drainage and Water Environment Chapter of the Environmental Statement (Application document 6.1).</p> <p>Table 6.1 shows no European sites are affected.</p> <p>Table 7.2 shows that this conclusion has been agreed with Natural England.</p>
<p>Changes in air quality – vehicle emissions – operation in relation to Benfleet and Southend Marshes SPA or the Thames Estuary and Marshes SPA.</p> <p>Note: impacts on Epping Forest and North Downs Woodlands have been screened in.</p>	<p>Paragraph 8.1.4.I shows that no pathway to Benfleet and Southend Marshes SPA or the Thames Estuary and Marshes SPA exists as they are not within 200m of the Affected Road Network.</p> <p>Figure 5 demonstrates the proximity of European protected sites to the Affected Road Network.</p> <p>Table 7.2 shows that Natural England have agreed with these conclusions.</p>

<p>Changes in air quality – vehicle emissions – operation in relation to the Swale, Medway and Thames Estuary Ramsar</p>	<p>Tables 8.3, 8.4, 8.6, 8.7 and 8.8 state that there would be no likely significant effects from vehicle emissions on these European sites.</p> <p>Figure 5 demonstrates the proximity of these European protected sites to the Affected Road Network all of which are within 200m and therefore need assessing.</p> <p>A reasoned argument is presented in paragraphs 6.3.13 to 6.3.19 which argues that threshold of significance in Highways England’s DMRB LA105 are not exceeded for these sites. These paragraphs also cross reference to further detail within Chapter 5 of the Environmental Statement (Application Document 6.1), and in particular the assessments contained in Appendix 5.4 of the Environmental Statement (Application Document 6.3)</p> <p>Table 7.2 shows that Natural England have agreed with these conclusions.</p>
<p>Changes in air quality – dust emissions.</p>	<p>Table 8.1 Project change in air quality shows that likely significant effects associated with dust have been screened out.</p> <p>Table 4.3 outlines the Zone of Influence considered for dust effects.</p> <p>Paragraphs 4.3.15 to 4.3.19 describe the integral measures to control dust.</p> <p>Table 6.1 identifies the four European estuarine sites within the zone of influence.</p> <p>Paragraphs 6.3.11 to 6.3.12 presents the reasoned argument as to why dust emissions would not result in Likely Significant Effects on those sites due to the control measures committed to.</p> <p>Table 7.2 shows that Natural England have confirmed that they agree with this conclusion for three of the estuarine sites but the effect on the Thames Estuary Marshes SPA Ramsar is still under discussion.</p>
<p>Changes in groundwater quality</p>	<p>Table 4.3 presents the Zone of Influence for groundwater effects from the project. More information is provided in the ES Appendix 14.7 Water Framework Directive (App Doc 6.3).</p>

	<p>Figure 4 shows the area included within the groundwater model for the Zone of Influence.</p> <p>Table 6.1 identifies that the affect pathway could only affect the Thames Estuary and Marshes SPA Ramsar site.</p> <p>Paragraphs 6.3.21 to 6.3.26 provide the reasoned argument detailing why there would be no likely significant effects and include more detailed references to Environmental Statement documents and figures.</p> <p>Table 7.2 shows that Natural England have agreed that there would be no groundwater effects for all the sites except for the Thames Estuary and Marshes Ramsar which remains under discussion.</p>
Changes in noise and vibration – operation	<p>Table 4.3 outlines the zone of influence for noise and vibration in operation, which is 600m as detailed in Highways England’s Standard DMRB LA111.</p> <p>Table 6.1 identifies the four estuarine sites with functionally linked land within 600m of the operational network.</p> <p>Paragraph 6.3.38 and 6.3.39 provide the reasoned argument detailing why there would be no likely significant effects from noise and vibration during operation.</p> <p>Table 7.2 shows that Natural England have agreed with the conclusion for all but the Thames Estuary and Marshes SPA Ramsar, which is still under discussion.</p>
Changes in noise and vibration – tunnel construction	<p>Table 4.3 sets out the zone of influence for noise and vibration from tunnel construction.</p> <p>Table 6.1 sets out the four estuarine European sites which could be affected by noise and vibration associated with tunnel construction.</p> <p>Paragraph 6.3.31 to 6.3.33 provides the reasoned argument why there would be no likely significant effects from tunnel construction and references ES Appendix 12.3: TBM Noise and Vibration Assessment, (Application Document 6.3).</p> <p>Table 7.2 shows that Natural England have confirmed their agreement for Benfleet and</p>

	<p>Southend Marshes SPA and Ramsar. At the time of submission, the other three estuary sites were still under discussion, subsequently Swale and Medway have been agreed.</p>
<p>Changes in light levels – construction</p>	<p>Table 4.3 shows the zone of influence for construction light.</p> <p>Table 6.1 shows the four estuarine European Sites potential affected by construction light.</p> <p>Paragraph 6.3.41 to 6.3.48 provides the reasoned arguments demonstrating why there would not be any likely significant effects associated with construction lighting. These paragraphs refer to the Code of Construction Practice.</p> <p>Table 7.2 shows that Natural England have confirmed their agreement for Benfleet and Southend Marshes SPA and Ramsar. At the time of submission, the other three estuary sites were still under discussion.</p>
<p>Reduction in species density due to Vehicle collisions and Utilities infrastructure collision</p>	<p>Table 4.3 defines the Zone of Influence where we would have a reduction in species density as a result of vehicle collisions and utility infrastructure collisions.</p> <p>Table 6.1 identifies the potential for likely significant effects at each European site. In this case it is the four estuarine sites which are within the zone of influence.</p> <p>The reasoned arguments are made in paragraphs 6.3.59 to 6.3.62 which conclude no likely significant effects.</p> <p>Table 7.2 shows that NE confirm agreement with the conclusions of no likely significant effects.</p>
<p>Effects of climate change</p>	<p>Although not a formal pathway climate change has been assessed in line Highways England's Standard DMRB LA115.</p> <p>The reasoned argument is presented in paragraphs 6.3.66 to 6.3.76 which concludes that there would be no likely significant effects.</p> <p>Table 7.2 shows that Natural England agree with the conclusions that there would be no likely significant effects due to the project associated with climate change.</p>

9 “As part of this point the in-combination assessment appears to be missing for some of the matters in Stage 1. Is this correct?”

9.1 This statement is incorrect. Paragraph 4.2.24 of the Habitats Regulations Assessment – Information to Inform Stage 1 Screening (Application Document 6.5) sets out the scope of the in-combination assessment. This paragraph sets out:

4.2.24 The Stage 1 Screening includes an assessment of effects of the Project in combination with other plans or projects. This assessment is limited to the European sites and effect pathways where no LSE has been found as a result of the Project alone. It is not completed for potential effects where no pathway exists or where any changes may occur but have been shown to be nugatory.

4.2.25 Any interactions between the European sites and the Project where a conclusion of potential LSE alone has been reached will be considered in combination with other plans and projects at Stage 2 Appropriate Assessment.

4.2.26 An in-combination assessment is carried out for pathways where no LSE has been concluded for the Project alone.

9.2 In-combination effects are not relevant where there is no likely significant effect because no pathway to effect has been shown (e.g. changes in water quality) and where any changes that could occur have been shown to be nugatory (e.g. changes in recreational pressure or changes in ground water). Sufficient information is provided and any clarification or additional information can be adequately examined within the next phase of the DCO process. The assessment undertaken is in full compliance with Highways England’s relevant standard, DMRB LA115.

10 Natural England does not appear to have been consulted on the Stage 2 assessment. Is this correct? (Planning Act 2008: Guidance on the pre-application process paras 27-29 and 95).

10.1 This is incorrect. As set out in section 8.2.1 of the Habitats Regulations Assessment Statement to Inform the Appropriate Assessment (Stage 2) (Application Document 6.5), the Stage 2 Report, a draft of the Stage 2 assessment was provided to Natural England on 13 July 2020. Appendix B of that document sets out how Highways England has responded to each comment raised as part of that consultation exercise. Highways England has therefore complied with paragraphs 27-29 and 95 of the pre-application guidance, as described in Appendix A of the Consultation Report. Section 7 of the Habitats Regulations Assessment Information to Inform Stage 1 Screening (Application document 6.5) describes the early and extensive pre-application consultation undertaken with Natural England, including use of an Evidence Plan (which is included at Appendix F).

Conclusion

We trust that the signposting information we have provided within this letter sets out a clear and sufficient response to the concerns you have raised.



As set out earlier, our firm view is that the pre-application consultation procedures have been complied with and this application is of a satisfactory standard in accordance with section 55(3) of the Planning Act 2008. Highways England emphasises that the approach in this application to the matters raised by the Inspectorate is consistent with a significant number of previous applications for development consent accepted by the Planning Inspectorate, even accounting for the scale of the Project. The pre-application consultation has provided technical information which goes well beyond the statutory requirements, and the technical engagement has been extensive.

Yours faithfully



BDB Pitmans LLP

M

E TomHenderson@bdbpitmans.com

Annex

The precedents below have all been accepted for examination by the Planning Inspectorate (and where the decision stage of the process has been reached, granted consent by the Secretary of State). The information provided in the table presents the approach undertaken on those projects to the best of our knowledge, based on our experience (where we were involved on the project) and otherwise based on the searches we have undertaken.

Table 1 – projects where no draft of the Transport Assessment application document was shared with local authorities in advance of application submission

Project	Status
<i>Southampton to London pipeline</i>	<i>Accepted by the Planning Inspectorate, granted by the Secretary of State</i>
<i>A303 Stonehenge</i>	<i>Accepted by the Planning Inspectorate, granted by the Secretary of State</i>
<i>A14 Cambridge to Huntingdon</i>	<i>Accepted by the Planning Inspectorate, granted by the Secretary of State</i>
<i>M42 Junction 6</i>	<i>Accepted by the Planning Inspectorate, granted by the Secretary of State</i>
<i>A19 Testo's Junction</i>	<i>Accepted by the Planning Inspectorate, granted by the Secretary of State</i>
<i>A19 Downhill Lane</i>	<i>Accepted by the Planning Inspectorate, granted by the Secretary of State</i>
<i>M25 Junction 10</i>	<i>Accepted by the Planning Inspectorate</i>
<i>M25 Junction 28</i>	<i>Accepted by the Planning Inspectorate</i>

Table 2 – projects where no outline Construction Traffic Management Plan was provided with the application submission

Project	Status
<i>Southampton to London pipeline</i>	<i>Accepted by the Planning Inspectorate, granted by the Secretary of State</i>
<i>A303 Stonehenge</i>	<i>Accepted by the Planning Inspectorate, granted by the Secretary of State</i>

<i>A14 Cambridge to Huntingdon</i>	<i>Accepted by the Planning Inspectorate, granted by the Secretary of State</i>
<i>M42 Junction 6</i>	<i>Accepted by the Planning Inspectorate, granted by the Secretary of State</i>
<i>A19 Testo's Junction</i>	<i>Accepted by the Planning Inspectorate, granted by the Secretary of State</i>
<i>A19 Downhill Lane</i>	<i>Accepted by the Planning Inspectorate, granted by the Secretary of State</i>
<i>M25 Junction 10</i>	<i>Accepted by the Planning Inspectorate</i>
<i>M25 Junction 28</i>	<i>Accepted by the Planning Inspectorate</i>

Table 3 – projects where no outline Site Waste Management Plan was provided with the application submission

Project	Status
<i>Southampton to London pipeline</i>	<i>Accepted by the Planning Inspectorate, granted by the Secretary of State</i>
<i>A303 Stonehenge</i>	<i>Accepted by the Planning Inspectorate, granted by the Secretary of State</i>
<i>A38 Derby Junctions</i>	<i>Accepted by the Planning Inspectorate.</i>
<i>A14 Cambridge to Huntingdon</i>	<i>Accepted by the Planning Inspectorate, granted by the Secretary of State</i>
<i>M25 Junction 10</i>	<i>Accepted by the Planning Inspectorate.</i>
<i>M25 Junction 28</i>	<i>Accepted by the Planning Inspectorate</i>