

Meeting note

Project name	Lower Thames Crossing
File reference	TR010032
Status	Final
Author	The Planning Inspectorate
Date	11 November 2021
Meeting with	Highways England (the Applicant)
Venue	Teams meeting
Meeting objectives	Project update meeting
Circulation	All attendees

Summary of key points discussed and advice given

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.

Project Update

The Applicant noted that the Thames Freeport designation had been announced in the budget. After briefing stakeholders of the designation on the 10 November 2021, National Highways made a public announcement through a press release on the 11 November 2021 in regard to land overlap with the Port of Tilbury. The release confirmed that the Applicant is looking to work around the overlap through engagement with stakeholders.

The designation afforded the Applicant additional clarity with regards to programme implications; informing the Inspectorate that submission would not occur in Q1/Q2 2021 but an update on programme would be forthcoming early in 2022.

The Applicant added that it is working with Thurrock Council and Thames Freeport towards shared proposals in regard to overlap with the area known as 'Tilbury Fields' in respect of spatial allocations of land and the sequencing of construction.

Feedback on draft documents

The discussion noted the Inspectorate's comments on the following draft documents sent for review by the Applicant:

- Draft Development Consent Order (dDCO)
- Provisional Navigational Risk Assessment (pNRA)

The Inspectorate's written comments on the dDCO and pNRA are added as Appendices to this meeting note.

There was also some further discussion on the suite of draft documents as discussed on the 16 September, the written comments can be found in that meeting note:

https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010032/TR010032-Advice-00051-1-210916_LTC_Final_meeting_note.docx.pdf

Draft Development Consent order feedback comments

There was a discussion on the wording of various parts of the dDCO, including; 'in consultation with', 'substantially in accordance with' and 'materially new or materially different environmental effects'. In regard to the latter, the Inspectorate noted that the judgement of 'materially different' within the DCO would benefit from being clearly defined. The Applicant added that in respect to 'substantially in accordance with', the wording is considered appropriate given the nature of those particular documents as outline documents.

The Inspectorate raised two points on the dDCO; 42(1) and 64, seeking additional explanation. The Applicant added that point 42 had been included in three transport Development Consent Orders to date and whilst would provide justification for its applicability to this project, did not consider it to be a novel provision.

The Inspectorate concluded that it would be keen to view any further iteration of the documents in advance of submission to understand any evolution of the content.

Preliminary Navigational Risk Assessment feedback comments

The Inspectorate noted that the Applicant had responded in detail to is comments/observations but had not had time in advance of the meeting to review them. The Inspectorate added that it was unclear as to the nature and amount of river movement used in spoil management and not totally assured as to whether those movements have been assessed for their environmental impact. The Inspectorate asked for additional clarity and cross reference to the environmental statement.

PINS comments on dDCO

LOWER THAMES CROSSING – TR010032

Section 51 advice regarding draft application documents submitted by NATIONAL HIGHWAYS

NATIONAL HIGHWAYS submitted the following draft documents for review by the Planning Inspectorate as part of its Pre-application Service¹:

- Draft Development Consent Order

The advice recorded in the table comprising this document relates solely to matters raised upon the Planning Inspectorate’s review of the draft application documents, and not the merits of the proposal. The advice is limited by the time available for consideration; if no comments are recorded against a provision/requirement in the text of the original document it should not be taken that The Inspectorate has exhausted any comments it may wish to make on the matter. Any comments made are raised without prejudice to the acceptance or otherwise of the eventual application.

The Inspectorate previously commented on the dDCO on 27 February 2020: <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010032/TR010032-Advice-00013-1-Lower%20Thames%20Meeting%20Note%20Final.pdf>

Draft Development Consent Order		
Ref No.	Article/ Requirement/Schedule	Comment/Question
1.	General	In the Inspectorate’s comments on 27 February 2020, we stated that:

¹ See <https://infrastructure.planninginspectorate.gov.uk/application-process/pre-application-service-for-applicants/>

Draft Development Consent Order

Ref No.	Article/ Requirement/Schedule	Comment/Question
		<p><i>A number of Articles make provision for compensation to be determined, in case of dispute, under Part 1 of the 1961 Act. It is acknowledged that a provision in this form is in the various Model Provisions and is commonplace in DCOs and other Orders. However, Part 1 of the 1961 Act only relates to compensation for compulsory acquisition. In order for there to be certainty that it would apply in other situations (e.g. Article 12, Article 23), should a modification be included as with the other compensation provisions in Schedule 9? If not, why not?</i></p> <p>We cannot see how this advice has been incorporated into the current version of the dDCO. For example, this usage is still employed in Articles. 12 (in which this reference has been reinforced in the latest draft), 13, 14, 18, 21, 23 and 24 – which do not deal with Compulsory Acquisition.</p>
2.	Title	Is The A122 (Lower Thames Crossing) Development Consent Order 202[] still the title for the scheme (re A122)?
3.	2 Interpretation	<p>“commence” means beginning to carry out any material operation (as defined in section 56(4) (time when development begun) of the 1990 Act) forming part of the authorised development other than operations consisting of archaeological investigations and pre-construction ecological mitigation, environmental surveys and monitoring, investigations for the purpose of assessing and monitoring ground conditions and levels, erection of any temporary means of enclosure, receipt and erection of construction plant and equipment, diversion and laying of underground apparatus (except any excluded utilities works), vegetation clearance and accesses for advanced compound areas, and the temporary display of site notices or information and “commencement” is to be construed accordingly.</p>

Draft Development Consent Order

Ref No.	Article/ Requirement/Schedule	Comment/Question
		<p>In the Inspectorate's comments on 27 February 2020 on the LTC draft documents (see link above), we stated that:</p> <p><i>The effect of these articles is to permit a wide range of works before discharge of the requirements. The applicant may wish to consider further explanation for the necessity and acceptability of this, particularly with reference to requirements directed at the works, such as the environmental management requirement (requirement 4), archaeology requirement (requirement 9) and fencing requirement (requirement 12).</i></p> <p><i>The EM should explain why it is necessary to undertake these works before discharge of requirements and clarify any impacts of these works, so that the ExA can consider whether this is justified or whether it is more appropriate that the works be controlled by requirement.</i></p> <p><i>The EM says that the works excluded from the definition of commence are de minimis or have minimal potential for adverse impacts but does not explain how this is secured in the DCO.</i></p> <p><i>The DCO should not permit works outside those assessed in the ES and applicant should consider limiting these works to those assessed within the ES.</i></p> <p>The Inspectorate recognises that the definition in the current draft has been amended but we cannot see how the above advice has been incorporated into the current version of the dDCO.</p> <p>We would make the following additional comments on the current draft:</p> <ul style="list-style-type: none">• 'Underground apparatus' is not defined – as worded this could involve major works.• Are any of the Works Nos. G1 to G11 and Works Nos. MU1 to MU35 intended to be excluded?

Draft Development Consent Order

Ref No.	Article/ Requirement/Schedule	Comment/Question
		<ul style="list-style-type: none"> • Why are advanced compound areas specified? (advance compound areas as shown in the Code of Construction Practice)? • What is the difference between 'site clearance' and 'vegetation clearance' and does 'vegetation clearance' only relate to advanced compound areas?
4.	2 Interpretation	<p>"the tunnels" means the tunnels to be constructed under the river Thames and shown as the tunnel on the tunnel area plan</p> <p>There is some confusion in the above phrase between 'tunnels' and 'tunnel'. A consistent approach could usefully be adopted.</p> <p>Is the tunnel area plan to be certified?</p>
5.	2.(3)	Is it right that distances are approximate – e.g. what about A6: Limits of Deviation?
6.	2.(4)	It would be useful if the Applicant could explain the application of this clause to other provisions in the dDCO in relation to LTC – and why it is included under 'Definitions'.
7.	2.(8)	Is this 'in this Order' or is it 'in article 8'?
8.	3.(2)	<p>The undertaker is authorised to carry out the works specified in column (2) of Part 2 of Schedule 1 (scheduled monuments) in relation to the scheduled monuments specified in column (1) of that Schedule</p> <p>It would be useful if the Applicant could explain the purpose and effect of this in relation to LTC taking into account the definition of authorised development in Article 2?</p>

Draft Development Consent Order

Ref No.	Article/ Requirement/Schedule	Comment/Question
9.	3.(3)	<p>'Any enactment applying to land within, adjoining or sharing a common boundary the Order limits has effect subject to the provisions of this Order'</p> <p>It would be useful if the Applicant could explain how this clause would apply in the case of LTC.</p>
10.	6 Limits of deviation	<p>In the Inspectorate's comments on 27 February 2020 on the LTC draft documents (see link above), we stated that:</p> <p><i>The applicant should explain and justify the need for additional flexibility to that already incorporated within the limits of deviation themselves.</i></p> <p><i>The applicant should also explain what process is in place for the SoS to determine whether exceeding the vertical limits would not give rise to any materially new or materially worse adverse environmental effects</i></p> <p>The phrase to which this comment related is still contained in 6.(2) and we cannot see how the above advice has been incorporated into the current version of the dDCO.</p> <p>In what circumstances would 6(2) apply – and should additional bodies to local planning authorities be consulted (and should they be required to certify their agreement)?</p> <p>Our February 2020 comments also made the point that <i>It is unclear how the (vertical) limits of deviation apply to the figures in the middle column of Schedule 10.</i></p>
11.	6 Limits of deviation	<p>6 (2) says that deviations 'in excess of these limits' should not have a materially worse effect than those presented in the Environmental Statement. But it would seem that there is potential for different effects</p>

Draft Development Consent Order

Ref No.	Article/ Requirement/Schedule	Comment/Question
		with a 25m depth difference and there could be opportunities to narrow the parameters and improve the environmental outcomes. Equally, the LoD should not be so wide as to present wholly different schemes.
12.	8.(4)	<p>In the Inspectorate's comments on 27 February 2020 on the LTC draft documents (see link above), we stated that:</p> <p><i>The applicant should explain why it is considered unnecessary to obtain the consent of the Secretary of State prior to a transfer or grant to the specified companies.</i></p> <p><i>In particular, as the CA and TP powers can be transferred to these bodies without consent, the applicant will need to satisfy the SoS that the companies have sufficient funds to meet these costs.</i></p> <p>The phrase to which this comment related is still contained in 6.(4) and we cannot see how the above advice has been incorporated into the current version of the dDCO.</p>
13.	11 Access to Works	<p>The undertaker may, for the purposes of the authorised development, form and lay out means of access, or improve (which includes altering) existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.</p> <p>Is it intended to insert any codicil?</p>
14.	16 Clearways, speed limits and prohibitions	<p>This Article deals inter alia with driving in excess of the speed limit – is this a proper matter for a DCO or should it be left to existing statute?</p>

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Ref No.	Article/ Requirement/Schedule	Comment/Question
15.	17 Traffic regulation – local roads	Has this (and other) Article(s) been discussed with the relevant highways authorities?
16.	18 Powers in relation to relevant navigations or watercourses	<p>This Article appears to give the undertaker some wide-ranging powers in respect of navigation (including to interfere with the navigation of the relevant navigation or watercourse).</p> <p>Has it been discussed with the Port of London Authority?</p> <p>It does not appear to be limited to the area within the Order Limits (as Art. 19 does, for example)?</p> <p>How is 'reasonable endeavours' in (2) defined?</p>
17.	23.(1)	<p>The undertaker may fell or lop any tree or shrub within or overhanging land within the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub...</p> <p>In the Inspectorate's comments on 27 February 2020 on the LTC draft documents (see link above), we stated that:</p> <p><i>To note the recent request for more information on A63 Castle Street. The Secretary of State is concerned to ensure that the loss of trees is limited to those included within the Environmental Statement and is thus proposing to amend article 35 of any Development Consent Order that might be granted by the Secretary of State. The amended article proposed is:</i></p> <p><i>Felling or lopping of trees and removal of hedgerows</i></p>

Draft Development Consent Order

Ref No.	Article/ Requirement/Schedule	Comment/Question
		<p><i>1.-(1) The undertaker may fell or lop any specified tree or any shrub within or overhanging land within the Order limits (other than a tree which is the subject of a Tree Preservation Order), or fell, lop or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub— ...</i> <i>"specified tree" means a tree which is shown as a tree to be removed on the drawing with drawing title "Volume 2 Figure 9.9 Tree Removed Proposals" in the environmental statement.</i></p> <p>The phrase to which this comment related is still contained in 23.(1) and we cannot see how the above advice has been incorporated into the current version of the dDCO and query how this article works with the mitigation secured via, for example, the CEMP.</p>
18.	23(4)	<p>...The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph (2), remove any hedgerow within the Order limits that is required to be removed...</p> <p>In the Inspectorate's comments on 27 February 2020 on the LTC draft documents (see link above), we stated that:</p> <p><i>Where it is known that specific hedgerows need to be removed, they should be listed in a Schedule and this article amended to refer to the Schedule. Where this is not possible the applicant should consider adding an additional paragraph to this article to the effect that any other hedgerows should only be removed once the prior consent of the local planning authority has been obtained.</i></p> <p><i>The applicant should have regard to paragraph 22.1 and the good practice point 6 in Advice Note 15. If the applicant wishes to adopt a different approach it is advisable to justify this in the EM</i></p> <p>https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2014/10/advice_note_15_version_1.pdf</p>

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Ref No.	Article/ Requirement/Schedule	Comment/Question
		<p>The phrase to which this comment related is still contained in 23.(1) and we cannot see how the above advice has been incorporated into the current version of the dDCO.</p> <p>In addition, the current draft shows the replacement of the phrase 'has the same meaning' by 'includes' in (5) - thus, apparently, widening the definition of hedgerow. The rationale for this change is not clear.</p> <p>How does this article work with the mitigation that is to be secured and on which the Environmental Statement relies?</p>
19.	25.(1)	<p>The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development, or to facilitate it, or is incidental to it, or is required as replacement land.</p> <p>This Article does not restrict the definition of 'replacement land' in the manner that the Act does - which is to be given in exchange for the order land under section 131 or 132 - nor does it define it in Article 1.</p>
20.	27.(1)	<p>An amendment in the current version of the dDCO changes the time limit for CA from 10 years to 8 years.</p> <p>Is the rationale for the specified time limit articulated in the Explanatory Memorandum?</p>
21.	28(1)	<p>...Subject to paragraphs (2) to (5), the undertaker may acquire such rights over the Order land, or impose restrictive covenants affecting the Order land, including rights and restrictive covenants for the benefit of a statutory undertaker or any other person, as may be required for any purpose for which that land may be acquired under article 25 (compulsory acquisition of land) by creating them as well as acquiring rights already in existence...</p>

Draft Development Consent Order

Ref No.	Article/ Requirement/Schedule	Comment/Question
		<p>In the Inspectorate's comments on 27 February 2020 on the LTC draft documents (see link above), we stated that:</p> <p><i>This grants an extremely wide power for the creation of new rights and restrictive covenants over all of the Order land.</i></p> <p><i>This power is not limited to the creation of specific rights and restrictions in schedule 8 in the DCO (where the CA granted over the plots in that schedule is limited to a right / restriction required for the specific purpose identified). The article permits the CA of undefined new rights over the rest of the order land. Although the BoR describes the land use for each plot there is nothing in the dDCO which secures the CA authorised to that described in the BoR. This is potentially misleading for persons with an interest in the land. The drafting of the dDCO should ensure that it only authorises the CA that has been consulted on (i.e. that described in the BoR and SoR and shown on the land plans).</i></p> <p><i>The applicant should have regard to paragraph 24 and the good practice point (see below) in Advice Note 15 https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2014/10/advice_note_15_version_1.pdf</i></p> <p><i>Good practice point 9</i></p> <p><i>'Applicants should provide justification which is specific to each of the areas of land over which the power is being sought, rather than generic reasons and include a clear indication of the sorts of restrictions which would be imposed and wherever possible the power should extend only to the particular type of Restrictive Covenant required.'</i></p>

Draft Development Consent Order

Ref No.	Article/ Requirement/Schedule	Comment/Question
		<p><i>The applicant is reminded that precedent in DCO drafting is not adequate justification for CA and should ensure that the extent of CA sought in the dDCO is clear on the face of all documents and is necessary and justified.</i></p> <p>The phrase to which this comment related is still contained in 28.(1) and we cannot see how the above advice has been incorporated into the current version of the dDCO.</p>
22.	28.(3), (4) and (5)	<p>...(3) The powers of paragraph (1) may be exercised by a statutory undertaker instead of by the undertaker in any case where the undertaker has given its prior consent to that in writing, and that consent may be given subject to terms and conditions.</p> <p>(4) Where in consequence of paragraph (3) a statutory undertaker exercises the powers in paragraph (1) in place of the undertaker, except in relation to the payment of compensation, the statutory undertaker is to be treated for the purposes of this Order, and by any person with an interest in the land in question, as being the undertaker in relation to the acquisition of the rights and the imposition of the restrictive covenants in question...</p> <p>In the Inspectorate’s comments on 27 February 2020 on the LTC draft documents (see link above), we stated that:</p> <p><i>The effect of these provisions, in-combination with article 8(5), is to grant CA powers to as yet unidentified statutory undertakers. It is unclear how the SoS will be able to be satisfied that these unidentified statutory undertakers will have sufficient funding to ensure payment of all compensation associated with CA.</i></p>

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		<p><i>The applicant may like to include a requirement for the SoS to consent prior to these powers being exercised or to list the specific undertakers to which this will apply and provide evidence to satisfy the SoS that they will have sufficient funds to meet any CA costs.</i></p> <p><i>Subsection (4) refers to an SU exercising these powers being treated as if they were the undertaker for the purpose of the order except in relation to the payment of compensation. It is unclear what the applicant is attempting to achieve with this drafting. The applicant should explain the intention of the provision in the EM and ensure that the drafting of the provision, in combination with article 8(5), achieves its intention.</i></p> <p>It seems that the latest draft has compounded this issue by adding 'or an owner or occupier of land identified in column (3) of Part 3 of Schedule 4 (permanent stopping up of streets and private means of access)' to 28(3) – so these comments still stand.</p>
23.	33. (2) (b)	<p>the acquisition of such easements or other new rights and the imposition of restrictive covenants in the remaining subsoil and over the surface of the land including rights and restrictive covenants for the benefit of a statutory undertaker or any other person</p> <p>This sub-clause appears to give unlimited and unspecified rights to impose restrictive covenants. The comments above under Article 28 (1) apply.</p>
24.	35.(10)	<p>...(10) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not to be precluded from—</p> <p>acquiring rights over any part of that land under article 28(2) (compulsory acquisition of rights and restrictive covenants)...</p>

Draft Development Consent Order

Ref No.	Article/ Requirement/Schedule	Comment/Question
		<p>In the Inspectorate's comments on 27 February 2020 on the LTC draft documents (see link above), we stated that:</p> <p><i>Article 34(10) limits the undertakers CA powers in the land listed in schedule 11 to the acquisition of any part of the subsoil under article 32 and the acquisition of new rights under article 28. As set out above, under article 23 the creation of new rights is permitted over all of the Order land. The effect of this is that all of the land in schedule 11 will be subject to the CA of new rights. The drafting does not limit this to the new rights described in schedule 8.</i></p> <p><i>The applicant's intention in relation to the land in schedule 11 is unclear. If the applicant is seeking to CA new rights in all of the land in schedule 11, they must ensure that all persons with an interest in that land have been consulted on this basis.</i></p> <p><i>The SoR, BoR and the land plans imply that there is some land which is for temporary use only (for example, see table 4 in the BoR and the description of land coloured green on the land plans). This is not secured in the dDCO. The dDCO permits CA over all of the land in schedule 11. This includes the CA as set out in schedule 8 and CA of undefined new rights over the rest of the land.</i></p> <p><i>If the applicant only intends to CA rights in the plots listed in schedule 11 which are also listed in schedule 8, the applicant should amend the drafting to ensure this is achieved. For example, this could be done by amending the drafting to say:</i></p> <p><i>...(10) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not precluded from—</i></p>

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Ref No.	Article/ Requirement/Schedule	Comment/Question
		<p><i>acquiring new rights or imposing restrictive covenants over any part of that land under article 28 (compulsory acquisition of rights) to the extent that such land is listed in column (1) of Schedule 8;</i></p> <p><i>The applicant must ensure that it is clear exactly what powers and rights are being sought over each plot of land and that this is secured in the DCO.</i></p> <p><i>The applicant must be able to demonstrate that all persons with an interest in the land in schedule 11 have been correctly consulted and understand the nature of powers and rights the applicant is seeking over their land.</i></p> <p><i>Drafting precedent is insufficient justification for the imposition of CA powers. The applicant is referred to the SoS DL for the A30 Chiverton to Carland Cross DCO and the ExA report, where this issue was expressly considered. The SoS did not grant the CA sought.</i></p> <p>The phrase to which this comment related is still contained in 35(10) and we cannot see how the above advice has been incorporated into the current version of the dDCO. The only change that we note is to remove 'new' before 'rights' and we would welcome clarification as to the rationale for this and the effect that the applicant intends this change to have.</p>
25.	37. (1)(a)	<p>acquire compulsorily, or acquire existing or new rights or impose restrictive covenants over, any Order land belonging to statutory undertakers</p> <p>This sub-clause appears to give unlimited and unspecified rights to impose restrictive covenants. The comments above under Article 28 (1) apply.</p>

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Ref No.	Article/ Requirement/Schedule	Comment/Question
26.	40. (1)	<p>the Secretary of State has certified that a scheme for the provision of the replacement land including a timetable for the implementation of the scheme has been received from the undertaker</p> <p>This could be read as meaning that a scheme for providing replacement land does not need to be in place until after any examination of and consenting of the DCO has been undertaken. An explanation of the purport of this phrase would be useful.</p>
27.	40. (4)	<p>In the Inspectorate's comments on 27 February 2020 on the LTC draft documents (see link above), we stated that:</p> <p><i>It would be helpful if the applicant could explain the difference / interaction between the "Orsett Fen common land / replacement land" and the "Special category land / (rights) land" in the EM.</i></p> <p>The Inspectorate has not received any updated Explanatory Memorandum – so this comment still stands.</p>
28.	44 Power to operate, use and close the tunnel area	<p>"relevant local authorities" means Thurrock Council, and Gravesham Borough Council</p> <p>As this Article relates to the closure of the tunnel, should highways authorities be specified in addition to local authorities?</p>
29.	46 Suspension of road user charging	<p>Unlike in other Articles 'emergency' is not defined – should there be an overall definition of emergency in Article 2?</p>
30.	48 Protection of tunnels, etc.	<p>It would be useful to have an update on the ongoing negotiations with the PLA on this.</p> <p>This appears only to cover activities undertaken by the PLA, might these activities be undertaken by another body - or a contractor acting on another body's behalf?</p>

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Ref No.	Article/ Requirement/Schedule	Comment/Question
		How does this Article relate to any Protective Provisions agreed with the PLA?
31.	49 and 50 Removal of vehicles and obstructions	Are these Articles best suited to a DCO rather than, for example, byelaws relating to the operation of the tunnel?
32.	51 and 52	<p>(1) The undertaker may make byelaws regulating—</p> <ul style="list-style-type: none">(a) the efficient management and operation of the tunnel area;(b) travel in the tunnel area;(c) the maintenance of the order in the tunnel area; and(d) the conduct of persons in the tunnel area. <p>In the Inspectorate’s comments on 27 February 2020 on the LTC draft documents (see link above), we stated that:</p> <p><i>The applicant should explain why this power is necessary in addition to the confirmation of the byelaws in schedule 13 and why the byelaws cannot be identified at this stage.</i></p> <p><i>The applicant should explain why each of the byelaws in schedule 13 is required and should be consented by the SoS.</i></p> <p>The phrase to which this comment related is still contained in 51.(1) and we cannot see how the above advice has been incorporated into the current version of the dDCO.</p>

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Ref No.	Article/ Requirement/Schedule	Comment/Question
		In addition, Article 52 sets out the procedure for penalties for offences under byelaws which themselves are yet to be specified.
33.	56 Application of landlord and tenant law	How does this Article relate to Article 8, Consent to transfer benefit of Order?
34.	62 Arbitration	Is the use of the 'President of the Institution of Civil Engineers' an outdated usage?
Schedule 2 Requirements		
35.	Sch. 2	The requirements schedule is currently missing notice periods for the undertaker to submit documents to the SoS or Local Authorities for their approval prior to beginning work.
36.	Requirement 3	<p>In the Inspectorate's comments on 27 February 2020 on the LTC draft documents (see link above), we stated that:</p> <p><i>The Applicant will need to justify the tailpiece which effectively permits the SoS to allow changes to the preliminary scheme design after the DCO has been made. Although limited to changes which do not give rise to any materially new or materially different environmental effects to those assessed within the ES; it will still enable changes to be made to the design assessed during examination. The Applicant should explain the necessity and appropriateness of this Requirement in the EM.</i></p> <p><i>The Applicant is referred to AN15 para 17.3 – 17.6.</i></p>

Draft Development Consent Order

Ref No.	Article/ Requirement/Schedule	Comment/Question
		<p><i>The Applicant should also explain what processes are in place to enable the SoS to approve any such changes.</i></p> <p>The phrasing to which these comments relate is still included in Requirement 3 and we cannot see how the above advice has been incorporated into the current version of the dDCO.</p> <p>It is noted that a design principles document is now included in the interpretation section of Schedule 2 and is listed within Schedule 16 as a document to be certified.</p>
37.	Requirement 3	<p>In the Inspectorate’s comments on 27 February 2020 on the LTC draft documents (see link above), we stated that:</p> <p><i>Will the General Arrangement Drawings (GAD) be certified to rationalise the Work Plans? Will the dDCO include provision that "works must be carried out in substantial accordance with GAD", or similar?</i></p> <p>It is noted that the General Arrangement Drawings are not included in the interpretation section of Schedule 2 and listed on Schedule 16.</p>
38.	Requirement 4	<p>In the Inspectorate’s comments on 27 February 2020 on the LTC draft documents (see link above), we stated that:</p> <p><i>This Requirement states that no part of the development can commence until the construction environmental management plans and control documents have been approved by the SoS. Schedule 16 of the dDCO (documents to be certified) is unpopulated, but the Explanatory Note implies that these documents will be certified. What environmental management plans and control documents does the Applicant intend to submit as part of the application? Will they be certified separately? The Applicant should</i></p>

Draft Development Consent Order

Ref No.	Article/ Requirement/Schedule	Comment/Question
		<p><i>make clear in the application the relationship between the individual environmental management plans and any control documents.</i></p> <p>It is noted that Requirement 4 now includes for a pre-commencement EMP and REAC. The interpretation section of Schedule 2 states that these will be contained within the Code of Construction Practice. The interpretation section also states that the REAC is contained in Appendix 2.2 of the ES. This requires some clarification.</p> <p>The interpretation section also states the Code of Construction Practice is a document to be certified on Schedule 16, however, it has been removed from that schedule (see comment on Schedule 16 below). Is this intentional?</p>
39.	Requirement 4 (4)	Construction and an approved EMP – does there need to be a reference here as in part (2) and (5) to ‘substantially in accordance with the Code of Construction Practice’? Does the phrasing ‘substantially in accordance’ offer enough security that the stipulations in the CoCP will be adhered to?
40.	Requirements 4, 7, 8, 9, 10	<p>In the Inspectorate’s comments on 27 February 2020 on the LTC draft documents (see link above), we stated that:</p> <p><i>It is unclear what a “part” of the development is. This would appear to enable the undertaker to discharge the Requirements on a piecemeal and undefined basis. The Applicant should consider explaining what a “part” means and how this will be communicated to persons with an interest in the scheme and the relevant local planning authorities.</i></p> <p>This phrasing is still included, and noted in Requirement 5 also.</p>

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Ref No.	Article/ Requirement/Schedule	Comment/Question
41.	Requirement 5	Are there any proposals for ongoing ecological monitoring aside from landscaping e.g. of birds associated with designated sites, and if so should this be captured here and in the related documents to be certified?
42.	Requirement 5	<p>There could be some ambiguity in mention of 'a LEMP' to cover the 'authorised development' and then mention of 'a LEMP' specifically in paragraph 5 (b) for Shorne and Ashenbank Woods SSSI.</p> <p>Does 'substantially in accordance with' allow for a significant degree of flexibility?</p> <p>Can this requirement also include e.g.:</p> <ul style="list-style-type: none"> • A programme for the proposed landscaping works; • Details of the retention or restoration of historic landscape features; • Replanting should be of the same species as was originally planted; and • Landscaping works should be carried out by suitably qualified persons. <p>Where does the role of the various committees and working groups responsible for environmental monitoring and management become secured?</p>
43.	Requirement 6	How will the management of contaminated land be addressed pre-commencement in the requirements? This clause only addresses the unexpected discovery of contaminated land / groundwater on an individual basis? There is also no defined timescale for notification of unexpected discoveries.
44.	Requirement 7	On a project of this scale there could be many incidences of protected species found during pre-construction surveys that were not aware of previously, particularly with a 6-year construction programme. How will the DCO address this?

Draft Development Consent Order

Ref No.	Article/ Requirement/Schedule	Comment/Question
		What timescales will be applied to pre-construction surveys to ensure they are carried out at an appropriate time of year and in a given period before construction activity commences?
45.	Requirement 9	<p>How will the DCO address pre-commencement surveys to built heritage, Listed Buildings and Conservation Areas?</p> <p>This section only refers to a single WSI, how will the DCO capture the potential for this project to have multiple work sites with their own WSIs and mitigation strategies?</p> <p>Is there a role for Historic England and also potentially the MMO / PLA to be notified?</p>
46.	Requirement 14	This requirement makes reference to a 'wider network impacts monitoring and management plan', which is included in the interpretation section as a document to be certified. However, no document of this description is listed in Schedule 16 (see below).
Schedule 15 Deemed Marine Licence		
47.	General	Has this draft been seen (and agreed) by the MMO?
48.	Sched. 15 1.	<p>"existing jetty" means the East Tilbury jetty at Goshem's Farm built pursuant to the existing licence;</p> <p>"the existing licence" means a marine licence granted by the MMO with reference L/2017/00214/1</p> <p>The Inspectorate will wish to discuss the status of the existing jetty and the Applicant's attention is also drawn to our comments on the use of this jetty made in reference to the DML (see below).</p>

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Ref No.	Article/ Requirement/Schedule	Comment/Question
49.	Sched. 15 5.	<p>This clause sets out a number of operations that may be carried out from the jetty, including, for example, the offloading of incoming concrete tunnel segments; and the use of heavy plant and machinery to offload barges, including crane unit and/or grab and licenses the decommissioning of the jetty.</p> <p>The Inspectorate had understood that LTC had decided that only the existing PoTLL would be used for any such operations. The use of the existing jetty for any operations has not been assessed in the pNRA and the Inspectorate would need to be shown where these operations and decommissioning have been assessed and an explanation provided as to why these are not covered in the pNRA (except for one reference in a note of a meeting with Port of London Authority and Port of Tilbury on 10 March 2021 in Annex B).</p>
50.	Sched. 15 10.	<p>We note that the details to be submitted to the MMO in advance of the commencement of any licensed activity must include details of where the licensable marine activity was assessed in the Environmental Statement.</p> <p>The applicant is advised to ensure that all activities listed in the Deemed Marine Licence have been assessed in the ES.</p>
51.	Sched. 15 11	<p>Is there an outline marine pollution contingency plan or other such document within the application, which the ExA could examine with respect to being assured of the delivery of this element?</p>
52.	Sched. 15 15 and 16	<p>These clauses cover piling techniques. However, piling is not specified in 5. - will piling be employed as part of the licensed works? Are there any other construction techniques e.g. dredging which would benefit from being specifically described in the description of the licensable works?</p>

Draft Development Consent Order

Ref No.	Article/ Requirement/Schedule	Comment/Question
53.	Sched. 15 17.	<p>Why is the need for bird surveys tied to the lifetime of the jetty? How does this clause relate to any other bird monitoring proposed e.g. associated with the designated sites?</p> <p>How is 17.(4) to be enforced – as it stands it only refers to the content of a report.</p>
54.	Sched. 15 18.	<p>The comments on Schedule 15 (17) above apply equally to sediment surveys.</p>
55.	Sched. 15 19.	<p>Does the jetty constitute a 'temporary structure' in the context of this clause?</p>
Schedule 16 Documents to be Certified		
56.	Schedule 16	<p>It is appreciated that Schedule 16 is potentially still a work in progress, however it is noted that the interpretation section of Schedule 2 refers to the following documents as being included in Schedule 16, however they are currently absent:</p> <ul style="list-style-type: none">• Code of Construction Practice• Framework Construction Travel Plan• Outline Landscape and Ecology Management Plan• Outline Traffic Management Plan for Construction• Outline Materials Handling Plan• Outline Site Waste Management Plan• Wider Network Impacts Monitoring and Management Plan <p>It is also noted that 'ES Appendices' are listed on Schedule 16. Does this include the REAC as suggested by the interpretation section? Given the lack of clarity here it may be worth considering whether the REAC should be separately listed in Schedule 16.</p>

PINS comments on pNRA

LOWER THAMES CROSSING – TR010032

Section 51 advice regarding draft application documents submitted by National Highways

National Highways has requested that the following draft documents be reviewed by the Planning Inspectorate as part of its Pre-application Service²:

1. draft Preliminary Navigational Risk Assessment – dated September 2021

The advice recorded in the table comprising this document relates solely to matters raised upon the Planning Inspectorate’s review of the draft application documents, and not the merits of the proposal. The advice is limited by the time available for consideration and is

² See <https://infrastructure.planninginspectorate.gov.uk/application-process/pre-application-service-for-applicants/>

raised without prejudice to the acceptance or otherwise, and any subsequent examination of the eventual application. These comments are initial and do not preclude further comments being made on these draft documents.

draft Preliminary Navigational Risk Assessment		
Ref No.	Paragraph/ Reference	Comment/Question
1.1	General	<p>This still does not answer directly the question as to whether the environmental impact of increased usage has been assessed (see our comment at 1.17 below) (but see 2.2.3 – ‘<i>Highways England has ensured that the assumptions, particularly those related to use of the river Thames in connection with the project, reflected in this document are consistent with the assumptions made in the Transport Assessment and Environmental Statement.</i>’). The NRA should provide specific cross reference to how navigation information has fed into the ES and HRA.</p> <p>The NRA should be clear if the use of vessels for materials and waste is accommodated within the PoTLL’s assessment. The NRA should also address what happens if the number or characteristics of vessels using Tilbury exceeds the PoTLL’s own assessment. This should include a brief explanation of any implications for the environmental assessments (see above) with specific cross-referencing to the relevant information as necessary.</p>
1.2	General	Does the risk assessment take into account any increased usage in other parts of this reach? – e.g. Thames Freeport and London Resort
1.3	Plate 1.1	What is the yellow line shown on this figure?

draft Preliminary Navigational Risk Assessment

Ref No.	Paragraph/ Reference	Comment/Question
1.4	1.2.5	<p>Art. 48 in the current dDCO seems strong, e.g:</p> <p><i>—(1) Subject to paragraph (2), the PLA must not, whether under the 1968 Act or otherwise, carry out the following activities within the part of the river Thames that is situated within the first protection zone or second protection zone shown on the river restrictions plan without the consent of the undertaker—</i></p> <ol style="list-style-type: none"> <i>1. any dredging;</i> <i>2. the installation of a mooring or other structure;</i> <i>3. any piling activities;</i> <i>4. any designation of any anchorage;</i> <i>5. any excavations, trial holes, boreholes and other investigations; or</i> <i>6. any other activity which might reasonably be expected to affect the safe operation of the tunnels.</i> <p>Has it been agreed with PLA (and PoTLL)?</p> <p>How does this relate to the draft Deemed Marine Licence at Schedule 15 in the dDCO?</p>
1.5	1.3.7	<p>Could a more specific reference to 'a previous pNRA' be provided here? It is not clear why this type of vessel can be excluded from this pNRA in this paragraph but the information in Paragraph 2.2.6 is noted – is this the assessment being referred to here? See also references at 1.7.1 + 2.2.7.</p>
1.6	1.4.3	<p>What are the relevant works (requiring a safety boat)?</p>
1.7	1.5.2	<p>Depth of cover was an issue in the 2020 consultation – has this been resolved and what is it to be?</p>

draft Preliminary Navigational Risk Assessment

Ref No.	Paragraph/ Reference	Comment/Question
1.8	1.5.4/5 and 1.7.5/6	<ul style="list-style-type: none"> • What mechanism will be used to disapply this licence? • Does the PLA agree? • The Order Limits across the Thames are fairly narrow – is a wider explosives exclusion zone needed? • This deals only with explosives – doesn't the licence also cover dangerous vessels/cargos? <p>Paragraph 1.5.5 states that no specific risk assessment in relation to the explosives anchorage is carried out within this document.</p> <p>1.7.6 seems quite sanguine about the licence not being disapplied.</p> <p>If the disapplication of the licence within the Order Limits is not possible, what are the implications for the LTC project? The document should cover this eventuality, the likelihood of it happening, and the implications.</p>
1.9	1.6.1	<p><i>The results demonstrate that all hazards can be mitigated to acceptable risk levels</i> – does this specifically include e.g. shipping collisions; grounding. It is noted that recorded incidents (para. 4.4.3) and Table 8.1 do include collisions and grounding.</p>
1.10	2.2.9	<p><i>The use of established facilities is not anticipated to give rise to any additional vessel movements that would not otherwise be likely to occur</i> – if materials are to be brought in by ship/barge, won't that naturally lead to an increase in vessel movements?</p> <p>Is the assumption that any further site investigations will be limited to an eight-week period?</p>
1.11	4.3.5	<p>When is the Thames Tideway project due to end construction?</p> <p>No future vessel movements on/off the East Tilbury Jetty have been assumed – what about other future projects including Thames Freeport?</p>

draft Preliminary Navigational Risk Assessment

Ref No.	Paragraph/Reference	Comment/Question
1.12	2.2.11	Does this take into account Thames Freeport?
1.13	2.2.3	It would be useful to set out what these assumptions are in summary and include a cross reference to the environmental assessments in the ES and shadow HRA which have used them.
1.14	3.4	The inclusion of a construction schedule is useful, presumably this will be updated in the final version. How does the construction timeline fit within the applicable time periods/years of validity for the other assessments on which the pNRA relies (including those made by others e.g. PoTLL)?
1.15	5	<p>Future vessel traffic – does it take into account Thames Freeport?</p> <p>This is mentioned in the pNRA but, presumably, any increase in shipping movements arising out of the Freeport are not yet quantified.</p>
1.16	5.3.1	<p><i>During the risk assessment workshop (see Appendix B) it was agreed that these projects: Thames Tideway, Thurrock Flexible Generation Plant, Silvertown Tunnel and London Resort, and further developments at Tilbury (see 5.3) are not likely to impact on the baseline traffic movements illustrated in the 2019/2020 AIS data to an extent which is likely to be relevant for the Project.</i></p> <p>It would be helpful if the document could include more information about the basis of this decision. Presumably the rationale here is specific to navigational risk, but it would be helpful if the assumptions made in particular around the numbers and types of vessels were provided and explanation provided or cross-reference to other information on how they have been applied to other assessments e.g. those in the ES.</p>

draft Preliminary Navigational Risk Assessment

Ref No.	Paragraph/ Reference	Comment/Question
1.17	5.5.1e	<p><i>Material supply vessels to support the tunnel and other civils construction. These may comprise a variety of vessels delivering bulk materials (e.g., sand, aggregates) and/or precast tunnel segments. These marine imports/exports would be to established facilities; therefore, these movements would be included under existing navigational risk assessments for PLA and any other SHA (e.g., PoTLL if movements enter their limits). On this basis, material supply vessels for the Project are excluded from this pNRA. As noted above, this has been agreed with the PLA and PoTLL.</i></p> <p>It is understood that from the perspective of navigational risk assessment, reliance has been placed on existing ports' assessments and that these movements are not to be 'counted again' for the pNRA for LTC. The environmental effects of these increased movements do however need to be assessed. The document, perhaps by cross reference to the wider suite of application documents, should allow understanding of how the ports' assessments have informed the assessment of environmental effects.</p> <p>Careful consideration should be made of the robustness of reliance on the ports' assessments to whatever extent they are used, for the purposes of assessing project-environmental effects including those on designated sites.</p>
1.18	6.2.3b	<p><i>Gravesend Sailing Club and Thurrock Yacht Club noted that previous developments on the north bank of the River Thames had affected sedimentation at/near their facilities, and they were keen to confirm that no changes were expected as a result of the Project.</i></p> <p>Has this been considered?</p>
1.19	8.1.1	Cannot locate the referenced Table 4.

draft Preliminary Navigational Risk Assessment

Ref No.	Paragraph/ Reference	Comment/Question
1.20	8.1.5 (note following table 8.3)	This paragraph states that the risk controls are legally secured within the protective provisions (PP) for the Port of London Authority. The Inspectorate will make any further comments on the PLA PPs when it comments on the draft DCO as a whole.
1.21	8.2.1	<i>Anchor seabed penetration within the protection zones</i> – is this assessing a worst-case scenario?
1.22	8.2.6 & 7	<i>Explosives anchorage location and usage</i> – in this case, is disapplication justified? Also see comments at 1.8 above.
1.23	Table 9.4	It is noted that all potential hazards are scored as moderate or minor – are all potential hazards covered? (anchor penetration?)
1.24	10.1.1	<i>The PLA agreed that the 2019 pNRA developed for previous tunnel related site investigations remained a valid basis. The risk controls agreed from this work would be anticipated to be taken forward for any further tunnel related site investigations work of a similar nature in the river.</i> Will the two documents be brought together?
1.25	Annex A - 2.1	Are there any implications for LTC from the Harbour Revision Order?

draft Preliminary Navigational Risk Assessment

Ref No.	Paragraph/ Reference	Comment/Question
1.26	Overall	<p>This assessment appears to have dealt with two key aspects in other documents:</p> <ol style="list-style-type: none"><li data-bbox="568 469 1285 501">1. Tunnel pre-construction in a 2019 pNRA; and<li data-bbox="568 520 1688 552">2. Handling of construction and waste materials in ports' own assessments. <p>Careful consideration should be given to combining the information in these documents to ensure a comprehensive and cohesive assessment is provided for the Proposed Development as a whole.</p> <p>If these documents are not combined, will these other documents form part of the application suite?</p>