

Lower Thames Crossing

National Highways
Woodlands
Manton Lane
Bedford
MK41 7LW

The Planning Inspectorate

c/o QUADIENT
60 Buckingham Drive
Slough
SL1 4PN

By E-mail

Dear Sirs and Madam,

National Highways' (Lower Thames Crossing Project) Deadline 8 response in respect of the Norwich to Tilbury (NTT) Project

This letter constitutes a Deadline 8 submission on behalf of the National Highways Lower Thames Crossing ("NH LTC"). It provides an update on matters raised in NH LTC's Deadline 7 submission and includes NH LTC's closing statement which sets out NH LTC's position on outstanding matters.

1. Draft DCO amendments

- a. NH LTC welcomes the amendments made by the Applicant to the draft DCO submitted at Deadline 6 [REP6-031] and Deadline 7 [REP7-065], which broadly reflect the amendments proposed by NH LTC in Appendix 1 of its Deadline 6 submission [REP6-153].
- b. NH LTC has no further comments on the drafting of the main body of the DCO save for those in section 3 of this submission.

2. Protective provisions

- a. NH LTC can confirm that it has now agreed a set of protective provisions with the Applicant. It is understood that these are to be incorporated in the Deadline 8 version of the draft DCO being submitted by the Applicant.
- b. For completeness, NH LTC has included the agreed version as Appendix 1 to this Deadline 8 submission.
- c. NH LTC has no further comments on the drafting of the protective provisions save for those in section 3 of this submission.

3. Closing Statement

a. Draft DCO and protective provisions

- i. The amendments to the draft DCO, both to the main body and to the protective provisions, have been carefully discussed, drafted and negotiated between NH LTC and the Applicant. Without the incorporated agreed amendments, the two projects are incompatible spatially and temporally. Should the NTT Project be granted consent, NH LTC urges the Examining Authority and the Secretary of State to include the amendments made in the final version of the DCO. If the Secretary of State is minded to make any adjustments, NH LTC would welcome being consulted on these in order to ensure that any further amendments made do not render the projects incompatible.

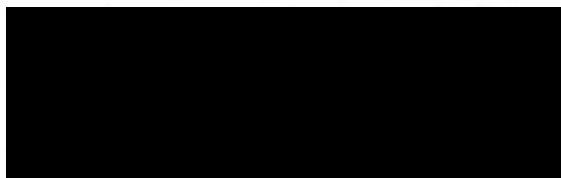
b. Outages

- i. Early in the examination, NH LTC raised a key concern over the incompatibility of the timings of the power outages being proposed by both projects during their construction. This is an area that remains under discussion between the parties. Both parties remain committed to working cooperatively in order to reach an agreement in relation to the timings of outages in order to ensure the efficient and coordinated delivery of both projects.

c. Remaining matters outstanding

- i. In the most recent statement of common ground submitted by the Applicant at Deadline 7 [REP7-383], all matters between the parties are listed as being either 'Agreed' or 'Agreed*'. The latter of these denotes the matters that are agreed subject to completion of a side agreement. This side agreement is intended to make further provision for the matters that remain under discussion between the parties. Both parties remain committed to agreeing and completing a side agreement to address the outstanding matters of concern.

Yours sincerely,



Lower Thames Crossing Roads North Project Director (Delivery)

Appendix 1 – Protective Provisions

SCHEDULE 16

PART [17]

FOR THE PROTECTION OF THE LTC UNDERTAKER

Application

1. The provisions of this Part of this Schedule apply for the protection of the LTC undertaker and have effect unless otherwise agreed in writing between the undertaker and the LTC undertaker.

Interpretation

2.—(1) In this Part of this Schedule—

“detailed design information” means such of the following information as is relevant to the specified works or, as the case may be, the works authorised by the 2025 Order—

- (a) the timing and programme of works;
- (b) detailed design of works, including works to highways, utilities and drainage;
- (c) site clearance details;
- (d) topographical surveys;
- (e) earthworks;
- (f) boundary, environmental and mitigation fencing;
- (g) landscaping and habitat creation;
- (h) construction, alteration and use of temporary and permanent access and egress routes into, from and adjacent to the interface area;
- (i) maintenance and repair strategy;
- (j) health and safety information, including compliance with the Construction (Design and Management) Regulations 2015;
- (k) any works which require departures from DMRB standards;
- (l) control and security of works, apparatus and working areas;
- (m) code of construction practice;
- (n) the approach to discharging requirements under this Order;
- (o) removal of temporary works and the approach to reinstatement of land held temporarily; and
- (p) such other information as may be reasonably required by the undertaker or the LTC undertaker as a consequence of the cooperation and coordination undertaken pursuant to paragraph 3;

“DMRB” means the Design Manual for Roads and Bridges or any replacement or modification of it;

“interface area” means land which falls within both the Order Limits of this Order and the Order Limits of the 2025 Order;

“specified work” means any work or works authorised by this Order which would be situated on, under, over, or within the interface area.

(2) Where the terms used in this Part of this Schedule are defined in article 2 (interpretation) of this Order are inconsistent with sub-paragraph (1) above the latter prevail.

(3) Both the LTC Undertaker and any of its approved contractors shall have the benefit of this Part of Schedule 16 but for the purposes of any approvals required under this Part the undertaker shall liaise directly with the LTC undertaker.

Cooperation

3.—(1) The undertaker must use all reasonable endeavours to avoid any conflict arising between the carrying out, maintenance and operation of the authorised development and the works authorised by the 2025 Order.

(2) The undertaker and the LTC undertaker must each act in good faith and use all reasonable endeavours to cooperate with, and provide such timely assistance to, one another as may be required to ensure the safe, economic and efficient co-ordination of the execution of the authorised development and the works authorised by the 2025 Order.

(3) Without prejudice to the generality of sub-paragraph (2), the undertaker and the LTC undertaker must:

- (a) provide a point of contact for continuing liaison and co-ordination throughout the construction and operation of the authorised development and the works authorised by the 2025 Order;
- (b) hold bi-monthly programming and coordination meetings, unless otherwise agreed by the parties, until the completion of the authorised development and the works authorised by the 2025 Order (whichever is the latest) with the aim of:
 - (i) ensuring that matters within the scope of paragraphs 4 and 5 are addressed as expeditiously and efficiently as possible; and
 - (ii) facilitating the prompt exchange of information in respect of works, activities or other operations, including the temporary closure or permanent stopping-up or diversion of any street or highway, which are proposed to be carried out outside of the interface area but which either the undertaker or the LTC undertaker reasonably consider may adversely impact upon works, activities or other operations to be undertaken within the interface area.
- (c) to the extent that relevant information has been provided to each party within a timely manner, take all reasonable steps to ensure that all plans and other documents as submitted for approval under the requirements of this Order and under the 2025 Order do not unreasonably impede or interfere with the construction of the authorised development or the works authorised by the 2025 Order; and
- (d) keep each other informed of, and have regard to, the anticipated programme of works for the authorised development and the works authorised by the 2025 Order in order to facilitate a coordinated approach to construction programming, land assembly, and the carrying out of works in connection with the authorised development and the 2025 Order.

Exercise of powers

4.—(1) A specified work, or part thereof, must not commence until—

- (a) the undertaker has provided the LTC undertaker with the detailed design information for that specified work or part thereof;
- (b) the LTC undertaker has itself provided the undertaker with such detailed design information concerning the works authorised by the 2025 Order as is relevant to the carrying out of the specified work or part thereof; and
- (c) the LTC undertaker has given its prior approval (not to be unreasonably withheld or delayed) as to the co-ordination of the execution of the specified work or part thereof in a manner which facilitates the safe, economic and efficient execution of works authorised by the 2025 Order within the interface area.

(2) The undertaker must not exercise powers under:

- (a) article 16 (temporary closure of streets and public rights of way);
- (b) article 20 (discharge of water); and
- (c) this Order to compulsorily acquire, take temporary possession of, or otherwise access land within the interface area,

without having first obtained the prior approval of the LTC undertaker (not to be unreasonably withheld or delayed).

(3) In providing the prior approval referred to in sub-paragraphs (1)(c) and (2) the LTC undertaker must have regard to the cooperation and coordination undertaken pursuant to paragraph 3, and ensure that its approval is given in writing and must set out any terms, requirements or conditions under which those powers are to be exercised.

(4) For the avoidance of doubt, the parties understand that any terms, requirements or conditions referred to in sub-paragraph 0 must not be intended to:

- (a) constitute the imposition of a moratoria on the carrying out of the authorised development;
- (b) be of a nature whereby compliance with those terms, requirements or conditions would constitute a breach of this Order; or
- (c) be contrary to the duties of cooperation set out in paragraph 0 of this Part.

(5) The undertaker must not exercise powers under article 21 (protective works to buildings) over any part of the interface area without having first consulted with the LTC Undertaker.

(6) Where the LTC undertaker is consulted for the purposes of sub-paragraph **Error! Reference source not found.**, the undertaker and the LTC undertaker must promptly, and without unreasonable delay, agree in writing the terms, requirements or conditions under which those powers are to be exercised on, over, under or within the interface area.

(7) For the avoidance of doubt, the parties understand that any terms, requirements or conditions referred to in sub-paragraph 0 must not be intended to:

- (d) constitute the imposition of a moratoria on the carrying out of the authorised development or the works authorised by the 2025 Order;
- (e) be of a nature whereby compliance with those terms, requirements or conditions would constitute a breach of this Order or the 2025 Order; or
- (f) be contrary to the duties of cooperation set out in paragraph 0 of this Part.

LTC compensatory habitat

5.—(1) If the authorised development is commenced in the interface area, the undertaker must, in consultation with the LTC undertaker, carry out and complete Work No. 20 such that not less than 16 hectares of compensatory habitat is created.

(2) The compensatory habitat referred to in sub-paragraph (1) must be carried out in accordance with the Outline Landscape and Ecology Management Plan referred to in paragraph 5 of Schedule to the 2025 Order, as it applies to the Hoford Road compensatory habitat site as set out in section 6.10 of that document.

(3) For the avoidance of doubt, sub-paragraphs (1) and (2) will not apply in the event that works authorised by the 2025 Order are cancelled, terminated, suspended indefinitely, or otherwise ceased so as to render the 2025 Order authorised development incomplete.

Costs

6.—(1) The undertaker must, on receipt of an invoice or written breakdown, pay to the LTC undertaker a sum equal to the whole of any reasonable, directly incurred and properly evidenced costs and expenses which the LTC undertaker incurs (including costs and expenses for using internal or external staff) in relation to any approvals or agreements required to be entered into under this Part of Schedule 16, or in connection with any additional work or action that the LTC undertaker is required to carry out as a result of any of the undertaker's works or exercise of powers within or affecting the interface area including, but not limited to—

- (a) any costs reasonably incurred by the LTC undertaker in connection with carrying out any work on behalf of the undertaker under any approval or agreement reached;
- (b) the carrying out of any protective works within the interface area, if required;
- (c) the survey of land within the interface area, and the inspection and monitoring of any works carried out by the undertaker within the interface area; and
- (d) all legal and administrative costs in relation to sub-paragraphs (a) to (c) above.

(2) The LTC undertaker must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs and expenses under sub-paragraph (1) and, if requested to do so by the undertaker, the LTC undertaker must provide an explanation of how those costs and expenses have been minimised.

(3) There will be deducted from any sum payable under sub-paragraph (1) a sum equal to the value of any land or rights acquired by the undertaker on behalf of the LTC undertaker for the purposes of paragraph 5, that sum being calculated following acquisition of the land or rights in question.

Indemnity

7.—(1) The undertaker fully indemnifies the LTC undertaker from and against all costs, claims, expenses, damages, losses and liabilities suffered by the LTC Undertaker directly arising from—

- (a) the construction, maintenance or use of specified works by the undertaker; or
- (b) the exercise of or failure to exercise any power under this Order by the undertaker,

provided that the undertaker's indemnity will not extend to any loss or claims arising out of or in consequence of any negligent act or default of the LTC undertaker or to the exercise of any powers under the Order which are carried out in compliance with the approval or agreement reached under paragraph 4, unless such exercise of powers is carried out negligently.

(2) The LTC undertaker will—

- (a) notify the undertaker upon receipt of any costs, claims, expenses, damages, losses and liabilities referred to in sub-paragraph (1); and
- (b) not accept or compromise any claims, charges, costs, expenses, liability or losses to which this indemnity relates without the prior consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Escalation of differences

8.—(1) The undertaker and the LTC undertaker shall use their reasonable endeavours to secure the amicable resolution of any dispute or difference arising between them out of or in connection with this Part in accordance with the following provisions.

(2) The undertaker and the LTC undertaker shall each nominate a representative who shall meet to try to resolve the matter. If the matter is not resolved at that level within ten business days of either the undertaker or the LTC undertaker requesting such a meeting (or such longer period as may be agreed between the undertaker and the LTC undertaker) the matter may at the request of either the undertaker or the LTC undertaker be referred for discussion at a meeting to be attended by a senior executive from each party.

(3) If the meeting between senior executives fails to result in a settlement within ten business days of the date of the request for such a meeting (or if it is not possible to convene a meeting within this period) then the dispute will be determined in accordance with article 62 (arbitration) of this Order.