

Your Ref: TR010032
Our Ref: 43879AOCTC

16 November 2022

National Infrastructure Planning
Temple Quay House
2 The Square
Bristol
BS1 6PN

By email only

Dear Ms. Church,

Application by National Highways for an Order Granting Development Consent for the Lower Thames Crossing – Adequacy of Consultation Response

Further to your letter dated 1st November 2022 regarding the above, please find attached Thurrock Council's ('the Council') Adequacy of Consultation Response. Thurrock wishes to make comments, in respect of:

Thurrock's role in representing its community;

Whether National Highways has complied with their duties under Section 42 of the PA 2008;


Whether National Highways has complied with their duties under Section 47 of the PA 2008;

Whether National Highways has complied with their duties under Section 48 of the PA 2008;

Whether National Highways has complied with their duties under Section 49 of the PA 2008;

Whether National Highways has complied with their duties under Section 50 of the PA 2008; and

Thurrock's role as technical authority.

Should you have any questions on this, please do not hesitate to contact Chris Stratford (Thurrock Council) at 

Yours sincerely



Dr. Colin Black
Interim Assistant Director - Place

Adequacy of Consultation

16 November 2022

1 Introduction

- 1.1.1 The Lower Thames Crossing (LTC) Development Consent Order (DCO) was submitted to the Planning Inspectorate ('the Inspectorate') on 31 October 2022. On receipt, the Inspectorate has 28 days to decide whether to accept the DCO.
- 1.1.2 Under Section 55(3) of the Planning Act 2008 (as amended) ('PA 2008'), the Secretary of State may accept an application only if the Secretary of State concludes:
- 1 That it is an application for an order granting development consent;
 - 2 That development consent is required for any development to which the application relates;
 - 3 That the applicant has, in relation to the proposed application that has become the application, complied with chapter 2 of part 5 (pre-application procedure); and
 - 4 That the application (including accompaniments) is of a standard that the Secretary of State considers satisfactory.
- 1.1.3 Under Section 55(4) of the PA 2008, the Secretary of State, when deciding whether the Secretary of State may reach the conclusion in subsection (3)(e), must have regard to:
- 1 The consultation report received under Section 37(3)(c);
 - 2 Any adequacy of consultation representation received by the Secretary of State from a local authority consultee; and
 - 3 The extent to which the applicant has had regard to any guidance issued under Section 50.
- 1.1.4 Section 55(5)(a) of the PA 2008 clarifies that, in subsection (4), "*adequacy of consultation representation*" means a representation about whether the applicant complies, in relation to that proposed application, with the applicant's duties under Section 42, 47 and 48.
- 1.1.5 The guidance referred to in Section 55(4)(c) includes guidance issued by the Secretary of State about the pre-application procedure for major infrastructure applications. This includes Ministry for Housing, Communities and Local Government's (MHCLG) 'Planning Act 2008: guidance on the pre-application process' (2015) ('the MHCLG guidance'), the Inspectorate's Advice Note 2 'The role of local authorities in the development consent process' (2015) ('Advice Note 2') and the Inspectorate's Advice Note 14 (version 2) 'Compiling the consultation report' (2012) ('Advice Note 14').
- 1.1.6 The Applicant also has a duty to take account of responses to consultation and publicity, under Section 49 of the PA 2008.
- 1.1.7 This Adequacy of Consultation response to the Inspectorate sets out Thurrock Council's ('the Council') position in respect of whether National Highways has complied with its duties under Section 42, 47, 48 and 49 of the PA 2008, as these are specific to the Council in:
- 1 Its role in representing its community; and
 - 2 Its role as technical authority.

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- 1.1.8 This response also considers National Highway's compliance with the relevant guidance issued under Section 50 of the PA 2008, the Infrastructure Environmental Impact Assessment Regulations 2017 (as amended) ('the Infrastructure EIA Regulations 2017'), the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the 'APFP Regulations') and other relevant guidance.
- 1.1.9 This response also provides an account of wider issues relating to the pre-application consultation process.
- 1.1.10 This report covers the following structure and content:
- Chapter 2: The Council's role in representing its community;
 - Chapter 3: The Council's role as technical authority;
 - Chapter 4: Conclusions;
 - Appendix A: The duty to comply with the PA 2008;
 - Appendix B: Relevant Guidance, Advice and Legislation on pre-application process;
 - Appendix C: Relevant Guidance, Advice and Legislation on application acceptance and Examination procedure; and
 - Appendix D: Inadequate Provision of Technical Evidence and Information – Traffic Modelling.

2 The Council's Role in Representing its Community

2.1 Section 42 – Duty to Consult

2.1.1 This section discusses the applicant's compliance with Section 42 of the PA 2008.

42(a) Prescribed Persons

2.1.2 A list of the prescribed bodies consulted during the Statutory Consultation has been provided by National Highways in Appendix H of the Consultation Report. A copy of the letter sent to the prescribed bodies on 4 October 2018 has been provided in Appendix K of the Consultation Report and they were given more than 28 days to respond. National Highways has therefore complied with that provision.

42 (aa) Marine Management Organisation

2.1.3 National Highways consulted the Marine Management Organisation (MMO) on 4 October 2018. A copy of the letter sent to the MMO has been provided in Appendix K of the Consultation Report and they were given more than 28 days to respond. National Highways has therefore complied with that provision.

42(b) Local Authorities

2.1.4 National Highways has provided a list of the local authorities consulted on the project. The Council can confirm that they were engaged by National Highways during the Statutory Consultation and were given more than 28 days to respond. However, it is clear that one affected local authority was only very recently recognised as a 'host' authority. Tonbridge and Malling Borough Council (TMBC) was only included as a 'host' authority at the Local Refinement Consultation (12 May – 20 June 2022, just 4 months before DCOv2 submission). It is understood that the reason for their addition as a 'host' borough is the need to include a nitrogen deposition mitigation area within this Borough and in recognition of significant traffic impacts on the A228. This raises questions about the effectiveness of consultation with TMBC and how it can practicably and properly respond to that consultation or indeed the entire scheme within a short period of 4 months.

2.1.5 The Council contends that National Highways has not complied adequately with the Section 42(b) provision above, in respect of TMBC. In their Adequacy of Consultation representation dated 14 November 2022, TMBC have stressed that they have not had effective consultation, had no public information events nor deposit locations at the LRC consultation, are missing key elements of critical information and therefore have been unable to engage with the project properly and meaningfully at this stage, not in its development and with the 5 consultations held over the last 4 years.

42(c) Greater London Authority

2.1.6 National Highways consulted the Greater London Authority (GLA) on 4 October 2018. A copy of the letter sent to the GLA has been provided in Appendix K of the Consultation Report and they were given more than 28 days to respond. National Highways has therefore complied with that provision.

42(d) Categorised Persons

- 2.1.7 The phases of consultation that National Highways has undertaken under Section 42(1)(d) have been provided in the Consultation Report and a list of these consultees is included in Appendix J of the Consultation Report. Copies of the letters sent to these consultees have been provided in Appendix K of the Consultation Report and they were given at least 28 days to respond. National Highways has therefore complied with this provision.

Conclusion on Section 42(d)

- 2.1.8 With regards to Section 42 of the PA 2008, the Council consider that National Highways has complied with the appropriate tests.

2.2 Section 47 – Duty to Consult Local Community

Section 47(1)-(4)

- 2.2.1 National Highways issued an early draft Statement of Community Consultation (SoCC) to the Council in February 2018, to which the Council provided comments on the 30 April 2018. Following this, the formal draft SoCC consultation took place from 1 August to 2 September 2018. The Council provided a draft response on the draft SoCC on the 17 August 2018 and committed to sending a final response by the 4 September 2018, this approach was agreed with National Highways by an exchange of emails. National Highways has complied with Section 47(1)-(4).

Section 47(5)

- 2.2.2 Section 47(5) requires that, in preparing the SoCC, the applicant must have regard to any response from the local authorities that is received by the applicant before the deadline.
- 2.2.3 Paragraph 54 of the MHCLG Guidance states '*...in consulting on project proposals, an inclusive approach is needed to ensure that different groups have the opportunity to participate and are not disadvantaged in the process. Applicants should use a range of methods and techniques to ensure that they access all sections of the community in question. Local authorities will be able to provide advice on what works best in terms of consulting their local communities given their experience of carrying out consultations in their area.*'
- 2.2.4 Paragraph 77 of the MHCLG Guidance states that '*Consultation should also be fair and reasonable for applicants as well as communities. To ensure that consultation is fair to all parties, applicants should be able to demonstrate that the consultation process is proportionate to the impacts of the project in the area that it affects, takes account of the anticipated level of local interest, and takes account of the views of the relevant local authorities.*'
- 2.2.5 Appendix F of National Highways' latest Consultation Report sets out the Council's previous response to the draft SoCC and how National Highways amended the SoCC to respond to these comments. Then, **Table 2.1** below sets out the Council's comments on the draft SoCC in late 2018. This shows the Council's responses which were not implemented by National Highways. This is important as it was the only Statutory Consultation undertaken by National Highways and hence requiring a SoCC. Also, it serves as a relevant and important indication of National Highways not adequately dealing with valid comments from a local authority representing consultation with its local community.

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Table 2.1: Council Comments on National Highways' response on the draft SoCC

Thurrock Council's comments on National Highways draft SoCC	National Highways response and amendments to the SoCC
<p>The Council commented that a 10-week consultation period for a project of this magnitude and with significant impacts does not reflect best practice normally associated with this type of consultation. The Council wished to see 12 weeks as a minimum standard particularly given that National Highways were holding events over the duration of the October half term break when some local people may be on holiday, away from the area or engage with childcare.</p> <p>The Council commented that community interest in the scheme is considerable and to afford people the best opportunity to participate warrants a minimum 12 weeks for consultation. This is consistent with the MHCLG Guidance which states at Paragraph 25 'consultation should be thorough, effective and proportionate'.</p>	<p>No action from National Highways.</p> <p>National Highways responded '<i>there is a minimum 28-day period for Statutory Consultation. As public consultation is a key part of how the Project is developed, the Applicant is allowing 10 weeks for consultation, which will ensure people have sufficient time to understand and respond to the proposals.</i>'</p> <p><u>The Council's response</u></p> <p>Despite the Council's feedback on the approach to the Statutory Consultation, National Highways did not consider an extension of time to the consultation period. It is considered that such an extension was proportionate and necessary to ensure that important stakeholders, namely members of the public, had sufficient time to understand, what is, a large and complex scheme, and be able to undertake a proper analysis of the scheme and provide informed feedback. It does not appear that National Highways took into account the likely impacts of the October half term period on stakeholder engagement.</p>
<p>The Council stressed the need for communication prior to Statutory Consultation so that people would receive information and be prepared for the consultation. The Council asked that the leaflet and emails announcing the consultation and consultation events should be sent in advance to ensure there is sufficient notification and that the consultation would stand a chance of being viewed as an authentic and adequate exercise.</p>	<p>No action from National Highways.</p> <p><u>The Council's response</u></p> <p>Advance communication would have alerted stakeholders and helped stakeholders prepare for the Statutory Consultation. This is likely to have prejudiced hard to reach (or seldom heard) groups, in being prepared to review large volumes of technical documents, which runs to over thousand pages, much of which is technical in nature. In some cases (such as seldom heard groups who are unfamiliar with, and possibly intimidated by, consultation processes) the Council considers that early engagement would have been critical, i.e. a necessary condition, to ensuring the effectiveness of the consultation.</p>
<p>It was noted that different areas will have different outcomes and local engagement needs to reflect these differences. In addition, greater</p>	<p>The Consultation Report confirms that at the beginning of the consultation period, leaflets were posted to approximately 283,000 addresses</p>

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Thurrock Council's comments on National Highways draft SoCC	National Highways response and amendments to the SoCC
<p>consideration of hard to reach groups needs to be given.</p> <p>The Council provided suggestions of how and where this could be achieved, which included:</p> <ol style="list-style-type: none"> 1 Providing an easy read version, or poster inviting people to come and talk about the plans. 2 Providing 12 weeks so that interest groups have sufficient time to make members aware, engage around key areas of support or concern and represent views – clarity on how these will be used as consultation responses needed. 3 Ensuring groups know in advance they can invite National Highways to meetings – consider arranging a meeting with CVS (Thurrock Community for Voluntary Service) as they can ask voluntary sector organisation representatives to attend. 4 A commitment from National Highways to braille or translation and exploring practical engagement alternatives if barriers to participate are identified. 5 Including venues that are near schools to engage young peoples and/ or presenting to the youth cabinet early in the process so they can promote the consultation period to peers. 6 Ensuring outreach to traveler sites. 	<p>(residential and non-residential) within 5km of the development boundary of the Project.</p> <p>National Highways provided an easy read version of the consultation guide and made it possible to request a braille version of the consultation guide. Requests could also be made for the consultation documents in alternative languages and formats by calling National Highways telephone line advertised on consultation materials or by email.</p> <p><u>The Council's response</u></p> <p>National Highways did not include all the suggestions provided by the Council, namely providing a 12-week consultation, which is discussed above. In addition, the following website ([REDACTED]) does not reveal any documents entitled 'easy read guide'. However, the Council believes the easy read guide equivalent is inadequate to provide an overview of the schemes likely impacts, especially as it was only 6 pages. This is in comparison to the Easy Read guide at Supplementary Consultation, which was 23 pages and also inadequate for the reasons set out in Section 5.3.10 of the joint Adequacy of Consultation letter between Thurrock Council, Gravesham Borough Council and London Borough of Havering). It did little to inform non-technical stakeholders the likely impacts of the scheme and was inadequate in its lack of detail.</p>
<p>The Council was concerned that only 31% of the consultation events were proposed in Thurrock. Considering that 70-80% of the route passes through the Borough and the impact is far more pronounced than in other areas. It is the Council's opinion that this should be much higher. In addition, the event locations were not considered ideal, for example:</p> <ol style="list-style-type: none"> 1 Lakeside is unlikely to capture a vast amount of Thurrock residents particularly on the last weekend of half term, as most visitors will be from outside the Borough. 	<p>National Highways' response was <i>"Arranging accessible and convenient events for stakeholders to attend is a priority for us. The Applicant recognises that Thurrock has around 50% of the route within its boundaries and this is reflected in the scheduling of events. Thurrock will host twice as many public information events as any other local authority. The events programme will reach the desired range of populations across the Project: Lakeside is a major shopping venue that is popular with local and non-local people; Linford is a smaller community but is at the heart of an affected community; and Orsett Hall was a popular</i></p>

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Thurrock Council's comments on National Highways draft SoCC	National Highways response and amendments to the SoCC
<p>2 Linford Methodist Church is small and has very limited parking. Given that residents from East Tilbury, West Tilbury and surrounding areas to the east of the Borough are likely to want to attend this meeting, this venue would not be able to cope with the number of attendees. The date also needed clarifying (14 October is a Sunday and not a Wednesday as stated).</p> <p>3 Orsett Hall Hotel cannot be accessed by public transport which will exclude a large number of people from attending.</p> <p>4 The Council would have expected to see an event in Tilbury however the nearest would be Chadwell or Linford – the transport links in place are inadequate to support residents in Tilbury, who have lower than average car ownership and experience higher inequalities to other parts of the Borough, to attend.</p> <p>The Council provided details on alternative locations in the Borough, these were: Tilbury Community Association; East Tilbury Primary School, East Tilbury Village Hall or St Clere's School; Aveley Football Ground; and Purfleet High House.</p>	<p><i>public information event venue for consultation in 2016.</i></p> <p>In response to feedback, National Highways replaced one of the Orsett Hall events with one at the Tilbury Community Association.</p> <p><u>The Council's response</u></p> <p>The consultation events were not proportionate to the amount of scheme that is within the Borough. Despite the Council's comments in relation to holding a consultation event at Lakeside 'Lakeside is unlikely to capture a vast amount of Thurrock residents particularly on the last weekend of half term', this was not taken into consideration. As, the Council's role in representing its community, the advice provided on alternative locations for consultation events should have been taken on board to maximise stakeholder engagement.</p>
<p>The Council was concerned that the Chadwell St Mary consultation event had been scheduled for 7 December, close to the end of the consultation period. Chadwell St Mary is one of the most affected areas in the Borough and so the Council asked that the event be brought forward to earlier in the consultation period to enable proper engagement from local people.</p>	<p>No action from National Highways.</p> <p>National Highways' response was that "<i>...the date of the Chadwell St Mary event was based on venue availability. This event takes place during the consultation period, with at least 10 days afterwards for consultees to consider any additional information and respond to the consultation.</i>"</p> <p><u>The Council's response</u></p> <p>Alternative venues should have been sought by National Highways to maximise stakeholder engagement. The timing of this consultation event prejudices the affected people of Chadwell St Mary in having an appropriate amount of time to digest the scheme and likely impacts and provide the required additional information.</p>
<p>The Council was concerned to note that a number of the Statutory Consultation events were taking</p>	<p>No action from National Highways.</p>

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Thurrock Council's comments on National Highways draft SoCC	National Highways response and amendments to the SoCC
<p>place over the course of the October half-term break and it felt this may result in local people being away from the area.</p>	<p>Of the events north (of which there were 14) and south (of which there were 9) of the River Thames, five were held during the October half term, including the two events at Lakeside Shopping Centre, which were held on the last weekend of half term.</p> <p><u>The Council's response</u></p> <p>Consultation events held during periods of school holidays would have meant that anyone away would have been at a disadvantage to comment on the scheme. National Highways does not appear to have given any consideration to this issue.</p>
<p>The Council said that there needed to be additional deposit locations within Thurrock, and that consideration should be given to all libraries/hubs, Civic Offices and the Beehive, as all are known locally as key information points.</p>	<p>No action from National Highways.</p> <p>Two deposit locations were at Grays library and Tilbury Hub.</p> <p><u>The Council's response</u></p> <p>Additional deposit location would have significantly benefited local people in engaging with consultation. For example, the arrangement of Map Books presented in the consultation material was found to be confusing and difficult to decipher, with the north orientation arrow pointing in a different direction on each plan. Large versions of hard copies of the maps would have provided the opportunity for the public to better understand the scheme.</p>

- 2.2.6 National Highways did not take into consideration the Council's comments on the draft SoCC in late 2018 in relation to extending the consultation period to ensure it was proportionate to the likely impacts of the scheme at specific locations in the Borough; to take account of the anticipated level of local interest; and, to maximise stakeholder engagement by extending the consultation date and timing.
- 2.2.7 It is acknowledged that some efforts were made to consult with hard to reach groups, however, the easy read version of the consultation guide was neither clear nor informative and did not provide an adequate representation of the likely impacts of the scheme.
- 2.2.8 The Council therefore considers that National Highways has not complied with Section 47(5) of the PA 2008 or Paragraphs 54 and 77 of the MHCLG Guidance and that a number of communities and individuals will have been substantially prejudiced as a result.
- 2.2.9 Since the 2018 Statutory Consultation, there have been four further non-statutory consultations undertaken by National Highways over a period of four years. Each of these required consideration of a range of complex material by the local authority and local community and

covered a significant range of changes to the scheme. In the Council's view this has resulted in the LTC scheme being substantively different to that which was consulted on in 2018.

- 2.2.10 Paragraphs 73-75 of the MHCLG Guidance relate to the need for further consultation. Paragraph 73 states that *'where proposals change to such a large degree that what is being taken forward is fundamentally different from what was consulted on, further consultation may well be needed. This may be necessary if, for example, new information arises which renders all previous options unworkable or invalid for some reason. When considering the need for additional consultation, applicants should use the degree of change, the effect on the local community and the level of public interest as guiding factors.'*
- 2.2.11 The Council consider that, in the light of the policy guidance statement above and the substantial changes to the project since late 2018, the incremental nature of 4 subsequent non-statutory formal consultations on only certain elements of the scheme and the concerns about the previous consultations (as detailed throughout this response), has led to piecemeal change and confusion across the local community, which needs to be rectified. The Council believes that National Highways should have undertaken a second round of statutory consultation (Stat Con) of the entire scheme, prior to the re-submission of the DCO. This has not been done. As noted above, if a further Statutory Consultation (Stat Con) is undertaken then it is possible to undertake revisions to the SoCC at that Stat Con.

Section 47(6)

- 2.2.12 National Highways published the final Statement of Community Consultation (SoCC) on 10 October 2018 at the start of the Statutory Consultation period. The Consultation Report confirms that the SoCC was provided at deposit locations in community venues, as well as being available in hard copy at all the public information events that were held throughout the consultation period.
- 2.2.13 The SoCC stated that the Section 47 notice would be publicised in the following sources:
- 1 Essex Chronicle;
 - 2 Kent Messenger;
 - 3 Thurrock Gazette; and
 - 4 Yellow Advertiser (Romford Hornchurch Upminster).
- 2.2.14 A copy of the notices required by Section 47(6)(a) as they appeared in the newspapers listed above has been provided by National Highways in Appendix N of the Consultation Report. The SoCC was also published on the LTC consultation website. The Council can confirm that National Highways has complied with Section 47(6).

Section 47(7)

- 2.2.15 Section 47(7) states that the applicant must carry out the consultation in the manner set out in the statement.
- 2.2.16 The Council has reviewed the SoCC and concludes that the consultations were carried out in the manner set out in the Applicant's SoCC.

2.3 Section 48 – Duty to Publicise

- 2.3.1 Section 48 of the PA 2008 requires the applicant to publicise the proposed application in the prescribed manner. The Regulations specify a deadline of not less than 28 days for responses. The SoCC stated that the Section 48 notice would be publicised in the following sources:
- 1 Essex Chronicle;
 - 2 Kent Messenger;
 - 3 Thurrock Gazette;
 - 4 Yellow Advertiser (Romford, Hornchurch and Upminster);
 - 5 London Gazette;
 - 6 The Times;
 - 7 Fishing News; and
 - 8 Lloyd's List.
- 2.3.2 The Consultation Report provides examples of the Section 48 notices, which were published in all of the above sources.
- 2.3.3 The Council considers that National Highways prepared and published the Section 48 notice in the manner prescribed by Regulation 4 of the APFP Regulations (which was then also issued to the consultation bodies under Regulation 13 of the Infrastructure EIA Regulations). The deadline for responses also satisfied the statutory requirements.
- 2.3.4 Therefore, with regards to Section 48 of the PA 2008, the Council consider that National Highways has complied with the appropriate tests.

2.4 Section 49 – Duty to Take Account of Responses to Consultation and Publicity

- 2.4.1 There is a well-developed body of case law that addresses what is necessary to ensure consultation is adequate, including the conscientious and open-minded consideration of relevant matters, i.e. an applicant must embark on the consultation process prepared to change course if persuaded to do so. Clearly, there is no obligation to agree with points by consultees, but it is necessary to show they have been properly considered and the reasons for disagreeing are rational and properly articulated. If a consultation response raises complex technical matters, needing expert consideration, the applicant must allow adequate time to have regard to those matters.
- 2.4.2 The Woolf or Gunning Principles of Consultation (originating from R v Brent London Borough Council, ex p Gunning (1985) 84 LGR 168) set a precedent for all future cases and are used as guiding principles now. These principles can be summarised as:
- 1 Consultation must be undertaken at a time when proposals are still at a formative stage.
 - 2 The proposer must give sufficient reasons for any proposal to permit intelligent consideration and response.
 - 3 Adequate time must be given for consideration and response.

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- 4 The product of consultation must be conscientiously taken into account in finalising any proposals.
- 2.4.3 Clearly, failure to fulfil these principles leads to low quality consultations, which risk reputational damage, judicial review and may impact planning determinations. A subsequent case (R v North and East Devon HA Ex p. Coughlan [2001] W.B. 213), called the Coughlan Principles, reinforced the Gunning Principles. In addition, Government published 'Consultation Principles' in 2018, which reinforced the above principles and set out further principles and in more detail.
- 2.4.4 Paragraph 80 of MHCLG Guidance requires the Consultation Report to provide a description of how the application was informed and influenced by consultation responses, to outline any changes made as a result and to show how significant relevant responses will be addressed. The Consultation Report must also explain why responses advising on major changes to a project were not followed, including advice from statutory consultees on impacts.
- 2.4.5 Paragraph 81 of MHCLG Guidance states *"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 to the Inspectorate."*
- 2.4.6 In reviewing the responsiveness of National Highways to the comments made by technical stakeholders and the public at the five formal consultations, a broad analysis has been undertaken using Chapters 11 - 15 of the Consultation Report. These long sections have summarised individual comments received into a series of summary themes and issues, but have not provided any back-up material, in the form of the original responses from consultees, or their responses to those original issues (except for the Traverse summary reports in Appendix U). These themes and issues understandably vary with each consultation, but do reveal the variety of issues raised, the National Highways formal responses to each summary issue and if a project change has resulted from the summary issue.
- 2.4.7 A broad analysis has revealed that overall, over the five consultations 81 changes have been made to elements of the scheme over a 4 year period. Following a review of Chapters 11 – 15 of the Consultation Report, it has revealed the number of issues raised and the number of changes made as a result of issues raised by consultees, which shows a very low proportion of changes in relation to issues raised. Each issue has a National Highways response and indicates if it resulted in a change to the scheme. A summary of issues raised against changes made is set out below.
- 1 **Statutory Consultation (Stat Con)** – 2,178 summary issues raised, but only 2% (or just 27 changes) resulted in a project change (notwithstanding the removal of the Rest and Service Area), with very little changes relating to the themes of environment, traffic modelling, utilities, construction, charging and land use.
 - 2 **Supplementary Consultation (Supp Con)** – 750 summary issues raised, but only 1.2% (or just 9 changes) resulted in a project change, with most issues relating to the themes of environment, south of the river, traffic modelling, walking, cycling and horse riding and key design elements not resulting in any changes.
 - 3 **Design Refinements Consultation (D-Con)** – 201 summary issues raised, but less than 10% (or just 20 changes) resulted in a project change, with all issues just resulting in these changes overall.
 - 4 **Community Impacts Consultation (CIC)** – 575 summary issues raised, but only 3.6% (or just 21 changes) resulted in a project change, with most changes relating to emergency access, environment, WCH routes and construction and very little relating to changes north and south, Tilbury and open space and operation.

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5 **Local Refinements Consultation (LRC)** – 377 summary issues raised, but only 1% (or just 4 changes) resulted in a project change, with the changes relating to environment, WCH routes and construction and none relating to changes north and south, compensation areas, nitrogen deposition methodology, Order Limits or special category and private recreational land.

2.4.8 It is clear that only a small proportion of issues raised by the Council and other consultees have resulted in changes to the scheme, some more significant than others. Our main point, therefore, is that very few of the Council's and other consultee comments have accounted for scheme changes.

2.4.9 Therefore, it may be that drawing conclusions from such a broad analysis is difficult. But given the number, breadth and technical depth of the 4,081 specific issues raised by many different and often knowledgeable stakeholders, there have been 81 changes to elements of the scheme (or an average of just 2% of changes over a four-year period, is considered low.

2.4.10 The figure of 81 changes corresponds to the overall number of changes set out in each of the 'Guides to Consultation' (when totalled), published at each of the 5 formal consultations. The contents and changes are summarised in the following graphic.

Table 2.2: Summary of Key Contents and Changes from each 'Guide to Consultation'

Statutory Consultation October - December 2018	Supplementary Consultation January - April 2020	Design Refinement Consultation July - August 2020	Community Impacts Consultation July - September 2021	Local Refinement Consultation May - June 2022
Supporting Technical Documents were: <ul style="list-style-type: none"> • PEIR and Summary • Traffic Forecasting Report and NTS • Map Books • Case for the Project • Approach to Design, Construction & Operation 	9 major design changes (taken from 'Guide') Major changes to Order Limits Limited information on environmental impacts Some information was provided on construction and utilities works There were updates to the traffic model	18 major design changes (taken from 'Guide') Some changes to Order Limits More developed landscaping proposals There was further information on Utilities proposals Details of proposed noise barriers Details of maintenance access tracks	Additional 28 major design changes (taken from 'Guide') Major changes to Order Limits, Utility proposals and Special Category Land Major Update of Information of 3,500pp covering: Construction Update Operations Update Ward Impact Summaries You Said, We Did document Maps Technical Documents: DCO Schedule 2 and Explanatory Note OSWMP OTMPfC oMHP CoCP and REAC WNIMMP OLEMP FTPfC	26 major design changes (taken from the 'Guide') Major changes to Order Limits Significant changes to Utility proposals Further changes to construction proposals Changes to traffic flows General information on air quality and noise impacts without assessments Changes to WCH and PRoW proposals Major changes to Special Category and Private Recreational Land Major proposals for Nitrogen Deposition Mitigation

2.4.11 The above analysis needs to be seen in the light of our comments relating to technical engagement being 'too little, too late' and with little chance for our comments to affect change, as were set out in the Council's CIC and LRC consultation formal responses. These concerns arise as a result of our serious ongoing difficulties in securing transparent access to modelling and assessment data at an appropriate time in the consultation process, in a manner that would permit intelligent consideration and response, as well as the limited serious consideration of the need for more meaningful scheme development, as set out in **Appendix D** below.

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- 2.4.12 Such changes that have been implemented took place over a period of 4 years, making it hard to understand what is now proposed. Tilbury Fields, Tilbury Junction, A13 intersection, etc., have all resulted in significant changes in the effects that the scheme has, and the piecemeal nature of these changes has created confusion, particularly for the local community. Yet the final outcome of these changes has failed to result in a substantially improved scheme from the perspective of the local authority and community.
- 2.4.13 Examples of this include the provision of limited modelling data and restrictions on data sharing that have led to constraints on the Council's ability to properly comment on the strategic impacts of the scheme. Now that some engagement is taking place on local modelling between the Council and NH, the scheme has been submitted therefore restricting the ability for the scheme to be amended to take into account the findings of this exercise (refer to **Appendix D**) and, by definition therefore, this feedback will not be provided at a sufficiently formative stage in the consultation exercise. There are many other examples relating to a number of key topics of assessment and construction management. Most notably, the Council has had to rely on a Freedom of Information (FOI) of a fellow public sector agency and then a decision on an appeal to the ICO for sight of the August 2020 outline business case, which was issued just a few days ago on 27 October 2022, providing no opportunity to intelligently comment in a timely manner on these key issues relating to the scheme, let alone the full 10-week period that even National Highways thought would be proportionate.
- 2.4.14 Given the absence of meaningful and early engagement and of any substantive changes to improve the effects of the scheme in terms of the local community, the Council strongly considers that the consultation was treated and carried out as a box ticking exercise rather than a genuine and meaningful opportunity for consultees to influence the progress of the scheme at a sufficiently formative stage in the scheme refinement. In fact, it appears overwhelmingly to be the case that consultees have had very little influence on the progress and design of the scheme.
- 2.4.15 The Council therefore considers that National Highways has not complied with Section 49 of the PA 2008, the Woolf/Gunning/Coughlan Principles (in terms of adequately responding to issues raised) or paragraphs 80 and 81 of the MHCLG Guidance.
- 2.4.16 In particular, National Highways has failed to meaningfully engage with the Council in a timely way or provide the information necessary to provide it with the opportunity to intelligently and appropriately consider all the issues raised by the scheme of concern to its local community.
- 2.4.17 It is worth reflecting that, had meaningful and early engagement taken place, this scheme might have been refined and developed into a scheme that delivered against its strategic objectives, whilst also embracing local constraints and ambitions some years ago, thus saving valuable public money and delivering better outcomes for the nation and local communities. The Council believes that this has been a significant wasted opportunity and a failure of the consultation process.
- 2.4.18 This conclusion needs to be set against the need for the public to fully understand the final scheme, by undertaking a further Statutory Consultation (as set out **above in paragraphs 2.2.9 – 2.2.10**), rather than the incremental and piecemeal consultation over 4 years.

Independent Review of National Highways Consultation Performance

- 2.4.19 The Council commissioned its own review of such adequacy of National Highways consultations in this respect in mid-2022 and published a 3-page Executive Summary of the results on its website on 13 May 2022 - [Independent review raises serious concerns about adequacy of consultation on LTC – Lower Thames Crossing](#) [REDACTED]

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2.4.20 The report found that National Highways had not upheld its commitments to improve its consultation and was consistently failing to meet requirements for meaningful and constructive engagement with key stakeholders and the local community. This is of enormous concern. It was clear from this report that National Highways seemed unwilling to provide basic data, appropriate assurances, and agreement on a wide range of matters related to the proposed Lower Thames Crossing. National Highways were forced to withdraw its last DCOv1 application, because it was judged to have fallen short of the standards required for consultation and it was clear that lessons have not been learnt and crucial opportunities to improve engagement with the local community have been missed.

2.4.21 A summary of the key conclusions relating to the quality of meaningful engagement and consultation were, as follows:

- 1 National Highways confidently promotes various benefits of the LTC project in the wholesale absence of published plans to show how these benefits will be realised. No explanation has been provided to inform communities when they can reasonably expect to see this detail. Consultation on theoretical benefits whose existence is asserted, as opposed to on more concrete proposals supported by plans, etc., is meaningless.
- 2 Consultation has not always been targeted to suit different audiences. Technical information more suited to statutory consultees rather than members of the public has been provided at public consultations alongside more community-appropriate publications which has caused a level of confusion, frustration, and has overwhelmed.
- 3 The Office of Rail and Road (ORR) Review of Highways England's Engagement Approach with Local & Regional Partners (2020), shows that National Highways is complying with the specific and defined engagement elements of its licence duties, but concludes that it is 'doing the minimum required and not meeting the expectations of communities and stakeholders in the engagement process'.
- 4 National Highways has not demonstrated how it has acted on the ORR feedback or considered the recommendations in the National Infrastructure Planning Association reports (NIPA). This has resulted in frustration for statutory consultees, bringing about a lack of trust and recognition that consultation is not being undertaken in an open, inclusive, and meaningful way.
- 5 Consultation experienced by the Council confirms ORR's findings in that National Highways could reasonably be expected to go much further in terms of collaborative partnering with key stakeholders, who hold the power to disrupt the DCO process and have the knowledge and expertise to help National Highways fulfil its Customer Imperative ambitions.
- 6 It is unclear what continual improvement process National Highways uses to ensure its own activities improve in line with customer and community expectations and supply chain maturity.

2.5 Section 50 – Guidance about Pre-Application Procedure

2.5.1 This section of the PA 2008 just sets out that guidance may be issued about how to comply with pre application procedures, either issued by the Commission (in this case the Planning Inspectorate) or the Secretary of State. It confirms that the applicant must have regard to any such guidance.

2.5.2 The relevant guidance is set out in Appendices A and B and is referred to in more detail in **paragraphs 1.1.3 and 1.1.8 above and paragraph 4.1.1 below.**

2.6 The Council's Vulnerable and Other Community Groups Disadvantaged in each of the Five Formal Consultations

Accessibility of the Information and Interest and Vulnerable and 'Hard-to-Reach' Groups

- 2.6.1 The Council have repeatedly been concerned with the accessibility of the consultation material throughout Statutory Consultation and then four subsequent piecemeal rounds of non-statutory consultation.

Map Books

- 2.6.2 The maps books provided for the Statutory Consultation were confusing and difficult to decipher, with the North orientation arrow pointing in a different direction on each plan. Furthermore, there was no overarching large scale plan to provide context to the smaller plans. The plans relating to the A13 junction were particularly difficult to read and the layout of roads could not be properly understood, therefore, it was not possible for the public to meaningfully engage in the consultation. National Highways did not address the concerns of the Council and did not amend the map books format in any of the subsequent consultations. In addition, non-technical language would have helped the public to understand technical terminology, such as, 'Land not included within the Order Limits'. These challenges have discouraged the public from meaningfully engaging with the consultation.

Easy Read Guides

- 2.6.3 There was no 'Easy Read Guide' provided as part of the Statutory Consultation. The Council believes the document titled 'Leaflet' was supposed to be the easy read guide equivalent, however, this was inadequate (it was only 6 pages) to provide an overview of the scheme's likely impacts often under-playing these impacts presenting a false narrative to the public (please refer to **paragraphs 2.5.27 – 2.5.32 below**). The Easy Read Guide to Supplementary Consultation was poor and did not give a true representation of the design and the likely effects of the scheme. For example, it included one page for the environment and did not set out any of the potential environmental impacts. The consultation material could have been much clearer to engender a more meaningful response. The Council expressed its concerns to National Highways regarding the approach to the previous Statutory and Supplementary consultations and for those concerns to be taken on board, but they were not.
- 2.6.4 The 'Easy Read Guide to Design Refinement Consultation' provided as part of the Design Refinement Consultation (D-Con) could only be accessed online. In order to submit a response to the consultation, this document navigated the reader to the standard online consultation, which was not easy to read. It is considered that someone who requires an easy read document would also require an easy read version of the consultation response questions. This was not available and therefore discriminated against a protected group of residents/stakeholders. This is exacerbated by the problem that most within this group are typically within the high rate of internet non-users.
- 2.6.5 The Community Impacts Consultation (CIC) was held over 8 weeks. It involved the provision of 9 technical documents, 7 'core' documents, a range of Map Books and Maps, a Highways England non-statutory compensation/mitigation policy document and some 'easy read' documents – a total of 30 separate items. This documentation totalled over 3,500 pages and did not contain any non-technical summaries. The three so-called 'easy read' documents (Guide, Ward Summaries and You Said We Did) did not fulfil that purpose.

Online Only Design Refinement Consultation (D-Con)

- 2.6.6 The Council expressed their concerns with regards to the online only Design Refinements consultation. Directly affected residents and the wider community were at a disadvantage to meaningfully engage with the consultation. For example, during Covid-19, because of the inability to hold 'in person' exhibitions, view notices in public locations, inspect hard copies of vital, complex documents and plans – the Council considers that the consultation was conducted in an unjustifiably short timeframe by National Highways and should have been longer, up to 8 weeks at a minimum and not a cursory 4 weeks.
- 2.6.7 In particular, interest groups have not been supported to make a contribution to the online only consultation. Community interest groups are likely to represent their wider membership, it is noted that the majority of voluntary sector organisations active in Thurrock represent social care needs, including vulnerable residents and cross cutting protected characteristics (according to the Equalities Act 2010). The Office for National Statistics (ONS) reports that those within this group of protected characteristics are typically a higher proportion of internet non-users, who would therefore not have adequate access to a virtual consultation exercise.
- 2.6.8 Given that the D-Con was online only, the Council assert that certain vulnerable groups were disproportionately under-represented, particularly those with limited access to the internet or with difficulties in downloading large documents, which was further exacerbated by the failure of National Highways to address the concerns previously raised about the Map Books. National Highways did state in its Guide to Design Refinement Consultation, 'If you do not have access to the internet, we can send a printed consultation pack', however, this Guide was an online document, so consultees would have had to be online to view the statement. For stakeholders where internet access is only via a mobile phone, this means that they are effectively excluded from the consultation, as it would be very difficult, if not impossible, to understand and engage with the plans on a mobile phone.
- 2.6.9 Other concerns with a virtual only consultation, which were not accommodated by National Highways but were well documented with them in advance and at every stage of every consultation, were:
- 1 That there was a significant risk of consultation fatigue as a result of this consultation being held just 3 months after the Supplementary Consultation ended, severely impacting on the scale of meaningful and constructive engagement;
 - 2 That the scale of the map books versus the scale of the scheme made it, for example, extremely difficult to decipher the layout of works around the A13, due to the complexity of the junction alterations;
 - 3 That the inability to interrogate hard copies of the plans in large scale restricted professional and community consultees ability to truly understand the effects of the scheme;
 - 4 That the format with changing north points on the plans on each sheet made it incredibly confusing and difficult to understand the context of the scheme within its wider surroundings; and,
 - 5 That extending the consultation period was essential owing to the complexity of, and ability to understand, the scheme and the proposed changes.

Other Accessibility Issues

- 2.6.10 The Council is concerned that those who requested paper copies of the consultation materials were prejudiced as their short time for review and comment was reduced by at least a week or so whilst waiting for these paper copies to arrive from National Highways. Similarly, the public events timing may have reduced the subsequent period for comment following such events.

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The Council is also concerned that the time taken for call-backs or written responses to questions (up to 10 days) seriously eroded the time left for responding formally to the consultation.

Vulnerable and 'Hard to Reach' Groups

- 2.6.11 The Council's response to the Community Impacts Consultation again set out its concerns regarding vulnerable groups when it stated, *'the Council is concerned that certain vulnerable groups may be under-represented, particularly those with limited access to the internet or difficulties in downloading large documents.'* This comment was repeated in the Council's response to the Local Refinement Consultation adding that *'we are concerned that those who request paper copies will be prejudiced as their short time for review and comment will be reduced and a limit of one copy per household is too restrictive given the prevalence of multi-occupancy households. Similarly, the public events timing may reduce the subsequent period for comment following such events.'* Unfortunately, National Highways did not respond positively to these comments again and consequently vulnerable and various interest groups were disadvantaged when they did not need to be. The Council contends that National Highways did not make the additional effort for these groups as prescribed in guidance (as set out in **paragraphs 2.4.19 – 2.4.21** above).
- 2.6.12 The Council, in their role in representing their communities, are concerned that it was not made clear in the consultation material how vulnerable or 'hard to reach' groups were engaged during all five formal consultations, such as the elderly, those with disabilities, those who may not be able to read, those for whom English is not their first language. The Consultation Report does not set out clearly in Sections 3.5.2, 3.5.28, 4.5.1, 6.5.13, 7.6.15, 8.8.15 and 9.6.1 how 'hard-to-reach' groups were engaged or the results and conclusions of any such engagement.
- 2.6.13 Using D-Con as an example, because it was online only and so certain vulnerable groups would be highly likely to have been under-represented and those most affected unable to access the online materials, i.e. ageing population, people with poor health, limited access to the internet or bandwidth for downloading large documents and especially not given sufficient time to understand the proposals or to respond. In addition, during both latter consultations of the CIC in summer 2021 and LRC in late-spring 2022, it is not clear from the Consultation Report, despite mentioning hard-to-reach groups throughout, exactly how they were researched, approached, or covered, which is considered a failing.
- 2.6.14 It should be noted that, in relation to equalities and engaging with hard to reach (or seldom heard) groups, the volume of information being consulted upon, which runs to over a thousand pages for each consultation, much of which is technical in nature, has proved a challenge for many sectors of the community to engage fully in the consultations.
- 2.6.15 The Council consider that National Highways has not complied with paragraph 20 of MHCLG Guidance, which require consultation to be engaging and accessible in style to encourage consultees to react and offer their views or paragraph 54 of MHCLG Guidance, which requires an inclusive approach when consulting on project proposals to ensure that different groups have the opportunity to participate and are not disadvantaged in the process. In fact, these groups have been substantially disadvantaged as a result of not taking the advice from the local authority to address the matters raised with regards to these groups and reaching them. Also, the way that the consultation has been carried out (as set out **above in paragraphs 2.5.1 – 2.5.14**) and as a result of errors in the presentation of the consultation material itself.

Duration of the Consultations

- 2.6.16 Paragraph 25 of the MHCLG Guidance establishes that consultation should be thorough, effective, and proportionate with sufficient time for consultees to understand proposals and formulate a response. The consultation periods for the Statutory Consultation and all four non-

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statutory consultations were insufficient given the complex nature of the project and several were held during local election and summer holiday periods. This is in contravention of two of the Government Consultation Principles – labelled G and K.

- 2.6.17 In summary, the periods for each formal consultation and if it was held during a difficult period and the Council’s recommended duration is set out below in a short table. The additional periods for the Supplementary, Design Refinement and Community Impacts consultations were recommended to be longer by the Council because of the purdah or holiday periods in which they were held by National Highways.

Table 2.3: Summary of Consultation Periods and Council Recommendations

Consultation	Conflict	Duration of Consultation	Council Recommended Duration
Statutory Consultation 2018		10 weeks	12 weeks
Supplementary Consultation	During Purdah	10 weeks	12 weeks
Design Refinement Consultation	Over summer holiday period	4 weeks	8 weeks
Community Impact Consultation	Over summer holiday period	8 weeks	10 weeks
Local Refinement Consultation		5.5 weeks	8 weeks

- 2.6.18 During the informal consultation with the Council prior to each consultation, the Council has clearly stated their recommended duration for each consultation and at each consultation. National Highways did not amend their proposed durations, nor did they explain why they considered the inconsistent and varied approach to be appropriate. In particular, the Council contend that the period for the last 3 formal consultations (Design Refinement (online only during Covid-19), Community Impact and Local Refinement Consultations) were insufficient to comply with the intent of paragraph 25 of the MNCLG guidance because insufficient time was provided for consultees to understand proposals and formulate a response. These concerns led to the Council seeking longer periods in our responses to the draft SoCC and its subsequent Addenda. National Highways’ lack of flexibility to make changes in its proposed approach has compromised Council resources, vulnerable and other interest groups and the public’s ability to understand and respond to the varying and complex consultation materials.
- 2.6.19 In addition, the Council believe that the duration of the most recent Local Refinement Consultation will have significantly limited the ability of community groups, many of whom will be advocates for the groups with protected characteristics whose wellbeing National Highways should have considered, via the Health & Equalities Impact Assessment. The short consultation period did not provide a fair period of time for the voluntary sector, still severely impacted by Covid-19, to mobilise those they represent to engage adequately or to consider and invite LTC representatives to community meetings.
- 2.6.20 In summary, the Council requests for additional time amounted to just over two months over all 5 consultations – a small amount of time that could have been agreed to by National Highways, if it were seeking to comply and meaningfully engage with the community. Given the complexity of the material within these consultations, these requests for additional time were entirely reasonable and appropriate and the Council consider that the failure to have carried out sufficiently lengthy consultations (for reasons which National Highways have yet to explain) caused substantial prejudice in that it prevented meaningful engagement and effective consultation, as set out above.

National Highways Response to Covid-19

- 2.6.21 The Covid-19 pandemic emerged as an issue during the course of the Supplementary Consultation (Supp Con) period and assumed critical significance in March 2020, thereby affecting both Supp Con and Design Refinement Consultation (D-Con), which itself was organised as solely online.
- 2.6.22 Later consultation events for the Supplementary Consultation, in March 2020, were cancelled due to the Covid-19 pandemic (four in total out of 21 events), meaning it is likely that many missed the opportunity to attend an event. The Council, in their role in representing their communities, expressed their concerns to National Highways regarding the likely impacts of Covid-19 pandemic on the community and that extending the consultation by only one week was inadequate when there was likely higher priority matters and concerns affecting people's health, wellbeing and in many cases, their ability to work. The one-week extension was likely to have little benefit to the public at this time. Many stakeholders provided feedback on National Highway's (Lower Thames Crossing) Facebook page, claiming that the consultation should either be postponed further or cancelled and that higher priority matters in relation to the global pandemic were at hand. There is no evidence that the decision to extend by one week was itself based on any evidence as to the likely effectiveness of the additional one week period, given the constraints presented by the lockdown and that the one-week period is arbitrary.
- 2.6.23 The Leader of the Council wrote to National Highways on 20 and 27 March 2020, requesting that the consultation be postponed and expressing the view that the one-week extension proposed was, given the state of emergency, of no benefit to any party. National Highways did not agree to the postponement of the consultation.
- 2.6.24 The Design Refinements Consultation was undertaken in full knowledge of the Covid-19 pandemic, albeit in a period when restrictions had been relaxed. The consultation period commenced on 14 July 2020, was only 30 days and took place only virtually or online and during the summer holiday period. The Council considers that there were significant issues and challenges associated with a further consultation exercise, undertaken virtually, so soon after the Supplementary Consultation, during a global pandemic and in the summer holiday period and expressed these concerns to National Highways at that time. Whilst National Highways acknowledged stakeholder concerns regarding the length and timing of the consultation, the duration and timing of this consultation programme was not altered.
- 2.6.25 It is considered that 30 days is insufficient time to enable an adequate level of meaningful review and response, compounded by the fact that National Highways undertook this round of consultation just 4 months after the completion of the Supplementary Consultation (March 2020), which would not have allowed time to reflect on the feedback from the last round of consultation and incorporate stakeholder comments into the scheme or the consultation approach.
- 2.6.26 Section 49 outlines the duty of the promoter to take account of responses to consultation and publicity. Paragraphs 20 and 54 of the MHCLG Guidance (refer to **Appendix B**) emphasise the need for consultation to be based on accurate information, shared at an early stage and engaging and accessible; and they also stresses importance of taking the advice of the local authority with respect to consultation with local communities and yet National Highways has shown no willingness to take local authority views on these important matters into account. Therefore, the Council considers that National Highways has not complied with Section 49 and paragraphs 20, 25 and 54 of the MHCLG Guidance.

Misleading Information at Community Impacts Consultation (CIC)

You Said, We Did (YSWD)

- 2.6.27 Paragraph 81 of the MHCLG Guidance 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 to the Inspectorate.'*
- 2.6.28 Overall, this YSWD document is unlike the DCOv1 Consultation Report, which only acknowledged that 9 design changes had been made following 3 consultations (reported within the Council's Adequacy of Consultation response in November 2020). The YSWD does the opposite. Every single design or project change made following each of the previous consultations were listed and summarised in a series of Tables. Unfortunately, it is not clear that often the reasons for a change were not directly due to a consultation response, but as a direct response to required mitigation following further impact assessments as a result of normal design development within the project; both of which should not be attributable to responses to consultation. Overall, this is considered false and misleading.
- 2.6.29 The sub-headings under which the YSWD document is structured, such as 'need for LTC', 'preferred route selection' 'route north of the river' are considered too broad to be helpful and do not follow the necessary Ward breakdown in the Ward Summaries, which would be more helpful. It would have been more helpful to structure this document around the Wards to offer the public more clarity. This made the consultation very confusing for the general public.

Ward Summaries

- 2.6.30 As included in the Council's response to National Highways on the CIC (refer to the following link - [Stantec - Lower Thames Crossing: summary review of community impacts consultation \(thurrock.gov.uk\)](https://www.thurrock.gov.uk/stantec-lower-thames-crossing-summary-review-of-community-impacts-consultation)), the information presented by National Highways in the CIC, consultation material is protracted, repetitive, complex and often missing key data. It was not supported by evidence that would be required for stakeholders, including the Council, to provide an informed response to the proposed design and the wider scheme. The assertions within the Ward Impact Summaries were often misleading by intimating that all impacts are to be mitigated by the proposals put forward by National Highways. A few significant examples are provided below:
- 1 Although in the initial section it states that Archaeology was to be assessed within these wards this did not happen. The assessment of the Scheduled Monument at North Stifford was very poor. Considering this is a nationally important heritage asset equivalent to a Grade I listed structure, there was very little detail provided, when as a result of LTC it will be completely destroyed. It is known that important non-designated assets will be destroyed, however, there was no attempt within the Ward Summaries to describe their presence or significance or the impact of the development on them. The document did not appropriately assess the historic environment impacts, with the exclusion of the majority of the archaeological data. As a result of this omission there was no assessment of the archaeological impact of the road proposals. In some places the summary in the table did not correlate with the information within the more detailed text.
 - 2 During construction and operation, the effects of light pollution were not considered, particularly in relation to 24/7 construction hours and in wards that already have existing health issues.
 - 3 Throughout the Ward Summaries there was an inconsistent application of the methodology to different environmental elements. For example, mitigation measures to reduce the impact of light pollution at night was considered for heritage, but there was no mention of this in relation to population and human health. Similarly, green bridges as a form of

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mitigation were mentioned in relation to habitats and biodiversity but omitted for population and human health.

- 4 General conclusions made about different environmental factors did not appear to be consistently applied across the environmental sections of the document. For example, in the Chadwell St Mary Ward Summary, it was concluded that there would be no significant noise impacts in the noise and vibration section of the report. However, paragraph 630 and the corresponding bullet points stated that there would be significant adverse effects relating to noise in Chadwell St Mary.
 - 5 Only broad and non-specific information relating to factors that will affect the health and wellbeing of local residents in wards were outlined in this document. The impact of traffic and public transport links was included; however, it was not explained how these effects would be felt in the surrounding wards by the local population.
- 2.6.31 Specific and fully complete ward information, relating to all Environmental Statement topics should have been provided in the Ward Summaries to inform ward level impacts relating to health and wellbeing of local residents and to clearly set out all other impacts in the ward areas.
- 2.6.32 Paragraph 80 of MHCLG Guidance requires the Consultation Report to provide a description of how the application was informed and influenced by consultation responses and paragraph 81 emphasise the importance of informing those '*who have contributed to the consultation of the results of the consultation exercise*'; the concerns expressed above, in relation to this matter substantiates why the Council considers that National Highways has not complied with paragraphs 80 and 81 of MHCLG Guidance.

3 The Council's Role as Technical Authority

3.1 Introduction

3.1.1 **Paragraphs 2.4.1 – 2.4.5 above** set out the various critical principles of consultation and specific Government guidance established through case law and reinforced by Government in 2015 and 2018. It is important that four particular principles/guidance are emphasised here, namely:

- 1 Consultation should take place at a time when proposals can still be influenced, and this should be informed by sufficient information to allow consultees to understand the reasons for the scheme proposed and permit intelligent consideration and response.
- 2 The product of consultation must be conscientiously taken into account in finalising any proposals. Further, there is no obligation to agree with points made by consultees, but it is necessary to show they have been properly considered and the reasons for disagreeing are rational and properly articulated. If a consultation response raises complex technical matters, needing expert consideration, the applicant must allow adequate time to have regard to those matters.
- 3 Paragraph 81 of the MHCLG Guidance states *'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 to the Inspectorate.'* This guidance would apply to the local authority as technical authority as well as members of the public and other stakeholders.
- 4 Government responses to consultations should be published in a timely fashion (and National Highways can be considered an agency of Government).

3.1.2 The following section examines compliance with these three accepted and well-documented principles/guidance of consultation. The Consultation Report and the consultation processes over the past 4 years have failed to comply with them. Compliance failures are set out with reference to the following critical matters:

- 1 Prematurity of the DCOv2 submission and the related lack of critical technical information/data;
- 2 Statement of Common Ground (SoCG) – process deficiencies;
- 3 Emergency Services Provision/Commitments – lack of progress;
- 4 Development Consent Order – amendments and negotiations;
- 5 Control Documents – lack of adequate feedback;
- 6 The Need for a Revised EIA Scoping Opinion and ongoing deficiencies;
- 7 Previous AoC, Planning Inspectorate Advice and MHCLG Guidance – deficient outstanding matters; and
- 8 Outstanding issues affecting the Examination timetable.

3.2 Prematurity and Lack of or Delayed Technical Information/Data

- 3.2.1 This sub-section concerns the Council's view that there has been a refusal to provide critical information and data to the Council, despite many requests in writing over the past few years, both within formal consultation and within ongoing technical engagement. This lack of information/data has prevented the Council in performing its tasks as technical authority. The Council has been prevented from obtaining an adequate understanding of the scheme and therefore in its ability to undertake meaningful engagement with National Highways on a range of important technical matters, as would normally be expected. Through its action National Highways has prevented the Council from providing its residents with a full understanding of the scheme and its impacts.
- 3.2.2 The Council demonstrates this with evidence and examples below the information/data that has not been provided or has been delayed and emphasises the critical nature of such information/data to perform both its functions as representing its community and acting as technical authority. The matters that most amply demonstrate this critical matter are:
- 1 Provision of the Outline Business Case and in a timely fashion;
 - 2 Lack of and delayed traffic modelling information;
 - 3 Lack of updated air quality and noise assessments since DCOv1 in October 2020; and
 - 4 Lack of any real updates to the Health and Equalities Impact Assessment (HEqIA) or any understanding of their response to criticisms of its methodology, impacts or proposed mitigation.
- 3.2.3 In addition to this lack of this information/data there are many other instances where long-awaited technical information/data has been provided in bulk all at once often due to National Highways delays, coinciding the release of critical information with a formal consultation or just before the current DCOv2 submission – the long-delayed issue of traffic modelling information (refer to **Appendix D**) and the resistance to publication of the Outline Business Case are examples of this, amongst others discussed below.
- 3.2.4 Other instances of delay in information/data or provision in bulk are covered within **Appendix D** below and in relation to several changed design proposals within the scheme – namely, modifications to the wider A13 junction and the Tilbury Fields open space were only included in the CIC consultation. Tilbury Fields and the wider A13/Orsett Cock junction was then modified again at the LRC consultation, and the Tilbury operational and emergency access was added. These changes were included with minimal technical engagement beforehand.
- 3.2.5 In considering these issues, the Council emphasises that the above-mentioned Consultation Principles make it clear that there should be sufficient information provided to allow 'intelligent consideration and response', 'at a time when proposals can still be influenced. Far from following these principles, National Highways has provided insufficient information to allow intelligent consideration and response (unless pressed through official channels) or delayed provision of this information to a point in the scheme development process where the proposals can no longer be influenced. The Council considers that this is a major failure and renders the consultation to date inadequate, insufficient, and unlawful.
- 3.2.6 When considering the term 'adequate time' set out from MHCLG guidance in **paragraph 3.2.7 below**, it is also of significance that there have been many instances where responses to Council technical comments have taken many months from National Highways resulting in delays to ongoing engagement on that issue. For example, the results of the Orsett Cock local junction modelling was only released to the Council a few weeks prior to the DCOv2 submission, which is likely to mean that this and other issues will only be considered during the Examination (also please refer to **Section 3.9 below**).

- 3.2.7 In all these instances, as a result of these delays, the Council has not had sufficient time to analyse and prepare responses, which is contrary to the Consultation Principles that states 'Adequate time must be given for consideration and response' and the Government Consultation Principle labelled as E ('Consultations should last for a proportionate amount of time') and paragraphs 20, 25, 68, 72 and 92 of the MHCLG guidance 2015.

Outline Business Case and ICO Decision

- 3.2.8 It is the Council's understanding that the Outline Business Case (OBC) is a document submitted to the Treasury, which sets out the economic case for proceeding with the Lower Thames Crossing Project. Without consent from the Treasury public funding will not be provided to pursue the project, so it is essential that interested parties, such as the Council, have an opportunity to comment. This is to help avoid public funds being committed based on potentially flawed conclusions. It is understood that the Outline Business Case has already been submitted to the Treasury, but it has not yet been approved and awaits the DCO grant and then the full business case submission.
- 3.2.9 On 11 March 2022 the Council requested the OBC from National Highways. The request in summary set out the following reasons:
- 1 So that the Council can better understand how the Lower Thames Crossing project is intended to benefit and impact Thurrock residents.
 - 2 To allow the Council to develop its proposals, including mitigation.
 - 3 To ensure that the views of the Council, who is uniquely placed to understand how its area will be impacted by the Lower Thames Crossing Project, are considered by the Treasury.
 - 4 To better understand how increased delays to traffic on the existing local road network due to the Lower Thames Crossing Project have been assessed.
 - 5 To better understand the treatment of carbon and climate impacts and how these have been taken into account.
 - 6 To better understand the impacts of the project on health and how these have been considered.
- 3.2.10 National Highways refused to share the OBC and stated on 8 April 2022 that it was incomplete, was not approved by the Treasury and therefore would not share the information ahead of sign-off from the Treasury. This position was maintained on 13 June 2022, following the Council's request for a review of that decision on 13 May 2022. It is not normal practice for the Council, nor generally the public sector, to issue FOI requests within the public sector, but National Highways' persistent refusal to engage on such matters created exceptional circumstances. Subsequently, the Council sent a letter to the Information Commissioner's Office (ICO), on 19 July 2022, to ask them to request that the OBC is disclosed to the Council, in the public interest.
- 3.2.11 In the ICO Decision Notice, 14 October 2022, it supported in favour of disclosure of the OBC to Thurrock Council and stated:
- 1 *'The project will have a major and lasting impact on people living and working in that area. Those people are entitled to take part in the associated decision-making and to be as fully informed as possible before any final planning decisions are made.'*
 - 2 *'The public authority has recognised that there is a public interest in transparency, openness and accountability, as well as the environmental impact and assessment of new road development...'*

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- 3.2.12 So, although National Highways repeatedly stated that sharing the OBC information was not in the public interest, the ICO disagreed with them and instructed it to be provided. National Highways did not disagree with this ruling and provided the OBC on 27 October 2022, 4 days before DCOv2 submission. In their covering letter, National Highways acknowledge that a number of changes have occurred since the OBC's preparation in August 2020, stating that it has now been superseded. National Highways then acknowledge that the DCOv2 application will contain an Economic Appraisal Report with updated costs and economic benefits of the project, although this does cover the same detail as the OBC. The Council has not yet reviewed this application document.
- 3.2.13 This example succinctly demonstrates the challenges and implications of National Highways' refusal to engage on crucial matters and too-often repeated behaviours that attempt to withhold release and delay disclosure of information. National Highways has, in the opinion of the Council, not upheld the necessary level transparency or support to facilitate meaningful engagement. Furthermore, the delay in disclosing the OBC to the Council and the public until just before DCOv2 submission has placed an unreasonable strain on Council resources in reviewing it (it is some 420 pages) and prevented the public's ability to understand its content and conclusions. Plainly, the Council has had insufficient time to review and meaningfully comment on the OBC, a document which it should have been provided with as early as March 2022.

Traffic Modelling Information

- 3.2.14 **Appendix D** entitled 'Inadequate Provision of Technical Evidence and Information – Traffic Modelling' sets out in more detail the Council's view of the deficiencies in providing vital traffic modelling data well in advance of DCOv2 submission to enable the Council to determine the validity of the models and effects of the LTC on the local highway network. This would provide more meaningful and rapid engagement and technical interaction to potentially remove issues from subsequent consideration during the Examination process. In particular, it would have revealed much earlier the fact that key junctions do not operate without major delays that will dramatically affect the operation of the project, such that it does not work. Clearly, one of the LTC objectives is '*to relieve the congested Dartford Crossing and approach roads and improve their performance by providing free-flowing north-south capacity.*' The Council contend that due to these significantly increased, long delays, that this objective has not been achieved.
- 3.2.15 In summary, despite ongoing engagement with National Highways regarding the strategic Lower Thames Area Model (LTAM) and limited more detailed local junction modelling, the Council continues to have unresolved concerns. Thurrock's concerns regarding the adequacy of consultation in relation to traffic modelling and its use to report the operational and construction impacts of the scheme relate to the following key areas, which have been examined in more detail in **Appendix D** below:
- 1 Limited access to the LTAM model and modelling results;
 - 2 Lack of supporting technical information;
 - 3 Adequacy of the LTC impact assessment on Thurrock's local road network using NH's strategic LTAM model;
 - 4 Adequacy of consideration of uncertainty in forecasting and recent travel behaviour changes following the pandemic; and,
 - 5 Timing of modelling programme and provision of modelling results, which is delayed and still incomplete.

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- 3.2.16 The Council considers that there are still key elements of technical engagement that should have been concluded prior to the DCOv2 submission but have not. This includes the ongoing traffic modelling work. The Council is concerned that it has not received sufficient transport modelling evidence in support of the evaluation of the scheme and its impacts on the local road network (LRN). The Council therefore contends that NH has:
- 1 Failed to satisfactorily assess and present the evidence of the impacts of the LTC scheme on the local highway network;
 - 2 Failed to adequately consider the implications of the recent changes in road user behaviour arising from the pandemic and locally significant locations of future growth;
 - 3 Failed to provide detailed technical information to evidence the validity of the models and assumptions made; and,
 - 4 Failed to adequately consult with local communities, businesses, and other important stakeholders, including Port of Tilbury and London Gateway on the impact of the LTC scheme.
- 3.2.17 Consequently, the Council contends that National Highways has not complied with Section 49 of the PA 2008 and paragraphs 20 or 54 of the MHCLG Guidance. Furthermore, this refusal to share key technical information well in advance of DCOv2 submission is considered to be contrary to the Consultation Principle which states, *'The proposer must give sufficient reasons for any proposal to permit intelligent consideration and response'* and is considered contrary to the Government's Consultation Principles of 2018 labelled C and I ('Consultation should be informative' and 'Consultation should facilitate scrutiny').

Air Quality and Noise Assessments

- 3.2.18 Following receipt of the full documentation of the DCOv1 in December 2020 and the subsequent Community Impact Consultation, the Council has repeatedly requested over the past year since the Community Impacts Consultation that National Highways release the updated air quality and noise assessment that form part of the Environmental Statement. These requests have all been refused and accordingly there has been *no* consultation – let alone any meaningful consultation – in respect of this material.
- 3.2.19 On 17 August 2022, both Thurrock Council and the London Borough of Havering (LBH) wrote to National Highways setting out their 10 joint concerns and 5 asks of National Highways within 3-months prior to DCOv2 submission. These asks included requesting release of updated environmental and health assessments, including updated air quality and noise assessments. On 20 September 2022, National Highways responded stating that they believed that adequate information had been supplied and further information would not be provided. Subsequently, National Highways have offered a series of 'briefings', with one on 3 October 2022 for 'Noise and Vibration and Air Quality'. This briefing involved a presentation (subsequently shared) presenting slides offering their narrative on the results of their updated assessments.
- 3.2.20 However, no updated assessments were provided for the Council to analyse and then update the community or respond to technically. These assessments are derived from the LTAM model and as we have not been provided with the technical information that supports the LTAM, we cannot also validate these air quality or noise assessments, even if they were provided as requested.
- 3.2.21 The Council contends that providing these updated assessments well in advance of the DCOv2 submission, is essential to facilitate meaningful engagement and technical interaction to understand and scrutinise the impacts and the appropriateness of any mitigation, thereby potentially removing issues from subsequent detailed technical consideration and analysis

during the 6-month time-bound Examination process. The Council is very concerned that in withholding crucial air and noise pollution data that there is now insufficient time prior within the DCOv2 Examination timescales to examine, engage in technical discussions with National Highways and communicate the impacts in a transparent and appropriate manner to people impacted.

- 3.2.22 The Council therefore contends that National Highways has not complied with Section 49 of the PA 2008 and paragraphs 20 or 54 of the MHCLG Guidance. Furthermore, this refusal to share key technical information well in advance of DCOv2 submission is considered to be contrary to the Consultation Principle which states, *'The proposer must give sufficient reasons for any proposal to permit intelligent consideration and response'* and is considered contrary to the Government's Consultation Principles of 2018 labelled C and I ('Consultation should be informative' and 'Consultation should facilitate scrutiny').

Health and Equalities Impact Assessment (HEqIA)

- 3.2.23 For context it is worth setting out a brief outline of the key consultation stages over the last two years. The Council's previous Adequacy of Consultation response dated 5 November 2020 referred in paragraph 2.4.10 to deficiencies in the HEqIA, namely the methodology, lack of information sharing of the impacts and mitigation proposed in the HEqIA thereby preventing meaningful input from the Council or public. This was partially resolved by the provision of the full documentation of DCOv1 in December 2020. However, the Council was still concerned about the HEqIA as were other local authorities. An Independent Review of the methodology was undertaken in June 2021, supported by 9 local authorities (Thurrock Council, Southend-on-Sea Borough Council, Medway Council, Gravesham Borough Council, Essex County Council, Havering Borough Council, Kent County Council, Dartford Borough Council and Brentwood Borough Council). National Highways provided a response to the 20 recommendations in February 2022, but it is still unclear if those responses satisfy the Council or provide adequate reasoning. This is because no updated HEqIA or updated extracts have been provided to enable Council review against the recommendations within the Independent Review.
- 3.2.24 Before and after that National Highways response to the Independent Review, there were no HEqIA updates were provided to the Council, besides 11 Community Impacts & Public Health Advisory Group (CIPHAG) multi-stakeholder meetings during 2021 and until July 2022 that were of limited value in providing any information regarding health and equalities impacts or mitigation. The request for a National Highways update on the HEqIA has been a standing agenda item and ask of the Council's LTC Task Force monthly committee meeting throughout 2022 due to public interest and the seriousness of impacts.
- 3.2.25 On 17 August 2022, together Thurrock Council and the London Borough of Havering (LBH) wrote to National Highways setting out their 10 joint concerns and 5 asks of National Highways within 3-months prior to DCOv2 submission. These asks include requesting release of updated health assessments. On 20 September 2022, National Highways responded stating that they believed that adequate information had already been supplied and further information would not be provided, given the additional cost and delay to the project. Following this there was a National Highways briefing on 13 October 2022 (2.5 weeks prior to DCOv2 submission) on HEqIA matters. This again involved a presentation (subsequently shared) setting out changes to the methodology, scheme changes and a summary of effects and mitigation, unsupported by any analysis or evidence and so of very limited value.
- 3.2.26 The Council contends that if National Highways had provided these updated HEqIA assessments or further information on the updated methodology and especially impacts and mitigation, well in advance of the DCOv2 submission, it would have enabled more meaningful engagement and technical interaction to understand the impacts and the appropriateness of any mitigation, thereby potentially removing issues from subsequent consideration during the Examination process.

3.2.27 The Council does not consider that National Highways has complied with Section 49 of the PA 2008 and paragraphs 20 or 54 of the MHCLG Guidance. To date no consultation has taken place in respect of the HEqIA at DCOv1 or DCOv2, either in part or as a draft full document. Furthermore, this refusal to share key technical information well in advance of DCOv2 submission is considered to be contrary to the Consultation Principle which states, *'The proposer must give sufficient reasons for any proposal to permit intelligent consideration and response'* and is considered contrary to the Government's Consultation Principles of 2018 labelled C and I ('Consultation should be informative' and 'Consultation should facilitate scrutiny').

3.3 Statement of Common Ground (SoCG)

3.3.1 Paragraph 47 of the MHCLG Guidance states *'Local authorities are encouraged to discuss and work through issues raised by the proposed development with applicants well before an application is submitted. Agreements reached between an applicant and relevant local authorities can be documented in a statement of common ground. This will contain agreed factual information about the application and can accompany the application. The statement of common ground can also set out matters where agreement has not been reached. This can then be looked at during examination...'*

3.3.2 Paragraph 116 of the MHCLG Guidance states *'Section 55(3)(f) of the Planning Act states that the application should be of a satisfactory standard. This means that meeting the consultation requirements alone will not guarantee that an application will be accepted for examination. Section 55 (5A) requires the Secretary of State in considering whether an application is of a satisfactory standard to have regard to the prescribed form and contents of applications and whether it complies with applicable guidance. The level of detail and definition of the project and the resulting quality of the information contained in the application as a whole will therefore have a bearing on the Secretary of State's decision.'*

3.3.3 The Council has fully engaged with National Highways to try and resolve issues, attending numerous workshops, meetings and undertaking a vast amount of work over 4 years. The original Issues Logs (up until mid-2022) included 3 Issue Group Logs (Group 1: some 1,100 issues – covered repetition, superseded and covered elsewhere and now agreed; Group 2: some 1,500 issues; and, Group 3, some 500-600 significant issues. Subsequently, the Council have undertaken with National Highways a summarising/simplifying exercise to develop the 500-600 significant issues into themes within a first draft of the draft SoCG and these are now reduced to 250-300 significant issues, which are still being reviewed carefully by the Council to ensure these summaries accurately reflect the more detailed issues.

3.3.4 The original Issues Log grew throughout 2019-2022 as National Highways has sought to amend the design of some scheme elements and undertake five rounds of consultation. Although National Highways have undertaken technical engagement in terms of meetings, workshops and responses – the National Highways engagement has been ineffective in relation to a substantial number of the Council's concerns, with 250-300 significant issues still not agreed or under discussion or not agreed pending review of the DCOv2 'control documents', even after significant effort has been expended by the Council to combine, summarise and simplify the Issues Log. In fact, many of the issues are unable to be resolved at this time, due to lack of evidence / information available from National Highways, to enable the Council to make an informed response on many issues (refer to **Section 3.2 above**).

3.3.5 Whilst summarising/clarifying the Group 3 issues may lead to clarity on the issues for the Planning Inspectorate and others, it does not yet deliver any progress towards their resolution.

3.3.6 In discussion on the first draft SoCG with National Highways there was discussion about including a statement on the SoCG front cover explaining the status of this first draft. National Highways set out its draft statement: *'While National Highways have worked closely with*

Thurrock Council in the preparation of this document, Thurrock Council has not yet been able to complete their review of this Statement of Common Ground in line with their governance process. This Statement of Common Ground is therefore presented as National Highways understanding of the status of discussions with Thurrock Council. This Statement of Common Ground is therefore an 'unsigned' Statement of Common Ground.'

- 3.3.7 The Council disagreed with this wording and set out its draft statement: ***'This is a DRAFT Statement of Common Ground (SoCG). It is unapproved and has yet to be agreed by Thurrock Council. National Highways has spent the last 2-3 months clarifying/summarising the large number of significant issues into this SoCG. Therefore, this DRAFT SoCG only represents National Highways' understanding of the issues and the status of discussions with Thurrock Council as at October 2022 and there remain a significant amount of further work to establish an agreed first draft. Thurrock Council requires further time to complete its review of this DRAFT SoCG in accordance with its local authority governance process. Thurrock Council continues to have a strong desire to undertake constructive engagement with National Highways to address the substantial number of issues prior to the DCO Examination period, as is normal practice. Thurrock Council intends to complete its review of the DRAFT SoCG prior to DCO Examination as is the normal process, although given the large number of outstanding significant issues we consider that it is likely to require further updates throughout the Examination.'***

National Highways refused to use the Council version or include it with their own statement, demonstrating clearly National Highways lack of collaboration on even the most basic Council views. Plainly, this is not acceptable.

- 3.3.8 Paragraph 69 of the PA 2008 states that the proposal should become firmer as the applicant takes account of responses to consultation. This does not appear to be the case, as the Issues Log, and subsequent first draft SoCG still has approximately 250-300 areas of fundamental/significant concern, and the majority are not agreed or under discussion (with limited change of resolution) after some 4+ years of 'front loading'. This has put the Council under a long period of pressure to provide the resources to attend the variety of meetings over 4 years, with limited resolution of many technical issues or clear evidence from National Highways as to how they have considered them and responded to them – the first draft SoCG is currently under detailed review by the Council.
- 3.3.9 The number of outstanding issues has grown in the lead up to the submission of the DCOv2 application submission. This is likely to result in a greater number of Examining Authority questions and potentially additional hearings, which will add undue pressure on all parties. Should the application be accepted for Examination, there is a significant risk that the volume of outstanding significant issues and concerns remains so large that it will consume a disproportionate amount of Examination time (see below).

Overall Technical Engagement/Outstanding Issues Deficiencies

- 3.3.10 Paragraph 69 of the MHCLG Guidance states that *'Applicants will often also require detailed technical advice from consultees, and it is likely that their input will be of the greatest value if they are consulted when project proposals are fluid, followed up by confirmation of the approach as proposals become firmer. In principle, therefore, applicants should undertake initial consultation as soon as there is sufficient detail to allow consultees to understand the nature of the project properly.'*
- 3.3.11 Paragraph 1.1 of the Planning Inspectorate's Advice Note 2 states that *'A local authority will provide an important local perspective at the pre-application stage, in addition to the views expressed directly to the developer by local residents, groups and businesses.'*

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- 3.3.12 Paragraph 6.2 of the Planning Inspectorate's Advice Note 2 states '*Local authorities should engage proactively with a developer even if they disagree with the proposal in principle. It is important to recognise that a local authority is not the decision maker but will want to contribute towards the development of the emerging proposals with the benefit of their detailed local knowledge...*' Paragraph 6.3 of the Inspectorate's Advice Note 2 states "*Once an application has been submitted it cannot be changed to the extent that it would be a materially different application, so as to constitute a new application. It is therefore important for local authorities to put any fundamental points to the developer during the pre-application stage.*'
- 3.3.13 Paragraph 115 of the MHCLG Guidance states that '*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.*'
- 3.3.14 Since withdrawing the DCOv1 in November 2020, technical engagement has taken place over the past two years as meetings and correspondence largely and these are still taking place with National Highways, irrespective of the submission of DCOv2. However, a very significant range of outstanding matters persist that have not yet been resolved prior to Examination, such as: very limited issues resolution, continued delays and inadequacy of various technical documents, lack of key technical information/data and many unresolved transport/traffic issues. In the Council's view this inadequate technical engagement required for issues resolution is contrary to the four Consultation Principles mentioned in **Section 2.4 above**. Such inadequacy strongly suggests the scheme design is not sufficiently resolved for the DCOv2 submission. In addition, the timing of significant technical engagement often coincided with formal consultations, stretching the Council's resources and limiting the efficacy of the Council responses.
- 3.3.15 Technical concerns not appropriately dealt with by National Highways were listed in the first AoC in November 2020 – many of these concerns still remain. The Council are of the view that over the last year that resolution of most of these matters of concern have not progressed with intent, with very little change of attitude at National Highways. For example, the wealth of inadequate technical engagement has still resulted in a serious lack of technical information being provided from National Highways to Thurrock Council, which is key to the Council providing evidenced and considered responses to help shape the design with National Highways. Examples of the lack of this technical information are set out below:
- 1 National Highways has not completed the options testing necessary to demonstrate that the DCOv2 scheme is the best option (such as the LTC / A13 / A1089 junction and Tilbury Link Road).
 - 2 National Highways has decided to submit a scheme with 250-300 significant issues outstanding (as shown in the first draft SoCG), rather than actually resolve them through technical engagement. This is because the Council believes it was under pressure to meet a DCOv2 submission deadline.
 - 3 Delay and lack of Transport Modelling information from National Highways, to inform Wider Network Impacts (unacceptable increased traffic and impact on local communities) – please refer to the 'Inadequate Provision of Technical Evidence and Information – Traffic Modelling' response in **Appendix D**.
 - 4 Lack of updated Air Quality and Noise Modelling Assessments (refer to **Section 3.2 above**).
 - 5 Health and Equalities Impact Assessment (HEqIA) – lack of detailed information or draft documents until very late in the process (August 2020, just prior to DCOv1 submission), inadequate consultation on derived impacts or mitigation and a complete lack of legally secured mechanisms for delivering mitigations (refer to **Section 3.2 above**).

- 6 The Hatch Report on Mitigation Measures was issued by the Council in February 2021 and was an attempt to address the earlier report on Economic Costs in February 2020. Since mid-2021 National Highways and the Council have held a number of 'Hatch' meetings, which have been fortnightly, with 11 held this year and some 36 in total. However, of the 58 measures only 16 have been technically agreed and very few of these are those that are of primary importance to the Council. The meetings continue. It is acknowledged that National Highways do not need to accept all of these measures, but they do need to provide robust evidence as to why they do not consider them to be required, have not done so.
 - 7 Lack of consideration of and provision for Future Travel Patterns, Public Transport Provision and Future Technology changes.
 - 8 Lack of options testing for alternative locations for spoil deposition. The East Tilbury Landfill site between LTC and Coalhouse Fort is an ideal location that has not been adequately investigated.
 - 9 Lack of commitment to securing targets for skills and employment local provision and social value procurement.
 - 10 Inadequate response and provision for the changing policy environment and legislation relating to Climate Change and Decarbonisation.
 - 11 Lack of adequate provision for emergency services within the LTC scheme or any securing mechanism for its provision, especially relating to the lack of detail and absence of measures to support the emergency services and safety partners.
- 3.3.16 The lack of information provided by National Highways to inform proper technical engagement with the Council, demonstrates no lack of activity, but a serious lack of meaningful engagement. It is considered that the timely provision of the above data and allowing time for analysis and discussion with National Highways to resolve issues would have provided the opportunity for many of the SoCG issues to be resolved, and more importantly, for a better scheme to be developed, which would both meet its strategic objectives and resolve many of the concerns of the Council. This is the reason for extensive guidance encouraging early, transparent, and meaningful engagement and why the DCO process was designed to be frontloaded.
- 3.3.17 The current position means that very many issues remain unresolved at the risk of taking up much unnecessary Examination time. If changes are to be made to the scheme to address Council concerns, these are likely to need to be significant and therefore need further consultation. Whilst there is some experience of this happening during Examination, it would be extremely sub-optimal to go into an Examination in the knowledge that this is a serious risk.

3.4 Emergency Services Provision/Commitments – Lack of Progress

- 3.4.1 The Emergency Services and Safety Partners Steering Group (ESSPSG) was formed in early 2021 in response to the failure to progress a range of issues and technical engagement through National Highways Tunnel Design and Safety Consultation Group (TDSCG) that was originally formed in early 2018. The ESSPSG is formed, with its own Terms of Reference, of all the emergency 'blue light' bodies and local authorities (including Thurrock Council) and has met largely monthly since January 2021. These meetings culminated in September 2021 with a formal response to the Community Impacts Consultation (CIC) setting out 56 recommendations for National Highways to implement in discussions with the ESSPSG that were formally endorsed by all members of the ESSPSG. Since then, National Highways has provided an interim response in November 2021 to these recommendations and have engaged in several technical ('Scoping Group') meetings, but with very little tangible progress.

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- 3.4.2 Then, the ESSPSG responded in June 2022 to the Local Refinement Consultation (LRC) stating that there had been some progress but very little progress on matters of consequence/concern in the 56 recommendations since their response to the CIC and that the LRC did not contain any changes relating to emergency services after almost one year of engagement.
- 3.4.3 In summer 2022 National Highways began to engage on the preparation of a Statement of Common Ground (SoCG), but only sent a first draft SoCG to the ESSPSG in mid-late September 2022, only one month prior to DCOv2 submission. Following ESSPSG members review of the draft SoCG it became clear that the document was not acceptable and consequently ESSPSG formally confirmed to National Highways that *'it should not be published in its current form. Once members have had full opportunity to consider the document and respond we will come back to you with a way forward, but until then there is concern that publication could present an inaccurate picture of the group's position to the Examining Authority.'* We therefore understand it has not been published within the DCOv2 submission.
- 3.4.4 It is the Council's view, as a key member of the ESSPSG, that given the critical nature of the need for adequate provision for emergency services within the project proposals or commitments, the lack of progress is seriously impairing the workability of the project during crucial incidents and emergencies. This is of particular concern given that one of the strategic objectives of the scheme is to provide greater resilience for crossing of the Thames in the event of incidents and the lack of information about emergency services provision forms part of a wider lack of evidence provided to consultees about how such incidents would be managed. Given the continuous attempts by the ESSPSG to set out its issues and requirements over the past two years, National Highways are entirely failing to deal adequately with both the technical engagement and in the development of project proposals and commitments within the DCOv2 submission to deal with these issues. The lack of any agreed draft SoCG demonstrates this failure amply.
- 3.4.5 The Council believes that providing for these recommendations well in advance of the DCOv2 submission and subsequently within their project proposals and commitments within the DCOv2 submission, would have enabled more meaningful engagement and technical interaction to develop the proposals/commitments, thereby potentially removing issues from subsequent consideration during the Examination process. It is acknowledged that National Highways do not need to accept all of the recommendations, but they do need to provide robust evidence as to why they do not consider them to be required, which has not yet been provided.
- 3.4.6 The Council therefore considers that National Highways has, again, not complied with Section 49 of the PA 2008 and paragraphs 20 and 54 of the MHCLG Guidance. Furthermore, this refusal to share key technical information well in advance of DCOv2 submission is considered to be contrary to the Consultation Principle which states, *'The proposer must give sufficient reasons for any proposal to permit intelligent consideration and response'* and is considered contrary to the Government's Consultation Principles of 2018 labelled C and I ('Consultation should be informative' and 'Consultation should facilitate scrutiny').

3.5 Development Consent Order

- 3.5.1 The Council notes and acknowledges that National Highways has engaged with the Council on the draft DCO since providing the draft DCOv1 in December 2020. This has resulted in four detailed reports being provided to National Highways (April 2021, October 2021, February 2022, and August 2022), who have responded on each occasion. This has resulted in approximately 19 changes being agreed within the draft DCO Order.
- 3.5.2 Whilst it is positive that changes have been agreed, the Council still has a number of fundamental concerns about how National Highways has approached the DCO Order, especially on those areas which are important to the Council. In particular, there has been a

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lack of explanation as to why some requirements are necessary, with an over reliance on previous DCOs. This is despite our concerns being raised multiple times.

3.5.3 The Council has identified over 30 areas of the draft DCOv2 that remain unagreed as between the parties, which are recorded within the SoCG but remain unresolved.

3.5.4 Three key examples of some matters outstanding at the time of DCOv2 submission include:

1 Limits of deviation – Article 6. The Council remains concerned with the extent and limits of the draft DCO. Specifically, the fact that the maximum limits of deviation are not limited to the Order Limits and are only limited by new or materially different environmental effects in comparison with those reported in the Environmental Statement. The use of limits of deviation should not negatively materially impact land or buildings, which have not been identified as part of the DCOv2 application and Examination process. It is important to allow all those possibly affected to make representations. Our concern is that such a broad amount of flexibility on the limits of deviation is means that it is not possible to clearly say who is potentially affected by the project, therefore removing the ability for them to be properly consulted.

National Highways has not explained why such broad flexibility is required or why it is appropriate to create such uncertainty as to the applicability of the draft DCO Order. Whilst it is correct that consultation has been undertaken in relation to this point, for the consultation to be meaningful National Highways' rationale for such broad powers needs to be understood. From the information provided by National Highways this is not possible.

2 Defence to proceedings in respect of statutory nuisance – Article 57. This article sets out the scope of the defence to proceedings in respect of statutory nuisance. National Highways proposes a defence against a wide variety of statutory nuisances, despite this not being the usual position in highways DCOs. National Highways has not explained, despite multiple requests, why such a defence against such a wide variety of statutory nuisances as necessary. Its position is that 'it is proposed to limit the paragraphs referenced to those nuisances which are considered to be potentially engaged for the Project.'

It remains the Council's position that the purpose of this article is only to provide the statutory defence to nuisance where it is demonstrated that the nuisance is likely to be caused and it is not practicable to mitigate against it. In those situations, the greater good of undertaking the project justifies the nuisance being caused. However, it is not appropriate to have a blanket defence as this discourages appropriate steps to reduce nuisance.

This failure to engage with the substance of the Council's concerns is of significant concern to the Council who, in the context of its ongoing concerns about the lack of timely information about noise, air quality, light pollution and road safety issues that might lead to such nuisance, is trying to better understand the negative impacts of the DCOv2 Order on local residents and to limit those impacts as far as possible.

3 Temporary possession of land – Article 35(3). This article sets out the notice that needs to be given to landowners before their land is temporarily possessed. The initial period within the draft DCO Order was 14 days. National Highways has extended this to 28 days. The Council's primary concern is that without sufficient notice local residents could face unnecessary disruption (especially those which are carrying out a business on the affected land). National Highways maintain that a period of greater than 28 days would cause unacceptable delay to the project. However, despite multiple requests National Highways still has not provided information on what the impact of providing a period of 2 months or 3 months would be on the delivery of the project, given that the only operational implication of this would be for National Highways to serve the notices earlier than they would need to do if the period were to remain as 28 days.

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- 3.5.5 A key aspect of consultation is to provide sufficient information to allow National Highways' reasoning to be understood and to allow the Council the opportunity to comment on this reasoning. However, the Council has been unable to understand the position of National Highways due to their refusal to provide further information.
- 3.5.6 The Council contends that National Highways has failed to provide proper and complete justification of the position adopted in DCOv2 on certain matters and/or failed to provide sufficient detail to evidence what analysis has been undertaken to mitigate the chances of unintended consequences. Consequently, there remains a significant number of both objections and issues outstanding, and potential risks that could lead to negative impacts on local residents and road users. Whilst some changes have been made to DCOv2 Order, which the Council appreciates, there remains important and significant factors that have neither been suitably addressed during the parties' engagement, nor adequately justified.

3.6 Control Documents

- 3.6.1 Only 4 Control Documents were provided in DCOv1, which are listed below:
- 1 Code of Construction Practice, including the Register of Environmental Actions and Commitments;
 - 2 Design Principles;
 - 3 Draft Archaeological Mitigation Strategy and Outline Written Scheme of Investigation (AMS-OWSI); and
 - 4 Environmental Masterplan.
- 3.6.2 Of the following seven Control Documents that were not provided in DCOv1, six were subsequently shared with the Council in July – September 2021 (as included within the draft list of DCOv2 documentation shared with the Council on 23 September 2022 entitled 'Introduction to the Application'). The SACR has not been shared at all:
- 1 Framework Construction Travel Plan (FCTP);
 - 2 Outline Landscape and Ecology Management Plan (oLEMP)
 - 3 Outline Materials Handling Plan (oMHP);
 - 4 Outline Site Waste Management Plan (oSWMP);
 - 5 Outline Traffic Management Plan for Construction (oTMPfC);
 - 6 Wider Network Impacts Management and Monitoring Plan (WNIMMP); and
 - 7 Stakeholder Actions and Commitments Register (SACR).
- 3.6.3 Overall, there has been a lack of updates to vital 'Control' and other critical technical documentation prior to DCOv2 Submission. The Council reviewed the 10 Control Documents in July-September 2021 as part of the Council's CIC formal response and since then there have been no further updates. The issues raised by the Council were transferred to the Issues Log and now the first draft of the SoCG. This was followed by various technical meetings, such as construction and transport modelling. However, despite all the effort and time spent during engagement with National Highways, the Council remains unsure how those comments have been dealt with within the DCOv2 submission. In fact, there are well over 100 issues within the

Issues Logs (and hence the first draft SoCG) that cannot be resolved without sight of these updated Control Documents.

- 3.6.4 Second, local traffic modelling has not been completed and so impacts, mitigation and scheme design cannot be finalised with any certainty. Third, air quality, noise and health assessments have not been completed or shared and therefore the local authority cannot review or judge their acceptability in terms of its dual roles. Finally, there are many updated or new Control Documents that the Council has not seen, such as the Carbon and Energy Management Plan (last seen in September 2021 as part of the CIC consultation) and the Stakeholder Actions and Commitments Register (which has never been seen by the Council).

3.7 The Need for a revised EIA Scoping Opinion

- 3.7.1 Regulation 14(3)(a) of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (SI 2017 No.572) states that '*...the environmental statement... must, where a scoping opinion has been adopted, 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).*'
- 3.7.2 As noted in paragraph 5.9 of the Inspectorate's Advice Note 7 '*...Applicants should consider carefully the best time to request a scoping opinion. In order to gain the most benefit, Applicants should consider requesting the opinion once there is sufficient certainty about the design of the Proposed Development and the main design elements likely to have a significant environmental effect.*' Given the 81 changes to elements of the scheme design (as noted in the 'Guides to Consultation' and the Consultation Report – see **paragraphs 2.4.6 – 2.4.12 above**) and the significant increase in the application area since the adoption of the 2017 Scoping Opinion, it is considered that the EIA Scoping Exercise was undertaken prematurely and needs to be redone. It has now been two years since DCOv1 and a new SSSI is being considered by Natural England, thereby potentially changing the environmental assessment.
- 3.7.3 Although the application area was slightly reduced from that of the Supplementary Consultation as part of the Design Refinement Consultation (July 2020), it is still considerably larger than that at the 2017 EIA scoping stage, as demonstrated below, using data generated from GIS data supplied by National Highways (within each 'Guide to Consultation'), which shows considerable variations in the application area throughout the last 4 years:
- 1 2017 EIA Scoping - 12.76 km²;
 - 2 2019 Statutory Consultation (December 2018) - 20.08 km²;
 - 3 2020 Supplementary Consultation (January 2020) - 26.21 km²;
 - 4 2020 Design Refinement Consultation (July 2020) - 22.91 km²;
 - 5 2021 Community Impacts Consultation (July 2021) – 22.2 km²; and,
 - 6 2022 Local Refinement Consultation (May 2022) – 24.35 km².
- 3.7.4 It is acknowledged that there is a need to retain flexibility in designing major infrastructure schemes, however, the significant increase in application area, which has increased by some 52% since EIA scoping stage up to the last consultation. This is compounded by the very significant and plainly material changes to elements of the scheme which have taken place since scoping, lead to the conclusion that National Highways' October 2017 EIA Scoping Report was submitted prematurely and at a point in time where there was considerable uncertainty about the design of the scheme. It should have been reviewed subsequently (but has not been) and, as a result of modifications to the scheme since it was submitted, it is no longer fit for purpose

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and it is not reasonable to rely on it at this point in time, given the significant developments just referred to.

- 3.7.5 EIA Scoping Opinion was issued by PINS in October 2017 and following the EIA Regulations must be complied with by the promoter. The first AoC highlighted some 11 specific comments that were not complied with by NH, of which 8 specific comments are set out below. However, as a number of the scheme elements and the scheme's Order Limits have changed significantly over the last 4 years, the Council considers that a new Scoping Opinion should be sought, and specific examples of non-compliance are offered in the Councils' response. A review of the EIA Scoping Opinion (December 2017) has been undertaken together with the DCOv1 submission and its ES chapters that were shared by National Highways in December 2020 and the Council's current understanding of the position on each matter. It is considered that the following scoping opinion comments may not be considered in the DCOv2 (Table 3.1, below), although this cannot be validated until review of the DCOv2 documentation.

Table 3.1 – EIA Scoping Opinion comments not considered in the draft ES Chapters within DCOv1

Scoping Opinion ID	The Inspectorate's EIA Scoping Opinion comments	Compliance of National Highways DCOv1 with PINS EIA Scoping Opinion and current understanding of DCOv2
Air Quality ID 1	The Inspectorate considers that the ES should include an assessment of impacts associated with increased PM _{2.5} resulting from the Proposed Development	<p>No – PM_{2.5} was not assessed in the draft ES Chapter for DCOv1 and National Highways have refused to assess it separately.</p> <p>ES Chapter 5, Paragraph 5.3.52, states: <i>"PM_{2.5} concentrations were not modelled as this is not a requirement of DMRB LA105. However, to address comments from the Planning Inspectorate, Gravesham Borough Council and Thurrock Council, the modelled PM₁₀ results have been utilised here (as they contain the PM_{2.5} fraction) to demonstrate that there will be no risk of PM_{2.5} exceeding statutory thresholds."</i></p> <p>This is despite the UK Government being legally required to produce updated PM_{2.5} thresholds in October 2022, which is still awaited. This statement above cannot therefore hold true.</p>
Air Quality ID 6	General methods of mitigation are set out in the scoping report; however, the ES should describe and justify any specific mitigation measures	No - ES Chapter 5 for DCOv1, did not contain any embedded mitigation, nor essential mitigation and instead relied on the good practice measures set out in the CoCP and the REAC.

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Scoping Opinion ID	The Inspectorate's EIA Scoping Opinion comments	Compliance of National Highways DCOv1 with PINS EIA Scoping Opinion and current understanding of DCOv2
	designed to address significant adverse effects.	
Cultural Heritage ID 2	The baseline assessment in the ES should be established using all relevant data.	<p>No – the Desk Based Assessment (DBA) (which was originally issued to the Council in May 2020, but then replaced in Appendix 6.1 of the ES for DCOv1)) was considered to fail to satisfy its own aims and did not provide the necessary evidence base to allow for accurate conclusions to be drawn of what levels of harm will be caused and what mitigation measures would be available.</p> <p>The DBA failed to use all of the available data, with most of the information provided relying on list descriptions and the Historic Environment Record.</p>
Cultural Heritage ID 2	The assessment in the ES should assess impacts to all relevant cultural heritage receptors.	No – there were serious concerns regarding the value of heritage assets identified in the Desk-Based Assessment (DBA) (Appendix 6.1 of the ES for DCOv1) and how these were assessed.
Noise ID 8	Noise barriers have been listed as potential mitigation measures to be used to reduce effects from noise. The effectiveness of noise barriers should be fully described and assessed. Any inter-relationships with other chapters such as the Landscape and Visual assessment or Ecology should also be considered. Details must be provided of how the mitigation design will be secured.	No – it was unclear in ES Chapter 12 of DCOv1 about the effectiveness of the noise barrier; what attenuation is provided, and likely impacts of the noise barriers to the community, i.e. visual impacts.
People and Communities ID 2	The ES should clearly set out the assumptions that have been made within the assessment of transportation impacts. A	No – the Council were not in receipt of the revised Transport Assessment to validate where transportation by river is relied upon to mitigate road

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Scoping Opinion ID	The Inspectorate's EIA Scoping Opinion comments	Compliance of National Highways DCOv1 with PINS EIA Scoping Opinion and current understanding of DCOv2
	<p>worst-case scenario should be assessed. Where transportation by river or rail is relied upon to mitigate road transportation impacts (as implied in paragraph 6.9.4 of the Scoping Report), the Inspectorate would expect to see commitments made to these movements, e.g. through the draft DCO.</p>	<p>transportation impacts, nor was a commitment made in the draft DCOv1 at that time in late 2020.</p>
<p>People and Communities ID 7</p>	<p>The Inspectorate notes that Medway Council (MC) have provided information on the predicted growth in Medway and the emerging development strategy, with respect to the Lower Thames Area Model for traffic modelling proposed in the Scoping Report. This information is also likely to be relevant to the Air Quality and Noise assessments. Essex CC have also provided advice regarding growth on the A127 corridor and emerging Local Plans. The assessment in the ES should take this information and any other relevant information of this sort into account.”</p>	<p>It is not the role of National Highways (or any other transport scheme) to solve the existing traffic issues in the local area, it is however, its duty to assess the impacts of the proposed scheme on the highway network, whether local or strategic and then mitigate those impacts. The same logic applies to transport impacts as any other subject, that if there are significant impacts they should be avoided, if possible, then mitigated and finally compensated for if that is not possible. The Council had not seen the submitted Transport Assessment with the DCOv1, even though the Council was promised sight of it before the previous submission. The central case is based on the WebTag approach, with high and low options. This was, however, not sufficient to address the requirements for a reasonable worst case under the EIA regulations. Without such analysis it is not possible for the Council or residents to form a proper view of the potential impacts of the scheme, or whether it is even fit for purpose in terms of its proclaimed objectives.</p>

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Scoping Opinion ID	The Inspectorate's EIA Scoping Opinion comments	Compliance of National Highways DCOv1 with PINS EIA Scoping Opinion and current understanding of DCOv2
Cumulative ID 3	The cumulative assessment should be based on the most up to date information available regarding the other developments considered.	No – the Council made substantial comments on National Highways Long list – but did not receive a response from National Highways that the additional developments have been included within the assessment.

3.7.6 It is the Council opinion that not only were the draft ES chapter of DCOv1 not compliant with the Inspectorate's Scoping Report, but National Highways should have undertaken a further and more recent scoping exercise to consider the changes to the scheme (as was expressed in the joint Adequacy of Consultation with Thurrock Council, Gravesham Borough Council, and the London Borough of Havering in November 2020).

3.7.7 The Council maintain that the most appropriate time for National Highways to seek a new Scoping Opinion would have been after the CIC consultation when the majority of scheme elements changes and Order Limit changes had taken place and the results of that consultation had been properly assessed for their effect on the scheme, i.e. in late 2021 or early 2022. In the Council's opinion, besides these above-mentioned (refer to **Section 2.4 above**) many scheme element changes, there have been a number of environmental topics that have undergone significant changes in assessment methodology and policy context, especially those relating to air quality, noise, people and communities, cumulative effects and climate. Furthermore, it would have permitted the very many consultation bodies consulted in 2017 (prescribed bodies, relevant statutory undertakers, Section 43 consultees (Local Authorities) and non-prescribed consultation bodies) to update their technical views to the Planning Inspectorate. Such a Scoping Opinion would have revealed these matters for a more recent consideration by the Planning Inspectorate.

3.7.8 Furthermore, the Council consider it essential that National Highways should demonstrate how the scheme now complies with the only Scoping Opinion issued by PINS on 13 December 2017 and demonstrate how the Council have been consulted on the matters above, as the Council considers such consultation has been inadequate. This should be achieved within Appendix C of the Consultation Report, which only currently contains the original Scoping Report letter dated 31 October 2017 and the PINS response letter of 13 December 2017.

3.7.9 Furthermore, National Highways has made 81 changes to various scheme elements (as has been set out **above in Section 2.4**), over the past 4 years and prior to the submission of DCOv2 and have still not undertaken a revised Scoping Report.

3.8 Previous AoC, Planning Inspectorate Advice and MHCLG Guidance

3.8.1 Further to the DCOv1 submission in October 2020, the Planning Inspectorate provided a meeting note dated 26 November 2020 setting out advice as to the main issues with the DCOv1 that would be part of any decision to not accept the application, as Annex A of that meeting note. The Council considers it important to review those main issues to determine if they have subsequently been adequately dealt with as part of the Consultation Report. This is notwithstanding that the Council has not yet reviewed any of the DCOv2 documentation.

3.8.2 The main issues identified by the Planning Inspectorate in Annex A in summary were:

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- 1 **Transport Assessment** – lack of it in demonstrating the assessment, impacts/effects and appropriate mitigation of construction traffic.
 - 2 **Construction Traffic Management proposals** – too generic and lacking detail.
 - 3 **Jetty Usage** – lack of consistent detail of proposals and barge use or understanding of **navigational effects**.
 - 4 **Navigational Assessment** – none provided.
 - 5 **Waste handling process** – no detail provided and no coordination with HGV movements, reuse and river transport.
 - 6 **HRA** – ‘nugatory’ (not valid or having no force or effect) effects not defined or quantified, lack of detail on in-combination effects, poor quality screening and integrity matrices. In addition, several related assessments lack supporting evidence.
 - 7 **DCLG Guidance** – not followed key guidance as set out in sections 19-27 of Annex A. This relates largely to poor sufficiency of information at formal consultations and in technical engagement and the lack of feedback from various formal and technical consultations.
 - 8 **Landscape and Ecology Management Plan (LEMP)** – lack of an outline LEMP to demonstrate how proposals will be achieved.
 - 9 **Missing Consultees** – some 11 stakeholders missed (Commissioner of Police of the Metropolis, one Parish Council, Port of Gravesend and several minor utility companies).
 - 10 **Minor Errors and Omissions** – in the Book of Reference, Land Plans, Works Plans and the ES. In addition, some loading errors and a lack of searchable PDF’s for Land Plans, Crown Land Plans and Special Category Land Plans.
- 3.8.3 The Council recognises that over the past two years many of the technical matters listed above have improved and may now be covered or no longer relevant within the DCOv2 submission documentation. However, there remain deficiencies related to the following technical matters that have arisen throughout the ongoing technical engagement and within the last two formal consultations over the past two years:
- 1 Appropriate mitigation has not yet been achieved for construction traffic impacts and impacts on public rights of way (PRoW), based on the content of all of the consultation materials over the past two years. This is because technical discussions are still ongoing and significant impacts remain that are unmitigated.
 - 2 There is a lack of commitment to river usage in the transport of materials to/from the main construction areas and its relationship to the Transport Assessment and use of local roads.
 - 3 Critical technical information has not been provided or delayed (refer to **Section 3.2 above**) leading to the Council and the public not having a clear view of the proposals or to understand impacts. Also, this relates to the ongoing deficiency in the sufficiency of information provided to consultees.
 - 4 Acknowledging that there was feedback at the Community Impact Consultation in the form of the ‘You Said, We Did’ document; the Council still considers that those contributing to the latest consultation have not been properly informed of the results, in relation to the Local Refinement Consultation (held from 12 May to 20 June 2022, some 4 months prior), as the feedback was only received on 21 October 2022, just 10 days prior to DCOv2 submission

on 31 October 2022. This did not allow the Council or public to understand how their responses have been accounted for or if not, then why not.

- 5 National Highways did not provide any drafts of the Consultation Report in advance, as recommended in PINS Advice Note 14 (Version 2), page 6 and hence did not assist the assessment process. Furthermore, the Council has not seen or reviewed the original full copies of the full consultation responses from statutory bodies in either of the two consultations in the last two years.

- 3.8.4 The Council considers that these matters are deficient and have not complied with paragraphs 20, 68 and 81 of the relevant MHCLG Guidance, 2015 and PINS Advice Note 14 (Version 2).

3.9 Outstanding Issues that May Affect the Examination Timetable

- 3.9.1 Section 98(1) of the PA 2008 imposes a duty on the Examination Authority to complete the Examination within 6 months. Paragraph 114 of the MHCLG Guidance states that the Secretary of State's acceptance of applications must be *'based on the overall quality of the application in terms of the ability of the Examining Authority to be able to examine it within the maximum 6 month statutory time period.'* In addition, MHCLG Guidance paragraph 15 states *'Pre-application consultation is a key requirement for applications for Development Consent Orders for major infrastructure projects. 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.'*

- 3.9.2 Should the application be accepted for Examination, there is a real likelihood that the number of outstanding issues and concerns is so large that it will consume a disproportionate amount of Examination time. This is in itself an indicator that the pre-application consultation and engagement of National Highways has been wholly inadequate as detailed in this document. Moreover, a number of key design issues and necessary technical analysis (such as pollution, traffic impacts, Section 106 agreements, scheme modifications, construction impacts) are likely to require more time than the period available to undertake, even presuming a change in National Highway approach to provide more timely responses. This is considered unacceptable by the Council. The number of outstanding issues is likely to result in a greater number of Examining Authority questions and potentially additional hearings, which will add undue pressure on all parties, and may not ultimately be achievable bearing in mind the need for procedural fairness going forward, an aspect of which is for parties to have sufficient time to deal with issues as they arise. Furthermore, there may be a need for requests for further information, i.e. under the Rule 17 of The Infrastructure Planning (Examination Procedure) Rules 2010, adding further pressure to all parties and on the timetable for any Examination.

- 3.9.3 As an example, to a delay to an Examination, a recent procedural decision by the Inspectorate on Thurrock Power Limited DCO under Section 89 and The Infrastructure Planning (Examination Procedure) Rules 2010 - Rules 6, 9 and 17, requested further information in respect of the Environmental Statement due to written submission and the oral submission at the Preliminary Meeting Part 1. The Inspectorate's reasoning was as follows:

'One of the primary purposes of the Examination process is to resolve issues that arise from the ES as opposed to providing a mechanism for resolving numerous omissions and inadequacies. Indeed, the frontloading of project development in the PA2008 is, in part, intended to avoid such issues acting as an impediment to the examination of applications in the statutory timescales.'

The relevance of this decision to the recent LTC DCOv2 submission is that in view of the missing critical information as outlined above, it may be necessary for PINS to request further

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information from National Highways (taking into consideration the Council's views above), which will in turn the delay this DCO process.

- 3.9.4 As set out **above in Section 3.3**, there are still approximately 250-300 outstanding significant issues included in the first draft SoCG. The majority of these issues are not agreed or under discussion (with limited chance of resolution) after some four years of discussion. In addition, there is substantial work to be completed on agreeing the Section 106 Heads of Terms and various side agreements to be negotiated. National Highways have not yet provided a required evidence base to back the submitted DCOv2 application, for example, transport modelling, updated air quality and noise assessments and health impacts (refer to **Section 3.2 above**).
- 3.9.5 As set out in **Appendix D** below, the Council asserts that the assessment of local traffic impacts demonstrates that there are likely to be significant delays on local roads, particularly Orsett Cock, that will require changes to the scheme design. Until this modelling work has been completed, it cannot be concluded with any certainty that an acceptable scheme can be designed within existing limits or that is not significantly different from that submitted. There is therefore a significant risk that additional consultation may be required. Whilst there is precedent for this, it would seem perverse to enter into an Examination process in the knowledge that this is a significant risk.
- 3.9.6 The Council therefore considers that National Highways has submitted its DCOv2 despite the significant amount of outstanding issues to be resolved, resulting in a significant risk to the statutory timescales of the Examination timetable. The Council does not consider that DCOv2 should have been submitted with this extent of unresolved objections to it, particularly since such a large proportion of that unresolved objection flows from National Highways' failures to have adequately consulted and informed the Council and the residents of the administrative area, as set out in this document.
- 3.9.7 The DCOv2 application should only be accepted for Examination if there can be a reasonable degree of confidence that it can be examined within the statutory period. The Council does not consider that it can be, for all of the reasons set out above. There are numerous outstanding issues arising from a number of defects in the consultation process that have significantly prejudiced the Council, and other consultees, such that the application should not be accepted for Examination at this stage without those matters being rectified.
- 3.9.8 It is a concern that National Highways appear to be systematically limiting the development of and access to technical analysis that would enable the Council to establish a counter-factual case that might undermine the credibility of the DCOv2 scheme submitted, in direct contravention of the Consultation Principles set out in **paragraphs 2.4.1 – 2.4.5 above**.
- 3.9.9 This is a tactic implicitly noted by PINS in its recent recommendation on the A428 Black Cat scheme. In that recommendation PINS noted that in a number of instances its ability to uphold the counterview presented by local authorities was undermined by the paucity of evidence that these authorities were able to present. It is understood that the local authorities were unable to present evidence because of a lack of engagement by National Highways to provide necessary technical analysis and due to disproportionate levels of funding and resources being available to the Applicant in comparison. The delayed release of important and crucial long-outstanding technical work until shortly before DCOv2 submission is a clear indication of this tactic, similarly, deployed here.
- 3.9.10 In conclusion, with the number of fundamental issues remaining, attempting to resolve this number of issues within the Examination will place extreme and untenable resource pressure on the Council.

4 Conclusions

- 4.1.1 Section 55(5) of the PA 2008 defines adequacy of consultation as ‘...a representation about whether the application complied, in relation to that proposed application, with the applicant’s duties under Sections 43, 47 and 48.’ The Council has addressed these issues in this AoC representation, but have also commented on National Highways’ compliance with Section 49 of the PA 2008, which requires the applicant to take account of responses to consultation and publicity and Section 50 of the PA 2008, which requires the applicant to have regard to relevant guidance issued under Section 50 (please refer to **Section 2.5 above** and **Appendix B** below), such as the Inspectorate’s Advice Note 2 and Advice Note 14 and the MHCLG Guidance.
- 4.1.2 It is the view of the Council that National Highways has met the legal tests set by the PA 2008 with regard to Sections 42 and 48 of that Act, but not Section 47, specifically 47(5) and 47(6) or Section 49 (see below). The Council’s response above also addresses the wider issues of National Highway’s consultation and compliance with relevant guidance, especially in relation to taking into account responses and covering deficiencies in the front-loading technical engagement.
- 4.1.3 National Highways has sought to undertake pre-application consultation on the scheme in response to Sections 42, 47 and 48 of the PA 2008. However, the Council has serious concerns about the adequacy of consultation and is of the view that the defects of the consultation that National Highways has carried out have substantially prejudiced the Council. It is therefore the Council’s view that the applicant has not complied with the requirement of the PA 2008 or the associated guidance on the pre-application process which the applicant must have regard to in developing its application.
- 4.1.4 The Council has previously raised concerns to National Highways (then Highways England), with regards to the programme, the adequacy of technical engagement to date, lack of associated data and the time available to enable a period of meaningful technical review and engagement to address stakeholder comments and explore and agree appropriate mitigation, prior to the submission of the DCOv1 and DCOv2 applications. These shortcomings have continued with the result that insufficient information has been provided in a timely way to allow the Council to intelligently respond to consultation or adequately influence the development of the proposals or mitigate its impacts.
- 4.1.5 It is therefore the Council’s view that the applicant has not complied with the requirement of the PA 2008 or the associated guidance on the pre-application process, which the applicant must have regard to.
- 4.1.6 Paragraph 15 of the MHCLG Guidance notes 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.*’ However, important issues, such as the information reasonably required for consultation bodies to develop an informed view of the likely significant environmental effects of the development as well as proposed mitigation measures, were not adequately presented in the consultation materials (including the PEIR) meaning that consultees have been unable to develop an informed view about the proposals.
- 4.1.7 **Table 4.1** below is provided as a schedule of compliance to demonstrate to the Inspectorate whether the Council are satisfied that the application fulfils the conditions for acceptance required under Section 55(3)e of the PA 2008 (Appendix 3 of Advice Note Six: Preparation and submission of application documents).

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Table 4.1: Compliance Checklist

Section 55 Checklist		Compliant	Paragraph Reference
Did National Highways consult the applicable persons set out in Section 42 of the PA 2008 about the proposed application?	Section 42(1)(a) persons prescribed as set out in Schedule 1 of the APFP Regulations?	Yes	2.1.2
	Section 42(1)(aa) the Marine Management Organisation?	Yes	2.1.3
	Section 42(1)(b) each local authority within Section 43 of the PA 2008?	No	2.1.4 – 2.1.5
	Section 42(1)(c) the Greater London Authority?	Yes	2.1.6
	Section 42(1)(d) each person in one or Section 44 categories?	Yes	2.1.7
Did National Highways notify Section 42 consultees of the deadline for receipt of consultation responses? If so, was the deadline notified by National Highways 28 days or more starting with the day after receipt of the consultation documents?		Yes	2.1.2 – 2.1.8
Did National Highways prepare a SoCC on how it intended to consult people living in the vicinity of the land?		Yes	2.2.1
Were 'B' and (where relevant) 'C' authorities consulted about the content of the SoCC; and if so, was the deadline for receipt of responses 28 days beginning with the day after the day that 'B' and (where applicable) 'C' authorities received the consultation documents?		Yes	2.2.1
Did National Highways have regard to any responses received when preparing the SoCC?		No	2.2.2 – 2.2.11
Was the SoCC made available for inspection in a way that is reasonably convenient for people living in the vicinity of the land; and was a notice published in a newspaper circulating in the vicinity of the land which states where and when the SoCC could be inspected?		Yes	2.2.12 – 2.2.14
Did the SoCC set out whether the development is EIA development and did it set out how National Highways intended to publicise and consult on the Preliminary Environmental Information?		Yes	n/a
Did National Highways comply with the provisions of Section 47(5) relating to having regard to any response from the local authorities that is received by the applicant before the deadline		No	2.2.2 – 2.2.11
Did National Highways carry out the consultation in accordance with the SoCC, as per Section 47(7) of the PA 2008?		Yes	2.2.15 – 2.2.16
Did National Highways publicise the proposed application in the prescribed manner set out in Regulation 4(2) of the APFP Regulations?		Yes	2.2.3
Did the Section 48 notice include the required information set out in Regulation 4(3) of the APFP Regulations?		Yes	2.3.3
Was a copy of the Section 48 notice sent to the EIA consultation bodies and to any person notified to National Highways in accordance with the Infrastructure EIA Regulations?		Yes	2.3.3
Did National Highways have regard to the relevant responses to the Section 42, Section 47 and Section 48 consultation?		Section 42 – No	2.4.1 – 2.4.20,

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Section 55 Checklist	Compliant	Paragraph Reference
		3.1.1 – 3.1.2, 3.3.1 – 3.3.17, 3.4.1 – 3.4.6, 3.6.1 – 3.6.4, 3.8.1 – 3.8.4
	Section 47 – No	2.2.2 – 2.2.11
	Section 48 – Yes	2.3.4
Did National Highways undertake their duty to take account of responses to consultation and engagement?	Section 49 – No	2.4
Did National Highways have regard to the MHCLG Guidance, relating to Section 50 of the PA 2008? Note any cases where changes were made to the scheme, in spite of agreement at technical meetings for consideration of alternative designs, and no further explanation of changes	Paragraph 20 – No	2.6.1 – 2.6.15
	Paragraph 25 – No	2.6.16 – 2.6.26
	Paragraph 54 - No	2.2.2 – 2.2.8, 2.6.1 – 2.6.15, 2.6.21 2.6.26, 3.2.14 – 3.2.27, 3.4.1 – 3.4.6
	Paragraph 68 - No	3.2.1 – 3.2.7, 3.8.1 – 3.8.4
	Paragraph 72 - No	3.2.1 – 3.2.7
	Paragraph 77 - No	2.2.2 – 2.2.8
	Paragraph 80 - No	2.4.1 – 2.4.17, 2.6.27 – 2.6.32
	Paragraph 81 - No	2.4.1 – 2.4.17, 2.6.27 – 2.6.32, 3.8.1 – 3.8.4
	Paragraph 93 - No	4.1.6

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Section 55 Checklist	Compliant	Paragraph Reference
Did National Highways have regard to relevant Inspectorate Advice Notes? Note any cases where changes were made to the scheme, in spite of agreement at technical meetings for consideration of alternative designs, and no further explanation of changes	Advice Note 2 - No	3.3.10 – 3.3.17
	Advice Note 7 - No	3.7.1 – 3.7.9
	Advice Note 14 - No	3.8.3 bullet 5

- 4.1.8 The Council will register as an Interested Party and will provide representations should the application be accepted, detailing its principal areas of concern through the examination process should the application be accepted.
- 4.1.9 However, the Council strongly recommends that the DCOv2 application should not be accepted by the Planning Inspectorate.

Appendix A Compliance with Planning Act, 2008

Section 42 – Duty to Consult

- A.1.1 Section 42 of the PA 2008 requires the applicant to consult the following about the proposed application, where relevant to the application–
- 1 Such persons as may be prescribed;
 - 2 The marine management organisation, in any case where the proposed development would affect, or would be likely to affect, any of the areas specified in sub-section;
 - 3 Each local authority that is within Section 43;
 - 4 The Greater London authority if the land is in greater London; and
 - 5 Each person who is within one or more of the categories set out in Section 44.
- A.1.2 The persons prescribed for the purposes of Section 42(a) and the circumstances in which they must be consulted, are set out in three of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.
- A.1.3 When consulting a person under Section 42, Section 45 of the PA 2008 requires the Applicant to notify the person of the deadline for the receipt of the person's response and this deadline must not be earlier than 28 days after the consultation documents are received.

Section 47 – Duty to Consult Local Community

- A.1.4 Section 47(1) of the PA 2008 requires the applicant to prepare a statement setting out how the applicant proposes to consult people living in the vicinity of the land, about the proposed application.
- A.1.5 Before preparing the statement, Section 47(2) requires the applicant to consult each of the relevant local authorities about what is to be in the statement.
- A.1.6 Section 47(3) requires the local authority to reply within 28 days of receiving the consultation documents. The 28 day period begins the day after the day on which the local authority receives the consultation documents.
- A.1.7 Section 47(4) clarifies that “the consultation documents” referred to in 47(3) means the documents supplied to the local authority by the applicant for the purpose of consulting the local authority under 47(2).
- A.1.8 Section 47(5) requires that, in preparing the statement, the applicant must have regard to any response from the local authorities that is received by the applicant before the deadline.
- A.1.9 Paragraph 38 of the MHCLG Guidance explains that *‘the role of the local authority in such discussions should be to provide expertise about the make-up of its area, including whether people in the area might have particular needs or requirements, whether the authority has identified any groups as difficult to reach and what techniques might be appropriate to overcome barriers to communication. The local authority should also provide advice on the appropriateness of the applicant's suggested consultation techniques and methods. The local authority's aim in such discussions should be to ensure that the people affected by the*

development can take part in a thorough, accessible and effective consultation exercise about the proposed project.'

A.1.10 Paragraph 41 of the MHCLG Guidance states *that 'where a local authority raises an issue or concern on the Statement of Community Consultation which the applicant feels unable to address, the applicant is advised to explain in their consultation report their course of action to the Secretary of State when they submit their application.'*

A.1.11 Section 47(6) states that once the applicant has prepared the statement, the applicant must:

- 1 Make the statement available for inspection by the public in a way that is reasonably convenient for people living in the vicinity of the land;
- 2 Publish, in a newspaper circulating in the vicinity of the land, a notice stating where and when the statement can be inspected; and
- 3 Publish the statement in such manner as may be prescribed.

A.1.12 Section 47(7) states that the applicant must carry out consultation in accordance with the proposals set out in the statement.

Section 48 – Duty to Publicise

A.1.13 Section 48 of the PA 2008 requires the applicant to publicise the proposed application in the prescribed manners. The prescribed manners are set out in Section 4 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 and are detailed below.

A.1.14 Section 4(2) states that the applicant must publish a notice, which must include the matters prescribed by paragraph (3) of this regulation, of the proposed application:

- 1 For at least two successive weeks in one or more local newspapers circulating in the vicinity in which the proposed development would be situated;
- 2 Once in a national newspaper;
- 3 Once in the London Gazette and, if land in Scotland is affected, the Edinburgh Gazette; and
- 4 Where the proposed application relates to offshore development:
 - i. Once in Lloyd's List; and
 - ii. Once in an appropriate fishing trade journal.

A.1.15 Section 4(3) states that the matters which the notice must include are:

- 1 The name and address of the applicant;
- 2 A statement that the applicant intends to make an application for development consent to the commission;
- 3 A summary of the main proposals, specifying the location or route of the proposed development;
- 4 A statement that the documents, plans and maps showing the nature and location of the proposed development are available for inspection free of charge at the places (including

at least one address in the vicinity of the proposed development) and times set out in the notice;

- 5 The latest date on which those documents, plans and maps will be available for inspection (being a date not earlier than the deadline in sub-paragraph (i));
- 6 Whether a charge will be made for copies of any of the documents, plans or maps and the amount of any charge;
- 7 Details of how to respond to the publicity; and
- 8 A deadline for receipt of those responses by the applicant, being not less than 28 days following the date when the notice is last published.

Section 49 – Duty to Take Account of Responses to Consultation and Publicity

A.1.16 Section 49(2) of the PA 2008 states that the applicant must, when deciding whether the application that the applicant is actually to make should be in the same terms as the proposed application, have regards to any relevant responses.

A.1.17 Section 49(3) states that in sub-section (2) “relevant response” means:

- 1 A response from a person consulted under Section 42 that is received by the applicant before the deadline imposed by Section 45 in that person's case;
- 2 A response to consultation under Section 47(7) that is received by the applicant before any applicable deadline imposed in accordance with the statement prepared under Section 47; or
- 3 A response to publicity under Section 48 that is received by the applicant before the deadline imposed in accordance with Section 48(2) in relation to that publicity.

Section 50 – Guidance about Pre-application Procedure

A.1.18 Section 50 of the PA 2008 is short and states the following:

- 1 Guidance may be issued about how to comply with the requirements of this Chapter.
- 2 Guidance under this section may be issued by the Commission or the Secretary of State.
- 3 The applicant must have regard to any guidance under this section.

Appendix B Relevant Guidance, Advice and Legislation on Pre-application Process

Introduction

- B.1.1 When deciding whether the applicant has complied with Chapter 2 of Part 5 of the PA 2008, the Secretary of State must consider the extent to which the applicant has had regard to any guidance issued under Section 50 of the PA 2008. Guidance issued under Section 50 includes guidance issued by the Secretary of State about the pre-application procedure, such as the Inspectorate's Advice Note 2 'The role of local authorities in the development consent process' (2015), the Inspectorate's Advice Note 14 (version 2) 'Compiling the consultation report' (2012) and the MHCLG Guidance (2015).

Consultation Process Guidance

- B.1.2 Paragraph 15 of the MHCLG Guidance states that *'Pre-application consultation is a key requirement for applications for Development Consent Orders for major infrastructure projects. 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.'*
- B.1.3 Paragraph 20 of the MHCLG Guidance states *'Experience suggests that, to be of most value, consultation should be:*
- 1 *Based on accurate information that gives consultees a clear view of what is proposed including any options;*
 - 2 *Shared at an early enough stage so that the proposal can still be influenced, while being sufficiently developed to provide some detail on what is being proposed; and*
 - 3 *Engaging and accessible in style, encouraging consultees to react and offer their views.'*
- B.1.4 Paragraph 25 of the MHCLG Guidance states *'Consultation should be thorough, effective and proportionate. Some applicants may have their own distinct approaches to consultation, perhaps drawing on their own or relevant sector experience, for example if there are industry protocols that can be adapted. Larger, more complex applications are likely to need to go beyond the statutory minimum timescales laid down in the Planning Act to ensure enough time for consultees to understand project proposals and formulate a response. Many proposals will require detailed technical input, especially regarding impacts, so sufficient time will need to be allowed for this. Consultation should also be sufficiently flexible to respond to the needs and requirements of consultees, for example where a consultee has indicated that they would prefer to be consulted via email only, this should be accommodated as far as possible.'*
- B.1.5 Paragraph 54 of the MHCLG Guidance states *'In consulting on project proposals, an inclusive approach is needed to ensure that different groups have the opportunity to participate and are not disadvantaged in the process. Applicants should use a range of methods and techniques to ensure that they access all sections of the community in question. Local authorities will be able to provide advice on what works best in terms of consulting their local communities given their experience of carrying out consultations in their area.'*
- B.1.6 Paragraph 68 of the MHCLG Guidance states *'To realise the benefits of consultation on a project, it must take place at a sufficiently early stage to allow consultees a real opportunity to*

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influence the proposals. At the same time, consultees will need sufficient information on a project to be able to recognise and understand the impacts.'

- B.1.7 Paragraph 69 of the MHCLG Guidance states '*Applicants will often also require detailed technical advice from consultees and it is likely that their input will be of the greatest value if they are consulted when project proposals are fluid, followed up by confirmation of the approach as proposals become firmer. In principle, therefore, applicants should undertake initial consultation as soon as there is sufficient detail to allow consultees to understand the nature of the project properly.'*
- B.1.8 Paragraph 1.1 of the Inspectorate's Advice Note 2 states that '*A local authority will provide an important local perspective at the pre-application stage, in addition to the views expressed directly to the developer by local residents, groups and businesses.'*
- B.1.9 Paragraph 6.2 of the Inspectorate's Advice Note 2 states '*Local authorities should engage proactively with a developer even if they disagree with the proposal in principle. It is important to recognise that a local authority is not the decision maker but will want to contribute towards the development of the emerging proposals with the benefit of their detailed local knowledge. Local authorities are not undermining any 'in principle' objections to a scheme by engaging with a developer at the pre-application stage.'*
- B.1.10 Paragraph 6.3 of the Inspectorate's Advice Note 2 states '*Once an application has been submitted it cannot be changed to the extent that it would be a materially different application, so as to constitute a new application. It is therefore important for local authorities to put any fundamental points to the developer during the pre-application stage.'*
- B.1.11 Paragraph 72 of the MHCLG Guidance states '*The timing and duration of consultation will be likely to vary from project to project, depending on size and complexity, and the range and scale of the impacts. The Planning Act requires a consultation period of a minimum of 28 days from the day after receipt of the consultation documents. It is expected that this may be sufficient for projects which are straightforward and uncontroversial in nature. But many projects, particularly larger or more controversial ones, may require longer consultation periods than this. Applicants should therefore set consultation deadlines that are realistic and proportionate to the proposed project.'*
- B.1.12 Paragraph 77 of the MHCLG Guidance states '*Consultation should also be fair and reasonable for applicants as well as communities. To ensure that consultation is fair to all parties, applicants should be able to demonstrate that the consultation process is proportionate to the impacts of the project in the area that it affects, takes account of the anticipated level of local interest, and takes account of the views of the relevant local authorities.'*
- B.1.13 Paragraph 93 of the MHCLG Guidance states '*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. The information required may be different for different types and sizes of projects. It may also vary depending on the audience of a particular consultation. The preliminary environmental information is not expected to replicate or be a draft of the environmental statement. However, if the applicant considers this to be appropriate (and more cost-effective), it can be presented in this way. The key issue is that the information presented must provide clarity to all consultees. Applicants should be careful not to assume that non-specialist consultees would not be interested in any technical environmental information. It is therefore advisable to ensure access to such information is provided during all consultations. The applicant's Statement of Community Consultation must include a statement about how the applicant intends to consult on preliminary environmental information.'*
- B.1.14 Paragraph 115 of the MHCLG Guidance states '*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 preapplication consultation was inadequate (on the basis that particular impacts had not been mitigated to an appropriate degree) if the applicant has acted reasonably.'

Need for a Further Statutory Consultation

- B.1.15 Paragraph 73 of the MHCLG Guidance states that '*Applicants are not expected to repeat consultation rounds set out in their Statement of Community Consultation unless the project proposals have changed very substantially. However, where proposals change to such a large degree that what is being taken forward is fundamentally different from what was consulted on, further consultation may well be needed. This may be necessary if, for example, new information arises which renders all previous options unworkable or invalid for some reason. When considering the need for additional consultation, applicants should use the degree of change, the effect on the local community and the level of public interest as guiding factors.'*
- B.1.16 Paragraph 74 of the MHCLG Guidance states that '*Where a proposed application changes to such a large degree that the proposals could be considered a new application, the legitimacy of the consultation already carried out could be questioned. In such cases, applicants should undertake further re-consultation on the new proposals, and should supply consultees with sufficient information to enable them to understand the nature of the change and any likely significant impacts (but not necessarily the full suite of consultation documents) and allow at least 28 days for consultees to respond.'*
- B.1.17 Paragraph 75 of the MHCLG Guidance states that '*If the application only changes to a small degree, or if the change only affects part of the development, then it is not necessary for an applicant to undertake a full re-consultation. Where a proposed application is amended in light of consultation responses then, unless those amendments materially change the application or materially changes its impacts, the amendments themselves should not trigger a need for further consultation. Instead, the applicant should ensure that all affected statutory consultees and local communities are informed of the changes.'*

Results of Consultation Exercise and Consultation Report

- B.1.18 As part of the documents submitted at the time of the DCO, the applicant must include a Consultation Report detailing how they have complied with the consultation requirements set out in the PA 2008. Paragraph 80 of the MHCLG Guidance states that the Consultation Report should:
- 1 Provide a general description of the consultation process undertaken, which can helpfully include a timeline;
 - 2 Set out specifically what the applicant has done in compliance with the requirements of the planning act, relevant secondary legislation, this guidance, and any relevant policies, guidance or advice published by government or the inspectorate;
 - 3 Set out how the applicant has taken account of any response to consultation with local authorities on what should be in the applicant's statement of community consultation;
 - 4 Set out a summary of relevant responses to consultation (but not a complete list of responses);

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- 5 Provide a description of how the application was informed and influenced by those responses, outlining any changes made as a result and showing how significant relevant responses will be addressed;
- 6 Provide an explanation as to why responses advising on major changes to a project were not followed, including advice from statutory consultees on impacts;
- 7 Where the applicant has not followed the advice of the local authority or not complied with this guidance or any relevant advice note published by the inspectorate, provide an explanation for the action taken or not taken; and
- 8 Be expressed in terms sufficient to enable the Secretary of State to understand fully how the consultation process has been undertaken and significant effects addressed. However, it need not include full technical explanations of these matters.

B.1.19 Paragraph 81 of the MHCLG Guidance states *'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 to the Inspectorate.'*

B.1.20 The Inspectorate's Advice Note 14 states that it is particularly useful if applicants provide local authorities with early sight of the Consultation Report to inform their views, given the short 28-day timescale allowed for the acceptance stage and the 14 day timescale local authorities have to provide their Adequacy of Consultation response.

Statements of Common Ground

B.1.21 Paragraph 47 of the MHCLG Guidance states *'A statement of common ground is a written statement prepared jointly by the applicant and another party or parties, setting out any matters on which they agree. A statement of common ground is useful to ensure that the evidence at the examination focuses on the material differences between the main parties.'*

B.1.22 Paragraph 48 of the MHCLG Guidance states *'Local authorities are encouraged to discuss and work through issues raised by the proposed development with applicants well before an application is submitted. Agreements reached between an applicant and relevant local authorities can be documented in a statement of common ground. This will contain agreed factual information about the application and can accompany the application. The statement of common ground can also set out matters where agreement has not been reached. This can then be looked at during examination...'*

Development Consent Order

B.1.23 Paragraph 44 of the MHCLG Guidance states that *'Local authorities will be able to provide an informed opinion on a wide number of matters, including how the project relates to Local Plans. Local authorities may also make suggestions for requirements to be included in the draft Development Consent Order. These may include the later approval by the local authority (after the granting of a Development Consent Order) of detailed project designs or schemes to mitigate adverse impacts. It will be important that any concerns local authorities have on the practicality of enforcing a proposed Development Consent Order are raised at the earliest opportunity.'*

B.1.24 The Inspectorate's Advice Note 13 proposes that, as well as sharing the draft Order with the Inspectorate, the draft Order should also be made available to other parties who may have useful comments on the operation of the order. For example, the relevant local planning authorities should have sufficiently early sight of the DCO's proposed draft requirements.

EIA Scoping

- B.1.25 Regulation 14(3)(a) of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (SI 2017 No.572) states that *'...the environmental statement... must, where a scoping opinion has been adopted, 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).'*
- B.1.26 Paragraph 4.9 of the Inspectorate's Advice Note 7: Environmental Impact Assessment: Process, Preliminary Environmental Information and Environmental Statements (2020) ('Advice Note 7'), states that *'..Applicants should consider carefully the best time to request a scoping opinion. In order to gain the most benefit, Applicants should consider requesting the opinion once there is sufficient certainty about the design of the Proposed Development and the main design elements likely to have a significant environmental effect.'*

Appendix C Relevant Guidance, Advice and Legislation on Application Acceptance and Examination Procedure

- C.1.1 Paragraph 89 of the MHCLG Guidance states *'Separately, where someone believes they have identified an issue which has not been adequately addressed by the applicant, despite raising it with them as part of their consultation exercise, they may wish to make a relevant representation about the issue if the application has been accepted. This will ensure this issue is considered during the examination. It is important to note, however, that the acceptance decision cannot be re-opened during the examination.'*
- C.1.2 Rule 6 of The Infrastructure Planning (Examination Procedure) Rules 2010 (SI 2017 No.103) relates to the notice of preliminary and other meetings. Rule 6 states:
- 1 *'(1) The Examining authority must give at least 21 days' notice of the date, time and place of the meeting required by Section 88(2) (in these Rules, "the preliminary meeting"), to all those whom it is required by Section 88(3) to invite to the preliminary meeting, and to any other person it chooses to invite.*
 - 2 *(2) The Examining authority must, at the same time as giving notice of the preliminary meeting, notify all those invited to it of the matters to be discussed at the preliminary meeting.*
 - 3 *(3) Where the Examining authority holds any other meeting for the purposes of the examination to which these Rules apply, it shall arrange for such notice to be given of that meeting as appears to the authority to be necessary.'*
- C.1.3 Rule 9 of The Infrastructure Planning (Examination Procedure) Rules 2010 (SI 2017 No.103) states that *'as soon as practicable after making any procedural decision, the Examining Authority must notify all interested parties of the decision.'*
- C.1.4 Rule 17 of The Infrastructure Planning (Examination Procedure) Rules 2010 (SI 2017 No.103) relates to further information and states:
- 1 *'(1) The Examining authority may at any time before the completion of its examination of an application or specified matters request further information or written comments from an interested party, who must supply such information by the date and in the manner specified by the Examining authority.*
 - 2 *(2) The Examining authority shall on receiving any further information or written comments within the specified period, consider whether or not a further opportunity to comment in writing should be given to all interested parties and, if so, the Examining authority shall specify a period for making any further written comments.*
 - 3 *(3) The Examining authority and the decision-maker may disregard any information or written comments received after the date specified or in a manner other than that specified.'*

Appendix D Inadequate Provision of Technical Evidence and Information – Traffic Modelling

Introduction

- D.1.1 The Lower Thames Area Model (LTAM) has been developed and used by National Highways (NH) as the scheme promoter to understand the impacts of the Lower Thames Crossing (LTC) on the Strategic Road Network (SRN) and Local Road Network (LRN) and to provide evidence that the scheme meets relevant planning policy tests and achieves its objectives.
- D.1.2 The LTAM is a multi-modal strategic model. For each model year the model is used to forecast how travellers will change their behaviour as a result of highway and public transport interventions, changes in the levels of congestion, the cost of fuel and other external factors. The model forecasts the routes that drivers will take, given higher levels of traffic on the network in the future and their behavioural responses to the change in the time and cost of their planned trips. These forecasts are prepared using a road network, which does not include the LTC (Do Minimum scenario) and a road network which includes the Lower Thames Crossing (LTC) (Do Something scenario). Clearly, the model is only as good as the assumptions and technical information within it.
- D.1.3 LTAM is a critical part of the assessment for LTC, results from the model are used to predict future road conditions, future changes in strategic travel behaviour, directly underpin environmental assessments, such as noise, carbon, and air quality, as well as the outline business case and Combined Modelling and Assessment Report, which includes information from the strategic and economic justification for the scheme. Clearly, this model (as any other strategic transport model), is only as good as the assumptions and technical information within it, so it deserves careful scrutiny by stakeholders to ensure that the assumptions are understood, and the model outcomes used in a way that respects the level of certainty achievable in a strategic model of this type.
- D.1.4 The Development Consent Order (DCO) consultation process for the LTC has included the following key consultation stages, with the latter two stages being included following the withdrawal of the DCOv1 application on 20 November 2020:
- 1 Statutory Consultation – December 2018;
 - 2 Supplementary Consultation – early 2020;
 - 3 Design Refinements Consultation – mid-2020;
 - 4 Community Impacts Consultation – Summer 2021; and
 - 5 Local Refinement Consultation – Summer 2022.
- D.1.5 The LTAM base year model was created in March 2016 to represent the transport system in the Lower Thames Area as it was then. Further updates were undertaken on the 2016 base model as part of the withdrawn DCOv1 application, including minor network alterations and a localised validation update. Forecast year models (2030, 2037, 2045 and 2051) were developed in early 2022 to test the effects of the LTC operation and construction phases on the SRN and LRN.
- D.1.6 Thurrock Council has been engaging with National Highways since 2018 on the reliability and accuracy of the traffic forecasts produced by the LTAM, particularly regarding local road

performance. Despite this ongoing engagement with National Highways regarding the modelling, the Council does not consider it has received sufficient transport modelling evidence to enable it to independently determine the validity of the models or understand the effects of LTC. Without having been able to do so, the Council has been substantially prejudiced in the context of all of the consultation in respect of DCOv2, since it has had to consult without having been able to satisfy itself as to: (a) the soundness of National Highways' own modelling; and (b) the likely extent and nature of the likely effects (both beneficial and adverse) of LTC.

- D.1.7 The Council's concerns regarding the adequacy of consultation in relation to traffic modelling relate to the following key areas, which are examined in more detail below:
- 1 Limited access to the LTAM model and modelling results;
 - 2 Lack of supporting technical information;
 - 3 Adequacy of LTC impact assessment on Thurrock's local road network;
 - 4 Adequacy of consideration of uncertainty in forecasting; and,
 - 5 Provision of modelling data, which is delayed and still incomplete.

Limited Access to the LTAM Model and Modelling Results

- D.1.8 National Highways agreed to provide the Council and other affected authorities with the LTAM models and results but with restrictions to the modelled area, i.e. cordon models. National Highways has only provided the local authorities, including Thurrock Council, with access to cordon versions of the LTAM model (covering only their administrative areas) to understand local scheme impacts. This information has been provided under the auspices of a Data Sharing Agreement (DSA), which has prevented the Council and other local authorities from sharing the cordon models provided. The effect of this DSA is that it is not possible to properly understand how changes in strategic traffic movements affecting each of the individual local authority areas are predicted to take place. This is a serious deficiency in the provision the information needed to allow consultees to intelligently understand and respond to scheme proposals. It is unjustified that each Council should not be able to view, and review, the model for the full model area as opposed to only cordons within it, bearing in mind the obvious inter-area effects of the scheme.
- D.1.9 Despite repeated requests from the Council and other local authorities, including Essex County Council and Kent County Council, for access to the full LTAM model to enable an appropriate understanding of the scheme's impacts, this serious deficiency has not been rectified. The last set of cordon models representing operational and construction phases of the LTC were provided to Thurrock in April and May 2022.
- D.1.10 On 22 December 2021 Thurrock Council wrote collectively with Essex County Council highlighting the need for all impacted authorities to have access to the full LTAM model and formally requested that National Highways provide them with this urgently. National Highways in their response dated 25 January 2022 refused to allow access to the full LTAM due to unjustified National Highways concerns that if LTAM were to be released, the model would then be able to be modified by third parties, which could result in significant confusion over which outputs were accurate reflections of the National Highways proposals. The Council maintains its position that the full LTAM model must be released, and time provided for its analysis to be completed and discussed with National Highways, prior to the acceptance of DCOv2 for Examination. The Council does not intend to share the LTAM model with third parties and has been willing to undertake not to do so.

D.1.11 In justifying its approach on a number of matters National Highways regularly cites examples of other DCO submissions, where its behaviours and approach have been permissible. In contrast, this is clearly not a normal or commonly accepted approach taken by DCO applicants when engaging with highway authorities. Normally, a full set of strategic models and other local models are regularly provided by the applicant to highway authorities to enable the authorities to audit the models and have a full understanding of the effects of a scheme. Some pertinent examples of common practice, where full access to strategic and local traffic models has been provided to authorities include the Thames Tideway (DCO granted in September 2014), Sizewell C nuclear power station (DCO granted in July 2022), and the A428 Black Cat to Caxton Gibbet Road (DCO granted in August 2022).

D.1.12 Significant ramifications for traffic on local roads operated and maintained by the Council are forecast and these impacts cannot be fully understood without understanding the wider travel patterns that are being forecast by the LTAM model. For example, access to the full LTAM model is required to understand the following key aspects:

- 1 **Strategic benefits:** the Council is not able to determine the validity of the wider benefits that National Highways is reporting the LTC will bring. Without the full LTAM model we are not able to understand and agree any potential wider benefits against the local disbenefits. For example, there are significant increases in traffic seen on some local roads within the cordon models, but it is not possible to understand where the traffic has arrived from or is travelling to and if the forecast strategic trip making patterns are valid.
- 2 **Local disbenefits:** the Council is not able to determine the full extent of transport user benefits and disbenefits to Thurrock as the cordon models cut off trips at the boundary of the authority. The Council only has a complete understanding of the transport user benefits and disbenefits for those trips that start and finish within Thurrock. Without the full LTAM model it is not possible to determine the transport user benefits and disbenefits of the scheme to Thurrock residents and local businesses for those trips that have an origin/destination outside of Thurrock.
- 3 **Impact of the emerging Thurrock Local Plan:** without the full LTAM model the Council is not able to understand the impact of the LTC on the emerging Thurrock's Local Plan growth due to the inability of the cordon models to assess complex travel behaviour responses caused by highway and public transport interventions, changes in the levels of congestion, the cost of fuel and other external factors. As a result, the Council has had to commission its own strategic model for Local Plan work, which will continue to be developed during 2023 and may not be available prior to Examination.

D.1.13 The Council considers that National Highways has failed to ensure through the technical engagement process that the Council is able to fully understand the predicted impacts of the scheme. Given the importance of LTAM to important environmental and economic assessments in support of the scheme and the significant level of scrutiny to which this project will undoubtedly be subjected, it seems highly likely that the lack of transparency relating to LTAM will increase required Examination time to consider complex technical issues that should have been resolved prior to Examination and create an unnecessary risk of future challenge.

Lack of Supporting Technical Information

D.1.14 The Council has not received supporting technical information required to allow the Council to verify the validity of the models and the forecasting assumptions.

D.1.15 TAG (Web-based Transport Analysis Guidance) is the Department for Transport's guidance on transport modelling and appraisal. Development of analysis using TAG guidance is a requirement for all transport interventions that require government approval. For interventions that do not require government approval the TAG guidance serves as a best practice guide.

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D.1.16 When issuing a base model, it should be issued with the corresponding Local Model Validation Report (LMVR). It is necessary to ensure that the traffic model can accurately reflect current traffic conditions before future traffic flows can be derived. The process of comparing the traffic model with observed traffic conditions is known as 'validation'. Validation of the base model is critical to confirm how well it reproduces observed traffic conditions, since without a good standard of validation the level of confidence in its ability to forecast future conditions is likely to be low.

D.1.17 When issuing a future year model or models, they should be issued with the corresponding Forecasting Report, which sets out the assumptions used to derive the future year models, including traffic growth, committed development included in the model, physical changes to the modelled traffic network and details of model parameters including ranges in uncertainty.

D.1.18 Department of Transport's TAG (Transport Appraisal Guidance) guidance requires models to be accompanied by a Model Specification Report, Local Model Validation Report (LMVR) and Forecasting Report. TAG Unit M3.1 'Highway Assignment Modelling' (May 2020) states at paragraph 10.1.1:

'The following two reports are required which relate to the advice in this unit:

- 1 *Highway Assignment Model Specification Report (or as part of the Appraisal Specification Report); and*
- 2 *Local Model Validation Report.'*

D.1.19 TAG UNIT M4 'Forecasting and Uncertainty' (May 2019) states at paragraph 2.1.4 that *'It is essential that all assumptions made are fully documented in a Forecasting Report.'* Paragraph 6.1.2 goes on to state that *'The assumptions used to define the core scenario should be reported in the Forecasting Report'* and lists the assumptions that need to be included. Paragraph 6.1.3 states that *'The Forecasting Report should also give details of the model outputs.'*

D.1.20 Despite many requests at the regular fortnightly modelling meetings over the last 6 months and specifically on 7 July, 9 August and 5 September 2022 for National Highways to share both the LMVR update and Forecasting Report, this has not been done. However, National Highways confirmed on 16 August 2022 that the LMVR is a DCOv2 document and still undergoing assurance and so cannot be issued – the Council disagreed and stated to National Highways: *'The Council has always been very concerned that the LTAM model is dated and poorly validates against appropriate local data. Without the revised LMVR the council cannot assess whether adequate further local model validation has been completed, particularly against junction turning counts, and journey times.'* National Highways responded on 26 September 2022 stating that the revised LMVR would be available after DCOv2 submission, and the Council reiterated its request on 28 September 2022. Therefore, National Highways has failed to provide the Council with the LMVR update and Forecasting Report to accompany the DCOv2 LTAM models.

Base Year Model – No Information Confirming its Adequacy

D.1.21 An LMVR was provided by National Highways in 2018 with the base LTAM model at that time. Further information on model development and validation was provided by National Highways to the Council in the Combined Modelling and Appraisal (ComMA) report in December 2020. No updates have been provided to the LMVR or ComMA report since December 2020, despite changes being made to the LTAM base model and despite the Council offering detailed comments on the ComMA Report from the DCOv1 on 17 May 2022. National Highways has not responded.

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D.1.22 The Council is aware that National Highways has, in the period since the Community Impacts Consultation (July to September 2021), completed some work to better calibrate and validate the LTAM 2016 base model in the Thurrock area. Updated cordon models of LTAM covering only Thurrock Borough were provided to the Council on 29 April 2022 for analysis of scheme impacts and the GIS Shape Files showing operational traffic model flow forecasts for the LTC were received on 1 July 2022. However, the Council has not received the updated LMVR, which supports the latest LTAM 2016 base model. Without the updated LMVR it is not possible for the Council to have confidence that the LTAM model accurately reflects traffic conditions within Thurrock.

D.1.23 The Council has repeatedly made fair and reasonable requests for the revised LMVR to enable it to review the validation of the model on local roads. The continued refusal to provide the LMVR in advance of the DCOv2 submission is considered unjustified. This approach serves only to restrict the Council in its ability to engage effectively with National Highways to resolve matters prior to DCOv2 submission, as is intended practice of the DCO front-loading process.

Forecast Year Models – No Technical Documentation

D.1.24 A Forecasting Report was prepared by National Highways in December 2018 to support the Statutory Consultation. Further forecasting information was included in the ComMA report as part of the DCOv1 documentation in December 2020.

D.1.25 Since the ComMA Report was included as part of the DCOv1 documentation in December 2020, the Council is aware that the forecast models have been updated by National Highways at least twice. First, these were updated to inform the Community Impacts Consultation in Summer 2021 and then the models were updated to support the Local Refinement Consultation in Summer 2022.

D.1.26 On both occasions LTAM cordon models representing the Thurrock area were provided to the Council for a range of forecast years. However, the corresponding Forecasting Report was not provided to the Council setting out the changes made to the forecast models for the Council to confirm the robustness of the forecasting modelling approach and local area assumptions. As a consequence, it is a serious concern to the Council that the entire forecasting process may be based upon inaccurate assumptions.

D.1.27 The effect of this is that the modelling of the local area could be incorrect, potentially requiring modelling to be undertaken again. In the Council's opinion it is not practical or in the public interest to force it to analyse the supporting information and potentially rerun all the modelling during the Examination, when this engagement should have been done prior to submission, when there has been ample opportunity to do so.

Construction Traffic Modelling – Technical Documentation

D.1.28 National Highways provided the Council with the LTAM Thurrock Area Cordon Construction Phase Models on 24 May 2022. However, no technical documentation describing the assumptions of construction traffic modelling was issued, which is vital to understand the robustness of the assessment of the construction impacts on the road network and local communities that informs the development of appropriate mitigation measures.

D.1.29 Concerns were also raised about the construction traffic modelling itself with the underlying assumptions not having been explained. A request for the technical documentation was made to National Highways verbally in May 2022 and in writing on 15 September 2022 with National Highways providing a response on 21 October 2022, 10 days prior to the DCOv2 submission, which is still being considered by the Council.

D.1.30 Further clarifications with National Highways highlighted that the construction traffic models provided to the Council for review do not reflect the construction traffic volumes reported by

worksite as set out in the Community Impact Consultation material. Instead, they are based on updated traffic data, which National Highways stated would only be made public in the DCOv2 submission within the Transport Assessment and therefore not consulted on prior to submission with the local communities.

- D.1.31 In summary, without being provided with the supporting technical modelling reports, it is not possible for the Council to determine if the LTAM base model accurately reflects the existing traffic conditions within Thurrock, upon which all of the assessment is based. Likewise, it is not possible to determine if the forecasting assumptions for the LTC construction and operational models are based on reasonable assumptions to reflect the future year scenarios. As a result, the Council has not been able to provide any advice to the local community about the validity of traffic forecasts they are being consulted on or the environmental or economic assessment on which these rely. Accordingly, the Council suggests that this matter should only be accepted for Examination once the appropriate level of technical traffic modelling information has been consulted on with the Council.

Adequacy of Local Road Impact Assessment

- D.1.32 Over several years, the Council has raised numerous concerns about the suitability of relying solely on National Highways strategic LTAM transport model for scheme impact assessment on the local highways network in Thurrock.
- D.1.33 The Council's response to the Supplementary Consultation (January to April 2020) set out its concerns about the validation of the LTAM base model of the local highways network in Thurrock, with the model data suggesting that baseline traffic flows were being under-estimated, thus undermining the ability of the model to be used for assessment of local highway impacts and mitigation in the future. Concerns were also expressed about the mismatch between the local AM peak hour (between 08:00 and 09:00hrs) and the modelling peak hour within LTAM, (07:00 and 08:00hrs) and the potential this has for under-estimating local traffic impacts.
- D.1.34 Engagement on these issues has continued through the Design Refinement Consultation in July 2020 and until the withdrawn DCOv1 in November 2020. The Council reiterated their concerns about validation of the LTAM base model and its use for the purpose of the local junction assessment in 'Community Impacts Consultation' response issued in summer 2021.
- D.1.35 The Council has subsequently suggested, through engagement at the time of the publication of the DCOv1 documents in December 2020, that an alternative approach be adopted by using locally validated micro-simulation models to assess local highway impacts at key junctions in the borough, including ASDA Roundabout, the Manorway, Daneholes roundabout and the Orsett Cock junction.
- D.1.36 Unlike the strategic LTAM, which provides an aggregated representation of traffic flow, the locally validated microsimulation models will represent individual vehicles, attempt to replicate the behaviour of individual drivers, and therefore have a greater accuracy. This makes the microsimulation models particularly appropriate for examining complex traffic interactions and potential operational problems at local junctions. In the Council's experience, National Highways would not allow a developer to rely solely on a strategic model for a planning application and instead would require a hierarchical approach to modelling to be adopted, i.e. a strategic model feeding into more detailed 'operational' models to assess the traffic impact of a scheme.
- D.1.37 The approach for the development of Orsett Cock microsimulation model was accepted by National Highways in October 2021 with an agreement to develop The Manorway and the East-West corridor microsimulation model covering the Daneholes roundabout reached in January 2022. The status of each of the local area assessments is summarised in **Table D.1** below.

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Table D.1: Progress of Local Area Microsimulation Assessment

Area/ Model	Development of Micro-simulation model agreed with National Highways	Base Year Model 1 st version issued	2030 and 2045 Forecast models issued
Orsett Cock	October 2021	14 July 2022	20 September 2022
The Manorway	January 2022	N/A*	19 October 2022
East-west	January 2022	27 June 2022	Not yet received

* Base Year model development was not possible to develop due to data availability constraints

- D.1.38 Taking the Orsett Cock as an example, it has taken National Highways over 10 months to develop and refine the Orsett Cock microsimulation model with the results ultimately shared on 15 September 2022, just 6 weeks prior to the DCOv2 submission. We would typically expect a base microsimulation model of a single junction to take a matter of weeks to be developed, not nearly a year.
- D.1.39 When finally received, the results of the Orsett Cock microsimulation model confirmed the Council's concerns that the LTAM model has significantly underestimated the impacts of LTC on Orsett Cock. National Highways own microsimulation modelling shows significantly worse operational performance of Orsett Cock in comparison with National Highways own strategic modelling completed using LTAM.
- D.1.40 To illustrate, the 2045 strategic LTAM model predicts that with the LTC in place average delays on any of the approach to Orsett Cock roundabout will not exceed 77 seconds on a typical weekday morning between 07:00 and 08:00hrs. However, the more detailed microsimulation assessment at this location forecasts that average delays will reach 168 seconds on the A128 Brentwood Road (North) approach and 236 seconds on the A128 Brentwood Road (South) approach during the same peak hour resulting in significant queuing predicted to reach a maximum of 357m and 534m correspondingly. Unlike the strategic LTAM model, local microsimulation modelling reveals that the impact of the LTC is materially adverse and is forecast to leave the area facing significant congestion and long delays.
- D.1.41 Any scheme with similar impacts submitted to the Council or National Highways to review would be considered untenable. National Highways has had ample time to consider the validity of junction design modification options and made changes to the Orsett Cock roundabout design, including the inclusion of new signals. It chose not to consult the Council on these modifications nor make the public aware of the impact in any public consultations and the Council highlighted this through its due-diligence, analysing the National Highways modelling. Despite their best endeavours, National Highways has been unable to put forward sufficient design modifications to Orsett Cock junction that would resolve the serious traffic congestion issues identified by the joint local junction modelling work. The Council do not consider that there are any solutions to this issue that could be agreed through the development of detailed design within the constraints of this current DCOv2 application.
- D.1.42 On the basis of the information we have, the Council is therefore extremely concerned that National Highways has made a DCOv2 submission for an LTC scheme that uses inaccurate results from their strategic modelling as the only evidence to assess the scheme and its impact on the LRN during the operational and construction phases. The Council is therefore concerned that Thurrock's communities, businesses and other key stakeholders have been consulted on inaccurate information and not been adequately consulted on the true extent of the impact of the scheme on the LRN.
- D.1.43 The discrepancy between strategic modelling and local microsimulation modelling assessment highlights that the LTAM model has inaccurately assessed the impact of the LTC on the LRN and that these local impacts have not been adequately considered or consulted on. The result

of this goes beyond concerns about the performance of the Orsett Cock junction within LTAM and has a bearing on the assignment of traffic to different route options across the network and the performance of other junctions. This example demonstrates that there may be issues at other parts of the LRN that have not been identified or fully assessed.

D.1.44 Results of strategic LTAM modelling have also been used to inform Air Quality and Noise assessments within the Environmental Statement and therefore our concerns extend to the deficiency of these environmental impact assessments of the scheme.

D.1.45 The Council is concerned that the impact of the scheme on the local highways network has not been adequately consulted on using the strategic model only and that further work is essential to understand the effects on the local network and the implications for scheme development.

Consideration of Uncertainty in Forecasting and Recent Travel Behaviour Changes

D.1.46 TAG Unit M4 'Forecasting and Uncertainty' (May 2019) sets out the need for all known assumptions and uncertainties in the modelling and forecasting approach to be summarised in an uncertainty log. Paragraph 2.1.1 states that *'the uncertainty log will also be the basis for developing a set of alternative scenarios. The alternative scenario is used to understand the possible impact of an error in assumptions on the model forecasts.'*

D.1.47 Whilst TAG guidance has always required an Uncertainty Log to be developed to inform alternative scenarios, the DfT has worked in recent years to create a set of scenarios for standard application in transport business cases. The development of a common set of appraisal scenarios was driven by the desire to see a more robust and consistent treatment of uncertainty in the appraisal of major schemes. The DfT's TAG Uncertainty Toolkit (August 2022, first published in May 2021) sets out scenarios for testing trajectories for economic and demographic growth, regional imbalances, behavioural and technological changes and decarbonisation, which capture the key uncertainties that face the transport sector in the coming decades.

D.1.48 DfT's TAG Uncertainty Toolkit states at paragraph 1.1 that *'There is considerable uncertainty about how the transport system will evolve in the future, particularly with the potential for emerging trends in behaviour, technology and decarbonisation to drive significant change over time. The use of transport models, a fundamental aspect of scheme appraisal, can also introduce uncertainty to transport analysis, through the data, assumptions and model specifications required. To ensure decision-making is resilient to future uncertainty, decision makers need to understand how the outcomes of spending and policy proposals may differ under varying assumptions about the future.'*

D.1.49 The DfT Uncertainty Toolkit sets out the 4 principles that underlie the guidance at paragraph 1.3, which are, as follows:

- 1 *'The treatment of uncertainty is a core part of any transport analysis and is needed to inform robust decision making.'*
- 2 *Analysis should not focus exclusively on a core scenario.*
- 3 *Proportionate appraisal techniques for defining, measuring and accounting for uncertainty within decision making should be used.*
- 4 *Uncertainty should be considered holistically across the strategic and economic cases and throughout the planning process.'*

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D.1.50 The LTAM model is based on traffic data originally sourced in 2016 and LTC forecasts are based on the DfT's national traffic growth forecasts published in February 2017.

D.1.51 Since then, there have been a number of changes that have impacted to transport sector, including the UK's exit from the European Union, the COVID-19 pandemic, rising fuel prices, changes to the UK economy and the UK's Net Zero Strategy. Therefore, the Council is concerned that the traffic modelling of LTC is based on outdated data. Given the level of uncertainty and in accordance with TAG guidance, we would have expected sensitivity testing to be undertaken by National Highways to assess these potential effects and follow-up technical engagement and consultation with the public.

D.1.52 Over the last few years numerous requests have been made to National Highways to undertake sensitivity tests to test uncertainty in forecasting. **Table D.2** summarises sensitivity tests requested by the Council, when they were requested and the inadequacy of the National Highways responses to date. However, no evidence of considering uncertainty in forecasting has been presented.

Table D.2: Summary of Sensitivity Tests Requested by Thurrock Council

Sensitivity Test requested by Thurrock Council	When Requested	National Highways Response	When Sensitivity Test Completed and Results provided
Impact arising from Thames Freeport	Requested in DCOv1 model review report (November 2021).	None	Not completed
Local Plan Growth Scenarios (DCOV1)	Requested following a review of the DCOv1 model (March 2020)	-	Completed and models provided on 26 March 2021.
Local Plan Growth Scenarios (DCOV2)	Requested in 'PART 2 Indicative Local Plan (ILP) Model Runs' report (29.06.21)	NH confirmed (30.11.21) that it was unlikely that they would be updating local plan runs using the latest version of the model available at the time (DCOV1).	Not completed
Impact of additional trips associated with London Resort	Requested in DCOv1 model review report (November 2021).		No longer relevant as the application for London Resort has been withdrawn.
Alternative LTC layouts to understand how Alternative Scheme Configuration would perform.	Requested in 'PART 3: A13 and TLR Option Model Runs' report June 2021 and a subsequent request in December 2021		Partially completed (Summer/Autumn 2022)
Incident/ network resilience tests to demonstrate that the scheme meets its objective of improving network resilience	Requested in December 2021.		Not completed
Future mobility - the LTC design is for a life span of some 100 years, yet there is no modelling for resilience to future change.	Thurrock Council requested NH to provide information regarding sensitivity testing of the scheme in terms of future mobility.	National Highways confirmed they will not be carrying out any sensitivity testing.	Not completed

D.1.53 The Council has not received any sensitivity test results providing further details on how traffic arising from the Thames Freeport proposals at the Port of Tilbury and London Gateway/DP World will impact on the highway network with the LTC in place. Similarly, the Council has not received any sensitivity test results on how the 'with LTC' highway network will perform with the Council's emerging Local Plan growth proposals using the latest DCOv2 model, when scenarios were presented to National Highways over a year ago for subsequent testing.

D.1.54 Furthermore, the LTC impact assessment should also consider the impact on the LRN if the SRN is affected by an incident. There are over 300 incidents per year causing over 30 minutes of delay happening on the current Dartford crossing and improving network resilience is a key

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National Highways objective of the LTC scheme. It therefore seems surprising that these sensitivity tests have not been completed either.

- D.1.55 The above confirms that the Council has not been provided with evidence that account has been properly taken of key areas of forecasting uncertainty, including UK's exit from the European Union, the COVID-19 pandemic, rising fuel prices, changes to the UK economy and the UK's Net Zero Strategy, as well as likely alternative land use changes or consideration of incident planning. As a result, all the environmental and economic assessment work would appear therefore to be based on the core scenario, preventing a realistic picture of the risks of variation from this scenario being considered. For example, increases or reductions in noise, air quality, carbon, etc., as well as implications for the justification of the scheme. This has prevented the Council from undertaking its role as technical authority or advising the public in its role as supporter of the community.
- D.1.56 The Council would expect analysis / sensitivity testing to have been completed by National Highways to demonstrate the validity of LTAM given significant events that have influenced travel patterns and considering the high levels of uncertainty about future economic and environmental policy – a requirement within the TAG guidance (referred to above), which becomes definitive in November 2022. No evidence of this has been presented.
- D.1.57 For these reasons, the Council believes that the Thurrock's communities and other key stakeholders have not been adequately consulted on the impacts of the LTC, and National Highways should address these issues to present a more transparent picture of the potential impacts.

Timing of Modelling Programme and Results – Delayed and Still Incomplete

- D.1.58 While the opportunity to respond to the LTC proposals is welcomed by the Council, the engagement on the scheme impacts is ongoing, the modelling programme is on-going and critical technical information is missing to fully understand the impacts of the scheme.
- D.1.59 As a result of National Highways refusing to provide the Council with access to the full LTAM, an alternative approach to an assessment of model outputs was discussed in February 2022 that adopts an iterative way of working, with additional LTAM data requests building on what is learned from the prior set of data, but the Council consider this to be a poor option. The Council has always been concerned that this approach will inevitably take longer than if the Council had direct access to the model. Therefore, the Council requested that National Highways allows the time for the iterative approach to be completed prior to finalising the LTC scheme for DCO submission. It was highlighted by the Council that there was insufficient time for this way of working within the current programme, which then targeted November 2022 as the DCOv2 submission.
- D.1.60 As a result, at the time of the DCOv2 submission the modelling programme is still incomplete, thus significantly impacting on the Council's understanding of the scheme impacts on the LRN and local communities and businesses. Summarised below is a list of modelling workstreams, which have been delayed or still incomplete:
- 1 At the time of the DCOv2 submission the assessment of the alternative scheme configurations is only partially complete, thus significantly impacting on the Council's understanding of the scheme impacts.
 - 2 By the DCOv2 submission local microsimulation modelling assessment has not been completed at any of the key junctions within Thurrock.

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- 3 Testing of uncertainty in forecasting including recent travel behaviour changes is incomplete.

D.1.61 The Council estimates that, based on the timescales for National Highways to complete the modelling to date, a further four to nine months may be required to complete the agreed junction modelling programme with National Highways. Longer time may be required to address the serious issues identified depending on the ability of National Highways to respond with agility.

D.1.62 Accordingly, the Council suggests that this matter should only be accepted for Examination once the full technical information has been consulted on with the Council and the public.

Conclusions

D.1.63 Despite ongoing engagement with National Highways regarding the strategic LTAM traffic model and limited more detailed local junction modelling, the Council has concerns with regards to the adequacy of consultation of the impacts of the scheme and that the probability that it is based on inaccurate information.

D.1.64 Thurrock's unresolved concerns (based on the limited data provided to date) regarding the adequacy of consultation in relation to traffic modelling and its use to report the operational and construction impacts of the scheme relate to the following key areas, which have been examined in more detail in this document:

- 1 Limited access to the LTAM model and modelling results;
- 2 Lack of supporting technical information;
- 3 Adequacy of LTC impact assessment on Thurrock's local road network;
- 4 Adequacy of consideration of uncertainty in forecasting and recent travel behaviour changes; and,
- 5 Timing of modelling programme and provision of modelling results, which is delayed and still incomplete.

D.1.65 Thurrock Council emphasises there remain key elements of crucial technical engagement that should have been at a significantly more advanced stage, preferably concluded, including the ongoing traffic modelling work.

D.1.66 The Council has not received sufficient transport modelling evidence in support of the evaluation of the scheme and its impacts on the LRN. The Council contends that National Highways has:

- 1 Failed to satisfactorily assess and present the evidence of the impacts of the LTC scheme on the local highway network;
- 2 Failed to adequately consider the implications of the recent and future travel behaviour changes and locally significant locations of future growth;
- 3 Failed to provide detailed technical information to evidence the validity of the models and assumptions made; and,
- 4 Failed to adequately consult with local communities, businesses and other important stakeholders, including Port of Tilbury and London Gateway on the impact of the LTC scheme.

D.1.67 Therefore, the provisions and formal requirements under key elements of the Planning Act 2008 have not been satisfied.