

Lower Thames Crossing

**Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2
(D1 and D2)**

Council's DCO Review – Appendix D

Thurrock Council

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Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 & D2) – Council's
DCO Review Appendix D
Lower Thames Crossing

Document Control Sheet

Project Name: Lower Thames Crossing

Report Title: Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2
(D1 and D2) – Council's DCO Review Appendix D

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Contents

1	Council Concerns on the DCO	1
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Tables

Table 1.1: Council Comments Key	1
Table 1.2: Council's LIR Comments	2

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1 Council Concerns on the DCO

- 1.1.1 The Council has colour coded these comments in the first column only as a summary response to the 4 four sets of comments received from the applicant:
- 1.1.2 Sections listed in the contents page and below include the Orange and Red items. It does not include the Yellow and Grey items.

Table 1.1: Council Comments Key

Colour	Status	Number
	resolved	5
	some progress but still more discussion required	8
	not adequately addressed	27
	not addressed	1
		Total: 41

- 1.1.3 These issues have been taken from the Council's LIR, except where in bold, where they have been raised as part of ISH 2.
- 1.1.4 The Council will be meeting NH on 29 August 2023 to discuss a range of 'matters under discussion' and some of the matters set out below may require amendments.

Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 & D2) – Council's DCO Review Appendix D
Lower Thames Crossing

Table 1.2: Council's LIR Comments

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1 Novel drafting	<p>It is also the view of the Council that the inclusion of novel drafting in one DCO does not mean that this is the current established preference of the SoS (see also paragraph 1.5 of Advice Note 15).</p> <p>There are a number of instances where wording has been chosen to provide a significant amount of flexibility to the applicant, with little explanation except that a project of this size should not be delayed. For example, no explanation has been provided to the Council as to why such broad Order Limits are in the public interest (article 6), how deemed consent is in the public interest (articles 12,17,19,21, and requirement 13) and how the applicant intends to establish whether remains were interred more than a hundred years ago (article 22).</p>	Not addressed	Not addressed	The Council remains concerned that an inappropriate amount of flexibility has been given to NH. The impact of this flexibility is increased uncertainty for those impacted by LTC. NH has not addressed the Council's concerns.	Not addressed
2 Flexibility of operation	<p>The issue of excess flexibility is a key concern to the Council. strongly agree on the issue of flexibility. It is accepted that a scheme of this size requires some flexibility to overcome unforeseen technical issues and avoid the need to amend the DCO. However, that flexibility needs to be within</p>		Not addressed	The Council remains concerned that an inappropriate amount of flexibility has been given to NH. The impact of this flexibility is increased uncertainty for those impacted by LTC. NH has not addressed the Council's concerns.	Not addressed

Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 & D2) – Council's DCO Review Appendix D
 Lower Thames Crossing

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	<p>defined parameters, so that those potentially impacted can input into the DCO process.</p> <p>Thurrock Council's main concern is about the uncertainty caused by flexibility, especially in relation to order limits. No explanation explaining why this is required has been provided, despite requests to do so. Notwithstanding that, in light of the lack of design work, the applicant is unable to demonstrate that every parcel identified is required there remains a risk that the limits of deviation could extend the Project onto land not previously within the Order Limits (if the deviation does not give rise to any materially new or materially different environmental effects in comparison with those reported in the Environmental Statement).</p> <p>The Council requires sufficient certainty to the scheme, to allow it to fully comment on the impacts, and allow those potentially affected to take an effective role in the examination.</p> <p>In relation to the Preliminary Works EMP – this is a new concept when compared with the previous DCO. Thurrock Council has not been consulted on this document (ES Appendix 2.2, Annex C). In the Council's</p>				

Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 & D2) – Council's DCO Review Appendix D
Lower Thames Crossing

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	<p>opinion the proposed preliminary works could have quite significant environmental effects (they involve vegetation clearing). If they were part of the EMP (Second Iteration) we would have to be consulted. Accordingly, the applicant needs to fully explain how all environmental considerations have been taken into account.</p> <p>It is also of concern that the purpose of the Preliminary Works EMP is to trigger the need to begin the development pursuant to Requirement 5. This appears to be an acknowledgment that the applicant does not intend to commence substantive works within the 5 year period. Delaying the commencement of works further adds to the uncertainty of those potentially impacted, having a chilling effect on local development and unfairly impacting local residents. It also impacts the validity of the assessments undertaken in relation to other aspects underpinning the application, such as traffic modelling and environmental impacts.</p> <p>The Council understands the need to balance flexibility for the applicant with certainty for local residents. It is the Council's position that the balance has not been set fairly in the current drafting of the DCO, with too much emphasis on flexibility for Thurrock. The</p>				

Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 & D2) – Council's DCO Review Appendix D
Lower Thames Crossing

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	<p>applicant's response of 6 July does not address how the balance of flexibility vs certainty for local residents has been set. Instead, it relies upon a broad statement that flexibility is in the public interest, without considering the extent of that flexibility and negative impacts associated with that flexibility.</p>				
<p>3</p> <p>2(10) – definition of materially new of different environmental effects in comparison with those reported in the ES</p>	<p>The Council's main concern is that although new measures might avoid, remove or reduce an adverse effect reported in the ES, the proposed wording does not consider other adverse effects, which are not in the ES (for example land ownership and economic effects). This is especially true in relation to article 6 and the extension of the maximum limits of deviation. This creates uncertainty, which makes it more difficult for those affected by the proposed DCO to fully engage in the examination process.</p> <p>The applicant notes that the purpose of this wording is to limit the need for material and non material amendments to the DCO, as this would cause delay. It is the Council's position that although delay should be minimised, it should not be at the expense of issues being properly considered. Significant changes, for example exceeding the stated limits of deviation, should in the</p>	<p>Not addressed</p>	<p>Not addressed</p>	<p>The Council remains concerned that non-environmental effects are not being considered.</p>	<p>Not addressed</p>

Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 & D2) – Council's DCO Review Appendix D
Lower Thames Crossing

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	Council's opinion usually go through the material or non-material amendment process to ensure that all impacts are properly considered.				
4	<p>3: Development consent etc. granted by the Order</p> <p>3(3) The wording 'adjoining or sharing a common boundary' causes uncertainty as the extent of other enactments being subject to the provisions of the order. We suggest that these refer to specific areas of land to avoid uncertainty.</p> <p>It is the Council's position that justification for the disapplication of legislation should have been provided prior to submission to allow Council input (as the public body representing local residents).</p> <p>The Council agree that NSIPs should usually take precedence. However, the Council is concerned that the precise impacts have not been considered. Having a blanket provision, where the specific impacts of different legislation being disappplied has not been considered could lead to unexpected adverse impacts.</p> <p>It is not an answer to the Council's concerns to highlight the fact that this is not an unusual provision in National Highways DCOs. The Council's concern is not primarily about the position, but the analysis which has been</p>	Not addressed	Not addressed	The Council's concerns remain. In particular it is of concern that the wording 'adjoining or sharing a common boundary' is not sufficiently clear. It would be useful to have a precise area within which legislation is disappplied.	Not addressed

Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 & D2) – Council's DCO Review Appendix D
Lower Thames Crossing

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	undertaken to justify it and avoid unintended consequences.				
5	<p>6: Limits of deviation</p> <p>6(2) The Council's main concern is about the uncertainty of flexibility, especially in relation to order limits. No explanation explaining why this is required has been provided, despite requests to do so. There remains a risk that the limits of deviation could extend the Project onto land not previously within the Order Limits (if the deviation does not give rise to any materially new or materially different environmental effects in comparison with those reported in the Environmental Statement).</p> <p>It should be noted that Article 3 now specifically removes the limitation in relation to undertaking the development within the Order limits (as was contained in the previously submitted DCO).</p> <p>The Council requires sufficient certainty to the scheme, to allow it to fully comment on the impacts, and allow those potentially affected to take part in the Examination.</p>	Not addressed	Not addressed	<p>The Council notes NH's points, however, it is of the opinion that these do not adequately address the Council's concerns. The flexibility given to NH is not in the Council's opinion proportionate because it does not provide certainty as to the limits within which the project will be constructed. The fact that similar wording has previously been approved not mean it is the most appropriate wording in this instance.</p> <p>Whilst NH refers to the extent of the CPO powers, this is not prohibit land being purchased by agreement. This uncertainty means that there could be impacts which do not entail a materially new environmental effect (such as impact on businesses, traffic congestion and other future development), which would not be taken into account.</p> <p>The uncertainty caused by this provision makes it more difficult for</p>	Not addressed

Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 & D2) – Council's DCO Review Appendix D
Lower Thames Crossing

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				<p>those potentially impacted by the proposal to know whether or not they need to make representations during the examination process.</p> <p>The Council considers a compromise and should be agreed whereby the extent of the limits of deviation, even if this covers a relatively large area, should be clearly set out.</p>	
6	<p>8: Consent to transfer benefit of Order</p>	<p>Not addressed</p> <p>Only change has been to update addresses.</p>	Not addressed	The Council have no further comments to make on this Article.	Not addressed
7	<p>9: Application of NRSWA</p>	Not addressed.	Not addressed	<p>The Council remains concerned that a project of this size, without following the unmodified permitting scheme, is going to have a significant negative effect on the operation of the local highway network.</p> <p>However, the Council notes that we are close to agreeing for support officers to be provided, which would</p>	Not addressed

Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 & D2) – Council's DCO Review Appendix D
Lower Thames Crossing

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	<p>conditions. The Council is not aware of any conditions that are likely to be imposed which would need to be a breach of the order, or that the applicant would be unable to comply with. Accordingly, this provision is not needed. If the applicant has particular concerns, then these should be raised now.</p>			<p>assist the Council is processing applications. Before being able to agree to this provision, the Council does need to understand the terms of reference for the Traffic Management Forum, and how in certain circumstances this could delay LTC construction work briefly to ensure that the local road network continues to function safely and effectively.</p>	
<p>8</p> <p>10: Construction and maintenance of new, altered or diverted streets and other structures</p>	<p>This Article requires that a variety of streets and other structures (including bridges) constructed by NH must be maintained by and at the expense of the LHA from completion.</p> <p>It is our position that this is not reasonable. There needs to be a defect correction period to ensure that the works undertaken are of the correct standard. This should run not from completion, but from operation (as this is when the defects in construction are most likely to become apparent).</p> <p>The Council suggests at least a 12-month defect correct period for a highway asset and structures such as bridges for 24 months.</p>	<p>Not addressed.</p>	<p>Not addressed</p>	<p>NH's response fails to grapple with the Council's primary concern, which is that the assets being transferred to the Council are not of sufficient quality.</p> <p>Whilst the ongoing responsibility and maintenance of the roads which are going to form part of the local highway network is not disputed, this does not mean that the Council should be forced to prepare defects in construction (which is not accounted for in the funding provided to the Council).</p> <p>The concept of the Council not excepting responsibility for defective</p>	<p>Not addressed</p>

Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 & D2) – Council's DCO Review Appendix D
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	Without this a huge burden is placed on the local highways authority who may have to try and find funds to repair defects in assets transferred to it. This would clearly divert monies from other essential Council services, which is especially problematic given the Council's financial position.			roads is well established. It is unclear why NH considers it appropriate in this instance.	
9	<p>12: Temporary closure, alteration diversion and restriction of use of streets</p> <p>Our primary concern relates to the notice being given for diversions (which is not currently adequately dealt with in the oTMPfC). Clearly the scale of the Project gives greater scope for multiple diversions which could be ongoing for a significant period of time. This makes it essential that they are properly co-ordinated (see our comments on the permit scheme modifications). There is no reason why the standard 3 month period cannot be followed. It will not lead to delay; it just requires the applicant to effectively plan works (which we assume will be done in any event).</p> <p>See comments in relation to deemed consent at Schedule 2.</p>	Not addressed.	Not addressed	The Council has previously requested details of how the Traffic Management Forum would operate. NH needs to provide these details to allow the Council to understand their effectiveness.	Not addressed
10	<p>13: Use of Private Roads</p> <p>Article 13(1) - There is no time limit on this provision so does that mean following completion that the undertaker maintains their rights under this section?</p> <p>Article 13(2) - Does the landowner have to evidence the damage or does the undertaker</p>	Not addressed	Not addressed	Not addressed	Article 13(1) – the Council's concerns have been addressed as the rights only apply now in relation to

Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 & D2) – Council's DCO Review Appendix D
Lower Thames Crossing

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	provide a before survey and then periodically assess for damage? This needs to be expanded.				construction not maintenance. Article 13(2) – not addressed
11	15: Classification of roads etc. Article 15(2)(a) a 12 month defect correction period for highways (24 months for structures) should be included before a newly classified road becomes the responsibility of the Council. Article 15(4)(a) - 4 weeks' notice for roads to change classification (and therefore potentially who is responsible for maintenance) is not acceptable. Article 15(6) should be removed as it is unnecessary. Future legislation can amend the DCO, however this needs to follow the correct process.	Not addressed.	Not addressed	In relation to NH's comments on Article 15(2)(a), please see the Council's comments in relation to Article 10 above. In relation to NH's comments on Article 15(4)(a) it remains the Council's position that a 4 week notice period is not acceptable. In relation to NH's comments on Article 15(6), the Council does not agree with the position of NH. However, considering the limited impact upon the Council, the Council is not going to object further and suggests that this is a drafting point for the ExA.	Not addressed
12	17: Traffic regulation – local roads In Article 17(2) the DCO refers to consent not being unreasonably withheld or delayed. The reference to delayed appears to be novel. In the	Not addressed	Not addressed	NH's comments do not alter the Council's position that the term	Not addressed

Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 & D2) – Council's DCO Review Appendix D
Lower Thames Crossing

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	<p>Council's opinion this is not required as it adds uncertainty.</p> <p>The 24-month period in article 17(7) should be reduced to 12 months. The longer period reduces the ability of the Council to control its network. In the Explanatory Memorandum it states that this additional time period is needed because of the 'complexity and scale of the project'. This is insufficient reasoning. If the applicant has specific concerns, then the Council will consider these.</p>			<p>'unreasonably delayed' is not necessary.</p> <p>The Council still considers that the period in Article 17(2) should be reduced to 12-months for the reasons previously set out.</p>	
13	18: Powers in relation to relevant navigations or watercourses	Not addressed	Not addressed	<p>The Council is aware that compensation claims can take time to process. In this situation those living on the river might lose their accommodation. In situations such as this compensation will be required to be paid quickly.</p> <p>As a compromise position, if no concerns by those potentially impacted through the Examination, then the Council will remove its objection to this Article.</p>	Not addressed
14	19: Discharge of waters	Not addressed.	Not addressed	NH has not addressed the Council's concern. The council request that	Not addressed

Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 & D2) – Council's DCO Review Appendix D
Lower Thames Crossing

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	<p>which adversely impacts flooding some distance from the scheme. It is our understanding that this situation compensation would not be payable on the DCO as currently drafted (despite comment from the applicant that compensation provisions were adequate – a comment which has yet to be tested). Accordingly, we suggest that specific compensation provisions are provided. In Article 19(8), it is not appropriate to have deemed consent provisions. Please see comments in Schedule 2.</p>			<p>the scenario set out is directly addressed.</p>	
15	<p>21: Authority to survey and investigate land</p> <p>At Article 21(3)(b) , the Council suggests the insertion of the word 'reasonably' necessary.</p> <p>In relation to Article 21(6), please see earlier comments on deemed consent.</p>	Not addressed.	Not addressed	<p>The Council disagrees with NH's reasoning. The use of the word 'reasonably' is sensible.</p>	Not addressed
16	<p>22: Removal of human remains</p> <p>The effect of Article 22(14) is to remove the requirement to advertise the fact that human remains have been found. Not all DCO's contain this exemption. The Council wishes to understand how the applicant intends to work out that no relative or personal representative of the deceased is likely to object when no advertising of the remains has been undertaken. This is a departure from the Model Provisions and requires further explanation, so parties can comment on the proposed process.</p>	Not addressed	Not addressed	<p>NH has still failed to explain how it will identify whether no relative or personal representative of the deceased is likely to object when no advertising of the remains has been undertaken.</p>	Not addressed

Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 & D2) – Council's DCO Review Appendix D
Lower Thames Crossing

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	At Article 22(19), no explanation for the disapplication of the Town and Country Planning (Churches and Places of Religious Worship and Burial Ground) Regulations 1950 has been provided.				
17	<p>23: Felling or lopping of trees and removal of hedgerows</p> <p>In relation to Article 23(1), to aid stakeholders in understanding the full impact of the scheme, a schedule and plan should be included identifying the relevant trees or shrubs.</p> <p>In relation to Article 23(2), the industry best practice for tree work can be found in British Standard BS3998:2010. The DCO should reflect this.</p> <p>At Article 23(4), in accordance with Advice Note 15 (paragraph 22 and good practice point 6) either a schedule and plan should be included identifying the relevant hedgerows should be included, or there should be a requirement for consent from the local authority.</p>	Not addressed.	Not addressed	The Council considers that NH's position provides largely the same result as the approach in Advice Note 15.	Not addressed
18	<p>24: Trees subject to tree preservation orders</p> <p>In relation to Article 24(1), Advice Note 15 (paragraph 22.3) sets out that it is not appropriate to include the power to fell trees subject to TPO or trees in a conservation area on a precautionary basis. Proper identification of affected trees will enable the ExA to give full consideration to the particular characteristics</p>	Not addressed.	Not addressed	It remains the Council's position that the plan should show the trees subject to CPO and are protected by virtue of the conservation area so that the full impact of this provision is understood.	Not addressed

Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 & D2) – Council's DCO Review Appendix D
Lower Thames Crossing

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	<p>they gave rise to their designation and desirability of continuing such protection.</p> <p>The details in Schedule 7 are noted, however the provision of a plan identifying the TPOs will help understand the impact of this provision. This should also include trees in a Conservation Area.</p>				
19	<p>26: Compulsory acquisition of land – incorporation of mineral code</p>	Not addressed	Not addressed	The Council have no further comments, and consider this matter agreed at this time.	Not addressed.
20	<p>27: Time limit for exercise of authority to acquire land compulsorily</p>	<p>Not addressed.</p> <p>No change to wording or time limit.</p> <p>NH have retained the delayed 'Start date' not included on almost all DCOs.</p>	Council's most recent comments not addressed.	<p>The points raised by NH do not address why they need both an extended 8-year time period and an extended start date.</p> <p>The Council has already indicated that they do not consider the examples provided for DCOs with 8-year limits as comparable. In any event, those 8-year time limit DCOs do not include the extended start date.</p>	Not addressed.

Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 & D2) – Council's DCO Review Appendix D
Lower Thames Crossing

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	<p>connection) – do not provide any meaningful comparison. Furthermore, the majority of NSIPs have sought and secured powers with powers extending to only 5 years.</p> <p>The Council are not aware of any highways project of this nature which has been granted such an extended period.</p> <p>The new change to amend the definition of 'start date' at 27(3) exacerbates this position – increasing the level of time and uncertainty faced by landowners. This is on top of the already extended time period.</p> <p>The Council has suggested that where elements of the project may require a period in excess of 5 years, that the time period is extended to these sections of the land only. In particular, consideration be given to:</p> <ul style="list-style-type: none"> • limiting the land to which this provision applies • limiting the categories of work to which this provision will apply. <p>The applicant has consistently rejected this approach, citing a lack of precedent for a mechanism which would allow for different time</p>			<p>NH continues to fail to engage meaningfully with the Council's suggestion that some areas of the Order Limits could be subject to a shorter time limit.</p> <p>There is no explanation as to why this would cause significant uncertainty about the interconnection between the works. The Council considers NH should already be at a stage where they are able to provide sufficient certainty in relation to development timetabling.</p> <p>NH has used novel drafting at various points in this dDCO. Therefore, the reference to the Council's 'novel and unprecedented suggestion' sits at odds with their evidence in support of its own novel drafting.</p> <p>The Council does not consider its suggestion is at all controversial as a concept. Different DCOs specify different time limits according to the size of the project. On a project covering this size of land area, it is an entirely logical extension of this</p>	

Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 & D2) – Council's DCO Review Appendix D
Lower Thames Crossing

Article/issue	Thurrock Council comments within LIR, except where in bold, where they have been raised as part of ISH 2. Comments in blue are due to amendments made to the DCO by NH.	Amendments made by DCO version 2 - REP1-043	Comments made post event submissions for ISH 2 - REP1-184	The Council's response to document titled 'Applicant's response to IP comments made on the draft DCO at Deadline 1 - REP2-077 '	Amendments made by DCO version 4 - REP2-005 and REP2-042
	<p>periods to be applied over different parts of the Order land. Given the applicant is seeking a much-extended time period, the fact that a proposal has not been used in previous DCOs, clearly should not preclude a full consideration of its appropriateness. The drafting to achieve this is not complicated and the applicant should by this stage have a clear project plan on a plot-by-plot basis.</p> <p>The Council proposes the addition of a new part of Article 27, which states:</p> <p><i>'The [8] year time period specified in subsection (1) shall not apply to the Order land listed in Schedule [] to which a [5] year time period shall apply.'</i></p> <p>As such, the Council considers it inconceivable that there are not any plots where the applicant is confident at this stage that they will be able to make a determination on requirements in less than 8 years.</p> <p>Even if the number of plots affected by this provision were limited, it would be entirely consistent with compulsory purchase principles that the applicant should seek to have the minimum possible impact on landowners.</p>			<p>concept that different time limits might apply to different parts of the land.</p>	

Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 & D2) – Council's DCO Review Appendix D
Lower Thames Crossing

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	<p>At this stage, the Council are not satisfied that evidence for an 8-year period has been provided.</p> <p>Actions as set out at 27(1) above also apply to temporary possession dealt with at Article 27(2).</p> <p>Further justification and consideration of alternative options required.</p> <p>The comments at 27(1) equally apply to Article 27(3) and the new change to amend the definition of 'start date' at 27(3) exacerbates the position– increasing the level of time and uncertainty faced by landowners. This is on top of the already extended time period sought by National Highways.</p> <p>The Council consider the start period should be the date of the making of the Order, which reflects standard drafting for DCOs and provides certainty to all parties from the outset.</p>				
<p>21</p> <p>28: Compulsory acquisition of rights and imposition of restrictive covenants</p>	<p>In relation to Article 28(1), further explanation and justification should be provided in respect of the need for the power to impose new restrictive covenants.</p> <p>The Council considers that the applicant should ensure that they cause the least impact possible on landowners. The blanket power set out at</p>	<p>Not addressed</p>	<p>Not addressed.</p>	<p><u>28(1) & (2)</u> - Whilst the Council considers that further work and justification should have been provided in relation to the areas covered by this power, the Council is prepared to agree this point at this time.</p>	<p>Not addressed.</p>

Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 & D2) – Council's DCO Review Appendix D
Lower Thames Crossing

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	<p>28(1) creates significant uncertainty and could stagnate the local property market and impact prices / the ability to lease commercial land.</p> <p>The Council does not accept that the applicant has provided sufficient justification either in the Statement of Reasons or in its formal responses, to demonstrate that it has taken all reasonable steps to reduce the area of land which are not subject to the restrictions at 28(2).</p> <p>The applicant has previously referred to not being able to make a more specific determination 'at this juncture because of the stage of design development'.</p> <p>In order to demonstrate a compelling case, the applicant should be taking every step to advance the progress of the design to ensure that the powers used are the minimum possible. The Council is concerned by wider powers being used with references to the Project design not being advanced sufficiently to limit these.</p> <p>The Council's comments about time limits at 27(1) above apply equally to the use of powers to acquire rights, as they do to the compulsory acquisition of land.</p>			<p>This matter can therefore be considered agreed, but the Council will be approaching NH to discuss a mechanism to raise any issues relating to exceptional circumstances.</p> <p><u>28(6)</u> – The Council's comments already accept that the provision is precedent. NH has not sought to engage with the comments raised by the Council.</p>	

Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 & D2) – Council's DCO Review Appendix D
Lower Thames Crossing

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	<p>The Council has undertaken a further review of land to be taken temporarily. The extent of this land is subject to a further review and the Council is waiting on the applicant for this together with a draft of the legal agreement.</p> <p>In relation to Article 28(2), the Council will be carrying out a review of the extent of the proposed Order Land and may have further comments accordingly.</p> <p>In relation to Article 28(6), further justification should be provided for the disapplication of existing statutory provisions.</p> <p>Responses from the applicant have indicated that they do consider that 'material detriment' are not relevant to the acquisition of subsoil, and so counter notice provisions requiring acquisition of retained land are not relevant.</p> <p>Whilst it may be the case that material detriment is less likely in the case of a tunnel project; it is not accepted that the considerations are simply not relevant and this has not been addressed in the EM.</p> <p>If the applicant is confident that there will be no material detriment, then the Council suggests that there should be no issue retaining the</p>				

Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 & D2) – Council's DCO Review Appendix D
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	<p>provision, as this will not then be a remedy available to a landowner.</p> <p>It is noted that previous tunnel DCOs have included similar provisions – but this does not preclude, as a minimum, a detailed analysis/consideration at this stage of why there will in fact be no potential detriment to any of the landowners with the Order land.</p> <p>The Council are concerned with the applicant's approach in relation to provisions being included in previous DCOs. Whilst previous DCOs confirm that specific wording can be appropriate, it still needs to be justified as per the relevant Advice Notes (for example articles 1.2 -1.5 of Advice Note 15). This makes it clear that it is not sufficient to simply state that a particular provision has found favour with the SoS previously, the ExA will need to understand why it is appropriate for the scheme applied for. The Council is asked the clear reasons as to why there will not be material detriment in this Project.</p>				
22 30: Modification of Part 1 of the 1965 Act	<p>In relation to Articles 30(2) and 30(4), time limits to be reviewed in accordance with actions set out at Article 27.</p> <p>For Article 30(5), see comments at 28(6).</p>	Not addressed.	Not addressed.	The Council's concerns about time limits remain, as set out in comments to Article 27.	Not addressed.

Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 & D2) – Council's DCO Review Appendix D
Lower Thames Crossing

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23	31: Application of the 1981 Act For Article 31(3), further information on this approach is required. This is a significant departure from standard provisions and the Council needs to understand the full implications of the proposal.	Not addressed	Not addressed.	The Council can agree this matter.	Not addressed.
24	33: Acquisition of subsoil or airspace only At Article 33(2), the Council will be carrying out a review of the extent of the land included at Schedule 10 and may have further comments in due course. For Article 33(4), See comments at 28(6). The EM does not explain the disapplication of statutory provision for counter notices.	Not addressed	Not addressed.	<u>33(2)</u> This matter is now considered agreed by the Council. In relation to 33(4) see comments at 28(6) above.	Not addressed.
25	35: Temporary use of land for carrying out the authorised development In relation to Article 35(1), see points on time limits at Article 27. 8 years is an unacceptable period of time to create uncertainty over such a large area of land. Further justification should be provided in relation to the power at 35(a)(ii) to temporarily possess Order Land that is not specifically set out in Schedule 11. Consideration to be given to: <ul style="list-style-type: none"> limiting the land to which this provision applies 	Not addressed	Not addressed.	For comments on time limits, see Article 27. <u>35(a)(ii)</u> – As previously set out, the Council does not dispute the principle of the provision or the potential benefit to landowners of temporary as opposed to permanent possession. However, temporary possession (especially considering NH is seeking the power for multiple temporary possessions, of up to a	Not addressed.

Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 & D2) – Council's DCO Review Appendix D
Lower Thames Crossing

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	<ul style="list-style-type: none"> limiting the categories of work to which this provision will apply. <p>Notification – General:</p> <p>The Council considers that owners should be made aware at the outset if their land may be subject to temporary acquisition; when this might occur; how many times (the extent to which an AA can take entry, pull out and re-enter is the subject of some debate – but we are sure there is a precedent for it), for how long; and what will be returned at the end of that period (i.e. demolition of buildings etc.).</p> <p>NH has indicated that it would not wish to use this approach on the basis that <i>'There is a risk that, by setting estimated timescales, NH will create expectations that cannot subsequently be met and may even be required to serve notice of temporary possession, which would incur further delay, cost and frustration for landowners.'</i></p> <p>The Council considers the balance here is in favour of providing as much information as possible. This allows for owners to prepare and to better mitigate any losses. The Council therefore suggest that the EM makes a commitment to: (a) outlining estimated timescales as accurately as possible to</p>			<p>year) can be just, if not more, disruptive as permanent land take – which would allow owners to relocate permanently.</p> <p>As such, the extent of temporary possession powers should be analysed in detail, and where NH can be confident these are not required, should be excluded from the power under 35(a)(ii) so as to give greater certainty to those landowners.</p> <p><u>Notification – notice requirements:</u> NH's comments do not address the Council's concerns.</p> <p>The Council has not sought to argue that the changes they are seeking are precedented. Instead, they raise a simple and valid point that they consider the balance should sit in favour of providing landowners with as much information as possible at the outset, to let landowners efficiently plan for the potential of temporary possession.</p>	

Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 & D2) – Council's DCO Review Appendix D
 Lower Thames Crossing

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	<p>landowners when notices are given; and, (b) keeping them updated as to evolving timescales.</p> <p>The same principal points set out at Article 35 below, apply to maintenance period at Article 36.</p> <p>At Article 35(2), the Council do not consider the 28-day notice period sufficient, given that possession can potentially be for a significant period.</p> <p>The Council notes that the recent Lake Loathing (Lowestoft) Third Crossing Order 2020 includes a three-month notice period. Therefore, it not accepted that the Council are holding the dDCO to a higher standard than other DCOs or that a 3-month period is inconsistent with a desire to ensure NSIPs are expeditiously delivered – as has been suggested by the applicant.</p> <p>Instead, this simply requires an appropriate level of planning and co-ordination to ensure that notices are served on time to allow this. It is not for the Council to evidence why a 3-month period is justified, but instead for the applicant to justify why it cannot in this case provide a longer period than 28 days.</p> <p>Further, this would also appear likely to increase the likelihood of increased compensation -</p>			<p><u>Notification – time periods 35(2):</u></p> <p>NH's comments do not address the Council's concerns.</p> <p><u>35(3)</u> – In relation to NH comment, we can confirm that 'excepts' should read as 'accepts'.</p> <p>The Council's comments remain. The wording at 35(3) identifying a 'potential risk' can be interpreted extremely broadly.</p> <p>The Council considers this still warrants further clarification in the EM.</p> <p><u>35(7)</u> The Council notes NH's comments. The Council agrees that the Applicant should avoid being in possession longer than necessary.</p> <p>The Council's comments are focused on ensuring that there is a strong motivation for the Applicant to restore land to is appropriate level, rather than leaving a landowner in a situation where they are left for a substantial period of</p>	

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	<p>where a landowner has increased notice, there will clearly be cases where this gives them a better opportunity to mitigate any losses.</p> <p>At Article 35(3), Council expects principle that safety issues may negate the requirement for a notice period to be served.</p> <p>The Council suggests further wording be provided in either the DCO or the EM to explain what these safety concerns might be, to ensure that the definition is not to broadly interpreted.</p> <p>In relation to Articles 35(5), (7) and (8), the applicant is required at 35(5) to restore the land to the reasonable satisfaction of the owner. However, the wording at 35(8) does not stop the applicant giving up possession of the land.</p> <p>The Council considers that the applicant should be required to comply with the requirement prior to giving up temporary possession of the land.</p> <p>In relation to Article 35(11), The Council will be carrying out a review of the extent of the land included within Schedule 10 and may have further comments accordingly.</p>			<p>time with unsatisfactory restoration and reliant on dispute provisions.</p> <p>However, the Council is prepared to agree NH's wording to move matters forward.</p> <p><u>35(11)</u> This matter can therefore be considered agreed, but the Council will be approaching NH to discuss a mechanism to raise any issues relating to exceptional circumstances.</p> <p><u>35(13)</u> NH's comments do not address the Council's concerns.</p>	

Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 & D2) – Council's DCO Review Appendix D
Lower Thames Crossing

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	<p>Article 35(13) allows multiple temporary possessions. The Council has reservations about this provision.</p> <p>It recognises that, in some cases, two shorter entries may be better than a prolonged stay. But the applicant should provide further justification for the inclusion of this power.</p> <p>If the power remains, all the points set out in this section are more poignant – i.e., notice periods, extent of land which the provision covers etc.</p>				
<p>26</p> <p>36: Temporary use of land for maintaining the authorised development</p>	<p>In relation to Article 36(1), the Council does not take issue with the principle of this provision, but the Council is not satisfied that the applicant has taken all steps reasonably possible to reduce the area of land.</p> <p>The Council considers that the area covered by this power can be reduced. This would remove the uncertainty for those landowners. Wherever the applicant can reasonably rule out a need for maintenance on an area of land, that area land should be excluded from this provision.</p> <p>At Article 36(3), the Notice period is considered insufficient. See comments at Article 35(2).</p>	<p>Not addressed</p>	<p>Not addressed.</p>	<p>NH's comments do not address the issue raised in relation to 36(1). The Council does not dispute that maintenance provisions are a necessary and proportionate power. However, it imposes an ongoing burden and uncertainty upon the landowner. NH should avoid the current blanket provisions where the Applicant can reasonably reduce the area covered by this provision.</p> <p><u>Article 36(2)</u> – see comments at 35(2) above.</p> <p><u>Article 36(11)</u> – This matter can therefore be considered agreed, but the Council will be approaching NH</p>	<p>Not addressed.</p>

Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 & D2) – Council's DCO Review Appendix D
Lower Thames Crossing

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	<p>For Article 36(8), please see comments at 18(3) which apply equally to this provision.</p> <p>In relation to Article 36(11), the Council will be carrying out a review of the extent of the proposed Order Land and may have further comments accordingly.</p> <p>In respect of Article 36(13), see actions at Article 27, which are in addition to the maintenance period.</p> <p>Further justification to be provided:</p> <p>As per actions at 36(1), power to be limited to specific areas.</p> <p>Necessity for 5-year period (as opposed to any permanent right of maintenance) to be justified. This should include assessment of whether areas of land can have a lower time limit.</p> <p>Rights of landowner during the maintenance period to carry out activity on the land to be clarified.</p>			<p>to discuss a mechanism to raise any issues relating to exceptional circumstances.</p> <p><u>Article 36(13)</u> – in relation to the maintenance period see comments at Article 27 which are in addition to the maintenance period.</p>	
27	38: Apparatus and rights of statutory undertakers	Not addressed	Not addressed.	The Council's concerns and suggestions remain as stated.	Not addressed.

Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 & D2) – Council's DCO Review Appendix D
Lower Thames Crossing

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<p>in stopped up streets</p>	<p>account by both the applicant and the statutory undertaker.</p> <p>The Council notes that other DCOs do not amend this provision. However, it is good example of where modifications can be made to improve outcomes for the public. This is especially relevant where the power of the Council under Section 56A of NRSWA (power of the Council to give directions as to the placing of apparatus) is proposed to be disapplied.</p>			<p>The Council notes NH's comments that the equipment will be placed in a position that the statutory undertaker has the power to place it.</p> <p>This does not change the fact the replacement is entirely due to the activities of NH or that a landowner would reasonably want to be consulted about its placement. The Council does not accept that needs to incur additional delay to the delivery of the project. It simply means that a consultation period needs to be planned in.</p> <p>As stated, the Council considers this a good example of where modifications can be made to improve the outcomes for the public.</p>	
<p>28 39: Recovery of costs of new connections</p>	<p>For Article 39(2), the provision to be extended to cover compensation for losses, not just expenditure.</p>	<p>Not addressed</p>	<p>Not addressed</p>	<p>If a person suffers losses as a result of the removal of a drain or sewer, then it is entirely reasonable they should be compensated for losses as well as expenditure.</p> <p>This would of course be subject to evidence and reasonable mitigation</p>	<p>Not addressed.</p>

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Lower Thames Crossing

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				<p>of losses – as with all compensation payments.</p> <p>NH has suggested that no justification has been given for this assertion. The Council considers the suggestion to be self evident and sees no reason why NH would object to paying properly and fairly incurred losses.</p>	
<p>29 40: Special Category Land</p>	<p>In relation to Article 40(1), there currently appears to be a significant risk of delay in replacement land being provided. The wording should follow the Model Provisions i.e., the replacement land should be delivered before the special category land is vested in the applicant. Otherwise, there is a least a temporary loss of open space, and a potential long-term risk of loss/non delivery.</p> <p>Clear justification is needed if fully implemented replacement land is not in place prior to vesting. The direct impact of this will be felt by those who use this valuable resource without compensation.</p> <p>The Model Provisions specifically require that the approved scheme has been implemented on the replacement land prior to the special</p>	<p>Not addressed</p>	<p>Not addressed.</p>	<p>The Council's concerns remain. The Council still considers replacement land should be provided before special category land is vested.</p> <p>The Council notes that NH is not seeking to rely on s.131(4A). It would object if the Applicant decided to do so at any stage in these proceedings.</p> <p>The Council remains concerned that NH is not making provision for the temporary loss of common land. The DCO provides for multiple yearlong possessions, during which no provision is made for replacement land. The Council considers this should be treated the</p>	<p>Not addressed.</p>

Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 & D2) – Council's DCO Review Appendix D
Lower Thames Crossing

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	<p>category land being discharged from its rights, trusts and incidents.</p> <p>The Council does accept that there are DCOs where this has been approved, but this is not considered to be a scheme where it is appropriate for the land to be vested, until the alternative land has been delivered.</p> <p>The applicant is seeking to reduce this burden such that Special Category land could be acquired prior to the replacement land being provided. In this context it is unclear as to the driver for the applicant to provide replacement land and on a meaningful timescale</p> <p>If it was argued that Special Parliamentary Procedure should not apply, full details should be provided to support the application, e.g. (in relation to common, open space or fuel or field garden allotments):</p> <ul style="list-style-type: none"> where it is argued that land will be no less advantageous when burdened with the Order right, identifying specifically the persons in whom it is vested and other persons, if any, entitled to rights of common or other rights, and clarifying the extent of public use of the land 			<p>same way as permanent land take under s.131.</p> <p>40(5) The Council's concerns as stated remain. The Council requests further information is provided in relation to the possible de-registration of common land, including the land areas expected to be de-registered and the reasons for this.</p> <p>40(7) & (8)</p> <p>This matter can be considered agreed, but the Council will be approaching NH to discuss a mechanism to raise any issues relating to exceptional circumstances.</p>	

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	<ul style="list-style-type: none"> where it is argued that any suitable open space land to be given in exchange is available only at prohibitive cost, identifying specifically those costs. <p>The Council is not aware that the argument has been deployed but should it then the Council would want to better understand what amounts to prohibitive cost and why this should mean that the applicant avoids incurring a liability.</p> <p>The Council does not agree with the wording at Article 40(5) – i.e., that replacement land should be provided for special category land that is in existence at the date of DCO. Otherwise, there may be an incentive to delay providing replacement land if there is a risk of de-registration.</p> <p>In relation to Article 40(8) (formerly 40(7)), The Council will be reviewing these plots and may have further comments.</p>				
30	<p>44: Power to operate, use and close the tunnel area</p> <p>The Council requests further information as to why the relevant local authorities are limited to Kent CC, Thurrock and Gravesham BC.</p> <p>The Council are concerned at the short notice period for shutting the tunnel. This could have significant impacts on networks and network</p>	Not addressed.	Not addressed.	NH needs to explain why the 7-day notice period is appropriate, as such a short notice period could have significant impacts on the Council. Whilst NH's position isprecedented, this does not mean that the 7-day	Not addressed.

Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 & D2) – Council's DCO Review Appendix D
Lower Thames Crossing

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	planning. The Council would like the applicant to explain why a 7-day notice period is appropriate.			notice period is appropriate in this instance.	
31 53: Disapplication of legislative provisions, etc.	<p>Whilst it is not unusual to disapply certain legislative provisions, this amount of disappplied legislation is greater than in many other DCO's.</p> <p>The Council request that NH explains the impact of the disapplication of statutory provisions, including the analysis which justifies this. In the Council's opinion significant additional justification is required to explain the rationale for such a wide approach.</p> <p>Despite this we do not disagree with the fact that primarily the DCO should take precedence, the Council's position is that we need to understand the impact better so we can assess whether any specific mitigation is required.</p> <p>The Council is concerned about the disapplication of parts of the Wildlife and Countryside Act, 1981. The uncertainty in the application (e.g., with the significant flexibility of order limits) means that it is going difficult to fully assess the potential impact on sites of special scientific interest. The requirements of the Wildlife and Countryside Act, 1981 should therefore apply to avoid harm being caused to these sites.</p>	Not addressed.	Not addressed.	<p>The Council notes the reasons given in the EM. Has any further analysis been undertaken of the specific impacts of these disapplication's, and whether any area specific mitigation is required?</p> <p>The Council will leave Natural England to comment on the response to the Council's concerns pursuant to the Wildlife and Countryside Act, 1981.</p>	Not addressed.

Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 & D2) – Council's DCO Review Appendix D
Lower Thames Crossing

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32 55: Application of local legislation	The Council would like to see the applicant's analysis of the potential impact of this disapplication. This would be to allow specific mitigation works to be put in to address any concerns. For example, what are the potential impacts from the disapplication of the Thames Barrier and Flood Prevention Act 1972? The Council clearly wants to avoid an increase in flood risk.	Not addressed.	Not addressed.	The Council notes NH's comment and analysis in the EM. Has NH identified any negative impacts that need to be mitigated? For example, due to the disapplication of byelaw provisions? Please can NH provide the Council with the reasons and analysis.	Not addressed.
33 56: Planning permission, etc.	<p>Regarding the new 56(3) and (4) provisions we understand why the applicant considers this relevant. Although Hillside was not a statement of new law – there was, and still is, some ambiguity in this area that future cases are going to have to resolve. For certainty, the Council consider it is sensible that this provision is included.</p> <p>In the Council's opinion this falls within the range of broad powers for the DCO – see Section 120 of the Planning Act 2008. It would be useful for the applicant to identify where this may be applied, however, broadly speaking, this is considered positive.</p> <p>The Council agrees there is not caselaw on exactly this situation, however, its addition makes the position clearer for the Council.</p>	Not addressed.	Not addressed.	This is agreed.	Not addressed.

Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 & D2) – Council's DCO Review Appendix D
Lower Thames Crossing

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34 58: Defence to proceedings in respect of statutory nuisance	<p>This Article sets out the scope of the defence to proceedings in respect of statutory nuisance. It remains the Council's position that the purpose of this section 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. It is also contrary to precedent from other highways DCOs. This is a long-term project and the impacts on local residents need to be carefully considered.</p> <p>If the applicant states that it is required, due to the scale of the project, the applicant needs to demonstrate why is it required.</p>	Not addressed.	Not addressed.	Such a wide scope of defences are not usually required in other highways DCOs. It remains the Council's position that the purpose of this section 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.	Not addressed
35 62: Certification of documents	<p>The Council considers the addition of paragraphs 4-7 of this Article to be unnecessary. They weren't in the originally submitted DCO, they act to avoid the normal procedure for amending the DCO and increase uncertainty.</p>	Not addressed.	Not addressed.	The Council does not agree with NH that these provisions are necessary. No justification for avoiding the normal procedure for amended the DCO has been provided. Simply because it has been agreed previously does not mean it is appropriate in this instance.	Not addressed.

Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 & D2) – Council's DCO Review Appendix D
Lower Thames Crossing

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36 65: Appeals to Secretary of State	<p>It is the view of the Council that the 10-business day period for responding appears unnecessarily short. While there is precedent for the 10 business days (see A14 Cambridge to Huntingdon), the Council suggest a minimum of 20 days considering the scale of the scheme.</p> <p>The Council suggest that the Control of Pollution Act provisions use their own statutory appeal process – this is something that NH needs to explain this further. The reference to the need for 'certainty and expeditious resolution' is not in our opinion sufficient. In Thurrock Council's opinion changing the appeal method makes it less rather than more certain.</p>	Not addressed.	Not addressed.	<p>The Council does not agree that 10 business days is sufficient. Insufficient reasons have been given for why a longer period of 20 business days could not be provided.</p> <p>The Council maintains that the use of the Control of Pollution Act 1974's own appeal provisions are the most appropriate. This is because they are well established and provide certainty. There is no evidence that they will cause delay.</p>	Not addressed.
37 66: power to override easements etc.	<p>The Council is concerned that the extent of the powers sought is not sufficiently refined, due to the project stage of design reached by the applicant at this stage. The applicant should be seeking to limit the impact of compulsory purchase rights by acquiring the minimum necessary.</p> <p>NH has suggested that the 'Council's comments on the extent of compulsory acquisition requires further particularisation and can be addressed as part of any Compulsory Acquisition Hearings the ExA decides to hold'. The Council has already</p>	Not addressed.	Not addressed.	<p>The Council's concerns remain in relation to this issue.</p> <p>The power provided by this provision, is equivalent to the use of S203 of the Housing and Planning Act. Where S203 is used, the Council would expect an authority to have clear understanding ahead of time, as to exactly the nature of rights they were seeking to override.</p> <p>The Council recognises the 'lacuna' presented by the NH but considers</p>	Not addressed.

Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 & D2) – Council's DCO Review Appendix D
Lower Thames Crossing

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	<p>set out substantive points of principle on the timing and extent of the rights acquired both in correspondence with the Applicant and as summarised in the paragraphs below. The Council has raised fundamental concerns with the approach taken and provided alternative approaches, which have been rejected. These comments remain. Further, the Council considers it is for NH to fully justify the extent of the powers they are seeking.</p>			the evidencing behind this power needs to be expanded.	
38 Schedule 1	<p>As the Council has noted in its Procedural Deadline C submission, the Council is concerned that although there has been engagement with utility companies, there has been very little engagement with the Council.</p> <p>The Council would have expected separate utilities document outlining the gas and electrical diversions, with drawings highlighting each one. These have not been provided. The Council have made a number of comments on the gas and electrical diversions over the last 2 years, but these do not appear to have been considered by NH.</p>	Not addressed.	Not addressed.	The Council maintains that there has been little engagement over the utilities diversions. In particular, there should be greater descriptions of what the utilities work is.	Not addressed.
39 Schedule 2	<p><u>Requirement 3</u> – detailed design. There is uncertainty the in this requirement due to the SoS be able to approve amendments if they do not give rise to materially new or materially different environmental effects in comparison</p>	<p>Requirement 3 not addressed.</p> <p>It has added the local highways</p>	Not addressed.	Requirement 3 – the Council's concerns have not been addressed. Although flexibility is important, so is certainty as to scope. Whilst no land outside the Order Limits is proposed	Not addressed.

Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 & D2) – Council's DCO Review Appendix D
Lower Thames Crossing

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	<p>with those reported in the environmental statement. This means that the design could change, and not take into account non-environmental effects, such as new land ownership. It could lead to changes in assumed construction and methodologies that were used to assess impacts in the ES that make such assessments invalid. It could also include adverse effects on businesses.</p> <p><u>Requirement 4</u> – construction and handover environmental management plans. The Council is concerned about the concept of preliminary works. It appears to have been included so as to satisfy the requirement to 'begin' rather than 'commence' the DCO within 5 years (requirement 2). The purpose of this appears to be to preserve the DCO with minimal works. This provides greater uncertainty, as if consented, the longer it takes the applicant to develop the scheme, the greater the time the uncertainty created by the order will impact residents.</p> <p>In addition, the Council have not been consulted on this document (ES Appendix 2.2, Annex C). In the Council's opinion the proposed preliminary works could have quite significant environmental effects (they involve vegetation clearing). If they</p>	<p>authority to consultation, rather than just the planning authority.</p> <p>Requirement 4 not addressed.</p>		<p>to be CPO'd, this does not mean that land can't be purchased by agreement.</p> <p>Requirement 4 – the Council's comments have not been addressed in relation to this. Requirement. The Council maintains its previous comments.</p>	

Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 & D2) – Council's DCO Review Appendix D
Lower Thames Crossing

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	<p>were part of the EMP (Second Iteration) then the Council would have to be consulted.</p> <p>Despite the mitigation measures in the REAC being based on a reasonable worst-case scenario, it is the Council's opinion that in exceptional circumstances it can be updated. For example, if it was identified that significant environmental harm was being caused, the plan should be capable of adaptation to stop the harm being caused. Whilst it is noted that the Secretary of State has previously authorised projects without this requirement, the last 3 years has seen exceptional domestic and international changes and challenges. There is a real risk that the current inflexible drafting for mean that the project is already unfit for purpose and/or represents poor value for money prior to being concluded.</p> <p>The Council should be consulted on the EMP Third Iteration. The Council acknowledge that this is a management plan relating to the operation and maintenance of the authorised development. However, the operation of the strategic road network has the potential to have significant impacts on the local road network, especially when the scheme proposes to disconnect the existing strategic road network (SRN) port link between the A13 west-bound and the A1089 south-bound and instead divert</p>				

Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 & D2) – Council's DCO Review Appendix D
Lower Thames Crossing

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	<p>this traffic via local authority roads. Considering the limited engagement by the applicant with the Council on the impact on the local road network, the Council has real concerns that NH is making decisions regarding the operation of the strategic road network without considering the impact on the local road network.</p> <p><u>Requirement 6</u> – contaminated land. The Council's key concern is that historic contamination is picked up too late. Requirement 6 is only engaged when carrying out the authorised development, whereas the Council suggests that there needs to be a more robust understanding of Ground conditions before the construction commences.</p> <p>Accordingly, the Council suggest the following additional requirement for Geology and Soils:</p> <p><i>(1) No part of the Works may commence until an investigation and assessment report to identify ground conditions and ground stability has been submitted to and approved by the relevant planning authority.</i></p> <p><i>(2) The report submitted pursuant to sub-paragraph (1) must identify the extent of any contamination and the remedial measures to be taken to render the land fit for its intended purpose, together with a management plan</i></p>	<p>Requirement 6 not addressed.</p>		<p>Requirement 6 – The Council has not engaged with the Council's suggestion for a new Requirement. Requirement 6 is to address unidentified contamination encountered during construction. The Council require more ground investigation in advance of construction to ensure that the control methods employed will adequately manage the exposure to third parties and environment.</p> <p>Whilst the current wording of GS0001 does commit NH to doing more ground investigations on their identified medium and high-risk sites (Section 6.1 of the ROA), the wording could be taken to mean a method statement on what technique to prevent creating pollution pathways. This will not tell</p>	

Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 & D2) – Council's DCO Review Appendix D
Lower Thames Crossing

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	<p><i>which sets out long-term measures with respect to any contaminants remaining on the site.</i></p> <p><i>(3) In the event that the report submitted pursuant to subparagraph (1) identifies necessary remedial measures, no part of the Works may commence until a remediation verification plan for that part has been submitted to and approved by the relevant planning authority.</i></p> <p><i>(4) The authorised development must be carried out in accordance with the approved report referred to at sub-paragraph (1) and, where necessary, the approved plan referred to at sub-paragraph (3).</i></p> <p><u>Requirement 13 – traveller site. The location and broad design of the traveller's site is something that the Council and the applicant broadly agree on and is covered in Design Principles, a secured Indicative Plan and the Requirement 13 and a new provision within the SAC-R-008. However, the Council notes and agrees with the points raised by the ExA during ISH2. Although Section 120(3) and (4) is very broad, Section 115 of the PA 2008 does limit what consent can be granted for.</u></p> <p><u>Dwelling is not defined, and our concern is that a Traveller site would not fall under the</u></p>	<p>Not addressed, although it is noted that some amendments are made. The Council does not object to the amendments proposed.</p>		<p>us how much and the nature of the data to be collected. Also, as a hang up from the previous wording it could be taken to only address release to controlled waters and the Council require atmospheric release controlled.</p> <p>Accordingly, the Council either require the new Requirement (as previously proposed), or GS001, GS003, GS006 and GS 027 needs to be worded so the Council see the additional ground investigations and agree the identification of what is unacceptable risk.</p> <p>Requirement 13 – the Council does not object to Requirement 13.</p>	

Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 & D2) – Council's DCO Review Appendix D
Lower Thames Crossing

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	<p><u>definition of a dwelling. NH's additional submissions of 6 July do not address this point.</u></p> <p><u>The Council are not aware of any precedent for similar provisions in other DCOs.</u></p> <p><u>The Council does not consider that conditions are required, as consent for the use of the site is contained within the DCO. The Council are aware that NH has updated the Stakeholder Actions and Commitment Register to secure the occupation of the site prior to the start of significant construction works.</u></p> <p><u>Requirement 14</u> – traffic monitoring. The Council considers that traffic monitoring should include noise and air quality. It should not lead to changes due to the environmental and traffic assessments being based on a reasonable worst-case scenario. However, in the event that there are significantly worse environmental outcomes this monitoring will allow them to be identified and ultimately mitigated.</p> <p><u>Requirement 15</u>- interaction with Thurrock Flexible Generation Plan. The Council is unclear why this is only necessary if the Flexible Generation Plant Development Consent Order</p>	<p>Requirement 15 not addressed</p>		<p>Requirement 14 – this has not been adequately addressed.</p> <p>Requirement 15 – This is agreed.</p>	

Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 & D2) – Council's DCO Review Appendix D
Lower Thames Crossing

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	<p>2022 is commenced. Further explain is needed to that the Council can fully assess the impacts.</p> <p>Requirement 16 – 16(4) refers to the CEP (Third Iteration) being submitted 'as soon as reasonably practicable' at the end of the construction, commissioning and handover stage. This is unclear and should be coupled with a long stop date.</p> <p>Requirement 18 highlights two key areas of concern for the Council; deemed consent and the relevant discharging authority.</p> <p><u>Deemed consent</u></p> <p>Deemed consent is found in:</p> <p>A12- Temporary closure, alteration, diversion and restriction of use of streets</p> <p>A17- traffic regulation local roads</p> <p>A19 – discharge of water (not the council)</p> <p>A21- authority to survey and investigate the land</p> <p>Requirement 13 – travellers' site</p>	<p>Provision amended</p> <p>Not addressed</p>		<p>Requirement 16 – not addressed</p> <p>Requirement 18 – not addressed</p> <p>Deemed consent – the Council strongly disagrees with NH's justification for deemed consent. There is considerable reliance on the fact that it is precedented. However, this does not mean it is the most appropriate option. NH has failed to identify how it avoids delay without also being contrary to the public interest.</p>	

Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 & D2) – Council's DCO Review Appendix D
Lower Thames Crossing

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	<p>The Council considers that deemed consent in this situation would not be in the public interest, despite numerous highways DCOs containing these provisions. The Council understands the need to ensure there isn't any unnecessary delay. However, inflexible deemed consent provisions will result in unnecessary delay.</p> <p>In the Council's opinion, the public interest and the interests of the applicant would be better served if:</p> <p>There was the ability for the parties to agree a mutually agreed extension of time (which we would be prepared to cap at a maximum of 3 months), to avoid unnecessary appeals and also avoid delay by having to refuse applications that could have been approved if a short extension could have been agreed.</p> <p>The Council note the applicant's position that there is no need for this, as the Council can simply refuse consent and the applicant can then submit a further application when ready. However, in our opinion this would be more less efficient.</p> <p>The provisions were deemed refusal rather than deemed consent. This will continue to incentivise the Council to work within the specified timeframes but avoid the risk of decisions being</p>				

Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 & D2) – Council's DCO Review Appendix D
Lower Thames Crossing

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	<p>deemed as having consent when they have not been considered by either the Secretary of State or the Council.</p> <p><u>Discharging Authority and Local Authority Consultation</u></p> <p>The applicant is strongly of the view that the DCO requirements (currently set out in Schedule 2 of the draft DCO) should largely be discharged by the Secretary of State. It is the Council's position that Requirements 3 (detailed design), 4 (Construction and Handover EMPs), 5 (landscaping and ecology), 6 – (contaminated land), 8 (surface and foul water drainage at a local level (with the Environment Agency responsible for those elements not at a local level), 9- historic environment, 10 (traffic management), 11 (construction travel plans), 12 (fencing), 14 traffic monitoring, 16 – carbon and energy management plan and 17 (amendments to approved details) should be discharged by the relevant local planning authority, with any appeal going to the Secretary of State. Whilst it is not uncommon for transport DCOs to have the Secretary of State as the discharging authority, it is by no means universal (there are at least four other transport DCOs where this is not the case). In addition, the Council are not aware of any other Secretary of State (for example DHLUC, DEFRA or BEIS) being the discharging</p>		<p>Not addressed.</p> <p>Referenced in paragraph 1.3.22. Whilst it is accepted that the Secretary of State is subject to general public law principles, and is subject to judicial review, this does not mean they would be the most appropriate discharged authority. Comments about independence were therefore relevant.</p>	<p>Discharging Authority and Local Authority Consultation – the Council strongly disagrees with NH's position. The focus of NH has been on precedent for its approach, rather than engaging with the Council's arguments as to why it is the most appropriate discharging authority.</p>	

Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 & D2) – Council's DCO Review Appendix D
Lower Thames Crossing

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	<p>authority in connection with non-transport DCOs. In relation to this scheme, the Council is the local highways authority for 70% of the route. Accordingly, NH's concerns regarding co-ordinated discharge of functions is not well founded in relation to this LTC scheme.</p> <p>In the Council's view, locally elected local authorities, who are experienced in discharging similar planning conditions, should be the discharging authority. It is precisely because of the complexity of the project that a detailed understanding of the locality, including the local highway network, is required. It is accepted that changes to local highway sections will need to consider the impact of those changes on trunk road sections (and vice versa), and accordingly it is suggested that the relevant planning authority will discharge requirements in consultation with relevant parties, such as the applicant and other key stakeholders. The current proposal, of the Secretary of State being the discharging authority, after consulting the Council, is likely to lead to unnecessary expenditure as the relevant local planning authority will have to commit significant resources to explaining to the Secretary of State the impact of proposals.</p> <p>A number of the requirements (as currently drafted) refer to consultation with the relevant</p>				

Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 & D2) – Council's DCO Review Appendix D
Lower Thames Crossing

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	<p>planning authority. There are no details in the draft DCO as to how long this consultation will be or how it will take place. However, it is understood from the applicant verbally that the consultation period will be four weeks, with the ability to extend to 6 weeks. Accordingly, the Council contends that the setting of 8-week discharge period for the Secretary of State and then only allowing only 4-6 weeks for consultation with local planning authorities is not appropriate or fair, as it does not take into account the complexities of the individual matters being discharged.</p> <p><u>Updating of control documents</u> - including the CoCP, oTMPfC, FCTP and oMHP. The Council's position is that just because documents are based on a 'reasonable worst-case scenario' does not mean that they cannot become unrepresentative. This is especially true given the effects of the pandemic and the drive to reach Net Zero. The Council does not accept that under no circumstances should the documents be capable of review, although it is anticipated that only in exceptional circumstances will they be reviewed.</p> <p>The Council understands the need for certainty in relation to the Project, and the reasons why</p>			<p>Updating of control documents – The Council still maintains its concerns. Although there are some updates to baselines, as set out in AS-086 - https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010032/TR010032-002051-Response%20%20Procedural%20Decisions%20of%2021st%20March%202023.pdf, this does not account for what could be very considerable changes over the coming years.</p>	

Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 & D2) – Council's DCO Review Appendix D
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	<p>the environmental and traffic assessments are based on a reasonable worst-case scenario.</p> <p>However, the last two years has seen unprecedented change in how we live and work. This is combined with significant environmental concerns and the need to reduce carbon emissions.</p> <p>Accordingly, there needs to be the ability to review and amend the scheme in exceptional circumstances. This is because the likelihood of there being exceptional circumstances, although low, is significantly higher than it might have been two years ago.</p> <p>The Council note that the outline management plans will provide mechanisms for ongoing engagement and coordination, however, the Council does not consider this sufficient because the Council is only consulted, it does not provide the Council with either approval rights or for the applicant to take into account our comments.</p>			<p>NH states that the Council's concerns can apply to any DCO. However, it is worth noting, as set out by the SoS for Transport on 9 March 2023:</p> <p><i>'To date we have spent over £800 million on planning the Lower Thames Crossing. It is one of the largest planning applications ever, and it is important we get this right' (document AS-086)</i></p> <p>The Council understands that this is a period of rapid change, where the impacts of climate change are becoming increasingly felt (see comments from the governments statutory advisor, the Climate Change Committee). This is likely to lead to changes in how LTC would be utilised, and also the impacts of LTC. Considering the size and timescales of LTC, if it is authorised, then it is important that in exceptional circumstances it can adapt as our environment and use of LTC changes.</p> <p>Failure to do so would not only waste public funds but would cause</p>	

Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 & D2) – Council's DCO Review Appendix D
Lower Thames Crossing

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				significant detrimental impact within the Council's administrative area.	
40 Schedule 14	<p>The Council appreciates the applicant's reasoning around disapplying Land Drainage Act Powers when the Project spans multiple LLFA areas. However, the Council considers that that ultimately enforcement action should be carried out at the discretion of the LLFA in accordance to their respective enforcement policy and protocol.</p> <p>The Council does not consider it possible to include parts of enforcement policy/protocol in the protective provisions as this comes as a complete package (i.e. procedure, timescales, etc.).</p> <p>In relation to previous examples of this in DCOs, the Council notes that it is far from universal that the usual enforcement provisions in the Land Drainage Act 1991 are disappplied. For example, refer to the A30 Chiverton to Carland Cross Development Consent Order 2020.</p> <p>Schedule 14, Part 3, Paragraph 23(5)(b) refers to the removal of obstructions in watercourses. The Council maintains that the current wording places an unacceptable risk on residential properties. The Council understand NH's</p>	Not addressed	Not addressed	<p>The Council disagrees with NH's position. NH's proposal would create a disjointed approach within the Council's administrative area.</p> <p>In relation to paragraph 23(5)(b), the Council still has real concerns that the wording 'as soon as reasonably practicable' is not sufficiently robust. There needs to be some certainty that damage isn't going to be caused to land and property as a result of NH deciding that taking action is not 'practicable' for it.</p>	Not addressed.

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	<p>comments about the fact that, in some instances, it may not be practical to remove an obstruction within 14 days. However, generally the applicant should be aiming to remove obstructions within set timescales and where there are exceptions to be made, these can be negotiated with the LLFA on a case-by-case basis.</p> <p>This will ensure that the risk of watercourse flooding is reduced as it will place some urgency on the applicant to remove obstructions from any watercourses under their care. The risk is that only including 'as soon as reasonably practicable' will mean that bias is placed on the practicality for the applicant of carrying out the work, rather than the increased flood risk the obstruction will cause (which could put residential properties at greater risk)</p>				
41 (new)	<p>The Council has a particular concern about which drawings are approved and therefore must be complied with. The key issue is that not all 'certified documents' (as listed in Schedule 16 of the DCO and which is in accordance with Paragraph 11 of the PINS Advice Note 15 (AN15)) appear to be control documents, as they are not secured within the DCO. Please refer to Section 8 of the Council's Deadline 3 submission for further information.</p>				