

1 MR SMITH: Good morning, everybody, and welcome to today's issue-specific
2 hearing 14 for the Lower Thames Crossing. Now, before we go any further with
3 introductions, I'll just check with the case team and the audio-visual team that
4 everything that is meant to be working is – livestreams are running; recordings
5 are working – and I'm seeing all the right thumbs up in all of the right places, so
6 thank you very much. To introductions, my name is Rynd Smith; I am the lead
7 member of a panel which is the Examining Authority for the Lower Thames
8 Crossing application, and I am in the chair for this hearing, and my fellow panel
9 members will introduce themselves, so I will start by moving to my colleague,
10 Ms Jan Laver.

11 MS LAVER: Good morning, everybody. Janine Laver, panel member. I think that'll be
12 the last time I say good morning to you all.

13 MR PRATT: Good morning, everybody. Ken Pratt here, panel member, and yes, it's
14 nice to see a full set of tables.

15 MR TAYLOR: Good morning, everybody. Ken Taylor, panel member.

16 MR YOUNG: Good morning, everybody. Dominic Young, panel member.

17 MR SMITH: I think your microphone is muted, Mr Young.

18 MR YOUNG: Can you hear me now?

19 MR SMITH: We certainly can. That's better.

20 MR YOUNG: Good morning, everybody. Dominic Young, panel member.

21 MR SMITH: Thank you very much, so that's a full house from the panel, and this is
22 Rynd Smith, panel lead, speaking again. I will also now introduce our planning
23 inspectorate colleagues working with us on this examination, and Spencer
24 Barrowman is the case manager leading the planning inspectorate case team here
25 today, and he's supported by Ryan Sedgman in the physical venue, and then case
26 manager Caroline Hopewell and Jessica Weatherby are working in the virtual
27 room today. I will also introduce two planning inspectors in the room. Mr Guy
28 Rigby, who – as you will be aware from previous hearings – is a non-practising
29 barrister and a chartered engineer, and he is providing us with... Can I just
30 check that all microphones are on mute? Can somebody just run through the
31 virtual room for me, please, and make sure that microphones are muted? We
32 were just picking up a little bit of interference there, so yes, so I'll return to
33 introducing Mr Guy Rigby who is a non-practising barrister and a chartered
34 engineer, who is also a planning inspector and is providing us with advice,

1 although not appointed to the Examining Authority, and we also have in the
2 room inspector Alex Oyebade, who is an examining inspector as well, relatively
3 early in his transfer to national infrastructure casework, and observing us for
4 continuing professional development purposes.

5 So hopefully the agenda papers set out a clear explanation of why we're
6 here today. Essentially, this is our final opportunity to undertake a review of the
7 draft development consent order, although that being said, I will remind
8 everybody in the room that we are running two hearings today. There is this
9 issue-specific hearing 14, which we propose to run to its end and I trust that will
10 happen at some point round about mid-afternoon. We will then close this
11 hearing and we will resume issue-specific hearing 12, which we adjourned with
12 some incomplete elements of the agenda in relation to the examination of the
13 control documents. I hope we'll come to that, as I say, mid-afternoon, and as
14 I've said before, I think we're probably aiming at a 6.00 to 6.30 p.m. cutoff when
15 we should have completed the business of both agendas. What I will flag is at
16 the point that we shift mode – because certain adjustments have to be made to
17 things like the recording and the livestream – at whatever point that is, we will
18 take approximately a 15-minute break to allow all the technical adjustments to
19 occur.

20 Okay, now everybody here is more than thoroughly familiar with where
21 to find information about the examination and our procedural decisions, so I'm
22 not going to bore you with any further information about that. Again, you should
23 be clear that this hearing, and indeed the later one today, will be livestreamed
24 and recorded, and I trust that everybody is content with those processes, and I'm
25 seeing no hands rising from the physical presence here today or indeed from the
26 virtual room. So with no further ado, I think we then need to move to hear
27 introductions from those who are here, both physical and virtually, and have
28 requested to be heard, so I'm going to start by moving around the physical room,
29 and hear introductions on behalf of Thurrock Council.

30 MR MACKENZIE: Good morning, sir. George Mackenzie of counsel for Thurrock
31 Council, and for the council here today, sir, to my right is Ben Standing, solicitor
32 and partner at Browne Jacobson, Chris Stratford, senior DCO consultant for
33 Thurrock Council. Behind us is Henry Church, compulsory purchase lead, and

1 joining online are Adrian Neve, transport planning director, and Tracey
2 Coleman, interim chief planning officer for Thurrock.

3 MR SMITH: Thank you very much. In which case, I will move on to Gravesham
4 Borough Council.

5 MR LEWIS: Morning, sir. A new face for you, Alastair Lewis from Sharpe Pritchard,
6 representing Gravesham Council. You'll see Mr Bedford has appeared on the
7 screen.

8 MR SMITH: Indeed he has.

9 MR LEWIS: He is leading today. I'm here with Tony Chadwick, planning manager
10 from the council, and we'll be joined later by Victoria May, who's going to talk
11 about housing.

12 MR SMITH: And good morning, Mr Bedford, too.

13 MR BEDFORD: Morning, sir. I've got something of a bug, so I decided that I was
14 probably better off not in the room.

15 MR SMITH: I fully concur with that judgement. There would be absolutely nothing
16 worse than moving into the final stages of examination 'bugged', shall we say.
17 I need my team to remain fit, healthy and well. Okay, so thank you very much,
18 let us then move on, and we should have Kent County Council.

19 MR FRASER-URQUHART: Thank you, sir. From the very fit and healthy Kent County
20 Council, Andrew Fraser-Urquhart, King's Counsel. Assisting me this morning,
21 Joseph Ratcliffe, transport strategy manager.

22 MR SMITH: Thank you very much, Mr Fraser-Urquhart, and then to the London
23 Borough of Havering.

24 MR DOUGLAS: Good morning, sir. Good morning, everyone. Daniel Douglas,
25 representing the London Borough of Havering.

26 MS THOMSON: Good morning, sir. Morag Thomson, a solicitor for the London
27 Borough of Havering.

28 MR WHITE: And Lee White, sir, representing London Borough of Havering.

29 MR SMITH: And thank you, and now if we move to Transport for London.

30 MR RHEINBERG: Good morning, sir. Matthew Rheinberg, major projects and urban
31 design manager at Transport for London.

32 MR SMITH: Thank you very much, and then finally in the physical room, Port of London
33 Authority.

1 MS DILLISTONE: Morning, sir. I am Alex Dillistone from Winckworth Sherwood,
2 and I'm here representing the Port of London Authority, and with me today I
3 have Lucy Owen from the PLA.

4 MR SMITH: Okay, thank you very much. Now, reviewing the virtual room, can I just
5 check who we have here for the Environment Agency, please?

6 MR PENN: Good morning. My name's Richard Penn, representing the Environment
7 Agency, and I'm here with Carol Bolt.

8 MR SMITH: Thank you very much, Mr Penn, and then I believe we have online, also,
9 representatives of Port of Tilbury London Ltd through Pinsent Masons.

10 MR OWEN: Yes, sir, good morning, sir. Robbie Owen from Pinsent Masons, here with
11 my colleague as you can see, Matthew Fox, both representing Port of Tilbury
12 London Ltd.

13 MR SMITH: Indeed. Okay, and I believe we should also have online, representing DP
14 World London Gateway, Mr Paul Shadarevian.

15 MR SHADAREVIAN: Sir, that's right. I'm having technology problems, but can you
16 see and hear me now?

17 MR SMITH: Yes, now we can.

18 MR SHADAREVIAN: Good. Yes, Paul Shadarevian KC, representing DP World
19 London Gateway. Thank you very much. I'm on my own today.

20 MR SMITH: Okay, what I'm going to suggest, Mr Shadarevian, is that – we are receiving
21 quite a lot of auditory feedback from your channel. I'm going to ask the case
22 team to contact you using a different channel to see if there's any way that we
23 can get you back into the event with a slightly better line, so to speak, because
24 that is not particularly good, but thank you for introducing yourself. If we then
25 move on, I believe virtually we should have Natural England present.

26 MR GRANT: Good morning, sir. Yes, Nick Grant of counsel here for Natural England,
27 and I'm joined by Alice Appleton, principal solicitor.

28 MR SMITH: Okay, thank you very much. Then also online we should have
29 Northumbrian Water Ltd, otherwise known as Essex & Suffolk Water in this
30 part of the world.

31 MS ANDERSON: Good morning, sir. Yes, my name's Hazel Anderson of Winckworth
32 Sherwood, and I'm representing Northumbrian Water, operating as Essex &
33 Suffolk Water. Thank you.

1 MR SMITH: And then we should have Mr Mike Holland, who is representing a large
2 class of persons in his capacity as land agent. Mr Holland.

3 MR HOLLAND: Good morning, sir, from Wales. I seem to be moving around a fair bit,
4 so I'll be here until lunchtime and then I will bid you farewell, and thank you
5 for the last time. Thank you.

6 MR SMITH: Well, and thank you for attending from wherever you may be, and
7 hopefully by lunchtime we will have covered those matters that you need to be
8 involved in. Is there anybody else in the physical or the virtual room – before
9 we move to introductions from the applicant – who is here, ready to speak,
10 believes they should have been introduced but has not been? That's very good
11 to hear. In which case, then, I will move to the applicant.

12 MR MUSTAFA-LATIF ARAMESH: Good morning, sir. Mustafa Latif-Aramesh for
13 the applicant. I will be leading today's hearing on behalf of National Highways.
14 I'm joined, to my right, by Dr Tim Wright, to my left, Mr Andrew Tait, to his
15 left, Mr Barney Forrest, and to Mr Forrest's left, Mr Graham Stevenson.

16 MR SMITH: Thank you very much. Okay, now that should have brought us to the end
17 of introductions. Before I move on to agenda item 2, the purpose of this hearing,
18 are there any other matters of an introductory or a preliminary nature that need
19 to be resolved now? No. I'm seeing no hands, so we will then move on very
20 briefly to agenda item 2. As I flagged in the opening, this is essentially a hearing
21 enabling us to undertake a final review of the draft development consent order
22 as it sits in front of us. As it sits in front of us it's important, then, to refer to the
23 particular versions that we'll be using, and we will be using the REP7-090 clean
24 draft development consent order, and if necessary – and it's probably worth, for
25 those of you with screens beside you, having this one open as well – the
26 immediately following reference, REP7-091, which is the track changes since
27 the last iteration, so we'll be making the most extensive use of those two.

28 We will also poetically need to dip in and out of the Examining Authority's
29 own commentary on the draft DCO. Now, hazard warning, that was drafted with
30 reference to the version 6, so you'll see the reference link in it. Most of the
31 referencing should still be correct. Most of the paragraphing should still be
32 correct, but caveat because we are now working on a later version of the draft
33 itself, and I think it's probably useful to enter a reminder that when deadline 8
34 responses to that commentary on the draft DCO are submitted, please do feel

1 free – even though it was based on the earlier version – to update your
2 referencing, and to actually align that with REP7-090.

3 I think there are two final remarks I want to make in terms of the purpose
4 of this hearing. Firstly, that irrespective of the recommendation on planning
5 merits that this Examining Authority makes to the Secretary of State for
6 Transport, because we are a recommendation-making authority and not a
7 deciding authority, we have to provide to the Secretary of State the best form of
8 draft development consent order that we can, in our opinion, and the reason for
9 that is very simple. It is that our recommendation is only that, and should we
10 recommend a particular outcome that the Secretary of State does not agree with
11 and wishes to pursue a different one, obviously to facilitate that exercise in
12 discretion by the Secretary of State, the Secretary of State must have a draft
13 development consent in the best order that they can receive it in, so that they
14 consider all of the potential ways in which they might be able to give effect to
15 the proposed development if that is their decision, whether that be in line with
16 the recommendation, or contrary to recommendation.

17 And so that then takes me to one final remark, that everything that has
18 been said about the draft development consent order in this entire examination,
19 in writing or orally, and everything that will be said today is absolutely without
20 prejudice, so it doesn't matter that an entity's in-principle position is that the
21 order ought not be made. It is nevertheless safe to continue to submit on specific
22 issues around drafting, development and improvement of the development
23 consent order twin track, in the alternative, so I hope everybody's completely
24 clear about that. So that really leaves me at the end of agenda item 2. Now,
25 again, is there anybody with any question at all about the final stage in this
26 journey through the DCO that we're about to embark upon? Again, I'm not
27 seeing any hands. Mr Latif-Aramesh.

28 MR LATIF-ARAMESH: Mustafa Latif-Aramesh for the applicant. It's just one
29 preliminary comment, noting what you've said about the without prejudice
30 nature of the recommendation that you'll make, and it's just an update which
31 other interested parties may be interested in, which is we have reached
32 agreement with the Environment Agency on the terms of article 68, and that will
33 be updated at deadline 8. So the current form of article 68, which is in the

1 deadline version that you mentioned, will be superseded by the agreed position
2 between National Highways and Environment Agency.

3 MR SMITH: Yes, and in fact that's a very important and useful reminder that Mr
4 Latif-Aramesh gives us generally, because, for example, yesterday we were
5 talking around table about possible approaches to the drafting of the traffic and
6 transportation requirements, and particularly requirement 18, which again, if
7 they can continue to move, hopefully by deadline 8, then there will be
8 considerable benefit thereby. Okay, so let us then move directly onto agenda
9 item 3. Now, agenda item 3 is very – I hope it will be quick. It is very much an
10 item that is owned by the floor rather than by the Examining Authority, but you
11 will be conscious that we published a commentary on the draft development
12 consent order. Now, what I want to make very clear is that it isn't the primary
13 purpose of this hearing to anatomise that commentary; that is a written process,
14 and examinations are, primarily, written processes, and we will allow that
15 process to go on in parallel with anything that's happening in this room.

16 But I did think that before we went any further, given that we had
17 published that document, that we would provide an opportunity for any
18 particular interested parties who are in the process of drafting responses to the
19 issues raised by that commentary raise specific issues that might be of general
20 application – in other words, they need to be considered around the table,
21 because they actually impact other parties, rather than just being inter-party
22 between that individual party and the ExA, and, of course, the applicant.

23 So, can I just see a quick show of hands? My intention here is to go around
24 the physical and virtual room and come to the applicant for response last. Yes,
25 I do see Thurrock. Is there anybody else? I do see London Borough of Havering,
26 and I so see Port of London Authority, and then in the virtual room I see
27 Gravesham, so what I'm going to do, I think, is I will go to Thurrock, then
28 Gravesham, then Havering, and then I'll come to Port of London Authority.
29 Thurrock, please.

30 MR STANDING: Thank you, Ben Standing for Thurrock Council, so no specific
31 guidance is sought on the commentary; that's clear, thank you. I just wanted to
32 very quickly – and I note your comments and I will be quick, I promise – point
33 out that we have made extensive comments throughout this process on the DCO.
34 I realise they will have been read, but to aid the Examining Authority, we're

1 going to – we’re undertaking a rationalisation of the key things that we’re
2 concerned at, and we’re going to put that in writing in D8, hopefully, as part of
3 this. We’re currently down to 16 key points, but just to give an indication of the
4 kind of things that we’re still concerned at – the discharging authority, we still
5 believe a number of the requirements should be Thurrock Council, because we
6 believe we’re best placed to do that. We have significant concern over limits of
7 deviation and the fact that these are able to be operated outside of the order
8 limits, and to how that then interacts and works with materially new or materially
9 different environmental effects, and the exact meaning of that. We’ve spoken
10 about that yesterday, but we still think there are some interesting practical points
11 that would be useful to be explored. What exactly is ‘material’ in this
12 circumstance? Is it a new effect? How does it affect new businesses? Is it every
13 effect which is in the environmental statement or not? And we’ll explore that.

14 We’ve already heard in other hearings about the replacement special
15 category land, and that’s of a key concern to the council as to when that’ll be
16 delivered. The way that the control documents are secured in requirements, and
17 the absolute nature or not of some of the words, in particular words like ‘reflect’
18 and ‘substantially in accordance with’, we’d like to see more of those turned to
19 more absolute requirement so that you have more confidence about what will be
20 delivered and how the documents will work. And also in relation to the EMP,
21 third iteration, we’d look for the council to be consulted, and also for that to be
22 approved by the Secretary of State, and we will put in points in relation to that,
23 so I won’t take up any more time. These are broadly the – what we still feel are
24 fairly big issues which would need to be looked at.

25 MR SMITH: And I’m very grateful for that high-level introductory overview, and again,
26 it flags that one of the most useful things that parties can actually engage in,
27 moving towards deadline 8, is the framing of elements of their written response
28 in relation to the DDCO through their response to the commentary, as what
29 amounts to closing submissions on the form and content of the order, and we
30 would very strongly encourage submissions structured after the manner of those
31 that Thurrock are indicating that they will be putting in to undertake that job,
32 and it is useful, I would flag, to share at this high-level, because it may well be
33 that there are common themes. Okay, I’m then going to go to Gravesham, and
34 I’m going to ask Mr Michael Bedford KC, to introduce their position on this.

1 MR BEDFORD: Thank you, sir. Michael Bedford, Gravesham Borough Council. Sir,
2 like Thurrock, we didn't have any need to seek further guidance on your DCO
3 commentary, which we found extremely helpful in terms of the questions that it
4 posed. We are obviously preparing at both deadline 8 and deadline 9, as
5 appropriate, to submit our responses in line with your advisory notes in the
6 commentary, and I'm certainly not going to rehearse all of those points at this
7 stage. I think at the moment the draft document's about 60 pages of comments,
8 so you clearly don't want that. I would echo the issues raised by Thurrock about
9 key outstanding matters, and I won't repeat those points because we share a
10 common position on most of those points. There are also – in terms of key
11 matters where we have a different position to the applicant, you'll be aware that
12 we have raised an issue particularly about road user charging. I know that that's
13 an issue that may get discussed later today, and we also have an issue about the
14 definition of 'ancillary works', and its scope, which also ties in with the
15 materially new, materially different issue.

16 But the point that I was going to just touch on now, because it's not a point
17 which I think we've rehearsed in our previous representations, and therefore is
18 a point that – I think the applicant may be aware of it informally, but the
19 examination isn't aware of it, so I thought it would be helpful just to highlight
20 it. It relates in part to the scope of what is requirement 23 in schedule 2, which
21 is concerned with what is termed 'the register of requirements', but what we
22 would like to see is whether it's done by supplementing requirement 23, or
23 whether it's done by a new requirement. What we would like to see is a
24 requirement for the REAC and the stakeholder actions and commitments
25 register, and the certified documents, and/or other certified documents, let's say,
26 if those things are not themselves certified documents. We would like all of
27 those, effectively, commitments to be made available to the public in one central
28 location from an early stage of the decision on the development consent order,
29 assuming that the decision were that the order were to be made, and for that,
30 then, thereafter, to be maintained.

31 And we're conscious with this particular project that there is going to be a
32 delayed implementation. We're also conscious that all of the documentation
33 which is currently available on the national infrastructure website and Lower
34 Thames Crossing pages, the planning inspectorate obviously has a practice of,

1 as it were, archiving that after a period of time, so that's not, as it were, always
2 going to be available for the duration of this project's construction, and what the
3 requirement 23 does is that relates specifically to the register of requirements,
4 and requires those to be available for inspection by the public in electronic form.
5 We consider that there is a need, actually, to make them available also in a hard
6 copy form in a central location. We do think that there is precedent for a similar
7 approach in the A303 Sparkford to Ilchester dualling development consent
8 order, and we do think it's important that all persons who may be interested in
9 or affected by the project and its implementation have easy access to the
10 material, and that's not just a register of requirements but as we say, also the
11 REAC and the register of stakeholder commitments.

12 So, sir, that's the new point, so that's why I've highlighted it at this stage,
13 and obviously in our representation we'll put forward the wording that we think
14 is appropriate. As I say, we think the precedent of the A303 Sparkford to
15 Ilchester is a precedent, and that's something to work from. Those are our
16 highlight – or, sorry, high-level highlighted points.

17 MR SMITH: Yes. I'm very grateful, Mr Bedford. I mean, in that respect – I don't expect
18 an answer now, because it'll probably come out in the wash – I'll just ask a
19 simple question, which is would Gravesham Borough Council consider offering
20 a physical location for the relevant documents inspection? Because that's one
21 possibility, as you are local, and I will ask the same question of Thurrock. A
22 second observation, which is that I have seen this sometimes dealt with – if we
23 very briefly flick up page 401 of the draft development consent order, the
24 explanatory note doesn't necessarily have to be dealt with on the face of the
25 order. The explanatory note, in very generic National Highways terms, talks
26 about copies of the plans, engineering drawings and sections, book of reference,
27 etc. being available on appointment during normal working hours at Bridge
28 House, 1 Walnut Tree Close, Guildford in Surrey.

29 Well, Guildford assists most of the affected persons and interested parties
30 in this matter not very much. We understand why that's the normal process, and
31 many orders have been made with that explanatory note. However, these may
32 be circumstances where something slightly more expansive than that could
33 potentially be done – without actually fiddling with the mechanics of the order
34 – that would be useful to the residents of Gravesham, useful to the residents of

1 Thurrock, or indeed Havering as well, so that's just an observation on those
2 points. The applicant can pick those up in responding. Anything further, Mr
3 Bedford?

4 MR BEDFORD: Sir, no. On your question, I think you can take it that yes, we would
5 be happy to make a location available; unless you hear from me later to the
6 contrary, I think you can assume that that is our position. Thank you.

7 MR SMITH: Thank you very much. Excellent. Right, in which case I do note that I
8 have more hands in the virtual room than I did, and I do believe that we have Mr
9 Penn from the Environment Agency with a hand raised as well. Mr Penn, I will
10 come to you, but I'll come to those who I indicated that I was going to hear from
11 first before I do, and so on that basis, now I am going to go to the London
12 Borough of Havering. Now, you've heard the host for physical documents point
13 raised by Gravesham, and I'll just ask you to cover that, briefly, as well, as you
14 pass through your submissions, so Havering.

15 MS THOMSON: Thank you, sir. Morag Thomson for the London Borough of Havering.
16 Sir, we don't have any comments on your document, which of course is helpful.
17 In terms of the responses to the draft DCOs as these emerged, we have responded
18 on every occasion, I think, and we've responded quite fully, and our position is
19 set out and mostly set out to its conclusion, to the point where either the matters
20 have been resolved or there remains an issue which isn't going to be resolved,
21 but at deadline 8, we will wrap that all up in a final position note which will not
22 trail through the whole debate, as previous notes of ours have, but will simply
23 highlight the points of issue. If I can just, on a high-level, like – similar to the
24 way that Thurrock dealt with this, I just highlight the items that, for us, are still
25 unresolved and probably will remain unresolved.

26 The first one is we've asked for an addition to article 8 to deal with the
27 unsatisfactory nature of the section 106 agreements, which are about bounds,
28 and secured only by a small part of land within the borough, which would
29 obviate the need for a further agreement with any subsequent undertaker. The
30 second point is that article 62 is one that we've always taken issue with; we don't
31 believe there should be a separate process for the [inaudible] of plans outwith
32 the Planning Act process. Article 65 and paragraph 9 of schedule 2, we have
33 issues with response times, and finally, in terms of this high-level response, we
34 have issues in terms of the use of the term 'substantially in accordance with',

1 because of the framework documents already being a framework, and if you go
2 beyond the framework then there really is not very much set in stone.

3 The final point is also that we did – in response to the wider network
4 impact position paper produced by the applicant at REP6, we did put a response
5 in to that at REP7, which is REP7-207, and in that response we made some
6 suggested amendments to the requirement 17, put forward by the applicant,
7 which is called network management group. We all know of it as the Silvertown
8 Tunnel type requirement, and so we put forward some amendments to that,
9 which we are still maintaining should be carried out. In terms of the
10 requirement 23, I think it's appropriate to add REAC and the SACR to
11 requirement 23, and that's a more satisfactory way of dealing with it than in the
12 explanatory note, although there could be a different address in the explanatory
13 note. I still think that there should be an absolute requirement within the DCO
14 for those documents to be available, and there's no real reason why, if the
15 requirement schedule should be available – and that's a requirement, that the
16 requirement schedule be available – why those documents shouldn't be subject
17 to that as well. I think that's all.

18 MR SMITH: In terms of that physical availability – again, noting that it's a very long
19 way from Gravesham to Havering – is the London borough willing to offer –

20 MS THOMSON: Yes, absolutely.

21 MR SMITH: – library space?

22 MS THOMSON: I understand so. We would be.

23 MR SMITH: Okay, thank you. Right, now within the room, I'm going to go to Port of
24 London Authority and then I will move back to the virtual room where, to name
25 check, I do have the Environment Agency, Mr Penn, and I'm also conscious that
26 I have a request to speak on behalf of the Port of Tilbury from Mr Fox, so Port
27 of London Authority.

28 MS DILLISTONE: Thank you, sir. Alex Dillistone for the Port of London Authority. I
29 wanted today to raise – on this agenda item – to raise four or five points, some
30 as an update, and some just as a quick response to the Examining Authority's
31 queries in the Examining Authority's commentary. Firstly, on – it was QD3 and
32 QD6 of the commentary, specifically in relation to the REAC and whether that
33 should be individually identified as a separate certified document. We
34 mentioned at ISH 12 that we thought it would be helpful for the REAC to be a

1 certified document in its own right, and in our view, that would assist the users
2 of a made order at the appropriate time to find and use the documents that they
3 need to enforce the order. We made that point last time, and I don't think I need
4 to say any more about it. In article 2, the definition of 'begin', we will cover
5 that in agenda item 4(a)(i).

6 Now, there were a couple of questions that the Examining Authority had
7 around article 18, the powers in relation to the relevant navigations and water
8 courses, and the PLA is taking the position that it is content with the drafting of
9 article 18 thanks to the latest amendments and on the basis that the applicant's
10 intention is that this provision is limited to dealing with the interference with the
11 private rights of navigation. The Examining Authority also had a question about
12 the issue of houseboats, their possible relocation and whether that could give
13 rise to any interference with ECHR article 8 rights. We are able to provide some
14 reassurance on this point, because there are no houseboats on this stretch of the
15 river. The tidal range at this location is around seven meters, and because of the
16 location and because of that tidal range, it doesn't make it a very attractive
17 proposition for houseboats, so there are not any residential moorings which
18 would be relocated as a result of the authorised development.

19 MR SMITH: I'm glad to hear that. I was conscious from our attempt to overview such
20 matters on unaccompanied site inspections that we didn't think there were, but
21 I'm – I was also equally conscious of site inspections for the then proposed
22 London Resort development, in which we found a very substantial grouping of
23 houseboats on the Swanscombe Peninsula. Now, I know that's not within remit
24 here, but we were quite surprised to find them and hence the reason for asking.

25 MS DILLISTONE: Thank you, sir. That is understandable, but I'm reassured that there
26 are definitely none here, so other than the tidal range, we're not sure what
27 particularly makes it that unattractive but nobody is choosing to moor their
28 houseboat there, and there are no residential moorings.

29 MR SMITH: Okay, thank you very much. Is that everything for Port of London?

30 MS DILLISTONE: We had just two further points, one small, one slightly larger, which
31 relate to article 53 of the DDCO and the protective provisions. The first point
32 on cabling, which is that the PLA has previously raised concerns about this and
33 the use of the tunnel for third party works, but the applicant has made some
34 amendments and we just want to acknowledge that and say we're grateful for

1 the amendments that they've made in the DL7 version, version 9 of the DCO,
2 which clarifies that those works will require a river works license in the usual
3 way.

4 The final – and slightly more substantial – point is the dredging one, and
5 it is a further outstanding issue. The PLA has made comments at paragraph 2.2
6 of its deadline 5 submission, which remain outstanding, and that is that we just
7 are not clear whether or not the applicant will be carrying out dredging and
8 whether dredging forms part of the authorised development, and we'd like to get
9 a handle on that before the examination draws to a close. It seems to us, from
10 our point of view, that the applicant will be carrying out dredging, but the
11 applicant repeatedly has said it will not. The impact of that is that if dredging is
12 a specified work under the protective provisions, and does form part of the
13 authorised development – and we and others have mentioned the previous – the
14 very wide scope of that definition of authorised development. If dredging does
15 form part of it, then the PLA's usual dredging regime will be disapplied by
16 article 53 and the protective provisions in the DDCO will kick in.

17 On the other hand, if dredging is not a specified work and it does not form
18 part of the authorised development, then section 3 of the PLA Act will apply in
19 the usual way, section 73 being the one that deals with dredging under the PLA
20 Act. So I suppose one could say that there is protection for the PLA either way,
21 so if dredging does form part of the authorised development, the PLA is
22 protected, and if it doesn't, then the usual PLA Act provisions will apply, but
23 we do need to know which regime applies, so is dredging part of the authorised
24 development or not? The applicant is saying not, but because of the wide
25 definition of the authorised development, we are not convinced that is correct.

26 MR SMITH: Would you go so far as to suggest, because of the operational significance
27 of dredging, that it will be something that – if there is any room for doubt – that
28 if it is not the intention of the applicant to include it, there ought to be some
29 reservation on the face of the drafting that says, 'Saving that, dredging is not
30 part of...'?

31 MS DILLISTONE: I think what we were going to suggest, sir, is that the applicant could
32 either amend the various documents, so the ES at chapter 9 and also the
33 mitigation route map where it says that dredging – well, they both say that
34 dredging will take place and that it will not take place, so that they either amend

1 those or that there is an amendment on the face of the DCO in the protective
2 provisions, which makes it clear that it is part of the specified work – that it is a
3 specific work.

4 MR SMITH: Okay. Right, well we'll leave that for the applicant to respond on.

5 MS DILLISTONE: Thank you.

6 MR SMITH: Is that –

7 MS DILLISTONE: That is all of our submissions, sir, thank you.

8 MR SMITH: Okay. Right, I am now going to go to the virtual room. I'm afraid, bearing
9 the order, I did see the Environment Agency before the Port of Tilbury, but I'm
10 very conscious that we have just been in riverine and port territory, so I will go,
11 I believe now, to Mr Owen of Pinsent Masons for Tilbury.

12 MR OWEN: Thank you, sir, and that's absolutely right. I'm grateful to you for that.
13 You asked in your commentary on the draft DCO a number of questions. First,
14 were we happy? 'Is the port happy with the drafting of article 18?' Our position
15 on that – now that it's very clear at the beginning of that article that it's subject
16 to the protective provisions – is that, yes, we are content with the drafting of
17 article 18, as long as we are content with the PPs, and I'll come onto those in the
18 moment, so article 18, so far as it goes itself, we are content with. In terms of
19 traffic-related requirements, we're going to be discussing those later, so I won't
20 cover them now. In terms of the protected provisions, we are in extensive
21 discussions still with the applicant in relation to the PPs, and at deadline 8, we
22 will be putting in detailed submissions to assist you.

23 We have noted, following comments from the applicant in their
24 documented deadline 7 – REP7-190 – what they have said about the outstanding
25 issues with the protective provisions, and if it would assist, I can just briefly
26 outline what are those outstanding issues. We note that the applicant, in relation
27 to, I think, two of the three issues – that is, first, the consent to the excise of
28 land-related powers, and secondly, the scope of the indemnity – we note that the
29 applicant sets out that these matters are unlikely to be agreed. We are always
30 optimistic, are working hard to try to get to position with the applicant where we
31 will reach an agreement on those issues by the end of the examination. That's
32 obviously not guaranteed, but that is still our intention and our hope.

33 The three issues really can be summarised as in relation to utilities, in
34 relation to land powers, and thirdly in relation to indemnities, and dealing with

1 them briefly, sir, without detaining you for too long, in relation to utilities, we're
2 grateful for the movement by the applicant in relation to the scope of the plan
3 approval provisions that the port would have under the PPs in relation to the
4 construction of the utilities works. However, that rather misses the point in that
5 we are concerned about the property-related provisions of the DCO and how
6 they would impact on the port's statutory undertaking, and there are issues there
7 to do with, for example, lift and shift of utilities, the types of uses that may be
8 permissible within exclusion zones, and the nature of access rights that the
9 utilities have over a port land.

10 These are all issues that the port routinely negotiates, with utilities wanting
11 to lay plants and equipment in the port's land, and therefore the port does wish
12 to deal with this fundamental issue, still, that it needs to be able to approve the
13 property rights granted by National Highways, or indeed any other third party
14 under the DCO, over the port's land, and this is required to protect the port's
15 statutory undertaking, so this is – and this is separate from the scope of plan
16 approval which is self-evidently to plan – to approve the nature of works,
17 whereas the property law provisions, in effect, the easements that will facilitate
18 those works – also, the port is very concerned to make sure that it has an
19 appropriate degree of control in relation to those, given its undertaking.

20 And this really takes me on to the second matter, which is the extent to
21 which the port should be able to exercise a right of consent to use of the DCO's
22 land powers generally, and we've noted everything that the applicant has said in
23 its responses at deadline 7, and it still feels that, in fact, the applicant isn't really
24 addressing the points that the port is making, and in the context of the
25 wide-ranging ambit of the port's statutory undertaking, as noted, as we've said
26 before, in the Lake Lothing development consent order case and the fact that the
27 land powers being sought by National Highways cut right through the middle of
28 the port and therefore there can be no denying, in our view, the material
29 detriment that could be caused by that. So we consider that this is something
30 that is a fundamental concern to us and we will be pursuing it as far as we
31 absolutely need to. It's a matter of critical importance.

32 And it's also of note to us that the standard of consent that we're seeking
33 – one of not unreasonably withholding consent to the exercise of the DCO's land
34 powers – that is the standard drafting applied across all DCOs, transport and

1 works act orders and other similar legislation, and that's been the case for
2 decades, certainly in my working career and way before that. It's not clear to us
3 why this is suddenly unacceptable to the applicant for this project, because in
4 granting – or in considering the grant of consent under protective provisions, it's
5 very clear that the principle of development can't be reopened when that consent
6 is sought. So we have fundamental concerns about this, and it is not enough for
7 the port to have control on physical works through plan approval. It does need
8 to know what land powers are being excised over its land as well.

9 The third issue, if I can deal with that just briefly sir, relates to the
10 indemnity, and the port's key concern – the indemnity in the protective
11 provisions – the port's key concern is that – the fundamental purpose of its
12 undertaking is to provide land and services for its tenants and their customers
13 who carry on port related activities, and this is all in the discharge by the Port of
14 Tilbury of its open port duty, and any incident or damage caused by the
15 applicant's works could impact on the port's tenants' ability to carry out their
16 own activities. And if that were to happen, there would no doubt be claims
17 against the port. and this is what the port wishes to be protected against through
18 the form of the indemnity in the protective provisions, and therefore the port's
19 key concern is to make sure that the indemnity explicitly covers claims and
20 demands, and this is consistent with the relevant protective provisions included
21 in the draft DCO which we have highlighted in our previous submissions and
22 indeed other precedents, and therefore it really should be something that is
23 wholly acceptable to the applicant.

24 We've considered further, following the applicant's deadline 7
25 submissions, the matter of loss of profits. We do accept that that is not
26 precedented in an indemnity – in a development consent order. However, we
27 have noted the existence of sections 271 onwards of the Town and Country
28 Planning Act 1990, particularly 279 to 280, and interestingly, those provisions
29 do allow for the recovery of loss of profits relating to any land acquired or any
30 right extinguished relating to statutory undertakers' apparatus, or indeed any
31 apparatus removed in relation to compulsory purchase orders made under the
32 Town and Country Planning Act 1990. It's not immediately apparent to us,
33 therefore, why this should not also apply in the world of development consent
34 orders and so we will be adding provisions to this effect to our version of the

1 draft protective provisions if this can't be agreed with the applicant, and
2 therefore they do so themselves.

3 And there are some other fundamental concerns in relation to the
4 indemnity, that again we think are all well precedented matters. They deal with
5 issues dealing with failures and emissions, issues relating to the carrying out of
6 specified functions as well as specified works, and finally dealing with the
7 consequence of the works and functions generally not just being limited to
8 damage to the ports, land and undertaking, and as I say, all of these we think,
9 are very well precedented matters, and as such, really should be something that
10 the applicant should be able to agree. So we are bashing away still, sir, in
11 relation to these issues. We are making some progress, as the applicant
12 themselves acknowledge at deadline 7. We have further discussions planned,
13 and the hope – but we can't guarantee it, of course – is that by the time of the
14 end of the examination, we will have agreed these matters with the applicant and
15 therefore there will not be issues that we will be needing you to consider
16 yourselves and then report on to the Secretary of State. I think that concludes
17 the current outstanding matters of relevance to this agenda item, sir.

18 MR SMITH: Indeed, and thank you very much, and it is useful at this stage to be very
19 clearly alerted to outstanding matters that may well settle, but nevertheless
20 sometimes they don't, and if there is any prospect of the Examining Authority
21 essentially having to turn itself to adjudication on outstanding matters, then at
22 least knowing the final few kilometres of the road travelled towards them is very
23 useful indeed, so thank you very much, Mr Owen. I am now to introduce the
24 Environment Agency, so Mr Penn, I believe, is waiting to speak.

25 MR PENN: Yeah, thank you, sir. Richard Penn, representing the Environment Agency.
26 I just wanted to confirm with the applicant's preliminary statement around that
27 we have agreed article 68. I do propose that we would just provide a written
28 response to this hearing, just outlining some of the discussion points and
29 decision points, and they will also be reflected in our updated statement of
30 common ground at deadline 9.

31 MR SMITH: I'm very grateful. Does that mean – can I just take it so that we know where
32 to look? Are you making a specific response to the draft DCO commentary or
33 will everything for yourselves be wrapped up at deadline 9?

34 MR PENN: We'll put a [inaudible] in for deadline 8, if that's okay, just on the article 68.

1 MR SMITH: Yeah, okay. Fine, that's useful. Thank you very much. I believe that's
2 brought me to the end of – London Borough of Havering.

3 MS THOMSON: Sorry, sir. Morag Thomson, London Borough of Havering. I thought
4 it might be helpful if I brought you up to date on the position on protective
5 provisions in relation to local highway authorities, which is an outstanding
6 matter on the DCO. Revised protective provisions were put forward by National
7 Highways at deadline 8, and they have been under consideration by the local
8 authorities in – over the course of the last few days, and we will be putting in a
9 further version at deadline 8. Deadline 7 [inaudible] – National Highways put
10 their version in, and that version will, in our view, represent a substantial
11 compromise in response to the points made by National Highways, so the
12 applicant, at the deadline 7 stage. So we're hopeful that the issues between us
13 will be narrowed to a significant extent although there are some issues in those
14 protective provisions that we know will not be resolved. We're hopeful that
15 there will be many fewer issues for you to consider than would previously be
16 the case.

17 MR SMITH: Thank you very much. Okay, now I believe that's brought us to the end of
18 in-principle submissions there, so I am going to go to Mr Latif-Aramesh for the
19 applicant. In doing, if I could just make a general remark, trying myself to
20 enunciate as clearly as I can and slow down. We do have an enormous amount
21 of material to cover today, and I know that I suffer from the tendency then to
22 start speaking small print, and there are people in the room and people outside
23 the room trying to capture the best notes that they can of everything that
24 transpires, and I do know from various of the observations that they've been
25 making that they are struggling a little because we are moving sometimes a little
26 bit too fast, sometimes a little bit too quietly and not with the best enunciation,
27 so if everybody can be on their best BBC manner I'd be very grateful. Yes?

28 MS LAVER: Can I just also add that when we start looking at the DCO proper, because
29 there aren't any hyperlinks in the index, if we're referring to an article or a
30 requirement, it would be helpful if a page number of the clean version could be
31 referenced, because otherwise we're scrolling through 405 pages trying to find
32 what is a requirement 15, for example, but there will be 15 in lots of places in
33 the document.

34 MR SMITH: Yeah. No, that's a very useful practice. Mr Latif-Aramesh.

1 MR LATIF-ARAMESH: Thank you, sir. Mustafa Latif-Aramesh for the applicant. I'm
2 not proposing to respond to each point that has been raised, but in our
3 post-hearing note, we'll provide sign posting where a number of matters have
4 been addressed already, or you can see the applicant's position on those matters.
5 There were just four things very briefly I wanted to deal with, so the first relates
6 to the comments from Thurrock, Havering and Gravesham relating to the limits
7 of deviation and the associated article 210, which is the interpretive provision
8 on materially new and materially different. We've set out our position on why
9 we think that is an appropriate balance, but there is one new matter we wanted
10 to put before the Examining Authority, which we think supports the approach
11 that we have taken.

12 The Government published last week a document called 'Getting Great
13 Britain Building Again', and within that document it sets out: 'Under the status
14 quo, developers are required to apply for additional planning permission if they
15 propose project amendments that have "materially new or materially different
16 environmental effects".' It goes on to say they want, "To make sure that project
17 changes that will deliver positive impacts for projects, communities, and the
18 environment can be approved more quickly.' So in our view, the approach that
19 we've taken positively responds to government policy on enabling exactly that.
20 We've set out our position on the discharging authority substantially in
21 accordance with – and EMP3, so I don't propose to go through those. On the
22 subject of the register of requirements and whether it's online or in person, I
23 won't be able to confirm today about the physical locations, but we've heard
24 what everyone has said. I did just –

25 MR SMITH: And I think if I may briefly interject there, Mr Latif-Aramesh, nobody
26 around this room is suggesting, least of all the ExA, that there should not be a
27 digital version of it. This is an additional physical, rather than anything else.

28 MR LATIF-ARAMESH: Thank you, sir. That's a helpful comment. Mustafa
29 Latif-Aramesh for the applicant. What I did want to flag, just in relation to the
30 existing paragraph 23, I think there were suggestions that the stakeholder action
31 and commitments register should also be brought within the scope of
32 paragraph 23 and that register. Under article 61, it already is, and in particular
33 the very final sub-paragraph of that provision says in terms that there should be
34 an electronic version of that provided. The only other thing I would mention is

1 that it might be helpful – I think we have, in our previous submissions, given an
2 example of the register of requirements that National Highways publishes, and
3 what is often the case is that in column 2 of that register that is published, there
4 are links to relevant documents already. So what we just want to do is make
5 sure that everyone is on the same page about what National Highways already
6 does, what we've committed to do under article 61, and as I said, on the physical
7 locations point, we will take that away because if you printed off all of the
8 documents, it would fill, probably, a substantial part of this room, and the offers
9 for venues are very welcome but we just want to make sure everyone knows
10 what they're getting themselves in for.

11 MR SMITH: Yes, it takes me back to a hearing that I chaired for the first utility scale
12 onshore wind farm in the southern hemisphere in 1999, when we needed a
13 pantechnicon to leave the relevant shire offices, and since then, the scale of
14 documentation has grown and grown and grown with large projects, and there
15 is a 'be careful what we wish for' dimension to all of this.

16 MR LATIF-ARAMESH: Thank you, sir. Mustafa Latif-Aramesh for the applicant. The
17 only other comment I wish to make is that on the PLA's comment around
18 dredging, this morning I had a discussion with Mr Owen and Ms Dillistone about
19 addressing this issue, and we're confident it can be resolved through the latter
20 mechanism that Ms Dillistone mentioned, and then finally on the Port of Tilbury
21 submissions, we agree with Mr Owen that progress is being made and we share
22 his careful optimism about resolving the matters. The applicant's position on
23 the two issues that are outstanding in relation to the indemnity and the consent
24 provisions are – the position set out in REP7-190 – and we make clear that the
25 issue of precedents – and certainly on the issue of the indemnity, the precedents
26 are not uniformly in one direction, so we just want to highlight that.

27 MR SMITH: Indeed, thank you. Anything else that you wish to add further, Mr Latif-
28 Aramesh? In which case, that, I believe, has brought us to the end of agenda
29 item 4 – sorry, agenda item 3. We will now move on to agenda item 4. Now,
30 in introducing this item, again, I trust it is clear that what we are not seeking is
31 simply a verbalised statement of all of those matters of particular concern to each
32 individual interested party, arising from the draft development consent order or
33 flagged in the DDCO commentary. However, in reviewing the matters that we
34 had raised in the commentary, the examining authority took the view that there

1 were, essentially, three matters of general principle that seem to be the source of
2 generalised concern, and felt that, if in no more than an evolutionary way, it was
3 useful to have a conversation around the table around those to, amongst other
4 things, inform, hopefully, convergence on the way those matters might be dealt
5 with by parties at deadline 8.

6 And those are item A, the whole broad issue of the definitions of
7 commence and begin; item B, around time limits; and item C, around dispute
8 resolution for DCO processes. And then there were two very specific either
9 geographical, and/or technical/development management questions that the
10 examining authority wanted to dip into. The first was the reposition of the
11 Gammon Field traveller site, which, to a degree, we have already touched. Part
12 of our purpose in including that in this agenda was in case it wasn't dealt with
13 in the open floor hearing the other night. Well, it was. So that may be capable
14 of being very brief. And then, a general development management discussion
15 about the operation and decommissioning of construction compounds.

16 So what I'm going to do, I think, is, again, I think probably the best way
17 to do this is to go item by item and to introduce interested parties and then come
18 to the applicant for response. But again, interested parties, thinking about your
19 observations on this, very clearly do turn your mind to the degree to which there
20 are issues of commonality or issues of principle that emerge under these agenda
21 items that we need dealt with. So can I see who wishes to speak on the first item
22 A? And we do have Thurrock; and we do have Kent, and Port of London. So
23 those are three entities – ah, and Gravesham. So what I'm then going to do is
24 I'm going to go via Thurrock, to Gravesham, to Kent and then to the Port of
25 London Authority. Okay, for Thurrock, please.

26 MR STANDING: Thank you, sir. Ben Standing, for Thurrock Council. So I'll keep it
27 concise on this. We've got two key concerns. The first is the concept of having
28 two hares running, really, that begin commence, which has been explored in the
29 commentary as well. But it's a simple matter; it's unclear how that is in the
30 public interest, the ability to preserve the development consent order when other
31 things haven't yet been done. And the second point is any impact of this, and
32 the works that are included in the preliminary works and how these are looked
33 at. So briefly turning to the concept of it, this what touched upon or spoke about

1 in the Tidal Lagoon Swansea Bay plc case. Would you like the reference for
2 that, sir?

3 MR SMITH: I think we can find it.

4 MR STANDING: It's in multiple submissions, but that looked at this. The applicant will
5 say, 'We agree that this doesn't say that a different approach couldn't be agreed
6 in the future,' but it's very difficult to see what the public benefit in the approach
7 proposed is. It doesn't seem to benefit anyone other than the applicant being
8 able to preserve it. And actually, the commence point, much like an
9 implementation of a normal planning consent under the Town and Country
10 Planning Act, isn't over difficult to secure. And we're just not clear about why
11 this is a good thing, and we are worried that members of the public will be
12 confused as to what's there, and it's an unhelpful precedent to set.

13 Moving onto my second point, the bits which are preliminary works will
14 be subject to a lesser degree of control, so that most of the requirements won't
15 comply. But they will have to comply with requirement 4 and a preliminary
16 works BNP[?]. And the preliminary works will have to comply with
17 requirement 10, the outline traffic management plan for construction. Whilst we
18 welcome that as a concept, and we understand why there would be less
19 requirements applying in relation to preliminary works, we are concerned a)
20 about what is in those outline documents, and we've made submissions in
21 relation to that in REP4-353, in response to question 4.6.4. We're also
22 concerned about the scale of what preliminary works are, and some clarity from
23 the applicant as to what is included because it appears to us that this could
24 include some fairly significant enabling works, the construction of key
25 compounds, particularly compounds 5 and 5A, which could take over a year and
26 have quite a significant impact in themselves.

27 So preliminary works, really, should be quite minimal in our opinion.
28 That's our response in relation to those two points: a) we don't see why there
29 needs to be a difference; and if there is going to be a difference, there needs to
30 be a tightening up of those control documents and what is included within begin.
31 Thank you, sir.

32 MR SMITH: Thank you very much. I am now going to go to the online room and I'm
33 going to call on Mr Bedford KC, for Gravesham Borough.

1 MR BEDFORD: Thank you, sir. Michael Bedford, Gravesham Borough Council. Sir,
2 we would echo those remarks made by Thurrock, which I don't want to repeat.
3 The additional point of emphasis, which we say reinforces the need for a
4 different approach, is that on the applicant's formulation, because very minimal
5 works under the preliminary works heading can be sufficient to begin the
6 development, and therefore, for that purpose, enable the DCO to endure, as it
7 were, in terms of complying with its time limit, the uncertainty that is then cast
8 over other developments that may be happening in the locality exists from that
9 points onwards. But the applicant is in no way, effectively, committed to the
10 project.

11 So our concern is that we get all the uncertainty, the shadow of the project,
12 but without there being any real commitment by the applicant to delivering the
13 project. We think that is not in the public interest; we think it's unhelpful; and
14 we think it compromises good planning, particularly in the Borough of
15 Gravesham, which, as you know, is in the process of going through a
16 development plan preparation process. So sir, that's our emphasis on the point,
17 on why we think there needs to be more clarity.

18 MR SMITH: Thank you very much. I'm now going to return to the physical room and
19 Mr Fraser-Urquhart for Kent.

20 MR FRASER-URQUHART: Thank you very much, sir. I suspect this may be a pattern
21 for most of the rest of the day, but we would echo the submissions made by
22 Thurrock and Gravesham. I'm not going to waste time repeating them, simply
23 to inform the examining authority that we share those concerns for the reasons
24 stated.

25 MR SMITH: Very succinct. Thank you. Right, okay. So if we then – apologies, on the
26 Borough of Havering, I'm having a senior moment, you didn't ask to speak on
27 this item. Okay, well, in which case, I am then going to move to Port of London
28 Authority, and I will also say that, since the opening up of this item, I have also
29 seen Mr Fox, for Port of Tilbury, with a hand raised in the virtual room. But I
30 will go to Port of London Authority first.

31 MS DILLISTONE: Thank you, sir. Alex Dillistone, for the Port of London Authority.
32 Our issue is that the article 2 includes the definition of begin, but not commence,
33 and we are told that this is precedented but we're not clear on what that precedent
34 is. And in any event, it does seem to us to be an unnecessarily complicated

1 approach to the drafting in the DCO. Our particular concern, which has been
2 echoed by some around this table is that, as currently drafted, the DCO only
3 requires that development begin not less than five years after the DCO comes
4 into force. And we have suggested an amendment to requirement 2, namely,
5 that there should also be a requirement that the DCO scheme should be
6 commenced within that same five-year period.

7 Now, without that amendment, if the applicant begins preliminary works,
8 even minor ones such as GI[?] or digging a small trench, the DCO will have
9 effect indefinitely. The applicant would then be able to commence the
10 development at any future time. So it does leave the PLA and the other parties
11 uncertain as to when the authorised development will be carried out. The DCO
12 therefore seems to be giving the applicant an unusually wide leeway as to when
13 it might actually commence the proposed development and may well result in
14 blighting land unnecessarily. The PLA has raise these points and these concerns
15 in its deadline 1, 2, 4 and 7 submissions, and it is a point being raised by other
16 parties around this physical and virtual table.

17 So I don't propose to take up any more time on it, other than to say, we
18 would welcome the more conventional drafting approach that's very clearly set
19 out in the examining authority's DDCO commentary, and we would be grateful
20 if the applicant could consider, more carefully, whether the flexibility afforded
21 by its current drafting is really necessary because it does come at a cost to the
22 interested parties. Thank you.

23 MR SMITH: Thank you very much. And without, in any way, reiterating any of the
24 points made in our draft DCO commentary, there is, at large in our minds still,
25 an interest in ensuring that there is an appropriate balance between matters of
26 public interest in relation to certainty and clarity about what will be done and by
27 when, and around issues of blight, around the effects of enduring provisions in
28 relation, for example, to the operation of the compulsory acquisition powers. So
29 this is a reasonably substantial topic in our minds. And the entire purpose of this
30 discussion is around ensuring ourselves that we understand what is being sought
31 and that it is broadly in the public interest. So I'm then going to call on
32 representatives for the Port of Tilbury, and it will be you, Mr Fox, on this
33 occasion.

1 MR FOX: Thank you, sir. Yes, Matthew Fox, on behalf of Port of Tilbury. I think the
2 Port of Tilbury's concern is related to the fact that the preliminary works, which
3 are essentially the difference between begin and commence, include the receipt
4 and erection of construction plant and equipment, and also include diversion
5 laying of apparatus, which excludes the works numbers identified in schedule 1.
6 But when you look at the control documents, it does include utilities to help
7 supply the northern tunnel construction compound. And both of those elements
8 – have we lost the room?

9 MR SMITH: We can still see and hear you loud and clearly.

10 MR FOX: Sorry, the room disappeared for a moment there. Yes, so, both of those
11 activities will require fairly intensive movements and activities likely to go
12 through the Port of Tilbury. So there's two aspects to that. First of all, the time
13 differences that have just been talked about by the other parties, in terms of that
14 disruption happening to the port, but there then being a gap to the main works
15 happening and how is that going to be managed. And I think, more generally,
16 and I think we'll come to it when we discuss the control documents this
17 afternoon in ISH 12, reopening, is that the environmental and traffic
18 management controls of those are going to be a particular concern to the port
19 because they're going to be directly going through them, going through the port.

20 So we will be looking for RPPs[?] to relate to the beginning of works, to
21 make sure that our plan approvals consider that. But I think that's an important
22 point, when looking at the preliminary works traffic management approvals and
23 consultation that we will discuss this afternoon.

24 MR SMITH: Thank you very much, Mr Fox. Okay, just checking with my colleagues,
25 anything else. No, in which case, Mr Latif-Aramesh, your response on A,
26 please.

27 MR LATIF-ARAMEH: Thank you, sir. Mr Latif-Aramesh, for the applicant. I will be
28 brief because the applicant's position is set out in response to one of your action
29 points from CAH 3, that's in REP5-089. And then, just very briefly to respond
30 on this issue, the applicant considers it has reached an appropriate balance. And
31 the key point is that there is a distinction between what commence is trying to
32 control and what begin is regulating. The word 'commence' is intended to
33 ensure that works are subject to the relevant controls in schedule 2; and the word

1 begin is merely preserving the position that exists under the Planning Act,
2 section 154 and 155, on when development must start.

3 As we've explained in the REP5-089 document, the position that we have
4 reflects, in substantive terms, what the Planning Act sets out, in terms of a
5 material operation being sufficient to start the development. In terms of what is
6 within the scope of preliminary works, I think it's very important to look at the
7 definition of preliminary works. Ms Laver, this is on page 122 of the draft order,
8 which includes the definition of preliminary works. It does not cover all
9 activities associated with advanced compound areas; it's limited. Mr Fox
10 referred to one of those limitations, but there are others. Annexe C of the code
11 of construction practice, the most recent version of which is REP6-043, sets out,
12 in a table on page 7-8, the activities which are specifically covered by the
13 preliminary works environmental management plan.

14 So that's a summary of our position. It does meet an appropriate balance.
15 It preserves the position on starting material operations. And Ms Dillistone
16 asked for a precedent; it's the A428 Black Cat project, which, importantly, was
17 made following the High Court's judgment in the Swansea Tidal Lagoon case.
18 Sir, those are my submissions on this item.

19 MR SMITH: Thank you very much. Okay, ladies and gentlemen, I think what I'm going
20 to do is I'm going to seek an indication of the extent of submissions on item B,
21 time limits, in order to form a view about the timing of the break as well. So
22 can I just see a show of hands, both in the physical and the virtual room, of those
23 who want to speak on B? We do have Thurrock again. Gravesham, no. No
24 from Kent. No from Havering. No from Port of London. This is a Thurrock
25 only item, so I think we will move straight through it. We will hear Thurrock;
26 we will hear the applicant; and we will conclude the item.

27 MR STANDING: Thank you, sir. Ben Standing, for Thurrock Council. As a preliminary
28 point, the applicant has just mentioned about Black Cat and the High Court
29 judgment in Swansea, but the references we were referring to were the Court of
30 Appeal comments in Swansea, which came out in December '22, and Black Cat
31 was in May '22. Just a quick comment on chronology. Moving onto time limits,
32 I'm going to be assisted by my colleague, Henry Church. There's a number of
33 time limits within this development consent order. We've obviously got begin,
34 within the five years. We've got commence of the authorised development. And

1 then we've got the compulsory purchase powers, which are eight years from the
2 start date.

3 Of course, there's confusion about how some of these work and,
4 especially, how it interacts with important powers such as CPO. I'm going to
5 hand over to my colleague, Henry, now, who will discuss that in a bit more
6 detail.

7 MR SMITH: Thank you very much. Mr Church.

8 MR CHURCH: Henry Church, for Thurrock Council. Sir, I think Mr Standing put it
9 well with the use of the word confusion. We have a multiplicity of expressions
10 and definitions and time limits, which add to confusion. Bearing in mind, and
11 you'll recall from my earlier appearances, we don't understand such simple
12 things as when land is being taken from us, this multiplicity of dates just creates
13 confusion for us. How are we meant to advise the borough residents as to the
14 implications of the scheme? It seems to me that, at the risk of mangling words
15 of William Shakespeare, the applicant doth protesteth a little too much on this
16 because, in many instances, they will need to have acquired land to do any
17 works. And simply put, we can't see why the dates for begin and commence
18 should not be contemporaneous.

19 They should be harmonised. The council's strong position is that the time
20 limit for exercise of compulsory acquisition powers and the time period to
21 commence the proposed development should be the same and should be five
22 years.

23 MR SMITH: The harmonisation point, noted. The duration point – there is precedent
24 for very substantially scaled projects having a longer period than five years for
25 reasons, and the applicant has advanced a number of those. But your view is
26 that this is not such a project and that the justifications that have been advanced
27 by the applicant are, shall we say, in a nutshell, insufficient, as it were. Can you
28 just speak to that in a little more detail?

29 MR CHURCH: Sir, Henry Church, for the council. Ultimately, any benefit that accrues
30 to the applicant almost invariably has a disbenefit, and that disbenefit will be felt
31 by the residents of the borough, in terms of uncertainty that exists. If it came to
32 a point, I think the council would probably, arguably, prefer harmonisation and
33 an eight-year period than the disaggregation of those two events and a five-year

1 period. The whole point about the time limit does, at one level, speak to a degree
2 of prematurity. I mean, the scheme is big, but – that’s the point, sir.

3 MR SMITH: Thank you very much, and apologies, whilst I just finish capturing a note.
4 Okay, well noting that – you’ve got other points to make, or not? No. Okay, so
5 noting that that item has been addressed by the one speaker requesting to speak
6 on it, I’ll just check with my colleagues to see if there are any other questions.
7 Again, bearing in mind that our stall is set out in the DCO commentary, so we
8 don’t need to recite that. I’ll return to the applicant. Mr Latif-Aramesh, the floor
9 is yours.

10 MR LATIF-ARAMEH: Thank you, sir. Mustafa Latif-Aramesh, for the applicant. I
11 just want to start by highlighting a change that we’ll be making at deadline 8, in
12 relation to the compulsory acquisition period, which has just been referenced by
13 Thurrock Council. In considering the examining authority’s commentary on the
14 draft order, we’ve revisited the justification that we provided for the start date
15 of the compulsory acquisition period being the end of the judicial review period.
16 Now, we’ve explained in our submissions that recent experience of National
17 Highways and other DCO promotions has meant that where there is an ongoing
18 judicial review, National Highways, in many cases, does not commence the
19 development. And therefore, the time starts running, and whilst the judicial
20 review eats into the time for compulsory acquisition, it means that the works are
21 not being carried out and it makes things a bit tighter.

22 So the fundamental justification for why we have proposed to start the
23 period at the end of the judicial review period is to address that problem which
24 we have experienced on a number of recent schemes. Having considered the
25 examining authority’s commentary, we understand the concern around certainty.
26 So what we are proposing to do is to amend article 27, which has the start date,
27 so that it runs from the earlier of a year after the development consent order is
28 made or the end of any – or the final determination of any judicial review. In
29 effect, that means that, if a judicial review is ongoing, it’s capped at a year,
30 which provides further certainty but still addresses the applicant’s fundamental
31 concern that there is an issue, when judicial reviews are ongoing, that the
32 compulsory acquisition periods start to run.

33 So that’s just an update on an amendment that we’ll be making. On that
34 point, I just have two very brief submissions to make. The first is that we have

1 given, in our submissions, very clear precedents for where the compulsory
2 acquisition period is different from the time limit contained in the time limit
3 requirement. And it goes both ways. There are some orders with compulsory
4 acquisition periods which are longer than the time limit, and there are some
5 orders where the time limit is longer than the compulsory acquisition period. So
6 the suggestion that this is somehow unprecedented, or it's always not in the
7 public interest to have some parallel running of the periods, I think, should be
8 rejected.

9 In the case of the project, as I've mentioned, the time limit requirement is
10 based on the position under section 154 and 155 of the Planning Act; a material
11 operation should be sufficient to discharge a requirement on expeditiously
12 starting the project. The compulsory acquisition period has a different rationale,
13 which is the period required to compulsorily acquire land. That period, in the
14 case of this project, is, as you've mentioned, sir, necessarily different from other
15 projects given the complexity of the works. We've set this out in our
16 submissions, but just as one example, usually the construction periods for a
17 nationally significant infrastructure project – at least, some of the applicant's
18 previous DCO projects – is between two to three years. And that's accompanied
19 by a five-year compulsory acquisition period.

20 You might ask why, and it is actually because there is a public benefit.
21 That public benefit is that National Highways exercises powers of temporary
22 possession to enter into the land, carry out the works. Once the works are
23 completed, it then acquires the as-built design, in effect, reducing the amount of
24 compulsory acquisition required. If the period was altered, we would run the
25 risk of having to acquire early, in respect of land which may not be required as
26 part of the detail design stage. The limits of deviation and order limits we have
27 now are appropriate for this stage. But National Highways, consistently, during
28 the detail design stage, operates in a way to minimise land interference further.
29 And that's our concern about trying to change the period, is that it's actually a
30 public disbenefit. That's all I had to say on that, sir.

31 MR SMITH: Okay. That is a clear point, in terms of compliance with the CA guidance,
32 and ensuring that you do not over-acquire, if, by careful design of process, you
33 can assure that you only acquire that which is absolutely, clearly, permanently
34 required. That point is noted. Just before I leave you on these points – and

1 again, I'm very conscious of time and therefore will not be asking for detailed
2 oral responses – but if you can wrap this up either in your DDCO commentary
3 response or the oral submissions, the rendition of oral submissions into writing
4 for today. And that is a consideration of the effects of all of these matters, in
5 terms of the provisions for, and timing of environmental surveys and
6 implications in terms of HRA data because, again, it may just be a case of
7 running the slide rule over these, but it would be very, very useful to be clear
8 that we aren't in circumstances where questions of timing leave surveys that
9 ought necessarily be carried out, not carried out in the preliminary works stage,
10 and/or be timed to be carried out too early, having regard to when the data is
11 actually required to deal with, essentially, the main construction stage, if that's
12 the case.

13 Now, I'm not claiming any wisdom about our thinking about the
14 appropriateness of that balance at present, but it will be a thing that we will have
15 to look at very carefully as we move towards the end of examination. And I'd
16 be very grateful if you, and indeed anybody else looking at these matters, can
17 just take that on and make submissions to us in writing, at deadline 8, if there
18 are matters that aren't feeling as if they gel. Okay, now, I note that it is 11.30,
19 almost to the minute, and we have closed item B. I'm not even going to start
20 item C until we return from the break. So let us break, now, at 11.30; we will
21 return at 11.45. Ladies and gentlemen, thank you very much.

22
23 **(Meeting adjourned)**
24

25 MR SMITH: Welcome back, ladies and gentlemen. My name is Rynd Smith, lead
26 member of the examining authority for the Lower Thames Crossing. We are in
27 the second session, now, of issue-specific hearing 14, in relation to the draft
28 development consent order, and we are resuming at agenda item 4(c), and we're
29 going to move to consideration of matters around dispute resolution for DCO
30 processes. Now, by way of show of hands, who wishes to speak on this item in
31 both the physical and the virtual rooms? And I do see Thurrock, again, and Port
32 of London Authority. Is there anybody else? And online, I see Mr Fox, for Port
33 of Tilbury London Ltd, and indeed, Mr Owen. Okay. So I think we will do a

1 terrestrial local authority session, and then we will do a riverine session. So I'll
2 go to Thurrock Council first.

3 MR STANDING: Thank you, sir. Ben Standing, for Thurrock Council. We'll keep it
4 brief on this point. So I mentioned earlier, in our introduction, that without
5 prejudice to our actual position on the discharge of requirements, that a number
6 of these, as we've set out in previous REPs, including our LIR, REP1-281,
7 paragraphs 15.2.22 to 15.2.24, we think we should be the discharging authority
8 for some of these requirements. But apart from that, the procedure is clear, in
9 terms of, although we've got comments on the particular documents, the actual
10 requirement wording is clear. You asked a specific question about what happens
11 if a Secretary of State refuses to discharge an application; I think that just has to
12 be, if the Secretary of State isn't convinced, the Secretary of State says, 'We're
13 not going to discharge it,' and it goes back to the applicant to come up with
14 something which is acceptable. And I think there shouldn't be an appeal process
15 from the Secretary of State.

16 I think we're all in the same boat in that regard. So that's it for (c)(i).

17 MR SMITH: Crikey. Okay, that was very, very quick. In which case, Ms Dillistone,
18 can I bring you in? And then I'll go to Mr Owen.

19 MS DILLISTONE: Thank you, sir. Alex Dillistone, for the Port of London Authority,
20 here to provide the riverine element to the proceedings. Paragraphs 99 and 104
21 are issues in relation to the dispute resolution. Paragraph 99 deals with
22 consulting the PLA in relation to the design of the tunnelling works, and sub-
23 paragraph 4 allowed the PLA, in the event of a dispute, to refer certain matters
24 to arbitration if agreement cannot be reached between the parties. Sub-
25 paragraph 5 then provides that if a matter is referred to arbitration, tunnelling
26 works should not begin until the dispute is settled.

27 So far so good, but the issue that we have is the process and the protection
28 is significantly weakened by sub-paragraph 6. This paragraph provides that if a
29 matter proceeds to arbitration, the applicant can unilaterally decide, at any point,
30 to override the arbitration to refer the matter to the Secretary of State. And an
31 arbitrator must then make their decision that is consistent with that of the
32 Secretary of State. So let's imagine, for a second, that there is a dispute.
33 Obviously, we don't want to get there, but imagine there is one. It then goes to
34 an arbitrator with the relevant expertise, to consider the dispute. It looks, to the

1 applicant, as though things are not going the way that they want them to. In that
2 case, they could just refer the matter to the Secretary of State, in the hope of
3 getting a more favourable decision.

4 This process looks an awful lot like it is just an option for the applicant to
5 get a second bite at the cherry. And I should just make sure that we distinguish
6 this from other dispute provisions elsewhere in the DCO, where disputes can be
7 referred to the Secretary of State. That does exist, but those provisions are either
8 where the parties fail to agree on arbitration as a route to resolution, or on appeal.
9 The process proposed for the PLA, under paragraph 99, sub-paragraph 6, where
10 the applicant can unilaterally intervene to override an arbitration process, is
11 unique and provides the applicant with an unwarranted degree of control over
12 the dispute resolution process. In our view, there is just no need for it.

13 And as I've said, there are examples across the DCO where matters are
14 referred to arbitrators. In none of those is it deemed necessary for a central
15 government department to be kept as a back-up option for the applicant. The
16 applicant's argument, so far as we understand it, is that referring a matter to the
17 Secretary of State, rather than an arbitrator, might be quicker for them. I don't
18 think there is any evidence for that, unless I'm missing a commitment that has
19 been made by the Secretary of State on this subject. The applicant is just not in
20 a position to say the Secretary of State would be quicker because it does not
21 know that. The length of time that it takes for the Secretary of State to take
22 decisions rightly varies because the DfT has plenty of calls on its time, which it
23 has to balance at any particular moment.

24 That's our submissions on paragraph 99. And we do also have further
25 submissions on paragraph 104, but as they're separate, I will not raise those at
26 this point.

27 MR SMITH: Okay, although just to be clear, that if you are wishing to raise them orally,
28 then clearly, at some point here –

29 MS DILLISTONE: I can keep it very short. The PLA has raised with the applicant the
30 need for the reference to material to address the fact that what is material in the
31 context of the river may be different from what is material in the context of the
32 project as a whole. And so, from our point of view, paragraph 4 should deal
33 with materiality, so far as the river is concerned. But the key issue here is in
34 relation to the Secretary of State's process in the arbitration process.

1 MR SMITH: Okay. So yeah, in general terms, a kind of jurisdiction shopping question.
2 Okay, now, I have noted, in the intervening time, that I now see Mr Bedford's
3 hand for Gravesham. But what I am going to do is, given that we are in aquatic
4 or riverine locations now, I am going to go to Mr Owen, as I said. And then, Mr
5 Bedford, I'll come to you before we close off submissions from the parties on
6 this item. So Mr Owen.

7 MR OWEN: Sir, thank you very much. We would like to make two points. The first is
8 in relation to paragraph 99 of the protective provisions for the PLA. They are,
9 of course, primarily a matter for the PLA. But given the Port of Tilbury relies
10 on open and safe use of the river, clearly it has a big interest in the functioning,
11 if I can put them that way, of the PLA's protective provisions. And we have,
12 equally, fundamental concerns with this completely unprecedented, in my
13 experience, addition to the protective provisions that Ms Dillistone referred to.
14 Incidentally, we did say, in our deadline 7 submissions – and I'll just point this
15 out now – that certainly, in relation to 99.6, so sub-paragraph 6 of paragraph 99,
16 but also sub-paragraph 3, there do appear to be some words missing. So they
17 don't entirely make sense.

18 But nevertheless, the principle of what the applicant is seeking is clear,
19 and we entirely support the concerns that the PLA has about sub-paragraph 6,
20 which is, fundamentally, in our view, unacceptable. I mean, clearly, the matters
21 that may be in dispute would be of a very technical nature and, therefore, not
22 really ones for a Secretary of State. As Ms Dillistone has said, the drafting
23 fundamentally undermines the independence of the arbitration, and that cannot
24 be acceptable. And thirdly, it's difficult to contemplate, anyway, why the
25 Secretary of State would want to authorise tunnelling if there was a dispute in
26 relation to matters of design, and therefore, potentially, safety.

27 But in any event, it seems to us that the applicant is concerned about
28 certainty here, and the impact of arbitration and the delay, possibly, that could
29 be caused as a result. And whilst, in our experience, arbitrations are usually
30 quick, it would be perfectly – it is perfectly open to the applicant to propose that
31 the DCO should include some specific arbitration rules. You do see arbitration
32 rules schedules included in some development consent orders. Whereas the
33 applicant has just proposed article 64, which is the standard arbitration article,
34 leaving the rules for any arbitration unspecified. If the applicant is so concerned

1 about ensuring timely determination of disputes through arbitration, then it's
2 open to the applicant to suggest to you, and all interested parties, adding to the
3 DCO by way of some rules.

4 So I just make those points in addition. But we absolutely support the
5 PLA here and see no justification whatsoever for this completely unprecedented
6 addition to these protective provisions, which, as you know, have been largely
7 preceded in this form for decades. The only other point I would wish to make,
8 sir, regards article 65, and that concerns appeal provisions, you may recall. And
9 we note the wide-ranging ambit of this article, but in particular, that it would
10 apply, it does apply, to street authorities, giving consent under article 12, which
11 deals with the temporary closure, alteration, diversion and restriction of use of
12 streets. That would include the undertaker using the powers of article 12 in the
13 port.

14 And it's the Port of Tilbury's position that article 65 should not apply to
15 the Port because this is a matter that should be dealt with through the protective
16 provisions. That's the purpose of protective provisions, essentially, and as part
17 of what would be termed 'specified functions', to which POTL should be
18 allowed to give its consent. So we will be – subject of course to the dispute
19 resolutions in the protective provisions themselves – so we will be making this
20 point to the applicant when we next meet them. But I thought I would just, for
21 completeness, wish to mention that now. That concludes all my submissions,
22 sir.

23 MR SMITH: Thank you very much, Mr Owen. It's actually an interesting observation
24 that arbitration provision on highways orders have tended to be relatively calm
25 and quiet. We have been through an essentially half-decade period in the
26 evolution of such provisions, typically in energy and offshore energy orders,
27 where some very, very detailed sets of, essentially, arbitration processes and
28 rules have been included in specially formed schedules. Some of those, frankly,
29 have become distinctly over-complicated, and there have been instances in
30 which examining authorities have recommended, and Secretaries of State have
31 decided, to cut away over-complex provisions. So there is a measure of care
32 needed with these.

33 But there is useful reference, as Mr Owen suggests, to practice outside the
34 highways field, in terms of how one – if it is a concern as to how timely an

1 arbitration will be, on what terms it will operate, when it will report, etc, then
2 there are plenty of precedents for provisions that do that job. Now, one of the
3 questions that I have typically put to energy applicants who are seeking
4 complicated arbitration provisions, has been, essentially, to ask them to turn
5 their mind to the mischief that they seek to resolve. Why are these complicated
6 provisions being sought when there are, again, as Mr Owen has proposed, there's
7 a lot of experience of quite simply drafted general provisions that work?

8 And so the challenge that I'm going to throw back to the applicant, in this
9 instance, is that, given that we have, in general terms, a simple arbitration
10 provision, but we do have this reservation out to the Secretary of State, well,
11 what mischief are you trying to resolve? What problems have emerged before
12 that lead you to the conclusion that you need to be able to essentially shop
13 jurisdiction and move from the jurisdiction of an arbitrator to the Secretary of
14 State? And if that is the simple matter of not being clear about how, not being
15 clear about when, not being clear about deliverables, remit, etc, then yes, maybe
16 do give consideration to some of the energy precedents because those matters
17 are dealt with there.

18 Now, we do need, before we close this item out, to go back onto land and
19 ask for observations from Gravesham Borough Council.

20 MR BEDFORD: Thank you, sir. Michael Bedford, Gravesham Borough Council. I saw
21 that Mr Owen, I thought, wanted to come back on your arbitration point. I'm
22 perfectly happy to defer to that if that completed the –

23 MR SMITH: Mr Owen, did I miss your re-raised hand? Apologies.

24 MR OWEN: That's perfectly fine, sir. Thank you very much. Just very briefly,
25 Robbie Owen for Port of Tilbury London Ltd. I think, sir, I entirely agree with
26 what you've said. These precedents are predominately, if not entirely, in the
27 field of energy DCOs, but I don't think that changes the point of principle. The
28 only point I wanted to add, though, is that it's entirely conceivable, I would
29 suggest, that there would be a greater chance, particularly with an arbitration
30 rules schedule of timely determination of an arbitration than there would be
31 under the applicant's approach of a timely response from the Secretary of State,
32 given how busy Secretaries of State are. And therefore, I would just pitch that
33 point in as well, but thank you very much.

1 MR SMITH: Thank you. That having concluded Port of Tilbury's oral submission,
2 apologies, Mr Bedford. We're back on land.

3 MR BEDFORD: Thank you, sir. Michael Bedford, Gravesham Borough Council. So,
4 dealing simply with the two items in your bullets in item 4(c), obviously echoing
5 the points made by Thurrock, you will have appreciated amply by now our
6 various representations on who should be the discharging authority for the
7 various requirements. I don't repeat all of that, but I do, just in a sense,
8 underscore that.

9 And then, turning to the second point, obviously, as a simple matter of
10 fact, the way that the DCO works is that if the Secretary of State refuses a
11 discharge application, that's it. There is no intention that there be an appeal
12 mechanism from a decision of the Secretary of State. The only recourse would
13 be potentially legal proceedings by an applicant who was aggrieved at that
14 process. All we would say is that, in a sense, that highlights two aspects which
15 bear back on the first point.

16 The first is, clearly, that if the local authorities are the discharging
17 authority, then there would be an appeal mechanism built into that process, so
18 there would be an opportunity for a further review of any refusal to discharge a
19 requirement, and that may be something that is thought to be more beneficial
20 than simply leaving an applicant with legal proceedings as the only avenue for
21 further recourse.

22 Secondly, the fact that the applicant has not included any mechanism to
23 allow it to appeal against a refusal of the Secretary of State – and you'll recall
24 that we earlier posed the question that if the Secretary of State's discharging
25 mechanism was as independent and as self-contained as the applicant was urging
26 on you, could they give us any examples of the Secretary of State actually having
27 to refused to approve a matter under a discharge on a highways scheme, and the
28 answer was a resounding silence.

29 So it just echoes our point that we're not confident that leaving those
30 matters to be dealt with only by the Secretary of State actually ensures that
31 important matters which are of local importance as much as they are of strategic
32 importance are going to be adequately addressed. Whereas, if the local
33 authorities are the discharging authorities, we think not only will there be more
34 effective decision-making but it actually doesn't disadvantage the applicant

1 either because in the event that there is a disagreement about what is appropriate,
2 the applicant does have the protection of an appeal route to the Secretary of
3 State. So, sir, those are our points on dispute resolution. Thank you.

4 MR SMITH: Thank you very much, Mr Bedford. Now that, I believe, takes us to the
5 conclusion of our oral submissions from the interested parties, so I'll turn back
6 to Mr Latif-Aramesh for the applicant for responses on that item.

7 MR LATIF-ARAMESH: Thank you, sir. Mr Latif-Aramesh for the applicant. I don't
8 propose to set out our position on the discharging authority because I think we
9 set it out in full at issue-specific hearing 2. Just for ease of signposting and
10 reading our position, it's in section 6.3 of the explanatory memorandum. And
11 again, I repeat, I don't think we've heard anything which changes the consistent
12 and well-trodden practice of the Secretary of State on these matters.

13 On the question of what happens if a consent is not provided by the
14 Secretary of State, we don't have anything to add to what Mr Standing has said.
15 We agree that it would fall back on the applicant to ensure it could discharge
16 those to proceed with the development.

17 On the question of the independence – again, I'm not going to repeat our
18 position, but we think it's inappropriate to suggest that the Secretary of State
19 would not act in accordance with public law appropriately, independently and
20 with the relevant requirements relating to procedural fairness. I would just
21 signpost specifically to REP1-184, which, in the annexes, contains arrangements
22 that have been in place to ensure independence. That's all I'm going to say on
23 the discharging authority because I think you've heard us on it.

24 MR SMITH: Yeah, okay.

25 MR LATIF-ARAMESH: I was just going to address, sir, the other substantive point
26 that's been raised by the Port of London Authority and the Port of Tilbury. Just
27 taking a step back, you'll recall that paragraph 99 and 100 of schedule 14 deal
28 with the depths of the tunnel, which, in the earlier part of the examination, was
29 an outstanding issue with the PLA. Other than sub-paragraph 6 in paragraph 99,
30 it is worth just pointing to the fact that those provisions are otherwise agreed,
31 and we're very grateful to the Port of London Authority for the comments they
32 provided over the course of the examination which seek to secure the future
33 aspirations in the River Thames.

1 Now, on sub-paragraph 6, the PLA today have said, ‘The ability to go to
2 the Secretary of State substantially weakens the protection that’s provided.’ The
3 Port of Tilbury supports that position and says, ‘The provisions relating to the
4 ability to go to the Secretary of State are without precedent.’

5 Now, I’ve just got three very short submissions to make on this. The first
6 is that the Secretary of State for Transport is responsible for the government
7 department that deals with both highways and ports, so any question that they
8 are not competent, technically or otherwise, to deal with a matter relating to a
9 highways scheme under the River Thames I think should be dismissed.

10 The second substantive point is the suggestion that the arbitration
11 provision is sufficient. Now, the mischief that we are seeking to target here is
12 in the event that the arbitration become protracted. Now, you and Mr Owen, sir,
13 have both made reference to the fact that there are quite a few provisions relating
14 to arbitration that set out quite a detailed process. And, in fact, article 65 is a
15 recreation of that very process itself.

16 The difference, however, is that in cases where a matter is referred to
17 arbitration, it’s very clear that there is scope for protracted delay. And I think,
18 in the Port of Tilbury’s deadline 7 submissions, they say that the suggestion the
19 Secretary of State would grant consent in these circumstances is extremely
20 limited. Well, that supports that the Secretary of State would look at the matter
21 very carefully before deciding to allow the works to proceed.

22 And on the third point, which is the question of precedent, it is correct to
23 say that sub-paragraph 6 of paragraph 99 is not precedented, but nor are any of
24 the other protections in that provision. The Silvertown Tunnel order, on which
25 the protected provisions for the PLA are based on, contains an agreed depth, and
26 then it contains the provisions which requires the production of a report followed
27 by arbitration.

28 Now, we responded to the PLA’s specific concerns on this point saying,
29 ‘An automatic referral to an arbitration would not be appropriate. There should
30 be an opportunity for the parties to sit down.’ And so, what you find in
31 paragraph 99, in terms of the process, which is a five-step process, is not in the
32 Silvertown Tunnel order, so the totality of the protections go above the
33 precedents. And it’s because they go above the precedents that we have inserted
34 sub-paragraph 6, which is just in the case where arbitration appears to be

1 protracted, that there is an ability to go to the government department
2 responsible for both ports and highways to ensure an expeditious determination
3 of the relevant dispute. That's what we're trying to secure.

4 We think, as you noted, sir, a number of arbitration provisions are overly
5 complicated. They impose time limits, and it's not possible to say what a dispute
6 would be about. And so prescribing specific timescales in the manner that some
7 arbitration schedules do is not appropriate, whereas the Secretary of State, who
8 would be well seized on the matters of dispute, could decide to allow us to
9 commence. I think that's all I have to say on that.

10 On the Port of Tilbury's point about the street authorities and the fact that
11 it's subject to the appeal provision under article 65, I just refer to paragraph 132,
12 which is on page 381 of the Port of Tilbury's protected provisions, which
13 regulate the exercise of relevant street powers over ports' land, and so we think
14 – the discussions are ongoing on the protected provisions, but it's not correct to
15 say that there is no protection in place at the moment. Thank you, sir.

16 MR SMITH: Okay. Now, Mr Taylor has a question on this.

17 MR TAYLOR: Yes, just really briefly, Mr Latif-Aramesh. I think it was Mr Owen just
18 raised a minor concern about the drafting of sub-paragraph 3 in 99. Could you
19 just take that away as action to have a look at and come back to us? I don't need
20 a response now. Thank you.

21 MR SMITH: Thank you very much. So, does that bring us to the end of item 4(c)?
22 Mr Owen, I see your hand still up. Is that a purposive hand?

23 MR OWEN: Thank you, sir. Robbie Owen, Port of Tilbury. Just a really quick point. I
24 also raised a drafting point about 99.6. I think there are words missing in both
25 99.3 and 6, so they don't entirely read, so it would be helpful if the applicant
26 could consider both, please. Thank you.

27 MR SMITH: Good, and I'm sure the applicant will have taken a note. Now, Mr Fox.

28 MR FOX: Yes, sorry. Mr Fox on behalf of the Port of Tilbury. I just want to make an
29 additional point just in relation to the applicant's last point about our concern
30 article 65 and the streets powers. At the moment, the protected provisions
31 provide for them to consult with us when they're seeking to use the street powers
32 on roads outside of the ports – because, obviously, we're concerned about them
33 opposing some restriction on the corridor that links into the port and wanting to
34 know when they're planning to do that. What we're talking about here is the

1 use of powers in the port and us needing to consent to that. I just wanted to be
2 clear with the position we're making there.

3 MR SMITH: Okay, well, in fairness, I do have to go back to Mr Latif-Aramesh on both
4 of those items before we close this out.

5 MR LATIF-ARAMESH: Thank you, sir. Mr Latif-Aramesh for the applicant. On the
6 corrections in 99.6, we agree there are the important words 'Secretary of State'
7 missing, so we will insert those at deadline 8.

8 On the question of paragraph 132, which Mr Fox has just raised, the point
9 I was making is that we think there is appropriate protection in place in relation
10 to the exercise of street powers. The plan approval powers also extend to
11 specified works and specified functions. Now, I don't propose to say any more
12 than that because this is the subject of a live negotiation on the scope of the
13 protected provisions. But we just wanted to provide comfort that it's not as
14 though we haven't given thought to the issue that's been raised, so I'll leave it
15 there.

16 MR SMITH: Thank you very much. In which case, I do think, again – and apologies for
17 prematurity earlier, that that has brought us to the end of agenda item 4(d), so
18 I'll just close my note on that. And then we will move on to two items that were
19 slightly different, not of the integrating and fully overarching nature of items A,
20 B and C, but rather relating to particular concerns that the Examining Authority
21 wish to explore.

22 Now, moving onto item D, 'the reprovision of the Gammon Field
23 travellers' site and requirement 13', hopefully, in a nutshell, the Examining
24 Authority's remaining concerns are patent from the bullet points on the agenda.
25 Essentially, what we read of the requirement as currently drafted is a
26 requirement that is essentially very good at the task of providing development.
27 And we've received an explanation from Mr Stratford about how the process of
28 what ought to be provided has been consulted with the relevant community, and
29 we've enquired into the degree to which they are content with that process. That
30 is now, I think, not an outstanding issue in front of us.

31 So our remaining concern essentially there is around the degree to which
32 the requirement does enable, essentially, the ongoing operation of a traveller site
33 with the appropriate capability of the local planning authority to exercise what
34 would be the normal powers of a local planning authority were there to be a

1 TCPA planning permission in force to manage the site appropriately to take
2 enforcement action in relation to non-authorised use for development as
3 appropriate.

4 Now, we have to a degree touched on this, and Mr Stratford has put his
5 hand on heart and said he thinks everything's alright. And I don't want to
6 over-labour the point, but it did strike us that we are still in slightly strange
7 territory here, which is where we are in a world where an NSIP DCO will
8 authorise the ongoing use as distinct from the development of a travellers' site,
9 and therefore, at risk of labouring the point, we wish to further check with the
10 local planning authority whether it was completely content that it can manage
11 that as an operating facility and as an enduring use once it has been provided. I
12 guess, Mr Stratford, this is going to be you.

13 MR STRATFORD: You were right in reminding me of my hand on my heart. However,
14 I then spoke to our lawyers.

15 MR SMITH: It usually has a chastening effect, doesn't it.

16 MR STRATFORD: Doesn't it, yes. So we have a hopefully helpful suggestion that
17 Mr Standing will cover, and we might be able to agree this one today.

18 MR SMITH: Okay. Apologies for the feedback.

19 MR STANDING: Ben Standing for Thurrock Council. This is something that's a rare
20 matter within the development consent order, that there is a meeting of minds in
21 terms of what the effect is. And we had suggested some previous wording. I
22 note the comments of the applicant in REP7-190. The point at the moment is
23 we own the site, so we will have a degree of control. The point where you're
24 looking at, and that we need to address to make sure this is robust, is that if, for
25 example, the site was sold, would we, as local planning authority, be able to take
26 enforcement action?

27 And actually, it was the suggestion that you made in the commentary that
28 there is some kind of deemed consent – I don't think the process allows you take
29 grant planning consent, but I think the process does allow you to do deemed
30 planning consent. And if there were deemed planning consent for the purpose
31 of the operation, we, as a local planning authority rather than the owner, would
32 be able to take enforcement action for what has been deemed, and that might be
33 a neat way of ensuring that it's – well, we don't plan on selling the site, but it
34 would be a neat way of ensuring that it's legally covered.

1 MR SMITH: Well, I mean, referring back to a time many, many years ago when I last
2 worked for a local authority, this distinction between the exercise of a local
3 authority's powers as, essentially, landlord and the exercise of its powers as a
4 local planning authority can sometimes – and I bear the scars of circumstances
5 where they can be very problematic.

6 And a site, an operation, a service that's in one year is absolutely core.
7 And therefore, landlord powers are always sufficient under different political
8 control, at another time, in different budgetary conditions – can be a site that is
9 sought to be privatised or divested or transferred to some form of trust operation
10 or some such, and in those circumstances, suddenly, the emphasis on the degree
11 to which this is just another use of land comes to the fore.

12 So the point is there. We haven't quite got as far as a fully worked-up
13 form of words that might address it. Is that likely to emerge by deadline 8? Do
14 you need to have further conversations with the applicant? Where does this run?

15 MR STANDING: Ben Standing for Thurrock Council. Yes, we'll talk to the applicant
16 and see if we come up with some wording. We're thinking of – that's article 56
17 – after sub 2 there might be some wording. But we haven't obviously heard
18 from the applicant, so if the applicant agrees with this, then we can knock some
19 heads together. If they don't, then we'll have to take another action.

20 MR SMITH: Yes.

21 MR TAYLOR: Ken Taylor, panel member. Just on the point you raised about potentially
22 making it a deemed consent, it's just, in the back of my mind, if the site were
23 granted under the usual TCPA route, you'd often see a raft of planning
24 conditions, and they're often quite specific when you're dealing with gypsy and
25 traveller sites. And it's really just having an understanding that the necessary
26 controls for you as local planning authority would be embedded in the route that
27 you're – potentially want to investigate with the applicant in this case.

28 MR STRATFORD: Yes, indeed, sir. We're, in fact, investigating the 1994 permission
29 [inaudible]. We've got the permission, but we don't yet have the conditions to
30 understand what the existing site is managed under, so once we get those, maybe
31 we can review them and, if necessary, add them into the process.

32 MS LAVER: Yeah, I would echo what Mr Taylor is saying that, ordinarily, you would
33 have a raft of conditions, and it would relate to number of pitches, number of
34 structures that would be allowed on the site. And I realise that the design

1 principles cover some of that, but there may also be restrictions ordinarily in
2 those types of TCPA consents or permissions which restricts the number of
3 occupiers or the names of individual families, so it's those things that we are
4 really wanting Thurrock to be assured that those controls are there. It goes
5 beyond you as a landowner. It just falls into the planning enforcement process.

6 MR STRATFORD: Yes, indeed, the process for the design principles and indeed the
7 layout plan, the indicative layout plan, which is secured under whatever the
8 requirement number is – that actually sets out the number of pitches, and it
9 mirrors exactly what's there now, albeit larger, and it restricts certain areas use
10 to open space, for instance. But, yeah, once we check the relative conditions,
11 and if we can have a conversation with Mr Latif-Aramesh, hopefully, we can
12 put this one to bed.

13 MR SMITH: Indeed, and thank you, Mr Stratford. In that respect, we would also urge
14 on the applicant, in considering the potential options for furthering this, to be
15 willing to engage in some statutory drafting flexibility, shall we say, recognising
16 that there might need to be something beyond the design principles to host those
17 equivalent of TCPA conditions, in effect, around use as distinct from
18 development.

19 So, yes, we will obviously come to you for a reply, but before I do, is it
20 worth trying to roll up the remaining elements of this item, item D2? I'm sure
21 you'll respond to us in general terms, Mr Latif-Aramesh. I mean, this is this
22 question about the effect of section 1151(c) and 4(b) of the Planning Act of 2008
23 at the housing point – and again, whether having considered the applicant's
24 consideration of that, there is then anything else that Thurrock wish to say before
25 we close this item out. So I think on 2, I probably need to come to you first and
26 then to go to Thurrock and then to come back to you, if that makes sense.

27 MR LATIF-ARAMEESH: Thank you, sir. Mr Latif-Aramesh for the applicant. On the
28 first matter relating to conditions and the future operation of the provision, it's
29 important to say what the effect of the existing article 56 is. Article 56 provides
30 the future planning permissions which overlap with land within the order limits
31 are to be given effect and are not deemed to be a breach of the order. That is
32 another provision where there is agreement between Thurrock Council and the
33 applicant on the necessity for those provisions.

1 Whilst that provision does not reference the replacement traveller site, it
2 applies to it, and so, if in future a further planning permission was sought, that
3 provision would ensure that the usual Town and Country Planning Act processes
4 would apply.

5 On the issue of conditions, I think our understanding – and I think
6 Thurrock Council have said in their previous representations that there were no
7 conditions, but obviously, if Mr Stratford identifies any conditions, we'll
8 consider those and see whether they are appropriate to be somehow
9 accommodated within the terms of the order – but, as it stands, I think our
10 position is that, because of the operation of article 56, there is provision for
11 future development, ensuring that it applies through the Town and Country
12 Planning Act rather than the Planning Act process, because I think all parties
13 agree that an amendment to the DCO in order to secure any changes would not
14 be an appropriate route.

15 There is the separate question of enforcement. And on enforcement, I
16 think you heard at open-floor hearing 5 from the traveller site liaison officer that
17 there are currently no issues with compliance. And in that context, we appreciate
18 that we need to deal with the hopefully rare instance where enforcement action
19 might be necessary. And in that context, we would refer to the enforcement
20 powers under the Planning Act in part 8, which allow local planning authorities
21 to take an enforcement action where the use is contrary to the term in the DCO.

22 On the second question, which is –

23 MR SMITH: I guess my only observation there is the obvious one, which is that that
24 may be obvious to you because that is your trade. We all live in the land of
25 DCOS, but there's not many people in a local authority enforcement team that I
26 can think of who would have even opened the front page of the Planning Act of
27 2008, realistically. And that's what we're trying to manage. I'm not saying that
28 that isn't where the solution lies, but before we close this off, I think we need to
29 be clear that that's what we're dealing with.

30 MR LATIF-ARAMESH: Yes, thank you, sir. Mr Latif-Aramesh for the applicant. Just
31 to be clear, we're not resisting a potential change, and in fact, Mr Mackenzie
32 and I had a brief informal discussion yesterday about the resolution of this issue,
33 so we agree with what Mr Standing has said, that we should be able to find a

1 resolution by deadline 8. On the point of the interpretation of section 115 and
2 the related housing development provisions, I'll pass over to Mr Tait.

3 MR SMITH: Mr Tait.

4 MR TAIT: Thank you, sir. Six short points, if I may, on the extent to which the proposal
5 falls within sections 1151(c) and 4(b). First, as indicated earlier, the Planning
6 Act does not have any statutory definition of the word 'dwellings', so the
7 expression must be given its plain and ordinary meaning.

8 Secondly, by recourse to the dictionary, the ordinary meaning of
9 'dwelling' is as a place of residence, and the key characteristic of this definition
10 is private domestic residence distinct from hotels, hostels and similar uses which
11 do not have the physical characteristics of private residence.

12 Thirdly, that ordinary meaning of dwelling is consistent with the case law
13 in the context of both the 1990 act and the 2008 act in the Gravesham case,
14 which is 1984.47 property and compensation reports 142 at 146. It was held that
15 the distinctive characteristic of a dwelling house was its ability to afford the
16 facilities required for day-to-day private domestic existence, and in the case of
17 Innovia, it was held this meaning could apply also to the expression of dwellings
18 in the Planning Act where it's used at section 1152(b) – that's in the associated
19 development restriction context, and there's no basis for applying any different
20 meaning in respect of section 1154(b).

21 The fourth point is that there has been a case in the High Court in 2020
22 called Rectory Homes 2020 EWHC 2098 Admin. Mr Justice Holgate
23 considered the distinction between dwellings and dwelling houses in the narrow
24 meaning within class C3 of the Use Classes Order 1987 and concluded that the
25 expression 'dwellings' should not be given any narrower restrictions as
26 contained in class C3.

27 Fifthly, importantly, in the Rectory Homes case, the court went on at
28 paragraph 53 to restate the relevant principle as follows: 'It has become well
29 established that the terms "dwelling" or "dwelling house" in planning legislation
30 refer to a unit of residential accommodation which provides the facilities needed
31 for day-to-day private domestic existence.'

32 The earlier Gravesham case was considering 'dwelling houses', and used
33 the word in the definition of 'building' which provides the facilities, but it's
34 quite clear from the Rectory Homes case, doesn't need to be a 'building' when

1 one's considering 'dwelling' because it's a unit of residential accommodation
2 and that was deliberate consideration by Mr Justice Holgate.

3 Sixthly, apply this test. It's plain the proposals for the replacement
4 traveller site comprise units of residential accommodation and will provide the
5 facilities needed for their day-to-day domestic existence. Each unit has private
6 amenities with the only shared element being the communal recreation area, and
7 this is wholly different from the circumstances of the worker accommodation in
8 the Innovia case, with its single rooms with all other facilities shared. And
9 there's a case in the Court of Appeal called Moore, and the Secretary of State
10 for the Environment 1998 EWCA Civ 235, which considered the question of
11 whether dwellings were separate dwellings or an overall unit, and that's referred
12 to by Mr Justice Holgate.

13 But in the Moore case, the fact that parking facilities were shared did not
14 mean, of course, that the units of accommodation were other than separate
15 dwellings. And the Court of Appeal went on to make clear that it's the physical
16 characteristics, not the frequency or regularity of occupation, that is of relevance.

17 So those are the six points that I would make in support of the position
18 that the proposal, as set out in the design principles S11.12 in REP7-140, which
19 require construction in accordance with the indicative plan at the back of the
20 design principles, why those fall within – squarely within the ambit of 1151(c)
21 and 4(b).

22 MR SMITH: Okay. Now, I'll just check with my colleagues whether anybody's got any
23 in-principle further points of test or clarification on those submissions. But
24 noting that that's an in-principle position that's been put forward, I suspect the
25 answer will be that Thurrock want to come back at that in writing, but is there
26 anything else that Thurrock wish to say?

27 MR MACKENZIE: George Mackenzie for Thurrock Council. We will come back in
28 writing, and we will only say this: we agree.

29 MR SMITH: Alright, well, that was simple. Okay.

30 MR MACKENZIE: I think the only footnote, as it were, is that if –

31 MR SMITH: I do note that when counsel says, 'We will only say one word: we agree,'
32 and that's two words, and we now have a footnote.

1 MR MACKENZIE: Yeah, it's we agree, and footnote one is, if you don't agree, then it's
2 also open to you to find that the replacement or reprovision would be associated
3 development within subsection 2.

4 MR SMITH: And we're big nods on that side of the table. Is this another 'we agree'?

5 MR TAIT: Yes, sir. We do.

6 MR SMITH: Okay, right, so there seems to be a broadly framed platform of agreement
7 on both sides of the table on that point. Now, I do note that that was raised in a
8 very particular context, which was the Gammon Field context, but given the
9 possible and broader issue of principle that may be a matter of interest for some
10 parties, does anybody else want to address us on that final question where the
11 submissions of both National Highways and Thurrock Council have been heard?
12 I'm not seeing any other hands. Okay, so on that basis, I think we can close out
13 agenda item 4(d), 'the reprovision of Gammon Field'. Yes. Good.

14 And then you will note that when the updated agenda for today was
15 provided, we did, I'm afraid, add an item, 4(e), and that essentially relates to an
16 observation that the Examining Authority made in passing in earlier hearings
17 about the operation of construction compounds and particularly the question
18 about worker housing in the light of our observation of the occupation of worker
19 accommodation at the HS2 Chiltern Tunnel site, where we saw that in practice
20 and being used.

21 We note, specifically, Gravesham have advanced a draft position in
22 relation to worker housing in the document that we've referenced there,
23 REP6-132. And we thought that it would be remiss of us to go past this hearing
24 without providing them with an opportunity to make oral submissions on this.
25 But also, given that Gravesham is not the only place with a substantial
26 construction compound, we thought we'd provide the opportunity for others to
27 make observations as well.

28 So I think probably the best way into this item 4(e)(i) – if I can ask, are
29 Gravesham happy to introduce their starting point in the document that I've
30 referred to there? Then can I see whether – just have a show of hands, others
31 who wish to speak on this item. We know Thurrock do. Is there anybody else
32 who wants to speak on this? Port of Tilbury. Okay, so we'll hear the principle
33 from Gravesham. We'll go to Thurrock, then to Port of Tilbury, and then I'll
34 return to the applicant.

1 MR BEDFORD: Thank you, sir. Michael Bedford, Gravesham Borough Council. Sir,
2 if I can start in terms of – the underlying concern was obviously rehearsed by us
3 in our local impact reports. We sought then to engage with the applicant about
4 addressing that concern. Obviously, they responded to our local impact report,
5 suggesting that they didn't perceive there to be a material problem in terms of
6 worker provision, and they referred us, obviously, to their worker
7 accommodation report.

8 We continued to press our point, but clearly, we were getting no traction
9 in the exchanges. So what we then did with our representations at deadline 6 is
10 we formulated a requirement that we considered could be imposed on the
11 applicant that would address our concern, and we took, as it were, as a precedent
12 from our investigations, what had been done in relation to Sizewell C, because
13 we considered that, as a mechanism, that provided a means of addressing the
14 concern.

15 What that seems to have led to is to the applicant to then say, 'Oh well,
16 Sizewell C is a very different kettle of fish, and therefore, this isn't appropriate.'
17 With respect, we think that slightly misses the point. We're not dealing with
18 'Are there similarities or are there differences between this project and Sizewell
19 C' – because clearly there are differences. What we're dealing with is, 'If there
20 is an issue by reference to the local circumstances in Gravesham, does Sizewell
21 C's mechanism provide a workable solution?' To which we say, well, the
22 answer is yes, obviously.

23 Having said that, we are not, as it were, seeking to say that the only
24 mechanism in which you can address the issue is by requirement along the lines
25 of that that we have put forward. We are, in a sense, agnostic about the tool that
26 is used to address the issue. What we're concerned about is that the issue is
27 adequately addressed. Now, in a moment, I'm going to introduce Ms May to
28 give you more, as it were, practical evidence as to why there is a problem, which
29 we say that the applicant ought to be responsible for providing the solution.

30 But if I can stay on this point about, well, 'How it is done?' what the
31 applicant has said in part in their responses is that they consider that there is
32 sufficient control through the operation of the framework construction travel
33 plan, and in particular, its proposals for a workforce accommodation working
34 group. And in some respects, there is some similarity between the framework

1 travel plans workforce accommodation working group and the mechanism in
2 our draft requirement.

3 The difference, in terms of the key rub, if I can call it that, is that whilst
4 the applicant's workforce accommodation working group allows issues to be
5 discussed and to identify if there may be concerns – which are along the lines
6 that have been outlined by Gravesham Borough Council – when it comes to what
7 is then to be done about that, at the heart of it is effectively paragraph 5.4.14 of
8 the travel plan – this is REP7-146, and it's on page 29 of REP7-146.

9 And what the applicant's proposals amount to is that 'Well, if there are
10 problems which are investigated by the working group, then it would be for the
11 contractors to propose further reasonable practical measures which' – and then
12 it goes on to say things like, 'encourage a higher proportion of locally employed
13 workers; incentivise workers to live in areas which have higher capacity.' Then
14 it goes on to talk about 'measures would include reviewing the outcome of the
15 monitoring and feedback to encourage workers to live in areas,' etc, and then
16 that 'National Highways would have due regard to the comments raised by the
17 group.'

18 Now, sir, that's all, in a sense, well and good, but it doesn't actually deliver
19 anything which will tangibly address the problem.

20 MR SMITH: Is that, in many respects, a toothless dragon? And you don't have specific
21 delivery requirements, nor do you have what amounts to enforceability.

22 MR BEDFORD: Absolutely, sir. I mean, the point is as stark as that. We would be
23 perfectly, I think, comfortable with, as it were, an amalgam, because, in our
24 requirement, the teeth in our requirement actually lie in at sub-paragraphs 3,4
25 and 5, where we set out the type of measures that we say that our version of a,
26 as it were, working group should address, and they are things like increasing the
27 supply of bed spaces in private housing in accordance with the private housing
28 supply plan, providing support to Gravesham Borough Council's housing
29 service through the provision of housing and homeless service resilience
30 measures, and then goes on to say how those should be dealt with in paragraph 4
31 and then in paragraph 5.

32 Now, as I say, going back to where I started from in terms of mechanism
33 and tools, we wouldn't be averse to seeing those type of measures – paras 3, 4
34 and 5 – brought into the applicant's framework construction travel plan. And if

1 they were embedded in that plan and that was then a control document, that may
2 very well prove to be a way forward because it would then give, as it were, teeth
3 to the tiger or the dragon, whatever it may be.

4 So, sir, I say, we're agnostic about the mechanism that's used, whether
5 it's a requirement or whether it's a control document. But it needs to have
6 substance, and it needs to have force, and it needs to be enforceable. So that's
7 what I'd say about, as it were, the overarching point.

8 But I think it's probably now helpful to bring in from, as it were, a delivery
9 perspective, Ms May. She is the head of housing outcomes with the borough
10 council, and she can just give you a little bit more of a handle as to why we're
11 saying that, in Gravesham in particular, this is a real concern, and it's not
12 sufficient simply to rely on the statistical analysis that's provided in the worker
13 accommodation report as being an adequate response. So, then, if I can ask,
14 then, Ms May, to come – well, she's in the room, so I'll ask her speak to you
15 directly.

16 MR SMITH: She's looking expectantly at the microphone and waiting to be allowed to
17 turn it on.

18 MS MAY: Thank you very much, sir. Computer logged off. Apologies.

19 MR SMITH: Yes, they do have that remarkable ability to switch themselves off just at
20 the moment of need.

21 MS MAY: Thank you so much. So I'm here from the head of housing solutions. I'm
22 Victoria May. I'm responsible for all housing options within the borough. We
23 currently have 1,000 households on the housing register with an identified
24 housing need. We have around 250 lets a year, and we are constantly losing
25 homes through 'right to buy'. An average wait for a three-bed can be up to
26 three years.

27 Gravesham is one of the smallest boroughs in Kent, as we know, and the
28 housing option service sees an increase year on year of those households
29 presenting, stating they're homeless or in threat of being homeless. We predict
30 by next year, we'll have a 12% increase, and this year already we've had
31 1,131 households make presentations for support and advice.

32 The biggest pressure for Gravesham financially is households in
33 temporary accommodation. We have 230 households in accommodation

1 temporarily residing there until we can find a solution for them. Thirty-nine of
2 these are placed outside of the borough because there isn't provision locally.

3 The reliance on expensive nightly paid is a real issue for Gravesham
4 Borough Council, and 65% of those placements are in that type of
5 accommodation. It's forecast that Gravesham will spend nearly £2 million net
6 on temporary accommodation, which is unsustainable as a council.

7 We have considerable other pressures around asylum, with Ukraine host
8 placements coming to an end, Afghan/Syrian schemes and the ceasing of
9 bridging hotels. Gravesham also hosts a bridging hotel within Northfleet which
10 offers up to 70 bed spaces. We're already seeing the impact of presentations
11 when their determination for asylum applications are made, so this is a new
12 burden to Gravesham Borough Council. In addition, there's a new consultation
13 out around new safe and legal routes, which is again for local authorities to make
14 commitments to find accommodation for asylum seekers.

15 Being on the outskirts of London, there are additional pressures because
16 London authorities are quite clearly expensive to find accommodation for
17 vulnerable people, and therefore, there are placements locally within the
18 borough. We've already had 51 section 208 temporary accommodation
19 notifications, and that is just from local authorities and excludes organisations
20 such as probation, Home Office and social services. It also doesn't demonstrate
21 the number of placements we're receiving as there was no obligation to notify
22 us if they find privately rented.

23 To import new residents into the borough will cause a considerable impact
24 for the local authority. It, of course, will have impact on local schools and GPs
25 and health services, and I am aware schools are oversubscribed already. Today
26 on Rightmove, it's only advertising 53 private rented properties within the whole
27 borough.

28 Over the last decade, the scale of the challenge has grown significantly,
29 and Gravesham are looking at all options possible to alleviate the financial
30 burdens that we're placed with. However, we are more than mindful it will take
31 years of work. We are reliant on ensuring the borough's position is clear and
32 the pressures of representing the challenges that we faced. There needs to be
33 greater efforts to provide general provision for worker accommodation to ensure
34 the project does not exacerbate these local pressures. Using the private rented

1 sector would impact Gravesham Council greatly, especially within the
2 homelessness and our efforts to prevent homelessness. Thank you.

3 MR SMITH: Can I just ask briefly there – I mean, they’re obviously – there’s the
4 quantum of available housing – the amount. That’s the first concern. There’s a
5 feedback in terms of supply and demand and price. Are both of those issues of
6 concern?

7 MS MAY: Yeah, they are a concern because a lot of the households that are presenting
8 to us are vulnerable, so we’re always at a disadvantage to access the private
9 rented sector already without guarantors. But in addition to that, the difference
10 between what they can claim with local housing allowance compared to what
11 the rents are, there’s a big disparity. So we were quite welcomed and excited
12 about the autumn statement, which stated that they’re going to extend the
13 volume of local housing allowance for vulnerable people. But of course, if the
14 accommodation’s going to be taken by workers, that keeps the challenge at the
15 borough.

16 MR SMITH: Okay, thank you very much. So, Mr Bedford, any gloss for that that you
17 need to place?

18 MR BEDFORD: Yes. Sir, you’re absolutely right. There is an interaction. It is quantum,
19 and price and anything which puts additional pressure on the housing supply,
20 particularly the private rented sector, has then these knock-on consequences for
21 Gravesham being able to satisfactorily discharge its various housing obligations.
22 And that is why we say that there needs to be more substance to the applicant’s
23 response to that and so – well, I won’t repeat the way that I put it. Thank you,
24 sir.

25 MR SMITH: Yeah, so those points are all noted. Okay, now, I think the best thing to do
26 before we go to the applicant for what may be an in-the-round response that
27 deals with Gravesham as well is to take on other local authority submissions and
28 then the other requests to be heard on this point, so I am going to go to Thurrock.
29 Mr Stratford. We seem to have one or two extraneous [inaudible] coming
30 through the sound system. I think that’s resolved. Mr Stratford.

31 MR STRATFORD: Money in the box for that sort of thing usually. I don’t,
32 unfortunately, have the support of our local housing officers or managers, so
33 without that support, although I do have a lawyer sitting next to me, let me cover

1 what we've dealt with on this, because a lot of what Michael has been saying
2 we've been –

3 MR SMITH: Maybe just bring the microphone a little closer, I think.

4 MR STRATFORD: Thank you. Never usually accused of not being heard, but it's a
5 first. Yeah, so we have set out in our REP6-168, appendix E, a response to the
6 applicant's technical note on accommodation. And if I could just highlight a
7 few points in there. We appreciate, obviously, that the allowance that the
8 workers will get will allow them to appreciate the higher cost of the rental
9 market. Nevertheless, the impact of an increase in demand at higher end, is
10 likely to have a drip-down effect on the private rental market, so it's very similar
11 to what's just been said.

12 And we have experienced impacts on its housing market from competition
13 throughout the private rental market, particularly from London boroughs. And
14 we have a concern that that will affect the housing market. In fact, my colleague
15 has just checked on Rightmove, and there are 63 currently available – only 63
16 in the whole of Thurrock, so a similar amount. So we pointed this problem out.

17 We also shared with the applicant, which was subsequently redacted, the
18 main providers that the council uses and suggested to them that perhaps
19 restraining themselves from using that might be appropriate. That was clearly
20 inappropriate. Nevertheless, we remain concerned. So, when we got to our
21 REP7 submission, having spoken to Gravesham, we noted their requirement,
22 and so we changed it from GARS[?] to TARS[?] – Thurrock accommodation –
23 and we have more or less replicated it, all the same reasons, so if I just hand over
24 briefly to Ben.

25 MR STANDING: Ben Standing for Thurrock Council. I don't think there's any need to
26 comment on the wording, which is the same, apart from changing, as my
27 colleague Mr Stratford said. But the broad principle is the idea of establishment
28 of a group to look at accommodation issues, this to go on through the
29 construction period, to look at increased pressure and to think of ways of solving
30 that.

31 And just as Gravesham said, we're happy for it to go in another document.
32 It's just a real concern, which I think would be borne out if something wasn't
33 done, and those most vulnerable and least able to afford rented accommodation
34 would suffer the most. So we're interested to see what is proposed, but we think

1 the current drafting would work, or if there's another solution that the applicant's
2 got, we'd happily consider that as well.

3 MR SMITH: All noted. Now, before I draw in Mr Fox from Port of Tilbury London
4 Ltd, I'm just going to check: is there anybody else from a strictly local authority
5 perspective who believes that they need to speak on this item? I don't see
6 Havering. I guess that means that Havering are content on this point. Okay, so
7 I'm going to go then to Port of Tilbury London Ltd.

8 MR FOX: Thank you, sir. Mr Fox on behalf of the Port of Tilbury. We don't have
9 comments on this point, apart from in relation to obviously the impact this might
10 have on traffic modelling. It was actually to raise a point in relation to another
11 of Gravesham's suggested amendments, and this felt like the appropriate point
12 to put it in the agenda. I'm happy for you to come back to me on that if you
13 want to perhaps first finish the conversation on the workers' –

14 MR SMITH: Yes –

15 MR FOX: – accommodation point.

16 MR SMITH: – I think, if you've got a more general point arising from amendments
17 sought by others – I mean, we've got what is, I think fair to say, a reasonably
18 open floor item at agenda item 6 after the lunch break, where we will be
19 providing people with the opportunity to make consequential observations on
20 the positions of others; it's probably the fairest way of describing it. I think best
21 to deal with that there. Let's stay focused in this item on the housing point, and
22 then, hopefully, we will close this item out and go to lunch and have a clear
23 vision for what we need to do after lunch.

24 So is there anybody else needing to address us on specifically what is now
25 the shared housing point between both Gravesham and Thurrock? No, in which
26 case I'm going to turn this over to Mr Latif-Aramesh. And again, the Examining
27 Authority's view in discussing this was not necessarily to seek a requirement as
28 such but certainly to provide a place where we can acknowledge that some form
29 of control is being sought by both of these authorities. And if there is a control
30 document solution, I think both are saying to us that they would consider it and
31 respectively support that. So, where do you see this going, Mr Latif-Aramesh?

32 MR LATIF-ARAMESH: Thank you, sir. Mr Latif-Aramesh for the applicant. I have
33 three submissions to make in response to what you've heard. The first is going
34 back to the worker accommodation report, which is APP-551. We haven't heard

1 anything, I don't think, which really questions the assessment findings in that
2 report. The applicant considers the assessment provided there is robust. And
3 there's one particular section I'd like to draw out, which is section 6 of the
4 workers' accommodation report.

5 What that section sets out is the identification of other major schemes and
6 NSIPs within a 60-minute drive time from the northern and southern tunnel
7 entrance compounds so that a scenario which stress-tests the potential impacts
8 on the local housing market can be established. This has resulted in considering
9 all of those projects – which are in table 6.17 – happening at the same time
10 during their peak as the Lower Thames Crossing. So it's fair to say that that
11 example is a very robust stress test of the impacts on local housing provision.
12 The results are shown on table 6.25 and 6.26. In our view, the impacts that are
13 reported there are not significant and the reason why we have resisted replicating
14 some of the controls from Sizewell and other projects is because it's not
15 necessary or proportionate to do so in light of the specific impacts that are being
16 reported in the case of the Lower Thames Crossing.

17 I should just flag specifically as well, in the context of Gravesham, the
18 assessment suggests that at the peak of the Lower Thames Crossing
19 construction, there would be 74 workers in the private rental sector which is less
20 than 1% of the market, so when we're talking about the measures which we have
21 secured, it is in the specific context of the impacts that we are forecasting and
22 that we have assessed, and that necessarily must be taken into account in
23 deciding what is necessary and proportionate in the case of the Lower Thames
24 Crossing.

25 The second point to note is that it's not correct to say that the only measure
26 which is secured is the working group under the terms of the framework
27 construction travel plan or that the only measure that's secured are those that
28 were referenced by Mr Bedford KC on encouraging further use of measures
29 where it's reasonably practical to do so. In the workforce – sorry, in the
30 framework construction travel plan, there are a list of measures which include
31 an accommodation helpdesk, an accommodation database, the group itself, the
32 visitor accommodation utilisation measures that we've secured, collaborative
33 opportunities with other projects which are being delivered at the same time, and
34 then it goes on to say 'further measures'. So we don't accept the premise that

1 the existing provisions don't have teeth. We acknowledged there is a concern
2 from local authorities which is why we have suggested these measures,
3 notwithstanding that we do not find there's a forecast significant effect.

4 I can also say that at deadline 8, there will be an update to the framework
5 construction travel plan and I'm mindful that we'll obviously put this in writing,
6 but I'll read it out now so that parties are aware of what is being proposed
7 because it goes some way into addressing the specific asks that have been made
8 from Gravesham, bearing in mind what I've said about the necessary and
9 proportionate elements that we consider comply with the planning policy tests
10 on what can be imposed under the terms of the draft development consent order.

11 So the framework construction travel plan at the moment says, 'Formal
12 monitoring secured would be reported monthly and provided in a suitable format
13 for review to the worker accommodation working group. This monitoring will
14 enable proactive management of interventions. The working group would
15 review the project's non-local workforce in the private rental sector and visitor
16 accommodation at a local authority scale, alongside a 12 month forward-look
17 information, and if anticipated it is going to exceed the estimates that we have
18 in the workers accommodation report, you have to – the contractor must
19 implement further interventions.'

20 What we are adding is the following: 'Those further interventions, if
21 agreed by the working group, may include proportionate financial contributions
22 to increase the availability of accommodation supply and/or provide measures
23 to support the resilience of the local authority statutory housing service where
24 the pressure may be increased. These measures would not include direct
25 delivery of new housing or permanent officer posts, but they would include
26 financial contributions in connection with housing supply. Any financial
27 contribution must be supported by evidence and be deliverable and
28 proportionate and compliant with managing public money, as well as the
29 National Highways licence, and may only be applied if reasonable interventions
30 provided to manage the workforce – all the ones that I've referenced – have been
31 exhausted.' So what we are doing is we're creating a failsafe for further
32 financial contributions. We think that is a proportionate response to the impacts
33 that are being reported in the workers accommodation report. Those are my
34 three submissions on that point.

1 MR SMITH: Okay. This has the distinct feeling of a place where the relevant local
2 authorities and the applicant are not going to entirely coincide and reach meeting
3 minds. I will very briefly ask for in principle responses from both of the
4 authorities, and then I'll return for any final comment to you, Mr Latif-Aramesh.
5 So Gravesham first.

6 MR BEDFORD: Thank you, sir. Michael Bedford for Gravesham Borough Council. Of
7 course, we have commented on APP-551 in our earlier representations and
8 obviously it's one of those areas where we're dealing with a relatively – sorry,
9 I'll start again – we're dealing with a topic where the methodology is not as
10 well-established as it is for some other impact assessment areas, and therefore
11 there are a lot of assumptions which are built into the worker accommodation
12 report.

13 Now, clearly, if any of those assumptions turns out not to be reflective of
14 reality, there is a problem which is why the applicant is proposing at least to do
15 something to address the problem. So in a sense, we've moved on from, is there
16 a problem? What we should be dealing with is, yes, they're accepting that there
17 is at least a risk of a problem. We think it's more than at least a risk. We think
18 it is a real problem. What should be done? The comments that Mr
19 Latif-Aramesh made in relation to the proposals that will come forward at
20 deadline 8, we certainly will look at that carefully. It sounds like that is more
21 the beginning of a constructive dialogue and it may be some finessing of that
22 may move us closer together. Obviously, we'll respond to that when we have
23 seen the material and I think that probably is as far as I can take it at this stage,
24 and we'll pick up on further comments in the light of what we see from the
25 applicant. Thank you.

26 MR SMITH: Thank you very much, and I think it is worth making the observation in
27 relation to APP-551 that the examining authority did also raise a question in
28 ExQ1, so there have been concerns expressed broadly and ventilated about that.
29 I'm going to Thurrock, now.

30 MR STRATFORD: Thank you, sir. Chris Stratford for Thurrock Council. Obviously, I
31 echo what Mr Bedford has said. Just really make two comments. Firstly, the
32 additional wording is welcomed, and we will look at it as well, especially our
33 housing officers – not necessarily me. However, on hearing it for the first time,
34 it does allow a lot of flexibility and a lot of outs for doing anything, as is often

1 the case with some of this wording. So it's not so much of a commitment as a
2 commitment to look at something which is entirely different, and it is rather odd
3 that the applicant, in the face of expertise from not me but both authorities
4 housing departments telling them there's a problem, that they're not responding
5 more robustly. I would have thought that the two housing departments at two
6 local authorities would have pretty much a good feel for what's a problem and
7 what's not a problem. However, that said, I'll leave it at that.

8 MR SMITH: Thank you very much. So brief response on those final items, Mr
9 Latif-Aramesh.

10 MR LATIF-ARAMESEH: Thank you, sir. Mustafa Latif-Aramesh for the applicant. Just
11 three very brief points. Mr Bedford raised the issue of methodology. I do go
12 back to my first submission which was that's why we carried out the sensitivity
13 which assumed a huge number of projects were being carried out at the same
14 time as the Lower Thames Crossing so that we could really stress test it. The
15 methodology that's been followed, I should say, is based on the best practice
16 available as well as that sensitivity, so that's just about the methodology.

17 The only other comment I'd like to make is about Mr Stratford's
18 commentary around flexibility and the new commitment that I read out earlier
19 today. Now, I just want to home in on what I think Mr Stratford is referring to.
20 'It must be supported by evidence, it must be proportionate and compliant with
21 managing public money, and it must also be provided after the other measures
22 have been exhausted.' In our view that is not egregious flexibility. That is
23 managing public money appropriately, and that's why we've drafted it in that
24 way, so that if we don't see that there's a broad ability for flexibility which is
25 inappropriate, it's perfectly appropriate to make sure the public funds are
26 managed in this way after other measures have been exhausted and that's all I'd
27 say on that.

28 MR SMITH: Okay. Well, we will have to await what we see on both sides at the coming
29 deadline and then deliberate further. Can I just check with my colleagues if there
30 are any other questions that they want to put on this item which I believe then
31 leads us to the end of agenda item 4.

32 MR STRATFORD: Sir, may I?

33 MR SMITH: Yes.

34 MR STRATFORD: It's just in terms of –

1 MR SMITH: Oh, apologies. I've missed off an entire item. Sorry.

2 MR STRATFORD: It's just in terms of timing. I appreciate that we're not going to get
3 this wording until deadline 8 which means we can't respond until deadline 9. It
4 would be extremely helpful, I think, to both authorities, if we could get it now
5 so that we could include our response to it at the same time as you receive it.

6 MR SMITH: Even if you can't get it 'now', this will be an area where I will urge on the
7 applicant that given that essentially there are two local authorities here with
8 distinct concerns, at considerable benefit in close engagement with just two
9 parties, if it's possible to email drafting to them sufficiently before deadline 8 to
10 enable, if possible, an agreed position, or a caveated agreed position to be
11 adopted, that would be very, very helpful, and if we can note that in the action
12 list. Is that something that the applicant could –

13 MR LATIF-ARAMESH: Thank you, sir. The point is noted. I might need to check in
14 the back room with the all-knowing eyes and ears, but we can come back to that
15 after lunch.

16 MR SMITH: Let's come back to that after lunch. If there's a problem with that, alert us
17 at the very beginning of the afternoon session and we might – at the moment it
18 feels as though it ought to be capable of being done with on a circulated draft
19 basis with responses at deadline 8 that are responses to something reasonably
20 concluded.

21 Okay. Yes, I'm getting too enthusiastic about ending the session because
22 we do have item (e)(2), and this is in relation to, again, a matter that we have
23 already been past in making some observations during the examination, but that
24 is the whole gamut of issues that can potentially arise in relation to managing
25 the decommission and restoration of construction compounds which do
26 potentially have (a) the potential for the establishment of non-conforming and
27 ongoing uses, and (b) contain at least in principle infrastructure that reverting
28 owners of that land that's been temporarily possessed and is being handed back
29 to them, if it has infrastructure still upon it, may suggest to them different land
30 use futures for that land than maybe was the case prior to its temporary
31 possession. So that's the context we're looking at and I'll be frank, this arose
32 from certain observations that we made onsite inspections of former M25
33 construction compound land.

1 We know that there's been to-ing and fro-ing around the table on this point
2 and really, we just wanted to make sure before we close the examination that we
3 are clear if there are any residual positions the parties want to put to us about the
4 adequacy or otherwise of decommissioning and restoration provisions in the
5 order. So I will go to principally the local planning authorities first, and can I
6 just see shows of hands who wants to speak on this? Thurrock definitely, and I
7 see Robbie Owen, Port of Tilbury London Ltd wants to speak on this. Any other
8 local authorities, particularly planning authorities? Is this a matter of concern
9 for Gravesham? Yes, we do have Michael Bedford. Not seeing Havering.
10 Okay. So I'm going to go to Tilbury, to Gravesham, and then I'm going to go
11 to Port of Tilbury. Thurrock, please.

12 MR STANDING: Ben Standing for Thurrock Council. We mentioned in relation to
13 ISH 8 about some of our concerns regarding article 35. The basic provision is
14 acceptable in that there is the land is held for a year or up to a year, and then it's
15 to be returned to the landowner to their reasonable satisfaction. So that part isn't
16 a problem, but there are a number of exceptions in article 35(5) which causes
17 some uncertainty as to what their reasonable satisfaction is able to reasonably
18 include. So I won't list them all, but some of the key ones are the undertaker
19 will not be required to replace a building removed under the article, to restore
20 land on which any permanent works have been undertaken, and critically to
21 restore the land on which any soil reprofiling work has occurred.

22 So there is a certain degree of the landowner not knowing about the
23 condition of the land that's going to come back to them, and that's obviously
24 relevant. If you're a landowner and land is being taken, you want to make plans
25 then to use your land when it comes back to you, and if you don't know how
26 much soil reprofiling is going to be undertaken, if you don't know which
27 buildings are being removed, it's very hard to make plans for that.

28 Now we fully accept the compensation provisions, so we know the
29 compensation provisions are there which ultimately will compensate the
30 landowner, but we suggested during ISH 8 that there is a mechanism whereby
31 either a scheme is submitted or in some way there is greater transparency given
32 to the landowner just so that they know early on in the process what to expect
33 and that they can engage in input into that so when the land is handed back

1 there's not a long ongoing dispute. There is a discussion they've made the
2 necessary preparation, and it minimises the disruption to them.

3 During ISH 8, the applicant came back and mentioned certain points
4 within the REAC, so there's GS-002 which is about a pre-condition survey, and
5 GS-014 which is about a five-year aftercare period. None of those – neither of
6 those address our particular concern in this instance which is knowledge for the
7 landowners of what condition their land is going to come back in. So some kind
8 of additional bit in article 35 would be useful in that regard. There's also the
9 point about article 35(5)(g) which allows for temporary works to stay in place
10 with the consent of the landowner.

11 MR SMITH: I was specifically going to ask you about this.

12 MR STANDING: Leaving temporary works in place permanently is contrary to the
13 assessment within the environmental statement and it could include things like
14 hard standing piles, etc.

15 MR SMITH: I'll cut to the chase on this one, and that is that our observation was that it
16 could lead to an extent of build development and use beyond the extent provided
17 for in the ES. It could at least provide a tacit incentivisation for the establishment
18 of enduring, permanent uses that are essentially urbanising, or of an urban
19 nature, and at least in principle there's a view that there's potential for some of
20 that to extend substantially beyond the surface of the Rochdale envelope.

21 If we're then looking at the broad question of what the originally strategic
22 intended land use future for that land was, what the local plan says about it or
23 doesn't say about it, what its existing lawful use or what its permitted use was
24 prior to the temporary possession and whether it is genuinely going to find itself
25 back in that place if that is seen as desirable by the local planning authority, there
26 did seem to be a measure of question mark about all of those things in relation
27 particularly to the relatively easy capacity of an undertaker to make an
28 agreement under (5)(g).

29 MR STANDING: Thank you, sir. Ben Standing for Thurrock Council. Yes, we agree
30 with the points made. It is of concern. It's that uncertainty, the fact it's outside
31 the environmental statement, it's your point about being outside the Rochdale
32 envelope, so we agree with that. I'd like to pass over to my colleague, Mr
33 Stratford, who'd also like to make a comment.

1 MR STRATFORD: Thank you, sir. Just briefly, I think in response to these issues being
2 raised in the previous submission, the applicant has said that there isn't really a
3 precedent for doing this scheme in advance – restoration scheme. In fact, there
4 is. Tideway did it. Of the, I don't know, 20 different sites throughout London,
5 the main construction compound sites where the main drive sites were had to do
6 a scheme for this very reason – for the simple reason that there were, in many
7 instances, piles and hard standing and a number of other things that needed to
8 be agreed properly through the scheme in detail. Otherwise you're left with the
9 uncertainty of 'to the reasonable satisfaction of the landowner'. Now what
10 happens if the landowner doesn't agree or isn't clear? Plus you've got these
11 exceptions. So there is a precedent, and all this is trying to do is give some
12 certainty about what can be done and what can't be done. Thank you.

13 MR SMITH: Thank you very much. Okay, I'm going to go over to Mr Bedford now.

14 MR BEDFORD: Thank you, sir. Michael Bedford, Gravesham Borough Council. Just
15 a small point. Obviously, we would support those concerns in relation to
16 ensuring that there is an adequate mechanism for the decommissioning of
17 compounds. You'll be aware, obviously, that the applicant has changed its
18 position in relation to the Thong Lane compound to remove the permanent
19 retention of the car park which had been a subject of concern to us. We welcome
20 that and obviously are grateful to the applicant for that change of position. But
21 what we wouldn't want to see, given the greenbelt location of that site, is
22 anything that might put a question mark over the achieving of the effective
23 decommissioning of that site and returning it back to a green and open condition
24 so that it can contribute to the greenbelt rather than not. So that's a small point.
25 Thank you, sir.

26 MR SMITH: It may seem a trite and obvious point, but is there any particular reason
27 why, within the framework of 35(5), there would not be possibly secured a need
28 for – in relation to anything under (g) – the agreement of the removal of
29 temporary works where any works were to be retained, that a further agreement,
30 not to be unreasonably withheld, of the local planning authority at which point
31 it would be considering, amongst other things, the nature of lawfulness of the
32 existing or proposed use or development so that you actually ended up – and
33 also the underlying policy position. So if you were dealing with a greenbelt site
34 that could be taken into account. If you were dealing with a site that had had a

1 previous agricultural use, a view could be expressed about its return to that.
2 Sorry, Mr Bedford, I interrupted.

3 MR BEDFORD: Well, no, certainly, sir, we would welcome the inclusion of additional
4 controls for absolutely those reasons, to ensure that the planning authority
5 actually gets an opportunity to fully consider and ensure that any
6 decommissioning is appropriate to the character of the land.

7 MR SMITH: Okay. Is there anything else in principle that you want to put?

8 MR BEDFORD: No, thank you.

9 MR SMITH: No. Right. I'm going to the Port of Tilbury, then, because Mr Owen has
10 his hand up.

11 MR OWEN: Thank you, sir. Robbie Owen for the Port of Tilbury. Can you hear me?

12 MR SMITH: Yes, we can, but we can't see you, Mr Owen.

13 MR OWEN: I'm not quite sure why. Ah, there we go.

14 MR SMITH: Ah, we can now.

15 MR OWEN: Sir, I will be very brief, and what I'm about to say is from the perspective
16 of the Port of Tilbury as a landowner, but I don't have any comment to make on
17 the submissions you've just heard from the two local planning authorities. We
18 understand there is a planning including environmental impact assessment,
19 Rochdale envelope type point here, but what I'm about to say is purely a
20 landowners point, because the whole approach to managing the
21 decommissioning and restoration of construction compounds is a critical
22 concern to the port as if not handled properly, it could directly impact on the
23 port's ability to develop the same land for freeport purposes.

24 And just pausing there, I would like to draw the panel's attention to the
25 announcement by the Chancellor of the Exchequer last week as part of the
26 autumn statement which you may have picked up on, that the government has
27 decided to extend freeport benefits to last for 10 years rather than the current
28 five years. We will put that into the examination so you have that before you,
29 and if it comes forward in time, we'll also put forward the relevant secondary
30 legislation which I think is necessary to promulgate that change.

31 But as we've set out before in our written representations and other
32 submissions, the standard mechanism in the temporary possession DCO drafting
33 that you've heard of is not sufficient, we believe, in this particular context, and
34 we do wish to see proper detailed mechanisms along the lines of those indeed

1 have already been agreed between the port and the applicant in the context of
2 the leases that you're aware have been entered into. So we are, to that end,
3 seeking to provide for those additional mechanisms for the temporary possession
4 land to be included in the framework agreement we're currently discussing with
5 the applicant to allow for a proper process to be undertaken between the
6 applicant and the port as promoter and landowner.

7 Hopefully, as with everything else I've been saying, we can reach merry
8 agreement on that shortly. If, however, that's not the position we get to by the
9 end of the examination, then we will need to put forward detailed drafting or
10 indeed probably at deadline 8 in the protective provisions for our benefit in
11 relation to this issue, which we anticipate would be provisions akin to plan
12 approval provisions that you are well aware of that are already in our protective
13 provisions and indeed in many other protective provisions. So that's all I wanted
14 to make on this sub-item. Thank you very much.

15 MR SMITH: Thank you very much, Mr Owen. Now, noting that there's nobody else
16 waiting to be heard on this, I do note some queries. Ah.

17 MR MACKENZIE: George Mackenzie for Thurrock Council. I am terribly sorry for
18 intervening on this side of the room. It is just to come back on the point about
19 article 35(5)(g) and landowner agreement, and in particular the suggestion that
20 there should be some involvement by the local planning authority as to whether
21 it would be appropriate to secure various land use futures which are wanted and
22 agreed by the landowner. Instinctively, the issue that we have with that is that
23 would be effectively out of the scope of the 1990 Act, albeit that the
24 development plan and other material considerations would undoubtedly be
25 considered, but it would be problematic if the local planning authority expressed
26 an opinion which was either aligned or not aligned with what the landowner
27 wanted but wasn't in itself a formal grant of planning permission. That would
28 be an unsatisfactory limbo.

29 MR SMITH: Yes. My concern, though, and part of our rationale for raising this issue in
30 its entirety, would be that might be a not particularly satisfactory maybe limbo.
31 The alternative of essentially a range of uses becoming established by passage
32 of time, that then essentially pre-empt the local planning authority's view about
33 those prior use lawful use and development and indeed potential approaches
34 through strategic planning mechanisms such as allocation of a local plan. If all

1 of that is effectively switched off by a landowner's agreement under (g), that's
2 not enormously satisfactory either.

3 MR MACKENZIE: No, it's very unsatisfactory, actually. We'll look at the drafting and
4 provide something at the next deadline, but it may be that (g) could be amended
5 to say, 'Remove any temporary works where planning permission has been
6 granted by the local planning authority or the Secretary of State of the retention
7 of the temporary works', or something like that. But we'll have a think about it.

8 MR SMITH: So you can't agree to retain that which is not lawful. Right. Anything else
9 that needs to be said by any of the other interested parties? I do know that some
10 of my colleagues may have questions on this point. Ms Laver, did you want to
11 come in?

12 MS LAVER: Mr Mackenzie stole my thunder, I think. The question I was going to put
13 to the applicant was what is constituted in (g), and I'm specifically thinking of
14 when we got to Brentwood and saw all those hundreds of caravans which had
15 been retained, and I'm sure the landowner in that case may have said, 'I'd quite
16 like you to leave these, thank you, National Highways.' They got left and the
17 local authority didn't know anything about it for a good period of time and
18 they've become a lawful use which was unsatisfactory.

19 So it certainly seems to me that article 35(5)(g) is fraught with difficulty
20 where a landowner can decide what stays and what goes, so certainly the
21 requirement to have planning permission – not just a planning application made
22 – is something which Mr Mackenzie referenced, but certainly something which
23 I think needs to be considered, and maybe the definition of the word 'works'
24 doesn't cover those things and the applicant may tell me otherwise.

25 MR SMITH: Actually, as an observation on Ms Laver's point, that also potentially
26 overcomes the Rochdale envelope issue, because if somebody is seeking to
27 permanentise – if such a word exists – any temporary works, and they apply for
28 planning permission for those, then it is for the local planning authority to
29 determine ab initio whether the retention of those is satisfactory and to consider
30 all immediate issues of environmental impact, and once they've wrapped up that
31 decision, it's a decision. So there may be some very considerable merit in
32 thinking about it in terms such as that, because it might help solve another
33 problem.

1 MR LATIF-ARAMESH: Thank you, sir. Mustafa Latif-Aramesh for the applicant. I
2 have, again, just three short submissions to make in response, taking into account
3 what the panel have said. The first point we just want to make clear is that article
4 35 subparagraph 5 should not be looked at in isolation. Requirement 5 in
5 schedule 2 requires the carrying out and delivery of the authorised development
6 in accordance with the environmental masterplan. The environmental
7 masterplan shows the environmental features as well as the arrangement of
8 project assets in the operational phase. So there is a requirement to restore or
9 lay out land in accordance with those plans. So looking at article 35(5) alone
10 misses the obligation of reinstatement in requirement five.

11 Second point is on the specific suggestion of a scheme – not the one that
12 you’ve just mentioned, sir, about granting or with the consent of the local
13 planning authority, but the landowner scheme that Mr Standing and Mr Stratford
14 referenced – we have responded to that in section 8.2 of REP7-190. Just to flag,
15 I have taken the opportunity to look at the Thames Tideway provisions. Their
16 equivalent article is article 35(5), so it’s the same, but what that says is, ‘Before
17 giving up possession of land in respect of which temporary possession has been
18 taken, unless otherwise agreed by the owners of land, the undertaker shall either
19 acquire the land or remove all works.’ And then it contains a paragraph list that
20 looks a lot like the one in the draft order.

21 So we can’t quite see what Mr Stratford is referring to, and at least on the
22 face of it the temporary possession article allows the same landowner agreement
23 to avoid the removal of temporary works. We do know, looking at the detailed
24 control plan documents that apply to Thames Tideway, there are some schemes
25 which relate to ecological features but that’s no different from what I’ve just set
26 out in relation requirement five. Just for completeness, paragraph (g) in article
27 35 is preceded. The M42, the A428, they contain the same provisions.

28 On the very last suggestion that was made which is around local authority
29 permission, I think what I’d just like to refer to is our post-hearing submission
30 note in respect of Issue-Specific Hearing 8, and specifically at paragraph 3.2.5
31 and 3.2.7. It records Mr Tait setting out our intention that paragraph (g) is used
32 where, for example, planning permission has been obtained. We would need to
33 be satisfied that on handing the land over it had the appropriate permissions.

1 We've heard what you said about that additional wording, but just to point you
2 in the direction of those paragraphs, that's our intention.

3 MR SMITH: Okay. Right. Is there anything else we need to cover on this item? I do
4 see Mr Mackenzie with a hand raised.

5 MR MACKENZIE: George Mackenzie for Thurrock Council. Again, sir, it's a point
6 that we'll put in writing, but paragraph 5 of schedule 15 to the HS2 Act deals
7 with restoration scheme and is very clear that the restoration scheme needs to be
8 agreed between the owners of the land and the relevant planning authority for
9 exactly this reason, and we'll provide that in writing.

10 MR SMITH: Thank you very much.

11 MR TAYLOR: Ken Taylor, panel member. I think, Mr Latif-Aramesh, in doing the
12 written response to this, it's just been really clear that it's more than intentions,
13 and how is that really nailed down so that we don't get the problems that Mr
14 Mackenzie and others are raising.

15 MR SMITH: And that, indeed, have clearly occurred in the past, even with the best
16 intentions. At this juncture, I do note that it is later than we would normally
17 break for lunch, and so unless anybody very clearly needs to address us on this
18 point, I'm going to bring – given that we have now heard the applicant on it –
19 I'm going to bring it to a close and let us call it 1.40. Let us resume at 2.40,
20 ladies and gentlemen, and we will proceed with the remainder of this agenda.
21 But I think we're on track. I think we will be able to deal with the remaining
22 ISH 12 business by about 6.00 to 6.30. Thank you very much, ladies and
23 gentlemen.

24

25 **(Meeting adjourned)**

26

27 MR SMITH: It is now 2.40 and time for the resumption of the afternoon session of
28 issue-specific hearing 14. My name is Rynd Smith. I'm the lead member of the
29 Examining Authority and we will be resuming at agenda item 5. Just before we
30 do, just checking to see if there are any consequential organisational points that
31 anyone wants to put arising from the morning. No. Mr Latif-Aramesh.

32 MR LATIF-ARAMESH: Thank you, sir. Mustafa Latif-Aramesh for the applicant. It's
33 just two things. The first is you made a request that we provide the wording I
34 read out as proposed to go in the framework construction travel plan to Thurrock

1 and Gravesham. We will do that. I just wanted to check because I don't think
2 Havering spoke under that item so we weren't proposing to share it with them,
3 but we're happy to do that if they would like us to.

4 MR SMITH: No, Havering didn't, but do you have any particular need to see it? No.

5 MR LATIF-ARAMESH: And then the second matter was just the last item we were
6 discussing, article 35(5)(g), and we've considered that over the lunch break. We
7 will make an amendment that reflects the intent that Mr Taylor said should be
8 secured. So it's just to positively put out that we will be doing that.

9 MR SMITH: We're very grateful. Thank you very much, Mr Latif-Aramesh. Okay, in
10 which case let us move onto agenda item 5. Now, this item was entered to a
11 degree speculatively because of the time. We had not seen deadline 7
12 submissions, and at the time we had also not had the benefit of the discussion
13 that we were able to have in issue-specific hearing 13, and part of our
14 consideration there was we would get as far as we could with those requirements
15 within the framework of that hearing. I think it's fair to say that whilst we gave
16 requirement 18 a reasonably good turn around the tennis court, we did not do
17 the same in relation to requirements 10, 11, 17 or open up indeed for any other
18 submissions slightly more broadly around traffic and transportation in relation
19 to ports or indeed local access.

20 So what I'm going to suggest we do is that we move through these in that
21 order – that we first of all review requirement 10, then 11, then 17. I think we
22 might just need to touch on 18 just to make sure that the situation was left
23 reasonably concluded in terms of submissions from the parties out of the last
24 hearing. Then we'll deal with, finally, other provisions in relation to ports and
25 local access. Now, to be clear also, although we are visibly a bench of four, our
26 colleague, Mr Dominic Young, is also in the virtual room and free to engage and
27 to raise questions on any of these items.

28 So can we turn, with no further ado, to requirement 10, traffic
29 management, and can I just have an indication in terms of hands who wants to
30 speak on this item? I see Thurrock. I don't see Kent. I do see Havering and
31 Tilbury – Port of Tilbury, Mr Fox. Okay, so we will go to Thurrock first.

32 MR STANDING: Hello. Ben Standing for Thurrock Council. Just a few brief comments
33 on requirement 10. The structure of it is generally acceptable to the council.
34 I've made the case multiple times about 'substantially in accordance with', and

1 also what requirement 10 does is set out that the traffic management plan will
2 be substantially in accordance with the outline traffic management plan for
3 construction, and we have a number of comments on that. Would you like to
4 hear some of our comments on the outline – some of our concerns about the
5 outline traffic management plan for construction?

6 MR SMITH: I believe so, because it might shorten what we may then need to do later
7 on when we get into the control documents, so –

8 MR STANDING: Okay, so I'll just pass over to my colleague, Adrian.

9 MR NEVE: Thank you, sir. Adrian Neve on behalf of Thurrock Council and, as you
10 say, hopefully this will short-circuit some of the matters we'll discuss later. So
11 with respect to the outline traffic management plan for construction, I apologise
12 perhaps for referring again to my response to your question 1, which was – for
13 series 1, which was question 4.6.4, where I gave you a detailed review of our
14 view of the traffic management plan. In summary perhaps, the view is that what
15 we've been looking for is a greater rigour within those suite of documents – so
16 the various control documents that we'll be talking about when we revisit ISH
17 12 – and the way that the local authority are then engaged in that process.

18 So the framework plan as it is gives an understanding of the anticipated
19 structure of the works, as per the applicant's current view, but it will need to be
20 able to flex to the changes in the process, and so we do need to be able to iterate
21 those documents as we go through the construction process. And so we talked
22 a fair bit about flexibility in the process and how that will be reflected, and I
23 think that as it is drafted, there's concerns as with the code of construction
24 practices we were discussing the other day – is that process captured well enough
25 through the documentation to allow us all to reflect and flex on things like
26 programme changes and process changes? So particularly within the framework
27 documents, I would request that that triggering of those iterations is picked up.
28 At the moment, it's left far too open and there's no process to actually trigger
29 the review of the documentation as part of the traffic management forum.

30 MR SMITH: Okay. Now, in relation to that, if we pitch up to the strict words of the
31 requirement in front of us on the page – and by the way, I will refer to the fact
32 that we are on the bottom of page 126 of the clean version of the DDCO if
33 anybody is looking for this, at requirement 10 – any specific amendments in the

1 drafting of that sort, or are you content with that as long as the documents that
2 are hatpegged to it address –

3 MR NEVE: Sorry, you'll have to forgive me for not being prepared enough on this one.
4 Okay. So we've certainly raised the 'substantially in accordance' point, but the
5 aspect of capturing in there the requirement then to iterate, and to keep those
6 documents up to date. If it's not captured within the actual framework document
7 itself, then it falls through the cracks if you like. I think requirement 19 talks
8 about updates of documentation, but again it's not to my mind specific enough
9 to keep [inaudible] the control documents up to pace with any changes in the
10 processes.

11 MR SMITH: Okay. I mean, here it seems as though we've got broadly a two-stage
12 process, with the outline traffic management plan for construction being the
13 document that governs the preliminary work stage, then flowing on at formal
14 commencement after preliminary works to the traffic management plan for the
15 construction of that part – so that demonstrates that there can be an entire
16 chessboard of these, and one would expect there to be – has been approved, but
17 it must be generally in accordance with the outline traffic management plan. I
18 mean, that's relatively simple and straightforward. Is there any need for any
19 more provision for further iteration in that, or is simply the two stages from
20 essentially outline to traffic management plan for the construction of the part
21 under 10.2 enough?

22 MR NEVE: I go back to my previous point, that what this – it captures, as you said there
23 might be, a chessboard of documents that all need to align, which again isn't
24 really picked up in the actual framework document itself, about that alignment
25 both across the different traffic management plans themselves but also through
26 the suite of further documents, but this is not committing to that ongoing
27 iteration. It's basically – again, we've talked about the last chance saloon. This
28 as it's worded is requiring one version of the traffic management plan, and if the
29 outline traffic management plan doesn't require that process of iteration and
30 update, then you have that ability for that iterative process not to happen.

31 MR SMITH: Okay, I'm going to move on, I believe, unless there's anything further that
32 Thurrock want to raise, but I do now see that Essex County Council have asked
33 to – sorry, Kent – one of these days. Mr Fraser-Urquhart, I'm sorry.

34 MR FRASER-URQUHART: Thank you, sir.

1 MR SMITH: Wrong side of the river.

2 MR FRASER-URQUHART: Yes. Always the way. Just wanted to intervene here
3 because obviously I indicated I wasn't intending to speak on the requirement
4 itself, but now that you've as it were opened the door to comment on the outline
5 traffic management plan, I just wanted to indicate that we had one or two minor
6 comments on that relating to matters such as monitoring of vehicles, some of the
7 documentation that we think ought to be referred to in the plan is not present,
8 and perhaps most importantly with respect to the matter of ensuring that
9 disruption to bus services is adequately mitigated, including with the financial
10 elements that may be necessary. Unless you want me to, I don't propose to
11 develop those any more now –

12 MR SMITH: Very happy to see those in writing, because that's where we'll get to the
13 detail –

14 MR FRASER-URQUHART: Exactly. That was what I was proposing, but I'm just
15 flagging it up now that that door's been opened, that we have those points which
16 we'll make in writing in due course.

17 MR SMITH: Noted, and we will certainly not come away from this hearing believing
18 that you have a clean slate as it were on the plan.

19 MR FRASER-URQUHART: Thank you, sir.

20 MR SMITH: Okay, so I'm then going to go to Havering.

21 MS THOMSON: Thank you, sir. Morag Thomson at Havering. Sir, very briefly, just to
22 make the point again about 'substantially in accordance' and to give you the
23 reference that the debate on that between ourselves and the applicant is all set
24 out in our REP7-206 document at page 51 and 52. I don't need to add to it, I
25 don't think.

26 MR SMITH: Right. Excellent. Right, in which case we will go to the virtual room now,
27 and call on the Port of Tilbury London Ltd and Mr Fox.

28 MR FOX: Thank you, sir. Mr Fox on behalf of the Port of Tilbury. I just wanted to raise
29 two concerns that we have. First of all in relation to preliminary works, and I
30 talked earlier about our concern about the fact that preliminary works refer to
31 both the receipt and erection of construction plant and equipment going through
32 the port, and also the diversion of utilities that aren't the named utilities works
33 but in the EMP. EMP1, it's clear that that includes utilities works associated

1 with the compound, all of which will take place on port land and could affect
2 traffic matters.

3 Now, I note your question earlier, which was focused on the drafting of
4 the requirement, and so the drafting of the requirement simply says for the
5 preliminary works that ‘the preliminary works must be carried out in accordance
6 with section 6 of the oCTMP,’ but when you look at section 6 of the oCTMP,
7 that is extremely vague and, to be honest, very broad.

8 Essentially, it’s a table of broad principles, and there is only one reference
9 to a traffic management plan for preliminary works even being created in the
10 first place. So it may be a process for the DCO or the oCTMPfc[?], but there
11 needs to be, we believe, a clear process by which that preliminary works traffic
12 management plan is developed. There is reference in the table in the oCTMPfc
13 to traffic management forums existing, but it’s not clear if those are a different
14 traffic management forum to the ones that are being created for the main works.
15 And crucially, it’s not clear that they have any kind of role in the development
16 of the TMP for the preliminary works, or who have any kind of approval
17 mechanism for the preliminary works TMP.

18 Now, I think the Port of Tilbury would understand why the applicant
19 would argue that there is no need for external approval of the preliminary works
20 TMP – we understand that would be their position – but notwithstanding that,
21 we would want to have some form of role in the creation of said preliminary
22 works TMP, particularly where it affects the port. And so in terms of the drafting
23 of the requirement, I think one thing I would proffer is whether the rewording
24 of paragraph 1 could be made similar to that of paragraph 2 in relation to
25 consultation on the development of the preliminary works TMP. It will be for
26 others to say, I think. We’re not suggesting there needs to go so far as to say
27 that it has to be approved by the Secretary of State, but I think there should be a
28 mechanism on the face of the DCO for consultation on the development of the
29 preliminary works TMP.

30 MR SMITH: Okay, so just to be completely clear, you are essentially asking for a kind
31 of within-iteration iteration in a way. You’re asking for a formalised preparation
32 of a draft and preliminary works TMP, pursuant to the OTMPC, and that that
33 would be consulted in draft amongst other parties with yourselves, and then there
34 would be an internal approval process [inaudible] wouldn’t deem it necessary

1 for it to be signed off by the Secretary of State, but it would have an internal
2 approval process before it bites.

3 MR FOX: Yes, sir.

4 MR SMITH: Does that summarise your position? Okay. I'm sure the applicant will
5 respond. Is there anybody else who wants to speak on this requirement and the
6 TMP document set that hangs beneath it?

7 MR FOX: Sir, apologies, I did have a second point.

8 MR SMITH: Ah, apologies.

9 MR FOX: Apologies. I'm conscious it's not directly on your agenda, but you will be
10 aware, sir, that ourselves and others have been looking for a separate
11 requirement in relation to the works on the northern side of the river, and
12 particularly from our perspective the impacts to the Asda roundabout. And if
13 it's acceptable, I'd just like to make a brief submission on that, which is that –
14 and we note that the –

15 MR SMITH: I'm actually going to come to that. It is actually directly on the agenda,
16 because when we get through requirement 18, we've then got any other
17 provision in the DDCO for ports and local access and that's absolutely around
18 the missing bits, which include Asda roundabout, so if we can deal with that
19 then.

20 MR FOX: Yes, sir. Okay.

21 MR SMITH: Okay. I do now however see that Gravesham Borough Council want to
22 speak on this item, so, Mr Bedford.

23 MR BEDFORD: Thank you, sir. Michael Bedford, Gravesham Borough Council. I
24 didn't want to speak on the requirement, because we have no issues on the
25 wording of the requirement, but obviously given the broadening out to the
26 outline transport construction management plan, sir, in the hope that it might
27 save time later, I would just make the point that we have a number of concerns
28 about the language of that document, merely in terms of too much flexibility,
29 not enough detail, and therefore it being too broad brush. Obviously, we
30 recognise the principle of having an outline document is to set out outline, and
31 there will be a detailed document that follows on, but we consider that the
32 language is too broad, so that's our general point on that particular control
33 document. Thank you, sir.

1 MR SMITH: Thank you very much, Mr Bedford. Now, before I go on on this, I'm
2 almost going to ask for kind of yes/no answers on this side of the room, but
3 we've heard Port of Tilbury on the proposition that there ought to be a more
4 detailed sub-iteration – a preliminary works TMP formed and internally
5 approved out of the outline traffic management plan for construction, before the
6 commencement even of preliminary works. So immediate observations on that.
7 Good idea/not good idea, because...

8 MR STANDING: Ben Standing, Thurrock Council. Yes, that sounds like a good idea,
9 but not without prejudice to the point that we don't believe there should be the
10 difference between preliminary and commence. It should all come under
11 commence anyway – but yes, it's a good idea.

12 MR SMITH: Yeah, okay. Noted. Kent, any observation on that point?

13 MR FRASER-URQUHART: Good idea.

14 MR SMITH: Good idea. Good.

15 MR WHITE[?]: Good idea, sir.

16 MR SMITH: Good idea. Okay. Well, that's wrapped around – and Gravesham, any
17 observation on that final point?

18 MR BEDFORD: I think we would concur. Not being a highway authority, but we would
19 concur that construction traffic ought to be addressed fully, including the
20 preliminary works.

21 MR SMITH: Okay. Right. Well, on that basis I'm going to come to the applicant to
22 wrap all of that, and if you are not fully complete orally on it, at least to highlight
23 when and how it's coming forward in writing.

24 MR LATIF-ARAMESH: Thank you, sir. Mustafa Latif-Aramesh for the applicant. Just
25 a few submissions and then I'll ask [Mohammed Halli?] to my left to speak to
26 some of the detail that's in the document that's been raised. Could I ask for plate
27 3.3 of the outline traffic management plan to be displayed? Whilst that's – I
28 think that's just come up.

29 So this is a plate that is in the outline traffic management plan for
30 construction, and I think Thurrock Council made the point that the development
31 of the traffic management plans and the ongoing monitoring should be an
32 iterative process. What plate 3.3 shows is that an iterative process is in fact
33 secured. Where there is an engagement with the local highway authorities,
34 where there's engagement with traffic management forums, and then the final

1 submission to the Secretary of State in respect of a traffic management plan,
2 which would be subject to consultation even after or as part of what's shown on
3 plate 3.3. Where there's an update required, and Mr Halli will comment further
4 on this, that's also mentioned at the bottom of the plate. If you just scroll down,
5 you'll see there's provision for updated traffic management plans.

6 So just on the substantive point about consultation and iteration, we
7 acknowledge it, and we've secured it. On 'substantially in accordance with',
8 I'm not going to repeat our submissions. You've got those.

9 MR SMITH: We know where you stand on that. This is going into that basket of items
10 on which we will have to deliberate.

11 MR LATIF-ARAMESH: I have nothing further to say on that. Message received loud
12 and clear. Just before turning to the detail, I would just point out two other
13 things. So again requirement 10 should not be looked at in isolation. If we look
14 at the protected provisions that we have inserted for local highway authorities –
15 and this is at page 385 to 386 of the clean version of the draft order – what the
16 protected provisions secure is a requirement on the applicant to provide detailed
17 information. Detailed information has a specific definition under the protected
18 provisions, which includes durations of works, traffic management etc, and that
19 then flows through into the process of engagement that's secured under the
20 protected provisions. So just whilst we're looking at this document, I wanted to
21 point out that that's not the only assurance that we're providing here.

22 On the point about an integrated plan and ensuring that the traffic
23 management plans work together, I would just reference paragraph E.4.26 of the
24 outline traffic management plan, which imposes a requirement to ensure that the
25 traffic management plans proposed are integrated as a whole. At this point, I'll
26 turn to Mr Halli and then I'll quickly come back on the points raised by the Port
27 of Tilbury, if that's alright.

28 MR SMITH: Indeed. Thank you very much.

29 MR HALLI: Afternoon. Mr Halli for the applicant. So just building off what Mustafa
30 has just spoken about in regarding the sort of iterative process and the different
31 sort of parameters used that triggers that sort of process of continuing to develop
32 the TMP. So what the applicant will seek to do is work – so they're required to
33 work on an approved traffic management plan. In the event that the measures
34 implemented during the TMP implementation prove ineffective, requiring

1 additional measures beyond the scope of the approved TMP, an update of that
2 traffic management plan would be carried out. This stipulation is detailed in
3 paragraph 3.3.23 of the outline traffic management plan. That's REP7-148. The
4 process as just set out is in plate 3.3.

5 In addition to that, the applicant has looked to secure a comprehensive
6 monitoring system, and if you refer to paragraph 2.4.22 to 2.4.25 of the outline
7 traffic management plan, that sets out the process and parameters for monitoring,
8 which will ensure all measures being brought forward. Where those measures
9 then necessitate an updated TMP, it follows that a further TMP must be
10 submitted for approval to the Secretary of State. In addition to this, there is an
11 explicit requirement, and this is set out in the outline traffic management plan,
12 where it states, 'where requests for traffic measures to be modified arise during
13 feedback from the TMF, National Highways would give due consideration to
14 any such request, and where necessary obtain appropriate approvals for any
15 modifications.'

16 Given the suite of those controls, and the others in the outline traffic
17 management plan, the applicant is confident that the proposed measures are
18 appropriate and proportionate, and go above and beyond precedents set by
19 previous other projects.

20 MR LATIF-ARAMESH: Mustafa Latif-Aramesh for the applicant. Just turning to the
21 comments made by the Port of Tilbury. The purpose of the preliminary works
22 traffic management plan was to provide comfort that controls would be in place
23 for the preliminary works. Now, Mr Fox made reference to the fact that section
24 6, which is the preliminary works traffic management plan, is relatively short.
25 The reason is because the table that's under section 6.31 cross-references to
26 other parts of the outline traffic management plan to secure relevant controls.
27 So it doesn't repeat them, it simply cross-references them, and we have looked
28 at the preliminary works to identify those controls and measures which should
29 be in place.

30 On the point about consultation – and it goes again to Mr Fox's point about
31 the traffic management forum – under that table, the applicant would be required
32 to establish a traffic management forum which secures consultation as part of
33 the preliminary works. In particular, if you look at page 76, it makes reference
34 to the establishment of the traffic management forum, and then also it goes on

1 to say that the traffic management forum in this context will be made up not only
2 of local authorities but utility companies, highway authorities, public transport
3 operators, emergency services and other maintenance providers. So the point
4 about consultation at this phase is also acknowledged and it's also secured, and
5 I don't want to labour the point too much but, again, we shouldn't look at these
6 controls in isolation.

7 We've made reference to the fact that, with respect to the Port of Tilbury
8 in particular, under the applicant's draft order there are plan approval rights over
9 land which is port land. And again in this context it provides comfort to them
10 because they're raising a specific concern about the utility works being carried
11 out as part of the preliminary works, that there are safeguards and appropriate
12 checks and balances already in place, already secured – so again, that's secured.

13 MR SMITH: So again looking at these observations in the round, your messaging here
14 is that the examining authority should take comfort in the existence and
15 operation of the protected provisions benefitting highway authorities, and indeed
16 the protected provisions benefitting the port, and that before we form any view
17 about the adequacy or otherwise of individual documents or the processes to
18 create them under 10, that we've got to take those into account as well.

19 MR LATIF-ARAMESH: That's correct. Thank you, sir.

20 MR SMITH: Okay. Right. I believe that brings the discussion of that item to an end,
21 unless any of my colleagues wish to intervene – but we do see Mr Fox, Port of
22 Tilbury London Ltd.

23 MR FOX: Yes. Apologies, sir. I'm just wondering if we could get 3.3 back up on the
24 screen. I just wanted to make one point on that, and whilst that is being done, I
25 just want to make two quick points. Firstly, is a request that Port of Tilbury be
26 specifically added to that reference to the traffic management forum in part 6 of
27 the plan, and secondly, just to make the point that, whilst I hear what the
28 applicant has had to say there, the DCO obviously has specific drafting where it
29 needs to – in relation to making sure the applicant does consultation. Much of
30 what's already in requirements, including the CEMP and OEMP requirements
31 are what's already in those documents, so I don't see an issue, sir, with why it
32 can't be on the face of the DCO.

33 On this point about plate 3.3, one thing I wanted to just check because I
34 don't think it's fully clear here, is the role of the TMF in inputting into the TMP.

1 And this is in our main works, but I think obviously it would apply to some
2 extent to the preliminary works as well, if we're going to take the applicant's
3 logic of section 6 referring back to earlier sections. So the TMF is established
4 by the traffic manager when it's already been agreed with the LHA, but it doesn't
5 appear that the TMF has a role in actually agreeing – well, at least having a role
6 in the TMP. Now, I appreciate there is the requirement 10.2, but I'm not clear
7 that that's completely consistent with what's written here in this plate, which I
8 think is an example of why we need the requirement for the preliminary works
9 as well as the main works to be on the face of the DCO, but also for this
10 document to be consistent with it.

11 The final point I just want to make on the traffic management plan more
12 generally, which is just to make the point that one of the things that the traffic
13 management plan does is say that the applicant will – there are main routes and
14 then there are secondary routes, and it simply says that the secondary routes will
15 be used less frequently than the main routes, and that is essentially all it says
16 about the secondary routes. And I think that's not exactly clear in terms of how
17 they are going to be used, which is particularly relevant on the network around
18 Thurrock, where if they were to use roads such as Fort Road, that could be an
19 issue. But that would be my points.

20 MR SMITH: Thank you very much. Now, in fairness, I do need to return to Mr
21 Latif-Aramesh on those points.

22 MR LATIF-ARAMESH: Thank you, sir. Mustafa Latif-Aramesh for the applicant. On
23 the first point as to why the consultation is not on the face of the order, I go back
24 to the underlying rationale, which is we have identified preliminary works and
25 we have secured the appropriate controls which are commensurate to those
26 preliminary works. The consultation, the engagement, is secured through the
27 traffic management forum, which is required under section 6. We don't agree
28 there needs to be a further iteration. That is the plan that will be secured if the
29 order is made in that form.

30 On the second point, which is the issue around the plate and whether the
31 traffic management forum is engaged, I just refer to the terms of reference that
32 we included at deadline 6 or 7, which goes into quite a bit of detail about how
33 the plate works with the engagement with the traffic management forum. There
34 isn't an inconsistency there.

1 The traffic management forum does feed into the traffic management plan,
2 and if you look at the top very briefly, the Secretary of State approval is the far
3 end, and so the TMF's input is secured prior to the submission of a traffic
4 management plan. The terms of reference go into a bit of detail about how the
5 monitoring is then considered once a traffic management plan is secured. So I
6 just want to say, we have secured these elements, and I think Ms Tafur made
7 this point earlier this week, that what we've secured is based on well-trodden
8 ground for National Highways and it goes above and beyond. The preliminary
9 works TMP itself is itself an example of an innovation. In a typical DCO, you
10 wouldn't have a preliminary works traffic management plan at all, and it would
11 be excluded from the terms of the equivalent requirement 10, so this is going
12 above and beyond already. I just wanted to put that in perspective.

13 MR SMITH: Thank you very much. Now, just briefly, at the risk of prolonging this, just
14 scroll back to the top of the figure, please. I guess there was one sort of just
15 immediate observation that was nagging my brain, and that is simply that the
16 establishment of the TMF is a in a sense floating thing in that diagram. There is
17 no process demonstrated in the diagram that flows on. Everything else is in a
18 flow diagram. There are arrows from process to process. Is there a missing
19 arrow? Very simple point, but... Do we need to relate the establishment of the
20 TMF to any of the rest of the mechanics of that process is what I'm asking you
21 in a nutshell.

22 MR LATIF-ARAMESH: Thank you, sir. Just so we understand the point and then we
23 can take it away to make sure that we've seriously considered it, is your
24 comment that the established TMF square needs to relate to the traffic
25 management plan?

26 MR SMITH: Yes, in a nutshell. And that there needs to be some diagrammatic
27 representation of how it integrates with the rest, because otherwise it potentially
28 freestands and could be open to argument subsequently that there are issues
29 about its timing that are not resolved by the document, etc.

30 MR LATIF-ARAMESH: Thank you, sir. We'll take that away, and just to provide you
31 comfort, the terms of reference make it clear that they will be involved, but we
32 will review the placement of an arrow to make it abundantly clear.

1 MR SMITH: Almost a footling point, but it just suddenly struck me as we were looking
2 at that, in the light of the conversation that we were already having. So I believe
3 that we can now close out discussion on –

4 MR STANDING: Ben Standing for Thurrock. Sorry, sir, my colleague Adrian's got one
5 very, very quick point. I promise it'll be quick.

6 MR SMITH: Okay.

7 MR NEVE: The reference to 3.23, which is the paragraph just underneath the table, I
8 note that there is reference to looking at the process for review when there's a
9 deviation from scope of the TMP. I could have said one word, 'trigger'. Perhaps
10 I'll leave it at that.

11 MR SMITH: Okay, well, Mr Latif-Aramesh, you do need to have your final say on that.
12 This is why they're not always quick. We do have to hear both sides of the table.

13 MR LATIF-ARAMESH: Sir, I note Havering has their hand up. Shall we wait for them
14 to...?

15 MR SMITH: Indeed. What I'm actually just going to say – I mean, we've possibly been
16 a little less disciplined than we normally are in this round, and what I will
17 indicate is that when we move on to the next requirement, I would like an in
18 principle kind of prompt indication of a wish to speak on the specific ground,
19 and then I will go party by party, and then I will come to the applicant, because
20 I think if we're not careful it becomes a sort of tag-team melee that never ends,
21 but, Havering.

22 MS THOMSON: Thank you, sir. Morag Thomson, Havering. So this arises from
23 something that Mr Latif-Aramesh said, which was that the traffic management
24 plans are updated from time to time, which is apparent from that table – which
25 is understandable, but that's not what's reflected in the drafting of requirement
26 10, and I think there needs to be some drafting added in there to ensure that the
27 traffic management plan that you're required to comply with is the one that's
28 updated from time to time, because at the moment it's only the first traffic
29 management plan which triggers the release of the development if you like,
30 under 2, which you're required to comply with under 10.3, whereas I think it
31 ought to say something like 'traffic management plan as updated from time to
32 time' or 'as reviewed from time to time'.

33 MR SMITH: Okay. Right, I'm really handing this back to Mr Latif-Aramesh, and then
34 we are going to move on.

1 MR LATIF-ARAMESH: Thank you, sir. Mustafa Latif-Aramesh for the applicant. I
2 think the comments from Thurrock Council there, the paragraph addresses
3 where the further traffic management plan will be progressed, and the plate
4 explains that as well. I think that partially addresses Ms Thomson's comments
5 as well on the point that the outline document itself requires iteration, it requires
6 monitoring, and it explicitly requires further TMP's in particular circumstances.
7 This is made very clear under the terms of reference. Other outline traffic
8 management plans that National Highways has produced in the past also set out
9 this process, and there's no need for a change in the wording to reflect what the
10 document says that you should produce, because the requirement ties you in to
11 the outline document, which contemplates –

12 MR SMITH: And essentially here, drawing all of this together, it's your proposition that
13 these are well tried and tested words, and also that the outline document, because
14 it frames the iteration process, delivers the need for general – something being
15 'substantially in accordance' includes the ability to iterate because that's what
16 the document calls upon you to do.

17 MR LATIF-ARAMESH: That's correct, sir. Mustafa Latif-Aramesh for the applicant.
18 The other thing I would just say is that it's also inherent in the use of the term
19 'part', and if you look at paragraph 1 of schedule 2 of the draft order, it has an
20 interpretive provision relating to parts, which includes the fact that it can be
21 construed as phases. So the fact the requirement says, 'no part', it assumes that
22 you could have traffic management plans for different parts –

23 MR SMITH: And it can be spatial, and it can be temporal.

24 MR LATIF-ARAMESH: Quite.

25 MR SMITH: Okay. Right. Well, we'll obviously look at that carefully, but thank you
26 very much for those submissions. I do believe we should now move on to
27 requirement 11. Very similar in principle, very brief and concisely drafted
28 requirement, and nevertheless I am going to bring within scope the subsidiary
29 control documents, the plan documents too, because by dealing with this in one
30 hit we are reducing the scope of the discussion that we need to hold when we
31 resume ISH 12.

32 Can I see an indication by way of show of hands from those parties who
33 do wish to speak on 11? And I do see Thurrock, and I do see Kent, and I do see
34 London Borough of Havering, and then I see Mr Fox for Port of Tilbury London

1 Ltd, and I will just wait for a second or two more to see if there are any other
2 interveners on this item, because in the interests of expedition and pace and
3 fairness, I will then make sure that we deal with those who have put their hands
4 up. I'm going to go to Thurrock.

5 MR NEVE: Thank you, sir. Adrian Neve on behalf of Thurrock Council. The point is
6 again that the requirement uses the terminology 'substantially in accordance
7 with', and we've made representations previously on that wording, so just like
8 to register that again. And the concern of course around that is again the same
9 point about the rigour within the framework document, and if you are not
10 rigorous on something that is equally not rigorous then you have too much
11 flexibility. That is the concern.

12 As a for-instance, there are a number of stated initiatives that are contained
13 within the framework travel plan that themselves don't have any real foundation.
14 Take for instance the use of active travel to some of the work sites when the
15 work sites are not accessible as they stand, and don't accord with the applicant's
16 own proposals of whether something is or is not accessible by active travel. So
17 the reliance then on active travel as a mitigating measure is not secured, and
18 therefore it is weak. So the rigour that should have been carried out in
19 developing the framework travel plan isn't supported, and therefore won't be
20 supported through that. That's an example. Thank you.

21 MR SMITH: Thank you very much. I am now going to move down the table to Kent.
22 Mr Fraser-Urquhart.

23 MR FRASER-URQUHART: Sir, my hand was a protective hand, and having reviewed
24 my notes, I don't need to say anything at this stage.

25 MR SMITH: Remind me never to play poker with you. London Borough of Havering.

26 MR WHITE: Thank you, sir. Lee White, London Borough of Havering. Echoing Mr
27 Neve's points on behalf of Thurrock, we do believe there is a lack of rigour in
28 the framework travel plan, as you would expect from our previous submissions.
29 I think the one thing that exercises us, sir, is actually the lack of targets within
30 this. There is an overarching target, but obviously there's no breakdown beyond
31 that, so I think that's a real concern for us.

32 One further point – a little comment about inter-compound travel. We do
33 recognise the travel plan now covers all the compounds that are involved, which
34 I think is a good step forward, but there's very little commentary about inter-

1 compound movement of particularly the workforce, so I think that's a question
2 for us that's outstanding.

3 I think the final thing, sir, and it relates back to the traffic management
4 plan as well, is that there's obviously a very nice diagram appeared now that
5 links the traffic management forum to the travel plan forum and the
6 accommodation forum. We talked last Thursday – I recall there was a comment
7 made about, 'Well, we expect that the applicant's team will have conducted
8 formal conversations.' What's lacking in the travel plan, and indeed the traffic
9 management plan, is that the traffic manager and the travel plan coordinator are
10 not obliged to talk to each other until the JOF[?] appears on the scene. Now, we
11 feel that's actually a significant weakness here, sir.

12 I could imagine a situation for instance where there's a competition for
13 resources between those two individuals, for example. I'm not saying that that
14 will occur, but there's that potential there. I think there does need to be some
15 obligation on those two individuals to actually talk to each other on a frequent
16 basis. So that's the end of our submission, sir. Thank you.

17 MR SMITH: Thank you very much. If I can just flag to the audio-visual team that I just
18 did receive feedback that unfortunately London Borough of Havering weren't
19 on camera for that submission. Now, we're not going to ask you to go back and
20 say it again –

21 MR WHITE: I think that may be a blessing, sir. I don't know.

22 MR SMITH: But it just seems as though maybe the sort of normal process of the camera
23 following the speaker isn't working quite as well as it normally should.

24 MR WHITE: The lens is certainly pointing this way, sir, so...

25 MR SMITH: I don't know, to tell you the truth. All I can follow is an observation made
26 by a member of my team. Okay, I'm then going to go to Port of Tilbury London
27 Ltd and Mr Fox.

28 MR FOX: Thank you, sir. Mr Fox on behalf of Port of Tilbury. I think we just had two
29 main points on this. So first of all it's just a point around being consulted on the
30 site-specific travel plans as they are developed. It had been promised to us since
31 deadline 1, and you'll see from our PAD submitted then, REP1-276, that the
32 Port of Tilbury would be added to table 2.1 of the framework travel plan. I'm
33 hoping that is just an oversight and we can be added to it, given of course the
34 construction worker movements are just as relevant to us as the HGV

1 movements. I would note – and I feel like I know what the applicant will say to
2 this – but I would note that the requirement, unlike the traffic management plan
3 requirement, doesn't in itself reference the fact of the need for free consultation
4 before going to the Secretary of State. Again, I appreciate it is set out in the
5 certified document, but I don't see an issue with it being put on the face of the
6 DCO.

7 And then the other element we wanted to raise was just to note that the
8 routes to be taken by workers visiting the compound aren't secured by the
9 document, including the framework. So paragraph 5.49 of the document sets
10 out how modal share has been factored in to the TA, but even that results in 820
11 two-way hourly car trips, and I think what we're concerned about, sir, is that at
12 the moment the modelling assumes that the construction workers will use routes
13 that at that volume probably aren't acceptable to the highway authorities.

14 When we get to the point that the site-specific travel plans are sought to
15 be signed off, I imagine that Thurrock and others would be saying, 'No, these
16 need to be using the main road routes,' i.e. through the Asda roundabout and the
17 infrastructure corridor across to the ports, which will therefore add to our
18 concerns that we, as you will know, have to the impacts of the scheme during
19 the construction phase. So I think the point we would make there, sir, is we
20 think that the document itself should be a bit more specific about the
21 construction worker routes that it says should be followed. Now, I appreciate to
22 the construction worker routes – and they'll be coming from different places and
23 it's harder for the applicant to control – but we are talking, as I just mentioned,
24 a high volume here, which added to the existing HGV high volumes could cause
25 an issue. Thank you, sir.

26 MR SMITH: Okay. Thank you very much. Right. I'm just casting my eye around the
27 room and noting, Mr Fox, that you do – yes, that hand has now gone. Thank
28 you very much. So I am going to return this to Mr Latif-Aramesh in the sincere
29 hope that this is one round of response.

30 MR LATIF-ARAMESH: Thank you, sir. Mustafa Latif-Aramesh for the applicant. As
31 we are straying into ISH 12 territory, I'm joined by Ms Tafur, who I'll hand over
32 to.

33 MS TAFUR: Isabella Tafur for the applicant. So a number of issues were raised by
34 Havering in respect of firstly coordination, I think it was, between the traffic

1 manager and the traffic plan manager. We have explained, and we explained
2 last week on Thursday, that there are various groups that have been set up, each
3 with their own specific remit and governed by their own terms of reference.
4 There will plainly be coordination between them. The JOF is the overseeing,
5 coordinating body as it were. We've made the point that the traffic plan manager
6 and the traffic manager will inevitably talk to and be engaged with one another.
7 The specific concern raised by Havering, I think, was that they wouldn't come
8 together other than formally through the JOF. Now, there's a limit to how many
9 times one can prescribe that people speak to their own groups and to each other,
10 and to the JOF.

11 That process is plainly something that will take place, and we think it's
12 appropriate to have a single, formal overseeing group – the JOF – without
13 prescribing separate groups that then the traffic manager has to talk to the traffic
14 plan manager, and then someone else will say, 'Well, when do they speak to us?'
15 Well, the JOF is the appropriate forum for that formal engagement between the
16 various different bodies that have been set up. As to the concern about inter-
17 compound movements, this is something that is specifically addressed in the
18 framework travel plan, and that is – let me just get you the reference. Yeah, it's
19 REP7-146, and it's from paragraph 5.4.24 onwards, which explains that there is
20 likely to be very limited inter-compound movement but there will be some, and
21 there's provision made for that and the way that that will be dealt with, including
22 various steps that have been set out in that section.

23 So that's a matter that's already covered. There was also a concern raised
24 about targets. Now, the framework travel plan doesn't itself contain targets,
25 because of the stage of development and the necessity for flexibility at this stage.
26 However, it does recognise that when the site-specific travel plans are produced,
27 there will be targets, and they are discussed in paragraph 7.1.5 of the framework
28 travel plan, which explains what the focus will be on those targets. It explains
29 that the targets will be developed using SMART target – specific, measurable,
30 attainable, realistic and timebound – and so there is provision for targets to be
31 included in the final approved documents.

32 As to the concern raised by Port of Tilbury about their specific inclusion
33 of the port in the consultation requirements in paragraph 2.1, that provision
34 requiring consultation with them in respect of works and movements affecting

1 their land is already secured in the framework agreement with them, and so our
2 position is it doesn't need to be replicated in table 2.1. That's already covered
3 in the agreement with them, and we are hoping that that will provide an
4 appropriate mechanism to satisfy their outstanding concerns in that regard. As
5 to the point raised about the movements of workers, we've made it clear
6 throughout that we don't consider it appropriate, certainly at this stage, to
7 mandate that workers will arrive at their places of work using specific routes.
8 We don't think that's an appropriate provision to include at this stage.

9 There is of course the possibility that in the future that is something that
10 could be considered in the development of specific travel plans, but not at this
11 stage. And we've made the point at various junctures that the modelling that we
12 have assumed is highly precautionary. It doesn't, for example, take account of
13 any modal shift associated with the travel plan or any of the features identified
14 in the framework travel plan. Let me just check if there's anything else. As to
15 the specific concern raised by the Port of Tilbury about traffic management on
16 the Asda roundabout and how that will be managed, that is a matter that we have
17 addressed in detail in REP6-123, and we don't have anything further to add on
18 that.

19 MR SMITH: Thank you very much. I believe that has brought our conversation on
20 requirement 11 to an end. Now, can we move on to requirement 17, passive
21 provision for the Tilbury Link Road. Now, plainly the Port of Tilbury wishes to
22 speak. So I see Mr Fox, and I do note that Thurrock wishes to speak as well. I
23 think this would probably benefit from having the Port of Tilbury speaking first.

24 I'm just struggling to note who the second request to be heard is from, the NG –

25 MR GRANT: Nick Grant, Natural England, sir.

26 MR SMITH: Natural England. Okay. Fine. Let's hear from the Port of Tilbury first, so
27 I'm going to go to Mr Fox. Then I actually will bring in Natural England, and
28 then I will go to Thurrock. So, Mr Fox.

29 MR FOX: Mr Fox, on behalf of Port of Tilbury, sir, thank you. Just a quick point to Ms
30 Tarfur's point, which was just to say that of course we, as my colleague said
31 earlier, are expending all efforts to reach a framework agreement, but of course
32 we need a position to protect where that isn't the case, and I don't see – I can't
33 see an issue with us being able to be in the room with the councils when a matter
34 that's been fundamental to our submissions throughout the examination is being

1 considered, but I'll leave that there. On the Tilbury Link Road requirement, sir,
2 we note the applicant's responses on this point at requirement 7, and in relation
3 to and to the changes made in the draft DCO submitted at deadline 7. So I'm
4 just going to go through I think the three points that were made there by the
5 applicant. So the first was to add the word 'reasonably' to paragraph 1, which
6 Port of Tilbury accepts, so we're happy with that.

7 The second point was in sub-paragraph 3(b), the words that have been
8 added at the end in brackets were 'unless the Secretary of State directs
9 otherwise', which again we understand where the applicant is coming from on
10 that and can accept that wording. I did want to make the point that in light of
11 the Levelling-Up and Regeneration Act now having received royal assent and
12 regulations apparently coming quite soon next year on that, we will probably –
13 and I'm hoping the applicant is agreeable to this – will need to look at adding
14 another sub-limb to that to deal with a situation where an application is
15 submitted with an EOR, an environmental outcome report, as opposed to the
16 EIA. So we'll put forward some suggestions on that.

17 The last point was just in relation to the change to the reference point in
18 the local plan process, where the applicant has suggested that this is changed to
19 reference to regulation 26 of the local planning regulations as opposed to
20 regulation 19 as we had it, that being where the local plan is adopted rather than
21 being the publication of the plan. And I think the Port of Tilbury's position on
22 that is that I think it's clear from Thurrock and other submissions throughout the
23 examination that the Tilbury Link Road is something that everybody wants in
24 this area to help ensure we have sustainable development across Thurrock
25 district.

26 I think the applicant will also be aware that regulation 19 [inaudible] the
27 local plans are usually seen as material considerations in the planning process,
28 and that is reflected in paragraph 48 of the NPPF, which says the local planning
29 authorities may give weight to relevant policies in emerging plans according to
30 their stage of preparation. As such, our drafting is simply asking National
31 Highways to treat any emerging TLR based policy in the same way that LPAs
32 would in bringing forward its scheme. And remember here that this is simply
33 about making passive provision for the Link Road. It's not requiring National
34 Highways to build it. I think – and it's useful just to step back – that the point

1 of sub-paragraph 3 is to reflect that, at present, whilst all parties including
2 National Highways in the broader sense are kind of supportive of this coming
3 forward, it isn't entirely clear at this point how it's to be delivered.

4 Of course, there is reference – National Highways exploring it in the RIS
5 3, but that in itself is not necessarily indicative that it will come forward at the
6 pace that the Port of Tilbury might want. And I think it's noticeable that I think
7 what we're trying to get National Highways to do here is to design its scheme in
8 a way which reflects what's happening around it, thus complying with the
9 scheme objective, its licensed obligations to cooperate with other organisations
10 for the purposes of long-term planning, and its licence in circular 01/2022, which
11 require the applicant to conform to the principles of sustainable development in
12 bringing forward its schemes.

13 So I think if we were to wait for the local plan to be adopted, that could
14 take some time. Regulation 19, which as I'm sure you'll know, sir, is the
15 publication of the local plan, that is what the council wants the local plan to be,
16 and now obviously it needs to go to the examination process, but I think given
17 NPPF paragraph 48, I don't see that it needs to be that this paragraph refers to
18 regulation 26. Thank you, sir.

19 MR SMITH: Thank you very much. In which case, I will now move to Mr Grant for
20 Natural England.

21 MR GRANT: Thank you, sir. Nick Grant for Natural England. Natural England doesn't
22 have any issue with passive provision per se. What we do have is a concern
23 about when a route becomes a proposed Tilbury Link Road in regulation 17.3,
24 and what that might mean for any future route selection or consenting. It seems
25 to us that, looking at 17.3, a route could become a proposed road for these
26 purposes before there's consideration of, say, environmental effects, and I'm
27 looking in particular at regulation 17.3(d), and whilst the reason that's a concern
28 for Natural England is that when you then go on to any subsequent route sort of
29 consenting process, what we don't want is the passive provision that has been
30 made based on a particular route alignment to become, say, seen as of material
31 consideration for that particular route alignment if we think it's, for example,
32 sub-optimal environmentally.

33 That's the only concern that we've got, particularly as the route – or any
34 potential route – might have implications or impacts on the potential Thames

1 Estuary marshes' potential SSSI. So I thought I'd raise that point, sir. I'm afraid
2 I don't have any easy answer to it now, but of course we've got to provide
3 something for deadline 8 and hopefully find a way through, but raise the
4 [inaudible] at least now for yourself and National Highways whilst I possibly
5 consider it before the final written subs go in.

6 MR SMITH: Yeah. No, thank you for that. I mean, there is a kind of 'thinking caps on'
7 dimension to this, because I was then going to ask you the kind of obvious
8 question which is, well, how then might one craft the drafting of this to attempt
9 to resolve that concern? Whether it was possible to specifically identify those
10 interests that you wish to safeguard or protect, and therefore you do something
11 that dealt with that by exclusion, or alternatively whether in your view you were
12 seeking a reduction in the specific endorsement of a particular proposed Tilbury
13 Link Road by way of a less emphatic reference to it than that which is currently
14 contained in sub-paragraph 3, or even the deletion of sub-paragraph 3. But
15 obviously there, we'd have to balance your – if that was your view – we'd have
16 to balance your view against a range of other views seeking to advocate the
17 virtue of that approach.

18 What would be very, very useful is that if you are seeking something in
19 that second group – i.e. the de-emphasis or possible deletion of sub-paragraph 3
20 – that if you were in a position to provide initial drafting thoughts and to the
21 entities with the most obvious engagement in this – which would appear to be
22 the applicant, Port of Tilbury London Ltd, and Thurrock – that would at least
23 assist us in getting to the point where we didn't suddenly arrive at deadline 8
24 with what feels like it is a deep in principle blockage, as opposed to a position
25 that can still be usefully discussed between parties with a view to getting
26 something to deadline 8 that acknowledges your concerns, and perhaps even
27 addresses them in a more agreed form of drafting. So is that something that
28 you'd be prepared to think about doing?

29 MR GRANT: Yes, sir, absolutely. We'll take that away and, conscious of where we are
30 in timing of this examination, the reason I don't want to offer an answer on the
31 hoof is because it's a delicate piece of drafting with various different
32 considerations, so better to present something thought out than me to make it up
33 and fudge it. So, yes, put it that way.

1 MR SMITH: Okay. Right. I'm going to go to Thurrock on this, and then obviously I
2 will come to the applicant.

3 MR STANDING: Thank you, sir. Ben Standing for Thurrock Council. So this has been
4 a cause of much debate within the council. Obviously, the ports have their
5 reasons for needing this. The council have wider concerns about what the
6 Tilbury Link Road is going to do when it does/if it does come forward, and the
7 benefits – well, where it needs to go, and how it's going to support future growth.
8 We obviously submitted our own wording for the requirement, and we've seen
9 the applicant's comments and we've also seen the comments of Port of Tilbury.
10 We are late on in the examination process and we want to be as constructive as
11 possible and try and work towards some kind of wording which can be agreed,
12 so we are prepared to accept what's there, except we're concerned that in 17.3(d)
13 what essentially happens is if the requirements in 3(a) to (c) aren't met, the
14 applicant gets to choose what goes on and the detailed design for the scheme is
15 being undertaken, it's being approved by the Secretary of State in accordance
16 with requirement 3.

17 So we propose replacing (d) with the following wording so that it says, 'In
18 the absence of that announcement, such other proposal that is submitted to and
19 approved in writing by the Secretary of State following consultation with
20 Thurrock Council, Port of Tilbury, London Ltd and any other party the Secretary
21 of State considers necessary,' and then at sub four, 'The proposal submitted
22 under subparagraph 3(d) above, must set out what the Secretary of State
23 considers to be the likely route and function of Tilbury Link Road.'

24 So we're taking the essence of what's there, but we're just taking away
25 the final decision from the applicant and giving it to a Secretary of State in line
26 with requirement 3, which is a difficult decision for the council to make because
27 we want to be a lot more prescriptive as to what's going to be there, because for
28 us it supports – and my colleague is going to come in on local plan and how this
29 fits in with the wider impact, but we're just trying to be eminently practical. So
30 if I could hand over to my colleague, Mr Stratford.

31 MR STRATFORD: Chris Stratford for Thurrock Council. Yes, I mean, everyone's
32 aware of the history of this roundabout, this junction. It was in the scoping
33 opinion just after the route announcement back in '17 and '18, then it was out
34 and now it's back in again about a year or two ago. What we want to make sure

1 is that the function of the junction permits the Tilbury Link Road and that doesn't
2 just mean the Tilbury Link Road to the west through the proposed freeport, it
3 also means the link to the east to future housing.

4 So the reason we've come up with this – because we have both the Port of
5 Tilbury and ourselves with slightly different drafting, and like Ben says, we're
6 trying to be constructive, so if this small adjustment can be made in addition to
7 what the applicant has put in under REP7-091 – sorry, I'm looking at the tracked
8 change version – then it might cover us. We didn't get to say anything about the
9 local plan. We're certainly not at reg 19 as you prescribed, but we will in the
10 next week or two be at reg 18, we believe, staffed, in other words. I know, but
11 it's quite important that the growth proposed under reg 18 is going to be options,
12 it's going to be settlement based. It's not going to be specific, but this is a pretty
13 key piece of infrastructure in order to facilitate both items. So hopefully the
14 drafting will help us move forward.

15 MR SMITH: Okay. Now, I do note, Mr Fox, that we still have your hand – is that a
16 residual hand or is that a request for a second intervention?

17 MR FOX: Sir, it was a request for a second intervention in response to Mr Grant, if that's
18 okay.

19 MR SMITH: Yes, I will indulge you.

20 MR FOX: Alright, thank you, sir. It was only in the context that this drafting was a joint
21 effort. I think it was just to note that we're just unsure where the fear is coming
22 from, from National England's point of view, because all subparagraph 3 is
23 trying to do is to give direction to National Highways about how to passively
24 provide for the design of that junction. It's not saying that the Tilbury Link Road
25 has permission or that it has consent. It's just providing passive provision for
26 that Tilbury Link Road to be able to come forward, but nothing in it will mean
27 that Tilbury Link Road and the effects of it aren't able to be assessed and
28 considered by Natural England as a consultee, whether that's through a TCPA
29 or it forming part of a wider DCO. So I think I just wanted to make that point,
30 that I can't quite see what the concern is, given how that paragraph sits in the
31 wider requirement.

32 MR SMITH: I have to say, speaking from the ExA's perspective here, and having mulled
33 over the requirement, my sense of it very much is that it's the DCO equivalent
34 of a safeguarding direction and not much more.

1 MR FOX: Yes, sir.

2 MR SMITH: And that just as a safeguarding direction can safeguard an alignment for
3 future road or rail infrastructure for decades without doing anything more than
4 saying this might be given, but absolutely without prejudice to the final approval
5 process that will determine where and on what terms that piece of infrastructure
6 is actually constructed. This felt to me like it was doing a very, very similar job.
7 I mean, does anybody have a substantially different view to what this
8 requirement ought to do or does do?

9 Because if 'that's all it is', then it doesn't appear in principle that it
10 particularly affects, for example, a concern about the adequacy of future EIA or
11 EOR or indeed, a concern about a future appraisal of effects on a potentially or
12 an actually statutory designated natural environment asset, or indeed anything
13 else, for that matter, because they would all need to come out in the wash when
14 a final approval was dealt with. It's just about making sure that things are not
15 constructed in ways that accidentally knock out the ability to deliver such a
16 thing.

17 MR FOX: I would agree, sir.

18 MR SMITH: Yeah, seeing lots of nods around the table, so it feels as though that is
19 reasonably clear between parties. I'm very conscious that Natural England
20 brought this issue initially to the table, so in fairness, I do need to ask them as
21 well, but before I do, Mr Fox, is there anything else that you need to say to close
22 your client's position down on that?

23 MR FOX: No, sir.

24 MR SMITH: Thank you very much. Okay, so, Natural England.

25 MR GRANT: Thank you, sir. I suppose the concern from Natural England is coming
26 from – if this is simply safeguarding, that's one thing, and I take Mr Fox's point
27 that this doesn't in any way authorise the link road along with that specific
28 alignment. That's not our concern. Our concern, I suppose, is whether we're
29 going to get to the assessment of the potential Tilbury Link Road and reach a
30 stage where we're told by, say, Highways or any other applicant that, 'Well,
31 we've made passive provision for it here, so the alignment has to go in here.
32 Basically, if you're going to have it, this is where provision has been made and
33 so this is where it suits it best,' or 'we've already sunk costs into designing it

1 around this site. So whilst it's not fixed, this is a material consideration in favour
2 of the link road going here.'

3 That's all we're trying to avoid. I don't suggest it authorises it. It's more
4 an implicit risk in safeguarding a specific place on a specific alignment. Is that
5 then going to be a material consideration which militates against other options
6 being considered down the line? That's what we're getting at. I hope that's
7 more clearly explained if my initial explanation wasn't clear.

8 MR SMITH: Thank you very much. Okay, in which case I need to return to the applicant
9 on this point.

10 MR LATIF-ARAMESH: Thank you, sir. Mustafa Latif-Aramesh for the applicant. To
11 start with Mr Fox's submissions on the issue about the environmental outcome
12 reports and whether that needs to be baked in, we're happy to consider some
13 drafting, but I should say that the purpose of subparagraph (d) on page 128 was
14 to account for the fact that there might not be something – the circumstances in
15 subparagraphs (a) to (c) may not exist, and so we could make this list much,
16 much longer, but it's, in our view, addressed through paragraph (d). We don't
17 have an objection, I don't think, to environmental outcome reports being catered
18 for and we'll take that offline with the Port of Tilbury.

19 Mr Fox's second submission was about subparagraph (c) and as he noted,
20 the Port Of Tilbury had suggested a reference to regulation 19 rather than 26.
21 Our view was that something should have gone through the process of a local
22 plan in order to meet the definition of a proposed Tilbury Link Road. Now, Mr
23 Fox very importantly said, under the NPPF, where there's an emerging plan, it's
24 given limited weight. That's completely correct, but that's not how this
25 definition works. We must treat it as the proposed Tilbury Link Road if it's
26 included in regulation 19 documentation. That's why we resisted it, is because
27 it's not as flexible as planning policy in saying you give it some weight. If we
28 had adopted what the Port of Tilbury had suggested, it must have been
29 considered, the proposed Tilbury Link Road, and we think in those
30 circumstances we'd fall back on (d) rather than (c).

31 MR SMITH: Yeah, I was going to ask you exactly that point. Is there anything
32 preventing a reg 19 proposal being considered under the remit of (d)? And it
33 seems not.

1 MR LATIF-ARAMESH: I don't think it's so limited. It's a proposal that is reasonably
2 considered to constitute the Tilbury Link Road, and that's my slight hesitancy
3 about trying to expand this list when the drafting is being put forward, to try to
4 give comfort that we all know what we're talking about when one of these
5 circumstances exist, but if one of those circumstances doesn't, then there is an
6 avenue for us having to consider it. On Natural England's point about material
7 consideration, I would just make one brief comment, which is provisions like
8 this have existed in other DCOs. So the Galloper Wind Farm DCO has passive
9 provision for Sizewell C.

10 The direct flexible generation plant DCO has passive provision for the
11 Lower Thames Crossing. Unfortunately, we have not relied on that as a material
12 consideration which weighs in our favour in the context of this scheme, but it's
13 just to give comfort, but that I don't think passive provision can be used in that
14 way when what we're seeking to do is provide passive provision to the extent
15 that we can within the terms of our DCO. The decision making process with the
16 Tilbury Link Road, as we've said, is entirely separate. It'll be subject to its own
17 considerations and optioneering.

18 On Thurrock Council's two submissions, on the first, which was to amend
19 the wording so that it's a proposal which is endorsed by the Secretary of State
20 following consultation with a number of different parties, we will come back to
21 that in writing, but I would be concerned that what we're doing is introducing
22 an administrative step before we can consider a proposal, and it seems to me that
23 that might be unnecessary, where paragraph (d) already requires us to consider
24 something. It is correct to say that National Highways would make the
25 determination under paragraph (d), but it is the strategic highways company for
26 England. The requirement does say 'reasonably considered', and its decisions,
27 like any public body decision, are amenable to challenge.

28 So we don't want to introduce a step which means we have to get the
29 Secretary of State's approval before we can consider a proposal where we are
30 necessarily acting reasonably. There is some documentation available about the
31 proposed Tilbury Link Road, even though it's at a preliminary stage, and so I'm
32 quite reticent to introduce further steps that would be required, where we've got
33 – if (a) to (c) exists, that's a clear indication. If it doesn't, then we'll act

1 reasonably. We'll take into account the full circumstances and provide passive
2 provision for that, so far as consistent with subparagraphs 1 and 2.

3 MR SMITH: Okay, I think we can move on from that item. Now, I'm going to very
4 briefly name –

5 MR FOX: Sorry, sir, do you mind if I quickly come back on something? Is that okay?

6 MR SMITH: Well, let's be clear that the operating ground rules here are that when
7 submissions have actually been made that they are responded to by the author of
8 the proposal in front of the examining authority, which in this case is the
9 applicant. I have asked the applicant to respond. You may not fully agree with
10 what they say. You do have an opportunity to respond in writing, and in the
11 interests of trying to finish this hearing at a moderately sensible hour, I am
12 actually going to ask for late afterthoughts and reconsiderations and second takes
13 to please be put in the written submissions. Is that okay?

14 MR FOX: Okay, sir.

15 MR SMITH: Thank you. So on that basis, I am then just going to briefly name check
16 requirement 18. Now, we did have a very substantial discussion of Orsett Cock
17 and all matters bearing upon it, including a view into the drafting of this
18 requirement in issue-specific hearing 13. My sense would be that unless
19 anybody has very high-level issues of principle in conflict that they don't believe
20 got ventilated at that hearing, that we are at least at a point where requirement
21 18 can now be dealt with in writing. Does anybody wish to put further matters
22 to us on that other than in writing? It's perfectly fine to deal with further points
23 of detail there, but personally I don't think it needs further discussion.

24 So I'm then finally, on this item, going to move to essentially a
25 precautionary matter, which was just to ask, before we leave, the traffic and
26 transportation effects as provided for in the draft order in requirements, whether
27 there is anything else in relation to draft provision for ports and/or local access
28 that is, as a matter of high-level concern, multiparty complex in dispute that is
29 sought to be introduced.

30 Now, I do again see Mr Fox for the Port of Tilbury – because I'm very
31 conscious I asked him to defer an item to this. Is anybody else wanting to speak
32 to this? I do see Thurrock, I do see Kent and I do see Gravesham as well. Okay,
33 what I think we'll do is I will go to Thurrock, then Gravesham, then Kent and
34 then I'll come to the Port of Tilbury. Okay, Thurrock, please.

1 MR STANDING: Ben Standing for Thurrock Council. I'll be very brief. There is an
2 agreement between the other highway authorities in relation to the Asda
3 roundabout requirement which we support. Nothing further to say, but just to
4 flag there's agreement on that. There is some disagreement over the wider
5 highway network monitoring and mitigation provision, which is the Silvertown
6 requirement. You've seen the wording that we've submitted. We've seen the
7 wording which National Highways has put forward at your request, obviously
8 on a without prejudice basis to their position and I've seen the amendments that
9 Havering have made to that. We will look at that. We are concerned primarily
10 with what would be done and when.

11 So we've referred to material worsening in the requirement that we put
12 forward. We obviously discussed that in relation to Orsett Cock, and if the desire
13 is to have different wording, then I can look at the wording that National
14 Highways drafted and Havering have commented on and look to circulate
15 something, but we do believe that it's a very important point. We are concerned
16 about the impact on the wider highway and we believe it is important that you
17 have confidence what the impacts will be of LTC on the wider network. So
18 nothing further to say on that, just to say we will look into that and look to submit
19 something.

20 MR SMITH: Thank you very much. Does that conclude Thurrock's case? Just making
21 sure I didn't have somebody else hovering in the background with a set of
22 content to bring forward. Can I go to Mr Bedford now for Gravesham Borough,
23 please?

24 MR BEDFORD: Thank you, sir. Michael Bedford, Gravesham Borough Council.
25 Hopefully I can be very brief. Two topics: Silvertown Tunnel, which Mr
26 Standing has just addressed. We had put forward some wording at an earlier
27 stage in our representations, but we're conscious that you've had a joint position
28 statement from, as it were, those bodies north of the river, and what we were
29 looking at is whether we could narrow the options that are on the table in front
30 of you by getting behind somebody else's representations.

31 In principle, we were happy to get behind the joint position statement, but
32 when we thought about that, we had not seen the Havering comments on the
33 applicant's without prejudice version, so what we're going to do, I think, is look
34 at the position again with a view to trying to, in a sense, I say, put a position in

1 front of you which is in line with that, that somebody else has put forward, but
2 whether that's the Havering variant of the applicant's – or whether that's the
3 joint position statement, I can't yet tell you, but certainly I say we're trying to
4 narrow what's left on the table for you. That's the Silvertown tunnel.

5 And then the second point to raise, if I can just say three words, Blue Bell
6 Hill, and you'll know that we have put forward a requirement, I think we
7 numbered it 24 in our representations. We still think that that has value and we
8 are hoping to leave that on the table for you as a consideration. Thank you, sir.

9 MR SMITH: Thank you very much for all of those submissions. Okay, so if we then
10 move on, can I go to Kent County Council? And I suspect those three words are
11 going to come back.

12 MR FRASER-URQUHART: Well, if it was a hand of poker, you'd have won on this
13 occasion, sir, because you're quite right. I do want to just remind the examining
14 authority, if I may, that the issue of Blue Bell Hill remains. Our representation
15 7198 sets out our suggested requirement on this matter, and I probably don't
16 need to say any more than that, and simply, on the matter of the Silvertown
17 Tunnel requirement with respect to monitoring and so forth, again, we've made
18 comment on that on the proposed requirement that the applicant put forward on
19 a without prejudice basis, again, we've made reference to that in our
20 representation 7-198. We'll try and be part of the ongoing discussions about
21 that, but again, sir, it's really just to put down a marker in your notes when you
22 come to consider it that that matter is still on the table as far as we're concerned.
23 Thank you, sir.

24 MR SMITH: And those things are noted, Mr Fraser-Urquhart. Right, now, just a quick
25 check, given that there seems to be very wide buy-in and also that the name of
26 the London Borough of Havering has been widely taken in vain, do you wish to
27 make any points?

28 MR DOUGLAS: Daniel Douglas for the London Borough of Havering. I'd probably
29 simply refer the panel to our submission at deadline 7, REP7-207, in relation to
30 our position on a Silvertown-style requirement, which still stands.

31 MR SMITH: And it still stands and it's still for careful consideration by us, but like many
32 good things at this stage, is a matter that's essentially mainly in the written
33 stream rather than the oral. Okay, and then I do need to call finally, Mr Fox, for
34 Port of Tilbury, London Ltd.

1 MR FOX: Thank you, sir. Mr Fox on behalf of the applicant – on behalf of the Port of
2 Tilbury. Apologies, again.

3 MR SMITH: You can build a road if you want to give up water.

4 MR FOX: Ms Tafur earlier raised the point that the applicant had and it said 96
5 submissions responded to the suggested Asda roundabout requirement, or
6 essentially northern construction traffic movements requirement, and it's a long
7 table, but I think I can probably summarise it as them saying, 'Well, this matter
8 is essentially dealt with through the measures that are in the outlying traffic
9 management plan for construction.' So I think to that we would say we
10 recognise that the management plan sets out a range of measures to be taken to
11 manage LTC construction traffic. However, as the applicant has always
12 acknowledged, and the management plan itself acknowledges, LTC construction
13 is a complex matter with a lot of variables such as traffic management measures.

14 It's taking place in the context of access to the northern compound being
15 taken on the SRN, on ports access roads, which obviously has the potential to
16 affect regional/national economy. So whilst we recognise the various
17 commitments that are in the outline traffic management plan, I think our concern
18 is, as we've said throughout, is that they are too broadly drafted and reference a
19 number of things that could happen through the traffic management forum.
20 Ultimately, however, the way the mechanism is set up is there's lots of talking
21 at the traffic management forum, but it's left to the applicant to decide what to
22 do, and that's why we've been trying to seek an additional set of protocols for
23 the applicant to manage port-specific impacts, where we recognise that it's not
24 just a port-specific impact.

25 In the applicant's own submissions at deadline 6, it's shown that there are
26 impacts arising for the northern tunnel compound activities and construction
27 movements associated with it. I think that demonstrates that there is a need for
28 dedicated suite of mitigation measures likely to be required for those
29 construction activities, and what our requirement does is ensure that there is a
30 package that is specific to the impacts that are caused and which recognises from
31 the outset that there is a need to ensure the servicing impacts aren't caused.

32 We therefore consider that, importantly, this requirement meets the test
33 because it's precise in that it ensures specific mitigation measures responding to
34 specific modelling are undertaken, rather than something that happens

1 generically through the wider TMF process, and it's enforceable because it's the
2 failure to implement the mitigation measures can then be something that's
3 enforced as something agreed pursuant to the requirement, rather than reverting
4 to the endless talking shop that the TMF could – and I don't mean that
5 pejoratively, but that could end up being what it is.

6 So I think, given the impacts in this area, the transport, air quality, noise
7 and socioeconomic impacts of delays on the network in the northern half of the
8 scheme, we consider that a requirement is necessary, and ultimately this builds
9 on the measures in the plan to have something specific dealing with an impact
10 that has already been recognised by the applicant.

11 MR SMITH: Is that you concluded, Mr Fox?

12 MR FOX: Sir, well, I did also have something we wanted to say on the wider networks
13 requirement, if you would allow me to.

14 MR SMITH: By all means, yes.

15 MR FOX: We noted what the applicant has said in its submissions in the wider networks
16 position payment paper, and there was just a couple of points I wanted to make,
17 which is, first of all, throughout that policy paper, unless we missed it, we
18 couldn't see any reference to the specific draft NPS policy 5.280, which we have
19 mentioned before, and I know there's the view of what has [inaudible] a policy,
20 but I think it's right to say that the draft NPS policy is an important and relevant
21 consideration. Importantly, it's not inconsistent with the current NTS, it just
22 takes it further.

23 So I don't think it's enough to simply say that the NPS is what it is as it is
24 currently, and one only has to look at all the various decisions that have been
25 made over the past couple of years in the energy space which have all looked at
26 the emerging energy NPSs, and I think I would just like to make the point that
27 all parties, I think, understand the differences between Silvertown and Lower
28 Thames Crossing, and I think the key question is about what's appropriate for
29 this project, rather than spending too long focusing on how this is or isn't
30 equivalent or applicable to what was done on Silvertown.

31 I think the applicant's position seems to be, in summary, that the DCO
32 shouldn't be used to upend the risk and government spending decisions
33 processes, that the impacts of the LTC might only be one reason why there are

1 material worsening on the network and it's for the government and National
2 Highways more widely to balance those factors.

3 The transport modelling is always uncertain and the policy guidance
4 doesn't require those matters outside the realms of the uncertainties, considering
5 the model for you to be dealt with, and as such the best a requirement can do –
6 this is what Silvertown does, is to commit to working with the highway
7 authorities and to transparently monitor future conditions. I think what we are
8 trying to achieve with this requirement from the ports and Thurrock and TEP is
9 ensure that the decision making is still kept with the Secretary of State.

10 The Secretary of State would, in considering matters brought to pursuant
11 to this requirement, be able to be mindful of the Government's wider spending
12 priorities and programmes in deciding whether they agree that mitigation
13 measures are brought forward.

14 Furthermore, I know there's nothing in the requirement that would stop
15 the applicant from being able to provide its own considerations when submitting
16 a mitigation measure to the Secretary of State for decision. All that the
17 requirement does is ensures that this consideration actually happens in the
18 context of this scheme, rather than just saying 'this is all part of the wider
19 network management.' It's ensuring that mitigation is able to be put in place
20 where it can be shown that it is to do with the scheme, rather than waiting for
21 the prolonged route, strategies and risk approach which seems to be suggested
22 by the applicant.

23 I think, given the potentially prolonged periods before this project
24 commences construction and ultimately opens, I think it's proportionate to say
25 that we need to look at the modelling, given all the uncertainties that we
26 discussed yesterday, to make sure that the impacts of this scheme are understood.
27 The applicant, both yesterday and generally, has identified that there are
28 uncertainties and there are concerns about network performance that might be
29 exacerbated in the future, and this requirement is just about ensuring the scheme
30 suitably reacts to that at the point that it's opening. Now, I think what I would
31 say is in the post opening period we recognise the applicant's concerns that I've
32 summarised, and I think that we would be open to tweaking the amendment of
33 subparagraph 6(e) of our drafting and the joint drafting.

1 I speak only on behalf of the Port Tilbury here, that 6(e) can be amended
2 to refer to submitting the necessary mitigation measures for approval to the
3 Secretary of State and then replicating subparagraphs 3 and 4, and that means
4 that both in the pre and post-opening situation, if the Secretary of State is
5 ultimately making a decision in the context of the wider programmes, and so we
6 think that we recognise where the applicant is coming from, but our requirement
7 as drafted and with those amendments that I just went through, it doesn't upend
8 – there isn't a government spending decision.

9 It allows for the fact that LTC might be one factor and the Secretary of
10 State can then determine whether this is actually an impact to LTC or not and
11 allows for the most up to date form of modelling to be taken into account. I
12 think essentially those are the criticisms, but the requirement we suggest doesn't
13 seek to upend any of those concerns that the National Highways have.

14 MR SMITH: Okay, right, I'm going to turn this over to Mr Latif-Aramesh unless there
15 is anybody else asking to come in, which there isn't. So, Mr Latif-Aramesh.

16 MR LATIF-ARAMESH: Thank you, sir. Mustafa Latif-Aramesh for the applicant. We
17 are not going to rehearse our wider network impacts position. There'll be a
18 further submission relating to wider network impacts at the next deadline, so we
19 don't propose to go through that. I think our position is set out in our
20 submissions.

21 MR SMITH: Indeed. I'm grateful.

22 MR LATIF-ARAMESH: On the Asda roundabout, just two brief comments and then Mr
23 Tafur will go into some of the further points on an Asda roundabout requirement
24 and how it relates to the existing outline traffic management plan for
25 construction. The first point is that the examining authority rightly raised an
26 issue about usability of management documents, and we think this is a good
27 example of where creating a requirement to deal with construction traffic
28 alongside an existing construction traffic requirement would actually not aid
29 usability. It would confuse the management plans that would be required in
30 relation to the Asda roundabout.

31 Table 4.2 of REP6-123 goes through line by line the requirement proposed
32 by the Port of Tilbury and others on the Asda roundabout explaining how it's
33 secured under the outline traffic management plan for construction. It is
34 important that that point about usability is made, because whilst it's important

1 to consider the impact on the Asda roundabout and its appropriate management,
2 and we've set out how we would anticipate that working, the wider
3 considerations also need to be taken into account and producing a requirement
4 has the potential to, I think, run afoul of the comments made about usability. I'll
5 hand over to Ms Tafur just to flag – we haven't forgotten about the three words,
6 and Dr Wright will address you on Blue Bell Hill after Ms Tafur has addressed
7 you.

8 MS TAFUR: Isabella Tafur for the applicant. Just responding to the point made by Mr
9 Fox that there are a lot of variables and assumptions in the construction traffic
10 modelling. There are inevitably, in modelling exercises, variables and
11 assumptions. We say, in respect to the construction traffic, they're all highly
12 conservative, the assumptions that have been input into the model. Also, while
13 there may be a number of assumptions and variables, there are also a suite of
14 measures available to the applicant to control, monitor, remediate any issues that
15 do arise, and they're generally set out clearly in the outline traffic management
16 plan for construction, but just to touch on – the traffic management forum is to
17 be held monthly, involving relevant stakeholders.

18 It is to include – so the contractor is required by the outline plan to provide
19 a monitoring system which will capture real-time data that provides
20 confirmation that the control measures are effective and that will include vehicle
21 arrival and departure times from compounds, and in the event, for example, that
22 arrival or departure times are causing problems that weren't foreseen, there'll
23 then be mechanisms to further control and mandate arrival and departure times,
24 and effectively it's paragraph 2.4.9 of the outline plan, explains that the data
25 that's gathered in the monitoring which will be reported monthly to the traffic
26 management forum will then be used to guide actions to resolve any unforeseen
27 issues arising as a result of construction traffic, so there is a very robust process
28 to identify controls, monitor them and ensure, subject to engagement with
29 relevant stakeholders, that remedial steps and actions are taken in response to
30 any issues that arise.

31 DR WRIGHT: Sir, Tim Wright for the applicant, and I'm not going to re-present our
32 previous submissions on Blue Bell Hill. I'm sure you don't want that, but I did
33 want to respond to the requirement that was put forward by Kent County Council
34 at deadline 7 in their submission REP7-198. It goes substantially further in our

1 view than the previous proposition that had been put forward by Gravesham
2 Council in their submission REP4-032, in that it absolutely obligates the
3 Department for Transport to fund the Blue Bell Hill improvement scheme while
4 notionally placing this obligation on National Highways. All of National
5 Highways funding is derived from the Department for Transport, so the
6 proposed requirement would therefore remove the ability of the Department for
7 Transport to make separate decisions about the two proposed projects, which
8 would be inappropriate. That's all, sir.

9 MR SMITH: Okay, now, we have a mildly discombobulated Kent, so I do have to –

10 MR FRASER-URQUHART: I'm not going to get into detail. We don't accept that
11 interpretation. We've deliberately built into the requirement measures for
12 flexibility in case differing funding arrangements were to come forward. I'm
13 not going to go into any detail other than serving to invite you to read carefully,
14 as I know you will, the requirement, and read it with that submission, that there's
15 flexibility built into it in mind.

16 MR SMITH: Yeah, and indeed this is now one of those matters in the famed adjudication
17 box as I see it. We'll have to read that and read the applicant's submissions with
18 care and take the view that we take. Okay, now, Mr Latif-Aramesh, is that the
19 totality of your responses on that group of items?

20 MR LATIF-ARAMESH: Thank you, sir. Mustafa Latif-Aramesh for the applicant.
21 You'll be pleased to hear, yes, we don't have any further submissions.

22 MR SMITH: In which case, ladies and gentlemen, that does bring us to the end of agenda
23 item 5. Now, I am very conscious of time and the part-heard nature of
24 issue-specific hearing 12, some headway against which we have already made,
25 but other matters of which are outstanding. I'm looking now at agenda item 6
26 and I had what amounted to a speculative item on the examining authorities part,
27 which was our opportunity to bring in front of you for discussion remaining
28 DCO matters arising from the issue-specific hearings last week and this and the
29 open-floor and/or compulsory acquisition hearing, should we wish to do so.

30 My colleagues and I have a very short table with six items in it, frankly –
31 and they are all points of detail, I have to say. In the interest of proper and fair
32 discussion of controlled documents, if you will indulge us, I'm going to suggest
33 that we form those into actions and move on, on that basis, because otherwise I
34 think we will sink into the weeds and we won't deal with the matters that we

1 need to deal with. Now, I'll just check with my colleagues, are there any
2 particular items you wanted to prioritise out of that list and bring forward,
3 bearing in mind the passage of time?

4 So we are then on to agenda item 6(b). Now, this was essentially a
5 business item, which was to check with the applicant, given that, amongst other
6 things, we had made a procedural decision, slightly varying the deadline
7 structure to facilitate submission of a preferred draft DCO and control
8 documents set through the interposition of deadline 9(a), that would allow other
9 interested parties an opportunity to comment before the applicant's own final
10 concluding submissions at deadline 10 have to be made, which, of course, are
11 made on the last statutory day available, so there is no possibility to vary the
12 timing of deadline 10.

13 Noting that we made that procedural decision some time ago – about two
14 and a half weeks ago – I note that nobody has surfaced it in any of the hearings
15 up until now, but it is usually a very bad idea for examining authorities to infer
16 joy from silence. There is the issue of the Dropbox, but I do just want to check,
17 is everybody clear about the fact that that change has been made and is
18 everybody content to observe it, live by it, deliver to it? I'm not seeing any
19 hands. Mr Stratford.

20 MR STRATFORD: Thank you, sir. Well, it's stating the obvious – we accept it,
21 obviously, but given the list –

22 MR SMITH: It's tight, we know.

23 MR STRATFORD: – of documents at D9, we have four days to actually – and we have
24 agreed, I believe, that when they're submitted to you, they're submitted to us
25 through a Dropbox or something.

26 MR SMITH: And this was what I finally wanted to touch on, and I know Ms Laver was
27 concerned about as well, that we need to know whether that distribution
28 arrangement we did ask the applicant to look into is something that is going to
29 be able to be facilitated, because, frankly, it makes the difference between a
30 workable process and one that will be extraordinarily difficult for a number of
31 interested parties. Ms Tafur, I believe that was your item, but if another member
32 of the team is speaking on this, do let me know.

33 MR LATIF-ARAMESH: Sir, if I may, I have just asked our team – Mustafa
34 Latif-Aramesh, for the applicant – we will do that i.e. the provision of the

1 documents at the deadline, noting there are four or five days for the responses
2 on those. So when they are submitted to you, arrangements will be made to
3 provide them to the list of parties that we went through last week.

4 MR SMITH: Excellent.

5 MR LATIF-ARAMESH: And one request we would make is whether they could also
6 reciprocate so that we have an opportunity to respond to their comments, noting
7 there will be a number of documents and the applicant will have to consider
8 them all, so it'd be quite useful to see.

9 MR SMITH: For deadline 10.

10 MR LATIF-ARAMESH: For deadline – sorry, for the documents submitted at deadline
11 9.

12 MR SMITH: 9.

13 MR LATIF-ARAMESH: Yes.

14 MR SMITH: Right, okay. That seems like an eminently fair and reasonable request,
15 recognising that there is no more time and there are jobs to be done and there is
16 a need to facilitate the best engagement around this document set. I think to the
17 extent that we have all of the relevant parties in the room, it does seem clear, but
18 I think we should probably take an action on that point and ask the principal
19 local authorities and the ports, the same list, to directly contact the applicant.

20 MR LATIF-ARAMESH: Thank you, sir. Mustafa Latif-Aramesh for the applicant. I'm
21 grateful.

22 MR SMITH: In which case, is there anything else that anybody wishes to raise on item
23 6(b), the mechanics of all of this? Yes, and we do have London Borough of
24 Havering.

25 MS THOMSON: Morag Thomson, Havering. Sir, could you just confirm when the
26 action points that you're going to be converting your questions to might be
27 available and what the deadline will be for response to them?

28 MR SMITH: Yes, the deadline will be deadline 8, I'm afraid. We will be endeavouring
29 to issue those tomorrow. I say endeavouring simply because it's not completely
30 within our control. They have to pass through a publication process that the
31 planning inspectorate runs for us. We don't control the pipe, but we will do our
32 best to issue them tomorrow, which really takes me on to agenda item 7, which
33 is next steps, and I will just briefly refer to the action points because we have
34 been keeping those in the background. So if I just find those. Now, at present,

1 and I will summarise these very briefly orally. A little more detail may emerge
2 when they are finally confirmed and emerge in writing.

3 The first is an action on the applicant in terms of the register of
4 requirements and this matter of confirming whether additional physical locations
5 such as the offices of Thurrock Council, Gravesham Council or the London
6 Borough of Havering and/or the London Borough of Havering could be
7 available for the deposit of documents, taking into account the practicability
8 point that Mr Latif-Aramesh raised about scale.

9 The second action point, commence and begin, and for the applicant to
10 provide a commentary as to any implications relating to the timings for
11 commencement or beginning of the development and associated timings with
12 particular reference to the question around environmental surveys and HRA
13 data.

14 The third is to the applicant, again, I'm afraid, and this is related to the
15 arbitration process point with the Port of London authority. The applicant,
16 please, to provide – well, these are all deadline 8, by the way – to provide a
17 commentary in respect to the arbitration provisions in paragraph 99 of schedule
18 14, part 8, protective provisions, for the Port of London Authority, and in what
19 context it was envisaged, those would operate with, shall I call it, 'calling
20 power', to the Secretary of State, which, again, the authority can comment on at
21 deadline 9.

22 Action 4 to the applicant by deadline 8. Consider and update if necessary
23 the drafting in paragraphs 99-3 99-6 of schedule 14, part 8, protective provisions
24 for the Port of London Authority. Now, that's essentially – we might consolidate
25 those two into a single one. I mean, it responds to the fact that we trust – will
26 be some further discursive process between yourselves and the authority.
27 Thurrock Council re-provision of Gammon Field and the setting out of concerns
28 with reference to article 56.

29 Action 6, the applicant Gravesham Borough and Thurrock Council,
30 worker housing. The applicant to provide a proposed update of provision and
31 that's at deadline 8 and the local authorities to provide feedback at deadline 9.

32 Then there was the question of the removal of temporary works. We have
33 here action 7 to the applicant, to consider the current drafting of article 35.5(g),
34 with particular reference to the point of landowner agreement, whilst also

1 somehow drawing in questions of the public interest, the duties and powers of
2 the local planning authorities and also ensuring that what may be retained on a
3 permanent basis, but wasn't assessed as such, somehow is either separately
4 approved or alternatively can be demonstrated to have remained within the
5 Rochdale envelope.

6 Action 8, on the applicant construction/traffic management, and this was
7 the issue about considering and commenting on the possible need for a sub-
8 iteration of the CTMP covering preliminary works traffic to be consulted upon
9 with the ports and the highway authorities subject to what was described by the
10 Port of Tilbury as an internal approval process.

11 Natural England. Action 9, Tilbury Link Road and here what we are
12 seeking is initial drafting in respect of amendments to subparagraph 3 of
13 requirement 17, and this is the view that Natural England might be seeking either
14 a softening or a removal of specific references to particular types of project that
15 might constitute the road. Although that being said, having moved on from the
16 making of that particular action, we then did discuss in much broader terms the
17 proposition that what was being provided was essentially not much more than
18 the safeguarding direction, and if, on reflection, Natural England come to agree
19 with that point, then there's no need to provide detailed drafting, and then finally,
20 and I won't belabour these because they are minor and on points of detail, there
21 are additional examining authority DCO log items that we will add as individual
22 line items to the list. So those will be emerging, we hope, tomorrow.

23 Now, in relation to actions, I think it's also worth noting that there are
24 published actions from issue-specific hearing 11 and from part 1 of
25 issue-specific hearing 12. The issue-specific hearing 11 actions are in the
26 examination library at EL-084A[?] and from part 1 of ISH 12-REL-085A[?].
27 Could I ask the case team – I don't normally verbalise these matters over air in
28 a hearing, but can we make sure that the banner is updated to specifically draw
29 attention to the fact those had already been published? Yes, and I will also then
30 say that the action list for issue-specific hearing 30 and open-floor hearing 5 are
31 also published.

32 They are in the document set. So if you go to the documents tab on the
33 website you'll see them at the top because they are the most recently published
34 documents. They're not yet in the examination library, but again, they have been

1 published [for at least a day?] and are there ready for everybody to access, and
2 we will try and get the banner and the links to those published as soon as
3 reasonably possible. Right, so let's then move back to the next steps in relation
4 to this particular hearing, which is simply to observe that having dealt with all
5 of the main agenda items in it, I am now going to bring issue-specific hearing –
6 MR STRATFORD: Sir, excuse me. Sorry, I was waiting for a pause. Would you mind?
7 Two small points. I don't know whether you've included in your actions the
8 need for us to submit additional drafting concerning the TLR that Ben read out.
9 MR SMITH: Yes, that's a point. We may have missed that one.
10 MR STRATFORD: I mean, we're going to do it anyway, but if it was in an action, it
11 would be...
12 MR SMITH: You would like it to be. Just verbalise that one again briefly, Mr Stratford,
13 just to make sure that it's captured.
14 MR STRATFORD: We had some additional drafting to the National Highways
15 requirement for Tilbury Link Road, where we were trying to supplement item
16 sub 4, I think it was – sub D. I mean, we can do it, but I just –
17 MR SMITH: No, thank you for the reminder and hopefully we can absorb that.
18 MR STRATFORD: The other point is the reference numbers you gave for those agendas
19 are EV/EL and also the banner doesn't appear to have ISH, the ones for CA-5.
20 MR SMITH: It doesn't?
21 MR STRATFORD: No.
22 MR SMITH: No, not yet. They're working on it, but what you will see is, if you go to
23 the documents tab, then you go to it and all of the latest documents are displayed
24 in the display immediately beneath and you'll see them there, they just haven't
25 yet been hyperlinked to the top of the banner. Okay, apologies, is there anything
26 else that anybody wishes to raise before I move to close this particular hearing?
27 MS TAFUR: Sir, Isabella Tafur for the applicant. Could I just ask you, just so that the
28 right people come back after the break, would you agree that we have covered
29 the outline traffic management plan for construction and the framework
30 construction travel plan and don't need to return to those –
31 MR SMITH: My intention was very much that, yes, we have – now, unless anybody
32 gravely disagrees, in which case, please speak up, if there are other items that
33 need to be brought in, but my intention was to try and cover all of those, both
34 requirement and plan in the run. So those items are green on my list. Okay, so

1 yes, you don't have to bring your relevant experts on those. With no further ado,
2 I am going to close issue-specific hearing 14, which, with the best of intentions,
3 would have been our last issue-specific hearing, but as it turns out, the remainder
4 of issue-specific hearing 12 will be our last hearing. We will return to it after a
5 15 minute-minute break, so we will resume at 5.00 p.m. Thank you very much,
6 ladies and gentlemen.

7

8

(Meeting concluded)