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MS LAVER: Good morning, everyone, and welcome to issue-specific hearing 12 for the Lower Thames Crossing. I'm Janine Laver, member of this panel, and I'm in the chair this morning. I just want to check with the case team that the livestream is operational. Good stuff. We are being recording and livestreamed, so onto panel introductions. As I said, I'm a member of the panel and I'm the chair this morning. My colleague, Mr Smith, will take the chair this afternoon. I'll hand you to my fellow panel members to give introductions.

MR SMITH: Good morning, everybody. Rynd Smith, panel lead, and as Ms Laver said, I will be relatively quiet this morning, but I will be in the chair this afternoon. Thank you very much.

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

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

MR PRATT: Good morning, everybody. Ken Pratt, panel member.

MS LAVER: Okay, so we are the Examining Authority for the application. Assisting us in the room today are case team and operations colleagues: Martin Almond and Spencer Barrowman, sitting at the back, and with Ryan Sedgman in the virtual space.

So in terms of housekeeping matters, can we have telephones switched to silent, please, and microphones off for those who are in the virtual room when you're not speaking? There are no planned fire alarms today, so if we hear a fire alarm, we should just assume we need to evacuate by the relevant evacuation points, and the meeting will follow the agenda that was published on the National Planning Infrastructure website. The examination library reference is EV-085; it would be helpful if you have that in front of you.

We're aiming this morning to delve into impacts on the delivery of public open spaces, community funds and section 106 agreements, as well as local commitments, and then this afternoon we're aiming to delve into the control document set. So I'm going to go through the attendance list of who we feel that we have participating today, and I'll start with Essex County Council, please.

MR WOODGER: Thank you, and good morning, everyone in the actual room. My name is Mark Woodger. I am a principal planner and I work in the growth and

1 development team at Essex County Council. Thank you for introduction; it's
2 my intent to speak as necessary, primarily upon items 3(a) and (b) this morning.
3 Thank you.

4 MS LAVER: Thank you. Can I go to Kent County Council, please?

5 MR FRASER-URQUHART: Morning. Andrew Fraser-Urquhart, King's Counsel, for
6 Kent County Council. I'll be assisted today by Mr Joseph Ratcliffe, who is the
7 transport strategy manager, and Ms Nola Cooper, who is a principal transport
8 planner.

9 MS LAVER: Thank you very much, so to Gravesham, please.

10 MR BEDFORD: Morning, madam. My name's Michael Bedford, King's Counsel, and
11 with me today in the room is Mr Alistair Lewis, who is a partner and
12 parliamentary agent with Sharpe Pritchard, and I think virtually we should have
13 – though I'm not sure we do have – I was hoping we might have Wendy Lane,
14 who is the [inaudible] director, but it may be that...

15 MS LAVER: Yeah.

16 MR BEDFORD: She is there, right. Well, there we are.

17 MS LAVER: Seems to be trying.

18 MR BEDFORD: Yes. There we are, so that's the team from Gravesham today. Thank
19 you.

20 MS LAVER: Thank you, and do we have a representative for Medway Council, I believe
21 virtually?

22 MR BULL: Good morning, madam. My name's Andrew Bull. I'm the only person
23 representing Medway Council today.

24 MS LAVER: Is it your intention to speak on the items in the morning, Mr Bull, or the
25 afternoon, the control documents?

26 MR BULL: I'd like to speak at item 3(c), please.

27 MS LAVER: Okay, thank you. Okay, so London Borough of Havering

28 MR DOUGLAS: Good morning, madam. Good morning, everyone. My name's Daniel
29 Douglas, representing the London Borough of Havering, and I'll just invite my
30 two colleagues next to me to introduce themselves.

31 MS THOMSON: Morning. Morag Thomson, solicitor advising London Borough of
32 Havering.

33 MR WHITE: Yeah, good morning, madam. Lee White, representing London Borough
34 of Havering.

1 MS LAVER: And Ms Basford, online.

2 MS BASFORD: Lynn Basford, representing London Borough of Havering. Thank you,
3 madam.

4 MS LAVER: Thank you very much, and Thurrock Council, please.

5 MR MACKENZIE: Good morning, ma'am. George Mackenzie of counsel, instructed
6 by Thurrock Council. To my right is Adrian Neve, transport planning director,
7 and Chris Stratford, senior DCO consultant, both for Thurrock Council. You'll
8 be hearing from both of them today, and if I can take a moment to introduce
9 those from Thurrock Council who are in the digital room, firstly, those whom
10 you will hear from today, and in no particular order: Ben Standing, solicitor and
11 partner at Browne Jacobson; Henry Church, our compulsory purchase lead;
12 Steve Plumb, who was in person yesterday, online today, chartered landscape
13 architect and ecologist; Johnny Riggall, climate change advisor; Richard Havis,
14 archaeological advisor; Darren Wisher, socioeconomic advisor. And then also
15 online but who we don't expect to speak today, but they may and I'll bring them
16 in if I need to, with your permission: Mat Kiely, transportation services strategic
17 lead, Sharon Jefferies, major infrastructure director, and Tracey Coleman,
18 interim chief planning officer at Thurrock. Thank you.

19 MS LAVER: Is there anybody left in Thurrock today?

20 MR MACKENZIE: No.

21 MS LAVER: Thank you very much. I think that gets me through the councils; I don't
22 believe we've anyone for Transport for London present today, so Shorne Parish
23 Council. Ms Lindley, are you in the virtual room?

24 MS LINDLEY: Good morning, madam, yes. Susan Lindley, Shorne Parish Council.
25 Just generally observing and see what happens. Thank you very much.

26 MS LAVER: Okay. Thank you, so onto other parties, Port of Tilbury London Ltd.

27 MS DABLIN: Good morning. Alison Dablin, appearing for the Port of Tilbury, and we
28 intend to speak on agenda item 4 today. Thank you.

29 MS LAVER: Thank you, and the Port of London Authority.

30 MS DILLISTONE: Good morning, madam. I'm Alex Dillistone, here on behalf of the
31 Port of London Authority. I'm from Winckworth Sherwood Solicitors.

32 MS OWEN: And good morning, madam. I'm Lucy Owen from the Port of London
33 Authority.

34 MS LAVER: Presumably speaking on item 4.

1 MS DILLISTONE: Indeed.

2 MS LAVER: Thank you very much. Is there anybody from the Thames Action Group
3 present today? Not seeing any hands, so Mr Holland, you're representing
4 several parties today.

5 MR HOLLAND: Morning, madam. Mike Holland, Holland Land & Property,
6 representing a number of affected landowners north of the Thames, generally
7 observing today but I may wish to raise my hand, and excuse me at 3.00 p.m.
8 because I have to dip off for another National Highways A46 improvement
9 scheme for half an hour. Apologies in advance.

10 MS LAVER: Okay. Thank you, and is there anybody from Northumbrian Water?

11 MS ANDERSON: Good morning. My name's Hazel Anderson from Winckworth
12 Sherwood, and I'll be representing Northumbrian Water today. I don't imagine
13 we need to say anything this morning, but we may wish to participate this
14 afternoon for item 4. Thank you.

15 MS LAVER: Thank you. Are there any other parties that I haven't called upon who
16 wish to speak? Resounding no, so over to the applicant, please.

17 MR TAIT: Thank you, madam. Andrew Tait KC, for the applicant. To my right, Mr
18 Mustafa Latif-Aramesh, partner at BDB Pitmans, Suki Coe to my left, who is
19 the DCO and planning manager for the project, to her left, Emily Dawson, who
20 is the project's head of benefits, to her left, Lucy Neal, who's the deputy
21 negotiations lead, and at the end of the row, Mr Mark Challis, partner at BDB
22 Pitmans.

23 MS LAVER: Thank you.

24 MR TAIT: There may be others –

25 MS LAVER: This afternoon.

26 MR TAIT: – moving forward for this afternoon.

27 MS LAVER: No problem. Okay, so we're through the introductions. Thank you very
28 much, everybody. Can I remind all participants that when you begin to speak to
29 an item or a question, please do reintroduce yourselves and say who you
30 represent; this helps with people on the livestream or watching the recording
31 afterwards to understand who is saying what. Can I also ask, if you're
32 referencing examination library documents, that you cite the publication
33 references, and you do so clearly and slowly so that any of us that want to open
34 them up are able to do so?

1 For anybody watching on the livestream or in the playback, you can make
2 written comments to us by deadline 8 on anything that you hear today, and those
3 submissions will be treated as equally as those that we hear in the room. In terms
4 of session timing, we will, as usual, try and take breaks at appropriate times in
5 the proceedings. It is our expectation to complete agenda item 3 before lunch
6 so that we've got a full, clear run on the control documents this afternoon, so
7 unless anybody has anything they wish to raise before we get on to agenda
8 item 3...

9 No, so agenda item 3 this morning: social, economic and land use effects.
10 Now, the agenda items contain sufficient detail to get into the submissions
11 without me introducing long, protracted dialogue beforehand. The first item on
12 the agenda relates to Chalk Park and primarily concerns Gravesham Council,
13 and the applicant – now, my intention is to go to Gravesham first and then to the
14 applicant, but is there anybody else that wishes to speak on the very first item
15 on the agenda? Please put your hands up now. No, very good, so without further
16 ado, Mr Bedford, can I please come to you in relation to the first item on the
17 agenda, which is in relation to Chalk Park.

18 MR BEDFORD: Thank you, madam. Michael Bedford, Gravesham Borough Council.

19 Am I to understand you would like to take the first bullet point separate from the
20 second bullet point, or take both of them together?

21 MS LAVER: I don't know if my mic is working sufficiently this morning, but yes, if
22 you could take the first item – the first bullet point on its own. Thank you.

23 MR BEDFORD: Absolutely. Well, that's what I was going to suggest because there is
24 a distinction between the wider position in relation to Chalk Park, and then the
25 specific position in relation to the golf provision related to the Cascades site. So
26 then dealing with Chalk Park, obviously you will appreciate, as we have
27 rehearsed in the earlier presentations, that the proposal is to provide what will
28 be a new area of open space, but predominantly it's an area of open space for
29 passive recreation. It will be possible to, clearly, walk and potentially to run in
30 that open space, but there is no provision of active sports facilities, whereas the
31 current position is that the recreational resort in the vicinity of Chalk Park
32 comprises the Southern Valley golf course.

33 That is obviously now a closed facility, but in terms of recreational
34 provision, that was a resource within the borough. It was, albeit a private club,

1 open to the public who were prepared to pay a fee to gain access to it. It wasn't
2 a membership club; it was a facility that you could turn up and play, provided
3 that you're prepared to pay the fee.

4 So far as the borough council's concerned, we don't have significant
5 facilities for public active sport in the form of golf. Whilst we are certainly
6 happy to consider alternative forms of active sport provision, at the – so it
7 doesn't have to be, as it were, replaced by golf – it's a case of we would like to
8 see active sport provision provided. Now, whether that is done through the
9 provision of some form of active sport facility within the Chalk Park
10 arrangements, or whether, effectively, it becomes a commuted sum to enable the
11 borough to consider either providing or improving active sports facilities
12 elsewhere in the borough, that's a matter for further discussion. But the position
13 that we adopt is that, as matters stand, we're not satisfied that the Chalk Park
14 proposal as currently envisaged would amount to equivalent replacement for the
15 loss of active sport recreational facility, which is currently available, at least
16 [inaudible] in terms of this part of the borough. Thank you.

17 MS LAVER: Thank you very much, Mr Bedford. I do note that the NPS does obviously
18 state that if you're removing a recreational sports – or recreational facility, it
19 should be developed. It should not – it should be replaced by equivalent or better
20 provision, so I think Gravesham Borough Council make a valid point that what
21 we're losing is sport facility for passive recreation, so I'd like a response, really,
22 from the applicant on the justification for that.

23 MR TAIT: Thank you, madam. As you're aware, the first bullet point has got two
24 matters within it, both the closed Southern Valley golf course and the impact on
25 the Swing Rite facilities. In relation to the latter point, of course, that's distinct
26 from Chalk Park, and there is a proposed replacement distinct from Chalk Park,
27 and we're coming to come onto that in a second.

28 MS LAVER: Yes, we were going to come on to the second bullet.

29 MR TAIT: But I just notice it's in the first, so I just wanted to make it clear, just
30 responding at this point to the question of whether Chalk Park is a suitable
31 replacement for the closed Southern Valley golf course, and I think I will turn
32 to Ms Suki Coe to deal with that. I note that in REP4-288, which is a response
33 to your first set of questions, at question 13.1.10, Gravesham welcomed the –
34 welcomed Chalk Park, so that's an important context, and in relation to the NPS

1 – again, which I’ll ask Ms Suki Coe to deal with – the paragraph at 5.1.74 deals
2 expressly with either the land is surplus to requirements, or the Secretary of State
3 determines that the benefits of the project, including need, outweigh the potential
4 loss of such facilities, taking into account any positive proposals made by the
5 applicant to provide new, improved or compensatory land or facilities.
6 Paragraph 5.1.74, that provision, does not say that one needs to provide identical
7 or similar provision. It expressly refers to any positive proposals to provide new,
8 improved or compensatory land or facilities, so I’ll ask Ms Suki Coe just to add
9 anything further to that, please.

10 MS COE: Thank you. Suki Coe for the applicant. Southern Valley golf course is
11 currently closed and has been purchased by the applicant. It was a private
12 recreation facility operated as a members golf club, with the ability for golfers
13 to book a tee time and play the course in return for a green fee. Chalk Park is
14 proposed to be an open space with open access for all members of the
15 community to enjoy and partake in recreational activities on an informal basis.
16 While Chalk Park is not a replacement for Southern Valley golf course in terms
17 of a golf facility, it is a recreational facility for the wider area. It is a wider and
18 bigger in site area, and it will incorporate a number of walking routes. Access
19 will remain along Thong Lane in a number of locations, but in addition, access
20 to Chalk Park will also be available from the A22 Rochester Road, and it will
21 provide links to Shorne Woods Country Park.

22 At this point, it might be helpful to show the plan that is in the project
23 design report in part D, to show the full extent of Chalk Park and how it
24 integrates with the wider area. You can see the road and the southern tunnel
25 portal. You can also see the extent of – Chalk Park is both sides of the project
26 road, and extends beyond the area that was Southern Valley golf course. The
27 applicant would contend that this opportunity to provide informal recreational
28 space is a broad opportunity for the people living east of Gravesham. It’s also
29 an opportunity to utilise the same area for enhanced landscaping and habitat
30 creation, and mitigation for the project.

31 The applicant is therefore demonstrating through this use of this land
32 within the order limits its commitment to reduce the land required to mitigate
33 and manage the impacts of the project. Further detail can be found in
34 appendix G of the planning statement, in particular paragraphs G.4.15 and

1 G.4.16, and the reference for appendix G is APP-502. Mr Tait has already drawn
2 your attention to the position of the applicant, which is the benefits of the project
3 outweigh the loss of Southern Valley golf course, taking into account the
4 positive proposal made by the project to create Chalk Park, which is an entirely
5 new recreational site to be created in the same locality.

6 The other thing I would also like to draw your attention to is that it can be
7 used for plenty of active participation by a broad number of people who
8 wouldn't need to pay. There's no fee to enter the park. It would be open and
9 accessible to all, and I also wanted to draw your attention to the fact that Sport
10 England have made no representations raising the concern of the loss of
11 Southern Valley golf course, or the provision of Chalk Park, and indeed,
12 appendix G of the planning statement at 4.16 states that whilst this provision is
13 not an identical substitution for the loss of private golf facilities, it would
14 significantly improve the general provision of green infrastructure and
15 recreational facilities in the same locality that counterbalances the loss of the
16 gold club in our view.

17 MR TAIT: Thank you, ma'am.

18 MS LAVER: Can I just ask a few questions? So I'm getting the impression that your
19 position is that Chalk Park is more advantageous for the community, because
20 it's a free, open facility even though it's not a sports facility, so that's the
21 proposition that you're putting to us. Now, the Southern Valley golf course has
22 obviously been acquired by National Highways; your compound is there. Did it
23 close because you acquired it, or had it closed before National Highways decided
24 they needed the land?

25 MS COE: Suki Coe for the applicant. It had closed before we acquired it.

26 MS LAVER: Do you know when it closed? I'm just interested to know if it was –
27 because your scheme – your proposals have been around for some time, so was
28 – and –

29 MS COE: It closed in 2022. I can find the particular month.

30 MS LAVER: So that would have been after your first submission to the planning
31 inspectorate for a DCO.

32 MS COE: Yes. August 2022.

1 MS LAVER: So in essence, there was an expectation on the Southern Valley golf course
2 they were going to be acquired, so I'm trying to get to the point: would it still be
3 a viable business had this scheme not come along?

4 MS COE: So we were aware that the golf course had proposed their site as being suitable
5 for residential development in the call for the sites for Gravesham's local plan,
6 so there were plans in advance, if you like, for the golf course to no longer be a
7 golf course.

8 MS LAVER: But in essence, the golf course putting themselves forward in a call for
9 sites doesn't mean it would have been accepted by Gravesham, because they
10 would have gone through the same conversations we're having now – whether
11 that was suitable for inclusion as a residential site – so that wasn't a forgone
12 conclusion.

13 MS COE: But it would be an indication that maybe the golf course wasn't as healthy, in
14 terms of it running as a business –

15 MS LAVER: Possibly, or they were just –

16 MS COE: Possibly, but that's just speculation.

17 MS LAVER: Or chancing their arm on more lucrative residential proposals, so we don't
18 know that.

19 MS COE: We don't know.

20 MS LAVER: Okay, thank you very much.

21 MR YOUNG: Could I just ask a question, putting that the other way round? If this
22 proposed development for the LTC doesn't go ahead, what happens? Is there a
23 realistic prospect that somebody comes in and reopens the golf course up?

24 MS COE: So there has been some unfortunate antisocial activity on the site, and there is
25 no longer a clubhouse, but certainly National Highways would not be wanting
26 to retain the land because they don't operate golf courses, but it may well be that
27 it would be disposed of, but it could be disposed of for a variety of reasons, and
28 we would be clearly talking to the local authority about how best to use that land
29 going forward, and it could easily go back to being a golf course as you – I
30 don't think you can see it on this plan, but it's still laid out as a golf course. It
31 would need a new clubhouse, but the access is there and all the other
32 infrastructure is still there.

33 MR YOUNG: The prospect of somebody coming along and opening it up for some sort
34 of public access would be pretty remote, wouldn't it?

1 MS COE: It has a footpath across it already so that –
2 MR YOUNG: Other than the footpath, I mean.
3 MS COE: But apart from –
4 MR YOUNG: Across a wider area.
5 MS COE: Yes. Yes, this is an opportunity to provide that facility.
6 MS LAVER: Mr Bedford, I wonder if you've got anything further to add.
7 MR BEDFORD: Thank you, madam. We think, and we will say whether there's any
8 public statements to this effect, but we think that the Southern Valley golf course
9 did indicate that the reasons for the their closure was associated with the
10 uncertainty as to their future in the light of the LTC proposals, but in any event,
11 as I think Ms Coe has clearly recognised from a planning policy position,
12 whether that particular operator had continued its operation in the absence of the
13 LTC or not, any proposals to change the use of a golf course resort would have
14 attracted, if we were dealing with the NPPF – planning policy framework – the
15 protection that's given to open space, so in a sense, we would see that as being,
16 really, a slight red herring. The reality is that LTC has occasioned the loss of an
17 active recreational resource.

18 We note that the applicant has, as it were, on a number of occasions across
19 a wide range of environmental topics urged on you the argument, 'Well, never
20 mind that', as it were. 'Our overall benefits of the project outweigh the loss.'
21 It's an argument. You will have to evaluate it, but we would say that when
22 you're looking at the impact, you should be looking to see, 'Well, is there any
23 reason why the applicant cannot provide what would be suitable replacement
24 provision for this loss?' Because if so, we would say the applicant ought to be
25 expected to do so unless there's a very good reason why not, rather than just
26 putting it into the basket of, 'Well, we've got wider benefits to outweigh the
27 loss', and in this circumstance, given that our starting point is we're perfectly
28 prepared to be flexible about the nature of replacement provision, if – and I can
29 understand, given the layout of Chalk Park, and partly the topography, partly the
30 potential hazards of an – what would be the proposed new highway, I can well
31 understand why providing an active sports facility within Chalk Park might be
32 challenging, and given the greenbelt location, we certainly wouldn't want to be
33 thinking about things with lots of high nets and so on to catch balls, or whatever
34 it might be in terms of the area.

1 But as I say, we're not concerned that you have to replace golf with golf.
2 We're open to consideration of other forms of active sports provision, and we're
3 also entirely open to that being not physical provision within Chalk Park, but
4 being by way of a commuted sum which would enable the borough to provide
5 replacement or improved facilities elsewhere, so we hear what the applicant
6 says. I'm afraid we're not persuaded by it. Obviously, it's a matter for you.

7 MS LAVER: Thank you, Mr Bedford. I think Mr Young wants to come in.

8 MR YOUNG: Do you think it's right that the panel here weigh up the benefits to the
9 wider community and what's being proposed, versus – as much as I love golf,
10 let's be honest; it's quite a ringfenced thing. It's not as if you just turn up and
11 have a walk round there. It's not particularly inclusive, is it? Young mothers
12 with children, that golf course is of no use whatsoever to them. Teenagers –

13 MR BEDFORD: Well, I'm not going to make any kind of comment about people who
14 play golf, but I –

15 MR YOUNG: You understand the point I'm making.

16 MR BEDFORD: I understand –

17 MR YOUNG: It's private, isn't it?

18 MR BEDFORD: Yeah, I understand.

19 MR YOUNG: It's private.

20 MR BEDFORD: Well, sir, I think the position is firstly I accept, and we accept, the basic
21 point that in carrying out a balance between, as it were, loss and gain, you should
22 certainly take into account the open space benefit of providing a public access
23 recreational resource. We certainly accept that point; our understanding – and
24 whether the signs are still there, I'm not able to tell you, in terms of what's on
25 Thong Lane – but our understanding is very clear that it was a pay and play golf
26 facility, and it was advertised as such. So for those for whom active sports
27 includes golf in their range of activities, it was an available facility, and as I say,
28 not being a golf person myself, I don't want to speculate to the extent to which
29 it's attractive to people of different age groups and different circumstances, but
30 it clearly is an active sport which is widely engaged with by all members of the
31 community.

32 The point that I think we would quite like to stress is that so far as the
33 borough is concerned – and if we've got some statistics to help you on this, we'll
34 put it in our post-hearing submission – but so far as the borough is concerned,

1 we have a concern that there are problems of active sport participation within
2 the borough. So whilst in one sense, all sorts of recreational activity have value,
3 there is a particular value in people doing – from, as it were, a health and
4 wellbeing point of view – there is a particular value in people doing active things
5 as opposed to what you might call passive recreational things. So as I say, I'll
6 see whether we've got some data that will support that, but our impression is
7 very much that the problem we have is not enough participation in active sport,
8 and so that, we think, goes into the balance, but –

9 MR YOUNG: Something like a Park Run that could be run at Chalk Park, you would
10 say that would be active sport wouldn't you?

11 MR BEDFORD: Again, not being a park runner, albeit my wife is a park runner so I will
12 accept, having observed a large number of Park Runs as a spectator, that it is
13 certainly a form of active sport. It certainly –

14 MR YOUNG: Yes. Quite an inclusive one.

15 MR BEDFORD: It's certainly inclusive, and it's certainly – taking your point, sir, about
16 parents with young children, it also includes parents with young children, again,
17 whether they've got buggies or whether they have actually just got young
18 children running with them, so that's the sort of thing which may well be
19 something that –

20 MR YOUNG: And that would be good for the residents, wouldn't it? Because it
21 wouldn't be behind a paywall.

22 MR BEDFORD: Well absolutely, so that's, as I say, the point that we are – and I hope I
23 had made earlier the point – that we are concerned to see, that some provision
24 for active sport is made, as I say, either directly within Chalk Park, or, as I say,
25 indirectly, and it may well be that exploration around providing a facility that
26 can specifically be design to accommodate a 5 kilometre – because I think all
27 Park Runs have to be 5 kilometres to be a Park Run – but providing a 5 kilometre
28 circuit that would be actually attractive to people, because again – I slightly
29 trespass by personal anecdote, but I know from my wife's experience that
30 running round and round the same area just to get your 5 kilometres is not
31 terribly attractive to park runners, whereas running on a, as it were, extended
32 route, is so, but, sir, those are matters we would be very happy to explore with
33 the applicant.

1 MS LAVER: So some thinking to do, I think, from the applicant. I think there's
2 compelling points on both sides, but I do keep hearing, 'The national benefit
3 outweighs all of this', and I think National Highways are the same as every other
4 applicant that puts an application in, that some things still also need to be
5 mitigated and compensated for, so we will weigh up both sides in our
6 deliberations, of course we will, but if there's further discussions to be had with
7 Gravesham, it would be very welcome.

8 MR TAIT: It's a double outweighing, because first of all, there's the new open space
9 that's provided, as well as having regard to 5.1.74, the overriding need in any
10 event, but one only needs to go to the first step, in my submission, to draw the
11 balance in favour of what is proposed, rather than relying on the wider need,
12 and... Yes, I think that's all I need to say on that, other than to note that at
13 G.4.16 of appendix G planning statement – that's APP-502 – the appropriate
14 management and maintenance agreements in relation to this new area are
15 currently being discussed with the local authority, so in so far as they would like
16 to see some acknowledgement of what might also take place within this area
17 open to the public at large, we can discuss that, such as a Park Run. But in
18 principle, none of that is – there are active opportunities that are not incompatible
19 with what is proposed.

20 MS LAVER: Okay, thank you very much. I think we can move on to the second bullet
21 point, and in fact we might as well start with yourself, Mr Tait, because this is
22 really an update between yourselves and Gravesham.

23 MR TAIT: Thank you, madam, so there have been discussions since CAH3. My
24 understanding, confirmed from talking offline this morning, is that both the area
25 that is identified already, and the principle, and indeed also the financial side is
26 agreed and that will be carried through into an agreement. There are still some
27 detailed drafting matters that remain at large, but in terms of the principles, my
28 understanding is that the parties have now reached a common position, and in
29 the matter that arose last night – which was item 18, action point 18 – that
30 agreement is intended to address the question of the condition of the land as well.

31 MS LAVER: That sounds positive. Mr Bedford, do you concur?

32 MR BEDFORD: Madam, Michael Bedford, Gravesham Borough Council. Shortly, yes,
33 there has been positive progress. There are things which still are outstanding

1 and need to be discussed in terms of detail, but the principle of a solution is now
2 effectively there, and parties are making active progress in finalising that.

3 MS LAVER: So will we get final submissions from the parties on this point? Because
4 it would be good for the Examining Authority to have something in writing at
5 the close of the exam.

6 MR TAIT: Yes, it's expected that we should have an agreement by the end of the
7 examination, and we will hopefully update you at the relevant intervening
8 points, but I would hope we'd be in a position at deadline 8 – which is not far
9 away – to have the written comfort that the – that you've heard orally, even
10 though you may not have the agreement by then.

11 MS LAVER: Thank you. I've got Ms Lindley in the virtual room with her hand up.

12 MS LINDLEY: Thank you, madam. I just wanted to make some input about the
13 discussion there's been about Southern Valley golf course being private, a
14 somewhat laboured discussion, if I may say so. Actually, locally we regard it as
15 public. Yes, it isn't public in the sense that it's 100% free; there were green fees,
16 but it was pay and play. It didn't have the kinds of archaic restrictive practices
17 that there are at the other private golf courses locally. It also did things like
18 family lessons. Anyone could book golf lessons and you could book sessions
19 for a whole family, so it was actually providing quite a good public service, and
20 as has been mentioned, there was a footpath across it as well so it was available
21 as an open space for walks, and was quite popular. I think that's – the other
22 point is that the clubhouse was used for – could be booked for functions. It was
23 actually used as a hospitality venue, and that was actually quite a lucrative part
24 of the finances of the club, but obviously that went and then of course now it's
25 been burnt down, so that's not going to happen. Anyway, thank you very much.

26 MS LAVER: Thank you. Apologies if I missed your hand up earlier, so I think, unless
27 anyone's got anything to say on the very first item on the agenda, we'll move on
28 to the next part, which is a review of open space delivery. Ms Lindley, you've
29 still got your hand up. I'm assuming that's just a legacy from before. Thank
30 you, so the Examining Authority would like to hear the latest positions from the
31 applicant and the local planning authorities in relation to the timing, form and
32 function of any open space replacement or new provision, so Mr Tait, over to
33 you.

1 MR TAIT: Thank you, madam. Appendix D to the planning statement, which is
2 APP-499, has been updated at deadline 7, and it specifically deals with the point
3 that was raised by Gravesham about plot 13-03, which was the footpath – or
4 rather, the use of a linear route around Swing Rite, and that was raised in
5 Gravesham’s REP4-287, and the applicant responded to that after CAH3 at
6 REP6-087, which was that on a precautionary basis, having regard to what
7 Gravesham were saying about that linear space which proceeds further off the
8 site, actually...

9 MS LAVER: Could we maybe get a cursor on that?

10 MR TAIT: Yes. It comes round the – it comes round that yellow – up the yellow line
11 and then round, and then back down again, so that’s the part that Gravesham
12 said in REP4-287 may have public – may be regarded, potentially, as public
13 open space, so we indicated at REP6-087 on a precautionary basis we would
14 include provision for that. That’s REP6-087, and that is shown on deadline 7,
15 and indeed this is the document that is on the screen. Following discussions
16 with Gravesham, there is now provision for alternative open space, albeit of a
17 linear form, which is greater in area and serves a similar function, and if we can
18 use the cursor to move along there, it’s that white – so along the edge of the
19 replacement land for Swing Rite, and then links up into – further to the right –
20 across.

21 There is no, as I understand – again, having confirmed this with Mr
22 Bedford – there’s no – that has emerged following discussions expressly with
23 Gravesham, and there’s no disagreement with them, as I understand it, as to the
24 appropriateness of that provision, in so far as they are correct about it’s
25 plot 13-03, referred to in REP4-287, so therefore that is an additional matter that
26 it included in the update to the planning statement – appendix D, APP-499 – so
27 that is changed at D7 expressly to deal with that point, but as I understand it,
28 there aren’t other changes.

29 And the second document that is of relevance is the open space addendum
30 at D6, which is REP6-097, and that is dealing specifically with the further timing
31 commitments bringing part of, or all of, some of the replacement land earlier in
32 the programme. That was, as you’ll recall, expressly raised by Thurrock back
33 at CAH2, and it relates to three areas: the Ron Evans Memorial Field, Thames
34 Chase, and Folkes Lane Woodland. So I may just ask Ms Suki Coe just to

1 identify what – the specific nature of those commitments, in summary form.
2 Thank you.

3 MS COE: So the early delivery of a proportion of the open space where – on those three
4 sites is secured through the SACR, SACR-014, 15 and 16, and they are therefore
5 secured through article 61 of the draft development consent order which has
6 been revised to ensure that it is now about implementation of the SACR rather
7 than the best practical means or the reasonably endeavours, so it is now a very
8 firm commitment to secure the early delivery, where – in relation to those three
9 sites.

10 MS LAVER: So those three sites – I'm looking at the addendum, so that's Shorne Woods
11 Country Park, Tilbury Green and Ron Evans. Those are three sites you're
12 referring to, or have I got that wrong? I haven't got the SACR open; I'm just
13 looking at your addendum.

14 MS COE: Okay, so it is Folkes Lane Woodland, the replacement land at Hole Farm. It
15 is Ron Evans Field, and it is Thames Chase.

16 MS LAVER: Thames Chase, thank you.

17 MS COE: So just very briefly, other updates – or just confirmation is that there is
18 extensive agreement between the applicant and landowners of existing special
19 category land for the replacement land that is being provided. This is reported
20 through statements of common ground with the landowners, so specifically –
21 and I won't go through them all in great detail, but I'll just give an overview
22 – Shorne Woods Country Park, there is agreement with Kent County Council.
23 The common land at Tilbury Green, there is agreement with the Cole family. In
24 relation to Thames Chase, there is agreement with Forestry England and also
25 Essex County Council, who operates the Thames Chase Centre, and Forestry
26 England again at Folkes Lane Woodland.

27 The matter is still under discussion, however, on the remaining sites; at
28 Orsett Fen we are still in discussions with the Cole family. Natural England,
29 however, are – have this matter in agreement. In relation to Ron Evans Field,
30 we are still discussing and waiting confirmation from Thurrock that the revised
31 commitments are acceptable, and finally, in relation to the Gravesham Golf
32 Centre, we're – as we've just reported, we are in agreement, so those are the
33 most up to date updates I can give you. They are in the statements of common

1 ground. We can provide the references in relation to our written response to this
2 post-hearing.

3 MS LAVER: Thank you very much. That would be really helpful.

4 MR TAIT: Just to add, in relation to Thurrock and Ron Evans Memorial Field, on the
5 last occasion – as reported in the statement of common ground, REP6-030 at
6 2.1.324 – Thurrock have confirmed that the quantity and quality of replacement
7 land is acceptable and they acknowledge that the earlier provision – which is the
8 subject of the SACR just mentioned – in their comments at D4 and D5,
9 REP6-164, will partially mitigate the loss of the public open space.

10 MS LAVER: Good, thank you very much, so I'll go to local authorities just to see if we
11 can get consensus, so I'll go to Thurrock first, please.

12 MR MACKENZIE: George Mackenzie for Thurrock Council. Madam, I'm going to ask
13 Henry Church to address you, please. He is online, and it's on the point about
14 Ron Evans Memorial Field, and in particular the timing point, which is the
15 remaining bone of contention, but Mr Church will explain that. Thank you.

16 MS LAVER: Okay, thank you.

17 MR CHURCH: Good morning, madam. My name's Henry Church, for Thurrock
18 Council, so as Mr Tait acknowledges, in the planning statement D, open space,
19 APP-499, the applicant's seeking 15.9 hectares of public open space at the Ron
20 Evans Memorial Field. 75,000 square metres is just under half of this permanent
21 acquisition, with the remainder being required temporarily. In respect of the
22 land that – to be acquired permanently, the applicant recognises its responsibility
23 to provide replacement public open space, and has proposed replacement land
24 directly to the west and to the south of the existing Ron Evans Memorial Field.
25 That is two separate plots totalling 92,000 square metres, and as Mr Tait just
26 references, the council is satisfied with the extent of the replacement land in
27 principle. The quantity and quality point is not disputed.

28 However, we do have very serious concerns in relation to the timing of
29 reprovision, as the applicant seeks to not reprovise replacement open space for
30 a period of not less than five years after the public open space is taken. I'll come
31 back to the partial mitigation in a minute. The timing of reprovision is not
32 acceptable, as it puts greater pressure on an already scarce resource, and the
33 council requests that the area of reprovision be established prior to the permanent
34 acquisition of existing open space to reduce the impacts on residents, and you

1 maybe recall from your site visit, madam, that there is a dense residential
2 population adjacent the Ron Evans.

3 As has been alluded to, the applicant and the council have met, and
4 subsequent to that meeting, the applicant has given a commitment to SACR-014
5 to provide the majority of the more northerly public open space prior to the
6 permanent acquisition of land at Ron Evans Memorial Field. Whilst this
7 welcomed – and contrary to what you’ve been told, that has been telegraphed to
8 them – it means that for a period of not less than five years, the council still has
9 a lack of public open space, so whilst it partially mitigates, it doesn’t fully
10 mitigate. The other challenge that the council has with the SACR-61
11 commitments is that contrary to what the earlier contributor said regarding it
12 being a very firm commitment, of course as currently drafted under article 61,
13 there is provision where the applicant may, effectively, not have to provide that
14 if it can’t.

15 So in determining that reversion after five years is acceptable, the
16 applicant has stated frequently that the benefits of the improved quantity and
17 quality of the replacement public open space outweighs the disbenefits of a
18 five year delay. The applicant has been invited to produce evidence to support
19 its contention but has failed to do so. The request remains extant. In so far as
20 the assessment of the benefits outweighing the disbenefit relies on professional
21 judgement, then the council wishes to know whose professional judgement is
22 being relied upon, and the extent to which they are suitably qualified to make
23 that assessment, as well as the methodology used in the exercise of this
24 professional judgement, and analysis of evidence to support the professional
25 judgement reached. They are aware of that; that request remains extant.

26 Notwithstanding this, the council is advised that as a matter of law, each
27 of the criteria applied in assessing [inaudible] public open space is to be assessed
28 in its own right. That is, that as a matter of law, you simply can’t say, ‘Quantity
29 and quality trumps the timing point, and therefore the timing is less relevant.’
30 In addition, the loss of a significant area of public open space on a temporary
31 basis creates a problem. We don’t know how long that is going to be for. It
32 significantly disadvantages those residents within the borough, particularly
33 those in the dense housing adjacent to the public space, the more so given that
34 presently, the applicant is unable to say when, for how long, and how often it

1 requires the current public open space. Temporary re-provision is considered
2 essential by the council. There is no such provision at the moment. The
3 council's position is fully explained at paragraphs 9.4.5 and subsequent, at
4 deadline 6 submission and comments on applicant's submission at deadline 4
5 and deadline 5. That's REP6-164.

6 Furthermore, madam, the national policy statement and national networks
7 policy on public open space is set out at paragraph 5.181, which reads: 'The
8 Secretary of State should also consider whether mitigation of any adverse effects
9 on green infrastructure or open space is adequately provided for by means of
10 any planning obligations, for example to provide exchange land and provide for
11 appropriate management and maintenance agreements. Any exchange land
12 should be at least good in terms of size, usefulness, attractiveness, quality and
13 accessibility.

14 Alternatively, where sections 131 and 132 of the planning act apply, any
15 replacement land provided under those sections will need to conform to the
16 requirement of those sections', and for your benefit, madam, section 131 of the
17 planning act requires provision of replacement land, where replacement land
18 means, 'Land which is not less in area than the order land, and which is not –
19 which is no less advantageous to the persons, if any, entitled to rights of common
20 or other rights and to the public.'

21 Section 132 identifies replacement land as, 'Land which will be adequate
22 to compensate the following persons for the disadvantages which result from the
23 compulsory acquisition of the order right,' and they include the persons in whom
24 the order land is vested, and the persons, if any, entitled to rights of common or
25 other rights over the land, and thirdly, the public.

26 And it's our position that whilst the council agrees the proposal
27 replacement land, when provided in full – that's at least five years after the land
28 is taken – will be, and I quote, 'At least good in terms of size, usefulness,
29 attractiveness, quality and accessibility', it does not meet the national policy
30 statement national networks test, because on the basis of the applicant's own
31 submission at 5.46 of appendix D, REP3-108, where the applicant notes, 'The
32 replacement land is anticipated to become available for public use five years
33 after the existing Ron Evans Memorial Field is impacted', so they're
34 acknowledging the issue, and secondly, section 131 test because the public open

1 space provision is less advantageous. It has to be, because it's – until the
2 reprovided public open space becomes available five years after the public open
3 space is taken. I think, madam, that picks up all the points that I had to make.

4 MS LAVER: Mr Church, I've got a couple of questions on that. What is the council's
5 solution? Because the applicant clearly are saying they need the land for X
6 period of time, and that is the bone of contention is then when they return that
7 land to you, but in the interim period, what solution does the council put
8 forward?

9 MR CHURCH: Well, the situation arises because rather than acquire sufficient land for
10 its soil compound, and separately for public open space, it ceases – seeks to use
11 the lands twice, so it benefits and the residents of the borough suffer as a result
12 of that, so –

13 MS LAVER: No, I understand that point, but what is your solution? What do you suggest
14 the applicant does?

15 MR CHURCH: It seeks to move that soil compound somewhere else. Where is their
16 problem; they're the ones who are seeking to do disbenefit to the residents of
17 the borough by reducing the public open space. This is entirely within their gift
18 to do. When they drafted this order, they must have known what they were
19 doing, and there was – there's plenty of space to the west of here which they
20 could agree terms – obviously they can't put the land in a DCO, but they could
21 certainly agree terms by private treaty to acquire other land either for a
22 temporary period as a soil compound or a temporary period as public open space.
23 As drafted, it's the residents of the borough who are suffering.

24 MS LAVER: Okay, just one more question. Now, what evidence has the council put
25 forward about the usage of the Ron Evans memorial field? I mean, you're
26 suggesting it's very well used, but is that just hypothetical or have surveys been
27 undertaken to how the land is used?

28 MR CHURCH: I don't know whether survey – sorry, Henry Church from Thurrock
29 Council. I don't know whether surveys have been undertaken, but certainly on
30 my site visits, I have seen it being used in the middle of working days, so – and
31 if you have a look round, it is clearly – the paths are well-trodden, so – I mean
32 it's self-evidently – they don't tread themselves down, so it is pretty clear to me
33 that it is well used, and indeed, it's not been advanced by the applicant that
34 actually there is no need to reprovide because it isn't well used.

1 MS LAVER: Yeah, okay. Thank you very much. Mr Mackenzie?

2 MR MACKENZIE: That's it, madam. It just occurred to me that when we provide our
3 written summaries to you, we'll also seek to identify the powers under which
4 the council hold that land, in case that would be of interest to you, as a follow
5 up to the last question you asked.

6 MS LAVER: Yes, please. Mr Stratford, did you want to add something?

7 MR STRATFORD: Yes, just briefly, ma'am. Chris Stratford, for Thurrock. The council
8 – obviously, we'll cover this later – are in the process of finalising the reg 18 for
9 the local plan, and there are a range of evidence documents; and I've just looked
10 at them to see if there's an open space study, and there isn't currently. There
11 may well be one recently. We'll investigate whether there are any value
12 accessibility use studies done of the open space, and if we can find any, we'll
13 put it in the evidence. But certainly, Thurrock have identified, as a borough,
14 amongst the many IMD categories, that there's a shortage of open space. And
15 so that's why this becomes acute, and it is surrounded by housing.

16 MS LAVER: Okay. So you're not saying it's just a Thurrock-wide thing. This is an
17 area, typically, which lacks open space.

18 MR STRATFORD: It's a Thurrock-wide thing, and it's a specific area.

19 MS LAVER: Yeah, it's a local thing too.

20 MR STRATFORD: Thank you.

21 MS LAVER: Okay, thank you very much. So assuming that's Thurrock complete on
22 their submissions, can I go to London Borough of Havering?

23 MR DOUGLAS: Thank you, madam. Daniel Douglas, from the London Borough of
24 Havering. A couple of points I'd just like to make in relation to the areas of
25 open space that the applicant referred to that are within our borough. Just to
26 clarify, that's the Thames Chase sites, and also the site at Folkes Lane
27 Woodland, where the applicant's proposing to replace open space there. So in
28 terms of the council's formal position, which is a matter of record in our local
29 impact report – that's REP1-249, section 5.1.10 to section 5.1.14 – where we
30 refer to our local plan policy, policy 18. We accept that, in terms of local space
31 within Havering, the council is getting an overall net-gain in open space
32 compared to what's being lost, and we are satisfied with the quality of that open
33 space that's been provided.

1 That's also a matter that's set out in our statement of common ground. We
2 note the points made by the applicant in relation to the owners of those two open
3 space sites being satisfied with the quality that's being proposed there. The point
4 that I, I think, would make – and I've said this before, but I will make the point
5 again because it's important for Havering – is the open space that's being lost at
6 Folkes Lane is obviously specifically being catered for by the site at Hole Farm,
7 which is in the borough of Brentwood, as opposed to Havering. So whilst we're
8 getting an overall net-gain in open space across the borough, that particular site
9 is being lost and being replaced within Hole Farm, which is why access to that
10 site is so important to us, because I think Havering's view would be, if it's of
11 sufficient quality, that's great, but our residents need to be able to access it in
12 order to enjoy that open space.

13 And that's why we've made repeated submissions around improving
14 access to, ultimately, Hole Farm from the A127 area. And I note the references
15 that were made by Thurrock to the MPS, in terms of access to open space. I
16 think the other reference that I would probably provide is, I think it's 5.180 of
17 the MPS, which refers to – oh, sorry, 5.184 of the MPS, which refers to 'public
18 rights of way, national trails and other rights of access land are important
19 recreational facilities for walkers, [inaudible], equestrians. Applicants are
20 expected to take appropriate mitigation measures to address the adverse effects
21 on coastal access, national trails and other public rights of way and open access
22 land, and where appropriate, to consider what opportunities there may be to
23 improve access.' And that's an important point for us, in terms of ensuring that
24 our residents have access to the open space site at Hole Farm.

25 MS LAVER: Yeah, I think we've heard those submissions in other hearings. So I don't
26 think we need you to go over those. The point behind the agenda item is really
27 about the timing, form and function of the open spaces and whether the councils
28 are content with the applicant's submission, as they've submitted an addendum
29 to that open space delivery. We're trying to just gauge, from Havering, if
30 they've considered those documents and are in a position to concur that they're
31 comfortable with what's there.

32 MR DOUGLAS: We are satisfied with the timing and form of the open space that's been
33 put forward by the applicant, yes.

34 MS LAVER: We have heard your points, however, about access. So, thank you.

1 MR DOUGLAS: Thank you.

2 MS LAVER: So Kent County Council. Mr Fraser-Urquhart. Nothing. Gravesham?

3 MR BEDFORD: Michael Bedford, Gravesham Borough Council. Only to note, and
4 welcome, the provision of replacement open space for the plot 1303, in relation
5 to the cascades. Quite how that translates is, I think, going to be part of the
6 discussion that is ongoing in relation to the overall replacement provision in that
7 location. We welcome the applicant's proposals, and we will respond, at
8 deadline 8, to the specifics that have now been set out in the updated deadline 7
9 document on open space appendix D.

10 MS LAVER: Thank you very much. Anything from Essex County Council, Mr
11 Woodger?

12 MR WOODGER: Thank you, ma'am. Mark Woodger, Essex County Council. Just to
13 briefly follow up on what Mr Douglas has said, obviously, connectivity through
14 open space is going to be key to this. Brentwood Borough Council, for your
15 information, have now received three planning applications for the
16 establishment of Hole Farm. Those applications include matters in relation to
17 staff welfare buildings, office facilities, the construction of a barn, new access
18 and coach and car parking facilities in relation to Hole Farm, which, obviously,
19 we welcome. Those applications were submitted to Brentwood Borough
20 Council in the middle of July 2023. I cannot give you an update as to when it is
21 likely they will be considered by the council. But I could take that as an action
22 point moving forward.

23 And in respect of Hole Farm, Hole Farm, at this particular point in time,
24 does have a public footpath running through the centre of it, from east to west.
25 So from where the M25 is, approximate junction just south of Great Warley. So
26 obviously, the use of Hole Farm would be connected to the existing footpath
27 network within Brentwood and is something which, I think, both Essex County
28 Council and Brentwood Borough Council wish to support in this regard. Thank
29 you.

30 MS LAVER: Great, thank you. Is there any other local authority that has anything to
31 add on this agenda item? I note Mr Holland, before I went to the local
32 authorities, I think you had your hand up and I didn't really come to you. So if
33 there was something on this item.

1 MR HOLLAND: Thank you, madam. It was only just a point of clarification. The
2 applicant mentioned that the Cole family have agreed the placement land for
3 Tilbury Green. Of course, the replacement land that's being used is in the Mott
4 family ownership, which is not agreed, which wasn't stated by the applicant at
5 the time.

6 MS LAVER: Okay, thank you. That's noted. Mr Tait, do you have anything to come
7 back on?

8 MR TAIT: Briefly, in relation to Havering, the position is that the statement of common
9 ground at deadline 6, which is REP6-029, at 2.1.14, confirms that Folkes Lane
10 Woodland replacement at Hole Farm meets the section 131 test. And I know
11 Ms Suki Coe can add to that in relation to other matters on Havering.

12 MS COE: Thank you. Suki Coe, for the applicant. I just wanted to let the examining
13 authority know, and confirm to London Borough of Havering, that designated
14 funds have been secured to improve the overbridge between Folkes Lane and
15 the replacement land at Hole Farm. In particular, I know that there's some
16 anxiety about the height of the parapets across that bridge. And that money will
17 be spent and used and deliver those improvements before 31 March 2025
18 because of the designated funds commitment. So that bridge is going to be
19 improved.

20 MR TAIT: And the second point relates to Thurrock and the Ron Evans field. And
21 clearly, timing has been a factor, which is referred to expressly at D731 of
22 APP-499, that's the planning statement appendix D, in part to justify the
23 additional 10,000 square metres of replacement land over that which is taken;
24 92,000 to compare to 82,000. As well, as of course, the commitment in the
25 SACR about the 33,000 square metres being available before there's any loss.
26 And again, I'll ask Ms Suki Coe to see if there's anything she can add to that,
27 please.

28 MS COE: Thank you. Suki Coe, for the applicant. Just in addition, we are making an
29 additional commitment within the SACR, and it will be submitted at deadline 8,
30 which, following discussions with Thurrock Council, is in relation to funding
31 for community engagement officers, which will focus on the construction period
32 in particular, for raising awareness and raising capacity building within the local
33 communities, particularly within seven wards along the project route, in order

1 to encourage and enable and facilitate residents to take part in active recreation
2 and get fit, if you like.

3 And in addition, we also have already provided some funding towards a
4 feasibility study for the improvement of open spaces within the borough of
5 Thurrock, one in particular being King George's Park, which is approximately
6 250 metres south of Ron Evans Memorial Field, which would enable and
7 facilitate an improvement of that open space, again during construction, as part
8 of that wider picture for recreational activity in this part of the borough. Just to
9 really confirm, we can't release more of Ron Evans field early because of the
10 need to construct the road, move the utilities and have a utility compound.
11 That's the constraint that we're working within.

12 MS LAVER: Great, thank you. I just want to come back on some hands which are in
13 the virtual room. Ms Basford is in the virtual room – just one second, Mr
14 Mackenzie – for London Borough of Havering.

15 MS BASFORD: Good morning, madam. Thank you very much. Just in response to Mr
16 Tait's comment about the fact that we have, in our reports, London Borough of
17 Havering, accepted the provision of the open space. There's a key element in
18 that provision and in the policy requirement, and that is that the open space has
19 to be suitably accessible. And at present, we don't believe it is suitably
20 accessible. So I don't want to – we've made this point many times, so I don't
21 want to labour it. But I just really want to come back on Mr Tait there, because
22 one thing the land being of a high quality, the other is if you can't access it.

23 MS LAVER: Okay, thank you, Ms Basford. Mr Mackenzie, I can see Mr Henry Church
24 has got his hand up as well. I had clocked it.

25 MR MACKENZIE: George Mackenzie, for Thurrock Council. Yes, madam, I was going
26 to ask if I may field two replies to the applicant's reply. Firstly, from Mr Church,
27 online, and also from Mr Stratford, who'd like to respond to the point about the
28 community fund, if I may.

29 MS LAVER: Yes, please.

30 MR MACKENZIE: Thank you.

31 MR CHURCH: Henry Church, for the applicant. I'd just like to come back on Mr Tait's
32 comments. We recognise, at Thurrock, that the re-provided public open space
33 is larger in area. But to reiterate the point, it isn't going to be provided for at
34 least five years from the date, in full, five years from the date when the land is

1 acquired. He referenced the statement in appendix D at APP-499, that's the
2 quantity and quality is that much greater that it effectively trumps the delay in
3 reprovision. And two points on that; that statement is made through that
4 document, and in other instances, the quality and quantity, the quality, in one of
5 the instances, is only 1% larger. But something is allowing the applicant to make
6 that statement. Somebody has applied judgment to this methodology,
7 notwithstanding the legality of whether you can conflate it in the way that we
8 talked about.

9 But there's got to be some documentation which allows the writer of that
10 document to draw the conclusion that they have. And we don't know who. We
11 don't know why. I assume there might be a matrix; apparently, there isn't. But
12 in order to sustain that statement, there's got to be some documentation behind
13 it. They've also added this professional judgment, and we don't know who's
14 judgment.

15 MS LAVER: Your point is about the quality, because the quantity is easily verifiable.

16 So is the point you're making –

17 MR CHURCH: Sorry, madam.

18 MS LAVER: No, go ahead.

19 MR CHURCH: Henry Church, for the applicant. They say quality and quantity.

20 Certainly, the quality is undoubtedly larger. The council has agreed quality and
21 quantity is larger. What the applicant is saying is that because they're larger,
22 that trumps, effectively, the fact that they're not going to re-provide it in full for
23 five years. And they've not made any attempts to explain how they've drawn
24 that conclusion. There must be a document behind that that allowed the writer
25 of appendix D to draw that conclusion.

26 MS LAVER: Maybe they're just interpreting policy in that way. But I've heard your
27 point, so thank you very much.

28 MR CHURCH: Okay, thank you.

29 MS LAVER: Mr Mackenzie, Mr Stratford is coming in now.

30 MR STRATFORD: Yes. I note Ms Coe's comment about designated funds, but of
31 course, as the applicant tries to explain on many occasions, designated funds
32 can't be considered as part of the DCO because they're not part of the DCO.
33 Therefore, claiming them as a benefit is a little bit rich. We do acknowledge,
34 however, that the additional item in the SACR, related to community

1 involvement, has been put forward. We haven't yet assessed it, and it was the
2 result of a D6 submission that we made, asking for a whole range of funding to
3 support a whole range of initiatives, and only in part has it come back. So
4 acknowledge it, but we haven't yet assessed its adequacy.

5 MS LAVER: But you will be making your response.

6 MR STRATFORD: We will.

7 MS LAVER: Thank you very much.

8 MS LAVER: Mr Tait, I don't feel I need to come back to you on any of those points.

9 MR TAIT: No, madam. But designated funds is context. We rely on it only to that
10 extent.

11 MS LAVER: Yes, because I think in one of the ExQs which came out, a question was
12 specifically put to you, or a point put to you, that they can't be benefits. But I
13 do appreciate that they are put forward as context. Thank you. I'd like to really
14 take a break, at this point, for 15 minutes. In fact, we might as well just say
15 11.35, before we jump into the next item. Thank you.

16
17 **(Meeting adjourned)**
18

19 MS LAVER: Welcome back, everybody. So we'll go on, straight into agenda item (b),
20 which is in relation to funding and planning obligations. Now, the agenda is set
21 out in two parts. The first is about community funds; the second one about
22 current heads of terms. I'd like to switch those round. It makes more sense,
23 really, to deal with the heads of terms document. And I'm specifically referring
24 to REP4-145. It would be helpful to really hear matters that remain outstanding
25 or not agreed in relation to section 106, as opposed to what the agenda suggests,
26 which is also matters that are agreed. I think matters that are agreed could be
27 put in writing, probably in statements of common ground. So really, we'd like
28 to focus in on matters that are not agreed in relation to section 106. So Mr Tait,
29 I'm handing over to your side first, please.

30 MR TAIT: Thank you very much, madam. The first point to make relates to where the
31 – which are the vehicles now. REP4-145, section 106, heads of terms, included,
32 at that stage, the C strategy – skills, employment, education strategy – as well as
33 the community funds. And in response to a number of comments from some of
34 the local authorities that those aspects didn't attach to land, and in relation,

1 specifically, to the community funds, that they weren't allocated to the local
2 authorities for distribution, those two elements have been moved into the SACR
3 at D7. And in relation to the community funds – in relation to the C strategy,
4 that remains as it was before; it's just in a different place. And in relation to the
5 community funds, that also remains as before, just in a different place. So just
6 to set that scene.

7 So the section 106 agreements now contain provision in relation to
8 severance, as identified in the environmental statement, officer contributions,
9 and in the case of Kent County Council, additionally, the AONB compensation
10 enhancement fund, which has been agreed, as you heard yesterday, as to its
11 quantum, and also funds for HGV restrictions, potentially, on Henhurst Road,
12 where, as I understand it, the principle has been agreed. So Kent's has more
13 than others. So if I can then look at the areas where there is – look at the overall
14 map of discussions, starting with severance, with Thurrock, the position in
15 relation to the funding for measures in relation to Brennan Road, I believe, is
16 agreed. For Kent County Council, Valley Road, we are waiting to hear the final
17 position, but we understand that's close to agreement, if not agreed.

18 And in relation to Henhurst Road, that provides for a feasibility study and
19 a pot of money for implementation, which broadly accords with the KCC
20 request. So we understand that's either agreed or close to agreement. But we'll
21 hear back in due course if that's not correct. In relation to the community funds,
22 the position there is that there is some agreement but not entire agreement. I
23 will just ask, if I may –

24 MS LAVER: We do have the first item on the agenda, which I've shunted to second,
25 specifically on community funds. So I'd like to park community funds, please.

26 MR TAIT: We'll park that, yes. So in relation to the C strategy, that hasn't changed, as
27 I indicated. That's now in the SACR, so we'll hear if there are any issues in
28 relation to that. In relation to officer contributions, there is some agreement with
29 some authorities, but not with all the authorities. There have been several
30 meetings. You may have seen the draft section 106 agreements, which came out
31 at D7, but you may not have. I appreciate that.

32 MS LAVER: I haven't had the chance yet.

33 MR TAIT: So those were, I appreciate, only uploaded yesterday. They were provided,
34 at the end of last week, to the various authorities who benefit from it. But at the

1 same time, it was accompanied – because of the logistics of the print runs for
2 those, it was accompanied by a sidenote, which actually amends the figures in
3 them. So you won't have seen that, but that will be incorporated into the
4 versions at deadline 8. The local authorities have seen that. The latest position
5 –

6 MS LAVER: The local authorities are privy to that, but we will subsequently be.

7 MR TAIT: Yes.

8 MS LAVER: Okay.

9 MR TAIT: So this was very nearly the latest version, but it was overtaken by events on
10 Friday. So that needs to be merged. As I understand it, the position with officer
11 contributions is agreed with Brentwood. There's no disagreement identified by
12 Essex. And again, we'll hear from all those parties. Kent County Council have
13 indicated they're minded to agree. But again, we'll hear from them. Where
14 there is disagreement at present, clear disagreement at present, is in relation to
15 Havering, Gravesham and Thurrock.

16 MS LAVER: Is that over the sums?

17 MR TAIT: Over the sums, yes. Over the outputs, although they've been updated. The
18 broad position, from the applicant, is that it has adopted a systematic and
19 structured approach to these matters to pinpoint additionality, where there is
20 additional work specifically by reason of the projects. The costs have been
21 assessed by reference to market research on a consistent basis. The
22 disagreement in relation to Havering relates to the quantum of time, i.e., the pro
23 rata question, whether it should be – how much the time of an additional officer
24 would be taken. That's that issue. In relation to Gravesham, my understanding
25 is the principal issues relate to the extent of the additional roles that would be
26 required and the – there is inclusion of a homelessness prevention officer from
27 Gravesham's ask, if I can call it that, homelessness prevention officer and
28 parking enforcement officer, and community safety contributions.

29 And I understand there remains, certainly from the applicant's position, a
30 disagreement about that and the need for that, and the proportionality, applying
31 the fair and reasonable test. And it is similar in relation to Thurrock, but there
32 it's, I believe, more a question of the salaries that are assumed or put forward on
33 behalf of Thurrock, and some of the on-costs, i.e. pension assumptions and
34 redundancy payments and the like. So there is a measure of agreement; the

1 issues are narrow, but in some instances, significant. And that is the position, as
2 matters stand today. Oh yes, there's one other matter. There's a further change,
3 which was explained last week, which is not in the draft 106s.

4 These are annual sums that are to be provided under this heading, and
5 there was a discussion about the period, the start period, and the most recent
6 position is that those annual sums would be triggered from two months before
7 what's called an input date, i.e., when the authorities are first asked to engage,
8 but not including the preliminary environmental works. And they would end,
9 that hasn't changed, following six months after the opening of the tunnel. So
10 that's the period.

11 MS LAVER: So nothing would be able to be drawn down through applicant's
12 preliminary works.

13 MR TAIT: So it wouldn't apply to the preliminary works, save insofar as they fall within
14 the two months of the input date. Again, that's an application of the
15 proportionality principle, that it's not envisaged that would involve significant
16 officer time in relation to those more limited functions, bearing in mind that the
17 preliminary environmental plan is not a document that has many further
18 approvals within it.

19 MS LAVER: Okay. So without me trawling through each of the agreements at this point
20 in the proceedings, things like archaeological officers, I don't know if they're
21 covered in the section 106 agreements, but they would be involved at
22 preliminary stage, would they not? That is as an example.

23 MR TAIT: I'll check that. I'm not sure that would –

24 MS LAVER: As I say, I don't know if, specifically, those councils have requested funds
25 for those type of officers.

26 MR TAIT: That is Essex and Kent. So those are in the draft agreements with Kent and
27 Essex. And with Essex, I understand there's no disagreement about that; and
28 we'll hear from Kent, but my understanding is similar. So that is addressed.

29 MS LAVER: Right. Okay, well, I'll hear from the authorities as well, and we can maybe
30 close the point out.

31 MR TAIT: Yes. There's clearly a lot more detail we could give, but I don't think you're
32 necessarily looking for that.

33 MS LAVER: No, no. Whatever you want to submit as follow-up submissions is fine.
34 And obviously, there's the D7 subs, which I have yet to get through. Okay, so

1 that's everything for the applicant. So I'll go to the other side of the floor. Can
2 I start with Thurrock, please.

3 MR STRATFORD: Thank you, ma'am. Chris Stratford, for the applicant – not for the
4 applicant, for Thurrock. Absolutely not for the applicant. I'd like to make four
5 points of contention about the actual draft agreement, without necessarily going
6 into the details, and then three other supplementary points, but important points.
7 So firstly, on the officer support contributions, a while ago, two or three months
8 ago, we submitted to the applicant the four posts that we want, the salary that
9 we wanted, the national insurance pension contributions we wanted, the on-costs
10 for things like space, IT, desks, all of that, pension contributions, and a final,
11 one-off, redundancy payment after six and half years, since there's nothing else
12 to fund the post.

13 Now, we explained that in some detail, and it was based on the officers
14 that are currently in post, having been in those posts, and knowing what these
15 posts need. They've been there for nearly 20 years in many cases. So we gave
16 the applicant every detailed evidence that we possibly could to explain why we
17 needed what we needed. Then there was a meeting a week or two ago; we had
18 a meeting with them, and they came back with an offer that was well below what
19 we wanted.

20 MS LAVER: Do you believe, Mr Stratford, they provided evidence to support their cost?

21 MR STRATFORD: I'm just about to go onto that. I asked them for the evidence, and it
22 was initially refused completely, and then they said they'd go away and think
23 about it. Subsequently, and without warning, we've had a final offer sent to us
24 the day before yesterday, I think. And again, no evidence; no support
25 information; no nothing. And it's considerably well below what we ask for. It
26 is a feature that evidence sometimes is just not provided. In this case, it's
27 difficult to know how they've come up with the numbers.

28 MS LAVER: Presumably, having been a manager of a planning service and having to
29 go to the top to ask for new posts, or to fund posts, you have to do a
30 benchmarking against not only your own service, your own levels of salaries,
31 but also other authorities.

32 MR STRATFORD: Yes. Well, these posts are particularly there to assist the applicant
33 in processing a whole range of different subsequent approvals necessary post

1 any DCO consent. And the judgment, in three cases of the four, they have more
2 or less hit the salary that we wanted, but one not. Not at all.

3 MS LAVER: Sorry, you just said, so they've agreed to meet you on three, more or less,
4 but just one that's – yes, and there's no issue with the posts being funded. The
5 applicant's not contesting the posts.

6 MR STRATFORD: No, the posts are fine.

7 MS LAVER: And you're almost there on three.

8 MR STRATFORD: Yes, but we are considerably below what we actually need in order
9 to make sure that the people employed to do the jobs can actually do the job at
10 the right level. So that's the first point. The second point, on Brennan Road, it
11 is possible that the Brennan Road severance payment may be adequate. I need
12 to seek approval; I'll come back to that. However, it's not currently index
13 linked, and given that the work of Brennan Road may not be done for several
14 years, the money that's currently allocated may then not be enough. So index
15 linking is kind of –

16 MS LAVER: It's unusual, if you're ever obtaining a commuted sum, for it not to be
17 index linked, I would say.

18 MR STRATFORD: This is not a commuted sum. This is a payment –

19 MS LAVER: But it's a payment for Thurrock to do works at some point in the future.

20 MR STRATFORD: Yes.

21 MS LAVER: So forgive me for using the word commuted sum, but in essence, a similar
22 –

23 MR STRATFORD: I suppose. It's for a pedestrian crossing, basically, and the cost of a
24 pedestrian crossing goes up all the time. And in another three or four years, the
25 cost allocated may not be enough. That's the point. And it may not be necessary
26 to do the work for three or four years. Therefore, it may be insufficient. The
27 other point, further point, is about commencement and the preliminary works.
28 Now, I accept your point about the archaeology, which we have sought, and the
29 applicant has offered that to Essex County Council, Essex [inaudible] services,
30 which is fine. They would be doing the work anyway. But a lot of that work
31 would be doing preliminary works. But the main point we've got to make about
32 preliminary works is currently, not the surveys and all the other small things, but
33 it includes the clearance of vegetation and the establishment of the working
34 compound sites.

1 Now, in the case of compound 55A, in the north, that's a huge area. It,
2 according to my colleague, may take more than six months to a year to establish
3 it. You've got to clear the vegetation; you may need to do some land levelling.
4 There's a whole range of things – fencing, [plant standing?] – and that is
5 categorised as preliminary works, and yet it has significant impacts. We don't
6 believe it should be. And therefore, because the posts won't be involved until
7 those works are finished, there could be six months to a year of fairly major
8 works without the posts being funded.

9 MS LAVER: On that point, could you just tell me what the posts are, then, because I'm
10 trying to relate those posts to –

11 MR STRATFORD: Yes. Two posts relate to transport matters: a network management
12 officer and a highways development manager. And these are for various
13 highway consents and network management issues connected with road closures
14 and diversions. [Inaudible] new works, one is an environmental public health
15 officer. That would be section 61, certainly, and a range of other necessary
16 consents and involvements. And then there's the principal planning officer,
17 project manager, to oversee all of that.

18 MS LAVER: Would you claim all four of those posts, then, all four of those posts are
19 then required at the preliminary works stage? I mean, certainly, environmental
20 I can understand. Possibly, if there's road closures. I'm not sure about principal
21 planning officer for a preliminary works stage.

22 MR STRATFORD: Yes, that's a fair challenge. Okay, if I move onto the fourth one,
23 then. Here I may need some help because it's a legal matter. Clause 5.3 prevents
24 the applicant from transferring the benefit of the order without the transferee
25 entering into a deed of covenant. Now, it's noticeable that our colleagues in
26 Havering have requested that such a clause goes into the order itself. We have
27 no objection to that. And if you ask me any questions on it, I'll ask for help.

28 MS LAVER: I may ask Havering.

29 MR STRATFORD: Yeah, please. We have a legal representative. Okay, so that's the
30 four points about the agreement. Broadly, when it comes to the other three
31 matters, the two items that we have no objection to moving into the SACR,
32 which is the community fund and the C strategy. We do have a problem with
33 the – and it may well have changed as a result of D7 submissions – but the article
34 61 of the DCO says 'take reasonable steps'. That does not commit them to doing

1 various things. And we would seek an absolute commitment or, at best, best
2 endeavours, because that has a legal meaning. So that's the first point. Second
3 point is, and this is in our D6(a) submission, which, I believe, is REP6-096. We
4 have indicated that there is more than likely to be diverted traffic going through
5 Orsett Village.

6 It has been discussed with the applicant for probably two or three years
7 now, and about two or three months ago, they decided they would not provide
8 any mitigation except for the measures contained within the traffic management
9 plan for construction. We believe that's insufficient and believe that a scheme
10 needs to be funded to cover traffic calming and environmental improvements to
11 avoid traffic going through the village, which is just to the north of Orsett Cock
12 junction. The last point is a much, much broader point concerned with the 106
13 programme. As you may be aware, the council is currently under a section 114
14 notice, in terms of its financial position, and they have given me and the team a
15 fair bit of leeway on most things technical, but financial matters not.

16 And therefore, we would have to go through a council procedure to accept
17 or sign a 106 agreement. And I'm not entirely certain that that could be done
18 within the programme of the examination, which is only less than four weeks
19 away. And we're not yet there. So it's been an issue that we've raised with
20 them since the declaration of the 114 notice, on 20 December last year. So it's
21 been a year. And there have been a number of delays, on behalf of the applicant,
22 in providing us with information. I understand that. I'm not making a big point
23 about that. But the actual approval of any 106, should we be able to get to that
24 point, might take some time.

25 MS LAVER: So what are the steps, in that regard, to seek taking an approval?

26 MR STRATFORD: I'm not sure. We have the interim chief planning officer on the line.

27 She may well know. It certainly would need to go to at least one, if not two,
28 council committees for approval. There is an opportunity to do an extraordinary
29 meeting before Christmas, but it's very, very tight. And it would need to be
30 tested against what implications it might have, legally and financially, for the
31 council.

32 MR SMITH: Can I just briefly make an observation in relation to timing, standing above
33 this particular agenda item but looking at the relationship between the settlement
34 of this matter and the examination as a whole and our consideration and

1 weighing of issues? And that is that in terms of the contribution of planning
2 obligations to the deliberations of examining authorities and the Secretary of
3 State, there has been a general view that unlike practice in relation to Town and
4 Country Planning Act matters, where one can resolve to grant planning
5 permission subject to the satisfactory conclusion of a section 106 agreement, and
6 then that can disappear into the weeds, almost, and get resolved at some future
7 time – that is very, very difficult to do within the framework of an NSIP, because
8 unless a matter is before us, and bearing in mind, if it's not before us before 20
9 December, it is not before us, and we statutorily do not report on it – unless a
10 matter is before us in either a concluded form or alternatively, in so
11 demonstrably and well evidencedly close to a concluded form, such that there
12 are very clear undertakings from all potential signatories that this is all but final
13 movement on detail, frankly, it becomes very, very difficult for us to report in a
14 way that entitles us to place any weight on a planning obligation, which then
15 leaves the Secretary of State with a dilemma, which is that they have to deal with
16 the question of the virtue and weight of the agreement absent of direct reportage
17 from us.

18 Now, it is open for the Secretary of State to carry out a consultation
19 exercise in the decision period, but again, I will flag that that is a procedure that
20 this Examining Authority would deem not to be appropriate in all but the most
21 emergency of circumstances, because it is not a good use of the Secretary of
22 State consent team's time, because this process, the examination is the process
23 that is meant to get all these things landed.

24 Now, I know that lumps a great big pile of bricks in the middle of the
25 table, but I just thought we needed to have those bricks visible to us so that
26 everybody around the table – applicant, individual councils, because these
27 considerations may bear on other councils as well, plus the Examination
28 Authority – can look at the sequencing and timing considerations of all of this
29 and see if there is any way that things can be landed by 20 December to a point
30 where we have material before us that is a) capable of being taken into account
31 and b) capable of being accorded appropriate weight having regard to its content.

32 MR STRATFORD: Okay. Yes, they're all good points. In fact, we did, in the last set
33 of comments, indicate to the applicant that if there was a situation where we
34 could not agree on 106, then the natural default would be to do a unilateral

1 undertaking, which is entirely within their gift to do that, and the agreement
2 would need to change substantially in order for that to happen. The difficulty
3 we have is largely, I think, with the officer contributions.

4 Now, given the fact that – not to go over the ground I’ve already gone
5 over, but given that we’ve given loads and loads of evidence as to why we want
6 what we want, and all we’ve got back is two sets of numbers with no further
7 detail whatsoever, it would extremely helpful – and they can’t really be in the
8 public domain, so you can’t ask for them, probably – for the applicant to provide
9 us with the backing for why they’ve got the figures that they’ve got to, or
10 increase the figures, and then we might reach agreement.

11 MR SMITH: Everybody in this room at this juncture needs to have as first focus in their
12 mind the importance of there not being, essentially, unnecessarily blockage to
13 the conclusion of reasoned justifications for positions so that negotiations can
14 be concluded, and absolutely, Mr Stratford, point there taken. The applicant
15 needs to facilitate a timely resolution, and just as much as there are procedural
16 matters and indeed governance matters that your authority might need to look at
17 quite carefully and expeditiously over the next day or so, there are offer position
18 matters that the applicant ought to turn their minds to being as clear and precise
19 about as they possibly can be so that remaining discussions can be concluded as
20 swiftly as may be possible. Is that broadly understood?

21 MR TAYLOR: Ken Taylor, panel member, and also, really for Mr Tait, but also for the
22 councils, potentially: the realistic prospect of us seeing unilateral undertakings
23 instead of section 106, and I take your point, Mr Stratford, that that normally
24 means very different forms of wording, given that obligations, positive
25 obligations on the council, would be appropriate.

26 MR TAIT: Yes. With those where there is an issue of principle remaining – for example,
27 with Thurrock at present – we have undertaken a benchmarking exercise, and I
28 have Ms Lucy Neal to my left, who’s undertaken that, we can give you that
29 further information. Not now, I suspect, but where there isn’t agreement is to
30 the salaries, and that’s the particular issue. That would be converted into a
31 unilateral, which isn’t a particularly complex drafting exercise, and is quite a
32 familiar one for all the lawyers in the room, but that’s what we would need to
33 do if there was disagreement, and so the Secretary of State could take account
34 of matters that we consider are appropriate in terms of reporting contradiction.

1 MR SMITH: Indeed. However, if we're looking at that being the nature of the disagreed
2 matters against the broad public interest, in terms of concluding agreements on
3 broad terms, I would hazard to go as far as to say that there is an issue of
4 kingdoms and horseshoe nails here, and that we really need to start looking at
5 kingdoms, because –

6 MR TAIT: We're proceeding at the moment on the basis of draft agreements, rather than
7 draft obligations. We think we're there with at least three, but there is some way
8 to go with Gravesham and Thurrock, possibly Havering, and we will provide the
9 benchmarking evidence, make that absolutely clear, so that may break the
10 logjam, if there is a logjam.

11 MS LAVER: And that benchmarking evidence – has that been shared with Thurrock?

12 MR TAIT: We have indicated it. I'm not sure whether the actual documents have been
13 provided, but likewise, I don't think we've seen the detailed evidence in relation
14 to the asks. So that's the position, but we can explain that further.

15 MS LAVER: Okay. We do need to move that point forward. Right, I think we need to
16 come back to Mr Stratford to close out.

17 MR STRATFORD: Would you mind? Thank you. We have, of course, given all the
18 detailed evidence over the course of a year to the applicant, so to claim that we
19 have not is –

20 MS LAVER: No, I appreciate that. I don't want to go around the semantics of that
21 debate. There is disagreement on that, but if it could be parcelled together in
22 one swift zip file to the applicant, then that will kill that point for you saying,
23 'We have provided it over a year,' but they could have it this afternoon and then
24 that point is dealt with, and then similarly, you have to have the information
25 back. We don't need to be privy to that bit of dialogue.

26 MR STRATFORD: Of course. No, I mean, I know what we've sent because I've sent
27 it, and I've sent it at least three times over the last year. In terms of who is
28 writing this, it's quite important, because these posts are to help the applicant
29 get through things quickly. Now, if we're right, and the post needs a certain
30 level of seniority and support, that job can be done well, and expeditiously. If
31 they are wrong, then there is a problem, because some of the works that's done
32 on their behalf will take longer to do, or just not get done, because no post can
33 be recruited.

34 MS LAVER: No, yeah, I do understand that.

1 MR STRATFORD: Thank you.

2 MS LAVER: Mr Mackenzie, is that everything for Thurrock before...

3 MR MACKENZIE: George Mackenzie for Thurrock Council. Yes, madam, it is. Thank
4 you.

5 MS LAVER: Thank you very much. I'm going to come to Kent County Council, because
6 Valley Road and Henhurst Road have been raised, so I think this point's for you
7 to respond to. I'm really just looking for areas of disagreement, so if everything
8 is tickety-boo, we could just say that. No, Mr Stratford is shaking his head.

9 MR STRATFORD: I wish we could, but I'm afraid we're some way from that. A number
10 of points to make, if I may, ma'am, on this topic, before I turn over to Mr
11 Ratcliffe and perhaps Ms Cooper as well. I mean, we are concerned and have
12 been concerned for some time about the timing of these matters. We received
13 at deadline 7 a draft, but further to that, we received yesterday at 2.52 p.m. a
14 further draft section 106 agreement. So you'll appreciate that we haven't had a
15 great deal of time, particularly with hearings being in progress, to consider it.
16 Now, you will have seen, I think, our deadline 7 submission, where we set out a
17 list of matters which we very strongly thought were suitable for contributions
18 relating to the mitigation of direct effects of that scheme, and we have run into
19 a virtual brick wall, I fear, in terms of acceptance of those being suitable matters.

20 We also have matters relating to the Shorne Woods Country Park debate,
21 which you'll remember from the hearings last time, where the preference has
22 been expressed by the applicant that those matters be dealt with by way of a side
23 agreement rather than through the main section 106 obligation. We haven't even
24 seen a draft yet of such a side agreement, and that side agreement is subject to
25 the same strictures in terms of the timing of its completion as the other section
26 106 matters. So we are really quite concerned about the approach that's been
27 adopted towards us by the applicant, and we also have the matters of very
28 considerable principle, which again we've touched on in previous issue-specific
29 hearings, relating to the wider network impact study monitoring and mitigation.

30 You will again recall our deadline 6(a) representation, where we invited
31 the panel to consider adding those as agenda items. You clearly heard enough
32 about those matters to deliberate on them, because they're not identified as such,
33 but they remain live issues between us, and the suggestion that the necessary
34 mitigations ought to be included within the section 106 agreement again has

1 been rejected by the applicant, so we arrive at a situation where we received
2 yesterday a document which is described as the final offer, which is grossly
3 deficient, we say, in terms of those matters set out in our deadline 7 submission,
4 which are simply not dealt with, and then there are the matters which are dealt
5 with.

6 Now, the one bright spot I can report is that the officer contributions – we
7 don't have any difficulty with the figures, so that's good. We don't need to join
8 other authorities in their debates on that matter, but we also have the same issues
9 with the lack of indexation for the physical works. In particular, the severance
10 overcoming pedestrian crossing on Valley Road. That's not indexed.

11 We also have a separate, discrete issue, where the section 106 draft seeks
12 to impose upon us an obligation to install low noise road surfacing, primarily on
13 the A228. Now, that is not a form of road treatment which we as the highway
14 authority use, because it degrades very quickly, and therefore has to be regularly
15 reinstalled with all the cost and disruption which that involves, and that means
16 that we would simply not be willing to sign the section 106 agreement as
17 proposed. Not just, as I say, because of the manifest deficiencies in terms of
18 what's left out, but also because of those particular obligations which are sought
19 to be imposed to us with respect to surfacing.

20 MS LAVER: Is there any funding attached to that?

21 MR STRATFORD: There is initial –

22 MS LAVER: But not ongoing.

23 MR STRATFORD: But nothing ongoing. Now, that's a summary. I don't know whether
24 that suffices or whether Mr Ratcliffe wants to come in. I think he does, so that's
25 where we stand at the moment, ma'am.

26 MR RATCLIFFE: Thank you. Joseph Ratcliffe for Kent County Council. No, I mean,
27 you couldn't have summarised that better. The only thing I will add is also to
28 agree with Thurrock's point, which I don't often do, on the involvement of our
29 technical officers at the preliminary design stage. That's something we will need
30 to do as well, if we're singing off works to our highway network. I think the
31 agreement's been changed to remove that. I mean, just to reiterate, as it currently
32 stands, I cannot recommend to my director that we sign this section 106. Thank
33 you.

1 MS LAVER: Ms Cooper, do you want to add – no. Okay, thank you. Obviously, much
2 more detail in a post-hearing submission on these points and similarly to
3 Thurrock, is going to be to our benefit. Obviously, that’s a precis of the
4 situation, but there’s much more behind that.

5 MR STRATFORD: Yes. I mean, obviously, some of it, as I’ve said, is foreshadowed in
6 what we’ve already put in at deadline 7, but of course we’ll expand and update.

7 MS LAVER: Yes, great. Thank you. Can I go to Essex, please, and Mr Woodger?

8 MR WOODGER: Good morning again, ma’am. Mark Woodger for Essex County
9 Council. Concentrating primarily on officer contributions, I’d just like to say
10 that there is no agreement and there is no specific disagreement at this time in
11 relation to officer contributions either. We’ve made a number of comments back
12 to National Highways, and I received an update to the section 106 agreement
13 with some additional figures in it and an explanation yesterday, and forgive me,
14 but I haven’t actually read that document yet and been able to digest it properly,
15 but discussions are ongoing with National Highways in relation to those officer
16 contributions, and I’ve got a meeting with them at 3.00 tomorrow afternoon,
17 really to dig deep into the weeds in relation to that.

18 For preliminary works, obviously, a lot of the works that are going to be
19 taken place in Essex are going to be in Brentwood and Hole Farm has been raised
20 as an example. I understand that Essex place services, who are the
21 archaeological investigators for both Essex and I understand Thurrock in
22 relation to this scheme, and Havering, do have an agreement with Oxford
23 Archaeology to take those works forward, but as to how their involvement is
24 moving forward in terms of if this development is consented, a figure has been
25 offered.

26 How we attribute that maybe potentially to higher amounts in earlier
27 years, lower amounts in later years, is something which we would discuss with
28 the Lower Thames team, and get them to come back to you at the next available
29 deadline on that with the document, which we hope we can both agree to.

30 MS LAVER: Okay. Sounds good.

31 MR WOODGER: That is all I have in terms of my notes on this item, ma’am. Thank
32 you.

33 MS LAVER: Great. Thank you. That’s really helpful. Can I go to Havering, please?

1 MS THOMSON: Thank you. Morag Thomson for Havering. Can I deal with three
2 distinct items? Firstly, can I deal with the change of the community fund and
3 the SEE strategy from the section 106 out into the SACR? Secondly, can I deal
4 with some remaining section 106 issues, and thirdly, deal with the issue of
5 timing?

6 So firstly, can I just, with respect, say that you would benefit from reading
7 some deadline 7 submissions which means that I can cut short what I say,
8 because much of this is in the deadline 7 submissions, and that I can't give you
9 any references because there aren't any references on the website yet, but it's
10 the response of Havering to the consents and agreements position statement,
11 which National Highways submitted at deadline 6, in response to the submission
12 submitted by Havering at deadline 7, and also, the documentation submitted by
13 National Highways, including a section 106 – I can't remember what it's called
14 – 'revision statement' or 'position statement' at deadline 7, and those documents
15 together explain how we've got to where we've got to, and so as a result of
16 National Highways realising somewhat late in the day that the obligations in
17 relation to the SEE strategy and the community fund could not be dealt with by
18 section 106 because they simply do not comply with section 106, those
19 documents have been moved into the SACR.

20 Now, you'll release when you read the documents at deadline 7 that there
21 was another approach that could have been taken, which was that they could
22 have remained in the section 106 and be dealt with by imposing them on any
23 subsequent undertakers within the DCO, as was done at Sizewell. I won't
24 burden you with all of that, because it's in the documentation submitted at
25 deadline 7, but that wasn't the course that was chosen by National Highways,
26 and instead they put them in the SACR, and the consequence of that, of course,
27 is that they are therefore enforced by reference by article 61 of the DCO, and
28 instead of them being in section 106 agreement, which are under the control of
29 the highway authority – of the local authorities, the planning authorities, in terms
30 of the content and enforcement, they are now under the control of the Secretary
31 of State for Transport, to whom National Highways report, of course, and so it
32 is a less satisfactory situation, because it's not as certain for local authorities as
33 would otherwise be the case, but in the circumstance where section 106
34 agreements weren't produced until halfway through the enquiry, and the position

1 relating to the SEE strategy and the community fund not realised until many
2 weeks after that, it seems we are where we are and we're going to have to deal
3 with them in the SACR.

4 So my final point on that is that we would like, in response at deadline 8,
5 to make some suggested drafted changes to the contents of those agreements in
6 the SACR, as we did when they were situated in the section 106 agreement, and
7 we would like very much to have some Word versions of those two documents
8 – that's part 2 and 3 of the SACR – that were submitted at deadline 7, so that we
9 can make tracked changes, so that the Examining Authority can easily
10 understand what changes we would like to those commitments, and
11 unfortunately, National Highways refuse to provide us with those, but we would
12 be grateful for some indication that you would also feel that helpful that we can
13 provide some tracked changes on Word versions of part 2 and 3 of the SACR.

14 So moving on then to the section 106, we only at Havering have officer
15 contributions. I can be quite swift now, because we echo what Thurrock have
16 said. We have been asking for a long time for a breakdown of the officer
17 contribution figure that has been put forward by National Highways. It's true to
18 say that they issued a document yesterday at deadline 7, which we received
19 yesterday, which has got an improved offer in it, but again, no breakdown of the
20 figure. Now, we've put forward different figures and we've explained how
21 we've arrived at those figures, and so we would echo Thurrock's request, that
22 we please be provided with the breakdown that we've been asking for for some
23 time.

24 The other problem with the agreement as currently drafted is this issue of
25 preliminary. The intention is that the officer input into matters that is required
26 should be reflected in the officer contributions, and there is no reason why that
27 should not relate to the preliminary works as well as the main construction
28 works, and that's especially the case since the officer payments are repaid if
29 they're not used, and so if there were to be payments made because they're
30 triggered at the start of the preliminary works, and the officers weren't required
31 to have any input into preliminary works then they would be repaid, because
32 there's a mechanism in the section 106 agreement which requires that
33 repayment.

1 MS LAVER: Can I just ask on that point, though – you would be recruiting people into
2 post, on the assumption you had funding from National Highways, but
3 ultimately, if those officers weren't required at any point, you've still got to pay
4 a salary.

5 MS THOMSON: It's an imperfect world, isn't it? That is a problem, and that's
6 something that needs to be reflected in the figures.

7 MS LAVER: But I think from the applicant's perspective, they will need to understand
8 actually how your officers, these new posts, how they would be required and
9 when they would be required, from your perspective. They're not going to fund
10 a post which is doing other council work because they're not doing anything on
11 their work.

12 MS THOMSON: No, the way the agreement is set up is there's an annual payment
13 specifically for works that are set out in the schedule to the agreement – inputs
14 into various aspects of the DCO, and if at the end of a year, that has not been
15 necessary, that those works have not been necessary or – the council would be
16 required to itemise what that money's been spent on.

17 MS LAVER: Present a timesheet.

18 MS THOMSON: Indeed, and if there's money left over, as it were – because these aren't
19 all full-time posts. Certainly, in terms of Havering, they're not full-time posts,
20 necessarily. So if that time hasn't been used, and there's money to be paid back,
21 then it's paid back just after the end of the year, so that – we would be happy for
22 there to be no requirement to pay it back, but we've seen that to be a sensible
23 thing, and the third thing, before the end of my final point on timing – the third
24 point is that we received on last Friday a section 106 agreement with the drafting
25 of the officer contributions. We received it previously as well, but further
26 drafting, and then we received yesterday a revised section 106 agreement with
27 some drafting which was advantageous to Havering taken out, but without any
28 explanation, so we've requested a meeting with National Highways, and
29 hopefully we'll get a meeting to resolve that as soon as possible.

30 Moving on to the third point, which is timing. This is almost a self-
31 fulfilling prophecy if we don't get going on section 106 until halfway through
32 in the examination, but we are where we are, and I think, whilst the deadline 8
33 or deadline 9 or deadlines that National Highways have given us for agreement
34 may not be possible, but I think we would hope that 20 December would

1 certainly be a long-stop date, but there is another – as a last resort, there is
2 another way forward, because it's not an unusual situation for there to be
3 disagreement on the contents of a section 106 agreement at a point where a
4 decision has to be made, or a report to be written, and I think you'll all be privy
5 with the blue pencil clause type of approach.

6 So that is – it's not an optimal position, and probably not particularly
7 helpful, but it is a way forward. If there remains a dispute at the end of the
8 period, there can be a blue pencil clause included so that if Secretary of State
9 considers A, then that applies, and if he considers B, then the other applies. Just
10 a backstop of a way forward, which is commonly used in planning appeals.

11 I think – oh, just one final point, which is the point batted across from
12 Thurrock. The drafting for the additional provision to enable a subsequent
13 undertaker to have to comply with the section 106 is contained in appendix A of
14 the LBH response to the DCO at deadline 7 on page 75. Again, I don't have a
15 reference number because it's not available yet. Thank you.

16 MS LAVER: Thank you very much, and I'll move to Gravesham, please. Give me some
17 good news, Mr Bedford.

18 MR BEDFORD: Michael Bedford. I was going to make some remarks in overall terms,
19 and then I was going to bring in Ms Lane, who's remote, to comment further.
20 Madam, under this agenda item, there are three matters of omission, which is I
21 think what you really want to hear about, instead of matters where we are
22 moving close to agreement. The three areas of omission – one relates to the
23 treatment of health impacts. In terms of the section 106 that has been proposed
24 by National Highways so far as Gravesham is concerned, it solely deals with
25 officer posts, and doesn't deal with any other matters.

26 I'm not going to say anything at this stage about the community funds
27 issue, which is being dealt with in the SACR, because we'll put that up as later
28 item, but in terms of matters that Gravesham have raised as matters that they
29 think ought to be dealt with in the section 106, healthcare provision was one of
30 those matters and the way that we see it is that the applicant has recognised in
31 the health and equality impact assessment that there will be impacts from the
32 construction works on the affected communities, particularly those approximate
33 to main works areas or compounds.

1 We don't see those impacts which we think are reasonably likely and
2 therefore are, as it were, known impacts – we don't see those as matters that can
3 just be, as it were, passed over to the community fund matters which deal with
4 the unknowns and the intangibles. We think that this is something that does
5 need to be as a matter of mitigation, which effectively means it needs to be dealt
6 with through the vehicle of the section 106, and at the moment, what the
7 applicant is addressing is the, as it were, additional health burdens that might
8 arise from its own construction workers and that is picked up in the REAC
9 commitments, but what the applicant is, at the moment, not making any
10 provision towards is the additional health burdens that will be experienced from,
11 as I say, the impacts on the local community of the construction works. So that's
12 an area of omission, and at the moment, the applicant's position is to simply not
13 make any proposals in that regard.

14 The second omission is on the issue that we've raised in various of our
15 representations about additional housing pressures due to the absence of
16 provision of work or accommodation south of the river, and so particularly
17 pressures in Gravesham. There has been, obviously, a lot of discussion about
18 that between us and the applicant, but the applicant's position appears to be that
19 it's not minded to make any provision.

20 As a result, as you will know, we have put forward a draft requirement
21 which deals with that matter and which, I think, on the agenda items for ISH14,
22 that is for discussion there. Having just touched on that as an omission, what I
23 was proposing to say was that we wouldn't deal with that today, particularly
24 because I'm hoping that ISH14 I'll have the benefit one of our housing team
25 who may be able to give you some more substance, though I have just – if you're
26 happy, I was just going to park that. It's an omission but I'm aware that it's on
27 the agenda for ISH14.

28 MS LAVER: Yes, Mr Smith and I did converse on this last week and yes, we were aware
29 that there was overlap between this item and the agenda, which Mr Smith has
30 said, so we will pick it up there as well.

31 MR BEDFORD: Thank you, madam, for that. So then I come to the third omission. It
32 does relate to the subject of officer posts. There is some positive news in this,
33 if I can say that what the applicant is proposing is to fund two officer posts within
34 Gravesham, and in principle, we've now got to the position of being, I think,

1 pretty close to agreement on the level of remuneration of the posts. I think there
2 still may be some outstanding matters of detail in relation to how one deals with
3 annual increments and how one deals with redundancy, and matters of that
4 nature, but in principle, for the two posts that have been agreed upon, we're in
5 reasonably common position.

6 However, what we're not in common position on is, as it were, other posts,
7 which Gravesham considers would be required in order to ensure that the
8 impacts of the scheme are properly managed, regulated, and if necessary,
9 enforced against during particularly the construction period.

10 In terms of the position of detail, we have identified to the applicant – or
11 perhaps, sorry – perhaps I should start by saying in terms of the agreed posts,
12 one is a project manager/principal planning officer, and the other is an
13 environmental health officer, but then in addition to those, we have identified
14 for the applicant – we see a need for a planning enforcement officer. Also, a
15 contribution to parking and environmental enforcement, community – sorry,
16 community safety. We have in discussions also identified a homelessness
17 prevention officer, but I think that actually gets wrapped up into the worker
18 accommodation knock-on consequence, so I won't touch on that, and then a
19 senior officer contribution, and as I say, there has been dialogue with the
20 applicant about those positions.

21 There hasn't been any acceptance by the applicant that those roles are
22 needed, and the position as we see it is obviously, in terms of context, this is a
23 very large construction project, effectively the largest in recent times within the
24 Gravesham area.

25 It is inevitable, as we see it, that there will be community issues raised
26 during the construction process, which will require investigation and potential
27 enforcement action by Gravesham's officers. It may be that there will be some
28 community concerns which are raised which are not as well founded, because
29 when one understands what's being put forward, what's being approved, and
30 what is being done, that actually what's being done is all in accordance with
31 what has been approved, but given the complexity of the project and the amount
32 of detail, even getting an answer to that question of, effectively, is that activity,
33 one, happening at a time that it should be allowed to happen – is it happening in
34 places where it's allowed to happen?

1 That will absorb officer time, and there is a distinction between – there’s
2 the roles that the applicant is prepared to fund, which will help dealing with the
3 discharge of requirements or approvals under the various control documents,
4 and we’ve obviously got a separate disagreement about the mechanisms for
5 those, but parking that, there is then this issue of separately, there will be officer
6 time needed to be spent on investigating whether or not there is compliance with
7 whatever has been approved, and if necessary, enforcement, which can include
8 needing to carry out site inspections, can include needing to investigate, may
9 need the question of potential prosecutions to be considered.

10 All of those matters for Gravesham to undertake, and we consider that all
11 of those matters are matters which, in the public interest, ought to be properly
12 supported so that there can be both prompt but also proportionate reactions to
13 any of those matters.

14 MS LAVER: Mr Bedford, I do find favour with the statements that you’re making,
15 having managed a planning service for the last five years, and whenever a new
16 large development comes on stream, there’s inevitable enforcement complaints,
17 and whether that’s mud-tracking on roads, whether it’s they haven’t discharged
18 a condition, and I do appreciate the need for discharging those duties, but I also
19 struggle to quantify how frequently and whether that is a full post if necessary,
20 through the entirety of the applicant’s build programme, so it is something that
21 we are alive to for all of the councils in the room who are making the same
22 statements.

23 MR BEDFORD: I’m grateful for that madam, and madam, we recognise that point as
24 well, that it would not be, effectively, reasonable for the applicant to have to
25 fund a post, and the funded post was somebody who was able to just sit in the
26 office waiting for the phone to ring and nothing ever happened. We don’t think
27 that’s very likely, but we’re not at all averse to a mechanism that requires
28 effectively – whether it’s on a timesheet basis, whether it’s some other form of
29 accounting – ensuring that the applicant is effectively only paying work which
30 is actually required, work that is actually to be done, but that’s, with respect to
31 that part of the discussion – we’re not on the same page as the applicant on this,
32 because the applicant at the moment is saying, ‘We don’t see the need to
33 contribute at all towards that role,’ as opposed to, ‘We recognise the need but
34 we’re concerned that there needs to be due diligence to ensure that we’re not

1 overpaying.’ As I say, we are perfectly happy to have a dialogue on that latter
2 point, which is, ‘Well, if the principle of the post is accepted, how now then do
3 you put in place mechanisms to ensure that you’re getting value for money?’

4 So those were, as it were, the three areas. If I can now bring in Ms Lane,
5 and it may be that with, I suspect, her rather more hands-on experience of
6 managing a planning service, she might be able to give you a little bit more flesh.
7 Although, I understand from what you’ve said, the principle you accept, and it’s
8 a question then of how one fleshes that out. So if I can just bring in Ms Lane, if
9 she’s got anything she wants to add.

10 MS LANE: Thank you very much. So Wendy Lane. I am the assistant director for
11 planning. Unfortunately, my camera’s not working, so you’re just going to have
12 this amorphous voice coming over the top. So I do want to just take us back to
13 the fundamental of what we’re being asked to do, so the officer support
14 contributions are to assist the council in meeting their obligations arising on the
15 account on the development on the basis that doing so imposes on them
16 additional cost burdens over and above their general duties and responsibilities.

17 We are quite used to having to scope the scale of our service. We are used
18 to having to set out our charges. We do pre-app charges all the time. We have
19 to look at those annually. We look at our fees and charges so that we only charge
20 what is actually costing us for the service, so we don’t make money on those
21 aspects, so it's only cost recovery. So this is a day-to-day thing that we do, so
22 when we put forward our charges, we were very, we thought, sensitive about
23 what we asked for.

24 So as you’ve heard, we’ve heard for this project manager role, the
25 environmental health, the planning enforcement, the environmental enforcement
26 contribution, community safety, homelessness and a senior officer contribution.

27 We explicitly did not ask, because we couldn’t quantify in the same way,
28 payments for emergency planning, community liaison, economic business
29 support or tourism, skills or employment, customer services or any finance, and
30 the reason, as I say, is because we couldn’t quantify those. All of those aspects
31 will still be impacted. Obviously, community liaison – this is directly going to
32 fund this. Obviously, skills and employment, we’re going to talk through the
33 SACR.

1 Customer services – people seem to have a naivety, I think, sometimes
2 about how a council works. Obviously, you completely understand. People will
3 use the channels they know. They will go through their elected members. They
4 will go through to the officers that they know that deal with this. They will go
5 through our customer services team. Even if in the end we direct them to the
6 helpline that National Highways have, they won't necessarily go to them direct,
7 and they won't always trust what they hear. So the amount of times we've
8 directed people to things, and obviously, we've got experience from High Speed
9 1. We've had big projects in the borough before, so we're very familiar with the
10 realities of how this works.

11 So what we've tried to do is truly make sure that we have that capacity
12 there. It's a really difficult time for the council. We are making redundancies.
13 There is no capacity within this council whatsoever to deal with a project of this
14 scale without those resources being identified. We put forward a proposition.
15 We provided actual pay scales for what those posts needed to be, and very much
16 the response that we had back on issues such as planning enforcement – they
17 didn't see the need. Parking enforcement – they think the environmental health
18 person would monitor DCO compliance. Parking, fly-tipping are very different
19 issues. You wouldn't have an EHO dealing with that.

20 We only asked for a very small contribution towards community safety
21 again. We have looked at lots of research around how projects have come
22 elsewhere, and there is tensions. I mean, in our ALR, we quoted work that was
23 done, obviously, from those big projects together, and they very much
24 highlighted having the people in the role. You want that community liaison. We
25 want to have it as a positive if it does happen within the borough. We don't want
26 those tensions, community tensions, all the time, and we think actually having
27 someone there very much being able to liaise would work better.

28 As we've highlighted, homelessness we'll talk about separately, and then
29 the senior officer contribution was again recognising that senior officers will be
30 pulled in to make press releases, statements, attend meetings, etc, and that is not
31 ever included, so we'd asked for that. So as I say, we thought we were very
32 rounded, what we'd asked for. I do have to just make one slight addition. So
33 we hadn't asked for economic development skills, but they've made an offer of
34 a post, but only in relation to £347, which is supposedly an officer to attend five

1 meetings, but they'd only be attending for 10 minutes if that's the kind of money
2 that you were paying, but that's another thing that they've offered.

3 So that's where we are on the officer contributions. We don't think it
4 remotely picks up the burdens that this council's going to deal with, and then
5 going back to the other issue that Michael Bedford raised earlier around health.
6 They have advised us that they're talking to the integrated care board about this.
7 The reason we're still pushing it is health, access to health is such a huge issue
8 for residents. It's in the press all the time. People are terrified about not being
9 able to have health provision when they need it. We therefore ask for that quite
10 clearly as part of major developments.

11 For this not to deal with that, or to not give the clarity, we think is
12 unacceptable, and obviously the whole point of section 106 is to make the
13 unacceptable acceptable, and we can't leave it for that uncertainty and they
14 might be having a discussion and there might be something coming in the future,
15 when the document clearly highlights that it's going to have a significant impact
16 through the construction phase on wellbeing and quality of life, because if that
17 provision isn't made and those demands increase, it's our residents who are
18 going to have all that additional stress of trying to get health provision.

19 So that's why it's important to us. It's our residents. It's our members
20 who are concerned, and we just need that reassurance. Hopefully that's provided
21 what you wanted, but obviously, happy to clarify anything if I've not been clear.
22 Thank you very much.

23 MS LAVER: Yeah, thanks, Ms Lane. I was going to come back to Mr Bedford and
24 yourself on the health point. I don't disagree with the position that you're
25 putting forward. The difficulty I have when any requests are made of any
26 applicant around health funding is actually delivering the end product. Councils
27 often seek commuted funds for GP provision and the like, or mental health
28 services, but then actually allocating those funds to relevant providers is where
29 the block comes in, because there simply aren't surgeries which just get built,
30 and it's quantifying that, and I struggle with that element, having been involved
31 in it for quite some time. So yes, the request – I understand why you're making
32 such a request. The integrated care boards haven't really come fully in to this
33 examination. The applicant has tried to have that engagement, but I just wonder
34 if you could advise how you would see – if the applicant were to put forward

1 those funds, how would those funds then produce at the end what it is that you're
2 seeking the funding for?

3 MS LANE: Maybe – sorry, Michael, might be quicker if I come back. So Wendy Lane,
4 Gravesham Borough Council. I suppose what we'd look very much is what was
5 done for HS2, so very much – they have a helpline, which facilitates and acts as
6 a wayfaring to a range of services that are available. There are lots of services
7 that you can buy in to. For example, Gravesham – we have a care-first package.
8 We can access direct mental health and counselling as part of a paid service, and
9 a lot of big companies have that.

10 If National Highways were talking to us and saying, 'We recognise that
11 there is a pressure. If people come through to the helpline that National
12 Highways are offering for the community and clearly there's an issue, we have
13 this provision behind us. We can do a referral ourselves to give them that
14 number. It would be very much through that process' – if we were being told
15 that there was that offer, I think it would give us a lot of reassurance that there
16 is a way of doing it, but at the moment, as I say, we're being told there's just
17 discussion with the ICB and there's no additional provision.

18 So I completely agree with you. We think we need to have something
19 clear and available, and something either virtual or a helpline would seem to be
20 a way, and as I say, we're very aware that a whole range of paid companies
21 provide such service, because we ourselves – we sign up to such a service as a
22 council.

23 MS LAVER: Okay. Thank you very much. Mr Bedford, does that complete –

24 MR BEDFORD: I was going to say, madam, given that Ms Lane's given you her insight
25 onto that, I'm not going to add anything further.

26 MS LAVER: Mr Mackenzie, you raised your hand.

27 MR MACKENZIE: George Mackenzie for Thurrock Council. Yes, madam. Can I ask
28 Mr Neve to address you on a brief point? I think it's appropriate to address it
29 now, but I'm mindful of the time and if we need to circle back to it later, then
30 we can. It's a point to do with – establish the relationship between the
31 establishment of compounds, preliminary works, and commencement, as
32 defined in the draft 106. I'll ask Mr Neve to address you on it, but as I say, if
33 you prefer to hear it from us –

1 MS LAVER: Is it something that I would need to then go to the applicant on, or could it
2 be dealt with in writing in a post-hearing submission?

3 MR MCKENZIE: Can I ask Mr Neve?

4 MR NEVE: Sorry. Adrian Neve on behalf of Thurrock Council, Ms Laver. Your
5 decision, obviously, but it might be a very quick answer to a question that I just
6 want some clarity on that might help –

7 MS LAVER: Okay. Go on.

8 MR NEVE: – the discussions. So through the work that we've been doing prior to the
9 submission, I was trying to establish a line in the sand, if you like, between
10 advanced works, preliminary works and establishing the sites, and I see the clear
11 definition between advanced site investigation works. Effectively, relatively
12 small exploratory works to establish the contract.

13 Following that, there's a site establishment, which is constructing the
14 compounds, which is in the case of compound 5 and 5(a), quite a significant
15 piece of work. There's a lot of infrastructure that goes alongside those works,
16 so I was very keen to set out within a documentation where that line in the sand
17 was, if you like, and obviously, that informs and triggers the discussions about
18 the future funding.

19 So that's what I want just to be very clear that from my perspective, if
20 there are archaeological or site investigation works, you might have some small
21 compounds that go with that, but from my experience, when you're establishing
22 the compounds per se, mini-villages – we've been to the HS2 works. We've
23 seen the scale of the main drive sites, etc, so we know that that site establishment
24 is a project in its own right.

25 MDS LAVER: So you'd be looking for some sort of definition within the agreements to
26 make that clear.

27 MR NEEVE: Indeed, and what I purposefully pushed for is in the traffic management
28 plan for constructing the outline – the traffic management for construction, I've
29 specifically requested that site establishment is demonstrated as being outside of
30 the preliminary works, so in my view, there's some confusion between what is,
31 terms in the DCO and code construction practices, those temporary means of
32 enclosure, for instance. From my perspective, I understood that as fairly small
33 scale works around some site investigation works, not the establishment of the
34 main compounds, and I think from the conversations that I've been hearing that

1 there still seems to be a little bit of confusion as to whether site establishment is
2 inside preliminary works or beyond, and that's why I think it maybe is quite a
3 straightforward answer. Is it or is it not? Thank you.

4 MS LAVER: Thank you very much. Okay, so I think we've heard all the authorities on
5 the section 106. I know Medway is virtual but I don't believe they're affected
6 by this particular item, unless Medway wants to come in. No. Okay. Oh, hang
7 on.

8 MR BULL: Yes, just to confirm, ma'am – Andrew Bull on behalf of for Medway Council
9 – no comment on this item.

10 MS LAVER: Okay, great. Thank you. Mr Tait, I'm going to go back to you for a very
11 brief response. The only one thing which is really – has jumped out – not one
12 thing. There are many things, but it's this issue of the benchmark of the salaries.
13 As I've said, when I've ever had to set up an establishment of a post, or try to
14 seek consent to advertise a post, I have to benchmark how those salaries are
15 provided. Now, I know you said you were preparing some material on that for
16 Thurrock, but Havering have raised it as well, so in terms of the provision of that
17 information, is it covering all of the post? Some of the councils have agreed to
18 the remuneration of the posts, but has that benchmarking been done for all of the
19 authorities?

20 MR TAIT: Yes, it has. I've got the person who did the benchmarking on my left.

21 MS LAVER: I don't need to hear it. I just need to know the information will be provided
22 to the councils.

23 MR TAIT: Yes.

24 MS LAVER: Thank you. So I'll go to you just for response.

25 MR TAIT: Just turning to each, but it will be at a high level if that's acceptable at this
26 stage. In relation to Thurrock, that was my first point, that the posts have been
27 agreed. The issue appears to be, principally, the benchmarking, as indicated by
28 Mr Stanford, and related to that, just to be clear, the officer contributions were
29 to be indexed linked. That's made clear.

30 In relation to preliminary works, those are defined, essentially, within the
31 DCO as essentially minor works. They're not for the construction of the main
32 compounds, and so applying the principle of proportionality, it's not considered
33 that would be imposing significant additional burdens, if any, on the local
34 authorities.

1 The fourth point is article 61. It was requested that be converted into ‘best
2 endeavours’ or an absolute commitment. D7, it’s been converted into an
3 absolute commitment, and fifthly, in relation to the agreements, there is
4 provision in each that if the relevant council considers the authorised
5 development has caused or will cause it to be incur plus, over and above those
6 mentioned in the document, that’s a cost burden over and above its general duties
7 and responsibilities, they make a fully reasoned request to National Highways
8 in writing for reimbursement to those costs. National Highways would use its
9 reasonable discretion in deciding whether or not to reimburse any such costs
10 requested in full or in part, so that is given legal effect.

11 MS LAVER: It is, but it’s still a discretion. The power rests with National Highways to
12 exercise.

13 MR TAIT: But to exercise it reasonably.

14 MS LAVER: Yep, point taken. Sorry. Go on. It was your turn.

15 MR TAIT: No, no. It’s your...

16 MS LAVER: You mentioned indexing, and I didn’t pick that up. I did say – when
17 Thurrock mentioned it, I did have a –

18 MR TAIT: Yes, for the officer contributions, that is indexing. In relation to the severance
19 paying, the lump sums, my understanding is that in each case, those are for a
20 one-off payment at a particular time. The timing of that is identified in the
21 agreements, and therefore, that’s been factored into the sums that have been
22 offered because they envisaged to occur at a particular time, i.e. towards the end
23 of the construction period.

24 MS LAVER: No, appreciate that, but are those costs based on present day costings?
25 Because if they are, then delivering that fund in six years’ time, seven years’
26 time, those costs are going to be very different.

27 MR TAIT: So...

28 MS LAVER: Yeah, so I think your colleague said, ‘present day.’ I got a bit of a whiff,
29 which makes their point quite valid, that in seven years’ time, the costs will be
30 very different. I don’t think any of us are under any illusion that costs are going
31 to come down significantly. So I want to rest that with you, for the applicant’s
32 team to think about.

33 MR TAIT: Yes, we’ll come back on that. So that’s all I was going to say on Thurrock.
34 In relation to Kent County Council, Mr Fraser-Urquhart mentioned that

1 following the discussion about a framework agreement for the payment of
2 potential compensation arising in relation to any operational effects into –
3 relating to Shorne Woods Country Park, that he hadn't seen the draft side
4 agreement. There have been discussions subsequent to that CAH hearing on that
5 advance payment framework. That is quite a complex process in terms of the
6 drafting because it requires it to be an evidence-based approach and needs to
7 have a structure in relation to how advance payments are to be quantified or
8 returned. But my understanding is that that is on its way to Kent County Council
9 today.

10 The second point relates to wider network impacts. It was explained on
11 25 October to Kent that the section 106 is not intended to replicate control
12 documents or matters that are already in the draft DCO, and so that's a clear
13 position. We thought that had been received but that is the position – not
14 intended to deal with the wider network impacts. There's a separate discussion
15 about that.

16 Third point, officer contributions – so Mr Fraser-Urquhart noted that as a
17 ray of sunshine. There is of course another ray of sunshine, which is the
18 compensation enhancement fund that's included in the section 106 agreement,
19 but I appreciate that burst through the clouds yesterday rather than today. In
20 relation to the discussion about low noise surfacing, Kent have come back and
21 said they don't wish to go down that route, and so that is to be removed from the
22 section 106 discussions. So that's all I was going to say on that.

23 In relation to Gravesham, here there is – this is where there's a
24 disagreement about the number of posts and we are probably best coming back
25 to you with a bit more detail as to our considered response in relation to each of
26 those particular points. We've heard some additional evidence from Wendy
27 Lane today, but there does appear to be close to agreement on the full-time posts.
28 It may be they will not be fully engaged on these matters, so again it's a question
29 of proportionality overall, taking an overall view as to the sums of money that
30 are going to be paid on an annual basis from a period before the input date to a
31 period after the construction of the tunnels. But we'll come back to you with
32 more detail on that because I think that deserves a more detailed response.

33 MS LAVER: Yes. Thank you.

1 MR TAIT: In relation to the question of the health issues, I think that is some funding
2 for health impacts. That does not appear to us to be either necessary or
3 proportionate, but I appreciate in relation to that, and also worker
4 accommodation, there's an opportunity to come back to that at ISH14.

5 MS LAVER: Yes, we'll be picking that up elsewhere.

6 MR TAIT: So I think the only matter additional in relation to Havering referred to
7 Sizewell – that was an expedient there to incorporate what would have been a
8 section 106 into the DCO because the promoters had no land to which to attach
9 a section 106 agreement. So after a considerable period of debate about that, my
10 understanding was that was the expedient that was adopted, but here we have a
11 section 106 process which has got well-understood and clear ambits and
12 enforceability requirements and so the section 106 route is the route that is
13 adopted here, subject to the points about the two matters going into the SACR
14 and also taking advantage, if required, of the unilateral element of section 106.
15 But again, just to reiterate, we are still looking towards it.

16 MS LAVER: Okay. One thing I'd just like to close on that point is on the Gravesham
17 point around health. I hear your position. I've heard Gravesham's position.
18 What I think we've heard, and I mentioned it when I spoke to Ms Wendy Lane,
19 is we've had really a lack of involvement from the integrated care board, and
20 very early on – I think in the rule 6 where we did request the applicant try and
21 get statements of common ground with the integrated care board – I appreciate
22 the applicant has tried, and they've been very slow in coming back. I think the
23 integrated care boards, however, have been approached from the perspective of
24 health for workers, particularly from the northern compound. I think that's been
25 the basis of the discussions that National Highways have been having with
26 integrated care board. But in terms of health on residents, what discussions have
27 taken place with the integrated care board? I don't need an answer now. It can
28 be post-hearing submission. It would just be helpful if we could get an update
29 on the dialogue with them on that matter.

30 MR TAIT: We will do that. I've been passed a note to say we understand they're happy
31 with the approach and it has been taken in the REAC commitment PH002, but
32 we will come back.

33 MS LAVER: Yes, thank you. Thank you very much. Okay. I think we need, really, to
34 break for some lunch. I had hoped – and I'm sure Mr Smith had, given the

1 control documents is going to be a fairly large item – that we would have been
2 a bit further forward, but all of this is far too important to have cut you all short.
3 But we’ve still got community funds and impacts on local plan allocations. I
4 think as a panel over lunch we need to have a bit of a discussion about how much
5 of that we can get through without really impeding on time. I think if we didn’t
6 have an open-floor hearing scheduled for tonight we may very well have run
7 over but I think we’re going to have to, in the break, determine what we can get
8 through this afternoon and what needs to go into writing. Mr Stratford, you’re
9 raising your hand.

10 MR STRATFORD: It’ll be very brief. We have made a point on the PH002 REAC
11 commitment on health. We, as a council, agreed some wording for the REAC –
12 changed wording – with the ICB and we put that to the applicant and it was
13 rejected and therefore the ICB have no approval role in the health facilities that
14 may or may not be provided by the applicant, so –

15 MS LAVER: Did you tailor that information to the examining authority, your agreement
16 that you got with the ICB?

17 MR STRATFORD: We did. I can’t remember the reference.

18 MS LAVER: If you could find the reference and put it in your post-hearing submission
19 that would be good.

20 MR STRATFORD: It would be certainly in REP6 but may have been reiterated in REP7.

21 MS LAVER: That’s fine. If you can add it to the post-hearing submission that would be
22 very good.

23 MR SMITH: We have a hand online.

24 MS LAVER: I can’t see the names. Oh, hello, the gentleman from Medway. I’m so
25 sorry.

26 MR BULL: Hi, ma’am. If it would assist the ExA, I prepared a short statement, but it
27 could be submitted as a written representation. It largely draws on information
28 that I’ve already submitted, so I thought I’d make that clear now. That might
29 help you during the break.

30 Ms LAVER: Thank you. I realise that you wanted to speak on 3(c) on the local plan
31 matter, so we’ll give it consideration in the break and come back to you. So if
32 there are no other points to raise, I can’t see the time, so can we please break
33 until 2.10 for lunch.

34

1 (Meeting adjourned)

2
3 MS LAVER: Good afternoon, everybody. Perfect. I'm just re-opening issue-specific
4 hearing 12 following the lunch break. Before we did adjourn, I said that the
5 panel would be discussing how we would proceed this afternoon given we'd
6 hoped to be a little further on. We did resolve, as a panel, to defer the local plan
7 commitments item – which was agenda item 3(c) – to written submissions only.
8 I do make apologies for that, but we do want to make some headway this
9 afternoon on the control documents matter.

10 I did want to put an express apology to Mr Andrew Bull from Medway
11 who came onto the hearing and waited patiently all morning just to speak on that
12 item and obviously to be cut off at the knees, but Mr Bull did suggest that he
13 would put a submission in writing and we're extremely grateful for that. So we
14 will reopen on community funds which was the first part of agenda item 3(b),
15 but before we just jump into that item, I just want to hand over to my colleague,
16 Mr Smith, who wants to talk about how we're going to do the transition to item
17 four.

18 MR SMITH: Indeed. Thank you very much, Ms Laver. I just thought we should have
19 the shape of the afternoon in front of us before we actually got too deeply into
20 the detail of individual agenda items, and so therefore we do need to
21 acknowledge that this evening we have an open-floor hearing which is due to
22 proceed, and we do have customers. There are people who have requested to be
23 heard who wish to appear, so we don't have the opportunity to push off business
24 that would otherwise be done this afternoon into this evening. We must, as a
25 matter of absolute requirement, be out of this room before public registration for
26 that event commences, because the shape of the room has to be changed. An
27 open-floor hearing doesn't proceed with a horseshoe table like this one.

28 So, in a nutshell then, there is quite a lot of work that needs to be done in
29 respect of control documents. Ms Laver will conclude her item without rush,
30 and with fair opportunity for involvement for those here around the table and in
31 the virtual room. I will then commence item four on control documents. I will
32 go as far as I can before the expiry of time, but what I did then want to flag is
33 that if we need adjournment time in order to manage control documents issues,
34 the best place to do that feels to me – subject to any views around the table – as

1 though it ought be in the day that we have to hand for issue-specific hearing 14
2 where the draft development consent order is to be discussed, because my sense
3 is that broadly the same expertise and the same advocacy is necessary to discuss
4 the DCO as is to deal with the control documents.

5 Now, our opportunities are relatively limited to do anything different,
6 namely that we only have one other hearing that we could extend into, and that
7 is a traffic and transportation hearing where the cast of experts is, shall we say,
8 somewhat different. So that's the proposition. That's the logic. Does anybody
9 want to complain vociferously or suggest an alternative solution, or shall we take
10 it that if we need additional time on control documents, that we'll make that time
11 on Tuesday. Everybody content. Wonderful. Thank you very much. I will
12 return to Ms Laver.

13 MS LAVER: Thank you, Mr Smith. So we're back into the item on community funds.

14 I think this really needs to go to the interested parties first. This is in relation to
15 the quantum of community funds, whether they should be indexed, what they
16 fund, whether they should be split appropriately amongst the local authorities,
17 and so on, and is listed in the agenda. Can I have a show of hands from the local
18 authorities who do wish to speak? Certainly Thurrock, Gravesham, that it?
19 Thurrock and Gravesham. Oh, and Havering. Okay, great. So we will move
20 across to Mr Bedford, please.

21 MR BEDFORD: Michael Bedford, Gravesham Borough Council. In relation to the issue
22 of the community fund, as far as the quantum is concerned, the Borough Council
23 is broadly content with the sum that is identified. So far as the issue of indexing,
24 we are firmly of the view that it ought to be appropriately indexed. As to the
25 nature of the index, we can see that there is, as it were, room for discussion
26 because the projects which might come forward for grant approval under the
27 scheme, some of them may be projects which have a capital element to them, in
28 which case it would seem to us that the BCIS index would probably be the most
29 appropriate, but there will be other projects which come forward for funding
30 where that wouldn't seem to be the best vehicle. I don't think we have an
31 enormous view as to between RPI and CPI. I think we would suggest that CPI
32 is probably better. That seems to be the one that is more regularly used by
33 government for other purposes.

1 If it was possible to do it in a way that allowed indexing to reflect that
2 there could be capital projects but there also could be revenue projects and you
3 would choose an index appropriately, that in a sense would be the most fit for
4 purpose, but I can also imagine that drafting such an arrangement and making it
5 workable might prove too challenging. So, madam, we don't have a strong view
6 on that, but if we had to choose anything – if there was to be only one measure
7 – I think our measure would be BCIS. But we certainly think the principle of
8 indexing, given the seven years over which the fund is available, is an important
9 component.

10 Madam, as to the question of split, we certainly think that it's appropriate
11 that there should be a geographic split. We don't take any issue with the way
12 that the split has been done. One could finesse it but we're not raising any issue
13 about that. As to the type of schemes that may be funded, again, we're content
14 with the headlines that are described in the SACR. I think at some stage in the
15 past there had been discussion about whether it would be helpful, possibly by
16 way of examples, to give more examples of what types of things the SACR part
17 3 recognise would fall under the umbrella of those headings, because that might
18 help community groups and so on –

19 MS LAVER: That's a question I have for the applicant.

20 MR BEDFORD: I'll leave that, but all I would say is, we can see the benefit of that but
21 that's not a matter that we are going to the wire about. And then should the remit
22 of the fund be expanded? In a sense it's slightly related, but we haven't
23 identified anything to be dealt with by the community fund that we would want
24 to add. As you know, we've got separate issues about things which are outside
25 of the SACR and currently outside of the 106.

26 There is one small point which, if anything, possibly relates to the third
27 bullet point. It's on split, but it's not really about the apportionment of funds.
28 It's more about the apportionment of governance, if I can call it that. It's a very
29 small point, but in appendix – sorry, in part 3 of the SACR in section three, under
30 the awarding panels, and 3.2 deals with the Kent community fund, and 3.2.1
31 deals with the composition of the panel, and it amounts – under the A, B, C and
32 D – it amounts to a panel of nine parties, and the Borough Council is one of the
33 three local authority representatives in item C. We don't raise any issue about
34 that, but if you look at item D –

1 MS LAVER: Mr Bedford, I'm not sure which version you're looking at. Could you
2 clarify that, because I've just pulled it off the examination library –

3 MR BEDFORD: Ah, yes, sorry. I apologise. I should have started properly. I am
4 looking at the SACR that was submitted at deadline 7.

5 MS LAVER: Okay.

6 MR BEDFORD: And which doesn't, therefore, have a number at this point in time. In
7 terms of pagination, I'm looking at it in a paper version. In the paper version
8 it's page 45. I'm not sure whether that correlates with the PDF electronic.

9 MS LAVER: Sorry, I'm just struggling to get it up on my screen because it doesn't have
10 a number. I was in the library.

11 MR BEDFORD: Yes. Although the library was updated at deadline 7, it wasn't updated
12 at deadline 7 to include the deadline 7 submissions. I think if you go into the
13 general index, under probably stakeholders, and then that picks it up.

14 MS LAVER: Yeah. Are you in the tracked or the clean?

15 MR BEDFORD: I was in the clean.

16 MS LAVER: Okay, so I'm in that document now, I think.

17 MR BEDFORD: So then it's part 3 which deals with the arrangements for the community
18 fund. I'm being told it's probably page 49 electronically.

19 MS LAVER: Awarding panels, bottom of the page.

20 MR BEDFORD: Awarding panels, yes. Awarding panels, section three, 3.2 is the Kent
21 community fund. I'll just reprise that point so you can more easily follow that
22 point.

23 MS LAVER: Yes please.

24 MR BEDFORD: There are component parts to that, A, B, C and D, and if you add them
25 up it actually comes to a panel of nine people because there is A is one person,
26 B is one person, C is three people, and then D is four people. As I say, we don't
27 have any issue about C, that's to say, there will be one representative from
28 Gravesham Borough Council as a component, but if you look at item D, these
29 are the representative bodies from the local community, and at the moment it's
30 worded as at least one member representing Kent, one member representing
31 Medway, and one member representing Gravesham, so there is a floating fourth
32 member. Conversely, if you just go back to paragraph 2.5, which is the
33 proportionate split, and 2.5.1, the split within Kent, is Gravesham 75, Medway
34 25. So we would suggest – and we don't think, from having liaised with

1 Medway, that they have a problem with this – we think that it ought to be that
2 item D is two from the Gravesham communities, one from Medway, one from
3 Kent, which we think is a closer fit to the proportionality.

4 Obviously, Medway can in due course speak from themselves in their
5 written representations after the event, but we don't understand that they would
6 have a problem with that, and we don't think it would throw out the working of
7 the community panel. We also note, in terms of governance – if you just go over
8 to 3.2.2 – there is a panel of nine people, but in any event, in the event of a split
9 vote, it's the chair that has the casting vote, so we would hope that we're not in
10 a sense thought to be shoehorning our way into dominating the organisation, but
11 we just think there's a fairer split. So that's our point on governance. So those
12 were our points on the community fund.

13 MS LAVER: Great, thank you. I don't have any questions on that at this point. So, Mr
14 Mackenzie, I'll come to Thurrock, please.

15 MR MACKENZIE: Thank you, madam. George Mackenzie for Thurrock Council. I'm
16 going to ask Darren Wisher and Chris Stratford to address you primarily on this
17 point, but before I do, can I just close off a live point that was raised just before
18 the lunch break concerning the REAC commitment to the delivery of
19 occupational health services including measures to support mental health, and
20 it's just to provide the reference concerning the integrated care board and the
21 extent to which we suggest they ought to be involved in the process of designing
22 the appropriate level of delivery. The reference is REP6-166, page 14.

23 MS LAVER: Thank you. Page 14. Lovely. Very helpful. Over to you, Mr Wisher.

24 MR WISHER: Thank you, madam. Afternoon. Darren Wisher. I'm a socioeconomics
25 specialist. I run a company called Wisher Consulting. In the same way as Mr
26 Bedford a few moments ago, I've got some brief points on all five bullet points
27 on this agenda item. Would your preference be that I run through them all in
28 one go or would you like me just to focus on scale initially?

29 MS LAVER: No, if you could run through them in one go, please.

30 MR WISHER: Okay. Will do. So starting with the issue of quantum, Thurrock Council
31 prepared a paper for the applicant that was actually submitted a year ago today
32 – I'll just check the date on it – and that set out the council's position on the
33 scale of the community fund. You can find that document in our deadline one
34 submissions, REP1-288. It's a very long PDF document – I think it's about 306

1 pages – but the points of interest around the community fund are at page 289 of
2 that PDF. So the council’s position, as set out in that paper, is that the 1.89
3 million proposed by the applicant over seven years is wholly insufficient. Our
4 view is that a more appropriate figure is a sum of 3.75 million over a seven-year
5 period, and we set out in that paper just how we got to the 3.75 million, and it
6 was the result of some pretty careful benchmarking analysis against what we
7 consider a representative sample of recent large-scale infrastructure projects. So
8 we looked at Thames Highway, we looked at the A14 road scheme, we looked
9 at Hinkley Point from a nuclear perspective, we looked at HS2 from a rail
10 perspective, and we basically took the average scale of community fund in those
11 schemes per pound of capital investment and applied that ratio to LTC and that’s
12 where we got to the 3.75 million. So that analysis has been shared in full with
13 the applicant and is summarised in the submissions we put in at deadline one
14 which I referred to earlier.

15 The applicant has done their own benchmarking which they may wish to
16 allude to in the fullness of time, but in our view that was based on only relatively
17 modest scale road-based schemes that in our view were not directly comparable
18 to both the scale and likely impact of LTC. And even then, the applicant didn’t
19 accurately scale up their benchmarking analysis to arrive at a proposed number
20 for the community fund. We set out those criticisms in that paper I referred to.
21 And it’s for those reasons that we say the applicant’s 1.89 million is insufficient,
22 and we’ve seen no movement from the applicant on this matter since we
23 submitted that paper a year ago today. So that’s my point on scale.

24 On the point of indexation, we feel very strongly that the community fund
25 should be index linked to protect its value and stop the value of it being eroded
26 over time. We have said, in our submissions, that we feel it should be index
27 linked in line with the CPIH – consumer price index with housing – which is the
28 government’s preferred measure of inflation, but I don’t think we’ve got a
29 particularly strong view on the precise source of the indexation. I think our
30 stronger view is that indexation needed to be in place and that there’s probably
31 a number of indices that can be used to achieve that goal.

32 On the point of split by local authority, we welcome the splits – or the
33 concept of the splits – that are included in the heads of terms document. The
34 paper that we prepared a year ago did propose some modest changes to the splits

1 which we discussed and agreed with other impacted authorities, but I won't go
2 through the precise nature of those splits. There were some modest changes to
3 the percentage shares, and they're all set out in our written submissions. We
4 were somewhat surprised that given those splits were agreed amongst a number
5 of impacted parties, they weren't readily seized upon by the applicant, so the
6 applicant hasn't agreed to our suggestions on those slight modifications to those
7 percentage splits.

8 MS LAVER: Can I ask, Mr Wisher, before you just move on – can I just who you came
9 to an agreement with on those splits?

10 MR WISHER: Yes. The signatories to that paper we produced were ourselves, London
11 Borough of Havering, Gravesham and Medway Councils.

12 MS LAVER: Lovely. Thanks.

13 MR WISHER: Final point from me on the focus of the fund, Thurrock Council is
14 essentially content with the proposed thematic remit of the fund, i.e. we don't
15 particularly feel any thematic areas are missing from its proposed focus. We do
16 have two requests – two quite precise requests – which I hope – if you consult
17 the heads of terms document that we're using for the basis of the discussions
18 today, we're happy with the wording within that heads of terms document, but
19 unfortunately that same wording is not replicated in the current section 106 that's
20 being discussed by the council and the applicant, so there's an unhelpful
21 inconsistency between the two applicant documents.

22 I raised the two points and, as I say, they are adequately covered in the
23 heads of terms which is the primary document we're using today. So firstly,
24 Thurrock Council would require the fund to have the flexibility to support
25 projects beyond 10k per project, and up to 25k per project in exceptional
26 circumstances, and that is set out adequately in the current heads of terms
27 document but not in the parallel section 106 document that we've been
28 discussing. And then secondly, we are very supportive of the timely delivery of
29 projects as set out in the current heads of terms document, but we don't wish to
30 see a clause in the parameters of the community fund which specifies that
31 projects must be fully deliverable within 12 months of receipt of grant which is
32 a clause which has crept into section 106. In our view that seems overly
33 restrictive and doesn't really reflect the realities of delivering community grants,
34 community projects, which by their nature take time to get off the ground and to

1 implement. So we're very supportive of timely delivery of projects but don't
2 wish to see that phraseology be hardened in any way in terms of deliverability
3 within a 12-month period. Thank you, madam. That's my points.

4 MS LAVER: Thank you very much. Mr Stratford, did you want anything to add? No,
5 so it's just Mr Wisher's submissions. Mr Mackenzie, that completes the
6 submissions?

7 MR MACKENZIE: George Mackenzie for Thurrock Council. It does, madam. Thank
8 you.

9 MS LAVER: Wonderful, thank you. So over to Mr Douglas, please.

10 MS THOMSON: If I may start – Morag Thomson for Havering. Can I just make a
11 further additional general point, before going onto the specifics of the agenda,
12 and that is that obviously the points I made regarding transfer of the CEE targets
13 – CEE skills thing – earlier, going into the SACR from the section 106 remain
14 valid for this. I won't repeat them all but they're clearly valid for this, and that
15 connection is one point that wasn't made, which is that just before lunch it was
16 said that the obligation to take all reasonable steps in article 61 had been firmed
17 up because it now says 'implement'. That is a little bit disingenuous because if
18 you look at the SACR, a lot of the obligations within the SACR which that
19 National Highways have committed to implement are actually reasonable
20 endeavours or best endeavours obligations and not absolute commitments. I
21 think it was said that that turned the SACR into absolute commitments but
22 they're not actually absolute commitments.

23 MR SMITH: There is actually a spot in our agenda item four where we will deal with
24 that.

25 MS THOMSON: So moving on then to the specific items on the agenda, in terms of
26 quantum, I'm going to let Mr Douglas deal with that shortly. But there is one
27 point that we've made consistently when this topic was in this section 106 and
28 that is of course the point of the fund is to deal with construction impacts and it
29 is fixed, though, for a seven year period, and so even if the construction were to
30 go beyond seven years, the fund runs out and so our view is that the fund should
31 be an annual payment which should last for the length of the construction period.

32 Indexation, obviously indexation should occur. I suggest that it is possible
33 to draft it quite clearly so that capital projects are subject to BCIS and other
34 projects subject of CPI. The identified allowance for each authority, we adopt

1 the same position as Thurrock on that, that the document they submitted was one
2 submitted on behalf of Havering as well. Type of schemes that may be funded,
3 we don't have an issue with that specifically except that the criteria for schemes
4 are very complex in the SACR document and it seems to us that it could be
5 significantly simplified so that it's not such a – so difficult to obtain.

6 MS LAVER: Do you want to give some examples of what you mean by that?

7 MS THOMSON: Yes. So if you turn to – do you have the SACR still on your screen,
8 ma'am? I don't know –

9 MS LAVER: I do.

10 MS THOMSON: So if you turn to, for example, paragraph – the criteria on page 47. I
11 don't know what page that is on your PDF. All those criteria need to be met,
12 but also there are going to be some further criteria which are to be identified by
13 the community foundations following them getting into agreement with National
14 Highways, whereas it seems to us that there's no reason there can't be a much
15 more general criteria which relates to the purpose of the fund which is set out in
16 the heads of terms document which is that it's to be used for mitigating any
17 intangible and residual impacts of development. Grants for schemes, measures
18 and projects which promote economic, social and environmental wellbeing of
19 the affected wards. And if necessary, that could be related to those four
20 objectives, but there's going to be further criteria that are going to be identified
21 further down the road by these community foundations which seems to me
22 unnecessary and uncertain.

23 MS LAVER: Have you put that submission anywhere in writing?

24 MS THOMSON: Yes. All these points have been made many times. Can I just deal
25 with just a few other points on the document? The document doesn't give the
26 local authorities any funds at all. What it does is provide funds to a community
27 foundation with which there is as yet no agreement, and so the document
28 provides funds in our case to Essex Community Foundation, and it sets out that
29 the National Highways will use their best endeavours to enter into agreement
30 with the foundation to distribute the funds under what they've called an
31 administrative agreement and also a funding agreement or transfer agreement,
32 they call it, all of which seems unnecessarily bureaucratic. The funds could have
33 been paid direct to the authorities. Nevertheless, that's where we are.

1 The difficulty is that there is no obligation in here, and cannot be, for the
2 community foundation to enter into any agreement, and therefore we would have
3 to address the fallback position – what if they don't enter into an agreement with
4 community foundation? We put that to National Highways and suggested that
5 the fallback should be that the local authorities have their individual parts of the
6 whole and were able to distribute the grants in accordance with the same scheme
7 as was envisaged in here. But that's not what's appeared in the SACR. What's
8 appeared is a fallback position whereby National Highways distribute the
9 scheme or run the scheme – not distribute – run the scheme. And so, for
10 example, the stand in the shoes of the community foundation, and therefore
11 have, as was just referred to earlier, the casting vote. It just can't seem right to
12 me that the National Highways – in whose interests it's not really to spend this
13 money because if it's not spent it's returned – also have the control over where
14 it goes. So we suggested the fallback position should be money going to the
15 authorities and we think that should be right.

16 There is a secondary point in relation to the way in which the individual
17 parts of the money are distributed, and we suggested some drafting which gave
18 each borough a little bit more of a weighted vote in the event that they were
19 dealing with the money directed at that borough, because the money is
20 ringfenced to the individual boroughs, so it seemed to us that it would be
21 appropriate for, for example, Havering to have more of a say in what happens in
22 Havering than what happens in Thurrock. And this is particularly relevant to
23 Havering because Essex Community Foundation is very shire-focussed. It's not
24 really focussed on a London borough and so we think it's an important point.

25 The 10,000 cap on individual grants was not included in the section 106
26 agreement that we have been discussing over the last few weeks, and has
27 appeared again – has just been reintroduced – into the document in the SACR.
28 We don't agree with that cap. We think it effectively rules out a lot of
29 associations and bodies who simply won't have the ability to spend a lot of time
30 and effort on applying for grants of that scale. So I think those are all of my
31 points. Sorry for taking up that time, but can I just reiterate my request – I think
32 it would be helpful if we could show you how we would like the SACR to read
33 – these parts, parts two and three – without unravelling everything, because we
34 know we are where we are, and so I reiterate again if you could make an action

1 point that you can release to us a Word version of parts one, two and three of the
2 SACR, that would be very helpful. Thank you.

3 MS LAVER: Mr Douglas.

4 MR DOUGLAS: Daniel Douglas, London Borough of Havering. Just on the quantum
5 point, again, as my colleague, Ms Thomson, said, Havering is part of the joint
6 or collaborative submission to the applicant last December where the authorities
7 submitted its view as to what it felt the quantum of the community fund should
8 be, and we still stand by that submission. We think it should be a greater level
9 than it currently is, and that the splits set out within that submission should be
10 what the final split is across the local authorities.

11 I think the other point that I will just make in relation to the community
12 fund, as it currently stands, Havering – the share for Havering would be about
13 £27,000 per annum, and it goes back to the point Ms Thomson just made around
14 community groups and the concern that I think we've got is the value of that is
15 going to cut off a lot of groups. Taking the time and effort to submit a bid for
16 that community fund in terms of the bureaucracy that goes in with preparing
17 application forms and getting it submitted – in this case to the Essex Community
18 Foundation – and if there's that maximum value available that would ultimately
19 get distributed to successful applications, it's going to put off a number of
20 groups, we think, preparing bids, and an overall bigger or larger allocation across
21 the various authorities I think would make it a much more attractive proposition
22 for community groups to submit funding applications. Thank you.

23 MS LAVER: Thank you very much. Now, there was nobody else that wanted to speak
24 but Mr Mackenzie, I have clocked your hand.

25 MR MACKENZIE: George Mackenzie for Thurrock Council. Sorry to pop up again.
26 Can I just add a footnote briefly to what Mr Wisher told you? It's in relation to
27 bullet 1 on this agenda item in relation to the scale of the fund. And it's this,
28 that the Thurrock Council benchmarking exercise which yields the figure of 3.75
29 million is based on a median figure as opposed to a mean. So it's just that really,
30 that when we say average using our four NSIP comparables, we mean the
31 median, not mean. And that's clear at our D1 submission, and I hope it's clear
32 now.

33 MS LAVER: Okay, thank you. I've made a note of that. Okay. Mr Tait, could I have
34 some responses please?

1 MR TAIT: Yes. Thank you, madam. To my left, I have Emily Dawson who, as
2 introduced earlier, is the project head of benefits. Before turning to her on each
3 of the five points, if I can pick up a couple of smaller points. The first is in
4 relation to Mr Bedford's comments in relation to the fourth person. That's
5 unidentified at present, precisely to give some flexibility, but we're open to
6 adjusting that if that's thought to be helpful, and we'll come back on that.

7 And the second point from Mr Wisher in relation to the 3.5 in the SACR
8 at D7, about 10,000, and the reference to extending that to 20,000 in exceptional
9 circumstances. We're open to making that adjustment and we'll come back to
10 you at the next deadline and likewise, at 346, whether there is some flexibility
11 that would be usefully imported in relation to the 12 months. So again, we'll
12 reflect on those very specific points.

13 If I can now go on to pick up the following sequence that others have
14 followed. And starting with the quantum, Gravesham are broadly content with
15 that, but you've heard from Thurrock and Havering that they are not. So if I can
16 ask Ms Dawson to explain the basis of the approach; how the figure's been
17 reached in particular.

18 MS DAWSON: Thank you. Emily Dawson for the applicant. The fund is split north
19 and south of the river and equates to £1.26 million for communities north of the
20 river and £630,000 for communities in the south, to be distributed over that
21 seven-year period. The scale of the proposed community fund was increased
22 following workshops held with the local authorities in 2022 and in response to
23 feedback we received that the funds should be available for the year after the
24 new road opened for traffic, whilst finishing works take place. As a result, the
25 total fund value increased from £1.5 million to £1.89 million.

26 The community fund aims to empower local communities and fund those
27 small-scale community-led projects that address the more residual and
28 intangible impacts of road construction rather than the direct impacts, which, if
29 significant, are required to be mitigated directly. This is because we consider
30 those direct significant impacts would and should be addressed through the
31 mitigation outlined in the environmental statement and other application
32 documents. As such, it's our position there's no standard methodology that can
33 be used to set the overall value of community funds given the scope, scale, type,

1 and location of developments and their effects, the socio-economic environment
2 within which each project is set and the approach to direct mitigation.

3 The value of our proposed fund has therefore been set based on National
4 Highways' experience of operating and planning similar funds on other major
5 road schemes, and the £1.89 million proposed value compares generously to the
6 following other major road projects that have delivered similar funds or are
7 planning to. These are the A14 Cambridge to Huntingdon improvement scheme,
8 which operated a fund of £450,000 during construction, The A303 Stonehenge
9 Tunnel, which is currently proposing a £500,000 community fund, and also the
10 A428 Black Cat to Caxton Gibbet scheme, which recently started works and is
11 due to shortly launch a £250,000 community fund to operate in the same way as
12 we are.

13 As the community funds are linked to the residual adverse effects of
14 building the road that are not mitigated through other means, we believe that as
15 a result of the mitigation and compensation secured elsewhere in the application,
16 that the likely residual effects of the project won't be significant, nor therefore
17 warrant similar fund values provided by other major projects such as nuclear
18 projects Sizewell C and Hinkley Point C. It therefore would not follow that
19 levels of funding should be increased based on the cost of, and funds provided
20 by, these other projects in the past. The local transport and environmental
21 benefits of the Lower Thames Crossing, once operational, will, for the most part,
22 be felt by the communities close to the route alignment; journeys starting or
23 ending in the Lower Thames area, including Thurrock, Gravesham, Havering,
24 Brentwood, Medway, and Dartford account for 48% of the transport benefits
25 generated by the Lower Thames Crossing, and so it's the local communities who
26 will benefit from the faster, more reliable journey times, leading to improved
27 productivity for local businesses and positive long term impacts on the local
28 economy.

29 On whether the value of the fund should be fixed or index linked, as this
30 is derived from precedents set on other road schemes and the amount proposed
31 is not fixed to a specific project, and in line with those other road schemes, it is
32 proposed that it is a lump sum and it's not proposed to be index linked. This
33 will provide National Highways with certainty of the funding required, allowing
34 us to control costs and manage public money effectively. We also believe that

1 it will provide a sense of fairness for applicants who will not find that later
2 applicants receive more money than they do at a later stage of the project being
3 delivered.

4 MR TAIT: In relation to split, Gravesham indicated they had no issue and Thurrock that
5 they welcomed the concept. There was a reference to some changes suggested
6 with a number of authorities – was supported by number of authorities. Did that
7 include Brentwood?

8 MS DAWSON: So the request that we received in the letter that we responded to in
9 March 2023 did ask us to exclude Brentwood from the split. We have proposed
10 a split which I can go through in detail that was based on the 36 affected wards
11 that are highlighted in our – the project’s community impact report, which is
12 reference REP 2032, where we stipulate that successful applicants will need to
13 demonstrate that their proposals relate to an impact on the community in one of
14 those wards that we found in our assessments meant that they would be impacted
15 by our construction. And it is for this reason that we didn’t agree to the ask from
16 the local authorities to exclude Brentwood from the community fund allocations
17 because we feel that the alignment to the affected wards in that report is the
18 correct way forward.

19 In terms of the split and how it will be split across the local authority areas,
20 by the community foundations north of the river, 75% – that’s £135,000 per year
21 – will be allocated for projects in Thurrock, 15% – as Mr Douglas says, £27,000
22 per year – for those in Havering, and we do believe we should keep the 10%,
23 that is, £18,000 per year for impacted communities in Brentwood. South of the
24 river, 75% – that’s £67,500 per year – would be allocated for projects in
25 Gravesham, and 25%, or £22,500 per year, for projects to support communities
26 in Medway.

27 Moving on to the types of schemes that may be funded. At the stakeholder
28 workshops held in 2022, those four broad themes were co-created and developed
29 and agreed as the basis for the fund criteria. They are mental health and well-
30 being, local skills and employment support, projects that connect communities,
31 and projects that enhance the environment. Those workshops allowed us to
32 respond to the feedback from local authorities. I think a couple of the big
33 changes there were that mental health and well-being was highlighted as being

1 a key area of concern, which we were able to incorporate, and indeed, heritage
2 was one of the initial proposals that dropped out as a result of that engagement.

3 However, there wasn't consensus in the group as to the level of definition
4 that could and should be given to the fund criteria at this point in time, ahead of
5 otherwise unforeseeable impacts being realised. The themes have therefore been
6 left intentionally broad to ensure that they may be applied in the future in a way
7 that reflects the needs of local communities at that future point in time.
8 However, based on our previous experience earlier this year of running a pilot
9 of the initiative with the Essex Community Foundation and the Kent Community
10 Foundation, in which we successfully awarded 55 projects a total of £250,000
11 to test the mechanism and essentially pilot it, we have produced a number of
12 example projects that we could foresee would be funded in the future, which I
13 can talk through if that would be helpful.

14 MS LAVAR: I think it's okay to put them in written submissions. Thank you.

15 MS DAWSON: And then there's just the final query that was raised on whether the remit
16 of the fund should be expanded. It's our position that the themes, as I say, have
17 been left intentionally broad to ensure that they can be adjusted in the future,
18 and indeed, that other impacts that can be identified have already been mitigated
19 elsewhere in the planning application.

20 MS LAVAR: I do have a few questions I want to ask on that, Mr Tait, before you want
21 to do a rounding off. The suggestion is that the fund is available for seven years
22 or a year after the road opens, but if there's a delay to the delivery of the road,
23 what does that mean for the fund? It's still seven years?

24 MS DAWSON: Yes. At this point, we believe that those residual impacts will have been
25 addressed during that seven-year period.

26 MS LAVAR: Okay. In terms of how you've arrived at your funding, I appreciate what
27 you say; there's no standard methodology, you've looked at a similar type of
28 road schemes and you've come up with a figure based upon experience. It is
29 open to the examining authority, isn't it, then to also take favour with the
30 benchmarking exercise of Thurrock? Because if there is no standard
31 methodology for arriving at that, we could very well be compelled to advance
32 their position, so either is on the table with the examining authority if there's no
33 methodology around this. Would you agree with that?

1 MS DAWSON: Emily Dawson for the applicant. I think I'd come back to my earlier
2 point about all of the projects essentially being different and having very
3 different levels of mitigation that are put around them, taking place in different
4 areas of the country and having very different impacts on local communities and
5 the environment.

6 MS LAVAR: Okay. The last point I have is around index linking. I'm really not
7 convinced – I don't know about my fellow panel members – but to set a fund
8 now and not revisit what's in that fund in seven years' time, six years, when
9 costs will have changed, seems a little strange to me when your costs will
10 increase. And I'm not sure that I'm buying the argument that somebody who
11 applies in year six might get a bit more money than someone that applied in year
12 one because if I were buying something for my community, chances are it's
13 more expensive in six years' time than it was in year one. So I would really urge
14 the applicant to reconsider this issue around index linking because it is
15 something which is resonating with me at this point. I don't have any further
16 matters I want to ask you about as yet, so Mr Tait, it's back to you please.

17 MR TAIT: Thank you, madam. I've noted obviously what you've said plainly. Just in
18 relation to the benchmarking exercise, the one that Thurrock have referred to
19 includes principally Sizewell and Hinkley Point C, where one of the principal
20 arguments, as I understand it, was there are no local community benefits there;
21 it's for a national need. And the point that was being made that it's – here, of
22 course, there are substantial local benefits arising from the need for the project,
23 which is as an important local consequence, and therefore that is a very distinct
24 circumstance in terms of considering a benchmark.

25 MS LAVAR: That's fine. Was that the end of the submissions? Okay. I don't feel like
26 I need to go back across the table. I think we've heard from both sides. Mr
27 Stratford, I can see you're putting your hands together, but in all reality, I think
28 we can close out this point, simply because we've got a rather big item to get
29 through on the next part. And if you wanted to put something in writing in post-
30 hearing submissions, I would – the examining authority will consider it. So I
31 want to draw a close to agenda item 3. Because there's going to be a bench
32 rearrangement, probably for yourselves and for us, I think we just need to pause
33 for 10 minutes while that takes place.

34 MR TAIT: Thank you. I'm being relegated to the back, so...

1 MS LAVAR: As am I. So yes, 3.10 everybody, to resume. Thank you.

2
3 **(Meeting adjourned)**
4

5 MR SMITH: Good afternoon, ladies and gentlemen. It is now 3.10. My name is Rynd
6 Smith, lead member of the examining authority in relation to the Lower Thames
7 Crossing, and we are about to resume at agenda item 4, issue-specific hearing
8 12. We're changing modes; we're moving now into consideration of the control
9 documents. And we thought that it was actually very useful to at least start a
10 conversation on those documents at this point because it's necessary to have a
11 clear understanding of them and the way they operate before we get into the
12 detail of the draft development consent order, which clearly, we will be
13 examining on Tuesday at issue-specific hearing 14.

14 What we are, I think, very clearly conscious of is that there is an enormous
15 amount of detail in the control document set. We've already had, from London
16 Borough of Havering, some quite detailed submissions in relation to the SACR
17 in the last agenda item, and that illustrates the degree to which detail is relevant,
18 and also, we can find ourselves moving potentially quite slowly in relation to a
19 large amount of detail. So what I wanted to set out here was an objective for
20 this afternoon with a view to striking an appropriate balance between the matters
21 that we're pursuing orally and matters that can be pursued in writing at deadline
22 8. And that is to say that what we should try and focus our discussions on this
23 afternoon is those contributions from parties that relate to general principles and
24 practice around the broad scale, operation, and usability of the control document
25 set. Do they work for you, and particularly here, the focus is on local authorities
26 as entities implementing elements and/or forming judgments about matters such
27 as enforceability in relation to those.

28 And then what I would like to focus on too are matters that arise from the
29 control documents that have application between parties or engage multiple
30 parties and are somehow still in dispute or unclear, because if there is an
31 engagement between multiple parties or there are issues of general principle,
32 then of course it's a very good use of hearing time to discuss them in this forum.
33 Whereas, if we are essentially at a point where there is a bipartisan position:
34 applicant says X, individual local authority or individual interested party says Y

1 – that is not in any way to diminish the importance of that as potentially a matter
2 that this examining authority needs to adjudicate, but it can be pursued in
3 writing.

4 So I think that gives us a reasonably firm set of ground rules about what
5 we hopefully need to cover this afternoon. Now, that being said, I think we are
6 strongly conscious that because of the abbreviated amount of time available, we
7 may not cover all of this agenda item 4. And if we don't, then we must stop at
8 around about 6.00 p.m. at the absolute latest to enable the open floor hearing to
9 proceed. And if that happens, we will adjourn to and open up space for this
10 agenda item on Tuesday next week, flowing out of issue-specific hearing 14.

11 There's one final introductory matter, and that relates to the somewhat
12 fraught discussion of the examination library. Now we're very conscious that –
13 I think with the exception of one or two items listed on my agenda, that we've
14 listed deadline 6 references since the issue of the agenda. Deadline 7
15 submissions, or nearly all of them, have come in, and yet we do not have
16 examination library reference numbers for those yet. I'm told by the case team
17 that hopefully by tomorrow that examination library will be available, but that
18 doesn't avail us now. So what I'm going to ask you to do is that when we get to
19 the title of the document – and I will be trying to use the titles and stop myself
20 from using the REP numbers, etc – that we all refer to the deadline 7s by title,
21 but then when we put our written submissions in at deadline 8, we have those
22 pinned back to what will by then be available, which is the relevant examination
23 library reference. So hopefully that gives us a way through all of this material
24 that allows us afterwards to connect people's oral submissions with the
25 document library set. Actually, one final observation. I will clarify also that on
26 agenda item 4 small L, that's a typographical error. It was a duplication, and
27 that item can be deleted.

28 So let us move then into agenda item 4(a), where I was intending to go to
29 the applicant first to essentially allow them to set out their stall. Now here, to
30 preface our hearing from the applicant on this, what I wish to draw attention to
31 was the usefulness in our minds of the Lower Thames Crossing mitigation route
32 map, which is REP4-203, and I understand that is not a document that's been
33 replaced at deadline 7; in fact, that is the latest version of that. Particularly useful
34 document in terms of setting out the structure and the relationship of the control

1 documents, one between the other, but what we would like is to hear from the
2 applicant about the degree to which that fully sets out its stall in relation to
3 describing the relationship between the documents that were submitted with the
4 application or in examination, those documents that are to be iterated with
5 subsequent submission, open the door at least and consider whether there are
6 any other documents that need to be framed within or discussed within the MRM
7 in order to understand the operation of the control documents, and then finally,
8 our starting point would be actually the mitigation route map itself is, usefully,
9 a potential control document. We were going to ask the question of whether it
10 should be a certified document and referred to in the draft development consent
11 order as such.

12 So, can I go to Ms Tafur on that bundle of points, and then if there are
13 interjections from other parties about what should or should not be included and
14 the status of that document, we'll hear those points. Sorry.

15 MS TAFUR: Isabella Tafur for the applicant. Thank you very much, sir. Just in response
16 to this introductory item, there are just six points I'd like to make, if I may. And
17 the first is to identify the documents which we think set out the approach to
18 control mechanisms, and they're the one that you've just referred to, REP4-203,
19 but also the introduction to the application document, the most recent iteration
20 of which is REP4-003, and it's chapter 14 of that document.

21 The second point is that in – those documents reveal that the applicant has
22 adopted a conventional and well precedented approach to securing mitigation
23 through a suite of control documents which was secured in schedule two of the
24 DCO. And those documents also reveal in our submission that the applicant has
25 applied and developed controls that respond to the specific circumstances of this
26 project, resulting in a substantial – a suite of controls that provide and secure
27 extensive mitigation. And we're confident that those documents
28 comprehensively address the impacts of the project and that there is no
29 requirement for any additional control document.

30 The third point is to note that the inclusion of control documents reflects
31 the fact that the nature, content, and level of detail within those documents is
32 better suited to a document outside of the DCO itself, albeit secured through the
33 DCO. And there are essentially two types of control document, those that are
34 finalised, control documents at the point of the DCO decision – and they include,

1 for example, engineering drawings and sections, general arrangement plans,
2 design principles, the preliminary works, environmental management plan, the
3 REAC, the archaeological mitigation strategy, and the SACR, so those are
4 finalised at the point of the decision. There are then a suite of documents that
5 are subject to further approval by the Secretary of State, and in general for those,
6 there will be an outline document with which they have to be substantially in
7 accordance or based on. And examples for those are the EMP 2, which has to
8 be substantially in accordance with the code of construction practice, the outline
9 site waste management plan, the outline materials handling plan, outline
10 landscape and ecological management plan, and various others.

11 MR SMITH: And as you say, this is a framework. I'm very conscious that there will be
12 some people in the room who haven't seen multiple NSIP highway made orders.
13 However, we are in a land that has been [inaudible], it's fair to say.

14 MS TAFUR: Isabella Tafur for the applicant. It's a very well-trod path. It's one with
15 which National Highways are highly familiar, both in developing these control
16 documents and subsequently implementing them, and it's a procedure which the
17 applicant has every confidence in.

18 MR SMITH: And comparably with some other made orders, particularly in some other
19 NSIP sectors, one of the consequences of that is less detail appearing on the face
20 of requirements and less subject-specific control appearing on the face of
21 requirements, because relevant commitments, and particularly the SACR and
22 the REAC, do those jobs. Is that a fair distillation of the principles?

23 MS TAFUR: Isabella Tafur for the applicant. Yes, precisely so. In our submission, it's
24 preferable to include those sorts of details in secondary control documents rather
25 than on the face of the order, because otherwise it could become rather unwieldy,
26 and they're sufficiently secured by the requirements in the order without being
27 reproduced in the order itself.

28 MR SMITH: And I raised that particular point and I'm seeking submissions around the
29 room on it because we are alive to circumstances where a number of interested
30 parties are making submissions to us that matters essentially of detail and fine
31 control, so to speak, or site-specific matters, ought to be elevated to control by
32 an individual requirement as distinct to resting in the SACR or resting in the
33 REAC or wherever.

1 MS TAFUR: Isabella Tafur for the applicant. Yes, I understand that that may be a
2 concern that others have raised, but given that the control documents themselves
3 are secured through the DCO and they contain those – that further level of detail,
4 I would just wish to reassure those who’ve raised such concerns that they are
5 appropriately secured.

6 MR SMITH: Now there’s one other related factor where we’re looking at this judgement
7 point about whether something ought to be specifically controlled by
8 requirement or is perfectly acceptably dealt with as a commitment, for example,
9 in the SACR or the REAC. I’m then looking at National Networks MPS,
10 paragraph 4.9, and the test in there that the examining authority should only
11 recommend that the Secretary of State should only impose requirements in
12 relation to a development consent that are – in the usual words that anybody
13 who’s been practising planning for the past 40 years knows well – ‘Necessary,
14 relevant to planning, relevant to the development to be consented, enforceable,
15 precise, and reasonable in all other respects’. Now, is it the case that the
16 subsidiary commitments in the relevant control documents that give effect to the
17 sort of detail that in some other made orders would be requirements are equally
18 subject to that test?

19 MS TAFUR: Isabella Tafur for the applicant. Well, I’m not sure that it could necessarily
20 be said that – for example, if the requirement is that there must be an
21 environmental management plan, a second iteration environmental management
22 plan, then you must be satisfied that production and adherence to an
23 environmental management plan complies with those considerations that you’ve
24 just read out. And then to the extent that the matters contained within that
25 document, the detail of that – well, in my submission, that would also be subject
26 to the requirements that those tests are satisfied, because that’s – the content of
27 those documents itself has to meet the relevant –

28 MR SMITH: There’s no point having the requirement –

29 MS TAFUR: Yeah, to do something that isn’t necessary.

30 MR SMITH: – that the SACR or REAC commitment serves, unless it serves it with the
31 same integrity as something that was worded in a requirement.

32 MS TAFUR: That’s right.

33 MR SMITH: Is that a reasonably fair distillation of where we stand?

1 MS TAFUR: Isabella Tafur for the applicant. Yes. And so could I just raise one point?
2 I know you made the point that the general infrastructure of the control
3 documents and mechanisms is well established and well precedented in
4 highways and other schemes. But I would also make the note that in our
5 submission actually, the control mechanisms in this case go above and beyond
6 other precedents, including other National Highway precedents. For example,
7 the preliminary works environmental management plan, the preliminary traffic
8 management plan, the SACR, and also a lot of the detail within those control
9 documents certainly goes above and beyond that which National Highways have
10 previously committed to, and indeed other projects. So general infrastructure,
11 well precedented, but we say we go above and beyond in this particular case.

12 MR SMITH: And in that respect, we're looking at the underlying concept that this
13 supports, that is that of essentially an adaptive management framework with
14 iteration that allows that adaptation. You have, to a degree, set out a first
15 iteration in detail in a way that maybe some other schemes would still only set
16 out an outline plan as a certified document, whereas here some of our first
17 iteration material is, in fact, it. It doesn't need – if it is recommended to the
18 Secretary of State, that would be the document. There's no subsequent
19 submission.

20 MS TAFUR: Isabella Tafur for the applicant. That's right. And I gave some examples
21 of the finalised document at this stage that wouldn't require further approval,
22 but on top of that, a number of the outline – our outline documents actually
23 contain a lot more detail than a comparable outline document in another project.

24 MR SMITH: Right. Are there other general introductory points that you wish to make
25 about the underlying design philosophy of this before we open this up and see
26 what others wish to put?

27 MS TAFUR: Isabella Tafur for the applicant. I think I was just on the fourth of my six.

28 MR SMITH: Right, I'd lost count.

29 MS TAFUR: So the fourth point was that it should be noted that some of the outline
30 documents themselves will entail multi-stage processes that continues beyond
31 the construction phase, for example, the environmental management plans and
32 the carbon and energy plans. All of the control documents approved under
33 schedule two are capable of being updated and replaced under requirement 19,

1 and in line with convention, requirements are capable of being discharged in
2 relation to parts of the works or stages or phases of the development.

3 Fifth, in respect of concerns about potential non-compliance – and this
4 applies to all the control documents – non-compliance with those would
5 constitute a breach of the relevant requirement which requires production and
6 then adherence to those control documents, and so it would be subject to
7 enforcement under the Planning Act. Also, a number of the control documents
8 contain processes to address matters in dispute or not agreed, which we can draw
9 out as we delve into the detail, for example, through the joint operations forum.

10 And finally, we appreciate that there are a number of different control
11 documents and associated forums for specific topics, but their outputs and
12 interfaces would be coordinated internally within the project to manage those
13 interfaces effectively and to increase opportunities for reducing overall impacts
14 on communities and stakeholders. So to facilitate the interfaces, the applicant
15 would establish and share the joint operations forum, the JOF, and the chairs of
16 each of the relevant forums of the other topic groups would attend the JOF and
17 they would serve as a liaison and there would be a coordinating function. That's
18 the formal system. Outside of that, National Highways has extensive experience
19 in delivering major construction projects and processes internally to engage with
20 members of the public and stakeholders and amongst themselves to ensure
21 efficient coordination between the various control documents and promoting a
22 united approach to the delivery of the project. Those are the overarching points
23 I wanted to make. Thank you.

24 MR SMITH: Thank you very much. Now, before I throw this open for interventions
25 from interested parties, any queries from my colleagues? No. Okay. Right.
26 Who wishes to speak on, I guess, the overarching hub of this wheel, the control
27 system and issues in principle of interrelationship before we get into the
28 individual items where we are dealing with the individual documents? So can I
29 just see hands please? I see Thurrock Council. I see – apologies, sir, I can't –
30 Havering. It is London Borough of Havering. Do you mind just angling your
31 'Toblerone' a little. It's kind of pointing outwards rather than towards me.
32 Thank you very much. Does anybody else wish to speak on this? No. And I'm
33 not seeing anybody in the virtual room, so I will go to Thurrock first.

1 MR MACKENZIE: Thank you, sir. George Mackenzie for Thurrock Council. Sir,
2 primarily you'll hear from Ben Standing, who's online, and Chris Stratford,
3 who's in the room, on the matters that you indicated you would like to hear from
4 the parties on, but can I just take a moment to address your overarching
5 observations a moment ago, and it's really just to indicate that we agree, clearly
6 in principle, that it's possible and permissible in the context of the 2008 Act for
7 a secondary layer of operational control sitting behind in legal terms but secured
8 by the primary control mechanisms, i.e. the DCO requirements in an order.
9 That's clearly legally permissible, but the devil is in the detail, and –

10 MR SMITH: And we're going to see quite a lot of devil, I think, later on.

11 MR MACKENZIE: And I was about to introduce two of our devils. Thank you.

12 MR SMITH: Let's speak to the devils.

13 MR STANDING: Excellent. Well, I think that's my cue, and I don't think I would
14 describe myself as a devil here. I think there's some more devilling detail to go
15 on in a bit, but – not going to speak for long. I would just like to set out our
16 broad comments on the control mechanism. The council agrees. It understands
17 that this is well-precedented as a general structure. We don't object to it. We
18 just have a couple of comments that we would like to make. Obviously, the way
19 that these control documents work, it's only as strong as the way they're actually
20 secured within the DCO.

21 So within many of the documents where there is an iterative process,
22 where there's an outline and then you're moving on to the next stage – for
23 example, with the EMP2 or the LEMP – it's important that the way it's described
24 is that these are 'substantially in accordance with' their outline documents or
25 sometimes reflecting that, and this has been a topic of conversation that many of
26 us have been having with the applicant for a while, and I think it might be worth
27 having another airing of it because there's quite a lot of examples of when
28 stronger commitments are made, and then there's this 'substantially in
29 accordance with'. So I think we'd like to go into that, and there's a number of
30 those. And also it's worth highlighting that we've been going through schedule
31 16, and we can reference this at the end as well, but not all of the documents
32 within schedule 16 actually do anything as far as we can tell.

33 We're trying to find out what their purpose is. I mean, they could well do
34 very critical things, but we haven't quite been able to find out what they are, so

1 we'd be grateful for comments on those, but it's worth highlighting that simply
2 being in schedule 16 doesn't make them a control document. They're just
3 certified. And it might be we can have a talk about that later as well –

4 MR SMITH: Well, you may have seen – and I mean certainly we can discuss that here,
5 but it is a live item in our general consultation on the form of the draft DCO in
6 our commentary that, amongst other things, it might be advisable if schedule 16
7 was divided into parts that made clear that there were certain documents, control
8 documents named as such, and other documents that have specific functions also
9 in a part named as such. So that's something that we are consulting generally
10 upon but, yes, we can deal with that around the table here as well.

11 MR STANDING: And – thank you – and then my final point is obviously we've been
12 speaking about devil and detail, but about the individual comments within the
13 documents themselves, and that's something we'll be discussing later, but the
14 overall framework we don't have any problems with. It's obviously just the
15 points I've just raised we'll be considering, and I think I'm now going to hand
16 over to my colleague, Chris Stratford.

17 MR SMITH: Mr Stratford.

18 MR STRATFORD: Thank you, sir. Chris Stratford, Thurrock Council. To make a point
19 about precedent, Ms Tafur mentioned that they're following the age-old practice
20 of other transport projects. I think even National Highways recognise that this
21 particular project was very, very different to everything else. About three or
22 four years ago it was part of the complex infrastructure projects, the CIP
23 projects. It was taken out of that and given its own, and therefore saying it
24 should be done like it's always been done doesn't necessarily follow. Just a
25 point.

26 MR SMITH: Indeed. And I mean one of the reasons why I wanted to have this
27 opportunity to discuss around the table essentially the mechanics, the hub of the
28 wheel, was to enable us to think about that point.

29 MR STRATFORD: Good. Obviously, when we get to each individual document, there's
30 a lot of comments that we've been making over the course of the examination
31 and a long time before. I just want to make a point, and only one more point,
32 about the mitigation route map. We did make a number of comments about that
33 in our REP6-164, section 14 – only a few pages – and it seemed to us, having
34 asked for this mitigation route map for a year or two, it was nice to see it finally

1 produced. However, I was involved for eight years on the Thames Tideway
2 project, and the mitigation route map was produced then, so 2013/2014, so
3 nearly 10 years ago. It was the first time ever that anyone had produced one,
4 and it produced one that was a very thick document.

5 I'm not suggesting length is necessarily advantageous, but it did go
6 through all of the application documents – I mean all of them – and every single
7 small commitment that might be made was included. So, for instance, the
8 environmental statement's a case in point. It's a very long document, as they
9 always are, but there were many, many commitments, however minor, and
10 controls set out in the ES that don't then find their way into the REAC or the
11 COCP or any of the other control documents and so they get missed, because
12 obviously the ES is not actually a control document. It also – so it's deficient in
13 that respect. There are five.

14 Firstly, it doesn't cover any legal commitments – so that's missing – and
15 like Ben's just said, some of the certified documents aren't necessarily fully
16 secured. Now, we did in our REP6, section 3.3, table 3.1, did set out on two
17 pages where we felt that things had been secured or hadn't been secured
18 adequately. And of course when you look at some of the control documents,
19 and my colleague in Havering has pointed it out with the SACR for instance, is
20 that although the commitment in the DCO is absolute now, the commitments in
21 the SACR are not, and it's 'take reasonable steps' or whatever, and therefore the
22 commitment is loose. And then finally, although the control documents are
23 listed in the MRM, not their individual – I mean, the REAC is in there, but they
24 list each control document without drawing out each and every one of the
25 commitments, so whilst it's helpful to have something, it's not there yet in our
26 view. Thank you.

27 MR SMITH: Okay, thank you very much. Now, I mean there is a specific question that
28 arose for us, which was the question about the status, the standing and the
29 ongoing value potentially of the mitigation route map itself. Now, having heard
30 you on those reservations about the degree to which it has completely discharged
31 the task that, with reference back to Tideway, you think it might – and I'm sure
32 we'll hear from Ms Tafur on that point in responding – but is there in principle
33 a value in essentially a switchboard document, be it either full and complete,
34 containing absolutely everything, or alternatively operating at a high level as an

1 umbrella document showing where the pegs are that the other commitments
2 hang from, and that that ought itself be a control document, and that all other
3 documents, as they iterate, are then required to reattach themselves to the
4 relevant peg in the umbrella document?

5 MR STRATFORD: Well, the short answer to that is ‘Yes, absolutely.’

6 And the reasons for saying that is that often – well, DCOs by their very
7 nature have got more complicated over the years, and therefore unless you’re
8 deeply involved in the DCO, trying to work out where a commitment might be,
9 or how it links to another commitment, or how it links to something else you’ve
10 got to be – it’s an [inaudible] thing really. And so having one single document
11 that lists everything out so it’s very, very clear is terribly helpful, for the simple
12 reason that having done a DCO and then spent four years trying to implement
13 what we thought was a good idea. Main contractors often take anything up to a
14 year before they get up to speed with everything, and actually having a clear
15 document that is a control document, and secured, gives them a helping hand
16 and allows them to say, ‘Ah, this is what we’ve contracted to do. Now, how do
17 we then go about doing it?’

18 So I’d wholeheartedly support it being a control document of some kind,
19 secured in the DCO.

20 MR SMITH: And there is potentially another dimension to this, which is seen from the
21 viewpoint of the individual coalface most likely local authority officer, who
22 might receive a concern about acoustic issues at night, for example, during
23 construction, who is not somebody who normally works within the NSIP system.
24 Where do they go?

25 And so again when we’re thinking about the usability dimension of this –
26 and it’s very much in this interest of practicability and useability that we’re
27 exploring these matters – trying to apply the torque wrench to a set of control
28 documents such that whether you’re looking at this from the standpoint of the
29 main contractor understanding what they’re on the hook to deliver, as against
30 the standpoint of the individual planning enforcement officer or environmental
31 health officer having to deal with what may become an enforcement matter or
32 not as the case may be and knowing what to do, from both of those ends very
33 different telescopes. These are documents that need to work.

1 MR STRATFORD: It's very true that in many ways, and I'm sure you'll hear this from
2 Mr Neve soon, that many of the documents give – and I appreciate the need for
3 flexibility with the contractor, but not to the extent that it currently is, because
4 the contractor needs to know the limits and not lighten them. And if it's very,
5 very clear what their commitments are, then it makes it so much easier, and
6 avoids a whole host of arguments later. We made some mistakes in Tideway,
7 believe me, and we then spent four years with the contractor trying to sort things.
8 I'm trying to avoid that now.

9 MR SMITH: Indeed. And noting of course that this entire discussion is without prejudice
10 to the principal issue, which is the merits of the scheme overall, which we will
11 have to judge separately. Any further matters from Thurrock? In which case, I
12 will go to London Borough of Havering on this point.

13 MR WHITE: Thank you, sir. Lee White for the London Borough of Havering.
14 Obviously, we've heard a lot about the road map in the last few minutes. I think
15 we welcome the road map. It was originally our request to the applicant that
16 triggered that document being produced, so we welcome it being produced. We
17 do echo Mr Stratford's comments about the level of detail within it, and I think
18 there is a need from our point of view for a significant more level of detail
19 contained within it. I will recount an experience we've had on another DCO that
20 colleagues on the applicant's benches will be familiar with, in the Havering
21 patch, probably within the last couple of months. The applicant's probably a
22 manager in that particular case.

23 I don't really know about the control framework and the documents there,
24 and there was an attempt to bring in a new traffic management approach that
25 was actually realised by the applicant was actually out of bounds of the DCO,
26 and obviously that approach was then withdrawn. So we just flag that up, sir, as
27 a very useful reference document, and I think we echo Mr Stratford's comment
28 that there should be more detail within it. I think the other observation we'd
29 make immediately, sir, is obviously Ms Tafur referred to effectively water-
30 cooler conversations taking place, and I think we accept those need to take place,
31 but actually obviously those need to take place within the framework that's set
32 out within the control documents. So that's quite important there.

33 We've already had the debate with I think Mr Latif-Aramesh in the
34 previous session about 'substantially in accordance with', so I think that is a live

1 issue still that we will probably not reach agreement about with the applicant. I
2 think other things we would say is there we would like to see the REAC as a
3 stand-alone control document, to bring the detail of that out so it's not buried
4 within the EMP framework, so we can actually have that upfront, I think is quite
5 important. And I think just as an overall comment, and this will come out in the
6 details probably to discuss this as we go forward this afternoon, a general
7 observation. We believe that the control documents as they stand at the moment,
8 they're lacking in a number of targets, and obviously the way the commitments
9 are secured, I think colleagues from Thurrock have already canvassed that issue,
10 but we re-emphasise that.

11 The way these documents bring commitments forward, actually at the
12 moment we would say that is not strong enough. So I think that's all we've got
13 to say as matters of principle, sir.

14 MR SMITH: Okay. Thank you very much.

15 MR WHITE: Thank you.

16 MR TAYLOR: Ken Taylor, panel member. Just, Mr White, could you just briefly
17 articulate why you feel that the REAC ought to be extracted and be a stand-alone
18 document, please?

19 MR WHITE: Yes, indeed.

20 MR SMITH: Do bear in mind, I think that we do have a specific agenda item on this
21 shortly. So, brief, and then we will come back to it, and we'll provide others
22 with an opportunity to speak to that general point.

23 MR WHITE: Okay, yeah. Lee White for Havering Council. We just believe it's about
24 visibility, sir. That's the simple point there. It is about being visible. Rather
25 like the road map, and we think that that's an absolutely key document that needs
26 to be quite visible, not only to the applicant, ourselves and contractors, but
27 actually to the wider world. It is something where I think we've heard from a
28 number of people at open floor hearings, we've heard from a number of people
29 within the other hearing sessions, where actually a lot of their concern is around
30 environmental matters. Therefore, we think it's a matter of visibility, sir, that
31 that's brought forward as a stand-alone.

32 MR SMITH: Okay. Are you content?

33 MR WHITE: Thank you.

1 MR SMITH: Okay. Just check with my colleagues to see if there are any other questions
2 to the interested parties that spoke on this item, and I see none. In which case,
3 Ms Tafur, just to close item 4(a)(i) down.

4 MS TAFUR: Isabella Tafur for the applicant. As to ‘substantially in accordance with’,
5 we have provided you with submissions and response in REP6-085, section 4.3
6 of that document, in which we explain that the Secretary of State has previously
7 given explicit consideration to this issue. I believe in that case it was the A47
8 Wansford to Sutton decision letter, where I think the examining authority had
9 recommended taking out that phrase, and the Secretary of State had reinserted it
10 because he considered it to be an inappropriate fetter on his discretion to take
11 out those words ‘substantially in accordance with’. And there are a number of
12 other precedents which we’ve referred to in that document I just gave you the
13 reference for.

14 In terms of the mitigation route map, we provided that to you in response
15 to a question. We’re glad it’s been useful. We would be happy to have that as
16 a certified document if that would be helpful, so that it could provide a kind of
17 one-stop-shop as to where people need to look. We don’t think it would be
18 appropriate to effectively copy and paste every requirement from the REAC,
19 from the SACR, from all of the outline documents, and to paste them into a
20 single document because in our view that would be unwieldy and difficult to
21 manage, and it makes more sense to have the issues separated out into their topic
22 areas in the outline plans rather than contained. And also there’s the issue that
23 there are various outline plans which things have to be substantially in
24 accordance with, and then there’s our specific commitments in the REAC and
25 SACR, which aren’t of that nature.

26 So in our submission it would be confusing as well as unwieldy, but we
27 can see that if it would be helpful to others to have a starting point as the
28 mitigation route map so that people could see where to look thereafter, then that
29 would be acceptable.

30 MR SMITH: In part, some of this is about essentially the request for the equivalent of
31 the TfL tube map. It’s being able to see a systematic rendition of the operation
32 of what when all is said and done is a very complicated system, and different
33 passengers will ride on different parts of the system. Very few people will use
34 the whole, but unless they know how to move from A to B through that

1 complicated system, it's very hard to even know if they're in the right place. So
2 part of this is about that. One of the analogies that I raised was the idea of an
3 umbrella with kind of hooks hanging from the end of each bone, and possibly a
4 resolution might be in a document that has that standing. So it has other
5 documents hanging beneath it, rather than absorbing all of the detail of all in a
6 reiteration.

7 We have no fixed view about the merits or demerits of this argument at
8 this point, but I think in terms of giving you some useful steer here, there does
9 seem to be some considerable benefit as we see it to the idea of the mitigation
10 route map as the kind of TfL tube map in the middle of this complex system,
11 and if it's going to do that, as a bare minimum having the hooks, the pegs, from
12 which all of the other relevant control documents then hang, so that everybody
13 can see where they need to go, even if where they're going isn't in that one
14 document.

15 MS TAFUR: Isabella Tafur for the applicant. We hear what you're saying, sir, and we
16 will certainly consider that. As to the specific example of the Thames Tideway
17 Tunnel mitigation route map, our understanding is that that document was
18 produced during the examination. It was not to assist in the way that you've
19 described. It was not a certified document, and it wasn't used post-consent. It
20 was in effect to assist people during the examination process to understand that
21 tube map.

22 MR SMITH: I think there's a kind of element of 'evolutionaryness' about that, and I
23 might just briefly return to Mr Stratford, who probably lived some of that more
24 painfully than the rest of us, but my recall from it at the time was that it emerged
25 initially in examination because the examining authority was struggling to find
26 where all the relevant commitments were. But that it having been produced, it
27 then went on to perform other roles, and that it may not have been a certified
28 document but it was certainly a very widely used one. Is that correct, Mr
29 Stratford?

30 MR STRATFORD: Yes. It wasn't a certified document, but then the fact that it's a
31 certified document is just a final version stamped by the Secretary of State as
32 being the final version. It doesn't mean it's secured in any way. I don't believe
33 it was secured but it certainly was used throughout, and my colleague, if I may,
34 Mr Neve, was on the contractor side and did use it.

1 MR NEVE: Thank you. Adrian Neve on behalf of Thurrock Council but talking about
2 Tideway. So as Mr Stratford says, we had many often-heated discussions over
3 the implementation of these various measures, and the maps, whichever
4 diagram, the route map, was very much used during process, so it was very
5 helpful. It did give a lot of guidance as to what was required by whom and when,
6 and what it related to. So on behalf of the contractor I can say that it was very
7 well used.

8 MR STRATFORD: If I might add a postscript, this was produced before the examination
9 started and took ages – ages – to produce, so –

10 MR SMITH: That may be an unwise submission.

11 MR STRATFORD: Well, I know, but I'm just being honest about it.

12 MR SMITH: I know, I know.

13 MR STRATFORD: We are now, having just got the mitigation route map a few weeks
14 ago, asking for what I'm asking for – which may not be done – but asking for
15 that to be done within the timeframe of the examination might be asking for –
16 so there might need to be practically – I hate saying this, but it might need to be
17 sort of a halfway house between your umbrella with the documents hanging off
18 of it and what I'd really like, somewhere, so that it can be dealt with within the
19 next two or three weeks.

20 MR SMITH: Yes. So it might even need an iteration process of its own. Okay. Now, I
21 do note we now have a hand from Lyn Basford, who is representing London
22 Borough of Havering, I believe, or supporting them. Ms Basford.

23 MS BASFORD: Good afternoon, sir. Just in response to the applicant's comment that
24 the production of such a route map may be unwieldy etc, it reminded me of the
25 discussion that we had at the M25 junction 28 hearing, whereby the applicant,
26 National Highways, had not produced a code of construction practice, and there
27 was a wish by all the authorities to produce that very document, to have in one
28 place the relevant points that the contractor needed to take into account and
29 adhere by in order to build out the scheme. As it happened, it was recommended
30 by the Secretary of State that the code of construction practice was produced and
31 of the very nature that we're talking about here, with a level of detail that would
32 support the scheme undertaken, having one point of reference to guide and
33 instruct on the implementation of the scheme.

1 So I think it would – just reiterating what people said, I don't want to
2 extend that debate, but I think it's proven in the past that such a document with
3 a good level of detail would in fact be very useful. Thank you, sir.

4 MR SMITH: Obviously, Ms Tafur, that kind of trespassed a little into your closing, so
5 I'm going to give it back to you so that you can close without being interrupted
6 this time.

7 MS TAFUR: Isabella Tafur for the applicant. Thank you, sir. Well, as you know, just
8 in response to that last comment, we have produced a code of construction
9 practice, so I'm glad that that was useful in another case, and I hope it will
10 equally be so in this case. As to my apparent suggestion that the production of
11 a mitigation route map would be unwieldy, apologies if I've misled. We have
12 already produced a mitigation route map, which we see as serving the purpose
13 that you described, as a tube map or an umbrella, and that has already been
14 produced and is obviously before you. We simply think it would be unwieldy
15 to expect a document of that sort to replicate every single control in all the other
16 documents, for the reasons I outlined a moment ago.

17 As to the Thames Tideway. Again, good to know that was a useful
18 document even though it wasn't a certified document, even though it wasn't
19 secured by any of the requirements on the Thames Tideway Tunnel. We
20 anticipate that our mitigation route map will be equally useful, whether it's a
21 certified document or not, but we're happy to consider it being a certified
22 document if that would allay anybody's concerns. Then there were just some
23 other points raised by the London Borough of Thurrock –

24 MR SMITH: I don't think they're quite a London borough.

25 MS TAFUR: Sorry. I'm sorry.

26 MR SMITH: They may object to that.

27 MS TAFUR: I'm sorry. I'm sorry. I think it was Thurrock rather than Havering. Let
28 me just have a check.

29 MR SMITH: Mayoral powers over Thurrock.

30 MS TAFUR: So, no, there was one by the London Borough of Havering, which was in
31 respect of REAC being a stand-alone document, which we're happy to come
32 back to under the next agenda item. And then from Thurrock there was a
33 suggestion that – well, they explained that they had requested a number of other
34 documents be certified documents. They have asked for a number of documents

1 to be certified, including for example the book of reference and the crown land
2 plans, documents that in our view don't actually control anything, and so we
3 have resisted that suggestion. We think that the control documents that we
4 currently have are appropriate, are secured, and we don't think it's necessary,
5 subject to further consideration about the mitigation route map, anything else
6 needs to be a certified document.

7 MR SMITH: Okay. Well, obviously all of this will be considered very carefully in the
8 wash-up, taking fully into account all of the written submissions that we receive
9 on the consultation points that relate to this in the DCO commentary. Can we
10 then close that item out, and this is where we kind of drop the grader down
11 several notches and, having been passing through at a very high level, start to
12 pass through at a lower level by looking at individual documents. Now, before
13 we deal with item 4(b), which relates specifically to the first iteration of the code
14 of construction practice, and to note this is a document that was replaced at
15 deadline 7, so now when I'm referring to this, I am referring to the deadline 7
16 version as distinct from the REP6 numbers that you'll see in the agenda.

17 We've set out a question framework down to five there, essentially starting
18 with the obvious, which is asking about clarity in terms of the way the document
19 itself is secured, and whether the security is viewed as appropriate. Moving then
20 through the iteration process – and again seeking views from parties about the
21 clarity of that. Then looking at specific content, and there's a very important
22 question there. I would imagine we don't need the applicant to address us in
23 detail on what is 'in the mechanics' of one and two. Those questions articulate
24 fundamentally to allow the parties to respond to them. The really detailed
25 matters I would like the applicant to give us an in principle response to before
26 we open this to the floor is on item three around content, particularly on the
27 question of the management of the REAC.

28 And the reason we included that question is this. Sitting as a user using
29 this suite of documents, working electronically through the entire document set
30 and trying to audit the proposition that, from a submission that there ought be
31 control over issue X, to then try to discover whether there is a commitment or a
32 control over that, in circumstances where the REAC isn't essentially in itself a
33 member of the primary hierarchy of control documents, has become somewhat
34 time consuming I think is probably the simplest way to deal with that. And so

1 there certainly is in our minds an initial useability proposition, that if the REAC
2 was a freestanding member of the control document set, just in simple
3 information management and searchability terms, it would be easier to find out
4 the answers to those questions.

5 If those questions can be answered with greater facility, then the likelihood
6 of a commitment being lost, overlooked, and therefore a non-compliant element
7 of delivery proceeding is reduced. So that was the reason for that question. And
8 then finally we ask questions 4 and 5 in terms of the clarity of the decision
9 making process, and whether decisions have been taken in the right place with
10 the right parties engaged. And then finally of course in five about how non-
11 compliance enforcement is to be addressed. Now, Ms Tafur, address us on
12 those. If you can wrap them together that would be helpful, with the particular
13 focus on that REAC point, and then I'm going to open it up.

14 MS TAFUR: Isabella Tafur for the applicant. Dealing with that REAC issue first, the
15 rationale for including it within the code of construction practice is because it's
16 an integral part of the overarching management framework provided in the code
17 of construction practice, and that's why it has been included in there. And I
18 understand that DMRB LA120 indicates that the REAC should be included
19 within the code of construction practice, so that's the rationale for its inclusion.
20 We've heard about your understandable issues with tracking down commitments
21 to where they're secured. We had hoped to assist with that in the REAC by
22 setting out the origin of each of the commitments. For example, air quality refers
23 you to relevant paragraphs in the environmental statement –

24 MR SMITH: That's very useful, but you need to have got into the REAC in order to use
25 that trackability, and I guess my concern starts higher up the chain than the
26 REAC, which is if you're trying to find out whether there's a commitment, but
27 the REAC is itself nested inside another document and you're doing electronic
28 searches to try and find that, it can be quite hard to get there.

29 MS TAFUR: Isabella Tafur for the applicant. Understood. I don't think we have any in
30 principle objection. As I say, we consider that we're complying with that which
31 is mandated by the relevant standard, but I can't see any difficulty in separating
32 that out. It may be that it remains within the COCP, but it's also separated out
33 as a separate document, but we can have a think about that.

1 MR SMITH: Indeed. And in relation to that, and exploring a closely related point,
2 obviously it's embeddedness in the COCP makes sense to the degree that the
3 stage – it is a first iteration thing, and the stage is the construction stage, and
4 very, very usefully, the REAC does set out the stages at which all of the line
5 items rest. But of course the further down the REAC you go, you start to find
6 things that are actually operational. They're beyond construction. And so
7 conceptually – and I might be being a nerd here – but conceptually these then
8 are things that cease to even be creatures of a code of construction practice,
9 because they have an enduring life beyond the period within which users would
10 expect to use a COCP.

11 And I guess again my concern is if we're thinking in 15 years' time, and
12 we're looking at an operational stage commitment in the REAC, and we're
13 asking again the practical question of where will a local authority officer go to
14 find whether that commitment exists, will they even dream of going to a code of
15 construction practice? And maybe the answer to that question is quite hard to
16 foresee at present, so part of this concern again is very much embedded in the
17 land of practicability.

18 MS TAFUR: Isabella Tafur for the applicant. Understood, and we'll go away and
19 consider that.

20 MR SMITH: Are there any other points that you need to put to us in terms of the kind of
21 mechanics of the five broad questions that we're asking interested parties to
22 respond on? Can I just turn this over to them?

23 MS TAFUR: I think there are some observations that we would like to make in respect
24 of the COCP. As to content, I don't think we'll delve into an enormous amount
25 of detail. We've explained our position on the REAC. It would take some time
26 even to summarise that which is contained within the COCP, so we're happy to
27 hear what others say on that. But as to, briefly, basis for security and
28 management of stages, and then decision making and management enforcement,
29 would you like us to briefly address you on those matters?

30 MR SMITH: Yes, certainly.

31 MS TAFUR: Okay. I'm going to ask then Mr Adrian Dawes, who's an environmental
32 advisor at LTC, to address you on those.

33 MR DAWES: Thank you. I'm Adrian Dawes for the applicant. Just to run through the
34 response to the questions you've posed on this particular document, code of

1 construction practice. It's secured through the requirements under schedule 2,
2 requirement 4 of the DCO, under construction of handover environmental
3 management plan, so that's quite straightforward. It works through a series of
4 three iterations, so the code of construction practice being the first stage or
5 iteration, which of course was submitted with the application and is being
6 updated as we go through examination, to be secured later on. And the various
7 control measures it outlines at this stage will be refined during detailed design,
8 and then later implemented as initially the second iteration of the environmental
9 management plan, or EM2, which will be implemented by the contractors to
10 provide control of construction works.

11 And then subsequently a third iteration of the environmental management
12 plan, which will be implemented by National Highways with the controls of the
13 future management and operation. It's worth mentioning that there's a separate
14 environmental management plan for preliminary works, which we'll come to
15 later in the agenda today, so I'll leave that for now. To help understand these
16 three things, the relationship of the documentation for these three iterations is
17 described in table 1 of the code of construction practice, and there's a plate –
18 plate 1.2 – in there, which shows their relationships and how they relate to other
19 plans within the wider control plan.

20 And there's also information in the code of construction practice regarding
21 the progression of the plan from code of construction practice to EMP2, through
22 to EMP3, and that's set out in paragraphs 2.3.1 and 2.3.6 of the code of
23 construction practice, and that sort of ties in with your point on decision making,
24 which I'll come to shortly. In terms of content, I've not too much to say. The
25 REAC as you know is in there and we've had that discussion, because it links
26 up with the code of construction practice, which in itself is really quite an
27 extensive document. It sets out various commitments around requirements for
28 staff roles, general site practice and management, information on working hours,
29 communication and community engagement, and it then ties up the other
30 consents and permits. So, as intended, the REAC at that stage would form part
31 of that one big holistic whole.

32 On decision making, so requirement 4 sets out that the second iteration
33 must be developed essentially in accordance – which we're going to come to –
34 it sets out – in 2.1.3 has about the process for consultation under schedule 2 of

1 the DCO, and it explains in there that that extension goes beyond and ties up
2 with other plans forming part of the environmental management plan. So the
3 site waste management plans, material management plans and various other
4 plans set out as part of that would be approved by the Secretary of State, but
5 having regard for stakeholder engagement. And then further down it's
6 explained, third iteration of the management plan must be again in place before
7 road is commissioned, and the process for that engagement with stakeholders
8 leading up to approval is set out in 2.3.6 of the code of construction practice.

9 Finally, around management and involvement of parties through
10 management and enforcement, again it's set out in the code of construction
11 practice, as the sections 2.2.1, 2.2.2 talk about how this is integrated within an
12 environmental management system, and that in turn would be to ISO14001
13 standards. It's set out in there, the section 2.3.3, about how the contractors have
14 to set out their procedures for monitoring compliance and mitigation measures
15 within the EMP2. And then a further section, 2.7.7, explains how local planning
16 authorities, Environment Agency, Natural England will be given access to attend
17 and observe site inspections and audits, and receive the results of such
18 inspections and audits. That essentially wraps up most of the points you've had.

19 I would just note that in response to your earlier comment about points of
20 detail, that we have addressed many points of detail, particularly on individual
21 REAC items and so on. They are addressed within the deadline 7 version which
22 I note your parties won't have had time to examine yet –

23 MR SMITH: Indeed. And I think in that respect it would be well worth returning to the
24 sort of overarching advice I gave at the beginning of this session, which is that
25 individual party-to-applicant concerns about those of course are very well
26 addressed in writing, and if they can be tagged into responses to the DCO
27 commentary, which has a section on the adequacy and the measures within the
28 control documents, that helps us make sure that all of those relationships map
29 back into our brains as best they can.

30 MR DAWES: Just one very last point if I can. Adrian Dawes for the applicant again.
31 Another sort of response to comments on the points of detail is another deadline
32 7 submission, which is the applicant's comments to interested parties' responses,
33 which is in that package as well.

34 MR SMITH: Indeed.

1 MR DAWES: Thank you.

2 MR SMITH: Thank you very much. So I'm going to ask who wishes to speak essentially
3 on the bundle of questions that we have asked about the role, content, function
4 and indeed matters of non-compliance and enforceability in terms of the COCP,
5 and I do see Thurrock, and I do see Gravesham. Is London Borough of Havering
6 involved in this? No. And online, I do see Alison Dablin and Ms Dillistone, so
7 we have Port of London Authority, and we have Port of Tilbury London Ltd.
8 Okay. What I'm going to do is I'm going to go to Gravesham first, then to
9 Thurrock, and then I will go online. So, Mr Bedford.

10 MR BEDFORD: Thank you, sir. Michael Bedford, Gravesham Borough Council. We
11 understand the role of the code of construction practice document, and we don't
12 take any issues with the principle of that. There are wider issues which we're
13 not touching on today about discharging authorities, and who should be the
14 discharging authority. That's obviously a matter for next week in terms of the
15 DCO. So as far as the code of construction practice is concerned, we very much
16 echo some of the comments that were made actually about the mitigation route
17 map in terms of searchability – and some of your comments – and in a sense we
18 are open minded as to the best way in which it could be done.

19 But what we think – whether it's in the mitigation route map or whether
20 it's in the code of construction practice, there ought to be an index which was
21 topic based, using common sense language that – picking up on your point, sir,
22 about the person who's unfamiliar with the project – but if the issue is dust, or
23 if the issue is noise, or if the issue is smoke, fumes, whatever, that there is
24 somewhere that you can immediately go to that then tells you where you then
25 need to look to find where that is dealt with the in the relevant control
26 documents. This is perhaps not the most helpful analogy, but if you pick up a
27 motor car service manual – if you're a user of a motor car – and you want to
28 know what your tyre pressures are because you think you've got a low tyre
29 pressure, you go to the index at the back and you find the word 'tyres' and it
30 tells you which page you need to look at, and then it tells you in detail where to
31 go.

32 And it's that sort of thing which I say we think it could be usefully added.
33 Whether it's added to the mitigation route map or whether it's added to the
34 COCP we're perhaps more neutral, but there ought to be something like that.

1 The second point that we would make from a perspective of a local planning
2 authority who might have enforcement responsibilities, is that controls should
3 be precise in their language so that they are enforceable. And whilst we certainly
4 recognise the need for flexibility in terms of being able to deliver the project, we
5 do think that a number of the documents – and the COCP is one of them, but it
6 applies to other control documents as well – the language is, in places, overly
7 loose such that it leaves anybody seeking to know whether or not actually there’s
8 been compliance with a challenge.

9 And absolutely only intended as an example, because clearly you don’t
10 want me to go through an inordinate list of things, but paragraph 6.1.6 tells us
11 that ‘the contractors will investigate the use of multi-modal transport, including
12 the use of the River Thames via port facilities.’ There’s a cross reference to the
13 materials handling plan. ‘Contractors will be required’ – that sounds quite
14 strong – but ‘to consider the impact of any multi-modal transport options on the
15 wider road network, and demonstrate the decision used to select them.
16 Contractors will be encouraged – 6.1.7 says – to optimise the use of autonomous
17 plant and equipment, the use of hydrogen-fuel fuel cells, electric hybrid plant
18 and hydro-treated vegetable oil and a modernised fleet.’ That is absolutely just
19 an example. We understand that there are some cases where you cannot be more
20 precise.

21 Clearly, in those circumstances, the language has to be the best that can be
22 fit for purpose, but we do think that a number of these documents would benefit
23 from a rigorous reading to winnow down any [inaudible] language, to make sure
24 that it’s as precise as it can be to then ease the task of ensuring compliance and
25 subsequent enforcement.

26 MR SMITH: Which to a degree, Mr Bedford, does go back to the paragraph 4.9 of
27 NPSNN point, and the question about enforceable, precise and reasonable in all
28 other respects. If an individual commitment – and we’re in the land of the REAC
29 at present I suspect – needs to be loose because it relates to a later stage in the
30 process and the relevant iteration has not yet fully come forward, then it may
31 well be that reasonably it is still loose. But if it relates to the current stage in
32 force at the time – so if it’s a construction commitment and we’re in the
33 construction stage – then maybe there’s a proposition that to be compliant with
34 4.9 it ought to be enforceable, precise, and the reasonableness of that is that it is,

1 because it's actually standing for the job that essentially a requirement would
2 do.

3 MR BEDFORD: Sir, absolutely. That is the point. As I say, we recognise that it's in a
4 sense not a one-size-fits-all that everything can be nailed down at this stage
5 because we understand where we are in the process, but we do think there is a
6 general need to ensure that the language is as precise as it can be, and that
7 anything which allows too much wiggle room should be edited out of the
8 documentation. So then as to the issue about security, we don't take a point on
9 that. We understand the controls. We understand how they are secured through
10 the DCO, and obviously then the sanctions for non-compliance with the DCO
11 and/or its requirements. And so far as the REAC – as whether that should be a
12 freestanding document or should remain as it is – I suspect that our position is
13 that we are neutral on that.

14 We can be the point of having the REAC commitments included in the
15 code of construction practice, but we also recognise that in strict terms some of
16 those commitments go beyond the construction period. So we can see that point
17 but, as I say, we also can understand why the COCP has been used as a kind of
18 a catch-all home for the REAC commitments. Thank you, sir.

19 MR SMITH: Thank you very much, Mr Bedford. In which case, I'm going to move on
20 to Thurrock Council.

21 MR MACKENZIE: George Mackenzie for Thurrock Council. Sir, it will be Mr Standing
22 and Mr Neve who will address you again primarily on this topic, but I'd just like
23 to make a brief legal submission to the authority if I may, and it's connected
24 with the wriggle room point that Mr Bedford just addressed you on, and the
25 debate between this side of the room and the other side of the room about
26 whether the word 'substantially' should or could be removed from requirement
27 4 of schedule 2. And as I understand the applicant's position, that Ms Tafur
28 articulated a moment ago, there's a DCO decision in which the Secretary of State
29 decided that it wouldn't remove the word 'substantially', because to do so would
30 give rise to legal problems in terms of fettering of discretion.

31 I'll obviously look at the decision – the reference will be read into the
32 transcript – and reply in writing, but just at the kind of outset it's not clear
33 whether that decision has engaged with the restatement of the Pilkington
34 principle in the Supreme Court decision Hillside Parks. And that was a decision

1 in which the Supreme Court held that even in the context of a planning
2 permission that says that the development has to be carried out in accordance
3 with the relevant plans, that does not mean that exact compliance is needed. And
4 what the Supreme Court said is that that would be an unduly rigid and unrealistic
5 approach to adopt, and for that reason would generally be an unreasonable
6 construction to put on the document recording the grant of planning permission.

7 All the more so where the permission is for a large multi-unit development,
8 and the ordinary presumption must be that a departure there means a departure
9 causing effectively the redundancy of the permission will have this effect only
10 if its material in the context of the scheme as a whole, and in my submission that
11 applies a fortiori in the context of the 2008 Act DCOs. In other words, even
12 where there is a requirement for – in this case, the requirements of the COCP –
13 the removal of the word ‘substantially’ would still, on the Hillside Parks
14 approach, build in a degree of flexibility. So that would be the point that I’ll
15 expand on in writing when I deal with the decision, but I will seek to persuade
16 you respectfully that it is legally permissible for that word to be removed.

17 There’s a separate question as to whether the flexibility that the applicants
18 say they need to deliver a project of the magnitude of LTC, that’s a slightly
19 different question on the merits, but that’s my position in relation to the legal
20 point.

21 MR SMITH: Thank you, Mr Mackenzie. Now, is that the end of the legal submission?

22 MR MACKENZIE: It is, and you’ll hear from Mr Standing now.

23 MR SMITH: Okay.

24 MR MACKENZIE: And then Mr Neve.

25 MR SMITH: Thank you very much.

26 MR STANDING: Hello, sir. Ben Standing for Thurrock Council. As a council, we
27 understand how this is secured. Obviously, we won’t go through. We’ve
28 listened to what the applicant has said. We agree with it. The actual mechanism
29 for how this is secured isn’t in doubt and is very clear. There are wider issues,
30 as has been mentioned by Mr Bedford for Gravesham, about who should be the
31 discharging authority, but that is something again that we can raise on Tuesday
32 next week in relation to the DCO, but broadly speaking our main concern is as
33 counsel’s just mentioned in relation to ‘substantially in accordance with’, and
34 this is there’s a degree of uncertainty in relation to that. I don’t need to rehearse

1 those arguments again, but the council's position is that the real risk in relation
2 to security isn't the mechanism per se, but the words used and how it's referred
3 to in requirement 4.

4 Moving on to the REAC and how it should be secured, we agree it should
5 be something separate. As someone who has come to this and has been going
6 through the code of construction practice trying to work out where things are,
7 where bits are, where documents are referred to, having the REAC as a separate
8 document would be really useable. I think it would aid everyone involved in it
9 for the reasons you mentioned at the start. So just to put down or to state that
10 we as a council agree that the REAC would be better as a separate document.
11 Its visibility would be greater, and it would generally be more useable. I'm now
12 going to pass on to my colleague, Mr Neve, who's going to get into the real crux
13 of the COCP itself and some of the content and iteration questions.

14 MR SMITH: Thank you very much. So, Mr Neve.

15 MR NEVE: Thank you. Adrian Neve on behalf of Thurrock Council. Apologies then
16 for getting into the nitty-gritty, but hopefully this will be helpful –

17 MR SMITH: At some point we have to push the probe into the bottom of the sand and
18 hit rock.

19 MR NEVE: Probe away, essentially. So starting on the iterations of the code of
20 construction practice. So you won't be surprised to understand that from the
21 council's perspective what we're concerning ourselves with is how we continue
22 to be engaged in the process after the granting. As Ms Tafur indicated, there's
23 effectively two sets of control documents. Those that are set at grant, and those
24 that are developed post-grant. So with the code of construction practice and the
25 environmental management plans we're into that second set, so we recognise
26 that there's going to be some development and some iteration through the
27 process.

28 So as a council, what we need to understand is that the DCO as at the end
29 of the examination is potentially our last chance saloon for a lot of this, and so
30 we need to make sure that we have got that suitable governance process as we
31 move forwards, that we as a council are able then to influence and manage and
32 help govern that process. So as has been said a number of times, and particularly
33 by Mr Bedford KC, that flexibility is an understood perspective that is required,
34 but that doesn't mean to say that there are no parameters or there aren't sufficient

1 parameters. So what we've been keen to push for is to introduce that process of
2 those parameters.

3 I've referred a couple of times to our response to your first round of
4 questions, and so question 4.6.4 that we responded to, and we gave what we felt
5 was a quite comprehensive response to the suite of control documents, so that
6 captures the detail of what we feel would be advantageous and perhaps necessary
7 to actually help that governance process. What sort of starts to concern us is that
8 level of interpretation of the documents as they are written, that if you take the
9 code of construction practice as it's written, there's reference to an
10 environmental management system. I don't believe that's a control. I'd
11 welcome any feedback from the applicant on actually what that document is.
12 That's section 2.2, I believe, of the code of construction practice. It doesn't
13 appear to be a document per se, so again in the route map it would be interesting
14 to see how that sits in there. It's not identified in the control plan. Is that the
15 umbrella? I don't know. I don't have the answer to that.

16 But that then leads into the development of the environmental
17 management plans 2 and 3, subsequent to the DCO grant. Taking the exact
18 wording within the various documents suggests that all we get as a council is a
19 feedback on a first iteration of a first draft. If you take it to the exact wording,
20 we don't have a chance to actually respond to the way that the applicant and the
21 contractor decide to put that forward for consent to the Secretary of State. So,
22 from our perspective, there's a concern that really, as I said before, once we get
23 through grant, how much more influence and control do we have over the
24 iterative process?

25 There's a number of contracts. Those contracts are going to run at
26 different paces. They're going to have various changes along the way, so I
27 anticipate that the management plans and all the other suites of documents will
28 need some form of iteration, as that process moves through. So there needs to
29 be alignments and coordination for some control. Now, looking at the
30 documents as they're set, a lot of that is set to the traffic managers, or the traffic
31 manager, that will chair the traffic management fora, and then there's the travel
32 plan managers. So there is some indication as to where that coordination would
33 sit within the applicant and contractor. What the council has started to lose by

1 that time is any ability to actually influence those outcomes and that
2 decision-making process.

3 There's been reference to the joint operations forum. Now, the local the
4 authorities – the council – are only represented on that joint operations forum, if
5 there is a dispute that's been escalated from the traffic management fora. So it's
6 quite an autonomous vehicle, the joint operations forum, and that then, as I said,
7 starts to exclude the local authorities from influencing the processes. What
8 we've suggested is looking at introducing triggers to how and when these
9 documents should be updated, provided, 'Is that programme slippage? Is it
10 process change?' and I think, in my opinion, that's a helpful process. Rather
11 than a hinderance, it's giving that parameters and giving that guidance to the
12 contractor as to how they should take those forwards, and that would then set a
13 timetable for the updates and things.

14 As local authority, as I said, there's a number of control suite that's going
15 to come forwards. We don't, as it stands, understand exactly when that's going
16 to come forwards, and as a council, we have to understand, are we suddenly
17 going to, on day 250, land on the doorstep of a number of documents to be
18 referred to and to be analysed? So, within the DCO, there's a requirement on
19 the deemed consent after 28 days. Some aspects are allowed to look for
20 extension to 42. It would be useful to understand within this route map as to
21 how exactly that process is then looking to manage to make that a more
22 realisable outcome, if you like, in the consents process. So that's on the iteration
23 side. On the content side, again, I'll refer really back to the response we've
24 given at the examining questions because that really sets out in detail what our
25 content view is. So rather than rehearsing that, it's about looking at where we
26 feel that there should be some more depth setting those parameters.

27 Finally, compliance – it comes back to what I was saying, that if we, as a
28 consultee to the various documents, have effectively gone through that process
29 of giving our feedback and the document has been approved, we're left with then
30 being able to comply against what is set out as the commitments by the applicant
31 on various measures, whether that's captured through the travel plans or through
32 the traffic management plans. Our concern is that there's too much flexibility
33 within there. The applicant relies on things like HGV bans, or workforce travel
34 [inaudible] routing. HGV vans are in themselves not necessarily enforceable,

1 particularly by the applicant, and so there are so many challenges within there
2 as to how we actually enact that compliance process. So again, the tightening
3 up through revisions, I think, would be welcomed. Thank you.

4 MR SMITH: Thank you very much, Mr Neve. Now, Mr Mackenzie, does that take us
5 to then end of Thurrock's in-principal positions on this item?

6 MR MACKENZIE: George Mackenzie for Thurrock Council. Thank you. It does.

7 MR SMITH: Thank you very much. Okay. We're now going to go into the virtual room
8 and I will go to Port of London Authority first, so Ms Dillistone.

9 MS DILLISTONE: Thank you, sir. Alex Dillistone for the Port of London Authority.
10 Sorry. I'm just trying to get up the right point in the agenda. We have comments
11 on agenda item 4(b)(i) in relation to the COCP and the DCO, and agenda item
12 4(b)(iii) in relation to the content of the COCP. Firstly, on agenda item 4(b)(i)
13 in relation to the DCO – schedule to requirement 4(ii) secures an environmental
14 and management plan EMP2, that is substantially in accordance with the COCP,
15 and requirement 4(iii) sets out that EMP2 must be written in accordance with
16 ISO14001, and reflect the mitigation measures as set out in the REAC, and it
17 lists the nine measures or plans that the EMP2 must include.

18 The issue for us is that there is a difference between, on the one hand, the
19 documents that are required to be included within EMP2, and which are secure
20 to requirement 4(iii), and on the other, the plans that are required pursuant to
21 EMP2, such as the materials handling plan, the waste management plan and will
22 be produced by the contractor following approval of EMP2. This distinction is
23 set out at paragraph 2.3.10 of the COCP EMP1 REP6-038, which states that
24 there is a distinction between matters which are to be included as part of EMP2,
25 which is submitted to the Secretary of State for approval and matters that are
26 required under or pursuant to the EMP2, which will be implemented following
27 the approval of EMP2. These latter plans are not subject to the same
28 consultation requirements, or signed off by the Secretary of State, and are
29 submitted to National Highways for approval.

30 The PLA has some concerns about the lack of review of these latter
31 documents by the interested parties of which – the PLA – we consider ourselves
32 one. It will, for example, have no opportunity for comment on the construction
33 and logistics plans. Now, we're effectively asked to trust that the applicant will,
34 in effect, carry out an effective auto-review of these documents. While we

1 understand that not necessarily every document will form part of the EMP2, as
2 seen by the Secretary of State, they should nevertheless be subject to
3 consultation with the PLA and with other interested parties.

4 Now, as for the content of the COCP, the PLA's comments, I think we've
5 generally on this document – they are well-documented, and the PLA and the
6 applicant met after the last set of hearings and prior to deadline 7. I would hope
7 it's not presuming too much, although I don't want to speak for the applicant, to
8 say that the PLA and the applicant understand each other's respective positions
9 and the points have been summarised in the Examining Authority's third written
10 questions at paragraph 4.2.2, and we will respond to those separately at deadline
11 8. But as far as our comments on the deadline 6 version, specifically if the COCP
12 are concerned, the PLA had suggested that the plans required as part of EMP2
13 should include a lighting plan.

14 Now, this is where there is some difference between us and the applicant.
15 The applicant has not agreed to this and the PLA therefore suggested amended
16 wording to section 6.8 of the COCP, which deals with site lighting in general, to
17 require the production of a river safety lighting management plan. At the
18 moment, as this paragraph is drafted, a plan that only needs to be prepared – and
19 I'm quoting here from the document – 'Insofar as that lighting is reasonably
20 expected to adversely affect any vessels using the river Thames.' Now, that
21 leaves it up to the contractor to decide whether a lighting management plan is
22 required and whether they might adversely affect vessels, which – in the PLA's
23 view, they're the wrong body to be taking a decision on that, and it's the wrong
24 way to go about it.

25 There is a requirement in section 6.8.7 to engage with the PLA and
26 Thurrock Council on the river safety lighting management plan, which is good,
27 but that requirement only applies if the applicant decides to produce us a plan in
28 the first place. So if no plan is required to be produced, if the contractor decides
29 not to produce a plan, then the PLA and Thurrock's views will not be sought.
30 So in our view, a plan should be prepared. Our request is that 6.8.5 of the COCP
31 should have removed from it the qualification that the plan only has to be
32 produced insofar as that lighting is reasonably expected to adversely affect any
33 vessels using the river Thames. That would require a plan to be produced and

1 Thurrock Council and the PLA to be engaged with. We will of course put that
2 in our summary of oral submissions from today.

3 We also have an issue with dredging, but I think we can leave that for
4 today and we will refer to it in the DDCO-ish[?] next week. So, whilst it's
5 relevant here, I don't think I need to set it out today. On this point, the PLA has
6 repeatedly raised the need for the PLA to be involved with environment incident
7 control if any incident impacts, or has the potential to impact the river.
8 Environment incident control is dealt with at paragraph 6.10.3 of the COCP, and
9 that paragraph requires emergency procedures will be produced with
10 engagement with the emergency services, the environment agency and highway
11 authorities. What that paragraph does not do is make any reference to the PLA.
12 So if, for example, there was an oil pollution incident from the north portal work
13 site, it is the PLA-managed and operated Thames Oil Spill Clearance
14 Association that the applicant would want to rely on to collect and/or contain
15 any oil, but at the moment that is not provided for in the drafting, and in our
16 submissions, it would therefore make sense for the PLA to be included within
17 that list within the COCP.

18 My last point is in relation to the REAC. Now, we've spoken – we haven't
19 personally, as the PLA, but the Examining Authority and the applicant have
20 spoken about it today. The PLA's view so far as we can note it today, is that it
21 would be helpful to have the REAC being a wide and separate schedule 16
22 document to be certified by the Secretary of State, and, as others have said today
23 – I think Thurrock Council – it is buried within the COCP. The reader has to
24 know where to find it and arguably only one that has been heavily involved with
25 the examination process will know where to look. Even actually, if you search
26 the PINS document library, you wouldn't find it, so a standalone reference in
27 schedule 16 would assist because it would allow easier identification of the
28 document and arguably, that is necessary to understand how the project is
29 authorised.

30 So in our view, the REAC is a key document and it should be certified in
31 its own right by the Secretary of State, and we are glad that the applicant has
32 today agreed to look at this. I think those are the content of our submissions on
33 agenda 4(b). Thank you, sir.

1 MR SMITH: Thank you very much, Ms Dillistone. Okay, and then finally, can I go to
2 Ms Dablin, please, or Port of Tilbury London Ltd?

3 MS DABLIN: Good afternoon. Alison Dablin for the Port of Tilbury. The code of
4 construction practice is a very key document. It secures the EMPs for the
5 preliminary works, the construction and then finally, the operational, and whilst
6 I think we are broadly satisfied that the DCO secures the code of construction
7 practice in this regard, what is not clear however is what works are actually
8 secured by each iteration of the EMP.

9 Table 3.1 of the code of construction practice sets out the nature of the
10 preliminary works that fall within the definition of preliminary works, and in
11 this document, the advanced compound areas, including at the northern tunnel
12 entrance compound, are highlighted in respect of preliminary works that are
13 defined as ‘receipt and erection of plant and equipment, diversion and laying of
14 underground apparatus etc, excluded utilities work and vegetation clearance and
15 construction of accesses for advanced compound areas.’ The only indication of
16 what this might entail is a reference to the temporary works plans, which is
17 document 2.17, which has also been updated for deadline 7.

18 If one is to look at the temporary works plans – and in relation to the north
19 portal compound, the relevant sheets are number 17 and 20 – we see a series of
20 temporary works that include on sheet 20 the welfare office, storage, material
21 storage areas and earthworks stockpile area, and on sheet 17, the segment casting
22 factory and a factory and storage yard. This begs the question: are these
23 preliminary works? If they are, then it is difficult to see how they can be defined
24 as minor which I believe is the phrase that was used by the applicant earlier when
25 discussing the Section 106 terms, in particular around Thurrock’s request for
26 staffing to oversee the preliminary works. Fundamentally, given it is not clear
27 the nature and the extent of what constitutes preliminary works, it is difficult to
28 know whether or not it is the preliminary works EMP that will apply, which is
29 in its final form on the date that the DCO is made, or if it is EMP2, which will
30 be developed in consultation with a number of stakeholders.

31 The difference between preliminary works and the main construction
32 works is important for at least the outline traffic management plan for
33 construction, hence why I’ve gone into this detail now, noting that the
34 preliminary works’ EMP is the final document that we would be going through.

1 In respect then of the iterations of the EMP, we note that there does not appear
2 to be any approvals process for EMP3. It is required under paragraph 4.5 of
3 schedule 2 to be developed in accordance with the process set out in the code of
4 construction practice, as per paragraph 2.3.6 of the code of construction practice.

5 The contractors will prepare the EMP3 with engagement with relevant
6 stakeholders on matters relevant to their respective functions, only as listed in
7 table 2.1, and subject to agreement by National Highways. It therefore seems
8 that it is essentially National Highways then that has the final say as to what
9 measures are included in EMP3, which seems like it's lacking in relevant
10 oversight. We are concerned that this may have impacts to the port and we are
11 seeking to address the boundary between the scheme and the port lands in the
12 agreement. We are seeking to address this.

13 Turning then to the REAC, the REAC is where the detail of the various
14 environmental commitments that the applicant is making is found, and it is
15 secured by paragraph 4.3 of schedule 2. Now, the EMP second iteration must
16 be substantially in accordance with the code of construction practice, however
17 in paragraph 3, it then states that the EMP must be written in accordance with
18 ISO14001. But then only that it must reflect the mitigation measures set out in
19 the REAC. We've searched for the word 'reflect' in DCO drafting to see if we
20 could find any incidences of this being precedented. The only precedent that we
21 have been able to find is where an update of certified documents is required to
22 reflect the terms of the Secretary of State's decision to grant the order, the
23 certified documents, as amended, then being subject to the Secretary of State's
24 satisfaction.

25 So in every instance where the term reflect has been used in DCO drafting
26 to date, there has been proper oversight and enforcement that is inherent in the
27 provision in which it is used. We are, I think, happy that the term 'substantially
28 in accordance with' is well precedented in DCO drafting, however it is
29 concerning that the drafting separates out the REAC, using the word 'reflect'
30 which is unclear, and would imply that there is a lower or uncertain commitment
31 to the REAC that ultimately means that under the current drafting, the REAC
32 commitments are not secured and are not guaranteed to be implemented.

33 There's also some concern that there does not appear to be a mechanism
34 to demonstrate that, if there are any changes away from the EMP first iteration,

1 or the construction methodologies presented in the ES that has formed the basis
2 of the identification of mitigation measures – there isn't a process in which they
3 need to not lead to materially new or materially different environmental effects.
4 This should be compared with requirement 3 or requirement 8 where this is
5 expressly required. I think we would generally support placing the REAC
6 commitments into a separate document. The current nesting of the control
7 documents does make it somewhat more challenging to find and navigate the
8 documents, however, at this point, I think we're all aware of where the REAC
9 is, so it may not make as much difference as it would have early on in the
10 examination.

11 Finally, I would just like to put down a marker that the consultation is with
12 the stakeholders listed in table 2.1, of which Tilbury is not listed and, in our
13 view, Port of Tilbury should be listed as a consultant, given the extend of the
14 interaction, however, recognising that you've requested that we use the hearing
15 time to focus on matters where it overlaps with more than one interested party.

16 We will put those submissions in writing. Thank you.

17 MR SMITH: I'm very grateful. Thank you very much. Now, just let me see –

18 MR FRASER URQUHART: Sir, sorry. Before we move on –

19 MR SMITH: Yes, Mr Fraser Urquhart.

20 MR FRASER URQUHART: Sorry. I didn't indicate that I wanted to speak at the outset,
21 but having listened to one or two of the submissions, I'd just like to add a few
22 brief points if I may.

23 MR SMITH: You may indeed, and I do see also Mr Holland's hand, so it feels to me as
24 though this item needs to remain with the interested parties for just a little longer,
25 before it returns to Ms Tafur for a response. So, Mr Fraser Urquhart first.

26 MR FRASER URQUHART: Yes. I'll be brief, sir. The first is to, I think, echo the
27 concerns, which have been put by Mr Neve for Thurrock, and also by the Port
28 of Tilbury about the inclusion of or lack of inclusion of interested parties in the
29 later iterations where it does appear to be a discussion open between contractor
30 and National Highways. One worries about an element of National Highways
31 marking its own homework at the latest stages, so we would express and share
32 the concerns which have been expressed.

33 The second is just on the matter of the REAC, where again, I think we
34 would quite firmly support the notion that it be made a freestanding control

1 document. The transparency of this process is important not just for participants
2 in the examination, not just for officers in local authorities subsequently, but also
3 for more general observers. It's entirely possible that members of the public
4 may want, at some point, to know what's being committed to and how they
5 might nudge their own local planning authority in respect of matters with which
6 they're dissatisfied, and having a document which may well include
7 commitments which go beyond construction, buried away within the
8 construction management plan only, doesn't seem terribly satisfactory. So we
9 would support the issue of REAC being a freestanding document.

10 The last point to just touch upon is with respect to matters of compliance
11 and enforcement. Obviously, the act provides that enforcement is performed by
12 local planning authorities, and it draws a distinction between that and county
13 authorities. In this case, ours is a highway authority, and we would appreciate
14 some greater clarity in the documentation about enforcement, and we have some
15 concerns about this just on a practical level, and this is not meant to be a whinge.
16 It's just an illustration, but for example, in the A2 – the Bean and Ebbsfleet
17 section of the A2 – there was meant to be a post-opening evaluation report a year
18 after the scheme opened. That hasn't happened, even though that the scheme's
19 been opened for many years, I think, now, and that's just an illustration that a
20 proper route for us as a highways authority to be involved with enforcement
21 matters is something that's probably very desirable. Thank you, sir.

22 MR SMITH: Thank you very much. Now, Mr Holland.

23 MR HOLLAND: Thank you, sir. I'll be very brief. So just a new point actually, and
24 it's the relationship between code of construction practice and the draft DCO,
25 and in particular, temporary possession, preliminary works and article 35.
26 Clearly, the assumption is that the project happens and it goes back to a point I
27 made yesterday, which is that, if preliminary works are carried out but the main
28 works are not, for whatever reasons that may be, then how does the – the code
29 of construction practice relies on article 35 in terms of how temporary possession
30 is dealt with and how land is then returned. But of course, the draft DCO doesn't,
31 I don't think, give us sufficient comfort that, if works stop at the preliminary
32 works stage, there is a mechanism as to how that code of construction practice
33 then kicks in to deliver that land back to those that are the freeholders who are
34 deprived of possession at that particular time.

1 In other words, in that scenario, listening to an old naval officer who
2 always told me, 'Know what your exit strategy is. Nevertheless, you may be
3 very keen to do what you're about to do, but know how you're going to get
4 yourself out of it,' there's a linkage there which I think is missing, and that's in
5 relation to the code of construction practice because it's about the works
6 themselves and how article 35 kicks in in that scenario, and the timetable and
7 the means by which those works are carried out.

8 MR SMITH: Thank you very much. Now, I do see we have one remaining hand in the
9 virtual room, which I believe is Northumbrian Water. Okay. Do we have
10 Northumbrian Water?

11 MS ANDERSON: Yes, sir. Hazel Anderson from Winkworth Sherwood, acting for
12 Northumbrian Water, who trade in this area as Essex and Suffolk Water. Sir, I
13 just wanted to join the merry band of those who are supportive of the REAC
14 becoming a standalone document, and that's simply, sir, for – the reasons, I
15 think, have already been covered, but certainly from Essex's and Suffolk's point
16 of view, there are commitments in the REAC which relate not only to
17 construction, but to post-construction matters. We're thinking in particular of
18 the commitments regarding the pond in SPZ1, which, for those who are going
19 to be dealing with that at a practical level, they will find the arrangement at the
20 moment of the REAC, being buried in the back of various appendices to COCP,
21 almost impossible to navigate if it is not made into a more clear control
22 document because of how it currently sits. Therefore, as I say, we lend our
23 weight to the suggestion it should be standalone, so that if commitments are
24 likely to be breached, or there are enforceability or other compliance concerns,
25 it is quite clear where those construction and post-construction commitments are
26 and can be easily found. Thank you, sir.

27 MR SMITH: Thank you very much. Right, I do believe that that has dealt with all of
28 the individual requests to speak on this item, so I am now going to return it to
29 Ms Tafur for responses, which may be brief because you may well be picking a
30 lot of this up in tandem with your deliberations on the DCO commentary at
31 deadline 8.

32 MS TAFUR: Isabella Tafur, for the applicant. Thank you, sir. Yes, we certainly will
33 pick up those that we don't respond to now in tandem with our comments on the
34 DCO. I will just try and cover some of the points that have been raised by others,

1 if I may. Gravesham asked for a document that set out by reference of topics;
2 someone's concerned about dust or noise. Where should they look? In our view,
3 the REAC does that already. It does separate out. It's got air quality topics,
4 noise topics and the relevant commitments, and it may be that this is one of those
5 issues that's assisted by our consideration of the REAC as a separate document
6 from the code of construction practice.

7 I would, sir, just note that I understand it was included in the code of
8 construction practice at the request of the planning inspectorate following the
9 withdrawal of the first application, but we're happy if the indication is to remove
10 it.

11 MR SMITH: It may well have been. I will be very frank with you, that I think we are
12 dealing with a range of different practice models and in fact, when I was
13 preparing for this agenda and also considering matters previously, I was looking
14 through and was finding essentially precedent on both sides of the line. So it
15 doesn't seem to have become very well settled. There are arguments of merit
16 on both sides of this line, I do have to say, however, at some point we also do
17 need to consider systematically what is the best and the most practical measure
18 that might be pursued, and it certainly struck us as an Examining Authority that
19 these were matters that merited full and careful consideration, in large part,
20 because of the scale of this scheme.

21 If one looks at other instances of a REAC resting inside a code of
22 construction practice, if the scheme's small and the scheme's going to be dealt
23 with and delivered and fully operational in two years, that may not be a problem.
24 But this is not such a beast.

25 MS TAFUR: Isabella Tafur, for the applicant. Understood, sir. Then there were some
26 concerns raised by Gravesham, and reflected by others, as to the wriggle room,
27 I think it was described as, in the code of construction practice. On that point,
28 the document, against which compliance will be enforced, will be the EMP2
29 because it's the EMP2 which is to be substantially in accordance with COCP
30 and that will regulate and govern the subsequent phase, and so that's the
31 document that will be approved by the Secretary of State, following
32 consultation, and it's against that document that compliance and enforcement
33 will be required. So the Secretary of State will have the opportunity to consider
34 the precise wording that should be included, having regard to consultation

1 responses from all other parties, and we say that the level of detail at the moment
2 included in the COCP is perfectly appropriate, and indeed necessary given the
3 stage that we're at and the need to retain an element of flexibility at juncture.

4 There were a number of points raised by Thurrock. One was about the
5 'substantially in accordance with' and the interrelationship with the Hillside
6 judgement. The Hillside judgement, I believe, was handed down by the
7 Supreme Court in November 2022, and the A47 DCO, which I mentioned, had
8 been subject to specific consideration of this issue, that was granted in March
9 2023, so post the Hillside Supreme Court judgement, as do a number of other
10 precedents that we have referred to and we can identify all of those which
11 post-date Hillside.

12 There was another concern raised by Thurrock as to their involvement,
13 once the DCO is granted, in the progression of the control documents, and I
14 would just note that requirement 4 provides that no part of the authorised
15 development can commence until the EMP second iteration has been approved
16 by the Secretary of State, following consultation by the undertaker with relevant
17 planning authorities and others – the bodies identified in table 2.1 of the COCP.
18 Then section 2.1.3 of the code of construction practice explains what will happen
19 where consultation is required. Contractors will provide a draft submission of
20 the material to the identified consultees in advance of submission. Consultees
21 will be asked to provide comments. Any feedback received shall be considered
22 and representations received from consultees will be provided to the Secretary
23 of State, as well as a written account of how any representations have been taken
24 into account, and that, in fact, is secured also in requirement 22 of the DCO.

25 Also, just to complete that, in respect of the third iteration of the EMP, the
26 code of construction practice paragraph 2.3.6 again requires consultation to be
27 undertaken with the relevant bodies, again identified in table 2.1, and so there is
28 a mechanism by which consultation is secured. Consideration of that
29 consultation is mandatory, and then in respect of the EMP2, those consultation
30 responses are then provided to the Secretary of State. I think there was a further
31 concern raised on behalf of Thurrock about the environmental management
32 system and ISO14001, but that is a matter which is covered and incorporated in
33 the code of construction practice. It's section 2.2 and it explains that National
34 Highways will operate an environmental management system, aligned with and

1 capable of certification to ISO14001. I appreciate that – I think it was Mr Neve
2 who wasn't familiar with what that was, and that's perhaps something we could
3 take up with him and provide some further explanation of.

4 MR SMITH: I'm not sure it was a lack of familiarity. I think it was more a case of not
5 understanding how the operation of the management system would interface
6 with essentially the operation of the code itself and other controls in the delivery
7 of the project. Am I correct there, Mr Neve?

8 MR NEVE: Andrew Neve on behalf of Thurrock Council – and also, was that
9 management system something that was to be secured? I don't see it secured
10 anywhere within either the DCO or any of the other control documents. Thank
11 you, sir.

12 MR SMITH: It's certainly worth discussing between you and, if needs be, we can come
13 back to it on Tuesday.

14 MS TAFUR: Isabella Tafur, for the applicant. It's secured through the COCP section
15 2.2 and it is a requirement of LA120 for it to be included in the COCP. So yes,
16 we can certainly discuss what the interaction will be, insofar as that's not already
17 explained in section 2.2 of the code of construction practice.

18 There was a concern raised also about – I think it was compliance with
19 HGV bands, which I think may come up in a later agenda item. I think it's
20 paragraph 2.4.10 of the outline traffic management plan for construction –
21 contains provision for monitoring vehicle movements. Then Port of London
22 Authority raised some concerns about – sorry. I'm just trying to understand my
23 own notes. They raised concern about documents that were required pursuant
24 to EMP2, but weren't themselves subject to approvals, I think the point was.
25 Yeah. It was included in EMP versus required EMP2. EMP2 of course will be
26 covered by the points I made a moment ago, that there will have to be
27 consultation with identified bodies, including the PLA. The Secretary of State
28 will be the ultimate arbiter having regard to all of those, and that document will
29 contain the appropriate control mechanisms for the next phase. After that, there
30 will be continued community liaison and engagement, including with the PLA,
31 to further finesse, but the ultimate approval will be secured appropriately by the
32 Secretary of State and governed by EMP2.

33 As to the river safety lighting management plan, this again is covered by
34 section 6.8.5/6.8.7 of the code of construction practice. So the contractors have

1 to consider lighting in accordance with specified guidance which is set out in
2 6.8.6, so as to ensure the night-vision of mariners isn't impeded, or existing
3 navigational lights aren't masked or made less obvious. The lighting plan has
4 to achieve certain things and, as Ms Dillistone recognised, the lighting plan
5 would have to be subject of engagement with the PLA.

6 MR SMITH: I think the very particular point there was that, if in the judgement of the
7 contractor no such plan was deemed relevant/necessary, that was the
8 contractor's judgement, bearing in mind that the contractor is not an authority
9 on navigation safety or pilotage or shipping operation, or indeed a port authority,
10 and maybe they're not best placed to make the underlying technical judgements
11 and that maybe a consultative measure that engaged people with that technical
12 expertise might ensure that navigational risk was identified and managed at
13 source, rather than possibly becoming patent because a contractor didn't quite
14 understand what they had done, without preparing a plan.

15 MS TAFUR: Isabella Tafur, for the applicant. First of all, the contractors do have to
16 consider this issue in respect of a guide to good practice on port marine
17 operations in accordance with the port marine safety code, and secondly, there
18 are protected provisions for the benefit of the Port of London Authority which
19 include navigational lights and directions as to light, which we think are
20 sufficient. But again – happy to discuss further. I think it's paragraph 1.1.2 of
21 the protected provisions in favour of the PLA – provide that the undertaker has
22 to comply with a reasonable direction issued by the harbour master with regard
23 to lighting of specified works and carrying out a specified function. So we think
24 –

25 MR SMITH: So if they perceive an operational navigation/river safety problem, they
26 would invoke the protected provisions, and that's the route into you.

27 MS TAFUR: Yes.

28 MR SMITH: Right.

29 MS TAFUR: I think the PLA also raised a concern about their involvement in
30 environmental incident control, and again, we think that's a matter that's dealt
31 with through the protected provisions, in particular paragraph 100(d), where we
32 have to provide them with the river use and navigation and emergency response
33 plan, and they have the opportunity to comment, and then there's an escalation

1 process as necessary in the event of non-agreement. So again, we think that's
2 covered via the protected provisions.

3 The Port of Tilbury then raised some concerns about what preliminary
4 works were and what they were governed by. There's the definition of
5 preliminary works and a definition of advanced compound areas in schedule 2
6 to the DCO.

7 MR SMITH: And we are going there on Tuesday.

8 MS TAFUR: Yes, indeed. Preliminary works, if it reassures in respect of the advanced
9 compound areas, only covers access to advanced compound areas and vegetation
10 clearance in connection with accesses. So limited works can be undertaken in
11 accordance with the definition of preliminary works, and they will be governed
12 by the preliminary works environmental management plan, which is a later
13 agenda item. As to the concern that there be no approval of the third iteration
14 of the environmental management plan, EMP3 is intended to deal with the
15 operational stage and that goes to National Highways' operational powers,
16 which, in our view, are not appropriately intended to be regulated by the DCO
17 process, but rather under the terms of National Highways' license and the
18 Highway Act.

19 LA120, again, sets out standard processes for EMP3 and it makes
20 provision for further consultation and EMP3 is to be in accordance with that
21 standard, and the none-approval of the third iteration of the environmental
22 management plan is very well precedented, including in the A19 Testo's DCO
23 amongst others. So we say that's perfectly appropriate. As to the use of the
24 word 'reflecting the REAC', there was a suggestion that there aren't any
25 precedents of the use of that language. We, I think, have found 12 while we've
26 been sitting here, which we will summarise in our post-hearing submission. I
27 think, other than those matters, the rest of the issues we can probably best pick
28 up in our written summary.

29 MR SMITH: Okay. Thank you very much. So that, I think, everybody, brings us to the
30 end of the COCP item. Now, I wanted to say a couple of things. Firstly, I think
31 we have almost exactly an hour left in session before we do need to clear this
32 room in order to enable it to be re-laid out to the following hearing. I don't think
33 it would be particularly sensible to continue that out without taking a comfort
34 break briefly now, so I am going to suggest very shortly we will take a 10-minute

1 break, and then looking at where we will proceed afterwards, and I was looking
2 at the agenda items and thinking that we will try and go as far as we can. Clearly,
3 we are going to need some time on Tuesday afternoon/possibly even early
4 evening to complete these items.

5 I thought it would make sense if we dealt with those documents today that
6 are essentially before us as detailed content, and maybe reserved outline
7 documents, and particularly those pertaining to traffic management, until after
8 we've had the traffic and transportation hearing, if that makes sense, which is
9 Monday, and then we will bring them back in in ISH-14. So I was going to
10 suggest that we use our remaining hour and we make a start on design principles,
11 and we do not then touch the outline traffic management plan for construction
12 or the framework construction travel plan. But we do, if we can, take a look at
13 the SACR because that's an initial high-level document with commitments that
14 are in front of us right now, secured on the face of the order.

15 We will then see how much further we can go, but you will see that the
16 rest of the agenda items, apart from the carbon and energy management plan,
17 are again all outline documents, so my sense would be that they might be best
18 discussed on Tuesday. But that's my sense of how we will best use the hour in
19 front of us now, so I'm going to suggest – it is creeping towards 20 past. Can
20 we resume at half past, and then we will use the remaining time until we close
21 to get as far as we can? Thank you very much ladies and gentlemen.

22
23 **(Meeting adjourned)**
24

25 MR SMITH: I see some hands before we start. So I'm going to go to the London
26 Borough of Havering first and then I'm going to go to Thurrock. So, London
27 Borough of Havering first.

28 MS THOMSON: Sorry, sir. At risk of testing your patience, I've just one little issue on
29 programming, which I wanted to do now before you embark on other stuff, and
30 I'm supported in this, I think, by Mr Bedford, which gives me a bit of heft, I
31 think, and that is that the deadline 9 on 11 December involves a submission by
32 the applicant of a considerable number of documents –

33 MR SMITH: It does.

1 MS THOMSON: – which requires a response to those to which responses are desire to
2 be made by 15 December. Now, if the documents don't come out as previously
3 until the Wednesday afternoon, or possibly later given the previous [inaudible]
4 on website uploading, then it's practically impossible.

5 MR SMITH: Impossible. Yes. Now, I think that is a – you're pressing an open door.
6 That's a point that's noted and in fact, it had been in my mind in a business
7 session, probably in issue-specific hearing 14 because the bulk of that is about
8 the preferred draft DCO, although the control documents are gathered into that
9 production requirement on the applicant.

10 I had certainly had it in mind that because of timescales we might need to
11 do something a little differently from normal procedure of a single submission
12 by the applicant to PINS, with then library cataloguing and upload proceeding
13 at the normal, fairly gentle pace, shall we say, of those processes. I was going
14 to suggest that there may be merit in exploring, bluntly, here whether there are
15 parties who would wish to see by direct email, or Dropbox or equivalent, links
16 to the relevant documents at the same time that the applicant submits them to us,
17 and if the applicant is prepared to facilitate that, I think we would be very
18 grateful and it will build three or four more days of useful time into the process.
19 Now, I won't go back to Ms Tafur yet because I'm conscious that the point from
20 Thurrock might have been a different one.

21 MR STRATFORD: Chris Stratford, for Thurrock. Yes. It is, sir. Certainly, I applaud
22 that last suggestion – very good idea. Dropbox or whatever – that would be
23 great. My suggestion – you suggested, and it's entirely your position obviously,
24 but design principles and then maybe the SACR. Could I make a big plea for
25 dealing with the carbon and energy management plan for the simple reason that
26 it would be an – and I appreciate it could be dealt with on Tuesday, but it's the
27 first opportunity verbally to do anything connected with carbon or the climate.
28 There have been a number of questions; I get that, but this is the first time
29 verbally. We have our specialists. I notice [Alistair Keen?] is here from the
30 applicant, so they're clearly ready. Would it be possible to fit that in tonight?

31 MR SMITH: Okay. It's not impossible. Rest assured everybody that none of these items
32 are to be dropped, and it's our intention that all of them will be covered orally.
33 So just because we do something tonight, that doesn't mean to say, 'That's it.'

1 Any other preliminary and procedural matters before I move to Ms Tafur for a
2 response on those two separate points? Ah, Mr Bedford.

3 MR BEDFORD: Only to say I absolutely endorse the point made by Ms Thomson and
4 I think – you say we’re pushing on an open door as far as you’re concerned. I
5 hope we’re pushing on an open door so far as the applicant is concerned by way
6 of providing early opportunity to see the documents, whether by Dropbox or
7 some other mechanism.

8 MR SMITH: Indeed. Okay, Ms Tafur.

9 MS TAFUR: Isabella Tafur, for the applicant. I can certainly see the sense in doing that.
10 It wouldn’t be me who was doing it so I feel reluctant –

11 MR SMITH: To take on the commitment for others.

12 MS TAFUR: Would it be possible just to get back to you in about 10 minutes? We’re
13 just asking somebody who will be responsible for doing that, if that’s feasible
14 and whether it would be – for example, sir, I think you’ve said people could
15 indicate if it was just the local the authorities, or if it were a limited pool of
16 people rather than every interested party, that might make it –

17 MR SMITH: My sense here is that this has to be essentially the engaged parties. I think
18 it would make sense if it was all of the relevant local planning authorities and
19 highway authorities, so that would wrap up Transport for London as well. Port
20 of London Authority, Port of Tilbury Ltd – I think of fairness then you’d have
21 to include London Gateway. Now, Mr Holland has also diligently been here –
22 and I know here represents a range of private clients, but he is also engaged, so,
23 Mr Holland, I was going to suggest you were added to the list.

24 MS TAFUR: Isabella Tafur, for the applicant. I am happy to confirm; we can do that –

25 MR SMITH: Okay.

26 MS TAFUR: – and will.

27 MR PRATT: Mr Smith, if I may, there’s a hand up.

28 MR SMITH: Yes, apologies. There’s a hand in the room. We have Northumbrian
29 Water. Essex?

30 MS ANDERSON: Thank you, sir. I make a plea that Essex and Suffolk could also be
31 added to that list, please.

32 MR SMITH: Can Essex and Suffolk Water be added to the list? That’s one more name.

33 MS TAFUR: They can.

34 MS ANDERSON: Thank you very much indeed. We appreciate it.

1 MR SMITH: – an engaged party. Okay. In which case, that’s that point dealt with.
2 Now, in relation to the plea of order from Thurrock, are there any observations
3 on that? Are you ready to proceed on carbon and energy management plan?
4 MS TAFUR: Isabella Tafur for the applicant. Yes. We’re totally in your hands, sir. We
5 understand all of these matters are going to be dealt with, so it’s not that some
6 are going to be bumped off altogether, so we’re content to deal with it today or
7 on Tuesday, as you prefer.
8 MR SMITH: Okay. Well, what I’m going to suggest is that has been brought forward;
9 why not hit the nail straight on the head? Why don’t we go to that and then to
10 the extent that time then allows, we will go the design principles, and I suspect
11 that will give us a wrap for the day? So on that basis, unless there are any other
12 preliminary or procedural matters that we need to deal with, I’m going to take
13 us to agenda item 4(j) – carbon and energy management plan – and ask for the
14 in-principal submissions first from the applicant.
15 MS TAFUR: Isabell Tafur, for the applicant. Sir, I’m going to introduce Mr Alistair
16 Kean to address this topic, if I may.
17 MR SMITH: Thank you very much. Mr Keen.
18 MR KEEN: Good evening. Alistair Keen, for the applicant.
19 MR SMITH: I think you perhaps – just bring the microphone a little bit closer.
20 MR KEEN: Sir.
21 MR SMITH: That’s better. Perfect. Okay.
22 MR KEAN: So our brief statement on the subject – the basis for security of the carbon
23 and energy management plan is secured through requirement 16 of schedule 2
24 of the draft DCO. This requirement states under sub-paragraph 1 that no part of
25 the development can commence until the plan has been submitted to the
26 Secretary of State for their approval, and that the second iteration of the plan
27 must be substantially in accordance with the first iteration. That’s the first main
28 point. It’s a very managed process. The first iteration was submitted as part of
29 the DCO application, and it’s been updated recently in deadline 7, as you
30 hopefully will have seen where we’ve been able to share a reduction in the
31 maximum commitment of emissions from the successful completion of our
32 procurement phase.
33 Sir, the reduction was achieved by embedding carbon in the procurement
34 of the [inaudible] build contracts, in line with the commitment made in the

1 carbon and energy management plan. So the actual pathway to achieve this
2 reduced maximum limit, and anticipated further reductions would be determined
3 by the contractors and their designers when developing the detailed design with
4 their procurement strategy and construction methodologies. So this process will
5 be facilitated by and managed through these mechanisms, introduced as carbon
6 commitments in the carbon and energy management plan, of which I think there
7 are 22. These include former, regular collaborative carbon workshops with
8 representatives of all contractors and the PAS-2080 carbon management system,
9 which is highly relevant to this. So the second iteration of the carbon and energy
10 management plan will reflect the results of this process.

11 In terms of the content of the document, the first iteration of the carbon
12 and energy management plan sets out the client's ambitions for reducing carbon
13 throughout this construction phase. The applicant has quantified its carbon
14 impacts in line with PAS-2080, covering the construction and operational
15 phases. The plan focusses in extreme detail on the construction and maintenance
16 submissions, as these are under the control of the applicant, and it covers
17 emissions from energy, water and waste during the operational phase as well.
18 As I mentioned, it has 22 carbon commitments, and it's highly innovative in
19 itself. It's the first the first time that a carbon and energy management plan has
20 been incorporated into a National Highways DCO, and the applicant considers
21 this approach to be industry-leading, and that I's going to have a significant
22 impact, not just on this project, but on many others.

23 So the second iterations that have to be developed have to stay
24 substantially in accordance with the first. They'll be developed by the
25 contractors, and it relates to the construction phase and provides the detailed
26 approach to reducing emissions, how the contractors will comply with their
27 maximum level of emissions secured as part of the first iteration. That's the
28 1.44 million tonnes that we're now talking about, and that further measures and
29 proposals the contractors will deploy during the construction phase to reduce
30 emissions beyond this already lowered maximum level.

31 So the commitments in the first iteration, which relate to the construction
32 of the authorised development will need to be reflected in the second. In terms
33 of the decision-making within the control document, they lie substantially with
34 the applicant. The carbon limits set the maximum emissions, and the carbon and

1 energy management plan will be used in combination with the highly detailed
2 management systems prepared in compliance with PAS-2080 to ensure that
3 there is an auditable sequence of events which serves to push emissions lower,
4 and that's an important point, that PAS-2080 itself is an audited process.

5 It is noted that if specific, low-carbon technologies and/or infrastructure
6 are proposed by the contractors, then these would require additional consents or
7 permits from time to time, and these would be dealt with in the normal way. In
8 terms of management and enforcement, PAS-2080 is really the key document
9 here. The project has been verified and contractors have to additionally become
10 verified within a year of their appointments, and their directly appointed
11 sub-contractors also have to have PAS-2080.

12 So a big part of PAS-2080 is pushing carbon reduction down through the
13 supply chain. So with this series of mechanisms, we have a very powerful
14 carbon reduction tool, and these aspects are secured through CBN-13, 14 and
15 15. There's regular project report to comply with the requirements of PAS-2080,
16 and we've also made a commitment in CBN-16 and 17 that the contractors will
17 make their own annual reports, which will be collated into a report which will
18 be published and made public, and his will include very clearly the forecast
19 lifecycle carbon emissions for the following year, the carbon reductions
20 achieved to-date and their progress against the carbon commitments and key
21 actions and targets for that year. So it's a very thorough and detailed assessment
22 of what we've done.

23 Enforcement would be in line with the [inaudible] requirement 16 of
24 schedule 2, and again, no part of the development can commence until this has
25 been agreed by the Secretary of State. In accordance with sub-paragraph 3 of
26 requirement 16 of schedule 2 of the draft DCO, the construction of each part of
27 the authorised development must be carried out in accordance with the carbon
28 and energy management plan approved for that part under sub-paragraph 1 of
29 requirement 16. So we think that I's a huge step forward in the way that carbon
30 is dealt with and project s for National Highways and that it should set an
31 important precedent for carbon reduction on other major projects in the UK.

32 MR SMITH: Okay. Now, I believe my colleague, Ms Laver, had a question.

33 MS LAVER: I did, but I think you answered it. My question was how will the
34 contractor-identified carbon reductions be documented and quantified? Is there

1 an audit? So if you're building your road, you normally have a road safety audit
2 a year later to determine that you've done what you should have done and it's
3 safe, but how does that work for carbon?

4 MR KEEN: Alistair Keen, for the applicant. There are two levels of audits. So
5 PAS-2080 has to be audited by a verified auditor, so it'll be somebody of the
6 likes of the British Standard that will be doing the audit. So the contractors can't
7 hide what they're doing. They have to pass that audit or they themselves will
8 no longer be PAS-2080 verified, which would be in breach of their contract
9 condition that says that they have to be verified. The second level of audit is
10 when it comes to National Highways and they report in a public forum their
11 achievements to-date and their progress against the long-term carbon target for
12 the project, which is the limit that they are contractually obliged to achieve, and
13 that we've also issued in our deadline 7 submission.

14 MS LAVER: But if they don't achieve what they need to achieve, what happens then?
15 What's the penalty?

16 MR KEEN: It is a contract failure at worst, so we'd deal with that as any other contract
17 issue, and there will be penalties within the contract to deal with that.

18 MS LAVER: But the penalty is really on the environment if what's meant to be achieved
19 isn't achieved.

20 MR KEEN: It is, but it also reflects on National Highways because it's a DCO
21 commitment to achieve that limit. So the limit is set as an absolute limit for the
22 project, and we're convinced there's many more carbon savings to come from
23 the work that will come to-date. The 1.44 takes us so far. If, for any reason,
24 there is a contract defect and they don't achieve that, then it can be dealt with
25 with the normal contract process for dealing with defects, but we think that's
26 highly unlikely. We've achieved this reduction without pushing into the realms
27 of highly innovative solutions and in the detailed design, there'll be lots of other
28 opportunities for the contractors through value engineering to reduce emissions
29 yet further. So we very much see that this is working to our proposition that
30 there is a lot of saving to be made, that the UK construction industry can go
31 much further, and it has to go much further, to achieve net zero by 2050, so this
32 is us moving towards the correct trajectory to achieve that. So we're very
33 confident that –

34 MS LAVER: I don't need to press you further on that. Thank you.

1 MR SMITH: Thank you very much. Any other questions from my colleagues? In which
2 case, I will open this up to the floor and given that Thurrock Council requested
3 it, I trust that it will be Thurrock Council who wish to speak on it.

4 MR MACKENZIE: George Mackenzie, for Thurrock Council. We do indeed wish to
5 speak on it, and it will be Johnny Riggall who will address you from the big
6 screen on this point please.

7 MR SMITH: Okay.

8 MR RIGGALL: Hello. Jonathan Riggall on behalf of Thurrock Council. Can you hear
9 me okay?

10 MR SMITH: We can perfectly, so, Mr Riggall, the floor is yours.

11 MR RIGGALL: Thank you very much. We have addressed many of our comments
12 towards the carbon and energy management plan in our responses within the
13 local impact report appendix K, which is REP1-292 for your reference, as well
14 as in the continual engagement with the applicant as an interested party, which
15 is also documented within the draft statement of common grounds, the most
16 recent being REP6-031.

17 I'm not going to go into the length of the communication that's been had
18 because we don't have time but I just want to go through some of the key
19 consideration that we have, or concerns that we have relating to the content and
20 the process that has been put in place by the applicant. The first part that we just
21 want to address is how budgets are broken down that are being presented within
22 the carbon and energy management plan. At this stage, they're not broken down
23 on a phase basis. We're really keen to understand the relationship between the
24 design decisions that will be made by the contractors, any change or variations
25 in those designs and how they'll be impacted on a phase relation.

26 At the moment, as mentioned by the applicant earlier, that the reporting of
27 greenhouse gas emissions are going to be done on a timed basis, so annually, as
28 opposed to a phased basis. If we no sight over how each phase and the budgets
29 of each phase are going to be addressed, there's a risk that only one phase could
30 be exceeded in terms of its carbon emissions, and then how that will be
31 addressed is also unknow, which brings me on to the next issue that we have, or
32 concern we have – the corrective procedures that wouldn't need to be put in
33 place, and that was actually just discussed earlier.

1 We too have concerns that currently there are no corrective procedures
2 outside just the contracts between National Highways and the contractors in
3 terms of delivering meaningful greenhouse gas emissions reductions during the
4 project. Those corrective procedures might be between National Highways and
5 the contractor, but we would also want to see from a wider perspective the
6 corrective procedures within that management plan system that have
7 independent regulation into those. We also are looking for within the carbon
8 and energy management plan, the relationship between the physical
9 infrastructure that will be required to be delivered by the contractors as they
10 design the scheme going forward and how they are managed, notwithstanding
11 that they might not actually have been assessed with the environmental impact
12 assessment themselves. So the physical infrastructure and its relationship to the
13 management plan is also critical.

14 We're also looking to understand how those management procedures can
15 include – and this was explained within our local impact report in appendix K
16 REP1-292 – the relationship between the carbon and energy management plan
17 and the host communities that the management system will affect, and also
18 address local impacts as well. There is an interlink between the management
19 procedures that will be delivered in terms of reduction of greenhouse gas on the
20 project, but also, the wider or local geography and how decarbonisation will
21 need to be delivered over the next 5/10 years within Thurrock itself.

22 Finally, we're looking to understand further the procedures of independent
23 regulation of compliance. So there's a difference between auditing and verifying
24 and the actual regulation compliance. So whilst there is some levers between
25 National Highways and the contractor in terms of the contract that's being
26 applied to deliver Lower Thames Crossing, the regulation of that process with
27 that contract is also unknown. So there's a variety of issues there that we've
28 sought revisions for, or sought further learnings of through our engagement with
29 the applicant, and how Thurrock Council's role in the determination of the
30 carbon and energy management plan is of great interest as well. So as part of
31 Thurrock Council's response to examination question 1 that was posed, our
32 response back to yourselves in REP4-343 – that's the reference doc – and they're
33 relating to localised climate and carbon assessments.

1 We explored in our response the role of local government in delivering
2 Government's net zero policy because we were concerned that actual
3 environmental impact assessment hadn't assessed the secondary impacts of
4 Lower Thames Crossing on Thurrock Council's ability to deliver their
5 obligations to the national commitments. In the applicant's response to that –
6 so the reference REP6-096 – they make consideration of that, and their response
7 was summarised as the council – they concluded that local authorities do not
8 have a policy of responsibility for greenhouse gas emission reductions within
9 that geography.

10 Now, that clearly creates a critical decision point, because if we accept
11 local government – i.e. local authorities – do have a role in implementing
12 national Government's net zero policies, as we've presented within our response
13 to examination question 1 within REP4-343, then Thurrock's Councils do have
14 a critical role in the compliance and enforcement of the carbon and energy
15 management plan. Not least to ensure that the implementation of this
16 management procedure for Lower Thames Crossing doesn't actually impact
17 Thurrock Council's obligations to the wider net zero agenda.

18 So there's a variety of issues and considerations with the carbon and
19 energy management plan that needs to be addressed, and further onto that is the
20 relationship also between the carbon and energy management plan and what it's
21 actually applying to as well. So we note that the carbon and energy management
22 plan is just the management procedures during the construction of Lower
23 Thames Crossing. It also has indication towards management procedures in
24 terms of the operation – as in the infrastructure operation of Lower Thames
25 Crossing – but not the influence of Lower Thames Crossing on the users of the
26 new network. So we would be looking to understand further the relationship
27 between the carbon and energy management plan and the opportunity to
28 influence decarbonisation or the reduction of emissions of the use of the road.
29 We note there would be further iterations of the carbon and energy management
30 plan where further details come into the document, which brings back the subject
31 of 'substantially in accordance with', which was previously mentioned.

32 At the moment, the carbon and energy management plan is setting out the
33 broad procedures. Everything else needs to be substantially in accordance with

1 that, so we're actually looking for more details to be able to hold decarbonisation
2 and the management of that in place within the wider documentation.

3 MR SMITH: Thank you very much. Now, are there any wrap-around positions,
4 Mr Mackenzie, that you need to put on that, or can I see if we have other speakers
5 on this item?

6 MR MACKENZIE: George Mackenzie for Thurrock Council. Nothing to add, thank
7 you, sir.

8 MR SMITH: Thank you very much. Anybody else wishing to speak to this particular
9 control document? I see nobody else in the room. In which case, Ms Tafur,
10 again, you can deal with matters of detail in writing and wrapped up in the
11 response to the DDCO commentary, but general points, here.

12 MS TAFUR: Isabella Tafur, for the applicant. In terms of general points, we say that
13 appropriate control is secured through requirement 16 of schedule 2 of the DCO,
14 which prevents any part commencing until a second iteration of the carbon and
15 energy plan has been submitted and approved. That needs to include reasonable
16 measures for management and minimisation of carbon during construction, and
17 specify the measures to taken in the event of any failure to meet a target set out
18 in the first iteration. So there will be included within that document, in the event
19 of a failure to meet a particular target, remedial steps will have to specified.

20 There's also then a requirement for a third iteration of the carbon and
21 energy plan that must also be submitted to and approved by the Secretary of
22 State, and also has to contain long-term commitments to manage and minimise
23 carbon emissions during the operation and maintenance of the authorised
24 development. Within the carbon and energy plan itself, the latest version of
25 which was submitted at deadline 7, there is a requirement on the applicant to
26 report annually, but then they also have to set steps and measures for
27 prospectively – there's an overall target set, but obviously, the project as a whole
28 will be some years of construction, and so in the event that one of the annual
29 reports indicates an issue or a failure to be on track, then there's a requirement
30 to set out prospective steps that will be taken to address that. So that's section
31 4.8.5 of the carbon and energy plan. I was just going to ask if Mr Keen wanted
32 to respond to any of the more detailed points?

33 MR KEEN: Well, just to reiterate, these are points that we've discussed in some detail
34 before with Mr Riggall. So the budgets are broken down in some considerable

1 detail in the carbon and energy management plan. The budgets are based on the
2 bill of quantities for the project largely, and there's an unprecedented amount of
3 detail in there, and of course, that's all going to change as the contractors go
4 through their own designs, so I think we've provided a very large amount of
5 detail about what the intentions are.

6 In terms of the management procedures and how we're reporting, I've
7 explained how we're going to be doing annual reporting and it's going to be
8 combined out of the level of detail that the contractors provide on each of those
9 contracts, so I think there's unprecedented level of detail that's going to be
10 explained, both in terms of where we've been with carbon and where we're
11 going. The auditing is again, I would say, unusually strong, given the links with
12 PAS-2080. We've also discussed this at length before, the issues to do with
13 local budgets and the fact that carbon emissions are a global issue. There's not
14 a localism issue to it at all and we have had previous advice that local budgets
15 have no basis in law in respect of these kinds of decisions.

16 In terms of the future – road users – again, we've discussed this in some
17 detail and we feel very strongly that it's the national Government's strategy to
18 reduce emissions from the use of road vehicles and it's not in the power of the
19 contractors through their carbon and energy management plans to do so.

20 MR SMITH: Okay. Yes.

21 MR YOUNG: Just on that issue of local carbon budgets, it may assist, but that was an
22 issue that came up in a Bristol Airport legal challenge. I don't know if you
23 picked that up.

24 MR SMITH: Okay. Does that then bring that particular item to a close? I'm just making
25 sure there's nobody else who wishes to speak on it. Now, I'm looking at the
26 time. It is now 6.00, and with reference to the design principles document, which
27 is important and substantial, I don't think it would be particularly sensible to
28 start examining that at 6.00, when we absolutely do have to be out of this room
29 at 6.15. So, on that basis, I'm going to suggest that we now adjourn this
30 particular item. We will resume issue-specific hearing 12 at the design
31 principles item on the agenda and then we will complete the remaining items
32 Tuesday next week, immediately following the completion of business in
33 relation to the draft development consent order ISH-14.

1 Now, what I will flag there is, it will require a little patience from
2 participants because we may need to use a little bit of late afternoon/early
3 evening time to get that job done, recognising that that is our last scheduled
4 hearing day, and it's therefore important that we do finish. We cannot leave
5 these matters unresolved, so your indulgence our ability to achieve that, we will
6 be very grateful for.

7 So you'll note then that I am not closing this hearing. I am adjourning it.
8 Just moving very briefly on to a few procedural matters that I just want to touch
9 on as I adjourn – firstly, that action points from issue-specific hearing 11 have
10 been published, and what we're trying to do in this particular cycle of events is
11 to publish action points essentially the day following the event. So that has now
12 been done, which raises the question about action points from this event,
13 incomplete though it is. We're not going to wait until next Tuesday to publish
14 the action points arising from all of this morning's business, and the business up
15 until now. We will aim to publish those, if we can, tomorrow, however what
16 that will mean is that there will be a supplementary action list published
17 following the resumption on Tuesday. So just keep an eye out for the fact that
18 these items then, in action list terms, will be split.

19 There is one other final business item that I did just want to address at
20 some point, and again, given that it's arisen and today was our first opportunity
21 to deal with it, and it seems remiss not to deal with it today and to leave it
22 hanging over until next week, and that is in relation to the NPSEN suite – the
23 energy national policy statements – which were announced yesterday as being
24 available to pass into the final parliamentary stage of their approval process,
25 leading to formal statutory designation. These are relevant because EN1 in
26 terms of overarching energy policy, but critically, new EN4 and EN5 in relation
27 to gas transport, and indeed electricity transmission connection items, are
28 potentially to be the designated policy framework for parts of the application in
29 front of us, so I thought I would just alert everybody to the distinct possibility
30 that there may be new national policy statements designated, the suggestion is,
31 as I have heard it, by Christmas.

32 Now, the house rises on 19 December 2023, at which point we have one
33 more day in examination, so I think we can reasonably assume we're going to
34 end up with some new NPSs. Now, I have to flag that because parties who are

1 interested in these matters will wish to essentially read down the latest available
2 drafts, noting the slight possibility of final change before designation, and ready
3 themselves to perhaps put in a by-exception change position in relation to those
4 new drafts.

5 Now, precisely the best way to deal with that, we could place it as an action
6 on this hearing. I think we would have, though, to leave a vague date for it and
7 say that that may need to be at the time when an approved or designated version
8 is available, should that be at any point before deadline 10, which is the final
9 day, 20 December. Does anybody have any better suggestions as to how we
10 might deal with that? Ms Tafur,

11 MS TAFUR: Isabella Tafur, for the applicant. I don't have a better suggestion, sir, but
12 I would just note that whenever those NPSs are designated, they may well be
13 important and relevant, but they will not have effect for the purpose of this
14 application because of the transitional provisions.

15 MR SMITH: Yep.

16 MS TAFUR: So, yes, of course I can understand why you would want submissions on
17 them, but it will be the previous NPS that have effect.

18 MR SMITH: Nevertheless they will be, if they are designated in their broadly current
19 form – then, as a minimum, they will be weighty, relevant and important
20 considerations. Noted. Any other submissions on that point, particularly on the
21 mechanics? No. In which case, I don't believe there's anything else we need to
22 deal with before we adjourn, so we will adjourn, and we will resume
23 issue-specific hearing 12 next Tuesday, at the tail-end of issue-specific hearing
24 14, and we'd be very grateful for all parties' attendance at that time. Thank you
25 very much.

26
27 **(Meeting adjourned)**

1
2 MR SMITH: Good afternoon, ladies and gentlemen. It is now 5.00 and welcome back
3 to the reconvened final session of issue-specific hearing 12 in relation to social
4 and economic matters and the control documents, and for those of you who were
5 here when we originally opened this issue-specific hearing, you'll recall that we
6 got part way heard through the control documents element of that agenda, and
7 so we agreed to adjourn until now in order to deal with the remaining matters.
8 Can I just check that we have a livestream and that the recording has started?
9 Thank you very much, ladies and gentlemen. My name is Rynd Smith. I'm the
10 lead member of the Examining Authority and I will now bring this final session
11 of issue-specific hearing 12 into session.

12 If we turn to up the agenda, ladies and gentlemen, we will see that the last
13 item that we completed when this hearing last sat was item B, code of
14 construction practice first iteration. We then went on to hear item J, carbon and
15 energy management plan first iteration, which leaves us restarting on the design
16 principles, which are shown as B. I think that's a typographical error because
17 there are two Bs in this agenda. Anyway, we will be dealing with the design
18 principles. We have however already heard this afternoon submissions in broad
19 terms on the outline traffic management plan for construction, the OTMPFC,
20 and the framework construction travel plan, the FCTP, so that's C and D.

21 So once we've dealt with the design principles, we will then go on to deal
22 with the SACR, the OLEMP – the outline landscape and ecology management
23 plan – the outline site waste management plan, the outline materials handling
24 plan, the draft archaeological mitigation strategy and outline written scheme of
25 investigation – the gloriously named AMS-OWSI – the preliminary works
26 environmental management plan – the PWEMP – and then broadly the final
27 balance questions about the degree to which any party is still considering that
28 there should be documents from the control documents set moved or added.

29 But again, bearing in mind, in relation to all of those submissions on all of
30 those documents, what we are really looking for here are high-level issues of
31 principle that engage multiple parties that remain in dispute because there, value
32 can be very usefully added by bringing them to a hearing, discussing them
33 around the table. If it's a two-party matter essentially, an individual interested
34 party and the applicant, with detailed drafting points, please, place those in

1 writing, noting that we have a set of questions in the draft DCO commentary that
2 will lead you to put useful submissions to us on the control document.

3 So with no further ado, let's move to the design principles, and can I see
4 an indication of who wishes to speak, and we'll be proceeding from interested
5 parties to the applicant for response here? So I am seeing Thurrock Council.
6 Who else wishes to speak on the design principles document, and I do see Mr
7 Bedford for Gravesham? I'm not seeing anybody else. We've had a lot of
8 Thurrock first go. Would you mind if we go to the south side of the river to start
9 on this?

10 PARTICIPANT: That's absolutely fine, sir.

11 MR SMITH: We'll go to Mr Bedford and then we'll come to Thurrock.

12 MR BEDFORD: Thank you, sir. Michael Bedford, Gravesham Borough Council. Sir,
13 I think what I'm going to say obviously relates to the design principles, but in
14 fact, it's a broader submission, which might help you on other items. In relation
15 to the design principles, we don't have any high-level, as it were, broad issues,
16 which go wider than matters which are of concern, particularly to Gravesham,
17 as between Gravesham and the applicant. We have rehearsed some of those
18 points already in our earlier representations. I think there is still an outstanding
19 to us in relation to green bridges and to supplement what we want to see by way
20 of additions to the design principles for green bridges, and that is something
21 we'll deal with at deadline 8.

22 Now, so the overarching point I was going to make was that, in fact, on all
23 of the documents which are on your list, all of our points really come into the
24 category of not being high-level or overarching. They come down to matters of
25 specific detail on specific elements of the documents, which we're perfectly
26 happy to put in writing to you. So, sir, I don't know if that helps you, but that's
27 in a sense our overall flavour for the remaining live session of the examination.

28 MR SMITH: Thank you very. No, that is helpful. In which case, I'm going to move on
29 to Thurrock, who still seem deeply in conference. Mr Mackenzie, are you ready
30 to proceed? Yes. Okay. Thank you.

31 MR STANDING: Thank you, sir. Ben Standing for Thurrock Council. So very quickly,
32 in relation to the security for the document, I know that the design principles are
33 used in a number of different requirements. They're in requirement 3, where the
34 authorised development must be designed in detail and carried out in accordance

1 with the design principles. The only comment to note on that, of course, is that
2 can be amended by the Secretary of State, if it doesn't give rise to materially
3 new or materially different environmental effects.

4 MR SMITH: Can I just ask you to maybe bring your microphone just a – if you just drop
5 the – that's it. Point it towards your mouth.

6 MR STANDING: Thank you, sir. The only comment to make in relation to that is in
7 relation to certainty – nothing further on that one. In relation to requirement 5,
8 this talks about the LEMP reflecting the design principles and we've made many
9 comments on that, again, in relation to certainty. In relation to requirement 13,
10 that has to be in accordance with the design principles and we're happy with
11 that, so that's not a problem, and in relation to requirement 17, the Tilbury link
12 road, we've discussed that. But actually, we're happy with its inclusion there.
13 So I'm going to now pass over to my colleague, Mr Stratford.

14 MR SMITH: Thank you very much. Mr Stratford.

15 MR STRATFORD: Thank you, sir. In lieu of Steve Plumb not being here, I'm going to
16 speak on this, and a couple of others, so bear with me. The process that we've
17 been through over the last few years on design principles has been engaging and
18 we don't have much to say, to be honest, about them – the content of them or
19 the iteration process. We did make a number of comments about design
20 principles PRO[?] 1 to 6 in our D6 submission, REP-6164. I know that the
21 applicant has responded to that at D7, and I'm sure Steve Plumb has comments
22 on that, so we may have to reserve our position in case some of the changes
23 which all relate to LTN-120 and Active Travel England provision on the WCHs
24 – the walking, cycling and horse-riding routes – and that's really the only thing
25 we've got to say. It's just to reserve our position following a review of the
26 response, and we'll do that at D8.

27 MR SMITH: Thank you very. Now, can I just check that there's nobody else wishing to
28 speak on the design principles? Okay. In which case, I'm going to revert to the
29 applicant and ask for submissions in response. So probably the trickiest general
30 issue that the Examining Authority is going to have to turn its mind to is this
31 whole issue about reflect versus generally in accordance versus in accordance.
32 We've heard you on the general point, but the reflect point is maybe still
33 hovering there in our minds as something that maybe needs a little bit of further
34 thought.

1 MS TAFUR: Isabella Tafur, for the applicant. First of all, requirement 3, which I think
2 Thurrock Council confirmed that they're happy with, requires that the authorised
3 development – to be designed and carried out in accordance with the design
4 principles. There is a reference in requirement 5 to – the LEMP must reflect the
5 design principles, but that doesn't detract from the requirement 3, which requires
6 accordance with the design principles. So any departure from the design
7 principles would be caught in the normal way, in any breach of a requirement,
8 albeit there is provision for the Secretary of State to allow amendments, but
9 subject always to the caveat that they don't give rise to materially new or
10 different environmental effects, which is a very well-precedented provision.
11 We've dealt with the concerns that Thurrock have raised in relation to the
12 certainty in requirement 3 in REP-6085, and I'll just – sorry. It's REP-6085 and
13 it's section 9.2, so I'll just give you that reference without repeating what's
14 contained in there because that sets out our position on that.

15 As to the reflect point that you just raised, sir, that is a matter that we
16 covered on Thursday. In our view, it's a well-precedented provision and again,
17 we do have the requirement in 3 which is in accordance with. I appreciate
18 Gravesham are going to come back with further comments on what they say is
19 required in respect of green bridges, but I wonder if I might just turn briefly to
20 Clare Donnelly, who's the project architect, who could just very briefly outline
21 the design principles that already govern those green bridges.

22 MS DONNELLY: Clare Donnelly for the applicant. We've made quite extensive
23 provision of further design in the detailed design of green bridges, throughout
24 the design principles document, including structures 08, which is a project-wide
25 design principle that applies to all green bridges across the project – also,
26 principles such as S104, which is specific to Brewers Road green bridge. We'd
27 also like to just draw attention to some more recent design principle additions,
28 including for habitat connectivity at the ends of the green bridges in the AONB,
29 which is S123, for example. Throughout, we've tried to balance the needs of
30 ecology and the non-motorised users using each of those bridges.

31 MS TAFUR: Isabella Tafur for the applicant – and just also, to draw your attention to a
32 further change that was made in the deadline 7 submission of the design
33 principles, which was the inclusion of the design principle PRO-07, which
34 provides the key elements of the detailed design should be subject to structured

1 stakeholder engagement on their spatial arrangement, user experience,
2 appearance, integration with the surrounding context and, where relevant,
3 signage and interpretation, and there's then provision in appendix D for the
4 detailed design multi-disciplinary workshop terms of reference. So they've
5 recently been included.

6 MR SMITH: Okay. Now, before we finally depart from this agenda item, I do note that
7 the team have told me that Matthew Fox for Port of Tilbury London Limited
8 was having some trouble joining the virtual room. In fairness to him, he may
9 not have heard the introduction to this item but I do just want to check – first of
10 all, tell him that we are on the design principles document and just ask if he has
11 any particular submissions to make before we close this, and I will return it you,
12 Ms Tafur, if he does.

13 MR FOX: Matt Fox on behalf of the Port of Tilbury. We didn't have any comments on
14 the design principles. Am I to assume that we had considered that this code of
15 construction practice was sufficiently dealt with in the first part of ISH 12?
16 Okay. I won't say anything more on that then.

17 MR SMITH: At risk of running over matters that I ran over in the introduction, but noting
18 that I suspect you didn't join us until it was complete, we have dealt with item
19 A on the approach to project control. We've dealt with the code of construction
20 practice. We have now dealt with the design principles. We have also dealt
21 with the carbon and energy management plan first iteration, which we dealt with
22 out of sequence, but we did deal with that before the closure of the adjournment
23 of the first half of issue-specific hearing 12, and then, on the run in 14, we did
24 cover the outline traffic management plan for construction and the framework
25 construction travel plan. So those items of the agenda are no longer in play.
26 Where we're going next is the SACR – the stakeholder actions and commitments
27 register.

28 [Crosstalk]

29 Okay. Item E it is then – the SACR. Now, can I see shows of hands for
30 those wishing to speak and I see Thurrock? I see London Borough of Havering,
31 and I don't see anybody at all in the virtual room, but I will give it another brief
32 moment before I bring down the metaphorical gavel. It is the SACR – the
33 stakeholder actions and commitments register at item E on the agenda. Thank

1 you very much, Mr Fraser-Urquhart. So let's go to Thurrock first, and I'll then
2 come to Havering.

3 MR STRATFORD: Thank you, sir. Chris Stratford for Thurrock Council. Just a number
4 of broad comments really. When we first saw this document, back just before
5 the LIR was submitted in July, we did indicate at that point there was only six
6 items on it, and we indicated we felt it was an unutilised resource. That's no
7 longer the case. It's been used a lot. The wording of article 61 is absolute, and
8 we are entirely in line with that. Our –

9 MR SMITH: There is however an interesting question, which I'll throw on the table now
10 so that you can respond to it and others can too, which is, given the nature of the
11 conversation we've had about the REAC, what's the difference, and are there
12 dimensions of REAC commitments that ought nest beneath that requirement and
13 have a similar status, or not?

14 MR STRATFORD: The REAC is largely to do with construction –

15 MR SMITH: It is indeed.

16 MR STRATFORD: – in my understanding.

17 MR SMITH: Well, there are –

18 MR STRATFORD: This could be –

19 MR SMITH: – non-construction –

20 MR STRATFORD: – operational. At the time the REAC was first envisaged, I think
21 there was a small section on operation, but this has more potential for moving
22 into the operational realm. I'm sure they'll comment on that. However, having
23 got the absolute commitment in article 61, which is terrific, you then move to
24 individual parts of the SACR and you find less absolute commitment. Some of
25 the measures related to – are still best – well, not even best endeavours –
26 reasonable steps and attempts to try and do something – are not fully committed
27 to. Now, you could take various approaches to this. I mean, they have brought
28 in items from section 106, notably the C strategy and the community fund. There
29 is also one in respect of Thurrock related to a piece of replacement open land
30 coming in early.

31 Those three items, and probably others, would benefit from absolute
32 commitments and the wording adjusted, and therefore, it might be appropriate,
33 either within article 61 or within the SACR itself, to split it into ones that you
34 take reasonable steps to and others that you might absolutely commit to, and a

1 number of them related to matters that we're interested in, we feel, should be
2 absolute commitments. That's really the only submission we've got, other than
3 we welcome further additions in the next three weeks.

4 MR SMITH: Thank you very much. On that basis then, I'm going to go to London
5 Borough of Havering.

6 MS THOMSON: Thank you, sir. Morag Thomson, London Borough of Havering. Sir,
7 you'll recall, last week I mentioned that the community fund and the C strategy
8 moved into the SACR at deadline 7, and so they've moved in as – there's a
9 substantial amount of drafting there, which has just moved straight from the
10 section 106 to that document, in our view, not in a very appropriate way. The
11 issues with the community fund, we dealt with last week. There are also issues
12 with the C strategy in principle, which contains more soft measure than really
13 hard commitments, and there's enforcement issues in terms of the obligations
14 are really obligations which the applicant commits to passing on to its contractor,
15 but doesn't commit to holding in force.

16 So, as we indicated last week at deadline 8, we'll be putting in suggested
17 amendments to those parts (ii) and (iii), which will set out what we think would
18 be acceptable for those parts, and they will in large part be amendments that we
19 have sought to encourage the applicant to accept when we were dealing with
20 them when they were part of the section 106. So they're not new to the applicant,
21 but they will be new to you because you've not seen these before. Thank you,
22 sir.

23 MR SMITH: Thank you very much. Now, just checking before I return this to the
24 applicant for response, are there any other observations from the interested
25 parties? I think, in relation to that question that I posed to Thurrock, there is, I
26 guess, still a living sense in our mind that we have two sets of essentially
27 registers of commitments. One has a very clear statutory standing and the one
28 doesn't, and is sitting in the back of the construction management plan, so we
29 know we've ventilated that before. We don't expect you to submit to us in detail
30 terms on it again, unless you've had further thoughts, but that is still live in our
31 minds.

32 MS TAFUR: Isabella Tafur for the applicant. Coming to that issue first then, sir, the
33 code of construction practice, which currently contains the REAC query whether
34 it will come out to them, as we discussed last time, but it's currently within the

1 COCP and it will remain in the COCP. It may additionally come out, but that is
2 subject to a secondary approval process, the code of construction practice, and
3 so there is further consultation, discussion, engagement with stakeholders on the
4 code of construction practice which will then result in the submission of a plan
5 for approval by the Secretary of State, and that EMP-2 will reflect the
6 commitments made in the REAC, as set out in requirement 4.

7 So SACR is a different beast because that reflects commitments that have
8 been made to particular stakeholders, which isn't subject to a further round of
9 consultation and approval. Those are the commitments. They are the
10 commitments at this stage, and so we say that it's right that there is a different
11 provision for the REAC which is going to be discussed – engaged upon. Each
12 party will have the opportunity to make their submissions to the Secretary of
13 State in the event of non-agreement, and he or she will be the ultimate arbiter of
14 that plan, so that is, we say, the reason for the distinction and it's an appropriate
15 distinction.

16 As to the other concern raised by Thurrock that some of the agreements of
17 commitments in the SACR are expressed in 'use reasonable endeavours' or 'best
18 endeavours' type language, that reflects the stage that we're presently at. So
19 given that those are absolute commitments that aren't subject to further rounds
20 of approval, and given the stage of design we're at this stage, they're the best
21 that we can offer at this stage. I would, though, note that the two particular
22 commitments that I think Thurrock identified, which related to the Travellers'
23 site and the Ron Evans Memorial Field, are expressed in absolute terms.

24 So the general concerns they raised as to some of the other commitments
25 I don't think actually apply to the two particular commitments that they raised,
26 and I understand that the commitments that have been agreed for the benefit of
27 Thurrock have all been agreed with them. As to the concerns raised by
28 Havering, I heard their brief outline. I understand their position. They're going
29 to make detailed submissions at deadline 8, and we will consider and respond to
30 those in due course.

31 MR SMITH: In which case, I think we can move on, and I believe we should move on
32 now to agenda item F, the OLEMP, bearing in mind the discussion of the
33 transport-related plans earlier. So the OLEMP, ladies and gentlemen, and again,
34 just a note, this is REP7-132 or 133 tracked – yet again, a document that was

1 replaced at deadline 7. So who wishes to raise matters on the OLEMP?
2 Thurrock, I see, and I also see Mr Fox for Port of Tilbury London Ltd. I am just
3 noting a conversation in Kent County Council, but it doesn't look as though they
4 wish to speak, nor indeed London Borough of Havering. No. So I am going to
5 go to Thurrock and then I'm going to go to Port of Tilbury London Ltd.

6 MR STRATFORD: Thank you, sir. Chris Stratford, for Thurrock Council. Very easy
7 this one – we're broadly happy with the OLEMP, but as Ms Tafur said, they
8 only have to reflect in its commitment to it. Having spent all this time getting
9 an agreement –

10 MR SMITH: Getting detailed –

11 MR STRATFORD: – only to find it's reflected is somewhat weak, and therefore – I
12 know there's a legal debate about the word reflect, but in general parlance, it
13 doesn't sound like much of commitment, despite the detail.

14 MR SMITH: Mr Stratford, we note what you say. We also note what Ms Tafur has
15 already said now on a couple of occasions, so I'm not going to constrain her to
16 answer the point again, but it's still a live point to us. We are – by no means a
17 closed point to us. We will deliberate on it very carefully. Okay. Anything
18 further from Thurrock? No. In which case, Port of Tilbury London Ltd, please.
19 Mr Fox. Do we have Mr Fox? Yes, we do.

20 MR FOX: Yes. Sorry, the mic button was refusing to go on. Mr Fox on behalf of Port
21 of Tilbury. I think on the LEMP, generally I think we, as the applicant will
22 know, are trying to negotiate with them an agreement that deals with our various
23 ecological concerns, putting in place various processes for those to be dealt with.
24 However, I think we are in a situation where of course we cannot – unless we're
25 able to say to you before 20 December that this is agreed, then I need to be
26 putting across the position of, 'What happens if it's not agreed?' Similarly to
27 the travel plan position, we think that we should be identified as a stakeholder
28 listed in table 2.1 of the outline LEMP, and I'd say that particularly because
29 obviously the creation of Tilbury Fields is happening directly adjacent to
30 [inaudible] land.

31 We have an interest in the ecological status of it as that may impact on port
32 development through intensification and migration of species, and obviously,
33 you can look into replacing[?] existing open mosaic habitats and obviously,
34 within the OLEMP, there's references to land parcels performing specific

1 landscape and ecological mitigation functions for the project and we want
2 make sure that that doesn't lead to problems for the port in undertaking its
3 current approach and future development. So we're all guns blazing to try and
4 come to an agreement that has more nuanced processes, but in the absence of
5 that, we would think that we would need to be listed as a stakeholder in table
6 2.1.

7 I am conscious, sir, that I've made that point a couple of times in reference
8 to a couple of management plans today, but I'm also conscious that both yourself
9 and Secretary of State cannot change the certified documents. You can only
10 change the DCO requirements. So, sir, obviously, I think it would be a bit
11 awkward for this to happen, but I would make the point that, if that doesn't
12 happen, then we'll be saying that it should be specifically said on the face of the
13 requirement. I can see why the applicant wouldn't want to do that and that's
14 why I suggest they add us in, and if we all agree everything, they can take us out
15 again at the end of examination, if need be, or update Secretary of State
16 accordingly. But I think in that situation, we need to be pushing for that. Thank
17 you, sir.

18 MR SMITH: Thank you very much. Right, I will return this to Ms Tafur.

19 MS TAFUR: Isabella Tafur for the applicant. I won't repeat what I said about reflect,
20 obviously, in light of your indication, but I would just note that, in fact, the
21 requirement is that the LEMP has to be substantially in accordance with the
22 OLEMP. So it is slightly different language and you've heard what we've said
23 about substantially in accordance, so I won't trouble you with that point again.
24 I think I'll just introduce briefly Mr Forrest, who's the environmental lead, who
25 just wanted to talk about further process that are captured within the OLEMP.

26 MR FORREST: It was just a brief one, really. Barney Forrest for the applicant. In terms
27 of the OLEMP, it's necessarily less reflective because it's about the long-term
28 development of habitat, and within the OLEMP we've got an advisory group in
29 terms of reference that allow for change to occur over time, if that habitat isn't
30 developing in the way that is intended, and that's a really important point
31 because things don't always go as intended with the development of complex
32 habitats. So that's how we've developed the OLEMP and that, in part, plays
33 into the language used.

1 MR SMITH: Okay. Now, there was the specific request put for Port of Tilbury there –
2 particular concerns about their boundary interface with sites subject to
3 management under the OLEMP. Is there any particular reason why they cannot
4 be formally identified as a stakeholder, or given some greater engagement with
5 it? Indeed, there are equivalent principles. The Mott land interface with the
6 OLEMP, for example, may give rise to an equivalent issue, even though that's
7 not been formally raised in front of us. Ms Tafur.

8 MS TAFUR: Isabella Tafur for the applicant. Just turning to the Port of Tilbury
9 concerns, just a couple of points, if I may. There's first of all article 55. This
10 isn't on your exact point, which I will come back to, but there were just a couple
11 of points I wanted to pick up. Article 55.5 of the DCO deals with – sorry. This
12 is page 60 in – I think it's the clean version I'm looking at. 55.5 deals with the
13 extent to which there's any inconsistency or conflict between works authorised
14 under the order and the exercise of any provisions of the Port of Tilbury
15 expansion order, and deals with the effects of such inconsistencies and provides
16 that it can be disregarded if there is an inconsistency that arises as a result of the
17 project.

18 Similarly to the points made by Mr Latif-Aramesh earlier, it's also
19 important to consider the protected provision that are made in favour of the Port
20 of Tilbury, including their power to approve works under paragraph 131 of their
21 protected provisions. As to the specific request that they be identified as a
22 consultation party, that is the subject of ongoing discussions and engagement
23 between the applicant and the Port of Tilbury, which we hope will prove to be
24 fruitful, and I think Mr Forrest just had one point he wanted to add.

25 MR FORREST: Mr Forrest for the applicant. It's actually two points, but briefly, in the
26 terms of reference for the advisory group under section 1.3, we allow for other
27 relevant groups to be involved in the advisory group and the reason for that is
28 that there are landowners who have interfaces across the entire project and we
29 haven't listed each and every one of them out, and we want to engage and we
30 want them to be involved in those processes, but we haven't called them out
31 specifically because that would be a very long table.

32 The other point was that the Port of Tilbury are identified as stakeholders
33 to be involved in the multi-disciplinary workshops as part of the design of
34 Tilbury Fields, and I think that's part of the design principles. Thank you.

1 MR SMITH: Okay. Right. Well, in which case, let us move on. Can we now turn to
2 the outline site waste management plan, the OWSMP, if it is such a beast? This
3 again was a document replaced at deadline 7, so REP-7124 replaces the
4 reference on the face of the originally circulated agenda. 124 is plain. 125 is
5 tracked. Can I see who wishes to speak on this document? I am not seeing any
6 – ah. It was Thurrock. I'm glad somebody's eyes are sharper than mine. Thank
7 you, Mr Taylor. So just Thurrock – I'll ask Thurrock to speak and then I'll return
8 this item to Ms Tafur for the applicant.

9 MR NEVE: Sorry. I thought you'd seen my hand. Adrian Neve on behalf of Thurrock
10 Council. We haven't actually got our expert here today unfortunately, because
11 of the change in agenda timetables, but if I can say some brief words and
12 obviously, we'll respond more fully in our written statements. So you'll be
13 please to know that largely we are roughly on board with the outline site waste
14 management plan. The point that is at contention is perhaps the wording around
15 the application of the waste hierarchy and the wording at the moment is not clear
16 as to how that is prioritised through the documents, and so very briefly really,
17 we are intending that the changes are made to reflect that better. Thank you, sir.

18 MR SMITH: Thank you very much. Ms Tafur.

19 MS TAFUR: Isabella Tafur for the applicant. There is a REAC commitment, MW007,
20 to apply the waste hierarchy and there is specific provision within the outline
21 waste management plan. If you bear with me, I'll find you paragraph reference,
22 which also requires compliance with the waste hierarchy. Then there is
23 provision for – this is 6.1.12 of the outline waste management plan. Materials
24 and waste management will be appointed to ensure, amongst other things, that
25 the waste hierarchy is implemented and further opportunities to reduce waste
26 generation or improve recovery and recycling rates, are identified, and various
27 other things they're going to be responsible for. So we say there is adequate
28 provision securing compliance with the waste hierarchy.

29 MR SMITH: Thank you very much. So unless there is anything further that anybody
30 wishes to raise, then we can move on to item H, the outline materials handling
31 plan – the OMHP – again, replaced at deadline 7, so instead of the reference on
32 the face of the agenda, it is REP-7127 and 126. I think the later one, the 127, is
33 tracked. Oh, it's the other way round, is it? Okay. Oddly. 126 is tracked. 127
34 is plain. Who wishes to speak on this item? It will be Thurrock again and Port

1 of London Authority, and indeed, Port of Tilbury London Ltd. So, landside first
2 – Thurrock.

3 MR NEVE: Thank you again, sir. Adrian Neve on behalf of Thurrock Council. There
4 are a few items within the materials handling plan which, I don't think it will
5 surprise you, we are at some difference with the applicant. In a similar way to
6 many of other framework documents, the feeling is that the wording within the
7 outline plan is not tight enough. It certainly doesn't press the issue particularly,
8 and I'd certainly refer you to the joint response that we have put to yourselves
9 with the Port of London Authority that picks up on this topic, and in that we give
10 what we feel is some very helpful hints, if you like, as to the depth of review
11 and research that should be done into the use of – particularly the joint response
12 with the Port of London Authority – is the marine – the use of [inaudible]
13 facilities for movement of plant materials and equipment, but pushing that
14 further to the use of rail as well and the way that both environmental impacts,
15 impacts on the local road network and also impacts on risk can be brought into
16 play through looking at that non-road use. So there's quite a long way between
17 us on that point and the view is the outline materials handling plan doesn't
18 capture that at the moment.

19 There have been changes –

20 MS TAFUR: Mr Neve, sorry. Could you give the reference for that joint statement?

21 MR NEVE: It is, in our LIR – sorry. I'll have to grab that.

22 MS TAFUR: Thank you. You can come back to it at the end.

23 MR NEVE: Sorry. I have it in front of me in fact. It's REP-1281 and it's appendix C,
24 annex 4. Thank you. So there have been changes at REP-7 to the outline
25 materials handling plan. So there is now reference to considering non-road
26 transport for the wider project, rather than just the north tunnel portal, so that is
27 welcomed. But as with many other documents, it's a consider, so there is no
28 depth to that proposal. It's a consider and then considered done, so we need that
29 to be stronger. We need it to actually document to provide evidence as to why
30 certain materials or plant equipment have been discounted. We aren't saying
31 that it is going to be the answer; we just want to understand a little bit more depth
32 as to how that has been considered and where opportunities should be taken
33 through changes in phasing, for instance, to certain works, so that you can take

1 opportunities within the trace for movement and material, for instance. So it's
2 noted, but it needs that rigour again.

3 The other aspect that, again, we welcome some movement to – the terming
4 of the derogation processes, so looking at exemptions, but again, the
5 presumption seems to be in favour of approval and again, it needs to be tested
6 as to there will be rejections on those derogation processes. That needs to be
7 tested. It should be tested through a group, whether that's through the traffic
8 management forum, and obviously couldn't be through the JOF[?] because
9 neither ourselves nor the Port of London Authority are represented on that. So
10 there needs to be a way that we can test and look at that consideration. We
11 accept it needs to be agile because, in the interests of derogation, we understand
12 that there needs to be a – needs to move quickly, so we understand that. So I
13 think those are the key areas of difference between us. Thank you, sir.

14 MR SMITH: Thank you very much. Right, I think probably the best place to go next is
15 Port of London Authority. Ms Dillistone.

16 MS DILLISTONE: Thank you, sir. Alex Dillistone for the Port of London Authority.
17 The PLA has previously made comments at ISH 8 and DL6 in its submission
18 that is the written submission of all our comments at CAH 3 and ISH 8, which
19 is REP-6160. Those comments concern matters which, as well as affecting the
20 PLA, do also go rather wider than just the PLA's interests, and I'll run through
21 those. Since the DL6 submission, the PLA has met with the applicant twice and
22 the applicant did submit at deadline 7 an updated OMHP, and we are pleased to
23 see that a number of points of clarification have been made within the document
24 that we requested. We also request the general positive direction of the
25 additional text at paragraph 8.3.3 – that document, which recognises the benefits
26 of river use, and commits to seek to maximise the use of the river as part of the
27 multi-modal transport of bulk aggregates to the whole scheme.

28 So whilst we welcome the addition in the second sentence of paragraph
29 8.3.3 which commits to seeking to maximising the use of rail and/or river
30 facilities, and whilst that now does extend to beyond the north portal, which is
31 helpful, there remains some elements of this commitment that, in our view, could
32 benefit from clarification and being qualified in, what our view is, a more
33 reasonable way. Firstly, that is that it is not entirely clear at the moment from
34 the drafting of the last sentence of paragraph 8.3.3 whether that sentence is a

1 qualification of the commitment in the rest of paragraph 8.3.3, or whether that
2 last sentence is a separate commitment. So we suggest that drafting should be
3 updated to clarify that.

4 Secondly – and this is our key issue with it – the commitment to maximise
5 the use of river facilities is significantly watered down by the last sentence of
6 paragraph 8.3.3. So that last sentences states that the commitment to maximise
7 the use of river facilities only applies where the use of a rail and/or river facility
8 is, – and I quote – ‘An environmentally better option,’ – so not equivalent but
9 better – ‘which allows the delivery of a competitive value-for-money project and
10 that does not cause disproportionate delay to the programme.’ Now, when you
11 read those three qualifications together, that effectively means that the
12 commitment has all of the teeth of a Christmas turkey.

13 MR SMITH: This examination has produced some extraordinary metaphors, but I do
14 have to say that is one of the best.

15 MS DILLISTONE: I’ll explain why. So river transport is usually more expensive than
16 road, which is why we imagine the applicant is reluctant to commit to it. The
17 requirement through river use not to cause disproportionate delay to the
18 programme is subjective, and one can easily see how any delay could be
19 disproportionate. Now, what does a competitive project mean? We can see that
20 the commitment could reasonably say that the use of the river is not overall
21 environmentally worse, and, in our view, taken together because that effectively
22 means the commitment does not have any teeth, we think these conditions
23 should be modified so that this new commitment to use the river is a meaningful
24 one.

25 Now, the PLA and the applicant are continuing to discuss this matter, and
26 it is hoped that further progress can be made before the close of the examination,
27 but if it is not possible to reach agreement, we will ensure in line with the written
28 questions that our final position is reflected in a final statement for the PLA.
29 Thank you, sir.

30 MR SMITH: Thank you very much. Now, let’s move to the Port of Tilbury London Ltd
31 and Mr Fox.

32 MR FOX: Thank you, sir. Matthew Fox on behalf of the Port of Tilbury. I’ve got another
33 number of concerns to raise about the materials handling plan. First of all,
34 obviously, the materials handling plan, a large part of the commitments that are

1 made involved the use of the Port of Tilbury, yet we're not identified as a
2 consultee in table 2.1 of the COCP to be consulted upon the materials handling
3 plan, which seems a clear gap. We're not quite sure why we haven't been added
4 to that. We note PLA have for reasons that we fully understand, but we don't
5 understand why we wouldn't be given the amount of materials that are intending
6 to come through the Port of Tilbury.

7 Similarly, we welcome the creation of a dedicated subgroup of the TMF
8 to monitor supply of materials using the port. We note we're not noted as a
9 member of that, I don't believe, and I think it's noticeable that, of course, the
10 derogation process that is allowed for is ultimately still the undertaker's choice.
11 So even if all the stakeholders agreed they didn't think a derogation is made out,
12 ultimately, that is the National Highways' choice and there's not necessarily a
13 mechanism for disputes to be taken elsewhere on that.

14 We also note, just finishing on the process, that the derogation process
15 provides for a form to be submitted. This is appendix B(iii) of the OMHP, but
16 that form, in terms of – that form is then presented to the group to consider, but
17 that doesn't to actually ask the two questions that would apply to whether an
18 exemption to the better than commitment should apply, i.e. if there are material
19 worsened traffic conditions, or they think there were material different
20 environmental effects, what are they, if they're the reasons that you're not able
21 to meet the better-than-baseline commitment? So if that form is what's being
22 used as part of the derogation process, then it should be asking for that
23 information.

24 So that's the point on the process, and I think I'll just add that in the context
25 that the commitments in the MHP underpin the assumptions that are in the
26 transport assessment, obviously the scheme modelling hasn't provided for a
27 situation where you might need to derogate. So there might be a situation that,
28 for whatever reason, you need to derogate. That has knock-on impacts on the
29 traffic management and so all these groups working together – Tilbury needs to
30 make sure that it is on the traffic management forum and the materials handling
31 group to ensure it's getting a consistent message and responding to the message
32 accordingly.

33 In terms of the measures themselves, we note that the better-than-baseline
34 commitment in 6.211 refers only to the import of bulk aggregates for the north

1 portal construction area, whereas the exemption suggests it's intended to imply
2 both to the import and onward transport areas beyond that area. So clarity on
3 that would be welcomed. We also note there is, in the measures, paragraph
4 3.5(b), it refers to envisages in queuing and holding points at site entrances. Our
5 concern there is that there are no areas within Tilbury two to stack vehicles that
6 are waiting and are queuing to get onto the north compound, which is just to the
7 east of Tilbury two. So if a way to manage [inaudible] movements is allowing
8 for holding points, where is that going to happen and how are they going to
9 ensure that that doesn't cause tailbacks through Tilbury two, therefore creating
10 carnage within a working operating port and potentially putting us in breach of
11 the open port duty.

12 I think I won't dwell on the point about the CMATs and the points that
13 we've made on that persistently and the fact that potentially that should have
14 been referenced as an embedded mitigation within the document, but I obviously
15 understand that the plan references the CMAT and other Port of Tilbury
16 facilities. But I think those are the two key points. So it's the process. I still
17 think that's not quite right, and the real concern about stacking outside entrances
18 and how that's actually going to work right next to a working port. Thank you,
19 sir.

20 MR SMITH: Thank you very much. Right, is there anybody else who wants to speak to
21 the outline materials handling plan before I pass it Ms Tafur for the applicant to
22 respond? No. Ms Tafur.

23 MS TAFUR: Isabella Tafur for the applicant. Starting with the concerns raised by
24 Thurrock, section 8 of the outline materials handling plan does deal with and
25 make provision for non-road transport options, including rail and river. We have
26 as others have touched – well, we've discussed this at numerous hearings before
27 now, whether further commitment should be made towards river use. We say
28 that the addition we've made at paragraph 8.3.3 goes some considerable way to
29 meeting those concern. There, we recognise the benefit of reducing the impacts
30 from vehicle movements using rail or river facilities as part of the multi-modal
31 approach, and commit to maximising the use of rail and river facilities. Just
32 while I'm on that point, it's a point raised by the Port of London Authority about
33 the final sentence and whether that waters down the commitments. The final
34 sentence is, 'Where the use of rail or river is proven to be an environmentally

1 better option, which allows the delivery of a competitive value-for-money
2 project, and doesn't cause disproportionate delay,' – so those are the three
3 elements. We can go away and consider whether we should say,
4 'Environmentally equivalent option,' rather than environmentally that the river
5 and rail has to be environmentally better than an alternative. We'll go away and
6 consider that.

7 The other factors are, in our submission, entirely appropriate
8 considerations – value for money and disproportionate delay to what is a
9 nationally significant infrastructure project. But it's also very important to note
10 the following paragraph, 8.3.4, which says that, 'The materials handling plan to
11 be submitted to the Secretary of State for approval would include an explanation
12 of how multi-modal solutions have been included and implemented, or
13 discounted where they don't meet the criteria from paragraph 8.3.3 above.' So
14 it won't just be the subjective view of the applicant because an explanation will
15 have to be provided to the Secretary of State, who will ultimately be the
16 approving body for the materials handling plan.

17 As to the derogation process, as the outline plan explains at paragraph
18 6.2.18, there will be a subgroup of the traffic management forum, whose purpose
19 will be to monitor the supply of material delivered using port facilities and
20 discuss derogation requests, and that paragraph explains that National Highways
21 will be required to give due regard to stakeholder comments in arriving at a
22 decision and ensure the derogation is implemented as per the terms of the
23 derogation notice. So there is provision for engagement and active consideration
24 of the responses of others, and the process for the derogation is set out in plate
25 6.1 of the document.

26 Then just touching on one of – I think it's – let me just check the paragraph
27 reference. One of the points made by the Port of Tilbury – bear with me a
28 moment. This was just in terms of the better-than-baseline commitment and the
29 concern that this might give rise to additional adverse traffic impacts, and just to
30 confirm, it's a point we looked at before, but paragraph 6.2.12 of the outline plan
31 provides that in realising the better-than-baseline commitments, certain factors
32 have to be considered, which include the potential of adverse impact on the road
33 network, particularly the A1089 and the Asda roundabout, as compared to the

1 traffic and environmental assessments. So that's actively incorporated into
2 compliance with better-than-baseline commitments.

3 There's also provision in the outline materials handling plan for
4 engagement with Tilbury. This is paragraph 4.3.24 of the plan, which requires
5 the project to engage with aggregate suppliers and Port of Tilbury
6 collaboratively to proactively seek opportunities to use the port and develop a
7 strategy to reduce material movement by road. So there is also already provision
8 for engagement with the Port of Tilbury and there is to be a traffic protocol with
9 the Port of Tilbury that we say is the appropriate vehicle for dealing with the
10 concerns about vehicle-stacking that Mr Fox raised. Thank you.

11 MR SMITH: Okay. In which case, I think we should move on and consider item I, the
12 draft archaeological mitigation strategy and outline written scheme of
13 investigation. Again, this was a document replaced at deadline 7, so we are now
14 referencing this as REP7-128 – 129 if you're looking for the tracked version.
15 Can I just see indications from those present of persons wishing to speak on this
16 item? I do see London Borough of Havering, and we haven't opened with
17 Havering recently, so are you ready to speak?

18 MR DOUGLAS: Yes, sir. Daniel Douglas from the London Borough of Havering. It's
19 just a very brief point regarding the archaeological mitigation strategy. Broadly
20 the council is content with that document, but I would just draw the panel's
21 attention to our submission at deadline 7 in response to the applicant's deadline
22 6 submission. So that's REP7-204, and the main point there is that we are
23 obviously continuing to speak to the applicant about some individual matters, or
24 one-to-one matters, as you referred to earlier, sir, that I won't go into, because
25 they're borough-specific. But in terms of a broader general point, we do
26 understand that there will be an addendum to the archaeological mitigation
27 strategy covering palaeolithic investigations, and that's not something that I
28 believe is included as an addendum to that document as yet. We very much hope
29 that it will be submitted at a future iteration of that document, either at deadline
30 8 or deadline 9, and we'll respond accordingly, but I just wanted to put that on
31 record. Thank you.

32 MR SMITH: Thank you very much. Now I will come to Thurrock.

33 MR MACKENZIE: George Mackenzie for Thurrock Council. Sir, Richard Havis, the
34 lead archaeological advisor will address you on this matter.

1 MR SMITH: Ah, so he does appear for Thurrock.

2 MR MACKENZIE: He does.

3 MR SMITH: Mr Havis.

4 MR HAVIS: Hello, sir. I'm Richard Havis, archaeological advisor for Thurrock Council.

5 We had quite a lot of concerns at REP6, especially relating to the role of the
6 archaeological advisors and signing off archaeological mitigation works. A lot
7 of that has now been resolved in the submission of REP6, and even further in
8 submission of REP7, with an extra item in REAC. We had problems with some
9 of the specific mitigation terminology. That again has been addressed in REP7
10 with at least one new REAC relating to palaeolithic deposits in tunnels mouths
11 and other areas, such underneath the M25. We have also been still in discussion
12 regarding specific mitigation areas along the length, throughout Thurrock, and I
13 had a meeting with the archaeological team from the applicant yesterday, where
14 most of those or all of those have been resolved, and we're awaiting final details
15 to be submitted before the 20th, and I think that's about all I've got to say. We
16 need to see that next iteration before we think we can really sign that off.

17 MR SMITH: Okay. On the timing point, before the 20th, the deadline structure is the
18 deadline. The 20th is the final day of the examination and the only material that
19 we're expecting to see on that day is essentially the applicant's final responses
20 to all of the other materials that have already been submitted. So realistically,
21 deadlines 9 and 9A, for their respective purposes, as identified in the timetable,
22 are the final points for submission of anything from any interested party. So can
23 we endeavour – whoever needs to – whether this slides on the applicant's side
24 or Thurrock's side, can we endeavour to make sure that the deadlines are adhered
25 to, please?

26 MR MACKENZIE: George Mackenzie for Thurrock Council. Yes, sir.

27 MR SMITH: Thank you very much. That would be greatly appreciated. Okay.

28 Anything else on behalf of Thurrock? No. In which case, Ms Tafur.

29 MS TAFUR: Isabella Tafur for the applicant. We welcome the indication from both
30 Havering and Thurrock of the progress that's been made between the parties.
31 We are preparing the additional appendix to the WSI that Havering mentioned a
32 moment ago, and we will share that with Havering as soon as we can even if it's
33 before a deadline because we do understand the timescales remaining and hope
34 to be able to confirm what was discussed in the meeting with Thurrock

1 yesterday, which we hope resolved their concerns which they seemed to
2 indicate, so that they will be able to confirm that in writing in due course and
3 before the 20th.

4 MR SMITH: Indeed. Right. On that basis, if we have finished that item, note that there
5 was an inadvertent duplicate item on the oTMP for construction. That is not an
6 item we're going to discuss because we've already discussed it. So that brings
7 us to the final substantive item in this hearing, which was merely to offer an
8 opportunity for any high-level submissions on the proposition that there are
9 missing documents from the control documents set for reasons, and/or that there
10 are documents that are essentially superfluous, or should be removed for
11 reasons. Now let me just check to see if there are any. Detail again can be
12 addressed in the response to the draft development consent order commentary
13 and the control documents section of that at deadline 8. I will go to Kent, and I
14 will go to Thurrock. Mr Fraser-Urquhart, are you content to lead off on this
15 item?

16 MR FRASER-URQUHART: Absolutely, sir. I can be brief I think and I can do it with
17 a single –

18 MR SMITH: Yes, do. Do continue.

19 MR FRASER-URQUHART: Sorry. I've just been taught to watch the inspector and see
20 what's – no. We say, sir, that wider network impacts plan with its monitoring
21 and mitigation aspects, as we've discussed on many occasions, should be made
22 a control document. It's of sufficient importance that it sits with that suite of
23 documents.

24 MR SMITH: Okay.

25 MR FRASER-URQUHART: I don't think I can usefully add more. You asked for
26 high-level, and that's high-level.

27 MR SMITH: Okay. So let me go to Thurrock, but I do note that I have a hand from Mr
28 Fox for Port of Tilbury London Limited, so I will come to you, Mr Fox, after
29 we've heard from Thurrock.

30 MR STANDING: Thank you, sir. Ben Standing for Thurrock Council. Just a very quick
31 one – we note that in schedule 16 there are references to the structures plans, the
32 temporary works plans and the drainage plans and we just would like
33 confirmation as to where these are secured and certainly, if they should be
34 secured, because there are details in some of these, such as the structures' plans,

1 which have the widths of different highway uses, which appear that would be
2 useful to be secured. That's it, sir. Sorry, sir. One last comment – I'd also like
3 to point you to our REP6 submissions, which is REP6-164 and paragraph 6.3.6,
4 where we set out some other comments in relation to secured documents.

5 MR SMITH: Thank you very much. Right, let me go to Port of Tilbury London Limited.
6 Mr Fox.

7 MR FOX: Thank you, sir. Matthew Fox on behalf of Port of Tilbury. It was less a
8 different control document. It was more a point that I was going to raise earlier,
9 but it didn't really fit with the agenda, which was a question I had about
10 something that Gravesham proposed, and it was just in relation to the REAC
11 commitments MW009 and 017 at deadline 6, which the applicant then
12 responded to. This was just about making sure that essentially that spoil arising
13 from tunnel excavation from the north portal and all tunnelling infrastructure
14 and equipment is brought in through the north portal, and the applicant's
15 response was essentially to say, although they didn't accept Gravesham's
16 wording, that that is what is proposed in any event. I just wanted to check that
17 that is an assumption that is in the traffic modelling assumptions that underpin
18 transport because obviously that does have effects in terms of essentially
19 everything going through the north portal and being pulled through, rather than
20 at least some going through the south. That's just a point of clarification, sir.

21 MR SMITH: Indeed, and it's noted now that there's a certain amount of conference going
22 on in the applicant's team.

23 MS TAFUR: Isabella Tafur for the applicant. Responding first to Kent and the wider
24 network impacts should be made a control document, requirement 14 provides
25 – well, it requires that the undertaker to submit written details of operational
26 traffic impact monitoring substantially in accordance with the wider network
27 impacts management, and monitoring plan for approval by the Secretary of
28 State. So that is already secured in that way, and indeed a certified document in
29 schedule 16.

30 The point made by Thurrock about temporary works plans and structures,
31 those illustrative drawings and are not secured and are not intended to be
32 secured. They're illustrative and, as we touched upon briefly last Thursday,
33 Thurrock have asked for a large number of documents to be certified documents
34 that we don't consider to be appropriate. Book of reference, for example, I think

1 another – sorry. To be secured as outline plans. Sorry – to be treated as outline
2 plans in circumstances where we don't believe them to serve that purpose. As
3 to the Port of Tilbury, I think that brief conference that's going on behind has
4 proved fruitful because those assumptions are reflected in the transport
5 modelling about the north portal.

6 MR SMITH: Okay. I'll just check. Mr Fox, content with that?

7 MR FOX: Yes, sir. Thank you.

8 MR SMITH: Thank you very much. Okay. Now I will just check before closing this
9 item out because conferences may be going on in a number of places. I just want
10 to check that we don't need to cover the preliminary works environmental
11 management plan, or do we? Did we cover it? Did anybody want to speak on
12 it, the PWEMP? Well, nobody wanted to speak on it, so on that basis, any
13 remaining comment –

14 MR FOX: Sir, sorry.

15 MR SMITH: You're earning your fee today, Mr Fox.

16 MR FOX: Sir, it was just to make the point, and it may just be a point of clarity, that we
17 note that the preliminary works REAC table does not include item GS0-21,
18 which talks about implementation and measures to prevent mobilisation of
19 [inaudible] and saline intrusion, which obviously could be something that's
20 relevant to the preliminary works for digging up things to delay apparatus,
21 particularly if it's going to the compound, and even if you're pumping down big
22 equipment, obviously that can have effects.

23 We also note that in relation to pre-ecological surveys, there doesn't seem
24 to be a commitment within the preliminary work REAC measures to do
25 ecological surveys before carrying out the preliminary works. There's reference
26 to pre-construction surveys, but that's in reference to determining the current
27 land quality, rather than ecological. Now, I appreciate that the issue here is that
28 part of preliminary works is indeed ecological surveys themselves, but there are
29 other preliminary works where it would make sense. So if you're receiving
30 construction equipment for example, that's a lot of noisy activities happening,
31 where you'd then want to have the relevant measures which then lead to the
32 controls that you would have for the works to be in place. So we would say that
33 that needs to be done and that's particularly important for POTL for the reasons

1 I mentioned earlier in terms of the management of ecology and how that effects
2 our development moving forward.

3 MR SMITH: Thank you very much. Ms Tafur, can I put that one to you?

4 MS TAFUR: Isabella Tafur for the applicant. In relation to the REAC commitments
5 GS0-21, that item relates to specific north portal works and not preliminary
6 works, and that's why it hasn't been included in the preliminary works plan, but
7 we can certainly go away and consider whether that should be extended to cover
8 the preliminary works and get back to you on that. As to the ecological surveys
9 being secured for preliminary works, that's covered by requirement 7 in the
10 DCO, which provides that no part of the authorised development is to begin
11 until, for that part, final pre-construction survey work has been carried out in
12 respect of species listed. You obviously have discussed already the relevance
13 of the use of begin rather than commence, so that is apt to cover preliminary
14 works, the use of begin.

15 MR SMITH: Okay.

16 MR FOX: Thank you, sir.

17 MR SMITH: Mr Fox, thank you. Now then, unless there is anything else that anybody
18 else wishes to raise, arising from that broad suite of agenda items, dealing with
19 the control documents, agenda item 4, I believe that we have dealt with that. Ms
20 Tafur.

21 MS TAFUR: Isabella Tafur for the applicant. Just two things, sir, because you had asked
22 us to go away on Thursday – it's been covered again today – to go away and
23 consider a couple of things and we said we would and I just want to update you
24 on them while we're here, as far as I can. One is in relation to the separation of
25 the REAC from the code of construction practice, and that is not intended to be
26 separated out. But it seems to us that a sensible way of dealing this is to rename
27 the code of construction practice to make it clear that it also includes the register
28 of environmental actions and commitments, given your understandable concerns
29 that the code of construction practice may not be a place that people immediately
30 look to see enduring commitments, which are contained in the REAC. So I just
31 wanted to let you know of the project position on that at this stage.

32 The second point is in schedule 16, with the certified documents, you had
33 us asked us to consider separating them out into plans and documents and to
34 split them out in that way, and we will be doing that.

1 MR SMITH: Okay. Thank you very much for those indications. Now, just before we
2 move on, in relation to dotting Is and crossing Ts, I think it would be very helpful
3 if we could receive from the applicant, dealing with that illustrative plans not
4 intended to be certified documents point, just a clear final list of those plans,
5 which you see – and documents indeed – as falling into that category.

6 MS TAFUR: Isbella Tafur for the applicant. Yes. I understand that work is already
7 underway in response to the commentary on the DCO.

8 MR SMITH: Excellent. Right, good. So no need for it to be done twice – thank you
9 very much. I mean, I think for our purposes, we won't take that as an action,
10 noting it is underway already, pursuant to the commentary. Okay.

11 MS TAFUR: Happy for it to be included as an action. It's underway and it's going to
12 be done anyway, but if it's – it will be done whether or not it's an action, but we
13 have not difficulty with it being included.

14 MR SMITH: Okay. Belt and braces it is then. Right, that then takes us to agenda item
15 5 in issue-specific hearing 12 next steps, and we will then just briefly review a
16 relatively small number of actions that have arisen since we resumed
17 issue-specific hearing 12. Now, just let me find the right action list. That's not
18 the one. Here we go. No, that's – no. That's 14. I thought I had it open. That's
19 the one isn't it. Part two – excellent.

20 Right, so we have the following actions to hand. The first action is a
21 general action to all participants. Detailed drafting in relation to the control
22 documents – please, provide an update on any detailed matters of drafting in
23 respect of the control documents or amendments to them, which in your view
24 remain an issue, in writing at deadline 8, and the applicant can of course respond
25 to that remaining set at deadline 9. Hopefully these are issues that will be flushed
26 out in any case. What I would say to parties considering responding to that is,
27 if you're able to do so within a framework of a response to the commentary on
28 the draft DCO of the control documents, please do so, so that it's all [inaudible].

29 Thurrock Council – please – to provide any final detailed comments to the
30 outline site waste management plan at deadline 8 with the applicant to respond
31 at deadline 9. The applicant and the Port of London Authority – these parties to
32 continue to discuss refinements of the wording of the outline materials handling
33 plan, the oMHP, in respect to the commitments for multi-modal transport for the
34 transportation of materials, and in particular, the applicant will consider adding

1 wording to refer to environmentally equivalent in addition to, or instead of,
2 environmentally better, when no-road transportation is being considered. We
3 note that this a discussion between parties. It therefore feels as though it may
4 not mature until deadline 9. But if that is the case, we strongly urge on each of
5 the involved parties to please engage with each other so that there are no terrible
6 surprises and that we're not in a situation where the Port of London authority
7 has to put its in-principal objections still in place at deadline 10, at which point
8 the applicant sees it but cannot respond. So could we ask for care and thought
9 about both of your positions in that.

10 If matters remain distinctly unagreed, my feeling would be that it would
11 be better to have statements of disagreement at deadline 8 from the Port of
12 London Authority, which would then enable the applicant to properly respond.

13 MS TAFUR: Isabella Tafur for the applicant. My understanding is that a meeting has
14 been arranged with the Port of London Authority for after deadline 8.

15 MR SMITH: Ah, after deadline 8.

16 MS TAFUR: Yes.

17 MR SMITH: Right, so we can't do that. Well, let's accept that it has to be at deadline 9,
18 but I think you're both aware of the critical importance in those circumstances
19 of not leaving the room until a shared position can then be embodied in one
20 document because otherwise, there is no fair opportunity to respond to it. Okay,
21 let's move on to action number 4.

22 MR STRATFORD: Sir.

23 MR SMITH: Yes.

24 MR STRATFORD: May I just interject a moment? Would it be possible to include
25 Thurrock in that discussion since we submitted the joint paper with the PLA.

26 MR SMITH: In the outline materials handling plan, yes. I see no concern with that.

27 MR STRATFORD: Thank you.

28 MR SMITH: Part – Ms Tafur.

29 MS TAFUR: Isabella Tafur for the applicant. I would say that quite a lot of water has
30 passed on to the bridge since that joint position statement at deadline 1, and the
31 applicant have made what we consider to be good and considerable progress
32 with the Port of London Authority in those bilateral discussions that we've had,
33 and we wouldn't want to lose that momentum.

1 MR SMITH: I note that, but equally, given the late deadline that we've already accepted
2 – 9 – for an agreed or reserved position, essentially, if Thurrock don't like what
3 they see, they're going to be responding at deadline 10, and you can't reply. So
4 it would be better that Thurrock were in, if they have a substantial remaining
5 interest in it, than that they are excluded and then left in circumstances where
6 you are unable to reply in the tenure of the examination. Frankly, what I would
7 ask Thurrock to do is, if it's possible to convene at least digitally, maybe around
8 an initial draft rather than a meeting, if Thurrock finds itself in substantial
9 disagreement, then my suggestion would be that Thurrock continues then to
10 work on a statement of its own position to be submitted at deadline 9, rather than
11 fighting in a ring where the other two contestants are maybe at that point close
12 to agreement.

13 MR STRATFORD: I appreciate that we have moved on and we have been in discussions
14 with the PLA through Mr Neve, so we're fully up to speed with where we are
15 and we would like to be involved.

16 MR SMITH: Oh, we know that, and we're not suggesting you're not. But what we are
17 suggesting is that because of the critical importance of there being a joint, agreed
18 position statement at deadline 9, that if either of you find yourselves unable to
19 broadly agree, it's better to have a statement of reservation at deadline 9 than to
20 end up, as I say, with nothing, and then the applicant not know what the position
21 is because it can't respond after deadline 10. If something comes in at deadline
22 10, it is essentially too late for the applicant to respond and gives us a substantial
23 natural justice problem in terms of taking it into account.

24 MR STRATFORD: The devilish part of me likes that idea; however, we will discuss it
25 with the Port of London Authority.

26 MR SMITH: Resist your attractions would be my advice to you, Mr Stratford, because I
27 will say very plainly for the Examining Authority that if material comes in late
28 – and this was going to be one of my general closing remarks, but I'll say it now
29 because it's come up. If material that is anticipated to be at or before deadline
30 9 comes in late, and the effect of its lateness is effectively to rule out the ability
31 of the applicant to make what is, when all is said and done, its right, which is its
32 closing submission at deadline 10, we will struggle to have any serious regard
33 to it whatsoever. So there isn't a great deal of point doing it, I would say. Let's

1 all try and stick within the bounce-down provided for within the timetable, that
2 actually makes sure that everybody gets their fair crack at the right time.

3 Okay. So hopefully we've dealt with the outline materials handling plan.
4 I will move on to the draft archaeological mitigation strategy and outline written
5 scheme of investigation. This is intended action 4, where we are asking the
6 applicant to provide at deadline an update on matters in discussion with the
7 London Borough of Havering and Thurrock Council in respect of that document,
8 and with the London Borough of Havering and Thurrock Council again, to
9 provide final positions, no later than deadline 9(a).

10 Then moving on to action number 5 on the applicant in relation to
11 illustrative plans, which is Laver's belt, braces – yeah. That one's clear and that
12 can be submitted with the final version of the draft DCO, and then finally, there
13 is an action 6 on the applicant in relation to the REAC GS0-21 and a
14 consideration of whether that particular item in the REAC should be extended
15 to include a preliminary works effect.

16 So those are the actions. Unless there are any specific additional
17 comments or observations on them, we will endeavour to produce them as
18 swiftly as we can, which will hopefully mean we produce them tomorrow. What
19 I would flag as well – and I note that a number have been published on quite a
20 rapid basis. We've been trying to get them out the following day throughout
21 this entire sequence of hearings. If you don't find them in the banner straight
22 away, please of look in the latest published documents – literally the first page
23 under the documents tab because all of the latest documents emerge there.
24 Frankly, that's where they should be. We will try and get banners up as quickly
25 as we can, but as soon as they're published, that's where they are.

26 On that basis, I don't think there's anything else that we need to cover
27 arising from actions, so I am going to move towards closure of issue-specific
28 hearing 12. This group of hearings in the November hearings window were
29 anticipated to be, and in fact now are the last formal hearings in this examination.
30 12 is the last one. We did reserve time in mid-December for further hearings
31 into the applicant's change requests in relation additional land and rights over
32 land, and we have not had any requests to be heard in relation to those. So, to
33 be clear, they will not proceed and a banner item will make that clear. I believe

1 that's already been published and I'm seeing all the right signals from the rear
2 of the room.

3 So what I think I now need to do is to thank all, not only speakers, at this
4 hearing, although speakers at this hearing have made their contributions in their
5 normal, committed and excellent ways, but also all contributors to the entirety
6 of this examination in writing and at all hearings, because we're conscious of
7 the extraordinary mobilisation of effort by local authorities, by a broad range of
8 interested parties, community groups, the ports, the Port of London Authority
9 etc. There's been an enormous amount of input brought in front of us, and we
10 are very grateful for all of the material and all of the effort that has gone into the
11 making of that material that's been brought before us.

12 So this is it. Unless there's anything that anybody else wishes to raise, I
13 will now be moving to close this hearing – ah, I do see a red light.
14 Mr Latiff-Aramesh.

15 MR LATIF-ARAMESH: Thank you, sir. Mr Latiff-Aramesh for the applicant. I
16 promise I was planning to do this before you said your thanks. This is quite a
17 milestone for National Highways and the project team. You'll appreciate that
18 we've had quite a few members of the team working on this for several years,
19 so we just wanted to thank the panel and interested parties for their consideration
20 of the application. That's it. Thank you.

21 MR SMITH: Well, very appropriate words. Thank you, and indeed thank your team for
22 – whatever measures of disagreement there are still evident in this room, or in
23 the assembled group of interested parties, without doubt, an enormous amount
24 of effort has gone on in the applicant team as well to mount such a substantial
25 project as a case in front of the Examining Authority, so a big thank you to all
26 of your team as well. Now –

27 MR MACKENZIE: Sir, if I may, I would also like – the only remaining action point on
28 our side for today is also to provide our thanks to you, sir, also to Mr Pratt, Mr
29 Taylor, Ms Laver and Mr Young online as well as all of your colleagues from
30 PINS. Clearly, there's been a lot of shoulders put to the wheel to conduct this
31 examination and we thank all of those shoulders.

32 MR SMITH: Again, I'm grateful. In that respect I would particularly like to highlight
33 not just the members of the case team who are here tonight, but the entirety of
34 the PINS team, and indeed the audiovisual staff, who have worked tirelessly to

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make sure we are recorded and broadcast, and indeed the security team who have been looking after us as well. I think we should specifically mention them. But a big thank you particularly to the case team present here tonight. Thank you for those remarks.

Right, I am going to draw this to a close. Ladies and gentlemen, this has been the final issue-specific hearing in the examination of the Lower Thames Crossing application, issue-specific hearing 12, and I am not going to draw it to a close. The hearing is now closed. Thank you very much, ladies and gentlemen.

(Meeting concluded)