

Lower Thames Crossing

Post Hearing Written Submissions (CAH5 and ISH11 – ISH14)

5 December 2023

Post Hearing Written Submissions (CAH5 and ISH11 – ISH14)
Lower Thames Crossing

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	Name	Position	Signature	Date
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1 Compulsory Acquisition Hearing 5 (CAH5) Individual and Site Specific Objections relating to Compulsory Acquisition & Temporary Possession

21 November 2023

Post Hearing Submission made by Thurrock Council, including written summary of Thurrock Council's Oral Case

Note: these Post Hearing Submissions include the Council's submissions on all relevant Agenda Items, not all of which were rehearsed orally at the CAH5, as the Council did not attend. The structure of the submissions follows the order of the agenda items, but within each agenda item, the submissions the submission made by the Council. This Appendix is, as follows:
This submission includes a response to the relevant Action Points arising from CAH5 [\[CAH5\]](#).

The ExA wishes to hear the following Affected Persons:

3	Site-Specific Representations
a)	Veolia ES Landfill Ltd Hogan Lovells International LLP, Solicitors
b)	Bellway Homes Ltd Strutt & Parker Ltd, Estate Agents and Property Consultants
c)	St Modwen Developments Ltd Mr Tom Rowberry of Pinsent Masons LLP, Solicitors
d)	Malthurst South East Ltd/ MFG re Cobham Services Ms Claire Brodrick of Pinsent Masons LLP, Solicitors
e)	Kathryn Homes Ltd and Others (including Runwood Homes Ltd and Runwood Properties Ltd re Whitecroft Care Home, Stanford Road, Orsett), Mr Michael Bedford KC / Birketts LLP, Solicitors
f)	HS1 Ltd DLA Piper UK LLP, Solicitors
g)	Partners LLP and S & J Padfield Estates LLP Ms Karen Howard of Gateley Legal, Solicitors
h)	Mr Stuart Mee & Family Shoosmiths LLP, Solicitors
i)	St John's College, Cambridge Mr Daniel Smyth of Savills, Estate Agents
For each Affected Person with the exception of e) Kathryn Homes and Ors, the ExA will ask:	
i	For an outline of the current scope of objections, taking account of any progress in negotiations with the Applicant
ii	Whether CA and or TP powers (or both) are objected to and (with reference to the statutory tests and applicable guidance) why?

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3	Site-Specific Representations
iii	What relief is sought?
iv	Whether there are any issues of hardship or requests for non-statutory relief, and if so, the basis for these and any practice precedents
v	Where relevant, whether the Human Rights Act (ECHR) rights and or the Public Sector Equalities Duty (PSED) are engaged and what considerations emerge from this?

ExA Action Points ([EV-083a](#))

No.	Party	Action	Deadline
<p>Thurrock Council's Response to Action Point 2 from CAH5 (EV-083a)</p> <p><u>Action Point for Bellway Homes</u>: Local Plan status of land – to include in post hearing submissions reference to Thurrock Council's (comments on Applicant's submissions at D6) D7 submissions in respect of the Local Plan status of land currently under option to Bellway Homes and whether it is or is to be allocated for residential development.</p> <p>Although the ExA did not request a response from the Council, it was considered necessary to set out the position of the Council in respect of its Local Plan to assist the ExA, which is set out below.</p>			
No.	Party	Action	Deadline
2	Thurrock Council	<p>The Council provides below the status of land submitted by Bellway Homes at South Ockendon:</p> <ul style="list-style-type: none"> The Regulation 18 Initial Proposals document to be issued w/c 4 December 2023, <u>subject to full Council approval</u>, considers growth at a settlement level. Consequently, for each settlement it sets out a range of potential sites that based on existing evidence and discussions with key stakeholders that the Council believe should be allocated for new uses or safeguarded for specific uses in the emerging Local Plan. Designations include new neighbourhoods, new employment areas, Local Green Spaces and opportunity areas, where the Council consider there is the potential to intensify existing uses, introduce new ones and/or make improvements to the public realm and the way people move around the area. The document also sets out a series of reasonable alternatives at a settlement level, some of these options are new sites and some are larger/smaller options for sites shown as initial proposals. National legislation requires us to assess reasonable alternatives. Reasonable alternatives are defined as different realistic 	

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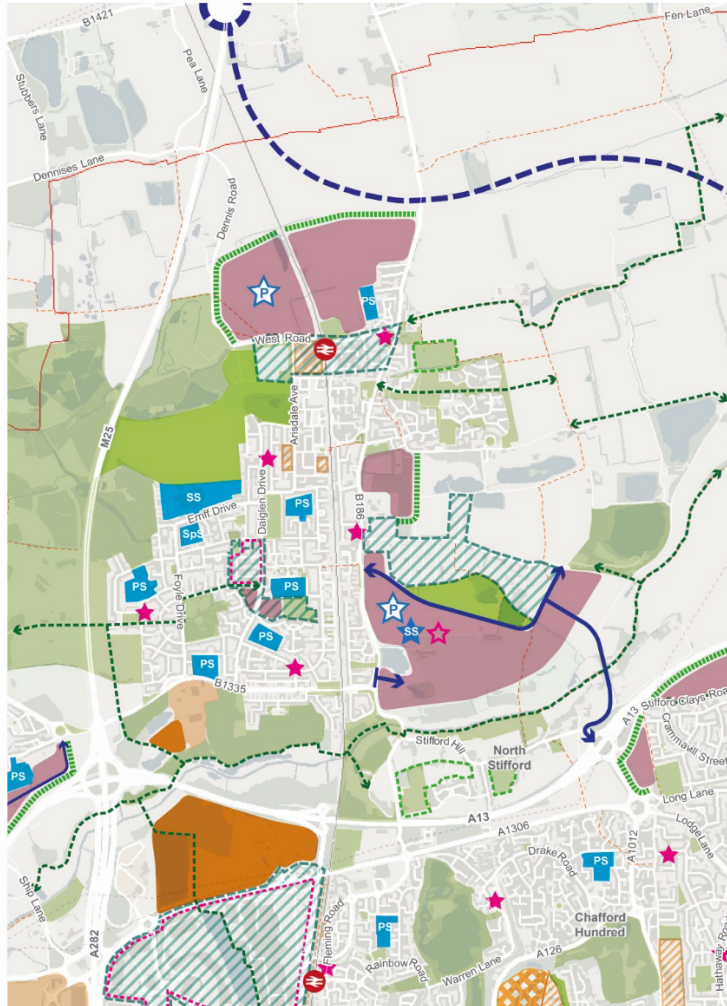
ExA Action Points ([EV-083a](#))

No.	Party	Action	Deadline
		<p>options considered by the plan-maker in developing the policies in the plan. They need to be sufficiently distinct to highlight the different sustainability implications of each, so that meaningful comparisons can be made.</p> <ul style="list-style-type: none"> <li data-bbox="539 616 1157 918">• The 'Initial Proposals for South Ockendon (see map and key below – purple area immediately south of the LTC route, the east of the railway line and to the west of North Road) identifies some of the land put forward by Bellway Homes as a new neighbourhood (although the Council do not provide a figure for this neighbourhood specifically it is considering growth across the settlement as a whole and the settlement range is between 4,000-4,500 new homes). <li data-bbox="539 940 1157 1243">• The positioning of the LTC has had an impact on how much of the site can be developed as the LTC severs the site and as a result sterilises half of the land that Bellway Homes are promoting for residential; and, without a connection to the LTC the Council are not necessarily supportive of additional employment uses in this location, because the existing road network is not suitable for increased HGV movements. 	

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Map and Key

SOUTH OCKENDON
INITIAL PROPOSALS



KEY:-

- | | |
|--|--|
| New Neighbourhoods | Proposed New Town Centre |
| Opportunity Areas - New Places | Local Centres / Neighbourhood Parades |
| Opportunity Areas - Established Places | Proposed Local Centres / Neighbourhood Parades |
| Tier 1 Existing Employment Areas | Existing Education Sites |
| Tier 2 Existing Employment Areas | Proposed Primary Schools |
| Existing Oil & Chemical Storage | Proposed Secondary Schools |
| Proposed Tier 1 Employment Sites | Potential Transport Interchange |
| Existing Port Boundaries | Proposed Lower Thames Crossing |
| Proposed Green Buffers | Preferred New Routes |
| Proposed Local Green Spaces | Public Access along the Thames |
| Existing Accessible Green Infrastructure | Green Links (Walking/Cycling) |
| Proposed Accessible Green Infrastructure | Public Rights of Way |
| Existing Shopping Areas | National Grid - Proposed OHL |
| | National Grid - Proposed Underground Cable |

2 Issue Specific Hearing 11 (ISH11) – Environmental Matters

22 November 2023

Post Hearing Submission made by Thurrock Council including written summary of Thurrock Council’s Oral Case

Note: these Post Hearing Submissions include a written summary of the Oral Case presented by the Council at ISH11. They also include the Council’s submissions on all relevant Agenda Items, not all of which were rehearsed orally at the ISH due to the need to keep oral presentations succinct.

The structure of the submissions follows the order of the agenda items but within each agenda item, the submissions begin by identifying the oral submission made at ISH11 by the Council and then turn to more detailed matters. Where requests for further information / clarification from the applicant were made by the Council at ISH11 these have been highlighted as ‘Requests’. Where the Examining Authority (ExA) requested the Council provides further written evidence or further information has been provided in response to statements made by the applicant during ISH11, this further information is included in Appendices and highlighted within this submission, but no Appendix is necessary.

This submission includes a response to the relevant Action Points arising from ISH11 [[ISH11](#)].

ISH11 was attended by George Mackenzie on behalf of the Council. Also, in attendance either in person or virtually at ISH11 on behalf of the Council were Steve Plumb, Chris Stratford, David Burgess, Matt Ford and Sharon Jefferies. Tracey Coleman, Interim Chief Planning Officer for Thurrock Council, also attended virtually.

The ExA asked questions of the Applicant relating to:

Agenda Item	Thurrock Council’s Response	
3	Kent Downs Area of Outstanding Natural Beauty (AONB) and Wider Landscape Matters	
a)	Landscape Impacts in Kent Downs ANOB	
i	Is there agreement amongst the parties that adverse landscape effects on the AONB are localised during construction and operation of the road (inclusive of utility works), or do the parties consider that there would be an adverse effect on the character and integrity of the AONB overall?	N/A
ii	The Applicant has advised in response to both ExQ1 and ExQ2 why it has	N/A

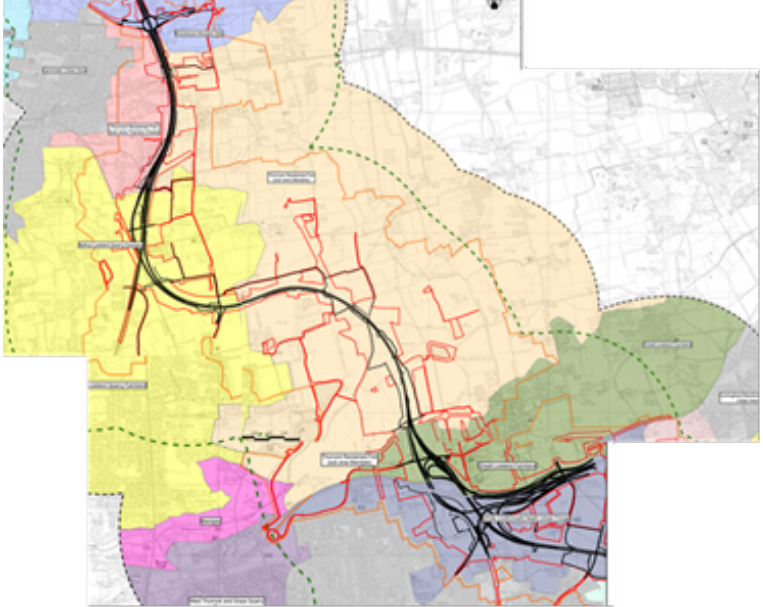
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Agenda Item	Thurrock Council's Response
<p>'adjusted' the boundaries for the Cobham and Shorne Local Landscape Character Areas (LLCA) for the purpose of assessing landscape impacts; however, can it explain the level of sensitivity and significance of effects it would ascribe to those areas if the boundaries had not been 'adjusted' and instead the Kent Downs AONB LLCA boundaries (which echo the Kent County Council's 2004 LCA) were used? Is there a difference?</p> <p>Having regard to the Applicant's adjusted boundaries, can the Applicant explain what the significance of effect would be if the areas of Cobham and Shorne were not combined in the assessment but were considered and reported separately? Comments from the Kent Downs AONB Unit, Gravesham Borough Council and Kent County Council will be sought on the Applicant's response.</p>	
<p>iii Will the green bridges over the A2 at their proposed widths provide valuable landscaping connectivity to reduce the severance between the historically linked landscape of Cobham and Shorne (noting that we do not need to re-visit the discussions on Green Bridge design)?</p>	N/A
<p>iv Are there any landscaping mitigation measures not already proposed by the Applicant that would reduce the impact of the Proposed Development on the</p>	N/A

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Agenda Item		Thurrock Council's Response
	AONB, and/or any measures that would instead compensate for the harm (noting that we do not need to re-visit the discussions on the site selection for nitrogen deposition compensation areas)?	
v	The ExA would like an update on the draft S106 Agreement with Kent County Council comprising a 'compensatory enhancement fund' for the Kent Downs AONB Unit (as per the Applicant's Response to EXQ1 12.2.9b [REP4-200] and as referenced in Item No. 2.1.62 of the Statement of Common Ground with Gravesham Borough Council [REP6-025]).	N/A
b)	Wider Landscape Matters	Thurrock Council Statement
i	The Applicant has summarised the Proposed Development's overall landscape impact in document [APP-524] at pages 68-69. It ascribes the overall impact as 'Moderate Adverse'. The ExA would like to hear from relevant parties on whether they agree with this conclusion.	<p>The section of the report identified relates solely to landscape effects and does not include visual effects. The Council accepts that most of the route would not have more than moderate adverse effects on landscape character. The exception would be the important Thurrock Reclaimed Fen character area which would experience a Large Adverse effect.</p> <p>ES Appendix 7.10 Schedule of Visual Effects (APP-385) confirms that visual effects would be significant from numerous viewpoints, including Thurrock Reclaimed Fen.</p> <p>Refer to image/map below: 'Thurrock Reclaimed Fen' – beige.</p>

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	 <p>The approach adopted by the applicant, which 'smooths out' the significant adverse effects on important landscape, in an attempt to achieve an overall moderate assessment, is considered inappropriate for use as part of an LVIA and was criticised by Natural England and several Councils, including Thurrock, at ISH11.</p> <p>This point is discussed further in response to AP8 below.</p>
<p>ii Are there any areas across the Proposed Development where operational lighting would have a significant landscape effect and are there any mitigation measures that could minimise the effect? The 'Environmental Lighting Zones' document [APP-199] may prove useful to aid this part of the discussion.</p>	<p>The most sensitive area within Thurrock is within the Mardyke Valley. The area centred on Orsett Fen has been identified as E1 Areas of intrinsically Dark Landscapes in ES Figure 7.3 - Environmental Lighting Zones (APP-199). Much of the rest of the route within Thurrock passes through E2 – Areas of Low District Brightness zones. ES Appendix 7.9 - Schedule of Landscape Effects (APP-384) and ES Appendix 7.10 Schedule of Visual Effects (APP-385) summarise the predicted nighttime effects. These confirm that most sections through Thurrock will be unlit therefore the main effects will be localised close to junctions or where vehicle lighting cannot be screened for example when crossing the viaducts.</p> <p>The Council worked with the applicant to minimise where lighting was placed and has not raised concerns regarding the current proposed lighting. The Council considers that operational lighting will not have a significant adverse landscape effect in Thurrock.</p>
<p>4 Coalhouse Fort and Point</p>	
<p>a) Coalhouse Point</p>	
<p>i In addition to any questions raised within the Habitat Regulation Assessment</p>	<p>In principle, the Council does not have any objection to the provision of water to allow the proposed wetland mitigation to be created. It was involved in the discussions regarding the</p>

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<p>and the Report on the Implications on European Sites, the ExA will be looking for the Applicant, Thurrock Council and the Environment Agency to confirm the current position of the discussions relating to the provision of water to allow the proposed wetland mitigation to be provided at Coalhouse Point.</p>	<p>alternative sources via the Coalhouse Fort moat and accepts that a direct inlet, avoiding the Scheduled Monument and direct links to the SPA would be simpler to achieve.</p> <p>The Council remains concerned about the condition of the flood defence fronting the proposed mitigation site. These matters are set out in the SoCG in item 2.1.263. The defence was overtopped by the river in 2019 causing structural damage. It was repaired in 2022, however, the Environment Agency considers that there is a risk of the structure failing in the short-term (an estimate of 5 years was given) and the EA have not undertaken any maintenance on this defence since January 2023. The Council therefore would require:</p> <ol style="list-style-type: none"> 1. Confirmation that the applicant will be responsible for the whole structure in the long-term along that part of the river frontage then-owned by the applicant – this should be set out as a new commitment within the SAC-R; and, 2. Confirmation of the timings for when works would start on installing the inlet and creating the wetland and do these accord with the anticipated need for significant repairs to the structure? <p>It is noted that these matters are discussed and partially provided for in the CoCP/REAC (REP6-038 in RDWE--49) and REP6-102.) Furthermore, it is noted that the EA will be issuing shortly a Technical Note that may assist in understand this matter.</p>
<p>ii Dependent upon the answer to (i) above, there are a number of issues that may require to be considered. It is recognised that there is an existing hydrological regime that currently includes flows entering the system from agricultural land in the catchment and ingress from the Coalhouse Fort moat system. In the Draft Statement of Common Ground between (1) National Highways and (2) Thurrock Council [REP6-031], Item No. 2.1.263 suggests that '... <i>the current proposal is to allow ingress of water from the River Thames through a water inlet with self-regulating valve, or equivalent ...</i>'. The ExA will be looking to the relevant parties to give a summary</p>	

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<p>of their positions on the issues listed below, with full details to be provided in writing by Deadline 8, with a reflection on the points raised by others during the hearing:</p>	
<ul style="list-style-type: none"> Hydraulically, how does this proposed alternate method of water supply change the hydraulic operation of the proposed wetland and the rest of the catchment from the use of the Coalhouse Fort moat? 	<p>The Council question the operation of the proposed Tidal intake because the applicant has not provided enough information for us to understand the proposed intake and how the wetland levels will be maintained:</p> <p>The intake structure is proposed to be directly from the Thames: there are a few unknowns:</p> <ol style="list-style-type: none"> Does the intake structure include a flap valve? Or a sluice gate? Or a combination of structures? If a sluice gate, is it manually or electrically actuated? As the intake is dependent on tide levels, how does this effect the wetland levels? Is there a high level overflow to maintain a maximum water level? What type of structure are the water level control structures? Are they manually or electrically actuated? Will the wetlands drain down too fast? Or will proposed level control structures be sufficient to maintain desired levels? <p>The Council note that the Lower Moat at Coalhouse Fort is currently drained into the ditch at the south west corner of the proposed wetland site. The Council would like to understand if the proposed wetland levels will cause the existing ditch water levels to remain artificially high, preventing the normal discharge of the Lower Moat. The Council request the applicant to confirm impact on ditch water levels and assess if this could have a hydraulic impact to the Lower Moat ability to discharge.</p>
<ul style="list-style-type: none"> What are the likely changes in chemical composition between the current water in the system utilising the Coalhouse Fort moat inlet and one directly from the River Thames? 	<p>The Council raised a concern that the watercourse that runs to the north of the DHL landfill site has a potential discharge through the Star Dam into the proposed Wetland site. The watercourse may be a pathway for contaminated water to adversely impact the wetland and also a pathway for contaminated water to enter the Thames through the new proposed intake structure.</p>
<ul style="list-style-type: none"> Are the chemical and hydrological changes likely to provide the ecological environment intended or is there a risk that those species that wish to be encouraged will not colonise the mitigation habitat? 	<p>The Council can only make general comments on this point.</p> <p>The proposed scrapes as well as the retained ditches will contain brackish water due to the mix of sea and freshwater. This is a relatively rare but important habitat – there are wetland areas at Coalhouse Fort comprising brackish water and which contain a range of specialist plants and animals. It is considered that the proposals for Coalhouse Point would provide an opportunity to expand the extent of this important habitat.</p>

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Agenda Item	Thurrock Council's Response
<p>iii At Compulsory Acquisition Hearing 4, it was suggested that the water in the watercourse system would continue to be required for agricultural irrigation. The ExA wishes to hear the Applicant's and other IP's views on the following points, with detailed comments to be submitted in writing at Deadline 8, with a reflection on the points raised by others during the hearing:</p>	
<ul style="list-style-type: none"> • Would an inlet at Bowater Sluice increase or decrease the potential for watercourse water to be utilised as a source for irrigation purposes? 	<p>At the ISH11 Hearing it was confirmed by the landowner's representative that the watercourses are not required for irrigation.</p> <p>During the ISH11 Hearing, the applicant confirmed their position that the direct Tidal intake to the wetland is the preferred source of water. There were no objections raised and the Council agree that this is preferable to using the Bowater Sluice Thames supply as an alternative source.</p> <p>The Bowater sluice is located to the east of the proposed North Portal junction, and west of the Coalhouse Point, currently the sluice allows/controls flow between a drainage ditch and the West Tilbury Main watercourse, which discharges into the Thames.</p> <p>No changes are proposed to the watercourse to the west of the wetland site, therefore the Council do not perceive there to be any risk of adverse impacts to the watercourse or its use as a source for irrigation.</p>
<ul style="list-style-type: none"> • Would the chemical content of the water from this source allow it to be used as an irrigation source? 	<p>At the ISH11 Hearing it was confirmed by the landowner's representative that the water courses are not required for irrigation.</p>
<ul style="list-style-type: none"> • What amendments are proposed at Star Dam to manage the water from both sources, should a new inlet from the River Thames become the preferred option? 	<p>During the ISH11 Hearing the applicant stated that no changes are proposed to the Star Dam. The applicant confirmed that the water levels within the wetland area would be maintained with new water level control structures within the proposed wetland site.</p>
<ul style="list-style-type: none"> • Within the catchment, at what point does the current ability to draw irrigation water from Coalhouse Fort inlet cease, and where would that change to if there 	<p>At the ISH11 Hearing it was confirmed by the landowner's representative that the water courses are not required for irrigation.</p> <p>If LTC were permitted, the arable farmland north of Coalhouse Point and Bowater Sluice would be used for ecological mitigation and therefore no form of irrigation would be required for that land.</p>

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<p>was a supplementary source from Bowaters Sluice, or other, new, inlet from the river?</p>	
<ul style="list-style-type: none"> Who will be responsible for the setting of the operational parameters, the operation and maintenance of any new inlet structure and the Star Dam? 	<p>The Environment Agency confirmed their commitment to continue maintenance responsibility for the Star Dam during the Hearing.</p> <p>Currently, part of Star Dam appears to be within the Order Limits, it is therefore not clear, based on the Coalhouse Wetland FRA (REP6-102), who would be responsible for maintenance of Star Dam. With only part of Star Dam within the Order Limits, this could lead to confusion over ownership extents for the applicant and the landowner of the adjacent land, whom would be responsible for maintenance of Star Dam.</p> <p>Additionally, the Council request the applicant to confirm that the Order Limits provide necessary provision to access the Wetland area when required for operation and maintenance purposes.</p> <p>The Council request the applicant to review the Order Limits in the Coalhouse Point area and make amendments where required.</p>
<p>iv There appears to be a complexity in the limitations on working practices and timeframes within the Coalhouse Point area.</p>	
<ul style="list-style-type: none"> Can the Applicant provide a simple breakdown of the allowable working periods, showing how the constraints are being met, alongside highlighting where it is secured in the REAC? 	<p>REAC HR010 – states works outlined in Design Principles Clause S9.13 will be carried out prior to the commencement of works at the Northern tunnel entrance compound.</p> <p>REAC HR010 – Works to construct the water inlet with self-regulating valve or equivalent structure would be undertaken with the following constraints:</p> <ol style="list-style-type: none"> All works requiring access to the inter-tidal zone will be completed to suit tidal cycle and at periods of low water; All pilling works will be completed during periods of low water to avoid transmission of underwater noise; All piling to utilize soft-start piling and other best practice techniques as per JNCC 2010 guidance. <p>At this point there are no detailed designs for the structure or indication as to how long construction would take. The applicant highlighted that while it was hoped work could be undertaken in August 2025, if the DCO were approved in summer 2024, this could extend into November. In principle, the Council accepts that a period of short-term disturbance to birds using part of the functionally linked land might be acceptable to enable the large-scale improvements to be made, however, additional mitigation measures could be required.</p> <p>It is considered that the HR010 should be expanded to include additional avoidance and mitigation measures, should works</p>

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	extend beyond August to minimise disturbance to over-wintering birds.
5 Mitigation Proposals	
a) Nitrogen Deposition and other Woodland Compensation / Mitigation	
i) There remain issues with the compensation offered for the Nitrogen Deposition and other woodland compensation/ mitigation. The Applicant is to provide a simple explanation or summary indicating:	
<ul style="list-style-type: none"> How the land in the Change Application [CR1-001 and 002] at Blue Bell Hill and Burham was originally considered to be necessary and is now considered to be no longer required to be provided elsewhere. 	N/A - Kent sites
<ul style="list-style-type: none"> The amount of Nitrogen Deposition compensation required to offset the project and why there is limited compensation provided in the Kent Downs AONB where the largest effect is said to occur. 	Discussion during the hearing confirmed that this is an issue raised by the Kent Downs AONB and others south of the Thames. Thurrock is satisfied that the areas north of the Thames provide coherent new habitats that increase connectivity and robustness for several relatively isolated sites.
<ul style="list-style-type: none"> Some of the proposed Nitrogen Deposition and other woodland compensation/mitigation locations have not yet had the benefit of detailed ecological surveys. What measures are proposed to mitigate the impact on the existing habitat and/or species found following the surveys? How is the mitigation secured? 	The majority of the Hoford Road site is in arable production and Buckingham Hill is predominantly species-poor grassland with little structural diversity. Both have had habitat surveys undertaken (ES Appendix 8.22 - APP-418). Based on the existing habitats and knowledge of the surrounding area it is expected that reptiles would be the most likely protected species to be present. The proposed habitat creation works can be managed to enable any reptiles to be retained on site. Appropriate long-term management should provide enhanced habitats for reptiles and other protected and important species.
A full description of all the points can be provided in	

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	writing at Deadline 8.	
ii	Are Natural England, and Local Authorities content with the proposed arrangements and the measures to safeguard any protected species located in areas to be planted as woodland? The ExA would welcome a summary of the issues with detailed explanations, if appropriate, to be submitted in writing at Deadline 8.	The Council is content with the proposed arrangements for the Thurrock sites. These sites are unlikely to support significant numbers of protected species due to their current habitat composition and management. The likely habitat creation at Buckingham Hill in particular will retain open grassland that will be brought into more appropriate management that would be beneficial for reptiles as well as other protected species.
6	Potentially Contaminated Land	
a)	Southern Valley Golf Course	
i	In its response to ExQ2 [REP6-131] , Gravesham Borough Council indicated that there may have been historic use of potentially contaminated material within the Southern Valley Golf Course. To what extent has this been investigated and what remediation measures would be secured in view of the proposed use of this site.	N/A

ExA Action Points ([EV-084a](#))

No.	Party	Action	Thurrock Council's Response	Deadline
8	Kent County Council, Gravesham Borough Council, Thurrock Council, Natural England, Kent AONB Unit	Landscape and Visual conclusions Provide a summary of your respective positions on the Applicant's conclusions within Chapter 7, Landscape and Visual of the ES [APP-145] paragraph 7.9.22.	Paragraph 7.9.22 of Chapter 7 Landscape and Visual (APP-145) states that DMRB LA107 requires the effect of the project on landscape and visual amenity combined and a single conclusion of the likely significant effect on landscape and visual amenity. This is considered to be contrary to the purpose of the LVIA. It mixes effects on landscape character with visual effects, which should be viewed separately, and it obscures	D8

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ExA Action Points (EV-084a)				
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			<p>where there are significant effects.</p> <p>It is agreed that effects on landscape character within Thurrock are generally moderate, however, this should not obscure the significant impacts on the Mardyke Valley, for example.</p> <p>The visual effects will be significant on numerous receptors which appear to be ignored.</p>	
10	Applicant & Environment Agency	<p>Star Dam – Compulsory Acquisition matters</p> <p>Provide commentary in respect of the distribution of temporary possession/permanent acquisition at Star Dam. In addition, provide details of the future maintenance of the structure, for example will the Environment Agency continue to retain maintenance responsibility for the structure and retain appropriate access for such a purpose.</p>	<p>The EA confirmed their commitment to continue maintenance responsibility for the Star Dam during the Hearing.</p> <p>Currently, part of Star Dam appears to be within the Order Limits, it is therefore not clear, based on the Coalhouse Wetland FRA (REP6-102), who would be responsible for maintenance of Star Dam. With only part of Star Dam within the Order Limits, this could lead to confusion over ownership extents for the applicant and the landowner of the adjacent land, whom would be responsible for maintenance of Star Dam.</p> <p>Additionally, the Council request the applicant to confirm that the Order Limits provide necessary provision to access the Wetland area, when required for operation and maintenance purposes.</p> <p>The Council request the applicant to review the Order Limits in the Coalhouse Point area and make amendments where required.</p>	D8
12	Applicant	<p>Coalhouse Fort – Provision of wetland mitigation</p> <p>Provide an update as to whether the time window given in the REAC for the early provision of the wetland mitigation could/should be given greater prominence.</p>	<p>As noted at the hearing REAC HR011 is the only HRA requirement for which there is not a defined working period included. Normally, it would be expected that works would be undertaken between April and August to avoid disturbance of passage and overwintering birds.</p> <p>Document 9.206 ISH10 – Supporting Information Item 4a (AS-112) includes</p>	D8

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ExA Action Points (EV-084a)				
No.	Party	Action	Thurrock Council's Response	Deadline
		Natural England, Thurrock Council and other IPs, may respond at D9.	<p>an Ecological Mitigation Works Programme assuming that the DCO is granted by summer 2024. In that the construction of the self-regulating water inlet is timetabled to begin in August 2025. This shows the window extending to mid-November. It is assumed that the construction will not take that full period. It is appreciated that without more detail regarding design and construction requirements it is not possible to provide a more definitive answer.</p> <p>In principle, the Council feels that a short-term disturbance to birds using a relatively small part of the functionally linked habitat rather than the SPA/Ramsar could be acceptable to deliver the wider benefits in advance of the main construction commencing. REAC HR011 provides more information on construction restrictions compared to the others, however, it is necessary to consider if works extend passed August, if other measures would be required, e.g. to reduce visual disturbance. The Council suggests that it is most appropriate for Natural England to lead on this matter.</p>	

3 Issue Specific Hearing 12 (ISH12) – Social, Economic and Project Delivery Matters

23 November 2023

Post Hearing Submission made by Thurrock Council including written summary of Thurrock Council’s Oral Case

Note: these Post Hearing Submissions provide the evidence on the indicated agenda items across both parts of the ISH12 Hearing. The submission captures the evidence given both orally and supplemented by further written evidence. They also include the Council’s submissions on all relevant Agenda Items, not all of which were rehearsed orally at the ISH due to the need to keep oral presentations succinct.

The structure of the submissions follows the order of the published agenda items. Where the Examining Authority (ExA) requested the Council provides further written evidence or further information has been provided in response to statements made by the applicant during ISH11, this further information is included in Appendices and highlighted within this submission, but no Appendix is necessary.

This submission includes a response to the relevant Action Points arising from ISH12 ([ISH12](#)).

ISH12, held in two parts, was collectively attended by George Mackenzie on behalf of the Council. Also, in attendance either in person or virtually at ISH12 on behalf of the Council were Adrian Neve, Chris Stratford, Ben Standing, Chris Hudson, Darren Wisher, Henry Church, Jonny Riggall, Richard Havis, Mat Kiely, Steve Plumb and Sharon Jefferies. Tracey Coleman, Interim Chief Planning Officer for Thurrock Council, also attended virtually.

The ExA asked questions of the Applicant relating to:

The ExA will ask questions of the Applicant and the relevant local authorities on the following matters:

Agenda Item	Thurrock Council’s Response
3 Social, Economic and Land Use Effects	
a) Replacement Open Spaces	
i Recreational / Sports Facility Replacement	
<ul style="list-style-type: none"> Whether Chalk Park is a suitable replacement for the impact to sports facilities in the Gravesham area, specifically the lost Southern Valley Golf Course and the impact on 	N/A

Post Hearing Written Submissions (CAH5 and ISH11 – ISH14)
Lower Thames Crossing

Agenda Item	Thurrock Council's Response
<p>the Swing Rite facilities (noting that we do not need to replay the discussion held at CAH3)?</p>	
<ul style="list-style-type: none"> The ExA would like an update from the Applicant and Gravesham Borough Council on the proposed 9-hole golf course land at the rear of Cascades Leisure Centre in light of Gravesham's D6 submission [REP6-125] following CAH3 discussion. 	<p>N/A</p>
<p>ii Review of Open Space Delivery</p> <p>The ExA would like to hear the latest positions from the Applicant and Local Planning Authorities in relation to the timing, form, and function of any open space replacement/new provision and whether the National Policy Statement's tests for replacement land have been met. National Highways submissions [REP3-109] and [REP6-097] may assist this discussion, along with the various responses provided to EXQ1 Q13.1.10.</p>	<p>The applicant acknowledges in Table D.1 and at D.7.24 of 7.2 Planning Statement Appendix D Open Space (APP-499) that 15.90 hectares of Public Open Space at the Ron Evans Memorial Field are required for:</p> <ul style="list-style-type: none"> Permanent acquisition (75,153m²) Temporary possession and permanent acquisition of rights (77,030m²) Temporary possession (6,817m²) to create working room to facilitate the utilities works. <p>In respect of the land to be acquired permanently the applicant acknowledges its responsibility to provide replacement Public Open Spaces (POS) and has proposed replacement land directly to the west and to the south of the existing Ron Evans Memorial Field, totaling 92,124m². The Council is satisfied with the extent of replacement land in principle, however, the timing of the re-provision is problematic, as the applicant seeks to not provide replacement Public Open Space for a period of not less than 5 years after the POS is taken (refer to paragraph D.5.39 <i>et seq</i> on page 27 <i>et seq</i> and Plate D.7 on page 39 and Plate D.8 on page 41 of 7.2 Planning Statement Appendix D Open Space (Clean Version) (REP3-108). The timing of re-provision is not acceptable, as it puts greater pressure on an already scarce local public asset and the Council requested that the area of re-provision be established prior to the permanent acquisition of existing Public Open Space to reduce the impact on residents.</p> <p>The applicant and the Council have met and subsequent to that meeting the applicant has given a commitment (SAC-R-014) to provide the majority of the more northerly area prior to permanent acquisition of land at Ron Evans Memorial Field. Whilst this is welcomed it still means that for a period of not less than 5 years the Council has a lack of POS.</p>

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Agenda Item	Thurrock Council's Response
	<p>In determining that re-provision after five years is acceptable the applicant has stated that the benefits of improved quantity and quality of the replacement POS outweigh the disbenefits of a 5-year delay. The applicant has been invited to produce evidence to support its contention but has failed to do so. The request remains extant. Insofar as the assessment of the benefits outweighing the disbenefits relies on professional judgement, then the Council wishes to know whose professional judgement is relied on and the extent to which they are suitably qualified to make that assessment, as well as the methodology used in the exercise of this professional judgment and analysis/evidence to support the professional judgement reached.</p> <p>Notwithstanding this, the Council is advised that, as a matter of law, each of the criteria applied in assessing replacement POS is to be assessed in its own right.</p> <p>In addition, the loss of a significant area of POS on a temporary period, of unknown duration, significantly disadvantages residents within the Borough, particularly those in the dense housing (including multi-storey developments) adjacent to the POS – the more so given that, currently, the applicant is unable to say when, for how long and how often it requires the current POS. Re-provision of this is considered essential by the Council.</p> <p>The Council's position is fully explained at Section 9.4.5 et seq of Deadline 6 Submission - Comments on Applicant's Submissions at Deadline 4 (D4) and Deadline 5 (D5 (REP6-164)).</p> <p>The National Policy Statement National Networks (NPSNN) policy on POS is set out at paragraph 5.181, as follows:</p> <p><i>'The Secretary of State should also consider whether mitigation of any adverse effects on green infrastructure or open space is adequately provided for by means of any planning obligations, for example, to provide exchange land and provide for appropriate management and maintenance agreements. Any exchange land should be at least good in terms of size, usefulness, attractiveness, quality and accessibility. Alternatively, where Sections 131 and 132 of the Planning Act 2008 apply, any replacement land provided under those sections will need to conform to the requirements of those sections.'</i></p> <p>S131 of the Planning Act requires provision of replacement land where 'replacement land' means:</p> <p><i>'Land which is not less in area than the order land and which is no less advantageous to the persons, if any, entitled to rights of common or other rights, and to the public'.</i></p> <p>S132 of the Planning Act identifies 'replacement land' as:</p> <p><i>'Land which will be adequate to compensate the following persons for the disadvantages which result from the compulsory acquisition of the order right</i></p> <p>(a) <i>The persons in whom the order land is vested,</i></p> <p>(b) <i>The persons, if any, entitled to rights of common or other rights over the order land, and</i></p>

Post Hearing Written Submissions (CAH5 and ISH11 – ISH14)
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Agenda Item	Thurrock Council's Response
	<p>(c) <i>The public</i>’.</p> <p>Whilst the Council agrees that the proposed replacement land <u>when provided in full</u>, will be ‘<i>at least good in terms of size, usefulness, attractiveness, quality and accessibility</i>’, it does not meet the:</p> <ul style="list-style-type: none"> • NPSNN test because, on the basis of the applicant’s own submission see paragraph D.5.46 of 7.2 Planning Statement Appendix D Open Space (Clean Version) (REP3-108) where the Applicant notes that ‘<i>..the replacement land is anticipated to become available for public use five years after the existing Ron Evans Memorial Field is impacted by the Project..</i>’ • S131 PA2008 test because the POS provision is ‘<i>less advantageous</i>’ until the re-provided POS becomes available five years after the POS is taken.
b) Funding for Residual Impacts and Other Planning Obligations	
i Community funds The ExA would like to discuss the following:	
<ul style="list-style-type: none"> • Whether the quantum of Community Funds identified in the S106 Heads of Terms document (REP4-145) are sufficient; 	<p>The Council provided a joint paper to the applicant in November 2022. It was prepared with other authorities directly impacted by LTC, namely Thurrock Council, LB Havering, Gravesham Borough Council and Medway Council. The joint paper is attached to the Council Deadline’s 1 submission at Annex 5 of Appendix G - REP1-288.</p> <p>The Council’s position, as set out in the joint paper, is that £1.89 million over seven years is wholly insufficient and that a more appropriate figure is £3.75 million over seven years.</p> <p>The Council’s figure of £3.75 million was the result of careful benchmarking analysis against a representative sample of four recent large scale infrastructure projects, namely Thames Tideway (infrastructure), A14 (road), Hinkley Point (nuclear) and HS2 (rail). The Council took the average scale of Community Fund per £ of capital investment and applied it to LTC – that is the source of £3.75 million. This detailed work was shared in full with the applicant as early as January 2022 and is shown in the table below.</p>

Post Hearing Written Submissions (CAH5 and ISH11 – ISH14)
Lower Thames Crossing

Agenda Item	Thurrock Council's Response																																																
	<table border="1" data-bbox="536 383 1393 869"> <thead> <tr> <th>Name of Scheme</th> <th>Name of Fund</th> <th>Scale of Overall Project</th> <th>Scale of Fund</th> <th>Ratio (Community Funding per £1M capital spend)</th> <th>Fund Scale Category</th> </tr> </thead> <tbody> <tr> <td>Race Bank/Horsea Offshore Wind</td> <td>East Coast Community Fund</td> <td>£2.8bn</td> <td>£9.3M <small>(based on £465K per annum, committed for 20 years)</small></td> <td>£3.321</td> <td>High</td> </tr> <tr> <td>HS2 Rail Phase 1</td> <td>Community & Environment Fund</td> <td>£44.0bn</td> <td>£40M</td> <td>£909</td> <td>Medium</td> </tr> <tr> <td>Hinkley Point Nuclear New Build</td> <td>HPC Community Fund</td> <td>£22bn</td> <td>£12.8M</td> <td>£582</td> <td>Medium</td> </tr> <tr> <td>A14 Highways Cambridge to Huntingdon</td> <td>A14 Community Fund</td> <td>£1.5bn</td> <td>£0.5M</td> <td>£333</td> <td>Low to Medium</td> </tr> <tr> <td>Thames Tideway Tunnel</td> <td>Community Enhancement Fund</td> <td>£3.8bn</td> <td>£1.0M</td> <td>£263</td> <td>Low to Medium</td> </tr> <tr> <td>Lower Thames Crossing</td> <td>Fund in preparation</td> <td>£8.2bn</td> <td>£1.5M <small>(initial indication)</small></td> <td>£183</td> <td>Low</td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td> Median Average of Comparators (excl. Race Bank/Horsea) = £475 per £1M LTC Community Fund if aligned to Average (excl. Race Bank/Horsea) = £3.75M </td> <td></td> </tr> </tbody> </table> <p data-bbox="536 887 1393 1070">By comparison, the applicant's benchmarking was based on only relatively modest scale road-based schemes that are not directly comparable to the scale and impact of LTC; and, even then the applicant did not use accurate figures, as we set out in Joint Paper REP1-288. It is for these reasons that the applicant's £1.89 million is insufficient.</p> <p data-bbox="536 1088 1393 1301">The comments made as a 'footnote' to that submission in relation to this bullet 1 on this agenda item in relation to the scale of the fund, require adjustment. The adjustment is that the Council benchmarking exercise, which yields the figure of £3.75 million, is based on a median figure as opposed to a mean. So, when the Council states average using our four NSIP 'comparable benchmarks', it is meant as the median, not mean, which was clear within the Council's D1 submission.</p>	Name of Scheme	Name of Fund	Scale of Overall Project	Scale of Fund	Ratio (Community Funding per £1M capital spend)	Fund Scale Category	Race Bank/Horsea Offshore Wind	East Coast Community Fund	£2.8bn	£9.3M <small>(based on £465K per annum, committed for 20 years)</small>	£3.321	High	HS2 Rail Phase 1	Community & Environment Fund	£44.0bn	£40M	£909	Medium	Hinkley Point Nuclear New Build	HPC Community Fund	£22bn	£12.8M	£582	Medium	A14 Highways Cambridge to Huntingdon	A14 Community Fund	£1.5bn	£0.5M	£333	Low to Medium	Thames Tideway Tunnel	Community Enhancement Fund	£3.8bn	£1.0M	£263	Low to Medium	Lower Thames Crossing	Fund in preparation	£8.2bn	£1.5M <small>(initial indication)</small>	£183	Low					Median Average of Comparators (excl. Race Bank/Horsea) = £475 per £1M LTC Community Fund if aligned to Average (excl. Race Bank/Horsea) = £3.75M	
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<ul style="list-style-type: none"> Whether the value of the fund should be fixed at the point of a signed agreement or appropriately indexed, and if indexed what index is suggested, e.g. Retail Price Index (RPI), the Consumer Price Index (CPI), the Building Cost Information Service (BCIS); 	<p>The Council's position is that the Fund should be index linked. This was made clear in the joint paper with other impacted authorities. The Council requested an annual Index-linked review, whereby the remaining unallocated amount is increased in line with the Consumer Prices Index with Housing (CPIH) each year, which is the UK's main measure of inflation.</p>																																																

Post Hearing Written Submissions (CAH5 and ISH11 – ISH14)
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Agenda Item	Thurrock Council's Response
<ul style="list-style-type: none"> Whether the fund should be split into identified amounts for each local authority area affected by the route alignment, and if so what percentage split is appropriate; 	<p>Yes, the Council agrees that the Fund should be split into identified amounts for each local authority.</p> <p>The joint paper made some modest changes to the splits proposed by the applicant. The proposed changes are, as follows:</p> <ul style="list-style-type: none"> Increase the % allocated to the Community Fund North from 66% to 70%. Some adjustments to the sub-division of the Community Fund North. Some adjustments to the sub-division of the Community Fund South. <p>The precise adjustments are as set out in the Council's Deadline 1 submission at Annex 5 of Appendix G - REP1-288.</p> <p>Despite these changes being agreed amongst all the parties directly impacted by LTC, the applicant has not agreed to them.</p>
<ul style="list-style-type: none"> What types of schemes may be funded; 	<p>The Council is content with the proposed thematic remit of the Fund but has two requests on the operation of the Fund. Both of these requests were covered adequately in the proposed wording of the Heads of Terms document but are not covered in the current S106 document being discussed between the Council and the applicant that now forms part of the SAC-R, Part 3. The Council has raised both these requests with the applicant within recent S106 discussions:</p> <p>First – the Council require the Fund to have the flexibility to support projects beyond £10K and up-to £25K if they are exceptional (as per the current HoT document).</p> <p>Second – the Council are supportive of timely delivery of projects (as per the current HoT document), but do not wish to see a clause that states projects must be <u>fully deliverable within 12 months</u> of receipt of grant, as this seems overly restrictive and does reflect the realities of delivering small scale community grants.</p> <p>It is understood from the Hearing with the verbal evidence of the applicant that these two requests will be incorporated into a subsequent revision to the SAC-R and if correct the Council welcomes this accommodation.</p>
<ul style="list-style-type: none"> Should the remit of the fund be expanded? 	<p>The Council is content with the proposed thematic remit of the Fund but has two requests on the operation of the Fund. Both of these requests were covered adequately in the proposed wording of the Heads of Terms document but are not covered in the current S106 document being discussed between the Council and the applicant that now forms part of the SAC-R, Part 3. The Council has raised both these requests with the applicant within recent S106 discussions:</p> <p>First – the Council require the Fund to have the flexibility to support projects beyond £10K and up-to £25K if they are exceptional (as per the current HoT document).</p> <p>Second – the Council are supportive of timely delivery of projects (as per the current HoT document) but do not wish to see a clause that states projects must be <u>fully deliverable within 12 months</u> of receipt of grant, as this seems overly restrictive and does reflect the realities of</p>

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Agenda Item	Thurrock Council's Response
	<p>delivering small scale community grants.</p> <p>It is understood from the Hearing with the verbal evidence of the applicant that these two requests will be incorporated into a subsequent revision to the SAC-R and if correct the Council welcomes this accommodation.</p>
<p>iii S106 – Current Heads of Terms and Omissions</p> <p>The ExA would like to hear from the Applicant and the Local Authorities on the status of discussions on s106 Agreements (separate to the discussion on item b) i above). The ExA is specifically interested to understand the matters which are settled and agreed between the parties and the matters which remain outstanding or not agreed and the reasons for the lack of agreement. Document [REP4-145] will assist this discussion.</p>	<p>The S106 Agreement is not yet in an agreed form. It is important to note that the Heads of Terms were dramatically reduced unilaterally by the applicant and the finalisation of the draft S106 Agreement is therefore still in question.</p> <p>There are several significant issues still outstanding and on which the applicant agreed to reconsider its position:</p> <ul style="list-style-type: none"> • The new offer on Officer Support Contributions from the applicant, whilst improved, is significantly below that required by the Council and the applicant agreed to consider providing justifications and calculations to support its position. The Council provided that detailed information in its submission to the applicant and therefore awaits that required information in return. However, on 2 December 2023 the Council received a final S106 offer from the applicant that it is currently being reviewed; • The improved offer on Severance related to Brennan Road is as required by the Council and will be considered formally by the Council once a plan is added to the Agreement schedule, but the sum is required by the Council to be index-linked, which the applicant has now confirmed and is welcome; • The issue of 'Commencement' not including Preliminary Works remains, but has been rejected by the applicant and is set out in further detail in Section 6.16 of the Council's D8 submission; • Clause 5.3 of the draft S106 Agreement prevents the applicant from transferring the benefit of the Order, without the transferee entering into a deed of covenant with the Council on terms equivalent to the S106 Agreement. The Council note that the LB Havering has requested that this goes into the Order itself. The Council does not object to this; and, • Regarding the removal of Schedules 2 and 3 (SEE Strategy and Targets and Community Fund) and their incorporation into the SAC-R, however, the applicant has provided a new version of the SAC-R at D7. The Council is particularly concerned that the securing mechanism for the SAC-R is Article 61 of the dDCO and it does not yet provide any absolute commitment to any of the measures set out within it. However, many of the Council's comments on these two key matters remain refused by the applicant. <p>The Council's comments on the main Agreement and retained Schedules relate to the commencement definition and comments on various Schedules, which it is hoped can be resolved. The Council has accepted that the two Schedules relating to the SEE Strategy and Targets and the Community Fund will now be removed and placed within the SAC-R. However, the Council has stated that it '<i>needs to</i></p>

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	<p><i>review the amended SAC-R with Parts 2 and 3 included and needs to review the proposed wording for Article 61 of the dDCO to ensure it provides for an absolute commitment to these two schedules.'</i></p> <p>The Council still maintains its objections to detailed matters within both Schedules, which have been reiterated to the applicant and the Council awaits the applicant's response. In addition, the applicant's response to its requested proposals for Council Officer Support contributions, is yet to be reviewed and it has received the applicant's positive response to its proposals for Severance at Brennan Road, together now with the index-linking of this sum.</p> <p>The Council remains concerned about the applicant's refusal to consider a S106 contribution to Orsett Village mitigation. The applicant had previously offered funding and mitigation however this has been withdrawn. The applicant determined that the lack of a Council report on this and other similar issues meant it would remove this item from further S106 consideration and rely instead on other temporary measures, as part of more detailed design and management plans, supported by ongoing monitoring. The Council has made further comments on this matter in its D6A submission. It should be noted that the applicant maintains in Section 2.5.3 of its responses within REP6-096 that the oTMPfC provides adequate measures to manage traffic impacts on Orsett Village – the Council strongly disagrees. Issues with Orsett Village have been dealt with in more detail in the Council's D6A submission.</p> <p>Draft S106 Programme</p> <p>The applicant's proposed programme for achieving an agreed S106 Agreement has already been delayed by the applicant and it remains questionable as to whether it will be achieved to the significant detriment of the Council, in the Council's opinion, especially given the more extensive governance procedures of the Council, given its S114 status, in respect of this financial agreement.</p> <p>There are also several detailed comments on the draft S106 Agreement that remain a concern to the Council. Accordingly, the Council remains concerned that agreement by D9 may not be achieved, largely because the applicant has only recently fully engaged and improved its position after over 18 months of discussions.</p>
<p>c) Local Plan Commitments</p>	<p>Thurrock Council Statement</p>
<p>iv Impacts on Local Plan Allocations</p> <p>The ExA would like to hear from relevant local authorities on the potential impacts of the Project on the delivery of residential and commercial growth commitments contained within</p>	<p>Oral submissions on this point of the agenda were not given. The ExA has set ISH12 Action 14 and the following Written Submission covers the Council's submission on that action aligned with the points published on the agenda. A summary is provided below with the full text covered within Action Point 14 below.</p> <p>The Council understands that the agenda item only relates to Local Plans which have reached post Regulation 19 stage only. However, the Council has several serious concerns about the impact of LTC on Borough residents and Local Plan deliverability and lack of mitigation for key junctions and other environmental mitigations that are likely to affect the deliverability and viability of major development sites and on the</p>

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<p>adopted plans or advanced published emerging plans (post Regulation 19 stage plans only). Where applicable, the ExA would like to understand which parts of the Proposed Development are seen as likely to hinder plan delivery and why?</p> <p>For the avoidance of doubt, the ExA does not wish to hear submissions relating to sites put forward at a 'call for sites' stage in emerging plans that have yet to reach Regulation 19 publication stage. The ExA also does not wish to hear repeat submissions on the delivery of the Tilbury Freeport / Port Expansion or the Brentwood Enterprise Park, as these have already been discussed on several occasions at previous hearings.</p>	<p>Local Plan itself.</p> <p>For context, the Council's new Local Plan programme is set out in its published LDS programme dated September 2023 and available on the Council website:</p> <ul style="list-style-type: none"> • Regulation 18 – commencing in December 2023 and consultation ending in mid-February 2024 • Regulation 19: End 2024 • Adoption: Summer 2026 <p>The impacts of LTC on future growth includes the following:</p> <p>Delays, uncertainty, and negative effects on viability in providing adequate infrastructure to enable strategic housing and employment locations to be delivered, as a result of construction disruption over six or more years, inadequate mitigation and uncertainty, particularly near Chadwell St. Mary, Linford, East Tilbury and South Ockendon.</p> <p>A primary issue for the Council with the LTC scheme is with Orsett Cock Junction and capacity along the A13 and at Manorway Junction. The Council spent a significant sum to upgrade the A13 and key junctions, which was completed in late-2022. This Council funding was for improvements to the A13 to accommodate future growth and not be used by additional traffic as a result of LTC. However, the DCO for the LTC scheme could be granted before the Council's emerging Local Plan is adopted and future growth can properly commence. In view of the fact that the Applicant's scheme for LTC is not providing the required mitigation or financial contributions required for a workable solution to the interface with the scheme at A13/Orsett Cock Junction, will create a major issue for the Council. In addition, LTC will also have significant impacts on major junctions, such as The Manorway junction, the Five Bells interchange, and the Asda Roundabout, in the Borough, which the applicant is also not mitigating as part of the LTC DCO scheme.</p> <p>Clearly, there will be extensive traffic and environmental problems caused by LTC during the minimum six-year construction period. Therefore, there will be a cumulative and long-term construction impact from LTC and major building sites across the Borough, all of which will need to be phased. Furthermore, the minimum two-year delay to the DCO commencement of construction that was announced by the SoS for Transport and the now current timetable for construction (due to commence no earlier than 2026, with completion no sooner than 2032) will lead to further uncertainty in terms of delivery of infrastructure, developments and implementation of the emerging Local Plan, if the DCO is consented.</p> <p>To support the delivery of future growth in Thurrock, the Council and developers require certainty that the impacts of LTC that have been challenged by the Council will be identified by evidence, mitigation and funding identified and/or provided by the applicant, as well certainty on timing. None of this has yet been provided by the applicant nor will be provided prior to the close of the Examination.</p> <p>The Local Plan team are looking to publish Regulation 18 Local Plan during December 2023. However, because of the uncertainty of LTC mitigation for major junctions in Thurrock and the impacts</p>

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		on Local Plan deliverability and viability concerns, this may prevent the Council getting to Regulation 19.
4	Project Delivery and Control Documents	
i	<p>The ExA will ask the Applicant to provide an overview of the operation of the proposed Control Documents with reference to the Lower Thames Crossing Mitigation Route Map [REP4-203] (MRM). It will be asked to explain it's in-principle approach to the Control Document set and to set out:</p>	<p>The proposed approach to control documents is understood. The Control Plan is set out at Plate 1.1 of APP-003. Broadly this sets out how key documents are secured within the Articles and Schedules of the DCO. If granted the Articles and Schedules in the DCO will require actions, such as the EMP and construction travel plans to be undertaken in accordance with certain outline documents submitted and considered as part of the application.</p> <p>Those outline documents are certified in accordance with Article 62 and listed in Schedule 16. The reason they are certified is so that there is no confusion as to which version of the documents are the 'control documents' (most documents have evolved since original submission).</p> <p>However, it should be noted that simply because a document is listed in Schedule 16, does not mean that there is a requirement for the applicant to comply with it. The applicant only has to comply with those documents are specifically referred to in the Articles and Schedules.</p> <p>The Council is concerned about the fact that there is an unacceptable amount of flexibility in how the documents are secured. A number of the requirements (such as Requirements 4, 5 and 10) are secured through interactions, with the draft document 'being substantially in accordance', or 'reflecting' a control document. This provides significant flexibility, the effect of which is magnified by the flexibility already contained within the control documents.</p>
	<ul style="list-style-type: none"> Documents submitted with the application or in Examination; 	No comments, except those raised in all previous submission regarding technical adequacy.
	<ul style="list-style-type: none"> Documents to be submitted subsequently; 	No comments
	<ul style="list-style-type: none"> Managing stages – the iteration process; 	Comments of adequacy raised in all previous submissions.
	<ul style="list-style-type: none"> Whether there are any other documents that need to be discussed in addition to those identified in the MRM in order to understand the operation of the Control Document 	<p>The Council submitted its comments on the MRM in its D6 submission (REP6-164) in Section 14.</p> <p>In summary, the MRM is considered to be missing certain key elements namely:</p> <ul style="list-style-type: none"> Additional controls and mitigations within the ES; Other legal commitments; Some certified documents are not adequately secured (as set out in the Council's D6 submission in Section 3.6;

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<p>set?</p> <ul style="list-style-type: none"> This item is to inform subsequent discussions and the ExA will not be seeking submissions about the merits of individual documents at this stage. 	<ul style="list-style-type: none"> Some commitments are not absolute as with the SAC-R; and Individual commitments within each Control document are not listed only the overall document. <p>Other comments were raised in Section 14 about specific topics.</p>
b) Code of Construction Practice (CoCP) (1st Iteration) [REP6-038, 040 & 042]	
<p>i The ExA will ask the Applicant about the relationship between the CoCP and dDCO: what is the basis for security for this document?</p>	<p>Comments made by Mr Mackenzie ISH12 Transcript Page 102 (EV-085h)</p> <p>A brief legal submission connected with the wriggle room point that Mr Bedford addressed, and the debate between the Council and the applicant about whether the word 'substantially' should or could be removed from Requirement 4 of Schedule 2. Understanding the applicant's position, that there is a DCO decision in which the Secretary of State decided that it would not remove the word 'substantially', because to do so would give rise to legal problems in terms of fettering of discretion, but it is not clear whether that decision has engaged with the restatement of the Pilkington principle in the Supreme Court decision Hillside Parks. That was a decision in which the Supreme Court held that even in the context of a planning permission that says that the development has to be carried out in accordance with the relevant plans, that does not mean that exact compliance is needed. The Supreme Court said that that would be an unduly rigid and unrealistic approach to adopt, and for that reason would generally be an unreasonable construction to put on the document recording the grant of planning permission. All the more so where the permission is for a large multi-unit development, and the ordinary presumption must be that a departure there means a departure causing effectively the redundancy of the permission will have this effect only if it is material in the context of the scheme as a whole, and in his submission that applies a fortiori in the context of the 2008 Act DCOs. In other words, even where there is a requirement for, in this case, the requirements of the CoCP – the removal of the word 'substantially' would still, on the Hillside Parks approach, build in a degree of flexibility.</p> <p>The Council therefore seeks to persuade the ExA respectfully that it is legally permissible for the word 'substantially' to be removed. There's a separate question as to whether the flexibility that the applicant's say they need to deliver a project of the magnitude of LTC, that is a slightly different question on the merits, but that was his position in relation to the legal point.</p> <p>The Council is broadly satisfied with the structure of how documents are secured. However, the wording of how the iteration of documents is secured is of concern. As set out below, there are a number of places where documents are described as being 'substantially in accordance</p>

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	<p>with', or 'reflecting' and outline document. This is not considered acceptable when the outline documents themselves contain a high degree of flexibility.</p> <p>The Code of Construction Practice is referred to in several places in the dDCO. Below the Council reproduce each instance with as much surrounding context as is necessary and comment on the security provided by each reference. Key parts are underlined.</p> <p>(A)</p> <p><i>Article 58: Defence to proceedings in respect of statutory nuisance</i></p> <p><i>—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance)(a) of the Environmental Protection Act 1990 in relation to a nuisance falling within paragraph (d), (e), (fb), (g), and (ga) of section 79(1) (statutory nuisances and inspections therefor.) of that Act no order is to be made, and no fine may be imposed, under section 82(2)(b) of that Act if—</i></p> <p><i>(a) the defendant shows that the nuisance—</i></p> <p><i>(i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the construction or maintenance of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site)(c) of the Control of Pollution Act 1974; or</i></p> <p><i>(ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or</i></p> <p><i>(b) the defendant shows that the nuisance is a consequence of the use or operation of the authorised development and that it cannot reasonably be avoided.</i></p> <p><u><i>(2) For the purposes of paragraph (1), compliance with the controls and measures described in the Code of Construction Practice or any environmental management plan approved under Paragraph 4 of Schedule 2 to this Order will be sufficient, but not necessary, to show that an alleged nuisance could not reasonably be avoided.</i></u></p> <p>This reference in itself does little to secure the CoCP in terms of its content. It references following it as a potential defence to proceedings for nuisance but does not set out any requirement as to its content or matters it must cover in order to be capable of being used in this way other than it needs approval under Paragraph 4 of Schedule 2.</p> <p>There is reference in paragraph 4 of Schedule 2 to the need for the EMP (second iteration) to be 'substantially in accordance with' the CoCP. This clearly leaves scope for departure from the CoCP.</p> <p>(B)</p> <p><i>Schedule 2, Part 1</i></p> <p><i>1.—(1) In this Schedule—</i></p> <p><i>'advanced compound areas' means the areas shown as advanced compound areas in plate 3.1 of the Code of Construction Practice;</i></p>

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	<p><i>This effectively defines where the location of advanced compound areas.</i></p> <p>(C)</p> <p><i>'Code of Construction Practice' means the document of that description in Schedule 16 (documents to be certified) certified as the code of construction practice by the Secretary of State and which is the first iteration of an environmental management plan;</i></p> <p>There is no ambiguity as to what the Code of Construction Practice means when referred to in the DCO.</p> <p>(D) <i>'outline materials handling plan' means the outline materials handling plan appended to the Code of Construction Practice;</i></p> <p>See comment in relation to (B)</p> <p>(E)</p> <p><i>'preliminary works EMP' means Annex C of the Code of Construction Practice and includes the preliminary works REAC;</i></p> <p><i>'preliminary works REAC' means those measures in the REAC applying to the preliminary works as shown in Table 2.1 of Annex C of the Code of Construction Practice;</i></p> <p>See comment in relation to (B).</p> <p>(F)</p> <p><i>'REAC' means the register of environmental actions and commitments contained in the Code of Construction Practice;</i></p> <p>See comment in relation to (B).</p> <p>(G)</p> <p><i>4.— (1) The preliminary works must be carried out <u>in accordance with preliminary works EMP.</u></i></p> <p><i>(2) No part of the authorised development is to commence until a EMP (Second Iteration), <u>substantially in accordance with the Code of Construction Practice</u>, for that part has been submitted to and approved in writing by the Secretary of State, following consultation by the undertaker with the relevant planning authorities, relevant local highway authorities and bodies identified in Table 2.1 of the Code of Construction Practice to the extent that it relates to matters relevant to their respective functions.</i></p> <p>In relation to the preliminary works this has been secured by an absolute obligation to comply with the preliminary Works EMP, which is contained within the CoCP. This is less effectively secured in relation to the EMP (Second Iteration), as it only needs to be 'substantially in accordance with' the CoCP.</p> <p>(H)</p> <p><i>(5) An EMP (Third Iteration) must be developed and completed by the end of the construction, commissioning and handover stage of any part of the authorised development, in accordance with the process set out</i></p>

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	<p><i>in the Code of Construction Practice.</i></p> <p>This is a relatively strongly secured, in that the EMP (Third Iteration) must be 'in accordance' not substantially in accordance with the process set out in the CoCP. However, the Council do have concerns about who approves the EMP (Third Iteration) and the need to consult with the Council.</p>
<ul style="list-style-type: none"> Are relevant IPs clear about security? 	<p>On the assumption that certification of the CoCP by the Secretary of State satisfactorily secures the CoCP and that EMP2 has to be 'substantially in accordance with the Code of Construction Practice', then there is sufficient transitional security between CoCP and EMP2. However, this security would be made stronger, as set out above, by removal of the word 'substantially'.</p> <p>EMP 3 has to be developed and completed in accordance with the process set out in the Code of Construction Practice. Given that by this stage the CoCP would not be further amended then the security of EMP3, insofar as the process set out in the CoCP, is secured.</p>
<ul style="list-style-type: none"> Is security viewed as appropriate? 	<p>See above comments.</p> <p>Whilst the CoCP is secured, we would prefer to see the removal of the word 'substantially' in Requirement 4.</p>
<p>ii The ExA will ask the Applicant about the management of stages through the CoCP – the iteration process.</p>	
<ul style="list-style-type: none"> Are relevant IPs clear about the iteration process? 	<p>Comments by Mr Neve – ISH12 Transcript Page 103 (EV-085h) on agenda item 4b ii)</p> <p>MR NEVE: spoke on the items raised by the ExA regarding the process of approving and iterating the CoCP. He noted the Council's perspective that it was concerning itself with how to continue to be engaged in the process of agreement after the granting of the DCO. He noted that as Ms. Tafur indicated, there is effectively two sets of control documents. Those that are set at grant, and those that are developed post-grant. The CoCP and the EMPs are into the second set, so there is likely to be some development and iteration through the construction process.</p> <p>The Council needs to understand that the CoCP as at the end of the Examination is potentially the last opportunity to influence change, and so it needs to make sure that it has suitable governance process, that it is able then to influence and manage and help govern that process. He concurred with Mr Bedford KC, that flexibility is an understood perspective that is required in the CoCP and EMP iteration procedure, but that does not mean to say that there are no parameters or there are not sufficient parameters to guide and control the development of the detailed EMPs. He reported that the Council has been keen to introduce those parameters. He reiterated that a detailed response on the desired rigour and adjustments was contained in the Council's response to ExAQ1 Q4.6.4 (REP4-353). That response gave a</p>

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	<p>comprehensive response to the suite of control documents and captures the detail of what the Council feel would be advantageous and perhaps necessary to help the governance process. The Council's concern is the degree of interpretation that is left within the documents in their current form.</p> <p>Rather than a hinderance, providing strong parameters within the outline document gives the basis for guidance to the contractor as to how they should take the control documents forward, and set a timetable for the updates.</p> <p>Summary Points</p> <p>In the CoCP, the applicant:</p> <ul style="list-style-type: none"> • identifies the Environmental Management Systems to be developed by the Undertaker and its contractors but does not propose to consult on or agree those matters; • Identifies EMP2s and EMP3s, but does not specify the phasing, geographic, programme or topic basis for each of these nor the coordination of those across the construction period; • States that only the first draft of any Control Document or management strategy will be consulted on prior to finalisation and submission to the sos, with no commitment to resolve feedback or disagreements; • Does not include triggers or mechanisms to ensure the EMP2s are kept up to date and coordinated; • Does not propose to consult the Local Authorities or other stakeholders on subsequent updates / iterations of the emps or any other governance documents; • Proposes to determine the assessment of changes in environment impact without reference to the Local Authority. <p>Draft development and iterations</p> <p>The CoCP clearly sets out that EMP2s and EMP3s are to be generated by the contractors and that those will reflect both the Undertaker's and the contractors' Environmental Management Strategies (EMSs).</p> <p>The applicant does not commit, however, to consult the Local Authorities and other stakeholders on the EMSs. Furthermore, the applicant proposes only to consults on the first drafts of the first versions of the EMP2s and EMP3. This is further captured in Requirement 19 of the dDCO (REP6-010).</p> <p>Following consultation on the first drafts of the initial EMP2s and EMP3s, there is no opportunity to respond to the approach that the contractors choose to adopt within the finalised EMP2 and EMP3 documents. Whilst the contractor is to document its consultation with stakeholders, there is no recourse in how it takes onboard (or not) comments and feedback on the first draft documents. The finalised documents are simply submitted to the SoS via the Undertaker and any updates are generated without the need for any consultation with the Local Authorities or stakeholders.</p>

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	<p>The EMP2s as first drafted will be in place for a number of years and could have serious consequences for the management of the local transport network and impacts on local communities that the SoS might not appreciate, particularly if not kept up to date. It therefore extremely important that agreement is reached with the Local Authorities on the coverage, currency and content of the EMP2s.</p> <p>The EMP3s for the operational state could have lasting effects and impacts that the Council cannot agree to but will be powerless to resist under the current process, where it is only a consultee to the first draft of the first iteration.</p> <p>A mechanism to discuss and resolve disagreement following consultation must be written into the consents' procedure.</p> <p>Control Document alignments, coordination and complexity</p> <p>The applicant often seems unclear as to whether it will require or expect a single discharge document from each of its main contractors or a series of phased or staged documents, e.g. '<i>an EMP2</i>' for its work (paragraph 2.3.1 of CoCP) or as indicated by the Requirement 4 '<i>no part of the authorised development is to commence....., for that part.....</i>'. It must be clarified how the applicant proposes that each main contractor will prepare EMP2s for its entire contract and how they will reflect phased documents or evolve them during the construction period.</p> <p>This lack of clarity is repeated across the suite of control documents, including the oTMPfC and the oMHP.</p> <p>It is the Council's view that the applicant has not fully enshrined within the draft control environment, the complexity of coordination across the various contracts and the need to align the control environment to reflect the different paces of delivery between the various works and across the different main- and sub-contracts. The need to engage, coordinate, agree and communicate that with the affected local authorities is not incorporated into the processes for approval or amendment and update.</p> <p>Future iterations and updates</p> <p>In regard to future iterations of documents, the Council has frequently and unsuccessfully challenged the applicant to explain how the suite of control documents will be maintained, aligned, coordinated and iterated. As currently presented the applicant's documents note that '<i>Where necessary, the EMP2 will be reviewed and revised.....following engagement with the bodies in Table 2.1</i>' (CoCP paragraph 2.3.1). It therefore acknowledges that updates and amendments might be necessary but does not set criteria for when those updates or amendments would be triggered. Furthermore, there is no clarity as to how compliance would be measured, and reviews or resolution action would be triggered. The applicant repeats that it will oversee contracting compliance as part of its formal agreements with the contractors and that compliance would be measured against the ES, which is an especially challenging judgement with regards to traffic and community impacts.</p> <p>In its response to the ExQ1 with reference Q1 4.6.4, the Council has</p>

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	<p>provided a detailed indication as to improvements that should be reflected in the control document suite for management of traffic and transportation. That response indicates the base level of triggers for updates/amendments, e.g. programme and phase changes, process changes or deviations, design alterations.</p> <p>These or any triggers have not been adopted by the applicant, and instead it leaves excess flexibility and interpretation within the documents.</p> <p>Changes (iterations) to the assessment of environmental impacts</p> <p>There is no commitment within Section 2.8 of the CoCP to engage with or communicate the assessment of post-Granting changes to the assessed environmental impacts. Instead, the contractor and the Undertaker are to independently determine what does and does not constitute a 'materially different' effect. The LAs are not included within that decision process but could have a very different conclusion on those assessments.</p> <p>That review process must include the affected stakeholders and include a mechanism to resolve disagreements.</p>
<ul style="list-style-type: none"> Are any revisions to the process sought? 	<p>Please refer to the above representation and to Council's response to ExQ1 Q4.6.4.</p>
<p>iii The ExA will ask IPs about the content of the CoCP</p>	
<ul style="list-style-type: none"> Is content appropriate? 	<p>Further Written Statement to Oral Submission given at agenda item 4b ii):</p> <p>It is the Council's opinion that there are a series of amendments that should be made to the CoCP and other framework Control Documents. Those changes would strengthen the foundations for the development of post-consent governance documents.</p> <p>Please refer to the Council's response to ExQ1 Q4.6.4 for details of the proposed adjustments and additions.</p>
<ul style="list-style-type: none"> Are any revisions sought? 	<p>Please refer to the Council's response to ExQ1 Q4.6.4.</p>
<ul style="list-style-type: none"> How should the REAC be managed – should it become a freestanding control document? 	<p>The REAC is currently provided as Chapter 7 to the CoCP (EMP First Iteration) (EMP1).</p> <p>Following any DCO Grant and the development of the construction period governance documentation, the EMP First Iteration will be replaced by the series of EMP Second iterations (EMP2s) and subsequently by the EMP Third iterations (EMP3s).</p> <p>It is appropriate, therefore, that the REAC should become its own document that can be maintained as a register and updated independently of the EMP1 as the construction process progresses. That process of updating should be carried out in engagement with the</p>

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	<p>Local Authorities. The mechanism for updating should be set out by the applicant, e.g. through the TMF.</p> <p>The applicant's solution of altering the name of the CoCP does not appear to fully address the concern regarding ease of use. It is unclear why the applicant is not prepared to separate out the REAC.</p>
<p>iv The ExA will ask the Applicant and IPs about decision-making under the CoCP</p>	
<ul style="list-style-type: none"> Is the decision-making process clear? 	<p>Further Written Statement to Oral Submission given at agenda item 4 b ii):</p> <p>Summary Points (general to all control documents)</p> <ul style="list-style-type: none"> The Council has very limited influence over decision making following any DCO Grant. Its input is limited to feedback on first draft, attendance at TMF and conflict representation at the Joint Operations Forum. The mechanisms for coordination across documents and iterations is not clear and is left to the Traffic Manager and Travel Plan Manager; Constructions Logistics Planning lies outwith the Traffic Management Plans and the Travel Plans; and, A consents discharge map and timetable would allow for resource management and improved feedback. <p>First iteration document discharge</p> <p>With regards to the decision-making process, that is proposed and captured in the CoCP and associated documents is not satisfactory to the Council and does not include sufficient feedback and conflict resolution and relies on decision and arbitration by the Joint Operations Forum, chaired by the Undertaker with no recourse to others.</p> <p>Whilst the Mitigation Route Map – Plate 2.1 - Control Plan indicates the constituent parts for subsequent discharge, it does not state how those documents are coordinated across the projects and contracts. This is stated as the unilateral function of the chair of the Joint Operations Forum, which is understood to be the Undertaker's Environmental Manager.</p> <p>For the first iterations of the control documents, the Council has a single opportunity at making improvements to the finalised plans that are to be issued to the SoS for consent, i.e. the EMP2s and their constituent parts, the EMP3s, the TMPs and SSTPs). That opportunity is in responding to the issued first draft documents.</p> <p>As noted previously, the Council has no response to the way in which the contractors (and Undertaker) rebut the feedback provided by the Council or other stakeholders. There is no conflict resolution stage or process. The process is therefore effectively unilateral following any granting of the DCO.</p>

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	<p>The contractors' EMSs are to include a works plan, but there is no requirement to provide a consents discharge timetable and map to indicate to the Council, which consents documents are to be presented in first draft for consideration or when those finalised documents would be submitted to the Undertaker and the SoS.</p> <p>The Council is therefore not able to plan its review of the documents and will not know whether it is to receive a coordinated group of documents or a drip-feed of uncoordinated / misaligned documents. The timeframe for providing a response on those documents remains set by Requirement 22, however, which could be unduly challenging for the Council even with the option of an extension to 42 days on application.</p> <p>Decision making subsequent to SoS approval</p> <p>As currently proposed, following approval of the discharged documents by the SoS the Council's only subsequent mechanism for resolution is through a weak representation on the Traffic Management Fora (TMFs) or through a Travel Plan Liaison Group or Worker Accommodation Working Group. Any representation at the Undertaker's controlled overseeing Joint Operation Forum is only by exception as part of a conflict resolution process from the TMFs.</p> <p>There is no clarity as to how decisions on the control and co-ordination across iterations of the documents or across the suite of documents is approached. This seems to be left very much to the Undertaker's Traffic Manager and Travel Plan Managers. This does not include coordination of the Construction Logistics Planning, which sits separately to those aspects, or other aspects such as materials and waste management.</p> <p>The decision-making process does not explain how coordination between those plans will be managed and so could require LHA to review consents documents in isolation of a clearly coordinated approach, e.g. SSTP without a TMP for works associated with those compounds and without information on the CLP, MHP and SWMPs.</p> <p>The timetable for preparation and publication of the EMS, the EMP2s etc. and how those documents will align and be coordinated with the subsidiary control documents is not stated. The process could be a single project wide strategy or developed by each MWC in isolation. The responsibility seems to lie with the Environmental Manager to oversee preparation, coordination, compliance, currency and updates. That would be a significant and complex task that should be set out within the documents before the ExA, such that the process is secured within the DCO, if it is to be granted.</p> <p>The applicant should secure through the DCO a commitment to provide a time-based and coordinated consents' discharge plan, to allow the Council to plan its resourcing of reviews and feedback.</p>
<ul style="list-style-type: none"> Are decisions being taken in the right place and with the right parties engaged? 	<p>Further Written Statement to Oral Submission given at agenda item 4 b ii):</p> <p>It is the Council's opinion that the decision process is too autonomous with no opportunity for the Council to be engaged in seeking resolution or with an open and impartial dispute resolution process. Please refer to the above representation and to Council's response to ExQ1 Q 4.6.4</p>

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	for further details.
v The ExA will ask about non-compliance and enforcement	
<ul style="list-style-type: none"> What is the anticipated role of the local authorities in this and how can they best deliver it? 	<p>Further Written Statement to Oral Submission given at agenda item 4 b ii):</p> <p>Summary Points:</p> <ul style="list-style-type: none"> Compliance processes are done in isolation of stakeholders and cannot be influenced by those stakeholders; The ability to monitor and enact compliance is challenging based on the absence of targets and measures to enforce; and, There is a heavy reliance on contractors defining the mitigation measures post consent and subsequent self-governance by the Undertaker. <p>Paragraph 2.7.2 of the CoCP stipulates that the applicant will incorporate compliance into contracts and will be responsible for compliance, however, that does not allow the Local Authorities to influence or enact that compliance procedure if they observe the need for compliance action.</p> <p>It is not enough to state that Local Authorities will have access to information on monitoring (CoCP paragraph 2.7.7), as that does not assist with managing the impacts on its networks and communities.</p> <p>There are very few measures that the applicant proposes to implement during the construction process, and it has wavered from its commitments on such aspects as routing agreements for workforce travel and construction related vehicles.</p> <p>It is therefore nearly impossible for the Local Authorities to influence compliance during construction.</p> <p>The applicant has referenced 'HGV bans' to apply to its construction vehicles, but it has not set out where those controls would be and is not able to enforce compliance. Furthermore, it has not committed to how it would aspire to enforce compliance. This is therefore a flawed proposal.</p> <p>Major strands of the applicant's resolution to workforce travel impacts rely on access by non-car modes and the use of public transport and organised shuttle services. The applicant has not set out how that strategy would be achieved and does not propose targets for the contractors to adopt into their strategies.</p> <p>There is, therefore, no reliable assessment base or impact resolution from which the applicant or the Council could base any compliance checking or enforcement.</p> <p>As with many aspects, the applicant places the onus for any definition on the management techniques to the contractors in the full knowledge that it too will not be able to commit to a sound management and compliance process. By that time the any DCO would be granted, and</p>

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	<p>the Council would be unable to influence resolution of the impacts.</p> <p>Whilst access corridors to the compounds have been indicated within the evidence base, e.g. the oTMPfC Section 4.1, the applicant now states that these are indicative and so cannot be complied with. It instead suggests that compliance would be based on its assessment of impacts within the Transport Assessment and Environmental Statement. That assessment of modelled impacts has been widely questioned throughout the Examination.</p> <p>The Contractors will propose alternative construction approaches and those will not align with the indicated 11 phases. It is therefore impossible for the Local Authorities to influence compliance management. It is for that reason that the Council has been pressing for strengthening and improvements in the pre-consent Control Documents that are to be secured by the DCO.</p> <p>Following any DCO grant, the Council will only be able to influence the construction process through the powerless Traffic Management Fora.</p>
b) Design Principles	
<p>With reference to the framework questions asked in relation to the CoCP, the ExA will ask equivalent questions about the Design Principles [REP6-046] document relating to:</p>	
<ul style="list-style-type: none"> The basis for security for the document 	<p>The Design Principles document is referred to in several places in the dDCO. Below we reproduce each instance with as much surrounding context as is necessary and comment on the security provided by each reference. Key sections are underlined.</p> <p>(A)</p> <p><i>Schedule 2, Part 1</i></p> <p><i>3.—(1) The authorised development must be designed in detail and carried out in accordance with the <u>design principles document</u> and the preliminary scheme design shown on the engineering drawings and sections, and the general arrangement drawings, unless otherwise agreed in writing by the Secretary of State following consultation by the undertaker with the relevant planning authority and, in respect of the authorised development comprising highways other than a special road or trunk road, the relevant local highway authority on matters related to their functions, provided that the Secretary of State is satisfied that any amendments to those documents showing departures from the preliminary scheme design would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.</i></p> <p>This provision secures the Design Principles Document as it has to be certified by the Secretary of State and cannot be altered without the Secretary of State being satisfied that any amendments that depart from</p>

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	<p>the preliminary scheme design would not give rise to any materially new or materially different environmental effects. The tail piece provision means that there is not absolute security.</p> <p>(B)</p> <p><i>5.—(1) Each part of the authorised development must be landscaped in accordance with a LEMP which sets out details of all proposed hard and soft landscaping works for that part and which has been submitted to and approved in writing by the Secretary of State prior to the opening of that part, following consultation by the undertaker with the bodies listed in Table 2.1 of the outline LEMP on matters related to their respective functions.</i></p> <p><i>(2) A LEMP prepared under sub-paragraph (1) must be substantially in accordance with the outline LEMP and must—</i></p> <p><i>(a) reflect the <u>design principles document</u> and the mitigation measures set out in the REAC</i></p> <p>This goes some way to secure the document in the dDCO, but does not protect its content, as the requirement to 'reflect' is not absolute.</p> <p>(C)</p> <p><i>13.—(1) The replacement of the Gammon Field travellers' site in Thurrock (Work No. 7R) must not commence until details of its layout and design have been submitted and approved in writing by the local planning authority, such approval not to be unreasonably withheld or delayed, following consultation by the undertaker with the local planning authority and the occupiers of the existing Gammon Field travellers' site.</i></p> <p><i>(2) The details submitted and approved under paragraph (1) must be in accordance with—</i></p> <p><i>(a) clause no. S11.12 of the design principles...</i></p> <p>This effectively secures the Design Principles in relation to the Gammon Field travelers site, as the details submitted must be in accordance with the relevant design principles.</p> <p>(D)</p> <p><i>17.—(1) The undertaker must design the detail of Work Nos. 5D, 5E and 5F in a manner that reasonably facilitates and accommodates a connection to the proposed Tilbury link road to the extent the route and design of proposed Tilbury link road is available prior to and up to the date of the submission of the detailed design of the tunnel area north of the river Thames to the design review panel pursuant to clause PRO.01 of the design principles</i></p> <p>Whilst this effectively secures the Design Principles, the Council have wider comments on this provision and have submitted an agreed version at D8.</p>
<ul style="list-style-type: none"> The management of stages – the iteration process for the document 	<p><i>'Schedule 2, Part 1 Paragraph 3(1) provides that any iteration on the already agreed design principles needs to be re-certified by the Secretary of State upon satisfaction that it will not give rise to any materially new or different environmental effects'.</i></p> <p>This is likely to mean that the ability to iterate on the Design Principles is</p>

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	quite limited, as it requires the involvement of the Secretary of State (or presumably senior officials under the Carltona principle).
<ul style="list-style-type: none"> The content of the document 	<p>The Council was actively engaged with the applicant when the Design Principles were being developed. The Council is generally satisfied with them. The Council as part of the wider SoCG discussions has provided additional text to strengthen PEO.01 - PEO.06 (D6 Submission – Comments on Applicant Submissions at D4 & D5 REP6-164) to ensure that they better align with LTN1/20 and Active Travel England guidance to help maximise future use of the WCH routes. It is noted that the latest version (REP7-141) does not have these amendments included.</p> <p>A new design principle - PRO.07 - Detailed design, has been added. This requires structured stakeholder engagement for specific projects, including Projected Enhanced Structures and Green Bridges and Tilbury Fields. This additional principle is welcomed by the Council.</p> <p>Specific additional principles S.10.15 and S.12.20 identify the need to deter unauthorised access to upgraded bridleways at two locations. Given the issues raised by landowners at ISH10 it is considered that these should be expanded to include all the new bridleway access points.</p>
<ul style="list-style-type: none"> Decision-making under the document 	How the document is utilized is set out above in relation to how the document is secured. The Council are broadly happy with the content of the document.
<ul style="list-style-type: none"> The management of non-compliance and the enforcement of the document's provisions 	Enforcement would be by the usual DCO enforcement mechanisms – Part 8 of the Planning Act, 2008.
c) Outline Traffic Management Plan for Construction (oTMPfC)	
With reference to the framework questions asked in relation to the CoCP, the ExA will ask equivalent questions for the oTMPfC [REP6-048]	<p>Further Written Statement to Oral Submission given at ISH14:</p> <p>The Council has proposed a number of adjustments to the oTMPfC to enhance the framework from which contractors will develop the detailed post-consent management documents and which will allow clearer and improved equitable overview and governance.</p> <p>Please refer to the above representation and to Council's response to ExQ1 Q 4.6.4.</p>
d) Framework Construction Travel Plan (fCTP)	
With reference to the framework questions asked in relation to the CoCP, the ExA will ask	<p>Further Written Statement to Oral Submission given at ISH14:</p> <p>The Council has proposed a number of adjustments to the FCTP to enhance the framework from which contractors will develop the detailed</p>

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<p>equivalent questions for the FCTP [REP5-054]</p>	<p>post-consent management documents and which will allow clearer and improved equitable overview and governance.</p> <p>Please refer to the above representation and to Council's response to ExQ1 Q 4.6.4.</p>
<p>e) Stakeholder Actions and Commitments Register (SACR)</p>	
<p>With reference to the framework questions asked in relation to the CoCP, the ExA will ask equivalent questions for the SACR [REP6-050]</p>	<p>Article 61 must adequately secure the SAC-R and consequently the Council suggests that this should be an absolute obligation, i.e. that the applicant will deliver the measures in the SAC-R). This is not considered unreasonable. Subsequently at D7 the applicant has amended Article 61 to read '61 (1) <i>The undertaker must when carrying out the authorised development implement the measures contained in Parts 1 to 3 of the stakeholder actions and commitments register,</i>' and this is considered acceptable.</p> <p>However, it is necessary to then determine how each SAC-R commitment actually secures this overarching provision and, in some cases, there is too much flexibility reducing the value of any commitment. For example, on page 22 the applicant is required to 'use its best endeavours to implement a form and comply with the provisions of the SEE Strategy' and on page 25 'National Highways covenants to require its Contractors to use their best endeavours' to comply with a list of specific targets.</p>
<p>f) Outline Landscape and Ecology Management Plan (oLEMP)</p>	
<p>With reference to the framework questions asked in relation to the CoCP, the ExA will ask equivalent questions for the oLEMP [REP4-140 & 142]</p>	<p>The oLEMP establishes the management principles for all landscape and ecological mitigation land within the Order Limits. The LEMP will be developed by the Contractor during detailed design and submitted for approval by the SoS. The LEMP will contain full details of the management operations and must be in accordance with the oLEMP.</p> <p>Section 4 of the oLEMP sets out the roles and responsibilities for the applicant, the Contractor, stakeholders and landowners and the monitoring party.</p> <p>SoS approval would be required for any changes to the specific management objectives or habitat types presented in the LEMP.</p> <p>An Advisory Group will be set up to help inform the decision making. There have been amendments to the Purpose of the Advisory Group (Section 1.4) made at D7 (REP7-135). Four additional points have been added to the remit of the group. New Point a, states the group will 'oversee the establishment of the habitats (during the establishment monitoring period in line with Table 4.1 of the oLEMP (REP7-133) or such period as the National Highways and advisory group agree.'</p> <p>Point j. has been added relating to the group reviewing and advising on achievement of success in light of annual reports at the end of the establishment monitoring period.</p> <p>The Council believes that the Advisory Group should have an ongoing role to advise on appropriate management post-establishment. While point a. is not explicit that this group will have a continued role passed establishment, the Council is satisfied that the group would have a</p>

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	<p>minimum existence of in excess of 20 years, due to the establishment periods of many of the habitat types.</p> <p>Point c. also clarifies the definition of in perpetuity.</p> <p>A new paragraph has been added to Section 4.2 of the oLEMP (REP7-133) confirming the need for in perpetuity management.</p> <p>The Council is satisfied that the latest oLEMP (REP7-133) and oLEMP – LEMP terms of reference (REP7-135) provide sufficient clarity regarding the roles and responsibilities of the different parties and the duration of future management and oversight.</p>
<p>g) Outline Site Waste Management Plan (oSWMP)</p>	
<p>With reference to the framework questions asked in relation to the CoCP, the ExA will ask equivalent questions for the oSWMP [REP6-040]</p>	<p>Further Written Statement to introductory oral submission given at ISH12 Part 2 page 144 9:</p> <p>Mr. Neve noted that the Council's waste expert would provide a written submission, but in summary he noted that the Council was largely content with the oSWMP, but that it required the applicant to express how the contractor was to prioritise the waste hierarchy, cascading through from the top (remove/prevent) with the lowest priority being dispose. The documentation currently refers to the hierarchy, but neither sets the clear priority or targets to be achieved.</p> <p>Further Written Statement</p> <p>The broad structure of the oSWMP (REP7-125) is appropriate, but the level of detail provided within the document remains insufficient for a project of this scale. The Council consider that the document needs to be further developed to reflect the temporal phasing of the project.</p> <p>As the Council has set out within its previous written responses (Within Section 8 in its responses to ExQ1 – REP4-353 and responses to ExxQ2 REP6-167) it believes that the oSWMP does not provide sufficient clarity on the prioritisation of the waste hierarchy, this is particularly reflected in the drafting of REAC MW007, in particular <i>'Preference would be given to appropriate reuse, recycling and/or recovery before disposal where feasible and permitted by the design'</i>. Whilst acknowledging the statement by the applicant in their response during ISH12 that the approach to the waste hierarchy is set out in the oSWMP (REP7-125), the Council does not believe this provides sufficient clarity for the future development of the waste management approach to be set out in the SWMP and could be redrafted to provide a greater level of commitment and onus to demonstrate why materials are not managed higher up the hierarchy. Through the conversations with the applicant the Council do not appear to fundamentally disagree with the aims of the REAC, however, the wording is imprecise and does not commit the applicant and their Contractor to a specific action, as it leaves it open to multiple interpretations.</p> <p>The Council considers that individual recycling rates should be set for individual material streams (with rates reflecting appropriate rates by material). With the variation in projected materials arising this approach would ensure that a focus is maintained across all material streams rather than the high tonnage 'easy wins'. This could be set within Table</p>

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	5.2 of the oSWMP (REP7-125).
h) Outline Materials Handling Plan (oMHP)	
<p>With reference to the framework questions asked in relation to the CoCP, the ExA will ask equivalent questions for the oMHP [REP5-050]</p>	<p>Further Written Statement to Oral Submission given at ISH12 Part 2 page 145 (EV-085h):</p> <p>The Council, the Port of London Authority (PLA), and the Port of Tilbury London Limited (PoTLL) have made strong representations on the weaknesses of the applicant's outline Materials Handling Plan on a number of occasions and would refer the ExA to those representations. A joint representation between the Council and the PLA is included in the Council's LIR at Appendix C Annex 4 (REP1-281). That representation was provided to the applicant prior to the submission of the accepted DCO submission. This position has been reiterated by the PLA, PoTLL, and the Council during the Examination, including at ISH5 as reported in the Council's Written Statements (REP4-352).</p> <p>The Council has proposed a number of adjustments to the oMHP to enhance the framework and commitments from which contractors will develop the detailed post-consent Materials Handling Plant and which will allow clearer and improved equitable overview and governance. The oMHP should consider not just in-bound aggregates, but also the reduction in environmental impacts and reduction in risks of the movement of inbound and outbound materials, plant and equipment. A comprehensive analysis of the benefits and options should be provided, explaining clearly and robustly why road transportation would be the recommended option if marine or rail transportation is ruled out. The applicant currently makes very general and dismissive statements without any incentive to its contractors to adopt a more environmentally sound or reduced risk method of transportation.</p> <p>Please refer to the above representation and to Council's response to ExQ1 Q 4.6.4 for further details.</p>
i) Draft Archaeological Mitigation Strategy and Outline Written Scheme of Investigation (AMS-oWSI)	
<p>With reference to the framework questions asked in relation to the CoCP, the ExA will ask equivalent questions for the AMS-oWSI [REP6-044]</p>	<p>Comments by Mr Havis – ISH12 Transcript Page 152 (EV-085h):</p> <p>The revised AMS-OWSI is an improvement on the earlier version with the role of the local Authority Archaeological Advisors now clearly defined. Discussions are still proceeding with the applicant regarding terminology being used in the definition of archaeological methods to be used to ensure that the work will fulfil the requirements to mitigate the impact of the road and its associated work.</p> <p>These areas include the following:</p> <ul style="list-style-type: none"> • Terminology used within the specific proposed mitigation methodologies; • A list of all of the mitigation areas and the mitigation methodologies proposed; and, • Further detail regarding the outreach proposals within the document. <p>It is understood that a further iteration of the document is to be</p>

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	<p>submitted.</p> <p>A further iteration was submitted at D7 (REP7-129), which contained further clarification on the role of the Local Authority Archaeologists in monitoring and signing off areas of archaeological mitigation. A further meeting has been held with the heritage specialists of the applicant where agreement was reached on the final areas of mitigation identified in the present plans submitted. The results of this meeting are to be submitted in the revised AMS-OWSI to be submitted at the next deadline.</p> <p>Two further REAC commitments have also been included, both of which are supported. One relates to the assessment for the potential of deep Paleolithic deposits in areas such as the tunnel mouth and M25 crossing and the other relates to access arrangements for the Archaeological Advisors to the Local Authorities.</p>
j) Carbon and Energy Management Plan (1st Iteration)	
<p>With reference to the framework questions asked in relation to the CoCP, the ExA will ask equivalent questions for the Carbon and Energy Management Plan [APP-552]</p>	
<p>i The ExA will ask the Applicant about the relationship between the C&EMP and dDCO: what is the basis for security for this document?</p>	<p>Carbon and Energy Management Plan, Carbon and Energy Plan and CEP are referred to in various places. CEP is defined as the carbon and energy management plan. Below the Council reproduce each instance with as much surrounding context as is necessary and comment on the security provided by each reference. Key elements are underlined.</p> <p><i>Schedule 2, part 1</i></p> <p><i>16.—(1) <u>No part of the authorised development must commence until a CEP (Second Iteration) for that part has been submitted to and approved in writing by the Secretary of State.</u></i></p> <p><i>(2) The CEP (Second Iteration) prepared under sub-paragraph (1) must be <u>substantially in accordance</u> with the CEP (First Iteration) and must—</i></p> <p><i>(a) include <u>reasonable measures</u> for the management and minimisation of carbon emissions during construction of the authorised development; and</i></p> <p><i>(b) specify the measures to be taken in the event of any failure to meet a target set out in the CEP (First Iteration).</i></p> <p><i>(3) <u>The construction of the relevant part of the authorised development must be carried out in accordance with the CEP (Second Iteration) approved for that part under sub-paragraph (1).</u></i></p> <p><i>(4) A CEP (Third Iteration) must be submitted to and approved in writing by the Secretary of State as soon as reasonably practicable at the end of the construction, commissioning and handover stage of any part of</i></p>

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	<p><i>the authorised development, in accordance with the process set out in the CEP (First Iteration).</i></p> <p><i>(5) The CEP (Third Iteration) prepared under sub-paragraph (4) must address the matters set out in the CEP (Second Iteration) that are relevant to the operation and maintenance of the authorised development and must contain the long-term commitments to manage and minimise carbon emissions during the operation and maintenance of the authorised development.</i></p> <p><i>(6) The authorised development must be operated and maintained in accordance with a CEP (Third Iteration).</i></p> <p>This sets out the security for the first iteration. The key issue is that the CEP (Second Iteration) only needs to be 'substantially in accordance' with the CEP. The document will also need to be certified.</p>
Are relevant IPs clear about security?	Paragraph 16 of Part 1 of Schedule 2 sets out a clear explanation of what is required of the first iteration of the C&EMP and this carries through the iterations.
Is security viewed as appropriate?	The security mechanism is appropriate, save that the CEP (Second Iteration) needs to be in accordance with the CEP, not just substantially in accordance with.
ii The ExA will ask the Applicant about the management of stages through the C&EMP – the iteration process.	
Are relevant IPs clear about the iteration process?	<p>It is clear that the applicant intends to ask its contractors to monitor carbon emissions and report carbon emissions from the application documents (APP-552) and subsequent communication between the applicant and the Council, including 26 September 2023, as documented in the draft SoCG (REP6-031).</p> <p>These emissions will be independently audited.</p> <p>The Council understand compliance with C&EMP and future iterations will be controlled through the contract between the applicant and the contractors.</p> <p>The C&EMP does not provide a breakdown of carbon emission budgets per phase of construction and provides no indication of the methodology of how the applicant will set carbon budgets per phase for the contractor to adhere to.</p> <p>The C&EMP does not provide a methodology as to how non-conformities and corrective procedures will be applied, as one would expect of an environmental management system.</p> <p>The C&EMP does not provide for independent regulation of compliance to any budgets being set outside of the contract between the applicant and the contractors.</p>
Are any revisions to	Clarifications on how budgets will be set, the non-conformity and corrective action procedures and independent regulation of the process

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<p>the process sought?</p>	<p>have been requested through continual engagement with the applicant, as referenced in the SoCG (REP6-031).</p> <p>The Council presented a list of considerations within Appendix K of the LIR (REP1-292) relating to need for the C&EMP to consider host community carbon emissions and climate vulnerability impacts as best practice.</p>
<p>iii The ExA will ask IPs about the content of the C&EMP</p>	
<p>Is content appropriate?</p>	<p>The content provides the management procedures that will be used to ensure contractors' designs and out-turned delivery are measured; and that reporting, and verification of carbon emissions are considered.</p> <p>Whilst the applicant would describe the C&EMP as 'unprecedented' there are a number of ISO standards that have been in use for many years that define the required contents for management procedures on environmental matters (such as ISO14001, IS50001). Planning for carbon and energy management is not without precedent.</p> <p>The Council would expect to see within a C&EMP the following:</p> <ul style="list-style-type: none"> • Clear and transparent breakdown of GHG emission targets based on phasing to ensure that any design changes within the phases by the contractor are captured and decisions of compliance against budgets are adhered to, rather than pushed to later phases to be addressed. • Definitions of non-conformity to the management plan. • All corrective procedures that will be implemented if non-conformities occur. • The management procedures relating to the delivery of the physical infrastructure required for GHG reduction measures against the environmental parameters set within the EIA. • Management procedures that will support host communities. • Procedures for independent regulation of compliance beyond the contractual relationship between the applicant and the contractor. <p>The C&EMP is for construction emission and functional operation of the road only and does not implement carbon and energy management procedures for users of the road to reduce emissions.</p> <p>The Council would expect to see, as standard practice, management procedures to include all emissions that the applicant has influence over, which includes end users, i.e. influence over downstream emissions.</p> <p>The C&EMP states that detailed carbon and energy management procedures will be developed in the second and third iterations (Table 3.1 Page 8, APP-552). This is reiterated in the updated C&EMP Appendix F, paragraph F1.8.</p> <p>The first iteration states that it lacks details on action. It therefore</p>

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	cannot be described as a detailed C&EMP.
Are any revisions sought?	<p>The Council has sought within REP1-292 (LIR, Appendix K) and REP6-031 (SoCG), the following:</p> <ul style="list-style-type: none"> • A breakdown of GHG emissions based on phasing; • Corrective procedures that will be implemented if budgets are exceeded; • Procedures for independent regulation of compliance; • The inclusion of physical infrastructure required to deliver management of GHG reduction measures; and, <p>Ensure that management procedures include host communities and address local impacts.</p>
How should the C&EMP be managed – should it become a freestanding control document?	The Council considers that this should be a free-standing document.
iv The ExA will ask the Applicant and IPs about decision-making under the C&EMP	
Is the decision-making process clear?	<p>The C&EMP directs responsibility onto the contractors for developing actions, management procedures and compliance to reduce GHG emissions, which will be authorised by the Secretary of State (Table 3.1 Page 8, APP-552). It is understood through consultation with the applicant that compliance with the C&EMP will be subject to contract with each contractor (REP6-031, the latest SoCG).</p> <p>The C&EMP provides no details on carbon targets/budgets at each construction phase. There is no information on how the applicant will implement corrective actions if the maximum budget reported in the DCO is broken.</p>
Are decisions being taken in the right place and with the right parties engaged?	<p>The C&EMP sets the commitment to report and independently review emissions annually.</p> <p>Emissions should also be tracked based on the physical infrastructure phasing, to ensure compliance with the budgets set is assessed against actual construction outcomes, rather than time bound parameters. The Council would also urge that emission budgets are linked to financial/spend budgets to ensure tracking emissions is done in parallel to financial decision making.</p>
v The ExA will ask about non-compliance and enforcement	
What is the anticipated	Within REP4-343 the Council provided a response to ExQ1 relating to

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<p>role of the local authorities in this and how can they best deliver it?</p>	<p>localised climate and carbon assessment. Within this response the Council explored the role of local government in delivering Government's Net Zero Policy.</p> <p>The response to ExQ1 was primarily related to the Council's concern that the EIA did not assess the secondary impacts of LTC on the Council's ability to deliver their obligations to national commitments and therefore not compliant with the EIA Regulations in assessing secondary impacts.</p> <p>The evidence presented in REP4-343 on ExQ1 shows that Local Government has a clear mandate from Government to implement the National Government's net zero goals. This includes roles in the compliance and enforcement of activities within their authority that may harm the environment or impacts the Council's ability to deliver their net zero obligations.</p>
<p>k) Preliminary Works Environmental Management Plan (PWEMP)</p>	
<p>With reference to the framework questions asked in relation to the CoCP, the ExA will ask equivalent questions for the PWEMP [REP6-042]</p>	<p>The Council notes the applicant's proposal to undertake preliminary works outside of the control of the discharged consents documents.</p> <p>The Council does not support that the preliminary works includes significant elements of work that would be carried out prior to the triggering of the S106 and the protective provisions. The triggers for S106 enactment and funding must be adjusted to include the commencement of the defined preliminary works.</p> <p>Those works as defined within the CoCP at Section 3.1 and in Plate 3.1 and as managed by the proposed framework within Annex C are accepted by the Council but must be managed strictly to adhere to the works stated and not allow contractors to stretch the definitions on such matters as 'erection of any temporary means of enclosure' to encompass the erection or installation of all temporary works for all compounds.</p> <p>The definitions of Preliminary Works, advanced compounds, site establishment and enabling must be clearly set out and demonstrate that only minor works associated with early surveying and exploration works are all that are to be covered within the Preliminary Works EMP. All other works, including establishing the main works compounds and the access corridors and utilities connections must be covered by a developed EMP2.</p>
<p>l) Outline Traffic Management Plan for Construction</p>	
<p>With reference to the framework questions asked in relation to the CoCP, the ExA will ask equivalent questions for the Outline Traffic Management Plan for Construction [REP6-048]</p>	<p>This was a mistakenly repeated item on the agenda and as such the Council has no submission to make on it.</p>

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m) Addition or Removal of Documents	
<p>i The ExA will ask if any documents should be added to the Control Document set (missing documents)?</p>	<p>During the Examination, the applicant confirmed that Structures Plans, Temporary Works Plans and Drainage Plans, although certified in Schedule 16, are only illustrative.</p> <p>The Council requests that these documents are added as control documents:</p> <p>Structures Plans – these set out key information to aid the design of structures, such as bridges, which is not contained elsewhere. They include key parameters for certain uses, such as walkers, cyclists and horse-riders, which is not contained elsewhere. They should be included as part of the design parameters in Requirement 3.</p> <p>Temporary Works Plans – these set out where temporary works are undertaken and should be included within Schedule 1.</p> <p>Drainage plans – these set out and show details, such as the catchment boundaries and the Drainage Strategy and have been under discussion between the Council and the applicant for some time and which has broadly been reviewed and agreed through the Examination and SoCG discussions. It is important to have a reference point for the Work No. for each proposed Water feature, i.e. they contain detail not contained elsewhere. They should be included within Requirement 8, so that the surface and foul water drainage system is designed to be in accordance with them.</p>
<p>ii The ExA will ask if any documents should be deleted from the Control Document set (superfluous documents)?</p>	<p>The response to the answer above will help inform this response. The Council are not aware of any superfluous documents.</p>

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ExA Action Points (EV-085a)				
No.	Party	Action	Thurrock Council's Response	Deadline
5	Thurrock Council	<p>Ron Evans Memorial Field</p> <p>To investigate whether the council holds any evidence relating to the levels of public use of the area of open space at Ron Evans Memorial Field. If so, this evidence is to be provided. Local Plan Regulation 18 evidence documents may be provided on this matter where relevant.</p>	The Council does not hold data on usage of Ron Evans Memorial Field	D8
6	Applicant	<p>S106 Agreements</p> <p>Status of on-going negotiations – Provide any additional submissions in respect of the status of the ongoing/final negotiations on the draft S106 agreements that were provided by the applicant at deadline 7</p>	Negotiations are ongoing.	D8
7	Local Authorities	<p>S106 Agreements – approval/completion process</p> <p>Provide information, including timing, of the approval process (i.e. Council committee procedure) for the conclusions of any S106 agreements and whether these approval processes could be completed before the close of the examination on 20 December 2023.</p>	Negotiations are ongoing, a further update is provided within the Council's D8 submission in Section 6.16	D8
8	Applicant and Local Authorities	<p>S106 Agreements – blue pencil clauses</p> <p>Please provide a view on the potential use of 'blue pencil clauses' in S106 agreements. In responding, please make</p>	Blue pencil clauses are used in relation to planning appeals where an appellant and a local authority are not in agreement over the contents of a S106 Agreement by the time that a decision maker on a planning appeal (Inspector or Secretary of State) needs to make	D8

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ExA Action Points (EV-085a)				
No.	Party	Action	Thurrock Council's Response	Deadline
		reference to their use in the context of NSIP applications.	<p>decision. In those circumstances the drafting of the S106 Agreement makes it clear as to the difference and the Inspector/SoS sets out in the decision letter the version that they consider should apply. Such an approach is confined to issues of principle such as the quantum or timing of payments and not detailed drafting points.</p> <p>The blue pencil clause approach does not rely on any specific provision in S106 which applies to planning appeals. It is an approach which is within the general scope of S106 provided the obligations concerned comply with the criteria in S106 (1), as all obligations are required to do. The ability to adopt such an approach applies to any planning obligation entered into, whether in respect of planning appeals or development consent obligations in relation to NSIPs since the same provisions of S106 apply to both.</p> <p>It is however available as a fall back to enable adjudication upon the differences. The Council is happy to agree to the use of blue pencil clauses.</p>	
14	Local Planning Authorities	<p>Agenda 3.c) Local Plan Commitments</p> <p>Please could any local planning authority who wishes to make comments on ISH12 Agenda Item 3 .c) (Local Plan commitments), provide these in writing.</p>	<p>The Council's comments are contained in its D7 submission (REP7-228) in Section 10 and above in relation to agenda item 3 c iv</p>	D8

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ExA Action Points ([EV-085a](#))

No.	Party	Action	Thurrock Council's Response	Deadline
23	Applicant and any IPs	<p>Suite of Energy National Planning Policy Statements (NPSs)</p> <p>Provide comments on the most recent suite of draft Energy National Planning Policy Statements in respect of any matters you consider important and relevant to this development.</p> <p>If the suit of Energy NPSs are designated prior to the close of the Examination, provide any updated comments in respect of the designated versions of the NPSs.</p> <p>In providing comments, at both deadlines, please have read to the transitional arrangements in the NPSs and indicate what weight you consider should be given to the new NPSs compared to the current policy framework.</p>	<p>The Council's initial comments are set out, in advance, in its D8 submission in Section 1.5, which will enable the applicant to respond at D9</p>	D9

ExA Action Points Part 2 ([EV-085i](#))

No.	Party	Action	Thurrock Council's Response	Deadline
1	All IPs	<p>Control documents – detailed drafting</p> <p>Provide an update on any detailed matters of drafting in respect of the control documents, or suggested amendments to them, in writing which, in your view, remain at issue.</p> <p>The Applicant may respond at D9</p>	<p>The Council has set these out in detail in its response to ExQ1 Q4.6.4 in (REP4-353).</p> <p>There are many changes proposed that are necessary to provide a coordinated and robust suite of control documents, to allow effective and efficient governance, monitoring and management of the construction phases and to protect the Council's interests and local communities during that period.</p>	D8

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ExA Action Points Part 2 (EV-085i)				
No.	Party	Action	Thurrock Council's Response	Deadline
			The proposed changes have been largely ignored by the applicant since submission at Deadline 4.	
2	Thurrock Council	<p>Outline Site Waste Management Plan (oSWMP)</p> <p>To provide any detailed comments relating to the oSWMP.</p> <p>Applicant to respond at D9</p>	<p>The Council has indicated to the applicant that the oSWMP must clearly state that the contractors must observe the waste hierarchy in its prioritised form and provide targets to be measured. Whilst REAC MW007 sets out an overarching commitment to the hierarchy it combines Reuse, Recycling and Recovery within a single target. The wording of this should be revised to clarify the need to consider each stage of the hierarchy individually for each material stream managed.</p> <p>Table 5.2 within the oSWMP (REP7-124) currently sets out tonnages for materials arising from the works, this should be expanded to separately identify the tonnages of each material that will be Reduced, Recycled and Recovered.</p>	D8
3	Applicant, Port of London Authority and Thurrock Council	<p>Outline Materials Handling Plan (oMHP)</p> <p>These parties to continue to discuss refinements to the wording of the oMHP in respect of the commitments for multi-modal transport for the transportation of materials.</p> <p>In particular, the applicant is to consider adding wording to refer to 'environmentally equivalent' in addition to, or instead of, 'environmentally better' when non-road transportation is being considered.</p> <p>Final positions to be provided by D9, if matters are not agreed. If Thurrock</p>	<p>The Port of London Authority, the Council and the applicant are to meet on 6 December 2023 to seek alignment on the wording around 'environmentally equivalent' vs 'environmentally better'.</p> <p>The Council will seek further changes to the oMHP to reflect the concerns that have been raised previously by the Council.</p> <p>The Council will report on these matters to the ExA at D9.</p>	D9

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ExA Action Points Part 2 (EV-085i)				
No.	Party	Action	Thurrock Council's Response	Deadline
		Council and the Port of London Authority have differing final positions, then separate final position statements should be provided		
4	LB Havering and Thurrock Council	<p>Draft Archaeological Mitigation Strategy and Outline Written Scheme of Investigation (AMS-OWSI)</p> <p>Update on matters in discussion with the London Borough of Havering and Thurrock Council in respect of the AMS-OWSI.</p> <p>Final positions from the London Borough of Havering and Thurrock Council to be provided no later than D9A</p>	The Council has been in discussion with the heritage lead of the applicant, and it is proposed that a final version that can be agreed will be submitted at D9. Discussions have identified all of the mitigation that is required in Thurrock, and it is understood that similar discussions have now been held with both LB Havering and Kent CC.	D8

4 Issue Specific Hearing 13 (ISH13) – Traffic and Transportation

27 November 2023

Post Hearing Submission made by Thurrock Council including written summary of Thurrock Council's Oral Case

Note: these Post Hearing Submissions include a written summary of the Oral Case presented by the Council at ISH13. They also include the Council's submissions on all relevant Agenda Items, not all of which were rehearsed orally at the ISH due to the need to keep oral presentations succinct.

The structure of the submissions follows the order of the agenda items but within each agenda item, the submissions begin by identifying the oral submission made at ISH13 by the Council and then turn to more detailed matters. Where requests for further information / clarification from the applicant were made by the Council at ISH13 these have been highlighted as 'Requests'. Where the Examining Authority (ExA) requested the Council provides further written evidence or further information has been provided in response to statements made by the applicant during ISH13, this further information is included in Appendices and highlighted within this submission. This Appendix is, as follows:

Appendix A – Thurrock Council's Response to ISH13 Action Point 2 with regards to VISSIM modelling parameters: driver behaviour.

This submission includes a response to the relevant Action Points arising from ISH13 ([ISH13](#)).

ISH13 was attended by George Mackenzie on behalf of the Council. Also, in attendance either in person or virtually at ISH13 on behalf of the Council were Kirsty McMullen, David Bowers, Chris Stratford, Colin Black, Adrian Neve, Nadia Lyubimova, Matt Ford, Mat Kiely and Sharon Jefferies. Tracey Coleman, Interim Chief Planning Officer for Thurrock Council, also attended virtually.

Introductory Statement

1. There are points of detail that the agenda items deal with, but there is also an overarching point to be made at the outset. It is evident following the publication of the D7 documents that a critical inflection point has been reached.
2. No modelling was submitted at D7 and no further modelling will be permitted by the ExA. The position at this point in time, which will not shift before the end of the Examination, is therefore that:
 - (a) the applicant has not submitted a reliable forecast microsimulation model of Orsett Cock, which is a critical operational element of LTC (it must function well for LTC to work); and, also a critical piece of infrastructure for the Council (it must function well in order to facilitate the Council's forward development goals, which is why it was delivered by the Council in the first place). The Council has provided v3.6T of the Orsett Cock VISSIM model, which it considers is reliable;
 - (b) there is no reliable localised modelling (let alone agreed validated base models) for six other key junctions in the area for which the Council are the local highway authority, namely:
 - i. The Manorway;
 - ii. Daneholes;
 - iii. Asda;

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- iv. A126 Marshfoot Road;
 - v. A13 westbound merge at Five Bells junction; and,
 - vi. A1012 Devonshire Road.
- (c) In respect of these last two junctions, the applicant has not in fact provided to the Council (or to the Examination) *any* operational phase localised modelling that responds to the issues raised by the Council. It should be noted that the latest adjustment to the LTAM outputs now show Five Bells and Asda Roundabout as 'moderate adverse' impact ([REP7-143](#) Plate 1.3);
- (d) LTAM itself predicts worsening of congestion on *all* of these junctions; and,
- (e) The VISSIM modelling that has been prepared by the applicant and the Council for Orsett Cock Junction shows that LTAM significantly underestimates those effects.
3. In particular, in relation to Orsett Cock Junction, there is a major unresolved friction between LTAM and VISSIM modelling. The two models do not align in terms of the results they produce and therefore different judgements would be made depending on which model is used to form that judgement.
4. The two models are not even close to converging; rather, they are miles apart. In fact, it is both telling and illustrative at the high level that LTAM does not even model the local network peak hour of 0800-0900.
5. The Council's technical analysis in relation to lack of convergence of LTAM and VISSIM is set out in its D6A submission ([REP6A-013](#)) and will not be repeated here. The following headline points, however, are important:
- (a) In many cases the delays forecast by VISSIM are two – three times higher than those forecast by LTAM;
 - (b) This means LTAM is significantly mis-estimating, i.e. wrongly estimating, both the benefits and the disbenefits of LTC compared to VISSIM. The transportation benefits would be less, as would the economic benefits, but the environmental effects in terms of noise and emissions (for example) would be higher with VISSIM levels of delay;
 - (c) Even in the scenario recently modelled by the applicant, which involved inputting VISSIM parameters into LTAM, the result was a reassignment of traffic away from Orsett Cock Junction and through Orsett Village;
 - (d) Orsett Village's roads are inherently and very obviously unsuitable to act as overspill for strategic traffic for which LTC is ostensibly designed. Furthermore, Orsett Village has a school, hospital, playground and is a long-established Conservation Area, which are all considered to be sensitive receptors in EIA terms. LTC should be accommodating rather than displacing this strategic traffic. It goes without saying that no mitigation measures in Orsett Village are designed as part of LTC;
 - (e) The likely significant environmental effects of traffic re-routing through Orsett Village in order to avoid the LTC-induced delays at Orsett Cock Junction have not been assessed in the ES (or indeed in any subsequent statutory Environmental Information). This is a fundamental and irremediable (at this stage of the Examination) defect in the application. Focus has been placed on Orsett Cock Junction and Orsett Village, but LTAM shows unacceptable re-routing of traffic through other communities, which should also be mitigated.
 - (f) As a result of this serious issue relating to Orsett Village re-routing, the applicant carried out sensitivity testing for two scenarios to reassign traffic away from Orsett Village and back through Orsett Cock Junction ([REP5-084](#)). The results of both tests showed worsening of conditions at Orsett Cock Junction. In particular, the 2nd sensitivity test showed that in the PM peak of the 2030 'with LTC' scenario, the delays on the A128 Brentwood Rd (North) approach increase from 74 seconds in the 'without LTC' scenario to 427 seconds in the 'with LTC' scenario. This is concerning, to put it mildly.

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The implications of this are:

- (a) Unless the scheme is amended, traffic is likely to re-route through Orsett Village, where it will give rise to environmental effects, which the applicant has thus far failed to assess or consider; or
 - (b) Mitigation and traffic-detering measures need to be implemented in Orsett Village (and so far there are no proposals to do so);
 - (c) Orsett Cock Junction needs to be re-designed to satisfactorily accommodate traffic, which is not re-routed through Orsett Village (provided that this can be achieved by measures, which are not currently proposed); and,
 - (d) The BCR of LTC as well as its strategic and economic case more broadly has to be revisited in the light of this, as do its environmental disbenefits.
6. The applicant's last-minute attempts to carry out a round of iteration between Orsett Cock VISSIM and LTAM in the last few weeks shows just how important this iterative process is. Significant changes arose out of just one engagement with iteration and significant other changes should follow from the Council's response in the form of v3.6T. Notably, in LTAM the length of this weaving section is distance of 334m; the distance assumed in the LTC drawings is 90m; and, it is 220m in VISSIM.
 7. It is lamentable that despite years of engagement with the applicant, even in the context of the previous withdrawn DCO application, with less than one month remaining until the close of the Examination the applicant is only very reluctantly engaging in what should have been initiated years ago, namely to seek a reasonable degree of convergence between the microsimulation and the strategic model for the most adversely affected junctions and to do so with the active and positive engagement of the local highway authorities.
 8. That is not of course where we are. So, the question is, what are the consequences of the applicant's failures in this regard.
 9. The Council's primary position is that there is insufficient information for the ExA to recommend that the DCO be made.
 10. The public law principle underlying this submission is that there must be adequate evidence to support any administrative decision made, though the legislative gloss on this principle in terms of the Infrastructure Planning (EIA) Regulations 2017 is that a DCO cannot be made unless an EIA has been carried out in respect of it, and an EIA must describe likely significant environmental effects, and of course that is only possible if the transport modelling is sufficiently reliable to pick up all likely significant environmental effects.
 11. So, the Council says that LTC is not 'consentable'. In outline, this is because:
 - (a) There is not a sufficient and reliable assessment to enable the impacts (both good and bad) of the scheme to be understood and to enable the BCR to be properly understood;
 - (b) That in itself is a breach of policy since NPSNN paragraph 4.6 requires there to be local modelling (proportionate to the scale of the scheme which, in the case of LTC, is unprecedented in its magnitude) to provide '*sufficiently accurate detail of the impacts of a project*', which is not the case in respect of LTC;
 - (c) Furthermore, since the modelling is deficient there can be no confidence that the EIA has picked up all of the likely significant environmental effects; in fact the VISSIM modelling just for Orsett Cock Junction (to say nothing of the other six junctions, where LTAM predicts adverse impacts) is indicative of the existence of a whole range of additional significant environmental effects, in particular in relation to Orsett Village and noise and air quality, re. additional congestion on Orsett Cock Junction, which are absent from the ES;
 - (d) Moreover, the NPSNN (and draft NPSNN) is clear that adverse environmental and social effects need to be avoided and mitigated (see NPSNN paragraph 3.3). This is a different question (because it is not disputed by the applicant) to the contested issue of whether

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- traffic/transportation effects should also be mitigated. But crucially, these policy imperatives can only ever be complied with if the unmitigated effects are known to a reasonable degree of certainty/reliability and currently they are not;
- (e) NPSNN paragraph 3.10 states that *'scheme promoters are expected to take opportunities to improve road safety, including introducing the most modern and effective safety measures where proportionate'*. Again: this can only be done if the operational effects of LTC at local junctions is known, so that effective safety measures can be designed;
 - (f) Any number of policy imperatives like that can be found in the NPSNN, but cannot properly be assessed without sufficient information;
 - (g) The policy-based debate, re. traffic-related mitigation measures, will not be rehearsed here, but suffice it to say that it is not possible to design (or assess the effectiveness, cost or proportionality of) mitigation measures if there is uncertainty regarding the points in the Strategic Road Network (SRN) and local road network (LRN) that need to be mitigated, nor assess how severe the residual effects of not mitigating would be, nor check that any such measures can be accommodated within the Rochdale Envelope;
 - (h) The BCR and economic case for LTC cannot be assessed intelligibly while there are such significant unresolved tensions in the information and the modelling; and,
 - (i) The adverse effects of LTC at the 'local level' cannot properly be assessed in accordance with NPSNN paragraph 4.3, bullet 2, in the light of the state of the current information.
12. For these reasons, LTC is not 'consentable' at this stage. If the ExA disagrees and decides that all of the above difficulties can be overcome, i.e. that there is sufficient information to make a determination on the application, that is not the end of the matter.
 13. This is because making a decision to the effect that a decision can be reached does not do away with, or sweep under the carpet, the fact that there is a deficiency in the modelling in the sense that the localised modelling calls into question the LTAM. It does not 'iron out the creases', in and of itself.
 14. The deficiency in the modelling is simply a fact that will have to be dealt with, if indeed it is not so problematic as to lead to the DCO being refused.
 15. The applicant's suggested approach to this issue is to say that the ExA should rely on LTAM not VISSIM (e.g. the EIA and business case are based solely on LTAM with no consideration given to the localised modelling, which shows different results, the Council's response to ExQ1 question 4.1.13 ([REP4-353](#))) deals with this, which the applicant did not respond to in ([REP5-077](#)) and the applicant reiterates its position that localised modelling must not be taken as bringing into question the LTAM results (paragraph 3.2.2 ([REP6A-004](#))). That with respect is wholly misguided and amounts to a submission that an obviously important and relevant consideration should be ignored, which simply is not right.
 16. It has long been recognised that strategic modelling, such as LTAM, is *'typically less suited to modelling flows on local minor roads, since they are primarily designed to assess and capture area-wide impacts on the more major and strategic routes'* – that is a quote from applicant's own responses to ExQs in the A428 Black Cat to Caxton Gibbert decision. See the ExA report paragraph 6.4.18 included as ISH4 Appendix A, Annex C of the Council's Post Event Submissions for ISH3 - ISH7 and CAH1 and 2 ([REP4-352](#)).
 17. The Council suggest that if this approach is taken, i.e. ExA decides that there is enough information properly to reach a decision, then it becomes imperative for the draft DCO requirements provided by PoTLL, DPWLG, TEP and the Council in ([REP6-163](#)) in Appendix 4 and confirmed in its Joint Position Paper in ([REP6A-017](#)), where it was agreed by the local highway authorities to be inserted into the DCO. **These Requirements have been the subject of ongoing negotiations between the parties and it is hoped that they will be amended in an agreed form and submitted at D9.**
 18. That position, however, should be understood as a submission that the DCO is 'consentable' subject to the insertion of those requirements (and the LB Havering's and all other LHAs

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- Protective Provisions). It is not ‘consentable’. Primarily because of the matters outlined above, i.e. the lack of sufficient and sufficiently converged modelling means that it is impossible intelligibly to apply the policy framework properly.
19. But beyond that, the draft Requirements (which are undoubtedly necessitated by the inadequacy of the way the applicant has promoted LTC and the high levels of uncertainty associated with it) do not simply make the problems vanish.
 20. Again, it simply is the case, factually speaking, that the VISSIM analysis shows that:
 - (a) LTAM is significantly underestimating delays at the Orsett Cock Junction;
 - (b) Therefore, the economic appraisal is underestimating the traffic disbenefits of LTC; and,
 - (c) Therefore, the ES is underestimating the environmental impacts of the scheme.
 21. All of those matters will have to be reflected in the ExA’s application of the policy tests in the NPSNN.
 22. When the NPSNN tests are applied in that context, the Council submit that the application should still be recommended for refusal. Even though the additional requirements are essential, they do not save the application.
 23. The applicant has been reticent to promote any dDCO requirements in respect of Orsett Cock Junction specifically, and the wider road network generally, which would alleviate the known and unknown issues surrounding this infrastructure. Their stance on this matter has only shifted slightly: it was only very recently that the applicant suggested any wording for requirements in respect of Orsett Cock Junction and the Wider Network Impacts. Even these requirements are too limited in their scope and effect and are promoted on an entirely without prejudice basis. The Council submits that this position gives rise to a further layer of policy conflict.
 24. NPSNN 3.3 states that *‘the Government expects applicants to avoid environmental and social impacts in line with the principles set out in the NPPF and the [PPG].’*
 25. The relevant principles in the NPPF concerning the mitigation of adverse effects associated with transport schemes are set out in NPPF Section 9, *Promoting sustainable transport*.
 26. The relevant applicable paragraphs are NPPG paras 110 and 111 which provide that:

‘Considering development proposals
110. In assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that:
a) appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;
b) safe and suitable access to the site can be achieved for all users;
c) the design of streets, parking areas, other transport elements and the content of associated standards reflects current national guidance, including the National Design Guide and the National Model Design Code 46; and
d) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.

111. Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.’ (emphasis added).
 27. Criterion (d) of paragraph 110 is of direct relevance and applicability here. It signals that *‘it should be ensured that...significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost-effectively mitigated to an acceptable degree.’* This is as clear a statement as one could possibly find that mitigation of ‘significant impacts’ on the LTN, in terms of capacity and congestion should be mitigated, in a cost-effective manner, as part of highway NSIP.

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28. Although NPSNN paragraph 3.3 states that the Government's *'detailed policy on environmental mitigations'* is set out in NPSNN Chapter 5, it is clear that the exhortation in paragraph 3.10 for applicants to ensure that *'environmental and social impacts in line with the principles set out in the NPPF'*, is itself a detailed policy that is directly applicable and not just a preamble to the detailed policy that is itself not capable of being applied.
29. In any event, NPSNN paragraphs 5.215 and 5.216 are squarely on all fours with NPPF paragraph 110. They provide that:
- '5.215 Mitigation measures for schemes should be proportionate and reasonable, focussed on promoting sustainable development.*
- 5.216 Where development would worsen accessibility such impacts should be mitigated so far as reasonably possible. There is a very strong expectation that impacts on accessibility for non-motorised users should be mitigated.'*
30. The *'proportionate and reasonable'* *'mitigation measure'* that are required by the *'detailed policy'* in NPSNN paragraph 5.215 are precisely those which are signalled in NPSNN paragraph 3.3, namely those set out at paragraph 110.
31. This position is entirely at odds with the applicant's contrived interpretation of NPSNN, which says nothing at all of the RIS, yet the applicant suggests that the existence of the RIS is such an important matter that it enables the NPSNN and NPPF paragraph 110 to be read out of existence.
32. This is despite the RIS not being secured in any way by the dDCO. The Council suggest that the ordinary principle applies here: nothing that is not secured in the dDCO (or ancillary arrangements such as S106 agreements) can carry any weight. The RIS is a background matter and is contextually relevant. But it provides no basis for saying that significant adverse impacts on the LRN (including on the Orsett Cock Junction, which is functionally strategic for LTC as a whole, are not required as a matter of policy to be mitigated.
33. If it were otherwise, one would have expected the Government to simply have said so, either in the NPSNN or the draft emerging NPSNN. On the contrary, the draft NPSNN contains even stronger language in respect of mitigation and also contains no relevant mention of RIS.
34. Draft emerging NPSNN paragraphs 5.272 – 5.276 rehearse the position in NPSNN (which is set out above) and paragraph 5.280 provides that:
- '5.280 Where a development negatively impacts on surrounding transport infrastructure including connecting transport networks, the Secretary of State should ensure that the applicant has taken reasonable steps to mitigate these impacts. This could include the applicant increasing the project's scope to avoid impacts on surrounding transport infrastructure and providing resilience on the wider network. In particular, this should recognise the importance of providing adequate lorry parking facilities, taking into account any local shortages, to reduce the risk of parking in locations that lack proper facilities or could cause a nuisance. The applicant may increase the project's scope to avoid impacts on the surrounding transport infrastructure and improve network resilience. Where the proposed mitigation measures are insufficient to reduce the impact on the transport infrastructure to acceptable levels, the Secretary of State should expect applicants to accept requirements and/or obligations to fund infrastructure or mitigate adverse impacts on transport networks.'*
(emphasis added)
35. It follows from all the above that to the extent that the dDCO does not provide for the reasonable, proportionate and cost-effective mitigation of significant adverse impacts, including on traffic and congestion on the local road network, it is contrary to policy and should be refused. The applicant's draft Requirements fail those tests by a considerable threshold.

Summary

- (a) The applicant has not submitted a reliable forecast microsimulation model of Orsett Cock Junction and there is no reliable localised modelling (let alone agreed validated base models) for six other key junctions in the area, for which the Council are the local highway authority;
- (b) There is a major unresolved friction between LTAM and VISSIM modelling - the two models are not even close to converging, rather, they are miles apart;
- (c) VISSIM modelling of the Orsett Cock Junction demonstrates that there would be significant adverse impacts, which have not been considered in the EIA or Outline Business Case;
- (d) Unless the scheme is amended, traffic is likely to re-route through Orsett Village, where it will give rise to environmental effects, which the applicant has failed to assess or consider;
- (e) The Council’s primary position, is that there is insufficient information for the ExA to recommend that the DCO be made; and,
- (f) The Council has jointly worked with the two national Ports and TEP to jointly draft a set of Requirements. Even though the additional Requirements are essential, they do not save the application. When the NPSNN tests are applied, the Council submit that the application should still be recommended for refusal.
- (g) There is a policy requirement under NPSNN for any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, to be cost effectively mitigated to an acceptable degree. The weak Requirements proposed by the applicant, late in the day, fall well short of this imperative. This is a further reason why the application should be recommended for refusal.

The ExA asked questions of the Applicant, Local Highway Authorities and Ports relating to:

Agenda Item		Thurrock Council’s Response
3	Final Positions on Port Access and Blue Bell Hill	
a)	Orsett Cock and Ports Access	
i	With reference to [REP5-084] , to what extent were the inputs into the latest VISSIM modelling (version 3.6) agreed beforehand?	<p>Comments by Kirsty McMullen – ISH13 Transcript (EV-087f)</p> <p>The inputs to the latest VISSIM modelling v3.6 were not agreed with the Council or other stakeholders.</p> <p>In summary, following ISH4, a meeting was held on 25 September 2023 between the applicant, the Council and the two national Ports to discuss Orsett Cock Junction and the approach to transport modelling. At that time Version 2 (v2) of the model had been issued by the applicant.</p> <p>The Joint Position Paper on Orsett Cock Junction, issued at Deadline 5, (REP5-084) summarised the changes that the applicant agreed to make to v2 of the Orsett Cock VISSIM model. Not all but most of the changes required by the Council were to be made and the revised version was to be issued as Version 3 (v3).</p>

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	<p>The applicant provided v3 on 6 October 2023, with further traffic signal timing provided on 17 October 2023.</p> <p>Version 3.6 (v3.6) was received unexpectedly by the Council late on Friday, 20 October 2023, just before ISH10, which was held on Tuesday, 24 October 2023. This version of the model was provided by the applicant because of errors they found in v3 of the model issued on 6 October 2023.</p> <p>During the 2-week period between issuing v3 and v3.6, the applicant did not make the Council aware that they had found errors in the model that they were rectifying nor that they planned to issue a revised version. This led to abortive review work of v3.0 and further unexpected review work of v3.6 in a short timescale.</p> <p>It is also important to note that the ongoing issues with the modelling and the challenges of completing this work in a short timescale were highlighted in detail in paragraphs D.1.32 to D.1.45 of the Council's 'Adequacy of Consultation Representation' (AoC-018).</p> <p>However, what was clear from the review of v3.0 and v3.6 was that the applicant had made changes to the model beyond those that had been discussed and set out in the Joint Position Paper on Orsett Cock, issued at Deadline 5, (REP5-084). This meant that the Council had to do a more detailed review to understand the additional changes that had been made to the model that had not been discussed or agreed with the Council and other stakeholders. The addition changes made by the applicant are detailed in Table B3.1 in the Council's Comments on Traffic Modelling (REP6A-013).</p>
<p>ii What does the version 3.6 modelling [REP6A-004-8] tell us about the likely traffic effects at Orsett Cock? Have any 'severe' effects been identified?</p>	<p>Comments by Kirsty McMullen – ISH13 Transcript (EV-087f)</p> <p>Based on the model changes that had been discussed with the applicant, the Council was expecting the results of v3.6 to be relatively similar to v2. However, as set out in response to i), further changes to the model were made by the applicant that had not been discussed with the Council and other stakeholders.</p> <p>As a result, v3.6 shows significantly different results to the previous versions of the model that have been issued by the applicant, which were summarised in the Council's D6A submission (REP6A-013). For example:</p> <ul style="list-style-type: none"> For 2030 AM peak (0800-0900), the total delays in v2 (measured in vehicle hours) at Orsett Cock Junction and the A1013 Stanford Road / Rectory Road junction increased by 27%, when comparing 'with LTC' to 'without LTC'. However, in v3.6 the total delay reduced by 30% when comparing 'with LTC' to 'without LTC'; and,

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	<ul style="list-style-type: none"> • For the 2030 PM peak (1700-1800) the total vehicle hour delays in v2 increased by 362% when comparing 'with LTC' to 'without LTC'. However, in v3.6 of the model the difference in total hour delays between 'with LTC' and 'without LTC' was reduced to 82%. <p>Based on the Council's review, several issues and inconsistencies were found with v3.6 of the model for both the 'with' and 'without LTC' scenarios. The key issues were:</p> <ul style="list-style-type: none"> • Lane allocation on the circulatory carriageway: <ul style="list-style-type: none"> - In the 'with LTC' model, all traffic on the circulatory was allowed to exit onto Brentwood Road (south) even from the outside lane. This would require traffic in three lanes to merge into a single lane on the circulatory carriageway to exit. Therefore, the v3.6 forecast model for the 'with LTC' scenario provided 'theoretical' additional capacity that would not materialise in reality; - The 'without LTC' model only allows the single inside lane to exit onto Brentwood Road (south), which creates significant queuing on A128 Brentwood Road (north), which the local highway authority would not allow to materialise; and, - Therefore, the 'with' and 'without' LTC models should allow two lanes to merge to one lane to exit onto Brentwood Road (south). • The introduction of a Pegasus crossing at Rectory Road, as proposed by the applicant, in the 'with LTC' model leads to more gaps in the east-west traffic flow on A1013 Stanford Road enabling traffic to exit more easily from the minor arm of Rectory Road – the coding of the Pegasus crossing is not accepted by the Council as set out in Table B3.1 in the Council's Comments on Traffic Modelling (REP6A-013). The 'without LTC' model shows significant queuing and delay on Rectory Road by 2030, i.e. 601 seconds delay per vehicle in the AM peak hour. The applicant has included growth within the 2030 'without LTC' model, but with no mitigation for the 2030 background traffic growth. It is not considered realistic that the local highway authority would allow this level of delay to materialise on Rectory Road in 2030 without intervention (i.e. either funded by the local highway authority or developer contributions), particular as the intervention is a low-cost signal-controlled crossing that would benefit non-motorised users as well reduce queuing on Rectory Road. Therefore, this minor intervention should be included in the 2030 'without LTC' scenario and the Pegasus crossing should be coded correctly taking account of the comments in Table B3.1 of (REP6A-013). • Finally, the applicant had made changes to the driver behaviour. The use of different driver behaviour between the base model, the future year Do Minimum 'without LTC' and future year Do

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Agenda Item	Thurrock Council's Response
	<p>Something 'with LTC' scenarios has falsely skewed the evaluation of the impact of the LTC scheme. Refer to the response to Action 2 arising from ISH13, which is included as Appendix A of this submission.</p> <p>This meant that the Council had to make changes to v3.6 to rectify the issues identified and provide a more genuine representation of the impact of LTC on the Orsett Cock Junction and adjoining network. The Council's version of the model that addressed these issues is referred to as Version 3.6T (v3.6T). The only changes that were made to the applicant's v3.6 model were at the Orsett Cock Junction itself and only in relation to lane allocation, driver behaviour and the Pegasus crossing. No changes were made to the wider network included in the Orsett Cock Junction v3.6 model at the junction of A13/A1089/LTC.</p> <p>The Council prepared a video of v3.6T to show the operation of the Orsett Cock Junction in the 2030 'with LTC' PM peak hour (1700-1800), which was provided as Appendix H of the Deadline 6A submission (REP6A-014).</p> <p>The Council showed the video at ISH13 to demonstrate the likely traffic effects of LTC at Orsett Cock Junction. It shows that there is:</p> <ul style="list-style-type: none"> • Queuing on most of the approaches to Orsett Cock Junction; • Queuing on the A13 (EB) off slip as it joins with the LTC off-slip; • Queueing on Rectory Road on the approach to Stanford Road; • Queuing back onto the A13 EB main line from the A13 EB off-slip; • Queueing back onto the LTC mainline from the NB off-slip; and, • Extensive queuing on the LTC SB off-slip. <p>This video and the associated analysis in the Council's D6A submission based on v3.6T of the model (REP6A-013) shows that the introduction of LTC will have significant and 'severe' impacts on the operation of the junction. For example, in the 2030 PM peak hour the following increases in delay occur between the 'without LTC' and 'with LTC' scenarios:</p> <ul style="list-style-type: none"> • Increase in delay from 65 to 552 seconds per vehicle on A13 westbound approach; • Increase in delay from 39 to 326 seconds per vehicle on A1013 Stanford Road eastbound approach; and, • Increase in delay from 37 to 636 seconds per vehicle on the A13 eastbound approach. <p>Only minor changes were made to the applicant's v3.6 model to create v3.6T and only to the Orsett Cock Junction part of the model.</p>

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	<p>The extensive queuing and delay, particularly in the PM peak, has been consistent in all of the applicant's VISSIM modelling and not just the Council's v3.6T modelling.</p> <p>Dr. Wright showed two screenshots of the Council's video (REP6A-014) at ISH13 – one of the A13 EB off-slip and one of the LTC northbound mainline with queuing back from the NB off-slip. He stated that the driver behaviour in the video demonstrates that the changes made by the Council in VISSIM v3.6T are not a realistic representation of driver behaviour (EV-087f). However, Kirsty McMullen confirmed that the Council made no changes to these parts of the model for v3.6T. The only changes that were made to the driver behaviour parameters for v3.6T were to parameters on Orsett Cock circulatory carriageway, as summarised in Appendix A of this submission.</p> <p>In terms of the severity of impacts, there is no definition of severe within planning policy and it is a matter of judgement. Judgements on severity of impacts have been tested many times through the planning process and the applicant has chosen to quote one appeal decision (Appeal 3185493, Planning Inspectorate, 2018) in their Wider Network Impacts Position Paper (REP6-092), which states:</p> <p><i>'the term 'severe' sets a high bar for intervention via the planning system in traffic effects arising from development; mere congestion and inconvenience are insufficient in themselves but rather it is a question of the consequence of such congestion.'</i></p> <p>The Council has raised a number of concerns with regards to the consequences of congestion, including:</p> <ul style="list-style-type: none"> • Unacceptable impact on the delivery of growth within Thurrock as a result of the queuing and delay caused by LTC as highlighted in VISSIM modelling; • Impact on road safety as a result of queueing back onto the mainline carriageways; • Community harm due to inappropriate re-routing of traffic through local communities, as a result of queuing and delay on the highway network; • The severance effect with reduced ability for pedestrians and cyclists to safely crossroads as a result of increased traffic on the network; and, • Impact on bus journey times and bus service reliability and viability. <p>It is therefore the Council's view that the consequences of congestion on the Orsett Cock Junction and wider interchange as a result of LTC</p>

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	<p>would be severe.</p> <p>Even though the Council does not agree with v3.6 of the model, at the request of the ExA the Council has reviewed the v3.6 model results and summarised the unacceptable impacts arising from that modelling in response to Action 5 arising from ISH13, as summarised later in this submission.</p> <p>Post Hearing Note: although the agenda item refers to 'severe' effects, the ExA is reminded that Government policy in paragraph 110(d) of the NPPF also expects applicants to ensure that '<i>significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost-effectively mitigated to an acceptable degree.</i>'</p> <p>This is as clear a statement as one could possibly find that mitigation of '<i>significant impacts</i>' on the LTN in terms of capacity and congestion should be mitigated, in a cost-effective manner, as part of highway NSIP.</p> <p>So, '<i>significant impacts</i>' should be mitigated in a cost effective manner in the first place. It is only after this hurdle has been passed that NPPF paragraph 111 is engaged.</p>
<p>iii Does the version 3.6 modelling affect the Applicant's earlier work on journey times to/from the Ports?</p>	<p>Comments by Kirsty McMullen – ISH13 Transcript (EV-087f)</p> <p>Originally, the journey times were presented by the applicant in Appendices B and C of the Transport Assessment (REP4-154 and REP4-156). These journey times were extracted from LTAM as no VISSIM modelling was submitted with the original application.</p> <p>At the request of the ExA, VISSIM modelling (v2) for Orsett Cock Junction was subsequently submitted to the Examination by the applicant at Deadline 1 (REP1-189).</p> <p>Given the significant concerns raised by the Council and other stakeholders concerning the lack of alignment of LTAM and VISSIM in terms of level of forecast vehicle delay, the applicant agreed to incorporate parameters from the Orsett Cock VISSIM model into LTAM (Action 8 from the Joint Position Paper on Orsett Cock Junction (REP5-084)). This was done using VISSIM v3.6.</p> <p>The applicant issued some information to the Council concerning journey times to the Ports on Friday 10 November 2023. This information was provided unexpectedly and without any detailed accompanying description or analysis. It was subsequently submitted to the examination by the applicant at Deadline 6A (Localised Traffic Modelling v4.0 (REP6A-004) - Tables N.23 - N.34). Journey times to and from the Ports were included in this analysis.</p>

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	<p>The tables compare journey times between the Original DCO LTAM Do-minimum and the test in the LTAM 'with LTC', where the delays from the Orsett Cock VISSIM model v3.6 were incorporated.</p> <p>The comparison shows that the updated Do Something ('with LTC') model, which incorporates the VISSIM delays, has journey time savings to/from the Ports compared to the Do Minimum ('without LTC') model.</p> <p>However, the comparison is misleading and not valid as only the 'with LTC' model has been updated to include VISSIM delays, but not the 'without LTC' model. Therefore, the comparison should not have been presented as evidence for decision making and yet the applicant relies heavily on its assertion that journey time savings might be achieved. There is no valid evidence to support this assertion.</p> <p>There is therefore no reliable evidence before the Examination on journey time impacts to and from the Ports based on LTAM. The only evidence that can be relied on for journey time impacts is the VISSIM modelling, although this only considers a part of the journey to and from the Ports. Version 3.6T of the Orsett Cock VISSIM model show severe delays at the modelled year of opening (2030) as a result of LTC, which will significantly adversely impact journey times to and from the Ports.</p> <p>The Council notes that comments made by the Ports at ISH10 that the requirements of NPSNN and NPS for Ports both need to be considered by the ExA as part of the assessment of LTC.</p> <p>This means that the Orsett Cock junction needs to be modified and mitigation measures need to be implemented at The Manorway, Asda Roundabout and other junctions, to ensure the Ports can continue to operate effectively and rely on the Strategic Road Network. The Orsett Cock Junction draft Requirement (REP6-163) put forward by the Council, the two national Ports and TEP would secure this. These Requirements have been the subject of ongoing negotiations between the parties and will be amended in an agreed form and submitted at D8.</p>
<p>iv What, if any, impact does the version 3.6 modelling have on the scheme's BCR and Environmental Assessments?</p>	<p>Comments by Mr Bowers – ISH13 Transcript (EV-087f)</p> <p>The Council considers that the v3.6 model does not provide an accurate representation of likely future traffic conditions at the A13/A1089/Orsett Cock junction. The Council has therefore prepared v3.6T to provide the ExA with a more robust analysis of likely traffic conditions. The Council's Deadline 6A submission (REP6A-013) provides further details of this process.</p> <p>The v3.6T model shows significant levels of additional delays caused</p>

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	<p>by LTC which are not captured by LTAM. These additional delays lead to a further reduction in the economic benefits of the scheme and a further reduction in the BCR. The additional delays lead to increased environmental impacts.</p> <p>The Council has made a high-level estimate of the cost of these delays as presented in its D6A submission (REP6A-013). The estimate is a cost of approximately £100m, which is higher than the total estimate by the applicant of the £78m of wider economic benefits expected to occur in Thurrock (Table C.11 of Combined Modelling Appraisal Report – Appendix D Economic Appraisal Report (APP-526)). This shows that the delays caused by LTC at this one junction outweigh all of the wider economic benefits of LTC across all of Thurrock.</p> <p>The applicant has queried these calculations, and the Council will review its assessment. The Council notes though that the applicant has agreed that their appraisal is missing the economic disbenefits of delays at Orsett Cock Junction. This is an important admission because it confirms that using LTAM is not sufficient to assess the transport impacts of LTC.</p> <p>The Council's Deadline 6A submission (REP6A-013) clearly shows that the LTAM model on which the applicant has based their economic and environmental appraisal does not capture all the forecast delays at Orsett Cock Junction.</p> <p>In addition, the Council's ongoing assessment of the Manorway, Asda Roundabout and other junctions described in Section 6 of the Council's Deadline 6A submission (REP6A-013) shows that the LTAM modelling of these junctions is also likely to be underestimating traffic delays.</p> <p>The Council has completed an initial high-level assessment of the impact of including the missing delays on the scheme BCR and this is provided in Section 5 of the Council's Deadline 6A submission (REP6A-013). This assessment shows that the lack of alignment between the LTAM and VISISM models means that the results of LTAM cannot be relied upon to assess the economic benefits (and disbenefits) of LTC. Incorporating the results of VISSIM and the associated increased in disbenefits has a significant downward effect on the BCR and brings it ever to closer to the level where costs are greater than benefits.</p> <p>Further, the Council would like to remind the ExA of the other assessments undertaken during the Examination that have reduced the economic benefit of the scheme. These include the following issues presented in Section 10.3 and Table 10.1 of the Council's D6 submission (REP6-164):</p>

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	<ul style="list-style-type: none"> • Incorporation of NTEM 8 effects and updated assumptions around traffic growth • Incorporation of LGV and HGV growth • Incorporation of updated carbon values - and • Inclusion of missing accident disbenefits (page 67 of the applicant's 'Comments on LIRs – Appendix H Thurrock Council' REP2-062) <p>All these changes will further reduce the BCR of the scheme, which in the DCO application is 0.48:1 for well-established 'Level 1' transport-related benefits and only 1.22:1 when less well-established 'Level 2' benefits based on agglomeration and reliability are included.</p> <p>The Council notes that there has been very little consideration of these Level 2 benefits during the Examination and that further scrutiny is recommended given they are fundamental to the economic case for the scheme.</p> <p>As shown by the evidence the Council's Deadline 6 and 6A submissions (REP6A-013), the Council considers the economic appraisal needs to be re-run by the applicant to capture these changes.</p> <p>When all these different changes are incorporated the Council expects that the benefits of the scheme will likely to be close to or lower than the costs of the scheme.</p> <p>This would mean that the scheme has 'POOR' value for money, using standard DfT categories for scheme assessment.</p> <p>The Council considers that the ExA should consider the comparison presented by the Council in paragraph 11.2.11 to 11.2.13 of the Council's D6 submission (REP6-164), between LTC and the recent cancellation of High Speed 2 north of Birmingham. LTC costs approximately £400m per km, which is more than the approximate £350m-£400m per km for the cancelled section of HS2. LTC and HS2 have both been developed over a similar time period since 2008-2009.</p> <p>The BCR for LTC has fallen at each stage of scheme development, similar to HS2, and is based on an economic analysis which is no longer robust as described in the Section 7 of the Council's Local Impact Report (REP1-281).</p> <p>Figure 11.1 of the Council's D6 submission (REP1-281) shows that both HS2 and LTC have a BCR which has consistently weakened over time. As a reminder the BCR for LTC started at 3.5:1 and is now</p>

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	<p>near or below 1:1.</p> <p>As the Rt Hon Mr Rishi Sunak said when cancelling the northern section of HS2: <i>“HS2 is the ultimate example of the old consensus. The result is a project whose costs have more than doubled, which has been repeatedly delayed... and for which the economic case has massively weakened with the changes to business travel post Covid.”</i></p> <p>The Council considers that the issues of increasing cost, reducing benefits and delays for HS2 (the largest rail scheme in the UK) are highly relevant for the assessment of LTC, which is the largest road scheme in the UK.</p> <p>As stated in the Council's LIR (key issues summarised in Table 7.1 (REP1-281)) and subsequent submissions the Council considers that the economic case for LTC has not been made given:</p> <ul style="list-style-type: none"> • The low level of economic benefits of LTC which now approach or are below 1:1; • The lack of any reduction in traffic flows at Dartford Crossing • The small (c1 min) estimated reduction in journey time at Dartford Crossing; and, • The 26 additional fatalities caused by the scheme overall and the 8 additional fatalities in Thurrock. <p>In order to be able to understand the impacts of LTC, the Council considers that the appraisal needs to be re-run to capture all the required changes which have been identified by the Examination. The need to update the appraisal reflects the requirements of paragraphs 4.5, 4.6 and 4.7 of the NPSNN and paragraphs 4.3 to 4.6 of the draft NPSNN.</p>

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	<p>The Council has prepared the following diagram to show the applicant's view of the need to update the appraisal.</p> <p style="text-align: right;">NH view of LTAM</p> <p>1. LTAM is valid and shows no impacts which require mitigation</p> <p>2. No need for mitigation</p> <p>3. Requirements defined by NH are suitable</p> <p>4. Economic and environmental assessments are valid</p> <p>5. No need for further appraisal</p> <p>In fact, the Council has presented extensive evidence to demonstrate the LTAM does not present a robust and accurate analysis of transport conditions.</p> <p style="text-align: center;">VISSIM analysis shows LTAM is not valid</p> <p style="text-align: right;">View of LTAM based on evidence</p> <p>1. LTAM is valid and shows no impacts which require mitigation</p> <p>2. No need for mitigation</p> <p>3. Requirements defined by NH are suitable</p> <p>4. Economic and environmental assessments are valid</p> <p>5. No need to update appraisal</p> <p>Appraisal to be updated</p> <p>Mitigation is required</p> <p>Assessments are not valid</p> <p>Requirements are not suitable</p> <p>If it is not possible to update the appraisal, then the Council considers that the ExA has insufficient information on which to assess the scheme.</p>

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<p>v How do the revised LTAM outputs differ from those presented in the Transport Assessment and what are the potential impacts on Orsett village?</p>	<p>Comments by Kirsty McMullen – ISH13 Transcript (EV-087f)</p> <p>For some time, the Council has raised concerns that the forecast delays at Orsett Cock Junction will result in traffic reassigning through Orsett village. A lot of focus has been placed on Orsett Cock Junction in the Examination, but the Council has concerns more widely about inappropriate re-routeing of traffic through local communities within Thurrock as a result of LTC.</p> <p>The test undertaken by the applicant to input VISSIM delays into LTAM (summarised in Appendix B of Localised Traffic Modelling (REP6-056)) demonstrates that this is a justified concern and that increased delays at Orsett Cock Junction in LTAM would result in traffic re-routeing through Orsett Village, as well as other local routes.</p> <p>The Council's review of the applicant's tests to input VISSIM delays into LTAM are summarised in Appendix C of the Council's D6A submission (REP6A-013).</p> <p>The introduction of VISSIM delays into LTAM significantly impacts the findings of the LTAM 'with LTC' scenario presented by the applicant in the DCO application.</p> <p>At Orsett Cock Junction the total flow reduces both in 2030 and 2045, with the highest reduction of 42% observed in 2045 PM. This means that as a result of increased delays, traffic from Orsett Cock Junction is forecast to re-route to other local roads, which are often unsuitable for the level of traffic choosing to use them. An example is Conway's Road leading to Orsett Village from the north, which is forecast to see an increase in a two-way flow of 550 PCU in 2045 PM peak (Sensitivity Test 3 in (REP6-056)).</p> <p>What is clear from these initial results is that the forecast delays at the Orsett Cock Junction presented in VISSIM would most likely result in re-routeing of traffic through Orsett village.</p> <p>Whilst no mitigation has been put forward by the applicant for Orsett village, the applicant did agree to undertake further sensitivity tests to assess the effect on Orsett Cock Junction of traffic not being able to re-route through Orsett village.</p> <p>The sensitivity tests reassigned traffic from Rectory Road to A128 southbound and formed Actions 9 and 10 of the Joint Position Paper on Orsett Cock Junction (REP5-084).</p> <p>The applicant submitted a Technical Note to the Council on 31 October 2023 (subsequently submitted to the Examination at D7 (REP6A-007), which summarised the results of the 'Rectory Road' sensitivity tests. The Council's review of the 'Rectory Road' tests was</p>

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	<p>summarised in the Council's D6A submission (REP6A-013).</p> <p>As would be expected, the tests show that forcing traffic to stay on the A128 and not re-route through Orsett Village will result in increased delays on the approaches to Orsett Cock Junction.</p> <p>The scheme design for Orsett Cock Junction should therefore not only reduce the delays for vehicles on the approaches to Orsett Cock Junction, but mitigation should also be provided for Orsett village to deter traffic from re-routing through the village. This would be secured by the draft Orsett Cock Requirement and draft Wider Highway Network Monitoring and Mitigation Requirement proposed by the Council, the two national Ports and TEP as set out in (REP6-163).</p> <p>It must not be forgotten that the Council would be the Local Highway Authority for the Orsett Cock Junction following completion of the construction of LTC and as such would be saddled with seeking to resolve, at its own expense, the problems on its network as a consequence of the operation of LTC.</p>
<p>vi The Applicant's response to Thurrock Council's 3.6T model run [REP6A- 013] will be sought. Are there any significant issues that emerge from this?</p>	<p>Comments by Kirsty McMullen – ISH13 Transcript (EV-087f)</p> <p>The Council reiterates its points from Agenda Item 3 (ii).</p> <p>Version 3.6T was developed to respond to errors and inconsistencies in v3.6 provided by the applicant.</p> <p>The Council, as Local Highway Authority, considers that v3.6T is more representative of the likely performance of the Orsett Cock Junction following the introduction of LTC.</p> <p>To demonstrate the significant issues shown by v3.6T the Council has prepared the video provided as Appendix H of the Council's Deadline 6A submission (REP6A-013).</p> <p>The clear conclusion is that v3.6T shows significant queuing and delays at Orsett Cock Junction. This shows an ongoing lack of alignment (or convergence) with the LTAM results.</p>
<p>vii Whether Requirement 18 of the dDCO is capable of securing the necessary level of mitigation at Orsett Cock or should the approaches set out in draft Requirements proposed by PoTLL [REP6-163] <i>et al</i> be</p>	<p>The Council, in common with PoTLL, DPWLG and the Thames Enterprise Park (TEP) considers that draft Requirement 18 put forward by the applicant does not go far enough and is insufficient, as set out in the Council's D6A submission (REP6A-013).</p> <p>At Deadline 5, and in accordance with the request in Action Point 5 of ISH7, the applicant proposed a draft Requirement in relation to the impacts at Orsett Cock Junction within the Wider Networks Impacts Update (REP5-085). Then at Deadline 6 the applicant inserted this draft Requirement (Requirement 18) into its dDCO (REP6-074).</p>

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<p>more appropriate?</p>	<p>However, as set out by the Council at D6 in Appendix N of the Council's Comments on applicant's submissions at D4 and D5 (REP6-168), it is the view of PoTLL, DPWLG, TEP and the Council that the applicant's drafting of draft Requirement 18 is inadequate.</p> <p>The applicant's draft Requirement would not secure the necessary works to the Orsett Cock Junction required to avoid serious adverse impacts on the transport network and for access to the two national Ports as a result of LTC as currently designed. In particular, it does not seek to identify or secure any threshold or standard to which the Orsett Cock Junction must operate.</p> <p>The Council would be burdened with having to resolve network operation problems on its network as a consequence of the operation of LTC.</p> <p>Whilst it is positive that the applicant has acknowledged the need to review the operation of this roundabout and the wider interchange, there are a number of amendments, which are necessary to that draft Requirement to ensure that it is effective. The wording as currently drafted seeks to optimise the performance of the roundabout and minimise delays as far as reasonably practicable. It is unacceptable that the applicant should propose a Requirement that only proposes 'consultation' with the responsible Local Highway Authority, without needing that LHA's consent for the resolution proposals. This is not acceptable at any other location and would certainly not be accepted by the applicant on its own network.</p> <p>In order to be effective, the requirement needs to be more specific about what it is aiming to achieve. In the draft Requirement proposed by the Council, two national Ports and TEP, the Council has highlighted that the purpose of the design needs to be to avoid a material worsening on the highway network and a substantial detriment to the efficient operation of the Port of Tilbury and DP World/London Gateway. This detail is required to give the Secretary of State and other stakeholders confidence in how LTC will operate once open. How this junction operates is a relevant consideration when measuring the impact of LTC.</p> <p>In addition, the wording suggested by the applicant does not include any further monitoring or mitigation, should the mitigation originally agreed be ineffective. This is an essential element of the requirement, as without it, there remains significant uncertainty about the operation of the junction.</p> <p>Whilst the wording proposed by the applicant is a positive first step, the Council (in conjunction with the Port of Tilbury, DP World London Gateway and TEP) have proposed amendments to this wording, which better achieves its desired outcome.</p>

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		<p>In order to provide comfort to the ExA that a mitigation scheme could be implemented within the Order Limits, including other highway land (whether strategic road network or owned/operated by the local highway authority), the Council has tested some initial, potential mitigation measures within VISSIM using v3.6T. The mitigation options tested, and modelling results were submitted at Appendix D of the Council's D7 submission (REP7-228).</p> <p>These initial, potential measures are not proposed as the definite mitigation scheme but is purely to demonstrate that a mitigation is achievable without third party land being required and that the draft Requirement put forward by the Council, PoTLL, DPWLG and TEP would meet the tests for Requirements set out in paragraph 4.9 of the NPSNN.</p> <p>Whilst the initial mitigation testing should provide comfort to the ExA that mitigation within the Order Limits is possible, it also demonstrates that in order to mitigate the impacts, substantial design changes would be required by the applicant. The minor changes to signal timings and line markings proposed by the applicant will not be sufficient to ensure there is adequate convergence between the LTAM and VISSIM traffic models.</p> <p>Without the draft Requirement for Orsett Cock Junction put forward by the Council, the two national Ports and TEP, the traffic impacts at Orsett Cock Junction are unacceptable to the Council.</p>
b)	Blue Bell Hill	
i	The Applicant and KCC are to be asked whether a smaller improvement scheme could be implemented at Blue Bell Hill should the Local Large Majors (LLM) scheme fail to come forward?	N/A

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ExA Actions Points (EV-087g)			
No.	Party	Action	Thurrock Council's Response
1	Applicant Thurrock Council	<p>Orsett Cock: Additional weave length and General Arrangement Plans</p> <p>Please submit a drawing demonstrating the proposition that relevant additional weave length can be provided without a requirement for additional land and within the limits of deviation. Please provide an amendment to the General Arrangement Plans Vol C [REP7-028/029] to show this change.</p> <p>Thurrock Council may comment at D9.</p>	<p>Thurrock Council will respond to the applicant's submission on the additional weave length at D9.</p> <p>It should be noted that the General Arrangement plans show a 90m weave length for the A13 EB off-slip and LTC EB off slip; but the VISSIM modelling provided by the applicant shows a 200m weave length. It should also be noted that the VISSIM modelling provided by the applicant shows that the weave length of 200m is not sufficient and should be extended further.</p> <p>This has been raised a number of times by the Council, including at ISH4 as set out in the Council's Submissions for ISH3 - ISH7 and CAH1 and 2 (REP4-352).</p>
2	Thurrock Council	<p>Orsett Cock: modelling parameters: driver behaviour</p> <p>Please confirm the extent to which Thurrock Council and the Applicant are in agreement, or not in agreement (and why), in relation to the driver behaviour assumptions employed in the modelling. To the extent not done so in the hearing, please explain any differences between model versions 3.6 and 3.6T.</p>	<p>The Council's response is included in Appendix A of this submission.</p> <p>It is apparent that the applicant has adopted more aggressive driver behaviour in its version of the forecast modelling, which does not conform to modelling best practice guidelines. It has also selectively changed its forecast model in a manner that was not deployed, or considered necessary, in its base model versions, which applied driver behaviour in alignment with guidelines and observed traffic conditions. The applicant is simply changing the driver behaviour parameters to minimise the traffic delays caused by LTC. This practice is not acceptable and would be prohibited by its national Spatial Planning team if it was reviewing this application independently.</p> <p>Even in the applicant's version of the VISSIM model (v3.6), its modelling shows that the delays caused by LTC are unacceptable. It demonstrates that LTAM is clearly unrepresentative of local traffic movements. It is crucial to remember that the LTC DCO</p>

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ExA Actions Points (EV-087g)			
No.	Party	Action	Thurrock Council's Response
			<p>application is critically reliant on the central fact that LTAM is representative of local traffic. This position is untenable. Deploying the correct driver behaviours, as shown in VISSIM v3.6T, the traffic congestion is exacerbated further, to the extent that the scheme design is clearly not viable.</p> <p>At ISH13 the applicant attempted to justify its unique version of driver behaviour by claiming that their approach is more representative of what happens in reality. These were misleading statements by the applicant that were unsubstantiated by any evidence and were not challenged. It is the modelling approach adopted by the Council which deploys an approach consistent with modelling guidance intended to most accurately reflect what happens in reality.</p> <p>A video has been prepared by the Council of the applicant's VISSIM v3.6 model for the 2030 PM peak hour (1700-1800) Do Something scenario (i.e. with LTC in place). This is the same scenario as shown in the Council's video submitted at Deadline 6A of the Council's v3.6T model (REP6A-014) in Appendix H – it is provided separately but described in Appendix B below.</p>
4		<p>Orsett Cock: roundabout route modelling assumptions Please use versions of the diagrams referred to in Action 3 to illustrate the differences between Applicant v3.6 modelling and the Thurrock Council v3.6T modelling assumptions. Further to discussion at ISH13, this should be taken as an opportunity to explain the modelling that is already before the ExA, but not to amend it. Thurrock Council may comment in responding</p>	<p>As instructed, the Council will respond to the applicant's submission at Deadline 9.</p>

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ExA Actions Points (EV-087g)			
No.	Party	Action	Thurrock Council's Response
		submissions at D9.	
5	Thurrock Council	<p>Orsett Cock: Identification of deemed unacceptable impacts by Thurrock Council</p> <p>Thurrock Council is requested to identify all instances of what it deems to be unacceptable impacts at Orsett Cock (plus definitions of the relevant terms describing impacts), emerging from the Applicant's version 3.6 modelling (noting that modelling is not agreed between Thurrock Council and the Applicant).</p>	<p>The Council does not accept v3.6 of the Orsett Cock VISSIM model for the reasons set out in this submission as well as the Council's Comments on Traffic Modelling (REP6A-013).</p> <p>Notwithstanding this, the ExA has asked the Council to set out all instances that are deemed to be unacceptable impacts at Orsett Cock Junction.</p> <p>The applicant summarised the results of v3.6 of the Orsett Cock VISSIM modelling at Deadline 6A in 'Localised Traffic Modelling Appendix C - Orsett Cock Forecasting report v3.0' (REP6A-006).</p> <p>The first aspect that has been considered when reviewing VISSIM v3.6 is to compare it to the LTAM results for Orsett Cock Junction. As set out earlier, the EIA and Business Case rely solely on LTAM and therefore Orsett Cock Junction will need to perform on the ground as forecast by LTAM, for the environmental effects assessed in the EIA and benefits/ disbenefits forecast in the Business Case to be true.</p> <p>Tables 2.1 and 2.2 and Figures 2.1 and 2.2 of the Council's Comments on Traffic Modelling (REP6A-013) show that in 2030 AM hour of 0700-0800 the delays per vehicle are up to 255% greater in VISSIM V3.6 than in LTAM (NB. no comparison can be made of 0800-0900 as it is not modelled in LTAM). In the 2030 PM peak hour (1700-1800) the delays per vehicle are up to 1,245% greater in VISSIM than in LTAM.</p> <p>Appendix A of (REP6A-013) provides a comparison of VISSIM V3.6 with LTAM for 2045 and shows that in the AM hour of 0700-0800 the delays per vehicle are up to 414% greater in VISSIM V3.6 than in LTAM. In the</p>

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ExA Actions Points ([EV-087g](#))

No.	Party	Action	Thurrock Council's Response
			<p>2045 PM peak hour (1700-1800) the delays per vehicle are up to 1,397% greater in VISSIM than in LTAM (i.e. LTAM only forecasts 21 seconds delay per vehicle on A13 EB off-slip arm (referred to as A13 West in the tables) and VISSIM V3.6 forecasts 318 seconds delay per vehicle.</p> <p>The difference between LTAM and VISSIM 3.6 is most acute on the following arms of Orsett Cock Junction:</p> <ul style="list-style-type: none"> - A128 Brentwood Road in the AM and PM - Brentwood Road (south) in the AM and PM - A13 (East) (i.e. WB off-slip) in the PM - A1013 Stanford Road (west) in the PM - A13 (West) (i.e. EB off-slip) in the PM <p>It is the Council's view that the delays per vehicle on the above arms forecast by VISSIM v3.6 would give rise to significant adverse impacts that have not been assessed in the EIA or Transport Assessment.</p> <p>The next aspect to consider in terms of unacceptable impacts of VISSIM v3.6 is to consider the level of displaced traffic. Appendix B of ISH4 of the Council's Post Event Submissions for ISH3-7 and CAH1 and 2 (REP4-352) summarises the level of displaced traffic from Orsett Cock Junction as a result of LTC.</p> <p>The analysis in Table A1.5 of ISH4 Appendix B (REP4-352) shows that the volume of LTC traffic forecast to route via Orsett Cock Junction in 2045 (1,458 and 2,037 PCUs in the AM and PM) is more than double the total increase in traffic forecast to route through Orsett Cock Junction in the Do Something scenario (721 and 976 PCUs in the AM and PM). This suggests a significant level of future baseline traffic (i.e. non LTC traffic) would be displaced by LTC. This displaced traffic is equivalent to 737 PCUs in the AM (0700-0800) and 1,061 PCUs in the PM</p>

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ExA Actions Points (EV-087g)			
No.	Party	Action	Thurrock Council's Response
			<p>(1700-1800) in 2045.</p> <p>Orsett Cock Junction is a key junction for the Council to enable the Council to deliver future growth. Therefore, it is the Council's view that LTC would have a significant adverse impact on the growth of Thurrock by displacing a significant level of traffic from Orsett Cock Junction that would otherwise route through it, with some of that displaced traffic using unacceptable routes through local communities.</p> <p>This leads the Council onto the third aspect of unacceptable impacts of VISSIM v3.6. The sensitivity tests undertaken by the applicant to input VISSIM v3.6 delay parameters into LTAM (REP6-056) demonstrate that were VISSIM levels of delay to be experienced at Orsett Cock Junction, it would result in re-routing of vehicles, including through Orsett Village. An example is Conway's Road leading to Orsett Village from the north, which is forecast to see an increase in a two-way flow of 550 PCU in 2045 PM peak (Sensitivity Test 3 in REP6-056). The likely significant adverse environmental effects of traffic re-routing through Orsett Village in order to avoid the LTC-induced delays at Orsett Cock Junction have not been assessed in the ES. Turning to the VISSIM v3.6 results presented by the applicant in 'Localised Traffic Modelling Appendix C - Orsett Cock Forecasting report v3.0' (REP6A-006), they show a significant adverse impact in queuing and delay on the following arms (NB: consideration has only been given to the local network peak hours of 0800-0900 and 1700-1800):</p> <p>2030</p> <ul style="list-style-type: none"> - Increase in delay from DM to DS on A13 (East) (i.e. A13 WB off-slip) from 74 seconds to 330 seconds in the 2030 PM peak (1700-1800) (Table 4.3 of REP6A-006) and a corresponding increase in

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ExA Actions Points (EV-087g)			
No.	Party	Action	Thurrock Council's Response
			<p>mean max queue from 112m to 217m.</p> <ul style="list-style-type: none"> - Increase in delay from DM to DS on A13 (West) (i.e. A13 EB off-slip) from 39 seconds to 137 seconds in the 2030 PM peak (1700-1800) (Table 4.3 of (REP6A-006)) and a corresponding increase in mean max queue from 39m to 672m. <p>2045</p> <ul style="list-style-type: none"> - Increase in delay from DM to DS on A128 Brentwood Road (North) from 57 seconds to 417 seconds in the 2045 AM hour (0800-0900) (Table 4.5 of (REP6A-006)) and a corresponding increase in mean max queue from 47m to 961m. - Increase in delay from DM to DS on A1013 Stanford Road (East) from 54 seconds to 357 seconds in the 2045 AM hour (0800-0900) (Table 4.5 of (REP6A-006)) and a corresponding increase in mean max queue from 105m to 605m. - Increase in delay from DM to DS on A13 (West) from 47 seconds to 318 seconds in the 2045 PM hour (1700-1800) (Table 4.6 of (REP6A-006)) and a corresponding increase in mean max queue from 39m to 2,257m. <p>The above increases in delays and queuing at Orsett Cock Junction would result in significant adverse impacts on a key local junction within Thurrock, causing delays to local traffic as well as public transport services and pedestrians and cyclists attempting to use Orsett Cock Junction.</p>
7	The Applicant Thames Freeport (Port of Tilbury, DP World London Gateway, Thurrock Council)	Thames Freeport (Ports and Thurrock Council): Collaborative development of draft Requirement 18 By Deadline 9, please engage to seek a further revised draft of Requirement 18 in which the objectives to be met and definitions of terms and outcomes sought	This Requirements has been the subject of ongoing negotiations between the parties and it is hoped that it will be amended in an agreed form and submitted at D9 (as indicated by the ExA in their Action Points).

ExA Actions Points (EV-087g)			
No.	Party	Action	Thurrock Council's Response
		to secure the proper functionality of the Orsett Cock are (as far as possible) agreed. Provide a draft that sets out all matters agreed. If necessary, provide reservations and statements of individual or group positions on matters not agreed	

Appendix A – Driver Behaviour Parameters

A.1 Introduction

A.1.1 This Appendix responds to Action Point 2 of Issues Specific Hearing 13 (ISH13), which requested that Thurrock Council confirm:

'the extent to which Thurrock Council and the Applicant are in agreement, or not in agreement (and why), in relation to the driver behaviour assumptions employed in the modelling. To the extent not done so in the hearing, please explain any differences between versions 3.6 and 3.6T.'

A.1.2 This Appendix sets out the following:

- a. Summary of network parameter changes made by Applicant in Version 3.6 of the Orsett Cock VISSIM micro-simulation model, which influence driver behaviour;
- b. Driver behaviour parameter changes in the Council's V3.6T;
- c. National Highways and Thurrock Council's stance on 'urban driving behaviour' in the circulatory;
- d. Continuity between the base and future year models; and,
- e. Guidance documents and industry best practices for modelling driver behaviour in micro-simulation.

A.2 Network parameter changes made by Applicant in VISSIM V3.6 that influence driver behaviour

A.2.1 **Table A.1** below summarises the changes in parameters applied by the applicant to the Orsett Cock circulatory, which either:

- a. Make unjustified changes to the network parameters in the future year models compared to the validated base year model; or

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- b. Make changes to the future year do minimum and do something parameters, which act to either make to do minimum worse or make the do something better.

Table A.1: Network parameter changes made by that Applicant in V3.6 that influence driver behaviour

VISSIM Parameter	Base VISSIM model	Do-Minimum V3.6	Do-Something V3.6	Thurrock Council's Comment
Driving behaviour around circulatory	'Urban' behaviour validated to observed traffic conditions	'Urban merge' – bespoke parameters derived by the applicant	'Urban merge' – bespoke parameters derived by the applicant	Forecast parameters do not align with validated base year model parameters - Refer to the section below, which provides an explanation of 'urban merge' and the need for consistency with a validated base year model.
Lane change distances	Examples include: A13 EB on-slip – 60m A1013 EB exit – 85m Brentwood Rd South – 90m	Examples include: A13 EB on-slip – 150m A1013 EB exit – 150m Brentwood Rd South – 150m	Examples include: A13 EB on-slip – 60m A1013 EB exit – 100m Brentwood Rd South – 100m	Reducing the lane change distance in the Do Something compared to the Do Minimum makes driving behaviour more aggressive.
Conflict Area parameters	0.5 seconds	3.0 seconds	0.5 seconds	Default minimum time for minor flow to enter in front of vehicles of the major flow has been increased from 0.5 seconds to 3.0 seconds in Do Minimum thus reducing capacity and increasing delays on minor arms. However, the default 0.5 seconds has been used in Do Something thus reducing delays compared to the Do Minimum scenario.
Priority Rules	N/A	For Brentford Road South and A1013 West approaches the minimum gap times and the maximum speed parameters are set differently for the AM and PM models	In Do Something model Brentford Road South approach is signalised and therefore the priority rules do not apply.	Parameter value have been adjusted in the Do Minimum PM model thus increasing delays compared to the Do Something.

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VISSIM Parameter	Base VISSIM model	Do-Minimum V3.6	Do-Something V3.6	Thurrock Council's Comment
			For the A1013 West approach the minimum gap times and the maximum speed parameters are the same for the AM and PM models.	

A.3 Driver behaviour parameter changes in the Council's V3.6T

A.3.1 The Council has rectified all of the parameters in Table A.1 within the VISSIM model version 3.6T submitted at D6A ([REP6A-013](#)). Parameters have only been changed to the Orsett Cock circulatory as well as the inclusion of a Pegasus Crossing at A1013 Stanford Road/ Rectory Road. No other changes have been made to any other area of the applicant's VISSIM v3.6 model. This is not to say the Council does not have concerns with other aspects of the Orsett Cock modelling, which are summarised in Appendix B of ([REP6A-013](#)).

A.4 National Highways and Thurrock Council's stance on 'urban driving behaviour' in the circulatory

A.4.1. As set out in Table A.1, the applicant's v3.6 models for the Do Minimum and Do Something scenarios apply a bespoke self-developed, 'urban merge' driving behaviour in the circulatory lanes of Orsett Cock gyratory. The 'urban merge' driving behaviour adopted by the applicant is based on the default 'urban' behaviour, built-in within VISSIM software (and used for the validated base model of Orsett Cock Junction), but a number of parameters have been intentionally modified by the applicant, resulting in a more aggressive lane change behaviour (i.e. in the applicant's bespoke 'urban merge' driving behaviour, drivers are more aggressive when changing lanes).

A.4.2. The applicant has modified the following parameters to create a more aggressive lane change behaviour compared to the base year model:

- a. Lowering the safety distance reduction factor between vehicles from 60% default to 30%
- b. Allowing higher deceleration for cooperative braking (from -3 m/s^2 to -9 m/s^2)
- c. Allowing higher maximum deceleration for the cooperating (trailing) vehicle (from -3 m/s^2 to -3.5 m/s^2)

A.4.3. These are the key parameters affecting the driver behaviour. In addition, the Council's review of the model has noted other changes made to driver behaviour parameters, which would have less effect but should still be consistent between Do Minimum and Do Something models. One example is changes made to the 'vehicle following' behaviour on the circulatory, whereby the look ahead distance is 50m in the Do Minimum and 100m in the Do Something. The look ahead distance is the distance the vehicle can see forward in order to re-act to other vehicles. It should be consistent between Do Minimum and Do Something. Greater distance in Do Something will create more aggressive driving behaviour than in the D -Minimum. For comparison, the validated base year model had a look ahead distance of 250m, which is standard practice.

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- A.4.4. The Council challenges two key aspects of the use of the ‘urban merge’ driving behaviour by the applicant:
- a. **Adherence to industry standards and guidance:** the Council’s stance is that using the bespoke ‘urban merge’ behaviour in the circulatory lanes is not appropriate and does not follow industry accepted modelling standards and industry set best practices as detailed further in this document; and,
 - b. **Alignment with the validated base year model:** the ‘urban merge’ driving behaviour has been adopted by the applicant both in the future year (Do Minimum and Do Something) models. However, the aggressive behaviour parameters associated with the ‘urban merge’ driving behaviour are not used within the applicant’s validated base year model. The Council’s stance is that such approach to modelling has created a misalignment between the base year and future year (Do Minimum and Do Something) models by completely ignoring the base year model validation and thus discredits the Do Minimum and Do Something model results. There is no justified reason why drivers would suddenly behave differently in the future compared to the observed conditions used to build the validated base year model.

A.5 Guidance Documents and industry best practices

- A.5.1. The transport modelling processes are governed by traffic modelling guidance documents and industry accepted best practices. Currently in microsimulation modelling there are three major guidance documents, which should be followed:
- a. **TAG unit M3.1: Highway Assessment Modelling (Department for Transport):** this guidance should be followed on all modelling projects, regardless of location.
 - b. **Guidelines for the Use of Microsimulation Software (National Highways):** this guidance should be followed on projects where National Highways is a stakeholder.
 - c. **Traffic modelling Guidelines V4.0 (Transport for London):** this guidance must be followed on all projects where TfL is a stakeholder. It is considered the most appropriate guidance for microsimulation modelling and widely applied on modelling projects across the country.
- A.5.2. The consideration and adherence to the TfL modelling guidelines are generally followed in the industry when presenting micro-simulation and this is generally expected by most local authorities, including National Highways. National Highways requires that microsimulation of its own schemes use the TfL guidance, e.g. the M5 Junction 14 VISSIM model, the M4 J16 VISSIM model and the A419 microsimulation corridor models.
- A.5.3. TfL’s Transport modelling Guidelines V4.0 in Section 7.6 states that:
- ‘..... the Proposed model should be implemented in the base model (or future base model if the Three Stage Modelling Process is being followed, (...)) by only modifying elements which will change as part of the scheme, including any signal timing changes. Adjusting other elements, which will not change on street, ‘to make it work better’ is not acceptable. If the Proposed model will not work without additional changes, then this is a sign that either the proposed design is not viable or the base model was not fit for purpose and should be revisited.’*
- A.5.4. The differences in results between the v3.6 (the applicant) and v3.6T (the Council) models clearly show that the driving behaviour change implemented by the applicant has greatly enhanced the performance of the v3.6 model between the validated base model (i.e. validated

against observed traffic conditions) and the future models, therefore this change is not acceptable.

- A.5.5. Additionally, regardless considering the adherence to the base year model - the use of the bespoke 'urban merge' behaviour in the circulatory is not justifiable. The default VISSIM 'urban' behaviour is considered to be the standard by industry best practice.

A.6 Continuity between the base year and future year models

- A.6.1. The modelling process is governed by a three stage modelling process, which encompasses:
- a. Development, calibration, and validation of the base year model, which shows the existing operation of the highway network and is validated against on-street conditions.
 - b. Development of future year models with predicted future year operation of the network without the scheme. This is the Do Minimum model.
 - c. Development of Do-Something scenarios, which are based on the Do Minimum model and includes the proposed scheme.
- A.6.2. The first stage of the process, the model validation, is utmost important, as it proves that the model is representative to on-site observed conditions, and truly reflects the driving behaviour, queueing, congestion and delays representative to the area.
- A.6.3. As set out in guidance, when the future year models are developed, it is inherent that the changes made to these models are strictly derivatives of the future year network and traffic demand changes and all non-related settings, parameters and circumstances are kept unchanged, to allow like-for-like and fair comparison.
- A.6.4. The Council's stance is that the applicant's application of a more aggressive driving behaviour for the future (Do Minimum and Do Something) models is not appropriate, as it is not established and justified that drivers would develop and apply a more aggressive behaviour than is represented in the base year model.

A.7 Conclusion

- A.7.1 This Appendix demonstrates that the applicant has adopted more aggressive driver behaviour in its version of the forecast modelling, which does not conform to modelling best practice guidelines. It has also selectively changed its forecast model in a manner that was not deployed, or considered necessary, in its base model versions which applied driver behaviour in alignment with guidelines and observed traffic conditions. This is contrary to model guidance and is not accepted by the Council.
- A.7.2 The changes made by the applicant to the forecast models result in less delay than would be the case had the parameters remained as in the validated base year model. Furthermore, some network parameters, which influence driver behaviour, are different between the Do Minimum and Do Something models, making the Do Minimum operate worse and the Do Something operate better.
- A.7.3 Deploying the correct driver behaviours, as shown in VISSIM v3.6T, results in additional traffic congestion to that presented by the applicant in v3.6.

Appendix B – Video showing Outputs from VISSIM v3.6 at Orsett Cock Junction

B.1 Introduction

- B.1.1 A video has been prepared by the Council of the applicant's VISSIM v3.6 model for the 2030 PM peak hour (1700-1800) Do Something scenario (i.e. with LTC in place). This is the same scenario as shown in the Council's video submitted at Deadline 6A of the Council's v3.6T model ([REP6A-014](#)) in Appendix H.
- B.1.2 The video provides a visual representation to help the ExA understand the significance of the aggressive driving behaviour the applicant has adopted in its VISSIM model v3.6 and to allow comparison with the same scenario shown in v3.6T, which shows driving behaviour in alignment with modelling guidance.
- B.1.3 The video of the applicant's v3.6 model demonstrates that, despite deploying aggressive driving behaviour that does not comply with guidance, the level of queuing and delay forecast by the applicant at the Orsett Cock Junction still remains substantial and unacceptable. The video demonstrates that there would be significant queuing and delay on:
- the A13 westbound off-slip, with traffic queuing in both lanes;
 - the weaving section where LTC off-slip joins with A13 eastbound off-slip;
 - the LTC eastbound off-slip as traffic joins the A13 eastbound off-slip;
 - the A13; and,
 - the A13 eastbound off-slip.
- B.1.4 As set out earlier in this submission, the only changes made to the applicant's v3.6 model to create the Council's v3.6T model were to the driver behaviour parameters on the Orsett Cock circulatory and the Pegasus Crossing on A1013 Stanford Road (i.e. only changes made to the local highway network to address issues identified by the Council as summarised in Appendix A of this submission).
- B.1.5 No changes were made by the Council to the rest of the applicant's v3.6 model.
- B.1.6 The video of the applicant's v3.6 shows that there would still be significant queuing and delay at Orsett Cock Junction with the aggressive driver behaviour adopted by the applicant at the Orsett Cock circulatory.
- B.1.7 The video of the Council's v3.6T model shows that with the driver behaviour parameters on the Orsett Cock circulatory corrected (as detailed in Appendix A of this submission), the queuing and delay at Orsett Cock Junction would have a consequential impact on the LTC/A13/A1089 junction with traffic queuing back onto the A13 EB mainline and LTC NB mainline:

5 Issue Specific Hearing 14 (ISH14) on draft Development Consent Order (dDCO)

Date: 28 November 2023

Post Hearing Submission made by Thurrock Council, including written summary of Thurrock Council’s Oral Case

Note: these Post Hearing Submissions include a written summary of the Oral Case presented by the Council at ISH14. They also include the Council’s submissions on all relevant Agenda Items, not all of which were rehearsed orally at the ISH due to the need to keep oral presentations succinct.

The structure of the submissions follows the order of the agenda items but within each agenda item, the submissions begin by identifying the oral submission made at ISH14 by the Council and then turn to more detailed matters. Where requests for further information / clarification from the applicant were made by the Council at ISH14 these have been highlighted as ‘Requests’. Where the Examining Authority (ExA) requested the Council provides further written evidence or further information has been provided in response to statements made by the applicant during ISH14.

This submission includes a response to the relevant Action Points arising from ISH14 ([ISH14](#)).

ISH14 was attended by George Mackenzie on behalf of the Council. Also, in attendance either in person or virtually at ISH14 on behalf of the Council were Ben Standing, Chris Stratford, Adrian Neve, Colin Black, Henry Church, Kirsty McMullen, Peter Doherty, Will Gullett and Sharon Jefferies. Tracey Coleman, Interim Chief Planning Officer for Thurrock Council, also attended virtually.

The ExA asked questions of the Applicant, Local Highway Authorities and Ports relating to:

The ExA will consider requests for discussion from IPs:

Agenda Item	Thurrock Council’s Response
3	Responses to the dDCO Commentary: Matters where guidance is sought
a)	Discussion of and guidance on dDCO Commentary Matters
i	<ul style="list-style-type: none"> The ExA will provide an opportunity for IPs to seek guidance on dDCO Commentary Matters <p>Generally, no specific guidance required. However, the Council do note that it does not cover all areas which have been highlighted as areas of dispute (see the Statement of Common Ground (REP6-030), pages 8 – 102), Local Impact Report (REP1-281) Section 15.2, comments pursuant to ISH 2 (REP1-295), comments pursuant to ISH 7 (REP4-352) in Section 5 and submissions back to the applicant (including REP5-112), Section 2.2).</p> <p>For example, that is no commentary on whether the Limits of Deviation should apply outside of the Order Limits or who should be the discharging authority. The Council will provide additional written comments, as appropriate, within its D8 submission.</p> <p>Considering the stage of the Examination, the Council is currently</p>

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	<p>undertaking a rationalization exercise in relation to its remaining significant comments on the DCO. Whilst we have reached agreement with the applicant on those areas that can be agreed, the Council is keen to highlight those areas it is still most concerned about. The Council do not intend to discuss these in detail now and instead will put them into written submissions at D8 and/or D9. During the Hearing the Council highlighted the following key areas:</p> <ol style="list-style-type: none"> 1. The Council contends that it should be the discharging authority in relation to local matters in respect of Requirements 3 (detailed design), 4 (Construction and Handover EMPs), 5 (landscaping and ecology), 6 (contaminated land and groundwater), 8 (surface and foul water drainage at a local level (with the Environment Agency responsible for those elements not at a local level), 9 (historic environment), 10 (traffic management), 11 (construction travel plans), 12 (fencing), 14 (traffic monitoring), 16 (carbon and energy management plan), 18 (operation of Orsett Cock roundabout and 19 (amendments to approved details). 2. An explanation from the applicant as to the meaning of '<i>materially new or materially new environmental affects</i>' in comparison with those reported in Environmental Statement. <ul style="list-style-type: none"> • Is that everything in the Environmental Statement or just certain things? • When considering matters such as business impact, how are new business treated? • How do we know what the impacts are considering the limited publication/consultation requirements? <p>These are not abstract questions, these are trying to explore how this provision will operate and if its wide ranging use, e.g. in Article 6 (Limits of Deviation even outside of Order Limits) and R3 (detailed design) is appropriate.</p> <ol style="list-style-type: none"> 1. Article 40 and the replacement of 'Special Category Land'. The replacement land should be delivered before the Special Category Land is vested in the applicant. Otherwise, there is a lengthy temporary loss of open space and a potential long term risk of loss/non-delivery. 2. More absolute words describing compliance with outline documents when commencing an iterative process. Words like 'reflect' and 'substantially in accordance with' should be replaced with more absolute words, such as 'implement'. This is especially important because the outline documents which are being secured also contain significant flexibility. The result is a significant amount of flexibility, which the Council considers will have an adverse impact on certainty both for local residents, but also for the Secretary of State, in what is actually being secured. 3. The EMP (Third Iteration) in Requirement 4 should be subject to both consultation upon with the Council and approved by the Secretary of State. It is acknowledged that this concerns the operation of LTC, which is the strategic highway network, however, the design of LTC, and its use of local junctions, such as Orsett

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	<p>Cock Junction, demonstrates that it has the potential for significant impact on the local road network.</p> <p>Key areas for the Council also includes the following:</p> <ol style="list-style-type: none"> 1. Deemed consent – the Council still maintain concern both with its use in general, and with the inability for both parties to agree extension. 2. Article 9 and the role of the Traffic Management Forum – the Council is still concerned with how conflict with pre-authorized permits will be resolved. 3. Article 27 – time limits for CPO. The Council considers that this should be five years not eight years, 4. Article 28 – the Council have a concern about the amount of land taken for the purposes of the CPO and temporary possession. 5. Article 35 – temporary possession. Uncertainty as to standard of returned land. 6. Article 35(2) – notice period for temporary possession is unnecessarily short, increasing uncertainty for landowners and potentially increasing the amount of compensation that needs to be paid out of the public purse. 7. Article 39(2) (recovery of costs of new connections) – should be compensation not just expenditure. 8. Review of key documents in the event that the reasonable worst case scenario proves materially incorrect. There is the potential for a mechanism to allow the SoS to amend approved detailed, using the powers in Requirement 19, if monitoring shows that the reasonable worst case scenario in control documents proves to be significantly incorrect. 9. Article 65 – within the appeals to the Secretary of State. The 10 business days for Council responses is not sufficient. The Council suggests 20 business days. Although the Council understands the need to avoid delay, it is important that a project of this impact and scale needs to be done correctly. It not any adverse impacts could be significant and wide ranging. 10. Article 66 - securing of documents. During the hearing, the applicant finally confirmed that the Structures Plans, Temporary Works Plans and Drainage Plans are meant to be illustrative. It is unclear why illustrative plans need to be certified. <p>However, it remains the Council's position that these should remain certified and should also become secured through the DCO articles or become part of existing Control documents.</p> <p>Structures Plans – these set out key information to aid the design of structures, such as bridges, which is not contained elsewhere. They include key parameters for certain uses, such as walkers, cyclists and horse-riders, which is not contained elsewhere. They should be included as part of the design parameters in Requirement 3.</p> <p>Temporary Works Plans – these set out where temporary works are</p>

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		<p>undertaken and should be included within Schedule 1.</p> <p>Drainage plans – these set out and show details, such as the catchment boundaries and the Drainage Strategy and have been under discussion between the Council and the applicant for some time and which has broadly been reviewed and agreed through the Examination and SoCG discussions. It is important to have a reference point for the Work No. for each proposed Water feature, i.e. they contain detail not contained elsewhere. They should be included within Requirement 8, so that the surface and foul water drainage system is designed to be in accordance with them.</p> <p>1. Requirement 3 – the reference in Requirement 3 to amendments being made in not materially new or materially different when compared with the ES has the effect, in the Council's opinion of removing the non-material amendment procedure in the Planning Act 2008. It is unclear why this is in the public interest, especially when taking into account the unanswered questions in relation to materially new and materially different raised above.</p>
	<ul style="list-style-type: none"> Matters flagged by IPs as being unclear or in dispute may be discussed 	<p>This section is in relation to the Commentary submitted by the ExA (PD-047). The Council does not consider that any part of the commentary is unclear.</p>
4	Issues from the dDCO Commentary: Matters of particular concern	
a)	Definition of 'Commence' and 'Begin'	
i	<ul style="list-style-type: none"> The definition of the term 'commence' excludes 'preliminary works', whereas submissions on the term 'begin' have suggested that intentionally it does not, but yet this division does not appear to be clear on the face of the dDCO as drafted. 	<p>The need for this is unclear. In the Council's opinion it is unnecessary and does not appear to work in the public interest. Previous submissions have been made in relation to this. This was explored in our REP4-352 (page 321).</p> <p>Clear objections to the principle of what is being proposed were expressed by the Court of Appeal in the case of Tidal Lagoon (Swansea Bay) plc v Secretary of State for Business, Energy and Industrial Strategy and others [2022] EWCA Civ 1579.</p> <p>As clearly explored and held in that case, and equally applicable in this situation, the underlying purpose of the time limits provided for in the Planning Act 2008 (sections 154 and 155) is to prevent a DCO surviving for a lengthy period of time without being implemented. The Council's concern in relation to the drafting in the DCO at present is that by seeking to satisfy the requirement to 'begin' works within five years, the applicant could preserve the DCO with very minor preliminary works being undertaken, which is contrary to the purpose and intention being the primary legislation. This will have a long term impact on planning matter for the Council, as well as creating uncertainty for residents within the local area. It is also likely to have a negative effect on the emerging Local Plan, as greater uncertainty will remain as to whether LTC will be commenced.</p> <p>Furthermore, and again as held in the Swansea Bay Case, there is need to consider the powers and timescales for the compulsory</p>

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	<p>acquisition of land alongside the period in which the DCO can be preserved. The Council's view is that the time periods must be consistent and aligned, and this is reflected in the Swansea Bay Case, where (at paragraph 41) it is stated <i>'It would have been illogical and dysfunctional to create inconsistent arrangements for the period of operation of the DCO on the one hand, and the draconian power to acquire land compulsorily on the other.'</i> Such an illogical and dysfunctional outcome would be seen here if the drafting remains as it is at present and the applicant is able to satisfy the requirement to 'begin' works by undertaking very minor preliminary works only.</p> <p>There is also some confusion because the definition of 'commence' in Schedule 2 states 'means the words beginning to carry out', which is confusing when the word 'begin' is defined separately elsewhere.</p>
<ul style="list-style-type: none"> Clarity about the effect of these terms is important in terms of understanding the inception of works for the purposes of the Control Documents (CDs) 	<p>In the Council's opinion the effect is clear in terms of DCO drafting. The wider concern is whether the impact is in the public interest.</p> <p>Whilst the effect of the insertion of 'begin' appears to be clear (to allow minimal works to preserve the DCO). The public benefit for doing so remains more difficult to ascertain. It also needs to be stressed that some of the Preliminary Works are not minor. They could include the setting up of the main compounds (for example, compounds 5 and 5A). This could take over a year and include substantial works in the adjoining highways to create utilities connections to the compounds and their facilities; to build the compound infrastructure (such as fencing and enclosures); hardstanding (s); compound buildings and infrastructure (such as the segment factory and access roadways). The size of the compound will influence the scale of those works, but for the main drive site of Compound 5/5a, the works could be much greater scale than the envisaged site investigation and data collection works of trial holes or archaeology surveys.</p> <p>Table 1.1 of the Preliminary Works Environmental Management Plan (REP6-042) (PWEMP) leaves significant ambiguity as to the extent of site establishments that is sought to be included prior to establishing the EMP (second iteration), such as <i>'erection of temporary means of enclosure'</i> and <i>'diversion and laying of underground apparatus'</i> for the <i>'Advance Compound Area'</i>.</p> <p>The document must stipulate that enabling works and site establishment of the compounds are excluded from the PWEMP and would be covered by the applicable EMP2 that would be approved by the SoS, following engagement with the Local Highway Authority. The oTMPfC (REP7-149) in paragraph 2.3.1 specifically excludes enabling works (such as utilities connections and access roads) and site establishment (such as welfare provision, plant installation). The applicant must clarify that these would be covered by the EMP2s and therefore covered by commencement.</p> <p>Construction traffic would be controlled by the Outline Traffic Management Plan for Construction. The Council has previously raised concerns regarding this document (see REP4-353 – question 4.6.4). In summary, it is not considered very rigorous, and the Council is pushing for a stronger framework. Major works, such as setting out Compounds 5 and 5A, these major works should not be undertaken until the full</p>

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		<p>traffic management plan for construction has been approved by the SoS.</p> <p>Construction traffic would be controlled by the Preliminary Works EMP. The Council has previously raised concerns regarding this document (see [REP4-353] – question 4.6.4). Major works should not be undertaken until the EMP (Second Iteration) for construction has been approved by the SoS.</p> <p>The resultant TMPs must be developed in alignment with the EMP2, which currently includes the CLPs, the SSTP, the MHP and the SWMP, as annexes to the EMP2. The suite of control documents must be developed in a coordinated and aligned approach and must all be approved prior to commencement.</p> <p>The Council has noted that the framework documents leave too much self-governance to the contractors and do not provide, through the framework documents, sufficient engagement and resolution with the Local Highway Authority. The detail of the Council's concerns is set out at its response to ExQ1 Q4.6.4. The process of subsequent updating and iteration is not set within the framework documents.</p>
	<ul style="list-style-type: none"> Are any further drafting refinements proposed by the Applicant? 	<p>The Council has previously set out its position on this in response to ISH7 ([REP4-352], paragraph 5). In the Council's opinion, the current arrangement in the DCO, which would allow the DCO power to ensure for an indefinite period without being materially progressed is not acceptable, essentially for the reasons indicated by the Court of Appeal in the Swansea Bay case set out above, relating to the uncertainty, which would thereby be allowed to persist.</p>
b)	Time limits	
i	<ul style="list-style-type: none"> The time limits for the commencement/beginning of the authorised development and the compulsory acquisition of land or rights are different and the basis for and effect of the difference are not clear. 	<p>In the Council's opinion the number of different timeframes within the DCO cause unnecessary confusions. For example, the following all have different definitions:</p> <p>Begin the authorised development within five years and allows preliminary works, controlled by preliminary works EMP (Requirement 4 and Requirement 10) and OTMPfC.</p> <p>Commence the authorised development no time limit if 'begin' met – controlled by all Requirements and Articles.</p> <p>CPO – powers need to be used eight years from start date, with the start date being the later of period of legal challenge for the DCO or final determination of any challenge.</p> <p>The concern of the ExA appear to be that for the authorised development to commence/begin the time periods are shorter than for CPO (8 years). It is assumed that the question is whether it is appropriate to require a development begin/commence before all necessary land is acquired.</p> <p>The time limits for the exercise of CA powers is a key part of the DCO. If this time period expires, then it becomes very difficult to implement the DCO. Accordingly, there is an argument for the harmonisation of the time limits applicable to beginning/ commencing the Proposed</p>

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		<p>Development and time limits for the exercise of CA powers.</p> <p>The Council's strong position is that the time limit for exercise of CA powers and the time period to commence to the Proposed Development, should be 5 years. If this is not agreed, it is preferable to harmonise both time periods, rather than have a differentiation between begin and commence.</p> <p>During the Hearing the applicant confirmed that the start date would be the shorter of one year and the end of the legal challenge period. The Council welcome this additional certainty, although this does not counter the significant amount of uncertainty caused by having an eight year period within which to use CPO powers.</p>
	<ul style="list-style-type: none"> Are any further drafting refinements proposed by the Applicant? 	<p>For the applicant to respond.</p> <p>The Council has previously set out its comments on the length of time required for the exercise of CPO powers.</p>
c)	Dispute resolution for DCO processes	
i	<ul style="list-style-type: none"> Procedure for discharge of Requirements (Sch 2 Part 2) 	<p>The Council's overarching position is that the discharging authority for Requirements 3 (detailed design), 4 (Construction and Handover EMPs), 5 (landscaping and ecology), 6 (contaminated land and groundwater), 8 (surface and foul water drainage at a local level (with the Environment Agency responsible for those elements not at a local level), 9 (historic environment), 10 (traffic management), 11 (construction travel plans), 12 (fencing), 14 traffic monitoring, 16 (carbon and energy management plan), 18 (operation of Orsett Cock Junction, and 19 (amendments to approved details) should be the Council, not the SoS, for the reasons set out in paragraph 15.2.22 – 15.2.24 of the Council's LIR (REP1-281).</p> <p>However, without prejudice to the above, if the SoS is to be the discharging authority, then the discharge procedure is clear.</p>
	<ul style="list-style-type: none"> What happens if the SoS refuses a discharge application? 	<p>Then the applicant would need to resubmit and application to ensure that it is acceptable.</p> <p>During the Hearing the issue of whether there needs to be an appeal route for the applicant was raised. The Council submits that if the applicant accepts that the Council should be the discharging authority, then the appeal route would be to the Secretary of State.</p>
ii	<ul style="list-style-type: none"> Arbitration 	<p>At the Council's request, the applicant has agreed to update Section 65 said that possible areas of dispute are referred to the Secretary of State, as an appeal rather than dealt with via arbitration. This is to avoid a situation where a non-public body is effectively determining how statutory powers should be discharged. The Council accepts this position.</p>
	<ul style="list-style-type: none"> The role of the SoS 	<p>See comment above.</p>

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	<ul style="list-style-type: none"> The role of other statutory authorities 	See comment above.
d)	Re-provision of Gammon Field¹ (R13)	
i	<ul style="list-style-type: none"> The ExA wishes to discuss the matters that it has identified in the dDCO Commentary with the Applicant and the Local Planning Authority 	
	<ul style="list-style-type: none"> Clarity on the effects of managing a site consented under the NSIP regime is sought 	<p>At Deadline 6 (REP6-164) the Council, and following ISH 8, the Council submitted additional wording to Requirement 13. The Council suggested the following wording for requirement 13 (amendments in red):</p> <p><i>3.—(1) The replacement of the Gammonfields travellers' site in Thurrock (Work No. 7R) must not commence until details of its design, layout, use and operation have been submitted and approved in writing by the local planning authority, such approval not to be unreasonably withheld or delayed, following consultation by the undertaker with the local planning authority and the occupiers of the existing Gammon Field travellers' site.</i></p> <p>The applicant highlights in REP7-190 in Section 8.3 that Article 3 of the DCO allows for the operation of the authorised development. It also sets out that the site is described within Work No. 7F.</p> <p>Whilst the Council broadly agrees with this position. The Council acknowledges that whilst it owns the site it is able, through contractual means, to control how it is used. However, the Council is concerned that if the land were sold it is unclear precisely the extent and intensity of the current use, and this would make enforcement difficult through the Town and Country Planning Act 1990 ("the 1990 Act").</p> <p>The applicant states that additional wording in relation to use would not bind the applicant rather than the owner. The Council appreciates this position and, accordingly, considers that further to Requirement 13 it is necessary to ensure that the use of the traveller site can be adequately managed in the future.</p> <p>In the Council's opinion the solution is to remove the words 'use and operation' and explicitly set out that the Travellers site has deemed planning permission for the purposes of the 1990 Act. Accordingly, the DCO would re-provide the travelers site, but not govern its operation.</p> <p>During the Hearing this approach in principle was agreed with the applicant. It is anticipated that agreed wording to achieve this will be</p>

¹ The names Gammon Field, Gammonfield and Gammonfields are found in Examination documents. The ExA will be guided on preferred usage.

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	submitted as part of the Council's D8 submission.
ii <ul style="list-style-type: none"> • The ExA has requested a legal view from the Applicant on the effect of PA2008 115 (1) (c) and (4B) 	<p>The applicant responded to this during the Hearing. The Council agreed with the applicant's position that this was lawful.</p> <p>The key test is whether travelers' sites should be considered 'related housing development' for the purposes of Section 115(1) (c) of the Planning Act, 2008. The further detail of what constitutes related housing development is Section 115(4B) relies on the travelers site being considered a dwelling. Dwelling is not defined and there is very little guidance on what constitutes a dwelling.</p> <p>From a practical perspective the site is being used as the primary accommodation for a number of members of the travelling community. Although the word dwelling normally brings to mind the image of a house, it is typically defined in non-legal terms as a place where someone lives.</p> <p>The Gammonfields is a place where people live, and in our opinion, it is likely to be considered 'associated housing development.</p> <p>In <i>Rectory Homes Ltd v SSCLG</i> [2020] EWHC 2098 (Admin) ('Rectory Homes') Holgate J held at [53] that:</p> <p><i>'53. It has become well-established that the terms 'dwelling' or 'dwelling house' in planning legislation refer to a unit of residential accommodation, which provides the facilities needed for day-to-day private domestic existence (Gravesham p. 146; Moore v Secretary of State for the Environment, Transport and the Regions (1998) 77 P & CR 114, 119; R (Innovia Cellophane Limited) v Infrastructure Planning Commission [2012] PTSR 1132 at [27]-[28])...'</i></p> <p>Notably in the paragraph cited above:</p> <ol style="list-style-type: none"> a. Holgate J relies on locus classicus for the meaning of 'dwelling house', namely <i>Gravesham BC v Secretary of State for the Environment</i> (1984) 47 P&CR 142 ('Gravesham'), which is itself is a caravan case; and, b. Holgate J also refers to an NSIP case, <i>R (Innovia Cellophane Limited) v Infrastructure Planning Commission [2012] PTSR 1132</i> ('Innovia'), to support of the definition of 'dwelling' articulated in <i>Rectory Homes</i>. <p><i>Innovia</i> was a judicial review of a decision of the Infrastructure Planning Commission ('IPC') to grant a DCO applicant rights to enter and inspect premises, which were proposed to be used as a temporary workers' campus (850 bedsits without kitchens together with separate restaurants, bars and other facilities including communal dining rooms, sport facilities and laundries: see [7] and [8] of <i>Innovia</i>), in connection with the delivery of the Hinckley 'C' NSIP. This was before the Housing and Planning Act 2016 amended S115 PA 2008 to enable development consent to be granted for 'related housing development'. The claimant alleged, and the court accepted, that the temporary workers' accommodation did not comprise 'dwellings' within the meaning of S115(2)(b) PA 2008. Therefore, the IPC was entitled to have granted the S53 access/inspection rights, so the challenge was dismissed.</p>

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	<p>In dismissing the challenge, the court endorsed the application of the Gravesham test for the meaning of 'dwelling' or 'dwelling house' (and there is no difference between those two terms: see [53] of Rectory Homes) to PA 2008: see [26] – [29] of Innovia.</p> <p>The Gravesham test will invariably be satisfied in respect of a structure that is a caravan statutorily defined. Section 29(1) (a) of the Caravan Sites and Control of Development Act 1968 defines a 'caravan' as '<i>any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted.</i>'</p> <p>The replacement Gammonfields site will comprise caravans as statutorily defined and will accordingly also comprise dwellings within the meaning of S115 PA 2008.</p> <p>If the replacement Gammonfields site is not within S115(4B) PA 2008 because, for whatever reason, it does not 'consist of or include the construction or extension of one or more dwellings' then it falls within S115(2) and is not excluded from that provision by virtue of S115(2)(b). Either way, the DCO can (if made) provide development consent for the replacement site.</p>
<ul style="list-style-type: none"> Emerging considerations and views (if any) from the Local Planning Authority will also be explored 	<p>Please refer to comments above.</p>
e)	Operation and decommissioning of construction compounds
<p>i</p> <ul style="list-style-type: none"> The ExA will seek views on Gravesham BC's draft requirement in relation to worker housing [REP6-132] 	<p>The Council supports the wording proposed by Gravesham BC and suggests its inclusion in relation to the Council. This is because there is a very real shortage of suitable housing within the Council's area. An influx of well paid workers is likely to impact those who are already struggling to afford accommodation the most. Without further steps to monitor and mitigate the situation, there is a significant risk that LTC will make some an already difficult rental market much worse.</p>
<p>ii</p> <ul style="list-style-type: none"> The ExA will seek views on the approach to managing the decommissioning and restoration of construction compounds and whether any additional provision is required in the dDCO? 	<p>As disused at ISH8 (REP6 -166, paragraph 1), Article 35 sets out the provisions in relation to the temporary use of land for carrying out the authorised development, including the restoration of the land temporarily occupied. This would include temporary construction compound sites. In summary, Article 35(4) – (5) state that land should not remain occupied after the end of the period of one year beginning with the date of completion of that part of the authorised development (as set out in Schedule 11).</p> <p>Before giving up possession of land for which temporary possession has been taken, the applicant must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land subject to a number of provisions. The provisions are set out in Article 35(5), as the Council suggests is modified as appropriate (proposed</p>

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	<p>drafting amendments underlined and some text removed in strikethrough):</p> <p><i>'(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to:</i></p> <ul style="list-style-type: none"> <i>a. Replace a building removed under this article;</i> <i>b. Restore the land on which any permanent works have been constructed under paragraph (1)(d);</i> <i>c. Remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development;</i> <i>d. Remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development;</i> <i>e. Remove or reposition any apparatus installed for or belonging to statutory undertakers or necessary mitigation works;</i> <i>f. Restore the land on which any soil reprofiling work has occurred; or</i> <i>g. Remove any temporary works where <u>planning permission has been granted (by the local planning authority or the secretary of state) for the retention of the temporary works. This has been agreed with the owners of the land.</u></i> <p>Note: Schedule 16, paragraph 5 of the High Speed Rail (London to West Midlands) Act, 2017 requires not just the agreement of the landowner, but also the agreement of the local planning authority, which the Council suggest is critical given the potential for the retention of permanent works to give rise to a range of planning/land use futures which the local planning authority is statutory and democratically responsible and accountable (unlike the land owner).</p> <p>Within the LTC draft DCO, PRoWs are not covered within Article 35, except in that they are in Article 12 (part of streets).</p> <p>Compensation is available for land temporarily possessed.</p> <p>Broadly speaking, this is acceptable and would include construction compound sites. It would, however, be beneficial to have more details from the applicant regarding the hand back procedure, so that landowners understand the process. It would also be helpful for landowners to have as clear an idea as possible at the beginning as to what the standard of restoration will be.</p> <p>During ISH8 the Council suggested that Article 35 is amended so that the applicant submits a restoration scheme for approval of the relevant landowner within 6 months of taking temporary possession of a piece of land, as was included in the Tideway DCO for the main construction compounds. This should be inserted as a new part of Article 35. The purpose of this is to allow the dialogue to commence early on what restoration is going to look like, providing greater certainty both for the landowner and also the applicant.</p> <p>The applicant responded during ISH8 to state that this is not necessary due to the operation of the REAC, and gave REAC references GS002</p>

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	<p>and GS014.</p> <p>GS002 states in the REAC (REP7-123):</p> <p>Prior to any construction compound area being prepared the contractor must undertake a pre-condition survey would be undertaken to determine the current land quality across the compound area. A repeat survey would be done after the compounds have been removed to confirm that the area has been restored in line with Article 35 of the dDCO.</p> <p>GS014 states in the REAC (REP7-123):</p> <p>Following soil reinstatement there would be a five-year aftercare period. The Contractors would prepare and present to the applicant for acceptance, a schedule of aftercare monitoring, maintenance and correction. This would include soil testing, appropriate to the target specification (e.g. land grade where restoration is to agricultural use or specific characteristics where restoration is to support habitat creation or re-provision). Implementation of the aftercare monitoring, maintenance and correction will be overseen by an Environmental Clerk of Works.</p> <p>Neither GS002 nor GS014 address the concerns raised by the Council, i.e. that there is significant uncertainty for landowners about what the final condition of the land that will be returned to them. It impacts how landowners can use the land once it is handed back to them and also is relevant in relation to any compensation claim. Having early negotiations on this element is beneficial to the landowner as it helps them to plan. It is also beneficial to the applicant, as the expectation management is less likely to result in prolonged disputes as to what is reasonable.</p> <p>It should be noted that Article 35 does not set out the condition the land should be handed back in, except that it needs to be to the 'reasonable satisfaction' of the landowner. From the landowner's perspective what is reasonable is likely to be returning the land to its previous condition. This is supported by the undertaking of the pre-condition survey pursuant to GS0002.</p> <p>However, this is not always going to be the case considering the applicant is not required to undertake some specific actions in Article 35(5) (a)-(g). This includes not being required to restore the land on which any soil reprofiling work has occurred or the removal of ground strengthening works. The sooner clarity is provided on this for the landowner, the better for all parties concerned.</p> <p>A separate but connected point is the scope of Article 35(5) (g). Article 35(5) (g) allows temporary works to stay in place with the consent of the landowner. Leaving temporary works in place permanently is contrary to the assessment in the ES, which could include hardstanding, piles, etc. The Council would like to see reference in Article 35 (g) that any agreement to leave temporary works on the land must be in accordance with the ES.</p> <p>In addition, as was discussed at the Hearing, it is important that temporary works are not left on the site without planning permission. The applicant argued that they would not leave works on site if they did</p>

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		<p>not benefit from planning permissions. Whilst this is positive, it is important that there is some certainty on this. Accordingly, the Council suggests the following as a replacement for Article 35(g):</p> <p><i>'(g) remove any temporary works where planning permission has been granted (by the local planning authority or, on appeal, the Secretary of State) for the retention of the works'</i></p> <p>The need for planning permission also addresses the Council's concerns in relation to the works being in accordance with the Environmental Statement above.</p>
5	Review of dDCO positions relating to traffic and transport¹	
	<i>Consideration of the potential content of ExA questions on this topic has been reserved until the closure of Deadline 6A and will be coordinated with that for ISH13 (traffic and transport). It may be necessary for the ExA to issue a request for further information under EPR Rule 17.</i>	
a)	Content and effect of Requirements with traffic and transport effects	
i	With reference to the implications for the dDCO of submissions at D6A and to discussion of these in ISH13, the ExA will wish to review the drafting of:	
	<ul style="list-style-type: none"> R10 – Traffic management 	<p>The Council has previously raised its concerns about the use of 'substantially in accordance with' in relation to iterations of documents based on outline documents. The Council suggested words substantially is removed. In addition, please note that significant concerns have been raised in relation to the Outline Traffic Management Plan for Construction.</p> <p>The framework document is extremely ambiguous and open on aspects of governance, updates, and required monitoring and impact resolution. By retaining 'substantially in accordance' even further flexibility is introduced. The Contractors would be able to promote equally as weak TMPs and maintain substantially in accordance.</p>
	<ul style="list-style-type: none"> R11 – Construction travel plans 	<p>The Council has previously raised its concerns about the use of 'substantially in accordance with' in relation to iterations of documents based on outline documents. The Council suggested words substantially is removed. In addition, please note the Council has significant concerns about the Framework Construction Travel Plan (FCTP).</p> <p>The framework document is extremely ambiguous and open on aspects of governance, updates, and required monitoring and impact resolution. By retaining 'substantially in accordance' even further flexibility is introduced. The Contractors would be able to promote equally as weak</p>

¹ The ExA has revised this Agenda having considered written submissions at Deadline 6A and other matters. New and amended content is shown in gold. This Agenda replaces the Agenda published on 15 November 2023.

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	<p>TMPs and maintain substantially in accordance.</p>
<ul style="list-style-type: none"> R17 – Passive provision for Tilbury link road 	<p>Making adequate provision for the Port of Tilbury is essential. It is a key area of growth within the Council's area (and is currently the fastest growing Port in the world) and the Council recognises how important it is that LTC does not restrict that growth.</p> <p>The Council suggested wording (REP6-164) paragraph 3.2 in relation to passive provision for the Tilbury Link Road. This has been rejected by the applicant, who has largely favoured wording put forward by the Port of Tilbury.</p> <p>The provision of the passive provision for the Tilbury Link Road is important to the Council, and accordingly, the Council is prepared to accept the wording currently in Requirement 17, with the following substitution of 17(3)(d) with the following:</p> <p><i>'(d) in the absence of that announcement, such other proposal that is submitted to and approved in writing by the Secretary of State, following consultation with Thurrock Council, Port of Tilbury London Limited and any other party the Secretary of State considers necessary.</i></p> <p><i>(4) the proposal to be submitted under sub-paragraph 3(d) above must set out identify what the Secretary of State considers to the likely route and function of the Tilbury Link Road'</i></p> <p>This addition is needed to avoid a situation where the detailed design of the authorised development is approved by the Secretary of State, except for the access to the Tilbury Link Road. This is not considered reasonable.</p>
<ul style="list-style-type: none"> R18 – Operation of the Orsett Cock roundabout 	<p>The Council has suggested additional wording which has been agreed by Port of Tilbury, DPWLG and TEP.</p> <p>This was discussed in ISH13.</p> <p>The key issue of disagreement remains the terms used for the actions that would need to be taken to ensure the effective operation of the Orsett Cock Junction. The Council's position, in common with Port of Tilbury, DPWLG and TEP, is that the wording needs to do more than 'optimize' what is already there or within the current LTC designs. There is a genuine concern that the modelling data from the applicant is incorrect, and that significant works could be required.</p> <p>The Council's starting point is that effects which are significantly worse than those predicted in the applicant's monitoring should be rectified. Updated wording will be submitted at D8 to address this point.</p>
<ul style="list-style-type: none"> Other Ports and local access considerations 	<p>In terms of ports and local access, the Council has proposed an updated Orsett Cock Junction Requirement. This includes Manorway and is important for the effective access to DP World/London Gateway.</p> <p>Additional wording has also been suggested in relation to the following:</p> <ul style="list-style-type: none"> Asda Roundabout Requirement to mitigate the impact on the Port of Tilbury; and,

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		<ul style="list-style-type: none"> A new requirement on worker accommodation – as previously submitted by Gravesham BC.
	<ul style="list-style-type: none"> Any other provision in the dDCO for Ports and local access 	<p>The Council, PoTLL, DPWLG and TEP have also provided a wider network requirement based on wording from the Silvertown Tunnel DCO. This is important to ensure the wider local network continues to function effectively.</p> <p>The Wider Network Impacts Requirement is required because the document (APP-547) provides no security to the Council that when any of the anticipated impacts, as forecast by the applicant, on the wider network would be resolved. The WNIMMP advocates the provision of data from monitoring but does not secure any funds to resolve any observed impacts. The applicant seeks to rely on its strategic modelling but is not prepared to fund resolution of induced impacts - stating that the Council should accept these on the justification of a perceived wider benefit. The Council does not concur with that position and does not wish to inherit the resolution of the applicant's problems.</p> <p>The Council notes the wording proposed by the applicant and commented on by LB Havering at Deadline 8. The Council still has significant concerns and will be proposing as part of its D8 submission updated wording to address some of the concerns raised about the wording for Orsett Cock, as noted below.</p> <p>It is likely that the affected parties of PoTLL, DPWLG and TEP will submit amended wording for the Wider Network Impacts Requirement to accord with the discussions at the Hearing and amend wording that directly reflects existing policy wording.</p>
6	Other DCO business arising from November Hearings	
	<p><i>If necessary, the ExA will ask questions of the Applicant and IPs as required on DCO matters arising from ISHs 11 – 13, OFH5 or CAH5 where these have not been addressed in the dDCO Commentary, in ExQs or dDCO ISHs to date or appear to be changed, complex, multi-party and/ or disputed. Arrangements for the Applicant's submission of a preferred dDCO and Control Document set will also be discussed.</i></p>	
a)	Matters arising from ISHs 11-13, OFH5 or CAH5	
	<ul style="list-style-type: none"> Issues and questions if and as required 	No specific issues not addressed above.
b)	The Applicant's preferred dDCO and Control Documents submission	
	<ul style="list-style-type: none"> Arrangements for the final submissions and responses to them 	<p>The Council has put a rationalization of its concerns on the DCO within its D8 submissions in Appendix B of its main D8 submission. The Council still has a number of significant concerns about the DCO as drafted.</p> <p>In addition, the Council has made multiple submissions on the control documents, with very few accepted or adequately dealt with. These can be found in the following places:</p>

Post Hearing Written Submissions (CAH5 and ISH11 – ISH14)
 Lower Thames Crossing

Agenda Item	Thurrock Council's Response
	<ul style="list-style-type: none"> • Chapter 5 of REP3-211 • Chapter 2 of REP4-354 • Chapter 2 of REP6-164 • Chapter 3 of REP7-228 <p>Key documents which remain in dispute are the:</p> <ul style="list-style-type: none"> • Code of Construction Practice (first iteration of the Environmental Management Plan and Outline Traffic Management Plan for Construction) • Draft Archaeological Mitigation strategy and Outline Written Scheme of Investigation • Outline Site Waste Management Plan • Design Principles • Stakeholder Actions and Commitments Register • Statement of Commonality • Consents and Agreements Position Statement

ExA Actions Points (EV-088f)				
No.	Party	Action	Thurrock Council's Response	Deadline
5	Thurrock	<p>Re-provision of Gammon Field</p> <p>Please set out your concerns with reference to Article 56 of the dDCO: Applicant to respond at D9.</p>	<p>This has been discussed with the applicant. Please refer to the Council's D8 submission, where wording has been agreed with the applicant.</p> <p>During the Hearing the applicant referred to Article 56(2). It is the Council's position that this is not sufficient to aid enforcement action, as it refers to the land being considered 'operational land'. This is important when considering whether to grant planning consent but would not provide the ability for the Council to take enforcement action pursuant to the Town and Country Planning Act, 1990.</p>	D8
6	Applicant; Gravesham BC and Thurrock Council	<p>Worker housing</p> <p>Applicant to provide proposed update of current provision: LAs to provide feedback at D9.</p>	<p>The Council's position was set out in its D7 submission (REP7-228) in Section 4.5 and Appendix B and awaits the applicant's response at D8.</p> <p>The applicant has responded separately to the Council's queries with further explanations on 5</p>	D8/D9

Post Hearing Written Submissions (CAH5 and ISH11 – ISH14)
Lower Thames Crossing

ExA Actions Points (EV-088f)				
No.	Party	Action	Thurrock Council's Response	Deadline
			December 2023, which are being considered.	
10		<p>Tilbury Link Road</p> <p>Provide additional drafting in respect of subparagraph (3)(d) of Requirement 17: Applicant to respond at D9.</p>	<p>The provision of the passive provision for the Tilbury Link Road is important to the Council, and accordingly, the Council is prepared to accept the wording currently in Requirement 17, with the following substitution of 17(3)(d) with the following:</p> <p><i>'(d) in the absence of that announcement, such other proposal that is submitted to and approved in writing by the Secretary of State, following consultation with Thurrock Council, Port of Tilbury London Limited and any other party the Secretary of State considers necessary.</i></p> <p><i>(4) the proposal to be submitted under sub-paragraph 3(d) above must set out identify what the Secretary of State considers to be the likely route and function of the Tilbury Link Road'</i></p> <p>This addition is needed to avoid a situation where the detailed design of the authorised development is approved by the Secretary of State, except for the access to the Tilbury Link Road. This is not considered reasonable.</p>	D8