

Lower Thames Crossing

**Thurrock Council Comments on Applicant's Submissions at Deadline D6A and
D7**

5 December 2023

Thurrock Council

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Thurrock Council Comments on Applicant's Submissions at Deadline 6A and Deadline 7 (D6A and D7)

Lower Thames Crossing

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- Appendix C Updated Protective Provisions agreed by LHAs
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Executive Summary

Section 1 – Introduction

1. This D8 submission seeks to respond to all of the applicant's Deadline 6A and 7 (D6A and D7) submission documents that were uploaded to the PINS website on 27 November 2023, whether new or amended in track changes. Some submitted documents do not require Council comments and so do not form part of this submission.
2. The Council would like to note that in many instances within the applicant's documents covered by this submission, there is no further analysis, evidence, documentation or response that addresses the Council's points made in its submissions. The applicant has in most cases referred to previous documentation, reiterated its previous position and/or stressed that it has been both 'robust, reasonable and proportionate', without actually being so.
3. The Council contends that this is not reasonable, particularly if a major stakeholder is making substantive technical points, then it is incumbent on the applicant to respond with further analysis, evidence, documentation or argument that addresses the Council's points.
4. **SoCG Progress:** since the submission of the joint SoCG with the applicant at D3 the Council has been working with the applicant to update the SoCG, which was submitted by the applicant at D6. Then, there remained a total of 314 issues, with 72 issues are 'Matter Agreed', 193 issues are 'Matters Under Discussion' and 49 issues are 'Matters Not Agreed'. The Council have continued working with the applicant and since D6 there has been agreement on just a few Matters, but the vast majority of Matters remain unresolved.
5. Clearly, to have so many issues for one local authority as 'Matter Not Agreed', at this very late stage in the Examination process, in very unusual and in the Council's view places an unnecessary burden on the ExA to resolve these issues, instead of the applicant, if they can be resolved (and in many cases that is not the case).
6. **Release of the Latest Energy NPSs EN-1, EN-4 and EN-5:** the Government published the latest Energy NPS EN-1, EN-4 and EN-5 policies on 22 November 2023 and they will come into force in early 2024. In summary, it is clear that, dependent on the ExA's view of the transitional arrangements in the NPSs and what weight should be given to the new NPSs compared to the current policy framework, there remains much to cover in the existing DCO in order to respond positively to, and comply with, these new policy imperatives. The Council will await the applicant's response to these new policy documents at D9, in the hope that such up-to-date policies can be positively incorporated into this LTC DCO.

Section 2 – Control Document Changes (at D7)

7. **Code of Construction Practice, First Iteration of Environmental Management Plan (CoCP) (v7):** the Council maintains that there are a number of changes that should be made to the CoCP to make it a robust and workable product. Those matters have been raised at many submissions, not least the response to ExAQ1 Q4.6.4 ([REP4-353](#)). The Council's comments on this update may be covered further at D9.
8. **Outline Traffic Management Plan for Construction (oTMPfC) (v7):** the Council notes that some changes are finally starting to be made to the oTMPfC following pressure from the Council and other IPs. The Council continues to seek further refinement and strengthening as set out particularly in its response to ExAQ1 Q4.6.4 ([REP4-353](#)). It is unacceptable that the applicant seeks to restrict any mitigation proposals to non-physical measures and in doing so will restrain it and the contractor to the mechanisms that would be available to resolve identified problems. This

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could be especially important at locations, such as the A1089 Asda Roundabout and in Orsett Village. Improvements have been to the arrangement for Public Transport Users and Operations but the wording is not sufficient robust, similar for healthcare facilities. Further changes to the arrangement near schools for pre-construction and further minor changes are suggested. The inclusion of the Port of London to the Materials Handling Sub-Group is all welcomed.

9. **Framework Construction Travel Plan (FCTP) (v4):** minor changes have been proposed and it is still the Council's opinion that the shuttle services are not well thought through and have insufficient refinement to be robustly proposed, as mitigation measures for the effects of workforce travel. Many measures are left to the contractor to define post-grant and the Council has little confidence, and no surety, that the effects will be managed. The Council continues to seek further revisions to the FCTP ([REP7-147](#)) and these are set out in its response to ExAQ1 Q4.6.4 ([REP4-353](#)).
10. **Outline Materials Handling Plan (oMHP) (v4):** a minor modification provides more detail for the definition of bulk aggregates which is welcomed but does not adjust the Council's position with regards to an increase in commitment to rail or river transport of bulk aggregates and other plant and equipment. The arrangements for derogation continue to be unsatisfactory. The Council continues to recommend that the Port of London Authority should be a full member of the TMF. The requirements to commit to river and/or rail use continue to be vague and have subjective exemptions. The Council, the Port of London Authority and the applicant are to meet between Deadline 8 and 9 to seek to improve on the wording of this point, and hopefully other weak aspects of the oMHP. Further comments will be provided at Deadline 9.
11. **Outline Site Waste Management Plan (oSMP) (v3):** the Council supports the applicant's increased minimum levels of reuse, recycling and/or recovery to 90% compared to the previous level of 70%. However, the amendment does not address the Council's previous comments regarding clearly setting out a requirement to prioritise the waste hierarchy through the disaggregation of reuse, recycling and recovery. Further changes are required to more clearly express this requirement and associated tonnage values need to be updated.
12. **Outline Landscape and Ecology Management Plan (oLEMP) (v5) and LEMP ToR (v2):** the main changes have been to refine the remit of the oLEMP and the roles and responsibilities of the Advisory Group. The Council believes that the Advisory Group should have an ongoing role to advise on appropriate management post-establishment. The Council is satisfied that the latest oLEMP and oLEMP – LEMP terms of reference provide sufficient clarity regarding the roles and responsibilities of the different parties and the duration of future management and oversight.
13. **Design Principles (v5):** as part of SoCG discussions the Council has provided additional text to strengthen elements on active travel. These comments have not yet been responded to by the applicant. A new Design Principle which requires structured stakeholder engagement is welcomed. Specific additional principles relating to upgraded bridleways should be expanded to cover all new bridleway access points.
14. **Draft Archaeological Mitigation Strategy and Outline Written Scheme of Investigation (v4):** several areas have been updated by the applicant and two extra commitments have been added into the REAC. The additions ensure that the mitigation required to ensure the impact on the historic environment is undertaken to the appropriate level considering the level of loss that will result from the road. The changes have clarified and further defined the role of the archaeological and historic building advisors, identified the methodology to assess the Palaeolithic and other early land surfaces that potentially survive in the deeper excavation areas, such as the tunnel mouth and identified the role of the LAA in the review of the documentation reporting on the results of the mitigation work. It is still expected that further iterations will be provided certainly at D9 and possibly D10.

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15. **Carbon and Energy Management Plan (C&EMP) (v2):** there are two changes to note concerning: the relocation of land use changes to align with PAS 2080:20231; and carbon savings achieved by embedding carbon in the procurement of its three design and build contracts. These measures reduce construction phase carbon emissions from 1.73 to 1.44 million tonnes of CO_{2e}. The revised C&EMP does not provide any management procedures that require contractors to certify carbon emission content of steel and concrete, guarantee the modal shift, define boundaries of logistic emissions and how low or zero emission construction plant would be delivered. The Council is disappointed to note that the applicant has not remodelled the utility impact of the increased use of electricity associated with the assumptions of greater use of electricity during construction.
16. **Stakeholder Actions and Commitments Register (SAC-R) (v5):** further minor changes have been made and all measures are secured by Article 61 of the dDCO and it provides an absolute commitment, which is acceptable to the Council. 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. The SAC-R has been split into three parts, although in practice this does not change the content.
17. **Statement of Commonality (v8):** the Council's views on this document remain the same as set out in its D6 submission ([REP6-164](#)) within Section 2.10 (and, indeed, in previous submissions too) and the applicant has made no attempt to discuss the Council's comments with the Council or to amend its document to accommodate those comments.
18. **Consents and Agreements Position Statement (v7):** the Council cannot identify any changes made to this document, except to add, amend or remove references, and so is puzzled as to why it has been submitted. However, the Council's comments in Section 6.1 of its D3 submission ([REP3-211](#)) have not been dealt with and still require responses, as was reiterated in its D4 submission ([REP4-354](#)) and its D7 submission ([REP7-228](#)).

Section 3 – Draft Development Consent Order Matters

19. **Draft Development Consent Order Changes (v9) and Schedule of Changes (v7):** the dDCO has been amended in a number of places. It is still considered that there are a significant number of improvements that can be made to the dDCO. These are points which have been raised by the parties since early on in this Examination and it is disappointing that these are only beginning to be addressed at this late stage. As set out elsewhere in this submission, the Council are trying to be practical and pragmatic, however, the failure of the applicant to consider movement from its positions unless the ExA indicates that movement is needed has led to unnecessary delay. This delay has put us in a position whereby an unacceptably large amount of amendments are required in the final three weeks of the Examination.
20. **Comments on Explanatory Memorandum Changes (v5):** there are limited tracked changes in the Explanatory Memorandum and the Council has further comments on the use of the courts, the Council being best placed to discharge Requirements (giving an important precedent) and on Design Principles.
21. **Council Comments on ExA Commentary on dDCO (dated 14 November 2023):** the Council appreciates the questions raised by the ExA and has fully responded. As a general comment, the Council would like to note that there remains a substantial number of outstanding comments, despite the late stage in the Examination process.
22. **Council Comments on Applicant's D7 Comments: Protective Provisions:** the LB Havering submitted a joint response on behalf of itself and the other local highway authorities (Kent County Council, Essex County council, the Council, and TfL). As a result, the Protective Provisions have been updated in the latest version of the DCO (v9) ([REP7-091](#)). This is despite the fact that for a significant period of time, it was argued by the applicant that no Protective Provisions were

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required to protect the local highway network. It is the Council's opinion that there are still a number of areas where significant further improvements are required. It is the Council's position that the scale of LTC, and its significant and systematic impact on local highway authorities, means that appropriate Protective Provisions are required, which are best determined by the local highway authorities. The Council considers that it is proportionate for commuted sums to be paid to the Council as a signal site is being stalled on Stanford Road near to the Rectory Road junction. It would be usual to secure commuted sums in relation to the future maintenance of this. This jointly agreed position between all local highway authorities can be found in **Appendix C** below.

23. **Signposting:** the Council has provided further comments on the signposting provided by the applicant and has set these out in Table 3.1 below.
24. **Article 35:** this was raised in ISH14 and there are two concerns related to restoring land and temporary works.
25. **Requirement 13:** the amended wording has now been agreed with the applicant and is presented in Section 3.4 below.
26. **Requirement 17:** making adequate provision for the Port of Tilbury is essential. The Council suggested wording ([REP6-164](#)) in Section 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 at that time. Further revised wording is proposed by the Council and has been agreed with the PoTLL and is set out in Section 3.4 below.
27. **Air Quality:** the applicant seems reluctant to engage in detail in relation to the concerns raised about air quality. The Council respectfully request that the proposed Requirement is included, if LTC is recommended for grant.
28. **Preamble to D9 dDCO Council Concerns Rationalisation Review:** whilst the Council continues to maintain that all the outstanding issues need resolution, in our opinion it would help the ExA if our key issues were reduced/combined and restated. Whilst the applicant is likely to respond by saying that these points have already been made, and that they have responded, the Council do not consider these resolved. This rationalisation is included in **Appendix B** below.
29. **Specific Certified Plans and Securing Mechanisms:** during ISH14, the applicant finally confirmed that the Structures Plans, Temporary Works Plans and Drainage Plans are meant to be illustrative. It is unclear to the Council why illustrative plans need to be certified, but, it remains the Council's position that these should remain certified, and also must also become secured by the dDCO with additional provisions.

Section 4 – Land and Compulsory Acquisition Matters

30. **Comments on Changes to SoR (v7):** the applicant has provided incorrect details about these changes and it is correct to conclude that the applicant has failed to address the points raised in Section 9 of the Council's submission at D3 – Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 and D2) ([REP3-211](#)). The Schedule of Negotiations is considered by the Council to be, at best, misleading.
31. **Comments on Applicant's Comments on ExQ1 Q15.1.1 and 15.1.2:** it is not clear why the applicant continues to consider that the landowner objects to the CA.
32. **Statutory Undertakers Land Rights (v4):** the Council wishes to note that their comments regarding the applicant's submission of ExQ1 Q15.1.3 PA2008 s127 Statutory Undertakers' Land-Rights – LTC v2.0 ([REP5-076](#)) and v3.0 ([REP6-082](#)) have not been addressed and still require a response. The Council requires further detail with a list of relevant Statutory Undertakers and their

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position on the dDCO. The Council notes that no updates to the status of objections have been included and it is not clear what National Gas Transmission PLC, National Grid Electricity Transmission PLC, Southern Water Services Ltd position is on the changes to the land plots. The Council notes that 12 Statutory Undertakers still have objections to the Order.

33. **Update on Land Negotiations:** the Council is meeting the applicant on 6 December 2023 to discuss the **Draft Memorandum of Understanding**. For the **Heads of Terms for an Agreement for an Option**, in order to dispose of assets either outright or by option the Council needs Board approval. The earliest date this could have been achieved was in December, however, the applicant's delay in providing an accurate spreadsheet subsequent to the 5 October 2023 meeting that there is insufficient time to assess the impact and value each of the parcels. The Council is engaged in the process of assessing impact and value each of the parcels and hopes that the applicant will confirm that it is interested in concluding agreement subsequent to the closure of the Examination
34. **Whitecroft Care Home:** the issue of the Whitecroft Care Home potential purchase remains a concern to the Council in respect of temporary loss of bedspaces and requires a further commitment from the applicant to protect its interest, prior to the close of the Examination.

Section 5 – Responses to Applicant's D6A Traffic Submissions

35. The applicant has provided further information concerning journey times to and from the Ports. However, inconsistencies in the definition of the Do Minimum and Do Something scenarios mean that the data cannot be used to assess the impact of LTC on journey times to and from the Ports. Information provided by the applicant concerning the operation of Rectory Road, near the Orsett Cock Junction, shows that the operation of Orsett Cock Junction is sensitive to even small changes in traffic flows and the performance of the Orsett Cock Junction is significantly worse when no traffic is assigned to Rectory Road.
36. For the Asda Roundabout, the applicant has changed the modelling approach and has provided model results which forecast queues of approximately 3km and delays of 15 minutes per vehicle on one arm of the junction. These results are implausible and are a blatant, obvious and desperate attempt to defend a now untenable position based on their discredited LTAM data.
37. The Council's review of the documents provided by the applicant at Deadline 6A reconfirm the need for the three draft Requirements prepared jointly by the Council, PoTLL, DPWLG and TEP and these Requirements together with that for the Tilbury Link Road are in the process of discussion between the parties and with the applicant. The further recommended amended Requirements are set out above in Sections 3.1.11.

Section 6 – Response to Applicant's D7 Submissions

38. **ES Addendum (v7):** three updates are required for Road Drainage and Water Environment.
39. **Drainage Plans (v4):** as described in Section 3 it is essential for the applicant to secure the Drainage Plans within the DCO to show the Drainage Strategy and Catchment boundaries and it is important to have a reference point for the Work No. for each proposed water feature.
40. **Work Plans Utilities (v4 and v6):** the applicant has continued to not address any of the points raised in Section 18.11 of the Council's D3 submission 'Thurrock Council Comments on applicant's Submissions at Deadline 1 and 2 (D1 and D2)' ([REP3-211](#)) and the Council's Local Impact Report ([REP1-281](#)).
41. **Transport Plans:** an update to Plate 1.3 of Transport Assessment – Appendix D, shows that the applicant has apparently re-run its assessment of impact significance of the road network,

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including roads in Thurrock. This reassessment was not raised with the Council or other IPs and was hidden away in a mass of other document revisions. The applicant has oddly reduced the assessment of significance on A13 between Orsett Cock and The Manorway, with no apparent justification and has also finally recognised the level of significance of impact within the local roads through Stanford le Hope and Corringham and within Grays. This has not led to an update of the Transport Assessment or any revisions of impact significance within the Environmental Statement, yet a change from Minor Adverse to Moderate Adverse impact significance should trigger a revision to appraisal and to the need to mitigate, where the change is from Minor to Moderate Adverse. This raises a series of questions and heightens the Council's concerns with the approach to the assessment of the effects that the applicant has adopted and is not clearly allowing the ExA to adequately assess.

42. **Structures Plans:** the Council strongly objects to these plans not being secured through the DCO and makes further comments on this in Section 3.
43. **Restrictions on Existing WCH Routes Plans and Rights of Way and Access Plans (v4 and v6):** the applicant has provided new information which collates in one place a summary of the routes that would be affected LTC and the likely duration of temporary closures. The plans show the existing PRoW and this helps illustrate the relative lack of routes present in Thurrock compared to Kent, for example. The plans highlight the lack alternative routes within the surrounding areas of places such as East Tilbury, Chadwell St Mary and Orsett and routes with the Mardyke Valley for prolonged period. It is not likely that there will be opportunities to provide diversions for most of routes due to the extent of the construction area. The plans highlight the lack alternative routes within the surrounding areas.
44. **Flood Risk Assessment (v2):** the Council acknowledge the updates to the Flood Risk Assessment Part 10, noting the useful cross-references to Work No. for watercourse crossings and diversions. The additional short culverts mentioned help to clarify the discrepancy previously observed in the total number of culverts.
45. **Utility Working Areas in Ancient Woodland:** the Council requires detail as to the extent of the utilities within Work No. MU37, including type of utility, voltage level, pressure level and diameter.
46. **Health and Equalities Assessment (v3):** for the Whitecroft Care Home, it is important to specify that the suggested new commitment wording put forward by the Council regarding *'no part of the existing WCH site and accommodation will be vacated or used by the project until a new site and premises has been secured and is capable of occupation by residents'* is crucial to reducing the health impacts of movement on vulnerable residents and visitors to the care home through ensuring that a move is only needed once.
47. **Carbon Strategy and Policy Alignment – Planning Statement Appendix I (v2):** updates to the calculation of carbon are provided. The applicant states that the proposed emission reductions within the model are **significant**, but their original assessment that these emissions are **not significant**, is robust. The Council notes there is a lack of transparency in how the applicant determines significance and this should be provided.
48. **Draft Section 106 Agreement:** since the update given by the Council in its D7 submission ([REP7-228](#)) in Section 6.9, there have been a number of discussions and exchanges of correspondence with the applicant. Broadly this exchange has been positive. Subject to governance and adjustments to the draft S106 Agreement it may be possible to agree the current S106 offer from the applicant and conclude the necessary governance prior to the close of the Examination.

Section 7 – Green Belt Harm Assessment Review (REP7-181)

49. LTC takes approximately 10% of the Council's overall land area, which is within the Green Belt. LTC is designated an NSIP and is the largest road scheme in the UK, hence it is being submitted through the DCO process. LTC is not a 'local transport infrastructure project' and no part of LTC is 'local transport infrastructure'. The Green Belt impact for LTC needs to be assessed as a whole and no elements can be removed from the assessment.
50. The Council have raised all these issues to the applicant about the lack of LTC Green Belt methodology and Belt assessment for over three years, as set out in the Council's SoCG issues 2.1.59 and 2.1.60, which remain unresolved.
51. The Green Belt Assessment submitted by the applicant at D7 is inadequate and much too simplistic to properly identify and assess the extent of harm. 'Very special circumstances' have not been evidenced by the applicant. There are other remaining important questions that remain unanswered by the applicant, as set out in the Council's response in Section 7.

Section 8 – Applicant's Responses to Post Event Submissions at D6 (REP7-188), Hearing Actions (REP7-185) and Applicant's Comments on IP Responses on ExQ2 (REP7-186) and D6 (REP7-187)

52. **ISH8 Actions – Section 4:** the applicant continues to refuse to place caps on the vehicle movements associated with its compounds. This leads to an absence of measurability and enforceability and reflects the weakness of the applicant 'control' documents. The applicant is not prepared to assist in the management of effects and harm on the local roads and communities and the Council would therefore be forced to consistently challenge activities and impacts during the construction period via its representation on the Traffic Management Fora and the Travel Plan working groups.
53. **ISH8 Actions – Section 5:** the Council continues to dispute the applicant's assertion that it has been robust in the preparation of the transport Control documents and the waste management and materials handling controls. The Council has no certainty that the process of construction will be delivered with safety and sustainability at the heart of the project and with the absence of harm to its communities. The Council therefore rebuts strongly the statements made by the applicant in its response in [REP7-188](#) in Section 5.
54. **ISH10 Actions – Section 7: Funding for Potential Mitigation at Orsett Cock:** the indisputable evidence presented by the Council at Deadline 6A ([REP6A-013](#)) and at ISH13 shows that LTC causes significant traffic impacts at Orsett Cock Junction. The applicant has now agreed to work collaboratively to further develop Requirement 18 associated with Orsett Cock Junction. It is now very clear that additional modifications to the scheme will be required to ensure that Orsett Cock Junction can operate effectively prior to opening. These modifications have not yet been designed or agreed, and it is not yet known whether they can be accommodated in the Rochdale Envelope but will add additional cost to the scheme.
55. **Silvertown Funding Model:** the applicant states that as part of the Monitoring and Mitigation Strategy for Silvertown Tunnel 'No Fund is established, and no further commitment is given' (page 70). This is simply the applicant engaging in semantics to attempt to maintain its untenable position on this matter. TfL has previously clarified that a specific ring-fenced fund is not necessary as there is a clear commitment by TfL to fund identified for mitigation requirements.
56. **Definition of Unacceptable Impacts:** this is considered further in the Council's response to Action Point 5 of ISH13.

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57. **Applicant's Comments on IP Responses at ExQ2 at D6: ExQ2 Q4.1.1 Orsett Cock – Local Traffic:** the Council considers that the analysis provided by the applicant is not complete because the assessment of benefits and disbenefits does not include the disbenefits associated with queuing and delay at the LTC interchange and Orsett Cock Junction (and other junctions in Thurrock), which have been identified by VISSIM models, but are not included in the LTAM modelling used to estimate economic benefits (see Council's D6A submission ([REP6A-013](#))).
58. **Geology and Soils: Comments on ExQ2 Section 3:** the Council requires a new REAC commitment as the Council would expect to agree the method of monitoring of airborne asbestos, the criteria to be used to identify a control failure and the contingency measures to be implemented (with timescales).
59. **Comments on GI data:** the applicant currently only commits to further GI being undertaken where medium and high hazards have been identified. On the parts of the scheme where contamination is deemed by the applicant to be 'low hazard', further GI is not committed to. The applicant proposes that the risks from these low hazard areas are to be controlled by the land contamination management plan to be prepared for the EMP. The Council's review shows that there may be insufficient data (for example due to GI being descope) and inadequate data (for example due to asbestos being identified as absent based on an insufficiently sensitive test method). The Council suggests an additional REAC is needed to require the Contractor to undertake a thorough data gap analysis (and not rely solely on the applicant's identified limitations). The Contractor would then commit to proving the ground conditions prior to starting earthworks to ensure appropriate controls are deployed.
60. **Noise and Vibration:** the applicant has accepted the Council's change to REAC NV018 and this is welcomed. The applicant wording changes to NV015 is welcomed and accepted by the Council with regards to inclusion of noise insulation/temporary rehousing. The Council considers that acoustic assessment are required to inform the noise assessment of construction traffic. The applicant has accepted the incorporation of vibratory rollers into NV017 and this is welcomed.
61. Whilst it is accepted that other noise source can affect the results and there is no requirement under DMRB with regards to monitoring, it is likely that the new road would be the dominant source. Furthermore, given the scale of the scheme and reliance on mitigation, this could be a landmark scheme, as no real study has previously been undertaken into post-construction/operational surveys. The Council notes the potential to undertake ground-breaking monitoring of post-opening operational noise levels.
62. **Road Drainage, Water Environment and Flooding: Infiltration Ponds:** although further information is provided the Council would like the applicant to confirm if there is a feasible route for exceedance flows from the Infiltration Basins that will not rely upon the flooding of roads.
63. **Responses to Thurrock Council Submissions: Walkers, Cyclists and Horse-Riders:** there have been ongoing discussions with the applicant as part of the Statement of Common Ground progression and the Council and an updated proposal was received on the 28 November 2023. The Council does not agree with the applicant's proposal to fund two part-time (0.6FTE) community engagement officer posts for a period of three years during the construction phase (budget £200k). The Council considers a more senior post is required, the posts need to be available for the full construction period, monitoring and evaluation needs to be built into the roles and insufficient information has been provided on the basis of the proposed budget. Discussions are ongoing as part of the SoCG process.
64. **Worker Accommodation Report Technical Note:** the applicant's comments are noted, but the Council disagrees and considers that the measures referred to by the applicant in the FCTP are insufficient, although the Council recognises the potential value of the WAWG and the Accommodation Helpline. Notwithstanding this, the Council put forward its own Housing Impact

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Requirement within its D7 submission ([REP7-228](#)) in Appendix B that it designed to protect its position against the impacts it considers will occur.

65. **Traffic Management Plan:** discussions are ongoing as part of the SoCG process. The Council notes the applicant frequently refers to 'mitigation' measures and commitments, yet the Council would challenge the applicant to explain and expand on where realisable 'mitigation' is proposed and committed to within the oTMPfC or any of the other associated control documents. There are few measures or initiatives that can reliably be claimed by the applicant as implementable or enforceable mitigation of the effects that are forecast by the applicant during the construction period and these include: a lack of evidence over how the applicant's 'HGV bans' would be applied; and, how the applicant will effectively manage the effects of access to the compounds when the effects have not been properly assessed within the evidence base before the Examination. The Council will review the applicant's D8 submission and respond at Deadline 9, but the Council does not anticipate any substantive movement by the applicant, reflecting on the absence of progress to date to resolve unagreed matters.
66. **Ron Evans Memorial Field:** whilst it is recognised that the Council may have asked that the totality of the space between the Ron Evans Memorial Field and the higher density residential units to the west not be included there is no indication that, at that time, the Council was aware of the five-year delay in re-providing Public Open Space nor that some of this could have been used for replacement POS. The delay is the material factor. As the applicant has now amended the wording of Article 61 as proposed, i.e. replacing the works '*take all reasonable steps to deliver*' with '*implement*', then this would be acceptable to the Council. However, it will be necessary to then determine how each SAC-R commitment actually secures the overarching provision.
67. **Non Statutory Relief Schemes:** as noted in the Council's D5 ([REP5-112](#)) and D6 ([REP6-164](#)) submissions, the statutory schemes that the applicant considers 'sufficient' fail to assist: those not directly impacts but who are affected and need to sell etc; or, those who will suffer construction related issues (noise, dust, etc.). Whilst it is acknowledged that any non-statutory policy would require a Special Payment application, the applicant gives no indication whether such an application was even so much as considered, much less actually made.

Section 9 – Applicant's Comments on IP Responses on D6 and D7 Submissions – Transport Issues

68. **Traffic matters:** the applicant has provided TomTom and other data for Dartford Crossing and maintains that traffic flows in 2023 are broadly similar to flows in 2019. The applicant asserts that this similarity means their assessment is robust. The Council strongly contests this conclusion.
69. Relying on traffic counts at Dartford Crossing is much too limited a metric to make this conclusion given the LTC is intended as a transformative scheme, which will affect traffic flows across a wide area on both sides of the River Thames. The applicant's comparative analysis ignores the effect of changes in traffic speeds, levels of congestion, and the location of these across the wider network and this means that changes experienced in travelling behaviour since 2016 across the area affected by LTC have not been properly assessed.
70. The Council does not accept that it would be proper for the ExA to recommend consent for LTC, when such a central and necessary part of establishing value for money overall has simply not been provided, and because of the clear and consistent misrepresentation of the resulting traffic conditions at Dartford Crossing that have been presented to the public through extensive rounds of consultation and during the Examination.
71. **Robustness of Economic and Engineering Appraisals:** the applicant asserts they have completed all the required assessments of value for money as part of their DCO submission, and that just examining traffic flows at Dartford Crossing is sufficient to test different scenarios and that

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any further calculations of BCRs etc are not relevant for the Examination. The Council continues to contest this view and there is extensive evidence that updating the appraisal would have a **material** impact on the outcome of the appraisal.

72. The Council considers that further work is required to fully assess LTC against the DfT's Common Analytical Scenarios and that completing such work would not be onerous given the work already completed by the applicant. The Council also considers that the applicant's assumption that traffic growth is inevitable does not reflect potential future scenarios with low or negative traffic growth which would have a significant impact on the assessment of LTC and potential alternatives. The Council therefore continues to conclude that the ExA currently has insufficient evidence to determine the application.
73. **Impact of update to DfT's TAG Uncertainty Toolkit:** in November 2023 the DfT provided a new version of the TAG Uncertainty Toolkit. This guidance confirms previous guidance and demonstrates the need for the appraisal of LTC to be updated to reflect the Common Analytical Scenarios in an appropriate and robust way. The guidance makes it clear that LTC is a 'Tier 1' scheme because of its cost (>£500m), Corporate Risk, Level of Uncertainty (due to >50 year lifetime) and most importantly because of its low and borderline value for money. There is no support for the applicant's assertion that there is no need to update the business case until after the ExA has determined the scheme. The 'Behavioural Change Scenario' is particularly important as this shows there is a scenario where traffic flows do not return to a 'pre-Covid' normal. This scenario needs to be assessed. There is also further guidance on how to treat potential increases in costs. The Council's analysis shows that LTC is even more vulnerable to cost increase than had already been demonstrated by the applicant under its P90 cost assumption. This is particularly concerning given the low value for money of the scheme and there is almost no room for cost increases before the value for money is seriously damaged.
74. **Mitigation:** the Council continues to consider that required mitigation has not been secured and this is the basis for the need for the Requirements as set out in Section 3 below. The Council has again reviewed the relevant paragraphs of the NPSNN and NPPF considers that it is clear that the applicant has not reflected the policy requirements presented in these paragraphs. These paragraphs mean that given the traffic impacts identified through the VISSIM modelling, there is a need for the applicant to mitigate these impacts to be in accordance with NPSNN and NPPF as well as the draft NPSNN, which is an important and relevant consideration.
75. The Council notes on 24 November 2023, the Government announced a number of measures designed to reduce the consenting time for NSIPs, including a new 'ministerially led forum' to 'drive' delivery, publishing spatial data on such schemes and confirming a one-year 'fast-track' route for certain developments. The department for levelling up, housing and communities (DLUHC) subsequently published a policy paper that was entitled '[Getting Great Britain building again: Speeding up infrastructure delivery](#)'. It is clear, however, that progress on these measures will take place over the next 12 months and will not commence until spring and summer and the end of 2024. Clearly therefore these measures will not and cannot apply to the LTC DCO application and nor are they important and relevant considerations.

Section 10 – Updated Evidence or Information Outstanding and/or Missing from DCO

76. The Council submitted within its D1 LIR submission ([REP1-281](#)) in Section 6.4 (in July 2023) a complete list of information and evidence missing from the applicant's DCO application. Despite extensive engagement with the applicant there continues to be a large amount of missing evidence. This updated missing evidence is listed in full below in Table 10.1 but is not repeated here.

1. Introduction

- 1.1.1 This D8 submission seeks to respond to all of the applicant's Deadline 6A and 7 (D6A and D7) submission documents that were uploaded to the PINS website on 27 November 2023, whether new or amended in track changes. Some submitted documents do not require Council comments and so do not form part of this submission. Further details of the relevant sections are set out below.
- 1.1.2 The Council would like to note that in many instances within the applicant's documents covered by this submission, there is no further analysis, evidence, documentation or response that addresses the Council's points made in its submissions.
- 1.1.3 The applicant has mostly referred to previous documentation, reiterated its previous position and/or stressed that it has been both 'robust, reasonable and proportionate', without actually being so. The Council contends that this is not reasonable, particularly if a major stakeholder is making substantive technical points, then it is incumbent on the applicant to respond with further analysis, evidence, documentation or argument that addresses the Council's points.

1.2 Context

- 1.2.1 There were a total of 22 submissions at D6A and 275 submissions at D7 of those totals the applicant made 8 submissions at D6A of which 3 were in track changes (and hence 3 clean versions that were not reviewed) and it made 194 submissions at D7 of which 81 were in track changes (and hence 81 were clean versions that were not reviewed) and the remainder were new documents or documents that did not require Council review. It is these overall total of 96 track changed and relevant new documents that have been assessed within this submission, to determine if the Council needed to comment.

1.3 Structure of this Submission

- 1.3.1 This document provides comments on the relevant and necessary submitted documents, as set out below.
- a) Control Document Changes at D7
 - b) Draft Development Consent Order Matters
 - c) Land and Compulsory Acquisition Matters
 - d) Responses to the applicant's D6A Traffic Submissions
 - e) Responses to the applicant's D7 Submissions
 - f) Green Belt Harm Assessment Review
 - g) Council Comments on Applicant's Responses to Post Event Submissions at D6, Hearing Actions and Applicant's Comments on TP Responses on ExQ2
 - h) Council Comments on Applicant's Comments on IP Responses on D6A and D7 Submissions – Transport Issues
 - i) Update on Evidence or Information Outstanding and/or Missing from DCO

1.4 SoCG Update Progress

- 1.4.1 Since the submission of the joint SoCG with the applicant at D3 the Council has been working with the applicant to update the SoCG, which was submitted by the applicant at D6. It is notably that whilst many SoCG items have been updated in descriptions and status, there still

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remains (at D6) 242 issues that are either a 'Matter Not Agreed' or a 'Matter Under Discussion' (but with little prospect of progression). In fact, then there remained a total of 314 issues, with 72 issues are 'Matter Agreed', 193 issues are 'Matters Under Discussion' and 49 issues are 'Matters Not Agreed'. The Council have continued working with the applicant and since D6 there have been agreement on just a few Matters, but the vast majority of Matters remain unresolved. Clearly, to have so many issues for one local authority as 'Matter Not Agreed', at this very late stage in the Examination process, is very unusual and in the Council's view places an unnecessary burden on the ExA to resolve these issues, instead of the applicant.

1.4.2 The Council notes, in Paragraph 2.1.4 of the SoCG, submitted to ExA by the applicant at D6, provides out-of-date information. The SoCG, submitted at D6, has been agreed by the Council and the applicant. The Council met with the applicant during September to November 2023 through a series of seven SoCG workshops, bringing together a wide range of different technical experts to discuss outstanding matters. Nevertheless, very little substantive progress has been made, except but minor changes to wording in control documents and a few Matters Agreed. The applicant has declined to change its approach preferring instead for these many issues to be resolved by the ExA through the Examination process – clearly in contravention of the basic purpose of the Examination process.

1.4.3 The Council, since D7, has continued to work with the applicant and will jointly submit a final SoCG at D9 and although a number of matters have been agreed, many have not. The final SoCG will only contain two categories – 'Matter Agreed' and Matter Not Agreed'. Final numbers will be set out in that submission and contained in the Council's D9 submission.

1.5 Release of the Latest Energy NPSs EN-1, EN-4 and EN-5

1.5.1 The Government published the latest Energy NPS EN-1, EN-4 and EN-5 policies on Wednesday, 22 November 2023, which will come into force in early 2024.

1.5.2 Action Point 23 of ISH12 (Part 1) requests that the applicant provide comments on the most recent suite of draft Energy NPSs in respect of any matters considered by the applicant to be important and relevant to this development. This is to be provided as part of its Deadline 9 submission.

1.5.3 Action Point 23 of ISH12 (Part 1) also requests that the applicant must *'if the suite 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.'* This is to be provided as part of its Deadline 10 submission.

1.5.4 Also included within Action Point 23 of ISH12 (Part 1) is a request that in providing comments at both Deadlines 9 and 10 the applicant must have regard to the transitional arrangements in the NPSs and indicate what weight the applicant considers should be given to the new NPSs compared to the current policy framework.

1.5.5 The Council looks forward to receiving these comments from the applicant as part of their Deadline 9 and 10 submissions.

1.5.6 The Council wishes to note that within Section 12.2, notably Sections 12.2.5 and 12.2.12, of the Council's LIR submission ([REP1-281](#)), the Council acknowledged that the applicant had reviewed the draft Energy NPS EN-1, EN-4 and EN-5 policies that had not yet been formally issued at the time.

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- 1.5.7 However, regarding utilities NSIPs for the project, the applicant does still not appear to have taken on board the Council's comments in Sections 12.2.14 and 12.5.1 of the Council's LIR ([REP1-281](#)) and further information has still not been provided to allay the Council's concerns.
- 1.5.8 Of particular note is the Post Written Submission for ISH2 ([REP1-184](#)), which contains a 'note on overlap between Nationally Significant Infrastructure Projects and associated development under the Planning Act 2008', which concludes that utility works that constitute NSIPs in their own right cannot also be associated development. Since the utility diversions that have been determined as NSIPs are not associated development, the NSIPs should therefore be assessed separately, including having separate Environmental Statements and the need for separate utilities documents.

Key Points to consider with the newly published NPS EN-1, EN-4 and EN-5

- 1.5.9 The Council notes that the following new sections have been added to NPS EN-1, EN-4 and EN-5 and looks forward to the applicant's review and comments on these new sections.
- NPS EN-1 – Section 1.6 Transitional provisions following review
 - NPS EN-1 – Section 2.3 Meeting net zero
 - NPS EN-1 – Section 2.4 Decarbonising the power sector
 - NPS EN-1 – Section 2.5 Security of energy supplies
 - NPS EN-1 – Section 2.6 Sustainable development
 - NPS EN-1 – Section 3.5 The need for new nationally significant carbon capture and storage infrastructure
 - NPS EN-1 – Section 4 (new sub-sections)
 - NPS EN-1 – Section 5.3 Greenhouse gas emissions
 - NPS EN-4 – Section 2.2 Factors influencing site selection and design
 - NPS EN-5 – Section 2.5 Environmental and Biodiversity Net Gain
 - NPS EN-5 – Section 2.6 Land Rights and Land Interests
 - NPS EN-5 – Section 2.7 Holistic planning
 - NPS EN-5 – Section 2.8 Strategic Network Planning
 - NPS EN-5 – Section 2.9 Applicant assessment
 - NPS EN-5 – Section 2.10 Mitigation
 - NPS EN-5 – Section 2.11 Secretary of State decision making
 - NPS EN-5 – Section 2.12 Special assessment principles for offshore-onshore transmission
 - NPS EN-5 – Section 2.13 Offshore-onshore transmission: Applicant assessment
 - NPS EN-5 – Section 2.14 Offshore-onshore transmission: mitigation
 - NPS EN-5 – Section 2.15 Offshore-onshore transmission: Secretary of State decision making
- 1.5.10 Within Section 5.10 'Landscape and Visual' of NPS EN-1 an update to the previous policy includes that the applicant should carry out a landscape and visual impact assessment, reported in the ES, which includes the effects on landscape components and character during construction and operation.

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- 1.5.11 Within Section 5.12 'Noise and Vibration' the applicant is expected to take all reasonable steps taken to mitigate and minimise potential adverse effects on health and quality of life. The Council is interested to understand how this has been covered for the identified energy NSIPs.
- 1.5.12 Within the new NPS EN-1 and EN-5 the Government has concluded that there is a critical national priority (CNP) for the provision of nationally significant low carbon infrastructure. This includes the electricity grid infrastructure, all power lines in scope of EN-5, including network reinforcement and upgrade works, and associated infrastructure, such as substations. Applicants must show how any likely significant negative effects would be avoided, reduced, mitigated or compensated for, following the mitigation hierarchy. This is further emphasised within Section 4.2 of NPS EN-1. The Council considers this a key item that the applicant will need to consider and review.
- 1.5.13 Also, within the new NPS EN-5, an update is given confirming that applicants should show how their application meets the requirements in EN-1 and this NPS, applying the mitigation hierarchy, and includes the assessment principles as set out in Part 4 of EN-1 and the consideration of impacts as set out in Part 5 of EN-1. The Council welcomes the applicant's comments on Parts 4 and 5 of EN-1.
- 1.5.14 Also, within the new NPS EN-5 the Government notes that the applicant should consider Section 11A of the National Parks and Access to the Countryside Act 1949 (as amended by Section 62 of the Environmental Act 1995), and should note amendments to provisions contained in Section 245 of the Levelling Up and Regeneration Act 2023. There is also an expectation that transmission and distribution licence holders are required under Schedule 9 of the Electricity Act 1989 to produce and publish a statement setting out how they propose to perform this duty. The Council welcomes the applicant's comments on this in relation to LTC.
- 1.5.15 The new NPS EN-5 has an additional paragraph noting that for overhead lines applicants should consider measures to make lines more visible such as bird flappers and diverters, which are covered in more detail in paragraphs 2.10.3 and 2.10.4 of NPS EN-5. The Council wishes to know whether these have already been considered and are being implemented on the diverted overhead lines.
- 1.5.16 Under 'Landscape and Visual Impact' of the NPS EN-5 policy there is a requirement for a landscape, seascape and visual impact assessment for relevant NSIPs, and that the applicant should demonstrate that they have given due consideration to the costs and benefits of feasible alternatives to the overhead line. The assessment is not something that the applicant has produced for LTC at present.
- 1.5.17 The Council notes that the section of 'Sulphur Hexafluoride' is one that the applicant had already considered within their dDCO submission as part of their review of the (at the time) draft NPS EN-1, EN-4 and EN-5. Sections 6.6.49 – 6.6.52 of the Planning Statement Volume 7 ([APP-495](#)) provides further detail of the NPS EN-5 requirement, with Section 6.6.52 saying that 'National Grid Electricity Transmission has confirmed in writing that the Project would not involve the use of SF6.' However, although it should be part of the evidence towards NPS policy compliance, this piece of evidence is not included within the DCO.
- 1.5.18 **In summary therefore, it is clear that dependent on the ExA's view of the transitional arrangements in the NPSs and indicate what weight the applicant considers should be given to the new NPSs compared to the current policy framework, there remains much to cover in the existing DCO in order to respond positively to these new policy imperatives. The Council will await the applicant's response to these new policy documents at D9, in the hope that such up-to-date policies can be positively incorporated into this LTC DCO.**

2. Control Document Changes (at D7)

2.1 Introduction

2.1.1 This section covers the Council's comments made to the applicant's nine updated Control documents for the scheme (within its D6 submission), as set out below, unless the Council intends to comment at D9 (where it is indicated below). The relevant applicant submission documents are annotated in each sub heading title for ease of reference.

2.2 Code of Construction Practice, First Iteration of Environmental Management Plan (CoCP) (v7) (REP7-123)

2.2.1 The Council maintains that there are a number of changes that should be made to the CoCP to make it a robust and workable product. Those matters have been raised at many submissions, not least the response to ExAQ1 Q4.6.4 ([REP4-353](#)).

2.2.2 In recent evidence given by the Council and other IPs the need for clarity on the definition of Preliminary Works has been repeated expressed and must be reflected in the CoCP and associated documents.

2.2.3 Further minor editing and formatting updates are shown in the EMP ([REP7-123](#)), which have no significant impact and the Council does not have any comments regarding them.

2.2.4 The Council welcomes the strengthening of REAC Table 7.1 measure AQ001 and the deletion of 'where reasonably practicable', but would wish to see the additional clarity of the wording by inserting 'in all plant and vehicles'. The inclusion of airborne asbestos in dust and particulate monitoring in Table 7.1 AQ006 is welcomed. The Council considers it appropriate that mitigation measures should be investigated (and implemented) prior to Project construction.

2.2.5 The additions of REAC measures CH009 and CH010 are welcomed.

2.2.6 The Council welcomes the addition of compensation for parties affected by noise and/or vibration above limits agreed in the Section 61 in Table 7.1 NV015. However, the Council considers it appropriate that this includes security of buildings vacated as a result of temporary housing, and compensation for costs and losses arising. The bringing forward of the assessment of eligibility for noise insulation at NV018 is welcomed, as are the adjustments to RDWE014 and RDWE019

2.3 Outline Traffic Management Plan for Construction (oTMPfC) (v7) (REP7-149)

2.3.1 The Council notes that some changes are finally starting to be made to the oTMPfC following pressure from the Council and other IPs. The Council continues to seek further refinement and strengthening as set out particularly in its response to ExAQ1 Q4.6.4 ([REP4-353](#)).

2.3.2 The Council welcomes the addition of paragraphs 2.4.20 and 2.4.21, which provide further clarity over the prospective modelled assessment of network impacts during the construction period. The onus rests with the Council to defend its network rather than proactively noting the locations expected to be reviewed, as have been identified by the applicant in its assessment work. The applicant is typically not confident to commit to the outputs from its assessment work and again seeks to pass the burden of definition onto the local highway authorities, communities and the contractor.

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- 2.3.3 It is unacceptable that the applicant seeks to restrict any mitigation proposals to non-physical measures and in doing so will restrain it and the contractor to the mechanisms that would be available to resolve identified problems. This could be especially important at locations, such as the A1089 Asda Roundabout and in Orsett Village. There will undoubtedly significant challenges put to the applicant and escalated to the JOF for resolution.
- 2.3.4 Further minor editing and formatting updates are shown in the oTMPfC ([REP7-149](#)), which have no significant impact and the Council does not have any comments regarding them.
- 2.3.5 In Table 2.3 Public Transport Users and Operators, the Council considers it appropriate that the contractor should identify measures that enable an ongoing bus service performing at a pre-construction standard in terms of frequency and delays. The additions to better define the effects on public transport users and operators are welcomed. The weakness is that the wording adopted by the applicant does not commit to maintaining the same level of service currently provided to the communities affected. This will need to be fought for through the Community Liaison Groups and the Traffic Management Fora.
- 2.3.6 The intention behind the additional text for '*Healthcare facilities...*' in Table 2.3 is understood, but the wording used is not clear.
- 2.3.7 In Table 2.3 'Local Schools' and via paragraph 4.5.9, the Council welcomes the definition of the approach to identifying and resolving problems associated with safe and efficient access to school during the construction period. The hazards and risks should be assessed and evaluated with discussion and agreement with the Council. Further to identifying its forecast impacts on Thong Lane in Kent, the applicant should identify the probable impacts on schools within Thurrock, including William Edwards School and those on Stanford Road (A1013).
- 2.3.8 The inclusion of the pre-construction inspection is welcomed, as indicated at paragraph 4.6.3. The applicant does not commit to repairing undue wear and tear or damage, but carefully words the undertaking to 'suitable for the anticipated use during construction'.
- 2.3.9 The inclusion of the Port of London to the Materials Handling Sub-Group, as stated at paragraph E.4.1.19 is a sensible and essential addition to have been made by the applicant.

2.4 Framework Construction Travel Plan (FCTP) (v4) (REP7-147)

- 2.4.1 Minor editing and formatting updates are shown in the Framework Construction Travel Plan ([REP7-147](#)), which propose minor refinements to the proposed worker shuttle services. It is still the Council's opinion that the shuttle services are not well thought through and have insufficient refinement to be robustly proposed, as mitigation measures for the effects of workforce travel.
- 2.4.2 As with many aspects of the applicant's mitigation strategy, the refinement and certainty of measures is left to the contractor to define post-grant. The security of mitigation is therefore absent from the assessment of the impacts of the scheme and the Council has little surety that the effects will be managed.
- 2.4.3 The Council continues to seek further revisions to the FCTP ([REP7-147](#)) and these are set out in its response to ExAQ1 Q4.6.4 ([REP4-353](#)).

2.5 Outline Materials Handling Plan (oMHP) (v4) (REP7-126)

- 2.5.1 Minor editing and formatting updates are shown in the oMHP ([REP7-126](#)), which have no significant impact and the Council does not have any comments regarding them.

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- 2.5.2 In paragraph 6.2.13, oMHP v4, the applicant provides a minor modification with more detail to the definition of bulk aggregates, which now includes sand and aggregates for 'precast elements'. This is welcomed, but does not adjust the Council's position with regards to an increase in commitment to rail or river transport of bulk aggregates and other plant and equipment. The Council's stance on this aspect is unmodified and it will continue to press for a much stronger position with regards to appropriate optimisation of the use of marine and rail transportation.
- 2.5.3 In paragraph 6.2.24, the applicant has added that the contractor would seek retrospective approval as soon as possible when derogation has been implemented without a derogation decision notice. This urgency for retrospective approval as soon as possible is noted, but has no consequence as there are no incentives or requirements in place to incentivise this and therefore the contractor would likely submit the derogation request form at the monthly TMF, which could be long after the unconsented derogation took place. The derogation process continues to be based on an assumption of approval (note paragraph 6.2.26) with challenges to that being only through the JOF, rendering the process neither agile or open to appropriate challenge by the Council or the Port of London Authority or any other IP.
- 2.5.4 The Council welcomes paragraph 6.2.27 in generality. The use of the Terms of Reference contained within the oTMPfC Appendix E to make a final decision of approved derogations that should no longer be in effect, as this provides a stronger basis for the constitution and management of the TMF. However, the Port of London Authority has not been included as a full member of the TMF, as the Council previously proposed, but only as a member of the Materials Handling Sub-Group.
- 2.5.5 The language used in paragraph 8.2.21 is too vague and does not require the applicant's contractors to improve on the baseline commitment. Whilst the Council welcomes more river transport opportunities for contractors at all compounds, there is no stipulation to improve on the baseline commitment.
- 2.5.6 The applicant states in paragraph 8.3.3 that in order to commit to river and/or rail facilities the facility must be an environmentally better option; must be competitive value for money; and, must not cause disproportionate delay to the programme. The Council disputes this statement, the commitment to river and/or rail facilities should be the same or better environment option. The language used for the requirements to commit to river and/or rail are vague and subjective exemptions that allow the applicant's contractors to themselves determine and consequently avoid maximizing the use of rail and/or river facilities.
- 2.5.7 The Council, the Port of London Authority and the applicant are to meet between Deadline 8 and 9 to seek to improve on the wording of this point, and hopefully other weak aspects of the oMHP. A further response will be provided by the Council at Deadline 9.

2.6 Outline Site Waste Management Plan (oSWMP) (v3) (REP7-125)

- 2.6.1 The applicant has updated the drafting of MW013 to reflect '*... reuse, recycling and/or recovery ...*' of a minimum of 90% compared to the previous level of 70%. The Council supports the applicant's increased minimum levels set out within MW013, however, the amendment does not address the Council's previous comments regarding clearly setting out a requirement to prioritise the waste hierarchy through the disaggregation of reuse, recycling and recovery. The Council also believes the applicant's commitment can be more clearly expressed as '*... the Contractors will divert ...*' rather than the current drafting of '*... the Contractors would divert*', which is a past tense commitment for a future activity.
- 2.6.2 Whilst the applicant has updated the text within Tables 5.1 and 5.2, the tonnages and percentages have not been updated to reflect the new minimum level within MW013.

2.7 Outline Landscape and Ecology Management Plan (oLEMP) (v5) and LEMP ToR (v2) (REP7-133 and REP7-135)

- 2.7.1 The main changes to the oLEMP ([REP7-133](#)) and the LEMP Terms of Reference ([REP7-135](#)) have been primarily to refine the remit of the oLEMP and the roles and responsibilities of the Advisory Group.
- 2.7.2 The Advisory Group will be set up to help inform the decision making throughout the duration of the LEMP. 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. A new point 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.'*
- 2.7.3 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.
- 2.7.4 The Council believes that the Advisory Group should have an ongoing role to advise on appropriate management post-establishment. Whilst Point a is not explicit that this Group will have a continued role passed establishment of the various habitat types, the Council is satisfied that the Group would have a minimum existence of in excess of 20 years, due to the duration of some of the establishment periods. It is accepted that by this point there will be a mechanism to continue the Group, if it is considered necessary.
- 2.7.5 Point c. also clarifies the definition of in perpetuity. This has been picked up throughout Section 8 - Habitat typologies.
- 2.7.6 A new paragraph has been added to Section 4.2 of the oLEMP ([REP7-133](#)) confirming the need for in perpetuity management.
- 2.7.7 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.
- 2.7.8 Section 6.3 - Coalhouse Point has been expanded to more accurately reflect the management requirements and typologies present. These are considered appropriate.
- 2.7.9 The changes are considered an improvement in that they provide more clarity regarding the need for in-perpetuity management and the role of the Advisory Group.

2.8 Design Principles (v5) (REP7-141)

- 2.8.1 The Council, as part of the wider SoCG discussions, 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. These comments have not yet been responded to by the applicant.
- 2.8.2 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.
- 2.8.3 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

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ISH10, it is considered that these should be expanded to include all the new bridleway access points.

2.9 Draft Archaeological Mitigation Strategy and Outline Written Scheme of Investigation (v4) (AMI-OWSI) (REP7-129)

- 2.9.1 The applicant has updated a number of areas within the AMS-OWSI. Most of these changes were in discussion with all of the Local Authority advisors involved. Two extra commitments have been added into the REAC in relation to the access to the scheme by Local Authority Advisors to monitor and sign off work and the requirements for the assessment and excavation of deep Palaeolithic and Holocene deposits.
- 2.9.2 Under paragraph 2.5.4 page 5 and 6, two additional REAC commitments (CH009 and CH010) have been added, one regarding the archaeological assessment of the tunnel mouth to assess the Palaeolithic and Holocene deposits and the other to ensure the Local Authority archaeological and built heritage Advisors are given access to the project for monitoring and sign off of the mitigation work.
- 2.9.3 Under paragraph 2.6.7 page 7, there is an addition relating to ensuring that the Local Authority Historic Building Advisors will monitor the work on historic buildings as defined within the AMS-OWSI and the future SSSI's.
- 2.9.4 Table 3.1 section 2.3 page 11, additional sections have been added on defining historic building recording to include the setting where this is altered and where the buildings may be impacted by vibration that a condition survey is undertaken. This is then repeated under Historic Building recording Sections 6.4.13 and 6.4.14.
- 2.9.5 Within Table 3.1 Section 3.3 geophysical survey has been added in as a method of non-intrusive fieldwork. This then is set out in its own paragraph under Section 6.4.20.
- 2.9.6 A new paragraph 5.1.7 has been added confirming that a LTC heritage research group is to be set up comprising of academics, researchers, field archaeologists and LA archaeologists to develop research aims and objectives on a project wide basis. This has been requested from early on in the process.
- 2.9.7 Under paragraphs 6.4.41 – 6.4.44 page 97, the proposed mitigation strategy for the potential Palaeolithic land surfaces and other significant deposits have been added. This has been requested for some time and is an appropriate method. This is repeated under paragraphs 7.3.119 to 7.3.121 page 125.
- 2.9.8 Paragraph 7.2.5 page 102, proposes a meeting between all parties involved in the demolition, dismantling and recording of the historic buildings in advance of work commencing to ensure everybody signs off what work is proposed. This is a sensible approach.
- 2.9.9 Further paragraphs 7.2.15 – 7.2.17 have been included to cover the role of the Historic Building advisors in the monitoring, access to the site and alterations of the SSSI's.
- 2.9.10 An additional Section within paragraphs 7.2.25 – 7.2.27 has been added on interim statements, post excavation reporting and publication which covers the role of the Local Archaeological and historic building specialists reviewing the documentation resulting from the archaeological fieldwork.
- 2.9.11 With table 9.3 page 149, Whitecroft's Farmhouse has been added to the structures proposed for building recording; and, with the Baker Street Windmill there is an emphasis on the recording of their setting.

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- 2.9.12 This is due to be a full list of all of the archaeological mitigation areas defining the agreed excavation method. A meeting was held on Monday, 27 November 2023 to agree the remainder and they should appear at either D9 or D10.
- 2.9.13 **Summary: the additions that have been made to the AMS-OWSI all provide further detail on the mitigation required to ensure that the impact on the historic environment is undertaken to the appropriate level considering the level of loss that will result from the road. In summary the changes have clarified and further defined the role of the archaeological and historic building advisors, it has identified the methodology to assess the Palaeolithic and other early land surfaces that potentially survive in the deeper excavation areas such as the tunnel mouth and identified the role of the LAA in the review of the documentation reporting on the results of the mitigation work. It is still expected that further iterations will be provided certainly at D9 and possibly D10.**

2.10 Carbon and Energy Management Plan (C&EMP) (v2) (REP7-151)

- 2.10.1 The Carbon and Energy Management Plan (C&EMP) has been updated to reflect changes in the calculation of construction emissions. The substantive changes are set out in Appendix F to this document.
- 2.10.2 There are two changes to note:
- a. Reallocation of land use change emissions to align with PAS 2080:20231; and,
 - b. Carbon savings achieved by embedding carbon in the procurement of its three design and build contracts.
- 2.10.3 These changes have two consequences:
- a. To shift sequestration benefits from land-use to the operational phase, resulting in a net increase in emissions during the construction phase;
 - b. Presentation of lower modelled forecast emissions during the construction phase through the use of:
 - Lower carbon emission factors for steel and concrete within the model;
 - Assumption relating to reduced materials transport emissions through modal shift and shorter haulage distances; and,
 - The use of new assumptions relating to the use of hybrid, electric and biofuel to power construction plant within the model.
- 2.10.4 The overall consequence of these measures is a forecast reduction in construction phase carbon emissions from 1.73 to 1.44 million tonnes of CO_{2e}.
- 2.10.5 The revised C&EMP does not provide any management procedures requiring contractors to:
- a. Certify the carbon emission content of steel and concrete for use in the carbon model;
 - b. Guarantee modal shift;
 - c. Define the boundaries of logistic emissions relating to haulage distance of materials; and,
 - d. Define how physical infrastructure that enables low or zero emission construction plant would be delivered within the environmental boundaries set the by the project EIA (for example, the utility impacts of electric power supply).

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2.10.6 The Council note that the applicant has not remodelled the utility impact of the increased use of electricity associated with the assumptions of greater use of electricity during construction.

2.11 Stakeholder Actions and Commitments Register (SAC-R) (v5) (REP7-153)

2.11.1 This latest version has made a number of minor text changes and further explanations, but has now divided the SAC-R into three parts: Part 1 is for matters that are not part of the REAC or Control Documents but are secured in the DCO; Part 2 is to secure the SEE Strategy; and, Part 3 covers the applicant's Community Fund provisions.

2.11.2 All measures are secured by Article 61 of the dDCO and it provides an absolute commitment, which is acceptable to the Council. 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.

2.11.3 In addition, the applicant has added two new commitments (SAC-R-018 – SAC-R-019) and none of these are relevant to the Council.

2.11.4 **Part 2 entitled 'Skills, Education and Employment' has now been added** – the Council were made aware of this change and have accepted it in principle. However, this is notwithstanding its comments made in the following submissions: its D1 submission ([REP1-281](#)) in full in Section 13; its D3 submission ([REP3-211](#)) in Section 18.12; its D4 submission ([REP4-354](#)) in Section 12.3; and, in its D6 submission ([REP6-164](#)) in Section 4.6.

2.11.5 It contains sections on Interpretation; the SEE Strategy (which is appended); the Employment and Skills Working Group for north and south; Implementation and Performance of the SEE Strategy; and, SEE Targets. There is nothing new within this Part 2 and limited response by the applicant to the Council's previous comments outlined above.

2.11.6 **Part 3 has now been added** – the Council were made aware of this change and have accepted it in principle. However, this is notwithstanding its comments made in the following submissions: its D1 submission ([REP1-281](#)) in full in Section 13.6; its D3 submission ([REP3-211](#)) in Section 18.12.11 – 18.12.17; and, its D4 submission ([REP4-354](#)) in Section 12.3.3.

2.11.7 It contains sections on Interpretation; Community Fund; Awarding Panels; Monitoring; and, Ward Boundary Changes. There is nothing new within this Part 3 and limited response by the applicant to the Council's previous comments outlined above.

2.12 Statement of Commonality (v8) (REP7-101)

2.12.1 The Council's views on this document remain the same as set out in its D6 submission ([REP6-164](#)) within Section 2.10 (and, indeed, in previous submissions too) and the applicant has made no attempt to discuss the Council's comments with the Council or to amend its document to accommodate those comments. It is clear from Table 4.2 within [REP7-101](#) that many of the topics for the Council remain red, i.e. Matter Not Agreed.

2.13 Consents and Agreements Position Statement (v7) (REP7-095)

2.13.1 The Council cannot determine any changes made to this v7 of the document, except to add, amend or remove references, and so is puzzled as to why it has been submitted. However, the Council's comments in Section 6.1 of its D3 submission ([REP3-211](#)) have not been dealt

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with and still require responses from the applicant, as was reiterated in its D4 submission ([REP4-354](#)) and its D7 submission ([REP7-228](#)).

3. Draft Development Consent Order Matters

3.1 Draft Development Consent Order Changes (v9) and Schedule of Changes (v7) (REP7-091 and REP7-160)

- 3.1.1 The dDCO has been amended in a number of places. The Council's comments are as set out below.
- 3.1.2 The Council has no comments in connection with the amendments to Article 40(8), Article 53, Article 56, Article 68, Schedule 1 or Schedule 11.
- 3.1.3 The Council welcomes the amendment to Article 61, which removes the words *'take reasonable steps'* and replaces it with the stronger requirement to *'implement'*. This is especially important considering the growth of the contents in the Stakeholder Actions and Commitments Register (SACR). However, it should be noted that the SAC-R itself ([REP7-153](#)) contains flexibility. 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. The effect of this is that the strength of the commitment is not as strong as Article 61 initially appears. Specific comments on the SAC-R can be found in Section 2.11 above.
- 3.1.4 Despite the comments on the SAC-R, the Council does support the approach in Article 61. This is to be compared with the approach in some of the Requirements. For example, Requirement 5(2) sets out that the LEMP must be *'substantially in accordance'* with the outline LEMP. The outline LEMP itself contains significant flexibility and so this flexibility is magnified by flexible wording the Requirement. In the interests of reducing uncertainty, it remains the Council's strong position that words such as *'in accordance with'*, and *'implement'* should be preferred over words such as *'substantially in accordance with'* and *'reflect'*. The formula *'in accordance with'*, still leaves the applicant with a degree of flexibility, as explained by the Supreme Court in the *Hillside Parks* case and would not unlawfully (or as a matter of fact) fetter the applicant's discretion.
- 3.1.5 **Requirements** – the Council notes the amendments to [Requirement 17 \(Tilbury Link Road\)](#) and welcomes the movement that has been made on this matter. Making adequate provision for the Port of Tilbury is essential. The Thames Freeport is a key area of growth within the Council's area (and the PoTLL is currently one of the fastest growing Ports in the world) and the Council recognises how important it is that LTC does not restrict that growth.
- 3.1.6 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. Whilst the Council considers that its suggested wording is to be preferred as it provides greater certainty, the Council is prepared to work with the applicant to find wording that can achieve the aim of safeguarding the provision for the Tilbury Link Road.
- 3.1.7 The Council has now agreed the following wording for Requirement 17, with the PoTLL and is set out below:
- 17.—(1) The undertaker must undertake the detailed design of Work Nos. 5D, 5E and 5F in a manner that reasonably facilitates and accommodates a connection to the proposed Tilbury*

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link road to the extent the route and design of the proposed Tilbury link road is available before the date of submission of the final iteration 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.

(2) If sub-paragraph (1) applies, Work Nos. 5D, 5E and 5F must be designed in detail and constructed by the undertaker so as to reasonably facilitate and accommodate a connection with the proposed Tilbury link road in compliance with the Design Manual for Roads and Bridges.

(3) In this paragraph, "the proposed Tilbury link road" means a proposal for a highway between the A122 and the town of Tilbury, passing through or in the vicinity of the Port of Tilbury, which includes a connection with or junction onto the A122, which is:

(a) reflected in a preferred route announcement by the Secretary of State;
(b) the subject of a request for a scoping opinion submitted to Thurrock Council under regulation 15 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, or an application to the Secretary of State under regulation 10 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017, whether the road forms the whole or part of the subject of the request for a scoping opinion (unless the Secretary of State directs the undertaker not to consider such a proposal as the proposed Tilbury link road);

(c) included in a local plan adopted by the relevant planning authority under regulation 19 of The Town and Country Planning (Local Planning) (England) Regulations 2012; or
(d) submitted by any person to and approved in writing by the Secretary of State, following consultation with the undertaker, Thurrock Council, Port of Tilbury London Limited and any other person the Secretary of State considers appropriate.

(4) Any proposal submitted under sub-paragraph 3(d) must identify the likely route and function of the proposed Tilbury link road so that the Secretary of State can determine if the proposal should constitute the proposed Tilbury Link Road for the purposes of this paragraph.'

- 3.1.8 This updated Requirement is needed to avoid a situation where the detailed design of the authorised development is approved by the Secretary of State, except for the passive provision for the Tilbury Link Road. It also removes the applicant from the position whereby it would face the conflicting pressures of reducing costs to give value to taxpayers, whilst also needing to understand the wider benefits of adequate passive provision for the Tilbury Link Road.
- 3.1.9 During ISH 14 the applicant set out that it was the appropriate body to determine what the passive provision should look like as it is the strategic highway authority. However, it is the Council's opinion that this is one of the concerns of the Council. Adequate provision for the Tilbury Link Road is required both to support growth to the ports and to support wider growth within Thurrock. These wider concerns require consideration from a party which is able to balance impact upon the road network and wider growth impacts. The Secretary of State is well placed to do this, but only if the TLR becomes a part of the strategic road network. It should also be noted that the status of the Tilbury Link Road has not been decided. It is possible that this could not be part of the strategic road network and may indeed be part of the local road network, which further highlights the fact that the applicant is not best placed to decide on the design for the passive provision for Tilbury Link Road.
- 3.1.10 The Council notes the comments on Requirement 18 (Orsett Cock). This is of primary importance to the Council. The Council submitted a jointly agreed version (between the Council, Port of Tilbury London Limited, DP World and the Thames Enterprise Park) of the

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requirement for Orsett Cock at D6 ([REP6-163](#)). The applicant has now amended their version with the intention of directly addressing the differences between our approach and their approach. As discussed at ISH 14, it is the Council's strong opinion that the approach proposed by the applicant does not address the key concerns of the Council or the other key stakeholders directly affected. Importantly it is replaced the concept of '*material worsening*' when compared with an agreed baseline, with the concept of '*minimising delays and optimising performance*'. The Council, and the other interested parties who submitted the joint requirements, do not consider that this adequately addresses the concerns. The Council has been discussing this with Port of Tilbury London Limited, DP World/London Gateway and the Thames Enterprise Park (TEP) and a further joint position can be found below in Section 3.1.11. This seeks to address the ExA's concerns over the use of the words 'material worsening'.

- 3.1.11 The Wider Network Impacts Requirement is required because the applicant's 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 Wider Network Impacts Management and Monitoring Plan ([APP-545](#)) 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.
- 3.1.12 The Council notes the wording proposed by the applicant in its Wider Network Impacts Position Paper ([REP6-092](#)) and commented on by the LB Havering at Deadline 8 ([REP7-207](#)). The Council agrees with the submissions of the LB Havering. The fundamental concern is that LTC should not be designed to relieve problems on part of the strategic highway network, but allowed to cause significant issues elsewhere, which would need to be paid for by the local highway authorities.
- 3.1.13 The Council, in agreement with PoTLL and LB Havering have agreed updated wording for the new Requirement as an interim recommendation to demonstrate a willingness to compromise and offer the ExA further options, subject to further refinement at D9. This is set out in the '**Updated Joint Position Statement on Additional Requirements**' in Annex A and may be amended further at D9. The purpose of this is to provide an indication to the ExA as to the current position of the parties. It also highlights that the Parties are not entrenched in the previously submitted wording. The parties are happy to be flexible, but the outcome needs to be effective. This wording may evolve as the discussions on the Orsett Cock Junction continue.
- 3.1.14 **Additional Requirements:** the Council, PoTLL, DPWLG and TEP met with the applicant on 4 December 2023 to discuss the principles and detailed provisions of Requirement 18, in particular. Whilst some progress was made and the applicant acknowledged it will make amendments at D8 and will consider further amendments at D9. Notwithstanding this, all the affected parties have determined that they will not submit amended wording for this Requirement 18 at D8 (although agreed amended Requirements for TLR and Wider Network Impacts are being submitted), but also submit an agreed '**Updated Joint Position Statement on Additional Requirements**' that sets out principles and intentions – this is included as **Appendix D**. It is hoped that this will guide the ExA as to the position of all affected parties and encourage the applicant to make more substantial amendments to its Requirements at D9. The parties will then review the applicant's amendments and either support them or submit its preferred version appropriate Requirements at D9.

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3.1.15 **Protective Provisions** – further amendments have been made by the applicant in relation to the Protective Provisions for Highway Authorities in Schedule 14. A jointly agreed position between all local highway authorities can be found in **Appendix C** below. In the interests of reaching agreement the Council has made many concessions and accordingly it is hoped that the proposed version is acceptable.

3.1.16 **In conclusion, it is still considered that there are a significant number of improvements that can be made to the dDCO. These are points which have been raised by the parties since early on in this Examination and it is disappointing that these are only beginning to be addressed at this late stage. As set out elsewhere in this submission, the Council are trying to be practical and pragmatic, however, the failure of the applicant to consider movement from its positions unless the ExA indicates that movement is needed has led to unnecessary delay. This delay has put us in a position whereby an unacceptably large amount of amendments are required in the final three weeks of the Examination.**

3.2 Comments on Explanatory Memorandum Changes (v5) (REP7-093)

3.2.1 There are limited tracked changes in the Explanatory Memorandum (EM).

3.2.2 The Council do not agree with the premise of paragraph 5.277. Whilst it is appreciated that the courts are busy, the Council do not think that the potential for delay is sufficient to warrant removing this safeguard. The Council are not convinced, based on the information presented in the EM, that the backlog would cause significant delay because of the range of cases involved. The applicant provides anecdotal evidence at best and seemingly wants agreement that this safeguard is removed without having made enquires with HMCTS as to the actual position.

3.2.3 There are amendments to paragraph 6.3, but none of these widen the scope for relevant local authorities to be given any degree of control and the focus seems to remain that the Secretary of State must be the primary decision maker in order to avoid delay. This is contrary to the position of the Council, which considers that it is best placed to discharge conditions based on its local knowledge and experience. It is rejected that having the local authorities discharging authority would violate the fundamental purpose of the 2008 Act. Most DCOs that are not part of the Department of Transport provide for local authorities to discharge Requirements.

3.2.4 In relation to the Design Principles at paragraph 6.3(f) please see submissions at Section 2.8 above.

3.2.5 In relation to the paragraph 6.3(g) and the new comment *'this approach continues to be the approach of all National Highways schemes in examination and pre-examination phase'*. The Council notes that as part of the A66 Northern Trans-Pennine Project the [Secretary of State for Transport issued a letter on 8 November 2023](#). In it, the Secretary of State proposed that the drafting of Article 54 would require the relevant planning authority, Westmorland and Furness Council, to provide approval of the detailed design for Trout Beck, Cringle Beck and Moor Beck Viaducts, as the Secretary of State considers that they are the most appropriate body to consider such matters. Accordingly, the wording of the Explanatory Memorandum may need to reflect this change.

3.2.6 Whilst the Council accept that the majority of schemes promoted by the applicant have the Secretary of State as the discharging authority, this does not mean that other options are not appropriate. The Council considers that the LTC is such an appropriate situation due to the nature of the project and its ability to significantly impact a large part of the Council's area, both during construction and operation.

3.3 Council Comments on ExA Commentary on dDCO (dated 14 November 2023) (PD-047)

- 3.3.1 The Council appreciates the questions raised by the ExA and has fully responded in **Appendix A**.
- 3.3.2 As a general comment, the Council would like to note that there remains a substantial number of outstanding comments, despite the late stage in the Examination process. Many of these issues, for example, deemed consent and disapplication of legislation have been raised by the Council since prior to the Examination commencing. Accordingly, whilst it is positive that that these have been raised by the ExA, the Council is concerned that the applicant is going to state that they have fully responded, when in the opinion of the Council there has been an over reliance on what has been agreed before (often referred to as the Secretary of States preferred drafting) and less analysis of why it is appropriate in the current application.

3.4 Council Comments on Applicant's D7 Comments (REP7-190, REP7-185 (Section 4) and REP7-187 (Section 7))

- 3.4.1 The applicant has responded to the Council's submissions made at Deadline 6 ([REP6-164](#)). The Council's comments are set out below. The applicant's responses to Interested Parties Comments on the draft DCO at Deadline 6 – [REP7-190](#).

Protective Provisions

- 3.4.2 The LB Havering submitted a joint response on behalf of itself and the other local highway authorities (Kent County Council, Essex County council, the Council, and TfL). As a result, the Protective Provisions have been updated in the latest version of the DCO (v9) ([REP7-091](#)). This is despite the fact that for a significant period of time, it was argued by the applicant that no Protective Provisions were required to protect the local highway network.
- 3.4.3 It is the Council's opinion that there are still a number of areas where there are further improvements required. In order to reach agreement, the Council has made a significant number of concessions. This has enabled us to reach a joint position with the other local highway authorities, which is being submitted by the LB Havering. The Council supports the position put forward by the LB Havering at D8. This jointly agreed position between all local highway authorities can be found in **Appendix C** below.
- 3.4.4 It is the Council's position that the scale of LTC, and its significant impact on local highway authorities, means that appropriate Protective Provisions are required, which are best determined by the local highway authorities. The Council considers that it is proportionate for commuted sums to be paid to the Council as a signal site is being stalled on Stanford Road near to the Rectory Road junction. It would be usual to secure commuted sums in relation to the future maintenance of this facility.

Signposting

- 3.4.5 The applicant has responded to a number of the points raised in the Council's D6 submissions ([REP6-164](#)). Primarily its response has been to signpost its previous response, despite the fact that the Council has indicated that response does not cover the concerns of the Council. Without wanting to repeat submission that have already been made, the Council responds to the applicant's Table 8.1, on page 25 of [REP7-190](#), as follows:

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Table 3.1: REP7-190 Table 8.1 Council Response

Matter in REP6-164	Signposting by the applicant in REP7-190 and further response in bold
Swansea Tidal Lagoon case	<p>Please see Section 2.2 of the applicant's responses to IP's comments on the dDCO at Deadline 4 [REP5-089]. The Council has merely highlighted a paragraph that was specifically dealt with by the applicant in paragraph 2.2.13 of (REP5-089). The applicant reiterates that its position is no different to how Section 155 of the Planning Act, 2008 would operate if the applicant simply deleted Requirement 2, so the suggestion that this is somehow unacceptable should be given no weight.</p> <p>As raised during ISH 14, the applicant is failing to deal with the real issue that is being raised by the Swansea case: namely that it is difficult to see how the approach proposed by the applicant is in the public interest. The applicant's failure to identify how its approach, which differs from the more conventional drafting approach for DCOs, furthers the public interest is concerning. The Council strongly advocates for return to more conventional approach the drafting, where preliminary works do not mean that the DCO is preserved.</p>
Article 6(3)	<p>Refer to pages 134 to 135 of the applicant's responses to IP's comments on the dDCO at Deadline 3 (REP4-212) and Section 9.2 of the applicant's responses to IP's comments on the dDCO at Deadline 4 (REP5-089). The Council repeats its claims about the effect on landowners, which was specifically addressed in paragraph 9.2.5 of (REP5-089). The applicant considers the request for a definition of 'environmental effects' to reflect a failure to understand what has now become widely understood and utilised successfully in the context of DCOs and the Examining Authority is requested to give no weight to these representations.</p> <p>The Council still has serious concerns regarding the operation of Article 6(3) and specifically that it applies outside of the Order Limits. The applicant has failed to comment on the Council's suggestion that this power be limited to the Order Limits, or for the following clarification around the meaning of '<i>materially new or materially different environmental effects</i>', in comparison with those reported in the environmental statement'.</p> <p>The Council has previously requested information regarding whether:</p> <ul style="list-style-type: none"> • This includes everything within the Environmental Statement or just certain aspects? • When considering matters such as business impact, how are new business is treated? • And how the impacts are known considering the limited publication/consultation requirements. <p>The applicant's response misunderstands our position. The Council was not asking for a definition to be inserted within the DCO (at this</p>

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	<p>stage), the Council was simply asking how this was going to be interpreted the purposes of understanding the impact of Article 6(3).</p> <p>The Council's concern rests with how extending outside the Limits of Deviation, which in theory could be achieved by purchasing additional land, would be considered and the effects taken into account. The applicant has signposted the Council to paragraph 9.2.5 of REP5-089. However, this only refers to the CPO powers not applying outside of the Order Limits. The is clearly not an adequate response.</p> <p>The failure of the applicant to respond to these points, especially at this late stage an Examination, is frustrating and makes further progression on agreeing wording more difficult.</p>
Article 10	<p>Refer to Section 9.2 of the applicant's responses to IP's comments on the dDCO at Deadline 4 REP5-089, as well as the updates to Article 10 submitted at Deadline 6 (which the applicant considers resolves this matter).</p> <p>Article 10 has been updated.</p>
Requirement 3	<p>Refer to Section 9.2 of the applicant's responses to IP's comments on the dDCO at Deadline 4 REP5-089. The applicant specifically refers to paragraph 9.2.3, which explains why the reliance on a case provides no support whatsoever to the Council's position. The Council has copy and pasted its submissions on the heavily precedented provisions somehow circumventing the material/non-material amendment process. This is an example of where the Council is making an in principle argument, and the existence of a multitude of precedents is relevant in refuting the unusual submissions. For completeness, a project-specific justification has been provided in Section 9.2 of REP5-089.</p> <p>To avoid repetition, the Council does not consider it beneficial to repeat its comments in REP6-164. However, the Council maintains these comments. The applicant's response is an example of how the fact that a position has precedent is being used to avoid engaging in the Council's concerns. This is particularly the case when the applicant has declined to comment on what consists of 'environmental effects'. As set out above, the Council has asked - Is that everything in the environmental statement or just certain aspects? When considering things like business impact, how are new business treated? How do we know what the impacts are considering the limited publication/consultation requirements? Without answers to these questions, it is difficult to fully understand the impact of the wording.</p> <p>The applicant fails to grapple with the fact that what they are proposing is effectively a modified non-material amendment procedure, which results in less consultation and less publication of the potential amendments. It is unclear how this is in the wider</p>

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	<p>public interest. It amounts to an unacceptable circumvention of the non-material amendment procedure in the Planning Act, 2008.</p> <p>It is not sufficient for the applicant to simply state that the wording is designed to give the applicant a proportionate degree of flexibility when constructing project. There is no analysis on what would happen if this wording was not included.</p>
<p>'Comments on securing mechanisms' – 'substantially in accordance with' / 'reflect' / 'based on'</p>	<p>Leaving aside the project-specific justification provided, the applicant considers this to be an example of an 'in principle' argument, which would apply to any of the other precedents, but which the Secretary of State has nonetheless endorsed the Applicant's approach.</p> <p>These concerns have been raised by a number of IPs. They are of particular concern due to the flexible language used within the control documents.</p>
<p>'Comments on securing mechanisms' – Article 61</p>	<p>Notwithstanding the applicant does not agree with the comments, the applicant has amended Article 61 at Deadline 7, because of the inclusion of the Skills, Education and Employment (SEE) strategy in the SAC-R (REP7-153).</p> <p>This removes the reference to <i>'all reasonable steps'</i> and puts a positive obligation to <i>'implement'</i> the measures in the SAC-R. The applicant considers this matter closed.</p> <p>The Council is happy with the amendment to Article 61, although it still has comments on the flexibility included within the SAC-R – refer to Section 2.11 and 3.1 above.</p>
<p>'Comments on securing mechanisms' – references to Schedule 16 and other plans (at the end of Table 3.1)</p>	<p>Refer to page 143 of applicant's response to IP's comments made on the dDCO at Deadline 3 (REP4-212).</p> <p>The Council understands the manner in which the majority of the control documents are secured. However, it still has concerns regarding whether all documents are effectively secured.</p> <p>The applicant signposts the Council to page 143 of REP4-212. This states:</p> <p><i>'The Applicant considers that certified documents are already appropriately secured. In particular, relevant certified documents are referred to in the requirements. It would not be appropriate to have a "general requirement" referred to because some documents do not contain measures relating to the way in which works are carried out. The Applicant stresses, again, that the council is raising suggestions which conflict with the established practice for DCOs on the basis of in principle objections that would apply to any DCO project.'</i></p> <p>This does not address the Council's detailed concerns, regarding why some of the documents are in the Schedule 16 and why some are not.</p>

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Article 35

- 3.4.6 This issue was most recently raised by the Council during ISH14. There are two primary concerns that the Council wishes to address:
- 3.4.7 Article 35(5) contains some broad exemptions, such as not restoring land on which any soil reprofiling work has occurred and not restoring land on which any permanent works or ground strengthening works has been undertaken. This means that there is likely to be significant uncertainty for landowners regarding what is going to take place on their land and therefore what state can they ask for it back in. This is likely to impact how they use the land. The Council would like to see information for landowners improved, to lessen the impact upon them and their businesses. The Council is open to further suggestions from the applicant on how best this can be achieved if the suggested addition to Article 35 is not agreed.
- 3.4.8 Temporary works being left on the site pursuant to Article 35(5) (g) without planning consent. The applicant appears to accept this point at paragraph 8.2.3 of [REP7-190](#). However, the wording in the DCO does not require this to be the case. To provide greater certainty the Council suggest the following replacement for article 35(5) (g):

'remove any temporary works where this has been agreed with the owners of the land and planning permission has been granted (either by the local planning authority or the Secretary of State on appeal) for the retention of the works.'

Requirement 13

- 3.4.9 This matter was discussed during ISH 14 and agreed wording between the Council and the applicant is set out below.
- (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 consultation by the undertaker with the local planning authority and the occupiers of the existing Gammon Field travellers' site.*
- (2) The details submitted and approved under paragraph (1) must be in accordance with— clause no. S11.12 of the design principles; and any plans, details or schemes approved by the Secretary of State under this Schedule.*
- (3) Work No. 7R must be carried out in accordance with the details approved under paragraph (1) or determined under an appeal under article 65 (appeals to the Secretary of State) of this Order.*
- (4) If the local planning authority which receives an application for approval under paragraph (1) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted approval.*
- (5) From the date the replacement site is provided pursuant to subparagraph (1), the following conditions will apply to that site as though they were imposed under section 70(1) of the 1990 Act:*
- (a) the site shall be used solely as a residential Gypsy and/or Traveller caravan site and there shall be no storage of scrap or other commercial vehicles, or open storage of hazardous materials, scrap materials, domestic or commercial waste or other such goods of any kind on the site;*
- (b) no more than 42 caravans are to be sited on the site at any time;*
- (c) the site must at all times be kept and maintained in a neat and tidy condition, and no activities shall be allowed to take place which would be likely to give rise to noise, smell or*

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other disturbances to the detriment of other occupiers of the site or other disturbance to nearby residential dwellings;

(d) notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, no structures of any description are to be erected at any time on site save for those whose details have been approved under paragraph (1);

(e) the area of land forming each pitch, other than the hard standing area, will be used only as a garden area and not for the storage of any materials or any other purpose save for those whose details have been approved under paragraph (1);

(f) there must be no direct vehicular or pedestrian access to the A1089 or A13 trunk road for any vehicle or person at any time;

(g) any access (vehicular and or pedestrian) and any physical barriers to control access to the site, including those whose details have been approved under paragraph (1) , must be regularly maintained and kept in full working order

(6) The conditions imposed under paragraph (4) are capable of being the subject of any enforcement action under Part VII of the 1990 Act and, without limitation, article 56(3) and (4) shall apply to that site.

(7) The undertaker must as soon as reasonably practicable after the provision of the replacement site in accordance with paragraph (1) exercise article 20 (compulsory acquisition of land) as applied by article 31 (application of the 1981 Act) and 32 (modification of the 2017 Regulations) of this Order to directly vest in the relevant planning authority or interest which may be necessary for the maintenance and operation of the site provided under subparagraph (1).

(8) In this paragraph

“caravans” means caravans within the meaning of Section 29(1) (a) of the Caravan Sites and Control of Development Act 1968; and

“Gammon Field travellers’ site” or “the site” means the travellers’ site located at Long Lane, Grays, Thurrock, RM16 2Q

Requirement 17

3.4.10 Making adequate provision for the Port of Tilbury is essential. It is a key area of growth and more broadly as part of the Thames Freeport 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.

3.4.11 The Council suggested wording ([REP6-164](#)) in Section 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 at that time.

3.4.12 The Council has now agreed the following wording for Requirement 17, with the PoTLL and is set out below:

17.—(1) The undertaker must undertake the detailed design 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 the proposed Tilbury link road is available before the date of submission of the final iteration 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.

(2) If sub-paragraph (1) applies, Work Nos. 5D, 5E and 5F must be designed in detail and constructed by the undertaker so as to reasonably facilitate and accommodate a connection with the proposed Tilbury link road in compliance with the Design Manual for Roads and Bridges.

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(3) In this paragraph, "the proposed Tilbury link road" means a proposal for a highway between the A122 and the town of Tilbury, passing through or in the vicinity of the Port of Tilbury, which includes a connection with or junction onto the A122, which is—

- (a) reflected in a preferred route announcement by the Secretary of State;*
- (b) the subject of a request for a scoping opinion submitted to Thurrock Council under regulation 15 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, or an application to the Secretary of State under regulation 10 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017, whether the road forms the whole or part of the subject of the request for a scoping opinion (unless the Secretary of State directs the undertaker not to consider such a proposal as the proposed Tilbury link road);*
- (c) included in a local plan adopted by the relevant planning authority under regulation 19 of The Town and Country Planning (Local Planning) (England) Regulations 2012; or*
- (d) submitted by any person to and approved in writing by the Secretary of State, following consultation with the undertaker, Thurrock Council, Port of Tilbury London Limited and any other person the Secretary of State considers appropriate.*

(4) Any proposal submitted under sub-paragraph 3(d) must identify the likely route and function of the proposed Tilbury link road so that the Secretary of State can determine if the proposal should constitute the proposed Tilbury Link Road for the purposes of this paragraph.'

- 3.4.13 This updated Requirement 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.
- 3.4.14 The applicant has stated that it is the appropriate party to make the decision pursuant to 'd' above because it is the strategic highway authority. However, it is precisely because of the specific role that the applicant has that it is not best suited. The need for the passive provision is because of the importance of the Tilbury Link Road to the future development of the port on the wider Council area. This is not an issue limited to strategic highways, it is a wider point about enabling growth. The Secretary of State is much better placed to balance this than the applicant if the TLR becomes part of the strategic road network. However, if part of the local road network then the Council maintains it is the appropriate authority.

Air Quality

- 3.4.15 The applicant seems reluctant to engage in detail in relation to the concerns raised about air quality. The Council considers that air quality is of concern to the residents of Thurrock. Whilst there may not be concerns raised in the air quality assessment, importance of this matter, combined with the relative ease of monitoring, means that the proposed Requirement is in the public interest, as set out in its D7 submission ([REP7-228](#)) in Appendix B. The Council respectfully request that it is included if LTC is recommended for approval.

3.5 Preamble to D9 dDCO Council Concerns Rationalisation Review

- 3.5.1 As stated in ISH 14, the Council has undertaken a rationalisation exercise of the remaining points (see **Appendix B**). Whilst it continues to maintain the outstanding issues, in our opinion it would help the ExA if our key issues were reduced/combined and restated. Whilst the applicant is likely to respond by saying that these points have already been made, and that they have responded, the Council do not consider these resolved.
- 3.5.2 The key areas which the Council are concerned about are, **as follows:**
- a) The discharging authority

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- b) Deemed consent
- c) The Traffic Management Forum
- d) The meaning of 'materially new or materially different environmental effects'
- e) Time limits for the CPO
- f) Article 35 – temporary possession, uncertainty as to the condition of returned land.
- g) Articles 35(2) and 36(3) - notice period for temporary possession
- h) Article 39(2) - should be compensation for loss not just expenditure
- i) Article 40 and the replacement of 'special category land'
- j) EMP3 in Requirement 4 both needs to be consulted upon with the Council and approved by the Secretary of State
- k) More absolute words describing compliance with outline documents when commencing an iterative process.
- l) Article 65 – appeals to SoS. 10 business days is not sufficient.
- m) Article 66 – securing of document

3.6 Specific Certified Plans and Securing Mechanisms

- 3.6.1 During ISH 14, the applicant finally confirmed that the Structures Plans, Temporary Works Plans and Drainage Plans are meant to be illustrative. It is unclear to the Council why illustrative plans need to be certified. However, it remains the Council's position that these should remain certified, and must also become secured by the dDCO with additional provisions or part of other Control documents. The specific plans in question are set out below with commentary.
- 3.6.2 **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.
- 3.6.3 **Temporary Works Plans** – these set out where temporary works are undertaken and should be included within Schedule 1.
- 3.6.4 **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.

4. Land and Compulsory Acquisition Matters

4.1 Introduction

4.1.1 This section covers all the matters relating to land, compensation and compulsory purchase that arise from the applicant's D7 submission and recent discussions with the applicant, as set out under the relevant sub headings below.

4.2 Comments on Changes to SoR (v7) (REP7-097)

4.2.1 The applicant has issued Deadline 7 Submission - 4.1 Statement of Reasons v7.0 (Tracked changes) ([REP7-097](#)). Notwithstanding, the typographical errors and that it is not tracked in the generally understood definition, i.e. the changes are not highlighted in colour. The Council's comments are, as follows:

a) The entry for 5 July 2023 references an email, as follows:

'Awaited response from the Applicant with regard (sic) to a number of outstanding clarifications (sic) on property matters'

- It fails to note that the delay was, as is acknowledged in its email, by the applicant.

b) The entry for 20 July 2023 references an email, as follows:

'To agent regarding mitigation measures (drain pipe) and written representations'

- It is unclear to whom this email was sent or to what it refers. The applicant is requested to re-send it.

c) The entry for 7 August 2023 correctly references an email sent by the applicant to the Council. There is no reference to the email dated 15 August 2023 responding to that earlier email.

d) There is no reference to an email dated 4 October 2023 from the applicant to the Council with an updated (but subsequently discovered) incomplete spreadsheet of interests owned by the Council. After some to-ing and fro-ing the applicant wrote to the Council attaching a revised spreadsheet stating *'I think everything you need is on this spreadsheet'*. In fact, that spreadsheet was still incomplete and it was not until 7 November 2023 that the applicant provided what the Council now understands to be a complete spreadsheet of its interests. This delay had a number of knock-on consequences, including that the Council was unable to undertake a full audit of interest and assessment of values insufficient time to get requisite Board approvals to enter into a contract to dispose (by option) of interests.

e) There is no reference to the fact that on 31 October 2023, the parties agreed and submitted the joint update – see Deadline 6 Submission - 9.128 CAH1 Action 1 Advanced Land Acquisition Thurrock Council Programme Confirmation ([REP6-086](#)).

4.2.2 It is, therefore, correct conclude that the applicant has failed to address the points raised in Section 9 of the Council's submission at D3 – Thurrock Council Comments on Applicant's Submissions at Deadline 1 and 2 (D1 and D2) ([REP3-211](#)).

4.2.3 The Schedule of Negotiations is considered by the Council to be, at best, misleading.

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4.3 Comments on Changes to Land Plans (v7) (REP7-007, REP7-009 and REP7-011), Crown Land Plans (v7) (REP7-013, REP7-015 and REP7-017) and Special Category Land Plans (v6) (REP7-019, REP7-021 and REP7-023)

4.3.1 The Council has no comments in relation to any changes in the documents listed as none is considered relevant to it.

4.4 Comments on Book of Reference (v7) (REP7-157 and REP7-159)

4.4.1 The changes relate to either a new interest or a deletion and generally in respect of subsoil rights, highway land, footpaths or rights granted and generally changes are made '*due to change of owner(s) requiring new plot boundaries following continued diligent inquiry*'.

4.4.2 The Council has no comments in relation to any changes as none is considered material to its interests.

4.5 Comments on Applicant's Comments on ExQ1 Q15.1.1 and 15.1.2 (v4) (REP7-168 and REP7-170)

4.5.1 In the applicant's Deadline 7 Submission - 9.77 ExQ1.15.1.1 Schedule of CA and TP Objections v4.0 (Tracked Changes) ([REP7-168](#)), the comment at '*Obj No*' 130 (page 687) is that '*The Applicant understands the landowner objects to the CA of their interests*'.

4.5.2 It was confirmed in Section 9.3.3 of the Council's Deadline 6 Submission - Comments on Applicant's Submissions at Deadline 4 (D4) and Deadline 5 (D50 ([REP6-164](#)) that the Council '*understands why there is a need for CA in order to secure delivery of the project and does not object to the use of CA for this purpose. It should be noted that the Council:*

- a. *Continues to question the extent to which a compelling case is made; and,*
- b. *Remains willing to engage further with the applicant and, to this point, met with the applicant on 5 October 2023'*

4.5.3 It is mystifying as to why the applicant continues to hold its stated view.

4.6 Statutory Undertakers Land Rights (v4) (REP7-172)

4.6.1 The Council wishes to note that their comments regarding the applicant's submission of ExQ1 Q15.1.3 PA2008 s127 Statutory Undertakers' Land-Rights – LTC v2.0 ([REP5-076](#)) and v3.0 ([REP6-082](#)) have not been addressed and still require a response.

4.6.2 The amendments to Table 1.1 of the ExQ1 Q15.1.3 PA2008 s127 Statutory Undertakers' Land-Rights – LTC v4.0 ([REP7-172](#)) are predominantly the references to the updated draft Development Consent Order v8.0 ([REP6-010](#)). The Council assumes that those Statutory Undertakers who have withdrawn or have no objection have been given the opportunity to review the amended draft Development Consent Order and make any comments. The Council, therefore, require further detail with a list of relevant Statutory Undertakers and their position on the dDCO.

4.6.3 The amendments to item number 7 in Table 1.1 of the ExQ1 15.1.3 PA2008 s127 Statutory Undertakers' Land Rights – LTC v4.0 ([REP7-172](#)) in relation to National Gas Transmission PLC are regarding changes to the affected land plots. In this instance, land plots 07-04, 07-09, 07-11, 11-14 and 13-08 have been removed and land plots 11-78, 11-79, 13-93, 13-94 and 13-95 have been added. The Council notes that no updates to the status of objection

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have been included and it is not clear what National Gas Transmission PLC's position is on the changes to the land plots.

- 4.6.4 The amendments to item number 8 in Table 1.1 of the ExQ1 15.1.3 PA2008 s127 Statutory Undertakers' Land Rights – LTC v4.0 ([REP7-172](#)) in relation to National Grid Electricity Transmission PLC are regarding changes to the affected land plots. In this instance, land plots 11-14 and 16-41 have been removed and land plots 11-78, 11-79 and 16-70 have been added. The Council notes that no updates to the status of objection have been included, and it is not clear what National Grid Electricity Transmission PLC's position is on the changes to the land plots.
- 4.6.5 The amendments to item number 16 in Table 1.1 of the ExQ1 15.1.3 PA2008 s127 Statutory Undertakers' Land Rights – LTC v4.0 ([REP7-172](#)) in relation to Southern Water Services Limited are regarding changes to the affected land plots. In this instance, land plot 11-14 has been removed and land plots 11-78 and 11-79 have been added. The Council notes that no updates to the status of objection have been included and it is not clear what Southern Water Services Limited's position is on the changes to the land plots.
- 4.6.6 The 'Status of Objection' for each Statutory Undertaker included within Table 1.1 of the ExQ1.15.1.3 PA2008 s127 Statutory Undertakers' Land-Rights – LTC v4.0 ([REP7-172](#)) has remained the same as per the previous version. The Council's comments therefore remain the same as per previous deadline submission responses, where the Council wishes to see an update during the Examination regarding all agreements that are yet to be reached with Statutory Undertakers.
- 4.6.7 The Council notes that within Table 1.1 of the ExQ1.15.1.3 PA2008 s127 Statutory Undertakers' Land-Rights – LTC v4.0 ([REP7-172](#)) the following Statutory Undertakers still have objections to the Order:
- a. Environment Agency
 - b. Essex and Suffolk Water Limited
 - c. HS1 Limited
 - d. National Gas Transmission PLC
 - e. National Grid Electricity Transmission PLC
 - f. National Grid PLC
 - g. Network Rail Limited
 - h. Northumbrian Water Limited
 - i. Port of London Authority Limited
 - j. Port of Tilbury London Limited
 - k. Southern Water Services Limited
 - l. Thurrock Flexible Generation Limited

4.7 Open Space – Planning Statement Appendix D (v3) (REP7-137)

- 4.7.1 The Council has reviewed the applicant's document Open Space – Planning Statement Appendix D (v3) ([REP7-137](#)). There are no changes which impact Council interests materially and none at Ron Evans Memorial Field.

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4.8 Update on Land Negotiations

- 4.8.1 The applicant has provided the following two documents, which the Council set out its comments on below.
- 4.8.2 A **Draft Memorandum of Understanding (MoU)** by email dated 8 September 2023. Notwithstanding that the Council has previously and clearly stated that an MoU does not give it the comfort that it requires (the undertakings given in it not being binding), the Council responded on the draft wording by email dated 13 November 2023. The applicant has, following a reminder dated 30 November 2023, now responded and the parties are meeting on 6 December 2023 to discuss this matter further.
- 4.8.3 **Heads of Terms for an Agreement for an Option** by email dated 3 October 2023. In order to dispose of assets either outright or by option the Council needs Board approval. The earliest date this could have been achieved was in December, however, the applicant's delay in providing an accurate spreadsheet subsequent to the 5 October 2023 meeting that there is insufficient time to assess the impact and value each of the parcels. The Council is engaged in the process of assessing impact and value each of the parcels and hopes that the applicant will confirm that it is interested in concluding agreement subsequent to the closure of the Examination.

4.9 Whitecroft Care Home

- 4.9.1 At item 3 b. i *et seq* of CAH2 (Page 354 of 356) of Post Event Submissions for Issue Specific Hearings (ISH3 - ISH7) and Compulsory Acquisition Hearings (CAH1 & 2) ([REP4-352](#)), the Council noted its significant concerns as to the impacts of the scheme on the residents of Whitecroft Care Home (WCH).
- 4.9.2 The Council notes from the latest iteration of its draft Statement of Common Ground that:
- 'Heads of Terms for an Acquisition by Agreement for the whole Whitecrofts site to enable them to relocate has now been issued to the owners of the Care Home to consider. As presented at CAH5 the Applicant considers that whilst there might be a temporary shortfall in provision of facilities between acquisition of the site and the setting up of a new site, there are alternative provisions currently coming through the planning process for consideration by Thurrock Council that would mean that there is no overall effect on the provisions for this type of care in Thurrock'*
- 4.9.3 The additional text from the applicant is new and has not been communicated to the Council and is therefore a surprise, particularly as the applicant has refused such an offer for several years until now. Whilst the negotiations between the parties is a private matter, the Council has concerns about any temporary shortfall of Care bedspaces. The Council also requires the applicant to set out what alternative provisions are currently coming through the planning process that might offset any temporary shortfall, as stated in their addition to the latest SoCG.
- 4.9.4 The Council do place in The Whitecroft Care Home (WCH) as a residential care home only, which is a 56-bedded provision and if it were to lose that number of beds from our capacity this would make it difficult for us to place and people may have to be placed outside of the Borough. Another factor to be considered is that out of Borough placements are generally more expensive, so the Council would then be under a greater financial burden. This can make visiting for relatives problematic and could lead to the person feeling isolated at what is already a difficult time for people as just going into a care home can be daunting. The Council, since 2018, has made approximately 300 referrals to the WCH, with annual frequencies differing, therefore illustrating how important this facility is to the Council.

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4.9.5 The Council has made a number of submissions about the WCH in its submissions to the ExA, notably in its D3 submission ([REP3-211](#)) in Section 18.9.15 and 18.9.78; and, its D6 submission ([REP6-164](#)) in Section 5.5.10. Also, within its Post Event Submission at CAH2 ([REP4-352](#)) in Section 3 b i.

4.9.6 The Council, therefore, considers that an additional commitment is required, probably within the SAC-R, to protect against the possibility of a temporary loss of bedspaces. The suggested wording is, as follows:

'Without prejudice to negotiations between the parties, no part of the existing WCH site and accommodation will be vacated or used by the project until a new site and premises has been secured and is capable of occupation by residents'.

4.9.7 The applicant is required to communicate with the Council to resolve this issue prior to the close of the Examination.

4.10 Conclusions

4.10.1 **The Deadline 7 Submission - 4.1 Statement of Reasons v7.0 (Tracked changes) ([REP7-097](#)) remains deficient in a number of areas, almost all of which have been highlighted previously. The Schedule of Negotiations is considered by the Council, at best, misleading.**

4.10.2 **In Deadline 7 Submission - 9.77 ExQ1.15.1.1 Schedule of CA and TP Objections v4.0 (Tracked Changes) ([REP7-168](#)) the applicant continues to maintain that the Council objects to the CA of its interests. The Council has previously clarified whilst it continues to question the extent to which a compelling case is made, it remains willing to engage further with the applicant. It is unclear why the applicant continues to hold its stated view.**

4.10.3 **The applicant has failed to respond to the Council's email commentary on the draft MoU.**

4.10.4 **Now that it has a complete schedule of impacted land interests the Council is engaged in the process of assessing impact and value each of the parcels. Mindful of the Council's governance procedures the Council hopes that the applicant will confirm that it is interested in concluding agreement subsequent to the closure of the Examination.**

4.10.5 **The issue of the Whitecroft Care Home potential purchase remains a concern to the Council in respect of temporary loss of bedspaces and requires a further commitment from the applicant to protect its interest, prior to the close of the Examination.**

5. Response to Applicant's D6A Traffic Submissions

5.1 Introduction

- 5.1.1 The 22 documents provided at Deadline 6A relate to transport modelling. The Council has reviewed these documents with a focus on the three new documents provided by the applicant, which are [REP6A-005](#), [REP6A-007](#) and [REP6A-008](#).

5.2 Localised Traffic Modelling v4 ([REP6A-005](#))

Additional Journey Time Analysis

- 5.2.1 This updated document includes journey time analysis in Section N.4, which was provided by email to the Council outside of the Examination process on 10 November 2023.
- 5.2.2 The Council provided initial comments on this analysis in paragraphs 4.2.3 to 4.2.5 of its Deadline 6A Submission 'Thurrock Council Comments on Traffic Modelling' ([REP6A-013](#)).
- 5.2.3 Further analysis of this information shows that the journey times provided by the applicant were extracted from LTAM.
- 5.2.4 Journey times for the assessed routes (including routes to/from the Ports) were previously presented by the applicant in Appendices B and C of the Transport Assessment ([REP4-154](#) and [REP4-156](#)) and were later updated to include journey times from the LTAM test, which included VISSIM V3.6 parameters, as show in Tables N.23 - N.34 of the applicant's Deadline 6A Submission 'Localised Traffic Modelling v4.0 (Tracked changes)' ([REP6A-005](#)).
- 5.2.5 The tables provided by the applicant at D6A compare journey times between the original Do-minimum scenario and the LTAM test which incorporates parameters from the Orsett Cock VISSIM model.
- 5.2.6 The comparison shows that the updated Do Something model (with VISSIM parameters included) has significantly lower level of delays than the Do Minimum model.
- 5.2.7 However, the comparison is misleading as whilst the Do Something model has been updated to include VISSIM delays, the Do Minimum model has not been updated in the same way.
- 5.2.8 This means that the comparison is misleading because the assumptions underpinning the Do Something and Do Minimum are not consistent and this lack of consistency means that comparing the results is not valid. This means that the comparison which are showing lower levels of delay in the Do Something should not have been presented as evidence for decision making.
- 5.2.9 It is clear that journey times to/from the Port of Tilbury would be different to those presented in the applicant's Transport Assessment and the journey times would be adversely impacted by LTC, if the full extent of delays at Orsett Cock Junction forecast by VISSIM were considered in the journey time analysis.
- 5.2.10 LTAM is a variable demand model. This means that the greater delays shown at Orsett Cock Junction would redistribute traffic onto local roads and other routes, including through Orsett Village. This will mean that measures will need to be implemented to restrict inappropriate traffic movements through sensitive local areas (though so far these measures are not

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secured). Modelled correctly this traffic will then also be redistributed by the LTAM and is likely to exacerbate delays at Orsett Cock Junction and Manorway, because traffic use of unsuitable local roads are restricted in the model. A common sense approach must be adopted by the applicant to engage in a pragmatic and open discussion about the impact on journey times of applying appropriate local traffic modelling.

- 5.2.11 The Council remains perplexed and astonished by the unwillingness of the applicant to engage on this and other modelling matters and its dogmatic and unreasonable stance. The applicant has consistently displayed a serious lack of professional integrity on these matters and prefers instead to engage in technical trickery and distraction through use of non-relevant case precedents and misrepresentation of its case.
- 5.2.12 The Council is simply trying to protect the best interests of the constituents and businesses it represents by highlighting the inadequacies of the local traffic modelling presented late in the Examination proceedings.
- 5.2.13 Despite overwhelming evidence of the inadequacies of the modelling approach adopted by the applicant, it is of serious concern that the ExA in its Examination of modelling matters is unwilling to hold the applicant to account on very substantial matters that undermine the integrity of the scheme and the business case predicated on discredited LTAM data.

5.3 Localised Traffic Modelling Appendix C – Orsett Cock Forecasting Report ([REP6A-007](#))

Additional Sensitivity Tests

- 5.3.1 This updated document includes the results of two sensitivity tests associated with Rectory Road, undertaken at the Orsett Cock Junction, based on version 3 of the VISSIM forecast model.
- 5.3.2 The Council had previously been provided with this information outside of the Examination process. The Council provided an analysis of these tests in paragraphs 4.3.1 to 4.3.8 of its Deadline 6A Submission 'Thurrock Council Comments on Traffic Modelling' ([REP6A-013](#)).
- 5.3.3 The Council's analysis of these two tests concluded that the operation of Orsett Cock Junction is sensitive to even small changes in traffic flows and the performance of the Orsett Cock Junction is significantly worse when no traffic is assigned to Rectory Road.
- 5.3.4 This means that the Council considers that the applicant needs to provide mitigation for Orsett Village to deter traffic from re-routing through the village, as a result of increased delays at Orsett Cock Junction following the implementation of LTC.
- 5.3.5 In addition, the further assessment and redesign of Orsett Cock Junction is required and this should be secured through the draft Requirement agreed jointly by the Council, PoTLL, DPWLG and TEP, as included within the PoTLL D6 submission ([REP6-163](#)) in Appendix 4 and as confirmed in the Joint Position Statement in D6A ([REP6A-017](#)).
- 5.3.6 The applicant continues to strongly resist the further assessment and redesign of Orsett Cock Junction because if the applicant accepts that its assessment of Orsett Cock Junction based on LTAM is not valid, it would fundamentally weaken the economic and environmental assessment of LTC. This is shown by Figure 5.1 below.

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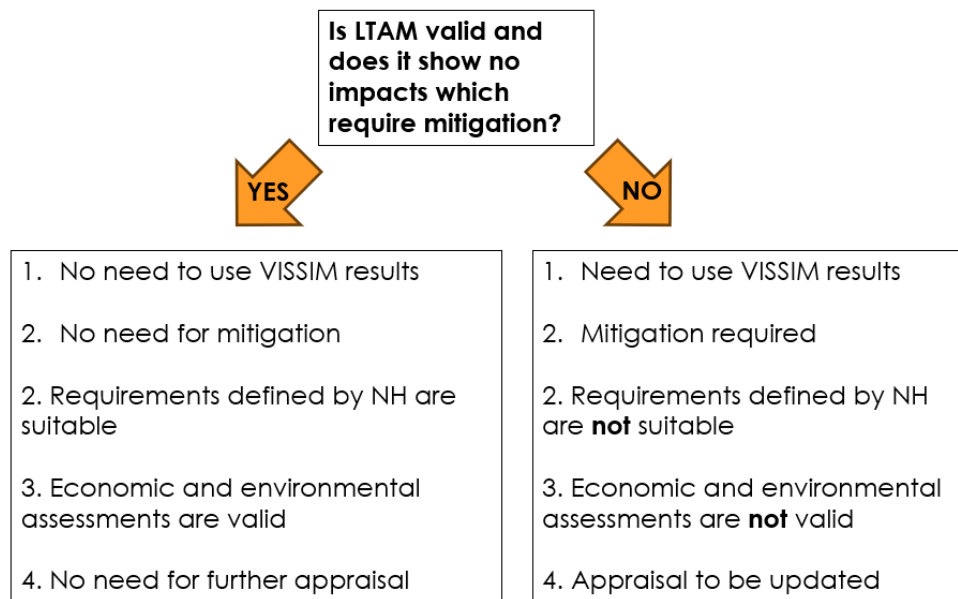


Figure 5.1 Link between LTAM and Appraisal Process

5.3.7 The Council has provided extensive evidence in Section 2 and Section 3 of its Deadline 6A submission ([REP6A-013](#)) and at ISH13 that there continues to be a lack of alignment (or convergence) between LTAM and VISSIM.

5.3.8 As local highway authority with responsibility for the operation of Orsett Cock Junction the Council considers it vital that the operation junction is assessment using VISSIM in accordance with standard assessment techniques. The results of this modelling process using VISSIM then need to be captured as part of the overall economic and environmental appraisal of LTC.

5.4 Asda Roundabout Construction Impact Assessment ([REP6A-008](#))

Junction Analysis

5.4.1 The Council has reviewed this document, which provides further analysis of the Asda Roundabout.

5.4.2 The applicant has now abandoned its previous commitment to model the operation of the junction using VISSIM and now presents analysis using ARCADY. The Council considers that is a very late stage in the Examination to make this fundamental change to the agreed assessment of the junction. The Council is aware that the applicant frequently deploys the most appropriate tools that enable it to uphold its narrative based on LTAM. This is unacceptable and lacks professional integrity hindering the ability of the ExA to properly consider the issues raised during the Examination.

5.4.3 The results of the ARCADY model for the modelled Do Minimum scenarios seem implausible. Table A.1 presents a queue of 637 pcus on Arm E in the 0700 to 0800 period. This is a distance of approximately 3km. The average delay is 920 seconds, i.e. approximately 15 minutes.

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- 5.4.4 Similar queues and delays are forecast on Arm E in the same time period for all Construction Phases. These queues and delays are forecast to happen every day and they are not included in the LTAM modelling of the road network.
- 5.4.5 The implausible nature of these results based on the use of a new approach to modelling commenced towards the end of the Examination, means that the Council's concerns about the assessment of this junction remain.
- 5.4.6 This view was presented in Section 6.4 of the Council's D6A submission ([REP6A-013](#)) and was summarised in Section 6.4.5: *'Given the outstanding issues with the assessment and the forecast impacts of LTC at Asda Roundabout, the PoTLL has drafted a draft Requirement for Asda Roundabout, which the Council fully supports.'*
- 5.4.7 **Summary: the applicant has provided further information concerning journey times to and from the Ports, but this is wholly discredited and unsuitable. Inconsistencies in the definition of the Do Minimum and Do Something scenarios mean that the data cannot be used to assess the impact of LTC on journey times to and from the Ports. Information provided by the applicant concerning the operation of Rectory Road, near the Orsett Cock Junction, shows that the operation of Orsett Cock Junction is sensitive to even small changes in traffic flows and the performance of the Orsett Cock Junction is significantly worse when no traffic is assigned to Rectory Road.**
- 5.4.8 **For the Asda Roundabout, the applicant has changed the modelling approach and has provided model results which forecast queues of approximately 3km and delays of 15 minutes per vehicle on one arm of the junction. These results are implausible and are a blatant, obvious and desperate attempt to defend a now untenable position based on their discredited LTAM data.**
- 5.4.9 **The Council's review of the documents provided by the applicant at Deadline 6A reconfirm the need for the three draft Requirements prepared jointly by the Council, PoTLL, DPWLG and TEP and these Requirements together with that for the Tilbury Link Road are in the process of discussion between the parties and with the applicant. The further recommended amended Requirements are set out above in Sections 3.1.11.**

6. Response to Applicant's D7 Submissions

6.1 Introduction

6.1.1 This Section covers the Council's comments on the following updated documents and plans, as necessary and only includes commentary of importance:

- Updated ES Addendum (v7)
- Drainage Plans (v4)
- Works Plans and Temporary Works Plans (v4 and v6)
- Works Plans Utilities (v4 and v5)
- Transport Plans
- Hedgerow and TPO Plans ([REP7-085](#), [REP7-087](#) and [REP7-089](#)) and EMP Figures (v3 and v4) ([REP7-117](#), [REP7-119](#) and [REP7-121](#)) – no comments.
- WCH Plans and Rights of Way and Access Plans (v4 and v6)
- Flood Risk Assessment (v2)
- Tunnel Depth Report (v3) ([REP7-166](#)) – no comments.
- Utility Working Areas in Ancient Woodland
- Council Comments on Applicant's Responses to ExQ2 Q11.3.2 and Q11.3.3 Figures ([REP7-182](#), [REP7-183](#) and [REP7-184](#)) – no comments, as these are plans relating to BNG and wetland loss/compensation
- Health and Equalities Impact Assessment (HEqIA) (v3)
- Carbon Strategy and Policy Alignment – Planning Statement Appendix I (v2)
- Draft S106 Agreement Progress Update.

6.2 ES Addendum (v7) (REP7-155)

Road Drainage and the Water Environment

6.2.1 Road Drainage and Water Environment updates required in the ES Chapter 14 are listed in Table 2.8 Deadline 7 Updates.

6.2.2 Updates required to paragraph 14.5.10 bullet point f. are to update REAC RDWE006 to remain consistent with the changes made in the Code of Construction Practice (CoCP) following stakeholder engagement. The updated paragraph affirms the commitment for the Contractor to develop a Construction Phase Drainage Plan. This will manage surface water on site and also manage offsite impacts. Control of pollution risk is addressed by a commitment to use industry guidance: Control of Water Pollution from Construction Sites C532 (CIRIA, 2001) and water features will be regularly inspected for signs of siltation or other forms of pollution in line with CIRIA C741 guidance (CIRIA, 2015).

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6.2.3 Updates required to paragraph 14.5.11 bullet point d. are to update REAC RDWE014 to remain consistent with the changes made in the Code of Construction Practice as part of ongoing technical engagement with the Environment Agency. This updated paragraph includes a commitment that Culverts and hydraulic structures would be inspected and maintained, in accordance with National Highways' DMRB CS 450, DMRB GS 801 Asset Delivery Asset Inspection Requirements and DMRB GM 701 Asset Delivery Asset Maintenance Requirements (ADAMr), as applicable (RDWE014). Where there are any additional, specific inspection or maintenance requirements, these would be documented in the Maintenance and Repair Statement.

6.2.4 Updates required to paragraph 14.5.14 bullet point k. are to update REAC RDWE019 to remain consistent with the changes made in the Code of Construction Practice (CoCP) in response to stakeholder engagement. The additional sentence added to the paragraph relates to the commitment to agree the use of Chemical Additives with the Environment Agency, prior to ground treatment, tunnelling or trenchless installation.

6.3 Drainage Plans (v4) (REP7-073, REP7-075 and REP7-077)

6.3.1 The Council has no comments, as there have been no relevant changes, except Order Limit changes to remove Port of Tilbury land.

6.3.2 Notwithstanding this, as is referred to in Section 3, **it is essential for the applicant to secure the Drainage Plans within the DCO, which are currently only understood to be illustrative. The Drainage Plans show the Drainage Strategy, which has broadly been reviewed and agreed through the Examination and SoCG discussions. They also show Catchment boundaries, which are not shown elsewhere. It is important to have a reference point for the Work No. for each proposed Water feature.**

6.4 Works Plans (v4 and v6) (REP7-037, REP7-039 and REP7-041) and Temporary Works Plans (v4 and v6) (REP7-079, REP7-081 and REP7-083)

6.4.1 The amendments in the Works Plans – Composite are shown on Sheet 4, 11, 13, 17 ([REP7-039](#)) and Sheet 21, 45, 46 ([REP7-041](#)) are changes that are not of consequence to the Council.

6.4.2 The amendments in the Temporary Plans are shown in Sheet 17 ([REP7-081](#)) and Sheet 21 ([REP7-083](#)). These are changes that are not of consequence to the Council.

6.5 Works Plans Utilities (v4 and v6) (REP7-031, REP7-033 and REP7-035)

6.5.1 The amendments to the Works Plans Volume A Utilities (Key Plan) v4.0 ([REP7-031](#)), Volume B Utilities (Sheets 1-20) v4.0 ([REP7-033](#)) and Volume C Utilities (Sheets 21-49) v6.0 ([REP7-035](#)) consist of removal of areas of land previously within the Order Limits. These areas are shown on Sheets 17 and 21, adjacent to Work No. MU27. The removal of areas of land previously within the Order Limits does not appear to affect the utilities.

6.5.2 The applicant has continued to not address any of the points raised in Section 18.11 of the Council's D3 submission 'Thurrock Council Comments on applicant's Submissions at Deadline 1 and 2 (D1 and D2)' ([REP3-211](#)) and Thurrock Council's Local Impact Report ([REP1-281](#)).

6.6 General Arrangement Plans (v4 and v5) (REP7-025, REP7-027 and REP7-029) and Engineering Drawings (v4 and v5) (REP7-055, REP7-057 and REP7-059)

6.6.1 The amendments to the General Arrangement Plans are shown in Sheets 4, 11, 13, 17 ([REP7-027](#)) and 21 ([REP7-029](#)) and are changes that are not of consequence to the Council. The only amendments to the Engineering Drawings are changes that are not of consequence to the Council.

6.7 Transport Plans: Traffic Regulation Measures (REP7-061, REP7-063 and REP7-065), Classification of Roads (REP7-067), Streets Subject to Temporary Restrictions of Use (REP7-049, REP7-051 and REP7-053), Tunnel Limits of Deviation (v3) (REP7-071), Transport Assessment Appendix D Scale of Impact Maps (v2) (REP7-143) and Structures Plans (v4) (REP7-069)

6.7.1 The only amendments in Traffic Regulation Measures Plans are shown on Sheet 17 ([REP7-063](#)) and Sheet 21 ([REP7-065](#)). These are changes that are not of consequence to the Council. The only amendment in Classification of Road Plans is shown on Sheet 2 ([REP7-067](#)) and is a change that is not of consequence to the Council. The only amendments in Streets Subject to Temporary Restrictions is shown on Sheet 17 ([REP7-051](#)) and are changes that are not of consequence to the Council. The only amendment to Tunnel Limits of Deviation Plans is shown on Sheet 1 ([REP7-071](#)) and is a change that is not of consequence to the Council.

6.7.2 The amendments in Transport Assessment Appendix D Scale of Impact Maps are shown on Plate 1.1, 1.3, 1.15, 1.22 ([REP7-143](#)). Plate 1.1 shows an addition of a minor adverse impact of link on M25 between J27 and J29, which does not directly affect the network in Thurrock.

6.7.3 Plate 1.3 shows a change from minor adverse impact to moderate adverse impact of link on A13 between Orsett Cock and Manorway. Plate 1.22 has been corrected to now present the area south of the river, as it previously presented the area north of the river. The Council does not have any comments for these inconsequential amendments.

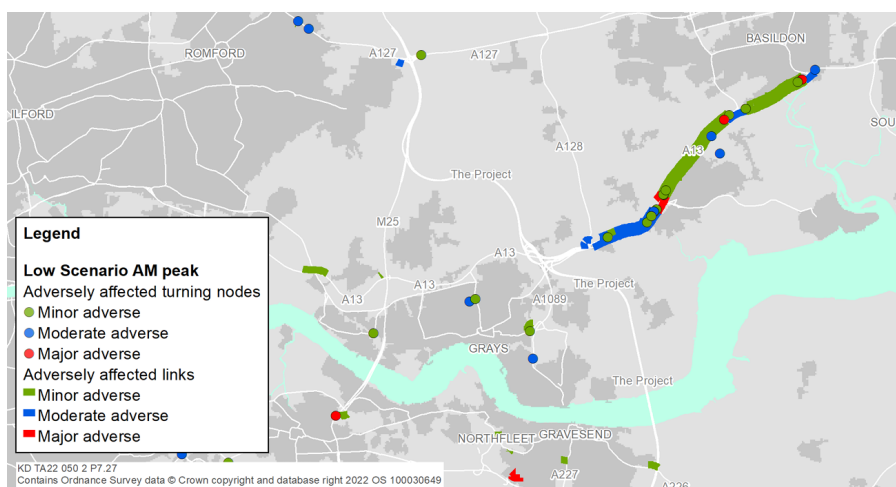


Plate 6.7.1: Extract from APP-533 7.9 Transport Assessment – Appendix D – Scale of Impacts Maps - Plate 1.3

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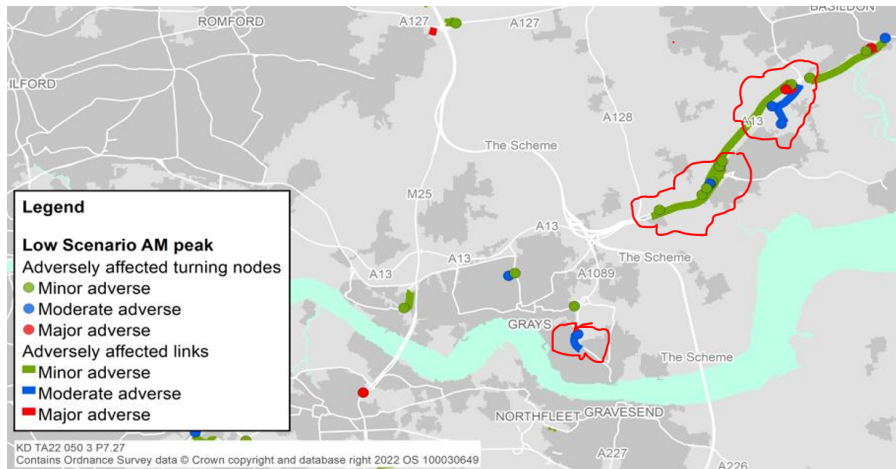


Plate 6.7.2: Extract from REP7-142/143 7.9 Transport Assessment – Appendix D – Scale of Impacts Maps - Plate 1.3

- 6.7.4 As shown by the comparison between the two versions of Plate 1.3 of the Transport Assessment – Appendix D – Scale of Impacts Maps ([APP-533](#) and [REP7-142](#)), the applicant has apparently re-run its assessment of impact significance on the road network, including those roads in Thurrock. This reassessment was not raised with the Council or other IPs and was hidden away in a mass of other document revisions.
- 6.7.5 The applicant has oddly reduced the assessment of significance on A13 between Orsett Cock and The Manorway, with no apparent justification and has also finally recognised the level of significance of impact within the local roads through Stanford le Hope and Corringham and within Grays.
- 6.7.6 This has not led to an update of the Transport Assessment or any revisions of impact significance within the Environmental Statement, yet a change from Minor Adverse to Moderate Adverse impact significance should trigger a revision to appraisal and to the need to mitigate, where the change is from Minor to Moderate Adverse.
- 6.7.7 That the applicant has made this change so late into the Examination is perplexing and does not allow time for that change to be examined. The Council has repeatedly noted that the effect of LTC on the communities in Stanford le Hope and Corringham should be recognised and mitigated and this has been consistently ignored by the applicant.
- 6.7.8 This raises a series of questions and heightens the Council's concerns with the approach to the assessment of the effects that the applicant has adopted and is not clearly allowing the ExA to adequately assess.
- 6.7.9 The only amendment in [Structures Plans](#) is shown on Sheet 5 ([REP7-069](#)), where there has been the removal of two areas of hardstanding and an adjacent building from the Order Limits. The amendment described does not appear to impact Structures Plans, but these are changes that are not of consequence to the Council.
- 6.7.10 However, as the applicant confirmed at ISH14 these plans are only illustrative and at present no reliance can be placed upon them. **The Council strongly objects to these plans not being secured through the DCO and makes further comments on this in Section 3 above.**

6.8 Restrictions on Existing WCH Routes Plans (REP7-179) and Rights of Way and Access Plans (v4 and v6) (REP7-043, REP7-045 and REP7-047)

- 6.8.1 9.170 ISH10 Action – Restrictions on Existing Walking, Cycling and Horse Riding Routes Plans has been prepared in response to ISH10 Action Point 12 ([REP6-091](#)) following a request from the Council for plans at a suitable scale to show how the proposed temporary closures would impact the network.
- 6.8.2 The introduction confirms that there is no new information provided in this document. It sets out several caveats relating to the lack of detailed design and that some closures would occur at different times to others. The Council accepts these points.
- 6.8.3 What the document does is to collate in one place a summary of the routes that would be affected and the likely duration of the temporary closures. Tables 2.1 and 2.2 record the likely duration of closures for most routes. These include a large number where closures would be between two – five years, so while strictly temporary their closure would be for a significant period. The Council had requested that the plans showed the affected routes colour-coded to better illustrate this; however, all are shown as in black. While lacking the clarity being sought the plans, however, do help illustrate the overall impacts on the network during construction.
- 6.8.4 The plans show the existing PRow and this helps illustrate the relative lack of routes present in Thurrock compared to Kent, for example. This is the reason that the Council has continued to raise the issue of long-term temporary closures on the wider network.
- 6.8.5 Sheets 2 and 3 illustrate how key routes linking settlements, e.g. East Tilbury and Chadwell St Mary, Chadwell St Mary and Orsett and routes with the Mardyke Valley for prolonged period. It is not likely that there will be opportunities to provide diversions for most of routes due to the extent of the construction area. The plans highlight the lack alternative routes within the surrounding areas.

6.9 Flood Risk Assessment (v2) (REP7-131)

Updates to Tables 4.7 to 4.12

- 6.9.1 The Council have reviewed changes to the ([REP7-131](#)) Deadline 7 Submission - 6.3 ES Appendix 14.6 - Flood Risk Assessment - Part 10 v2.0 (Tracked changes). There are a number of links added to referenced Design Principles and REAC commitments throughout the report. There are also links added in Section 5 to Figure 2.4 Environmental Masterplan where relevant to Culverts.
- 6.9.2 In Section 4, Tables 4.7 to 4.10 have been updated to include cross-references to Work No. for each watercourse crossing (including proposed culverts) and diversions.
- 6.9.3 Note 3 under Table 4.7 states that drainage plans show additional work number references 6I, 6J, 8R, 8S, 8T, 8U, 8V and 9X. These are short culverts that will facilitate crossings of new highway drainage ditches created at the toe of earthworks embankments for access.
- 6.9.4 The watercourse structures in Tables 4.11 and 4.12; do not have a Work No. but the Ancillary Works are referenced in the DCO document: Schedule 1 of the draft Development Consent Order ([REP6-010](#)).
- 6.9.5 **The Council acknowledge the updates to the Flood Risk Assessment Part 10, noting the useful cross-references to Work No. for watercourse crossings and diversions. The**

additional short culverts mentioned help to clarify the discrepancy previously observed in the total number of culverts.

6.10 Utility Working Areas in Ancient Woodland (REP7-180)

- 6.10.1 As there is new information and no additional impact on Rainbow Shaw, the Council has no further comments for a biodiversity standpoint.
- 6.10.2 The Utility Working Areas in Ancient Woodland ([REP7-180](#)) Sheet 3 shows the area of Ancient Woodland impacted by Work No. MU37. The Council requires detail as to the extent of the utilities within Work No. MU37, including type of utility, voltage level, pressure level, and diameter.
- 6.10.3 The Council assumes that Work No. MU37 consists of diversions and it would therefore be beneficial for the existing utilities to be shown on Utility Working Areas in Ancient Woodland ([REP7-180](#)) Sheet 3 to show the tie-in between the diverted routes and the existing utilities.
- 6.10.4 The Council notes that the area of ancient woodland affected by Work No. MU37 is also impacted by the proposed new road and would still be impacted by the proposed new road, if Work No. MU37 did not exist, therefore the Council have no further comments.

6.11 Health and Equalities Assessment (v3) (REP7-145)

- 6.11.1 The changes to the Health and Equalities Impact Assessment (REP7-147) concern minor formatting and editorial changes and additional text concerning impacts outside of the area of Thurrock.
- 6.11.2 It is pertinent to note here updated conversations regarding Whitecroft Care Home within the Statement of Common Ground (Item 2.1.231). It is important to specify that the suggested new commitment wording put forward by the Council regarding *'no part of the existing WCH site and accommodation will be vacated or used by the project until a new site and premises has been secured and is capable of occupation by residents'* is crucial to reducing the health impacts of movement on vulnerable residents and visitors to the care home through ensuring that a move is only needed once. This is supported in the Council's previous submissions. This is set out more fully in Section 4.9 above and will be contained in the final SoCG at D9.
- 6.11.3 There are no significant changes to the Health and Equalities Impact Assessment ([REP7-147](#)) concerning the Council.

6.12 Carbon Strategy and Policy Alignment – Planning Statement Appendix I (v2) (REP7-139)

- 6.12.1 The revised construction emission forecasts are reflected in the updated 6.15 Carbon Strategy and Policy Alignment – Planning Statement Appendix I (v2) ([REP7-139](#)) and 6.2 ES Addendum (v7) ([REP7-155](#)) (Appendix E).
- 6.12.2 Paragraph I3.15, page 5 of REP7-139 states:
- 'The net effect of these lower carbon emission commitments is a revised carbon limit of 1.44 million tCO₂e, a **significant reduction** of 323,000 tonnes from the estimated total of 1.763 million tCO₂e which was set by CBN04 at the time of the DCO submission.'*
- 6.12.3 The updated ES Addendum (v7) ([REP7-155](#)) (E3.9, page 243) states that:

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'the Project's contribution to the 6th carbon budget is now estimated to be 0.045% down from 0.048%.'

6.12.4 At the bottom of page 243 the applicant states:

'In the context of the changes described in this appendix, the conclusions of the GHG emissions assessment presented in Section 15.6 of ES Chapter 15 [APP-153] remains robust and would not change.'

6.12.5 It is assumed that this relates to the statement made at paragraph 15.6.6 of ES Chapter 15 ([APP-153](#)) that:

*'In the context of the above, GHG emissions from the Project would not have a material impact on the ability of the Government to meet its carbon reduction targets, and it is concluded that the GHG emissions from the Project would be **not significant**'.*

6.12.6 The applicant states in [REP7-139](#) that the applicant's proposed emission reductions within the model are **significant**, but their original assessment ([APP-153](#)), that these emissions are **not significant**, is robust.

6.12.7 The Council note there is a lack of transparency in how the applicant determines significance and this should be provided by the applicant.

6.13 Draft Section 106 Agreement Comments and Progress Update and Explanatory Note (REP7-178 and REP7-193)

6.13.1 Since the update given by the Council in its D7 submission (REP7-228) in Section 6.9, there have been a number of discussions and exchanges of correspondence with the applicant. Broadly this exchange has been positive.

6.13.2 The progress on the various matters can be captured under five topics: the draft S106 Agreement wording, the Officer Support Contributions, the Severance at Brennan Road, Missing S106 Elements and Governance Process and Timetable for the Council, which will be set out below in turn.

6.13.3 **Draft S106 Agreement wording** – the applicant's final version was sent to the Council on 22 November 2023. There are two matters that the Council is still in disagreement with:

- a. the Council is concerned about the replacement of the requirement to pay officer support contributions from six months before commencement, to two months before the Input Date. The input date is uncertain and only gives the Council two months to advertise for posts, recruit and onboard that person. In the Council's opinion the previous trigger (six months before the commencement date) should be adopted.
- b. In addition, the definition of commencement should include Preliminary Works, as officer time is likely to be required for many of these works, especially in relation to the major works for the main northern compound (an advance compound area), for example, particularly in respect of the erection of any temporary means of enclosure, receipt and erection of plant and equipment, diversion and laying of underground apparatus, accesses and vegetation clearance.

6.13.4 **Officer Support Contributions** – the applicant has now matched the Council's request sums in respect of base salary for the four main roles and in fact added a small contribution for a new role of 'Landscape and Ecology Advisor' and has agreed to index link these contributions. However, it is still short of two elements of additional costs relating to pension contributions and standard on-costs. The result is that the applicant's now final offer is just below 85% of

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the Council's requested submitted on 20 October 2023. This offer has now just been formalised by the applicant. This maybe considered acceptable subject to Council governance.

- 6.13.5 **Severance at Brennan Road** – the applicant has matched the Council's requested contribution and has now agreed to index link this contribution. This offer has not yet been formalised by the applicant but is expected soon. This maybe considered acceptable subject to Council governance.
- 6.13.6 **Missing S106 Elements** – 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.
- 6.13.7 **Governance Process and Timetable for the Council** – because the S106 Agreement and its associated contributions are both legal and financial matters they must be submitted through the Council's governance procedures, due in the main to its S114 status. The Council has confirmed that this is a decision for Cabinet supported by a Executive Decision Form and a technical report. However, if this is outside of the timings for Cabinet to meet then the decision can be delegated to the Leader and Chair of Overview and Scrutiny Committee, but approval would need to be sought for such delegation at the next Cabinet meeting. This process is underway and it is hoped it can be concluded prior to the close of the Examination.
- 6.13.8 **In summary, subject to governance and adjustments to the draft S106 Agreement it may be possible to agree the current S106 offer from the applicant and conclude the necessary governance prior to the close of the Examination.**

7. Green Belt Harm Assessment Review (REP7-181)

7.1 Introduction

- 7.1.1 The applicant is proposing to construct LTC, of which some 70% of the route will be within the Council's area, which takes approximately 10% of Borough's overall land area and approximately 11% of all of the Green Belt in Thurrock would be lost, if LTC is granted.
- 7.1.2 This Section sets out the Council's response to the applicant's Green Belt Assessment ([REP7-181](#)) of LTC, which was submitted to ExA at D7 on 17 November 2023, which was responding to the ExA's ExQ2 Q13.1.3 ([PD-040](#)).
- 7.1.3 ExQ2 Q13.1.3 ([PD-040](#)) asked the following of the applicant (red text and underlining is the Council's emphasis):

ExQ2 Q13.1.3 – 'If the proposed development is deemed to be inappropriate development in the Green Belt, the Applicant's Green Belt Assessment [[APP-500](#)] is considered inadequate because the assessment of the Project against the purposes for including land in the Green Belt and on the impact on the openness of the Green Belt is too simplistic and abbreviated to enable the ExA to establish the extent of harm. Because this is a large-scale linear project, if it (or elements of it) is/are deemed to be inappropriate development, then it is necessary to understand the actual level of harm that may occur across the extent of the project, which may vary between locations and over time. There is no standard methodology for undertaking such an exercise, but a more detailed assessment of the impact of the project on the purposes and openness of the Green Belt using the relevant local authority Strategic Green Belt Assessments as the basis for the categorisation of settlements and identification of parcels to inform the assessment should be used. Thurrock, Gravesham and Havering Councils have provided useful pointers to those assessments and their 'parcel method' in their responses to ExQ1.'

- 7.1.4 The Council agree with ExQ2 Q13.1.3 above, the Green Belt Assessment submitted as part of the DCO application was inadequate and too simplistic to enable anyone to establish the extent of harm.
- 7.1.5 The applicant submitted a response to ExQ2 Q13.1.3 in the applicant's submission to D7 ([REP7-181](#)) on 17 November 2023. The Council have reviewed the submission and confirm that this revised Green Belt Assessment is still inadequate and too simplistic to establish the extent of harm. It does not:
- Provide a robust Green Belt Assessment for the alternatives assessment or preferred route;
 - Provide a more detailed assessment of the impact of the project on the purposes and openness of the Green Belt. The revised Green Belt Assessment is still inadequate and too simplistic to establish the extent of harm;
 - Use Thurrock Council's Strategic Green Belt Assessment (2019) (see Council's LIR Annexes 3 and 4 ([REP1-293](#))), as the basis for the categorisation of settlements and identification of parcels to inform the assessment; and,
 - Clearly provide enough detail on the extent of harm to be able to establish 'very special circumstances.

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7.2 Council's Previous LTC Submissions on LTC Green Belt Assessment

- 7.2.1 The Council has submitted a number of submissions during the Examination, which include comments on the Green Belt Assessment included in the DCO, which are listed below:
- a. LIR Appendix L (Annex 1 provided the overall response from the Council) ([REP1-293](#));
 - b. Council's response to ExQ1 Q13.1.20 ([REP4-353](#)); and,
 - c. Council's response to ExQ2 Q13.1.2 ([REP6-167](#)).
- 7.2.2 The LIR Appendix L ([REP1-293](#)) sets out the Council's response on:
- a. Green Belt Policy and Guidance (Annex 1 L.2.1 – L.2.25);
 - b. Thurrock Strategic Green Belt Assessment (2019) (Annex 1 L.2.26 – L.2.36 and Annexes 3 and 4); and,
 - c. 'Very Special Circumstances' is not Demonstrated for LTC (Annex 1 L3).
- 7.2.3 The Council's previous responses, set out above, remain the Council's position on the applicant's Green Belt assessment, because the Green Belt assessment submitted at D7 remains inadequate. Therefore, these previous submissions should be read in conjunction with this Section of the D8 submission.

7.3 Thurrock Strategic Green Belt Assessment Study (January 2019)

- 7.3.1 Thurrock Strategic Green Belt Assessment (GBA) (2019) ([REP1-293](#)) provides a clear methodology, providing a task by task process to identify the degree to which the strategic parcels fulfil Green Belt purposes and their overall importance in Green Belt terms.
- 7.3.2 The Study assesses the parcels against the first three purposes of the Green Belt, set out in the NPPF:
- a. *To check the unrestricted sprawl of large built-up areas*
 - b. *To prevent neighbouring towns from merging into one another*
 - c. *To assist in safeguarding the countryside from encroachment*
- 7.3.3 It sets out, for Thurrock, the categorisation of settlements, identification of parcels and provides clear methodology for assessment parcels in the Green Belt.
- 7.3.4 Although the route has changed since the Council's Strategic Green Belt Study (2019) the alignment at that time was considered within it. The Study concluded that LTC '*will form a very clear linear boundary and, together with embankments, elevated structures, moving vehicles and signage (and lighting where this is to be provided), will form a prominent intrusive feature within much of the landscape through which it passes. In effect it would subdivide the parcels that it crosses and form a profound encroachment into and through some of the more rural parts of the borough beyond the eastern, north western and northern periphery of the Thurrock built-up area, and beyond the adjoining towns of Tilbury, Chadwell St Mary and South Ockendon, and the smaller settlements of West and East Tilbury, Linford, Orsett, and Baker Street.*', (paragraph 3.7.6) which is still valid. Also, paragraph 3.7.6 also highlights the different character areas the route passes through.
- 7.3.5 Implications of the proposed LTC route on the parcels is considered in Section 5 of the Study, though a full assessment of all the Green Belt parcels affected by LTC is not provided in this

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Study. Section 5 sets out the implications of the proposed LTC route on the Green Belt parcels that it crosses.

- 7.3.6 The Council's LIR (Annex 1, L.2.26 – L.2.36 and Annexes 3 and 4) ([REP1-293](#)) sets out the key elements of the Study, which are not repeated here, but are relevant and should be read in conjunction with this submission.

7.4 Council's Comments on the applicant's LTC Green Belt Assessment ([REP7-181](#))

- 7.4.1 The Council's general comments on the applicant's LTC Green Belt Assessment ([REP7-181](#)) submitted at D7 are, as follows:

- a. The Green Belt Assessment for LTC does not provide enough detail and assessment for a scheme of this scale, which is 100% within the Green Belt in Thurrock. The overall report is just 12 pages long, with the assessment against purposes (6 pages and Appendix B 5 pages) and assessment against 'openness' (2 pages). Although the length of document is not an indication of quality, it does demonstrate the lack of a detailed assessment provided along the LTC route.
- b. LTC is 'inappropriate development' in the Green Belt and this is confirmed by the applicant in its Planning Statement ([APP-500](#)), paragraph E.1.4.
- c. The Green Belt Assessment is inadequate and too simplistic to enable the establishment of the extent of harm. The applicant has not undertaken a robust Green Belt assessment for LTC, against the purposes of the Green Belt set out in the NPPF and impact on openness, which would robustly set out the harm in any location and for the project as a whole.
- d. The applicant has not properly identified or clearly set out the level of harm to the Green Belt, including to its openness and the purposes of the Green Belt, to inform the selection of alternatives (at a strategic level) or for the preferred option design (at a detailed level, e.g. for the A13/A1089/LTC junction) or for the construction sites, such as construction compounds.
- e. 'Very special circumstances' have not been demonstrated by NH for LTC, because the GB assessment for LTC is inadequate for a development of this scale.

- 7.4.2 The ExA is clear in ExQ2 Q13.2.3, that '*a more detailed assessment of the impact of the project on the purposes and openness of the Green Belt using the relevant local authority Strategic Green Belt Assessments as the basis for the **categorisation of settlements** and **identification of parcels** to inform the assessment should be used. Thurrock, Gravesham and Havering Councils have provided useful pointers to those assessments and their 'parcel method' in their responses to ExQ1.*'

Categorisation of Settlements

- 7.4.3 The ExA states in ExQ2 Q13.1.3, that the more detailed LTC Green Belt assessment should include the categorisation of settlements. The revised applicant's Green Belt Assessment does not include a categorisation of settlements in Thurrock. It also does not provide a map or clearly list 'Neighbouring Towns' and 'Large built-up areas' to inform assessment against purpose (a) and (b). In the revised Green Belt Assessment the applicant refers to a settlement 'Thurrock'. It is unclear where 'Thurrock' is located, as there is no settlement called 'Thurrock' in the Borough.
- 7.4.4 The Council's Strategic Green Belt Assessment (LIR Appendix L Annex 3 ([REP1-293](#))) includes a clear categorisation of settlements in Thurrock, to inform assessment against

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purpose (a) and (b), where reference is made to the relationship between 'Neighbouring Towns' and also to 'Large built-up areas'.

Identification of Parcels

- 7.4.5 The ExA states in ExQ2 Q13.1.3, that the more detailed LTC Green Belt assessment should include the identification of parcels, informed by useful information provided by Thurrock in response to ExQ1.
- 7.4.6 The applicant's Green Belt Assessment for LTC ([REP7-181](#)) does not use the Thurrock Council strategic Green Belt parcels, identified in the Council's Strategic Green Belt Assessment (LIR Appendix L Annex 3 ([REP1-293](#))), for the applicant's Green Belt assessment against the purposes of the Green Belt set out in the NPPF. The applicant has continued to use Green Belt parcels for the Green Belt assessment against the purposes of the Green Belt, which the applicant states was informed by landscape study areas described in Environmental Statement (ES) Chapter 7: Landscape and Visual ([APP-145](#)) and shown on ES Figure 7.1 ([APP-197](#)). This is informed by landscape assessment and not Green Belt purposes.
- 7.4.7 The revised Green Belt Assessment ([REP7-181](#)) include Green Belt parcel mapping, at Appendix A (map 2), which shows:
- a. The applicant larger Green Belt parcels, which have been used to assess the extent of harm to the Green Belt assessment of LTC, against the purposes of the Green Belt. There are three parcels in Thurrock (moving North to South): Parcels D, E and F (Plate 2.1 and map in Appendix A map 2).
 - b. Thurrock Council Green Belt parcels, from the Council's Strategic Green Belt Assessment (LIR Appendix L Annex 3 ([REP1-293](#))) are mapped. However, they have not been used at all in the Green Belt assessment against purposes of the Green Belt and not been used adequately in the applicant's Green Belt assessment against openness. There are 23 Green Belt parcels in Thurrock, which fit within the 3 applicant parcels above, (moving from North to South): Parcels T13, T12, T24, T18, T16, T15, T14, T17, T20, T41, T40, T27, T26, T11, T28, T25, T31, T29, T30, T35, T32, T33 and T34.
- 7.4.8 LTC Green Belt Assessment ([REP7-181](#)) Section 2.2 confirms that parcels identified in the Council's Thurrock Strategic Green Belt Assessment (2019) ([REP1-293](#)) was assessed and then grouped. The parcels actually used in the LTC Green Belt Assessment ([REP7-181](#)), against the purposes of the Green Belt in particular, were these larger parcels – the same parcels used in the submitted DCO documents. Although the Green Belt Assessment does providing mapping of how the Council's Strategic Green Belt Assessment (LIR Appendix L Annex 3 ([REP1-293](#))) parcels fit within the applicant's Green Belt parcels, there has been no change to the parcels used in the actual Green Belt assessment, against Green Belt purposes, itself.
- 7.4.9 The applicant's Green Belt Assessment against the openness of the Green Belt has insufficient detail of Green Belt assessment against the Thurrock Study parcels and are grouped into the three Parcels D, E or F. This provides insufficient detailed Green Belt assessment at the local level along the LTC route, for example, at A13/LTC junction which takes up approximately 117 hectares of land. The Green Belt parcels carefully developed for Council's Thurrock Strategic Green Belt Assessment (2019) ([REP1-293](#)) should not be grouped.
- 7.4.10 The ExA is clear in ExQ2 Q13.1.3, that the more detailed LTC Green Belt assessment should include parcels, informed by the Council's previous response. The Council would expect to see the Green Belt assessment based on the Thurrock parcels, with the extent of Green Belt harm clearly set out for each Thurrock parcel by the applicant, as set out in the Council's

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Strategic Green Belt Assessment (LIR Appendix L Annex 3 ([REP1-293](#))). It would also be clearer for the ExA, if the applicant had undertaken a baseline assessment for each Thurrock parcel and then a revised assessment factoring in the LTC, so that the overall impact could be clearer and easier to understand. The baseline should be informed by the Council's Study.

Assessment of Harm – Methodology

- 7.4.11 NPSNN paragraph 5.178 states '*Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness...*'. NPSNN paragraph 5.178 requires the Secretary of State to '*attach substantial weight to the harm of the Green Belt*', when considering LTC. It is therefore closely related to the policy requirements within the NPPF.
- 7.4.12 Below are the Council's comments on the methodology used by the applicant to undertake the Green Belt assessment against Green Belt **purposes**, as set out in the NPSNN above and the NPPF **and openness of the Green Belt**:
- a. Green Belt assessment against 'openness' is split out separate from the Green Belt assessment against the purposes, as set out in the NPPF. The Council suggest that openness should be weaved into the assessment against the purposes, rather than separated out. Notwithstanding that, the Council have reviewed the applicant's assessment against openness, which is set out below.
 - b. There is no robust methodology set out to how the applicant has assessed Green Belt parcels against the purposes of the Green Belt, as set out in the NPPF and openness of the Green Belt. The Council would expect to see a robust methodology to be set out, in a similar step-by-step process, as done in the Council's Green Belt methodology in the Council's Strategic Green Belt Assessment (LIR Appendix L, Annex 3 ([REP1-293](#))).
 - c. There is no clear methodology to assess and record the extent of harm to the Green Belt. Appendix A sets out the assessment of Harm to Green Belt Purposes. There is no methodology to identify the extent of harm for each parcel, against each Green Belt purpose, e.g. 'No' harm; 'Moderate' harm; 'Major' harm; 'Significant' harm, etc.
 - d. There is a breakdown in the methodology set out for 'openness': 'No change' up to 'Major change'. However, it is termed as 'change' and not 'harm'. There is also no way of recording a 'Significant' change (or harm) in the methodology, this level is simply omitted. There should be a level to record 'significant harm. It should also be recorded as 'harm' and not 'change'.
 - e. There should be consistent assessment of Green Belt across purposes and openness, in terms the level of harm for each Thurrock parcel, so that the extent of harm can be pulled together at the end in any one location, which should then feed into the overall extent of harm. The mapping in the Council's Green Belt assessment does this, then provides overall level of harm. Otherwise, it is very confusing.
 - f. Assessment is made against the grouped parcel assessments which is too broad. It is too light touch and inadequate. This does not provide the right level of Green Belt assessment to inform detailed design changes or mitigation measures at a local level along the LTC route, for example, at the A13/LTC junction location.
 - g. There is no clear methodology for how Green Belt parcels are assessed against any of the first three purposes of the Green Belt, as set out in the NPPF. The assessment against the first three purposes is set out in Appendix B of the applicant's Green Belt assessment ([REP7-181](#)). The Council's review of that assessment is set out in the later in this Section. The immediate paragraphs below provide the Council's comments on the methodology used for assessing Green Belt parcels against the purposes of the Green Belt:
 - h. In relation to Purpose (a) '*to check the unrestricted sprawl of large built-up areas*', the applicant's Green Belt assessment states in paragraph 2.3.7 '*the Project would not*

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involve the sprawl of urban areas or prejudice this purpose of including land within the Green Belt for this purpose. Therefore there is no harm to this purpose. The Council responds with: this is a very general overarching statement, which is not based on robust evidence. An adequate Green Belt assessment would have used the smaller Thurrock Green Belt parcels to assess LTC's extent harm against this purpose. Some parts of the LTC is very close to the urban edge of settlements, while other locations are far away. These smaller parcels would give a more robust Green Belt assessment along the route. The LTC route does run close to 'large built-up area' in Thurrock and therefore introduce development close to built-up areas, thereby reducing the amount of Green Belt in those locations. The applicant also does not provide a categorisation of 'large built-up areas' in Thurrock, to base a Green Belt assessment against this purpose.

- i. In relation to Purpose (b) *'to prevent neighbouring towns from merging into one another'*, the applicant's Green Belt assessment states in paragraph 2.4.1 *'although the Project route runs close to a number of settlements along its length, the distances involved would not result in the physical or visual merging of any towns or villages as a result of the Project and would not, therefore, reduce the spatial or perceptual experience of the separation of these existing settlements'*. It goes on to say in paragraph 2.4.6, that the *'project would result in a new infrastructure corridor in the Green Belt, however, this would not result in neighbouring towns merging and would therefore not prejudice this purpose of land being included within the Green Belt. Therefore, there is no harm to this purpose.'* This is a very general statement and the applicant has not provided a methodology for assessing the 'distance' and has not provided a detailed assessment along the route, for individual towns located close to each other in Thurrock. The LTC route does run between towns and therefore introduce development between towns, thereby reducing the amount of Green Belt between towns. The applicant also does not provide a categorisation of 'towns' in Thurrock, to base a Green Belt assessment against. The applicant's assessment of Green Belt harm between towns in Thurrock is too simplistic and not adequate. Paragraph 2.4.4 states *'The Project is set back from and would be physically separated from neighbouring settlements and would not therefore lead to the merging of existing urban areas or their extension into open countryside.'* However, the counter argument could be that the physical barrier could encourage development up to that barrier on each side.
- j. In relation to Purpose (c) *'to assist in safeguarding the countryside from encroachment'*, the applicant, in paragraph 2.5.1, acknowledges *'that the Project as a whole would not assist in safeguarding the countryside as the Project introduces highway infrastructure that would encroach into the open countryside'*. The Council agree with this assessment. However, the applicant then goes on to state *'the nature of the Project as a form of highway infrastructure would provide a strong defensible boundary thereby limiting the extent of encroachment into the countryside'*. LTC is development in the countryside, therefore the LTC project is 'encroachment into the countryside'. Using the applicant's method the LTC itself would be defined a 'strong boundary' and if others (developers and site promoters) were to view it the same they could put pressure on future Green Belt land to be released up to the LTC in some places, as it could be viewed as a 'robust boundary'. This could then have a cumulative impact on the overall integrity of the Green Belt.

7.4.13 **Summary: the applicant's Green Belt methodology has not clearly been set out and it does not provide an adequate methodology to enable of robust Green Belt assessment for LTC to enable 'very special circumstances' to be demonstrated.**

7.5 Council's review of applicant's Green Belt Assessment

7.5.1 The applicant's Green Belt Assessment is provided against the large Parcels of the applicant, which in Thurrock are Parcels D, E and F. The parcels are assessed, in the applicant's Green Belt Assessment:

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- a. Against the four Purposes (a, b, c and d) of the Green Belt in Appendix B; and,
 - b. Against the openness of the Green Belt in Appendix D.
- 7.5.2 The applicant does not include a Green Belt assessment against Purpose (e) and the Council agrees with this approach.
- 7.5.3 The Council have not undertaken a full Green Belt Assessment for LTC. However, the Council has spot-checked the applicant's Green Belt assessment and have the following comments.
- 7.5.4 Sub Section 7.4 above confirms that the Green Belt methodology used by the applicant is not robust and inadequate. Therefore, this has an impact on the Green Belt assessment results, which is too high-level, too simplistic and inadequate.
- 7.5.5 There is no overall Green Belt assessment conclusion on the extent of harm for each parcel (Parcel D, E and F), when considering both the applicant's assessment against the purposes of the Green Belt and the openness of the Green Belt.
- 7.5.6 There is no overall Green Belt assessment for Thurrock Council's Green Belt parcels, as identified in the Council's Study.
- 7.5.7 The applicant only provides conclusion of '*significant harm to the openness of the Green Belt as a result of the Project*'. Where is the overall harm to the purposes of the Green Belt? How has the applicant concluded 'significant' harm from the individual parcel assessments and conclusions, when the maximum level of harm is 'Major' on the applicant's scale of harm?

GB assessment against purposes

- 7.5.8 Para 2.1.2 states that '*an assessment of the harm to the Green Belt purposes as a result of the project is set out in this section*'. The assessment of LTC's harm to the first three purposes of the Green Belt is set out in Sections 2.3 – 2.7 of the main report and Appendix B, which totals 8 pages for the whole LTC route. This demonstrates the lack of detailed Green Belt assessment for LTC, against the purposes of the Green Belt.
- 7.5.9 There is no adequate Green Belt assessment relating to the 'extent of harm' to the Green Belt for any of the parcels (D, E and F in Thurrock), against any of the first three purposes (a, b and c). There is also no overall conclusion to the 'extent of harm' for each parcel, e.g. 'significant' harm, 'major' harm, 'limited' harm etc. What is the extent of harm to each parcel, against each Green Belt purpose?
- 7.5.10 For each parcel, there is no assessment of openness within each of the Green Belt assessments, against the Green Belt purposes. Openness is split out separately, which is confusing and difficult to pull together an overall extent of harm/conclusion. In the Thurrock Strategic Green Belt assessment, the Council assessed the parcels against Green Belt purposes and built in openness within each purpose assessment, thereby providing a more comprehensive assessment.
- 7.5.11 In relation to Green Belt purpose (d), the Council do not view Horndon on the Hill as an historic town in the Council's Green Belt Study (2019). However, the applicant has based their assessment based on advice from Historic England. In the applicant's assessment of Horndon on the Hill the applicant state there is no impact on the setting, i.e. important views. However, there is no evidence to support this in the applicant's revised Green Belt assessment. The applicant sets out what the important view is, on page 31, and the assessment, but do not set out the evidence - is there a linked Landscape Visibility Impact Assessment (LVIA)?

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7.5.12 There is no mention of moving the electricity pylons and impact on Green Belt purposes.

7.5.13 Council comments on a selection of Green Belt assessment against the purposes (Appendix B) below (for Parcels in Thurrock – D, E and F):

Parcel D:

7.5.14 Purpose A: Appendix B states 'the project would not prejudice this purpose as there would be no removal of land from the Green Belt'. This statement is incorrect and misleading. LTC is built development in the Green Belt, which will pass through Parcel D. It will provide built development closer to the existing built-up areas, than what is existing, which potentially could encourage further development proposals on the edge of existing settlements. The assessment sets out a list of 'large built-up areas', though does not provide an assessment against the purposes for each of these 'large built-up areas'. Also, these do not match the list of 'large built-up areas' listed in the Council's Strategic Green Belt Assessment (LIR Appendix L, Annex 3 ([REP1-293](#))).

7.5.15 Purpose B: the same response is provided as Purpose A, specifically in relation to the gap between Chadwell and East Tilbury.

7.5.16 Purpose C: the assessment confirms that LTC will result in encroachment of built development in the countryside in Parcel D. This assessment plays down the impact of LTC in the Green Belt and is very simplistic. For example, the A13/Orsett Cock junction takes up approximately 117 hectares in the Green Belt, but the assessment give no sense of scale of the impact or does not describe in any detail – the junction is split across Parcels D and E. It also does not provide an overall extent of harm, e.g. 'Significant' or 'Major' etc. The assessment then states that mitigation measures have been put in place to minimise the impacts. However, there is correlation with the list of built development listed, which would impact on this Green Belt purpose and there is no conclusion on how this has changes to extent of harm. The assessment against this purpose should deal with the encroachment of development relating to each settlement within this parcel, in turn, as the assessment results will be different for each. This would then inform the overall extent of harm assessment, e.g. 'Significant' or 'Major', etc. The Green Belt assessment for Parcel D, against this purpose, is very broad for such a large geographical area, too simplistic and is inadequate. The applicant assessment concludes that '*the Project (LTC) would not enable, nor encourage, future development to encroach into the countryside.*' However, the Council confirm that a strong boundary would do just that, i.e. provide encourage proposed development in these locations.

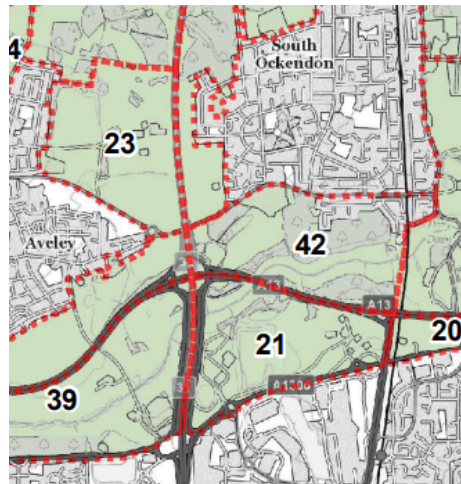
Parcel E:

7.5.17 Purpose A: Appendix B states '*the project would not prejudice this purpose as there would be no removal of land from the Green Belt*'. This statement is incorrect and misleading. LTC is built development in the Green Belt, which will pass through Parcel D. It will provide built development closer to the existing built-up areas, than what is existing, which potentially could encourage further development proposals on the edge of existing settlements. The parcel includes the new Gammonfields traveller's site, which is part of LTC and there is no Green Belt assessment for this new site or any assessment for the A13/LTC junction, for example. The applicant uses the term 'Thurrock' throughout the purposes assessment, e.g. for Parcel E Purposes A '*is to prevent the 'large built-up areas' of South Ockendon and Thurrock*'. Thurrock is not a settlement, town or built-up area, so does the applicant mean Grays Conurbation? There is confusion about the list of towns and 'large built-up areas', which is due to a lack of a clearly defined settlement hierarchy set out in the methodology.

7.5.18 Purpose B: the applicant refers to the gap at Aveley, however Aveley is not a 'large built-up area' and there is no mention of South Ockenden. The 'large built-up-areas' should be clearly defined within the methodology and match those set out in the Council's Strategic Green Belt

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Assessment (LIR Appendix L, Annex 3 ([REP1-293](#))). The applicant's Green Belt parcel boundaries between Aveley and South Ockendon are weirdly defined and they seem to use the Council's parcel boundaries here to define the edge, which is confusing, as shown on the plan below.



7.5.19 Purpose C: the assessment confirms that LTC will result in encroachment of built development in the countryside in Parcel E. This assessment plays down the impact of LTC in the Green Belt and is very simplistic. For example, the A13/Orsett Cock junction takes up approximately 117 hectares in the Green Belt, split across Parcels D and E, but the assessment give no sense of scale of the impact or does not describe in any detail. It also does not provide an overall extent of harm, e.g. 'Significant' or 'Major' etc. The assessment then states that mitigation measures have been put in place to minimise the impacts. However, there is correlation with the list of built development listed which would impact on this Green Belt purpose and there is no conclusion on how this has changes to extent of harm. The assessment against this purpose should deal with the encroachment of development relating to each settlement within this parcel, in turn, as the assessment results will be different for each. This would then inform the overall extent of harm assessment, e.g. 'Significant' or 'Major', etc. The Green Belt assessment for Parcel D, against this purpose, is very broad for such a large geographical area, too simplistic and is inadequate.

Parcel F:

7.5.20 Purpose A: Appendix B references Aveley, however, Aveley is not a 'large built-up area' and there is no mention of South Ockenden. The 'large built-up-areas' should be clearly defined within the methodology and match those set out in the Council's Strategic Green Belt Assessment (LIR Appendix L, Annex 3 ([REP1-293](#))).

GB assessment against 'openness' (Thurrock Parcels D, E and F (pages 44 – 53))

7.5.21 The applicant's Green Belt assessment for LTC against 'openness' does not link or include reference to the first three purposes of the Green Belt. It does set out the extent of harm of the Green Belt, but only goes up to 'Major' harm and does not include a 'Significant' level of harm in the method, as set out above. The assessment does include the individual Thurrock Green Belt parcels identified in Thurrock's Strategic Green Belt Assessment (LIR Appendix L, Annex 3 ([REP1-293](#))), which is welcomed, though the assessment is too simplistic for a development of this scale.

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Parcel D:

7.5.22 Year 1: the overall extent of harm is identified as 'Year 1: Major harm to no change'. It is unclear what this statement means – does it mean part of Green Belt extent of harm in Group D is 'major harm' and part is 'no change/harm'? What is the individual extent of harm for individual Thurrock Green Belt parcels, such as T25? How does this relate to the extent of harm to Green Belt Purposes? The Green Belt assessment for Parcel T25 states (in Appendix B) 'there would be a noticeable change in the amount of built development and resulting perception of openness in parcel T25.' There is no specific assessment of the extent of harm for individual Thurrock Green Belt Parcels.

Parcel E:

7.5.23 Year 1: the Green Belt assessment states 'modifications to the existing A13/A1089 junction would result in 'moderate harm' to the openness of the Green Belt within parcel T41. The combination of modifications to the existing A13/A1089 junction and earthworks along the Project route to the north would result in 'major harm' to the openness of the Green Belt within parcel T14/H9. The presence of the Project route would result in 'moderate harm' to the openness of the Green Belt within parcels T15/H8 and T16/H7.' The A13/Orsett Cock junction takes up approximately 117 hectares in the Green Belt, but the assessment gives no sense of scale of the impact or does not describe in any detail – the junction is split across Parcels D and E. The applicant's revised Green Belt assessment understates the impact of LTC on the Green Belt in this location.

Parcel F:

7.5.24 LTC fails on safeguarding countryside for every parcel and in the revised Green Belt assessment the applicant makes reference to mitigation. When considering harm to Green Belt and mitigation the Council would expect to see a detailed assessment considering specific interventions to minimise harm to the Green Belt, potential measures to mitigate harm, i.e. design road infrastructure to limit perception of increased urbanisation associated with new development, using Landscape Character Assessment to identify valued characteristics that should be retained and where possible strengthened, and intrusive elements that should be diminished and where possible removed. The revised Green Belt assessment is too simplistic to truly understand the mitigation measure proposed in detail along the route and how this changes the extent of harm to the Green Belt. Consideration should also be given to opportunities to increase beneficial use of the Green Belt

7.5.25 **Summary: the applicant's Green Belt assessment is too simplistic, confusing and inadequate to be able to use in the demonstrating 'very special circumstances'.**

7.6 Summary

7.6.1 For each parcel, there is no mention of how the applicant's revised GB Assessment has informed changes in the LTC design along the route and junctions to minimise the impacts on the Green Belt and mitigation.

7.6.2 It is difficult for the Council, ExA and others to draw a conclusion on the overall level of harm to the Green Belt from the applicant's revised Green Belt Assessment. The Council are not sure how the ExA can then make a decision on 'very special circumstances', when there is a no robust Green Belt assessment methodology and the assessment is lacking in detail.

7.6.3 The Green Belt assessment for LTC is still inadequate for a development of this scale, all within the Green Belt. The Green Belt assessment is very short and too simplistic. The assessment is split between the purposes and openness of the Green Belt and not brought

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together at the end of the assessment, for each parcel. Therefore, it is not possible to come to conclusion on the 'level' of harm for individual parcels, let alone across the whole scheme. The applicant concludes that the overall extent of harm to the Green Belt is 'significant', but there is NO parcel assessment that identifies the impact on GB as 'significant'.

7.6.4 The following questions remain for the Council:

- a. Does the Green Belt assessment include a robust Strategic assessment relating to alternative routes and a Detailed Green Belt assessment relating to the preferred route design and construction sites?
- b. Where is the applicant's categorisation of settlements, for purposes (a) and (b)?
- c. Where is the Green Belt assessment for moving electricity pylons moving in the LTC project?
- d. How has applicant arrived at overall impact of 'significant' harm? Where are the individual parcel assessments against each purpose and openness that set out the level of harm?
- e. Has the applicant set out a clear and robust methodology for assessing the impact of LTC based on the NPPF purposes of the Green Belt?
- f. Has the applicant demonstrated a robust assessment of the level of 'harm' to the Green Belt? Is the level of 'harm' underestimated? Has the Applicant undertaken a robust Green Belt assessment of LTC based on the purposes of the Green Belt and clearly set out the harm to the Green Belt?
- g. Has the applicant undertaken a robust Green Belt assessment, against both openness and purposes of the Green Belt? If so, please demonstrate how this has been undertaken? In particular, to inform the design of the scheme, e.g. A13/Orsett Cock junction and other locations along the LTC route.
- h. Where has the applicant demonstrated very special circumstances? Has 'very special circumstances' been demonstrated with appropriate analysis and evidence?
- i. Where has the applicant demonstrated they have minimised the impact on Green Belt and how does this relate to specific locations, such as the A13/LTC junction?
- j. Is the SoS able to make a judgement to whether there are 'very special circumstances', as to whether the potential harm to the Green Belt, by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations?
- k. Have all the elements of 'Any other harm' of LTC been underestimated by the applicant, including impacts on air quality, noise, health, geology and soils, heritage, water, landscape, transport (wider network impacts), climate change etc, been properly included in the balance?
- l. Have all the elements of 'other considerations' of LTC been overestimated by the applicant, relating to need of LTC, the level of benefits and assessment of alternatives?

7.7 'Very special circumstances' Not Demonstrated

- 7.7.1 Paragraph 5.178 of the NPSNN sets out the decision-making policy: *'When located in the Green Belt national networks infrastructure projects may comprise inappropriate development. Inappropriate development is by definition harmful to the Green Belt and there is a **presumption against it except in very special circumstances. The Secretary of State will need to assess whether there are very special circumstances to justify inappropriate development. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. In view of the presumption against inappropriate***

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development, the Secretary of State will attach substantial weight to the harm to the Green Belt, when considering any application for such development'.

- 7.7.2 'Very special circumstances' have not been demonstrated by NH for LTC, because:
- a. The reviewed GB assessment for LTC is still inadequate for a development of this scale, all within the Green Belt. The applicant has not undertaken a robust Green Belt assessment for LTC, against the purposes of the Green Belt and impact on openness set out in the NPPF, which would robustly set out the harm in any location and for the project as a whole.
 - b. The applicant has not properly identified or clearly set out the level of harm to the Green Belt, including to its openness and the purposes of the Green Belt, to inform the selection of alternatives (at a strategic level) or for the preferred option design (at a detailed level, e.g. for the A13/A1089/LTC junction) or for the construction sites, such as construction compounds.
 - c. In terms of 'any other harm', the impacts of LTC in Thurrock on air quality, biodiversity, climate change, geology and soils, health, heritage, landscape, noise, socio economics, transport (such as PRow, public transport, wider network impacts), water, etc., is significant.
 - d. In terms of 'other considerations', the applicant's evidence for the need for LTC has not been properly demonstrated; the level of benefits of LTC has been overestimated; and, there is a lack of proper assessment of alternatives.
- 7.7.3 **Summary: LTC takes approximately 10% of Borough's overall land area, which is within the Green Belt. LTC is designated a NSIP and the largest road scheme in the UK, hence is being submitted through the DCO process. LTC is not a 'local transport infrastructure project' and no part of LTC is 'local transport infrastructure'. The Green Belt impact for LTC needs to be assessed as a whole and no elements can be removed from the assessment.**
- 7.7.4 **The Council have raised all these issues to the applicant about the lack of LTC Green Belt methodology and Belt assessment for over three years, as set out in the Council's SoCG issues 2.1.59 and 2.1.60, which remain unresolved.**
- 7.7.5 **The Green Belt Assessment submitted by the applicant at D7 is inadequate and too simplistic to identify the extent of harm. 'Very special circumstances' has not been evidenced by the applicant. There are other remaining important questions that remain unanswered by the applicant, as set out in the Council's response in this Section 7.**

8. Council Comments on Applicant's Responses to Post Event Submissions at D6 (REP7-188), Hearing Actions (REP7-185) and Applicant's Comments on IP Responses on ExQ2 (REP7-186) and D6 (REP7-187)

8.1 Introduction

8.1.1 The Council has only general points to make below on these updated documents, as detailed comments have been made in earlier submissions.

8.2 ISH8 Actions – Section 4 (REP7-185)

8.2.1 The applicant continues to refuse to place caps on the vehicle movements associated with its compounds. This indicates that it has no confidence in its assessment of activities at those compounds and is unable to set measurable targets for the movement activities or for the noise and vibration effects. This leads to an absence of measurability and enforceability and reflects the weakness of the applicant 'control' documents.

8.2.2 The applicant is not prepared to assist in the management of effects and harm on the local roads and communities. The Council would therefore be forced to consistently challenge activities and impacts during the construction period via its representation on the Traffic Management Fora and the Travel Plan working groups.

8.3 ISH8 Actions – Section 5 (REP7-188)

8.3.1 The Council continues not to concur with the applicant's assertion that it has been robust in the preparation of the transport control documents and the waste management and materials handling controls.

8.3.2 The Council's position has been made very clear on a number of occasions through its evidence and does not need to be repeated here. Amongst other aspects, the suite of control documents is weak, with no targets for performance measurement or enforcement, vague governance procedures; and no triggers for refresh. Loose assertions are made by the applicant, but are not backed up by secured commitments or undertakings. Whilst the applicant frequently uses the term 'commitment', the contractors are left to self-govern and are able frequently to interpret any aspirations as nothing more than hollow statements.

8.3.3 The Council has no certainty that the process of construction will be delivered with safety and sustainability at the heart of the project and with the absence of harm to its communities little more than ambiguous statements in the documents. The Council therefore rebuts strongly the statements made by the applicant in its response in [REP7-188](#) Section 5.

8.4 ISH9 Actions – Section 6 (REP7-188)

8.4.1 These were points already addressed in the Council's D7 submission ([REP7-228](#)) and the Council has nothing further to add.

8.5 ISH10 Actions – Section 7 (REP7-188)

Point 4 b (i) PROWs and Mardyke Bridleway

8.5.1 These points have been addressed in Section 6.8 above.

Point 5.216 Funding for Potential Mitigation at Orsett Cock

8.5.2 The applicant states that were mitigation required it has been identified and secured through the draft Development Consent Order and that the applicant is not relying on funding from the RIS programme to address these impacts.

8.5.3 The indisputable evidence presented by the Council at Deadline 6A ([REP6A-013](#)) and at ISH13 shows that LTC causes significant traffic impacts at Orsett Cock Junction. The applicant has now agreed to work collaboratively to further develop Requirement 18 associated with Orsett Cock Junction.

8.5.4 The Council supports this approach and considers that it is vital that the Requirement reflects the draft presented by the Council, PoTTL, DP World/London Gateway and TEP to ensure that the Council, as Local Highway Authority, is not left having to fund (or seek funds) for junction improvements because of the impacts of LTC.

8.5.5 It is now very clear that additional modifications to the scheme will be required to ensure that Orsett Cock Junction can operate effectively prior to opening. These modifications have not yet been designed, but will add additional cost to the scheme.

Silvertown Funding Model

8.5.6 The applicant states that as part of the Monitoring and Mitigation Strategy for Silvertown Tunnel 'No Fund is established and no further commitment is given' (page 70). This is simply the applicant engaging in semantics in a misguided and desperate attempt to maintain its untenable position on this matter. TfL has previously clarified that a specific ring-fenced fund is not necessary as there is a clear commitment by TfL to fund identified for mitigation requirements.

8.5.7 This made clear by Section 4.7 of the Monitoring and Mitigation Strategy for Silvertown Tunnel which states:

- a. *'4.7 Funding and delivery of post-opening localised mitigation*
- b. *TfL will meet the cost of all post-opening mitigation identified as being necessary in relation to impact attributable to the Scheme.'*

8.5.8 This clearly shows that TfL, as scheme promoter, expects to fund mitigation related to the impacts of Silvertown Tunnel. The Council considers that it is entirely fair and reasonable to expect the applicant, as promoter of the scheme, to fund mitigation related to these impacts.

Definition of 'Unacceptable Impacts'

8.5.9 The Council proposed criteria to define 'Unacceptable Impacts' to help the ExA with their assessment of the scheme. The Council notes that although the applicant has critiqued the proposed approach, they have not suggested any alternatives.

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8.5.10 This issue is considered further in the Council's response to Action Point 5 of ISH13 on 'unacceptable impacts' within its accompanying submission of the Post Event Submission for ISH13. It is important to recognise that whilst the applicant may have got away with a bold insistence that simply because it is National Highways it can make up its own rules, times have changed. It is crucial that the applicant uses this project as a watershed to adopt practices entirely within precedent that are focussed on optimising outcomes for local people, and reflect on the damage it causes by a dogmatic focus on achieving planning approval regardless of serious and established concerns about the negative impact of doing so without properly mitigating known issues.

8.6 Applicant's Comments on IP Responses on ExQ2 at D6 (REP7-186)

Traffic and Transportation – Section 2

ExQ2 Q4.1.4 Orsett Cock: Local Traffic

8.6.1 The Council notes the applicant's response concerning the allocation of benefits to Thurrock. The Council considers that the analysis provided by the applicant is not complete because the assessment of benefits and disbenefits does not include the disbenefits associated with queuing and delay at the LTC interchange and Orsett Cock Junction (and other junctions in Thurrock), which have been identified by VISSIM models, but are not included in the LTAM modelling used to estimate economic benefits (see Council's D6A submission ([REP6A-013](#))).

8.7 Geology and Soils – Section 3 and Council Comments on GI Data

Comments on ExQ2 Section 3

8.7.1 Topic 6 of the document relates to Geology and Soils and includes a response to Council comments on Q6.1.2 relating to provision of a new REAC commitment for monitoring of airborne asbestos. The applicant has identified that as an alternative, the wording of AQ006 has been amended at D7. However, whilst asbestos is identified as requiring a risk assessment by the contractor, the Council would only have sight of/comment on the proposed locations. The Council would want to have the opportunity to comment on the risk assessments and conclusions prepared by the contractor when determining where monitoring is required (and where reassurance monitoring would be undertaken). The extent of Council comment should not be limited to locations and the Council would expect to agree the method of monitoring, the criteria to be used to identify a control failure and the contingency measures to be implemented (with timescales).

Comments on GI Data

8.7.2 On the 7 November 2023, the applicant shared eight PDF documents. The applicant advised that these shared documents were the factual ground investigation (GI) reports previously requested. Due to the limited time available and some technical issues related to the size of some of the documents only three documents have been opened to date. However, whilst the reports are for specific work in a defined package, it has been assumed that the approaches will be the same for all packages. Initial comments are set out below on each one in turn.

HE54039-PCI-GEN-REP-GEO-00116 - a report on long-term monitoring (for Package C) provides information on the monitoring and sampling method that is missing from the interpretative reports.

8.7.3 Points considered noteworthy:

- a. Groundwater sampling used a low flow method, however, the stabilisation criteria to be achieved were not defined in the report.
- b. Groundwater samples were filtered and preserved in the field.
- c. Gas monitoring was for a maximum of three minutes rather than a requirement to monitor until steady state readings were recorded. Based on a review of a limited number of records this would not be an issue for these wells as the gas concentrations were low.
- d. Deviating samples were not recorded on the selection of laboratory certificates reviewed.

HE54039-PCI-GEN-REP-GEO-00053 – a report on additional exploratory hole locations in package D.

8.7.4 15 exploratory holes were 'descoped' due to access issues. This means approximately 30% of the proposed additional locations that the applicant deemed necessary were not undertaken.

HE54039-PCI-GEN-REP-GEO-00044 – a report on ground investigation in Package B.

8.7.5 The points considered noteworthy are:

- a. Deviating samples were not recorded on the selection of laboratory certificates reviewed.
- b. Whilst the report identifies NADIS (no asbestos detected in sample) the limit of detection is 0.001% which is not appropriate for human health risk assessment.

Conclusion

8.7.6 The applicant currently only commits to further GI being undertaken where medium and high hazards have been identified. On the parts of the scheme where contamination is deemed by the applicant to be 'low hazard', further GI is not committed to. The applicant proposes that the risks from these low hazard areas are to be controlled by the land contamination management plan to be prepared for the EMP. The above review shows that there may be insufficient data (for example due to GI being descoped) and inadequate data (for example due to asbestos being identified as absent based on an insufficiently sensitive test method). The Council suggests an additional REAC is needed to require the Contractor to undertake a thorough data gap analysis (and not rely solely on the applicants identified limitations). The Contractor would then commit to proving the ground conditions prior to starting earthworks to ensure appropriate controls are deployed.

8.8 Noise and Vibration

Q9.1.1

8.8.1 The applicant has accepted the Council's change to REAC NV018 and this is welcomed.

Q9.1.3

8.8.2 The applicant wording changes to NV015 is welcomed and accepted by the Council with regards to inclusion of noise insulation/temporary rehousing.

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- 8.8.3 With regards to the Council's request for additional noise assessment of construction traffic, the applicant has states that '*active monitoring and management of flows around the network, allowing route changes and other control measures such as speed limit directions to be implemented to alter flow patterns of construction traffic where problems are identified*'. However, there is no mention of acoustic assessments to inform this assessment. The Council would re-iterate that a noise assessment forms part of the input that identifies appropriate control measures.
- 8.8.4 The applicant has accepted the incorporation of vibratory rollers into NV017 and this is welcomed.

Q9.1.4

- 8.8.5 It is noted that the applicant does not intend to undertake post-opening monitoring to confirm how operational noise levels relate to those reported in the ES, as noise monitoring can be affected by other noise sources.
- 8.8.6 Whilst it is accepted that other noise source can affect the results and there is no requirement under DMRB with regards to monitoring, it is likely that the new road would be the dominant source. Furthermore, given the scale of the scheme and reliance on mitigation, this could be a landmark scheme, as no real study has previously been undertaken into post-construction/operational surveys. This presents the opportunity to do something ground-breaking, whilst also confirming appropriate mitigation has been provided.

8.9 Road Drainage, Water Environment and Flooding

ExQ2 Q10.1.2 – Infiltration Ponds

- 8.9.1 The Council noted in Q10.1.2 that the likely exceedance route for Infiltration Basins is not clear from the drainage plans provided. However, it is possible that exceedance flow would be confined to within the junction or forced onto the roads. The proposed discharge mechanism is reliant on infiltration with inherent uncertainties around ground conditions and long term performance.
- 8.9.2 The applicant's response partially addresses the long term performance concern by pointing to commitments to routine inspection and maintenance. Whilst the Council support the robust approach to inspection and maintenance, this does not remove the risk of infiltration basins under performing. The applicant points to commitments to design exceedance routing at detailed design stage. However, this does not address the concern that the Infiltration Basins are confined within the junction.
- 8.9.3 The Council would like the applicant to confirm if there is a feasible route for exceedance flows from the Infiltration Basins that will not rely upon the flooding of roads.

ExQ2 Q10.4.1 – Operational surface water drainage pollution risk assessment

- 8.9.4 The Council requested in Q10.4.1 that the applicant highlight known constraints for catchments and associated outfalls that may lead to variations to number and location of proposed outfalls.
- 8.9.5 The applicant has confirmed that there are no foreseen challenges or constraints that are not presently addressed in the drainage strategy. The applicant has reinstated their position that the number and location of proposed outfalls may vary at detailed design stage.
- 8.9.6 The Council accept this response and have no further comments on this item.

8.10 Biodiversity

- 8.10.1 The responses relate to questions raised by PoTLL. They relate to very detailed points that have not been raised as a concern by the Council. The Council agrees with the applicant that these are matters that will be picked up at detailed design and incorporated into the LEMP and other relevant documents.
- 8.10.2 The applicant has yet to provide the specific answers to the points raised by the Council in its response to ExQ2 Q11.2.2 ([REP6-167](#)) regarding the numbers of proposed culverts and the relevant measures for mammal passage.

8.11 Responses to Thurrock Council Submissions (REP7-187)

Traffic and Transport Matters (REP7-187 – pages 26-43)

- 8.11.1 This is covered in detail in Section 9 below.

Walkers Cyclists and Horse-riders (REP7-187 – pages 43-44 and 52-53)

- 8.11.2 The applicants response to comments on walkers, cyclists and horse-riders made by Thurrock ([REP6-164](#)) notes that the applicant does not accept the proposal put forward by the Council regarding mitigation to be added to the SAC-R ([REP7-153](#)), but is considering a targeted approach to engagement. There have been ongoing discussions with the applicant as part of the Statement of Common Ground progression and the Council and an updated proposal was received on the 28 November 2023.
- 8.11.3 This suggested that the applicant fund two part-time (0.6FTE) community engagement officer posts for a period of three years during the construction phase, with a total budget of £200,000. This would include to basic salary, staff on-costs and redundancy costs at the end of the three year period; as well as nominal running costs associated with the cost of office/desk space and ICT equipment; and a nominal capital sum of £9,000 across the three years associated with the provision of materials for community engagement activities. The proposals have taken into account annual inflation of 4% over the three-year period.
- 8.11.4 The Council view this proposal as unsuitable, these reasons were set out in the Statement of Common Ground meeting on the 24 November 2023:
- a. The capacity building responsibility suggested requires a more senior post;
 - b. If this is not possible, that the more junior posts (the engagement officers) would need to be available for the full construction period;
 - c. The proposal would not allow for sufficient monitoring and evaluation to be built into the roles, which would reduce the efficacy of these positions;
 - d. The Council would like to see a full breakdown of the costs used by the Applicant to create the budget suggested.
- 8.11.5 Whilst the targeted approach from the applicant is appreciated, there is ongoing discussions and correspondence on how best to deploy the resources suggested by the applicant, in order to try to reach agreement on this issue.
- 8.11.6 Additionally, the applicant quotes paragraph C.5.16 of the Council's submission within ([REP7-187](#)) that the additional mitigation proposed by the Council are to '*mitigate the non-significant affect during construction*'. It is important to note here that this is referencing the impact designated by the applicant. The applicant's response to the suggested additional mitigation

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is repeated in its response to the appendices for([IREP6-164](#)) , as this included the Council's full mitigation proposal.

- 8.11.7 The applicant's response to comments on the Terms of Reference for the Community Liaison Group ([REP6-164](#)) sets out that there is agreement on including the drafted Terms of Reference at Deadline 8. This, along with suggested amendments agreed as part of the discussions on the Statement of Common Ground, would be acceptable to the Council. This response is repeated in the applicant's response to the Appendices, as the Council's submission included the suggested Terms of Reference.

Worker Accommodation Report Technical Note (REP7-187 – pages 53-56)

- 8.11.8 The applicant's comments are noted, but disagrees and considered that the measures referred to by the applicant in the FCTP are insufficient, although recognises the potential value of the WAWG and the Accommodation Helpline. Notwithstanding this, the Council put forward its own Housing Impact Requirement within its D7 submission ([REP7-228](#)) in Appendix B that it designed to protect its position against the impacts it considers will occur.

Design Principles (REP7-187 – page 45)

- 8.11.9 The applicant's response to Section 2.6 in ([REP6-164](#)) is regarding the proposed Design Principles published by the Council at Deadline 7. During ongoing conversations with the applicant as part of the Statement of Common Ground discussions, the Council notes that the applicant does not propose to integrate the Council's proposals into the Design Principles, as they are either not deemed relevant to the scheme or are already covered under a broader principle (e.g. PEO.04). This is acceptable to the Council at this stage given the routes being provided.

Traffic Management Plan (REP7-187 – page 45)

- 8.11.10 The applicant's response to comments regarding the Traffic Management Plan in Section 2.2.5 of ([REP6-164](#)) has been discussed as part of ongoing Statement of Common Ground discussions, a further amendments has been discussed regarding the addition of informing healthcare services, not just facilities, of changes to routes and timetables. This is being considered by the applicant and the Council expects to respond in full after the submission at Deadline 8.
- 8.11.11 The minor modifications made in Table 2.3 of the oTMPfC as submitted at Deadline 7 ([REP7-149](#)) are welcomed, but do not cover many of the further changes that the Council proposes are necessary to provide a robust approach to governance, measurement and monitoring for the construction period. The applicant frequently refers to 'mitigation' measures and commitments, yet the Council would challenge the applicant to explain and expand on where realisable 'mitigation' is proposed and committed to within the oTMPfC or any of the other associated Control document.
- 8.11.12 There are few measures or initiatives that can reliably be claimed by the applicant as implementable or enforceable mitigation of the effects that are forecast by the applicant during the construction period – these include a lack of evidence over how the applicant's 'HGV bans' would be applied or how the applicant will effectively manage the effects of access to the compounds, when the effects have not been properly assessed within the evidence base before the Examination.
- 8.11.13 The Council will review the applicant's D8 submission and respond at D9, but does not anticipate any substantive movement by the applicant, reflecting on the absence of progress to date to resolve unagreed matters.

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Ron Evans Memorial Field (REP7-187 – page 46)

- 8.11.14 Whilst it is recognised that the Council may have asked that the totality of the space between the Ron Evans Memorial Field and the higher density residential units to the west not be included there is no indication that, at that time, the Council was aware of the five year delay in re-providing Public Open Space nor that some of this could have been used for replacement POS. The delay is the material factor.
- 8.11.15 Insofar as the applicant commits to amending the wording of Article 61 as proposed i.e. replacing the words *'take all reasonable steps to deliver'* with *'implement'*, then this would be acceptable to the Council. However, it is, as advised above, necessary to then determine how each SAC-R commitment actually secures the overarching provision.
- 8.11.16 Turning to the applicant's response to points regarding the re-provision of Public Open Space at the Ron Evans Memorial Field, the applicant says *'The replacement open space design for Ron Evans Memorial Field was in fact amended in 2021 to remove the agricultural field between the existing open space and housing on the edge of Grays at Thurrock Council's request. The Council asked that the land not be designated as replacement open space because it had development potential, providing the Grays Northern Villages Development Framework (November 2016) to the Applicant in support of this on 17 December 2020. The amended design, which excluded the land in question, was re-presented to Thurrock Council at a meeting on 13 May 2021 at which the Council confirmed that 'the amended proposal looks good, and you have delivered what we asked for'. The replacement open space design was subsequently consulted upon as part of the Community Impacts Consultation between July and September 2021 – refer to page 96 of the Operations Update (July 2021), Sheets 26 and 30 of the Land Use Plans (July 2021) and Sheets 26 and 30 of the General Arrangement Plans (July 2021). Thurrock Council's response to the Community Impacts Consultation notably confirms, at 'Table 2.1: The Council's Comments on the Operations Update' of Appendix H under sub-heading 'Chapter 3.2: Special Category Land' at the row titled 'Ron Evans Memorial Field (pg.92)' that 'The proposed changes have been discussed and agreed in principle with the Council'.*
- 8.11.17 Reviewing the documents referenced in the applicant's response there is no indication that there was to be a five year delay in re-provision, nor that the land identified for replacement POS was to be used for another purpose prior to it being made available as replacement POS. It is not surprising that the Council did not object to a proposal (the five year delay), which the applicant had not brought to its attention and, indeed, which the applicant might not have been aware of at the time.
- 8.11.18 The applicant states that it has *'detailed its approach to the design of replacement open space in Planning Statement Appendix D: Open Space [REP3-108] and the Planning Statement Appendix D: Open Space Addendum [REP6-097]. The assessment of replacement land relied upon by the Applicant is presented in Planning Statement Appendix D: Open Space [REP3-108]. Section D.4 of that document explains that 'Where replacement land is to be provided, the five factors noted in paragraph 5.181 of the NPSNN (DfT, 2014) (i.e. size, usefulness, attractiveness, quality and accessibility) form the primary consideration for assessing whether the replacement land [complies with] the test contained in paragraph 5.166 of the NPSNN. The same factors are used to assess whether the replacement land is no less advantageous for the purpose of the test contained in the sections 131 and 132 of the Planning Act 2008'. The Applicant's assessment of replacement land is therefore based on the factors set out in national policy.'*
- 8.11.19 What the applicant has been invited to do, but has repeatedly failed to do, is to set out how it has concluded, as it does at paragraph D.5.47 of National Highways' Deadline 3 Submission - Other: 7.2 PS Appx D Open space v2.0 clean (REP3-108) that *'..the replacement land would be larger in quantity, equally or more accessible, useful and attractive, and its overall quality*

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would be better, and therefore it would be no less advantageous to the persons, if any, entitled to rights, and to the public...' nor on what basis it can be said that '..the benefits of the Project (including need) outweigh the loss of existing open space, taking into account the replacement land.'

8.11.20 Furthermore, the applicant states that '*These specialists have, in combination, supported the development of the replacement open space design for Ron Evans Memorial Field in consultation with stakeholders, including Thurrock Council, and the public. The assessment does not conflate quality, quantity and the timing of replacement land, noting these are not the same headings listed under paragraph 5.181 of the National Policy Statement for National Networks (NPSNN)*', but fail, yet again, to detail that '*assessment*' nor identified, as previously requested (paragraph 9.4.5 of the Council's Deadline 6 Submission - Comments on Applicant's Submissions at Deadline 4 (D4) and Deadline 5 (D5) ([REP6-164](#))), where professional judgment has been applied and by whom.

Non Statutory Relief Schemes (REP7-187 – pages 48-50)

8.11.21 As previously noted in Section 9.4.28 of the Council's Deadline 6 Submission - Comments on Applicant's Submissions at Deadline 4 (D4) and Deadline 5 (D5 ([REP6-164](#))) the statutory schemes that the applicant considers '*sufficient*' fail to assist:

- a) Those not directly impacted (no land interest acquired), but who are affected (either permanently or temporarily) and need to sell, etc.; and,
- b) Those who will suffer construction related issues (noise, dust, etc.).

8.11.22 This failure is recognised by the promoters of the non statutory relief schemes referenced (by way of example) in Section 9.4.29 of the Council's Deadline 6 Submission - Comments on Applicant's Submissions at Deadline 4 (D4) and Deadline 5 (D5 ([REP6-164](#))).

8.11.23 Whilst it is acknowledged that any non-statutory policy would require a Special Payment application, the applicant gives no indication whether such an application was even so much as considered, much less actually made.

Robustness Economic and Engineering Appraisals (REP7-187 – pages 57-61)

8.11.24 The Council provides comments on this section in Section 9.3 below.

9. Applicant's Comments on IP Responses on D6 and D7 Submissions – Transport Issues

9.1 Introduction

9.1.1 This Section provides further comment and analysis of traffic issues.

9.2 Traffic Matters ([REP7-187](#) page 26-53)

9.2.1 The applicant has submitted further information on traffic counts from TomTom and NH TRIS count locations in support of their proposition that:

'traffic volumes (particularly on the strategic road network, but also on the local road network) have already returned to, and in some cases exceed, levels seen before the COVID-19 pandemic. This is important to note, as there was concern that traffic volumes would never recover.' (quote taken from bottom of page 26 of [REP7-187](#))

9.2.2 They report in the Conclusions (page 43 of [REP7-187](#)) that:

'The Select Link Analysis using TomTom data presented shows a very close match of distribution patterns using the Dartford Crossing between 2019 and 2023. This indicates that the patterns of movement using the crossing have not been significantly impacted by the COVID-19 pandemic'

and

'The TRIS traffic flow analysis shows a mixed picture where in some locations traffic flows were lower in 2023 than in 2019 and in other locations vice versa.'

9.2.3 The Council has no reason to challenge the general conclusions of the applicant that the traffic counts on the specific sections of highway near and related to the Dartford Crossing were (on average) broadly similar in 2019 and 2023.

9.2.4 The applicant asserts that as the observed pattern of flows near and related to the Dartford Crossing was broadly similar in 2019 and 2023, the need for the project and the benefits it would produce is unaffected by the experience of Covid (and, implicitly any of the other important developments affecting traffic in the same period).

9.2.5 Therefore, the applicant claims that the case for LTC remains as strong as they had claimed in the DCO application.

9.2.6 The Council contests this conclusion.

9.2.7 The key question is not whether Covid permanently reduced traffic levels, but whether the traffic growth which the applicant confidently asserts will return over the whole appraisal period, would (a) rapidly produce the previously forecast level, or (b) would catch up to the previously forecast long term rate of growth, but with a four-year delay, rolled forward.

9.2.8 If traffic rapidly returns to the previously forecast level, the traffic picture in 2030, say, would be broadly the same as the applicant had previously forecast.

9.2.9 If, however, traffic catches up with the long term forecast, but with a four-year delay, traffic flows in each successive year would be significantly less than the earlier forecasts,

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- systematically over the whole forecasting period (or at least the earlier part of it). This is important due to the effect of discounting, which gives more weight to earlier impacts.
- 9.2.10 The appraisal of need and benefit would differ significantly in the two cases: rapid return to previous level of four-year delay to traffic growth.
- 9.2.11 The applicant is asserting that traffic flows are similar in 2019 and 2023. However, the traffic flow forecasts are based on traffic flows in 2016 and growth levels which do not reflect the impact of the pandemic. This means that the traffic flows assumed by the applicant in 2023 (for example) are higher than the actual flows in 2023, which the applicant's evidence shows are similar to 2019. This means that actual traffic flows in 2023 are lagging four years behind the forecast traffic flows in 2023. Further details on this issue were provided in Section 10.3.44 of the Council's D6 submission ([REP6-164](#)), which stated that 50% of the growth forecast by the applicant has not materialised. This means that the forecast traffic flows are an overestimate and hence the associated economic benefits of LTC are overestimated. This is important given the low value for money of LTC.
- 9.2.12 There is a further reason why the similarity in cross-river traffic flows near Dartford Crossing fails to give confidence that the need for and benefits from the project remains unaffected by Covid and other changes since 2016.
- 9.2.13 This reason is that traffic counts at Dartford Crossing are a much too limited metric to make this conclusion, given that LTC is a transformative scheme, which will affect traffic flows across a wide area on both sides of the River Thames. The applicant's comparative analysis ignores the effect of changes in traffic speeds, levels of congestion and the location of these across the wider network. This issue is covered in more detail in following sections.
- 9.2.14 The Council do not accept that it would be proper for the ExA to recommend consent when such a central and necessary part of establishing value for money overall and the resulting traffic conditions at Dartford Crossing, have simply not been provided. They could and should have been and the absence of this data means that the ExA is unable to make its decision on the basis of the data required.
- 9.2.15 The applicant has continued to assert that analysis of traffic counts at Dartford Crossing is sufficient information to demonstrate that further analysis of the scheme is not required. This is an untenable and unsubstantiated position. The applicant is deliberately and consistently resisting the need to provide the transparency required for fear of the truth impacting the basis of a scheme, that has so far consumed circa £1bn in costs.
- 9.2.16 This is the largest single project in the road programme. The DCO Examination process has produced huge volumes of figures and tables at great public expense.
- 9.2.17 But at best LTC has a low, and possibly negative, net value. Acutely aware of this the applicant has continually resisted producing reliable information, even the really relevant information they already have, which might show it in an even worse light. It is clearly not engaging appropriately or reasonably in the DCO process and shows contempt through its consistent gamesmanship.
- 9.2.18 **Summary: the applicant has provided TomTom data and other data for Dartford Crossing and maintains that traffic flows in 2023 are broadly similar to flows in 2019. The applicant asserts that this similarity means that their assessment of LTC is robust. The Council strongly contests this conclusion. Relying on traffic counts at Dartford Crossing is much too limited a metric to make this conclusion given the LTC is intended as a transformative scheme, which will affect traffic flows across a wide area on both sides of the River Thames. The applicant's comparative analysis ignores the effect of changes in traffic speeds, levels of congestion, and the location of these**

across the wider network and this means that changes experienced in travelling behaviour since 2016 across the area affected by LTC have not been properly assessed. The Council does not accept that it would be proper for the ExA to recommend consent for LTC, when such a central and necessary part of establishing value for money overall has simply not been provided; and, because of the clear and consistent mis-representation of the resulting traffic conditions at Dartford Crossing that have been presented to the public through extensive rounds of consultation and during the Examination.

9.3 Robustness of Economic and Engineering Appraisals ([REP7-187](#) pages 57-61)

9.3.1 The following section has been compiled by Prof. Phil Goodwin and show be recognised for its veracity and integrity accordingly.

Correction

9.3.2 As part of our response the Council needs to correct a mistake that was made in the wording of a footnote in the Council's D6 submission ([REP6-168](#)).

9.3.3 A footnote was included within Table 3M.1 in Appendix M of the submission ([REP6-168](#)), in relation to the prospective DfT VAT adjustment for carbon, the phrase 'Approximate average - 0.5 adjustment on BCR figures above.' In fact this specific adjustment would have a considerably lower impact on the Project's BCR, as the applicant asserted and the Council accepts.

9.3.4 In our phrase, the units were inadvertently omitted. The statement should actually read: *'Approximate average -£0.5 billion adjustment to the net present value of benefits, which would have further downward effects on all the Project's estimated BCRs'*.

9.3.5 It should be noted that this is quite separate from the issue of whether the quantity of carbon has been fully and accurately estimated in accordance with best practice, which we have commented on in Section 5.18 of the Council's D6 submission ([REP6-164](#)) and Section 10.14 of the Council's Local Impact Report ([REP1-281](#)).

9.3.6 Also, which was not made clear, the estimate of -£0.5 billion relates to the combined effect of both the higher value of carbon and the VAT adjustment. This correction has no consequential effect on any of the other recalculated BCRs in the table.

9.3.7 A revised version of the table is presented below for completeness.

Table 9.1 Results of Sensitivity Tests on the Estimated Value for Money of LTC

	Low Growth	Core Growth	High Growth
2016 NH Favoured scheme adjusted BCR		3.4 High VFM	
2020 NH estimate (withdrawn)		1.44 Low VFM	
2022 DCO with p=2.5 (as reported in the Application)	1.09 Low VFM within sight of zero NPV	1.22 Low VFM	1.36 Low VFM

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	Low Growth	Core Growth	High Growth
2023 with p=4 as recommended by DfT and standard value of carbon	1.01 Borderline zero net present value	1.22 Low VFM	1.43 Low but within sight of VFM
2022 p=2.5 and high value of carbon	0.99 Borderline zero net present value	1.12 Lower VFM within sight of zero net	1.25 Low VFM
2023 p=4 and high value of carbon	0.90 Negative net present value, poor VFM	1.12 Lower VFM within sight of zero NPV	1.15 Low VFM
Prospective DfT VAT adjustment carbon	Approximate average -£0.5billion adjustment to the net present value of benefits, which would have further downward effects on all the Project's estimated BCRs		
Note: these calculations do not take account of an apparent anomaly with the assumed traffic growth between 2016 to 2023, with DfT analysis showing zero growth based on observed values and LTAM indicating an increase in traffic flows over the same period. This discrepancy may affect the calculation of traffic levels, therefore benefits, cost and value for money, for the period after 2023.			

- 9.3.8 This analysis continues to show that the BCR for LTC has reduced significantly over time and has low or poor Value for Money.
- 9.3.9 This provides further evidence that the BCRs for LTC continues to reduce and reinforces the evidence provided in Figure 11.1 of the Council's Deadline 6 submission ([REP6-164](#)) showing the reduction in BCR for LTC each time the appraisal is re-run.
- 9.3.10 Given the evidence provided by the Council, the low starting point for LTC's BCR and the downward trajectory for major infrastructure schemes, there can be little confidence that the next iteration of the economic analysis will demonstrate more benefits than costs.

Relevance of Updating the Appraisal

- 9.3.11 The Council notes that the applicant makes no critical comment on the actual magnitude of all the other figures in our Table M3.1.
- 9.3.12 The Council are therefore now more confident that if the applicant had made, or has made, such calculations themselves, on the assumptions stated, and with the required additional information to scrutinise them, their model would have given broadly the same results.
- 9.3.13 Wider effects of other variables in the Common Analytical Scenarios would logically increase the range of effects on the BCRs, which are discussed further below.
- 9.3.14 The essential difference between the applicant's approach and ours is about the application and relevance of DfT guidance.
- 9.3.15 The applicant's position ([REP7-187](#) page 57):

'The Applicant does not consider it proportionate to update its modelling and appraisal work whenever there is a change in the DfT's guidance, where this change occurs after submission of its DCO application. This position is supported in national policy at paragraph 4.7 of the NPSNN, which notes that TAG is updated regularly but states that 'updated guidance is only

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expected to be used where it would be material to the investment decision...’ which it would not be in the Project’s case. The transport modelling using NTEM 8 and the Common Analytical Scenarios was undertaken to demonstrate that the need for the Project and the relief provided by the Project at the Dartford Crossing, compared to the Do Minimum situation, remained with the revised traffic growth forecasts and in each of the Common Analytical Scenarios.’

9.3.16 The applicant’s wording ‘The modelling... was undertaken to demonstrate that...’ rather than ‘the modelling ...was undertaken to test whether...’ is unfortunate, but does seem to represent the applicant’s intent.

9.3.17 The applicant’s logic here is:

- a. It was not necessary to update the appraisal because it would not be material to the investment decision;
- b. Therefore, it was only necessary to demonstrate that there was still a need for the project, not to measure the strength of that need;
- c. Forecast traffic counts at and near Dartford Crossing are the appropriate metric of need;
- d. The forecast traffic counts at and near Dartford demonstrated that traffic counts at Dartford Crossing would continue to be lower with the LTC than without, under a wide variety of assumptions;
- e. This was sufficient evidence to demonstrate continued need; and,
- f. Therefore, further modelling and appraisal would not be material to the investment decision.

9.3.18 This reasoning is completely circular, as shown by Figure 9.1 below.

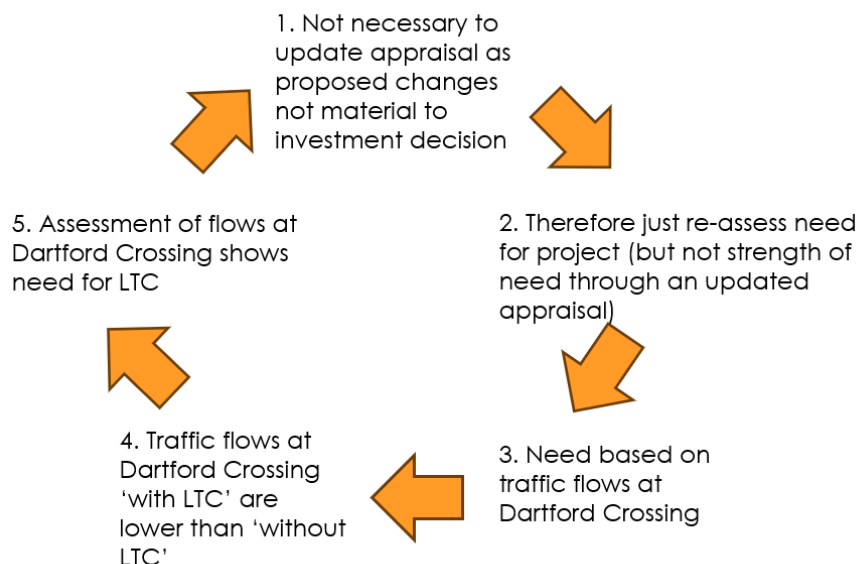


Figure 9.1: Circular reasoning concerning appraisal

9.3.19 The form of modelling used and the introduction of extra capacity at LTC means that the model is incapable of producing any other result than (d) above. Therefore, using this metric must in all cases show **some** level of relative relief at Dartford Crossing. Therefore, it would

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never be necessary to update the appraisal. The scale of that relief, and its cost, and whether the benefit justified the cost, would not be re-examined. This could have been stated without any modelling being necessary.

9.3.20 A further reason advanced by the applicant for not updating the appraisal was its excessive cost. However, the Council argues below that this is not the case, as the amount of time and resources already spent on calculating the Dartford Crossing traffic flows represents an unexpectedly high proportion of the total resources that would be necessary to complete a full assessment.

The Council's Position

9.3.21 The Council bases its case on the same quotation from paragraph 4.7 of the NPSNN, which notes that TAG is updated regularly and states that *'updated guidance is only expected to be used where it would be material to the investment decision...'*

9.3.22 It is clear from this if the applicant's assertion concerning materiality (**'which it would not be in the Project's case'**) is wrong, then the updated guidance would become important.

9.3.23 The relevant 'updated guidance' in this case is the explicit DfT advice, in TAG Unit M4 (Forecasting and Uncertainty), para 4.1.1, which states the key questions which analysis of uncertainty should address:

'Key questions include:

- ***Under high demand assumptions, is the intervention still effective in reducing congestion or crowding, or are there any adverse effects, e.g. on safety or the environment?***
- ***Under low demand assumptions, is the intervention still economically viable?***
- ***Under a wide range of possible futures, does the intervention still provide value for money?'***

9.3.24 The first of these three questions include scrutiny of whether the intervention is still effective in reducing congestion. The applicant **partly** addresses this in its comparison of forecast traffic flows at Dartford Crossing under different assumptions. To meet this test the applicant would need to extend the metrics involved, so that as well as traffic flows, the Dartford Crossing metrics would have also to include travel times and costs.

9.3.25 The Council considers that the applicant must have recalculated these values, but they have declined to publish the results.

9.3.26 The second and third questions, of economic viability and value for money, cannot possibly be addressed without updating the assessment of effects on the wider network, travel times, congestion, safety and the environment.

9.3.27 So, the question is, whether the calculation of economic viability and value for money, advised in TAG note M4, would be material to the investment decision.

9.3.28 At the time of the DCO submission, the applicant already recognised that using DfT standard definitions, the project offered *'low value for money'*, with a BCR of only 1.22. In addition, the applicant's submission showed that the congestion relief at Dartford Crossing itself, and elsewhere, contributed less than a half of the total estimated benefits and would not nearly be enough to justify the investment of £8bn-£9bn.

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- 9.3.29 Including the standard assumption for low traffic growth applicable at that time, the applicant already acknowledged that the BCR was even lower at 1.09:1 (taken from Table 11.3 of [APP-526](#)).
- 9.3.30 The revised guidance from DfT published in August 2022, was to take into account a wider spread between 'low' and 'high' traffic growth, and also, in the new Common Analytical Scenarios (CAS), to take account of other changes, which would affect scheme appraisal through explicit changes in economic growth, value of time, travel costs, trends in behaviour and choice, vehicle technology and the environment. Each of these affects net present value and benefit-cost ratios in other mechanisms than simply traffic growth.
- 9.3.31 The applicant has already recognised that the CAS are appropriate, but has chosen not to update the appraisal. The applicant has only sought to demonstrate a continuing need for LTC as measured by the minimalist feature that in all of the scenarios traffic flows at Dartford Crossing would be, to a varying extent, less with LTC than without LTC. But, as shown above, this measure could show nothing else.

Prima Facie Evidence that applying the revised guidance would be material to the investment decision.

- 9.3.32 In our calculations presented in Table 8.1 above the Council makes a case that the revised calculations include several likely outcomes where **the costs exceed the benefits**.
- 9.3.33 The Council asks the ExA to consider: what if those calculations might be correct? What if, as the Council asserts, the applicant would also come to that conclusion if they updated their analysis? How then can it possibly be argued that this is 'not material to the investment decision'?
- 9.3.34 The Council also note that the ExA also asked, in the same words as the DfT Uncertainty guidance:

'Under low demand assumptions, is the intervention still economically viable?', and 'Under a wide range of possible futures, does the intervention still provide value for money'.

- 9.3.35 The Council contends that the ExA must also take the view that these questions are material to the investment decision and it is within the competence of the Examination to scrutinise these calculations in giving approval, or otherwise, to the application.
- 9.3.36 The proposition that such a reconsideration of the analysis will only be done **after** approval is given to the scheme would mean that the ExA's recommendation would have to be made without being able to endorse, or even assess, the applicant's own confidence that it provides acceptable value for money.
- 9.3.37 Guidance from the DfT includes the TAG Uncertainty Toolkit, which emphasises the importance of communicating the results of both qualitative and quantitative results of the Common Analytical Scenarios, including:

'3.24 Higher Impact schemes: examples of higher impact schemes are high impact investment programmes e.g. Roads Investment Strategy or strategic national transport studies. The Common Analytical Scenarios should be used.

Justification should be provided if certain scenarios are discounted e.g. they have already been considered at an earlier phase of work. Other sensitivities and uncertainty techniques should be used to communicate the range of uncertainties. A comprehensive risk analysis of all quantifiable variables that feature in the forecasting and appraisal such as cost and elasticities should be performed.'

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9.3.38 **In summary:**

- a. The applicant asserts that they have reported all the detailed calculations of BCRs and value for money that they are required to in the original submission, and since subsequent tests would not have made any material difference to the appraisal, the only purpose of the subsequent calculations and tests relates to the forecasts of number of movements at Dartford Crossing. The Council replies that there is a very strong prima facie evidence that such a reappraisal would be very **material** to the appraisal, and therefore the main reason for the refusal of the applicant to update their assessment is not valid.
- b. The applicant asserts that any further calculations of value for money are between them and the DfT and they to be reported after the Examining Authority has given approval to the scheme: these calculations of value for money are therefore not the business of Thurrock Council – nor, therefore, subject to scrutiny by the Examining Authority. We reply that there is no statutory or logical basis for this.

9.3.39 The applicant also suggests that the calculations that the Council have reported are 'cherry picking' of assumptions that suit our case, whereas when the applicant do report their own calculations to the DfT, after approval has been given, they plan to give a more balanced assessment, which includes elements that increase the calculated value for money, such as an expected increase in the value of time.

9.3.40 This is an interesting foretaste of what might be included, but we would add a caveat that it does not necessarily follow that an increase in the value of time will unambiguously increase the benefits of the project.

9.3.41 This is because such a change will increase the proportion of generalised cost that is made up of time, and hence increase the proportion of induced traffic generally (both for cars and, as the Council has pointed out previously and has been reluctantly agreed by the applicant, for LGVs and possibly HGVs also) and will increase the deterrent effect of travel time on traffic growth generally.

A priori evidence that appraisal using the Common Analytical Scenarios will affect the Investment decision

9.3.42 The earlier tests concerning the BCR (included in the original DCO application) only really considered high and low traffic growth, without distinguishing any particular mechanisms for the distinction.

9.3.43 The applicant has already demonstrated in the application itself that within the range 'low' to 'high' traffic growth the effect on the economic appraisal was substantial, magnified significantly beyond the degree of change in traffic counts at Dartford Crossing.

9.3.44 Since the range of traffic to be considered now is wider than it was then, logically the range of results in the economic appraisal must also be wider.

9.3.45 However, using the CAS approach rather than one focused only on traffic growth raises changes important to the appraisal.

9.3.46 This may be seen in the DfT summary definitions of the difference in definition of the different scenarios, which was copied by the applicant in its submission and is repeated below for convenience (Table 2.1 of [REF3-145](#)).

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Table 2.1 Description of CAS in TAG Uncertainty Toolkit

Scenario	Narrative: "This scenario captures a future where..."	Core features or components
High Economy	... productivity growth returns to its long-term trend, and people become richer than we currently expect. Migration, and population in general, increases above official forecasts.	GDP – 10% higher in 2050 relative to core assumptions Population - GB total reaches 77.7m by 2050 Employment - 12% higher in 2050 relative to core assumptions
Low Economy	... productivity growth fails to return to historic levels and inwards migration is subdued, causing low levels of total population growth.	GDP – 31% lower in 2050 relative to core assumptions Population - GB total reaches 64.6m by 2050 Employment - 7% lower in 2050 relative to core assumptions
Regional	... people leave London, the South East and the East of England in search of more affordable housing. As a result, there is lower employment and population growth in these regions relative to the rest of the country. Areas outside of the South increase their relative level of competitiveness through an increase in productivity.	Population/ Households/ Employment – core redistributed, so that regions outside London, the South East and the East of England grow at at least the growth rate of the whole country, if not already higher. London, the South East and the East of England are then adjusted downwards, so that the whole country's growth rate is maintained.
Behavioural Change	... people embrace new ways of working, shopping and travelling. Important behavioural trends which have emerged in recent years accelerate, in part because of the Covid-19 pandemic, which include: changes in the travel behaviour of young people; increased flexible working; and increased online shopping.	Trip Rates - extrapolation of existing trip rate trends by purpose, meaning overall trips continue to fall, although some purposes do increase Licence Holding - reduced rates among younger cohorts throughout forecast period LGV (Light Goods Vehicles, vans) trips - increased, reflecting reductions in shopping trips and an increase in deliveries from online shopping.
Technology	... road travel becomes far more attractive and accessible to road users because of a high take-up of connected autonomous vehicles (CAVs), which enter the fleet in the 2020s and make up to 50% of it by 2047.	Trip Rates – elderly trips rates increase after 2031 Licence Holding – rates increase after 2031 to over 92% by 2061, reflecting improved accessibility due to availability of CAVs Electric Vehicles – high uptake Value of Time – perceived time cost of travel falls Car occupancy – reduced to account for zero occupancy (empty running) trips.

Vehicle-led Decarbonisation	... there is a high take up of electric and zero-emission vehicles (ZEVs). Tailpipe emissions fall. There is no intervention by government to increase electric vehicle costs, resulting in increasing road traffic.	Electric Vehicles – high uptake for both cars and freight, with no adjustment made to current costs Public transport – reduced as electric vehicles have a cost advantage
Mode-balanced Decarbonisation	... there is a high take up of electric and zero-emission vehicles (ZEVs). Tailpipe emissions fall. An unspecified intervention leads to electric vehicle costs being equalised with petrol and diesel costs, so that public transport modal share is maintained.	Electric Vehicles - high uptake for both cars and freight, with running costs (fuel and non-fuel) equalised to internal combustion engine vehicles Public transport - modal share higher than the core. [note 30]

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- 9.3.47 Differences among the scenarios at national level give rise to ranges of traffic growth, according to DfT traffic projections, of from 8% to 54% over 35 years from 2025 to 2060, equivalent to a compound annual traffic growth per year ranging from approximately 0.22% to 1.24% a year for 35 years, if it were smooth growth over the whole period. In practice it is assumed to be higher at the beginning and slower towards the end.
- 9.3.48 This range of traffic growth is not arbitrary, but arises directly from DfT modelling of the effects of the assumed underlying causes. These causes in many cases have other mechanisms for an impact on the economic appraisal besides the traffic volumes.
- 9.3.49 For example, the two scenarios focusing on alternative prospects of economic growth (typically a major source of error in the applicant's and indeed DfT traffic forecasts, as DfT acknowledge) affect traffic directly due to average incomes, and the level and structure of economic activity generally. But they also influence values of time, both influencing travellers' choices and as a key element in calculating value for money.
- 9.3.50 By contrast, the one scenario reflecting a different interpretation of trends in behavioural responses for reasons other than value of time, produces low traffic flows at the same time without assuming lower than core economic growth.
- 9.3.51 The scenarios reflecting different pace of electrification of vehicles not only affect the appraisal through the value of carbon emitted, but also because under current taxation arrangements they produce a change in the average cost of motoring which increases the traffic levels.
- 9.3.52 Underpinning all this is that higher traffic levels, especially where there is already a degree of congestion, are associated with more than proportional impacts on speeds, which enter into the value for money calculations directly.
- 9.3.53 Thus, the different scenarios will have their own impact on value for money, which had been assumed by the applicant to be identical between the simpler higher and lower traffic growth calculations.
- 9.3.54 It seems likely that this will act as a damping factor on traffic flow itself. This may be one of the reasons why the modelled flow at Dartford Crossing varies less than the overall effects of the scenarios on underlying volume of movement.
- 9.3.55 All this means that the reported differences in traffic flows at Dartford, described as 'small' or 'non material' by the applicant, will not be a good measure of the effect on the calculated benefits even at Dartford Crossing alone.
- 9.3.56 In addition to that, the scale of difference in the national CAS traffic growth will not be identical to the differences in the whole modelled area, but they will certainly show some similar features, and since a very substantial part of the value for money of LTC is assumed to come from its impacts on the whole area, the wide differences in general traffic growth will be a major component of the assessment of economic viability and value for money.

Would this require an inordinate amount of extra work?

- 9.3.57 The Council does not accept the applicant's argument that it would be an excessive burden to carry out such an updating of the appraisal (although the Council notes that no actual estimate of time or money required has been submitted by the applicant). But the reason why we consider the difficulty has been exaggerated is because of the way the very limited traffic figures on Dartford Crossings must have been calculated.

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- 9.3.58 In order to produce these detailed figures (e.g. the traffic flows at Dartford Crossing presented in Table 3.2 of the applicant's D3 submission 'NTEM 8.0 and Common Analytical Scenarios' ([REP3-145](#))), the applicant will have had to carry out the following modelling steps:
- a. The modelling of flows at the Dartford Crossing in the case of each CAS would have needed to recalculate the pattern of traffic ab initio from the characteristics of each scenario, i.e. with new forecasts which took account of the differences in income growth, fuel prices, rate of electrification, behavioural trends, the value of time affecting the relative size of money and time costs in the generalised cost, and other characteristics which define each scenario.
 - b. These components would have needed to be converted into a matrix of the generalised costs on the modelled network, with a resulting matrix of traffic flows then recalculated to enable the behavioural responses allowed for in the model (including choice of mode, route and origin-destination matching and time of day of travel), distinguishing the vehicles types and journey purposes in the same way as had been done in the original traffic forecasts, with feedback of the responses to the cost matrices to find a new equilibrium pattern of flows with a satisfactory degree of convergence.
 - c. These recalculations would have had to be done both for the 'without LTC' and 'with LTC' cases, separately for each scenario.
- 9.3.59 Thus in order to produce the extensive tables provided in the applicant's D3 submission 'NTEM 8.0 and Common Analytical Scenarios' ([REP3-145](#)) with very limited (and rather uninformative) content for traffic flows at and near Dartford Crossing, it would have been necessary to produce travel time, cost and trip matrices for all traffic in the whole modelled area.
- 9.3.60 A by-product of the calculations would therefore automatically have been a great deal of the data necessary to answer our questions about the total effect on pcu mileage travelled on the whole modelled network, the interaction of congestion effects both close to Dartford Crossing and more distant parts of the network, and the time-consuming part of the calculation of calculation of the net present values and BCRs, essentially leaving manipulation of look-up tables and spreadsheets to be carried out.
- 9.3.61 The Council considers that if all this had not been done, it is difficult to see how the reported traffic flows at Dartford could have been credibly produced.
- 9.3.62 This all means that it is a reasonable and proportionate request for the appraisal to be re-run to assess the impact of the different scenarios in details. In terms of what is 'proportionate' given LTC is the largest road scheme in the UK with a cost of £8bn-£9bn, the level of analysis must rise to reflect the scale of the scheme and its very significant impacts, particularly on Thurrock where 10% of Thurrock's land is lost to the scheme.

The inevitability of traffic growth

- 9.3.63 The applicant asserts that it is not appropriate to compare the evolution of traffic flows (or, therefore, congestion, traffic speeds and journey times) at Dartford Crossing with the conditions obtaining in 2016, or any other specific year, or in absolute terms, because traffic growth is **inevitable** with or without LTC.
- 9.3.64 The applicant considers therefore there will be an inevitable increase in traffic and decline in performance over time, after the initial improvement related to LTC. Therefore, the applicant argues that the only relevant metric is the difference between performance 'with LTC' and 'without LTC'.

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- 9.3.65 The Council would add an important caveat to this 'inevitability' as 'inevitability' does depend on the policy adopted and the range of scenarios considered.
- 9.3.66 The CAS scenarios already include two scenarios, which produce very low traffic growth over time, one due to economic conditions and the other due to changing choices. They are not mutually exclusive, and if both applied simultaneously the result would be declining traffic volumes. Similarly there are other policy choices, or developments in the wider economic and environmental conditions.
- 9.3.67 It would be correct to note that all the separate scenarios currently listed by the DfT include traffic growth, though very low growth in some cases. But there is no suggestion of 'inevitability' in traffic growth, and views on this vary within the UK, in different countries, and at different times.
- 9.3.68 With that caveat, the Council does accept the description that the current scenarios, as specified, all include some traffic growth, and the Council does endorse the applicant's suggestion that this implies a steady deterioration in traffic conditions, after an initial improvement in the 'with LTC' case.
- 9.3.69 The Council accepts that this deterioration could go below the base year, or below any specific other year chosen for comparison. But that feature is absolutely central to issues of engineering design and control, which depend on the absolute conditions not those relative to the 'without' case.
- 9.3.70 It is also important to be very explicit about this in terms of public information, for reasons of trust and transparency.
- 9.3.71 The same principle applies to the non-standard measures like wider economic effects or agglomeration, and above all environmental impact, which also can deteriorate over time: the point is very obvious that there is a difference between 'reducing carbon emissions' and 'slowing down the pace of increase of carbon emissions'.
- 9.3.72 The Council trusts that the applicant, and the ExA, and the Council, all agree on this matter.

The Present Problem for the Examining Authority

- 9.3.73 The Council understands that this situation concerning incomplete transport and economic analysis is a very serious problem for the ExA. If our advice and requests had been followed, the updating of the analysis could have been done in an informative and timely way, months ago.
- 9.3.74 The applicant's refusal to undertake this work has meant that at best the Council and the ExA could have substantially more useful information with barely any time to scrutinise it. Nevertheless, the Council still maintains that it is necessary for this analysis to be provided in terms of DfT advice and sensible decision-making.

Summary

- 9.3.75 **The applicant asserts they have completed all the required assessments of value for money as part of their DCO submission, that just examining traffic flows at Dartford Crossing is sufficient to test different scenarios and that any further calculations of BCRs etc are not relevant for the Examination. The Council continues to contest this view and there is extensive evidence that updating the appraisal would have a material impact on the outcome of the appraisal. The Council considers that further work is required to fully assess LTC against the DfT's Common Analytical Scenarios and that completing such work would not be onerous given the work already completed by the**

applicant. The Council also considers that the applicant's assumption that traffic growth is inevitable does not reflect potential future scenarios with low or negative traffic growth which would have a significant impact on the assessment of LTC and potential alternatives. The Council therefore continues to conclude that the ExA currently has insufficient evidence to determine the application.

9.4 Impact of update to DfT's TAG Uncertainty Toolkit

9.4.1 In November 2023, the DfT issued a new version of the TAG Uncertainty Toolkit, though this is described by DfT as a 'clarification' of the earlier guidance, rather than a substantive change which had already been made in the previous version. The new version is at: <https://assets.publishing.service.gov.uk/media/65539dc3c684c4000db64d49/tag-uncertainty-toolkit.pdf>.

9.4.2 The new version directly addresses some of the claims made by the applicant that the matters of value for money need not be recalculated in the CAS sensitivity tests. In our view this was already clear in the previous version, but we take the latest wording in this note. Emphasis in bold is the Council's.

1.2 'The aim of the Uncertainty Toolkit is to provide practitioners with practical advice on the analysis and presentation of uncertainty. The Uncertainty Toolkit sets out techniques for exploring uncertainty as part of transport modelling and appraisal, with a focus on the use of scenarios for assessing uncertainty around future travel demand. Further, the Uncertainty Toolkit provides a) the Department for Transport's (DfT) view of when it is appropriate to use different tools and techniques for analysing uncertainty and b) guidance on proportionality in uncertainty analysis'.

1.3 (2) decision makers need to be provided with analysis showing how different futures may affect the outcomes of the decisions they are taking today.

1.3.(4) Uncertainty should be considered holistically across the strategic and economic cases and throughout the planning process.

2.24 'Optimism bias uplifts' should be applied to account for practitioners' tendency to be over-optimistic about capital or operating costs. Where relevant, adjustments should also be made to benefits, to account for the possibility of over-optimistic calculations.

*2.43 'the use of scenarios... offers a means to **stress test** schemes against these sources of uncertainty'*

9.4.3 The question of proportionality is dealt with in Table 1 below.

Table 1 Table of Indicative Impact

	Indicative Impact		
	Low	Medium	High
Impact on public finances through budget cost or revenue risk	Tier 3 e.g. < £50m	Tier 2 e.g. £50 - 500m	Tier 1 e.g. > £500m
Corporate risk	Limited / risk of minor embarrassment	Risk of minor loss in confidence	Risk of major loss in confidence
Value for Money	Solidly within a value for money category	Close to a value for money category boundary	Bordering two value for money categories
Level of uncertainty	Input assumptions low range of uncertainty. Short lifetime e.g. <5 years	Input assumptions medium range of uncertainty. Medium lifetimes 5 – 50 years	Input assumptions high range of uncertainty. Long lifetimes e.g. > 50 years

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- 9.4.4 This shows that on the indicators used, LTC would count as 'Tier 1' on indicative impact of uncertainty under all four classes of risk, namely Impact on public finances (over £500m cost), Corporate risk ('major loss of confidence') and level of uncertainty (Long lifetime over 50 years). But especially important is the definition used to measure value for money, which relates to where the project appraisal sits within a 'value for money category'.
- 9.4.5 The applicant has shown that such sensitivity testing as was done at the DCO application stage, the value for money was close to the value for money boundary. The applicant then refused to report the value for money results for the Common Analytical Scenarios, but we have shown that the results bordered two value for money categories, which is the definition of 'High Impact' in the table.
- 9.4.6 Further, the borderline concerned was never, for example, the borderline between 'Medium' and 'High' value for money (which the applicant has never claimed).
- 9.4.7 The borderline is at best solidly within the 'low' value for money category, and the borderline concerned was the critically important boundary between having a positive net present value, and a negative net present value, or equivalently a BCR great than 1 (just) and a BCR less than 1. This self-evidently represents a more important risk than between medium and high success. It is the borderline between, on value for money, success and failure.
- 9.4.8 The advice makes it clear that serious and detailed work is necessary for such assessment:
3.16 'In all cases the scenario analysis should be clear about which scenarios enhance/weaken the scheme's viability and needs case. Schemes should consider what impacts are associated with each of the scenarios. e.g. freight impacts, emissions impacts, distributional impacts, congestion and feedback loops'.
- 9.4.9 Note that there is not the slightest suggestion that reporting estimated traffic flows alone, at one part of the network is sufficient. It needs explicit consideration of congestion and other wider impacts. Table 2 below shows the level of analysis which would be 'proportionate' at different stages of the analysis.

Table 2 Technique selection for a proportionate approach to scenarios analysis

	Low Impact Projects	Medium Impact Projects	High Impact Projects
Requirement for all schemes at all stages	Qualitative discussion of how the options developed could be impacted by the different Common Analytical Scenarios		
Recommended for Strategic Outline Cases	Qualitative discussion of Common Analytical Scenarios as described in the 'requirement for all schemes'	Proportionate quantitative analysis of scenarios critical to decision making	Proportionate quantitative analysis of scenarios critical to decision making on a subset of longlisted options
Recommended for Outline Business Cases	TAG M4 Low/High or envelope of Common Analytical Scenarios to be run and VfM reported	Critical Common Analytical Scenarios to be run, with reported VfM. Alongside this, any relevant local scenarios could be run. For scenarios not critical to decision making, there should be proportionate quantitative analysis	Critical Common Analytical Scenarios to be run, with reported VfM. Alongside this, any relevant local scenarios could be run. For scenarios not critical to decision making, there should be proportionate quantitative analysis
Recommended for Full Business Cases	TAG M4 Low/High or envelope of Common Analytical Scenarios to be run and VfM reported	Critical Common Analytical Scenarios to be run, with reported VfM. Alongside this, any relevant local scenarios should be run. For scenarios not critical to decision making, there should be proportionate quantitative analysis	Critical Common Analytical Scenarios to be run, with reported VfM. Alongside this, any relevant local scenarios should be run. For scenarios not critical to decision making, there should be proportionate quantitative analysis.

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- 9.4.10 The particularly important recommendation here, relevant to the current disagreement between the Council and the applicant, is the distinction between analysis necessary at the 'Outline Business Case' and the 'Full Business Case'. The applicant has consistently said the sort of analysis that the Council have requested is only relevant at the 'Full Business Case' stage, which it would be their policy only to report **after** the Examination recommends acceptance of the scheme.
- 9.4.11 There is no support for this proposition for a project of this scale: what is very clear and unambiguous in the DfT advice is that *value for money should be calculated for each of the common analytical scenarios for the Outline Business cases also*, not only for the high impact projects, such as LTC, but even for the low impact projects. Value for money calculations are critical and universally required for all Outline Business Cases, as the relevant row in the table above shows.

Recommended for Outline Business Cases	TAG M4 Low/High or envelope of Common Analytical Scenarios to be run and VfM reported	Critical Common Analytical Scenarios to be run, with reported VfM. Alongside this, any relevant local scenarios could be run.	Critical Common Analytical Scenarios to be run, with reported VfM. Alongside this, any relevant local scenarios could be run.
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Covid and other changes in demand trends.

- 9.4.12 Note also the importance of the 'Behavioural Change Scenario' which gives 'substantially lower (or negative) traffic growth over much of the forecast period') and is the only scenario which includes the expected long run impact of Covid:

5.30 'The Behavioural Change scenario considers a world in which people embrace new ways of working, shopping and travelling, including remote and flexible working and online shopping. Trends which have been observed in the 2010s are accelerated by the Covid-19 pandemic and extrapolated until 2040. **The result is substantially lower (or negative) traffic growth over much of the forecast period. This is the only NTEM/TEMPro scenario which explicitly accounts for the expected long-run impact of the Covid-19 pandemic**'.

- 9.4.13 It is explicitly not the DfT's view that traffic trends will go back to the pre-covid 'normal'. **This is shown in Table 7 of the DfT's guidelines:**

Table 7 Trip rate changes and relative change to core scenario in 2041 for the Behavioural Change scenario

Purpose (Home-based)	Average annual percentage change in trip rates	Ratio of trip rates relative to the core scenario in 2041 (held constant until 2061)
Work	-2.27%	61%
Employer's Business	0.02%	92%
Education	-1.56%	60%
Shopping	-1.77%	70%
Personal Business	-1.14%	59%
Recreation/Social	-0.46%	80%
Visiting friends & relatives	-1.81%	45%
Holiday / Day Trips	0.48%	119%

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9.4.14 There seems to be not the slightest indication in the applicant's analysis that they have even noticed this element of the DfT advice, let alone taken it seriously.

Changes in the Calculation of Risk from Excessive Cost Increases

9.4.15 DfT has revised its guidance on calculation of the risk that costs may increase. This is contained in Revised TAG Unit A1.2, November 2023, at <https://assets.publishing.service.gov.uk/media/655b735dd03a8d00d07fcdc/tag-unit-a1-2-scheme-costs.pdf>

9.4.16 The Council anticipates that the applicant will argue that this advice is irrelevant to the Examination, because (a) it is too late to take into account; or (b) it is essentially the same as the method they used already, allowing for the possibility of real cost increases; or (c) changes in cost expectations are only relevant to calculation of value for money, which it is not necessary to take into account until after approval has been given to the scheme; or (d) it would be too much work to recalculate; or indeed some combination of these.

9.4.17 The applicant's previous discussion of cost risk was reported in the original sensitivity tests, included in our submission in response to the applicant's comments and copied again below for convenience.

Table 11.5 BCRs for P10, Most Likely and P90 costs (£m, 2010 prices and values)

	P10	Most Likely	P90
Level 1 PVB	1,295.9	1,295.9	1,295.9
PVC	1,846.9	2,700.2	4,140.1
Initial BCR	0.70	0.48	0.31
Journey time reliability	487.1	487.1	487.1
Wider economic impacts	1,516.6	1,516.6	1,516.6
Level 2 PVB	2,003.7	2,003.7	2,003.7
Level 1 and 2 PVB	3,299.5	3,299.5	3,299.5
PVC	1,846.9	2,700.2	4,140.1
Adjusted BCR	1.79	1.22	0.80

Headroom for cost increases

9.4.18 The applicant reported under the 'P90' assumptions that these represented an increase in cost from a net present value of £2,700.2m to £4,140m, which reduced the estimated Benefit-Cost Ratio from the 'most likely' (at that time) of 1.22 to 0.80.

9.4.19 This was the greatest drop in BCR reported by the applicant of any of the sensitivity tests, equivalent to an estimate that the calculated benefits, even including the Level 1 and less well-established Level 2 benefits, would only cover 80% of the worst case costs. The 'most likely' case was that the benefits would be more than the costs, by (£3,299.5m - £2,700.2m = £5,993m), i.e. there was an estimated headroom of roundly £600m, by which costs could be allowed to rise before the net benefits reduced to zero.

9.4.20 In the test, costs would rise to £4,140.1m, i.e. roundly £1,440m, over twice the estimated headroom.

9.4.21 However, in this test it was assumed that the benefits all remained at the full value as reported in the then core estimated value of benefits, without any effect of the then carried out

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calculation on sensitivity of the benefits to high and low case traffic growth, and before any of the sensitivity tests on Common Analytical Scenarios, for which the applicant did not recalculate the value of benefits, but could (and in our submission should) have done.

- 9.4.22 The Council made some estimates of the effect of these, reported in the Council's D7 submission, which the applicant has not challenged in content, though argues they are not relevant.
- 9.4.23 Now the main point in these recalculations was that there were some realistic cases where the value of benefits were less than the applicants core case.
- 9.4.24 If, for example, the effect of a reduction in the BCR from 1.22 to 1.1 is taken, which were driven only by changes in the estimated benefits and still keeping to the applicant's calculation of 'most likely' costs. In this case, the headroom by which costs might be allowed to increase before reducing the net benefits to zero, reduced from the headroom of £600m to roundly £270m, less than half the allowance. In the cases where NPV of benefits was 1.0 or less, there would be no allowable headroom for cost increases at all.
- 9.4.25 Therefore, the project is even more vulnerable to cost increases than had already been demonstrated by the applicant under its P90 assumption.
- 9.4.26 The particular scenarios where this would be most concerning for the value of money of the project would be those where higher traffic growth was driven by growing economic activity, since this condition is one where construction and other costs would be in competition with other economic activity and cost inflation likely to be greater than average inflation.
- 9.4.27 But the main point is that there is almost no room for cost increases at all before the value for money of the project is seriously damaged. This had already been demonstrated by the applicant's own calculations at submission of the DCO. There is nothing in the new advice that reduces this vulnerability and the new advice on uncertainty reduces what narrow margin for error there might have been.
- 9.4.28 Given that it had already been demonstrated that the risk of cost increases would be most damaging for the economic viability of the project, the current situation is that that risk is higher, not lower.
- 9.4.29 **Summary: in November 2023 the DfT provided a new version of the TAG Uncertainty Toolkit. This guidance confirms previous guidance and demonstrates the need for the appraisal of LTC to be updated to reflect the Common Analytical Scenarios in an appropriate and robust way. The guidance makes it clear that LTC is a Tier 1 scheme because of its cost (>£500m), Corporate Risk, Level of Uncertainty (due to >50 year lifetime) and most importantly because of its low and borderline value for money. There is no support for the applicant's assertion that there is no need to update the business case until after the ExA has determined the scheme. The 'Behavioural Change Scenario' is particularly important as this shows there is a scenario where traffic flows do not return to a 'pre-Covid' normal. This scenario needs to be assessed. There is also further guidance on how to treat potential increases in costs. The Council's analysis shows that LTC is even more vulnerable to cost increase than had already been demonstrated by the applicant under its P90 cost assumption. This is particularly concerning given the low value for money of the scheme and there is almost no room for cost increases before the value for money is serious damaged.**

9.5 Mitigation (REP1-877 page 69)

- 9.5.1 The applicant provides further comments concerning their approach to mitigation and states:

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'The Applicant confirms that where mitigation is required it has been identified and secured within the draft Development Consent Order (REP6-010) or through other agreements (such as S106 agreements) as set out in the Consents and Agreements Position Statement (REP6-014), and that the Applicant is not relying on funding through the RIS programme to address these impacts'.

- 9.5.2 The Council continues to consider that required mitigation has not been secured and this is the basis for the need for the Requirements as set out in Section 3 above.
- 9.5.3 The Council has again reviewed the relevant paragraphs of the NPSNN and considers that it is clear that the applicant has not reflected the policy requirements presented in these paragraphs.
- 9.5.4 Paragraphs 3.2 and 3.3 state:

Environment and social impacts

- 3.2** The Government recognises that for development of the national road and rail networks to be sustainable these should be designed to minimise social and environmental impacts and improve quality of life.
- 3.3** In delivering new schemes, the Government expects applicants to avoid and mitigate environmental and social impacts in line with the principles set out in the NPPF and the Government's planning guidance. Applicants should also provide evidence that they have considered reasonable opportunities to deliver environmental and social benefits as part of schemes. The Government's detailed policy on environmental mitigations for developments is set out in Chapter 5 of this document.

- 9.5.5 The relevant principles with respect to the NPPF are provided Section 9 'Promoting Sustainable Transport'. The critical paragraphs are:

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.

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- 9.5.6 Paragraph 110(d) is clear that 'significant' impacts, including those relating to 'capacity and congestion' should be 'mitigated to an acceptable degree', with the caveat is that it should be 'cost effective' to do so.
- 9.5.7 This matches NPSNN paragraphs 215 and 216, which again signal that mitigation measures should be proportionate and reasonable and should focus on promoting sustainable transport.

Mitigation

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.

Road and rail developments

5.217 Mitigation measures may relate to the design, lay-out or operation of the scheme.

- 9.5.8 This is exactly what NPPF paragraph 110(a) - (d) says. The statement in NPPF in paragraph 110(d) is as clear a statement as one could possibly hope to find that mitigation of significant effects is necessary, so far as proportionate. It is clear that this is both NPPF policy and NPSNN policy.
- 9.5.9 This mean that given the traffic impacts identified through the VISSIM modelling, there is a need for the applicant to mitigate these impacts to be in accordance with NPSNN and NPPF.

Getting Britain Building Again

- 9.5.10 On 24 November 2023, the Government announced a number of measures designed to bring down the consenting time for nationally significant infrastructure projects (NSIPs), including a new 'ministerially led forum' to 'drive' delivery, publishing spatial data on such schemes and confirming a one-year 'fast-track' route for certain developments. The department for levelling up, housing and communities (DLUHC) subsequently published a policy paper that was entitled '[Getting Great Britain building again: Speeding up infrastructure delivery](#)'.
- 9.5.11 The Government, in that policy paper describe a number of themes relating to speed, certainty, simplicity, delivery, long-term reform and next steps. It is clear, however, that progress on these measures will take place over the next 12 months and will not commence until spring and summer and the end of 2024. Clearly therefore these measures will not and cannot apply to the LTC DCO application.

10. Updated Evidence or Information Outstanding and/or Missing from DCO

10.1 Introduction

10.1.1 The Council submitted within its D1 LIR submission ([REP1-281](#)) in Section 6.4 (in July 2023) a complete list of information and evidence missing from the applicant's DCO application.

10.1.2 At that time, the Council stated *'In considering this vast amount of missing robust evidence and information in the LTC DCO submission documents, it is information which has either not been produced by the applicant at all or has been produced but not shared with the Council, despite various written requests. Without clear visibility of crucial evidence, the Council have not been properly informed to enable the Council to make full assessment of the scheme benefits, disbenefits and impacts, which has resulted in a large number of SoCG issues and PADs. Missing evidence is listed below, with summary of why evidence is required, which is explained in full within various other subsequent Sections of this LIR.'*

10.1.3 Consequently, the Council has revisited this list and updated it in Table 10.1 below.

Table 10.1: Evidence and Information Missing from DCO Application

Lack of Missing or Missing from DCO	
1	Strategic Green Belt Assessment for the selection of preferred route, based on the purposes and openness of the Green Belt, as set out in NPPF. Then a detailed Green Belt Assessment for the preferred route, based on the purposes and openness of the Green Belt, as set out in the NPPF, to inform the design.
2	<p>Microsimulation Modelling is required at the following locations for LTC operations:</p> <ul style="list-style-type: none"> ▪ Orsett Cock <ul style="list-style-type: none"> - This localised modelling has been the subject of significant time at the Examination, but has demonstrated the weakness of the applicant's evidence and case. The localised modelling has shown that it does not align with the LTAM strategic model; it is not acceptably prepared; and, demonstrates significant problems with the applicant's proposals and the unresolved impacts. ▪ The Manorway <ul style="list-style-type: none"> - The localised modelling for this junction was not developed either before the submission, prior to Examination or during Examination. The concerns over operational impacts at this junction remain unanswered and unresolved. - An unaccepted forecast model was presented by the applicant and was not supported by a base model (agreed or otherwise). ▪ Daneholes and Marshfoot junctions: <ul style="list-style-type: none"> - Base Year model East-West microsimulation model was complete but not submitted as part of the DCO evidence - Forecasts were presented but were not agreed by the Council. - No further submissions were made during the Examination.

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Lack of Missing or Missing from DCO	
	<ul style="list-style-type: none"> ▪ Five Bells junction <ul style="list-style-type: none"> - Microsimulation modelling was required to assess impacts; - A simplistic Junctions 10 model was submitted to the Examination which did not respond to the impacts forecast by the applicant. This was rejected by the Council, as it was of no relevance to the problem. Nothing further was submitted by the applicant and no further submissions were made by the applicant. The applicant has subsequently recognised the moderate adverse impacts at that junction on its D7 submission (REP7-142 Plate 1.3). ▪ A1012/Devonshire Road <ul style="list-style-type: none"> - Microsimulation modelling was required to assess impacts and has not been provided. ▪ Tilbury Junction <ul style="list-style-type: none"> - No modelling has been provided to inform the analysis of the proposed Tilbury junction <p>Further work should have been carried out to refine the operational and emergency access. A protective Requirement is being developed but is not well supported by the requisite assessment and outline design.</p>
4	<p>Missing Traffic Modelling – ASDA Roundabout – LTC operations and construction periods</p> <ul style="list-style-type: none"> ▪ A1089 Asda Roundabout <p>The applicant provided two submissions to seek to consider the impacts at this junction. Neither was acceptable and they were rejected by the Council and the Port of Tilbury London Limited. The impacts remain unassessed and unresolved for both the construction impacts and the operational impacts.</p>
6	<p>Excavated Material</p> <p>The applicant has provided its assumptions used to identify the quantities of both excavated materials generated and placed within the order limit to the satisfaction of the Council.</p> <p>The applicant continues to state that 'earthworks'/Excavated Materials HGVs are assigned to specific routes within its LTAM Thurrock Cordon Model and assigned to specific compounds. Those compounds are contained within broad model zones and so permitted to assign across that zone and can contain more than one compound with unclear EM strategies. The applicant should provide detailed evidence on its EM/earthworks movements within the LRN and that strategy should be the basis for a capping of impacts. The applicant has currently refused to assign caps to movements associated with each compound, inferring that there is no certainty over the assessments of impacts that it has provided to the Examination and recognising the inadequacy of the LTAM strategic modelling that has been provided to the Examination.</p>
7	<p>Air Quality Assessment</p> <p>Given the substantial impacts and deterioration in air quality predicted for numerous residential properties within Thurrock, no evidence has been presented to demonstrate that the efficacy and practicability of options to mitigate the air quality impacts of operational traffic have been considered through the design process of the Scheme and the Council consider that mitigation, such as speed limits or additional physical barriers to protect the most impacted and vulnerable receptors, which would need to be secured through the DCO.</p>

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Lack of Missing or Missing from DCO	
	It would be appropriate (and in line with non-Highway related developments) to commit to undertake extensive monitoring post completion at receptors identified by the air quality assessment to have the greatest change in concentrations because of the scheme. This would provide clarity as to the actual impacts of the Scheme on air quality (and risk of adverse health effects) and support the Council in its statutory duties in regards to Local Air Quality Management and Public Health.
8	Wider Economic Benefits The applicant has been asked to provide the input and output files for the WITA2 analysis, including any masking (and any differences between it and the TUBA masking). This request remains outstanding.
9	Details on the Assessment of other modal solutions in response to Traffic Appraisal Modelling and Economics (TAME) Advice Note 2 to understand what alternative options have been considered and how they have been assessed.
10	Carbon Emissions All technical calculations, spreadsheets and workbooks that were developed and used as part of the carbon emission calculations have not been provided. The NH Carbon Valuation Toolkit was used to value the embodied carbon emissions. A copy of this has not been provided to allow full analysis of the assumptions behind it. A copy of the schemes Carbon Valuation Toolkit (including results, input assumptions and other relevant information) has been requested, but not yet received. Only the core carbon values for the carbon impacts (tailpipe and embodied) have been provided whereas many of the applicant's schemes provide both these and the high values of carbon. A copy of the calculation using the higher carbon value has been requested, but not yet received. No secondary impact assessment (as required under the EIA Regulations) has been provided on LTC's impact on the Council's obligations to deliver Government's net zero strategy. The EIA would appear not to compliant with the EIA regulations (as noted in the Council's response to the Inspector's ExQ1 (REP4-343)).
11	Local Benefit Climate Adaptation Assessment No evidence has been provided on the benefits and disbenefits of investment into climate adaptation measures by LTC. This includes no management procedures with the Carbon and Energy Management Plan (APP-552) that manages carbon and energy impacts of LTC on the local communities and the Council's ability to adapt to climate change.
12	Human Health, Equalities and Wellbeing The following methodological issues are still outstanding, clarification provided on how criteria for significance has been met and why topic assessments outlined in paragraph 10.2.5 are not considered significant. Further clarification is needed on what local weight policy has been given in the assessment and if mitigation is expected to meet local policy objectives. Clarification on what mitigation is proposed for sensitive wards outlined within the air quality assessment and how a neutral impact has been justified. Further clarification on if there has been consideration of noise and vibration impacts on WCHs during construction. Further clarification on numbers of CLG's proposed, where these might be and a list

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	<p>of topics/themes that these will cover. Clarification is needed on if the Council and other stakeholders will have input into the ECP to inform the development of the CLGS.</p> <p>Further information provided regarding what enhancement measures are in place to encourage a move away from vehicular travel in operation to achieve a positive significant effect.</p>
13	<p>Noise Assessment</p> <p>No details on Traffic Management Plan and associated noise levels to mitigate construction traffic impacts.</p> <p>No information on absolute noise levels in noise contour format to determine significance.</p>
14	<p>Draft DCO (dDCO)</p> <p>A major concern with the dDCO is the lack of justification and analysis for certain provisions. As set out earlier in this D8 submission and its Appendices, the applicant needs to justify why they require so much flexibility and how this has been balanced by the harm caused by the uncertainty to other stakeholders. This includes justifying the uncertain Order Limits and the time limit for exercise of CPO powers. Throughout the Examination process the applicant has maintained that they have struck a fair balance, however, in the Council's opinion is that this has not been quantified. Instead, it has been supported by previous examples of similar wording. This reliance on precedence is something the Council continues to find concerning.</p> <p>The Council also consider that the applicant needs to provide further justification for why it has not taken all reasonable steps to reduce the areas of land which are not subject to the restrictions of Article 28(2). Further justification should also be provided in relation to the power in Article 35(a) (ii) to temporarily possess Order Limits land that is not specifically set out in Schedule 11.</p> <p>The applicant also needs to provide its analysis of how which legislative provisions (including local legislation) may be impacted by LTC and why it is appropriate to disapply them. This includes the analysis as to whether there could be unintended consequences and why the geographic scope of the disapplication of legislation has not been set out.</p> <p>Further justification needs to be provided for the wide scope of the defence to statutory nuisance, taking into account that the requested provisions are much wider than requested in other highways DCOs.</p> <p>For Article 31(3), further information on this approach is required. This is a significant departure from standard provisions and the Council needs to understand the full implications of the proposal.</p>
15	<p>Drainage and Water Environment</p> <p>As described in Section 8.9, it is possible that exceedance flow from the Infiltration Basins could be confined to within the junction or forced onto the roads. The Infiltration Basins are located within the Junction with the A13/A1013. The Council have requested that evidence is provided to show a feasible exceedance route from the Infiltration Basins for this area that will not rely on flooding of the roads.</p> <p>The Council have some recommendations relating to Whitecroft Care Home and the associated cross-sections (REP5-092). The Council request additional cross-</p>

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	<p>sections to be produced to show the Infiltration Basin. Furthermore the Cross-Sections need to be updated to use the same terminology as the Drainage Plans Volume C (REP7-077). Cross referencing to Work No. will also be needed. This will also help in the response to ExQ3 Q10.1.1 regarding the question about Residual Risks and Exceedance routing for the Infiltration features.</p> <p>The Council request an Addendum to the Coalhouse Point Flood Risk Assessment (REP6-102) to address the concerns related to maintenance responsibility of Star Dam, impact of proposals on watercourses, and any updates that may be required to the Order limits to ensure access for operation and maintenance of the Wetland.</p> <p>A report should be provided that quantifies the residual risk of flooding at the North Portal Tunnel entrance as well as the residual risk of flooding associated with the infiltration basins in the junction north of Orsett Heath (A13 and A1013 Junction). The report should include Emergency Planning and Contingency Planning measures. This will address concerns raised in the Councils response to ExQ3 Q10.1.1.</p> <p>In the Drainage Plans (REP7-076) Deadline 7 Submission – 2.16 Drainage Plans Volume C, Sheet 24 shows the culvert (Work No. 6F) is not perpendicular to the highway. The Culvert is specified as 178m long, 1.7m height, 1.55m width and is the longest proposed culvert. The Council request the applicant to consider reducing the length of this culvert as well as provide information on additional measures that will be required for safe access and maintenance of long culverts.</p>
16	<p>Utilities</p> <p>Within the Council's LIR (REP1-281), the Council's overarching concern regarding the utilities infrastructure, including diversions, new supplies and utilities logistics hubs (ULHs), was the spread of information across the DCO, with little to no reference to information location. It was also acknowledged that the information provided is not detailed enough to be able to determine the impacts of the utilities diversions, new supplies and ULHs. It is usual for a project of this size and complexity, particularly with regards to the gas and electric NSIPs, for a standalone Utilities Section to be included, which provides a lot more detail than has been given for LTC and with detailed drawings provided. It is clear from what has been included within the DCO that further detail and information is available, however, this has not been provided. The above comments still remain and the Council has seen no evidence within the applicant's submissions of amendments to the dDCO to cover the Council's concerns.</p> <p>Issues associated with the utilities information included within the DCO have been raised previously and are included within the submitted Statement of Common Ground (SoCG) Volume 5 (APP-130). These issues include the following matters: 2.1.1, 2.1.35, 2.1.39, 2.1.64, 2.1.66, 2.1.77, 2.1.111, and 2.1.257. The SoCG Volume 5 and the Group 2 issues relating to utilities infrastructure have either been only partially resolved or not resolved at all, despite adequate time allowance for these issues to be resolved.</p> <p>Furthermore, it is clear from the assessment of the relevant DCO documents above that many of the matters raised in both the latest previous consultations and items numbers 3,6,9,10,13,18,21,22,27 and 55 of the original PADs Summary Statement (PDA-008) have not been dealt with, despite claiming successful engagement in a number of other DCO documents provided by the applicant.</p>

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<p>The applicant clarified in its email to the Council in mid-June 2023 that utility diversions were covered in over 15 main DCO documents, making clarity difficult. Therefore, with this assistance and following an assessment of documents related to proposed utility diversions (Cover Letter (APP-001), Application Form (APP-002), Sections 3.14, 13.2.10, 13.4.7, 13.4.11-13.4.15 and Table 13.2 of the Introduction to the Application (APP-003), Works Plans and Temporary Works Plans (APP-018, APP-019, APP-020, APP-021, APP-022, APP-023, APP-050, APP-051, APP-052, AS-024, AS-026, AS-034 and AS-036), Volume H – Overhead Diversion Routes and Pylon General Arrangement of the Engineering Drawings and Sections (APP-037), the Explanatory Memorandum (APP-057), notably Annex 2, which assess the overhead electric lines for the purposes of Section 16 of the Planning Act 2008, to determine whether any of them are NSIPs, ES Chapter 2 (APP-140), Environmental Statement – Appendix 1.3 (APP-334), Environmental Statement – Code of Construction Practice (APP-336), ES Appendix 12.8 (APP-448), paragraphs 5.6.1 – 5.6.25, 6.4.27 – 6.4.41, 6.4.53 – 6.4.58, and 6.6.1 – 6.6.52 of the Planning Statement (APP-495), Planning Statement Volume 7 – Appendix B (APP-497), Section 3.3.3 of the Project Design Report Part A (APP-506), Sections 4.4, 5.4 and 6.4 of the Project Design Reports Part D (APP-510 and APP-511), the HEqIA Appendix D (APP-543), and Outline Traffic Management Plan for Construction (APP-547) and having requested information from NH as part of the Community Impacts Consultation on 8 September 2021, the Local Refinement Consultation on 20 June 2022, within the submitted SoCG Volume 5 (APP-130), within the submission of the PADs Summary Statement (PDA-008) and within the Procedural Deadline C (PDC) submission (PDC-008), it is clear and notable that information and drawings within the DCO relating to utility diversions, their impacts and mitigation is not clear and is spread across several documents with limited supporting drawings. This is considered a significant deficiency.</p> <p>With regards to the identified NSIPs, the minimal and lack of detail provided within the dDCO, as well as the non-specific documentation, which looks at LTC as a whole rather than specifically for the identified electricity and gas diversion NSIPs, shows a lack of policy compliance and therefore assessment of impacts for NPS EN-1, EN-4 and EN-5.</p> <p>Information on the proposed utilities diversions, new supplies and temporary works that is provided lacks the detail expected for a project of this size, which is also considered as a significant deficiency. Of particular note in this regard are the gas and electric NSIPs, which lack detail regarding impact, policy compliance, design, mitigation, background, alternative considerations and the reasoning behind the final routing choices, and timescales. Whilst it is evident that the applicant has liaised with the statutory providers on these proposed utility works, the associated evidence showing this and the assessment of the diversions by the applicant itself is not clear within the DCO documentation.</p> <p>The Work Plans (APP-018, APP-019, APP-020, APP-021, APP-022, APP-023, AS-024 and AS-026) and Volume H – Overhead Diversion Routes and Pylon General Arrangement of the Engineering Drawings and Sections (APP-037), whilst useful as high-level plans to reference each element of work, do not provide the detail expected for both the NSIP utility diversions and the other utility diversions. Without the detail on the plans the ability to fully review the proposed utility diversions is lost. Generic lines showing routes of 'multi-utility corridors' without providing an explanation of the nature and type of utilities proposed within each multi-utility</p>

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	Lack of Missing or Missing from DCO
	<p>corridor is a failure to adequately provide the information expected and required and creates a difficulty to allow a suitable review of the proposals to be carried out.</p> <p>The Council notes that none of their above comments have been addressed by the applicant.</p>

Appendix A Council Comments on ExA's Commentary on the Draft DCO

Lower Thames Crossing

Thurrock Council Submission at Deadline 8 (D8)

Appendix A: Council Comments on ExA's Comments on Draft DCO

5 December 2023

Thurrock Council

 **thurrock.gov.uk**

Document Control Sheet

Project Name: Lower Thames Crossing

Report Title: Thurrock Council Submission at Deadline 8 (D8) – Appendix A: Council
 Comments on ExA’s Comments on Draft DCO

Doc Ref: FINAL

Date: 5 December 2023

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A.1 Council Comments on ExA’s Comments on Draft DCO (5 December 2023)

Table A1.1: Council Comments on ExA’s Comments on Draft DCO (5 December 2023)

Question No.	Details	Comments
	FOR THURROCK/IPs	
QD1 dDCO Title	Do any IPs have any submissions to make on the title of the dDCO?	The Council does not have any submissions to make on the title of the dDCO.
QD2 Structure	Do any IPs have any submissions to make on the structure or broad function of the provisions in the dDCO?	The Council does not have any submissions to make on the structure or broad function of the provisions within the DCO.
QD3 Certified and control documents	Are there any documents that have been submitted to the Examination that should be certified but are not recorded in the dDCO?	<p>As per discussions at ISH12 it became apparent that a number of parties considered that the Mitigation Route Map or an equivalent process management document would be an extremely useful addition to the project governance process. That Mitigation Route Map should include definitions of the advance notice for submissions of documents for consultation and engagement, in order to assist with the management by the consultee of the feedback required of those documents. These would not be the subject of deemed consent and should be strengthened by agreed and collaborative Local Authority buy-in.</p> <p>The CoCP (EMP First iteration) indicates the preparation of Construction Logistics Plans – these are not separately secured within Schedule 2 and are not listed within Schedule 16. These should be secured through an addition to Requirement 4(3), with reference to the Construction Logistics Plans after the reference to the REAC.</p>
QD4 Certified and control documents	Are there any documents are recorded in the dDCO as to be certified but which are superfluous?	<p>During ISH14, 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> <p>However, it remains the Council’s position that these should remain certified and should also become secured by the dDCO with additional provisions or part of other Control documents.</p>

Thurrock Council Submission at Deadline 8 (D8) – Appendix A: Council Comments on ExA’s Comments on Draft DCO
Lower Thames Crossing

Question No.	Details	Comments
		<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>
QD5 Certified and control documents	Should Schedule 16 be restructured to set out the proposed certified documents in functional groupings?	It is the Council’s position that restructuring Schedule 16 as suggested in the ExA commentary would aid understanding and operation of the DCO. LTC is likely to be under construction, if approved, for many years. All parties would benefit from steps to aid clarity.
QD6 Certified and control documents	Should REAC be individually identified in Schedule 16 (certified documents)?	It is the Council’s position that the REAC should be individually identified within Schedule 16 for the reasons set out by the ExA. During ISH14 the applicant submitted that it did not wish to separate out the REAC and would instead rename the CoCP. Although not a major point, the suggested change does not greatly assist useability. It is unclear why the applicant objects to the REAC being separated out.
QD7 Certified and control documents	Should the Mitigation Road Map be included as part of the REAC, as a separate DC or certified document or not at all?	It is the Council’s position that the Mitigation Road Map should be secured as a separate document that can be agreed as a first iteration prior to DCO Grant and maintained and updated during the construction period to inform the process and progress with discharging consents and control documentation. That document would be a helpful direction to all parties involved in the discharging process, including the contractors. The comments on its inadequacy set out in the Council’s D6 submission (REP6-164) in Section 14 need to be accounted for by the applicant in further amendments at D8 or D9.

Thurrock Council Submission at Deadline 8 (D8) – Appendix A: Council Comments on ExA’s Comments on Draft DCO
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Question No.	Details	Comments
QD8 Certified and control documents	Do any IPs have any further submissions to make on the manner in which certified documents and specifically CDs are recorded in the dDCO?	<p>The Council is broadly happy with the manner in which most of the certified documents and Control documents are secured.</p> <p>However, the Council considers that the use of flexible words such as ‘reflect’ and ‘substantially in accordance with’ are not appropriate when securing outline documents, which themselves contain significant flexibility (see pages 35-37 of REP6-164).</p>
QD9 General comments on Articles	Are there any further matters that have been raised in the Examination that should be provided for in an Article but which are not? If so, please provide reasons and evidence for your position.	The Council is satisfied that no additional articles are required (although it has proposed additional Requirements and protective provisions). The Council has made suggested amendments to various articles and would propose that where consultation or engagement with the Local Authority/Local Highway Authority/Local Planning Authority is stated, that it is made clear that that consultation and engagement applies to all subsequent iterations of the associated document or process.
QD10 General comments on Articles	Are there any matters provided for in an Article which are superfluous? If so, please provide reasons and evidence for your position.	The Council has not identified any Articles which are superfluous.
QD11 General comments on Articles	Are there Articles that the ExA has not yet commented on in respect of which a change in drafting is sought? If so, please provide reasons and evidence for your position.	There are a number of amendments that are sought to the Articles. Some of these are dealt with in the questions below. Where they are not, they are set and reasons given in Annex 1 below .
QD12 Deemed consent	All prospective consenting bodies subject to deemed consent provisions with a time-limit are asked to consider the appropriateness of a provision for deemed consent and of the time limit. If these are not considered to be appropriate, then they are asked to explain why and how these provisions might be varied.	<p>The topic of deemed consent is one which the Council has raised throughout the Pre-Examination period and during the Examination. The primary position of the Council is that deemed consent does not work in the public interest, as a failure of a public body to grant consent can lead to consent being granted without scrutiny. It is difficult to see how this is in the public interest. Equally delays to large projects, such as LTC may incur significant costs. As the road is being funded by the public purse, delays are clearly not in the public interest.</p> <p>The Council’s solution is deemed refusal, whereby the Council would still be incentivised to respond so that it does not lose control of the process, however, any</p>

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Lower Thames Crossing

Question No.	Details	Comments
		<p>delay would be limited and the application would be scrutinised by the Secretary of State.</p> <p>Despite this, the Council note the ExA’s comments. If deemed consent is considered justified, then the Council acknowledge the ExA’s comments and agrees that a fixed 28-day period would not always be fair or operable for the reasons given by the ExA.</p> <p>The Council has previously proposed the ability to agree an extension of time (which we would be prepared to cap at a maximum of 3 months), especially necessary if it receives multiple or complex documents. This enables both the consenting body (which is rarely the local authority) and the applicant to agree when 28 days is insufficient to provide an agreed extended period. If an extended period cannot be agreed, then the consenting body will be forced to refuse consent. This will trigger the appeal procedure, which is likely to be more costly and time-consuming than agreeing the extended period.</p> <p>The Council note the applicant’s position that there is no need for this, as the Council can simply refuse consent and the applicant can then submit a further application when ready. However, in the Council’s opinion this would be more less efficient.</p>
QD16 Begin and Commence	What would be the effect for the Proposed Development of a return to the more conventional drafting approach of defining ‘commence’ with a carve-out for ‘preliminary works’ in A2, with all subsequent references in the dDCO amended as necessary?	<p>The Council has considered the detailed comments of the ExA and agree with the conclusions reached, as the applicant cannot access land without triggering its powers. The conclusions of the ExA also reflect the views of the Court of Appeal in the Tidal Lagoon (Swansea Bay) plc v Secretary of State for Business, Energy and Industrial Strategy and others [2022] EWCA Civ 1579 case.</p> <p>Accordingly, the Council strongly advocates for a return to the more conventional drafting approach.</p>
QD20 Construction and maintenance of new,	Are the Local Highway Authorities content that A10 adequately provides for the maintenance of Green Bridges? If an agreement has yet to be reached, then final submissions on drafting for comment between the parties should be made.	<p>The Council is content that all Green Bridges within Thurrock contain a highway (although Green Lane is a Public Bridleway) and as such the management regime is set out in accepted detail.</p> <p>From the discussions at ISH6, it has been confirmed that the bridge structure remains the responsibility of the applicant. The vegetation will be managed through the LEMP</p>

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Question No.	Details	Comments
altered, or diverted streets		by the appointed contractor. The Highway Authority will be responsible for managing the highway surfaces.
QD22 Temporary closure of streets etc	IPs who are street authorities are asked whether a 28-day deemed consent provision in A12(8) is reasonable. If not, please propose and justify an appropriate alternative provision.	<p>Our primary concern relates to the notice being given for diversions and for the coordination of the closures with other works. Clearly the scale of LTC gives greater scope for multiple diversions which could be ongoing for a significant period of time and will interface with other non-LTC works. This makes it essential that they are properly coordinated. The Council suggests the standard 3-month period. It will not lead to delay, it just requires the Undertaker and contractors to effectively plan works, which should be standard practice, especially by a member of the Considerate Contractor Scheme.</p> <p>Please also see comments in relation to QD12.</p>
QD23 Traffic regulation - local roads	Traffic authorities and emergency services bodies (consultees) are asked whether the deemed consent period of 28 days in A17(11) is appropriate and, if not, to propose and justify an appropriate alternative provision	<p>Our primary concern relates to the notice being given for diversions and for the coordination of the closures with other works. Clearly the scale of LTC gives greater scope for multiple diversions which could be ongoing for a significant period of time and will interface with other non-LTC works. This makes it essential that they are properly coordinated. The Council suggests the standard 3-month period. It will not lead to delay, it just requires the Undertaker and contractors to effectively plan works, which should be standard practice, especially by a member of the Considerate Contractor Scheme.</p> <p>Please also see comments in relation to QD12.</p>
QD27 Discharge of water	The Applicant and any prospective consenting bodies asked whether the deemed discharge consent period of 28 days under A19 is appropriate and, if not, what an appropriate period might be	<p>Please see the Council’s comments in relation to QD12.</p> <p>The Council suggests that there could be benefit from considering a different approach for construction phase and final commissioning of the proposed design /operational phase. This is because the operational phase has significant time for scrutiny and design development. However, the construction phase time for scrutiny of proposals is going to be relatively short, furthermore unforeseen circumstances result in the contractor having to make potentially frequent changes to the construction flood risk and drainage methodology.</p>

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Question No.	Details	Comments
		<p>During the construction phase, the Council should perhaps allow more time to assess Discharge Consent applications, especially where a change from the agreed flood risk and drainage construction methodology is changed, or where additional risks are incurred: for example, when contaminated water needs additional treatment considerations.</p>
<p>QD28 Authority to survey and investigate the land</p>	<p>The Council applicant and any prospective consenting bodies asked whether the deemed trial hole consent period of 28 days under A21 is appropriate and, if not, what an appropriate period might be.</p>	<p>Please see the Council’s comments in relation to QD12.</p>
<p>QD32 A53 and A55 - Disapplication of legislation</p>	<p>Does any IP have any concern that the draft provisions unreasonably or inappropriately seek to disapply or modify other applicable legislative provisions? If so, what changes are sought to this provision or the dDCO more generally and why?</p>	<p>The Council does not consider that the applicant has provided a detailed analysis of the potential impact of disapplication of specific legislative provisions (the concept that the DCO should take precedence over other legislation is not under dispute, but it is important to understand what the impact is so that this can be mitigated if needed). Despite this, the Council has reviewed the provisions and does not have any concerns.</p>
<p>QD33 Defence to proceedings in respect of statutory nuisance</p>	<p>Does any IP have any concern that the proposed defence unreasonably seeks to safeguard the undertaker against poor or inappropriate practices or insufficient mitigation in either construction or operation? If so, what changes are sought to this provision and why?</p>	<p>The Council is concerned about this Article because it is a departure from the established position large projects. In the Council’s opinion the purpose of this section is to provide a statutory defence to nuisance where it is demonstrated that the nuisance is likely to be caused and is not practicable to mitigate against it. In those situations, the SoS needs to decide whether the public benefit of undertaking the project justifies the nuisance being caused. If it does, then provisions such as Article 58 can be inserted.</p> <p>However, the effect of having a blanket defence is that this discourages appropriate steps to reduce nuisance. The Council has considered the statutory nuisance statement (APP-489) and notes that the mitigation measures proposed means that, in the Council’s opinion, no nuisance is likely to be caused. The Council also notes the qualifications in Article 58(1)(a) and (b). However, it remains the Council’s opinion at the blanket exemption is too broad.</p>

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		The Council recommends that the applicant further justifies why the defence in relation to specific nuisances is required. If no defences are required due to specific mitigation works provided, then the reference to that nuisance in Article 58 could be removed.
QD34 Arbitration and appeals	Does any statutory body with formal decision-making powers have any concern that the proposed arbitration mechanism unduly affects their statutory role or powers? If so, what changes are sought and why?	The Council has worked with the applicant to ensure that when exercising formal decision-making powers, any disagreement as to the Secretary of State on appeal pursuant to Article 65. It is the Council’s strong opinion the disagreement over the exercise of statutory powers should be resolved by the Secretary of State, rather than an arbitrator, as this is more likely to be the expectation of Parliament.
QD37 General comments on Schedules	Are there any further matters that have been raised in the Examination that should be provided for in a Schedule but which are not? If so, please provide reasons and evidence for your position.	The Council does not consider that there are further matters that should be provided for in a Schedule, but which are not. The Council does have suggestions for amendments to the Schedules and these are considered below.
QD38 General comments on Schedules	Are there any matters provided for in a Schedule which are superfluous? If so, please provide reasons and evidence for your position.	The Council is not aware of any matters in the Schedule which are superfluous.
QD39 General comments on Schedules	Are there Schedules that the ExA has not yet commented on in respect of which a change in drafting is sought? If so, please provide reasons and evidence for your position.	There are a number of amendments that are sought to the Schedules. Some of these are dealt with in the questions below. Where they are not, they are set out and reasons given in Annex 1 below.
QD41 Schedule 1	Do IPs have any further and final observations on the drafting of this Schedule including on the description of the individual numbered Works and their relationship with the Works Plans?	The Authorised Works description for Works No. 7 does not clearly set out the provision of the traffic signal controlled walking, cycling and horse-riding crossing (the Pegasus Crossing), proposed by the applicant to be installed on A1013 to the south west of its junction with Rectory Road. The Council suggests that this is added. The works required to resolve the poor performance of the Orsett Cock Junction are not yet defined and are therefore not included within the Authorised Works.

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		<p>Works associated with the resolution of impacts at A1089 Asda Roundabout are not yet defined and are therefore not included within the Authorised Works and are not included within the Order Limits.</p> <p>It is not clear if temporary work are secured only through Requirement 10. Consequently, the Council recommends that the Temporary Works Plans and Temporary Works Plans Utilities should also be included within Schedule 1.</p>
<p>QD43 Schedule 2 – Requirements</p>	<p>Local planning and highway authorities, port authorities and operators, Natural England, the Environment Agency and the Marine Management Organisation are asked whether the REAC commitments are sufficiently secured. If not, what specific additional references to the REAC are required in any of the existing draft Requirements, or any additional Requirements sought (and if so reasons for their inclusion and draft should be provided)?</p>	<p>The Council does not consider that the REAC needs to be more extensively referenced in other Requirements. However, the Council is concerned that in both Requirements 4 and Requirement 8 the burden placed on the applicant is to ‘reflect’ the mitigation measures in the REAC. It is the Council’s opinion that this needs to be stronger, for example, should ‘implement’ or ‘be in accordance with’ the mitigation measures within the REAC.</p> <p>The discussion regarding the separation of the REAC from the CoCP (EMP First Iteration) is noted and would be welcomed by the Council.</p>
<p>QD44 Schedule 2 – Requirements Security to other CDs</p>	<p>Local Planning and Highway Authorities, Port Authorities and Operators, Natural England, the Environment Agency and the Marine Management Organisation are asked whether the other CDs are sufficiently secured? If not, what specific additional references to specific CDs are required in any of the existing draft Requirements, or any additional Requirements sought (and if so reasons for their inclusion and draft should be provided)?</p>	<p>The Council notes that the Construction Logistics Plan, which is part of the CoCP (Section 61) is only secured so far as it is referred to as part of the CoCP in Requirement 4. The Council considers that it would be in the public interest to amend Requirement 4(3), so that the Construction Logistics Plan is referred to after the REAC. This would add details and governance to the control and enforcements process. The Construction Logistics Plans should supplement and complement the Traffic Management Plans.</p> <p>Please see response to QD4 above.</p> <p>In addition, the Council contends that there should be a specific Requirement regarding noise mitigation to reinforce commitments within the REAC, which is recommended to be worded, as follows:</p>

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		<p><i>‘Noise Mitigation 1) No part of the authorised development is to commence until written details of proposed noise mitigation in respect of the use and operation of that part of the authorised development, including low noise surfacing and acoustic barriers, have been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to their functions if required any additional relevant planning authority. (2) The written details referred to in sub-paragraph (1) must either reflect the mitigation measures included in the environmental statement or, where the mitigation proposed materially differs from the mitigation identified in the environmental statement, the undertaker must provide evidence with the written details submitted that the mitigation proposed would not give rise to any materially new adverse or materially worse adverse environmental effects in comparison with those reported in the environmental statement taking into account the mitigation identified in it. (3) The noise mitigation must be constructed in accordance with the approved details referred to in paragraph (1) and must be retained thereafter.’</i></p> <p>Additional requirements have been sought by the Council in relation to Asda Roundabout, Wider Network Impacts and Clean Air Quality. Please refer to the Council’s D8 submissions and the D8 submissions of the Port of Tilbury in relation to the joint position on Asda Roundabout. Further submissions will be made about Wider Network Impacts at D9.</p>
<p>QD46 Schedule 2 – Requirements ‘Commence’ and ‘Preliminary Works’</p>	<p>What approach do other IPs consider should be taken to these definitions and why? (schedule 2 R1)</p>	<p>The Council has considered the detailed comments of the ExA and agree with the conclusions reached. The conclusions of the ExA also reflect the views of the Court of Appeal in the Tidal Lagoon (Swansea Bay) plc v Secretary of State for Business, Energy and Industrial Strategy and others [2022] EWCA Civ 1579 case. It should be noted that the applicant refers to the A428 Black Cat to Caxton Gibbet Road Improvement Scheme in support of its position. However, this decision was made before the Court of Appeal judgement in the Swansea Bay case.</p> <p>Accordingly, the Council strongly advocates for a return to the more conventional drafting approach.</p>
<p>QD47</p>	<p>Should time limits applicable to beginning/commencing the Proposed Development and</p>	<p>The time limits for the exercise of compulsory acquisition powers is a key part of the DCO. If this time period expires then it becomes very difficult to implement the DCO.</p>

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Schedule 2 – Requirements Time Limits	time limits for the exercise of CA powers be harmonised?	<p>Accordingly, there is an argument for the harmonisation of the time limits applicable to beginning/commencing the Proposed 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 compulsory acquisition powers and the time period to commence to the Proposed Development, should be five years. If this is not agreed, it is preferable to harmonise both time periods, rather than have a differentiation between begin and commence.</p>
QD48 Schedule 2 – Requirements Time Limits	Is there a justification for time limits of longer than 5 years? What is that justification?	<p>In the Council’s opinion there is no justification that has been provided in this case for a time period of greater than five years. Despite the flexibility it gives to the applicant, it has a significant negative impact in terms of uncertainty for those impacted and simply extends the period that they are blighted for.</p>
QD49 Schedule 2 – Requirements Detailed Design	Are the design principles guiding the Proposed Development adequately secured and do any of the principles need to be amended? If amendments are sought, why are they required?	<p>The Council are satisfied that the Design Principles are secured within the DCO. Requirement 3 requires the authorised development to be designed in detail and carried out <i>‘in accordance with the design principles document’</i>.</p> <p>Requirement 5 sets out that the LEMP must <i>‘reflect’</i> the design principles.</p> <p>The Council’s only concern is that the Design Principles are not adequately secured due to the flexibility allowed in both Requirement 3 and Requirement 5.</p> <p>Whilst Requirement 3 sets out that the design must be in accordance with the Design Principles document, there is a tailpiece whereby the Secretary of State can depart from the scheme, so long as they are satisfied that it would not give rise to any materially new or materially different environmental effects in comparison to those reported in the environmental statement. The concern of the Council is that this introduces unnecessary uncertainty.</p> <p>The Council is also concerned that the word <i>‘reflect’</i> is just not strong enough, as it leaves scope for elements of the Design Principles not to be followed.</p>

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		<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. The Council awaits the applicant’s responses to those recommended amendments.</p>
<p>QD50 Schedule 2 – Requirements EMPs</p>	<p>Is the iteration and approval process sufficiently clear? Does it provide adequate security for initial stage commitments and for the REAC? If amendments are sought, why are they required?</p>	<p>The iteration, consultation and approval process is not sufficiently clear. The Council is concerned that the EMP (Third Iteration) does not need to be approved by the Secretary of State (unlike the EMP (Second Iteration)). There is also no Requirement within the DCO to consult the relevant planning authorities (unlike the EMP (Second Iteration)). As it is a permanent plan and will require long-term commitments from the Council, it needs consultation prior to SoS approval. Therefore, the Council would like to see the EMP (Third Iteration) reflect the Requirements for the EMP (Second Iteration), because both the operational and construction phases are likely to have a significant impact on the local highway network.</p> <p>It is also not clear that the Undertaker and contractor must consult the Council on any subsequent and further updates or redrafting of the various iterations of the EMPs or to resolve the feedback provided by the Council or other parties. This should be specified within the Requirement and is not correctly captured by Requirement 19.</p> <p>Although the applicant notes that many DCOs for highways projects do not include the suggestions above, the Council notes that in the A66 Northern Tran-Penne Project this is what has been proposed by the Secretary of State. Accordingly the Secretary of State does have an open mind in relation to this.</p>
<p>QD51 Schedule 2 – Requirements EMPs</p>	<p>Should any specific consultations prior to approval by the SoS be secured?</p>	<p>Please see response to QD 50 above.</p>

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QD52 Landscaping and ecology	Is the approval process sufficiently clear? Does it provide adequate security for initial stage commitments and for the REAC? If amendments are sought, why are they required?	The approval process is sufficiently clear. However, for it to provide adequate security Requirement 5 needs to set out that the LEMP will be in accordance with the REAC, not just ‘reflect’ it.
QD53 Landscaping and ecology	Should any specific consultations (and the timing for those consultations) prior to approval by the SoS be secured?	The Council does not consider that additional wording in relation to consultation is required.
QD55 Gammonfields	R13 appears to provide for the development of a replacement Travellers’ site but the ExA is not clear that it also adequately provides for the lawful ongoing use of the site or ensures that use or development not expressly contemplated in clause S11.12 of the Design Principles document can be adequately managed.	<p>Within the Council’s D6 submission (REP6-164) and following ISH8, the Council submitted additional wording to Requirement 13. The Council suggested the following wording for Requirement 13 (amendments in red):</p> <p style="padding-left: 40px;"><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 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”). 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 of necessary to ensure that the use of the traveller site can be adequately managed in the future.</p>

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		<p>In the Council’s opinion the solution is to explicitly set out that the Travellers site has deemed planning permission for the purposes of the 1990 Act. Wording to this affect has been agreed as part of the Council’s D8 submission and the wording agreed with the applicant is included within the D8 submission in Section 3.4. This is considered further in relation to QD58 below.</p>
QD56 Gammonfields	<p>Does R13(3) (which provides security for the carrying out of works to provide the replacement Travellers’ site) provide any security for the ongoing use of the operational site as provided?</p>	<p>Additional wording has been agreed between the applicant and the Council as part of the Council’s D8 submission.</p>
QD57	<p>Could a new R13 (4) (with renumbering thereafter) provide that on completion of Work No.7R the land must be used as a Travellers’ site and the development must be maintained generally in accordance with any plans or details submitted and approved under R13 (2)?</p>	<p>The Council considers that this is an option. However, this would bind the applicant, and would not provide the Council with enforcement powers under the 1990 TCPA Act, should the Council subsequently dispose of the site.</p> <p>Additional wording has been agreed between the applicant and the Council as part of the Council’s D8 submission.</p>
QD58	<p>Is there argument to include another new provision that, notwithstanding the process for obtaining consent for operational development for a Travellers’ site provided under R13, any subsequent application for change of use, new development or any further enforcement proceedings or appeals in relation to any of these should proceed under relevant provisions of the TCPA, with the consent for use and development provided under the made Order being deemed to be a conditional lawful use or a planning permission for the purposes of TCPA decision-making, subject to a need to consult the LTC undertaker on any such application, proceeding or appeal? The aim of such a change would be to use the DCO regime to re-provide the site, but not to govern its operation.</p>	<p>The Council agrees that new provisions should be inserted, which would allow any enforcement proceedings to proceed pursuant to the 1990 TCPA Act. This will be achieved by use authorised by the DCO being deemed a planning permission for the purposes of the 1990 Act.</p> <p>Please see additional wording proposed as part of the Council’s D8 submission.</p>

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	<p>Could such a provision form part of A56 or should it be dealt with in R13 or another new Article and or Requirement?</p>	
<p>QD59 Carbon and energy management plan</p>	<p>IPs final submissions are sought. Reasons for any proposed changes must be provided (carbon and energy management plan)</p>	<p>The Council does not consider that the proposed plan and its iterations address carbon and energy control adequately. 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). These emissions will be independently audited.</p> <p>It is unclear how the iteration of measuring, reporting and verification will then be used to control or regulate emissions through the phasing of the development. This has been requested through continual engagement with the applicant as referenced in SoCG REP6-031.</p> <p>The Council presented a list of considerations within REP1-292.</p> <p>In addition, the Council has sought that the applicant defines time-bound or phase-bound budgets from the construction process to compare emissions reported to as requested through the applicant’s interested party engagement and as summarised in the draft SoCG REP6-031.</p> <p>Without these there is no way of monitoring progression of emissions against the total budget set within the DCO.</p> <p>The Council has also sought that the applicant defines how compliance to its set budget will be independently regulated.</p> <p>The C&EMP provides no physical infrastructure, technology interventions and how they will be constructed to reduce emissions. This has been raised with the applicant through consultation and summarised in the draft SoCG REP6-031.</p> <p>It is noted that this is a management plan only not a GHG mitigation plan or GHG reduction strategy, which has not been provide with the DCO. The C&EMP is for</p>

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		<p>construction emission and functional operation of the road only and does not implement carbon and energy management procedures for users of the road. For operational impact the applicant notes that this will be agreed within the third iteration of the C&EMP. Details are limited on what actually the applicant will intend to deliver. The Council has sought within REP1-292 (LIR Appendix K) and REP6-031 (SoCG):</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, • Ensure that management procedures include host communities and address local impacts.
<p>QD60 Temporary street closure etc</p>	<p>Final submissions on the appropriateness and/or accuracy of the proposed descriptions, extents and representation of temporary restrictions on plans identified in Schedule 3 are sought from Local Highway Authorities and IPs affected by the proposals. Reasons for any requested amendments must be provided.</p>	<p>The Council raises no further comments on the inclusion and extents of the roads subject to temporary closure.</p>
<p>QD61 Permanent stopping up etc</p>	<p>Final submissions on the appropriateness and/or accuracy of the proposed descriptions, extents and representation of permanent stopping up on plans and of the proposed substitutes(s) identified in Schedule 4 are sought from Local Highway Authorities and IPs affected by the proposals. Reasons for any requested amendments must be provided.</p>	<p>The Council is satisfied that there is sufficient detail regarding the permanent closures and diversions to the rights of way network in Thurrock.</p> <p>The Council is reviewing the additional plans and commentary regarding the effects on the works during construction that was requested from the applicant in ISH10 Action Point 10 that was submitted by the applicant at D7 (REP7-179). What the document does is to collate in one place a summary of the routes that would be affected and the likely duration of the temporary closures. Tables 2.1 and 2.2 record the likely duration of closures for most routes. These include a large number where closures would be</p>

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		<p>between two – five years, so while strictly temporary their closure would be for a significant period. The Council had requested that the plans showed the affected routes colour-coded to better illustrate this, however, all are shown as in black. While lacking the clarity being sought the plans, however, do help illustrate the overall impacts on the network during construction. The plans show the existing PRoW and this helps illustrate the relative lack of routes present in Thurrock compared to Kent, for example. This is the reason that the Council has continued to raise the issue of long-term temporary closures on the wider network.</p> <p>Sheets 2 and 3 illustrate how key routes linking settlements, e.g. East Tilbury and Chadwell St Mary, Chadwell St Mary and Orsett and routes with the Mardyke Valley for prolonged period. It is not likely that there will be opportunities to provide diversions for most of routes due to the extent of the construction area. The plans highlight the lack alternative routes within the surrounding areas.</p> <p>The proposed routes once the scheme is completed will maintain and improve connectivity.</p>
<p>QD62 Permanent stopping up etc</p>	<p>Final submissions on the appropriateness and/or accuracy of the proposed descriptions, extents and representation of permanent stopping up on plans identified in Schedule 4 are sought from Local Highway Authorities and IPs affected by the proposals. Are individual proposals to stop up without substitution appropriate? Reasons for any requested amendments must be provided.</p>	<p>The Council raises no further comments on the inclusion and extents of the roads subject to permanent stopping up.</p>
<p>QD64 Public rights of way and permissive paths</p>	<p>Applicant, Local Highway Authorities and IPs affected by the proposals are invited to respond at the following deadline.</p>	<p>The Council's position in principle is that it wants all affected routes to be upgraded to bridleway to enhance the network.</p>

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QD65 Speed limits	Final submissions on the appropriateness and/or accuracy of the proposed descriptions and extents of the proposed speed limits, clearway provisions and TRO amendments in Schedule 6 are sought from Local Highway Authorities and IPs affected by the proposals. Reasons for any requested amendments must be provided.	The Council raises no further comments on the current inclusion and extents of the road speed limits. It does note that these may need to adjust to reflect future development of the detailed design and the development of proposals at the Orsett Cock junction and A1089 Asda Roundabout. Those adjustments would be agreed as part of the discharging of Requirement 3.
QD67 TPOs	Final submissions on the appropriateness and/or accuracy of the proposed descriptions, extents and effects of the proposed tree works in Schedule 7 are sought from Local Authorities. Reasons for any requested amendments must be provided. (tree preservation orders)	The Council confirms that it agrees with the provisions on Tree Preservation Orders.
QD68 Schedule 8 – land of which only new rights etc may be acquired	Final submissions on the appropriateness and/or accuracy of the proposed descriptions, extents and purposes of the proposed acquisitions in Schedule 8 are sought from Affected Persons. Reasons for any requested amendments must be provided.	The Council suggests not further amendments.
QD69 Schedule 9 - CPO	Final submissions on the appropriateness and effect of the proposed modifications in Schedule 9 are sought from Affected Persons. Reasons for any requested amendments must be provided.	The Council has no further comments on Schedule 9.
QD70 Schedule 10 – acquisition of subsoil or airspace only	Final submissions on the appropriateness and/or accuracy of the proposed descriptions, extents and purposes of the proposed acquisitions in Schedule 10 are sought from Affected Persons. Reasons for any requested amendments must be provided.	The Council has no further comments on Schedule 10.

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QD71 Schedule 11 – temporary possession	Final submissions on the appropriateness and/ or accuracy of the proposed descriptions, extents and purposes of the proposed TP in Schedule 11 are sought. Reasons for any requested amendments must be provided.	The Council has no further comments on Schedule 9.
QD72 Road user charging	Is the ExA correct in assessing the basis for this provision as avoiding differential approaches to charging which might differentially attract vehicles to one or the other crossing?	This is primarily a question for the applicant. However, it is the Council’s understanding that the ExA are correct in stating that the basis for Schedule 12 is to avoid differential approaches to charging.
QD73 Road user charging	Are IPs content that the proposed charging regime is within the powers of a DCO (with reference to PA2008 s120 and Schedule 5)? If not, please explain why not	It is the Council’s position that the proposed charging regime is within the powers of DCO.
QD74 Road user charging	Are there any final observations on the operation of Payments for local residents (para 5)?	The Council has no further comments on this aspect.
QD75 Road user charging	Are there any final observations on the effect of the balance of these provisions? Responses to these questions are specifically sought from the host Local Authorities for the proposed LTC. Reasons should be provided for any changes sought.	The Council has no further comments on this aspect.
QD76 Byelaws	Are IPs content that all of the proposed byelaws are within the powers of a DCO (with reference to PA2008 s120 and Schedule 5)? If not, please explain why not.	The Council are content that the proposed byelaws are within the powers of the DCO.
QD77 Byelaws	Are there any final observations on the effect of these provisions? Responses to this question are specifically sought from the host Local	The Council has no further comments on this aspect.

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	Authorities for the proposed LTC. Reasons should be provided for any changes sought.	
QD78 Protective Provisions	Are the named beneficiaries of the Protective Provisions content that the provisions drafted for their benefit are appropriate and correct? If not please explain why not	<p>At Deadline 6 the Council submitted, jointly (REP6-142).</p> <p>A further updated version of the jointly agreed (between the IPs) Protective Provisions, with commentary, will be submitted by the LB Havering at D8 and by the Council, for completeness.</p>
QD80 Protective Provisions	Do any other IPs and specifically statutory undertakers affected by the Proposed Development consider that they should benefit from Protective Provisions? If so, why and what ought the provisions to contain?	The Council is included as part of the Protected Provisions for Highway Authorities.
QD81 Protective Provisions	Are there any other requests for amendments to Protective Provisions? If so what changes are sought and why?	<p>A further updated version of the jointly agreed (between the IPs) Protective Provisions, with commentary, will be submitted by the LB Havering at D8 and by the Council, for completeness.</p> <p>The Council is concerned that there are no Protective Provisions or mechanisms to secure the funding of undue maintenance due to the extraordinary weight from LTC construction traffic causing wear and damage to the Local Road Network during the construction period by the Undertaker’s contractors construction vehicles. This should be secured through the preparation of before and after condition surveys with commitments to fund remedial works where excess wear or damage is determined to be as a result of the construction of LTC. This commitment is in line with the undertaking within the Highways Act, 1980 Part IV, Section 59.</p>
QD84 Certified documents	Do any IPs have any final concerns about the functions of and relationships between the proposed certified documents and the CDs as a subset of them? Are the proposed iterations clear and justified? If any changes are sought, please explain these.	<p>The Council are happy with the framework in principle but do have specific concerns about which documents are secured (see response to QD85 below). The Council also has concerns regarding the use of words such as <i>‘reflect’</i>, and <i>‘substantially in accordance with’</i> to secure further iterations of key documents, such as the EMP and LEMP (see comments made during ISH 14 hearing and ISH 7 hearing (REP4-352)). The Council considers that the importance of these documents, means that stronger securing words, such as <i>‘implement’</i> and <i>‘in accordance with’</i> should be used. These</p>

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Question No.	Details	Comments
		<p>words have been used by the applicant in various places within the DCO and in the Council's opinion there is no reason why they cannot be utilised in relation to securing further iterations of the Control documents.</p>
<p>QD85 Certified documents</p>	<p>Do any IPs have any final submissions to make on the CDs and their content?</p> <ul style="list-style-type: none"> • Is there superfluous content that could be removed? • Is there additional content that should be added? • Are there any other documents that should be certified and should form part of the CDs? <p>Any responses to this question should be accompanied by an explanation of the changes sought and the reasons for them.</p>	<p>The Council notes that the Construction Logistics Plan, which is part of the CoCP (Section 61) is only secured so far as it is referred to as part of the CoCP in Requirement 4. The Council considers that it would be in the public interest to amend Requirement 4(3) so that the Construction Logistics Plan is referred to after the REAC. This would add details and governance to the control and enforcements process. The Construction Logistics Plans should supplement and complement the Traffic Management Plans.</p> <p>During ISH14, 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> <p>However, it remains the Council's position that these should remain certified and should also become secured by the dDCO with additional provisions or part of other 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</p>

Thurrock Council Submission at Deadline 8 (D8) – Appendix A: Council Comments on ExA’s Comments on Draft DCO
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Question No.	Details	Comments
		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.
FOR THE APPLICANT/OTHER PARTIES		
QD13	For the applicant	n/a
QD14	For the applicant	n/a
QD15	For the applicant	n/a
QD17	For the applicant, EA and other water environment and industry stakeholders	In the (PD-047) the definition in A2 seems to be the same as the definition in the Land Drainage Act 1991. Accordingly the Council have no concerns.
QD18	For the applicant and relevant statutory undertakers	n/a
QD19	For the applicant and PLA	n/a
QD21	For the applicant	n/a
QD24	For IPs operating vessels on the Thames	n/a
QD25	For the applicant	n/a
QD26	For the applicant	n/a
QD29	For the applicant	n/a
QD30	For the applicant	n/a
QD31	For the applicant	There is clearly a valid question as to the appropriateness of the applicant being able to impose restrictive covenants with relatively few restrictions across the Order Land. It is therefore for the applicant, as Acquiring Authority, to make the case for compulsory purchase.
QD35	For the undertaker	n/a
QD36	For the applicant	n/a
QD40	For the applicant	n/a

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Question No.	Details	Comments
QD42	For the applicant	n/a
QD45	For the applicant	n/a
QD54	For EA, Natural England and Historic England	n/a
QD63	Final submissions on the reclassification of certain bridleway PRowS are sought from Mr Mike Holland for clients, Mr Tom Benton, and Mr Jeremy Finnis for client. With reference to Schedule 5 Part 6 and to the Classification of Roads Plans, please identify each Bridleway proposed to be differently classified, what its revised proposed classification would be and a summary reason for the change.	n/a
QD66	For the applicant	n/a
QD79	For National Grid	n/a
QD82	For the MMO	n/a
QD83	For the MMO	n/a

Annex 1 Proposed Drafting

Annex 1: Proposed Drafting

Article number	Amended drafting proposed	Reasons
Article 6(3)	The Council propose that this is limited to the Order Limits	To balance the flexibility required by the applicant, with sufficient certainty for the those which may be affected by LTC.
Article 12(8)	The deemed consent period (without prejudice to the fact the deemed consent should be removed) should be 3-months.	To allow sufficient time for the Council to consider applications,
Article 27(1)	Eight years should be replaced with five years	To reduce the uncertainty for residents regarding when and if their land will be subject to compulsory purchase.
Article 35	Article 35 should be 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.	<p>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 Council is open to alternative methods of improving expectation management between landowners and the applicant in relation to the condition of land to be handed back.</p>
Article 35(5)	<p>Amendment to Article 35(5), so that Article 35(5) is replaced, as follows:</p> <p><i>'remove any temporary works where this has been agreed with the owners of the land and planning permission has been granted (either by</i></p>	To avoid temporary works remaining on site without planning permission.

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Article number	Amended drafting proposed	Reasons
	<i>the local planning authority or the Secretary of State on appeal) for the retention of the works.'</i>	
Article 35(2) and Article 36(3)	References to 28 days amended to 3-months	To allow sufficient notice for landowners to make alternative provision for the use of that land, with the aim of reducing loss and therefore the compensation payable from the public purse.
Article 39(2)	After the word 'expenditure' the words 'and loss' should be inserted.	<p>The Council is of the view that Article 39(2) (relating to the recovery of costs of new connections) should be extended to cover compensation for losses, not just expenditure.</p> <p>If a person suffers losses as a result of the removal of a drain or sewer, then it is entirely reasonable they should be compensated for losses as well as expenditure.</p> <p>This would of course be subject to evidence and reasonable mitigation of losses, as with all compensation payments.</p>
Article 65	References to Council response times from 10 working days to 20 working days	To allow sufficient time for respond to appeal documentation submitted by the applicant.
All references to deemed consent – Articles 12(8); 17(11); 19(8); 21(6).	<p>All references to deemed consent should either be removed or replaced with deemed refusal.</p> <p>If deemed consent is to remain, then there should be the ability for the parties to agree an</p>	<p>To avoid a situation whereby consent is deemed to have been granted where a third party public body has not made a determination in time. Whilst it is not disputed that a local highways authority should not be allowed to cause delay, it is not in the public interest if there is then no scrutiny of decision by the applicant.</p> <p>Having a position whereby the applicant is able to go o the Secretary</p>

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Article number	Amended drafting proposed	Reasons
	extension (potentially capped at a maximum of 3 months).	<p>of State if there has been no determination in 28 days incentivises the Council to review applications, whilst avoiding the negative impact on the public interest.</p> <p>Allowing an extension is administratively sensible, and avoids a situation where the Council is forced to refuse applications, when it would have been more productive to have agreed a short extension.</p>
Schedule 1	The Temporary Works Plans should be included within Schedule 1.	Temporary Works Plans set out where temporary works are undertaken and should be included within Schedule 1.
Requirements 3,4,5,8,10 14, 16	The wording of specific requirements should more strongly require compliance with the first iteration of documents. See specific comments in table 3.1 of REP6-164	The Council remains concerned that not all control documents and plans are adequately secured. In particular, the Council restates its concerns regarding the use of phrases, such as ‘ <i>substantially in accordance with</i> ’, ‘ <i>reflecting</i> ’, ‘ <i>specific outline documents</i> ’ and ‘ <i>based on</i> ’ specific documents. These words and phrases do not provide sufficient certainty. The documents referred to are statements of broad principles and not being required to act in accordance with them provides an unacceptable amount of flexibility to the applicant. The amount of flexibility is unacceptable, as it causes significant uncertainty to those potentially impacted by LTC, as it is unclear what has been permitted.
Requirements 3 (detailed design), 4 (Construction and Handover EMPs), 5 (landscaping and ecology), 6	In these requirements the discharging authority should be the SoS, with and an appeal to the SoS. This would involve adding the specific	See notes to Appendix B of the Council’s D8 submission. In the Council’s view, locally elected local authorities, who are experienced

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Article number	Amended drafting proposed	Reasons
(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)	requirements to article 65 and amending the relevant requirements.	in discharging similar planning conditions, should be the discharging authority.
Requirement 3	The Structures Plans should be included as part of the design parameters in Requirement 3. The Council suggests that it is included after the words 'general arrangement drawings'.	The Structures Plans 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 pedestrians and cyclists, which is not contained elsewhere.
Requirement 3	Removal of the wording ' <i>unless otherwise agreed in writing by the Secretary of State</i> '	This effectively bypasses the non material amendment process. The Council is concerned about the lack of transparency and consultation requirements.

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Article number	Amended drafting proposed	Reasons
Requirement 4	The Construction Logistic Plan (which is currently within the COCP) should be included within Requirement 4(3) after the word 'REAC'.	The Construction Logistics Plan, which is part of the CoCP (Section 61) is only secured so far as it is referred to as part of the CoCP in Requirement 4. The Council considers that it would be in the public interest to amend Requirement 4(3), so that the Construction Logistics Plan is referred to after the REAC. This would add details and governance to the control and enforcements process. The Construction Logistics Plans should supplement and complement the Traffic Management Plans.
Requirement 4	Requirement 4(5) should be amended to refer to the approval by the SoS and consultation with the Council.	<p>The Council should be consulted on the EMP Third Iteration. The Council acknowledge that this is a management plan relating to the operation and maintenance of the authorised development. However, the operation of the strategic road network has the potential to have significant impacts on the local road network, especially when the project proposes to disconnect the existing strategic road network (SRN) port link between the A13 west-bound and the A1089 south-bound and instead divert this traffic via local authority roads. Considering the limited engagement by the applicant with the Council on the impact on the local road network, the Council has real concerns that the applicant is making decisions regarding the operation of the strategic road network without considering the impact on the local road network.</p> <p>In addition, the Council consider the EMP third Iteration should be approved by the Secretary of State. This would mirror the approach currently proposed as part of the A66 Northern Trans-Pennine</p>

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Article number	Amended drafting proposed	Reasons
		Project – refer to the Secretary of State for Transport’s issued a letter on 8 November 2023.
Requirement 8	The Drainage Plans should be included within requirement 8 after the word ‘REAC’	The Drainage Plans set out details, such as the catchment boundaries and have been under discussion between the Council and the applicant for some time. 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.
Requirement 13	For enforcement purposes this should be deemed planning permission – see wording in the Council’s D8 submission as agreed with the applicant.	
Requirement 17	Requirement 17(3) (d) should be replaced with the following: <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> <i>(4) the proposal to be submitted under sub-paragraph 3(d) above must set out identify</i>	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.

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Article number	Amended drafting proposed	Reasons
	<i>what the Secretary of State considers to be the likely route and function of the Tilbury Link Road'</i>	
New requirements in relation to Wider Network Impact and Air Quality	Included as Requirements within schedule 2. It is proposed that these could be new requirements 19 and 20.	See paragraph 3.1 of the Council's D* submission for Wider Network Impacts. See paragraph 3.4 of the Council's D8 submission for Air Quality.
Schedule 14	Updated wording for protective provision for local highway authorities	Please see Appendix C of the Council's D8 submissions.

Thurrock Council Comments on Applicant's Submissions at Deadline 6A and Deadline 7 (D6A and D7)
Lower Thames Crossing

Appendix B Rationalisation of Council's dDCO Concerns

Lower Thames Crossing

Thurrock Council Submission at Deadline 8

Appendix B: Key Outstanding DCO Concerns

5 December 2023

Document Control Sheet

Project Name: Lower Thames Crossing

Report Title: Thurrock Council Submission at Deadline 8 (D8) Appendix B: Key Outstanding DCO Concerns

Doc Ref: Final

Date: 5 December 2023

	Name	Position	Signature	Date
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Approved by:	Tracey Coleman	Acting Director of Place, Thurrock Council	TC	5 December 2023

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B.1 Thurrock Council – Key Outstanding DCO Concerns

Table B.1.1: Thurrock Council – Key Outstanding DCO Concerns

Issue	Comment
<p>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)</p>	<p>Key points:</p> <ul style="list-style-type: none"> • Council is best placed to discharge majority of Requirements • Council will need to be consulted anyway, so why then add another layer and give to the Secretary of State, adding in delay and cost • There is an appeal route to the Secretary of State that can be used in event of disagreement • Concern that consultation periods are not going to be adequate. <p>The applicant is strongly of the view that the DCO requirements (currently set out in Schedule 2 of the draft DCO) should largely be discharged by the Secretary of State.</p> <p>It is the Council's position that 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) should be discharged by the relevant local planning authority, with any appeal going to the Secretary of State.</p> <p>Whilst it is not uncommon for transport DCOs to have the Secretary of State as the discharging authority, it is by no means universal (there are at least four other transport DCOs where this is not the case). In addition, the Council are not aware of any other Secretary of State (for example DHLUC, DEFRA or BEIS) being the discharging authority in connection with non-transport DCOs. In relation to this scheme, the Council is the local highways authority for 70% of the route. Accordingly, the applicant's concerns regarding coordinated discharge of functions is not well founded in relation to this LTC scheme.</p> <p>In the Council's view, locally elected local authorities, who are experienced in discharging similar planning conditions, should be the discharging authority. It is precisely because of the complexity of</p>

Thurrock Council Submission at Deadline 8 (D8) Appendix B: Key Outstanding DCO Concerns
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Issue	Comment
	<p>the project that a detailed understanding of the locality, including the local highway network, is required. It is accepted that changes to local highway sections will need to consider the impact of those changes on trunk road sections (and vice versa), and accordingly it is suggested that the relevant planning authority will discharge requirements in consultation with relevant parties, such as the applicant and other key stakeholders. The current proposal, of the Secretary of State being the discharging authority, after consulting the Council, is likely to lead to unnecessary expenditure as the relevant local planning authority will have to commit significant resources to explaining to the Secretary of State the impact of proposals.</p> <p>The Council notes that as part of the A66 Northern Trans-Pennine Project the Secretary of State for Transport issued a letter on 8 November 2023. In it the Secretary of State proposed that the drafting of Article 54 would require the relevant planning authority, Westmorland and Furness Council, to provide approval of the detailed design for Trout Beck, Cringle Beck and Moor Beck viaducts, as the Secretary of State considers that they are the most appropriate body to consider such matters (instead of National Highways). Whilst the Council recognises that the weight of precedent for highways schemes promoted by the applicant is contrary to this, it does demonstrate that the Secretary of State does have an open mind on the issue.</p>
2. Deemed consent	<p>Key points:</p> <ul style="list-style-type: none"> • Risks decisions being made without scrutiny by a third party, such as the local authority or Secretary of State. • Blanket 28 days is not reasonable. • Inability to agree extension may lead to inefficiency. <p>The Council considers that deemed consent in this situation would not be in the public interest, despite numerous highways DCOs containing these provisions. The Council understands the need to ensure there is not any unnecessary delay.</p> <p>However, inflexible deemed consent provisions will result in unnecessary delay.</p> <p>In the Council's opinion, the public interest and the interests of the applicant would be better served if there was the ability for the parties to agree a mutually agreed extension of time (which we would be prepared to cap at a maximum of 3-months). This could avoid unnecessary appeals and also avoid</p>

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Issue	Comment
	<p>delay by having to refuse applications that could have been approved if a short extension could have been agreed.</p> <p>The Council note the applicant's position that there is no need for this, as the Council can simply refuse consent and the applicant can then submit a further application when ready. However, in our opinion this would be more less efficient.</p> <p>The provisions were deemed refusal rather than deemed consent. This will continue to incentivise the Council to work within the specified timeframes but avoid the risk of decisions being deemed as having consent when they have not been considered by either the Secretary of State or the Council.</p> <p>The Council notes the position of the applicant, which largely focusses on the need to avoid delay. The Council understands this and does not wish to introduce delay. However, the Council does not believe that deemed consent is the solution that the applicant appears to believe it is. In order to ensure there are not delays, the Council needs to be sufficiently resourced. The Council is also not opposed to a deeming position to encourage timely determination of applications. However, deemed approval is not considered the most appropriate mechanism.</p>
<p>3. Article 9 and the role of the Traffic Management Forum.</p>	<p>Key points:</p> <ul style="list-style-type: none"> • The Council is still concerned with how conflict with pre-authorised permits will be resolved. <p>The Council, as Street Authority, has a duty under the NRSWA to manage its street network and works within those streets, such that delays are minimised and safe operation of the network is maintained. If the Council is not in a position to effectively coordinate all works on its network, the risk of conflicting street works is increased, and the Council will then not be fulfilling its duty. Having two determining Street Authorities operating on the same section of network risks conflicting street works being approved, resulting in significant traffic disruption (and potentially significant economic, environmental and social issues in the local area and restricting access to emergency vehicles). Although the Traffic Management Forum (TMF) may well help resolve issues, there is still uncertainty regarding its setup and terms of reference.</p> <p>As a minimum the Council considers it important that the applicant explain how conflicts with pre-authorised permits will be resolved.</p>

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Issue	Comment
<p>4. An explanation from the applicant as to the meaning of <i>'materially new or materially different environmental affects'</i> in comparison with those reported in ES.</p>	<p>Key points:</p> <ul style="list-style-type: none"> • Further explanation as to the means of 'materially new or materially different environmental affects' in comparison with those reported in ES, including: • 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 outside of Order Limits); and, in Requirement 3 (detailed design) is appropriate.</p> <p>These issues are explored further in our D8 submission. The applicant's response misunderstands our position. The Council was not asking for a definition to be inserted within the DCO (at this stage), the Council was simply asking how this was going to be interpreted the purposes of understanding the impact of Article 6(3).</p>
<p>5. Article 27 – time limits for CPO</p>	<p>Key issues:</p> <ul style="list-style-type: none"> • The eight year period increases uncertainty for residents and is longer than most DCOs. • General the time period should be reduced to five years, unless justified on a plot by plot basis. <p>Whilst the applicant can cite examples where the time limit for use of powers has been accepted at eight years, the time limit in the vast majority of DCOs is five years. It is the Council's opinion that this period is too long, and either should be shortened or justified on a plot by plot basis.</p>
<p>6. Article 35 – temporary possession. Uncertainty as to standard of returned land.</p>	<p>Key issues:</p> <ul style="list-style-type: none"> • Better communication of the condition in which temporary possess land will be returned to the landowner to facilitate planning and minimise disruption • Temporary works being left on the site without planning consent

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Issue	Comment
	<p>This issue has been most recently raised by the Council during ISH14. There are two primary concerns that the Council wishes to address:</p> <p>a) Article 35(5) contains some broad exemptions, such as not restoring land on which any soil reprofiling work has occurred, and not restoring land on which any permanent works or ground strengthening works has been undertaken. This means that there is likely to be significant uncertainty for landowners regarding what is going to take place on their land, and therefore what state can they ask for it back in. This is likely to impact how they use the land. The Council would like to see information for landowners improved, to lessen the impact upon them and their businesses. The Council is open to further suggestions from the applicant on how best this can be achieved if the suggested addition to Article 35 is not agreed.</p> <p>b) Temporary works being left on the site pursuant to Article 35(5) (g) without planning consent. The applicant appears to accept this point at paragraph 8.2.3 of REP7-190. However, the wording in the DCO does not require this to be the case. To provide greater certainty the Council suggest the following replacement for Article 35(5)(g):</p> <p><i>'remove any temporary works where this has been agreed with the owners of the land and planning permission has been granted (either by the local planning authority or the Secretary of State on appeal) for the retention of the works'</i></p>
<p>7. Article 35(2) and article 36(3) – notice period for temporary possession.</p>	<p>Key issue:</p> <ul style="list-style-type: none"> • Notice period for taking temporary possession should be 3 months <p>Notice period for temporary possession, Articles 35(2) and 36(3) require the applicant to provide at least 28 days' notice before entering and taking temporary possession of land.</p> <p>The Council considers that both these time frames are far too short, especially if landowners need to make alternative arrangements for their business to continue to function. Accordingly, the period in Articles 35(3) and 36(3) should be 3-months.</p> <p>The Council notes that the recent Lake Loathing (Lowestoft) Third Crossing Order 2020, includes a three-month notice period. Therefore, it is not accepted that the Council are holding the dDCO to a higher standard than other DCOs or that a 3-month period is inconsistent with a desire to ensure NSIPs are expeditiously delivered, as has been suggested by the applicant.</p>

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Issue	Comment
	<p>Instead, this simply requires an appropriate level of planning and coordination to ensure that notices are served on time to allow this. It is not for the Council to evidence why a 3-month period is justified, but instead for the applicant to justify why it cannot in this case provide a longer period than 28-days.</p> <p>The applicant indicates that the Council provides no support for its assertion that compensation would be likely to increase compensation. The Council considers this to be a matter of simple logic. Where a landowner is given a shorter time period for notification of any possession, they have less time to take steps to mitigate any losses, such as changes to contracts, secure alternative premises, etc.</p> <p>Further, this would also appear likely to increase the likelihood of increased compensation, where a landowner has increased notice, there will clearly be cases where this gives them a better opportunity to mitigate any losses.</p> <p>The applicant has responded to these concerns in the Statement of Common Ground (REP6-030). However, the fact that the period offered is longer than some consent to DCO's does not in itself mean that it is proportionate.</p>
<p>8. Article 39(2) (recovery of costs of new connections) – should be compensation for loss not just expenditure.</p>	<p><u>Key issue</u></p> <ul style="list-style-type: none"> • Article 39(2) should refer to compensation for loss not just expenditure <p>The Council is of the view that Article 39(2) (relating to the recovery of costs of new connections) should be extended to cover compensation for losses, not just expenditure.</p> <p>If a person suffers losses as a result of the removal of a drain or sewer, then it is entirely reasonable they should be compensated for losses as well as expenditure.</p> <p>This would of, course, be subject to evidence and reasonable mitigation of losses, as with all compensation payments.</p> <p>The applicant has suggested that no justification has been given for this assertion. The Council considers the suggestion to be self-evident and sees no reason why the applicant would object to paying properly and fairly incurred losses.</p> <p>The applicant has responded to these concerns in the Statement of Common Ground (REP6-030). However, its primary position is that compensation is secured in relation to expenditure and at other</p>

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Issue	Comment
	transport DCO's don't require compensation for losses. In the Council's opinion this is an incomplete response.
<p>9. Article 40 and the replacement of 'special category land'.</p>	<p>Key issue</p> <ul style="list-style-type: none"> • The replacement land should be delivered before the Special Category Land is vested in the applicant. Otherwise, there is a least a temporary loss of open space and a potential long term risk of loss/non-delivery. <p>There currently appears to be a significant risk of delay in replacement land being provided. The wording should follow the Model Provisions, i.e. the replacement land should be delivered before the Special Category Land is vested in the applicant.</p> <p>Otherwise, there is at least a temporary loss of open space and a potential long- term risk of loss/non delivery.</p> <p>Clear justification is needed if fully implemented replacement land is not in place prior to vesting. The direct impact of this will be felt by those who use this valuable resource without compensation.</p> <p>The Model Provisions specifically require that the approved scheme has been implemented on the replacement land prior to the special category land being discharged from its rights, trusts and incidents.</p> <p>The Council does accept that there are DCOs where this has been approved, but this is not considered to be a scheme where it is appropriate for the land to be vested, until the alternative land has been delivered.</p> <p>The applicant has responded to these concerns in the Statement of Common Ground (REP6-030, item number 2.1.324). However, dispute the position of the applicant there is a real risk of important open space note being available for public use for a significant period of time. In the Council's opinion this is not acceptable.</p>

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Issue	Comment
<p>10. EMP3 in Requirement 4 both needs to be consulted upon with the Council and approved by the Secretary of State.</p>	<p>Key issues:</p> <ul style="list-style-type: none"> • The EMP Third Iteration should be consulted upon with the Council • The EMP Third Iteration should be approved by the Secretary of State in the same way that the EMP 2 is approved. <p>The Council should be consulted on the EMP Third Iteration. The Council acknowledge that this is a management plan relating to the operation and maintenance of the authorised development. However, the operation of the strategic road network has the potential to have significant impacts on the local road network, especially when the project proposes to disconnect the existing strategic road network (SRN) port link between the A13 west-bound and the A1089 south-bound and instead divert this traffic via local authority roads. Considering the limited engagement by the applicant with the Council on the impact on the local road network, the Council has real concerns that the applicant is making decisions regarding the operation of the strategic road network without considering the impact on the local road network.</p> <p>In addition, the Council consider the EMP Third Iteration should be approved by the Secretary of State. This would mirror the approach currently proposed as part of the A66 Northern Trans-Pennine Project - see Secretary of State for Transport issued a letter on 8 November 2023</p>
<p>11. More absolute words describing compliance with outline documents when commencing an iterative process.</p>	<p>Key concern</p> <ul style="list-style-type: none"> • That the control documents are not adequately secured as the requirements allow too much flexibility in following documents which are themselves only outline and allow significant flexibility. • The Council suggests that words like ‘reflect’ and ‘substantially in accordance with’ should be replaced with more absolute words, such as ‘implement’. <p>The Council has addressed this in its D6 submissions (REP6-164, pages 35-38).</p> <p>The Council remains concerned that not all Control documents and plans are adequately secured. In particular, the Council restates its concerns regarding the use of phrases, such as ‘<i>substantially in accordance with</i>’, ‘<i>reflecting</i>’, ‘<i>specific outline documents</i>’ and ‘<i>based on</i>’ specific documents. These words and phrases do not provide sufficient certainty. The documents referred to are statements of broad principles and not being required to act in accordance with them provides an unacceptable</p>

Thurrock Council Submission at Deadline 8 (D8) Appendix B: Key Outstanding DCO Concerns
Lower Thames Crossing

Issue	Comment
	<p>amount of flexibility to the applicant. The Council requests that these references are replaced with <i>'in accordance with'</i>.</p> <p>The applicant states that the removal of the phrases would fetter the discretion of the Secretary of State. It is correct that these would place limits on what can be approved, but this is the purpose of referring to the specific outline documents. It is accepted that the applicant does not have to fully design the authorised development before bringing it for examination. However, there does need to be a degree of certainty in order for the Examination to be effective. That certainty is reduced by using the words and phrases advocated for by the applicant. It should also be noted that the applicant is prepared to use the phrase <i>'in accordance with'</i> in a number of places within the draft DCO and therefore it is not accepted that the use of <i>'in accordance with'</i> is unlawful.</p> <p>Despite the applicant highlighting that these are unprecedented (see REP7-190, page 26), these concerns have been raised by other IPs and remain a concern.</p>
<p>12. Article 65 – appeals to SoS. 10 business days is not sufficient.</p>	<p>Key issue:</p> <ul style="list-style-type: none"> • Article 65 should be amended to allow 20 business days to respond (Article 56(2)(d)) <p>It is the view of Thurrock Council that the 10-business day period for responding appears unnecessarily short. While there is precedent for the 10-business days (refer to the DCO for A14 Cambridge to Huntingdon). The Council recommends a minimum of 20 days considering the scale of the scheme.</p> <p>The Council still considers that 10 business days is unnecessarily short. Irrespective of precedent, considering the scale of LTC and the role the Council is going to have to play, allowing 20 business days is reasonable.</p> <p>The applicant has responded to these concerns in the Statement of Common Ground (REP6-030), however, the position of both parties remains the same.</p>

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Lower Thames Crossing

Issue	Comment
13. Article 66 – securing of documents	<p>Key issue</p> <ul style="list-style-type: none"> • The Construction Logistic Plan (which is currently within the COCP) should be included within Requirement 4(3) and certified. • Structures Plans should be included as part of the design parameters in Requirement 3. • Temporary Works Plans should be included in Schedule 1. • Drainage Plans should be included within Requirement 8. <p>The Council notes that the Construction Logistics Plan, which is part of the CoCP (section 61) is only secured so far as it is referred to as part of the CoCP in Requirement 4. The Council considers that it would be in the public interest to amend Requirement 4(3) so that the Construction Logistics Plan is referred to after the REAC. This would add details and governance to the control and enforcements process. The Construction Logistics Plans should supplement and complement the Traffic Management Plans.</p> <p>During ISH 14, 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> <p>However, it remains the Council's position that these should remain certified and should also become secured by the dDCO with additional provisions or part of other 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</p>

Thurrock Council Submission at Deadline 8 (D8) Appendix B: Key Outstanding DCO Concerns
Lower Thames Crossing

Issue	Comment
	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.

Appendix C Updated Protective Provisions agreed by LHAs

Lower Thames Crossing

Thurrock Council Submission at Deadline 8 (D8)

**Appendix C: Response of Local Highway Authorities to the Applicant's
Response at Deadline 7 to the Protective Provisions for the Benefit of Local
Highway Authorities (REP7-190, pages 2-13)**

5 December 2023

Thurrock Council

 **thurrock.gov.uk**

Thurrock Council Submission at Deadline 8 (D8) Appendix C: Response of Local Highway Authorities to the Applicant's Response at Deadline 7 to the Protective Provisions for the Benefit of Local Highway Authorities (REP7-190, pages 2-13)
 Lower Thames Crossing

Document Control Sheet

Project Name: Lower Thames Crossing

Report Title: Thurrock Council Submission at Deadline 8 (D8) – Appendix C: Response of Local Highway Authorities to the Applicant's Response at Deadline 7 to the Protective Provisions for the Benefit of Local Highway Authorities (REP7-190, pages 2-13)

Doc Ref: -

Date: 5 December 2023

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Lower Thames Crossing

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C.1 Response of Local Highway Authorities to the Applicant's Response at Deadline 7 to the Protective Provision for the benefit of Local Highway Authorities (REP7-190, pages 2-13)

RESPONSE OF LOCAL HIGHWAY AUTHORITIES TO THE APPLICANT'S RESPONSE AT DEADLINE 7 TO THE PROTECTIVE PROVISIONS FOR THE BENEFIT OF LOCAL HIGHWAY AUTHORITIES (REP7-190, pages 2 – 13)

1. Introduction

- 1.1 This document responds directly to the response of the Applicant at D7 in REP7-190 to the protective provisions put forward by the Local Highway Authorities (LHA) at D6 (REP6-142). It is submitted on behalf of all five LHA.
- 1.2 In view of the criticism of the drafting of the Prospective Provisions ("PP") submitted by the LHA at D6 contained in paragraphs 2.1.2 and 2.1.3 of REP7-190, it is worth reminding the Examination of the context for that submission.
- 1.3 For some time, it was argued by the Applicant that no PP should be included to protect the local highway network. When a set of PP were produced by the Applicant, the five LHA felt it would be helpful to the ExA to provide a combined response. To meet a deadline this necessitated some rapid drafting by committee and the production of draft PP which were not the final article but intended to be helpful in order to further the discussion with the Applicant. It was intended to be an iterative process which would progress between deadlines; however, this has not occurred.
- 1.4 Appendix 1 to this document contains the PP submitted by the Applicant at D7 with the amendments being sought by the local highway authorities at this stage. It should be apparent from Appendix 1, and the text which follows below, that the LHA have responded to the Applicant's comments in REP7-190 and very significantly reduced their amendments to those they consider absolutely essential to protect their assets. The LHA have therefore compromised in order to try and reduce the number of issues upon which the ExA and Secretary of State are required to adjudicate.
- 1.5 This document broadly follows the order set out in REP7-190 and deals with the subject matter as follows:
 - Section 2 The approach to the drafting of the Protective Provisions
 - Section 3 Design Input.
 - Section 4 Maintenance and Defects.
 - Section 5 Commuted sums and costs.
 - Section 6 Other amendments – dealt with in tabular form.
 - Section 7 Conclusions
- 1.6 Suggested revisions to the draft PP submitted by the Applicant at D7 are contained in the Appendix 1 to this document with the LHA amendments shown

as tracked changes. Appendix 2 contains a clean version of the PP incorporating the LHA amendments. Apologies for any formatting issues in respect of those documents. A request was made for a word version of the PP submitted by the Applicant at D7 however none have been received.

2. The approach to the drafting of the Protective Provisions.

- 2.1 The purpose of PP in a DCO is to provide safeguards to protect assets not under the control of the undertaker but which are affected by its proposed works. The Applicant has accepted that the local highways are an asset appropriately protected by such provisions.
- 2.2 The best precedents for such PP are those contained for the protection of local highways and national highways in other DCO, including DCO which are subject to the same NPSNN. These precedents contain the type of protections for highway authorities usually contained in agreements entered into under section 278 of the Highways Act 1980 and, where one highway authority is carrying out works on another authorities' network, agreements under Part 1 of that Act.¹
- 2.3 Highway schemes do not as a matter of course include PP for the benefit of highway authorities because most highway schemes are promoted by highway authorities on their own network. There are, nevertheless, some instances of highway schemes including PP².
- 2.4 There are also several other DCO promoted under the NPSNN and other NPS which affect the national and local highways and those schemes have been required by the Applicant and the relevant local highway authorities to include PP for the benefit of their assets.³
- 2.5 Whenever other DCO propose works on the National Highway network, which it will fall to the Applicant to assume responsibility for, it insists on PP for its assets and it has draft PP which it provides to DCO promoters for inclusion in DCO⁴.

¹ In fact the first PP for the benefit of National Highway and Local Highway Authorities in a DCO were those included in The East Midlands Gateway Rail Freight Interchange and Highway Order 2016 at the request of the Examining Authority who were concerned that delivery might be delayed if the essential provisions for the protection of the highway authorities were to be included in s.278 agreements since there can often be delay in completing such agreements. The drafting of the PP therefore followed generally the form and scope of the NH and relevant LHA s.278 agreements at that time.

² The A303 Sparkford to Ilchester Dualling DCO 2021

³ The East Midlands Gateway Rail Freight Interchange and Highway Order 2016; The Northampton Gateway Rail Freight Interchange Order 2019 and The West Midlands Rail Freight Interchange Order 2020 and The Southampton to London Pipeline DCO 2020.

⁴ The up-to-date position of the Applicant in respect of the PP it requires when other parties promote DCO can be found in Appendix 1 of its Deadline 1 submissions to the ongoing Examination into the Hinckley National Rail Freight Interchange DCO (REP1-182 in the relevant Examination Library). Appendix 1 of that document contains the current PP sought by the Applicant.

- 2.6 Accordingly, the LHA have drawn on the PP included in other DCO promoted under the NPSNN, and also the “standard” PP that the Applicant routinely requires to be included in other DCOs for protection of its network, as precedent for the PP included in this DCO. The local highway network should be entitled to the same protection for its network when work is being carried out as the Applicant requires for its own network.
- 2.7 It is anticipated that the Applicant will argue that it is different since it is a highway authority and therefore the full protections normally afforded are not necessary. This is a consistent approach it has taken in respect to try and create a distinction between its DCO and DCO promoted by others under the NPSNN. However, the Applicant will not be the highway authority for the assets which the PP are designed to protect. They will have no responsibility for them once the works are completed and that will fall to the local highway authorities.
- 2.8 As referred to previously, the LHA have significantly compromised and are not seeking the full protection normally afforded by such PP⁵. However, it is essential that the local highway authority are sufficiently engaged and assets protected to ensure that works carried out to its network, and the handing over of them, are appropriately dealt with.
- 2.9 It is, and always has been, apparent that full agreement will not be reached on the drafting of the PP. It is hoped that the compromise position represented in the Appendices to this document will assist in reducing the number of issues upon which the ExA and, in due course, the Secretary of State will have to adjudicate.

3. Design Input

- 3.1 The PP only deal with works affecting the local highway network, not the entirety of the scheme. This is important to bear in mind when considering the rather extreme reaction to the LHA amendments to para 145 (Design Input) in the Applicant’s D7 submissions (REP7-190).
- 3.2 Nonetheless, the LHA have reviewed the position and accepts the concern of the Applicant with regard to the potential for a protracted process.
- 3.3 Accordingly, as can be seen from the Appendices, the LHA have therefore reverted substantially to the Applicant’s original version with only some amendments to seek a little more time and to improve the drafting of the provision. This represents a substantial compromise on the part of the LHA – not only will there be no need to obtain design approval from the LHA but the opportunity to influence design under these PP is limited. Therefore much rests upon the control documents.
- 3.4 This represents a different position, and level of protection, than afforded to all the other parties who have PP included in Schedule 9 Parts 1-10 of the dDCO.

⁵ For example, it is not seeking to approve the design which is a usual provision in such PP.

Without exception all of those parties have the protection of provisions requiring approval or agreement of matters relevant to their assets to a greater or lesser extent.

4. Maintenance and Defects

Maintenance

- 4.1 It appears that the section headed Maintenance and Latent Defect in the REP7-190 document is concerned only with the inclusion of a latent defects clause (dealt with below). None of the LHA amendments interfered with the overall regime of provisional certificate, maintenance and then final certificate.

Latent Defects

- 4.2 The LHA are no longer pursuing the provision requiring latent defects to be made good for a period of 12 years. The defects provision in the Appendices (paragraph 150) is as drafted by the Applicant save for the inclusion of “the relevant” in front of “local highway authority”.

5. Commuted Sums and Costs

Commuted Sums

- 5.1 The issue of commuted sums has already been explored in the Examination and is not repeated here. Reference should be made to the relevant submissions in respect of the rationale for the provision.⁶
- 5.2 This note simply reminds the ExA that there is precedence for the payment of commuted sums in the PP. Examples, all covered by the NPSNN, being:
- 5.2.1 The A303 Sparkford to Ilchester Dualling DCO 2021;
 - 5.2.2 The M25 J28 DCO 2022;
 - 5.2.3 The East Midlands Gateway and Rail Freight Interchange and Highway Order 2016;
 - 5.2.4 The Northampton Gateway Rail Freight Interchange Order 2019;
 - 5.2.5 The West Midlands Rail Freight Interchange Order 2020; and
 - 5.2.6 The “standard” protective provisions issued by the Applicant for inclusion in DCO which affect its highway network⁷.

⁶ See for example - in respect of LBH see REP3-186, REP4-318 pages 5 and 6; in respect of TfL see REP1-304 paras 4.9-4.15, REP4-359 paras 6.7-6.15, REP5-114 paras 5.1-5.5 and REP7-229 Section 3

⁷ National Highways submission to Hinckley SRFI DCO – REP1-182

- 5.3 All the above schemes are, by definition, nationally important and provide substantial public benefit.
- 5.4 There is a distinction between the position of the local highway authorities in London (TfL and the London Borough of Havering) and the other three LHA regarding the ability of the authorities to access funds for future maintenance. TfL and LBH do not benefit from funding via the standard maintenance formula. Accordingly, the PP in the Appendices have been drafted with alternative wording to allow for the commuted sum provisions to only apply to TfL and LBH if felt appropriate.

Costs

- 5.5 The Applicant rejected the inclusion of a provision providing for the payment of costs not because such costs should not be paid but on the basis that such costs will be payable under the s.106 Agreements to be entered into.
- 5.6 The costs payable under the s.106 Agreements are not as yet agreed between all the LHA and the Applicant and in any event do not cover the full costs applicable in respect of the operation of these PP.
- 5.7 Accordingly, a costs provision has been reinstated however a sub- paragraph (2) has been added to ensure that, if the costs are payable under a s.106 agreement, they are not also payable pursuant to the PP.
- 5.8 A review of the other PP in the dDCO will reveal that all the other PP within the dDCO include a provision for the party’s costs/expenses for dealing with the operation of the PP to be paid by the Applicant. There is no reason why LHA should be different.

6. Other amendments

- 6.1 The table below addresses all of the amendments to the Applicant’s PP proposed by the LHA as shown tracked in the Appendix to this document. The table also identifies those additional provisions/points that the LHA are no longer pursuing.

Provision	Issue and [LBC/LHA] Response
Throughout	<p>Insertion of “relevant” before “local highway authority”.</p> <p>The Applicant has adopted the use of the term “relevant local highway authority” as suggested by the LHA. The LHA amendments just seek to ensure it is added at all places where needed.</p>

Definition of “as built drawings”	<p>In response to the LHA draft PP the Applicant has included the definition that was missing however, the Applicant’s definition is, in part vague and includes only some of the information required by the LHA definition.</p> <p>The LHA have again compromised and not reverted to the full list but have included only the additional elements felt essential.</p> <p>It should be noted that the definition of “as built drawings” included by the LHA in the Appendices is very similar to that required to be provided to the Applicant when dealing with works by others on the Applicant’s network. This can be seen from the DCOs referred to in paras 5.2.3 – 5.2.5 and the Applicant’s “standard” PP referred to in paragraph 5.2.6.</p> <p>In particular, the drafting criticism from the Applicant⁸ with regard to the inclusion of items such as “as constructed programme” and “method statements” is curious given that those items are included in the definition of the “as built drawings”, in the Applicant’s own standard PP.⁹ Nonetheless, the LHA have not sought to add all those items back in.</p>
Definition of Commuted Sum	Added back in for the purposes of Paragraph 156.
Definition of “detailed information”	<p>Limited additional worded has been inserted.</p> <p>Again, the wording virtually replicates that included by the Applicant in its standard PP.</p>
Definition of “works”	Amended to insert a missing word.
Design Input – Para 145	<p>(1) Amendments to insert “must” rather than “will” to comply with drafting conventions¹⁰.</p> <p>(3) Increase from 10 to 15 business days for LHA to consider and respond to design information supplied – which could be extensive.</p> <p>(4) and (6) Additional wording suggested for clarity.</p>
Local operating agreement - Para 146	(1) It is noted that the Applicant has responded positively to additional matters included in items (a) to (h).

⁸ REP7-190 Page 9

⁹ See REP1-182 App 1 National Highways Written Representations to Hinckley SRFI DCO Examination

¹⁰ Para 3.3 Advice Note 15

	<p>The LHA have included two additional items both of which were accepted by the Applicant in its discussions on the contents of side agreements.</p> <p>(2) Wording amended for clarity.</p>
Reinstatement – Para 147	Additional words added to ensure requirement to reinstate applies whatever the reason for the survey or investigation.
Inspection and Testing – Para 148	<p>Amended wording suggested for clarity.</p> <p>As a compromise the LHA are no longer seeking the deletion of (7)</p>
Road Safety Audits – Para 149	<p>(1) Amendments to insert “must” rather than “will” to comply with drafting conventions¹¹.</p> <p>(3) Amendments to ensure recommendations of safety audit are complied with unless it would give rise to any new or materially different environmental effects in comparison with those in the environmental statement unless otherwise agreed with the relevant local highway authority. The safety audits are undertaken by independent parties and it is appropriate that the LHA be involved in any decision not to accept the recommendations from the auditor in respect of those elements of the authorised work being carried out on the local highway network for which it is, or will be, the custodian. That is the position taken by the Applicant when it is dealing with works on its network.</p>
Warranties	As a compromise the LHA are no longer seeking a provision with regard to warranties
Provisional Certificate – Para 151	<p>(1) Amended wording suggested for clarity.</p> <p>(2) As 149(3) above.</p>
Final Certificate – Para 153	<p>Words added for clarity in 153 (1) (b).</p> <p>Addition of (1) (g) to carry forward obligation in 149 (3).</p> <p>Addition is to ensure traffic management finished prior to the final certificate being issued so that the impact of the works on the part of the network concerned is not still being experienced.</p>

¹¹ Para 3.3 Advice Note 15

<p>Commuted Sums – Para 156</p>	<p>Provision added back in as explained in 5.1 – 5.4 above.</p> <p>The drafting follows closely the drafting of Paragraph 73 of Part 7 Sch 9 of The M25 Junction 28 Development Consent Order 2022 – being protective provisions for the benefit of TfL.</p>
<p>Indemnity – Para 157</p>	<p>Provision added back in to include an indemnity which is ordinarily included in such PP.</p> <p>A review of the other PP in the dDCO will reveal that all the other PP within the dDCO (Parts 1-10 of Schedule 14) include an indemnity provision. There is no explanation as to why LHA should be different.</p> <p>See also the following PP where the Applicant has insisted on an indemnity itself:</p> <p>East Midlands Gateway DCO – Sch 19 para 12.</p> <p>Northampton Gateway DCO – Sch 13 Part 2 para 12.</p> <p>West Midlands Interchange DCO – Sch 13 Part 2 para 12.</p> <p>A303 Sparkford to Ilchester Dualling DCO – Sch 8 Part 4 para 45.</p> <p>London to Southampton Pipeline - Sch 9 Part 6 para 69</p> <p>National Highways “standard” DCO provisions para 18¹².</p>
<p>Arbitration – Para 158</p>	<p>(3) Correction to cross reference</p> <p>The LHA are no longer seeking arbitration rather than an appeal to Secretary of State although they note that every other PP in the dDCO includes provision for arbitration.</p>

7. Conclusion

- 7.1 The LHA have significantly compromised in order to achieve as much agreement as possible.
- 7.2 It would seem that there is possibility that there will remain some provisions at issue. In that regard the ExA and the Secretary of State is requested to have regard to the need to be even handed in its approach to PP under the DCO regime. The LHA is not seeking any protection for its assets over and above that which is afforded to the national network when works are carried out on its network. Indeed, the compromises of the LHA to reach agreement will mean that even if the LHA PP are included in their entirety, there will be less protection

¹² See REP1-182 App 1 National Highways Written Representations to Hinckley SRFI DCO Examination

for the LHA network compared with that ordinarily afforded to the national network.

- 7.3 In so far as issues are not agreed, then the justification for the PP in the Appendices is contained in this document and the documents sign posted within it.

APPENDIX 1

PART 11

FOR THE PROTECTION OF LOCAL HIGHWAY AUTHORITIES

Application

143. The provisions of this Part of this Schedule have effect in relation to the works (as defined under paragraph 144) unless otherwise agreed in writing between the undertaker and the relevant local highway authority.

Definitions

144. In this Part of this Schedule—

“as built drawings” means –

(a) as constructed drawings of the local highway in both PDF and Autocad DWG formats or in formats reasonably agreed with the relevant local highway authority

~~(a) drawings showing the as constructed local highways in an appropriate format;~~

(b) drawings showing the location for utilities diverted and installed in the local highway: and

(c) specifications for materials used for the constructed local highway;

“business day” means a day other than a Saturday or Sunday, which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971;

“Commuted sum” means the sum to be paid by the undertaker to the relevant local highway authority for the future maintenance of any highway asset not previously forming part of the local highway network or substantially modified by the works as determined in accordance with paragraph 157

“detailed design” means drawings and other information comprising the detailed design for local roads comprised in the authorised development for the purposes of paragraph 3 of Schedule 2 of the Order;

“detailed information” means drawings, specifications and other information relating to the local highway, as relevant to the works in question, to comprise the following (insofar as both parties agree (acting reasonably) are relevant and not already provided for in any document that the undertaker is required to produce under Schedule 2 to the Order) which must~~and~~ be in accordance with the detailed design—

(a) boundary, environmental and mitigation fencing;

(b) road restraint systems (vehicle and pedestrian);

(c) drainage and ducting;

(d) earthworks including supporting geotechnical assessments required by DMRB and any required strengthened earthworks appraisal form certification;

(e) road pavements;

(f) kerbs, footways and paved areas;

(g) long and cross sectional drawings;

(h) traffic signs and road markings;

(i) traffic signal equipment and associated signal phasing and timing detail;

~~(j)~~(j) electrical work for road lighting and traffic signs;

~~(k)~~(k) highway structures;

~~(l)~~(l) landscaping, planting and any boundary features which will form part of the local highway;

~~(m)~~(m) new utilities and utility diversions ~~insofar as~~ in the existing or proposed local highway;

~~(n)~~(n) a schedule of timings for the works, including dates and durations for any closures of any part of the local highway;

- ~~(n)~~(o) _____ traffic management proposals including any diversionary routes;
- ~~(m)~~(p) _____ a schedule of the existing local highway condition prior to commencement of construction related activities;
- ~~(l)~~(q) _____ a specification of the condition in which it is proposed that the local highway will be returned once the relevant works have been completed;
- ~~(k)~~(r) _____ any temporary works structures which are to be erected or retained under the Order or otherwise.

“DMRB” means the Design Manual for Roads and Bridges published by the undertaker, or any replacement or modification of that standard for the time being in force;

“final certificate” means the final certificate issued by the relevant local highway authority under paragraph 153 of this Part;

“local highway” means any public highway including any public right of way which is maintainable, or is intended at the completion of the works in relation thereto to be maintainable by ~~at~~ the relevant local highway authority;

“maintenance period” means 12 months from the date of the provisional certificate being served under paragraph 151 of this Part unless otherwise agreed in writing between the parties;

“provisional certificate” means the certificate served under paragraph 151 of this Part;

“senior representatives” means the regional director on behalf of the undertaker and persons notified to the undertaker by the relevant local highway authority as being their senior representatives; and

“works” means any works authorised by the Order undertaken on, to, over or under any part of the local highway.

Design input and commencement

145.—(1) The undertaker ~~must~~will allow and facilitate an appropriately qualified person or persons duly appointed by the relevant local highway authority (each being a “nominated officer”) to participate in the design process for the detailed design for the works and will have reasonable regard to any representations of the nominated officer in finalising its detailed design proposal (and, without limitation, the undertaker is able to refuse implementation of any representation which would cause a breach of this Order, conflict with a permit issued under a permit scheme or would entail materially new or materially different environmental effects from those reported in the environmental statement) .

(2) Participation under sub-paragraph (1) will be in the form of invitations (given at least 10 business days in advance and sent by email) to attend design meetings relating to relevant works and the provision to the nominated officer of such drawings, cross/long sections, design proposals and other information as is reasonably required to allow the nominated officer to provide an informed response on the detailed design proposals to the undertaker.

(3) ~~The n~~Nominated officer will have no less than ~~10~~5 business days from the date on which the undertaker supplies information pursuant to sub-paragraph (2) to provide the undertaker with any comments upon any information provided to that officer pursuant to sub-paragraph (2).

(4) No part of the works may commence until ~~the~~ undertaker has provided to the relevant local highway authority the detailed information relating to that part of the works (without prejudice to the undertaker providing parts of the detailed information insofar as it relates to the operation (as distinct from the construction) of the local highway at a later date provided the provision of that information is subject to ~~this sub-paragraph and~~ sub-paragraphs (5) to (7)).

(5) The undertaker will give the relevant local highway authority at least 10 business days to comment and provide representations by email on the detailed information provided to it under sub-paragraph (4).

(6) The undertaker will have reasonable regard to any comments, representations and recommendations made by the relevant local highway authority under paragraph (5) (and, without limitation, the undertaker is able to refuse implementation of any representation or recommendation which would cause a breach of this Order, conflict with a permit issued under a permit scheme or would entail materially new or materially different environmental effects from those reported in the environmental statement) and will ~~endeavour to~~ provide the relevant local highway authority with reasons for non-acceptance of any representation or

recommendation ~~as soon as reasonably practicable upon following~~ receipt of a request from the relevant local highway authority in writing within 10 business days of ~~such request, its decision~~.

(7) The works must not be carried out except in accordance with the detailed information (but subject to the process in sub-paragraphs (4) and (5)) or as otherwise may be agreed between the undertaker and the relevant local highway authority.

(8) This paragraph does not apply to the works to the extent the undertaker and the relevant local highway authority agree (acting reasonably) that a permit issued under a permit scheme applies to the works.

(9) This paragraph does not apply to the works to the extent that they are subject to PRO.7 of the design principles, and to the extent they are not subject to that clause of design principles, without limitation, the undertaker is able to refuse implementation of any representation or recommendation made under this paragraph where it would cause an inconsistency with the outcome of process secured under that clause of the design principles.

146.—(1) Before commencing the construction of, or the carrying out of any work authorised by this Order which involves works to a local highway the undertaker must use bestreasonable endeavours to agree with the relevant local highway authority a local operating agreement covering the following as relevant to the works in question—

- (a) communications and customer care arrangements for communication with stakeholders and the local community including
 - (i) the identity ~~of~~ the party responsible for each activity;
 - (ii) the identity of the contractor responsible for stakeholder engagement and communication; and
 - (iii) defined timescales for contractor responses to responses to communication;
- (b) where the undertaker takes responsibility for the local highway in which the works are proposed definition of the extents for the works areas between the highway boundary, the traffic management lead in tapers, the longitudinal coning and the end of the lead out tapers, zone of influence (being the area which is reasonably affected by those work areas, traffic management and diversion requirements and free recovery areas (as appropriate));
- (c) arrangements for the submission to the local highway authority of digital copies of all as-built drawings for the relevant work area including identification of any new limits of highway maintainable by the relevant local highway authority in accordance with paragraph 153 of this Schedule;
- (d) winter maintenance including anticipated winter treatments and severe weather arrangements to apply during the construction period and the maintenance period;
- (e) routine maintenance and repair arrangements in relation to local highways directly affected by the construction of the authorised development;
- (f) continuity of technology arrangements to apply during the construction period and the maintenance period;
- (g) arrangements for dealing with and recording incidents during the construction period and the maintenance period including appropriate provision of recovery vehicles; and
- (h) traffic management: during therelevant works.
 - (i) asset handover arrangements
 - (j) the method of reporting any claims made by and against the undertaker in respect of the works

(2) Any agreement completed under sub-paragraph (1) must be complied with by the undertaker and continue in force until such time as a final certificate has been issued by the relevant local highway authority in respect of the ~~relevant~~ works.

Survey Reinstatement

147. The undertaker must reinstate to the reasonable satisfaction of the relevant local highway authority any part of the local highway which has been temporarily used for survey or investigation by the undertaker pursuant to Article 20 or Article 35 of this Order or under any other power in this Order to the condition it

was in on the date on which the survey or investigation began or such other condition as may be agreed in writing by the relevant local highway authority.

Inspections and testing of materials

148.—(1) The undertaker must allow and facilitate any person duly appointed by the relevant local highway authority to access and inspect at all reasonable times any part of the works during their construction and before a final certificate has been issued in respect of the ~~relevant~~ works as is reasonably necessary to ensure that the works have been or are being carried out in accordance with the detailed design and to the appropriate standard.

(2) The undertaker must allow any person duly appointed by the relevant local highway authority to enter upon and inspect any part of the works which are in, over, under, or adjacent to any local highway or may affect any highway or any property of the relevant local highway authority, during the carrying out of the works, and the undertaker must give to such officer reasonable facilities for such inspection.

(3) Any testing reasonably requested by the relevant local highway authority of materials used in any works must be carried out at the undertaker's expense and in accordance with the latest version of the Manual of Contract Documents for Highway Works (or any other testing specification agreed ~~between both parties~~ the undertaker and the relevant local highway authority acting reasonably).

(4) The relevant local highway authority (or its agent) may test all or any materials used or proposed to be used in any works and the undertaker must provide such information access and materials as is reasonably necessary to facilitate such testing.

(5) The undertaker must, as soon as is reasonably practicable, and in any event within 10 business days provide the relevant local highway authority with a copy of all available test certificates and results relevant to the works that the relevant local highway authority has requested in writing.

(6) The relevant local highway authority must as soon as is reasonably practicable, and in any event within 10 business day provide the undertaker with a copy of all available test results and certificates relevant to the works that the undertaker has requested in writing.

(7) In circumstances where a work carried out by the undertaker is tested by the relevant local highway authority pursuant to the provisions of this ~~Part of the Schedule~~ and that test resulted in works being undone at the undertaker's expense (acting reasonably) and found to be satisfactory then that expense must forthwith be reimbursed by the relevant local highway authority provided that the relevant local highway authority was given a reasonable opportunity by the undertaker to inspect the works at a time when the works could have been inspected without the need to incur the expense.

Road Safety Audits

149.—(1) The undertaker must procure that an appropriately qualified RSA team (as defined in DMRB Volume 5 Section 2 Part 2 (GG119) or any replacement or modification of that standard) undertakes road safety audit in accordance with DMRB standard GG 119 and ~~will must~~ provide copies of the reports of such audits to the relevant local highway authority within 10 days of their receipt by the undertaker.

(2) The relevant local highway authority must be invited to participate in the road safety audit conducted under sub-paragraph (1).

(3) Where the report of the stage 3 and 4 road safety audit identifies any recommended measures in respect of the local highway, the undertaker must carry out, at its own expense and to the reasonable satisfaction of the relevant local highway authority, all these measures identified as part of stage 3 and 4 audit ~~which the undertaker considers necessary (acting reasonably) and~~ which do not give rise to any new or materially different environmental effects in comparison with those identified in the environmental statement unless otherwise agreed with the relevant local highway authority.

Defects in local highways constructed by the undertaker

150.—(1) Until such time as a final certificate has been issued in respect of any works, the undertaker must make good any defects in the works constructed by the undertaker to the reasonable satisfaction of the relevant local highway authority.

(2) The undertaker must submit to the relevant local highway authority such details and information relating to making good any defects under sub-paragraph (1) as the relevant local highway authority and the undertaker agree is reasonable in the circumstances.

Provisional Certificate

151.—(1) Subject to sub-paragraph (2), when the undertaker considers that the works have reached completion so that they are available for use by the public it must serve a provisional certificate on the relevant local highway authority and must allow the relevant local highway authority the opportunity to inspect the works to identify any defects or incomplete works ~~and the undertaker must give proper consideration to any representations and recommendations made by the relevant local highway authority and make good such defects pursuant to paragraph 150 or~~ and complete any incomplete works.

(2) The undertaker must not serve a provisional certificate on the relevant local highway authority under sub-paragraph (1) until either—

- (a) a stage 3 road safety audit has been carried out in respect of the works in question in accordance with GG119 of DMRB and ~~in the opinion of the undertaker~~ any recommended measures identified in the audit which do not give rise to any new or materially different environmental effects in comparison with those identified in the environmental statement ~~(and which the undertaker considers to be necessary,~~ have been completed unless otherwise agreed with the relevant local highway authority; or
- (b) the relevant local highway authority has been provided an opportunity to inspect the works and the undertaker has, in its opinion, completed any further works or measures required to address any safety deficiencies or defects identified as a result of the inspection.

(3) The relevant local highway authority must issue to the undertaker, on request from the undertaker a counter-signed provisional certificate in relation to any part of the works, after completion of that part of the works once a stage 3 safety audit has been carried out in accordance with sub-paragraph (2).

Maintenance

152.—(1) Subject to paragraph (2), the undertaker must maintain the works throughout the maintenance period to a standard appropriate to their use by the public in accordance with DMRB.

(2) Nothing in paragraph (1) makes the undertaker responsible for the maintenance of any street works or maintenance works undertaken by any person other than the undertaker or which does not form part of the authorised development during the maintenance period.

Final Certificate

153.—(1) The relevant local highway authority must as soon as reasonably practicable and in any event within 10 working days of the last of paragraph (a) to (f) of this sub-paragraph being satisfied issue a final certificate in respect of the works where—

- (a) the maintenance period has passed;
- (b) all incomplete works and identified defects requiring remediation under sub-paragraph 150(1) have been remedied to the relevant local highway authority's reasonable satisfaction; and
- (c) the undertaker has given the relevant local highway authority a reasonable opportunity to inspect the relevant works in readiness for the issue of a final certificate and has given due consideration and acted accordingly in respect of any representations and recommendations made by the relevant local highway authority in respect of the works;
- (d) the undertaker has provided the relevant local highway authority with a health and safety file in respect of the relevant works to the relevant local highway authority's reasonable satisfaction;
- (e) the undertaker has provided the relevant local highway authority with as built drawings and such detailed information as the relevant local highway authority has requested (acting reasonably) in relation to the relevant works as built; and
- (f) any sewers which the local drainage authority consider should be constructed to dispose of soil and surface water drainage in connection with the relevant Works and in order to make them appropriate for public use have been constructed.
- (g) a stage 4 safety audit in accordance with GG119 of the DMRB has been completed and any recommended measures identified in the audit which do not give rise to any new or materially

different environmental effects in comparison with those identified in the environmental statement have been completed unless otherwise agreed with the relevant local highway authority.

(h) the relevant works are not subject to any ongoing traffic management measures or routing of construction traffic related to the authorised development

(2) The issue of a final certificate by the relevant local highway authority amounts to an acknowledgment by the relevant local highway authority that the construction alteration or diversion (as the case may be) of a highway has been completed to its reasonable satisfaction for the purposes of article 10 (construction and maintenance of new, altered or diverted streets and other structures) of the Order.

Emergency Work

154. Nothing in this Part of this Schedule prevents the local highway authority from carrying out any work or taking such action as deemed appropriate forthwith without prior notice to the undertaker in the event of an emergency or danger to the public.

Land interests

155. Following the issuing of the final certificate under paragraph 153 in respect of any part of the local highway, the undertaker must, if requested by the relevant local highway authority, in respect of a local highway which is to be maintainable by the relevant local highway authority following, and as a result of, the completion of those works either—

- (a) execute and complete a transfer to the relevant local highway authority at nil consideration of any land and rights which have been compulsorily acquired under this Order and which are necessary for the maintenance and operation of a local highway; or
- (b) exercise article 20 (compulsory acquisition of land) and article 28 (compulsory acquisition of rights and imposition of restrictive covenants) as applied by article 31 (application of the 1981 Act) and 32 (modification of the 2017 Regulations) of this Order to directly vest in the relevant local highway authority land or interest which may be necessary for the maintenance and operation of a local highway,

unless otherwise agreed between the undertaker and the relevant local highway authority.

Commuted Sums

156.

(1) [Where this paragraph applies in accordance with sub- paragraph 7] The undertaker must use reasonable endeavours to agree with the relevant local highway authority a schedule of new highway assets which are proposed to become the maintenance responsibility of the relevant local highway authority as a result of the authorised development.

(2) Where the schedule prepared under sub-paragraph (1) cannot be agreed, the matters of dispute shall be determined in accordance with paragraph 158.

(3) Following agreement of the schedule under sub-paragraph (1) or determination under sub-paragraph (2), the relevant local highway authority must prepare a calculation of the commuted sum based on maintenance the local highway authority considers to be required for the schedule of highway assets agreed under sub-paragraph (1) or determined under sub-paragraph (2) and must use reasonable endeavours to agree it with the undertaker.

(4) The undertaker must be provided with a complete breakdown of the calculation of the commuted sum by the relevant local highway authority under sub-paragraph (3) including any assumptions used.

(5) Where the calculation prepared under sub-paragraph (3) cannot be agreed, the matters of dispute shall be determined in accordance with paragraph 158.

(6) The undertaker must pay the commuted sum to the relevant local highway authority in one instalment within 10 business days of the later of:

(a) the date of completion of the relevant works to which the commuted sum applies as evidenced by the issue of the provisional certificate in respect of those works; or

(b) the date of agreement of the value of the commuted sum under sub-paragraph (3) or determination under sub-paragraph (5).

(7) [This paragraph only applies to Transport for London and the London Borough of Havering]

Costs and Indemnity

157. (1) Subject to paragraph (2) the undertaker must pay to the relevant local highway authority in respect of the works a sum equal to the whole of any costs and expenses reasonably incurred by that relevant local highway authority in respect of:

(a) participating in the design of any part of the authorised development

(b) carrying out any inspections reasonably required in connection with any of the provisions of this Part of this Schedule

(c) negotiating, completing, implementing and monitoring compliance with the relevant local operating agreement pursuant to paragraph 146

(d) participation in road safety audits relating to the works pursuant to paragraph 149

(e) issuing any approvals/certificates pursuant to paragraphs 151 and 153

(f) agreeing any commuted sum pursuant to paragraph 156

(g) the transfer or vesting in the relevant local highway authority of any land and rights acquired by the undertaker pursuant to paragraph 155

(2) No costs shall be payable under paragraph (1) if they are the subject of an obligation to pay costs to a relevant local highway authority under the provisions of an agreement entered into between that local highway authority as local planning authority and the undertaker under section 106 of the 1990 Act.

(3) The undertaker must pay the costs and expenses referred to in sub-paragraph (1) to the relevant local highway authority within 28 business days of the relevant local highway authority advising the undertaker that they have been incurred and no final certificate will be issued under paragraph 153 if any payment due to be paid at that point has not been paid.

(4) The undertaker will indemnify and keep indemnified the relevant local highway authority against any liability, loss, costs, claim arising out of or incidental to the relevant works other than any caused by any negligent act, default or omission of the relevant local highway authority.

Disputes

~~156.158.~~—(1) In the event of any disagreement between the Parties arising out of or in connection with this agreement which requires the agreement of the Parties jointly or the approval of the local highway authority and which cannot be resolved within 10 business days of the disagreement arising, either party may request a review of the issue in disagreement by the parties giving notice in writing to their senior representatives.

(2) The senior representatives will consider any such request and use all reasonable endeavours in good faith to reach agreement to resolve any disagreement.

(3) Where agreement is not reached by the senior representatives within 10 business days of a request being made under sub-paragraph (1), the disagreement may be the subject of an appeal to the Secretary of State under article 65 (appeals to the Secretary of State) of this Order.

APPENDIX 2

PART 11

FOR THE PROTECTION OF LOCAL HIGHWAY AUTHORITIES

Application

143. The provisions of this Part of this Schedule have effect in relation to the works (as defined under paragraph 144) unless otherwise agreed in writing between the undertaker and the relevant local highway authority.

Definitions

144. In this Part of this Schedule—

“as built drawings” means –

(a) as constructed drawings of the local highway in both PDF and Autocad DWG formats or in formats reasonably agreed with the relevant local highway authority

(a) drawings showing the location for utilities diverted and installed in the local highway: and

(b) specifications for materials used for the constructed local highway;

“business day” means a day other than a Saturday or Sunday, which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971;

“Commutated sum” means the sum to be paid by the undertaker to the relevant local highway authority for the future maintenance of any highway asset not previously forming part of the local highway network or substantially modified by the works as determined in accordance with paragraph 157

“detailed design” means drawings and other information comprising the detailed design for local roads comprised in the authorised development for the purposes of paragraph 3 of Schedule 2 of the Order;

“detailed information” means drawings, specifications and other information relating to the local highway, as relevant to the works in question, to comprise the following (insofar as both parties agree (acting reasonably) are relevant and not already provided for in any document that the undertaker is required to produce under Schedule 2 to the Order) which must be in accordance with the detailed design—

(c) boundary, environmental and mitigation fencing;

(d) road restraint systems (vehicle and pedestrian);

(e) drainage and ducting;

(f) earthworks including supporting geotechnical assessments required by DMRB and any required strengthened earthworks appraisal form certification;

(g) road pavements;

(h) kerbs, footways and paved areas;

(i) long and cross sectional drawings;

(j) traffic signs and road markings;

(k) traffic signal equipment and associated signal phasing and timing detail;

(l) electrical work for road lighting and traffic signs;

(m) highway structures;

(n) landscaping, planting and any boundary features which will form part of the local highway;

(o) new utilities and utility diversions in the existing or proposed local highway;

(p) a schedule of timings for the works, including dates and durations for any closures of any part of the local highway;

- (q) traffic management proposals including any diversionary routes;
- (r) a schedule of the existing local highway condition prior to commencement of construction related activities;
- (s) a specification of the condition in which it is proposed that the local highway will be returned once the relevant works have been completed;
- (t) any temporary works structures which are to be erected or retained under the Order or otherwise.

“DMRB” means the Design Manual for Roads and Bridges published by the undertaker, or any replacement or modification of that standard for the time being in force;

“final certificate” means the final certificate issued by the relevant local highway authority under paragraph 153 of this Part;

“local highway” means any public highway including any public right of way which is maintainable, or is intended at the completion of the works in relation thereto to be maintainable by a relevant local highway authority;

“maintenance period” means 12 months from the date of the provisional certificate being served under paragraph 151 of this Part unless otherwise agreed in writing between the parties;

“provisional certificate” means the certificate served under paragraph 151 of this Part;

“senior representatives” means the regional director on behalf of the undertaker and persons notified to the undertaker by the relevant local highway authority as being their senior representatives; and

“works” means any works authorised by the Order undertaken on, to, over or under any part of the local highway.

Design input and commencement

145.—(1) The undertaker must allow and facilitate an appropriately qualified person or persons duly appointed by the relevant local highway authority (each being a “nominated officer”) to participate in the design process for the detailed design for the works and will have reasonable regard to any representations of the nominated officer in finalising its detailed design proposal (and, without limitation, the undertaker is able to refuse implementation of any representation which would cause a breach of this Order, conflict with a permit issued under a permit scheme or would entail materially new or materially different environmental effects from those reported in the environmental statement) .

(2) Participation under sub-paragraph (1) will be in the form of invitations (given at least 10 business days in advance and sent by email) to attend design meetings relating to relevant works and the provision to the nominated officer of such drawings, cross/long sections, design proposals and other information as is reasonably required to allow the nominated officer to provide an informed response on the detailed design proposals to the undertaker.

(3) The nominated officer will have no less than 15 business days from the date on which the undertaker supplies information pursuant to sub-paragraph (2) to provide the undertaker with any comments upon any information provided to that officer pursuant to sub-paragraph (2).

(4) No part of the works may commence until the undertaker has provided to the relevant local highway authority the detailed information relating to that part of the works (without prejudice to the undertaker providing parts of the detailed information insofar as it relates to the operation (as distinct from the construction) of the local highway at a later date provided the provision of that information is subject to sub-paragraphs (5) to (7)).

(5) The undertaker will give the relevant local highway authority at least 10 business days to comment and provide representations by email on the detailed information provided to it under sub-paragraph (4).

(6) The undertaker will have reasonable regard to any comments, representations and recommendations made by the relevant local highway authority under paragraph (5) (and, without limitation, the undertaker is able to refuse implementation of any representation or recommendation which would cause a breach of this Order, conflict with a permit issued under a permit scheme or would entail materially new or materially different environmental effects from those reported in the environmental statement) and will provide the relevant local highway authority with reasons for non-acceptance of any representation or recommendation following receipt of a request from the relevant local highway authority in writing within 10 business days of such request..

(7) The works must not be carried out except in accordance with the detailed information (but subject to the process in sub-paragraphs (4) and (5)) or as otherwise may be agreed between the undertaker and the relevant local highway authority.

(8) This paragraph does not apply to the works to the extent the undertaker and the relevant local highway authority agree (acting reasonably) that a permit issued under a permit scheme applies to the works.

(9) This paragraph does not apply to the works to the extent that they are subject to PRO.7 of the design principles, and to the extent they are not subject to that clause of design principles, without limitation, the undertaker is able to refuse implementation of any representation or recommendation made under this paragraph where it would cause an inconsistency with the outcome of process secured under that clause of the design principles.

146.—(1) Before commencing the construction of, or the carrying out of any work authorised by this Order which involves works to a local highway the undertaker must use best endeavours to agree with the relevant local highway authority a local operating agreement covering the following as relevant to the works in question—

- (a) communications and customer care arrangements for communication with stakeholders and the local community including
 - (i) the identity of the party responsible for each activity;
 - (ii) the identity of the contractor responsible for stakeholder engagement and communication; and
 - (iii) defined timescales for contractor responses to responses to communication;
- (b) where the undertaker takes responsibility for the local highway in which the works are proposed definition of the extents for the works areas between the highway boundary, the traffic management lead in tapers, the longitudinal coning and the end of the lead out tapers, zone of influence (being the area which is reasonably affected by those work areas, traffic management and diversion requirements and free recovery areas (as appropriate);
- (c) arrangements for the submission to the local highway authority of digital copies of all as-built drawings for the relevant work area including identification of any new limits of highway maintainable by the relevant local highway authority in accordance with paragraph 153 of this Schedule;
- (d) winter maintenance including anticipated winter treatments and severe weather arrangements to apply during the construction period and the maintenance period;
- (e) routine maintenance and repair arrangements in relation to local highways directly affected by the construction of the authorised development;
- (f) continuity of technology arrangements to apply during the construction period and the maintenance period;
- (g) arrangements for dealing with and recording incidents during the construction period and the maintenance period including appropriate provision of recovery vehicles; and
- (h) traffic management: during the works.
- (i) asset handover arrangements
- (j) the method of reporting any claims made by and against the undertaker in respect of the works

(2) Any agreement completed under sub-paragraph (1) must be complied with by the undertaker and continue in force until such time as a final certificate has been issued by the relevant local highway authority in respect of the works.

Survey Reinstatement

147. The undertaker must reinstate to the reasonable satisfaction of the relevant local highway authority any part of the local highway which has been temporarily used for survey or investigation by the undertaker pursuant to Article 20 or Article 35 of this Order or under any other power in this Order to the condition it was in on the date on which the survey or investigation began or such other condition as may be agreed in writing by the relevant local highway authority.

Inspections and testing of materials

148.—(1) The undertaker must allow and facilitate any person duly appointed by the relevant local highway authority to access and inspect at all reasonable times any part of the works during their construction and before a final certificate has been issued in respect of the works as is reasonably necessary to ensure that the works have been or are being carried out in accordance with the detailed design and to the appropriate standard.

(2) The undertaker must allow any person duly appointed by the relevant local highway authority to enter upon and inspect any part of the works which are in, over, under, or adjacent to any local highway or may affect any highway or any property of the relevant local highway authority, during the carrying out of the works, and the undertaker must give to such officer reasonable facilities for such inspection.

(3) Any testing reasonably requested by the relevant local highway authority of materials used in any works must be carried out at the undertaker's expense and in accordance with the latest version of the Manual of Contract Documents for Highway Works (or any other testing specification agreed between the undertaker and the relevant local highway authority acting reasonably).

(4) The relevant local highway authority (or its agent) may test all or any materials used or proposed to be used in any works and the undertaker must provide such information access and materials as is reasonably necessary to facilitate such testing.

(5) The undertaker must, as soon as is reasonably practicable, and in any event within 10 business days provide the relevant local highway authority with a copy of all available test certificates and results relevant to the works that the relevant local highway authority has requested in writing.

(6) The relevant local highway authority must as soon as is reasonably practicable, and in any event within 10 business day provide the undertaker with a copy of all available test results and certificates relevant to the works that the undertaker has requested in writing.

(7) In circumstances where a work carried out by the undertaker is tested by the relevant local highway authority pursuant to the provisions of this Part and that test resulted in works being undone at the undertaker's expense (acting reasonably) and found to be satisfactory then that expense must forthwith be reimbursed by the relevant local highway authority provided that the relevant local highway authority was given a reasonable opportunity by the undertaker to inspect the works at a time when the works could have been inspected without the need to incur the expense.

Road Safety Audits

149.—(1) The undertaker must procure that an appropriately qualified RSA team (as defined in DMRB Volume 5 Section 2 Part 2 (GG119) or any replacement or modification of that standard) undertakes road safety audit in accordance with DMRB standard GG 119 and must provide copies of the reports of such audits to the relevant local highway authority within 10 days of their receipt by the undertaker.

(2) The relevant local highway authority must be invited to participate in the road safety audit conducted under sub-paragraph (1).

(3) Where the report of the stage 3 and 4 road safety audit identifies any recommended measures in respect of the local highway, the undertaker must carry out, at its own expense and to the reasonable satisfaction of the relevant local highway authority, all the measures identified as part of stage 3 and 4 audit which do not give rise to any new or materially different environmental effects in comparison with those identified in the environmental statement unless otherwise agreed with the relevant local highway authority.

Defects in local highways constructed by the undertaker

150.—(1) Until such time as a final certificate has been issued in respect of any works, the undertaker must make good any defects in the works constructed by the undertaker to the reasonable satisfaction of the relevant local highway authority.

(2) The undertaker must submit to the relevant local highway authority such details and information relating to making good any defects under sub-paragraph (1) as the relevant local highway authority and the undertaker agree is reasonable in the circumstances.

Provisional Certificate

151.—(1) Subject to sub-paragraph (2), when the undertaker considers that the works have reached completion so that they are available for use by the public it must serve a provisional certificate on the

relevant local highway authority and must allow the relevant local highway authority the opportunity to inspect the works to identify any defects or incomplete works and the undertaker must give proper consideration to any representations and recommendations made by the relevant local highway authority and make good such defects and complete any incomplete works.

(2) The undertaker must not serve a provisional certificate on the relevant local highway authority under sub-paragraph (1) until either—

- (a) a stage 3 road safety audit has been carried out in respect of the works in question in accordance with GG119 of DMRB and any recommended measures identified in the audit which do not give rise to any new or materially different environmental effects in comparison with those identified in the environmental statement (have been completed unless otherwise agreed with the relevant local highway authority; or
- (b) the relevant local highway authority has been provided an opportunity to inspect the works and the undertaker has, in its opinion, completed any further works or measures required to address any safety deficiencies or defects identified as a result of the inspection.

(3) The relevant local highway authority must issue to the undertaker, on request from the undertaker a counter-signed provisional certificate in relation to any part of the works, after completion of that part of the works once a stage 3 safety audit has been carried out in accordance with sub-paragraph (2).

Maintenance

152.—(1) Subject to paragraph (2), the undertaker must maintain the works throughout the maintenance period to a standard appropriate to their use by the public in accordance with DMRB.

(2) Nothing in paragraph (1) makes the undertaker responsible for the maintenance of any street works or maintenance works undertaken by any person other than the undertaker or which does not form part of the authorised development during the maintenance period.

Final Certificate

153.—(1) The relevant local highway authority must as soon as reasonably practicable and in any event within 10 working days of the last of paragraph (a) to (f) of this sub-paragraph being satisfied issue a final certificate in respect of the works where—

- (b) the maintenance period has passed;
- (c) all incomplete works and identified defects requiring remediation under sub-paragraph 150(1) have been remedied to the relevant local highway authority’s reasonable satisfaction; and
- (d) the undertaker has given the relevant local highway authority a reasonable opportunity to inspect the relevant works in readiness for the issue of a final certificate and has given due consideration and acted accordingly in respect of any representations and recommendations made by the relevant local highway authority in respect of the works;
- (e) the undertaker has provided the relevant local highway authority with a health and safety file in respect of the relevant works to the relevant local highway authority’s reasonable satisfaction;
- (f) the undertaker has provided the relevant local highway authority with as built drawings and such detailed information as the relevant local highway authority has requested (acting reasonably) in relation to the relevant works as built; and
- (g) any sewers which the local drainage authority consider should be constructed to dispose of soil and surface water drainage in connection with the relevant Works and in order to make them appropriate for public use have been constructed.
- (h) a stage 4 safety audit in accordance with GG119 of the DMRB has been completed and any recommended measures identified in the audit which do not give rise to any new or materially different environmental effects in comparison with those identified in the environmental statement have been completed unless otherwise agreed with the relevant local highway authority.
- (i) the relevant works are not subject to any ongoing traffic management measures or routing of construction traffic related to the authorised development

(2) The issue of a final certificate by the relevant local highway authority amounts to an acknowledgment by the relevant local highway authority that the construction alteration or diversion (as the case may be) of a highway has been completed to its reasonable satisfaction for the purposes of article 10 (construction and maintenance of new, altered or diverted streets and other structures) of the Order.

Emergency Work

154. Nothing in this Part of this Schedule prevents the local highway authority from carrying out any work or taking such action as deemed appropriate forthwith without prior notice to the undertaker in the event of an emergency or danger to the public.

Land interests

155. Following the issuing of the final certificate under paragraph 153 in respect of any part of the local highway, the undertaker must, if requested by the relevant local highway authority, in respect of a local highway which is to be maintainable by the relevant local highway authority following, and as a result of, the completion of those works either—

- (a) execute and complete a transfer to the relevant local highway authority at nil consideration of any land and rights which have been compulsorily acquired under this Order and which are necessary for the maintenance and operation of a local highway; or
- (b) exercise article 20 (compulsory acquisition of land) and article 28 (compulsory acquisition of rights and imposition of restrictive covenants) as applied by article 31 (application of the 1981 Act) and 32 (modification of the 2017 Regulations) of this Order to directly vest in the relevant local highway authority land or interest which may be necessary for the maintenance and operation of a local highway,

unless otherwise agreed between the undertaker and the relevant local highway authority.

Commuted Sums

156.

(1) [Where this paragraph applies in accordance with sub- paragraph 7] The undertaker must use reasonable endeavours to agree with the relevant local highway authority a schedule of new highway assets which are proposed to become the maintenance responsibility of the relevant local highway authority as a result of the authorised development.

(2) Where the schedule prepared under sub-paragraph (1) cannot be agreed, the matters of dispute shall be determined in accordance with paragraph 158.

(3) Following agreement of the schedule under sub-paragraph (1) or determination under sub-paragraph (2), the relevant local highway authority must prepare a calculation of the commuted sum based on maintenance the local highway authority considers to be required for the schedule of highway assets agreed under sub-paragraph (1) or determined under sub-paragraph (2) and must use reasonable endeavours to agree it with the undertaker.

(4) The undertaker must be provided with a complete breakdown of the calculation of the commuted sum by the relevant local highway authority under sub-paragraph (3) including any assumptions used.

(5) Where the calculation prepared under sub-paragraph (3) cannot be agreed, the matters of dispute shall be determined in accordance with paragraph 158.

(6) The undertaker must pay the commuted sum to the relevant local highway authority in one instalment within 10 business days of the later of:

- (a) the date of completion of the relevant works to which the commuted sum applies as evidenced by the issue of the provisional certificate in respect of those works; or
- (b) the date of agreement of the value of the commuted sum under sub-paragraph (3) or determination under sub-paragraph (5).

(7) [This paragraph only applies to Transport for London and the London Borough of Havering]

Costs and Indemnity

157. (1) Subject to paragraph (2) the undertaker must pay to the relevant local highway authority in respect of the works a sum equal to the whole of any costs and expenses reasonably incurred by that relevant local highway authority in respect of:

- (a) participating in the design of any part of the authorised development
- (b) carrying out any inspections reasonably required in connection with any of the provisions of this Part of this Schedule
- (c) negotiating, completing, implementing and monitoring compliance with the relevant local operating agreement pursuant to paragraph 146
- (d) participation in road safety audits relating to the works pursuant to paragraph 149
- (e) issuing any approvals/certificates pursuant to paragraphs 151 and 153
- (f) agreeing any commuted sum pursuant to paragraph 156
- (g) the transfer or vesting in the relevant local highway authority of any land and rights acquired by the undertaker pursuant to paragraph 155

(2) No costs shall be payable under paragraph (1) if they are the subject of an obligation to pay costs to a relevant local highway authority under the provisions of an agreement entered into between that relevant local highway authority as local planning authority and the undertaker under section 106 of the 1990 Act.

(3) The undertaker must pay the costs and expenses referred to in sub-paragraph (1) to the relevant local highway authority within 28 business days of the relevant local highway authority advising the undertaker that they have been incurred and no final certificate will be issued under paragraph 153 if any payment due to be paid at that point has not been paid.

(4) The undertaker will indemnify and keep indemnified the relevant local highway authority against any liability, loss, costs, claim arising out of or incidental to the relevant works other than any caused by any negligent act, default or omission of the relevant local highway authority.

Disputes

158.—(1) In the event of any disagreement between the Parties arising out of or in connection with this agreement which requires the agreement of the Parties jointly or the approval of the local highway authority and which cannot be resolved within 10 business days of the disagreement arising, either party may request a review of the issue in disagreement by the parties giving notice in writing to their senior representatives.

(2) The senior representatives will consider any such request and use all reasonable endeavours in good faith to reach agreement to resolve any disagreement.

(3) Where agreement is not reached by the senior representatives within 10 business days of a request being made under sub-paragraph (1), the disagreement may be the subject of an appeal to the Secretary of State under article 65 (appeals to the Secretary of State) of this Order.

Thurrock Council Submission at Deadline 8 (D8) Appendix C: Response of Local Highway Authorities to the Applicant's Response at Deadline 7 to the Protective Provisions for the Benefit of Local Highway Authorities (REP7-190, pages 2-13)
Lower Thames Crossing

Appendix D Updated Joint Position Statement on Additional Requirements

Lower Thames Crossing

Thurrock Council Submission at Deadline 8 (D8)

Appendix D: Updated Joint Position Statement on Additional Requirements

5 December 2023

Thurrock Council

 **thurrock.gov.uk**

Document Control Sheet

Project Name: Lower Thames Crossing

Report Title: Thurrock Council Submission at Deadline 8 (D8) – Appendix D: Updated Joint Position Statement on Additional Requirements

Doc Ref: FINAL

Date: 5 December 2023

	Name	Position	Signature	Date
Prepared by:	Various			5 December 2023
Reviewed by:	David Bowers / Chris Stratford	Director / Senior Consultant	DB / CS	5 December 2023
Approved by:	Tracey Coleman	Interim Chief Planning Officer, Thurrock Council	TC	5 December 2023

**UPDATED JOINT POSITION STATEMENT ON ADDITIONAL REQUIREMENTS
PROPOSED TO BE INCLUDED IN THE DCO**

BETWEEN

 <p>PORT OF TILBURY LONDON</p>	
	
 <p>DP WORLD</p>	
	

1. At Deadline 6A, Port of Tilbury London Limited (**PoTLL**) Thurrock Council, DP World London Gateway and Thames Enterprise Park (**the Parties**), submitted a Joint Statement in respect of proposed draft Requirements that all of the Parties agreed should be included in the DCO for LTC [[REP6A-017](#)].
2. In particular, this Joint Statement referenced draft Requirements relating to Orsett Cock roundabout and wider highway network monitoring and mitigation. The Parties are key stakeholders that may be most affected by impacts at the Orsett Cock roundabout and each having a wider interest in the proper functioning of the wider road network in the area north of the River Thames.

Orsett Cock

3. Following the Hearings, the Parties have been collaborating to seek to amend the wording of this Orsett Cock Requirement in light of the questions raised by the Examining Authority and the submissions of the applicant. This has included holding a meeting with the applicant on the drafting of the Requirement on 4 December 2023.
4. Following that meeting, it is understood that the applicant will be putting forward a further iteration of its drafting of the Requirement at Deadline 8. The Parties have not seen that drafting in advance of finalising this Statement, but stand ready to have a further discussion with the applicant once they have seen that drafting, prior to Deadline 9, whilst also continuing to develop their own drafting in case full agreement with the applicant cannot be reached to be submitted at that deadline.
5. However, following the discussion on 4 December 2023, the Parties have fundamental concerns that they consider are likely to be stumbling blocks to reaching full agreement with the applicant (but will continue discussions to try and find a way through in any event):
 - the Parties want to ensure that there are clear parameters by which the Secretary of State makes his/her decision on whether the measures proposed pursuant to the Requirement are sufficient. However, the applicant is clear that it will not accept any kind of approach which seeks to set out any form of criteria or thresholds against which a measure should be judged;
 - the Parties are alive to the concerns raised by members of the ExA at the Hearings and is are seeking to develop wording to ensure that the criteria/thresholds are objective, and/or, failing that, that a proper process is put in place for the Secretary of State to determine the criteria/thresholds. However, it is understood that the applicant would refuse to accept any drafting that even provided for the Secretary of State to adjudicate on that matter, having heard comments from all parties;
 - the Parties are concerned that, fundamentally, this means that there are no clear parameters for the Secretary of State to make his/her decision against, meaning that such a decision could not only be vulnerable to challenge, but the outcome of that process will be unnecessarily uncertain. In addition, the process created by the Requirement proposed by the applicant will lack preciseness and enforceability, which is not good drafting practice or in the public interest;
 - as set out in the submissions at the Hearing, as well as setting criteria, the Parties consider that it is important that the Requirement is clear what objectives the criteria against which measures are judged are seeking to achieve. To that end the Parties would want the Requirement to ensure that measures do not just 'optimise'¹, but ensure the proper performance of Orsett Cock roundabout (building on the applicant's own wording) to:
 - ensure reliable and efficient traffic journeys through the Orsett Cock roundabout having due regard to journeys from the Port of Tilbury and London Gateway Port to the

¹ Which can only be done by reference to a defined parameter, which to date the applicant has not set out or agreed to. Optimisation is an entirely empty concept unless the parameter which must be optimised is also defined. That parameter could be reducing displacement of traffic through Orsett Village, or eliminating such traffic, or it could be the efficient movement of traffic to and from the ports, etc. The parameter must be defined.

strategic road network and the importance of the Orsett Cock and Manorway roundabouts for port operations;

- avoid significant adverse impacts to Orsett Cock village;
 - minimise traffic delays on the highway network; and,
 - avoid causing significant highway safety issues, including the safe and efficient passage of movement for cyclists and pedestrians across this local junction ; and
- in light of the above, the Parties desire that the Requirement provides a clear process by which the applicant and the Parties have a chance to make statements to the Secretary of State about what the criteria/thresholds should be and what the measures should be to deal with any issues identified in meeting those criteria/thresholds, for the Secretary of State to make a judgement accordingly. The Parties understand that the applicant is reluctant to move away from its generic proposals in respect of Requirement discharge processes but will be putting forward some proposals at Deadline 8, which the Parties will consider.
6. It is useful background to note that the Thurrock Council has invested significantly in the A13 upgrade, including the Orsett Cock roundabout, to allow for the expansion of the ports and other Local Plan growth. This is key to the development of Thurrock. The aim of Thurrock Council is that LTC does not significantly negatively impact that capacity and future growth plans. This is important to ensure the longer-term economic growth in Thurrock. It is submitted therefore that it is appropriate to place clear and precise duties on the applicant to ensure that the interaction between the Orsett Cock roundabout and LTC works (and if it does not then additional works are required).
7. Another key area of disagreement between the Parties and the applicant is an ongoing scheme of monitoring, so that further mitigation can be provided if the works undertaken are not effective. As set out above, the operation of the Orsett Cock roundabout is critical to future growth in Thurrock and it is therefore imperative the roundabout works. The applicant has indicated that under no circumstances will it agree to a requirement that requires (or could require) the implementation of post-opening mitigation measures. In other words the applicant wishes to remain at arm's length from Orsett Cock roundabout after LTC opens, despite having appropriated the roundabout for the strategic purposes of LTC and despite the proper operation of the roundabout being critical to the strategic functionality of LTC, as well as Thurrock Council's own growth agenda and to the ports' proper and efficient operation.
8. In light of the above and seeking to try and find some common ground given the applicant's apparent position, the Parties note that it would be open to the ExA to:
- make a Procedural Decision to direct all parties (including the applicant) to consider 'with-criteria' wording (including criteria proposed by the applicant when submitting the scheme to the Secretary of State, so that the Secretary of State knows what the parties are trying to achieve) and 'without-criteria' wording (whereby the Secretary of State is to be given little guidance as to what the final outcome is intended to be), to enable all possibilities to be considered and/or;
 - make a Procedural Decision to direct all parties (including the applicant) to include drafting to allow for an ongoing scheme of monitoring and mitigation for a maximum of five years to allow the Secretary of State to consider such drafting in determining whether it should be imposed:
or
 - call a 'meeting' under Examination Procedure Rules 6(3) for a focused discussion with the ExA present, as such a meeting does not require 21 days' notice.
9. However, the Parties fully recognise that these are all matters of the ExA's discretion. They will continue to seek to make progress with the applicant in any event.

Wider Networks Impacts

10. As a result of the efforts to try and find a way through the discussion on measurable criteria, the Parties have also been considering the drafting of the Wider Networks Impacts Requirement, where similar terminology is utilised, as for the Orsett Cock drafting.
11. As such, an interim update on this Requirement is presented at Appendix A to move away from seeking to define the measureable threshold, while also seeking to make progress on defining what is meant by a material worsening in the context of seeking to achieve defined objectives. The Parties will continue working on this drafting for Deadline 9.
12. Notwithstanding this, the Parties also make the following points on the principle of why such a Requirement is needed, in light of the applicant's submissions at Deadline 6 (REP6-092).
13. It is noted that, despite extensive focus on policy, the applicant has not engaged with the draft NPS policy in its Position Paper, which must be seen as an important and relevant consideration in light of paragraph 5.280². That paragraph is not inconsistent with adopted policy in the current NPS, it just takes it further. It is therefore an important and relevant consideration that must inform understanding of this topic.
14. The Parties understand the differences between Silvertown and LTC, so the key question should be what is appropriate for this project rather than focusing on this.
15. In summary, the applicant position seems to be:
 - the DCO should not be used to upend the RIS and Government spending decisions processes;
 - that the impacts of the LTC may only be one reason why there are material worsening on the network and it is for Government, and NH more widely, to balance those factors;
 - that transport modelling is always uncertain and that policy/guidance does not require consideration/mitigation for matters outside the realms of the uncertainties already modelled; and
 - as such, the best a Requirement can do is commit to working with highway authorities and to transparently monitoring future conditions, so that knowledge of those conditions can inform future network investment decisions made by the relevant authority.

² *'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. 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'*.

The parties to this joint position paper consider that although the wording of the draft NPSNN is clear and unambiguous, they do not consider that the policy position under the extant NNNPS is any different. In particular NPSNN paragraph 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].'* Paragraph 110(d) of the NPPF states 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 *'significant impacts'* on the LHN in terms of capacity and congestion **must** be mitigated, in a cost-effective manner, as part of a transport NSIP such as LTC. NPSNN paragraphs 5.215 and 5.216 are squarely on all fours with NPPF paragraph 110, and echo the substance and the language of that policy, as do draft NPSNN paragraphs 5.272 – 5.276 and 5.280.

15. These positions are made without differentiating between the pre-opening and post-opening position.

16. In response to this, the Parties would note the following:

Pre-Opening

17. The proposed Requirement from the Parties keeps the decision making as to whether mitigation is brought forward with the Secretary of State.

18. The Secretary of State would, in considering matters brought to him/her pursuant to this Requirement, be able to be mindful of the wider Government spending priorities and programmes in determining whether s/he agrees with the mitigation measures being brought forward.

19. Furthermore, there is nothing in the Requirement that would stop the applicant from being able to provide information not listed in the Requirement to the Secretary of State, such as information on what other factors may be contributing to any material worsening in the wider network.

20. The Requirement ensures that this consideration has to happen and that mitigation is put in place to ensure that the Scheme 'works' from the outset; rather than waiting for the prolonged route strategies and RIS approach, which may not dovetail with the LTC opening period.

21. Given the potentially prolonged period before this project commences construction in earnest and ultimately opens, it is proportionate that modelling is refreshed to ensure that the Scheme can actually work with the baseline and future baseline position that exists at that time. The applicant has identified that there are uncertainties, leading to some concerns on network performance across the network that may be exacerbated in the future: this Requirement ensures the Scheme suitably reacts to how those uncertainties have evolved.

Post-Opening

22. In respect of post-opening, many of the same arguments apply.

23. The Parties consider that the applicant's concerns can be assuaged by amending what is now suggested in sub-paragraph (6) (d) to 'read *'submit the necessary mitigation measures for approval to the Secretary of State'* and then replicate sub-paras (3) and (4). This will be considered further with the applicant.

Further Requirements

23. Further to the above discussions and the discussions at the Hearing, Thurrock Council and PoTLL have also considered the drafting of the Asda Roundabout and Tilbury Link Road proposed requirements (as the only parties affected by their drafting), and have collectively agreed that they **support the inclusion of the following updated draft Requirements in the draft DCO:**

- Draft Requirement: **Asda roundabout – construction traffic mitigation**, found at Appendix 3 to PoTLL's Deadline 6 submission [REP6-163] as amended by PoTLL's Deadline 8 submission (and the associated amendments to Requirement 10), for the reasons given in PoTLL's Deadline 8 submission.
- Draft Requirement: **Tilbury Link Road passive provision**, as per the applicant's version of the DCO at Deadline 7, as amended in the drafting set out in PoTLL's Deadline 8 submission, for the reasons given in PoTLL's Deadline 8 submission. For the avoidance of doubt, the Council's previous suggested drafting is no longer proposed by the Council.

5 December 2023

Annex A

Clean version

Wider highway network monitoring and mitigation

Pre-opening scheme of mitigation

- 1.—(1) The tunnel must not be opened for public use until a scheme of mitigation, informed by the assessment and consultation mentioned in sub-paragraph (2), has been submitted to and approved in writing by the Secretary of State.

2. In carrying out the assessment and consultation required by sub-paragraph (1), the undertaker must—
 - a. identify in consultation with the [LTCIG] the measurable thresholds;
 - b. carry out an updated assessment of the likely impacts of the operation of the authorised development on the performance of the highway network;
 - c. consult with the members of the [LTCIG] and have regard to any consultation responses received on—
 - i. the locations on the highway network where the assessment demonstrates there is likely to be a material worsening of traffic conditions as a result of the operation of the authorised development;
 - ii. the measures which the undertaker proposes to mitigate the impacts of such a material worsening of traffic conditions; and
 - iii. the proposed programme for implementation of those measures;
 - d. further consult with the relevant local highway authority on the detail of mitigation measures which it proposes to implement on roads in that local highway authority's area.

3. The scheme of mitigation submitted to the Secretary of State for approval under sub-paragraph (1) must include—
 - a. the measurable thresholds;
 - b. details and locations of the proposed mitigation measures;
 - c. responses to the consultation and further liaison carried out under sub-paragraph (2);
 - d. the estimated cost of implementing each measure; and
 - e. the proposed programme for the implementation of those measures.

4. If the Secretary of State proposes to approve the scheme of mitigation submitted for approval with material modifications, the Secretary of State must consult the members of [LTCIG] on the proposed modifications and have regard to any responses received when deciding in what form to approve the scheme.

5. The undertaker must implement or secure the implementation of the measures set out in the approved scheme of mitigation in accordance with its terms.

Post-opening monitoring and mitigation

6. For the duration of the monitoring period, the undertaker must—
 - a. implement and keep under review a programme for monitoring the impacts of the operation of the authorised development on the performance of the highway network, in consultation with the members of the [LTCIG];
 - b. prepare—
 - i. quarterly monitoring reports for a period of one year from the tunnel opening for public use; and

- ii. annual monitoring reports thereafter,
derived from that monitoring, and submit them for consideration by the members of [LTCIG];
- c. develop in consultation with the relevant local highway authority any measures which are necessary to mitigate material worsening of traffic conditions on the highway network which are attributable to the operation of the authorised development; and
- d. implement or secure the implementation of the necessary mitigation measures.

7. If the undertaker's statutory functions in relation to highways and road traffic on the strategic road network are not sufficient to enable the undertaker to implement any mitigation measure which it is obliged to implement under this requirement, the undertaker must either—

- a. seek to agree with the relevant local highway authority that the undertaker will implement that measure on behalf of that local highway authority; or
- b. if such an agreement cannot be reached, pay to that local highway authority a sum equivalent to—
 - i. the estimated cost of the local highway authority implementing that measure, which the local highway authority must use for that purpose; or
 - ii. the costs reasonably incurred by the local highway authority in implementing an alternative measure in the same location which the local highway authority has determined will mitigate the adverse impact attributable to the authorised development.

8. In this paragraph—

“material worsening of traffic conditions” means significant adverse impacts to the highway network in terms of capacity, congestion, delays or highway safety;

“measures” may include physical works to create additional highway capacity; ; and

“the monitoring period” means a period commencing no later than three years before the tunnel is expected to open for public use and continuing for not less than three years after the tunnel opens for public use.

Tracked changed version

Wider highway network monitoring and mitigation

Pre-opening scheme of mitigation

1.—(1) The tunnel must not be opened for public use until a scheme of mitigation, informed by the assessment and consultation mentioned in sub-paragraph (2), has been submitted to and approved in writing by the Secretary of State.

2. In carrying out the assessment and consultation required by sub-paragraph (1), the undertaker must—
- a. identify in consultation with the [LTCIG] the measurable thresholds;
 - b. carry out an updated assessment of the likely impacts of the operation of the authorised development on the performance of the highway network;
 - c. consult with the members of the [LTCIG] and have regard to any consultation responses received on—
 - i. the locations on the highway network where the assessment demonstrates there is likely to be a material worsening of traffic conditions as a result of the operation of the authorised development;
 - ii. the measures which the undertaker proposes to mitigate the impacts of such a material worsening of traffic conditions; and
 - iii. the proposed programme for implementation of those measures;
 - d. further consult with the relevant local highway authority on the detail of mitigation measures which it proposes to implement on roads in that local highway authority's area.
3. The scheme of mitigation submitted to the Secretary of State for approval under sub-paragraph (1) must include—
- a. the measurable thresholds;
 - b. details and locations of the proposed mitigation measures;
 - c. responses to the consultation and further liaison carried out under sub-paragraph (2);
 - d. the estimated cost of implementing each measure; and
 - e. the proposed programme for the implementation of those measures.

4. If the Secretary of State proposes to approve the scheme of mitigation submitted for approval with material modifications, the Secretary of State must consult the members of [LTCIG] on the proposed modifications and have regard to any responses received when deciding in what form to approve the scheme.

5. The undertaker must implement or secure the implementation of the measures set out in the approved scheme of mitigation in accordance with its terms.

Post-opening monitoring and mitigation

6. For the duration of the monitoring period, the undertaker must—
- a. implement and keep under review a programme for monitoring the impacts of the operation of the authorised development on the performance of the highway network, in consultation with the members of the [LTCIG];
 - b. prepare—
 - i. quarterly monitoring reports for a period of one year from the tunnel opening for public use; and
 - ii. annual monitoring reports thereafter,
derived from that monitoring, and submit them for consideration by the members of [LTCIG];

- c. develop in consultation with the relevant local highway authority any measures which are necessary to mitigate material worsening of traffic conditions on the highway network which are attributable to the operation of the authorised development; and
- d. implement or secure the implementation of the necessary mitigation measures.

7. If the undertaker's statutory functions in relation to highways and road traffic on the strategic road network are not sufficient to enable the undertaker to implement any mitigation measure which it is obliged to implement under this requirement, the undertaker must either—

- a. seek to agree with the relevant local highway authority that the undertaker will implement that measure on behalf of that local highway authority; or
- b. if such an agreement cannot be reached, pay to that local highway authority a sum equivalent to—
 - i. the estimated cost of the local highway authority implementing that measure, which the local highway authority must use for that purpose; or
 - ii. the costs reasonably incurred by the local highway authority in implementing an alternative measure in the same location which the local highway authority has determined will mitigate the adverse impact attributable to the authorised development.

8. In this paragraph—

“material worsening of traffic conditions” means significant adverse impacts to the highway network in terms of capacity, congestion, delays or highway safety. ;

“measures” may include physical works to create additional highway capacity; ; and

“

“the monitoring period” means a period commencing no later than three years before the tunnel is expected to open for public use and continuing for not less than three years after the tunnel opens for public use.