





## Contents

<b>Executive Summary</b> .....	<b>1</b>
<b>1 Introduction</b> .....	<b>8</b>
1.1 Context	8
1.2 Structure of this Submission.....	8
1.3 Summary of Council's Major Concerns.....	9
1.4 Further Commentary on Economic Appraisal .....	9
<b>2 Control Document Changes at D9 (Final Documents)</b> .....	<b>14</b>
2.1 Introduction.....	14
2.2 Code of Construction Practice, First Iteration of Environmental Management Plan (CoCP and REAC) (v9) (REP9-185) .....	14
2.3 Outline Traffic Management Plan for Construction (oTMPfC) (v9) (REP9-236).....	14
2.4 Framework Construction Travel Plan (FCTP) (v6) (REP9-234).....	14
2.5 Wider Network Impacts Management and Monitoring Plan WNIMMP) (v2) (REP9-232) .....	14
2.6 Outline Materials Handling Plan (oMHP) (v5) (REP9-189) .....	14
2.7 Preliminary Works EMP (v4) (REP9-191).....	15
2.8 Draft Archaeological Mitigation Strategy and Outline Written Scheme of Investigation (v6) (AMI-OWSI) (REP9-198) and Figures 6.1 (3no.) (REP9-153, REP9-155 – REP9-157) .....	15
2.9 Stakeholder Actions and Commitments Register (SAC-R) (v7) (REP9-242).....	16
2.10 Consents and Agreements Position Statement (v8) (REP9-112).....	16
<b>3 Draft Development Consent Order Matters</b> .....	<b>17</b>
3.1 Introduction.....	17
3.2 Draft Development Consent Order Changes (v11) and Schedule of Changes (v9) (REP9-108 and REP9-251) .....	17
3.3 Comments on Explanatory Memorandum Changes (v7) (REP9-110).....	17
3.4 Council Comments on Applicant's Comments on IPs Commentary on dDCO at D8 (REP9-275) .....	18
3.5 Council Comments on Updated Requirements .....	22
<b>4 Land and Compulsory Acquisition Matters</b> .....	<b>25</b>
4.1 Statement of Reasons (v8) (REP9-115) .....	25
4.2 Post Event Submissions.....	25
4.3 Status of Negotiations .....	25
4.4 Book of Reference (BoR) (v8) (REP9-117) and Schedule of Changes to BoR (v6) (REP9-249) and Appendix A (v6) (REP9-250) .....	25
4.5 Land Plans (v8) (REP9-009, REP9-011 and REP9-013), Crown Land Plans (v8) (REP9-015, REP9-017 and REP9-019), Special Category Land Plans (v7) (REP9-021, REP9-023 and REP9-025) and Agricultural Landowners Figure 13.5 (v2) (REP9-183) .....	25
4.6 ExQ1 15.1.1 (v5) (REP9-253) and 15.1.2 (v5) (REP9-255).....	25

Thurrock Council Comments on Applicant's Submissions at Deadline 9 (D9)  
 Lower Thames Crossing

4.7	ExQ1 15.1.3 (v5) (REP9-257) .....	26
4.8	ExQ1 15.1.4 (v3) (REP9-259) .....	27
4.9	Status of Negotiations with Statutory Undertakers (v5) (REP9-244).....	28
<b>5</b>	<b>Transport and Engineering Plans.....</b>	<b>30</b>
5.1	Introduction.....	30
5.2	Transport Plans .....	30
5.3	Engineering Plans.....	30
<b>6</b>	<b>Environmental Matters .....</b>	<b>31</b>
6.1	Introduction.....	31
6.2	ES Addendum (v9) (REP9-246) .....	31
6.3	ES Topics Updates .....	31
6.4	Health, Equalities and Wellbeing .....	32
<b>7</b>	<b>Planning and Policy Matters .....</b>	<b>33</b>
7.1	Introduction.....	33
7.2	Planning Statement (v2) (REP9-216) .....	33
7.3	Planning Statement Appendix E: Green Belt (v2) (REP9-224) .....	36
7.4	Planning Statement Appendix C: Local Authority Policy Review (v2) (REP9-222).....	37
7.5	Planning Statement Appendix A: NPSNN Accordance Table (v2) (REP-218).....	38
7.6	Policy Accordance Assessment against draft NPSNN (v2) (REP9-261) .....	39
7.7	Planning Statement Appendix B: Energy NPS Accordance Table (v2) (REP9-220)...	41
7.8	Council Comments on Applicant's Responses to ExA ISH12 Action Point 23 on new Energy NPSs (REP9-274) .....	43
<b>8</b>	<b>Council Comments on Applicant's Comments on IP Submissions at D8 (REP9-276) ....</b>	<b>46</b>
8.1	Introduction.....	46
8.2	Approach to Local Traffic Modelling.....	46
8.3	Asda Roundabout .....	47
8.4	VISSIM Model Parameters.....	48
8.5	Comments on VISSIM Video.....	48

## Figures

Figure 1.1: Performance of LTC against Scheme Objectives .....	11
Figure 1.2: Summary of Council's Major Concerns .....	12
Figure 1.3: High-level Summary of Council's Scheme Assessment.....	13

## Tables

Table 3.1: Rationalisation of Concerns .....	20
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Thurrock Council Comments on Applicant's Submissions at Deadline 9 (D9)  
Lower Thames Crossing

---

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Thurrock Council Comments on Applicant's Submissions at Deadline 9 (D9)  
Lower Thames Crossing

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9. **Outline Traffic Management Plan for Construction (oTMPfC) (v9):** no changes of consequence have been made and the Council's residual concerns with the robustness of the oTMPfC remain unresolved.
10. **Framework Construction Travel Plan (FCTP) (v6):** no changes of consequence have been made and the Council's residual concerns with the robustness of the FCTP remain unresolved.
11. **Wider Network Impacts Management and Monitoring Plan (WNIMMP) (v2):** the applicant has made no changes of consequence to the WNIMMP and the Council's residual concerns with the WNIMMP and the overarching approach to wider network impact resolution remain unresolved.
12. **Outline Materials Handling Plan (oMHP) (v5):** the Council welcomes the additional wording relating to the potential use of marine transport, but continues to express its concern that the overarching framework of the oMHP is too narrow (i.e. concentrating only on imported bulk material and primarily aggregates), and with too much flexibility and too little control to represent a robust foundation for subsequent detailed MHPs or the governance of the construction process.
13. **Preliminary Works EMP (v4):** no changes of consequence have been made and the Council's residual concerns with the robustness of the PWEMP remain unresolved.
14. **Draft Archaeological Mitigation Strategy and Outline Written Scheme of Investigation (v6) (AMI-OWSI):** the draft mitigation strategy and Outline Written Scheme of Investigation has had a large amount of additional detail added at this late stage. Overall, the additions improve the document and in the case of the detailed maps within Annex D provide clarification on the agreed areas of mitigation. All of the additions have been discussed with the Local Authority advisors and are supported. It is disappointing that it is so late in the day these have been submitted.
15. **Stakeholder Actions and Commitments Register (SAC-R) (v7):** the applicant has added two additional commitments which are relevant to the Council. **SACR-027** offers to provide, on request, air quality and noise existing pre-construction baseline monitors to relevant local authorities, following completion of construction, that such monitors remain in situ. It assigns all costs, responsibilities and permissions associated with such equipment to the relevant local authorities but requires handover of all data and an explanation of the use of such data. This is a typically one-sided arrangement, and the Council will need to consider this 'so-called' 'commitment' further. **SACR-033** is in lieu of a legal agreement requested by the Council over 18 months ago and was briefly discussed with the Council over the last two weeks. In the Council's view this was not agreed with the Council, is unspecific regarding the nature and content of the programme and leaves all control with the applicant.
16. **Consents and Agreements Position Statement (v8):** there are a number of minor and other changes that are not of any significance to the Council.

### Section 3 – Draft Development Consent Order Matters

17. The Council have raised various matters in relation to the dDCO. The Council is concerned that these have not been addressed by the applicant and as a result there is uncertainty about the impacts of the dDCO. The Council requests that the ExA considers our concerns and takes these into account when making recommendations in relation to LTC.
18. **Draft Development Consent Order Changes (v11) and Schedule of Changes (v9):** although the Council and other IPs have made many suggested improvements to the dDCO the applicant has made relatively few amendments to the dDCO. The amendment to Requirement 13 (Gammonfields) is agreed, but the Council disagrees with the applicant's version of Requirement 18 (Orsett Cock Junction). The Council's proposed Requirement sets out clear objectives, using language firmly rooted in the relevant applicable policy tests and provide a clear monitoring and decision-making framework and ought to be recommended as Requirement 18 to the Secretary of



## Thurrock Council Comments on Applicant's Submissions at Deadline 9 (D9) Lower Thames Crossing

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State. For Part 11 of Schedule 14, the Council endorses the joint response submitted by the LB Havering at D9A.

19. **Comments on Explanatory Memorandum Changes (v7):** the Council have reviewed the Explanatory Memorandum, and have no comments except to signpost the comments in the joint submission on Orsett Cock submitted at Deadline 9 ([REP9-299](#)) in Appendix D.
20. **Council Comments on Applicant's Comments on IPs Commentary on dDCO at D8:** the Council considers that the concerns of the Council have not been taken into account. The fact that responses to relatively simple requests, which are designed to allow all parties to better understand the impact of the dDCO, have not been addressed is concerning. The Council suggests that this uncertainty is taken into account when considering the impact of the dDCO and the amount of flexibility it is appropriate in any decision to grant the application.
21. The Council has expressed serious concerns regarding a number of the key documents (Requirements, Wider Network Impacts, Worker Accommodation), which underpin the application for LTC. The impact of this is that there is significant uncertainty about the level of impact caused by LTC, particularly on the local highway network. The Requirements proposed are a necessary way of increasing the confidence of all parties in the impacts of LTC. That the applicant either rejects the Requirements or seeks to weaken them is of concern, especially given the significant amount of flexibility already given to the applicant.

### Section 4 – Land and Compulsory Acquisition Order Matters

22. **Statement of Reasons (v8):** the Council has indicated that the Schedule of Negotiations is deficient and/or inaccurate and, therefore, '*at best misleading*' (see paragraph 4.2.2 of Deadline 8 Submission - Comments on Applicant's submissions at Deadline 6A and Deadline ([REP8-166](#))). The applicant has, regrettably, failed to use its D9 submission to correct the deficiencies and inaccuracies and this needs to be addressed.
23. **Post Event Submissions:** the applicant has not acknowledged the Council's Deadline 8 submission let alone sought to address the concerns raised in relation to replacement Public Open Space at the Ron Evans Memorial Field.
24. **Status of Negotiations:** further to the Council's submission at Deadline 9, the Council has not heard further from the applicant.
25. **ExQ1 15.1.1 (v5):** the applicant continues to incorrectly assert that the Council objects to the Compulsory Acquisition of their interests. The Council is pleased to note that the applicant notes '*National Highways confirmed that these discussions can continue post close of Examination*'.
26. **ExQ1 15.1.3 (v5):** the Council's previous comments have not been addressed and still require a response. The Council notes that 12 Statutory Undertakers still have objections to the Order.
27. **ExQ1 15.1.4 (v3):** the updates provided by the applicant are not clear and the Council requires further details with a list of relevant Statutory Undertakers and their position on the dDCO. The Council notes that 12 Statutory Undertakers still have objections to the Order.
28. **Status of Negotiations with Statutory Undertakers (v5):** the Council notes that agreements between the applicant and 12 Statutory Undertakers are still to be reached.

### Section 5 – Transport and Engineering Plans

29. No changes have been made to the Plans and therefore the Council has no further comments.

## Section 6 – Environmental Matters

30. **Coalhouse Point Flood Risk Assessment:** the Council would like to understand if the proposed wetland levels will cause the existing ditch water levels to remain artificially high, preventing the normal discharge of the Lower Moat. The Council request the applicant to confirm impact on ditch water levels and assess if this could have a hydraulic impact to the Lower Moat ability to discharge.
31. **Terrestrial Biodiversity (v2):** it is noted that 'The Wilderness is now listed as an 'ancient woodland' and its significance has been amended as a result. What the applicant has not done is to apply the mitigation hierarchy whereby the first step should be to avoid harm. The Council has requested previously ([REP7-228](#)) in Section 8.3 that the applicant provide a detailed response to justify why the route has not been realigned to avoid the ancient woodland, when there appears to be scope to adjust the route slightly, so that it runs into the adjacent landfill site. On that basis the Council does not consider that the applicant has satisfactorily addressed NPSNN paragraph 5.3.2, justifying why the alignment that results in the destruction of the ancient woodland has been selected rather than the alternative.
32. **HEqIA Screening Template (v2):** there are a number of updates to the HEqIA Screening Template to reflect updated positions and also minor modifications. The Council continues to remain cautious concerning the approach to the relocation of Whitecroft Care Home. The HEqIA Screening Template has been updated relating to the funding of community engagement activities and this remains a 'Matter Not Agreed'. Furthermore, the Council understands that no agreement has been reached and only Heads of Terms have been presented to the owner by the applicant, which is reflected in the owner's D9 submission ([REP9-316](#)).

## Section 7 – Planning and Policy Matters

33. **Planning Statement (v2): Whitecroft Care Home:** the additional text provided by the applicant is disputed as is the assertion that this would result in not materially affecting the provision of care home bedspaces, as there is currently no guarantee that the replacement facility would be within the borough of Thurrock. Additionally, the response does not set out how the temporary removal of bedspaces will be mitigated or set out contingency plans if the planning permission referenced does not get approved – also refer to paragraph 32 above.
34. **Wider Network Impacts:** the Council continues to contest that the applicant's approach to assessing, analysing and mitigating wider network impacts is not compliant with either the current or draft NPSNN. The severe design shortcomings of the interface between LTC and the Council's Orsett Cock Junction have been widely aired at the Examination and the applicant has finally accepted that the resolution of this shortcoming must be achieved, prior to the construction of the scheme and is not a wider network impact, albeit the Council and other Interested Parties are not able to agree to the applicant's proposed Requirement that deals with that resolution. This, however, does not address the wider network impacts on other junctions within Thurrock, including Manorway, Five Bells interchange, Marshfoot Road interchange, Devonshire Road and the Asda Roundabout.
35. **Local Plan:** the Council acknowledges that the Local Plan is at an early stage. However, LTC would have a major systemic impact on Local Plan future growth delivery and viability and indeed it is the uncertainty created by LTC that is in fact causing the Council's inability to progress more detailed plans at the present point in times. The Council has made previous submissions relating to Local Plan impacts.
36. **November 2023 Published Energy NPSs:** the applicant has provided comments on these new documents. 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.

Thurrock Council Comments on Applicant's Submissions at Deadline 9 (D9)  
Lower Thames Crossing

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37. **Planning Statement Appendix E: Green Belt (v2):** this document provides very limited new information, which is simply signposting other documents in the DCO application relating to 'any other harm' and does not provide any further changes to justify 'very special circumstances'. The lack of new information means there is no change in the Council's position on the applicant's inadequate Green Belt assessment of harm and on the applicant's lack of demonstration of 'very special circumstances'.
38. **Planning Statement Appendix C: Local Authority Policy Review (v2):** the applicant has provided an additional response at Deadline 9 regarding policy Thurrock Local Policy CSTP11 'Health Provision' and the proposed acquisition of Whitcroft Care Home. The Council continues to question the accuracy behind the applicant's claim that the potential replacement of the care bed spaces would result in a non-material effect on bed space provision, when the location of the replacement facility is not confirmed. In terms of the Local Plan, the Council acknowledges that the Local Plan is at an early stage, however, LTC would have a significant impact on Local Plan future growth delivery and viability and this remains a concern for the Council.
39. **Planning Statement Appendix A: NPSNN Accordance Table (v2):** this document remains largely unchanged from the document submitted with the DCO application. As would be expected, the applicant continues to claim that it has suitably responded during the development of its proposals and during the Examination, to the requirements of those paragraphs in the NPSNN, as it similarly asserts it has responded to equivalent paragraphs within the draft NPSNN. The Council cannot agree with the applicant that it has suitably observed the requirements within NPSNN paragraphs 5.206 and 5.216. Both relate to the assessment of effects on the wider transport network and the need to respond to forecast negative effects. They require the applicant to adequately assess the effects and to mitigate those negative impacts. The adequacy of the assessment of effects has been roundly questioned during the Examination and as a consequence there is little reliability in the forecasting of effects.
40. The Council is not adverse to adopting a monitor and manage approach, where there is an absence of certainty over the forecast impacts, however, that approach must have secured funding on which all affected bodies can draw as required. That approach or strategy is not before the Examination and is not secured through the DCO.
41. **Policy Accordance Assessment against draft NPSNN (v2): draft NPSNN Paragraph 2.24 – Carbon:** the applicant continues to fail to follow the basic principles of transparency set by the Paris Agreement and International Guidance on greenhouse gas (GHG) emission reporting in their assertions on the percentage impact of LTC and significance testing. Project compliance to the draft NPSNN should be based on the impact of the project on the strategic road network, not the national budget, to ensure a transparent approach to appraising significance of infrastructure.
42. **Draft NPSNN Paragraphs 4.4 and 4.9 – Requirements:** the applicant's view of the adequacy of certain Requirements is at variance with the Council and several key IPs that are directly affected by the outcomes of such Requirements.
43. **Draft NPSNN Paragraphs 5.266 and 5.280 – Wider Network Impacts:** the applicant seeks to assert that it has collaboratively engaged with the Council, other Local Authorities and Interested Parties during the development of its proposals. The Council entirely contests this assertion. Throughout the pre-submission process the applicant resolutely defended its proposals and was not prepared to take into consideration the judgement of harm to its local communities and its Local Road Network that the Council was raising. This is evident through the many matters that are not agreed between the parties within the final SoCG. The applicant has not entered 'discussions' on the transport impacts, which would imply collaboration, but has instead taken the stance of presenting its proposals with no intention of adaptation or resolution of effects.
44. The Council therefore is of the opinion that the applicant has not entered into 'discussions' on the transport impacts but has taken a stance of defence and refusal to acknowledge impacts.

Thurrock Council Comments on Applicant's Submissions at Deadline 9 (D9)  
Lower Thames Crossing

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45. The applicant has therefore not 'taken reasonable steps to mitigate' the impacts of the proposals on 'surrounding transport infrastructure' and does not provide 'resilience on the wider network'. The Secretary of State should therefore note that the application is not compliant with paragraphs 5.266 and 5.280 of the draft NPSNN.
46. **Planning Statement Appendix B: Energy NPS Accordance Table (v2):** 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. 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. In addition, here are a number of rather key, specific policy requirements that the applicant does not appear to have responded to or incorporated into the scheme.
47. **Council Comments on Applicant's Responses to ExA ISH12 Action Point 23 on new Energy NPSs:** the Council is in disagreement with the applicant's view that the Energy NSIPs are associated development, a subsidiary of LTC and as such the applicant should consider the new or amended policies, rather than imply that they are not relevant.

## Section 8 – Council Comments on Applicant's Comments on IP Submissions at D8

48. **Approach to Transport Modelling:** the Council stands by its comments specifically related to the approach of the applicant to transport modelling. The simple fact that there is an unprecedented number of serious matters not agreed across all affected local authorities (including 216 issues for the Council in its SoCG) is testament to the wholly inadequate approach consistently adopted by the applicant.
49. The applicant could have, and should have, resolved transport modelling matters prior to its submission. It chose not to because it recognised that an admission of error on this matter would fundamentally undermine the integrity of the applicant.
50. This is not a simple disagreement on a small modelling matter as the applicant would prefer to portray. It is a structural crack in the foundations of the application, which has ramifications for the scheme and all technical work based on it.
51. The applicant could have brought Orsett Cock Junction into its jurisdiction as part of the LTC scheme. It chose not to. Instead, the applicant decided to make the Council responsible for the operation of a crucial part of its scheme.
52. The Council has a responsibility as Local Highway Authority to ensure it is not left with yet another legacy of traffic issues that will take decades of time and effort to resolve, as happened with the last Dartford Crossing.
53. **Asda Roundabout:** despite requests over many years from the Council, the applicant chose not to prepare any localised modelling of the construction period or operational impacts on the A1089/Asda Roundabout. The applicant then submitted a VISSIM model at Deadline 3 only for this modelling approach to be discarded at Deadline 6 and for ARCADY to be used.
54. The Council raised serious concerns with the applicant's ARCADY modelling in the Council's Comments on Applicant's Submissions at Deadline D6A and D7 ([REP8-166](#)). Despite the absence of validity or adequacy of the applicant's modelling, the applicant's assertion that its construction period control documents would mitigate these delays at the Asda roundabout junction are completely implausible. The applicant's models forecast delays of in excess of 900 seconds (15 minutes). The construction period controls are not adequate to mitigate that level of

Thurrock Council Comments on Applicant's Submissions at Deadline 9 (D9)  
Lower Thames Crossing

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delay, however, effective the applicant believes its controls will be. It is therefore not appropriate that the applicant dismisses the need for further mitigation at this junction to mitigate impacts during the construction phase.

55. **VISSIM Model Parameters:** the parameters should be consistent between Do Minimum and Do Something models and there is no justified reason why the applicant has made changes between model scenarios. This artificially skews results and disguises the true impacts of LTC. The applicant has without justification made the future year models work better and moved significantly away from a validated base model.
56. **Comments on VISSIM Video:** the Council has provided a robust method for preparing the videos of the VISSIM models. The applicant's approach to calculating queues in VISSIM model results is incorrect, as previously highlighted by the Council. The applicant's approach significantly underreports queue lengths.

# 1 Introduction

- 1.1.1 This Deadline 9A submission responds to the applicant's Deadline 9 documents made available on 11 December 2023, whether new or in track changes. Some submitted documents do not require Council comments and so do not form part of this submission.
- 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. This is particularly relevant as the Examination closes on 20 December 2023 and yet very little progress has been made on many significant issues, which is most unusual. Normally issues are increasingly resolved during the Examination process, but this has not been the case with this applicant.

## 1.1 Context

- 1.1.3 There were a total of 316 submissions at D9 and of that total the applicant made 279 submissions at D9 of which 134 were in track changes (and hence 134 clean versions were not reviewed) and the remainder were new documents or there were many documents that did not require Council review. Consequently, an overall total of just 131 track changed and relevant new documents that have been assessed within this submission, to determine if the Council needed to comment.
- 1.1.4 It should be noted that despite there being both tracked changed and clean versions of the various plans, the applicant confirmed to the Council on 14 December 2023 that *'We can confirm that all of our plans submitted at D9 had no changes from previous submission so no revision clouds needed'*. It is puzzling to understand why both versions were necessary to be submitted at D9 when there are no changes?
- 1.1.5 The Council considers it important to note that only a very short timescale has been provided for the review of these documents between their receipt on 12 December 2023 and the finalisation of this document on 15 December 2023.

## 1.2 Structure of this Submission

- 1.2.1 This document provides comments on the relevant and necessary submitted documents, as set out below:
- a. Control Document Changes at D9 (Final Documents)
  - b. Draft Development Consent Order Matters
  - c. Land and Compulsory Acquisition Matters
  - d. Transport and Engineering Plans
  - e. Environmental Matters
  - f. Planning and Policy Matters
  - g. Council Comments on Applicant's Comments on IP Submissions at D8

### SoCG Update Progress

- 1.2.2 Since the Council's D9 submission there have been minor additions and changes to the SoCG, which has affected the overall total of issues slightly, but overall, there remain approximately 70% of all issues as 'Matters Not Agreed'. The jointly signed version will contain the exact numbers of issues in the two remaining categories.

### 1.3 Summary of Council's Major Concerns

- 1.3.1 The Council provided a summary of the Council's 20 major concerns in Section 2 of the Council's Deadline 7 submission ([REP7-228](#)). Since that submission the Council has finalised the Section 106 Agreement with the applicant. This leaves the Council with 19 major concerns with the scheme.
- 1.3.2 The Council is aware that there have been multiple documents and analyses provided to the Examining Authority and so the Council has prepared **Figure 1.1**, **Figure 1.2** and **Figure 1.3** to help provide a clear summary of the Council's major concerns and aid the ExA in understanding these concerns.
- 1.3.3 **Figure 1.1** provides a summary of the Council's assessment of how LTC meets the stated objectives for the scheme. This is based on the analysis provided in the Council's Local Impact Report ([REP1-281](#)) together with updates provided through further information provided during the Examination.
- 1.3.4 **Figure 1.2** provides a summary of the Council's 19 major concerns summarised in Section 2 of the Council's Deadline 7 submission ([REP7-228](#)).
- 1.3.5 **Figure 1.3** provides a further high-level summary of the Council's assessment drawing out the key issues in an accessible way. The Council considers that this style of presentation is useful in explaining the impacts of the scheme to a non-technical audience.

### 1.4 Further Commentary on Economic Appraisal

- 1.4.1 The Council provides the following further commentary to its previous comments on the economic appraisal of the scheme provided in Sections 5.1.15 to 5.5.33 of the Council's Deadline 9 submission ([REP9-299](#)) and Section 9.3 of the Council's Deadline 8 submission ([REP8-166](#)).
- 1.4.2 The Council requests that the ExA formally states whether it considers that sufficient evidence has been provided to deliver the confidence essential to the answer the three 'key questions' specified in the Department for Transport's Transport Appraisal Guidance (TAG) on Uncertainty (in terms of both Value for Money and effectiveness under 'high demand assumptions', 'low demand assumptions' and a 'wide range of possible futures').
- 1.4.3 These Council has set out these requirements in Section 9.3.23 of the Council's Deadline 8 submission ([REP8-166](#)).
- 1.4.4 The Council considers that the ExA should find that insufficient evidence has been provided by the applicant and therefore the application is not in compliance with TAG.
- 1.4.5 This is because the applicant has declined to submit evidence on these matters relating to Uncertainty to the Examination. The applicant proposes to do so only as advice to the Secretary of State after the proposed project is approved. This is a deliberate action by the applicant intended to deny the ExA and Interested Parties the opportunity to consider, scrutinise or challenge the evidence. This lack of transparency is wholly inappropriate and has prevented the ability of the Examination process to properly consider the application. It also means that important and relevant considerations are being withheld from the Examination and accordingly, it is not possible for a lawful decision to be taken, since at present these matters are not in Examination evidence.
- 1.4.6 Submissions by the Council to the Examination have demonstrated that the applicant has prepared the information required to answer the three 'key questions' specified in the DFT's TAG on Uncertainty. Whilst the evidence clearly exists it is being unreasonably withheld by

## Thurrock Council Comments on Applicant's Submissions at Deadline 9 (D9) Lower Thames Crossing

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the applicant because it does not suit their narrative. Scrutiny of this evidence is specified by the DfT's TAG as a proper and essential matter throughout the Examination, including in the Outline Business Case.

- 1.4.7 Review of the information that the applicant has provided has shown that, prima facie, the answers to the three key questions relating to Uncertainty are negative (see Section 9.3.32 to 9.3.41 of the Council's Deadline 8 submission ([REP8-166](#))).
- 1.4.8 This analysis shows that ExA does not have sufficient evidence necessary to make a determination of the application.



Figure 1.1: Performance of LTC against Scheme Objectives

## Lower Thames Crossing Objectives

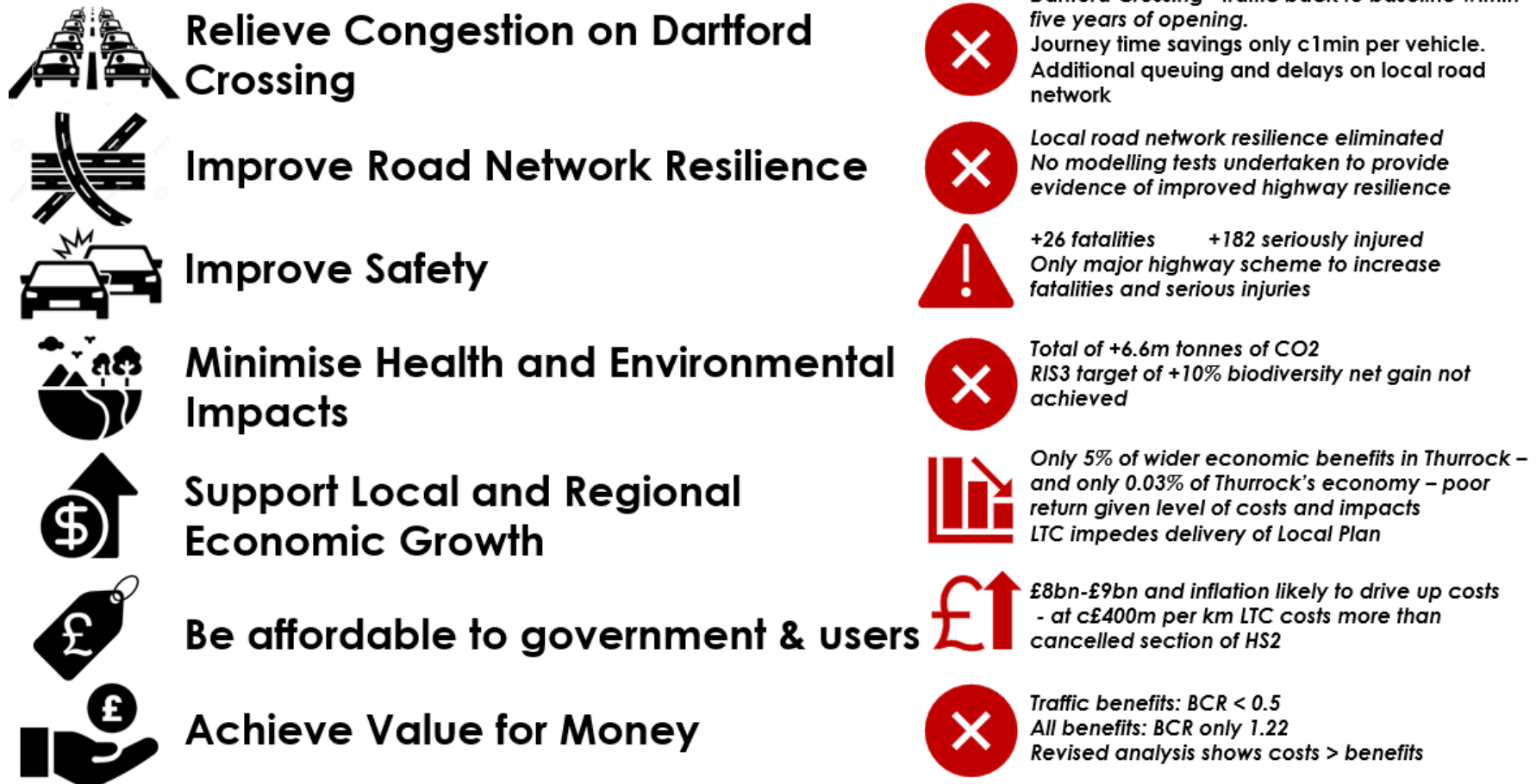
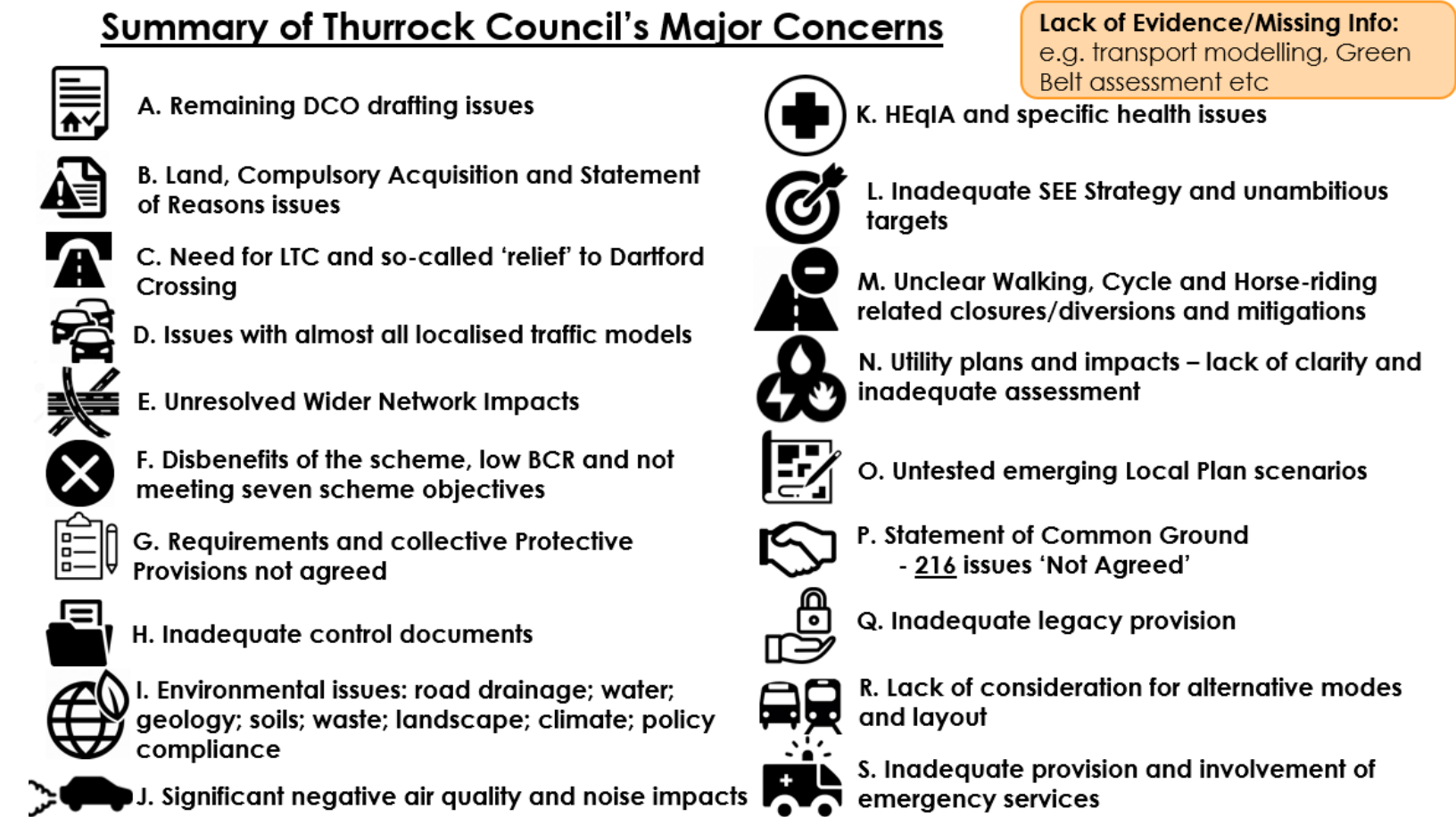
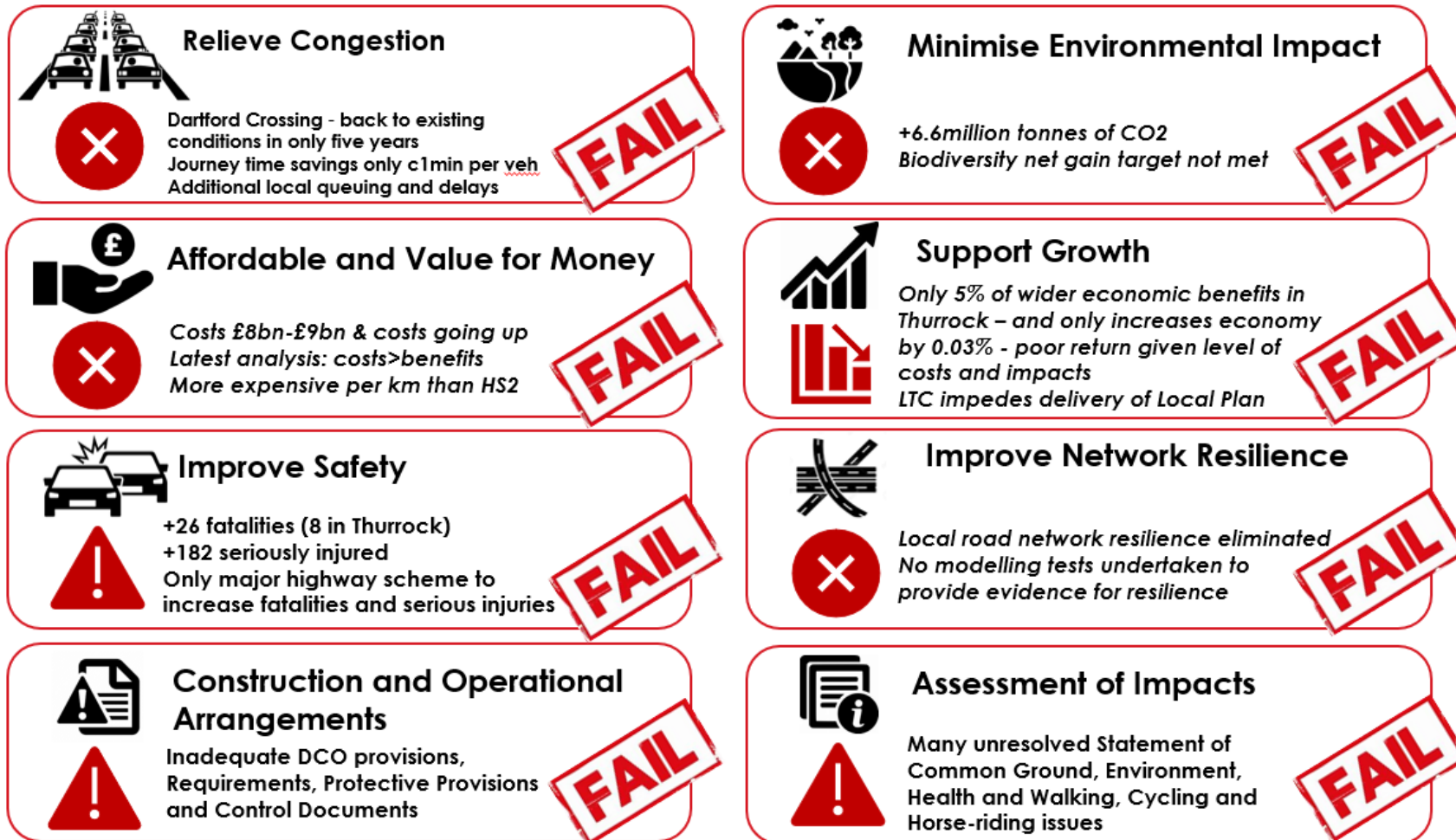


Figure 1.2: Summary of Council's Major Concerns



Thurrock Council Comments on Applicant's Submissions at Deadline 9 (D9)  
Lower Thames Crossing

Figure 1.3: High-level Summary of Council's Scheme Assessment



## 2 Control Document Changes at D9 (Final Documents)

### 2.1 Introduction

2.1.1 This section covers, as necessary, the Council's comments made to the applicant's 14 updated Control documents for the scheme (within its D8 submission), as set out below. Although the 14 documents were submitted very few contained any changes of any consequence or none at all. 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 and REAC) (v9) (REP9-185)

2.2.1 The applicant has made no changes to the CoCP and REAC of consequence to the Council. The Council's residual concerns with the robustness of the CoCP remain unresolved. Those concerns are set out in response to the ExA Q1 Q4.6.4 ([REP4-353](#)).

### 2.3 Outline Traffic Management Plan for Construction (oTMPfC) (v9) (REP9-236)

2.3.1 The applicant has made no changes of consequence to the oTMPfC. The Council's residual concerns with the robustness of the oTMPfC therefore remain unresolved. Those concerns are set out in response to the ExA Q1 Q4.6.4 ([REP4-353](#)).

### 2.4 Framework Construction Travel Plan (FCTP) (v6) (REP9-234)

2.4.1 The applicant has made no changes of consequence to the FCTP. The Council's residual concerns with the robustness of the FCTP therefore remain unresolved. Those concerns are set out in response to the ExA Q1 Q4.6.4 ([REP4-353](#)).

### 2.5 Wider Network Impacts Management and Monitoring Plan WNIMMP) (v2) (REP9-232)

2.5.1 The applicant has made no changes of consequence to the WNIMMP. The Council's residual concerns with the WNIMMP and the overarching approach to wider network impact resolution remain unresolved and are reported elsewhere in this document, such as Sections 7.2, 7.5 and 7.6 below.

### 2.6 Outline Materials Handling Plan (oMHP) (v5) (REP9-189)

2.6.1 The applicant has amended paragraph 8.3.3 of its oMHP to reflect that the Port of London Authority has proposed that the wording for assessment of the prospect to use marine transport is 'environmentally equivalent or better'. The wording in that and other paragraphs, however, retains caveats and flexible wording that undermines the strengthening of the additional wording.

2.6.2 The Council therefore welcomes the addition of that wording, but continues to express its concern that the overarching framework of the oMHP is too narrow (i.e. concentrating only on imported bulk material and primarily aggregates) and with too much flexibility and too little

Thurrock Council Comments on Applicant's Submissions at Deadline 9 (D9)  
 Lower Thames Crossing

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control to represent a robust foundation for subsequent detailed MHPs or the governance of the construction process.

- 2.6.3 This view has been aired through the Examination, including in the Council's LIR ([REP1-281](#)) Section 15, various other written evidence and at hearings such as during ISH12 and ISH14 (reported at [REP8-167](#)). The detail concerns are set out in response to the ExA Q1 Q4.6.4 ([REP4-353](#)).

## 2.7 Preliminary Works EMP (v4) (REP9-191)

- 2.7.1 The applicant has made no changes to the PWEMP of relevance to the Council. The Council's residual concerns with the absence of clarity of definition between Preliminary Works at advance compounds and associated utilities works and those work which must be included within site establishment and mobilisation for the works compounds remain unresolved. The significant scale of site establishment and mobilisation works must be covered by detailed control documents including EMP2 (including the construction logistics planning), TMP, MHP, SWMP and SSTEP.

## 2.8 Draft Archaeological Mitigation Strategy and Outline Written Scheme of Investigation (v6) (AMI-OWSI) (REP9-198) and Figures 6.1 (3no.) (REP9-153, REP9-155 – REP9-157)

- 2.8.1 The draft mitigation strategy and Outline Written Scheme of Investigation has had a large amount of additional detail added at this late stage. The main addition is Annex D, which provides details and a location map of each of the mitigation areas.
- 2.8.2 Within paragraph 6.4.2 the number of listed buildings that are potentially impacted have significantly increased from 11 to 60 across the scheme. This has stemmed from the recent discussion on the potential of vibration damage to designated and non-designated heritage assets. The applicant's specialists have discussed with the local authority advisors the criteria used for this and agreed the buildings to be included.
- 2.8.3 Tables 9.4 and 9.5, which provide lists of the designated and non-designated heritage assets potentially affected by vibration, have been inserted. As per paragraph 6.4.14, it is expected that the buildings listed in the tables will have condition surveys completed before the relevant aspect of the work begins. These condition surveys will provide an appropriate baseline from which any potential vibration impacts can be identified and managed.
- 2.8.4 Throughout the document there is increased references to the consultation of Historic England and their science advisors during the mitigation phases of the project. This will add support and guidance available to the heritage contractors undertaking the mitigation.
- 2.8.5 Annex C, Palaeolithic Written Scheme of Investigation, has been updated from the previous version with comments from the Local Authority Advisors and Historic England addressed. This has provided more detailed information that was missing from the previous version, which first appeared at Deadline 7.
- 2.8.6 Annex D is a new addition to this iteration of the OWSI comprising detailed plans, description, scheme impact and mitigation of each of the proposed pieces of archaeological work being proposed as mitigation. Part D 3 relates to the 154 areas of archaeological interest in Thurrock. This information adds to the detail of the OWSI and is supported.
- 2.8.7 Overall, the additions improve the document and in the case of the detailed maps within Annex D provide clarification on the agreed areas of mitigation. All of the additions have been discussed with the Local Authority advisors and are supported. It is disappointing that it so late in the day these have been submitted.

## **2.9 Stakeholder Actions and Commitments Register (SAC-R) (v7) (REP9-242)**

- 2.9.1 It is noted that there have been no changes to Parts 2 and 3 dealing with the SEE Strategy and Community Fund and therefore the Council's comments set out in its D8 submission ([REP8-166](#)) in Section 2.11 and in earlier submissions as noted in the Council's D7 submission ([REP7-228](#)) in Section 2.13.
- 2.9.2 Within Part 1 it is notable, even at this late stage, that an additional 9 commitments (SACR-025 – SACR-033, have been added. However, only two are relevant to the Council and commentary on each is set out below.
- 2.9.3 **SACR-027** – this offers to provide, on request, air quality and noise existing pre-construction baseline monitors to relevant local authorities, following completion of construction, that such monitors remain in situ. Although this was discussed with the Council some six months ago, it is a surprise to see this commitment appear now without further discussion. It assigns all costs, responsibilities and permissions associated with such equipment to the relevant local authorities but requires handover of all data and an explanation of the use of such data. This is a typically one-sided arrangement, and the Council will need to consider this so-called 'commitment' further.
- 2.9.4 **SACR-033** – this commitment is in lieu of a legal agreement requested by the Council over 18 months ago (and set out in the Council's previous submissions, such as D9 in Section 4 ([REP9-299](#)) and D8 ([REP8-166](#)) in Section 4.8 and was briefly discussed with the Council over the last two weeks. In the Council's view this was not agreed with the Council, is unspecific regarding the nature and content of the programme and leaves all control with the applicant.

## **2.10 Consents and Agreements Position Statement (v8) (REP9-112)**

- 2.10.1 There are a number of minor and other changes that are not of any significance to the Council, although it does note that the S106 Agreement has been agreed with the Council.

## 3 Draft Development Consent Order Matters

### 3.1 Introduction

- 3.1.1 The Council have raised various matters in relation to the dDCO. The Council is concerned that these have not been addressed by the applicant and as a result there is uncertainty about the impacts of the dDCO.
- 3.1.2 The Council requests that the Examining Authority considers our concerns and takes these into account when making recommendations in relation to LTC.

### 3.2 Draft Development Consent Order Changes (v11) and Schedule of Changes (v9) (REP9-108 and REP9-251)

- 3.2.1 The applicant has submitted an updated DCO (v11) at Deadline 9, and its accompanying Schedule of Changes (v9). The Council has reviewed these documents and notes, as a general point, that considering the considerable volume of suggested improvements from the Council and other Interested Parties, the applicant has made relatively few amendments to the dDCO.
- 3.2.2 On the amendments that the applicant has made the Council as the following comments:
- a. The amendment to Requirement 13 (Gammonfields) is agreed.
  - b. In relation to Requirement 18 (Orsett Cock Junction) the Council's position is set out in the joint submission between PoTLL, DP World, TEP and the Council ([REP9-299](#)), Appendix D). The Council disagrees with the statement from the applicant that the wording proposed by the applicant 'has clear parameters when considering the scheme submitted'. This is not the case, as it is unclear what the objectives of the scheme are, except to 'ensure and optimise the performance' of the Orsett Cock Junction. The Requirement needs a process whereby the Secretary of State considers representations as to the objectives of the improvements and then representations on how best to achieve those objectives. This is proportionate and reasonable and does not try to set the objectives at this stage. It also needs to be clear that the applicant consults upon the monitoring to be undertaken. The Council's proposed requirement sets out clear objectives, using language firmly rooted in the relevant applicable policy tests, and provide a clear monitoring and decision-making framework and ought to be recommended as req.18 to the Secretary of State.
  - c. Part 11 of Schedule 14 sets out the Protective Provisions for Local Highway Authorities. The Council endorses the joint response submitted by the London Borough of Havering at D9A.

### 3.3 Comments on Explanatory Memorandum Changes (v7) (REP9-110)

- 3.3.1 The Council have reviewed the Explanatory Memorandum, and have no comments except to signpost the comments in the joint submission on Orsett Cock submitted at Deadline 9 ([REP9-299](#)) in Appendix D.

### 3.4 Council Comments on Applicant's Comments on IPs Commentary on dDCO at D8 (REP9-275)

#### Joint Submission on Local Highway Authority Protective Provisions

- 3.4.1 The Council supports the response submitted by the LB Havering in their Deadline 9 submissions. In particular, the Council wishes to emphasise that the Council has not 'acknowledged that many of the amendments sought were inappropriate'. The Council, along with the other local highway authorities, have sought to reach a compromise position in order to try and reduce the number of outstanding issues. The Council has been requesting a degree of flexibility from the applicant, so that an agreed position can be reached.
- 3.4.2 The Council also wishes to highlight its concerns about local operating agreements, and the refusal by the applicant to use best endeavours to agree one. One of the primary concerns about LTC is the impact that it will have on the local road network. The Council has raised concerns regarding disapplication of key parts of its permitting powers (for works on the local highway network) and to a large extent is reliant on an effective local operating agreement being in place. The Council is concerned about the approach being taken by the applicant. The applicant states that the change is 'unacceptable and has the potential to introduce significant delays to be delivered with the Project and runs a serious risk of cutting across the Applicant's licence obligations to ensure value for money'.
- 3.4.3 The applicant provides no reasons why having a best endeavours obligation would have the results it suggests. It is plainly reasonable that the applicant should be required to make every effort to enter into the local operating agreement; only frustrated by reasons outside of its control. The Council is also a public body, which is required to act to ensure that the local highways network works effectively both for the applicant when undertaking LTC and other road users.

#### Unanswered Queries

- 3.4.4 In its Deadline 7 ([REP7-228](#)), Deadline 8 ([REP8-166](#)) and Deadline 9 ([REP9-299](#)) submissions the Council raises a number of concerns. The applicant has decided not to engage with these concerns and instead signpost back to submissions which 'it considers addresses the matters' (see paragraph 12 of [REP9-275](#)). The Council's queries are raised as a result of the responses received and accordingly it is not appropriate to simply signpost back to those earlier responses. However, this has been the position taken by the applicant.
- 3.4.5 The applicant invites the ExA to review the signposting to earlier responses and the Council also invites the ExA to do the same. The uncooperative and entrenched position adopted by the applicant concerns the Council, especially considering the significant flexibility given to the applicant should the DCO be granted in its current form.
- 3.4.6 The Council addresses the applicant's comments below:
- a. **Use of the term 'substantially in accordance with' in securing the Requirements.**  
 The applicant is focused on whether use of this phrase is lawful. However, the Council's concern is how this works in practice, considering the uncertainty caused by securing what is already an outline document (for example the Outline Traffic Management Plan for Construction). The concern relates to what is actually being consented and the confidence in which the Council has in relation to how potential issues have been resolved.
  - b. The need for **passive provision for the Tilbury Link Road (Requirement 17)** was commented on by the Council on its joint submission with PoTLL, DP World and TEP ([REP8-166](#) on page 190 in Appendix D). It was also commented on during ISH14 (see



Thurrock Council Comments on Applicant's Submissions at Deadline 9 (D9)  
Lower Thames Crossing

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Council's comments in [REP8 –162](#)). The Council adopted during ISH14 an approach designed to enable agreement on this requirement, by accepting the wording suggested by the applicant, with one exception. The Council agrees that if certain specific criteria (see Requirement 17, paragraph 3(a)-(c)) are met then this gives sufficient certainty for the passive provision to be provided. However, absent these criteria being met, there is a balancing exercise to be undertaken between adequate provision for future growth in Thurrock, including the ports and the cost to the applicant.

The applicant suggests that it is the correct party to make the final decision on this, whereas the Council considers that the Secretary of State is much better placed due to the conflicted position that the applicant would be in, due to the need to balance potentially conflicting positions. This is something that the Secretary of State is experienced in doing and accordingly would be in the public interest. The Council therefore requests that the ExA adopts the wording agreed put forward by the PoTLL at Deadline 8 ([REP8-164](#), pages 5-6).

- c. The Council has put forward a joint submission at Deadline 9 with PoTLL, DP World, TEP ([REP9-299](#)) in Appendix D, which proposes **updated wording for Orsett Cock Junction in Requirement 18**. The Council remains concerned that the current wording suggested by the applicant is not sufficiently certain.
- d. The Council supports the **joint position statement being submitted by the LB Havering at Deadline 9A on the Protective Provisions** (Part 11 of Schedule 14).
- e. The Council is still of the opinion that it is best placed to be the **discharging authority in relation to a number of the Requirements**, for the reasons previously set out (see for example [REP1-281](#) pages 220,221, [REP1-295](#) page 40, and [REP4-352](#), page 334). The applicant's position is that the Secretary of State always wishes to be the discharging authority. The reference to the A66 project highlights that the Secretary of State has an open mind in relation to this, and therefore so should the applicant. The Council considers that the characteristics of LTC (for example the large percentage of the project within the area of two local highway authorities and the integral use of parts of the local highway network as part of LTC) mean that the applicant should consider more closely the Council's request to be the discharging authority for specific requirements.
- f. The arguments in relation to **'begin' and 'commence'** are well rehearsed (for example see [REP1-295](#) page 8, and [REP4-352](#), page 321). The Council understands the applicant's position (that it wants a material operation, even if it is part of the preliminary works, to preserve the DCO). This is a departure from usual practice and has been addressed by the Council at Deadline 9 ([REP9-299](#) on page 22). However, the effect is that it allows very little work to be done to preserve the DCO. The Council's position, and the position of the Court of Appeal in *Tidal Lagoon (Swansea Bay) PLC v Secretary of State for Business, Energy and Industrial Strategy, Welsh Ministers, the Council of the City and County of Swansea [2022] EWCA Civ 1579*, is that this is not desirable, because DCOs are more likely to be left 'on the stocks for years, inhibiting future development and placing landowners at potential risk of delayed compulsory purchases' (paragraph 10 of the Swansea case). The applicant has not responded to this point.
- g. In relation to **Article 6(3) (Limits of Deviation which potentially exceed the Order Limits)**, the applicant has again signposted back to previous submissions and asserts, without basis, that they address the Council's concerns. In summary, the applicant's position appears to be that a) there is precedent for their approach; b) CPO powers do not apply outside of the Order Limits; and c) the Secretary of State needs to approve the extension of the Limits of Deviation. The applicant has not responded to why it is not appropriate to limit this power to the Order Limits. The applicant has also not responded to the specific queries raised by the Council on the interpretation of 'materially new and materially different environmental effects in comparison with those reported in the environmental statement' (see [REP9-299](#)) in Section 3.6.3. These queries were raised in order to better understand how Article 6(3) (and Requirement 3) would work in practice.

Thurrock Council Comments on Applicant's Submissions at Deadline 9 (D9)  
Lower Thames Crossing

- h. The applicant states that they have specifically responded to the Council's questions on the meaning of 'materially new and materially different' on page 25 of [REP7-190](#). Their response on page 25 of [REP7-190](#) states:  
*'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.'*
- i. The Council submits that this does not respond to the questions raised by the Council and does not advance the understanding of the ExA or Secretary of State as to how Article 6(3) will operate in practice. This is typical of the responses that have been received from the applicant and it is frustrating that even at this late state the applicant is not trying to work productively with the Council to narrow areas of dispute. This dismissive position to the valid concerns of another public body is not in the public interest (the delivery of LTC in a cost efficient manner is not the only public interest which needs to be considered).
- j. In relation to **Requirement 3, the Council has similar concerns as in relation to Article 6(3)** (see page 29 of [REP8-166](#)). These are primarily uncertainty regarding whether the non-material amendment procedure would be more appropriate, the meaning of 'materially new and materially different environmental effects in comparison with those reported in the environmental statement'. Whilst the applicant has responded to this, it is the Council's position that the fact that this is approved by the Secretary of State does not address the Council's concerns. The Council is concerned about the less defined consultation and publication requirements.
- k. The Council has raised at [REP9-299](#) on page 63 and in response to the ExA's comments on the DCO ([REP8-166](#) – Appendix A) **concerns regarding specific documents**. It is a response to these specific queries that the Council is requesting. It is unclear why the applicant is unwilling to address them.
- l. In relation to a **new Requirement on Air Quality**, please see Council comments below.

### Rationalisation of Concerns

- 3.4.7 Appendix B of [REP8-166](#) sets out the Council's rationalisation review. The Council was seeking to use this as an opportunity to highlight key areas of concern to allow these to be subject of further comments prior to the end of the Examination. Unfortunately, the applicant has not decided to take this opportunity and has decided to primarily signpost back to previous responses. Whilst the Council agrees with the use of signposting where appropriate, when the Council has indicated that this would benefit from further discussion it is concerning that this opportunity has largely not been taken.

Table 3.1: Rationalisation of Concerns

Matter	Comment
Discharging authority	Please see comments above.
Article 9 and Traffic Management Forum	The Council is concerned about the impact of LTC on its ability to manage the local highway network. Article 9 removes powers in relation to timing of works (even though this is usually a key part of the permitting process). The Council's discussions with the applicant have highlighted that the Traffic Management Forum will help ensure coordinated approach to different works being undertaken.

Thurrock Council Comments on Applicant's Submissions at Deadline 9 (D9)  
Lower Thames Crossing

Matter	Comment
	The Council's concern was what happens when proposed works by the applicant conflict with pre-authorise permits (which is not, as suggested by the applicant, an 'unparticularised' claim about the Traffic Management Forum. This does not appear to be dealt with in the responses provided. It is unclear why the applicant is not prepared to elaborate on this.
Article 35 – returned land	The Council agrees with wording inserted in relation to planning permission in Article 35(5), in response to the issue raised by the Council during ISH14.
Article 35 – notice period	It remains the Council position that this should be a more extensive notice period for taking temporary possession of land. As noted by the applicant, it is agreed that there has been the opportunity for landowners to take part in the Examination process. The Council also agree that if approved, LTC should be delivered expeditiously. However, it is unclear why the Council's proposal is not consistent with the expeditious delivery of LTC. It is designed to manage the expectations of landowners and allow them to plan to minimise the financial impact, and therefore minimise the compensation paid from the public purse.
EMP3 – consultation and approval	The applicant has not engaged with our comments on this issue. Their primary position appears to be that their approach is precedent. However, as mentioned previously, the fact that an approach is precedent, does not mean that it has to be followed. The Council considers that its approach would be beneficial. As demonstrated by the comments on the A66 Northern Trans-Pennine Project, the Secretary of State has an open mind in relation to this, therefore it is appropriate for the applicant also to have an open mind.

- 3.4.8 The applicant notes that much of what has been submitted has been duplicated from other submissions. Whilst the Council does not want to create duplication, the Council is also concerned that the applicant has not engaged in many of the points raised. It is this failure to engage which causes the Council concern, both in relation to ensuring that all the relevant information is available to the ExA and in subsequent working with the applicant, if the LTC DCO is granted.
- 3.4.9 Many of the provisions within the dDCO give significant discretion to the applicant, and the Council is concerned that without the necessary checks and balances (which the applicant refers to as 'processes and administrative burdens'), there are going to be avoidable negative impacts on residents, both during construction and operation.
- 3.4.10 To state that the Council's proposals 'present a material risk' not only LTC, but UK infrastructure generally is plainly false (and is not supported by any evidence provided by the applicant). The Council is genuinely confused as to why the applicant has repeatedly refused to answer questions about how the processes will work in practice (for example, Article 6(3) and how conflicts are resolved in permitting). LTC is a major project, that has the ability to have significant impacts for many decades to come (it could take over a decade to construct).

Thurrock Council Comments on Applicant's Submissions at Deadline 9 (D9)  
Lower Thames Crossing

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Balancing the anticipated benefits of the scheme (which the Council is concerned about) against the likely harm is an important part of the role of the Examining Authority.

- 3.4.11 This is made significantly more difficult by the flexibility requested by the applicant, as the exact impacts are more difficult to quantify. So, to be in a position whereby the applicant is refusing to respond to questions as to how this will operate in practice create further uncertainty, which needs to be taken into account by the Examining Authority.

### **Responses to Comments on the ExA's Commentary on the dDCO**

- 3.4.12 The Council has responded to the questions raised by the Examining Authority ([PD-047](#)) at Deadline 8 ([REP8-166](#)). At Deadline 9, the Council responded to the comments of the applicant at Deadline 8 on PD-047 ([REP9-299](#)). The Council now responds to the applicant's response to [REP8-166](#). This is set out in Appendix B. The Council has replicated the table produced by the applicant at [REP9-299](#) [doc number 3.213] and inserted its comments beneath each question. The signposts back to our earlier responses where necessary.
- 3.4.13 Overall, the Council still has numerous concerns, as set out in [REP8-166](#) and [REP9-299](#).
- 3.4.14 **In summary, the Council considers that the concerns of the Council have not been taken into account. The fact that responses to relatively simple requests, which are designed to allow all parties to better understand the impact of the dDCO is concerning. It is unclear why the applicant feels the need to close down discussion of this aspect. The Council suggest that this uncertainty is taken into account when considering the impact of the dDCO and the amount of flexibility it is appropriate to grant the applicant.**

### **3.5 Council Comments on Updated Requirements**

- 3.5.1 The Council wishes to set out where its most recent position on various updated requirements can be found, so that the ExA can consider these in comparison with the versions submitted by the applicant.
- 3.5.2 It is positive that updated requirements in relation to Orsett Cock Junction and Passive Provision for Tilbury Link Road have been added. They were initially strongly resisted by the applicant, who has been slow to recognise the serious concerns that the Council and other interested parties have, in particular about the impact on the local highway network.
- 3.5.3 However, the requirements proposed still require additional improvements. The 'Parties' have moved as much as possible to work with the drafting proposed by the applicant, in order to make it easier for the ExA to see the differences and evaluate our concerns.

#### **Requirement 18 – Orsett Cock Junctions**

- 3.5.4 The Council submitted a joint response with the Port of Tilbury London Limited, DP World and the Thames Enterprise Park ([REP8-166](#), page 190) and an updated provision for Orsett Cock Junction at [REP9-299](#) in Appendix D. [REP8-166](#) has been responded to by the applicant at [REP9-275](#)).
- 3.5.5 The Council requests the ExA to prefer the wording jointed submitted by the Port of Tilbury London Limited, DP World and the Thames Enterprise Park ([REP9-299](#)) in Appendix D).
- 3.5.6 The applicant continues to rely on the word 'optimisation', which the Council does not consider appropriate. It needs to be clear that the purpose of the Requirement is to correct what the Council considers to be the flaws in the current modelling, to ensure that the junction is effective.

## Thurrock Council Comments on Applicant's Submissions at Deadline 9 (D9) Lower Thames Crossing

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Optimisation suggests more minor amendments, without reference to a clear and objective optimisation parameter/metric and is therefore not acceptable.

- 3.5.7 The Council also requests that the Requirement applies during the first 5 years of operation. The operation of the junction is fundamental to the delivery of the benefits that LTC purports to deliver. The failure of the junction would have a significant adverse impact on the business case for LTC and accordingly it is appropriate to include measures to give comfort that it will operate as anticipated. The Council's proposed requirement sets out clear objectives, using language firmly rooted in the relevant applicable policy tests, and provide a clear monitoring and decision-making framework and ought to be recommended as req.18 to the Secretary of State.

### **Asda Roundabout**

- 3.5.8 At Deadline 8 ([REP8-166](#)) the Council submitted a joint response with the Port of Tilbury London Limited, DP World and the Thames Enterprise Park ([REP8-166](#), page 190). This included provisions about the control of construction traffic at the Asda Roundabout. A draft Requirement can be found at Appendix 3 to the Port of Tilbury London Limited Deadline 6 submission ([REP6-163](#)) as amended by the Port of Tilbury London Limited's Deadline 8 submission ([REP8-164](#)). The Council supports these submissions.
- 3.5.9 The comments of the applicant at Deadline 9 ([REP9-275](#)), (doc 9.213) do not address the concerns raised by the Council. The Asda Roundabout has been identified as an area of key concern and it is appropriate that it has its own Requirement.

### **Requirement 17 – Passive Provision for Tilbury Link Road**

- 3.5.10 At Deadline 8 ([REP8-166](#)) the Council submitted a joint response with the Port of Tilbury London Limited, DP World and the Thames Enterprise Park ([REP8-166](#), page 190). This included provisions about the Passive Provision for Tilbury Link Road, which referred to the submissions of the Port of Tilbury London Limited at Deadline 8 ([REP8-164](#)). The Council supports these submissions.
- 3.5.11 Please see comments above which address the applicant's comments.

### **Wider Network Impacts**

- 3.5.12 In [REP8-166](#) on page 192 the Council suggested jointed suggested, along with Port of Tilbury London Limited, DP World and the Thames Enterprise Park, a new requirement in relation to Wider Network Impacts. This is to provide greater certainty about the operation of the local highway network, which the Council and other IPs have significant (and evidenced) concerns about. The parties have suggested an approach that was agreed in the Silvertown DCO. However, in order to assist the reaching of an agreed position this has been amended to reflect wording proposed in relation to Orsett Cock Junction.
- 3.5.13 The applicant does not appear to have responded to this suggestion (despite the text of [REP9-275](#)) suggesting it would be dealt with at paragraph 11.1), which is surprising given its clear importance to the Council, Port of Tilbury London Limited, DP World and the Thames Enterprise Park. The ExA is requested to consider the wording proposed and recommend an amendment to the dDCO to include the proposed Requirement.

### **Air Quality**

- 3.5.14 At Deadline 8 the Council commented on the need for a new Requirement on Air Quality ([REP8-166](#), paragraph 3.4). This referred back to the Council's D7 submission ([REP7-228](#) in

## Thurrock Council Comments on Applicant's Submissions at Deadline 9 (D9) Lower Thames Crossing

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Appendix B). The Council's position is that air quality monitoring should take place, even though current assessments indicate that air quality is not expected to be a problem. This is due to the importance of air quality on public health and the ease with which monitoring can be undertaken. In response to our concerns, the applicant has signposted back to its Deadline 7 submissions. This response simply states their position that they are *'not proposing to monitor NO2 during construction as the air quality modelling and assessment work assesses that the construction of the Project would not result in significant air quality effects. The air quality assessment has concluded there are no significant air quality effects during the operational stage, and consequently there is no requirement for mitigation monitoring'*.

- 3.5.15 Whilst this is understood, the Council has not had a response to its comments that the importance of air quality mean that it is still appropriate for air quality to be monitored (both during construction and operationally). This is especially true when monitoring of air quality will be undertaken and accordingly it would not be disproportionate to leave there is monitoring positions in situ, rather than handover responsibilities to local authorities, as set out in SACR-033. This is considered to be in the wider public interest.

### **Worker Accommodation**

- 3.5.16 At [REP7-228](#) the Council proposed a Requirement for Housing Impact due to the applicant's provisions for worker accommodation. Despite the comments of the applicant, the Council considers that this is still a very real problem, that is best addressed through the proposed requirement. This is because it provides a clear structure for remedying issues with the work accommodation.
- 3.5.17 **Overall Summary: the Council has expressed serious concerns regarding a number of the key documents which underpin the application for LTC. The impact of this is that there is significant uncertainty about the level of impact caused by LTC, particularly on the local highway network. The Requirements proposed are a necessary way of increasing the confidence of all parties in the impacts of LTC. That the applicant either rejects the requirements or seeks to weaken them is of concern, especially given the significant amount of flexibility already given to the applicant.**

## 4 Land and Compulsory Acquisition Matters

### 4.1 Statement of Reasons (v8) (REP9-115)

- 4.1.1 The Council has indicated, including at Section 4.2.2 of its Deadline 8 Submission - Comments on Applicant's submissions at Deadline 6A and Deadline ([REP8-166](#)), that the Schedule of Negotiations is deficient and/or inaccurate and, therefore, '*at best misleading*' (see paragraph 4.2.2 of Deadline 8 Submission - Comments on Applicant's submissions at Deadline 6A and Deadline ([REP8-166](#))).
- 4.1.2 The applicant has, regrettably, failed to use its D9 submission to correct the deficiencies and inaccuracies.
- 4.1.3 **The applicant to update the Schedule of Negotiations to give an accurate representation of the position.**

### 4.2 Post Event Submissions

- 4.2.1 In Section 3 a ii in its Deadline 8 Submission – Post Event Submissions, including written submission of oral comments made at the Hearings held 20 to 28 Nov 2023 ([REP8-167](#)), the Council highlighted a myriad of issues with the applicant's proposal in relation to replacement Public Open Space at the Ron Evans Memorial Field. The applicant has not acknowledged the submission let alone sought to address the concerns raised.

### 4.3 Status of Negotiations

- 4.3.1 Further to the narrative at paragraph 4.2 of Thurrock Council's Comments on Applicant's Submissions at Deadline 7 (D7) and Deadline 8 (D8) ([REP9-299](#)), the Council has not heard further from the applicant.

### 4.4 Book of Reference (BoR) (v8) (REP9-117) and Schedule of Changes to BoR (v6) (REP9-249) and Appendix A (v6) (REP9-250)

- 4.4.1 There are no changes of consequence to the Council in these documents.

### 4.5 Land Plans (v8) (REP9-009, REP9-011 and REP9-013), Crown Land Plans (v8) (REP9-015, REP9-017 and REP9-019), Special Category Land Plans (v7) (REP9-021, REP9-023 and REP9-025) and Agricultural Landowners Figure 13.5 (v2) (REP9-183)

- 4.5.1 There are no changes of consequence to the Council in these documents.

### 4.6 ExQ1 15.1.1 (v5) (REP9-253) and 15.1.2 (v5) (REP9-255)

- 4.6.1 At paragraph 5.22. of Thurrock Council's Comments on Applicant's Submissions at Deadline 6 (D6) ([REP7-228](#)), the Council noted that within page 324 of the document Deadline 6 Submission - 9.77 ExQ1 Q15.1.1 Schedule of CA and TP Objections v3.0 (Tracked changes) ([REP6-078](#)), the applicant continued to assert that the Council objects to the CA of their interests and that this remained incorrect (having been addressed at paragraph 9.3.2 of Thurrock Council's Comments on applicant's Submissions at Deadline 4 (D4) and Deadline 5 (D5) ([REP6-164](#))).

Thurrock Council Comments on Applicant's Submissions at Deadline 9 (D9)  
Lower Thames Crossing

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- 4.6.2 Whilst the applicant continues to incorrectly assert (at page 459 of ExQ1.15.1.1 Schedule of CA and TP Objections ([REP9-253](#)) that the Council objects it does, correctly, note that *'The Applicant is engaging with the Council on this issue' and 'Discussions are on going'*.
- 4.6.3 The Council is pleased to note that the applicant further notes *'National Highways confirmed that these discussions can continue post close of Examination'*.

#### **4.7 ExQ1 15.1.3 (v5) (REP9-257)**

- 4.7.1 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](#)), v3.0 ([REP6-082](#)) and v4.0 ([REP7-172](#)) have not been addressed and still require a response.
- 4.7.2 The amendments to Table 1.1 of the ExQ1 Q15.1.3 PA2008 s127 Statutory Undertakers' Land-Rights – LTC v5.0 ([REP9-257](#)) include the references to the updated draft Development Consent Order v11.0 ([REP9-107](#)). 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.
- 4.7.3 The amendment to item number 4 and 11 in Table 1.1 of the ExQ1 15.1.3 PA2008 s127 Statutory Undertakers' Land Rights – LTC v5.0 ([REP9-257](#)) in relation to Essex and Suffolk Water Limited and Northumbrian Water Limited is regarding changes to the status of objection. The applicant has noted that following a meeting with Essex and Suffolk Water Limited, the latest updated version of the agreement is under discussion and that the applicant believes that matters relating to Linford Well have reached or are close to reaching agreement. The applicant states that they are confident that agreement on all matters will be concluded prior to 20 December 2023 (close of Examination). The Council looks forward to receiving this update when complete.
- 4.7.4 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 v5.0 ([REP9-257](#)) has been amended for item numbers 5 – HS1 Limited and 10 – Network Rail Limited. The applicant has amended to state that they believe that there are no outstanding substantive issues, however, these agreements will not be concluded prior to 20 December 2023 (close of Examination), but they are confident that these will be agreed during the recommendation stage.
- 4.7.5 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 v5.0 ([REP9-257](#)) has been amended for item numbers 7 – National Gas Transmission PLC, 8 – National Grid Electricity Transmission PLC, 9 – National Grid PLC, 12 – Port of London Authority Limited, 16 – Southern Water Services Limited, and 18 – Thurrock Flexible Generation Limited. The applicant has amended to state that they are confident that agreement on all matters will be concluded prior to 20 December 2023 (close of Examination).
- 4.7.6 The amendment to item number 13 in Table 1.1 of the ExQ1 15.1.3 PA2008 s127 Statutory Undertakers' Land Rights – LTC v5.0 ([REP9-257](#)) in relation to Port of Tilbury London Limited is regarding changes to the status of objection. The application has noted that they believe that there are no outstanding substantive issues regarding s127(3) and S127(6) and is actively engaging with Port of Tilbury London Limited to conclude agreements within the Examination period (20 December 2023).



Thurrock Council Comments on Applicant's Submissions at Deadline 9 (D9)  
Lower Thames Crossing

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- 4.7.7 The amendment to item number 17 in Table 1.1 of the ExQ1 15.1.3 PA2008 s127 Statutory Undertakers' Land Rights – LTC v5.0 ([REP9-257](#)) in relation to Thames Water Utilities Limited is regarding changes to the status of objection. This objection has now been withdrawn.
- 4.7.8 The Council notes that within Table 1.1 of the ExQ1.15.1.3 PA2008 s127 Statutory Undertakers' Land-Rights – LTC v5.0 ([REP9-257](#)) 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

#### **4.8 ExQ1 15.1.4 (v3) (REP9-259)**

- 4.8.1 The amendments within Table 1.1 of ExQ1 Q15.1.4 PA2008 S138 Statutory Undertakers' Rights and Apparatus – LTC v3.0 ([REP9-258](#)) predominantly consist of the references to updated documents, including the draft Development Consent Order v11.0 ([REP9-107](#)) and the Book of Reference v8.0 ([REP9-117](#)). 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.
- 4.8.2 The amendment to item number 4 and 12 in Table 1.1 of ExQ1 Q15.1.4 PA2008 S138 Statutory Undertakers' Rights and Apparatus – LTC v3.0 ([REP9-258](#)) in relation to Essex and Suffolk Water Limited and Northumbrian Water Limited is regarding changes to the status of objection. The applicant has noted that following a meeting with Essex and Suffolk Water Limited, the latest updated version of the agreement is under discussion and that the applicant believes that matters relating to Linford Well have reached or are close to reaching agreement. The applicant states that they are confident that agreement on all matters will be concluded prior to 20 December 2023 (close of Examination).
- 4.8.3 The 'Status of Objection' for each Statutory Undertaker included within Table 1.1 of ExQ1 Q15.1.4 PA2008 S138 Statutory Undertakers' Rights and Apparatus – LTC v3.0 ([REP9-258](#)) has been amended for item numbers 5 – HS1 Limited and 11 – Network Rail Limited. The applicant has amended to state that they believe that there are no outstanding substantive issues, however, these agreements will not be concluded prior to 20 December 2023 (close of Examination), but they are confident that these will be agreed during the recommendation stage.
- 4.8.4 The 'Status of Objection' for each Statutory Undertaker included within Table 1.1 of ExQ1 Q15.1.4 PA2008 S138 Statutory Undertakers' Rights and Apparatus – LTC v3.0 ([REP9-258](#))

Thurrock Council Comments on Applicant's Submissions at Deadline 9 (D9)  
Lower Thames Crossing

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has been amended for item numbers 7 – Lumen Technologies UK Limited, 8 – National Gas Transmission PLC, 9– National Grid Electricity Transmission PLC, 10 – National Grid PLC, 13 – Port of London Authority Limited, 17 – Southern Water Services Limited, and 19 – Thurrock Flexible Generation Limited. The applicant has amended to state that they are confident that agreement on all matters will be concluded prior to 20 December 2023 (close of Examination).

- 4.8.5 The amendment to item number 14 in Table 1.1 of ExQ1 Q15.1.4 PA2008 S138 Statutory Undertakers' Rights and Apparatus – LTC v3.0 ([REP9-258](#)) in relation to Port of Tilbury London Limited is regarding changes to the status of objection. The application has noted that they believe that there are no outstanding substantive issues regarding s138 and is actively engaging with Port of Tilbury London Limited to conclude agreements within the Examination period (20 December 2023).
- 4.8.6 The amendment to item number 18 in Table 1.1 of ExQ1 Q15.1.4 PA2008 S138 Statutory Undertakers' Rights and Apparatus – LTC v3.0 ([REP9-258](#)) in relation to Thames Water Utilities Limited is regarding changes to the status of objection. This objection has now been withdrawn.
- 4.8.7 The Council notes that within Table 1.1 of ExQ1 Q15.1.4 PA2008 S138 Statutory Undertakers' Rights and Apparatus – LTC v3.0 ([REP9-258](#)) the following Statutory Undertakers still have objections to the Order:
- a. Environment Agency
  - b. Essex and Suffolk Water Limited
  - c. HS1 Limited
  - d. Lumen Technologies UK Limited
  - e. National Gas Transmission PLC
  - f. National Grid Electricity Transmission PLC
  - g. National Grid PLC
  - h. Network Rail Limited
  - i. Northumbrian Water Limited
  - j. Port of London Authority Limited
  - k. Port of Tilbury London Limited
  - l. Southern Water Services Limited
  - m. Thurrock Flexible Generation Limited

#### **4.9 Status of Negotiations with Statutory Undertakers (v5) (REP9-244)**

- 4.9.1 The Status of Negotiations with Statutory Undertakers v5.0 ([REP9-244](#)) has been amended, with all key amendments in the 'Negotiations summary' and 'Status of Negotiations' column of Table 2.1.
- 4.9.2 Within item number 3 of Table 2.1 of the Status of Negotiations with Statutory Undertakers v5.0 ([REP9-244](#)), the applicant had previously reached an agreement with Cadent Gas Ltd. However, Cadent Gas Ltd. has *'subsequently sought further commitments and assurances with regard to the process to be adopted by the applicant in seeking to negotiate the voluntary grant of rights by third parties for Cadent's benefit, prior to acquiring those rights compulsorily.'* The applicant has confirmed that further agreement is expected to be concluded within the recommendation stage and will therefore not be agreed by the close of the Examination (20 December 2023).

Thurrock Council Comments on Applicant's Submissions at Deadline 9 (D9)  
Lower Thames Crossing

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- 4.9.3 Under items number 8, 11, 12 and 13 within Table 2.1 of the Status of Negotiations with Statutory Undertakers v5.0 ([REP9-244](#)) in relation to High Speed One Ltd. and National Gas Transmission PLC, National Grid Electricity Transmission PLC and Network Rail Infrastructure Ltd., the applicant has provided an update that whilst they believe that there are no outstanding substantive issues the agreement will not be concluded prior to 20 December 2023 (close of Examination). The applicant has confirmed that they are confident that an agreement will be reached during the recommendation stage.
- 4.9.4 Within item numbers 10, 14, 16, 19 and 21 of Table 2.1 of the Status of Negotiations with Statutory Undertakers v5.0 ([REP9-244](#)) concerning Lumen Technologies UK Ltd., Northumbrian Water Ltd – trading as Essex and Suffolk Water, Port of London Authority Ltd., Southern Water Services Ltd. and Thurrock Flexible Generation Ltd., the applicant has stated that they are confident that an agreement will be reached prior to 20 December 2023 (close of Examination).
- 4.9.5 Within item number 26 of Table 2.1 of the Status of Negotiations with Statutory Undertakers v5.0 ([REP9-244](#)) concerning Zayo Group UK Ltd., the applicant has amended the status of negotiations to confirm that no further action is expected with regard to Protective Provisions during Examination.
- 4.9.6 The status of negotiations has also been amended for item numbers 27 – Essex County Council, 28 – Kent County Council and 29 – North Kent Marshes Internal Drainage Board. The applicant has confirmed that agreement relative to Protective Provisions is complete and that no further action is required.
- 4.9.7 The Council notes that within Table 2.1 of the Status of Negotiations with Statutory Undertakers v5.0 ([REP9-244](#)) agreements between the applicant and the following Statutory Undertakers are yet to be reached:
- a. Cadent Gas Ltd.
  - b. High Speed One Ltd.
  - c. Lumen Technologies UK Ltd.
  - d. National Gas Transmission PLC
  - e. National Grid Electricity Transmission PLC
  - f. Network Rail Infrastructure Ltd.
  - g. Northumbrian Water Ltd. – Trading as Essex and Suffolk Water
  - h. Port of London Authority Ltd.
  - i. Port of Tilbury London Ltd.
  - j. Southern Water Services Ltd.
  - k. Thurrock Flexible Generation Ltd. (formerly known as Thurrock Power Ltd.) (part of Statera Energy)

## 5 Transport and Engineering Plans

### 5.1 Introduction

- 5.1.1 It should be noted that despite there being both tracked changed and clean versions of the various plans, the applicant confirmed to the Council on 14 December 2023 that *'We can confirm that all of our plans submitted at D9 had no changes from previous submission so no revision clouds needed'*. It is puzzling to understand why both versions were necessary to be submitted at D9 when there are no changes?
- 5.1.2 Consequently, although the various plans submitted are listed below, the Council has no further comments as no changes have been made.

### 5.2 Transport Plans

**Traffic Regulation Measures Plans (v5) (REP9-073, REP9-075 and REP9-077)**

**Classification of Roads Plans (v6) (REP9-079)**

**Tunnel Area Plan (v2) (REP9-081)**

**Tunnel LoD Plan (V3) (REP9-089)**

**River Restrictions Plan (v3) (REP9-087)**

**Rights of Way and Access Plans (v5) (REP9-045, REP9-047 and REP9-049)**

**Streets Subject to Temporary Restrictions of Use Plans (v5) (REP9-051, REP9-053 – REP9-055)**

### 5.3 Engineering Plans

**Structures Plans (v3 and v5) (REP9-083 and REP9-085)**

**Drainage Plans (v5) (REP9-091, REP9-093 and REP9-095)**

- 5.3.1 The Drainage Plans Volume A, B and C have been updated. The applicant has stated that the plans have been updated for Deadline 9 to include all agreed proposed changes and amendments throughout Examination. The Council observe that each drawing has been reissued, however, no other changes have been observed. Notwithstanding this, the Council still reiterates its comments in its D9 submission ([REP8-166](#)) in Section 3.6 that Drainage Plans should be secured within the DCO.

**Works Plans (v5) (REP9-039, REP9-041 and REP9-043)**

**Temporary Works Plans (v5) (REP9-097, REP9-099 and REP9-101)**

**General Arrangement Plans (v5 and v7) (REP9-027, REP9-029 and REP9-031)**

**Engineering Drawings and Sections (v6) (REP9-057, REP9-059, REP9-065 and REP9-067)**

## 6 Environmental Matters

### 6.1 Introduction

6.1.1 This section deals with the Council's comments on the latest version of the ES Addendum (v9) and Health, Equalities and Wellbeing Matters. This is because all other documents submitted relating to the Environment either have no changes or changes are minor or do not have significance for the Council.

### 6.2 ES Addendum (v9) (REP9-246)

#### Coalhouse Point Flood Risk Assessment

6.2.1 Page 60 and Page 68 of the ES Addendum (v9) ([REP9-246](#)) has been updated for Deadline 9 to address comments in relation to flood risk at Deadline 6 and with reference to 9.147 Coalhouse Point Flood Risk Assessment ([REP6-102](#)).

6.2.2 The applicant asserts that their interpretation of the hydraulic modelling results demonstrates that the proposed wetland area will not have an adverse impact on flood risk elsewhere.

6.2.3 The Council accept in broad terms, that the Coalhouse Point Flood Risk Assessment demonstrates that the proposed wetland area will not effect flood risk elsewhere. However, the Council have raised a concern in paragraph 7.2.6 of Thurrock Council's Deadline 9 submission (([REP9-299](#)) and in ISH11 Post Hearing Note Environmental Matters - Agenda Item 4 a ii ([REP8-167](#)). The Council note that the existing lower moat has a controlled discharge to the watercourse in the south of the wetland area.

6.2.4 **The Council would like to understand if the proposed wetland levels will cause the existing ditch water levels to remain artificially high, preventing the normal discharge of the Lower Moat. The Council request the applicant to confirm impact on ditch water levels and assess if this could have a hydraulic impact to the Lower Moat ability to discharge.**

### 6.3 ES Topics Updates

#### Terrestrial Biodiversity (v2) (REP9-121) and Figures 8.1, 8.32 and 8.33 (REP9-169, REP9-171 and REP9-173)

6.3.1 It is noted that 'The Wilderness is now listed as an 'ancient woodland' and its significance has been amended as a result. Subsequently, the Council notes the ExA's Procedural Decision (PD-048) issued on 8 December 2023, requires a response from the applicant, which has been provided in its updated ES Chapter ([REP9-121](#)) in Table 8.33 on pages 178-179; and, in Table 8.39 on page 251.

6.3.2 In its Procedural Decision 45 ([PD-048](#)) Rule 17 – Request for Further Information, the ExA has requested that the applicant provide further information regarding the loss of ancient woodland at The Wilderness. The Council's position is set out below.

6.3.3 ES Chapter 8 ([REP9-121](#)) has been amended to acknowledge that part of The Wilderness is ancient woodland. **Table 8.39 – Terrestrial ecology impact summary table** considers this loss as Nationally significant as it is irreplaceable habitat. The level of impact would be Major an the effect Large Adverse and Significant. **Table 8.33 – Construction effects on non-statutory designated sites north of the River Thames** sets out how the proposed mitigation and compensation measures that would be applied.

Thurrock Council Comments on Applicant's Submissions at Deadline 9 (D9)  
Lower Thames Crossing

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- 6.3.4 What the applicant has not done is to apply the mitigation hierarchy whereby the first step should be to avoid harm. The Council has requested previously ([REP7-228](#)) in Section 8.3 the applicant provide a detailed response to justify why the route has not been realigned to avoid the ancient woodland, especially when there appears to be scope to adjust the route slightly so that it runs into the adjacent landfill site.
- 6.3.5 On that basis the Council does not consider that the applicant has satisfactorily addressed NPSNN paragraph 5.3.2, justifying why the alignment that results in the destruction of the ancient woodland has been selected rather than the alternative.

## 6.4 Health, Equalities and Wellbeing

### HEqIA Screening Template (v2) (REP9-230)

- 6.4.1 There are a number of updates to the HEqIA Screening Template to reflect updated positions and also minor modifications. The following is noted in relation to previously stated Council positions either within the Deadline 8 submission or as part of the Statement of Common Ground process.
- 6.4.2 Paragraph E on page 20 of the HEqIA Screening Template notes that there are ongoing negotiations between the applicant and the owner/operators of the Whitecroft Care Home resulting in the applicant making the provision to purchase the Care Home. The Council understands that no agreement has been reached and only Heads of Terms have been presented to the owner by the applicant.
- 6.4.3 The Council's position of this has been laid out at Deadline 8 ([REP8-166](#)) in Section 4.9, within the Statement of Common Ground and within Appendix A of this D9A submission and remain concerned regarding the potential negative impact on provision in the Borough. This is also referenced within the HEqIA Screening Template update in relation to noise and vibration, with the applicant stating that this will resolve the remaining issues regarding noise, and also reduce potential equalities impacts. The Council remain cautious about this approach due to the potential negative impacts of relocation and the potential removal of key services from the Borough.
- 6.4.4 The HEqIA Screening Template has also been updated to state that 'Further SAC-R commitments commit to contributing to the funding of community engagement activities targeted at specific wards and communities during the construction period in Thurrock (SACR-020) and Kent (SACR-023) (the Council commented on SACR-020 in its D9 submission ([REP9-299](#)) in Section 2.10), specifically in relation to use of areas of open space and the promotion of physical activity'. It is important to note that this additional mitigation remains a 'Matter Not Agreed' within the Council's Statement of Common Ground due to the level of funding provided within this mitigation and the suggested roles that this mitigation would cover not meeting the needs of the Council.
- 6.4.5 The HEqIA Screening Template updates include reference to the Initial Terms of Reference for the Community Liaison Groups (CLG ToR (v2) ([REP9-194](#))), which the Council is in agreement with.

## 7 Planning and Policy Matters

### 7.1 Introduction

- 7.1.1 There are only a few changes to the applicant's Planning Statement (v2) ([REP9-216](#)) and Appendices A - E at Deadline 9 submission documents.
- 7.1.2 The Council submitted responses to Planning Statement (v1) ([APP-495](#)) and Appendices A - E (APP-496 – APP-504) at Deadline 1 in the Council's LIR (REP1-281 – REP1-293). These are signposted in the relevant sections below and remain the Council's position on the applicant's Planning Statement (v2) ([REP9-216](#)) and Appendices A - E at Deadline 9 submission documents.
- 7.1.3 The section below sets out the Council's response to the few changes made to the applicant's Planning Statement (v2) ([REP9-216](#)) and Appendices A - E at Deadline 9 submission documents.

### 7.2 Planning Statement (v2) (REP9-216)

- 7.2.1 The applicant has made just a few changes to the Planning Statement (v2) ([REP9-216](#)) at Deadline 9. The majority of the document is the same as Planning Statement (v1) ([APP-495](#)) submitted as part of the DCO application. Council's response to Planning Statement (v1) ([APP-495](#)) was submitted at D1 is within the Council's LIR ([REP1-281](#)) and this remains the Council's position on the DCO Planning Statement.
- 7.2.2 The Council's response to the changes to the Planning Statement (v2) ([REP9-216](#)) is set out below.

#### **Whitecroft Care Home**

- 7.2.3 New text in Planning Statement (v2) ([REP9-216](#)) para 6.5.304 *'During the course of the Examination hearings a noise issue has arisen in respect of the Whitecroft Care Home in terms of the potential impact of construction of the Project on residents of the care home which provides end-of-life dementia support. There has been ongoing negotiation between the Applicant and the owners/operators of the care home which has resulted in the Applicant making provision to purchase the care home which will allow the residents to be relocated to a replacement facility and so remove the potential noise issue.'*
- 7.2.4 New text in Planning Statement (v2) ([REP9-216](#)) para 7.13.41 *'Policy CSTP11: Health Provision is relevant in the consideration of the impacts of the Project on the Whitecroft Care Home. The Applicant considers that, although the offer to acquire the care home may potentially result in a short term temporary loss in bedspaces, it will not result in any permanent change in provision and will not impact on the ability of the Council to meet the totality of the identified need for care home bedspaces identified in the South Essex Housing Needs Assessment in the period to 2040.'*
- 7.2.5 The logic set out by the applicant that this would result in not materially affecting the provision of care home bedspaces is disputed, as there is currently no guarantee that the replacement facility would be within the Borough. Additionally, the response does not set out how the temporary removal of bedspaces will be mitigated or set out contingency plans, if the planning permission referenced does not get approved. Furthermore, the Council understands that no agreement has been reached and only Heads of Terms have been presented to the owner by the applicant

Thurrock Council Comments on Applicant's Submissions at Deadline 9 (D9)  
Lower Thames Crossing

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- 7.2.6 Additional text has also been added to the applicant's Planning Statement Appendix C: Local Authority Policy Review (v2) ([REP9-221](#)), as set out in Section 7.4 below and Appendix A.

**Wider Network Impacts**

- 7.2.7 The applicant has added new text in its Planning Statement (v2) ([REP9-216](#)) in paragraph 6.5.332 that states: *'In response to the Examining Authority's consideration of wider network impacts at the examination hearings, specifically ExA Actions Points 3, 5 & 6 arising from Issue Specific Hearing 10, the Applicant's Deadline 6 submission 9.134 Wider Network Impacts Position Paper [REP6-092] supplements the WNIMMP in respect of potential wider network impacts at four specified locations raised by Interested Parties. These locations being the Blue Bell Hill corridor, the A13 corridor, the A2/M2 corridor and the Asda roundabout.'*
- 7.2.8 The Council continues to contest that the applicant's approach to assessing, analysing and mitigating wider network impacts is not compliant with the current or draft NPSNN and is:
- a. Not reliable or proportionate;
  - b. Does not secure mitigation through the DCO; and,
  - c. Off-sets the burden of resolution to the local authorities.
- 7.2.9 The wider network impact has been robustly reported to the Examination by the Council within its LIR ([REP-281](#)), particularly at Section 9, and through many other aspects of its evidence including in oral and written evidence at ISH10 (reported at [REP6-166](#)) and ISH13 (reported at [REP8-167](#)). Other evidence (although not exhaustive) from the Council on the absence of resolution to the Wider Network Impacts matters were represented at:
- a. D3 submission ([REP3-211](#)) – Sections 14, 18.8 and 22 and Appendix E;
  - a. D4 submission ([REP4-354](#)) – Sections 10 and 11 and Appendices A and B;
  - b. D5 submission ([REP5-112](#)) – Sections 3 and 4 and Appendices A – C;
  - c. D6 submission ([REP6-164](#)) – Sections 4.3, 11, 12.3, 12.19 and Appendices A and B; and,
  - d. D6A submission ([REP6A-013](#)) – Section 6 and Appendices A – G.
- 7.2.10 The applicant cannot exempt itself from its requirement to mitigate the wider network impacts, furthermore, the locations identified in its Wider Network Impacts Position Paper ([REP6-092](#)) capture only part of the forecast impacted areas – this neglecting communities, such as Stanford-le-Hope, Corringham, Orsett and Chadwell St Mary. All of those communities will be negatively affected by the proposed operation of the LTC, but the applicant has continually refused to acknowledge or resolve the harm on those communities or the associated affected local transport network.
- 7.2.11 The severe design shortcomings of the interface between LTC and the Council's Orsett Cock Junction have been widely aired at the Examination and the applicant has finally accepted that the resolution of this shortcoming must be achieved, prior to the construction of the scheme and is not a wider network impact, albeit the Council and other Interested Parties are not able to agree to the applicant's proposed Requirement that deals with that resolution. This, however, does not address the wider network impacts on other junctions within Thurrock, including:
- a. The Manorway;
  - b. The Five Bells interchange;
  - c. Marshfoot Road interchange;
  - d. Devonshire Road; and



Thurrock Council Comments on Applicant's Submissions at Deadline 9 (D9)  
Lower Thames Crossing

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- e. The Asda Roundabout (albeit this is recognised but not secured in the applicant's Wider Network Impact Position Paper ([REP6-092](#))).

**Emerging Local Plan**

- 7.2.12 New text in Planning Statement (v2) ([REP9-216](#)) para 7.13.54 *'Thurrock Council has issued a number of iterations of Issues & Options consultation documents in 2016 and 2018 and has recently (6 December 2023) secured a Council resolution to undergo a further Local Plan; Initial Proposals consultation. However, as Regulation 18 consultations, each of these consultation documents do not contain firm proposals and are at such an early stage in the preparation of a replacement Thurrock Local Plan that they can be afforded little, if any, weight in the decision-making process.'*
- 7.2.13 The Council acknowledge that the Local Plan is at an early stage. However, LTC would have a major systemic impact on Local Plan future growth delivery and viability and indeed it is the uncertainty created by LTC that is in fact causing the Council's inability to progress more detailed plans at the present point in time. The Council has made previous submissions relating to Local Plan impacts, including within the Council's LIR ([REP1-281](#)) in Sections 4.4.6 – 4.4.12; at Deadline 3 ([REP3-211](#)) in Section 18.3; and at Deadline 7 ([REP7-228](#)) in Section 10. This remains the Council's position on the Council's emerging Local Plan update and major concerns with LTC, especially noting that its Regulation 18 consultation will begin in December 2023.

**Deleted Images/Figures from the Planning Statement**

- 7.2.14 The applicant has deleted a number of images and figures from the Planning Statement (v2) ([REP9-216](#)), submitted at Deadline 9, listed below:
- a. Plate 3.4 – Lower Thames Crossing 'host' local authorities
  - b. Plate 4.1 – Traffic using the Dartford Crossing
  - c. Plate 5.1 – Six locations investigated in the 2009 study
  - d. Plate 5.10 – Shortlisted routes
- 7.2.15 These figures clearly showed the broad scale and location of the scheme within Thurrock, which is important in the Planning Statement as the overall document bringing the DCO application documents together and providing the planning balance.

**November 2023 Published Energy NPSs**

- 7.2.16 The Government published the latest Energy NPS EN-1, EN-4 and EN-5 policies on 22 November 2023, which will come into force early 2024.
- 7.2.17 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. The Council notes that the applicant has formulated a response within the Planning Statement v2.0 ([REP9-216](#)), Planning Statement Appendix B National Policy Statements for Energy Infrastructure Accordance Tables v2.0 ([REP9-219](#)) and Applicant's response to ExA ISH12 AP23 on Suite of Energy National Policy Statements ([REP9-274](#)).
- 7.2.18 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 the Deadline 10 submission. The Council notes that the applicant has formulated a response within the Planning Statement v2.0 ([REP9-216](#)), Planning Statement Appendix B National

## Thurrock Council Comments on Applicant's Submissions at Deadline 9 (D9) Lower Thames Crossing

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Policy Statements for Energy Infrastructure Accordance Tables v2.0 ([REP9-219](#)) and Applicant's response to ExA ISH 12 AP23 on Suite of Energy National Policy Statements (REP9-xxx).

- 7.2.19 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. The Council notes that the applicant has formulated a response within the Planning Statement v2.0 ([REP9-216](#)), Planning Statement Appendix B National Policy Statements for Energy Infrastructure Accordance Tables v2.0 ([REP9-219](#)) and Applicant's response to ExA ISH12 AP23 on Suite of Energy National Policy Statements ([REP9-274](#)).
- 7.2.20 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.
- 7.2.21 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.
- 7.2.22 It is evident within the Planning Statement v2.0 ([REP9-216](#)) that the applicant's view is that the Energy NSIPs are associated development, which is counter to the Post Written Submission for ISH2 ([REP1-184](#)). This is evident in paragraph 6.6.6. The Council therefore sees the applicant's view as incorrect and should amend the submission documents to suit.
- 7.2.23 Paragraph 6.5.309 of the Planning Statement v2.0 ([REP9-216](#)) has been amended to include the following sentence: '*Where noise issues have been identified solutions have been proposed to mitigate those impacts*' with the applicant going on to state that it can therefore be concluded that the Project would meet the requirements of the Energy NPSs. The Council would have expected the applicant to either identify these solutions within the Planning Statement or provide a reference to the document(s) where these solutions are described.
- 7.2.24 The applicant also states within paragraph 6.7.6 of the Planning Statement v2.0 ([REP9-216](#)) that they have considered the final version of the future Energy NPSs EN-1, EN-4 and EN-5, published November 2023, but believes that the Energy NPSs are not considered to raise any new matters relevant to the Energy NSIP elements of LTC and therefore require no further comment or response. The Council disagrees with this view, notably with regard to matters that the applicant believes not to be relevant since they believe the Energy NSIPs are associated development, rather than NSIPs in their own right.
- 7.2.25 Further discussion on the above matter is outlined in Sections 7.7 and 7.8 below.

### **7.3 Planning Statement Appendix E: Green Belt (v2) (REP9-224)**

- 7.3.1 The applicant has made minor changes to the Planning Statement Appendix E Green Belt ([REP9-224](#)) at Deadline 9.
- 7.3.2 The new document states that it is supplemented by the applicant's response to ExQ2 Q13.1.3 Green Belt Harm Assessment ([REP7-181](#)) and the applicant's response to ExQ2 Appendix I – 13 Social, Economic & Land-Use Considerations ([REP6-116](#)) questions Q13.1.2 Green Belt: applicability of 'inappropriate development'. The document does not contain any

## Thurrock Council Comments on Applicant's Submissions at Deadline 9 (D9) Lower Thames Crossing

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new information and does not provide any new text on the assessment of harm to the Green Belt openness or to Green Belt purposes.

- 7.3.3 Planning Statement Appendix E Green Belt ([REP9-224](#)) does provide very limited new information, which is simply signposting other documents in the DCO application relating to 'any other harm' (new paragraphs E6.27 and E6.28).
- 7.3.4 Planning Statement Appendix E Green Belt ([REP9-224](#)) does not provide any further changes to justify 'very special circumstances'.

### **Council's Response**

- 7.3.5 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.
- 7.3.6 As the applicant's Planning Statement Appendix E Green Belt ([REP9-224](#)) at Deadline 9 has not included any substantive changes, the Council's previous responses remain the Council's position, as 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](#));
  - c. Council's response to ExQ2 Q13.1.2 ([REP6-167](#)); and,
  - d. Council's response at Deadline 8 in Section 7 ([REP8-166](#)).
- 7.3.7 Council's 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).
- 7.3.8 The Council maintain that the applicant's Green Belt Assessment ([REP7-181](#)), submitted in response to ExQ2 Q13.1.3, is inadequate and too simplistic. The Council's response to the applicant's Green Belt Assessment ([REP7-181](#)) was submitted at Deadline 8 in Section 7 ([REP8-166](#)).
- 7.3.9 The Council's previous responses, set out above, remain the Council's position on the applicant's inadequate Green Belt assessment of harm and on the applicant's lack of demonstration of 'very special circumstances'. Therefore, these previous submissions should be read in conjunction with this Section of this Deadline 9A submission.

## **7.4 Planning Statement Appendix C: Local Authority Policy Review (v2) (REP9-222)**

- 7.4.1 Planning Statement Appendix C: Local Authority Policy Review (v2) ([REP9-222](#)) was submitted at Deadline 9 by the applicant. It is largely unchanged from the original submitted Planning Statement Appendix C: Local Authority Policy Review ([APP-498](#)), which the Council responded to in its Deadline 1 LIR submission ([REP1-281](#)) in Section 4.
- 7.4.2 The applicant has only made two new substantive amends to the Planning Statement Appendix C: Local Authority Policy Review (v2) ([REP9-222](#)), which are relevant to the Council. The Council's response to these changes is provided below and in Appendix A (Table A.1).

Thurrock Council Comments on Applicant's Submissions at Deadline 9 (D9)  
Lower Thames Crossing

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### Thurrock Policy CSTEP11 Health Provision

- 7.4.3 The applicant has provided an additional response at Deadline 9 regarding policy Thurrock local policy CSTEP11 'Health Provision'. The applicant's response refers to the proposed acquisition of Whitecroft Care Home, in Thurrock. In light of this, the applicant notes that consideration needs to be given to policy CSTEP11 due to the effect of this on care home provision. The Council's full response at Deadline 9A can be found in Appendix A (Table A.1). This includes questioning the accuracy behind the applicant's claim that the potential replacement of the care bed spaces would result in a non-material effect on bed space provision, when the location of the replacement facility is not confirmed. As well as highlighting the need to mitigate against the temporary loss of bed spaces whilst the suggested relocation is managed.
- 7.4.4 Additionally, the Council notes that policy criteria in policy CPST11 provides wider criteria, than social care homes, which the applicant's response does not address. This is set out in Appendix A (Table A.1).

### Thurrock Local Plan Initial Proposals (December 2023)

- 7.4.5 In Planning Statement Appendix C: Local Authority Policy Review (v2) ([REP9-222](#)) the applicant states in Table C.13 page 125, in its review of the Thurrock Local Plan Initial Proposals (December 2023), that *'In view of its early stage in the development plan process and its lack of firm policies or proposals, there remains a high degree of uncertainty relating to development proposals. Therefore, the Applicant considers that this consultation document can be afforded little, if any, weight in the decision-making process. The Initial Proposals do, however, proactively plan for the Project route and acknowledges it as a constrain in allocating land for development. The Initial Proposals indicate that the Council is able to meet the development needs of the authority, whilst taking account of the Project which demonstrates that the two are not incompatible.'* The Council disagrees with this final sentence, which is incorrect.
- 7.4.6 The Council acknowledge that the Local Plan is at an early stage. However, LTC would have a significant impact on Local Plan future growth delivery and viability. In its current form, the LTC DCO would restrict the potential planned growth from coming forward. The Council has made previous submissions relating to Local Plan impacts, including within the Council's LIR ([REP1-281](#)) in Sections 4.4.6 – 4.4.12; at Deadline 3 ([REP3-211](#)) in Section 18.3; and at Deadline 7 ([REP7-228](#)) in Section 10. This remains the Council's position on the Council's emerging Local Plan update and major concerns with LTC.

## 7.5 Planning Statement Appendix A: NPSNN Accordance Table (v2) (REP-218)

- 7.5.1 Planning Statement Appendix A: NPSNN Accordance Table (v2) ([REP9-218](#)) was submitted by the applicant at Deadline 9. It is largely unchanged from the original document submitted with the DCO application Planning Statement Appendix A: NPSNN Accordance Table ([APP-496](#)). The Council has previously commented on ([APP-496](#)) throughout the Council's LIR ([REP1-281](#)), and this submission remains the Council's position.
- 7.5.2 The applicant has only made two new amendments to the Planning Statement Appendix A: NPSNN Accordance Table (v2) ([REP9-218](#)), which are relevant to Thurrock, relating to paragraphs 5.206 and 5.216.
- 7.5.3 As would be expected, the applicant continues to claim that it has suitably responded during the development of its proposals and during the Examination, to the requirements of those paragraphs in the NPSNN, as it similarly asserts it has responded to equivalent paragraphs within the draft NPSNN on which the Council comments in Section 7.6 below.

Thurrock Council Comments on Applicant's Submissions at Deadline 9 (D9)  
Lower Thames Crossing

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- 7.5.4 The Council's response to the applicant's latest submission is provided in Appendix A (Table A.2) to this document, but in summary, the Council does not concur with the applicant that it has suitably observed the requirements within NPSNN paragraphs 5.206 and 5.216.
- 7.5.5 Both relate to the assessment of effects on the wider transport network and the need to respond to forecast negative effects. They require the applicant to adequately assess the effects and to mitigate those negative impacts. The adequacy of the assessment of effects has been roundly questioned during the Examination and as a consequence there is little reliability in the forecasting of effects. Where operational period negative impacts have been indicated the applicant's approach is to propose monitoring, but to leave any subsequent mitigation to other bodies and processes, either through the uncertain RIS process for current or future SRN routes or for other funding sources for the local communities and LRN.
- 7.5.6 The Council is not adverse to adopting a monitor and manage approach, where there is an absence of certainty over the forecast impacts, however, that approach must have secured funding on which all affected bodies can draw as required. That approach or strategy is not before the Examination and is not secured through the DCO.

## 7.6 Policy Accordance Assessment against draft NPSNN (v2) (REP9-261)

- 7.6.1 The applicant's Policy Accordance Assessment Against Draft NPSNN (v2) ([REP9-261](#)) was submitted at D9A. The changes to the document are mainly signposting to other DCO documents. This is an updated version of the applicant's document Policy accordance assessment of the Project against the Consultation draft NPSNN (published March 2023) ([REP4-209](#)). The applicant has only made two substantive new changes between the two versions.
- 7.6.2 Previously, the Council submitted a response to the applicant's initial assessment of LTC against the draft policies in the merging Draft NPSNN published for consultation in March 2023 ([REP4-209](#)). The Council submitted its response at Deadline 7 ([REP6-168](#)) in Appendix B and this submission remains the Council's position.
- 7.6.3 In terms of the applicant's two new amendments to the Policy Accordance Assessment Against Draft NPSNN (v2) ([REP9-261](#)), the Council's response is set out below.

### Draft NPSNN Paragraph 2.24 - Carbon

- 7.6.4 The applicant continues to fail to follow the basic principles of transparency set by the Paris Agreement and International Guidance on greenhouse gas (GHG) emission reporting in their assertions on the percentage impact of LTC and significance testing.
- 7.6.5 As explained within the Council's LIR ([REP1-281](#)), the applicant has not used consistent and comparable boundaries in comparing the emissions calculated and presented within Chapter 15 of the EIA ([APP-153](#)).
- 7.6.6 The application establishes its percentage impact of the construction and operation of the scheme against the total national GHG emission budgets. The national budgets account for sectoral emissions, which are not relevant to the strategic road network, i.e. within influence and therefore scope and boundary of the strategic road network (for example aviation, agriculture and domestic).
- 7.6.7 The principles of transparency set within the Paris Agreement calls for consistency, comparability, completeness and accuracy in GHG emission reporting. The principles of international guidance, such as the WRI's Greenhouse Gas Protocol Project Emission Reporting, calls for consistency and comparability when establishing baselines in GHG emissions reporting.



Thurrock Council Comments on Applicant's Submissions at Deadline 9 (D9)  
Lower Thames Crossing

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- 7.6.16 The Council has continually questioned the basis for the applicant's analysis of impacts and the applicant has demonstrated within the Examination its inability to provide suitable modelling assessment, to resolve fundamental flaws in its application relating to network and community harm. Furthermore, the applicant has taken the stance that it is exempt from resolving wider network impacts, as is shown through its Wider Network Impacts Management and Monitoring Plan ([APP-545](#)) and the subsequent Wider Network Impacts Position Paper ([REP6-092](#)). The latter being the place where the applicant decides to express falsely that the Council and other Interested Parties have not engaged with the applicant. That is simply not the case, the Council has always sought to engage with the applicant but has consistently met the resolute resistance from the applicant. Furthermore, the Wider Network Impacts Position Paper does not even recognise the full extent of the forecast impacted areas, such as Orsett Village, Five Bells and Stanford-le-Hope/Corringham or Chadwell St Mary.
- 7.6.17 In fact, the Council held many monthly meetings with the applicant during 2021 – 2022 to discuss Wider Network Impacts, however, these resulted in no improvements or changes from the applicant to their current position on this significant issue.
- 7.6.18 The Council therefore is of the opinion that the applicant has not entered into 'discussions' on the transport impacts but has taken a stance of defence and refusal to acknowledge impacts.
- 7.6.19 The applicant continues to mislead the ExA in pages 445-446 of its Policy Accordance Assessment Against draft NPSNN (v2) ([REP9-261](#)). In its consideration of compliance with paragraph 5.280 of the draft NPSNN, the applicant states that it '*has taken reasonable steps to mitigate the impacts of the Project including in terms of improving network resilience*'. Plainly, it has not.
- 7.6.20 The Council has provided evidence within its LIR ([REP1-281](#)) in Section 7 that the applicant's proposal does not achieve the network resilience that it claims. Any 'resilience' provided at the Dartford Crossing is quickly eroded through the induction of new traffic to the network. This evidence has been revised during the Examination in written and oral evidence.
- 7.6.21 Over the many years during the pre-submission process, the applicant has been informed of the many areas of negative effect that the proposals have on the Council's communities and transport network, as such the applicant has been given every opportunity to adjust its proposals and the geographic coverage of the DCO application (i.e. increasing the Order Limits) or the scope of the proposals. The applicant has opted to ignore the feedback and advice of the Council and has therefore entered the submission and Examination with a poorly conceived proposal, that has required many months of stolid but ill-informed defence without resolution. The applicant has concluded that it is exempt from mitigation of wider network impacts on its unsubstantiated claimed that the proposals provide a net benefit to the region.
- 7.6.22 The applicant has therefore not 'taken reasonable steps to mitigate' the impacts of the proposals on 'surrounding transport infrastructure' and does not provide 'resilience on the wider network'. The Secretary of State should therefore note that the application is not compliant with paragraphs 5.266 and 5.280 of the draft NPSNN. As a result the DCO should not be made.

## **7.7 Planning Statement Appendix B: Energy NPS Accordance Table (v2) (REP9-220)**

- 7.7.1 The Government published the latest Energy NPS EN-1, EN-4 and EN-5 policies on 22 November 2023, which will come into force early 2024. This has been noted by the applicant in paragraph B.1.12 in the Planning Statement Appendix B National Policy Statements for Energy Infrastructure Accordance Tables v2.0 ([REP9-220](#)).

Thurrock Council Comments on Applicant's Submissions at Deadline 9 (D9)  
Lower Thames Crossing

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- 7.7.2 Action Point 23 of ISH12 (Part 1) ([EV-085a](#)) 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 the Deadline 9 submission.
- 7.7.3 Action Point 23 of ISH12 (Part 1) ([EV-085a](#)) 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 the Deadline 10 submission.
- 7.7.4 Also included within Action Point 23 of ISH12 (Part 1) ([EV-085a](#)) 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.
- 7.7.5 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.
- 7.7.6 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.
- 7.7.7 The applicant appears to have disregarded the Post Written Submission for ISH2 ([REP1-184](#)), notably in paragraph B.1.2 of the Planning Statement Appendix B National Policy Statements for Energy Infrastructure Accordance Tables v2.0 ([REP9-220](#)), such that the applicant has confirmed that they have responded in terms of LTC as a whole rather than to the Energy NSIPs (Work Nos. OH7, G2, G3 and G4) regarding design, impacts, mitigation measures and relevant controls.
- 7.7.8 The applicant's summary within paragraph B.1.18 of the Planning Statement Appendix B National Policy Statements for Energy Infrastructure Accordance Tables v2.0 ([REP9-220](#)) that "the newly published Energy NPSs are potentially capable of carrying some weight in the decision-making process, that degree of weight is less than that to be afforded the designated 2011 Energy NPSs, those reasons being the subsidiary nature of the Energy aspects of the Project and the fact that transitional arrangements exist which clearly give primacy to the designated NPSs", also appears to disregard the Post Written Submission for ISH2 ([REP1-184](#)).
- 7.7.9 The Council does, however, acknowledge that the applicant appears to have reviewed and compared the designated 2011 Energy NPSs, the draft NPSs and the newly published November 2023 Energy NPSs.
- 7.7.10 The applicant has noted within paragraph B.1.19 that the key changes between the three versions of the Energy NPSs appear only marginally relevant to LTC. This is something that the Council comments further on in Section 7.8 of this report.
- 7.7.11 Within Table B.1, paragraph 4.8.5 of the Planning Statement Appendix B National Policy Statements for Energy Infrastructure Accordance Tables v2.0 ([REP9-220](#)) the applicant has amended the 'Project Response' stating that the 'impacts of climate change and subsequent climate variability have informed the design and environmental assessment for all aspects of the project.' The Council, within Section 12.2.8 of their Local Impact Report ([REP1-281](#))



Thurrock Council Comments on Applicant's Submissions at Deadline 9 (D9)  
Lower Thames Crossing

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commented that the applicant had referenced Chapter 15 – Climate of the Environmental Statement ([APP-153](#)). As described in Section 12.3.6 the ES is for the whole of LTC and does not specifically look at the OH7 NSIP. Effects of wind and storms on overhead lines and higher average temperatures leading to increased transmission losses are also not covered. Therefore, this means that consideration has not been given regarding the local impact of climate change adaptation, by means of an increased risk to the resilience of the infrastructure, i.e. risk of damage to the local area by infrastructure collapse, a power outage to the local and wider communities and regular maintenance the infrastructure then being required. Furthermore, the latest amendments to the Environmental Statement Addendum v9.0 ([REP9-246](#)) do not appear to have covered the Council's concerns on this matter.

## 7.8 Council Comments on Applicant's Responses to ExA ISH12 Action Point 23 on new Energy NPSs (REP9-274)

- 7.8.1 As previously noted, the Government published the latest Energy NPS EN-1, EN-4 and EN-5 policies on 22 November 2023, which will come into force early 2024.
- 7.8.2 Action Point 23 of ISH12 (Part 1) ([EV-085a](#)) 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 the Deadline 9 submission.
- 7.8.3 Action Point 23 of ISH12 (Part 1) ([EV-085a](#)) 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 the Deadline 10 submission.
- 7.8.4 Also included within Action Point 23 of ISH12 (Part 1) ([EV-085a](#)) 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. This is noted by the applicant in paragraph 1.1.1 of the Applicant's response to ExA ISH12 AP23 on Suite of Energy National Policy Statements ([REP9-274](#)).
- 7.8.5 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.
- 7.8.6 The applicant's conclusion, as noted in paragraph 1.1.2 and 2.1.3 of the Applicant's response to ExA ISH 12 AP23 on Suite of Energy National Policy Statements ([REP9-274](#)) is that *'while the newly published Energy NPSs are potentially capable of carrying some weight in the decision-making process, that degree of weight is less than that to be afforded to the designated 2011 Energy NPSs'*. The Council has concerns over this, since the newly published NPS EN-1 and EN-5 includes the Government's conclusion that there is a critical national priority (CNP) for the provision of nationally significant low carbon infrastructure, of which the project identified NSIPs would qualify. Within the Council's area, the OH7 diversion NSIP is of relevance.
- 7.8.7 Within paragraph 3.1.2 of the applicant's response to ExA ISH 12 AP23 on Suite of Energy National Policy Statements ([REP9-274](#)) the applicant considers the identified Energy NSIPs of LTC to be subsidiary to the primary road element, and as such constitute associated development. This is also further reiterated in paragraph 9.1.3.
- 7.8.8 The Council refers the applicant to the Post Written Submission for ISH2 ([REP1-184](#)), which contains a *'note on overlap between Nationally Significant Infrastructure Projects and*

Thurrock Council Comments on Applicant's Submissions at Deadline 9 (D9)  
Lower Thames Crossing

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*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.

- 7.8.9 The Council takes note of the applicant's comment in paragraph 8.1.1 that Section 1.6 of the Transitional Provisions, following review of the newly published NPS EN-1 considers that the 2011 suite of the NPSs should be the relevant NPSs in respect of applications accepted prior to the designation of the newly published Energy NPSs, which is likely to be early 2024. However, the applicant has noted that at the Secretary of State's discretion the draft and newly published NPSs are capable of being important and relevant to be considered.
- 7.8.10 The applicant notes within paragraph 9.1.7 of the applicant's response to ExA ISH12 AP23 on Suite of Energy National Policy Statements ([REP9-274](#)) that the mitigation hierarchy, the circular economy and 'dark skies' initiative are already addressed in other NPS accordance tables already submitted to the Examination and updated at D9, which includes Planning Statement Appendix B National Policy Statements for Energy Infrastructure Accordance Tables v2.0 ([REP9-274](#)), comments of which have been included by the Council in Section 7.7 above.
- 7.8.11 Within paragraph 10.1.5 and 10.1.6 of the applicant's response to ExA ISH12 AP23 on Suite of Energy National Policy Statements ([REP9-274](#)), the applicant has again used their view that the Energy NSIPs are subsidiary to LTC and therefore associated development, such that the CNP for low carbon infrastructure is not relevant to the project energy NSIPs. As stated above in Section 7.8.8 above, the Energy NSIPs should be classed as NSIPs in their own right, rather than associated development and therefore the CNP for low carbon infrastructure would be relevant.
- 7.8.12 The applicant in paragraph 10.1.7 of the applicant's response to ExA ISH12 AP23 on Suite of Energy National Policy Statements ([REP9-274](#)) references the Carbon and Energy Management Plan ([REP9-240](#)), however, this is plan produced for LTC as a whole, rather than specifically considering the Energy NSIPs. The Council believe this does not cover the requirements of the CNP low carbon infrastructure well enough for the Energy NSIPs.
- 7.8.13 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. The Council wishes to know whether the applicant will be providing an update to ensure that the Energy NSIPs landscape and visual impacts are detailed and covered.
- 7.8.14 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.
- 7.8.15 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.

Thurrock Council Comments on Applicant's Submissions at Deadline 9 (D9)  
Lower Thames Crossing

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- 7.8.16 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.
- 7.8.17 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.
- 7.8.18 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.
- 7.8.19 To conclude, the Council is in disagreement with the applicant's view that the Energy NSIPs are associated development, a subsidiary of LTC and as such the applicant should consider the above new or amended policies, rather than imply that they are not relevant.
- 7.8.20 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.

## **8 Council Comments on Applicant's Comments on IP Submissions at D8 (REP9-276)**

### **8.1 Introduction**

8.1.1 This section provides the Council's comment on the applicant's comments on IP submissions at Deadline 8 ([REP9-276](#)).

### **8.2 Approach to Local Traffic Modelling**

8.2.1 To say that the Council is disappointed in having to consistently provide observations on this critical matter throughout a challenging DCO process, is a huge understatement.

8.2.2 Repeatedly, the applicant has demonstrated a 'contempt' for the local authorities that has stymied any serious ability for the public sector to work collaboratively to optimise outcomes for the local communities.

8.2.3 Numerous times throughout the gestation of the project the applicant has attempted to reset its engagement approach in recognition of its failures. Each time, the applicant has failed and has reverted to behaviours commonly acknowledged as being out of touch with the needs of contemporary society. The Council has evidenced a catalogue of concerns regarding the engagement of the applicant on transport modelling matters (see Section 6 of the Council's Deadline 6A submission ([REP6A-013](#)) particularly Table 6.1).

8.2.4 The applicant has consistently refused to address the matters raised and has instead insisted on forcing the ExA into wholly inappropriate position of jury on complex technical issues that have been outstanding unresolved, often for several years.

8.2.5 A largely imperious and arrogant approach has been displayed throughout the applicant's engagement on transport modelling, attempting to use superior funding, access to legal representation and special status to exempt them from the rigour that they themselves would apply should they be on the receiving end of an application.

8.2.6 Throughout many years of technical engagement, the Council has frequently raised its concerns that the extensive programme of meetings with stakeholders has been unable to elicit meaningful, common-sense alterations to the proposed scheme.

8.2.7 The simple fact that there is an unprecedented number of serious matters not agreed running into the hundreds, across all affected local authorities (including 216 issues for the Council in its SoCG) is testament to the wholly inadequate approach consistently adopted by the applicant.

8.2.8 The Council is not alone amongst the local authorities, who are frankly exasperated by the behaviour of the applicant throughout the DCO (as often expressed verbally at monthly meetings).

8.2.9 The Council stands by its many and various comments specifically related to the approach of the applicant to transport modelling.

8.2.10 The applicant could have, and should have, resolved transport modelling matters prior to its submission. It chose not to because it recognised that an admission of error on this matter would fundamentally undermine the integrity of the DCO application.

## Thurrock Council Comments on Applicant's Submissions at Deadline 9 (D9) Lower Thames Crossing

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- 8.2.11 This is not a simple disagreement on a small modelling matter as the applicant would prefer to portray. It is a structural crack in the foundations of the application, which has ramifications for the scheme and all technical work based on it. The applicant has had to remain dogmatic in its stance because it had left itself no option to move from its position without risking further challenge to its application. A classic catch-22 situation.
- 8.2.12 The serious divergence on transport modelling matters that remains is a stark and obvious reflection of the unreasonable approach adopted by the applicant.
- 8.2.13 It would normally be entirely possible and reasonable to agree on transport modelling matters. It is, however, the serious implications of doing so that has required the applicant to resort to technical trickery and distraction. The applicant got itself into an untenable position where it found it was unable to agree any version of the modelling that does not align with LTAM.
- 8.2.14 The Council is confident that, given the freedom to work independently and with integrity, the applicant's technical modelling team would align with the Council on modelling matters. Indeed, the microsimulation modelling for critical junctions, such as Orsett Cock Junction, should have been undertaken prior to fixing the scheme for statutory consultation. This was not undertaken at the appropriate time.
- 8.2.15 It was a grave error from the applicant to wait over five years to respond to the Council's requests concerning modelling and force such a serious issue into the last weeks of the Examination.
- 8.2.16 The Orsett Cock Junction is the applicant's 'black elephant': *A looming and obvious threat or risk that was not adequately addressed or acknowledged; A situation where the potential negative consequences are significant, the probability of occurrence is high, and yet there is a collective reluctance or denial to confront and deal with the issue.*
- 8.2.17 Failure to recognise and address this 'black elephant' meant that the applicant was unprepared when the risks materialised, leading to severe consequences where this application is unable to be approved.
- 8.2.18 The applicant could have brought Orsett Cock Junction into its jurisdiction as part of the LTC scheme. It chose not to. Instead, the applicant decided to make the Council responsible for the operation of a crucial part of its scheme.
- 8.2.19 The Council has a responsibility as Local Highway Authority to ensure it is not left with yet another legacy of traffic issues that will take decades of time and effort to resolve, as happened with the last Dartford Crossing.
- 8.2.20 The applicant has ferociously and nervously resisted the legally binding commitment necessary to ensure it is held accountable to address traffic issues that result from its scheme. If it seriously believes it has acted with professional integrity on this matter, then this commitment really should not have been in question.

### **8.3 Asda Roundabout**

- 8.3.1 In spite of concerns being raised prior to the DCO v1 and v2 submission by the Council and the Port of Tilbury London Limited (PoTLL), the applicant chose not to prepare any localised modelling of the construction period or operational impacts on the A1089/Asda Roundabout.
- 8.3.2 Following on-going pressure and an action being set by the ExA, the applicant has initially submitted a VISSIM model for ASDA roundabout during the Examination at Deadline 3. The Council provided its response on the inadequacies of that modelling in Appendix A of the Council's Comments on the Applicant's Submissions at D3 ([REP4-354](#)). The Council's review

## Thurrock Council Comments on Applicant's Submissions at Deadline 9 (D9) Lower Thames Crossing

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of the base year model identified critical issues, which were required to be addressed before comments could be provided on the forecast models and the results of that modelling. Therefore, the base VISSIM modelling was not approved by the Council and as such neither the operational or the construction forecast modelling were considered ready for review.

- 8.3.3 However, the applicant at Deadline 6 abandoned the VISSIM modelling to assess the construction impacts and submitted a new assessment based on ARCADY. The applicant considered that the process proposed by the Council and PoTLL would be 'complex and time consuming' ([REP6-123](#) paragraph 2.1.2), however, that process was an appropriate and proportionate process that the applicant should have adopted prior to submission, such that the applicant would then not have been so constrained by the Examination programme.
- 8.3.4 As a consequence of not having sufficient time to undertake a robust assessment, the applicant justified the use of ARCADY to model numerous construction tests in a short timeframe. However, in the context of assessing the LTC on the LRN, this approach is unacceptable. The ARCADY assessment models the Asda Roundabout in isolation from other junctions, ignoring inter-junction interactions and the potential for a blocking back effect on other junctions.
- 8.3.5 Despite the very late change in modelling approach from VISSIM to ARCADY, the Council raised serious concerns with the applicant's ARCADY modelling in the Council's Comments on Applicant's Submissions at Deadline D6A and D7 ([REP8-166](#)). The Do Minimum ARCADY modelling shows queues of over 3km long on A1089 Dock Road and similar levels of delay are forecast for all construction phases. These queues and delays are not included in the LTAM modelling of the road network, which again highlights a significant discrepancy between LTAM and local modelling.
- 8.3.6 Despite the absence of validity or adequacy of the applicant's modelling, the applicant's assertion that its construction period control documents would mitigate these delays at the Asda Roundabout junction are completely implausible. The applicant's models forecast delays of in excess of 900 seconds (15 minutes). The construction period controls are not adequate to mitigate that level of delay, however, effective the applicant believes its controls will be.
- 8.3.7 It is therefore not appropriate that the applicant dismisses the need for further mitigation at this junction to mitigate impacts during the construction phase.

### **8.4 VISSIM Model Parameters**

- 8.4.1 The parameters should be consistent between Do Minimum and Do Something models and there is no justified reason why the applicant has made changes between model scenarios. This artificially skews results and disguises the true impacts of LTC.
- 8.4.2 The Council asserts that the applicant has without justification made the future year models work better and moved significantly away from a validated base model.

### **8.5 Comments on VISSIM Video**

- 8.5.1 The two submitted videos, Orsett Cock v3.6 (applicant) and Orsett Cock v3.6T (the Council) versions were recorded for the same seed (i.e. model run) and for the same scenario (2030 PM Do Something) and the same time period, starting from 17:53:20. This provides a like for like comparison of the v3.6 and v3.6T models.
- 8.5.2 It is not possible to provide videos of an average of 20 model seeds. Therefore, the modelling seed used for the videos of V3.6 and V3.6T was 'seed 5', which was randomly picked, and not artificially selected to show congestion in the model as that would be highly inappropriate.

Thurrock Council Comments on Applicant's Submissions at Deadline 9 (D9)  
Lower Thames Crossing

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- 8.5.3 The applicant's approach to calculating queues in VISSIM model results is incorrect, as previously highlighted by the Council. The maximum queues are reported by the applicant as the average (of seeds) of the average (of 5 minutes intervals) of maximum queues, which is incorrect. The average and the maximum queue length should be independent from the evaluation interval (whether it is 1 minute, 5 minutes or 1 hour) therefore it should be reported as the average (of seeds) of the maximum (of 5 minutes intervals) of the maximum queue length. The applicant's approach significantly under-reports queue lengths.





