

16 March 2020		ITEM: 5
Lower Thames Crossing Task Force		
Lower Thames Crossing (LTC) – Supplementary Consultation Response		
Wards and communities affected: All	Key Decision: Key	
Report of: Anna Eastgate, Assistant Director Lower Thames Crossing & Major Transport Projects		
Accountable Assistant Director: Anna Eastgate, Assistant Director Lower Thames Crossing & Major Transport Projects		
Accountable Director: Andrew Millard, Director of Place		
This report is Public		

Executive Summary

This report sets out the draft response of the Council to the Supplementary Consultation by Highways England on the proposals for the Lower Thames Crossing (LTC) which commenced on 29 January 2020 and closes on 25 March 2020. The current consultation follows consideration by Highways England of the feedback received in response to the Statutory Consultation which ran between October and December 2018 and generated 28,500 responses. The Council submitted a full and detailed consultation response at that time.

Members will recall that in April 2017, the preferred route for the Proposed LTC was announced. Since then, the Council has been clear in its unanimous objections to the LTC, setting up the cross-party LTC Taskforce, including resident and business representation, and has continued to raise objections to the proposals.

The Council has been actively working with stakeholders in sharing its concerns about the proposal including no discernible benefits for Thurrock or the surrounding South Essex areas.

The summary of the detail of the consultation response is set out in section 4 below.

This report comprises two parts as follows:-

- (1) The consultation response from the Council in its capacity as a statutory consultee pursuant to Section 42(1)(b) of the Planning Act 2008, that is a local authority for the purposes of the area in which a Development Consent Order (DCO) application is to be made (**Appendix A**); and

- (2) The consultation response from the Council in its capacity as a landowner pursuant to Section 42(1)(d) of the Planning Act 2008, that is being an owner, lessee, tenant or occupier of land.

1. Recommendation(s)

1.1 That the Task Force comments on the Council's proposed response to the Highways England Supplementary Consultation

2. Introduction and Background

Statutory Consultation October 2018 to December 2018

- 2.1 Highways England commenced a statutory consultation on the LTC scheme at the end of 2018 and the Council provided a full and detailed response to that consultation which was considered by Council on 10 December 2018. The consultation was preceded by the milestones set out below.

Preferred Route Announcement (April 2017) to July 2018

- 2.2 The Secretary of State for Transport announced the preferred route for the Lower Thames Crossing in April 2017. In November 2017, Highways England made a further announcement in relation to changes to the proposed scheme announced seven months earlier. Those changes included a link road at Tilbury to facilitate access to the area south of Tilbury and the removal of the link road from the LTC to the Orsett Cock roundabout. It is understood that these changes were made in response to feedback received to the preferred route announcement earlier that year.
- 2.3 Between November 2017 and the statutory consultation in 2018, there was little further information released or shared either with Thurrock Council or its residents and businesses. During this period however, Thurrock Council prepared for the statutory consultation phase of the project. This was the point at which Highways England consulted on its proposed application for development consent and represented a significant milestone in the project development.
- 2.4 Thurrock Council established a Task Force specifically for the LTC in September 2017, which is representative of the Council and its affected residents and businesses. Councillors across all three groups are involved and are working alongside representatives from the Thurrock Business Board, Port of Tilbury, residents and the Thames Crossing Action Group. This has provided a platform to challenge and review the development of the scheme.
- 2.5 One of the key points that the Task Force focussed on was the need to include a Health Impact Assessment (HIA) as part of the development consent order application. Officers worked collaboratively with other

neighbouring authorities to bring significant pressure to bear on Highways England to obtain agreement to produce an HIA. This was a significant step forward and would enable collaboration to continue between the affected authorities to get a positive outcome for the health and wellbeing of residents. However the HIA has not yet been completed and therefore the Council is currently unable to comment fully on the health impacts of the LTC and any mitigation arising from it. This will form a significant part of the Council's ongoing work regarding the LTC post submission of the supplementary consultation response.

- 2.6 In July 2018 Highways England released an enlarged red line boundary for the proposed scheme, increasing the land take from approximately 12 square km to over 21 square km. This change constituted approximately a 68% increase in the land required for the scheme and has had a significant impact upon the Borough and its green belt. It is highly likely that further changes to the red line boundary will continue to be made up to the point of DCO submission

3. **Supplementary Consultation Scheme**

- 3.1 On Wednesday 29 January 2020, Highways England announced the commencement of its supplementary consultation which will run until Wednesday 25 March 2020. Further changes have been made to the proposed scheme which is subject to a targeted consultation. The main elements of those changes are:

South of the River Thames:

- the tunnel portal has been extended further south by approximately 350 metres. Members will recall at the statutory consultation it was moved by approximately 600m south;
- realignment and changes to the slip roads to minimise local impacts
- reduction in the width of land 4 on the M2 to minimise impacts on the Kent Downs AONB

North of the River Thames:

- Removal of the Rest and Service Area (RaSA);
- Removal of the previously proposed junction at Tilbury;
- Relocating the route between Tilbury and the A13 junction approximately 60 metres north-east;
- Changes to a number of slip roads at the junction between the LTC, A13, A1089 and A1013 to reduce visual impacts;
- Removal of one lane southbound between the M25 and A13 junction;
- Changes to the structures over the Mardyke River, Golden Bridge Sewer and the Orsett Fen Sewer;
- Changes to the southbound link from the M25 to the LTC; and
- Changes to the layout of junction 29 of the M25.

3.2 In addition, as part of the Supplementary Consultation exercise, Highways England has reported its progress in relation to:

- Funding – the project is now being developed as a fully publicly-funded scheme rather than as a privately financed initiative;
- Charging at Dartford and LTC – it is proposed that the charging regime will be the same for both the Dartford Crossing and the LTC; and
- Local Residents Discount Scheme (LRDS) – Highways England intends to apply a LRDS to residents of Thurrock and Gravesham for the LTC. The intention is that this will be on a similar basis to that which applies to the Dartford Crossing.

Ongoing Work

3.3 The services of experienced consultants have been retained to provide support and advice to the Council in order to continue to challenge and review the Highways England proposals and to support the Council in producing a robust supplementary consultation response.

3.4 Current guidance relating to consultation is set out in DCLG Planning Act 2008: Guidance on the pre-application process March 2015. In that guidance, reference is made to the communities and environment in which infrastructure projects are located and therefore a ‘one size fits all’ approach is not appropriate. The guidance goes on to reference that consultation should be thorough, effective and proportionate with sufficient time for consultees to understand proposals and formulate a response. Paragraph 30 specifically states that ‘The Planning Act recognises the role that local authorities play as bodies with expert knowledge of the local community, business and other interests as well as responsibility for development of the local area’.

3.5 Part of the role of the Council in the DCO process is to provide an ‘Adequacy of Consultation’ representation at the point at which any DCO application is made (currently anticipated to be summer 2020). The Secretary of State, in determining whether to accept the DCO application, must have regard to this representation made by the Council, although this will not be the only determining factor in deciding to accept the application or not, as the case may be. As part of the representation, it is important to note that the Council can reference and evidence issues and concerns from the local community that have been raised about the consultation.

4. Issues, Options and Analysis of Options

4.1 The Council continues to make clear its objection in principle to the LTC scheme. This position will not change as a result of the current proposal which delivers very little benefit for local people or indeed does not deliver on Highways England’s own scheme objectives ‘to support sustainable local development and regional economic growth in the medium to long term’ or to ‘minimise adverse impacts on health and the environment’.

- 4.2 With regard to the strategic planning of the future of the Borough, it remains the position that there is an imperative to progress the Local Plan in order to support the Council's position in relation to the LTC. This is consistent advice which has been received from the Council's legal representatives as well as from discussions which have taken place with MHCLG and the Planning Inspectorate. In its response to Highways England's Statutory Consultation, the Council highlighted the challenges presented by the proposed LTC in relation to the development of the new Local Plan. The parties have since participated in a workshop, in January 2019 and had numerous exchanges including meetings and letters to discuss the matters at issue. Members will be aware that the Local Plan is being progressed and a task force has been set up to support the delivery of that key corporate document.
- 4.3 The Council continues to engage with Highways England in order to fulfil its statutory obligations and to protect the interests of the borough. This is important in order to comply with the Planning Inspectorate Advice Note two: The role of local authorities in the development consent order process, which states at paragraph 6.2 'Local authorities should engage proactively with a developer even if they disagree with the proposal in principle... Local authorities are not undermining an 'in principle' objection to a scheme by engaging with a developer at the pre-application stage'.
- 4.4 With this in mind, the Council has a Planning Performance Agreement (PPA) in place with Highways England which will provide some financial support for resources needed to respond and engage with Highways England on technical matters. This aligns with the Council's usual practice for major development applications within the borough.
- 4.5 Thurrock residents should continue to be encouraged as much as possible to attend consultation events and engage in the consultation process and submit their responses by the relevant date. It is an important part of the DCO process to provide feedback on the proposals. Highways England has a statutory obligation under Section 49 of the Planning Act 2008 to have due regard to the responses received by the deadline. Residents should also be encouraged to report any concerns they have about the consultation to the Council at the earliest opportunity to ensure that officers can provide the necessary support in an attempt to resolve concerns, albeit this consultation is a Highways England initiative.
- 4.6 The Council's consultation response as a statutory consultee is set out in full at Appendix A. The response is detailed and includes a technical assessment of the supplementary consultation scheme. The Council's position in relation to the consultation scheme has four strands as follows:-
- i. the Council has an in-principle objection to the proposal as it gives rise to substantial harm to the borough; and
 - ii. the supplementary consultation material focuses on detailed design changes and does not address the wider issues, relating

to strategic policy and encouraging sustainable growth in the Borough, raised by the Council at the Statutory Consultation stage; and

- iii. that progress on Highways England's environmental and health impact assessment work has been slow such that the potential effects of the scheme, and the effectiveness of mitigation proposals cannot be properly determined at this late stage in the Highways England programme; and
- iv. if the scheme were to proceed, there will need to be substantial changes to mitigate and compensate for the worst of its impacts (although the Council does not believe full mitigation of these impacts can be secured).

4.7 The consultation response sets out the Council's current position with respect to the proposed LTC as well as a detailed response to Highways England's proposed design changes presented in the Supplementary Consultation materials. A summary of the consultation response is as follows:

4.7.1 National and strategic policy: the proposed LTC does not meet several of the national and Highways England's strategic policy tests and scheme objectives, particularly relating to option testing, the delivery of economic growth and achieving sustainable local growth. The policy context and the 'tests' against which the proposed LTC scheme has been considered were presented by the Council in its response to the Statutory Consultation Scheme;

4.7.2 Emerging Local Plan and interface with proposed LTC: the proposed LTC does not make provision for, and is inconsistent with, the housing and development potential for Thurrock and the aspirations for the borough and for the wider South Essex area. Specifically, there are design elements which require modification and/or further consideration by Highways England in order to contribute to meeting the Government's and LTC's policy and scheme objectives;

4.7.3 Scheme configuration and design quality: elements of the scheme configuration and design - notably at the A13 connections, the treatment of the crossing through the Mardyke Valley, the potential for a crossing over the Tilbury Loop Line, the reduction of the LTC from 3 to 2 lanes southbound from the M25 to the A13 – require further discussion with HE in order to minimise potential adverse effects and optimise the potential benefits for the Borough;

4.7.4 Effects on Thurrock's community and assets: the LTC would give rise to potential adverse effects arising from its construction and operation, in particular in relation to air quality, noise, health impacts and community severance, historic environment, effects on general amenity, cumulative effects, the waste handling and disposal strategy, and mitigation proposals including habitat replacement. The Supplementary Consultation materials rely on the Preliminary Environmental Information Report (PEIR), published as part of the Statutory Consultation exercise at the end of 2018. The PEIR contains significant information gaps and the potential for under-reporting

potential impacts, such that the effects of the scheme, during both the construction and operational phases, have not been and cannot be properly considered. Officers have agreed further engagement with Highways England, particularly in relation to the assessment of health impacts, and are anxious to see the outcome of the assessment work prior to the submission of the DCO application;

- 4.7.5 Effects on Thurrock's economy and the Council's operation: a separate report has been prepared which relates to the potential 'cost' to the Borough of hosting the LTC on the current alignment. The Council has published a non-technical summary of the report to enable residents and stakeholders to understand the impacts and position with regard to the LTC scheme. This report is an important step in moving forward to understand how the scheme could be improved and designed to deliver benefits to Thurrock as a host borough, supporting the ambition for growth and meeting Highways England's objectives for the scheme.
- 4.7.6 Technical assessments: specific elements raised in relation to HE's ongoing assessment work are as follows:
 - 4.7.7 Traffic modelling: the traffic modelling update presented as part of the supplementary consultation materials does not include the results of any option testing nor make provision for any Thurrock growth scenario. It has insufficient detail to understand the impacts of the Supplementary Consultation Scheme on the local road network as well as residents, businesses, open countryside and designated environmental areas in the borough;
 - 4.7.8 Code of Construction Practice (CoCP/Construction Environmental Management Plan (CEMP)): the supplementary consultation material puts a strong reliance on developing a CoCP and CEMP in order to control potential environmental impacts during construction. It also includes proposals for construction site working hours which are unlikely to be acceptable to the Council. To date, the Council has received (and commented upon) only a 'skeleton draft' of this critical document, issued 2 Dec 2019. Concern has also been raised about the discharge of DCO Requirements, effectively planning conditions, the approval of which is likely to be retained by HE/DfT rather than the Council;
 - 4.7.9 EIA scoping: the changes to the application boundary and the scheme made since the EIA Scoping Opinion was issued in 2017 are likely to give rise to new or altered likely significant environmental effects. It is believed that the Supplementary Consultation Scheme should undergo a further scoping exercise to ensure that all potential likely significant environmental effects are identified and that any Scoping Opinion will reflect the scheme for which consent is being sought;
 - 4.7.10 Utilities diversions: a large area has been identified, within the LTC works, for utilities diversion work. It is understood that HE's design work is still evolving

and the extent of works and the rationale for and effects of undertaking these works requires further explanation from HE;

- 4.7.11 LTC application programme and technical engagement: Officers have raised a number of concerns with HE and the Planning Inspectorate regarding the limited amount of meaningful technical engagement which has taken place on the scheme to date. In particular, commencing the level of technical engagement recently suggested by Highways England at this stage presents the Council with numerous challenges which would have been otherwise avoided by undertaking meaningful engagement and better planning earlier in the pre-application process. The timing of the engagement means that the Council will be under the pressures of a compressed programme, in effect HE has compressed the time within which the Council can review the information and meaningfully inform the scheme design and pre-application process prior to the submission of the DCO Application. This remains a considerable concern to the Council as it limits the time in which suitable and appropriate measures to mitigate and to compensate the adverse effects of the scheme can be explored and agreed with Highways England.
- 4.7.12 DCO process: the Council has raised concerns in the past about the general adequacy of consultation by Highways England throughout the DCO process. It still has reservations about this, particularly in relation to the amount and accessibility of consultation documents, and this point will again be raised with the Planning Inspectorate.
- 4.8 The Council's consultation response as a landowner is still a work in progress.
- 4.9 Highways England has extended the red line boundary such that there are additional Council land holdings now affected by the scheme.
- 4.10 A plot by plot review is currently underway to ascertain the precise impact on those land holdings which comprise elements of permanent acquisition, temporary acquisition and permanent rights over the land.
- 4.11 The Council's position in relation to the Supplementary consultation at this stage is to object to the compulsory acquisition of its land.
- 4.12 Further detailed consideration of the land plans is required in consultation with Highways England to enable officers to understand the impacts of the scheme not only as a landowner but also in relation to any obligations that exist under landlord and tenant legislation.
- 4.13 In this regard, Officers are seeking delegated authority to agree the land owner response to ensure that the appropriate level of challenge and review is undertaken within the remaining consultation period.

5. Reasons for Recommendation

- 5.1 It remains the position that the LTC supplementary consultation scheme in its current form delivers substantial harm but delivers no discernible local benefit for Thurrock.
- 5.2 The Council should, in order to protect the interests of the borough and its resident and business community, submit an agreed consultation response both as a local authority and as a landowner by the deadline.
- 5.3 The consultation response may need to be amended to include any specific issues which arise as part of the debate. As a consequence, a delegation is sought to enable officers to give effect to those changes.
- 5.4 Further consideration of the scheme and its impacts on Council land holdings is required to ensure a full and proper consideration of the issues and implications is required. Consequently a delegation is sought to enable officers to give effect to that process.

6. Impact on corporate policies, priorities, performance and community impact

- 6.1 Lower Thames Crossing will have a significant impact on the emergent Local Plan as well as associated policies and documents.

7. Implications

7.1 Financial

Implications verified by: **Sean Clark**
Corporate Director of Finance, Governance and Property

The Planning Performance Agreement (PPA) being negotiated currently caps the financial support being provided to the Council which could add to financial pressures. Further the PPA will not provide financial support for anything which is considered to be a statutory function. This includes the response to statutory consultation.

The Council has currently agreed a recurring annual budget to fund a dedicated Assistant Director post and further lump sums of £380k and £490k were allocated through the 2017/18 and 2018/19 budget surpluses.

7.2 Legal

Implications verified by: **Tim Hallam**
Acting Head of Law, Assistant Director of Law and Governance and Monitoring Officer

Most of the legal implications are considered elsewhere in this report. This report seeks authority to submit a response to the 'supplementary' non-statutory pre-application consultation being carried out by Highways England as a precursor to its proposed submission of an application for a Development Consent Order ('DCO') in relation to the proposed Lower Thames Crossing project, which is classed as a Nationally Significant Infrastructure Project ('NSIP'). The application is expected to be submitted to the Planning Inspectorate (PINS), acting on behalf of the Secretary of State, later in 2020.

As the Secretary of State rather than the Council will not be the decision-maker in respect of the proposed application, the Council is being consulted in its roles as both a local authority and as a landowner with interest in some of the land comprised in the proposed application. This approach reflects the status and roles of the Council as a statutory consultee under the Planning Act 2008 regime.

It should be noted that the Council will also have an opportunity to submit an adequacy of consultation representation and, should an application be accepted, submit a Local Impact Report to PINS and participate in the Examination of the application including in any hearings. The Council would also be consulted by PINS at the pre-application stage if Highways England were to seek a further EIA Scoping Opinion from the Secretary of State.

It should also be noted that the DCO process obviates the need for the applicant to separately seek and secure a range of consents (such as planning permission, approvals for highways works and compulsory acquisition of land) that may be required for a scheme. Accordingly, the Council's response should, as necessary, seek to address the key issues raised through the consultation process, which may include (but not be limited to): requirements on the DCO and/or planning obligations that the Council considers should be provided to mitigate the impact of the development; the potential requirement for the stopping up or diversion of highways (including Public Rights of Way and Bridleways); the potential need for highways works and /or Traffic Regulation Order type provisions in any DCO ; any objections that the Council may have including with respect to environmental impacts including to air quality and health, proposals for the compulsory acquisition of land (or interests on, under or over land) owned by the Council and any protective provisions the Council may wish to secure in the DCO in its capacity as an affected landowner

7.3 Diversity and Equality

Implications verified by: **Natalie Smith**
Strategic Lead, Community Development and Equalities

All public bodies have a legal obligation to complete an equality impact assessment for new schemes under the Equality Act 2010. An equality impact assessment will be a requirement for the submission of the DCO. As set out

at 2.5, Thurrock worked with other neighbouring authorities to obtain agreement from Highways England to also produce a Health Impact Assessment to address our concerns about the effect on local residents. Thurrock has participated in an Advisory Group convened by HE to assess community impacts and public health concerns, including vulnerable groups covered by the Equality Act. The focus of the work in this group has been on the methodology to inform the assessment. To date the results of this work have not been shared with any Local Authority and so we are unable to consider the impacts or mitigation suggested by HE.

7.4 Other implications (where significant) – i.e. Staff, Health, Sustainability, Crime and Disorder, and Impact on Looked After Children)

The scheme includes the proposal to compulsorily acquire land from the Council to facilitate the delivery of the scheme. Some of the land in question is leased in particular some of the land affected which is agricultural land. The true impacts of this will not be understood until the DCO application is submitted and therefore the red line boundary of the scheme will become fixed. Any acquisition of land will be subject to rigorous scrutiny to ensure it passes the legal, policy and guidance tests. Ultimately any land will not be acquired compulsorily until after the DCO were to be granted which on the current programme is anticipated to be early 2022. The Council would be compensated under the statutory code for compensation for land taken either permanently or temporarily for the scheme.

8. Background papers used in preparing the report (including their location on the Council's website or identification whether any are exempt or protected by copyright):

- Thurrock Council Paper 10 December 2018, Lower Thames Crossing
- Thurrock Council Paper 26 July 2017, Lower Thames Crossing
- DCLG Planning Act 2008: Guidance on the pre-application process March 2015
- Planning Inspectorate Advice Note two: The role of local authorities in the development consent order process
- Lower Thames Crossing Guide to Supplementary Consultation January 2020 www.lowerthamescrossing.co.uk

9. Appendices to the report

- Appendix A – Local Authority Response (to follow)

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