

Thurrock - An ambitious and collaborative community which is proud of its heritage and excited by its diverse opportunities and future

Lower Thames Crossing Task Force

The meeting will be held at **6.00 pm** on **14 February 2022**

Training Room, The Beehive Community Resource Centre, West Street, Grays, RM17 6XP

Membership:

Councillors Fraser Massey (Chair), John Kent (Vice-Chair), Gary Byrne, Adam Carter, Daniel Chukwu, Sara Muldowney, Terry Piccolo and Sue Sammons

Agenda

Open to Public and Press

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1 Apologies for Absence	
2 Minutes	5 - 10
To approve as a correct record the minutes of the Lower Thames Crossing Task Force meeting held on 17 January 2022.	
3 Items of Urgent Business	
To receive additional items that the Chair is of the opinion should be considered as a matter of urgency, in accordance with Section 100B (4) (b) of the Local Government Act 1972.	
4 Declaration of Interests	
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6 Verbal Update: Health Impact Assessment	
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Queries regarding this Agenda or notification of apologies:

Please contact Lucy Tricker, Senior Democratic Services Officer by sending an email to direct.democracy@thurrock.gov.uk

Agenda published on: **4 February 2022**

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DECLARING INTERESTS FLOWCHART – QUESTIONS TO ASK YOURSELF

Breaching those parts identified as a pecuniary interest is potentially a criminal offence

Helpful Reminders for Members

- *Is your register of interests up to date?*
- *In particular have you declared to the Monitoring Officer all disclosable pecuniary interests?*
- *Have you checked the register to ensure that they have been recorded correctly?*

When should you declare an interest *at a meeting*?

- **What matters are being discussed at the meeting?** (including Council, Cabinet, Committees, Subs, Joint Committees and Joint Subs); or
- If you are a Cabinet Member making decisions other than in Cabinet **what matter is before you for single member decision?**



Does the business to be transacted at the meeting

- relate to; or
- likely to affect

any of your registered interests and in particular any of your Disclosable Pecuniary Interests?

Disclosable Pecuniary Interests shall include your interests or those of:

- your spouse or civil partner's
- a person you are living with as husband/ wife
- a person you are living with as if you were civil partners

where you are aware that this other person has the interest.

A detailed description of a disclosable pecuniary interest is included in the Members Code of Conduct at Chapter 7 of the Constitution. **Please seek advice from the Monitoring Officer about disclosable pecuniary interests.**

What is a Non-Pecuniary interest? – this is an interest which is not pecuniary (as defined) but is nonetheless so significant that a member of the public with knowledge of the relevant facts, would reasonably regard to be so significant that it would materially impact upon your judgement of the public interest.

Pecuniary

If the interest is not already in the register you must (unless the interest has been agreed by the Monitoring Officer to be sensitive) disclose the existence and nature of the interest to the meeting

If the Interest is not entered in the register and is not the subject of a pending notification you must within 28 days notify the Monitoring Officer of the interest for inclusion in the register

Unless you have received dispensation upon previous application from the Monitoring Officer, you must:

- **Not participate or participate further in any discussion of the matter at a meeting;**
- **Not participate in any vote or further vote taken at the meeting; and**
- **leave the room while the item is being considered/voted upon**

If you are a Cabinet Member you may make arrangements for the matter to be dealt with by a third person but take no further steps

Non- pecuniary

Declare the nature and extent of your interest including enough detail to allow a member of the public to understand its nature



You may participate and vote in the usual way but you should seek advice on Predetermination and Bias from the Monitoring Officer.

Our Vision and Priorities for Thurrock

An ambitious and collaborative community which is proud of its heritage and excited by its diverse opportunities and future.

1. **People** – a borough where people of all ages are proud to work and play, live and stay
 - High quality, consistent and accessible public services which are right first time
 - Build on our partnerships with statutory, community, voluntary and faith groups to work together to improve health and wellbeing
 - Communities are empowered to make choices and be safer and stronger together

2. **Place** – a heritage-rich borough which is ambitious for its future
 - Roads, houses and public spaces that connect people and places
 - Clean environments that everyone has reason to take pride in
 - Fewer public buildings with better services

3. **Prosperity** – a borough which enables everyone to achieve their aspirations
 - Attractive opportunities for businesses and investors to enhance the local economy
 - Vocational and academic education, skills and job opportunities for all
 - Commercial, entrepreneurial and connected public services

Minutes of the Meeting of the Lower Thames Crossing Task Force held on 17 January 2022 at 6.00 pm

- Present:** Councillors Fraser Massey (Chair), John Kent (Vice-Chair), Gary Byrne, Adam Carter, Sara Muldowney and Sue Sammons
- Apologies:** Councillor Daniel Chukwu
Peter Ward, Business Representative
- In attendance:** Colin Black, Interim Assistant Director Regeneration and Place Delivery
Lucy Tricker, Senior Democratic Services Officer
- Chris Stratford, Senior Consultant, Stantec engaged by Thurrock Council
- Laura Blake, Thames Crossing Action Group Representative
Robert Quick, Resident Representative
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Before the start of the Meeting, all present were advised that the meeting was being recorded, with the recording to be made available on the Council's website.

45. Minutes

The minutes of the meeting from the Lower Thames Crossing Task Force held on 18 October 2021, 15 November 2021 and 13 December 2021 were approved as a true and correct record.

46. Items of Urgent Business

There were no items of urgent business.

47. Declaration of Interests

There were no interests declared.

48. Thames Freeport - Verbal Update

The Interim Assistant Director Regeneration and Place Delivery introduced the report and explained that it provided a brief update on the Thames Freeport and the effect this would have on the LTC. He stated that due to the size of the Freeport, Thurrock felt that LTC connectivity to the local road network should improve, and the Council had met with Thames Gateway, Port of Tilbury, and DP World to discuss the implications of the LTC and the Freeport, particularly the adequacy of the A13 Manorway junction. He explained that the amendments that National Highways (NH) were proposing

to the Orsett Cock roundabout would have implications on the A13 Manorway junction, and would therefore impact port traffic. He added that Thurrock were currently waiting for detailed traffic modelling of the Orsett Cock roundabout and how this would affect the A13 Manorway and the A13/LTC junction. The Interim Assistant Director Regeneration and Place Delivery added that officers from Thurrock Council had met with the Port of Tilbury last week to understand the alignment of the potential Tilbury Link Road and how this might connect to Tilbury town. He felt that the view of the Port of Tilbury was aligned with the Council's as both believed that the newly proposed junction would be a good step towards the development of the Tilbury Link Road, although the Council were still looking to understand how future connectivity would be delivered to the port. He explained that the new junction would be close to the port, but port traffic would still need to travel up the A1089 to the A13/LTC junction to then travel back down to the port. He stated that Thurrock Council would be pushing for the Tilbury Link Road at Development Consent Order (DCOv2) submission. He summarised and stated that NH were planning to start their next consultation on 24 March.

The Chair thanked the Interim Assistant Director for his report and stated that the red line boundary for the LTC and the Freeport would overlap. He queried whether traffic out of the Freeport would contribute towards LTC air quality statistics. The Senior Consultant replied that NH were currently updating their traffic model, and Thurrock had been informed that this should be ready by mid-March. He explained that at that point, NH would then begin to work on updating their noise and air quality modelling. He stated that as the consultation began on 24 March, this information would likely not be available pre-consultation. He added that the air quality threshold was also changing following the Environment Act, which would be implemented toward the end of October 2022. He commented that Thurrock had received no clarification from NH regarding how this change of threshold would affect the proposed scheme.

Councillor Muldowney questioned what was currently known about the proposed Tilbury Link Road. The Interim Assistant Director Regeneration and Place Delivery explained that the upcoming consultation would consult on modifications to the proposed junction. He explained that the proposed junction would only be for operational and emergency access, but could provide the basis for a future junction, although no current public access was proposed. He added that the proposed junction would be where the tunnel portal emerged on the north side of the river and would allow emergency vehicles faster access to the tunnel entrance in case of incidents. He stated that the new proposed junction could in future connect to Station Road, but it was not currently clear whether it would connect to the east or west of Station Road.

The Thames Crossing Action Group (TCAG) Representative asked how long the new consultation would run, and if this would fall during the purdah period. The Senior Consultant stated that the consultation would conclude on 22 April and would fall completely during purdah. He stated that therefore the Council would need to either submit a draft consultation response or wait to submit

until after purdah had finished with Council endorsement. Councillor Muldowney queried when the Council would receive feedback from the last consultation. The Interim Assistant Director Regeneration and Place Delivery replied that a summary of changes following the consultation would be provided, but NH would not be able to reply to all consultation responses before the start of the next consultation in March. The Senior Consultant replied that there would be no technical documents for the next consultation and that all information would be contained within the consultation guide, plus the usual three map books.

The Resident Representative queried how the new Freeport would affect the proposed Tilbury Fields area. The Senior Consultant explained that the Freeport would receive priority over the Tilbury Fields area, and therefore the western half of Tilbury Fields had been given to the Freeport. He explained that the new plan increased the northern and eastern sections of Tilbury Fields, but this was still smaller in size than the original plan. He added that this could cause issues for NH, as NH originally planned for the spoil to be used in Tilbury Fields. He explained that as Tilbury Fields would now be much smaller, the level of the ground could be higher. He stated that part of the proposed consultation would be regarding the updated plans for Tilbury Fields.

49. Health Impact Assessment - Verbal Update

The Senior Consultant explained that no new information had been received on the Health Impact Assessment (HIA) since the last meeting. Councillor Muldowney asked if the Task Force could get sight of the HIA document. The Senior Consultant replied that the only HIA document that Thurrock Council had received was from DCO v1, which included the draft Health and Equalities Impact Assessment (HEqIA), but this could be circulated to the Task Force for information. He explained that nine local authorities, including Thurrock, had commissioned an independent assessment of the methodology of the HIA, and many points raised by this assessment would hopefully be included in the next version. He stated that Thurrock had received the full contents list from the next version of the HIA, but would only receive the final document at DCO submission.

The Resident Representative asked when the updated traffic model would be available, and if this would include traffic data from the Dartford Crossing. The Senior Consultant replied that the updated traffic model data would not be available until mid-March, at which point Thurrock would get the opportunity to analyse the data. He explained that Thurrock Council had only received the cordon model and not received full access to the previous full traffic model, so therefore could only make assumptions regarding traffic in certain areas. The Interim Assistant Director Regeneration and Place Delivery added that the new consultation was being called a Local Refinement Consultation by NH, and therefore they would only consult on areas of change, for example Tilbury Fields. He stated that Thurrock were pushing for NH to consult on a wider variety of aspects.

Councillor Muldowney asked if the Council could push to move the consultation so it did not fall within purdah. The Senior Consultant replied that officers would be raising this with NH, and the Chief Executive was also aware. He suggested that the Task Force could also raise this with NH to provide a political standpoint. The Chair suggested that he would write a letter and circulate it to the Task Force for their agreement and signature, to urge NH to postpone the consultation until after the purdah period had finished.

The TCAG Representative added that NH had recently submitted a retrospective planning application for a site on Pilgrims Lane. She stated that she was reviewing the planning application that NH had submitted, and had found that it contained unreliable data, for example it stated that no trees would be destroyed, but she felt that the area contained lots of trees that would need to be destroyed for the proposed coach park. Councillor Byrne stated that the planning application for Pilgrims Lane would be brought before the Planning Committee, so he could update the Task Force as to the outcome of that discussion.

The TCAG Representative added that she had also raised the issue of smart motorways with the relevant Select Committee, local MPs, and NH, as she felt the LTC scheme should be paused, in line with the pause to smart motorways. She explained that although the LTC would be an 'all-purpose trunk road', it was being designed to smart motorway standards. The Interim Assistant Director Regeneration and Place Delivery added that Thurrock Council had also written to NH regarding the pause of the smart motorway programme, as the LTC was being designed to almost identical standards.

50. Work Programme

The Chair asked that NH be invited to an upcoming meeting of the Task Force to discuss the new consultation. The Senior Consultant replied that he would liaise with NH and would invite them at the next appropriate meeting.

The meeting finished at 6.42 pm

Approved as a true and correct record

CHAIR

DATE

**Any queries regarding these Minutes, please contact
Democratic Services at Direct.Democracy@thurrock.gov.uk**

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Compensation Where No Land Taken & Noise Insulation Regulations

CBRE Briefing Note

SUMMARY

- 1.1 This is a briefing note regarding:
1. Compensation entitlements that can arise from schemes reliant on statutory compulsory purchase powers where claimants do not have any of their land acquired; so called "compensation where no land taken" claims.
 2. Noise insulation regulations as they apply to significant construction or infrastructure works.
- 1.2 The briefing note covers the issues as follows
- **Section 10 Claims** – Compensation arising from execution of works enabling the scheme.
 - **Part 1 Claims** – Compensation arising from the use and operation of the scheme.
 - **Noise Insulation Regs** – Triggers and requirement to offer and install insulation measures.

SECTION 10 CLAIMS

Summary

- 1.3 Section 10 of the Compulsory Purchase Act 1965 provides persons with an interest in land, but where no land is acquired, to a right to compensation for injurious affection to the claimant's interest caused by the execution of the works.
- 1.4 In order to succeed, a claim for compensation must pass each of four tests that derive from various decisions that were consolidated by the House of Lords in *Metropolitan Board of Works v McCarthy* (1874) LR 7 HL 243. These are known as the McCarthy Rules and are:
- 1. The injurious affection must be the consequence of the lawful exercise of statutory powers otherwise the remedy is by legal action.**

In other words, this limits the ambit of a valid s10 claim to injurious affection that arises from lawful conduct or operations relating to the scheme.
 - 2. The injurious affection must arise from that which, if done without statutory authority, would give rise to a cause for action.**

This sets the bar as to the level of injurious affection that would be actionable. It essentially means if the impact is such a degree that an actionable remedy could be pursued and be admissible against a private entity (for example an injunction against private nuisance) then it would be admissible against the statutory authority under s10.
 - 3. The value of the land or interest must be directly affected by physical interference with some legal right, public or private, that the claimant is entitled to make use of in connection with the claimant's property.**

In other words, the owner is entitled to compensation only for loss as reflected in a depreciation of value of land. Owners cannot ordinarily claim for loss of business or inconvenience.
 - 4. The damage must arise from the execution of the works and not from their authorised use.**

This prevents an overlap or double claim; a claimed based in the execution of works can be claimed under s10. A claim based on the use of the land can be claimed under Part 1.

Compensation Where No Land Taken & Noise Insulation Regulations

Detail

Limit on Claims

- 1.5 A claim cannot be progressed under section 10 for injurious affection arising from the use and operation of the works. Loss arising from operation is addressed in Part 1 Land Compensation Act 1973 ("LCA")(see below).

Compensation

- 1.6 Compensation is paid as damages arising from the natural and probable consequence of the execution of the works. The causation of the damages must not be too remote.
- 1.7 The measure of compensation is the diminution in the value of the claimant's land. In more straightforward case this means a 'before and after' capital valuation is undertaken assuming the works are being executed and another where they works are not. Claims can be mitigated by re-provision of the right(s) interfered with.

Section 10 Claims in practice

- 1.8 Section 10 claims are not common. It is typically the case that satisfying all four *McCarthy* tests is challenging and it is very rare for any valid section 10 claims to arise on a scheme.
- 1.9 It should be noted that this claim relates to execution of the works not those losses caused by a contractor operating outside its remit – these are frequently dealt with as a claim against the contractor directly.

PART 1 CLAIMS

Summary

- 1.10 Part 1 of the LCA1973 provides persons with an interest in land an ability to claim compensation for diminution of value of their interest caused by physical factors (defined in statute) arising from the use and operation of public works.
- 1.11 Save for a limited number of circumstances claims can only be lodged one year after the public works opens to the public with the valuation date (the 'relevant date') being the date the scheme opened.

Detail

What can trigger a claim

- 1.12 Part 1 compensation arises where an owner of a property can demonstrate that the value of their property has been reduced by physical factors arising from the use and operation of the scheme.
- 1.13 Physical factors are defined in the LCA 1973 as noise, vibration, smell, fumes, smoke, artificial lighting, discharge on to land of any solid or liquid substance – the principal factor is noise (in the case of a road this will be the noise generated by cars using the road). Non-physical factors cannot be taken into account, for example the mere presence or visibility of a new highway or other infrastructure.
- 1.14 Public Works are defined as any highway, aerodrome or other works or land provided or used in the exercise of statutory powers.
- 1.15 Part 1 claims may only be lodged from the first claim date which is defined as the date one year after the 'relevant date'. In the case of a road, this is the date on which it opened to the public and in the case of other public works, the date on which the works were first used after its completion.

Compensation Where No Land Taken & Noise Insulation Regulations

Eligibility

1.16 Eligible claimants must;

- Hold an 'owner's interest' defined as freehold or a tenancy with not less than three years unexpired. Where the owner's interest entitles the owner to occupy then they must be in occupation. The effect of this is that vacant property needs to be occupied prior to a claim being submitted.
- In the case of agricultural land, hold an 'owners interest' and be an owner-occupier of the whole agricultural unit.
- In the case of other commercial property, such as small businesses premises, hold an 'owners interest' and occupy premises with a rateable value set by statutory instrument and which is currently not greater than £36,000 or £44,200 in Greater London. (*correct as of December 2021*)
- Submit their claim within six years of the first claim date.

Compensation

1.17 Compensation is assessed as the depreciation in the value of the owner's interest caused by physical factors attributable to the scheme, this being the difference between;

1. The price a purchaser would pay for the property with the presence and use of the public works but without the presence of the 'physical factors', and
2. The price a purchaser would pay for the property with the presence and use of the public works with the presence of the 'physical factors'.

1.18 This is commonly known as a 'switched on and switched off valuation' because it takes account of the valuation impact of the physical factors only.

1.19 In forming a valuation, the effect of any mitigating works carried out by the acquiring authority to the property (such as soundproofing) or to the works (such as barriers) must be taken into account and not ignored in the assessment.

1.20 The valuation date is the relevant date.

Part 1 Claims in Practice

1.21 Part 1 claim submission is widespread following the opening of new infrastructure schemes. There are a number of 'no-win, no-fee' surveying practices in the market whose business model tends to involve 'sweeping up' a large number instructions with suggestions of no-risk compensation for owners.

1.22 There is no geographical limit to the eligibility to claim and so depending on the nature of the scheme, Acquiring Authorities can sometimes expect a large volume of claims, however only a proportion of them are typically held to be valid and proceed to settlement.

1.23 Whilst much has been made of scientific approaches and use of noise assessments to inform depreciation valuations it is commonly the case that settlements are arrived at by negotiation and agreeing a diminution percentage informed by precedents on the same or other scheme as agreed between parties or directed by Lands Tribunal settlements.

1.24 In negotiating reliance is often placed on noise data. The Council would be well advised to check the extent to which the highway authority proposes measuring noise generated by the scheme and, if not, it should give serious consideration to undertaking its own noise measurements once the scheme is open (in preference to reliance on projected noise readings).

1.25 The relevance here is in respect of the Council's housing stock – be that Council owned or owns by a housing provider.

Compensation Where No Land Taken & Noise Insulation Regulations

NOISE INSULATION REGULATIONS

Summary

- 1.26 The Noise Insulation Regulations 1975 (as amended 1988) sets out the criteria under which a Highways Authority must offer to carry out or make a grant for carrying out defined noise insulation works to qualifying residential properties affected by noise from a new or altered highway.
- 1.27 This duty is ordinarily satisfied by undertaking an assessment of impact using computer modelling as set out in The Calculation of Road Traffic Noise, 1988 (CRTN). This is the methodology used to determine entitlement under the Regulations and is the accepted method for the prediction of traffic noise in the UK.
- 1.28 Typically, the CRTN is applied against all eligible dwellings or facades within a set distance from the road to identify qualifying dwellings or facades. Highway Authorities then contact eligible building owners to offer insulation grants or works.

Detail

The Requirement

- 1.29 The duty under the Regulations means it is for the Highways Authority to identify and offer noise insulation to qualifying building owners. Unlike Part 1 and Section 10 claims, the process is not reactive and driven by claims, but proactive and driven by the Authority actively identifying eligible building owners.
- 1.30 Highway Authorities ordinarily commission a specialist consultant to detail an assessment methodology that has been undertaken to identify dwellings which qualify for noise insulation in accordance with the Regulations. Letters are then sent to offer works to be carried out or a payment made.

Eligibility - Statutory Traffic Noise Insulation

- 1.31 Regulation 3 of the Act places a duty on the relevant highway authority to offer insulation in respect of a new road, or a road for which a new carriageway has been constructed if the following four requirements are satisfied:
- The 'Relevant Noise Level' must be at least 68 dB(A) L10(18-hour) – which is significant.
 - The 'Relevant Noise Level' must be at least 1 dB(A) more than the 'Prevailing Noise Level'.
 - New roads must contribute at least 1 dB(A) to the 'Relevant Noise Level'.
 - The property must be within 300m of a carriageway forming part of the scheme.
- 1.32 The "relevant noise level" is calculated using the maximum expected traffic flows between 06:00 and 24:00 on a normal working day within a 15-year period after the new or altered road or carriageway opens to traffic. This is ordinarily taken to be the 15th year of operation.

Eligibility – Discretionary Traffic Noise Insulation

- 1.33 The Regulations provide Highway Authorities with the ability to offer noise insulation at their discretion, if the four statutory requirements are met in respect of an altered road.
- 1.34 The Regulations also provide the highway authority with discretionary powers to insulate buildings which do not fulfil the four requirements, but which share the same facade as a qualifying building. An example would be a block of flats in which one flat is eligible, but the Highway Authority could offer insulation to all other flats that share the same façade.

Compensation Where No Land Taken & Noise Insulation Regulations

CONCLUSION

Summary

- 1.35 As identified there are 3 instances where compensation might be payable in respect of property from which no land interest has been acquired – in turn
- **Section 10 Claims**

It is very unlikely that there will be any s10 claims on this scheme and where they might arise the Acquiring Authority can normally act to mitigate the loss.
 - **Part 1 Claims**

Insofar as the Council's housing stock is impacted by the physical factors then there is scope for Part 1 claims to be made. Experience suggests that on a scheme of this magnitude the Highway Authority will receive thousands of claims.
 - **Noise Insulation Regs**

It is incumbent on the highway authority to identify all those properties which might be entitled to noise insulation and then either undertake the insulating works or make a payment for them to be undertaken. Those properties which are insulated are still eligible for a Part 1 claim.

Henry Church

Senior Director – CBRE

25 January 2022

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**Lower Thames Crossing Task Force
Work Programme 2021/22**

Dates of Meetings: 14 June 2021, 12 July 2021, 16 August 2021, 20 September 2021, 18 October 2021, 15 November 2021, 13 December 2021, 17 January 2022, 14 February 2022, 14 March 2022, 11 April 2022

Topic	Lead Officer	Requested by Officer/Member
14 June 2021		
Nomination of Chair	Democratic Services	Officers
Nomination of Vice-Chair	Democratic Services	Officers
Economic Mitigation List	Colin Black	Members
Work Programme	Democratic Services	Officers
12 July 2021		
HEQIA QA Review: Update Paper	Colin Black	Members
Highways England Attendance	Colin Black	Members
Work Programme	Democratic Services	Officers
16 August 2021		
Highways England Attendance	Colin Black	Members
Work Programme	Democratic Services	Officers
20 September 2021		
Thurrock Council Consultation Response	Colin Black	Members
Work Programme	Democratic Services	Officers

18 October 2021 – this meeting was postponed until 15 November 2021		
Skills and Employment Strategy	Colin Black	Members
Health Impact Assessment: Verbal Update	Colin Black	Members
Development Consent Order (DCO) Submission: Verbal Update	Colin Black	Officers
Work Programme	Democratic Services	Officers
15 November 2021 – this meeting was adjourned and rescheduled for 13 December 2021		
Transport Action Network Presentation	Colin Black	Members
Work Programme	Democratic Services	Officers
13 December 2021		
Hatch Report Update	Colin Black	Members
Work Programme	Democratic Services	Officers
17 January 2022		
Thames Freeport Verbal Update	Colin Black	Officers
Health Impact Assessment Verbal Update	Colin Black	Members
Work Programme	Democratic Services	Officers
14 February 2022		
National Highways Compensation Policy	Colin Black	Members
Health Impact Assessment Verbal Update	Colin Black	Officers
Work Programme	Democratic Services	Officers
14 March 2022		
Orsett Cock/A13 Junction	Colin Black	Members

Health Impact Assessment Verbal Update	Colin Black	Members
Work Programme	Democratic Services	Officers
11 April 2022		
Health Impact Assessment Verbal Update	Colin Black	Members
Work Programme	Democratic Services	Officers

Clerk: Lucy Tricker
Last updated: 6th January 2022

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