

Responses to ExQ1

Medway Council

Planning Inspectorate Scheme Reference: TR010032

Unique Interested Party Reference: LTC-SP097

Introduction

Purpose, content and layout

This Deadline 4 submission sets out Medway Council's responses to the Examining Authority's (ExA's) first written questions and requests for information (ExQ1).

The content and layout of this submission is consistent with the table in ExQ1, dated 15 August 2023. Medway Council's responses have been inserted below each relevant question.

ExQ1	Question to:	Question:
Q2.3.1	All IPs	<p>Carbon and Climate Considerations: R (oao) Boswell v Secretary of State for Transport</p> <p>What are the implications of the recent Boswell v Secretary of State for Transport High Court Judgement [2023] EWHC 1710 (Admin) in relation to the treatment of carbon and climate in NSIP decision-making for the A47 Blofield to North Burlingham, A47 North Tuddenham to Easton and A47/A11 Thickthorn Junction applications for the consideration of carbon and climate matters in the LTC Examination and decision?</p>
	Medway Council's response	<p>The High Court Judgement ruled that it was permissible for the Secretary of State to consider the effects of three NSIPs individually, rather than the cumulative effects.</p> <p>The High Court Judgement has reinforced the principle that the assessment of the cumulative effects of the development is a matter for the decision-maker, in consideration of the facts of the specific case and the evidence presented, and the Court's role is only whether the decision was reasonable in the circumstances or flawed.</p>
Q4.1.14	All IPs	<p>Modelled Traffic Effects: Lower Thames Area Model: TAG Compliance</p> <p>Does any party disagree with the Applicant's conclusion that the LTAM is TAG compliant? If so, please explain why.</p>
	Medway Council's response	<p>Medway Council has not been able determine whether the LTAM is TAG compliant. Nonetheless, as in Medway Council's previous representations, the core scenario does not reflect the spatial distribution of relevant planned development (including highway schemes) and Medway's development needs.</p>
Q4.2.7	Local Authorities	<p>Wider Network Monitoring Approach</p> <p>It has been suggested that the Applicant's approach to monitoring wider impacts contained in the WNIMMP is not compliant with the NPSNN. However, it appears established practice for made DCO's to include provision for wider network monitoring along similar lines as proposed here. Accordingly, please explain why such an approach would be unacceptable in this instance?</p>

ExQ1	Question to:	Question:
Medway Council's response	<p>Following the Written Ministerial Statement on 9 March 2023, the monitoring scheme is unlikely to provide certainty in local plan-making, specifically funding sources in an accompanying Infrastructure Delivery Plan (IDP).</p> <p>A contractor's technical note appended to Medway Council's LIR (REP1-258, Appendix E) recommended a review of the Project in conjunction with an assessment to inform plan-making.</p> <p>Medway Council has commissioned a new traffic model and an assessment to inform local plan-making, including a 'with Project scenario'. Medway Council is engaging with National Highways (Spatial Planning) in producing the assessment. The assessment will include analysis to determine proportionate developer contributions from sites to be allocated for development, which is likely to include contributions due as a result of traffic flows generated by the Project; the IDP will need to specify National Highways as a funding source. A commitment from National Highways would provide more certainty to support local plan-making.</p> <p>The WNIMMP (APP-545) has identified M2 junction 1 as a proposed monitoring location site. However, as it stands (i.e. unless work to be commissioned indicates otherwise), M2 junction 1 requires a strategic scheme to accommodate planned development, Medway's development needs and the Project.</p>	
Q4.6.4	Highway Authorities	Realistic Extent of Construction Phase Mitigation
Medway Council's response	<p>Notwithstanding the provisions of various control documents such as the Traffic Management Plan (TMP), is it accepted that it would be impossible to prevent or mitigate all adverse effects on local communities during the construction phase? If that is not accepted, please provide details of what further measures could be incorporated into the oTMPfC at this stage.</p> <p>Paragraph 12.6.183 of Chapter 12 of the Environmental Statement (APP-150) discusses the feasibility of mitigation measures, including low noise surfacing, barrier options, speed restrictions and heavy vehicle restrictions. None of these mitigation measures would be effective due to:</p>	

ExQ1	Question to:	Question:
		<ul style="list-style-type: none"> • the existing speed limit; • the nature of the properties; • heavy vehicles producing more noise at lower speeds; and • the need to avoid compromising existing businesses. <p>However, Medway Council’s LIR (REP1-258) identified the need for an appropriate noise insulation assessment for Cuxton and Halling ward to be conducted as soon as possible before construction starts. This was rejected in the Applicant’s comments on Medway Council’s LIR (REP2-061); instead, this would be managed through measures in the outline Traffic Management Plan for Construction (REP1-175). The Applicant’s comments refer to the Noise Insulation Regulations 1975 (as amended 1988).</p> <p>Medway Council accepts that the potential negative impact due to the rerouting of non-construction traffic can be mitigated through robust traffic management.</p>
<p>Q8.1.4</p>	<p>LPAs</p>	<p>Waste Management</p> <p>Can the Local Authorities set out whether you consider:</p> <ul style="list-style-type: none"> • The measures in the dDCO, specifically the commitments in the Register of Environmental Actions and Commitments (REAC) [REP1-157] (eg Commitment MW007) to adhere to the waste hierarchy, are adequate in terms of waste management? • If not, please identify what alterations or additions you would consider to be necessary?
	<p>Medway Council’s response</p>	<p>Taken together, the Outline Site Waste Management Plan (oSWMP) (APP-337), Outline Materials Handling Plan (oMHP) (APP-338) and commitments in the REAC, in particular MW007, MW010 and MW011, appear to provide adequate assurance that excavation waste would be minimised, and re-use and recovery on-site within the Order Limits would be maximised, with disposal being the last resort, in line with the waste hierarchy.</p>

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		<p>The identification of facilities outside of the Order Limits for management or disposal of waste that cannot be managed within the Order Limits would be the responsibility of the contractor(s) in due course, applying the same criteria to identify sites as used by the Applicant (MW012). MW013 applies targets for re-use and diversion from landfill /disposal for CDE waste which also appear to be consistent with the waste hierarchy.</p> <p>Enforcement of measures in the REAC are covered in section 2.7 of the Code of Construction Practice (APP-336). There could be better discussion and explanation of how monitoring and enforcement of off-site measures and operations will be undertaken, for example application of and adherence to the waste hierarchy where management of waste is outside of the Order Limits.</p>
Q8.1.6	LPAs and Environment Agency	<p>Waste Management</p> <p>Beyond the matters secured by the dDCO as currently drafted, and the consenting/ environmental permitting requirements that will apply, are there other matters in terms of waste management that you consider need to be clarified/secured?</p>
	Medway Council's response	There are no other matters in terms of waste management that need to be clarified/secured.
Q8.1.7	Applicant and LPAs	<p>Materials Handling</p> <p>Please could the Parties provide comments on what, if any, further use of wharves close to the Order Limits for the delivery of materials, particularly aggregates, could be utilised? If so, how should the Outline Materials Handling Plan [APP-338] be updated?</p>
	Medway Council's response	<p>The oMHP (APP-338) identifies that proximate ports at Tilbury (Port of Tilbury and Tilbury2) can potentially be used for the supply of aggregates (imported and marine dredged) for use in construction of the tunnels and the northern portal as part of a multi-modal approach required of the contractor(s). The benefits include reducing the distance materials would be transported by road and reducing pressure on local (Medway and Kent) aggregates (particularly declining sand and gravel) reserves.</p>

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		<p>As selection of sources of material will be the responsibility of the contractor(s) in due course, it is difficult to see how the oMHP and other documents can be more prescriptive in terms of requiring use of river or rail for delivery of materials. Potentially, minimum targets could be applied for use of material transported by rail and river (as summarised in paragraph 8.3.2 of the oMHP) that the contractor(s) would apply to ensure these sources are given due consideration in any multi-modal approach.</p>
<p>Q8.1.9</p>	<p>LPAs and Environment Agency</p>	<p>Monitoring Consultation/ Approval/ Timescales</p> <p>Section 11.8 of ES Chapter 11 – Noise and Vibration [APP-149] deals with monitoring. Can you provide your views on:</p> <ul style="list-style-type: none"> • The Applicant’s strategy for waste and material management during construction? • The Applicant’s strategy for waste and material management during the operational phase? • The Applicant’s suggested approach to consultation and approval of these matters through the dDCO [REP2-004], as currently drafted, and the associated REAC within the CoCP [REP1-157]?
<p>Medway Council’s response</p>		<p>The management of waste during construction is the main concern, given the quantities involved relative to operational waste. Medway Council considers that the oSWMP (APP-337), which incorporates the REAC, and the oMHP, provide an appropriate strategy for waste and material management during construction. These measures would be incorporated into the Environmental Management Plan Second Iteration (EMP) and implementation would be the responsibility of the contractor(s) in due course.</p> <p>Monitoring of waste arisings is a requirement of the REAC (MW010) and oSWMP. Monitoring of the fate of waste arisings and tonnages will also be essential to track and demonstrate compliance with the oSWMP and REAC and the targets for re-use, recovery and diversion from landfill, within and outside of Order Limits. This is identified in the oSWMP (sections 6.5 and 6.6) and so appears to be addressed adequately.</p>

ExQ1**Question to:****Question:**

The consultation with the relevant planning authorities and others that is required by the dDCO when producing the Second and Third Iterations of the EMP is considered to be appropriate as long as it is undertaken in a thorough and transparent manner. This has been the experience to date, and future consultation should be as constructive and proactive. This will depend on the undertaker being adequately resourced and having systems in place to ensure that concerns raised are addressed properly and in an iterative manner.
