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BY ONLINE SUBMISSION ONLY

Growth, Environment & Transport

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Maidstone
Kent
ME14 1XQ

Your Reference:
TR010032

KCC Interested Party
Reference Number:
20035779

Date: 5th December 2023

Dear Rynd,

RE: Application by National Highways for an Order Granting Development Consent for the Lower Thames Crossing (LTC) - Kent County Council's Submission to Deadline 8

As outlined within the Examination Timetable (Annex A of the Rule 8 letter (PD-020)), this letter is Kent County Council's (KCC) Deadline 8 (D8) submission which provides the following:

- Post-event submissions, including written submissions of oral comments made at the hearings held 20 to 28 November 2023
- Comments on Applicant's submissions at D7

Post-event submissions, including written submissions of oral comments made at the hearings held 20 to 28 November 2023

Issue Specific Hearing 11 (ISH11) – Environmental Matters – Wednesday 22nd November 2023

Agenda Item 3a) iii. Landscape Impacts in Kent Downs AONB

Will the green bridges over the A2 at their proposed widths provide valuable landscaping connectivity to reduce the severance between the historically linked landscape of Cobham and Shorne (noting that we do not need to re-visit the discussions on Green Bridge design)?

Ideally, the proposed Thong Lane and Brewers Road green bridges would be widened to increase the benefit to biodiversity, but as this has been deemed unfeasible, a third undersized green bridge at Park Pale would be an alternative option.

Agenda Item 3a) iv.

Are there any landscaping mitigation measures not already proposed by the Applicant that would reduce the impact of the Proposed Development on the AONB, and/or any measures

that would instead compensate for the harm (noting that we do not need to re-visit the discussions on the site selection for nitrogen deposition compensation areas)?

KCC supports the Kent Downs Area of Outstanding Natural Beauty (AONB) Unit in their request for Park Pale bridge to become a green bridge. From a biodiversity perspective, the bigger the green bridges the better. All of the ones crossing the A2 are under half of what the ideal green bridge size should be. The Park Pale bridge would therefore help to connect the new mitigation planting areas that connect into Puckle Hill and the park on one side and Great Crabbles Wood on the other, to the wider Cobham estate, therefore would have a great connectivity value.

Agenda Item 3b) Wider Landscape Matters

ii. Are there any areas across the Proposed Development where operational lighting would have a significant landscape effect and are there any mitigation measures that could minimise the effect? The 'Environmental Lighting Zones' document [APP-199] may prove useful to aid this part of the discussion.

The Applicant has provided limited information relating to lighting. It is anticipated that there will be significant increased lighting across the whole junction which will reduce opportunities for nocturnal species.

During a previous meeting between KCC's Ecology Team and the Applicant's Ecology team it was explained that due to the size of scheme, the current lighting plan has deliberately focussed on key high value areas only as a baseline/reference point. Within these areas, Lux levels from roadside lighting drops to < 0.5 Lux at 30m, which is "standard use for Highways". Due to the location adjacent to the Site of Special Scientific Interest (SSSI) and Ancient Woodland (AW) and within 100m of the Special Protection Area (SPA)/Ramsar/SSSI, KCC would expect the lighting design to go above and beyond standard use for highways.

Furthermore, Table 4.6.1 of the Applicant's Deadline 6 Submission - 7.5 Design Principles v4.0 (Clean) [REP6-046] states that lighting will be minimised where it is reasonably practicable and that dark corridors will be maintained. However, with a road scheme of this size the lighting requirements are likely to be quite significant and the Applicant is not really committing themselves with those design principles.

Agenda Item 5a) Nitrogen Deposition and other Woodland Compensation/Mitigation

i. There remains issues with the compensation offered for the Nitrogen Deposition and other woodland compensation/ mitigation. The Applicant is to provide a simple explanation or summary indicating:

- *How the land in the Change Application [CR1-001 and 002] at Blue Bell Hill and Burham was originally considered to be necessary and is now considered to be no longer required to be provided elsewhere.*
- *The amount of Nitrogen Deposition compensation required to offset the project and why there is limited compensation provided in the Kent Downs AONB where the largest effect is said to occur.*
- *Some of the proposed Nitrogen Deposition and other woodland compensation/mitigation locations have not yet had the benefit of detailed ecological*



surveys. What measures are proposed to mitigate the impact on the existing habitat and/or species found following the surveys? How is the mitigation secured? A full description of all the points can be provided in writing at Deadline 8.

KCC shares the concerns of the Kent Downs AONB Unit about the need to consider the ecological networks as part of the appropriate protection of the AONB. Furthermore, KCC agrees with the Kent Downs AONB Unit that the Applicant's proposal to compensation for damage done in Kent being located in Essex is completely unsatisfactory.

Agenda Item 5a) Nitrogen Deposition and other Woodland Compensation/Mitigation

ii. Are Natural England, and Local Authorities content with the proposed arrangements and the measures to safeguard any protected species located in areas to be planted as woodland? The ExA would welcome a summary of the issues with detailed explanations, if appropriate, to be submitted in writing at Deadline 8.

KCC has previously raised concerns regarding the lack of surveys at the nitrogen deposition sites. The Applicant confirmed that there was sufficient space within the nitrogen deposition areas to implement any protected species mitigation required. As the sites are mainly arable, KCC would agree with the Applicant's proposed approach.

Responses to Action Points

ISH11 Action Point 8:

“Landscape and Visual conclusions

Provide a summary of your respective positions on the Applicant's conclusions within Chapter 7, Landscape and Visual of the ES [APP-145] paragraph 7.9.22.”

Kent County Council would defer to the views of Gravesham Borough Council and the Kent Downs AONB Unit in relation to this action point.

ISH11 Action Point 14:

“Nitrogen Deposition

Following the consideration of the Applicant's D7 submissions, provide comments on respect of Agenda Item 5.a) i including whether these have resolved previous concerns (including those raised by GBC).

In KCC's view, the Applicant's D7 Submissions have not resolved the concerns raised during ISH11.

Appendix 8.14 – Designated Sites Air Quality Assessment (1 of 4) [APP-403] provided details about the process the Applicant went through to identify the compensation sites. It was quite clear they were going for habitat creation at a landscape scale approach within the area where the impact was happening. The updated consultation or the information provided during

ISH11 did not provide any information to satisfactorily address why the approach had changed.

The relevant paragraphs are:

7.3.48 *The judgement of the competent experts advising the Applicant is that it is ecologically preferable to propose an approach of habitat creation at an ecological network scale for compensation measures. A small number of larger compensation measures in carefully selected locations associated with identifiable habitat networks would provide the most suitable and certain available ecological option for compensating for degradation across a number of sites within the ecological networks. This would provide permanent, meaningful, landscape-scale habitat creation areas that would be a long-term habitat resource of a comparable area to that affected by degradation. This would be a precautionary but proportionate response to the residual effects related to nitrogen deposition. A landscape scale approach to habitat creation is consistent with the Lawton Principles (Lawton, et al., 2010) and Department for Environment, Food and Rural Affairs advice (Department for Environment, Food and Rural Affairs, Natural England, Welsh Government and Natural Resources Wales, 2021) and is an approach supported by Natural England. The guidance followed (listed in paragraph 7.2.1) states that measures closer to the site are generally preferred, unless measures further away will benefit the network of sites as a whole. As the Project has multiple affected sites within identifiable ecological networks, the landscape approach is consistent with guidance.*

The report then continued and highlighted how they narrowed down the selection.

7.4.10 *To ensure any search areas were appropriate to ecological networks at a scale that would be resilient and support biodiversity, a buffer of 2km around the clustered points was calculated and mapped. These were defined as macro areas of interest (MAOI) and numbered uniquely MAOI1-4 as shown in Plate 7.1. (PDF page 46)*

7.4.11 *The purpose of creating the MAOIs was to focus the search areas to where suitable compensation sites may exist. Any sites outside the MAOI would be inherently less connected to the ecological networks that support the affected sites and so less suitable for compensation measures. Sites further afield would have been considered in the eventuality that no suitable locations could be found within the macro search areas.*

The above paragraphs clearly demonstrate that when identifying the mitigation sites they were looking at areas within the immediate vicinity. In addition, it is botanical species which are impacted within the woodland and therefore from an ecological connectivity view point they would need to be located within an area which is not divided by the Thames.



Issue Specific Hearing 12 (ISH12) – Social, Economic and Project Delivery Matters – Thursday 23rd November 2023

ISH 12 Agenda Item 3b) ii. S106 – Current Heads of Terms and Omissions

KCC's comments on the draft Section 106 (s106) Agreement can be categorised as follows:

1. Obligations within the s106 Agreement between National Highways and Kent County Council

KCC has been involved in recent negotiations with the Applicant and welcomes the latest schedules relating to Officer Contributions and the Kent Downs AONB Compensation Fund included within the latest version of the draft s106 Agreement received from the Applicant on 22nd November 2023, but not yet submitted to the ExA.

In addition, KCC welcomes the Skills, Education and Employment (SEE) Strategy and the Community Fund schedules being moved to the Stakeholder Actions and Commitments Register (SAC-R). KCC felt the scope of these schedules were project wide and so it was only right they sit within a joint document of which all interested parties could discuss and agree to the wording of.

However, KCC continues to negotiate with the Applicant regarding the Severance Contributions, HGV Restrictions and Low Noise Surfacing schedules in the draft s106 Agreement. KCC made clear at ISH12 Part 1 that currently the Council would not be in a position to sign the s106 Agreement unless the Low Noise Surfacing Schedule was removed and the Applicant agreed to Index Link the costs outlined within the draft agreement. Our detailed comments on each s106 schedule can be found later in this submission within our Comments to the Applicant's submissions at Deadline 7.

2. Additional S106 Agreement Obligations requested by KCC

KCC has put forward a list of additional obligations to the Applicant which the Council insists are required to mitigate the impact of the scheme. This list was also included within KCC's Deadline 7 submission [REP7-198].

Whilst some of the additional obligations have been considered by the Applicant and included within the latest draft s106 agreement or are proposed to be secured by other means, such as a Side Agreement, the overall response from National Highways remains disappointing. It is the Applicant's view that the overall strategic benefit of the scheme outweighs the need for them to agree to the additional obligations and that some mitigation is secured through the DCO and various control plan documents. However, KCC would argue the control plan documents produced by the Applicant do not go far enough to secure funding for delivery of necessary mitigation. Within the control documents the Applicant is often proposed to hold overall decision making power for the implementation of mitigation, meaning that there is still no assurance to the local authorities that the correct mitigation will be secured.

3. Shorne Woods Country Park Compensation

The ExA will be aware of KCC's requests for compensation regarding the loss of revenue at Shorne Woods Country Park as a result of the Lower Thames Crossing project. This request



was discussed at length at ISH8 and throughout our various written submissions. Since ISH8, there have been a number of discussions between KCC and the Applicant on this matter but there remains a number of outstanding issues before agreement can be met.

Further to this, the Applicant has only recently expressed their preference for compensation to be provided through the form of a Side Agreement, as opposed to the Section 106 Agreement. Whilst KCC is not against entering into side agreements, the Council is growing increasingly concerned that a draft Side Agreement has only recently been provided by the Applicant (the draft Side Agreement was received by KCC on 28th November 2023) and there remains a significant amount of negotiation that needs to take place regarding the compensation and the process around claiming for loss of revenue.

Furthermore, the timescales instilled on us by the Applicant have meant there has been very little opportunity for KCC to review and negotiate the contents of the Applicant's proposed Side Agreement.

ISH12 Agenda Item 4b) Code of Construction Practice (CoCP) (1st Iteration) [REP6-038, 040 & 042]

KCC is clear that the DCO states this document must be in accordance with this and the Project Control Plan identifies when the next iterations are proposed. As for the contents of the proposed Code of Construction Practice (CoCP), KCC is relatively content with the content.

However, we have concerns about the lack of clarity on whom the ultimate decision making responsibility lies. The Applicant's revisions to the latest document includes more escalation about the process, e.g. the Outline Traffic Management Plan for Construction (oTMPfC) states: "*E.10.1 National Highways would fund the preparation of the TMPs [Traffic Management Plans] and the implementation and monitoring of TMP measures would be a requirement of Contractor's appointment and so would be funded by those Contractors*". However, KCC is concerned that there could be instances of dispute if a party such as KCC requests mitigation. KCC welcomes the inclusion of a dispute resolution process but it is proposed that National Highways will have final decision making authority, not a third party.

Furthermore, the process around non-compliance and enforcement needs clarifying. Currently it is not clear within the CoCP who has responsibility for non-compliance and who enforcement is to be passed to. For instance, would this be the Local Planning Authority, or would it be the Secretary of State?

As an example, National Highways have not yet completed their Post Opening Evaluation Report for the A2 Bean and Ebbsfleet scheme. This is despite the scheme now being open to traffic and the trigger of 1 year post opening having now passed. KCC is keen to avoid this type of delay happening with the LTC and so the CoCP needs to be clear which planning authority will be responsible for monitoring compliance of these conditions.

ISH12 Agenda Item 4c) Design Principles

The Kent Downs AONB Unit are advocating Park Pale Bridge being a green bridge. KCC would support this suggestion; however, the design principles do not list green bridges in STR.08.



ISH12 Agenda Item 4d) Outline Traffic Management Plan for Construction (oTMPfC)

KCC is satisfied that the process to secure the oTMPfC in accordance with the DCO is clear and the iteration process is explained in Plate 2.2 Extract from the Project Control Plan.

However, there is a need for the Plan to ensure National Highways will undertake appropriate monitoring, e.g. Automatic Number Plate Recognition (ANPR) / Geographical Information Systems (GIS), to ensure vehicles are retained on permitted routes and that rat running is not causing detriment to local villages. National Highways have previously said they would monitor the movement of construction vehicles but have not clarified how they will do it other than through the use of a booking system.

The Applicant should be encouraged to prevent construction related vehicles being on the network during peak times as much as possible (this is likely to happen anyway, but could be secured, with the Traffic Management Forum agreeing to relax the standard if and when it is needed during construction, rather than the other way around).

KCC need a financial contributions towards mitigation for the impact of delay to existing local bus services. This has been repeatedly requested by KCC for inclusion in the s106 but has so far been refused by National Highways as it is their view this has been secured through the oTMPfC and more specifically the TMP. However, KCC is concerned that leaving this to the Traffic Management Plan/Forum to decide whether this is needed is a risky strategy as there is no confirmed funding for the Traffic Management Forum (TMF) and this request could just be refused by National Highways. If the roads are going to be subject to further congestion, we need a reliable bus service in place to reduce the impact on residents.

National Highways has committed to utilising the Kent Permit Scheme for bookings on KCC's network. Should any Streetworks Non-Compliance or Enforcement be required this would be the system used to record such issues. The TMF would give an avenue to discuss and avert/correct matters.

In Section 4.5 'Safety Measures' There is no mention of the Red Book – Safety at Street Works and Road Works ~ A Code of Practice. This is the mandatory code for works on the highway and should be acknowledged as reference. The documents mentioned would all support safe working, but the Red Book would be the reference should judgement on a set-up be required.

Another guidance document not referenced is the replacement for the Pink Book – ARTSM- Guidance on the use of Portable Traffic Signals. With the need to utilise temporary signals at various locations and time through the project, this is a relevant guide to include reference.

Contra flow is a term referred to in the document; however, this is incorrect for the traffic management layouts National Highways are referring to. This should be altered to 'Shuttle Working', with includes temporary signals, Priority Boards and Give/Take layouts. Contra flows can be utilised on KCC's network; however, the appropriate sites are minimal. This amendment is certainly required and has been requested multiple times before.

There is a standard reference to 300m limits for works sites using Shuttle Working. It is not accurate in relation to length of works; this distance is the maximum between 'Wait Here' signs.



With the lead in tapers and longitudinal safety zones the Works area would be significantly reduced. In some locations, extents would be limited to 150m for KCC to grant the permit.

Reference is made to a contact centre to deal with customer care enquiries; however, clarity is required within the oTMPfC as to whether there will be a dedicated Customer Care lead, as has been the case for previous projects. This representative would form part of the TMF with the Traffic Manager to liaise with Stakeholders represented within the group.

The restriction or closure of a highway maintainable at the public expense is classed as Major Works and would ordinarily require the making of a Temporary Traffic Regulation Order (TTRO) under Section 14 Road Traffic Regulation Act (1984). KCC requires the giving of 12 weeks' notice for such an Order with the submission of a PAA (Provisional Advance Authorisation) to the Council. Such a period allows for the processing, advertising, and distribution requirements of a TTRO. KCC also use this time to ensure adjacent planned works are coordinated appropriately. Accordingly, KCC asserts that a 28-day period for deemed consent is too short and a 12-week period ought to be inserted for prohibitions and restrictions.

The Applicant regularly utilises KCC's network to divert traffic onto the Local Road Network. 28 days is an acceptable lead-in period for a diversion route request; however, this does not guarantee road space. It is the view of KCC that lead times associated with the established permit process should be adhered to when Article 12 is being operated, and consent for permits must not be subject to a '28-day deemed consent provision'.

KCC's comments on the decision making process and enforcement of non-compliance of the oTMPfC is the same as those relating to the CoCP.

ISH12 Agenda Item 4e) Framework Construction Travel Plan (fCTP)

With reference to the Framework Construction Travel Plan (fCTP), it is clear this control plan is to be secured in accordance with the DCO, and the draft DCO states "*No part of the authorised development is to commence until a travel plan for the construction of that part which is substantially in accordance with the framework construction travel plan has been submitted...*"

Overall KCC is relatively satisfied with the content of the fCTP and welcomes the establishment of a Traffic Management Plan/Forum. However, the Applicant should be required to allocate a sufficient amount of funding for the implementation of traffic management measures identified through the Traffic Management Plan/Forum.

KCC's comments on the decision making process and enforcement of non-compliance of the fCTP is the same as those relating to the CoCP.

ISH12 Agenda Item 4g) Outline Landscape and Ecology Management Plan (oLEMP)

The Outline Landscape and Ecology Management Plan (OLEMP) details that it will be secured through Schedule 2 Requirement 5 of the draft DCO (Application Document 3.1) [APP-056]. The Landscape and Ecology Management Plan (LEMP) must be prepared substantially in accordance with this outline (O)LEMP, submitted as part of the application, and KCC understands that there will be more than one LEMP produced for the whole DCO area.



Overall KCC is satisfied with this approach; however, we would highlight that it may be appropriate at the start of the project to produce an interim LEMP for the mitigation areas and then develop the full and final LEMP in advance of the landscaping works commencing.

The OLEMP has on going monitoring detailed within the document which should continue to identify if there are any issues with the management and rectify them. This will also be addressed via the proposed advisory group. For example, the OLEMP states the following:

“The remit of this advisory group will be to: a. oversee the implementation of the oLEMP and subsequent LEMP as approved under Schedule 2 Requirement 5 of the DCO. b. review the monitoring outputs c. provide a mechanism to agree matters which are required under or pursuant to the LEMP and which will be implemented following the approval of LEMP. d. provide lines of communication to amend the LEMP should an unforeseen circumstance occur meaning the approved LEMP objectives could not be achieved, following Schedule 2 Paragraph 17 of the Draft DCO. e. to agree changes to the LEMP (and/or its prescribed management activities) when they are required, or when successful achievements of targets have been met.”

There is a need to ensure that the relevant organisations have time and funding to be involved in this advisory group and therefore the Applicant should commit to funding for it.

The OLEMP is very overarching so it does provide over all habitats to be created/managed as part of the proposal.

KCC feels the OLEMP should be a free standing control document outside of the Register of Environmental Actions and Commitments (REAC).

The OLEMP will inform detail LEMPS so any management carried out within the site will be agreed within a detailed LEMP or following any changes as a result of on-going monitoring.

KCC would defer to the views of Gravesham Borough Council for comments relating to non-compliance and enforcement as they are likely to be the Local Planning Authority responsible.

ISH12 Agenda Item 4h) Outline Site Waste Management Plan (oSWMP)

KCC has no specific comments regarding the estimated arisings of inert, non-hazardous and hazardous wastes as detailed in Table 5.2 and Appendix A.1 to A.5. These are only what will be probable as arisings. What is more important is how these materials will be managed. The document makes clear that the principles of the circular economy are to be applied to the management of these materials in accordance with the defined waste hierarchy. The various waste arisings are to be reused (as aggregate where possible and land forming within the limits of the scheme) onsite. Where this is not possible given the scheme's requirements and the nature of the waste materials, they are to be firstly recycled and/or recovered and if that is not possible, finally disposed of to landfill offsite.

This process, as detailed by the document, is the recognised approach for sustainable waste management as set out by the Circular Economy (Department for Environment, Food and Rural Affairs (Defra) 2018), the Waste Framework Directive 2008/98/EC, and the recognised waste hierarchy (Defra, 2011). The County Council's adopted Kent Minerals and Waste Local Plan 2013-30 [Early Partial Review 2020] (KMWLP) policies are in accordance with these



relevant government guidance documents, and therefore the proposed approach is in accordance with the KMWLP policies for sustainable waste management. Therefore, the County Council has no objection to the processes proposed in the Outline Site Waste Management Plan for the LTC proposal.

ISH12 Agenda Item 4i) Outline Materials Handling Plan (oMHP)

The Outline Materials Handling Plan (oMHP) document is a very detailed assessment of how materials required by and arising from the proposals will be managed in terms of their available transportation options as part of the civil engineering project that is the LTC. Therefore, the matter is not directly related to either a waste or mineral development activity that should accord with waste and minerals government guidance, national and local planning policy. However, the document does state that of the 12.5 million cubic metres of tunnel spoil arisings, 11.2 million cubic metres will remain onsite as a reused otherwise waste material. This greatly reduces the need to use offsite transportation. If that alone can be considered as a 'waste led' activity, then the Kent Minerals and Waste Local Plan (KMWLP) has some direct relevance with its Policy D13: Transportation of Minerals and Waste seeks to ensure that emissions associated with road transportation are minimised as far as practical. Retaining 89.6% of the of the tunnel arisings onsite, thus negating offsite road use to transport the materials to other sites, can be said to be in accordance with the adopted KMWLP for sustainable waste transportation.

ISH12 Agenda Item 4j) Draft Archaeological Mitigation Strategy and Outline Written Scheme of Investigation (AMS-oWSI)

KCC understands that the Archaeological Mitigation Strategy and Outline Written Scheme of Investigation (AMS-OWSI) will be secured through the Control Document CoCP (or through the REAC if this becomes a control document in its own right) and also directly through the wording of Requirement 9 (Schedule 2) of the DCO.

To help ensure the security of the process we ask that the wording of Requirement 9 clarifies that the Secretary of State will approve documents, such as the AMS-OWSI and subsequent documents such as EMP2 and Site Specific Written Schemes of Investigation, in consultation with the Relevant Planning Authority.

The iteration process is clear but KCC has not yet agreed an updated AMS-oWSI with the Applicant which will include clarity on what mechanism will be put in place to agree with us the design, avoidance of and mitigation of harm to, archaeological assets once the results of archaeological work are available for those sites that have not yet been surveyed. This includes nitrogen deposition/ancient woodland compensation sites or landscape mitigation sites. KCC is in discussions with the Applicant about this matter and understands that good progress is being made.

KCC consider the overall structure of content is appropriate. However, we have not yet agreed an updated AMS-oWSI with details about mitigation, both for areas where archaeological surveys have been undertaken, and as noted in the answer to question 2, and for areas where surveys have not yet been undertaken. We are in discussions with the Applicant about this matter and understand that good progress is being made.



KCC is satisfied that the decision making process is clear and from our perspective the AMS-oWSI clearly sets out the role of local authority archaeologists to agree and approve documents, monitor work and sign-off completed mitigation fieldwork for areas of development as well as subsequent post-excavation documentation and reporting.

Enforcement in Kent (related to archaeological matters) would rest with the relevant planning authority but advised by the KCC Heritage Conservation archaeological advisor.

ISH12 Agenda Item 4m) Addition or Removal of Documents

KCC raised concerns that whilst the Applicant's Wider Network Impacts Management and Monitoring Plan (WNIMMP) is expected to be a Control Document secured through the DCO, the agenda of ISH12 did not allow the opportunity to comment on this document. KCC is concerned that the WNIMMP has not been updated by the Applicant since it was first submitted as part of the application. It has not been a document which has evolved over the lifespan of the Examination. Whilst it is KCC's preference that a robust Monitoring and Mitigation Strategy is secured through the DCO which is similar to that for the Silver Town Tunnel (and reflected in the draft Requirement provided by the Applicant within their Wider Network Impacts Position Paper submitted at Deadline 6 [REP6-092]) if this is not to be favoured by the Examining Authority then the WNIMMP is wholly insufficient in its current form.

Responses to ISH12 Action Points

ISH12 Action Point 7:

"S106 Agreements – approval/completion process

Provide information, including timings, of the approval process (i.e. Council committee procedures) for the conclusion of any S106 Agreements and whether these approval processes could be completed before the close of the Examination on 20th December 2023."

KCC has expressed its disappointment with the Applicant's approach to the s106 Agreement, in particular, the lack of time that has been left for local authorities to negotiate certain obligations within the agreement. However, KCC's Corporate Director has delegated power to sign and seal the s106 Agreement should the final version be satisfactory to KCC and this process could be completed before the close of the Examination on the 20th December 2023.

ISH12 Action Point 8:

"S106 Agreements – blue pencil clauses

Please provide a view on the potential use of 'blue pencil clauses' in S106 Agreements. In responding, please make reference to their use in the context of NSIP applications."

KCC is not against to the use of blue pencil clauses in s106 Agreements. Within the short timescales imposed upon us, KCC has worked hard with the Applicant to negotiate obligations within the s106 Agreement that are acceptable to both parties and would meet the required tests. Therefore, such a clause may be unnecessary but KCC would not be opposed to the use of a blue pencil clause if the Examining Authority felt it was appropriate.



It remains KCC's view that there are certain obligations that should be included within the s106 Agreement but currently are not, such as mitigation for impacts on the wider highway network. These could be inserted as a blue pencil clause and left for the Secretary of State to determine whether they are required to meet the regulatory tests.

ISH12 Action Point 12:

“Shorne Woods Side Agreement (Revenue Compensation)

Applicant to submit ASAP to Kent County Council.

Subsequently the Applicant and Kent County Council should provide confirmation whether this side agreement has been agreed by the parties. Any matters that the parties rely upon in terms of securing a relevant important consideration should be provided in outline form.”

KCC can confirm that a draft Side Agreement has now been provided by the Applicant, as of the 28th November 2023. KCC is currently reviewing the draft Side Agreement and will update the Examining Authority at Deadline 9 to confirm whether it is acceptable to both parties.

Issue Specific Hearing 13 (ISH13) – Traffic and Transportation – Monday 27th November 2023

ISH13 Agenda Item 3b) i. Blue Bell Hill

The Applicant and KCC are to be asked whether a smaller improvement scheme could be implemented at Blue Bell Hill should the Large Local Majors (LLM) scheme fail to come forward?

Since the last Issue Specific Hearing on this topic, it has been confirmed by government that successful Large Local Major schemes could benefit from the uplift from 85% to 100% funding to deliver schemes approved at the end of the Outline Business Case stage. Developer contributions are still expected but local authorities are no longer expected to fund Large Local Majors (LLM).

It would therefore appear that if Blue Bell Hill is given approval at the end of the Outline Business Case stage, then there should no longer be a funding gap inhibiting scheme delivery.

Government also announced that Blue Bell Hill would proceed to the Outline Business Case development stage, almost three years after submitting the Strategic Outline Business Case (SOBC) for consideration. However, the Department for Transport has informed KCC that they will only fund up to approximately two thirds of the development costs of the Outline Business Case. On a scheme of this size that leaves a funding gap of around £3 million. Kent County Council has already put significant amounts of its own funds into developing the scheme to get to this stage, around £1.6 million, and given the well-publicised financial situation that the Council, indeed most councils, find themselves in, no further funds are available to take the scheme forward. Hence, as it stands, the Outline Business Case for the Blue Bell Hill scheme cannot progress.

Therefore, as stated at previous Issue Specific Hearings, it continues to be the case that it must be assumed that when the Lower Thames Crossing is open then Blue Bell Hill as it is today will be as it is then. National Highways will have to accept that the increase in congestion



at their junctions (M20 Junction 6 and M2 Junction 3) and the resulting queues on the mainline M20 and M2, as shown by their own Transport Assessment, is acceptable to them with the safety risks that will result.

The Examining Authority's question in this agenda item is therefore very relevant. We must all assume that the Large Local Major scheme is not delivered and therefore it is right to ask whether a smaller scheme could be implemented.

The simple answer is yes, a smaller scale scheme could be implemented, but to what benefit? The real question should be - can and should a scheme of a smaller scale than the currently proposed A229 Blue Bell Hill Improvement Scheme be implemented? That answer is no.

85% of respondents to the KCC consultation on A229 Blue Bell Hill Improvement Scheme in 2020 agreed that something needed to be done about Blue Bell Hill and its junctions even without all the additional traffic that will be generated from the LTC and local growth.

Small scale interventions have already been considered by KCC to improve the current situation, but there has been no sensible solution identified that makes enough of a difference to the congestion to justify the expenditure – if there was, KCC would have already made improvements to the M2 Junction 3 and M20 Junction 6.

The A229 Improvement Scheme optioneering process considered 73 different interventions. At M20 J6 - 26 proposals were considered, at M2 J3 - 43 proposals and the A229 mainline - 4 proposals, in addition to 17 broader package and wider transport strategy options. The small-scale solutions (for example segregated left turn lanes) were quickly discarded because they could not accommodate the volumes of traffic forecast.

As part of the Strategic Outline Business Case (SOBC), the Department for Transport (DfT) requested that KCC looked at an option which allowed for local plan growth but not the LTC, i.e., a "no-LTC" scenario. It must be noted that you can only do it this way around – there can be a scenario without a new Lower Thames Crossing in which background growth continues, but there can never be a scenario where the Lower Thames Crossing is delivered but background growth does not happen. This smaller scale option has been sensitivity tested with the LTC traffic added back in. The testing shows that the option does not work and causes significant impacts on the Strategic Road Network at both M20 Junction 6 and M2 Junction 3. The option was costed at £100m and would not provide the benefit or capacity needed.

There may be suitable proposals for mitigating the additional traffic that LTC generates (when considered in isolation) but implementing such a scheme will provide no benefit as the extra capacity created for LTC is overwhelmed in combination with background growth. Such a scheme would therefore be a waste of public funds.

The Applicant could tinker with Blue Bell Hill to mitigate the LTC traffic impact, Maidstone Borough Council could tinker with Blue Bell Hill for their Local Plan (which cannot be delivered without mitigation at Blue Bell Hill), Medway Council and Tonbridge & Malling Borough Council could tinker with Blue Bell Hill for their local plans, but none of the tinkering will add up to a suitable scheme that actually mitigates the combined impacts. A much larger strategic intervention is required, hence KCC's Large Local Major scheme. KCC is trying to combine all these needs into a single scheme which provides value for money to the taxpayer, does not require the road to be dug up time and time again and actually provides a sensible solution to the capacity issues.

The one outcome which must be avoided is a series of sequential but partial works at Blue Bell Hill.

KCC's Deadline 7 (D7) submission [REP7-198] set out suggested text for a Requirement for Blue Bell Hill. This has been revised and updated in KCC's Response to the Examining Authority's Commentary on the draft Development Consent Order [PD-047] submitted at this Deadline 8 (D8) and replaces the previous text for the proposed Blue Bell Hill Requirement at D7 [REP-198].

Other Wider Network Impact matters:

KCC's D7 submission [REP7-198] clearly set out the rest of the Wider Network Impacts, excluding Blue Bell Hill, summarising the study work that the Applicant has funded. This evidences where the impacts are that are due to the LTC and most importantly, costed interventions that must be funded by the Applicant to mitigate the impact of their scheme. We are disappointed that the other Wider Network Impacts were not addressed orally in this Issue Specific Hearing, but KCC's welcomed the Examining Authority's verbal assurance that the Wider Network Impact study work has been noted.

Response to ISH 13 Action Points

ISH13 Action Point 9

"Blue Bell Hill: Local Plan Allocations and Major Planning Applications in Kent

Provide details of responses from National Highways, in its function of providing consultation responses for local plan allocations and major planning applications, where matters relating to the Blue Bell Hill junction have been raised by NH."

As noted in KCC's Deadline 4 Submission [REP4-308], specifically within Appendix C - A229 Blue Bell Hill Impact Statement, National Highways have an inconsistent and contradictory approach to the generation of additional traffic at junctions on the Strategic Road Network (SRN). REP4-308 provided an example of a small scale development for which National Highways demanded mitigation of the M20 Junction 6 Running Horse Roundabout.

Further examples specifically relating to the Blue Bell Hill junctions are listed below:

Examples relating to A229 Blue Bell Hill, M2 J3 and M20 J6

Planning Application for Land South East of Tottington Farm, Rochester Road, Aylesford (Tonbridge and Malling) Reference:21/03066/OA

- National Highways recommended that the planning permission not be granted for a specified period (holding objection) due to an impact on the M20 Junction 6 Running Horse Roundabout. Application decision is outstanding and there is currently no agreement on suitable mitigation.

Maidstone Borough Council Local Plan Review - ongoing

- KCC is currently in discussion with National Highways and Maidstone Borough Council (MBC) about the mitigation required for the Local Plan at several junctions on M2 and M20. National Highways accept in principle that the impacts of the proposed Garden Settlements at Lenham Heathlands and Lidsing can be mitigated, whilst raising the need for further work on mitigations in relation to the wider impacts of planned growth (i.e., M2 Junction 3 and M20 Junctions 6 and 7). MBC would like to use A229 Blue Bell Hill Improvement Scheme as mitigation, but National Highways are not currently satisfied with this approach as there is insufficient certainty that the scheme will come forward. Discussions are ongoing.

Planning Application for Bushey Wood, Bull Lane, Eccles, Aylesford, Kent (Tonbridge and Malling) 22/00113/OAEA

- National Highways recommended that the planning permission not be granted for a specified period (holding objection) due to impacts at M20 Junction 6 and M2 Junction 3. Objection not lifted as the applicant entered a non-determination appeal.

Examples relating to other Strategic Road Network (SRN) junctions

In addition to the above Blue Bell Hill examples, there have been further cases where National Highways have objected and/or raised concerns to proposed development on the grounds of traffic constraints at other SRN junctions. These examples are as follows:

Medway Local Plan

Medway are currently preparing a new Local Plan and recently held a Regulation 18 consultation. As highlighted in REP1-257 from Medway Council, the existing M2 Junction 1 has emerged as a constraint to development. Given that many of the proposals for the new Local Plan (for housing and employment) are centred around the Hoo Peninsula which relies on M2 J1 for access to the SRN, National Highways has already indicated that M2 Junction 1 will require a strategic solution to be delivered through the Local Plan process.

Planning Application (MC/21/06979)

- Trips capped under condition at M2 Junction 1. *(The development shall be restricted to the Initial Land Use and Initial Trip Cap parameters as identified in the Technical Note N13-SM-Initial Trip Cap (dated October 2022) prepared by Vectos. The Initial Trip Cap and Initial Land Use parameters may be exceeded up to the maximum land use and trip parameters where; i) Analysis is presented and agreed by National Highways that indicates acceptable effects at Junction 1 of the M2; or ii) A scheme for enhancements to Junction 1 of the M2 has been agreed with National Highways and a programme for its delivery is in place. Reason: To ensure that Junction 1 of the M2 continues to be an effective part of the Strategic Road Network for through traffic in accordance with section 10 of the Highways Act 1980, Circular 02/2013 'The Strategic Road Network and the Delivery of Sustainable Development', the National Planning Policy Framework and Planning Practice Guidance.)*



Planning Application for Land Off Pump Lane, Rainham, Kent (Medway) MC/19/1566

- National Highways recommended that the application was refused on the basis that there was not sufficient robust information to determine the impact on the SRN (objection). Application refused.

Planning Application for Binbury Park, Binbury Lane, Maidstone, Kent (Maidstone) 18/504836/EIOUT

- National Highways recommended that the planning permission not be granted for a specified period (holding objection). Application refused - *In relation to the potential impact on the Strategic Road Network, there is insufficient evidence to demonstrate acceptable merges and diverges for M2 Junction 5; contrary to NPPF 111 and MBLP 17 Policy DM21.*

Issue Specific Hearing 14 (ISH14) – The Draft DCO – Tuesday 28th November 2023

For KCC's detailed comments in relation to the draft DCO, please refer to our separate Deadline 8 submission which includes our responses to the ExA Commentary on the dDCO and includes a revised and updated proposed Requirement for Blue Bell Hill.

Comments on Applicant's submissions at Deadline 7

Deadline 7 Submission – 6.3 ES Appx 6.9 – Draft Archaeological Mitigation Strategy and Outline Scheme of Investigation v4.0 (Clean) [REP7-128]

KCC acknowledges the latest version of the Draft Archaeological Mitigation Strategy and Outline Scheme of Investigation (dAMS-oWSI) submitted by the Applicant at Deadline 7.

KCC welcomes the additional text, in particular the following additions:

- The Register of Environmental Actions and Commitments (REAC) 10 ensures that Local Authority Archaeological and Historic Buildings Advisors have access to the Project to monitor and sign-off relevant work.
- Additional commitments (Section 5.1.7 etc.) for developing a research group to be chaired by Professor Timothy Darvill.
- Additional wording (Sections 6.4.13 & 14) about the recording of the setting of buildings and condition surveys before, and monitoring during construction, for issues such as vibration.
- Additional wording (Section 6.4.20) to confirm that there will be ongoing geophysical surveys to inform detailed mitigation decisions.
- Additional wording (Section 7.2) about Local Authority Archaeological Advisors monitoring of the works to historic buildings. Whilst this applies mainly to the project north of the Thames it is helpful to have included for the whole project.



Furthermore, KCC would like to make the following comments in relation to the Deadline 7 version of the dAMS-oWSI:

- There is new text which clarifies commitments to further investigations and mitigation of deeper Palaeolithic and Holocene deposits (Sections 2.5.4, 6.4.40 – 45 and 7.3.119 – 121). However, it would be helpful if it was made clearer that the approaches outlined will apply in other areas yet to be investigated as well as the presently identified important sites (as recorded in 6.4.41). The approaches outlined in these sections are covered by REAC Ref CH009.
- Additional wording (7.2.25 – 27) provides greater clarity to ensure that all relevant interim statements, post-excavation reporting and publication will be approved by the Secretary of State following consultation with the relevant LPA Archaeological Advisors).
- It has been noted that Table 9.1 for Kent is in a draft format as the contents relating to agreed mitigation are still under discussion and not yet agreed. Changes to this table will inevitably require changes to the main text of the dAMS-oWSI and these changes will need to be made within the timescales of the Examination.
- KCC notes that there are no significant changes to the Public Archaeology and Community Engagement (PACE) section. We have been providing comments directly to the Applicant in relation to this particular section and hope to see these additions within future iterations of the document.
- KCC welcomes the inclusion of a 'draft' Annex B Table of Mitigation Sites but note that we are still in discussions with the Applicant about the proposed mitigation for each 'site'. Agreeing the content of Annex B Table of Mitigation Sites will be essential before Deadline 10 to ensure appropriate mitigation is secured by the DCO process.

Deadline 7 Submission – 6.7 Outline Landscape and Ecology Management Plan v5.0 (Clean) [REP7-132]

KCC has limited comments on the Applicant's latest Outline Landscape and Ecology Management Plan (OLEMP) submitted at Deadline 7.

However, the species monitoring needs to also inform the management plan reviews/advisory board. Habitat is being created to support the species present within the site so there is a need to ensure that the species continue to be present when reviewing the management plan. Species monitoring has been proposed by the Applicant but it is not set out in the OLEMP like it is for the habitat establishment monitoring in Table 4.1.

Deadline 7 Submission – 9.167 Draft Section 106 Agreement – Kent County Council [REP7-176]

The Applicant's draft Section 106 (s106) Agreement with Kent County Council submitted at Deadline 7 includes the following schedules:

1. Officer Support Contributions
2. Severance Contributions
3. Payments to the Council - Enhancement of the Kent Downs Area of Outstanding Natural Beauty (AONB)
4. Heavy Goods Vehicles (HGV) Restrictions
5. Low Noise Surfacing
6. Council's Obligations



Officer Contributions

It is reassuring that the Applicant acknowledges the resource burden a Project of this size and scale will place on KCC as a local authority. Therefore, we welcome the inclusion of Officer Support Contributions in the draft s106 Agreement. KCC has been working hard with the Applicant to agree suitable figures which would align with the relevant KCC pay scales, ensuring that as much as possible, KCC will be able to sufficiently fund the resource required to deal with the future input required in the detailed design and implementation of the Project.

Severance Contributions

KCC recognises the Severance Contributions would be an obligation for KCC to deliver a new pedestrian crossing on National Highways' behalf to mitigate the impact of severance on Valley Drive in Gravesend.

KCC remain in discussions with the Applicant on the draft wording and financial figures included within the draft s106 Agreement. At the time of writing, some progress has been made and the Applicant has agreed for these figures to now be index linked.

Low Noise Surfacing

KCC disagrees with the inclusion of this schedule for the following reasons:

- Firstly, the Design Manual for Roads and Bridges (DMRB) does not apply to Kent roads in terms of requirements for road surfacing. KCC is close to finalising its own pavement manual which reflects the needs and realities of local authority roads. We do not take road noise into account. We have coincidentally assessed this road recently as it has been identified by our asset management and operational systems as being a priority for maintenance. We will be resurfacing this road in April 2024 and certainly cannot justify delaying that to tie in with LTC timescales.
- Our view is that the most suitable material here, given the volume and type of traffic, topography etc is HRA. In addition, HRA will have the longest lifespan and provide the best Value for Money to Kent taxpayers.
- Low noise materials such as thin surfacing are not suitable in this location. KCC has experience of using this type of surfacing before and the material has failed. Even if the surfacing was successful in delivering the required noise mitigation, this sort of material has a shorter lifespan, and in the absence of a commuted sum to cover the costs of regular resurfacing, KCC cannot justify its use.
- KCC believes the noise impacts identified by the Applicant's assessment are deemed to only be of a moderate level and to affect only a few properties. Mitigation for these properties could instead be delivered through localised measures such as upgrading windows or acoustic fencing.
- There is also an environmental impact of regularly resurfacing a road if there are alternative means of mitigating the noise impacts.
- Finally, KCC cannot be compelled to follow any future maintenance regime. Even if a thin surfacing solution was laid by either KCC or the Applicant, when it fails, KCC would replace with HRA and from that point the noise impacts would no longer be mitigated.



HGV Restrictions

KCC is relatively content with the contents of this proposed schedule. We welcome the feasibility study which will help to identify the most appropriate restrictions to implement. It is KCC's view that the wording of the schedule needs to be amended to reflect that the most appropriate restrictions may not necessarily be a ban, which is what is currently proposed within the draft agreement.

As mentioned previously, KCC remains disappointed that the draft s106 Agreement does not provide any mitigation or financial contribution towards KCC delivering mitigation measures to address the adverse impacts of the LTC on the wider highway network. Nor does the draft agreement provide the financial contribution needed to mitigate against the impact of the scheme on existing bus services during the six year construction period.

Yours sincerely,

Simon Jones

Corporate Director – Growth, Environment & Transport