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BY ONLINE SUBMISSION ONLY

**Growth, Environment &
Transport**

Sessions House
Maidstone
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Your Reference:
TR010032

KCC Interested Party
Reference Number:
20035779

Date: 11th 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:

- Applicant's submission of updated s106 agreement (s) and any other updated legal agreements
- Comments on any information requested by the ExA and received by D8

Applicant's submission of updated s106 agreement (s) and any other updated legal agreements

As mentioned in KCC's Deadline 8 submission [REP8-138], KCC has been 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.

Whilst KCC has been involved in recent negotiations with the Applicant on the schedules within the draft bilateral s106 Agreement, it remains KCC's view that there are certain obligations that should be included within the s106 that currently are not. KCC has repeatedly made these requests for additional obligations clear to both the Applicant and the Examining Authority.

On 4th December 2023, KCC informed the Applicant via email that unfortunately we would be unable to sign the final draft Section 106 agreement in the current form. While KCC is relatively content with the amendments made to the existing clauses, we continue to be disappointed



that a number of our prior requests have not been incorporated into the agreement. For a scheme of this scale (approximately £10 billion) we consider that the overall Section 106 offer to make the scheme acceptable in planning terms is a long way from what KCC consider is needed to make the scheme acceptable in planning.

The Applicant responded via email to KCC's additional obligation requests (also on 4th December 2023). The Applicant outlined that their overall position on the additional obligation requests is that they do not consider that the items requested are needed - as part of the Section 106 Agreement - to make the scheme acceptable in planning terms as per s106 tests.

National Highways also state that some of the matters requested by KCC are already provided for. For instance, in the case of management of traffic effects during construction these are secured by Requirement 2 of the Draft DCO which requires the implementation of Control Documents such as the oTMPfC (which in turn secures that all works set out within a Traffic Management Plan would be funded by the Undertaker (i.e. National Highways or Contractors)).

The main additional obligation requests that KCC has made, along with the Applicant's responses to these requests and KCC's position on the Applicant's response are outlined in the table below:

KCC's Additional Obligation Request (as of 4 th December 2023)	The Applicant's Response (as of 4 th December 2023)	KCC's Position on the Applicant's Response
<p>An obligation for the Applicant to carry out a programme of pre-emptive works to prevent or minimise damage to the Local Road Network during the LTC construction phase. In the alternative, funding for KCC to undertake such works at National Highway's expense.</p>	<p>The oTMPfC at Deadline 7 [REP7-148] states (paragraph 4.6.3) that <i>The Traffic Management Plan will require the Contractor to conduct a joint inspection with the relevant local highway authority. This inspection will specifically focus on the access routes associated with main works compounds. The objective is to assess the condition of these routes and the major diversion routes detailed in Table 4.5, and thereafter prior to the commencement of construction using all reasonable endeavours to ensure the implementation of works to those routes and their condition is suitable for the anticipated use during construction.</i></p> <p>As set out above, the proposed works form part of the TMP and therefore fall under the remit of works that the Undertaker has explicitly agreed to fund – Paragraph E.10.1 of the oTMPfC [REP7-148] states that <i>National Highways would fund the preparation, implementation and operation of the oTMPfC, including the activities related to the implementation of the TMF. The preparation of the TMPs and the implementation and monitoring of TMP measures would be a requirement of Contractors' appointment and so would be funded by those Contractors.</i></p> <p>National Highways considers that the addition of this clause commits to the pre-emptive works suggested by KCC. The oTMPfC is secured by draft DCO Schedule 2 Requirement 10 and would be delivered through a Traffic Management Plan (TMP) which must be substantially in accordance with the oTMPfC.</p>	<p>However, KCC is concerned that the use of "reasonable endeavours" does not provide enough assurance that strengthening works prior to the start of LTC construction will be undertaken. Furthermore, paragraph 4.6.3 of the oTMPfC only covers for access routes associated with the main works compounds. This does not address KCC's concerns that local rat running will result in other local routes becoming obliterated as a result of the LTC construction.</p> <p>In 2021 KCC undertook a Road Asset Impact Assessment of the impacts of the LTC construction works on its local highway network. That assessment identified that a two year programme of pre-emptive strengthening works (totalling approximately £2.5 million) was required to prepare Kent's highway network. This work was shared with National Highways at the time and it is disappointing the positive joint working that took place has not resulted in the Applicant committing to fund the £2.5 million required to ensure the local highway network is in a robust condition to handle the pressures of the LTC construction. The current wording of the oTMPfC does not provide KCC with the confidence that any costs to pre-emptively strengthen or repair the network will be sufficiently met by the Applicant. As outlined in our Deadline 8 submission [REP8-], we have additional concerns that the overall decision making authority of the TMF would lie with National Highways.</p>
<p>An obligation that National Highways should fund KCC to carry out identified mitigation measures on the Local Road Network (LRN) as identified through the Wider Network Impact (WNI) study (details of mitigation schemes including costs are provided in Appendix B of KCC's D7 submission). The combined cost of all the proposed mitigation is estimated at £23.3m.</p>	<p>As set out within the SoCG and in response to the Local Impact Report and Written Representations, National Highways agrees that there are some likely increases in traffic across the network, which will in part be caused by the Project, but not wholly, and this is set out within the Transport Assessment and traffic modelling data issued to Kent County Council. National Highways recognises that as a result of the Lower Thames Crossing opening, people will choose to make different journeys. In many places on the network, and within Kent, this will lead to beneficial transport impacts on the network, and in some cases will lead to adverse transport impacts. Overall, the benefits on the road network outweigh the adverse impacts, and this is reflected in the positive economic benefit of the Project within Kent.</p> <p>National Highways has worked with Kent County Council to fund a study to identify the impacts of the Project on the Kent road network and to assess the business case of potential interventions to optimise the network. The outputs of the WNI Study have allowed Kent County Council to make informed representations during the DCO examination. National Highways does not agree that the output of this study should be a requirement for National Highways to fund all of the proposed mitigation identified by the WNI Study, rather that the findings will enable Kent County Council to develop more advanced business cases over the course of the next 10 years through existing processes.</p>	<p>As outlined within KCC's Deadline 7 submission [REP7-198], KCC reminded the Examining Authority (ExA) of its position on the policy basis for requiring appropriate mitigation. This is in the context of the Applicant's overall position, based on its interpretation of the provisions of the National Policy Statement (NPS) for National Networks, that it is under no obligation to mitigate impacts caused by additional traffic. The Applicant considers that its obligations are limited only to mitigation for severance, accessibility and safety.</p> <p>It is on that basis that the only measure of mitigation currently proposed in the draft Section 106 (S106) for KCC's network is a single pedestrian crossing on Valley Drive.</p> <p>KCC contends that there is no basis for such a limited view. Instead, a proper reading of the NPS indicates clearly that appropriate mitigation for effects on traffic congestion should properly be required from the Applicant.</p> <p>Whilst KCC has welcomed the funding from National Highways to undertake the WNI study, it is KCC's position that provision for funding (estimated £23.3 million) of these mitigation measures should be provided by the Applicant through the s106 Agreement. At the very least, the Applicant should provide funding for KCC to develop more advanced business cases over the next 10 years to then bid for funding through existing and future process. It must be clearly understood that KCC does not and will not have to revenue funding available to develop these schemes otherwise.</p>

<p><i>KCC has developed an improvement scheme for the A229 Blue Bell Hill to mitigate the existing situation as exacerbated by the effects of the LTC. KCC have requested a Requirement within the DCO for National Highways to carry out the A229 Blue Bell Hill Improvement Scheme at its own expense in the eventuality that the Government does not provide funding for its delivery. KCC welcomed the Network North announcement of the potential for 100% for the Large Local Majors (LLM) schemes and has since received confirmation that the Bluebell Hill scheme can progress to Outline Business Case stage. However, KCC is not able to fund the development of the Outline Business Case. To allow KCC to continue to develop the scheme for consideration for LLM funding, the Applicant should contribute to the Outline Business Case (OBC) funding gap (approximately £3m towards the cost of the OBC) by June 2024 to allow KCC to meet its current programme.</i></p>	<p>As set out within the SoCG and in response to the Local Impact Report and Written Representations, as well as discussed within hearings, National Highways does not agree that it is appropriate to secure the funding for Blue Bell Hill as part of the DCO consent or through accompanying S 106 Agreements, including the approach to the OBC.</p>	<p>KCC remains disappointed by the Applicant's reluctance to commit to any financial contribution towards the mitigation required for Blue Bell Hill, including providing even a £3 million towards the development of the OBC.</p>
<p><i>An obligation for National Highways, following consultation with KCC, to identify and fully fund mitigation to local bus services which are disrupted because of temporary works during construction. This would include a financial contribution of £80,000 due to delays arising from construction traffic management measures as set out in the Transport Assessment (APP-529). In addition, KCC Public Transport requires a further £80,000 to cover the temporary works that may impact bus services but which the Transport Assessment [APP-529] cannot determine at this stage. This totals a potential contribution of £160,000 for public transport.</i></p>	<p>When assessing the impacts of the Project, the Applicant has taken into account the impacts to public transport services to then determine sufficient controls to manage those impacts.</p> <p>The outline Traffic Management Plan for Construction (oTMPfC) [REP7-148] details the mechanisms throughout the document which would be in place (such as the Traffic Management Forum, Plate 3.2) which would allow for discussions with public transport operators and local authorities, such as KCC Public Transport Team to take place on matters such as appropriate mitigation for public transport impacts during construction.</p> <p>When developing the Traffic Management Plan (TMP), specific measures are outlined to address and minimise the impacts on public transportation, including public transport users and operators (set out in Table 2.3 of the oTMPfC). These measures are designed to reduce the impacts on public transport users and operators, to a minimum, demonstrating a commitment to maintaining the service and accessibility of public transportation during the construction of the Project.</p> <p>Alongside the planning process and the implementation of controls, monitoring (as set out in paragraphs 2.4.8 – 2.4.24 of the oTMPfC) will be put in place. The results of this monitoring would be discussed within the Traffic Management Forum, as would the development and refinement of appropriate mitigation where required. Public Transport operators as well as local authorities would be able to recommend mitigation packages at the TMF which would be duly discussed and considered.</p> <p>The Applicant therefore considers that the proposed financial contribution is effectively secured and would be applied if evidence and agreement is presented that interventions are needed to resolve issues. By securing it in this way, the amount of funding would not be capped to £80,000 or £160,000. The approach to TMF / TMP would mean that the funding would be held by the Applicant, and would be applied based on evidence of effects and through consultation with KCC.</p>	<p>As outlined in KCC's Deadline 8 submission [REP8-138], KCC need a financial contribution 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. However, KCC is concerned that leaving this to the Traffic Management Plan 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.</p> <p>We remain unsatisfied with the Applicant's response as it fails to give KCC the assurance needed that the impacts already identified by KCC's Public Transport team will be mitigated pre-emptively, reducing the level of impact and maintaining a reliable bus service for residents and local businesses.</p>

<p><i>An obligation for National Highways to provide a sufficient financial contribution for the implementation of traffic management measures identified through the Traffic Management Plan and Traffic Management Forum.</i></p>	<p>For the avoidance of doubt - Paragraph E.10.1 of the oTMPfC [REP7-148] states that <i>National Highways would fund the preparation, implementation and operation of the oTMPfC, including the activities related to the implementation of the TMF. The preparation of the TMPs and the implementation and monitoring of TMP measures would be a requirement of Contractors' appointment and so would be funded by those Contractors.</i></p> <p>We are aware that a key concern is <u>timescales</u> for the implementation of measures, and <u>responsibility for approval</u> of the measures secured by the TMF.</p> <p>To confirm, the Contractor cannot start works until the Secretary of State has approved the Traffic Management Plan (TMP), and as such it is in the Contractor's best interest to implement measures secured by each TMP quickly. Works cannot start until the measures are in place.</p> <p>Regarding responsibility for approvals - During the development of the TMP (i.e. in advance of the works) KCC will be a member of the TMF and would be consulted in the development of the TMP. Any matters that are not agreed upon would be escalated to the Joint Operations Forum to which KCC would be part of to raise their matter of dispute. If the matter is not resolved following the outcome of the JOF, National Highways is required to include written representation to the SoS who as the final decision maker – Paragraph 2.3.5 of the oTMPfC states that <i>The Contractor must include copies of any representations made and a written account of how any such representations have been taken into account, with the TMP submitted to the SoS for approval, as per Schedule 2, paragraph 20 of the draft Order (Application Document 3.1).</i></p> <p>If there is an issue on KCC's network resulting from the works - In the event that the measures implemented prove ineffective, requiring additional measures beyond the scope of the approved TMP, an update of this would be carried out, as detailed in para 3.3.23 of the oTMPfC. National Highways has also looked to secure a comprehensive monitoring system and paragraphs 2.4.22 to 2.4.25 set out the process and parameters for monitoring which will ensure measures are brought forward. Where those measures necessitate an updated TMP, a further TMP must be submitted to the SoS. There is also an explicit requirement in the oTMPfC (para 2.4.25) which states <i>“where requests for traffic measures to be modified arise during feedback from the TMF [Traffic Management Forum], National Highways would give due consideration to any such request, and where necessary obtain appropriate approvals for any modifications.”</i> National Highways is therefore confident that the proposed measures are proportionate and go above and beyond precedents set by other projects.</p> <p>On the matter of timing - In practical terms during the construction period there are a series of operational control measures that the contractor could implement and would be in the remit of the TMP – for example if there was an issue with traffic congestion along the A226 the contractor could alter their deliveries to avoid peak hours or hours that the monitoring data is identifying to avoid or reduce the physical length of measures should the works allow it, or timing of temporary traffic signals. The monitoring system is to inform appropriate measures and in the first instance this would be operational measures rather than any physical interventions. What National Highways has set up and committed to via the TMF is a forum that brings stakeholders together and use appropriate monitoring data as well as local knowledge from the local authorities to make informed decisions on how best to plan the works or modify should it be required.</p>	<p>As outlined above, KCC is concerned that leaving the implementation and monitoring of the TMP measures to the appointed Contractors is a risky strategy. There is no confirmed funding for the Traffic Management Forum (TMF) so any requests could just be refused by National Highways and/or the Contractor. It is also imperative that Local Highway Authorities have the final say over what traffic management measures are needed on their network and have assurance that associated costs will be covered in full by the Applicant.</p>
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Comments on any information requested by the ExA and received by D8

Deadline 8 Submission – Kent County Council’s Deadline 8 Submission – Post-event submissions, including written submissions of oral comments made at the hearings held 20 to 28 November 2023 and Comments on Applicant’s submissions at Deadline 7 [REP8-138]

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’s Deadline 8 submission [REP8-138] confirmed that a draft Side Agreement had been provided by the Applicant, as of the 28th November 2023. KCC has reviewed the draft Side Agreement and is continuing to negotiate with the Applicant on a number of concerns regarding the proposed content. It is hoped these concerns can be easily resolved and the agreement will be signed and sealed by both parties shortly after the Examination, if not before.

Yours sincerely,

Simon Jones

Corporate Director – Growth, Environment & Transport