

**Gravesham Borough Council**  
**Lower Thames Crossing**  
**Deadline 9 submission**  
**(IP Ref: 20035747)**

**Deadline 9 (D9)**

For receipt by the ExA of:

- Comments on responses to further ExQ (if applicable)
- Applicant's final documents:
  - o dDCO, with Statutory Instrument validation report. draft Control Documents.
  - o Book of Reference (BoR) and schedule of changes. Statement of Commonality.
  - o Status of Negotiations/Compulsory Acquisition schedule.
  - o Status of Negotiations with Statutory Undertakers. National Policy Statement (NPS) tracker.
  - o Final signed and dated s106 agreement(s) or any other final legal agreements. Stakeholder Actions and Commitments Register (SAC-R).
  - o Consents Position Statement
  - o Errata, if applicable
- Comments on Applicant's submissions at D8
- Comments on any information requested by the ExA and received by D8
- Any further information requested by the ExA under Rule 17 of the EPR

**Intended submissions at D9a**

Gravesham intends to submit at Deadline 9a:

- Final Position Statement
- Updated Principal Areas of Disagreement Summary Statement
- Note covering any outstanding matters and anything arising from D9 submissions

**Update on amendments to draft DCO**

Attached as Appendix 1 is the Council's updated list of amendments to the draft DCO, updated following the consideration of the Applicant's D8 Documents. It replaces a version of the list which was sent to the Applicant (but not submitted to the Examination) at Deadline 8.

**Update on proposed changes to Control documents**

Attached as Appendix 2 is a revised version of the proposed Changes to the Control documents which replaces the submission at Deadline 8.

**Update on S.106 and SACR**

The section 106 agreement has now been, reluctantly, signed, after considerable negotiations and is being submitted by the Applicant.

One area of concern to the Council is that it may not be able to recover all reasonable costs for staff time over and above what has been allowed for in the s.106 agreement. Accordingly, it is proposing a new commitment in the 7.21 Stakeholder Actions and Commitments Register v6.0 [[REP8-090](#)]

#### **New Commitment: Reimbursement of reasonable officer costs**

1. Paragraph 2 applies if a local authority is required to deal with any Relevant Matter that is directly related to the Authorised Development and the local authority is unable to recover its costs in doing so under a section 106 planning obligation or other agreement entered into by National Highways.
2. National Highways shall pay to the Council the actual costs of dealing with the Relevant Matter at an hourly rate notified by the Council and evidenced by timesheets or other similar records provided to National Highways by the local authority in question within 30 working days of the time being incurred.
3. In the event that there is any dispute over a payment due under this commitment, the amount of any such payment, or the hourly rate applied, the matter shall be referred for dispute resolution as if it were a dispute under any agreement or unilateral undertaking containing planning obligations in respect of the local authority in question.

In this commitment:

“Relevant Matter” means any consultation, application, request for agreement or other similar matter instigated by National Highways or its contractor under the development consent order; and any additional enforcement costs which the Council can reasonable demonstrate arise as a result of the Authorised Development.

#### **Update on Cascades land and contamination issue**

The Council is still awaiting to receive the draft Heads of Terms to enable the outline deal to be sorted, despite the Applicant having said that an agreement was likely to be reached by the end of the Examination. This will be picked up in the Final Position Statement if no progress has been made. Advice has been taken on the contaminated land issue from our consultants, who are very concerned about the potential implications if there is serious contamination. This also has implications for timescale on creation of new leisure facilities. Any agreement must require the Applicant to have carried out investigations and any remediation required.

#### **Comments on D8 submissions**

##### **Comments on the Applicant’s Comments on Interested Parties’ Submissions at Deadline 6A [[REP8-118](#)]**

GBC notes that the Applicant contends REP8-118 (section 2) that the guidance in para 4.6 of NN NPS absolves it from any need to undertake sensitivity testing in relation to the implications of out of date local plan and housing monitoring data in Gravesham and adjoining districts being used as inputs to the NTEM traffic growth projections. However, when that para is read in full, including the need for a local transport model to “*provide sufficiently accurate detail of the impacts of a project*” and that modelling should “*include appropriate sensitivity testing to consider the impact of uncertainty on project impacts*”, and that guidance is then applied to the facts here, where no one has disputed that there is a marked divergence at a local (rather than national) level between the data that was an input to the NTEM growth forecasts and the data that local planning authorities are required to use when planning to meet housing needs, GBC maintains that the ExA and the SoS should be concerned to explore the reasons for that divergence and what it means for the robustness of the modelled impacts of the LTC.

As an indication that para 4.6 of NN NPS should not be read as narrowly as the Applicant seeks to suggest, GBC has referred to the genesis of the NN NPS and to the Government Response to Public Consultation (Dec 2014) - National Networks National Policy Statement: Government Response to Public Consultation (publishing.service.gov.uk)

#### **“National road and rail demand forecasts**

*4.14 We agree that national demand forecasts, while a useful indicator of future demand and national need at an aggregate level, should not be the sole basis for decisions to justify need for specific schemes. The approach in the NPS has been revised to make clear that local transport models will be used for individual schemes and appropriate sensitivity testing needs to happen to consider the impact of uncertainties. We have clarified the role of national traffic forecasts in the context of planning inquiries for individual schemes to this effect.”*

In GBC’s view, this Government response suggests that the Government was not seeking to exclude appropriate sensitivity testing at the local level.

#### **Comments on the Applicant’s Comments on Interested Parties’ Submissions regarding Wider Network Impact at Deadline 7 [REP8-123]**

Gravesham and the Applicant disagree on the relevance of para 5.214 of NN NPS (discussed below) but this should not obscure a more fundamental disagreement. The key issue is the application of the guidance in paras 5.202 (“*The consideration and mitigation of transport impacts is an essential part of Government’s wider policy objectives for sustainable development*”) and 5.215 (“*Mitigation measures for schemes should be proportionate and reasonable, focused on promoting sustainable development*”). The Applicant seeks to argue that mitigation is not required unless it is to address problems of safety, accessibility, severance, or an environmental impact (see paras 2.4.6, 2.4.23, and 3.2.1 of REP6-092). If that were the case, it is remarkable that para 5.215 of NN NPS does not say so. The reality is that those examples are cases where mitigation is expected but they are not a closed list. Any transport impact of a scheme might require mitigation and whether it should be mitigated or not requires an assessment of what is “*proportionate and reasonable*” in the context of promoting sustainable development. A scheme which causes congestion to a part of the network may well need to mitigate that impact, depending on the severity of the congestion and the feasibility of mitigation measures to address it.

The Applicant's attempt to draw a distinction in principle between network improvements and 'ordinary' development (most recently articulated at para 2.1.2 of t REP8-123) is unsupported by policy and is unsound. If a junction or link is overloaded by the addition of traffic attributable to the undertaking of development, it is immaterial whether that traffic derives from a new housing development nearby or from the provision of a network improvement that has allowed existing traffic to re-route to that junction or link. Traffic is traffic, whatever the reason why it is on the network. If that traffic is attributable to the carrying out of development which falls to be considered under the PA 2008 regime, there is nothing in the advice in NN NPS to say that it should not be included in any consideration of whether mitigation for its impacts would be "*proportionate and reasonable*."

On the disagreement about para 5.214 of NN NPS, GBC has rehearsed its position many times, including in REP6-128. The Applicant is wrong to claim (in para 2.1.2) that the heading on 'SRFIs' is "*directly above paragraph 5.214 of the NNNPS*". It is not. It is directly above para 5.213. The Applicant's suggestion (in Appendix A) that "*strategic road and rail network proposals, of course, do not require travel plans during the operational phase because they are not a place of employment*" avoids the fact that such proposals may be places of significant employment during their construction phase (as is the case for the LTC) and there is nothing in either para 5.208 or 5.218 of NN NPS to suggest that they are only addressing the operational phase in requiring travel plans (and para 5.201 would suggest the reverse).

Perhaps the most telling indication that para 5.214 of NN NPS is intended to apply to all national networks projects comes from the drafting of the proposed revised NN NPS (March 2023). The equivalent to para 5.214 of current NN NPS is to be found in para 5.281 of draft NN NPS. That para is clearly not limited to SRFIs. If the Applicant is correct, the simply re-positioning of this advice as between the current and the draft NPS has worked a fundamental change of policy so as to require a wholly new approach to mitigation for road (and rail) network improvements, which has hitherto not been the case. This apparent major shift of policy, imposing wholly new burdens on the road and rail sectors, is nowhere explained as such. GBC suggests that the reality is that there has been no shift of policy and that the draft NN NPS simply places the relevant guidance in the 'decision-making' section, where it more naturally belongs.

### **Response to Action Point 1 following ISH11**

*[To the Applicant] The Levelling-up and Regeneration Act 2023 (LURA) - section 245 (5) & (6)(a) Section 245 (5) & (6)(a) of LURA, will amend the Countryside and Rights of Way Act 2000 in respect of the "general duty" imposed on Public Bodies dealing with functions in an AONB. Please provide a commentary on the effect of this for the Development and the assessments which have been submitted. In addition, provide a view as to the effect of the new "general duty" on the policy framework in the NNNPS (paragraphs 5.150 - 5.153). In particular, please consider the use of the wording "where possible" in the Policy and "must seek" in LURA. Please set out reasons for conclusions that the amended "general duty" does or does not affect the application of policy.*

*Other IPs may respond by D9.*

The Applicant responded to AP1 in Annex A of REP8-110 (section A.2). GBC does not agree with the Applicant that the new duty goes no further than the existing policy guidance on AONB matters in NN NPS such that the Applicant's previous assessments can be said to fully meet the requirements of the new duty.

The Levelling Up and Regeneration Act 2023 received Royal Assent on 26 October 2023. One of the provisions coming into force on 26 December 2023 (in accordance with s.255(9)(b) LURA 2023) is s.245 LURA 2023. S.245(6) LURA 2023 amends s.85 of the Countryside & Rights of Way Act 2000 by adding a new sub-section (A1) to impose a new duty as follows: S.85(A1) *“In exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty in England, a relevant authority other than a devolved Welsh authority must seek to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty.”*

S.85(2)(a) CROWA 2000 defines a *“relevant authority”* so as to include a *“Minister of the Crown”*. This means that the new duty to seek to further the purpose of conserving and enhancing the Kent Downs AONB will apply to the Secretary of State from 26 December 2023 onwards and so will apply when the Secretary of State comes to make his decision on the Application.

The Secretary of State for Environment Food and Rural Affairs will be empowered by s.85(1A) CROWA 2000 from 26 December 2023 to make regulations which make provision for how a relevant authority is to comply with this new duty but at present no such regulations have been made. The new duty is not, however, contingent on the making of such regulations.

GBC considers that the new duty will mean that the Secretary of State should give greater weight to the need to ensure that the AONB is conserved and enhanced and that impacts on the AONB are avoided, minimised or adequately mitigated, or where they cannot be mitigated any residual impacts are compensated for so that the overall effect of the development on the AONB is one that achieves conservation or enhancement of its natural beauty so far as is possible.

Whilst GBC notes that the new duty is not absolute but requires that the relevant authority *“must seek to further”* the stated purpose, GBC considers that this imposes an imperative that requires as much as possible to be done to achieve that purpose when considering the merits of the Applicant’s proposal and its effects on the AONB. GBC does not agree with the Applicant that its general argument that the benefits of the LTC outweigh its adverse impacts (a view not shared by GBC in any event) provides any basis for not complying with the new duty, in circumstances where the Applicant could take practical measures to conserve and/or enhance the AONB. In other words, the new duty means that the Applicant must do as much as it can, within the context of providing the LTC, to further the conservation and/or enhancement of the AONB.

GBC notes that the Applicant has agreed a fund of £4.24 million for compensatory measures elsewhere in the AONB but does not agree that this is a sufficient response to the new duty. GBC considers that the new duty reinforces the case that GBC has already advanced for more to be done in relation to the design and landscape treatment of the two green bridges in the AONB (at Thong Lane (south) and Brewers Road) to better integrate those structures into the AONB and to reduce the increased severance effects of the LTC on the AONB (by widening of the A2 corridor, by removal of the vegetated central reservation, and by major works within the setting of the AONB at the A122/A2 junction). GBC has set out its proposals for such further measures in REP8-129. GBC notes that the AONB Unit is also not satisfied with the Applicant’s proposals for the green bridges crossing the A2 within the AONB. GBC also refers to its response to AP7 following ISH11 (below).

## **Response to Action Point 2 following ISH11**

*[To the Applicant] Local Landscape Character Area boundaries Provide clarity as to any adjustments which were made to Local Landscape Character Area/ Sub Area boundaries in respect of the assessments prepared for the 2020 Application and the current application. If any changes were made in 2020 and/or 2023, please set out detailed reasons for this.*

The Applicant's response is in Annex A of REP8-110 (section 3).

It is GBC's view that the Applicant's response does not support the changes they made to the boundary between the Shorne sub-area and Cobham sub-area LLCAs in their 2020 and 2022 assessments.

The Applicant changed the boundary between the LLCAs for their 2020 LVIA, and it is clear that the change in boundary position influenced the landscape Sensitivity and Magnitude of effect of the proposals on these areas, and thus altered the findings of the landscape assessment of these two LLCAs.

In their post-event submission for ISH11 (REP8-110) the Applicant now states the reasons for the change in the 2020 LVIA are not known (para A.3.4). This being the case, the Applicant has not in fact provided a coherent explanation for continuing to use the changed boundary (barring one minor further revision).

The Applicant's response then goes on to explain a further change in the boundary made between the assessment of 2020 and 2022. The Applicant's explanation includes the prominence of the HS1 corridor and A2 corridor from the southern fringes of Shorne Woods Country Park as one of the reasons for moving the LLCA boundary. Document 6.2 Environmental Statement – Representative Viewpoints – Winter and Summer Views (1 of 8) at Figure 7.17 Viewpoint S-13 Sheet 3 of 3 clearly shows the significant effect of the wooded central reservation on this area, and its role in forming a strong boundary. It is therefore our view that the LLCA boundary should be reinstated. It is noted that the Applicant has provided a new 'without prejudice' assessment on that basis in Appendix B of REP8-110. This is addressed under Action Point 4.

NB we have previously responded to the effect that the 2020 LVIA was underassessed.

#### **Response to Action Point 4 following ISH11**

*[To the Applicant] Kent Downs AONB landscape impact assessments*

*On a without prejudice basis, provide an assessment using the published Kent Downs AONB Unit landscape character area/sub areas boundaries in addition to the assessment already provided by the Applicant using adjusted boundaries. In addition, you may provide a commentary with reasoning setting out whether or not you consider that this alternative assessment could/should be adopted by the ExA.*

*Other IPs can respond at D9.*

The Applicant's response to AP4 is in Annex A of REP8-110 (section A.5) and in Appendix B of REP8-110.

Appendix B is a substantial document running to over 30 pages and includes a multiplicity of professional judgments. GBC's landscape consultant has had insufficient time since sight of this new work to complete a review of it and, as a result, the comments below are initial and any further submissions will be made at D9a.

I do not agree with the commentary in Table 1.3 regarding Shorne LLCA; the LLCA has not been severed from the rest of the AONB landscape to the south by the A2 road corridor,

because the wooded central reservation forms an important backdrop to the LLCA, it helps contain the effects of the A2 and makes a valuable contribution to the wooded landscape character of the AONB.

Re Table 2.3 Effects on Cobham LLCA during construction; I agree with the assessment of Magnitude and Significance of effect (consistent with our previous comments);

Re Table 2.3 Effects on Shorne LLCA during construction; I disagree with the assessment of Magnitude and Significance of effect. We have previously commented to the effect that the Magnitude should be Major Adverse and the Significance of effect should be Very Large Adverse, as were reported by the Applicant in the 2022 assessment. It would appear that the Applicant is attempting to downgrade the effects on the Shorne LLCA as the central reservation forms the northern boundary of the Cobham LLCA. This boundary is capable of forming a backdrop to the Shorne LLCA – as it does (see comments above).

Re para A.5.8 of REP8-110, and their point about double counting; the central reservation of the A2 forms the northern boundary of the Cobham sub-area LLCA. However, it is a matter of fact that it also runs along the southern boundary of the Shorne sub-area LLCA, and the central reservation does have two sides. Even though it forms the northern boundary of the Cobham LLCA, it cannot be ignored in an assessment of the Shorne LLCA, as it forms an important backdrop and screen.

Table 2.3 Shorne LLCA – the Applicant’s commentary re effects during construction are unhelpful in confining the landscape effects to the eastbound carriageway of the A2. The effect of the loss of the central reservation and the resulting exposure of the westbound carriageway, together with the removal of vegetation along the northern boundary of HS1 may occur outside of the Shorne LLCA boundary, but their loss will have a significant effect on the greatly increased severance of the landscape and change to landscape character.

## **Response to Action Point 7 following ISH11**

*[To the Applicant] Width of the Green Bridges*

*Please provide a supplement to the response at [REP4-182], giving a commentary as to the feasibility of any scope to widen the Green Bridges which would not significantly alter the linear extent of the structures.*

The Applicant responded to AP7 in Annex A of REP8-110 (section A.7). GBC notes that the Applicant accepts that “*it is possible to widen the central section of a bridge (e.g. to create an inverse hourglass)*” but the Applicant argues (at para A.7.4) against doing so in the case of the green bridges within the AONB because (a) it is claimed to “*exacerbate pinch points on the approaches from a landscape and ecological perspective*” and (b) the required design work and additional construction would “*extend the programme for construction*”. With regard to (a), a widening of the central section of a green bridge would not alter the width of the approaches and it is the Applicant’s case that those widths are adequate to allow ecological connectivity and so far as landscape connectivity is concerned GBC does not accept that greater width in the central section will alter the pinch points that already exist at the approaches. If anything, the greater central width would serve to provide some amelioration of those pinch points. With regard to (b), there is no quantification provided by the Applicant of the likely changes to the construction programme. Given that the implementation of the project is to be delayed by 2 years, the design work involved in widening the green bridges need have no impact on the construction programme, and any extended construction period

would be warranted by the benefits of achieving a more appropriate design for the green bridges at the gateways to the AONB.

### **Response to Action Point 6 following ISH14**

*Worker housing: Applicant [at D8] to provide proposed update of current provision: LAs to provide feedback at D9.*

GBC suggested amendments in reply to the Applicant's proposed changes to the Framework Travel Plan at pages 13 and 14 of its ISH post-hearing submissions [[REP8-126](#)]. GBC's preference is for its proposed new requirement to be added to the DCO, with the proposed amended Framework Travel Plan a second best option. It is crucial to the Council that direct provision of housing accommodation by the Applicant, if it is shown to be required, is an option.

### **Response to changes made to the Stakeholder Actions and Commitments Register at D8**

GBC notes the changes made to the Community Fund commitments. It notes that the Applicant has selected CPI for indexation of funds etc, whereas in its list of proposed amendments to the SACR, the Council proposed (and still supports) the BCIS General Building Cost Index. GBC is content with the changes made to the composition of the Kent Community Fund Panel.