

Maldon District Council – Responses to Examination Authority’s First Written Questions

Submitted 13 February 2023

| ExQ1 | Question to: | Question: |
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| 1. Air Quality and Emissions | | |
| 1.0.1 | CoCC, CCC, MDC, BDC, ECC | <p>Has the Applicant’s Construction Dust Assessment, as set out in Section 6.9 of ES Chapter 6 [APP-073], had regard to the latest guidance and is the method used by the Applicant acceptable? Are the LPAs satisfied with the Applicant’s proposed mitigation in relation to dust as outlined in the Dust Management Plan, Appendix E to EMP [APP-189]? If not, please explain why.</p> <p>MDC is satisfied that the Construction Dust Assessment has been carried out in accordance with DMRB LA105 which is the most appropriate methodology for a large transport infrastructure project like this. DMRB LA105 suggests that detailed mitigation should not be included in the assessment, but in an Environmental Management Plan (EMP).</p> <p>The Dust Management Plan appended to the first iteration EMP includes all the measures MDC would expect to see and covers the measures recommended to monitor mitigation effectiveness which are suggested in DMRB LA105.</p> <p>Consideration of impacts on specific locations and arising from specific activities should be included in the second iteration EMP following discussion with MDC where necessary. It is noted that a commitment to consult local authorities is included in the Register of Environmental Actions and Commitments (REAC) appended to the First Iteration EMP.</p> |
| 1.0.2 | MDC | <p>Does the Council agree with the Applicant’s conclusion in relation to the air quality impacts within Hatfield Peverel and the recent AQMA declarations in Maldon and Danbury? If not, please explain why.</p> <p>Not completely, for the reasons set out below.</p> |

Hatfield Peverel Air Quality relating to existing traffic and congestion at Duke of Wellington mini roundabout junction with A12

NH state in [APP-073] Table 6.2 Key Statutory Consultation Feedback on Air Quality, that modelling studies undertaken and reported in the PEIR and air quality assessments for updated traffic modelling outputs, ‘will not significantly cause air quality impacts in the Hatfield Peverel area’. MDC believe this statement references impacts from construction at locations in the ‘area’ that are modelled as imperceptible-small and from the operational phase up to medium. A medium magnitude impact is an increase of between 2-4 $\mu\text{g}/\text{m}^3$ of NO_2 , but the sensitive receptors in the area are modelled at around 20 $\mu\text{g}/\text{m}^3$. MDC accepts this is below the air quality objective of 40 $\mu\text{g}/\text{m}^3$ and therefore not regarded as ‘significant’ and why no additional mitigation, beyond embedded mitigation identified in the REAC is proposed, given no significant impacts have been identified. In turn, MDC acknowledges that DMRB LA105 para 4.4 states that monitoring shall not be required for projects that do not require mitigation.

However, there appear to be inconsistencies between the air quality assessments and the traffic model, which could have a counter effect on each others’ performance. Separate traffic modelling undertaken by the Applicant, for the project, states the Duke of Wellington mini roundabout operates at Level of Service D (LoS D) and works at capacity off-peak and over capacity at peak times. The Applicant suggests in Table 6.2: ‘the PEIR Workshop conclusions on air quality in 2019 and the 2022 traffic modelling at the Duke of Wellington Mini Roundabout Junction ‘broadly agree’’. MDC however feel this is not conclusive and feel the phrase also suggests a degree of difference. MDC feel there is justification to know the nature of the difference so would like to understand whether they refer to an improvement to air quality forecasts, or a decline?

The traffic flows include elements which originate from the Maldon District, along Maldon Road to the Duke of Wellington Mini Roundabout Junction in Hatfield Peverel and are known to cause traffic stacking at the junction reflected in the LoS D in ‘waiting times’ at the junction in respects of information submitted with the DCO. The ‘made’ Hatfield Peverel Neighbourhood Plan identifies traffic congestion on Maldon Road as a concern for safety reasons and associated poor air quality. MDC does not know the breakdown of the traffic flows at the Maldon Road/Duke of Wellington Mini Roundabout between HGVs, LGVs, vans and cars, despite several repeated requests for the information from NH. A poor LoS D junction to access the A12 that is overcapacity at peak times, therefore in MDC’s view, has the potential to impact negatively on current and modelled air quality and this should be better understood and if significant enough, mitigated against. The significance of this concern for MDC is that Maldon Road where it runs through Hatfield Peverel village, is a

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| | | <p>residential street. Whilst the village is within the neighbouring District of Braintree, MDC remains concerned that the traffic modelling undertaken for the project has not adequately demonstrated that it has taken account of existing settlements in the Maldon District and their role as active and operational housing and employment areas, alongside the further approved housing and employment growth locations that will result in more HGVs, LGVs, vans and car trips generated to access the SRN via the Maldon Road/Duke of Wellington mini roundabout.</p> <p>Hatfield Peverel Junctions 20a and 20b (to close) are the nearest access/exit junctions to Maldon and Heybridge, less than 4 miles to the south-east. The human receptors to poor air quality line Maldon Road at the junction with the Duke of Wellington Mini Roundabout are residential properties, as well as more sensitive receptors including a nursery school facing Maldon Road and the primary school on Church Road, off Maldon Road. There are two zebra crossings on Maldon Road, one very close to the Duke of Wellington Mini Roundabout.</p> <p><u>Maldon and Danbury AQMAs</u> – MDC disagrees with NH conclusions that the construction of the project can categorically rule out having any impact on the AQMAs in Maldon and therefore by relation, the AQMA associated with the A414 in Danbury, in the neighbouring Chelmsford City administrative area. The A414 is the primary LRN connection to the SRN at Junction 18 Sandon on the A12 and through directions on road signage from the Maldon District traffic is encouraged to utilise the A414 to access the A12. All other roads including the Maldon Road (B1019) to Hatfield Peverel are B roads due to width and in some instances weight restrictions. MDC feels that it stands to reason that if NH’s contested modelling is correct in its predictions for limited impacts at the Duke of Wellington Mini Roundabout, then where is the Maldon District originating traffic going to access the A12 (or Maldon District bound traffic leaving the A12) if it is not via the A414 through Danbury and Maldon, which if using Satellite Navigation, or local knowledge would include the classified route which includes Market Hill, Maldon, where the AQMA is situated.</p> |
| 1.03 | CoCC, CCC, MDC, BDC, ECC | <p>Has Table 6.5 of ES Chapter 6 [APP-073] identified all the key relevant local policies that relate to air quality? If not, please identify those that are missing.</p> <p>MDC can confirm that the Environmental Statement has reviewed all relevant key Local Development Plan and Neighbourhood Plan policies that relate to air quality.</p> |

| 2. Biodiversity, Ecology and Natural Environment (including Habitats Regulations Assessment (HRA)) | | |
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| 20.1 | NE, CoCC, CCC, MDC, BDC, ECC | <p>In relation to Applicant’s approach toward biodiversity net gain, are the parties satisfied with this approach and the Applicant’s conclusion? If not, please explain why.</p> <p>It is welcomed that the Applicant has sought to use Natural England’s Metric 3.0 as the basis for its Biodiversity Net Gain (BNG) assessment (April 2022) and that the Applicant has noted that this has been updated since the work was carried out and that Metric 3.1 will be considered for future metric calculations.</p> <p>Contrary to the assertion in the Applicant’s response to the Scoping Opinion from different stakeholders, including Essex County Council and Natural England (ES 6.1 Chapter 9 – Biodiversity - Table 9.2, p12) that <i>“there is no legal or policy requirement for BNG provision for the proposed scheme”</i>, MDC has had statutory Development Plan policy that makes provisions for BNG since 21 July 2017. Unusually for an LPA, the Maldon District LDP was approved by the Secretary of State following a Direction to intervene in plan-making in 2015; it was not adopted by the LPA but has the same legal weight, as set out in Paras 1.18 and 1.19 of the LDP (p5). This policy provision for the Maldon District was therefore around long before the more recent legal provisions being made through the Environment Act 2021 and national policy set out within the NPPF. For the avoidance of doubt, LDP Policy N2 seeks to secure BNG from all developments in the Maldon District, where possible.</p> <p>MDC would argue that whilst at an A12 project scale there may be BNG, the gas main diversion is a separate NSIP as confirmed by the Applicant, albeit being dealt with by the A12 project’s DCO. The diversion of the gas main should therefore achieve BNG in its own right; divorced from the gains otherwise being achieved elsewhere in the A12 project so as not to devalue its own discrete impacts. Whilst it is accepted that the Applicant has had to make practical concessions in 9.10.13 that lost woodland vegetation and trees cannot be replaced <i>in situ</i> due to utility easements and would instead be replaced by native shrub and hedgerow planting, MDC is not satisfied that this should be the only replacement considered to mitigate the impact and achieve BNG as per policy requirements. It is accepted that this would help to repair and soften the scar on the vegetated part of the landscape through Blue Mills Nature Reserve in Maldon District, but it is not satisfactorily demonstrated that it would necessarily achieve BNG in the Maldon District. This is contrary to Policy N2 which seeks for any “new or replacement habitat [be] delivered as close as possible to the development site in order to maintain a viable population locally and avoid incremental and accumulative impact on local ecology. The Applicant should instead be considering where additional planting could take place in the general vicinity that has the freedoms to reach its maturity to strengthen the green infrastructure</p> |

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| | | <p>assets’ biodiversity value that could otherwise receive a net-loss in value, which is contrary to the approved LDP policy. Any trees that are also subject to a Tree Preservation Order (TPO) in the Maldon District should also be replaced with appropriately sized specimens, as close to the location of loss as possible, to protect amenity; just as proposed for the main A12 scheme.</p> <p>MDC is disappointed that despite some selective references to utility easements, the Design, Mitigation and Enhancement measures set out in 9.10 of the ES fail to cover with the same vigour and thoroughness (as other Green Infrastructure assets examined as affected by the A12), the proposed approach for the design, mitigation and enhancement of Blue Mills Nature Reserve and surrounding riparian corridor of the River Blackwater that will be directly impacted by the utility diversion of the gas main. Equally, the only reference to the gas main in the BNG Report - Appendix 9.14 concerns the cross-sections of the River Blackwater; there is no reference specifically to Blue Mills Nature Reserve and MDC is not assured that the BNG approach has adequately examined it. This is compared to other specific places and habitats along the A12 route being mentioned specifically such as watercourses and Colemans Farm Quarry.</p> |
| 202 | NE, CoCC, CCC, MDC, BDC, ECC | <p>Has ES Chapter 8: Biodiversity [APP-076], identified all relevant legislation and policy, in particular local policy? If not, please identify which elements are missing and how this relates to the proposed development.</p> <p>Maldon District Council notes that Maldon District Local Development Plan (LDP) Policies D1, N1 and N2 as set out in Table 9.1, however, MDC is of the view that policies N1 and N2 have been <i>selectively</i> captured. Relevant omissions which relate to biodiversity and are relevant to the A12 proposed development (including the gas pipeline diversion) are:</p> <p>N1 – Presumption against any development which may lead to loss, degradation, fragmentation and/ or isolation of existing or proposed Green Infrastructure.</p> <p>N1 – All development should maximise opportunities for restoration, enhancement, and connection of the District’s Green Infrastructure network throughout the lifetime of the development, both on-site and for the wider community.</p> <p>N2 – If any protected species and/ or priority habitats/ species, or significant local wildlife are found on site, or their habitat may be affected by the proposed development, the proposal must make provision to mitigate any negative biodiversity impacts it may create.</p> <p>Paragraph 6.7 of the MDC LDP clarifies that “Green Infrastructure covers a wide range of green and blue infrastructure assets including open spaces, natural assets and facilities including woodlands, nature</p> |

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| | | <p>reserves, country parks...”. Therefore, the natural assets including Blue Mills Nature Reserve affected by the gas pipeline diversion are covered by Policy N1 and N2. MDC’s policy position is to seek to protect, restore and enhance biodiversity interest (including mitigation for negative biodiversity impacts) with developments seeking to deliver biodiversity net gain where possible. This is covered in more detail in Section 6.3 of the MDC Local Impact Report.</p> <p>Maldon District Council notes the absence of any reference to the Wickham Bishops Neighbourhood Plan (WBNP), which is part of the statutory Development Plan for the District; was ‘made’ in 2021 and parts of the parish at Blue Mills Nature Reserve fall within the Order Limits of the DCO.</p> <p>Policy WBen02 of the WBNP covers Biodiversity and Natural Habitats and this applies in the part of the District including the Blue Mills Nature Reserve that is impacted by the gas pipeline diversion. This policy covers trees, veteran trees and ancient woodland, woodlands, hedgerows and habitats. The policy pathway in respects of development is to seek retention, enhancement and creation, over loss, which it permits only in exceptional circumstances, alongside mitigation with native species. The policy also supports the development of a network of wildlife corridors alongside public rights of way and through links between different types of habitats. This is particularly relevant to the proposed development, where the scheme impacts on the parish around Blue Mills Nature Reserve through the diversion of the gas pipeline.</p> <p>https://www.maldon.gov.uk/download/downloads/id/18555/wbnp_march_2021_final_version.pdf</p> <p>The Maldon District Green Infrastructure Strategy (adopted in 2019) specifically supports the delivery of Policy N1 and N2 of the Local Development Plan. This set out the long-term vision for the Maldon District’s management of Green Infrastructure, published an opportunities map of how the network could be improved, created a set of principles and policies to underpin the network’s creation and enhancement, identified and prioritised key projects, and provided an action plan for delivery.</p> <p>https://www.maldon.gov.uk/download/downloads/id/17559/green_infrastructure_strategy_spd_appendix_a.pdf</p> |
| 20.3 | NE, CoCC, CCC, MDC, BDC, ECC | <p>In terms of ES Chapter 8: Biodiversity [APP-076] and its Assessment Methodology, including scope, approach, assessment of significance, assumptions and limitations and study area, do the parties consider the approach and conclusions to be robust? If not, please explain why and what is required.</p> |

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| | | <p>Maldon District Council is not assured that the assessment methodology has adequately screened, scoped and surveyed the issue of biodiversity in respects of the gas pipeline diversion specifically. The summary of stakeholder engagement in Table 9.1 of the ES does not cover in any detail, the matter of the gas main’s diversion, or the habitats and species that could be affected by it; rather it appears to be an expression of engagement with biodiversity stakeholders about the A12 route matters only. MDC has significant concern that the biodiversity assessment methodology for the gas pipeline diversion has not been subject to the same principles of engagement, survey, or thoroughness which will result in impacts and outcomes detrimental to habitats and species along the diversion route.</p> <p>MDC understand from landowners at Blue Mills Nature Reserve that no surveys by the Applicant or their contractors have taken place on their land, despite a tranche of it being directly affected through vegetation clearance, protected species impacts and river crossing challenges in association with the diversion’s construction. Seasonal surveys on behalf of MDC for the Local Development Plan Review that were started in 2021 have however shown the nature reserve and land along the riparian corridor to have sufficient value to be recommended to be designated as a Local Wildlife Site, with several species of flora and fauna cited as the basis for that value. This omission in the ES is unacceptable and should be rectified before the Development Consent Order is granted to ensure biodiversity impacts inform the gas pipeline’s diversion route and method of construction to avoid loss and disturbance and provide commensurate mitigation of harm that cannot otherwise be avoided.</p> |
| 20.4 | NE, CoCC, CCC, MDC, BDC, ECC | <p>Are the parties satisfied with Applicant’s approach towards mitigation of impact upon protected species? If not, please explain why.</p> <p>Maldon District Council has considered Table 9.6, including the reference to the inclusion of surveys for Dormice for the gas-main diversion only. The Council has no view on the proposed mitigation approach and would defer to the advice of Natural England.</p> |
| 20.5 | NE, CoCC, CCC, MDC, BDC, ECC | <p>Are the parties satisfied with the Applicant’s approach?</p> <p>The Whetmead Local Nature Reserve and Local Wildlife Site is on the edge of the Braintree District, within Witham Parish, which borders the Maldon District; the boundary being the watercourse of the River Blackwater. Whilst Maldon District Council fully supports the principle that new habitats should be created to offset the impact caused by the proposed development at Whetmead; Maldon District Council would recommend that this is addressed at a suitable scale relatable to the relevant habitats. The Applicant should therefore also assess if suitable offset opportunities exist in the Maldon District and not merely look to contain that offsetting in the Braintree District.</p> |

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| 3. Climate change | | |
| 4. Compulsory Acquisition, Temporary Possession and Other Land or Rights Considerations | | |
| 5. Draft Development Consent Order (dDCO) | | |
| 5.0 Requirements | | |
| 6. Gas pipeline diversion | | |
| 7. Geology and Soils | | |
| 7.0.1 | CoCC, CCC, MDC, BDC, ECC | <p>In relation to best and most versatile land, are the LPAs satisfied with the approach and conclusions taken by the application with regards to unsurveyed agricultural land? If not, please explain why?</p> <p>MDC has considered its own Development Plan Policy D2: Climate Change and the Environmental Impact of Development. Clause 11 seeks that development must take into account the economic and other benefits of preserving the best and most versatile agricultural land and where possible poor-quality land should be prioritised over higher quality land. Having reviewed the ES, MDC is generally satisfied with the approach and conclusions with regards to unsurveyed agricultural land; noting it amounts to around 2% of all the land in the Order Limits.</p> |
| 8. Good Design | | |
| 9. Health | | |
| 10. Historic Environment | | |
| 10.0.1 | The Applicant Historic England Local Authorities | <p>There are a number of archaeological remains, in and close to the Order Limits, which would be adversely affected by the construction of the Proposed Development. In addition, please provide more detailed justification for concluding moderate adverse residual effects from the Proposed Development on the archaeological remains [APP-074]. Historic England and LAs to comment.</p> <p>Applicant – what consideration has been given to the effect of the Proposed Development on all these remains combined?</p> <p>Are parties satisfied with the approach, scope and conclusions of the archaeological assessment, and proposed mitigation?</p> <p>MDC notes ExQ1 11.0.1 is specific to ‘archaeological remains’ only and not built heritage and the historic landscape (as the three cultural asset considerations). The approach, scope and conclusions archaeological</p> |

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| | | <p>remains have been discussed and agreed with Historic England, responsible for advising on Scheduled Monuments (above or below ground) and any above ground Grade I and Grade II* Listed structures. Further, Essex County Council (ECC) is responsible for the Historic Environment Record, as well as being the Local Highway Authority for Maldon District.</p> <p>Having reviewed Table 7.2 <i>Key statutory consultation feedback for cultural assets</i> and Table 7.3 <i>Record of consultation undertaken with key stakeholders</i>, the archaeological fieldwork and mitigation measures undertaken and proposed, are in accordance with Policy D3, Maldon District Local Development Plan 2014-2029. Policy D3 sets out MDC’s approach to archaeological remains including the requirement that where a development may affect such remains an assessment be carried out, including consultation with the Historic Environment Record, to confirm the likely impact of the development, and to confirm likely mitigation strategies. MDC defers to ECC in the assessment of the moderate adverse residual effects of the construction of the proposed development.</p> |
| 11. | Landscape and Visual | |
| 12. | Land use | |
| 13. | Material assets and waste | |
| 14. | Noise and Vibration | |
| 14.0.1 | CoCC, CCC, MDC, BDC, ECC | <p>ES Chapter 12: Noise and Vibration [APP-079], does table 12.4 reflect the latest and most relevant development plan policies? If not, please identify those that are missing.</p> <p>In reviewing Table 12.4, MDC agrees that Policy D1 is a relevant policy, however, Table 12.4 omits Policy D2, which is just as relevant to the matters of noise and vibration.</p> <p><i>Policy D2: Climate Change & Environmental Impact of New Development</i> states that all development must minimise its impact on the environment by incorporating several principles including “Minimising all forms of possible pollution including air, land, water, odour, noise and light. Any detrimental impacts and potential risks to the human and natural environment will need to be adequately addressed by appropriate avoidance, alleviation, and mitigation measures.</p> |

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| 14.02 | CoCC, CCC, MDC, BDC, ECC | <p>Are the LPAs satisfied with the Applicant’s identified methodology as set out in 12.5 of ES Chapter 12: Noise and Vibration [APP-079]? If not, please explain why. In particular, do the parties have any views on the Applicant’s use, approach and conclusions with regards to the use of SOAEL and LOAEL?</p> <p>MDC has no issues with the methodology, but it is disappointing that there are four dwellings within the Maldon District on Braxted Road that will suffer from significant adverse impacts despite embedded, standard and additional mitigation being considered. The significance of the impact comes from the magnitude of the increase in noise levels, in part at least, associated with the realigned Braxted Road, but it should be noted that the absolute level experienced is still below the SOAEL. It is noted that mitigation of the adverse impacts on these properties through use of a low noise road coating on Braxted Road and /use of noise barriers have been considered and discounted and whilst they may not be so significant so as to require an intervention, they will still cause an increased noise impact to Maldon District residents which is not currently present and steps are being taken elsewhere in the project to make the A12 a better neighbour. The assessment still arguably meets the aims of the Noise Policy Statement for England & the National Planning Policy Framework to avoid significant adverse impacts on health and quality of life and to mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development, which MDC notes is also echoed in the National Policy Statement for National Networks. There is obviously no outright requirement to avoid significant impacts at all costs but MDC is dissatisfied at the negative impact on MDC residents in these four dwellings and would ask the Applicant to take some goodwill steps, at the very least, on Braxted Road to reduce the impact.</p> |
| 14.03 | CoCC, CCC, MDC, BDC, ECC | <p>Paragraph 12.5.24 of ES Chapter 12: Noise and Vibration [APP-079]? identifies the Applicant’s consideration of significant effects from construction activities. Are the parties satisfied with this approach as set out? If not, please explain why.</p> <p>MDC accept that the approach outlined is consistent with DMRB LA111, which in turn is informed by <i>BS 5228-1:2009: Code of practice for noise and vibration control on construction and open sites – Part 1: Noise</i></p> |
| 15. Socio Economic Effects | | |
| 16. Traffic and Transport | | |
| 17. Water Environment | | |
| 17.0.1 | EA, CoCC, CCC, MDC, BDC, ECC | <p>Are the parties content with the Applicant’s Flood Risk Assessment (FRA) and drainage proposals as detailed in Appendix 14.5 [APP-162] and Appendix 14.6 [14.6] of ES Chapter 14: Road drainage and the water environment [APP-081]? If not, please explain why and what additional information is required.</p> |

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| | | <p>MDC set out the position of known flood risk baseline for the Maldon District in Section 6.15 of the MDC Local Impact Report.</p> <p>MDC will defer to Essex County Council as the Lead Local Flood Authority (LLFA) for the district in respects of compliance against the Essex Flood Strategy and to both the LLFA and the Environment Agency in respects of the adequacy of the Flood Risk Assessment from a technical perspective.</p> <p>In respects of Road Drainage and the Water Environment MDC feel that Anglian Water should also be included as a consultee on the DCO Requirement 11 for surface and foul water drainage as the statutory sewerage undertaker for the Order Limits. This is to ensure that designs for the management of the surface water do not prejudice the operation of Anglian Water assets including currently unknown connections to the public sewer network and the consequent impacts on the capacity of their network to serve existing customers and future development.</p> |
| 17.02 | EA, CoCC, CCC, MDC, BDC, ECC | <p>ES Chapter 14: Road drainage and the water environment [APP-081], do the parties agree that section 14.8, baseline conditions, is an accurate assessment of the current situation? If not, why not.</p> <p>MDC will defer to Essex County Council as the LLFA and the Environment Agency in respects of the adequacy of the Section 14.8.</p> |