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**My ref:** LTC/AoC  
**Your ref:** TR010032  
**Date:** 6 November 2020

Dear Eleanor,

**Application by Highways England for an Order Granting Development Consent for the Lower Thames Crossing - Adequacy of consultation request**

Thank you for your letter dated 23 October 2020 requesting views on the adequacy of the pre-application consultation in respect to the Application by Highways England for an Order Granting Development Consent for the Lower Thames Crossing.

PINS invited the Council to advise whether the Council considers that the developer has complied, in relation to the application, with the following duties under the Planning Act 2008 (as amended) (PA2008):

- **Duty to consult - PA2008 – section 42**
  - Section 42 requires consultation with certain persons specified in the Act and prescribed in regulations.
- **Duty to consult the local community - PA2008 – section 47**
  - Section 47 requires applicants to prepare a “Statement of Community Consultation” (SoCC) in consultation with relevant Local Authorities which sets out how the developer intends to consult the local community on its proposals. The developer must then publish the SoCC and undertake statutory consultation in accordance with it.
- **Duty to publicise - PA2008 – section 48**
  - Section 48 requires that details of the statutory consultation be publicised via a series of notices in the local and national press.

Other sections of the Planning Act are relevant along with the MHCLG’s ‘Planning Act 2008: Guidance on the pre-application process’ (2015), the EIA Regulations (2017), and PINS advice notes 2 and 14.

This letter complements the combined letter from Thurrock Council, London Borough of Havering and Gravesham Borough Council, and should be read in association with that document. The purpose of this letter is to give the more local dimension about the consultation process south of the River Thames.

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It is structured with some preliminary background and then an Executive Summary of the conclusions. Further background on the evolution of the scheme is provided for context, followed by a discussion of the consultation process, then the content of the Preliminary Environmental Information Report, the transport modelling and their relationship to the Scoping Opinion. There is also brief mention of Climate change and the Planning Performance Agreement to illustrate other issues.

In preparing its response the Borough Council has also taken in to account section 49 of the PA2008 which requires the applicant in preparing the actual DCO application to 'have regard to any relevant responses'.

PINS also supplied a copy of the consultation report at the same time as its Adequacy of Consultation request, which is very substantial although significant elements in the appendices are pre-existing material from the consultations. The main report (Lower Thames Crossing: 5.1 Consultation Report) is however 2,562 pages long and it has therefore not been possible to consider all of this in great detail in the time available. The failure of Highways England to supply the document in advance, as recommended on page 6 of PINS Advice Note 14, is noted as not assisting the assessment process. It is noted that the appendices cover the 2016 route consultation as well as the two non-statutory consultations in 2020.

We understand that PINS, at this stage, are not seeking GBC's views on the merits of the application. However an analysis of the adequacy of the consultation must include consideration of whether the consultation process provided sufficient information as to the effects of the scheme – it cannot just be a consideration of process and does need to consider content.

The Planning Act 2008 does not lay down a detailed procedure for the carrying out of the consultation exercise and this gives the Secretary of State / PINS broad discretion. However, even such discretion is subject to the principles set out by Stephen Sedley QC as approved by Hodgson J in *R v Brent LBC ex parte Gunning* (1985) 84 LGR 168 and endorsed by the Supreme Court in *R (Moseley) v Haringey LBC* [2014] UKHL 56 per Lord Wilson JSC ("the Gunning principles"), namely:

1. the consultation must be at a time when proposals are still at a formative stage;
2. the proposer must be given sufficient reasons for any proposal to permit of intelligent consideration and response;
3. adequate time must be given for consideration and response, and;
4. the product of the consultation must be conscientiously taken into account in finalising any statutory proposals."

The Borough Council is therefore applying those tests to the consultation process on the basis of the spirit intended for the process, not only whether the letter of the regulations has been met.

On the fourth principle the Council has not had any sight of the application documents as submitted, and therefore cannot comment on whether some of its concerns have actually been addressed in the application material. It can, however, comment on the adequacy of material in the public domain.

Statutory pre-application consultation was carried out under Sections 42, 47 and 48 of the Act between 10 October 2018 and 20 December 2018 for a period of 72 days. The Borough Council responded on 20 December 2018 to that consultation.

Two further non-statutory rounds of consultation have been carried out by the applicant. The Supplementary Consultation ran between 29 January 2020 and 25 March 2020 (extended by one week to 2 April 2020 so 65 days) and the Design Refinement Consultation between 14 July 2020 and 12 August 2020 (30 days). The Borough Council responded to those consultations on 2 April and 12 August 2020 respectively. From the point of view of the public, the distinction between 'statutory' and 'non-statutory' consultation is academic – it is all consultation.

Gravesham Borough Council is the planning authority for the parts of the scheme south of the River Thames. As such it takes an overview on all issues, whether it is directly responsible for them or not, since they potentially impact (positively or negatively) on the residents and proper planning of the Borough.

Historically the Borough Council has dealt with major transport infrastructure projects such as the Channel Tunnel Rail Link (now known as HS1), A2 widening (which actually moved it southwards over a substantial length), and the putative Cliffe Airport. More recently the Council has engaged on DCO applications for Tilbury 2 port facility and Thurrock Energy. The Council is therefore well aware of the sorts of issues and processes (in an overall sense) that major infrastructure projects have to go through.

The Borough Council has received comments from Borough Councillors, Parish Councillors, some environmental bodies and consultants to the Council, on whether they feel from their own particular perspectives that the consultation process has been adequate. These are set out in Appendix 1 and have been taken into account in preparing this response. In broad terms the meetings etc. have been held, but the overall complaint is the lack of information to understand the impacts of what is being proposed. The consultants have also found that they have not had sufficient information to properly advise the Council.

## **Executive Summary**

The Borough Council has carefully considered the overall consultation process, taking into account where relevant the Environmental Scoping Opinion and the 2016 consultation.

### **Section 42: Duty to Consult**

The Borough Council is content that the relevant bodies have been consulted and had the opportunity to make representations at the various stages. The Council is aware that there have been some issues with serving of Notices on those with an interest in land.

### **Section 47: Duty to Consult the local community**

The Statement of Community Consultation (SoCC) has been followed as to process and the Borough Council's comments were taken into account in preparing that document, and in what followed. The Borough Council does have concern that the COVID pandemic should have allowed additional time for consultees to respond, both for the Supplementary Consultation but especially to the Design Refinement Consultation.

Where the Borough Council does have major concerns is over the content of the consultation material and therefore whether consultees have had sufficient information (taking into account the inevitable evolution of the scheme) to allow them take an informed view as required by Regulation 12.

In particular:

- (i) The Preliminary Environmental Impact Report did not contain sufficient information to allow consultees to understand the impacts of the scheme;

- (ii) Environmental Updates during the two years of consultation have not contained substantive amounts of additional information;
- (iii) In particular, the transport modelling assumptions for the purposes of the Environmental Assessment do not cover a reasonable worst case scenario, which feeds through to many of the impacts in the rest of the document and do not follow the clear guidance of the Scoping Opinion 2017;
- (iv) Insufficient feedback has been provided to consultees over the last two years as to how their comments have influenced the development of the scheme;
- (v) There is a justifiable expectation that the consultation information is that which “is reasonably required for the consultation bodies to develop an informed view of the likely significant environmental effects of the development”<sup>1</sup>. In the Council's this has not been achieved.

#### **Section 48: Duty to publicise**

The Borough Council is content that the consultations have been publicised in an appropriate manner although it does have concerns over the length of time given for the on-line only Design Refinement Consultation.

#### **Scheme Evolution**

As would be expected with such a large scale scheme there was an evolution of the design, which in turn implies that the expected environmental impacts may change, for better or worse, and need to be clearly documented. The scheme has been through some significant shifts, and consequential changes to impact, and this section provides an overall context to these changes.

The original study on the possible need for a Lower Thames Crossing was carried out in 2009 for the Department for Transport. This looked at various broad corridors of which the most relevant were A, Dartford Crossing, and C, east of Gravesend. Option B, the Swanscombe Peninsula was ruled out in 2013. In 2016 Highways England (see Consultation Report: Appendix B) looked at route alternatives north and south of the river. It purported to rule out Option A, but a Ministerial statement implied it that was still an option to be considered, causing confusion.

South of the Thames there were alternative routes to reach the A2/M2 known as Western Southern link and Eastern Southern link, both with a possible junction on the A226. A bored tunnel, a cut and cover tunnel and bridge options were also considered for crossing the Thames. For the tunnel options the portals were just south of Lower Higham Road and the North Kent Marshes. The road was a 2 lane dual carriageway and the western option had junction with the A2 that just fitted between the Marling Cross (Gravesend East) and Cobham junctions. The eastern option connected at Three Crutches (M2 J1). In both cases there were east and west facing slips. The Western Option was selected for further development, along with a bored tunnel.

By the time of the Statutory Consultation in 2018 the Lower Thames Crossing had become a 3 lane road with a complex 3 level A2 interchange and with a total rebuilding of the A2 through the Kent Downs AoNB. This will have an extended M2 in the middle and feeder roads for the A289 and A2 into Strood (a local road at that point). There were significant changes to the local highway network (see Consultation Report Appendix M and links therein) to accommodate the junction arrangements. The tunnel portal had moved south of the A226 as a junction with that road had

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<sup>1</sup> The Infrastructure Planning (Environmental Impact Assessment) [Regulations 2017](#) Regulation 12

been ruled out. This was a materially different scheme to what had been proposed hitherto, but was the one covered by the PEIR.

At Supplementary Consultation in early 2020 the tunnel portal had moved 350m south to its current location, the design of the A2 junction was refined and the carriageways narrowed slightly through the AoNB. New features included a ground stabilisation tunnel to be driven from the Lower Higham Road north beneath the North Kent Marshes, with the boring machine for this to be extracted just north of the North Kent Railway and Thames & Medway Canal. This was to facilitate the main tunnel boring machines coming south under the river. The connections from the A2 Marling Cross junction were reconfigured. Further work on utilities had shown that there was a large (900mm) gas main along the A2 corridor and its diversion resulted in an expansion of the development boundary north into Shorne Woods and also an enlargement of the mitigation planting areas on the east side of Gravesend and south of the A2. A substantial area of Ashenbank Wood south of the A2 could have been impacted by other utility diversions. A new electricity sub-station was proposed at one of three possible sites along the A226 near the tunnel portal.

At Design Refinement Consultation in July 2020 the corridor for the gas pipeline along the north side of the A2 was reduced (including Ashenbank Wood) and the areas for compensation planting equally so. LTC alignment was raised by 2-3m south of Riverview Park and a noise barrier introduced that had not been proposed before. The 400Kv power line was moved away from Riverview Park, but closer to Thong. A location for the electricity substation on the A226 was chosen but a new, smaller, switching station was introduced at the south end of Thong Lane near the A2. Just north of Thong a proposal for a public car park was added. Confusion was caused as the Design Refinement guide referred to changes from Supplementary Consultation whereas the Environmental Update related to the PEIR from 2018.

As raised in the joint letter there is the obvious question of whether a request should have been made for an updated scoping opinion, especially at Supplementary Consultation with the introduction of the ground stabilisation tunnel and the expansion of the development boundary along the A2 for the utility diversions.

### **Statement of Community Consultation**

The Borough Council was informally consulted on a draft of the Statement of Community Consultation (SoCC) on 20 March 2018 and responded on 24 April 2018. It was formally consulted on the draft Statement of Community Consultation on 1 August 2018 and responded on 30 August 2018. The Lower Thames Crossing Statement of Community Consultation was published by Highways England on 10 October 2018, at the start of the Statutory Consultation.

The Borough Council's response to the SoCC is attached as Appendix 2 for convenience but is also to be found on in Appendix F page 13 of the Consultation Report. The applicant's response to those points is to be found in the same appendix at pages 43-48. Many of the points made in that were picked up in published document as set out in the response table. For example lack of exhibitions at Cascades Leisure Centre (to serve Riverview Park and Thong) was rectified, references to the overall DCO process included, a development boundary plan added, a link to the PINS website to explain process and a reference to hard to reach groups included. It was not clear how the latter would be addressed in practice.

In making its comments the Borough Council was mindful of the fact that inevitably on a project of this scale, local residents could find the amount and complexity of the documentation daunting. As

a result face to face contact at an exhibition or information point with the relevant plans is a good way of communicating the scheme and its implications.

The Borough Councils letter of 30 August 2018 said '*There is no information anywhere within the SoCC on the level of detail that will be provided at the s.47 pre-application stage. Whilst GBC accepts that full details are only likely to become available at the application stage, the consultation can only be meaningful if people have something substantive to respond to.*'

There was a further informal document on the approach to the Supplementary Consultation, draft shared for comment on 14 October, responded to 18 October 2019, and formally published on 23 January 2020. This was essentially the table from paragraph 18 of the published SoCC updated to take account of the fact that the consultation was going to be more focussed on specific issues north and south of the river rather than being across the board. Two specific comments made, inter alia, by the Borough Council were:

- The 'you said' – 'we did' concept would be appropriate – and need to expect to answer questions on any topic since members of the public will not restrict themselves to the topics you are actually consulting about
- Impact on local roads of your proposals is bound to be a topic – including what happens when there is an incident

This was in a context when the main topics were expected to be tunnel portal location, spoil disposal, A2 junction layout and the A2 in the AoNB. The issues arising from the utility diversions only became apparent at the Design Development Workshop held on 7 November 2019.

There was a repeat of the approach for the Design Refinement consultation (shared on 27 May 2020) in the circumstances brought about by the COVID-19 and the advice from PINS on this matter (and subsequent changes to regulations).

### **Consultation Process**

The term consultation process is used here to refer to the overall process of holding consultation events, providing the documentation and related matters. Formal and informal feedback received by the Borough Council has shown that most felt the events etc. were reasonable, but that there were deficiencies in the supply of information.

Consultants, who are looking at the information from the point of view of their specialisation found the PEIR unsatisfactory but that in some cases subsequent engagement has been a lot more positive. This has however for the most part not been in the public domain.

### **Impact of COVID**

The COVID-19 pandemic could not have been foreseen when the arrangements for the Supplementary Consultation were set out. It emerged as an issue during the course of the consultation and assumed critical significance in early March 2020. On 16 March 2020 Highways England announced that the remaining four public events were cancelled (one of which was a mobile information centre in Shorne, the rest north of the river). On 19 March 2020 there was the announcement of an extra week being added to the consultation period, extending it from 25 March to 2 April 2020. This predates the Infrastructure Planning (Publication and Notification of

Applications etc.) (Coronavirus) (Amendment) Regulations 2020 which came into force on 22 July<sup>2</sup>, which provide an up to date model in these circumstances.

Lockdown was announced on 23 March with little prior warning and this included advice that the clinically extremely vulnerable should stay at home for at least 12 weeks. Schools were shut and parents were asked to home work if possible and home school their children. The priority at this point for the Borough Council had to be the needs of the local population. Panic buying meant that supermarkets often had empty shelves and so sourcing food for the most vulnerable in our community, such as baby milk, whilst trying to keep as many services going as possible was the Council's focus. It was also the focus for our residents and businesses.

Highways England have suggested that the much more limited response to Supplementary Consultation gives tacit acceptance, whereas we think that the consultation was not a priority with the other challenges potential respondents faced.

The Design Refinement Consultation only covered 4 weeks and was conducted in full knowledge of the COVID-19 pandemic, albeit in a period when restrictions had been relaxed. The documents were available online, and various webinars and other outline events were held as well as the material and documents. It coincided with the school holidays, which was the first opportunity for residents, whether constrained by school terms and online learning or not, to go away. The Borough Council responded on 16 June 2020 to a draft document on the consultation process which had been received on 27 May 2020. Key points from this response were:-

- Appreciated that the circumstances are unusual and that doing consultation on line exclusively will involve a learning curve for all
- The impact of COVID will be of more significance to many residents than the consultation
- In circumstances, including school holidays, 6 weeks would be more appropriate time span
- It is not clear why this additional consultation needs to take place now
- There has been no considered feedback from previous consultations
- Those who have no internet access or rely on a mobile phones for such access are disadvantaged
- It is not clear how the document relates to the Governments consultation principles – in particularly items E, G, & J<sup>3</sup>.

### **Feedback on the consultation responses**

Neither the Supplementary nor Design Refinement consultations contained substantive feedback on the results of the previous consultations. In summer 2019 a project update was published which contained high level information on the responses to the Statutory Consultation. Some presentation slides have given equally high level information subsequently.

The non statutory consultations have because of their content contained a 'response' to comments made in that the proposals have changed, for example moving of the tunnel portal further south and the re-arrangement of the connections eastbound from the Marling Cross slips.

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<sup>2</sup> Summary can be found at <https://www.gov.uk/guidance/guidance-on-procedural-requirements-for-major-infrastructure-projects> and actual regulations at <https://www.legislation.gov.uk/uksi/2020/764/contents/made>

<sup>3</sup> See <https://www.gov.uk/government/publications/consultation-principles-guidance>

It will be noted that when Gravesham responded on the proposed approach to the supplementary consultation it pointed out that the general public would expect responses on issues raised at the previous consultation. It should be noted that two years have elapsed since the Statutory Consultation to DCO application submission.

Responses are now available in the Consultation Report (when published) to the points made, but that leaves consultees that have not had their issues addressed only with the option of focusing their concerns on their representations.

### **Preliminary Environmental Impact Report**

The final version of the SoCC at paragraph 16 contained the following commitment to produce a Preliminary Environmental Information Report (PEIR):

*In accordance with regulation 12 of the 2017 Regulations, a Preliminary Environmental Information Report (PEIR), which sets out survey methodologies and results, and the potential likely significant environmental effects of the Project, has been prepared to allow consultees to take an informed view on these matters. The PEIR therefore forms an important part of this consultation.*

Regulation 12 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 embeds a requirement into section 47 of the 2008 Act that where a proposal is subject to EIA, the SoCC must set out how the applicant intends to publicise and consult on preliminary environmental information. The latter is defined under regulation 12 (2)(b) as information 'reasonably required for the consultation bodies to develop an informed view of the likely significant environmental effects of the development (and of any associated development)'. This approach clearly accords with the *Gunning* principles set out above.

At Statutory Consultation the Borough Council raised a major concern over the content of the PEIR on the basis of its own analysis, comments by its consultants, and the views of other local and national organisations. Appendix 3 contains some of the comments made by Gravesham, to Gravesham or shared after the consultation period by other parties to illustrate that this was not a unique concern. The comments made are also reflected in Table 7.14 p.893-986 EN01-170, particularly the EN13 response on page 897 of the Consultation Report.

The applicant's response taken from EN13 is in part:

*Consultation material included a Preliminary Environmental Information Report (PEIR), which set out the assessment of the potential impacts of the Project on the environment. The PEIR provided information so consultees could take an informed view of the Project's impacts and respond to the consultation.*

*Since Statutory Consultation, the Applicant has developed the proposals for the Project and presented updated information as part of Supplementary and Design Refinement Consultations. During each consultation, assessments of the environmental impacts of any changes to the design have been presented.*

*Since Statutory Consultation, an Environmental Impact Assessment (EIA) has been carried out, involving additional desk-based studies and intrusive ground investigations.*

The updates referred to were part of the documents supplied for Supplementary<sup>4</sup> and the Design Refinement<sup>5</sup> non statutory Consultations. These make reference back to the PEIR or forward to the Environmental Statement but contain relatively little new information. The Design Refinement

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<sup>4</sup> Supplementary Consultation Environmental [Update](#) January 2020

<sup>5</sup> Design Refinement Environmental [Update](#) July 2020



version was also confusingly as it referred to the PEIR, but the main document is referring to changes over the Supplementary Consultation.

The Borough Council has two major concerns with the PEIR:

1. A fundamental basis of the EIA for such a road scheme is the transport modelling that underpins it and the justification of the preferred option against stated scheme objectives and reasonable alternatives. If the assumptions built into this modelling are not appropriate the scheme will not meet its objectives and the environmental assessments will be wrong. The Council is not convinced that the inputs to the transport model are sufficiently robust or that a realistic worst case scenario has been tested – a matter discussed in more detail below. Not only does this appear to be contrary to the guidance the applicant was given in the EIA Scoping Opinion<sup>6</sup>, it is also potentially in breach of regulation 14(3)(a) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 in that the Environmental Statement must be based on the most recent Scoping Opinion adopted. The applicant was clearly guided to have regard to developments in Medway and elsewhere in undertaking transport modelling but has chosen to disregard them. The Borough Council has repeatedly stated that a higher level of development should be tested so that the analysis is robust. If a key component of the EIA is potentially flawed, then the PEIR which precedes it in support of pre-application consultation is also potentially flawed as it could misrepresent likely significant environmental effects.
2. Notwithstanding the above the content of the PEIR at Statutory Consultation was severely deficient in some areas and did not allow a proper informed consideration of the proposals; their potential impact or the relative performance of reasonable alternatives. This was not rectified at either the Supplementary or Design Refinement Consultation stages in the Environmental Updates, referred to above, which rested on the PIER as their basis and only considered the potential impacts of the proposed changes. Whilst it would clearly be unreasonable to expect the PEIR to provide the same level of detail and analysis as the final Environmental Statement, it was clearly unsatisfactory in terms of the requirements of regulation 12 of the 2017 Regulations.

Given that the DCO process was intended, by Parliament, to be front-loaded, the Council has found the stance adopted by the applicant in terms of transport scenario testing and the timely release of information to be frustrating. To take a simple example, the request that cross sections of the A2 junction and some form of 3D visualisation to provide a clearer overview of a 3 level interchange has never been responded to. Cross sections in the AoNB omitted HS1 which is a key feature of this section. It is only now that detailed archaeological survey work is being done. Although the applicant has held numerous meetings with the Borough Council, and other parties, these have frequently been presentations of the latest position, not discussions about options or feedback. The requirement to enter into a non-disclosure agreement with the applicant before information would be released or detail of the scheme discussed has also proved to be an impediment within the planning process. This has only served to delay progress and the ability to come to agreement on areas of common ground.

It is the Council's contention that the applicant has failed to do this and that the consultation has not delivered what was set out in the SoCC. As a result, in the Council's opinion, the requirement of section 47(7) of the 2008 Act has not been met.

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<sup>6</sup> In particular see item 7 on Page 40 of the Scoping Opinion in relation to Medway's comments

## Transport Modelling

A key input to the traffic implications of the Lower Thames Crossing, which in turn feeds through in to such matters as air quality and noise and health, is the results of the traffic modelling. Highways England have had constructed a very extensive traffic model, the Lower Thames Area Model (LTAM). A report on this and its results<sup>7</sup> was provided at Statutory Consultation and an update at Supplementary consultation<sup>8</sup> after the model had been enhanced from new data sets.

The local authorities have been supplied with traffic flow data from the model (as ArcMap shapefiles) and the cordoned sections of the model. The latter is only of use if you have the necessary software and skills. The detailed data was covered by the non-disclosure agreement which meant that unpublished information could be not be discussed by the Borough Council with third parties, such as Parish Councils who have a material interest on impacts on the local highway network.

The Environmental Scoping Opinion made comments about transport modelling and the Council would in particular direct attention to item 7 on page 40 of the Scoping Opinion which says, inter alia, "*The Inspectorate notes that Medway Council (MC) have provided information on the predicted growth in Medway and the emerging development strategy, with respect to the Lower Thames Area Model for traffic modelling proposed in the Scoping Report. This information is also likely to be relevant to the Air Quality and Noise assessments. ECC have also provided advice regarding growth on the A127 corridor and emerging Local Plans. The assessment in the ES should take this information and any other relevant information of this sort into account.*"

Section 3.2 of Tag Unit M4 provides guidance on the construction of a core scenario (and at section 4 high and low growth options) which provides a consistent basis for assessing the business cases of such schemes. This is the methodology followed in the inputs to LTAM model, and therefore the traffic modelling results. Very simplistically this uses for new development those sites that have planning permission and allocations in approved Local Plans.

Local Planning Authorities are however being expected to deliver their Housing Need as set out in the standard methodology produce by the MHCLG. This provides a Local Plan baseline, regardless of the actual status of the current Local Plan. Into this feeds the requirements of other large scale schemes that may emerge, which may not have planning permission or be in Local Plans, the obvious local (to Kent) example being London Resort. At the time of writing this is due to submit its DCO application in mid November 2020 and is therefore a material consideration.

It is not the role of LTC (or any other transport scheme) to solve the existing traffic issues in the local area, it is however its duty to assess the impacts of the proposed scheme on the highway network, whether local or strategic. The same logic applies to transport impacts as any other subject – if there are significant impacts they should be if possible avoided, then mitigated and finally compensated for if that is not possible.

The overall issue was raised under codes TR11 & TR12 of the Consultation Report (p.1076-1077), which covers representations on the subject from 9 Local Authorities. Part of the response by the applicant is: *The Applicant's traffic modelling forecasts include development and highway scheme assumptions supplied by local planning and highway authorities. The decision as to whether or not a particular development should be included in the model is defined by Department for Transport (DfT) guidance<sup>16</sup>. Information about which developments have been included in the traffic*

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<sup>7</sup> Traffic Forecasting report at Statutory Consultation is [here](#) and appendices [here](#)

<sup>8</sup> Supplementary Consultation Traffic Modelling [Update](#)

*modelling can be found in the Transport Model Package, which is Appendix B of the Combined Modelling and Appraisal Report (Application Document 7.7).*

The footnote is a link to the DfT overall TAG guidance, however the specific element of interest here is unit M4, and the Council would direct attention to paragraphs 5.2.6 and 5.2.7 (page 10), which provide guidance on handling local uncertainty. In particular paragraph 5.2.6 specifically says “*Some sources of local uncertainty may have a significant impact on the transport network if they go ahead (for example, a housing development of 1,000 dwellings). It may be appropriate to test these individually, even if they are only hypothetical, so that decision-makers are aware of any risks that could arise. This is particularly important if the source of uncertainty is very close to the scheme itself.*” This is entirely consistent with the guidance provided in the Scoping Opinion.

Gravesham has not seen the submitted transport report with the DCO, even though the Local Authorities were promised sight of it before submission, but as far as we are aware the central case is based on the WebTag approach outlined above with high and low options around that. This is however not sufficient to address the requirements for a reasonable worst case under the Environmental Assessment regulations. Without such analysis it is not possible for the Local Authorities or residents to form a proper view of the potential impacts of the scheme, or whether it is even fit for purpose in terms of its proclaimed objectives.

Medway very specifically highlighted the expected levels of development in that Authority, in particular the development at Hoo and the Commercial Dockyard, both of which meet the criterion above. Any development in Medway will produce additional traffic on the A2/M2 and its junctions, but those two sites in particular will feed onto the A289, and therefore the Three Crutches junction (M2 J1) and the critical section of the A2 through the AoNB. There are wider concerns over the capacity of the A229 and its junctions with the M2 (J3) and M20 (J6) to handle flows diverted to use the new crossing. London Resort, which is aiming to attract 12.5m visitors per year when fully developed, also needs to be factored in.

On this basis it would appear that the requirement of the Environmental Scoping has not been complied with and nor has a robust reasonable worst case scenario been tested for the Environmental Statement.

The Council has asked Highways England to provide a run of the transport model with more realistic scenario to examine the impacts. This has not been done although they have recently offered to do such a run. Whilst this is to be welcomed this should have been done at the start of the process to feed into the environmental assessment and consultation processes.

### **Sharing of information**

The Borough Council has engaged in a long series of meetings with Highways England in relation to this project, as well as the consultations. These have included general updates, workshops and specialist meetings. It also notes the record of meetings set out in the main consultation report.

It has to be said that these meetings have frequently consisted of Highways England announcing their latest proposals or issues, and not very often has there been a proper opportunity for an exchange of views and ideas. This can be illustrated specifically in the process of the joint preparation with Highways England of a Statement of Common Ground.

A summary schedule of 254 comments made by the Borough Council was received on 28 November 2019, covering the Environmental Scoping (December 2017) and the Statutory Consultation (autumn 2018). The Council was invited to classify the various points as Agreed; Not

Agreed; or under discussion. There were however no comments from the applicant to explain what they had, or had not done, in relation to the comments. Some issues were partly addressed by subsequent consultations where matters had changed. Some of the meetings have had long presentations which those attending were not supplied with the material, which makes comment difficult. Some of the online meetings, inherent in the format and number of attendees, provide little scope for meaningful discussion.

It was only on 31 July 2020 that the Borough Council received an updated schedule that included the Supplementary Consultation points and the responses from Highways England. The Design Refinement consultation was still in progress at the time. During this period the Borough Council has analysed and responded to the Supplementary Consultation and the Design Refinement consultation, processes which naturally had priority. Over the summer it was also responding to Environmental Scoping and Statutory Consultation on London Resort.

Various other draft documents have been supplied over the summer of elements of the submission, but generally asking for 'show stopper' type comments rather than for any feedback and discussion. For example a draft Code of Construction Practice (CoCP) was supplied on 3 June (an earlier skeleton of headings has been supplied on 28 November 2019), and detailed comments were made on 24 June 2020. There are major areas of concern with construction process in Gravesham since the scale of the project means that this is potentially going on for 6 or 7 years. At no point has an outline construction programme (fully accepting the uncertainties in such a timeline in the absence of a contractor) has been produced to understand how the various operations (e.g. tunnel approach cutting or major construction work along the A2) interact. Scoping Opinion p.25 item 3 addresses this issue, which may be covered in the unseen Environmental Statement, but certainly has not in the consultation process. The draft environmental assessment chapters did not include the appendices, which precluded meaningful analysis.

No response was given on the CoCP comments, but rather a revised version was sent on 18 August – but not as tracked changes and with no attempt to give any information on the extent to which our substantial comments had or had not been taken into account.

## **Climate Change**

This is an emerging area of concern and no doubt a matter for the Examination. The following comments are about process. On 25 June 2019<sup>9</sup> the Council passed a motion declaring a climate emergency. This included:

*Declare a climate emergency;*

*Pledge to do what is within its powers and resources to make Gravesham Borough Council carbon neutral by 2030, taking into account both production and consumption emissions;*

This resolution was communicated to the applicant at both Supplementary and Design Refinement consultations. The information on this topic supplied by the applicant to date has been very superficial. From construction, permanent adverse effects are to be expected from greenhouse gases involved and from the operational phase. The Supplementary Consultation made reference to the carbon footprint, but little further information was provided. A recent FOI request by a third party seems to have elicited the response from the project team that Highways England does not hold the assessment for the carbon emissions caused by construction of the Lower Thames Crossing. They explained that "at the early stages of the route selection we don't have sufficient

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<sup>9</sup> Resolution can be found at item 33 [here](#)

data to calculate the emissions. For example there aren't enough details about how it will be built and these details are required for calculations.”

Gravesham would expect such calculations at Borough level as part of its work on climate change outlined above since its endeavours might be entirely negated by the Highways England scheme.

The responses to Code NE108, NE 109 & NE110 on p.273-4 of Consultation report says:

*“As part of the Development Consent Order application, the Applicant has had to demonstrate that relevant legislative and policy requirements in relation to climate change impacts are met. Although constructing and operating the Project would result in the creation of additional carbon emissions, the Applicant has taken steps to reduce these. “*

It is not clear how this has been done and whether it has sufficient granularity to meet the Borough Council's policy. It is noted that two current Judicial Review cases touch directly on this area, namely those concerning Heathrow and RIS2. The results of these may have significant implications for this application.

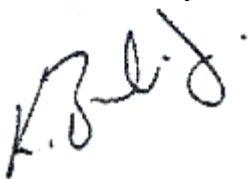
### **Planning Performance Agreement**

It will be appreciated that this project is placing considerable resource burdens on the Borough Council. As set out in PINS guidance Gravesham sought a Planning Performance Agreement (PPA). The initial response was negative on the grounds that we were both public bodies. The Borough Council is not funded to deal with such large scale infrastructure projects. After much discussion a PPA has finally been agreed, and the signed agreement from Highways England was finally received on 10 September 2020. This still does not cover work undertaken by the Authority in responding to the various consultations. The lack of commitment to funding has mean that the Council has not been able to plan its resources properly.

Taking into account all the information set out above the Borough Council is of the opinion that the adequacy of consultation test has not been passed and therefore that the Planning Inspectorate should not accept the application (see Executive Summary above).

If you require any further information, please feel free to contact me.

Yours sincerely



Director (Planning & Development)  
Gravesham Borough Council