

Thanet District Council's Response to the ExA's Second Written Questions at Deadline 5

EN020026 – Sea Link Project

ExQ2	Question to:	Question:	Thanet District Council Response
1. General and Cross-topic Questions (GEN)			
2GEN2.	All parties	<p>Need</p> <p>The need for the project was explored at ISH1. Several parties have made submissions requesting that the topic of need be discussed again at a future ISH. The ExA reminds all parties that the examination is a predominately written process. Due to the highly technical nature of need as a topic and the necessity for considered responses to questions, the ExA's current view is that it will be most assisted by examining the evidence in writing. To date the ExA has received extensive evidence on the topic of need, both orally and in writing, and is carefully considering the cases of the parties. If any party has any new or additional evidence they believe is important and relevant to the examination of need, we ask that it is submitted for DL5 in order to allow a fair opportunity for all parties to comment on each other's submissions.</p>	TDC does not have any new or additional evidence to submit.
2GEN6.	East Suffolk Council (ESC), Thanet District Council (TDC), Kent County Council (KCC), Suffolk County Council (SCC), Historic England	<p>Detailed design in the dDCO requirement 3</p> <p>Provide comments on the applicant's wording in requirement 3 of the dDCO [REP4-217] and whether it would provide adequate controls over the design of above ground elements of the proposed development.</p>	<p>TDC maintains that the wording proposed by the LPA set out in response to Issue Specific Hearing 2 (ISH2) action points [REP4-162] is sufficient and we would welcome the inclusion of operational lighting either within this requirement or a separate one.</p> <p>The concerns with the current wording are set out in the Principal Areas of Disagreement Summary Statement – Deadline 5 Update.</p>

2GEN13.	Applicant Local authorities	<p>Article 49 - Defence to proceedings in respect of statutory nuisance</p> <p>Applicant: Article 49(1)(b) provides for a defence against statutory nuisance in operation and if “the defendant shows that the nuisance— (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised project and that the nuisance is attributable to the use of the authorised project which is being used in accordance with the Construction Noise and Vibration Management Plan”. As the outline Construction Noise and Vibration Management Plans [AS-131] and [AS-133] contain no operational noise controls, explain the purpose of this clause and whether additional operational noise controls should be referenced.</p> <p>Local authorities: To comment.</p>	<p>TDC’s Senior Environmental Health Officer considers that the required CNVMP which will have regard to the oCNVMP and a requirement to carry out a NMP once a contractor is selected must have Local Planning Authority agreement. This sets out measures to manage and control noise and vibration arising from construction activities. In that context, it is reasonable for compliance with such a document to form part of the demonstration that best practicable means have been employed and must be reviewed and agreed by the LA.</p> <p>Operational noise from the substation is a permanent feature of the development and may vary over time due to plant replacement, maintenance, degradation, or other operational changes. For this reason, it would not be appropriate for compliance with the operational noise impact assessment to be relied upon as a defence to statutory nuisance during the operational phase.</p> <p>Operational noise should remain subject to the standard statutory nuisance regime under the Environmental Protection Act 1990, which allows the Local Authority to assess circumstances at the time any alleged nuisance occurs.</p> <p>Accordingly, the authority considers that Article 49(1)(b) is most appropriately interpreted as relating to construction activities only, and that it should not be taken to imply that operational noise impacts assessed at the planning stage or compliance with the CNVMP would constitute a defence to statutory nuisance during operation.</p>
2GEN14.	Local authorities Applicant	<p>Article 51 - Arboricultural Method Statement (AMS)</p> <p>Local authorities: The applicant’s response to ISH2 AP18 [REP4-086] explains that there is no need to amend Article 51 of the dDCO in respect of ancient and veteran trees because any tree works would be detailed in the AMS secured by requirement 8 of the dDCO, which is subject to local authority approval. Requirement 8 does not make explicit reference to ancient and veteran trees. If requirement 8 is the correct mechanism to control effects, should it explicitly make reference to retention of ancient and veteran trees, for example linking to a specific dDCO schedule?</p> <p>Applicant: To comment.</p>	TDC does not have any comments to make.
2GEN15.	Local Authorities and Environment Agency (EA)	<p>Article 53</p> <p>Article 53(2)(b) allows for complete closure of the navigation on health and safety grounds only. 53(3) secures that this is kept to a minimum period. Should additional wording be included to specify what is a reasonable period or any seasonal constraints where closure may be inappropriate. If yes, please include suggested drafting.</p>	TDC notes the wording within Article 53(2)(b) and considers it necessary for the term ‘a reasonable period’ to be defined, if practicable. We would therefore welcome the Applicant’s comments and possible examples of where this has happened in other Projects to inform appropriate wording.

2GEN17.	Local authorities Applicant	<p>Schedule 3 – Requirements - trenchless landfall</p> <p>Local authorities: In light of interested party (IP) concerns, the sensitivity of the receiving environment (including designated European sites) and notwithstanding the applicant's updated wording in the revised Register of Environmental Actions and Commitments (REAC) [REP4-235], provide draft wording to secure the use of a trenchless landfall technique as a dDCO requirement. The wording should provide for construction and operation/maintenance and may also provide for a minimum depth of burial to address concerns regarding coastal erosion.</p> <p>Applicant: To comment or provide its own form of wording.</p>	<p>We are working with The Environment Agency to establish wording for a Requirement relating to the minimum depth of burial to address concerns regarding coastal erosion.</p> <p>In terms of trenchless techniques, TDC considers that the wording in Schedule 1 which includes the nature of works approved should be changed to 'will include' rather than 'may include' for all references within the DCO to trenchless techniques.</p>
2GEN26.	All parties	<p>New requirements and conditions</p> <p>Notwithstanding any questions below, highlight and provide specific wording for any commitments currently included in the REAC [REP4-235] that you believe should be secured as requirements or conditions on the face of the order.</p>	<p>It is recognised that the applicant has removed the word 'construction' from Requirement 6 so it only refers to Management Plans to be Approved. Requirement 6 therefore includes some management plans related to construction activities only, some management plans which cover both construction and operation and some which cover operation only. Whilst this is welcomed, TDC would like to reiterate that construction and operational management and mitigation measures should be separated into separate plans for clarity, ease of control and to ensure accountability. TDC requests that an Operational Management Plan is secured through the DCO via Requirement 6 to capture the operational commitments and mitigation that are not secured elsewhere in management plans or requirements.</p>

ExQ2	Question to:	Question:	Thanet District Council Response
2. Landscape and Visual			
2LVIA8.	ESC, TDC, KCC, SCC	<p>Lighting and fencing</p> <p>Further to your responses to ISH2 Action Point 131, explain whether you consider that relevant planning authorities require control over details of lighting and fencing. If so, provide suggested wording. If not, explain why you consider that there would be adequate existing controls.</p>	<p>TDC requests control over details of lighting and fencing. This could be achieved by ensuring the lighting and fencing details are secured in an existing management plan such as the Outline Landscape and Ecological Management Plan - Kent [REP4-067]. Alternatively fencing (means of enclosure) could be included within the detailed design matters of Requirement 3.</p> <p>The other option would be to secure the provision of an operational lighting management plan within Requirement 6 and to provide a separate Requirement for fencing.</p> <p>Suggested additional wording for Requirement 6: (s) Lighting Management Plan (Kent)</p> <p>Suggested wording for fencing Requirement: Fencing and other means of enclosure</p>

			<p>** (1) No phase of the authorised development may commence until written details of all proposed permanent and temporary fences, walls or other means of enclosure of the connection works for that phase have been submitted to and approved by the local planning authority as part of the detailed design approval required by requirement 5(1).</p> <p>(2) For the purposes of requirement ** (1), “commence” includes any site preparation works.</p> <p>(3) Any construction site must remain securely fenced in accordance with the approved details at all times during construction of the authorised development.</p> <p>(4) Any temporary fencing must be removed on completion of the phase of construction of the authorised development for which it was used.</p> <p>(5) Any approved permanent fencing must be completed before completion of the authorised development.</p> <p>(6) No site preparation works are to be commenced until written details of all proposed temporary fences, walls or other means of enclosure for the site preparation works have been submitted to and approved by the local planning authority.</p> <p>(7) Any proposed permanent or temporary fences, walls or other means of enclosure must be carried out in accordance with the approved details.</p>
2LVIA9.	Applicant, TDC	<p>Stour Marshes landscape character area (LCA) E1</p> <p>Environmental Statement (ES) Appendix 3.1B [APP-144] identifies the key characteristics of LCA E1 as including long uninterrupted views across the marshes to the coast. ES Appendix 3.1C [APP-143] identifies that the partial loss of openness and the change to the aesthetic and perceptual aspects of the landscape would be lessened by the context of existing infrastructure. Provide clarification as to whether the Weatherlees Hill wastewater treatment plant is an existing detracting feature in LCA E1 that indicates that the effect on landscape character would be lessened.</p> <p>The assessment in [APP-143] considers that at year 15 the mature planting around the converter station and substation would reduce the effect from moderate adverse (significant) to minor adverse (not significant).</p> <p>Provide a detailed explanation of how the presence of mature planting would reduce the significance of effects on a landscape characterised by long uninterrupted views.</p>	<p>TDC does not consider that the presence of the Weatherlees Hill Wastewater Treatment Plant means that the impact on the landscape would be lessened. As already highlighted, TDC are concerned with the views from the north to the south. The wastewater treatment plant has been a feature within the landscape for a considerable number of years and the proposed development would intrude directly on the environment surrounding existing features within the landscape. Having regard to the scale of the Project it is not considered that the existing infrastructure would provide context for the proposed development.</p> <p>TDC confirmed that the impact would be major (significant) adverse for the full duration of the project given the location, the scale and the characteristics of the landscape as it stands. As such the impact is considered to be a major adverse effect for the whole operational period that would be significant (TDC written rep post ISH2 [REP4-160]).</p> <p>TDC maintains that mature planting will not reduce the significance of the effect and will remain major adverse at year 15 as set out in REP4-160 and the Principal Areas of Disagreement Summary Statement – Deadline 5 Update.</p>

ExQ2	Question to:	Question:	
3. Ecology			Thanet District Council Response

2ECOL5.	NE RSPB Local authorities	Unexploded Ordnance (UXO) Explain whether the proposed approach to UXO outlined in the applicant's response to ISH2 AP16 [REP4-086] is sufficient to ensure that potential effects on the designated sites could be appropriately mitigated.	TDC makes no comment.
2ECOL12.	RSPB Local authorities NE	Updated wintering bird survey Comment on the applicant's statement in [REP4-241] that "since the North Warren RSPB Reserve is being treated as a sensitive receptor, the Applicant does not consider that updated information regarding the number and distribution of wintering birds within the Reserve is required, particularly since RSPB have good data for their Reserve."	The North Warren RSPB Reserve is located in Suffolk and as such TDC has no comment to make.
2ECOL21.	Applicant Local authorities NE	Impact of pylon base installation Table 9.23 of Kent chapter 9 noise and vibration [AS-111] identifies use of pad foundations for pylon construction as an example means of achieving 10 to 20dB reduction in noise levels. Should this measure be secured to reduce noise and vibration effects on bird species in Kent?	TDC defer to Natural England and KCC Ecology on this matter.
2ECOL29.	KWT Local authorities NE	Hoverport access – reptiles In light of the acknowledged presence of reptiles within the hoverport, should two stage clearance of any vegetation, or other measure, be secured as a REAC or oLEMP provision and if not, why not?	TDC considers a two stage clearance of any vegetation on the hoverport to be a sensible approach which should be secured either as a REAC or oLEMP provision. We would defer to Natural England and KCC Ecology for expert advice.
2ECOL43.	Local authorities	REAC provision B14 The REAC [REP4-235] explains that a precautionary method would be followed "when undertaking vegetation clearance potentially suitable for dormice". Comment on whether this provision should specify particular locations or the process for establishing 'potentially suitable' vegetation.	TDC defer to KCC Ecology on this matter.
2ECOL44.	Local authorities EA	REAC provision B18 Confirm whether provision B18 of the REAC [REP4-235] provides sufficient detail to provide certainty regarding eel mitigation measures. Is any additional construction mitigation for eel required during eel migration periods in addition to the measures identified in the REAC for Minster Marshes and if not, why not?	TDC defers to Natural England and KCC Ecology on this matter.
2ECOL48.	Local authorities NE	REAC provision B55 Are the local authorities and NE satisfied with the commitment in REAC [REP4-235] provision B55 to "making the lines visible in adverse weather or low light conditions" or should specific reference be made to night time? The ExA has considered the applicant's response to ISH2 AP24 [REP4-086] but considers that based on plain English, 'low light' may not be inclusive of the night period.	TDC agrees with the concern raised by the ExA in relation to the term 'low light' and defer to Natural England and KCC Ecology for more detailed consideration of the wording within the REAC Provision B55.

ExQ2	Question to:	Question:	
8. Traffic and Transport			Thanet District Council Response
2TT7.	Applicant All County and District Councils	<p>Caps on HGVs</p> <p>If there are no caps on HGVs using certain routes, then would there be any enforcement possible for the County or District Councils if it transpired that there were more HGVs using certain routes than anticipated in the ES assessment, including cumulatively with other projects?</p> <p>For the Councils, is there a concern that capping HGV movements may displace them to other more sensitive routes with adverse impacts or that it could elongate the construction programme.</p>	TDC defer to KCC as the Highway Authority.

ExQ2	Question to:	Question:	
9. Air Quality			Thanet District Council Response
2AQ2.	Local authorities Applicant	<p>Appendix A Air Quality Technical Note [REP4-241]</p> <p>Local authorities: Provide comment on the technical note.</p> <p>Applicant: Confirm whether the high predicted NOx process contributions identified in Table A.7 maximum impact scenario could indicate any potential for exceedance of the hourly limit values for NO2 and if so, what further analysis or mitigation might be required in respect of the Kent or Suffolk converter station sites to address human health issues? Applicant to also re-provide appendix tables A.8 and A.9 with headings that are aligned with columns as the tables are difficult to read as presented.</p>	TDC's Senior Environmental Health Officer is satisfied AQ health impacts have been assessed appropriately within the Air Quality Assessment which included construction dust and re-assessment of NRMM. This updated technical note which includes a worse case use of backup generators has not altered our view. Although the assessment relates to ecological receptors and recommends not siting of backup generators within 120m; the nearest relevant human receptor is around 1km away so is highly unlikely to impact human health objectives. However, this will need to be reviewed by an updated assessment.
2AQ3.	Local authorities	<p>Outline Air Quality Management Plans (oAQMP)</p> <p>Are any further changes required to the outline AQMP [REP3-052] and [REP3-054] to take account of the amended order limits as part of the change request?</p>	TDC's Senior Environmental Health Officer considers that no amendments need to be made.

2AQ4.	Applicant Local authorities	<p>Operation and maintenance air quality controls</p> <p>Applicant: SCC's LIR paragraph 12.23 [REP1-130] suggests that it is vital for appropriate mitigation to be put in place to minimise operation and maintenance air quality impacts from major works. The applicant's comments on SCC's LIR [REP2-026] simply states that it notes SCC's comments. Provide an appropriate mechanism within the applicant's suite of control documents to control operation and maintenance works emissions or explain why this is not required.</p> <p>Local authorities: To comment.</p>	This question relates to Suffolk and as such TDC has no comment to make.
2AQ5.	Applicant Local authorities	<p>REAC provision AQ11</p> <p>Applicant: Update REAC [REP4-235] provision AQ11 to specify a minimum 120m offset from Sandwich Bay to Hacklinge Marshes SSSI consistent with the proposed mitigation in the applicant's updated air quality assessment [REP4-241].</p> <p>Local authorities: Suggest wording for a requirement to ensure that a 120m offset is secured between the generators and the SSSI.</p>	<p>TDC's Senior Environmental Health Officer suggests that the second bullet in AQ11 be amended to:</p> <p>Should diesel generators be required, they shall not be located within 120m of the Sandwich Bay to Hacklinge Marshes SSSI (as defined at the time of application submission). Where used, generators shall be positioned as far from the SSSI as reasonably practicable.</p>

ExQ2	Question to:	Question:	Thanet District Council Response
10. Noise and Vibration			
2NV1.	Local authorities	<p>Operational noise and vibration</p> <p>Suggest draft wording for operational noise and vibration requirements in respect of the detailed converter and substation designs that sets limits for operational noise at specific receptors and a mechanism for agreeing the final acoustic design.</p>	<p>TDC's Senior Environmental Health Officer suggests:</p> <p><i>[With reference to: AS123]</i></p> <p>The rating level of noise emitted from the operation of the converter station and substation, when assessed in accordance with BS 4142:2014+A1:2019, shall be at least 5 dB below the existing background sound level (LA90,T) at the nearest noise sensitive receptor during both daytime and night-time periods:</p> <p>30dB (LAeq,T) at NSR - daytime 24dB (LAeq,T) at NSR - nighttime</p> <p>The assessment shall include any applicable acoustic character corrections for tonality, impulsivity, intermittency or other distinctive acoustic characteristics in accordance with BS 4142:2014+A1:2019.</p> <p>An assessment of low-frequency noise shall also be undertaken. The difference between the C-weighted and A-weighted equivalent continuous sound pressure levels (LCeq,T – LAeq,T) measured at the nearest noise sensitive receptor shall not exceed 10 dB. Where the difference exceeds this value, a detailed one-third octave band</p>

			<p>analysis shall be undertaken to demonstrate that no significant low-frequency noise impact is likely to occur.</p> <p>Prior to commissioning of the converter station and substation, a scheme demonstrating compliance with the above requirements, including details of the final plant specification, layout and any acoustic mitigation measures, shall be submitted to and approved in writing by the relevant planning authority.</p> <p>The authorised development shall thereafter be operated in accordance with the approved scheme.</p>
2NV3.	Local authorities	<p>s61 controls Suggest an alternative form of wording for the outline Construction Noise and Vibration Management Plan (oCNVMP) s61 controls or a suitable requirement to secure s61 controls for specific construction activities.</p>	<p>TDC's Senior Environmental Health Officer suggests:</p> <p>Construction Noise and Vibration Management Plan</p> <p>No authorised development may commence until a Construction Noise and Vibration Management Plan (CNVMP) has been submitted to and approved in writing by the relevant planning authority. The assessment of construction noise and vibration must</p> <p>(a) be undertaken by a suitably qualified acoustic consultant; and (b) be carried out in accordance with BS 5228-1:2009+A1:2014 Code of practice for noise and vibration control on construction and open sites and BS 5228-2:2009+A1:2014.</p> <p>Where the assessment identifies that predicted construction noise levels are likely to exceed the Category A threshold defined within BS 5228, the undertaker must, unless otherwise agreed in writing with the relevant planning authority, submit an application for prior consent under section 61 of the Control of Pollution Act 1974 to the relevant planning authority before the relevant works commence.</p> <p>The authorised development must thereafter be carried out in accordance with the approved CNVMP.</p>
2NV8.	TDC	<p>Piling data Provide comment on the extent to which the noise levels selected to inform the piling noise assessment in Pegwell Bay are representative of the spreadsheet of data relating to piling noise levels [REP4-088] that has been used to inform the assessment.</p>	<p>TDC's Senior Environmental Health Officer states that the Council would expect the assessment to have regard to the levels given in BS5228, (as considered in Application Document 6.3.1.4.B ES Appendix 1.4.B Construction Plant Schedule) which currently state that vibratory sheet piling at 10m is 88dBLAeq until actual measured or manufacturer specified data for the proposed equipment are available. The graph reference appears broadly in keeping with these levels when considered as an LAeq.</p>

ExQ2	Question to:	Question:	Thanet District Council Response
12. Onshore Cumulative effects (intra-project)			
2CEIntra1.	All Councils	<p>Mitigation of intra-project cumulative effects</p> <p>Do you consider that further mitigation measures are required to mitigate significant intra-project cumulative effects in addition to those already identified by the applicant? If yes, explain what specific additional measures should be considered. In answering identify the specific significant cumulative effects that the mitigation is considered to address, how it accords with appropriate planning tests and how it could be secured? If it is to be secured in the DCO, provide suggested wording.</p>	<p>It is unlikely that further mitigation measures are available to mitigate significant intra-project cumulative effects as the relevant mitigation measures have already been imposed for the relative topics. Whilst other potential mitigation measures are still being discussed for each topic. In addition, the Applicant has advised the exact intra-project impacts are not fully known at this stage and are subject to detailed design and construction programme.</p>
2CEIntra2.	All Councils	<p>REAC commitment to review / mitigate significant intra-project cumulative effects</p> <p>Having regard to the applicant's response to AP112 [REP4-086], can all Councils confirm if they agree with the suggested commitment wording for the REAC (and subsequent approval through discharge of requirement 6 via relevant management plans) to review intra-project cumulative effects and establish what additional mitigation measures could be applied to reduce their significance? In answering, summarise any remaining concerns, if you consider it should be secured in the DCO provide suggested text.</p>	<p>A review of the intra-project cumulative effects is welcomed. However, it is unclear how this would be secured through Requirement 6 of the DCO unless it is secured as an intra-project cumulative management plan. Alternatively, Requirement 5 already secures the need to prepare the management plans in accordance with the REAC in which commitment GG40 would have to be undertaken to inform the management plans.</p>
2CEIntra3.	All Councils	<p>Quantification of significance of effects</p> <p>Having regard to the applicant's response to AP111 [REP4-086], can all Councils confirm if they agree with the applicant's stated position regarding quantification of magnitude/degree of significance of effects in cumulative (intra-project) assessments on residential properties and how the various effects interact with each other? In answering: • explain if you agree with the conclusion that if any significant effects on residential receptors were to occur, they would be likely to be moderate not major? • set out if there are any other concerns regarding possible significant effects on non-residential receptors (including road, public rights of way and recreational users) and how any specific significant cumulative effect could be mitigated, how that accords with appropriate planning tests and could be secured?</p>	<p>The response from the Applicant solely focuses on the residential receptors. The conclusion of moderate adverse (significant) effects on residential receptors is agreed.</p> <p>For the other receptors it is unlikely that further mitigation measures are available to mitigate significant intra-project cumulative effects as the relevant mitigation measures have already been imposed for the relative topics. Whilst other potential mitigation measures are still being discussed for each topic. The applicant should attempt to identify the magnitude of the effect to understand the impact of the effect as to whether the significant effect is moderate or major adverse.</p>
2CEIntra4.	All Councils	<p>REAC mitigation commitments (GG27, GG03, NV03)</p> <p>In responding to AP112 [REP4-086] the applicant has set out initial comments regarding REAC commitments GG27, GG03 and NV03? Can the identified Councils confirm if they agree with the applicant's position / proposed amendments, or if not provide details of the additional changes you consider necessary?</p>	<p>ES Chapter 3 'Summary of Likely Significant Effects' [REP1A-013] sets out intra-cumulative effects significant visual amenity effects in-combination with minor additional noise, traffic and transport, and health and wellbeing effects, upon some residential receptors in proximity to viewpoints 5 and 11 and to PRoW users of TE37 and the Saxon Shore Way due to significant visual amenity effects at some locations combined with minor traffic and transport, socio-economic, and health and well-being effects upon the regional trail.</p> <p>It confirms that no mitigation has been confirmed at this stage and it is recognised that detailed mitigation will come forward at a later stage subject to a review of the intra-project related effects. Whilst this review of intra-project effects is welcomed it has to be assumed that the significant effects cannot be mitigated for the purposes</p>

			of the examination. However, if the Applicant has identified measures to mitigate the significant effects such as those contained within GG27, GG03 and NV03, then this should be clearly stated by the Applicant and the assessment updated. Notwithstanding this, there remains the inherent risk that the significant effects cannot be mitigated.
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ExQ2	Question to:	Question:	Thanet District Council Response
13. Onshore Cumulative effects (inter-project)			
2CEInter1.	All Councils	<p>Mitigation of inter-project cumulative effects</p> <p>Do you consider that further mitigation measures are required to mitigate significant inter-project cumulative effects in addition to those already identified by the applicant. If yes, explain what specific additional measures should be considered. In answering identify the specific significant cumulative effects that the mitigation is considered to address, how it accords with appropriate planning tests and how it could be secured? If it is to be secured in the DCO, provide suggested wording.</p>	<p>TDC has no additional mitigation measures to propose beyond any previously outlined. In addition, it is not possible to identify additional mitigation measures given the full cumulative impact of inter-project effects is not known as the cumulative assessment has omitted numerous sites which will have a cumulative effect particularly on traffic and transport as set out in the Statement of Common Ground.</p>