

Date: 15 December 2023  
Our ref: 460242  
Your ref: TR010032



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**By email only, no hard copy to follow**

Dear Mr Smith

**Application by National Highways for an Order Granting Development Consent for the Lower Thames Crossing  
Natural England's response to Deadline 9a  
Natural England User Code: 20034784**

Natural England is pleased to provide our Deadline 9a response for the Lower Thames Crossing Examination within the annexes appended to this letter.

Given the number of documents submitted at Deadline 9, Natural England has used best endeavours to review these but have had to prioritise our document review. The absence of comments on a document should not be taken that Natural England's previous concerns have been addressed, it is more a reflect on us needing to prioritise our advice given the challenging timeframe.

For ease, we have provided our comments in the following Annexes:

- Annex 1: Natural England's delayed comments from Deadline 9 regarding documents submitted by the Applicant at Deadline 8
- Annex 2: Annex 2: Natural England's addendum to our Deadline 9 response in relation to the enhanced duty in relation to Protected Landscapes including the Kent Downs Area of Outstanding Natural Beauty
- Annex 3: Comments on the Applicant's submissions at Deadline 9
- Annex 4: Final Statement of Common Ground
- Annex 5: Final Principal Areas of Disagreement
- Annex 6: Natural England response to the Procedural Decision 45, Rule 17 letter regarding 'The Wilderness'

Natural England hopes our Deadline 9a comments are helpful.

Yours sincerely

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# **1 Annex 1: Natural England's delayed comments from Deadline 9 regarding documents submitted by the Applicant at Deadline 8**

## 1.1 Introduction

1.1.1 Natural England is pleased to provide below our delayed comments on:

- The Applicant's comments on the Report on the Implications for European Sites (RIES);
- The Applicant's detailed response to comments made by Natural England on HRA matters; and
- The Applicant's Assessment of the air quality effects on European sites following Natural England advice

1.2 Applicant's comments on the Report on the Implications for European Sites (RIES)

1.2.1 Having reviewed the Applicant's comments on the Report on the Implications for European Sites (Examination Document REP9-120), Natural England has the following comments.

1.2.2 Natural England notes the Applicant's response to QR20. We welcome the updated wording of REAC ref. HR011 to give prominence to the seasonality of works at Coalhouse Point. We have no further comments at reference QR13.

1.3 Applicant's detailed response to comments made by Natural England on HRA matters

1.3.1 Natural England notes the 'Applicant's detailed response to comments made by Natural England on HRA matters' document (Examination Document REP8-121). As this relates largely to air quality matters, we have provided our response to these in Section 1.4 below, alongside the 'Assessment of air quality effects on European sites following Natural England advice'.

1.4 Assessment of the air quality effects on European sites following Natural England advice

1.4.1 Natural England welcomes '9.199 Assessment of the air quality effects on European sites following Natural England advice' (Examination Document REP8-122) which addresses many of the concerns raised our Deadline 5 response (Examination Document REP5-109). Our comments in relation to this document are provided below.

In combination assessment

1.4.2 Natural England acknowledges the Applicant's further representations relating to in combination assessment and its rationale for using growth factors. The Applicant considers that its approach is consistent with Department for Transport's Transport Analysis Guidance (TAG). As Natural England has previously pointed out it is not consistent with other guidance (such as Advice Note Ten Habitats Regulations Assessment relevant to Nationally Significant Infrastructure Projects<sup>1</sup>) and more importantly is not considered sufficiently precautionary to meet the requirements of HRA which is a legal test.

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<sup>1</sup> <https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/advice-note-ten/>

- 1.4.3 Section 3.4.12 states that 'it is likely that the changes in the outputs of the model overall would not be significant'. Given that the Applicant has been aware of Natural England's position for many years there has been sufficient time for them to test this hypothesis and assure that this assertion is evidence-based. If inclusion of plan led growth is considered unlikely to significantly change the outputs it is difficult to understand why our advice has not been followed.
- 1.4.4 The above notwithstanding, Natural England recognises that the Applicant has provided a much-improved non-traffic in-combination assessment (and has identified further projects as a result) and we have worked with the Applicant to reach agreed positions on Thames Estuary and Marshes SPA and Ramsar and North Downs Woodlands SAC irrespective of our concerns relating to the in-combination assessment.

#### HRA Screening

- 1.4.5 Natural England advises that it is in full agreement with the HRA screening conclusions contained in welcomes '9.199 Assessment of the air quality effects on European sites following Natural England advice' (Examination Document REP8-122).

#### HRA Appropriate Assessment

##### Thames Estuary and Marshes SPA and Ramsar

- 1.4.6 Natural England advises that, despite our concerns relating to in combination assessment as set out above, an AEOI of Thames Estuary and Marshes SPA and Ramsar can be ruled out. We consider that the key factors allowing the competent authority to reach this conclusion are:

- The affected area is grazed land reducing potential for nitrophilic grasses to take over.
- The impact is temporary, occurring during the construction phase only.

##### North Downs Woodlands SAC

- 1.4.7 Natural England advises that, despite our concerns relating to in combination assessment as set out above, an AEOI of North Downs Woodlands SAC can be ruled out. We consider that the key factors allowing the competent authority to reach this conclusion are:

- There are no qualifying species within the likely affected area for North Downs Woodlands SAC
- Whilst the site has a restore objective for air quality, it is the opinion of Natural England that the absence of nitrogen sensitive species in the likely affected area is not primarily down NOx/Ammonia or nitrogen deposition.
- Natural England does not consider that an improvement in air quality at in the affected area would have a significantly beneficial effect on species composition.

## Epping Forest SAC

- 1.4.8 There is little new information presented relating to Epping Forest SAC. Natural England considers that AEOL cannot be excluded for NO<sub>x</sub>, NH<sub>3</sub> or Ndep at Epping Forest SAC without mitigation being in place. Like North Downs Woodlands SAC, Epping Forest has a restore objective for air quality. Unlike North Downs Woodlands SAC the primary reason for the absence of nitrogen sensitive species from the affected area is air pollution, to which traffic on the M25 significantly contributes. Any projected improvements would support recovery of the SAC and may improve species richness. National Highways is uniquely placed in its ability to address this concern.
- 1.4.9 The Applicant's own modelling identifies increases of NO<sub>x</sub>, NH<sub>3</sub> and Ndep on the SAC. These result from foreseeably permanent increases in annual average daily traffic (AADT) and whilst the Applicant considers that downward trends in pollutant will ultimately lead to improvements in air quality they will always be worse than the do nothing scenario (until such a time as Ultra-low Emission Traffic dominates). Further to this there is a 4 year period where the proposal is modelled to make air quality at the SAC worse. Having identified an affect and mitigation Natural England considers that it is now appropriate for the Applicant to secure and deliver that mitigation.
- 1.4.10 We note the concerns relating to ammonia monitoring and recognise that it will be difficult to identify a specific increase resulting from this proposal. However, given that the Applicant's justification for the absence of an AEOL leans heavily on improving trends it is appropriate that NO<sub>x</sub>/NH<sub>3</sub> and Ndep are all monitored to ensure that they are broadly consistent with projections. A monitoring plan should be agreed with Natural England, for an initial period of four years of LTC operation, with pre-operation monitoring also undertaken for at least 1 year prior to commencement of construction. This monitoring plan would ensure that the speed limit mitigation reduces nitrogen deposition and NO<sub>x</sub> and ammonia concentrations, and that levels of the three pollutants at year 4 are no higher than the pre-operational values. Monitoring with a corrective feedback mechanism to ensure the mitigation identified is certain will need to be secured through an appropriately worded REAC commitment.
- 1.4.11 Natural England notes that REIS question QR22 asked the Applicant about the implications of the Dutch Nitrogen case and that Applicant responded that 'The Applicant does not consider that the Dutch Nitrogen Case (2018) has any implications for the conclusion of no adverse effect on integrity (AEOL)'. The key message from the Dutch Nitrogen Case was that consenting activities which could affect the ecological situation of a site which is already unfavourable is 'necessarily limited'.

- 1.4.12 It is reasonable to expect that where a protected habitat is already unfavourable, as is the case for Epping Forest, there will be a limit to the extent of further loading that is possible without undermining site integrity. This is because a site in unfavourable condition is likely to be less resilient and any additional pressures resulting from development may be more likely to result in an adverse effect on the integrity of the site. The key question which the HRA needs to consider is whether increasing nutrient loading to a site that is already in unfavourable condition would or may cause an adverse effect on integrity by undermining the conservation objectives. The HRA should justify how further nutrient loading (alone or in combination) would not prevent the restore conservation objectives from being achieved to enable consent to be granted. The HRA hasn't justified this adequately as in our view an adverse effect on integrity cannot be ruled out without mitigation.
- 1.4.13 The Dutch Nitrogen judgement also repeatedly stresses the need for scientific rigour and certainty. Natural England does not believe that Dutch Nitrogen changes the legal standard to be applied in HRA cases, but it does highlight that it is a high standard. Hence the need to ensure there is sufficient certainty in the evidence used to draw conclusions around harm and the need to take a precautionary approach where uncertainties are identified.

## **2 Annex 2: Natural England's addendum to our Deadline 9 response in relation to the enhanced duty in relation to Protected Landscapes including the Kent Downs Area of Outstanding Natural Beauty**

- 2.1.1 Natural England apologise for inadvertently omitting our advice in relation to the enhanced duty on public bodies in respect of Areas of Outstanding Natural Beauty provided through the Levelling Up and Regeneration Act in our Deadline 9 Response.
- 2.1.2 As discussed during Issue Specific Hearing 11, Section 245 (Protected Landscapes) of the Levelling Up and Regeneration Act 2023 places a duty on relevant authorities in exercising or performing any functions in relation to, or so as to affect, land in a National Park, the Broads or an Area of Outstanding Natural Beauty ('National Landscape') in England, to seek to further the statutory purposes of the area. The duty applies to local planning authorities and other decision makers in making planning decisions on development and infrastructure proposals, as well as to other public bodies and statutory undertakers.
- 2.1.3 It is anticipated that the government will provide guidance on how the duty should be applied in due course. In the meantime, and without prejudicing that guidance, Natural England advises that:
- The duty to 'seek to further' is an active duty, not a passive one. Any relevant authority must take all reasonable steps to explore how the statutory purposes of the protected landscape (A National Park, the Broads, or an AONB) can be furthered;
  - The new duty underlines the importance of avoiding harm to the statutory purposes of protected landscapes but also to seek to further the conservation and enhancement of a protected landscape. That goes beyond mitigation and like for like measures and replacement. A relevant authority must be able to demonstrate with reasoned evidence what measures can be taken to further the statutory purpose. If it is not practicable or feasible to take those measures the relevant authority should provide evidence to show why it is not practicable or feasible.
  - The proposed measures to further the statutory purposes of a protected landscape, should explore what is possible in addition to avoiding and mitigating the effects of the development, and should be appropriate, proportionate to the type and scale of the development and its implications for the area and effectively secured. Natural England's view is that the proposed measures should align with and help to deliver the aims and objectives of the designated landscape's statutory management plan. The relevant protected landscape team/body should be consulted.

### **3 Annex 3: Comments on the Applicant's submissions at Deadline 9**

#### 3.1 Introduction

3.1.1 Given the volume of amended documents submitted at Deadline 9, Natural England has used our best endeavours to review and provide further advice below. We have made detailed comments, which remain appropriate, in our previous deadline submissions which, for expediency, we have not repeated in this Deadline 9a response.

3.1.2 The absence of comments on a document (or parts of a document) submitted at Deadline 9 does not mean that there are no outstanding concerns, it is more a reflection of Natural England having to prioritise our advice given the challenging timeframe to review the volume of documents shared and provide our advice.

#### 3.2 Consents and Agreements Position Statement

3.2.1 We note that section 4.1.2b (page 7) of the Consents and Agreement Position Statement (Examination Document REP9-112) refers to the DCO including consents for works impacting SSSIs. As summarised in our deadline 9 submission (Annex 2, response to ExA QD32), Natural England have advised that the disapplication of Sections E and H of the Wildlife and Countryside Act 1981 should not be included in the DCO, and this remains a matter not agreed in our Statement of Common Ground with the Applicant (SOCG item number 2.1.3). If the disapplication of this legislation is removed from the final DCO, the wording in the Consent and Agreements Position Statement will need amending accordingly.

#### 3.3 Environmental Statement Chapter 7 – Landscape and Visual

3.3.1 Having reviewed the updated Chapter 7 - Landscape and Visual of the Environmental Statement (Examination Document REP9-119), Natural England has the following comments to make.

3.3.2 Natural England notes the inclusion, within Table 7.14, of the additional REAC Clause LV037 to minimise the impacts to the existing vegetation to the north of Park Pale. Notwithstanding our long-term concern regarding the use of 'where reasonably' practicable within the securing mechanisms, including Clause LV037, Natural England supports the intention of the first bullet point to minimise the removal of existing vegetation in this area. Our concerns regarding the second bullet point of LV037 detailed in Paragraph 3.3 of our Deadline 8 Response (Examination Document REP8-154) in relation to the landscape and visual impacts to the Kent Downs AONB from the woodland compensation planting in this area remain.

3.3.3 Natural England has provided detailed comments in relation to the additional REAC Clauses LST.04 and S1.24 in our Deadline 9 Response (Examination Document REP9-292) including suggested amended wording to overcome our concerns and we have not repeated them here.

- 3.4 Figure 7.19 – Photomontages Winter Year 1 and Summer Year 15
  - 3.4.1 Natural England has provided extensive comments in relation to Viewpoint S-03 throughout the Examination, including in our Written Representation (Examination Document REP1-262), our Deadline 6 Response (Examination Document REP6-152) and our Deadline 8 Response (REP8-154). In these submissions, we expressed, and continue to have, significant concerns regarding the nature and scale of the landscape and visual impacts of the Project from Viewpoint S-03 and also the additional impacts resulting from the proposed woodland compensation planting.
  - 3.4.2 Natural England has reviewed the amended Winter Year 1 visualisations provided for Viewpoint S-03 within Figure 7.19 (1 of 4) (Examination Document REP9-160). The amended visualisations Drawing Numbers HE540039-CJV-ELS-SZP\_ZZ000000\_Z-DR-LV-00325 and HE540039-CJV-ELS-SZP\_ZZ000000\_Z-DR-LV-00326 (both dated 10 November 2023) show the A2 corridor and associated highway infrastructure being less prominent than in the initial visualisations submitted at Deadline 5 (Examination Documents REP5-046 and REP5-047).
  - 3.4.3 Notwithstanding Natural England’s concerns regarding the previous visualisations and the assessment of impacts, no information appears to have been provided by the Applicant to evidence and support these changes. Given the significant concerns regarding the landscape and visual impacts for the Kent Downs AONB in this area, Natural England would have expected the changes to be supported by a narrative from the Applicant, particularly given the late stage of the Examination.
- 3.5 Environmental Statement Chapter 8 – Terrestrial Biodiversity
  - 3.5.1 Natural England notes the amendments within Chapter 8 – Terrestrial Biodiversity (Examination Document REP9-121). We have provided advice on these changes previously and can confirm we have no further comments to make.
- 3.6 Appendix 2.2 Code of Construction Practice including Register of Environmental Actions and Commitments, First Iteration of Environmental Management Plan
  - 3.6.1 Having reviewed the updated Code of Construction Practice (version 9.0) (Examination Document REP9-185), Natural England has the following comments to make.
- 3.7 Landscape
  - 3.7.1 Natural England notes the amendments to REAC reference LV037 in relation to the proposed woodland compensation planting north of Park Pale within the Kent Downs AONB. Natural England continues to advise that the proposed woodland compensation planting will result in adverse landscape and visual impacts for the AONB in this area. We provided advice in relation to this addition of LV037 to the REAC in our Deadline 8 response (Examination Document REP8-154) and these concerns remain valid.



### 3.8 Road Drainage and Water Environment

3.8.1 Natural England notes the minor amendment to REAC reference RDWF033 in relation to the proposed discharge of treated surface water run-off from the southern construction compound into the Thames Estuary and Marshes Ramsar site and the underpinning South Thames Estuary and Marshes Site of Special Scientific Interest. Natural England has worked with the Applicant to agree the suite of chemical and biological parameters which the Environmental Permit will need to meet (as detailed within Habitats Regulations Assessment (Examination Document APP-488 and RDWF033). Given this agreement, Natural England has no comments to make in relation to this amendment.

### 3.9 Ancient woodland soil translocation

3.9.1 Natural England notes the amendments to REAC reference TB028 and welcomes the confirmation that ancient woodland soils will be undertaken in accordance with the CIRIA Habitat Translocation good practice guidance.

### 3.10 Outline Landscape and Ecology Management Plan

3.10.1 Having reviewed the amended outline Landscape and Ecology Management Plan (version 7.0) (Examination Document REP9-208), Natural England's previous advice and suggested amendments within our Deadline 8 response (Examination Document REP8-154) remain valid as they have not been incorporated.

### 3.11 Outline Landscape and Ecology Management Plan Appendix 1 – LEMP terms of reference

3.11.1 Natural England has reviewed the amended LEMP terms of reference (version 9.) (Examination Document REP9-210) and remain concerned regarding the dispute resolution measures (as detailed within item 2.1.2 of our Statement of Common Ground, Examination Document REP8-013). We also advised at Deadline 8 (Examination Document REP8-154) that the Terms of Reference should be updated to reflect the discussions Natural England held with the Applicant to ensure that the Advisory Group would agree the species/species groups and the monitoring protocols as part of the holistic indicators of success approach and suggested amended wording. These comments remain valid.

### 3.12 Design Principles

3.12.1 Having reviewed the updated Design Principles (version 7.0) (Examination Document REP9-228), Natural England has the following comments to make.

#### Brewers Road Green Bridge

3.12.2 Notwithstanding Natural England's longstanding advice that the design of the Brewers Road Green Bridge is unlikely to meet the Applicant's ecological and landscape objectives, Natural England welcomes the clarity provided within Clause S1.17 that vegetation will be planted on both the eastern and western side of the Bridge.

## Thong Lane Green Bridge

- 3.12.3 Notwithstanding Natural England's longstanding advice that the design of the Thong Lane south Green Bridge is unlikely to meet the Applicant's ecological and landscape objectives, Natural England welcomes the clarity provided within Clause S2.12 that vegetation will be planted on both the eastern and western side of the Bridge.
- 3.13 Applicant's responses to Interested Parties' comments on the draft Development Consent Order at Deadline 8
  - 3.13.1 Natural England welcomes the Applicant's clarification regarding the Tilbury Link Road, specifically that 'the Tilbury Link Road would be subject to its own environmental assessment, and its own route selection appraisal.' We therefore understand that the Lower Thames Crossing project will not constrain a Tilbury Link Road before such time as it has been consulted upon. Natural England's concern is that adequate consultation needs to have taken place before passive provision is made, such that the route alignment of a Tilbury Link Road can adequately take into account environmental concerns before the Lower Thames Crossing has, in any way, made adjustment for it. Our suggested drafted amendments have this outcome in mind.
- 3.14 Applicant's comments on Interested Parties' submissions at Deadline 8
  - 3.14.1 Having reviewed the Applicant's response to Interested Parties' submissions at Deadline 8, Natural England has the following comments to make.

### Indicators of success

- 3.14.2 Natural England notes the Applicant's response in relation to our concerns regarding the lack of a specific reference and commitment to include species/species groups as part of a holistic indicators of success approach (as implemented by the Applicant on other schemes such as the A21 Pembury to Tonbridge Dualling). Our advice remains that clearer wording and a stronger commitment should be provided. The Applicant's commitment to 'consideration of key species groups, where necessary' within Section 4.1.14 of the oLEMP does not provide sufficient certainty that a holistic indicators of success approach will be secured post consent. This is heightened by the lack of a requirement within the LEMP Advisory Group Terms of Reference for the Group to agree the species/species groups and the monitoring measures.
- 3.14.3 Natural England's advice therefore remains as detailed in our Deadline 8 response (Examination Document REP8-154) that, to overcome these concerns, we would seek the amended wording to the oLEMP and Advisory Groups Terms of Reference suggested in our Deadline 8 response being secured.

## Design principles

- 3.14.4 Natural England notes the clarity provided by the Applicant in response to our comments on Clause S1.17 and S2.12 regarding the lack of clarity as to which side of the Thong Lane south and Brewers Road Green Bridges the planting would be placed. Notwithstanding Natural England's remaining concerns regarding the design and effectiveness of the Green Bridges in being effective in providing landscape scale connectivity for people and wildlife, Natural England welcomes the clarity provided within the amended wording for Clause S1.17 and S2.12 within the updated Design Principles (Examination Document REP9-228). These amendments address our concern in relation to the location of the planting.

## Viewpoint S-03

- 3.14.5 Natural England notes the Applicant's response to our concerns regarding the Baseline Year 15 visualisation for Viewpoint S-03 which does not show the current (2023) height and effective screening of the industrial units at Park Pale. They state that it is not possible to provide an estimate of vegetation growth for Baseline Year 15. Given the sensitivity of Viewpoint S-03, Natural England's previous advice regarding the visualisation and assessment of impacts (as detailed within our Deadline 8 response, Examination Document REP8-154) remain. We remain concerned that the existing level and effectiveness of the screening of the industrial units at Park Pale is not reflected within the Applicant's visualisations and assessment. Given the Applicant's Winter Year 1 and Summer Year 15 visualisations (incorporating their planting) show growth rates, we consider that it would have been appropriate for a similar approach to have been taken for this viewpoint given its sensitivity and the significant change between the baseline photography in 2019 and the current (2023) situation.

## Green Bridges

- 3.14.6 Natural England notes the Applicant's response to our concerns regarding the likely effectiveness of the Green Bridges in achieving their stated Design Principles. Our advice remains that they do not meet good practice guidance nor the Applicant's previous good practice design to provide landscape connectivity at Lamberhurst within the High Weald AONB. We have provided significant guidance on the design and nature of the Green Bridges to the Applicant during the pre-application and Examination stages. Natural England's advice remains that, for a scheme of this nature, which results in significant protected landscape and ecological impacts, Green Bridges which more closely align with the minimum width and width to length ratios within the various Good Practice Guidance documents referred to by the Applicant (Examination Documents REP4-329, REP4-330 and REP7-121) should be delivered.

## Securing mechanisms

- 3.14.7 England's advice remains that the ambiguity within the various control documents and securing mechanisms does not provide a sufficient degree of certainty as to the ecological and landscape mitigation measures that will be delivered post consent. As detailed within our Deadline 8 response (Examination REP8-154), Natural England recommended, as a minimum, that the wording is amended to 'significantly in accordance with' and 'where reasonably practicable'; this advice remains.

## Kent Downs Area of Outstanding Natural Beauty

- 3.14.8 Whilst Natural England notes the Applicant's agreement to a compensatory enhancement fund for residual impacts to the Kent Downs AONB, we consider that additional measures could have been provided by the Applicant to reduce the residual adverse landscape and visual impacts to the AONB. These were detailed in our Written Representation (Examination Document REP1-262) and whilst some progress has been made, our advice remains that additional measures could be delivered. These were summarised in our Deadline 8 response (Examination Document REP8-154) and we suggested amended wording to design principles within our Deadline 9 response (Examination Document REP9-292).
- 3.14.9 Given these unresolved matters, in our final Statement of Common Ground to be submitted by the Applicant at Deadline 9a, regrettably records Item 2.1.29 (Landscape Mitigation) as a 'matter not agreed'.

## Sensitive breeding bird species

### 3.14.10

The Applicant places emphasis on the role of the environmental clerk of works to provide for more detailed guidance on sensitive periods for key species across the Project. Whilst Natural England welcomes the role of the environmental clerk of works in general, this role is described (in REAC Ref. TB006) as ensuring 'legislative compliance' which, for the species in question, extends to the protection against killing / injury, but would not (we understand) extend to avoiding the critical period for nest prospecting. We are looking for the Applicant - in the interests of a positive conservation outcome - to go beyond legal compliance, but ensure the species in question has every prospect of successful nesting. It remains our view therefore, that a specific REAC commitment is required to address the need for works to avoid (should the ExA determine that they outweigh the harm caused) the sensitive period, by undertaking them between September and December (inclusive) as proposed in our DL8 response.

### 3.15 Applicant's comments on Natural England's ExQ3 response

- 3.15.1 Natural England has provided comments to a number of the Applicant's responses to the third round of the Examiner's Questions (ExQ3) in our Deadline 9 response (Examination Document REP9-292) which we consider remain valid. We have some additional comments to make following the Applicant's comments on our response to ExQ3 (Examination Document REP8-155) and these are provided below.

## LEMP Advisory Group Terms of Reference

- 3.15.2 In relation to the Applicant's response to our concerns detailed in our response to ExQ3 Q11.1.10 (the oLEMP Terms of Reference), these concerns remain as detailed in Section 3.11 of this letter.

## Noise attenuation on the Green Bridges in the AONB

- 3.15.3 Natural England notes the Applicant's comments in relation to our recommendation for additional mitigation, such as sympathetic integrated noise attenuation measures into the Green Bridges to reduce the impacts for recreational users within the Kent Downs AONB. Our advice remains that such measures would help reduce the impacts to receptors in the AONB.

## Green Bridge design

- 3.15.4 Natural England has provided extensive, detailed advice on the design and likely effectiveness of the Green Bridges during both the pre-application and Examination stages of the Project. Our advice remains that, to be effective in meeting their ecological and landscape objectives, the design should much more closely align with the minimum width and width to length ratios recommended within Examination Documents REP4-329, REP4-330 and REP7-221. We have recommended strengthened wording in our Deadline 8 response (REP8-154) to help address these concerns and this remains valid.

#### **4 Annex 4: Final Statement of Common Ground**

- 4.1.1 Natural England has agreed a final Statement of Common Ground which we understand the Applicant will be submitting at Deadline 9a.

## **5 Annex 5: Principal Areas of Disagreement**

- 5.1.1 As at previous Deadlines, Natural England's advice remains that our agreed Statement of Common Ground accurately details the areas of agreement and disagreement so we will not be providing a Principal Areas of Disagreement to the Examination.

**6 Annex 6: Natural England response to the Procedural Decision 45, Rule 17 letter regarding ‘The Wilderness’**

6.1.1 Natural England is pleased to provide our response to the questions asked of us by the Examining Authority within the Procedural Decision 45 Rule 17 letter of the 8 December 2023 below.

6.2 Question A: NE is asked if ‘The Wilderness’ (identified as the area hatched in blue on the plan in Annex A) is currently designated as ancient woodland? Or is it still pending a designation decision? (By Deadline 9A on 15 December 2023.)

6.2.1 The southern section of The Wilderness (as previously identified) is ancient woodland. Please note that Natural England does not use the terms designation or designated with respect to ancient woodland, as this implies a legal underpinning, of which ancient woodland has none – rather it is a classification. The term ‘designation’ was used in our Deadline 7 submission (Examination Document REP7-215) of 17 November 2023 in error and we apologise for this mistake.

6.2.2 Natural England has decided to classify the southern section of the Wilderness as ancient woodland. The area should be treated as ancient woodland from the time of the decision (and communication thereof). The ancient woodland inventory database has been amended to add the southern section of The Wilderness to the ancient woodland layer and the remainder of the Wilderness has been added to the long-established woodland layer. The updated ancient woodland layer is due to be published (on MAGIC<sup>2</sup> and Defra’s open data portal<sup>3</sup>) on 15 January 2024. The publication date for the long-established woodland layer has yet to be confirmed but is likely to be early in 2024. In our Deadline 7 submission, the sentence: ‘The polygon will be split and the Wilderness added to the pending Ancient Woodland Update layer’ was perhaps misleading – the word ‘pending’ simply referring to our pre-publication internal processes. These internal publishing processes are now complete, and the external publication is ready for the next update slot set to go live on 15 January 2024. Natural England advised the Examining Authority and the Applicant of the above decision in our Deadline 7 submission (Examination Document REP7-215), which set out the rationale and key evidence for the decision. The methodology for determining ancient woodland status is detailed in the published Ancient Woodland Inventory Handbook<sup>4</sup> (Examination Document REP4-355).

6.3 Question B: NE is asked to advise the ExA of the designation status of ‘The Wilderness’ in writing at Deadline 9A on 15 December 2023. Advice about a formal designation decision should be accompanied by a record of the designation decision. The designation process should be explained. If the site remains ‘pending’ designation, then the effect of that status and its policy consequences should also be set out.

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<sup>2</sup> <https://magic.defra.gov.uk/>

<sup>3</sup> <https://environment.data.gov.uk/>

<sup>4</sup> <https://publications.naturalengland.org.uk/publication/4876500800634880>



- 6.3.1 As mentioned above in response to Question A, the methodology for determining ancient woodland status is detailed within the Ancient Woodland Inventory Handbook (Examination Document REP4-355). The Handbook details explains the methodology used to determine if a woodland is ancient and includes the detailed methodology that is applied when map evidence is sparse within Section 6.1.2 (Constructing a chronology and assessing continuity from map data). The section entitled 'Lack of depth in the map record' on page 102 also provides helpful additional advice.
- 6.3.2 Natural England has included a copy of our decision-making report for The Wilderness within Appendix A (sent under separate cover) to this Deadline 9a response.
- 6.4 Question C. The Applicant may respond to material provided by NE at Deadline 9A at Deadline 10 on 20 December 2023
- 6.4.1 This question appears to be for the Applicant so Natural England has no comments to make in relation to Question C.
- 6.5 Question D. If the designation status of 'The Wilderness' has not changed by Deadline 9A, NE is requested to confirm the status of the Wilderness at the last available point in the Examination which is Deadline 10 on 20 December 2023.
- 6.5.1 As detailed in our response to Question A, The Wilderness has been classified as ancient woodland and has been added to the ancient woodland inventory database; we therefore do not consider there will be a need to provide further advice at Deadline 10.