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Our ref: 474297
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Dear Transport Infrastructure Planning Unit

**Application by National Highways for an Order Granting Development Consent for the Lower Thames Crossing
Consultation seeking comments from The Applicant, Natural England and other interested parties dated 19 April 2024**

Thank you for your letter of the 19 April 2024 on behalf of the Secretary of State. Natural England is pleased to provide our comments following the Applicant's response to the Secretary of State's letter of 28 March 2024, regarding the implications of the amendment of section 85 of the Countryside and Rights of Way Act (CROW) 2000, in relation to National Landscapes (formerly Areas of Outstanding Natural Beauty (AONBs)).

We have provided our detailed advice in Annex A appended to this letter. In summary, Natural England welcomes the consideration of the amended duty in respect of protected landscapes. Our advice remains that, given the nature and scale of the significant residual landscape and visual impacts to the Kent Downs National Landscape, further mitigation measures should have been more fully explored by the Applicant.

In the absence of the submitted scheme avoiding or fully mitigating its impacts to the National Landscape, Natural England is not able to advise that the Applicant and the proposal has sought to further the conservation and enhancement of the natural beauty of the Kent Downs National Landscape as required by the amended duty.

For a scheme of this nature and scale, Natural England would have expected a much more comprehensive approach to mitigating the impacts and delivering enhancements to the protected landscape to have been provided.

We trust these comments are helpful.

Yours faithfully

James Seymour
Deputy Director, Sussex and Kent Team

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Annex A Natural England's comments in relation to the Applicant's response to the Secretary of State's letter of the 29 March 2024 in relation to National Landscapes.

- 1.1 Natural England provided advice on the implications of the amended duty within Section 85 of the Countryside and Rights of Way Act 2000 implemented through Section 245 of the Levelling Up and Regeneration Act 2023 in Annex 2 of our Deadline 9A response following Issue Specific Hearing 11 of the Examination in November 2023 (Examination Document REP9A-122).
- 1.2 The amended duty requires that 'In exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty in England, a relevant authority other than a devolved Welsh authority must seek to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty'.
- 1.3 Whilst we await the provision of guidance from the government on how the duty should be applied, Natural England considers the amended duty to be a strengthening of the original 'duty to have regard'. Without prejudicing the forthcoming guidance, Natural England advised the Examining Authority 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 Area of Outstanding Natural Beauty) can be furthered;
 - The amended 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; and
 - 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.
- 1.4 Natural England provided detailed comments on the Applicant's landscape and visual impact assessment and the effectiveness of the avoidance and mitigation measures during the Examination. These comments are summarised in our Written Representations (Examination Document REP1-262). Based upon the information provided, the scheme will result in a number of significant residual adverse effects to both the landscape character and visual receptors within the Kent Downs National Landscape at Year 15. We also advised that the nature and scale of residual impacts is likely to be an underestimate. This is heightened by the additional impacts resulting from some elements of the ecological mitigation.
- 1.5 Given the significant residual adverse effects to the Kent Downs National Landscape,

our advice remains that additional mitigation measures should have been sought and more fully explored by the Applicant; these are summarised within Sections 6.1.61 and 6.1.62 of our Written Representation (Examination Document REP1-262).

- 1.6 The Applicant's response to the Secretary of State, in their letter of the 11 April 2024, details in Section A.2.19 that the scheme '...has included in the Project design a raft of measures which has the effect of mitigating the impacts on the AONB (National Landscape), as well as providing enhancements – these include woodland planting on a landscape scale, a number of green bridges and the enhancement of walking, cycling and horse riding networks in the AONB (National Landscape)' and that 'the Applicant has reached agreement with the AONB Unit to provide a fund of £4.24 million to enable further compensatory enhancements to other aspects of the environment within the AONB'. Given these, the Applicant considers that 'that the Secretary of State can be satisfied that on the in the absence of less harmful alternatives, and the design and enhancement commitments, that all necessary steps have been taken to seek to further the relevant purposes of the AONB (National Landscape) and to comply with the amended statutory duty'.
- 1.7 During the Examination, Natural England advised that a key mitigation measure to reduce the impacts to recreational users within the Kent Downs National Landscape was the provision of green bridges across the widened A2 corridor, the design of which needed to follow good practice guidance. Well-designed green bridges providing a high-quality user experience linking recreational routes and habitats would provide significant mitigation for the increased noise, visual and severance impacts for users and habitats. The design and effectiveness of the Thong Lane, Thong Lane South and Brewers Road green bridges were subject to significant discussion during the Examination, both during Issue Specific Hearings and as part of our response to the Examining Authority's questions.
- 1.8 As detailed in our advice to the Examining Authority, we do not consider the design of the green bridges will be effective in mitigating the impacts for people recreating within the Kent Downs National Landscape nor in providing habitat connectivity for species impacted by the proposal. Our detailed advice on the green bridges is provided more fully in Examination Documents REP3-193, REP4-324, REP5-109, REP6-155, REP7-215, REP8-154 and 155, REP9-291 and REP9A-122. In summary, we consider that for the proposed green bridges to be effective in reducing the impacts to the Kent Downs National Landscape, their design should much more closely align with good practice in terms of their width, connectivity for people and wildlife and deliver a high quality user experience (including the ways to reduce the impact of traffic using the shared bridge and noise generated from the widened A2 corridor).
- 1.9 Given the loss of ancient woodland to the scheme, including areas within the Shorne and Ashenbank Woods Site of Special Scientific Interest, Natural England acknowledges that woodland planting is proposed should the Secretary of State consider the benefits of the scheme outweigh the loss of irreplaceable habitat. The woodland habitat planting referred to by the Applicant in their letter of the 11 April 2024 is primarily for the ecological impacts (rather than landscape) and in some situations is likely to increase the landscape and visual impacts to the Kent Downs National Landscape. For example, Natural England expressed concern during the Examination that the proposed woodland planting at Park Pale (within the Kent Downs) will change the landscape character of the area from parkland with mature trees to planted woodland whilst also largely removing the attractive panoramic view of the woodland habitats within the National Landscape to the south of the A2 corridor for users of the public right of way.

- 1.10 Whilst Natural England's advice remains that it is not possible to compensate for residual landscape and visual impacts, we note the Applicant proposed a 'compensatory enhancement' fund to undertake works in areas of the Kent Downs outside of the order limits. We understand this 'compensatory enhancement' fund was proposed by the Applicant in acknowledgement that the scheme will result in a significant number of residual adverse impacts to the Kent Downs which the submitted scheme design did not fully avoid or mitigate. Given this Natural England does not consider this funding has been provided to further the conservation and enhancement of the natural beauty of the National Landscape as detailed by the Applicant in Section A.2.219C of their response to the Secretary of State's request.
- 1.11 Given the number of long-term significant adverse residual landscape and visual impacts identified by the Applicant and the lack of effective avoidance and mitigation measures, Natural England's advice remains that the Applicant should have explored more fully opportunities to mitigate the impacts of the scheme to the Kent Downs National Landscape. Such measures could, for example, have included green bridges which meet the good practice guidance to ensure their effectiveness, measures to reduce noise impacts for recreational users of the green bridges and recreational routes along the A2 along with ensuring that ecological mitigation does not result in additional landscape and visual impacts to the Kent Downs National Landscape.
- 1.12 In the absence of seeking all opportunities to avoid or mitigate the landscape and visual impacts, we are unable to advise that the scheme, in its current form, has sought to further the conservation and enhancement of the natural beauty of the Kent Downs National Landscape.