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23 May 2024

Dear Mr Bartkowiak

## **A122 Lower Thames Crossing (Reference Number TR010032)**

### **1 Response to Secretary of State letter from 10 May 2024**

1.1 The Applicant is responding to the letter from the Secretary of State published on the 10 May 2024 requesting updates on a number of matters.

### **2 Amendment of section 85 of the Countryside and Rights of Way (CroW) Act 2000**

2.1 It states within the Secretary of State's letter of 10 May 2024 that:

*The Secretary of State notes the comments from the Applicant in their response to the consultation letter issued by the Secretary of State on the 28 March 2024.*

*The Secretary of State also notes the comments from Natural England in response to the Secretary of State's consultation letter of 19 April 2024, regarding compliance with the duty set out in the above Act.*

*The Secretary of State requests that the Applicant and Natural England should seek to agree a position on this and, if an agreed position is possible, to set out what, if any, amendments they agree should be made to the Development Consent Order to address the enhanced duty. Where an agreed position cannot be reached, the Secretary of State invites both parties to set out their respective views on what is needed to meet the enhanced duty.*

*The Secretary of State also notes the comments from the Kent Downs National Landscape Team, Gravesham Borough Council and Thames Crossing Action Group regarding the enhanced duty, and invites the Applicant to respond.*

- 2.2 The Applicant provides an update on the discussions with Natural England at Annex A of this letter. A response to the matters raised regarding the enhanced duty is provided at Annex B.

### **3 Outstanding Agreements**

- 3.1 It states within the Secretary of State's letter of 10 May 2024 that:

*The Secretary of State notes the responses from the Applicant, Network Rail, and the Mee Family in response to the consultation letter issued by the Secretary of State on the 28 March 2024. The Secretary of State did not receive a response from Hill Residential Ltd., MOPAC and the RSPB.*

*The Secretary of State requests an update on the outstanding agreements from the Applicant and Network Rail, the Mee Family, Hill Residential Ltd., MOPAC and the RSPB.*

- 3.2 An update on the agreements identified by the Secretary of State, along with an update on other agreements, is provided at Annex C of this letter.

### **4 Whitecroft Care Home**

- 4.1 It states within the Secretary of State's letter of 10 May 2024 that:

*The Secretary of State notes the request from Birketts Ltd., on behalf of the owners and operators of Whitecroft Care Home, to publish their post-examination response dated 26 March 2024. This is attached at Annex A.*

*The Secretary of State invites the Applicant and the owners and operators of Whitecroft Care Home to provide an update on their respective positions, and whether an agreement has been, or is expected to be, reached.*

- 4.2 The Applicant notes the content of Whitecroft Care Home's post-examination submission dated 26 March 2024. This response provides Applicant's response to the points raised within that submission and confirms the Applicant's overall position in relation to this matter.

- 4.3 Dialogue between the parties is continuing to try to resolve matters. A revised draft Heads of Terms has been received from Whitecroft Care Home's agent following a productive meeting on 8 April 2024 between the parties. The Applicant is considering the content of the revised Heads of Terms and will be in a position to respond shortly.

- 4.4 The Applicant considers that the inclusion of the revised wording of Article 30 (option (a) in the Care Home's response) provides the appropriate protection for the Care Home and, therefore, the second option, identified as option (b), suggested by the Care Home, to incorporate the Care Home within the Order Limits, is not required. The Applicant considers that the tests within section 122(3) Planning Act 2008 had already been met within its application for Development Consent. Nevertheless, the Applicant recognises the highly sensitive nature of this particular facility, which

provides for end of life care and that this additional drafting within the Order is to provide additional comfort to the Care Home.

4.5 The Care Homes' submission states that "*unless there is a relocation, the SoS cannot be satisfied that the PSED will be met*". The Applicant considers that the inclusion of the revised wording of Article 30 ensures that the PSED requirements can be met.

4.6 As mentioned above the Applicant will be responding shortly to the revised draft Heads of Terms provided by the Care Home but due to the complex nature of the agreement the Applicant believes it will be unlikely that an agreement will be reached in the next few weeks. The Applicant commits to continuing to work with the Care Home to purchase the Care Home site and allow the Care Home to relocate elsewhere.

## 5 Revised draft Development Consent Order

5.1 As set out in section 1.4 above, the Applicant has made a revision to the drafting of paragraph 30 of the draft Development Consent Order. A clean and tracked changes version of the draft Development Consent Order **[3.1 draft Development Consent Order (rev. 15.0)]** are included with this submission.

## 6 Crown land update

6.1 The Applicant notes the request for an update on Crown Land Consents (HS1 Ltd.) set out within the 4th consultation letter from the Secretary of State published on the 21 May 2024. The Applicant is continuing to engage with the Department for Transport and HS1 Ltd on the acquisition of their land and interests, and good progress is continuing to be made. In the last meeting, held on 22 May 2024, the Applicant agreed a timeline with the Department for Transport for the resolution of matters. The Applicant therefore seeks an extension to the request to set out our proposals until the 7 June 2024. At that time both parties anticipate that the required consent will be in place.

Yours sincerely

Dr Tim Wright

Head of Consents – Lower Thames Crossing

# Annex A: Response to: Compliance with the enhanced duty arising through the amendment of section 85 of the Countryside and Rights of Way (CROW) Act 2000

## A.1 Introduction

- A.1.1 The changes to section 85 of the Countryside and Rights of Way Act 2000 (the 2000 Act) introduced by section 245 of the Levelling Up and Regeneration Act 2023 establish an enhanced duty on relevant authorities to seek to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty (AONB). The enhanced duty reads as follows:
- A.1.2 *“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.**”* (our emphasis).
- A.1.3 For the purposes of this duty, both the Secretary of State (as decision-maker on the DCO application) and National Highways are relevant authorities. Where (as here) the grant of a DCO would affect land (directly or indirectly) within an AONB (now National Landscapes), then the duty in section 85 of the 2000 Act will be engaged in relation to determination of the application.
- A.1.4 Throughout the development of the proposals for the A122 Lower Thames Crossing the Applicant has considered carefully the impacts on Kent Downs AONB (National Landscape). From route selection through to the development of the design set out within the application and the associated mitigation, compensation proposals, avoidance and reduction of the harm to the Kent Downs AONB (National Landscape) has been an important consideration, alongside an exploration, in collaboration with stakeholders, of enhancements that would deliver an environmental legacy in the area. As such, although the duty was not in place during the development of the proposals for the A122 Lower Thames Crossing, as set out in the Applicant’s submission on 11 April 2024 (Annex A of the Response to Secretary of State letter from the 28 March 2024) the work by the Applicant has been undertaken in a manner that accords with the newly enhanced duty.
- A.1.5 This response updates the submissions the Applicant made to the Secretary of State in Annex A of the Applicant’s letter dated 11 April 2024 and provides our full position on the matter, so that it is consolidated into a single

submission. The 11 April 2024 response referenced consideration of the same issue in the Secretary of State's determination of the A66 Northern Trans-Pennine DCO application. Subsequent to the Applicant's 11 April 2024 letter, the Secretary of State has now published his decision in the M3 Junction 9 DCO application, which also involved consideration of the enhanced duty<sup>1</sup>. In providing this latest consolidated position, the Applicant has had regard to M3 Junction 9 DCO decision, and also to the responses received by the Secretary of State from Natural England and others in response to the Secretary of State's consultation letter of 19 April 2024.

A.1.6 This response is structured into [six] parts:

Section A.2 - The Applicant's understanding of the enhanced duty

Section A.3 - An explanation of how the Applicant has actively worked with stakeholders through the development of the proposals for the A122 Lower Thames Crossing to identify solutions that mitigate the impacts where possible, and how the Applicant has developed proposals that seek to conserve and enhance the natural beauty of the Kent Downs AONB (National Landscape).

Section A.4 A summary of the future engagement and consultation secured by the draft Development Consent Order that will continue the Applicant's compliance with the requirement to seek to further the purpose of conserving and enhancing the Kent Downs AONB (National Landscape).

Section A.5 - A table setting out the policy changes between the 2014 NPSNN which has effect and the revised 2024 NNNPS, and then showing how compliance with the policy in the 2014 NPSNN also leads to compliance with the enhanced duty under Section 85.

Section A.6 - An explanation of how the recommendations set out by Natural England in their submission of the 1 May 2024 are secured or otherwise an explanation as to why they are not appropriate.

Section A.7 - The Applicant's commentary on what, if any, amendments should be made to the Development Consent Order to address the enhanced duty.

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<sup>1</sup> The M3 Junction 9 DCO engaged the amended duty under the National Parks and Access to Countryside Act 1949, but this is substantively the same (in relation to National Parks) as the amended duty under section 85 of the 2000 Act.

## A.2 The Applicant’s understanding of the enhanced duty

- A.2.1 The Applicant recognises the strengthening of the duty to seek to further the purpose of conserving and enhancing the natural beauty of an AONB as reflected in the amendment to section 85. The enhanced duty was not in force during the pre-application and examination stages of the LTC DCO application, but came into force on 26 December 2023.
- A.2.2 The amendments to section 85 envisage that regulations will be made to assist in the application of the enhanced duty. No regulations have yet been produced. Similarly, no guidance has been issued by Defra on the interpretation of the duty.
- A.2.3 In the absence of regulations or guidance, the Applicant considers that the words “seek to further” must be ascribed their ordinary meaning. It can be discerned therefore that while the enhanced section 85 amendment can be considered to be a proactive measure, it is not a duty that dictates any particular outcome. Put another way, the amendment to section 85 is not a duty to *achieve* the furthering of the purpose in every case, but rather requires the exercise of seeking to further the purpose.
- A.2.4 In the context of a DCO application, the enhanced duty means that the Secretary of State, as decision-maker, is required to exercise their duty to try to further the purpose of conserving and enhancing the natural beauty of an AONB when determining a DCO application that would affect land (directly or indirectly) within that AONB. In this context, the Applicant’s interpretation is as follows:
- a. the enhanced duty requires that the Secretary of State must consider the extent to which an applicant’s proposals would further the purpose of conserving and enhancing the natural beauty of the AONB, and to consider if other opportunities exist (in the context of the project and its objectives and constraints) to further that purpose;
  - b. the enhanced duty goes beyond consideration of mere rectification of harm to an AONB, but this does not mean that the Secretary of State must adopt all measures that are theoretically available to further the purpose. The duty is subject always to what is reasonable and proportionate in the context of the project in question and its specific objectives and constraints. For this reason, the Applicant disagrees with the submission of Kent Downs National Landscape team that section 85 is an “unqualified duty”;
  - c. the Applicant’s interpretation in paragraph b. above is further supported by the existence of other legal tests which (alongside section 85) establish a framework for the scope and extent of environmental commitments that may be imposed – by way of example:



- i. section 120(1)-(2) of the Planning Act 2008, and paragraph 4.9 of the 2014 NPSNN, which provide that the Secretary of State should only impose requirements in relation to a development consent that are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise, and reasonable in all other respects; and
  - ii. paragraph 4.10 of the 2014 NPSNN, which provides that planning obligations should only be sought where they are necessary to make the development acceptable in planning terms, directly related to the proposed development and fairly and reasonably related in scale and kind to the development.
- d. In the context of section 85, “enhancement” should not be read as something that is necessarily functionally distinct from “mitigation”. Assessment of compliance with the duty should not exclude consideration of mitigation commitments because these can provide conservation and enhancement benefits to an AONB, e.g. where they have multi-functional benefits, or when considered in aggregate and on a landscape scale. The Applicant notes that the 2014 NPSNN, and the 2024 NPSNN, do not make such a distinction between mitigation and enhancement. Indeed, paragraph 5.168 of the 2024 NPSNN<sup>2</sup> (under the sub-section “mitigation”) states that: *“Applicants should consider how landscapes can be enhanced using landscape management plans, as this will help to enhance environmental assets where they contribute to landscape and townscape quality and can reinforce or enhance landscape features and character”*;
- e. the Secretary of State in determining the DCO application will need to consider whether there is anything more that reasonably and proportionately could be done by the project in the context of its objectives to further the purpose of conserving and enhancing the natural beauty of the AONB beyond that which is proposed. If there is not, then the Secretary of State as decision-maker will have fulfilled their duty to seek to further the purpose, and by extension can be satisfied that the Applicant (as a relevant authority) has also met the enhanced duty.
- f. finally and importantly, the Secretary of State can grant approval for a DCO application in a manner compatible with the enhanced duty, notwithstanding that the NSIP in question would result in net harm to an AONB.

A.2.5 The enhanced section 85 duty reflects the 2014 NPSNN policies at paragraphs 5.130 to 5.153 (which have effect for the purpose of decision making for this DCO application). In combination, these paragraphs have the

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<sup>2</sup> Whilst the decision on the application will be made with reference to the 2014 NPSNN, the 2024 NPSNN (an important and relevant consideration) provides a helpful indication – in the absence of regulations and guidance – as to how the enhanced duty can be met.

same effect as the enhanced section 85 duty. Accordingly, the NPSNN effectively already obliges the Secretary of State to seek to further the relevant statutory purposes, which is now required under statute through the amendments made to section 85 by section 245 of the Levelling-up and Regeneration Act 2023.

- A.2.6 It follows that a finding of compliance with the 2014 NPSNN supports a conclusion that the enhanced section 85 duty has also simultaneously been complied with. To demonstrate this, at Table A-2 (section A.5) of this document the Applicant maps the relevant policies in the 2014 NPSNN against the requirements of the enhanced section 85 duty. For completeness, Table A-2 also highlights how the relevant policies have been adjusted in the 2024 NPSNN.
- A.2.7 The Applicant's overarching position therefore, as commented on in further detail in subsequent sections of this response, is that in the absence of less harmful alternatives, and in view of the Applicant's extensive design and environmental commitments relating to the Kent Downs AONB (National Landscape), the Secretary of State can conclude that he can grant the application for the DCO on a basis which is entirely consistent with the enhanced duty in section 85 of the 2000 Act.
- A.2.8 The Applicant notes the submissions made by Natural England in its response of 1 May 2024 on the meaning on the enhanced duty, in particular at paragraph 1.3 of its submission. The Applicant has set out its interpretation above, and considers that substantively there is broad consensus between it and Natural England on what the duty means, save that the Applicant emphasises a key distinction noted at paragraph 4(d) above. The Applicant's position is that compliance with the duty should not focus on measures "beyond mitigation" alone – mitigation measures are capable of the dual function of both mitigating the effects of a development, and furthering the purpose of conserving and enhancing the natural beauty of an AONB. Importantly, this means that assessment of compliance with the duty should not be viewed as a sequential process, but rather a holistic assessment of a project's measures which overall support the conservation and enhancement of an AONB's natural beauty.
- A.2.9 The Applicant disagrees with Natural England's view that the Applicant's proposals do not meet the enhanced section 85 duty, for the reasons set out in the sections of this response that follow.
- A.2.10 The Applicant also notes the legal opinion of Alex Shattock of Counsel submitted by TCAG. The Applicant observes that the same legal opinion was submitted to the Secretary of State during the decision-making stages of the Applicant's DCO applications in respect of the A66 Northern Trans-Pennine



and the M3 Junction 9 projects. For the avoidance of doubt, the Applicant does not endorse or accept the contents of that legal opinion. The Applicant's interpretation of the enhanced duty is set out above.

### **A.3 Consideration of the Kent Downs AONB (National Landscape) in the development of the proposals**

A.3.1 The impacts on Kent Downs AONB (National Landscape) have been an important consideration through the development of the A122 Lower Thames Crossing and the Applicant set out in the submission of 11 April 2024 how the proposals comply with paragraphs 5.130 to 5.153 of the National Policy Statement for National Networks (Department for Transport, 2014) (the 2014 NPSNN) and by extension complies with section 85 of the 2000 Act as amended. The influence on the route selection process, as required by paragraph 5.151 of the 2014 NPSNN, is summarised in Annex B of this submission, directly responding to representations from Kent Downs National Landscape Team, Gravesham Borough Council and the Thames Crossing Action Group.

A.3.2 Following selection of the preferred route and through consultation with stakeholders including Natural England, extensive work has been undertaken to achieve compliance with paragraph 5.153 of the 2014 NPSNN including:

- a. Design development to avoid or reduce the harm
- b. Incorporation of additional project elements that mitigate, compensate and enhance

A.3.3 The Applicant actively engaged with stakeholders throughout the development of the proposals, through both formal consultation and an extensive engagement programme. Early discussions resulted in the agreement that a landscape scale approach should be taken to the further development of the proposals. This agreement to the approach is specifically set out as a matter agreed as issue 2.1.19 of the Statement of Common Ground with Natural England [[REP9A-014](#)]. The outcome of this process has been the identification of a number of changes to the proposals that further conserve and enhance the natural beauty of the Kent Downs AONB (National Landscape), as well as the introduction of a set of secured commitments that ensure that the landscape scale approach is maintained through the construction and operation of the project (particularly comprising the outline Landscape and Ecology management Plan [[REP9-207](#)] and the Design Principles [[REP9-227](#)]).

A.3.4 At present there exists very poor user connectivity across the A2 corridor with two existing local road bridges offering no connectivity to people or wildlife. At the Statutory Consultation in 2018, in recognition of the impacts

on the Kent Downs AONB (National Landscape) the Applicant proposed a design that enhanced the current connectivity across the A2 through the replacement of the existing bridges at Brewers Road and Thong Lane with green bridges, as well as other measures such as the provision of an environmental barrier and a landscape earthwork and associated woodland planting strategy which had the intent of, over time, integrating the link roads, structures, traffic and gantries at the A2/Project route junction.

A.3.5 In response to the Statutory Consultation, the Applicant received a response from Natural England, submitted on behalf of the Defra Family (appended at page 108 of the Statement of Common Ground with Natural England [[REP9A-014](#)]). In addition to recognising the “*positive, partnership approach*” that had been taken in the development of the proposals set out in the Statutory Consultation, the submission identified a series of potential environmental legacy projects that would “*complement or are directly linked into much wider, partnership landscape scale conservation and/or access enhancements*”.

A.3.6 A number of these enhancement opportunities identified by the DEFRA were adopted by the Applicant into the proposals as they developed in the area.

A.3.7 Design developments following the Statutory Consultation included narrowing of the M2/A2 corridor through the Kent Downs AONB (National Landscape) reducing the impacts in the area, by:

- a. reducing the width of lane four on both M2 carriageways, as well as the central reservation;
- b. removing the hard shoulder from the eastbound link road along the A2; and
- c. working with statutory undertakers to reduce the land needed for works on utilities alongside the A2.

A.3.8 The proposed green bridges at Brewers Road and Thong Lane were widened significantly, and the locations modified, addressing the following enhancement opportunities proposed by the DEFRA family:

*“Habitat connectivity along the route will be maintained wherever possible recognising the significant ecological impacts that a linear scheme has in severing the ecological networks. Living bridges and wildlife corridors should be installed at key locations to facilitate movement of wildlife and people helping to future proof the scheme”*

*“Opportunities to remove the 'barrier' of the widened A2 for non-motorised users between Shorne and Cobham/Jeskyns (ideally with a living bridge) to help reconnect the landscape for people and wildlife along with the health and wellbeing benefits that it will deliver”*

- A.3.9 A combination of ancient woodland compensation planting and replacement open space was included within the design, addressing this enhancement opportunity proposed by the DEFRA family:
- “Woodland creation linking Great Crabbles and Randall Woods”*
- A.3.10 Opportunities to bolster the mitigation installed for the A2/M2 widening and High Speed 1 by delivering landscape enhancement in the AONB were explored and incorporated where possible, noting the design intent of minimising the impact of the A2 on the existing landscape and habitat. Similarly, this was the reason for not retaining and enhancing the existing central reservation. By using the central reservation the land take on either side of the A2 corridor was reduced, reducing the impact on the AONB and the Shorne and Ashenbank Wood Site of Special Scientific Interest (details of these points are recorded in Table A-3 below).
- A.3.11 It is important that the proposals met with the scheme objectives, including supporting sustainable local development and regional economic growth in the medium to long term. During the Examination, views from Gravesham Borough Council were sought as to whether the removal of local connectivity, and the consequent reduction in the scale of the highways development in this location, would be acceptable. Gravesham Borough Council clearly indicated that the loss of links would be a large disbenefit to local residents (see page 10 of the Gravesham Borough Council ISH1 Post Hearing Written Representations [[REP1-235](#)]).
- A.3.12 The Applicant worked with Natural England to develop a methodology and approach for the assessment and compensation for effects of nitrogen deposition on designated sites. This included the creation of significant additional habitat within the AONB and its setting (see the Project Air Quality Action Plan [[APP-350](#)]). The purpose of this habitat creation is as a compensation for significant adverse effects on biodiversity. However, it has intentionally been developed, with Natural England, as a landscape scale response that the Applicant believes further underlines the principle of seeking opportunities to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty.
- A.3.13 In recognition of the residual impacts, the Applicant has committed to the provision of a compensatory enhancement fund of £4.24m for Kent Downs AONB (National Landscape), with the intent of offsetting the residual impacts by enabling enhancement in the Kent Downs AONB (National Landscape) elsewhere.
- A.3.14 The detailed engagement with the stakeholders is set out in the relevant Statements of Common Ground. The specific engagement with Natural England, including all of the design workshops and other meetings in which

the Applicant collaboratively and actively worked to conserve and enhance the natural beauty of the region, as well as specifically the Kent Downs AONB (National Landscape), are set out in Appendix D of the Statement of Common Ground between National Highways and Natural England submitted with the application [\[APP-099\]](#).

### Multi-functional mitigation and enhancement

- A.3.15 Many of the proposed Project mitigation measures deliver multiple mitigation, for example, a planted false cutting that provides visual screening will also provide a reduction in noise levels and new habitats; an example of this is the false cutting to the north-east side of the A2/A122 junction within the setting of the Kent Downs AONB. Similarly, proposed mitigation often goes beyond simply providing mitigation, for example, proposed planting within nitrogen deposition compensation sites would enhance landscape character and views and provide opportunities to increase public access to the countryside [\[APP-151\]](#), in addition to the primary mitigation purpose. This is reflected in the general Design Principles [\[REP9-227\]](#) clause LSP.26 which states:

*“Opportunities shall be sought in the detail design of planting to screen or soften the visual appearance of any existing visual detractors featuring in views, for example, overhead power lines.”*

- A.3.16 Examples of where proposed mitigation measures would also deliver landscape, visual and biodiversity enhancements, as well as improvements to the user experience within the Kent Downs National Landscape are set out below:

### Green bridges

- A.3.17 The two green bridges proposed across the A2 road corridor (Thong Lane south green bridge just outside the national landscape and Brewers Road green bridge) would provide mitigation for the increased width of crossing and in the case of Brewers Road green bridge, for removal of the existing tree belt within the central reservation of the A2, which currently reduces the extent of road corridor visible from certain points on the existing bridge. The two new green bridges connect the northern part of the Kent Downs National Landscape to the main part of the national landscape to the south, where no green bridge links currently exist. In addition to the mitigation provided, the two proposed green bridges will enhance the existing user experience crossing the A2 corridor via Brewers Road and the realigned Thong Lane. Users would benefit from the proposed tree, shrub and hedgerow planting on the green bridges, that would also provide effective screening of the A2 for users. Examples are shown in the before and after photomontage views from Representative Viewpoint S-14 in the Deadline 9 Submission – 6.2 Environmental Statement Figure 7.19 – Photomontages Winter Year 1 and

Summer Year 15 (1 of 4) v5.0 [REP9-160] looking east and the Deadline 7 Submission – 9.179 Computer Generated Views from Thong Lane green bridge south [REP7-189] looking west.

- A.3.18 From a biodiversity perspective, the two new green bridges would create links between habitats north and south of the A2 where currently none exist. They would therefore provide enhancement by addressing historic habitat fragmentation issues which severed woodland habitats and the range of species they support, including dormice, bats, badgers, great crested newts and reptiles. The culvert proposed at the southern side of Thong Lane South and the northern side of Brewer Road supplement the overall connectivity of these new green bridges facilitating species movement into the wider landscape, further addressing the historic fragmentation impacts and in so doing providing enhancement to the Kent Downs National Landscape.

### Nitrogen deposition compensation sites

- A.3.19 The nitrogen deposition compensation sites are proposed to compensate for the potential ecological degradation of designated sites and habitats as a result of increased nitrogen deposition. As a result of this compensation measure, the landscape impact assessment in the Deadline 9 Submission – 6.3 Environmental Statement Appendices Appendix 7.9 – Schedule of Landscape Effects v2.0 [REP9-201] records a beneficial landscape effect and therefore an enhancement of existing landscape character in the following local landscape character areas within the Kent Downs National Landscape or its setting:
- a. Mid Kent Downs (sub area Bredhurst) Local Landscape Character Area, within the Kent Downs National Landscape. Moderate beneficial effect (significant) in the design year.
  - b. Shorne Wooded Slopes Local Landscape Character Area, within the setting of the Kent Downs National Landscape. Moderate beneficial effect (significant) in the design year.

(Refer to Appendix 7.9 – Schedule of Landscape Effects for further details.)

- A.3.20 Similarly, the visual impact assessment in the Deadline 9 Submission – 6.3 Environmental Statement Appendices Appendix 7.10 – Schedule of Visual Effects v2.0 [REP9-203] records a beneficial visual effect and therefore an enhancement of existing views from the following Representative Viewpoint locations within the Kent Downs National Landscape:
- a. N-Dep-RV-02: View from footpath KT/NS/168, north-west of Woodlands Lane in Shorne Ridgeway (LLCA West Kent Downs (sub area Shorne)) within the Kent Downs National Landscape. Moderate beneficial effect (significant) in the design year.



- b. N-Dep-RV-07: View from footpath KH31 and adjacent residential properties along a farm access track off Bell Lane (LLCA Mid Kent Downs (sub area Bredhurst)) within the Kent Downs National Landscape. Moderate beneficial effect (significant) in the design year.
- c. N-Dep-RV-08: View from footpath KH31, KH30 and the North Downs Way (LLCA Mid Kent Downs (sub area Bredhurst)) within the Kent Downs National Landscape. Slight beneficial effect (not significant) in the design year.
- d. N-Dep-RV-09: View from footpath KH646 (LLCA Mid Kent Downs (sub area Bredhurst)) within the Kent Downs National Landscape. Slight beneficial effect (not significant) in the design year.

(Refer to Appendix 7.10 – Schedule of Visual Effects for further details.)

- A.3.21 This mitigation has a further consequential enhancement benefit by providing opportunities for increasing public access to the countryside within the Kent Downs National Landscape.

**Areas where the application explicitly seeks to further the purpose of conserving and enhancing the Kent Downs AONB (National Landscape)**

- A.3.22 Table A-1 shows how the commitments within the “control” documents, legally committed to in the draft DCO, will secure the protection and also further the purposes of conserving and enhancing the natural beauty of the Kent Downs National Landscape. It is the Applicant’s view that the following items, listed in Table A-1, are elements which will enhance the Kent Downs National Landscape:

- a. **Design principles:** STR.06 (Project Enhanced Structures), S1.04 (Brewers Road Green Bridge and Thong Lane Green Bridge South), S1.06 (Reflect surrounding landscape character), S1.07 (Planting palette within the Kent Downs AONB and its setting), S1.08 (New woodland east of Shorne Woods Country Park), S1.09 (Retaining structures and bridge abutments), S1.24 (Highway furniture), S3.15 (Woodland planting north of Brummelhill Wood and Randsall Wood) and S3.19 (Retention of vista near Representative Viewpoint S-29).
- b. **Outline Landscape and Ecology Management Plan:** Para 4.1.13 (Advisory group), Para 4.2.3 (In perpetuity), Section 5.2 (A2/M2 Corridor), 5.14 (Fenn Wood Site), 5.15 (Court Wood Site) and 5.16 (Blue Bell Hill Site).



**Table A-1 summary of items within the control documents which relate to the AONB**

Reference	Title	Reference to AONB
<b>Design Principles [REP9-227]</b>		
STR.06	Project Enhanced Structures	<ul style="list-style-type: none"> <li>- Materials shall be self-finished ... and appropriate to the colour palette required in the Kent Downs AONB.</li> <li>- A sense of place and pride of asset shall be promoted through the application of placemaking features ...so it can be seen by users of the project (AONB Bridges).</li> </ul>
S1.01	Woodland north of the A2/M2 Corridor	To retain the historic woodland landscape character within the Kent Downs AONB and to screen the Project from users of Shorne Woods Country Park (including users of Park Pale), existing planting along the northern edge of the A2 corridor shall be retained as far as reasonably practicable. Where tree loss is unavoidable, landscape proposals shall maximise reinstatement of woodland within the A2 corridor as defined in the Environmental Masterplan (Application Document 6.2, Figure 2.4).
S1.02	Planting to the south of the A2/M2 Corridor	To reduce the visual impact of the Project on users of Cobham Hall, woodland adjacent to and within Cobham Park shall be retained as far as practicable. Furthermore, in order to mitigate loss of woodland and screen the works within the AONB, trees shall be planted on new earthworks along the southern sides of the A2 as far as practicable, as shown in the Environmental Masterplan (Application Document 6.2, Figure 2.4).
S1.03	Associated works in the A2/M2 corridor	To reduce the impact on the Kent Downs AONB, the preliminary design has been developed to reduce the width of the A2 corridor footprint as far as reasonably practicable. The detail design shall be developed to minimise the footprint of the works associated with the Project and diverted utilities in order to maximise the areas available for woodland planting. For example, steep planted engineered embankments shall be used, and asset maintenance accesses, ProWs and utilities easements shall be combined to make as efficient use of land as is safe and practicable.

Reference	Title	Reference to AONB
S1.04	Brewers Road Green Bridge (Work No. 1D) and Thong Lane green bridge south (Work No. 1H)	<p>The bridges shall be designed to meet the following criteria:</p> <ul style="list-style-type: none"> <li>• To provide connectivity of habitats for species including dormice, badgers, reptiles, bats and great crested newts between Shorne Woods and Ashenbank Woods, Jeskyns and Cobham Park, and to strengthen the woodland character, new green bridges shall be provided for the replacement of Thong Lane and Brewers Road crossings. Landscape shall be designed to provide continuity of habitat between the bridges along the main highway's corridor as far as reasonably practicable.</li> <li>• To act as local landmarks and to signal entry into the Kent Downs AONB for drivers, the vegetation on the bridges shall be visible on the horizon on their approach to the area from the east for Brewers Road green bridge, and from the west for Thong Lane green bridge south.</li> <li>• To provide a bridge with soil depth suitable to establish appropriate shrubs and intermittent tree species, reflective of the surrounding character and species makeup of the Kent Downs AONB. Variations in soil depth on the bridge can provide diversity in planting species and heights.</li> <li>• To provide a high-quality experience for users crossing the bridge through vegetation and woodland planting. The green bridge shall improve recreation access across the A2/M2/Lower Thames Crossing corridor.</li> <li>• To provide planting on the green bridge that links into woodland planting to the edge of Gravesend in the west and the gateway to Shorne Woods Country Park in the east as part of a wider 'wooded circle' connecting Shorne Woods and Claylane Wood.</li> </ul>
S1.06	Reflect surrounding landscape character	<p>The detail design of the landscape and mitigation shall take account of the extensive deciduous woodlands adjoining large arable fields, thick deciduous shaws and hedgerows to ensure they complement and strengthen the existing character of the Kent Downs AONB and local landscape character assessments and the Kent Downs AONB Landscape Design Handbook (Kent Downs AONB Joint Advisory Committee, 2018). A diverse palette of local provenance native shrub and tree species will be reflective of the key characteristics of the West Kent Downs character area.</p>

Reference	Title	Reference to AONB
S1.07	Planting palette within the Kent Downs AONB and its setting	Further to Design Principle LSP.11, a diverse palette of native shrub and tree species characteristic of the local landscape character area and of local provenance shall be used in the area, in accordance with the Kent Downs AONB Landscape Design Handbook (Kent Downs AONB Joint Advisory Committee, 2018). Planting palette to consider suitable species to be reintroduced as identified from archaeological data (from field data) as far as reasonably practicable.
S1.08	New woodland east of Shorne Woods Country Park	New woodland east of Shorne Woods Country Park shall be provided to link Shorne Woods with Great Crabbles Wood. The design shall be developed through collaboration and engagement with Shorne Woods Country Park, Natural England, Kent Downs AONB and relevant local stakeholders, subject to their requirements being compatible with mitigation requirements as defined in the Environmental Masterplan (Application Document 6.2, Figure 2.4). Defensive understorey planting shall be planted to the boundary of adjacent private land to prevent public access. The design of woodland shall retain key views from the upper slopes of the new woodland across to the Darnley Mausoleum and views to the wider Kent Downs AONB.
S1.09	Retaining structures and bridge abutments	Retaining structures and bridge abutments within the Kent Downs AONB and its setting, shall be either green walls, earth banks, or clad with hard materials in accordance with the Kent Downs AONB Landscape Design Handbook (Kent Downs AONB Joint Advisory Committee, 2018), to be reflective of the local vernacular.

Reference	Title	Reference to AONB
S1.24	Highway furniture	<p>Where technically and reasonably practicable and following agreement with the relevant Highway Authority, roadside furniture within the AONB including (but not limited to):</p> <ul style="list-style-type: none"> <li>• Gantries</li> <li>• Lighting columns</li> <li>• Signage</li> <li>• Technology</li> </ul> <p>Shall be finished to accord with the Kent Downs AONB Guidance on the selection and use of colour in development.</p>
S2.04	Thong Lane green bridge north (Work No. 3B)	<p>To connect woodland habitat, lessen the visual impact of the M2/A2/A122 Lower Thames Crossing junction, enhance the user experience and maintain east-west connectivity between Gravesend and Thong/Shorne Woods Country Park, the crossing at Thong Lane green bridge north shall be a new green bridge. The landscape across the bridge shall be designed to extend the character of the well-vegetated Thong Lane and connect woodland to the east and west to provide a habitat corridor for mammals. The bridge shall provide off-road routes for walkers, cyclists and horse riders away from the main road. Appropriate crossings shall be provided north and south of the bridge to facilitate north-south movement. Design Principles for the Project Enhanced Structures shall apply to this bridge. Woodland shall be designed to retain a sense of openness and intervisibility at eye level to make people feel safe when crossing the bridge, and not fully enclosed. The bridge shall provide a high-quality experience for users crossing the bridge using vegetation and woodland planting. The soil depth on the bridge shall be suitable to establish appropriate woodland and woodland edge species, reflective of the surrounding character and species make up of the Kent Downs AONB. Variations in soil depth on the bridge can provide diversity in planting species and heights.</p>

Reference	Title	Reference to AONB
S3.15	Woodland planting north of Brummelhill Wood and Randsall Wood	To replace existing ancient woodland lost in the south, a new area of woodland shall be planted north-east of Thong on the upper slopes adjacent to the AONB boundary/ Brummelhill Wood and north of Randall Wood as defined in the Environmental Masterplan (Application Document 6.2, Figure 2.4). The woodland planting shall follow the contours of the landscape and tie into existing field/hedge line boundaries.
S3.19	Retention of vista near Representative Viewpoint S-29	The detail design of ancient woodland compensation planting shall retain a long-range view north from Shorne Ifield Road bordering Shorne Woods Country Park within the Kent Downs AONB, over the River Thames towards distant hills near Thorndon Country Park. Refer to Viewpoint S-29 location on Figure 7.16 (Application Document 6.2).
<b>Outline Landscape and Ecology Management Plan [<a href="#">REP9-207</a>]</b>		
Para 4.1.13	Advisory group	The advisory group will assure LEMP related targets and commitments made to stakeholders. It shall meet regularly and will include a representative from National Highways, local planning and highway authorities listed in Table 2.1, Natural England, Kent Downs Area of Outstanding Natural Beauty (AONB) and local statutory environmental bodies, National Highways' Contractor and detailed design ecological consultant, and other appropriate parties.
Para 4.2.3	In perpetuity	In addition to the habitat establishment, the in-perpetuity management and monitoring is important to the success of the mitigation planting areas. The outline measures of success will be refined during detailed design with consideration of key species groups, where necessary, to target ecosystems functionality.

Reference	Title	Reference to AONB
5.2	A2/M2 Corridor	<p>This management area is located along the existing A2/M2 corridor, extending from the A2/M2 junction in the east to the Pepper Hill junction in the west. The corridor passes through the Kent Downs AONB and has a heavily wooded character, particularly in the eastern extents of the management area.</p> <p>Management Area:</p> <p>a. To provide appropriate native woodland to screen views from within the Kent Downs AONB. Proposed woodland shall not detract from the existing landscape character of the Kent Downs AONB</p> <p>d. To establish a diverse palette of local provenance native tree and shrub species that will be reflective of the key characteristics of the West Kent Downs character area</p>



Reference	Title	Reference to AONB
5.14	Fenn Wood Site	<p>This management area is located to the south of Shorne and to the west of Woodlands Lane. The site lies partly within the Kent Downs AONB. <b>Management Requirement:</b></p> <ul style="list-style-type: none"> <li>b. Primarily woodland at a landscape scale</li> <li>c. Providing other habitats in recognition of habitats significantly affected by the Project operational N-Deposition effects</li> <li>d. Providing most ecologically appropriate mosaics of habitats / features for the site</li> <li>e. Integrating objectives with local nature conservation plans and emerging local nature recovery strategy and the Kent Downs AONB Management Plan principles and relevant landscape character assessment guidelines</li> <li>g. Preferentially achieve habitat creation through natural regeneration wherever possible</li> <li>h. Integrate biodiversity objectives with other objectives wherever feasible and not undermining the biodiversity objective</li> <li>i. Existing interests such as AONB / Landscape, Conservation areas and Heritage assets</li> <li>j. Potential additional benefits such as community benefits e.g. enhanced access such as improved surfacing, increased connectivity with the surrounding ProW network, artwork and benches, visitor/ public Information/ education boards and signage in relation to biodiversity, the benefits of natural regeneration and the Kent Downs AONB</li> <li>k. Habitat creation shall be designed to: <ul style="list-style-type: none"> <li>i. conserve and enhance the existing landscape character of the Kent Downs AONB</li> </ul> </li> </ul>

Reference	Title	Reference to AONB
5.15	Court Wood Site	<p><b>Management requirements:</b></p> <p>h. Integrate biodiversity objectives with other objectives wherever feasible and not undermining the biodiversity objective</p> <p>i. Existing interests such as the nearby AONB, Landscape, Conservation areas, Heritage assets</p>
5.16	Blue Bell Hill Site	<p>This management area is located to the south of the M2 between junctions 3 and 4. The site is between Wouldham to Detling Escarpment SSSI to the south west and Malling Wood ancient woodland to the north east. The site is within the Kent Downs AONB.</p> <p><b>Management Requirements:</b></p> <p>iv. Integrating objectives with local nature conservation plans and emerging local nature recovery strategy and the Kent Downs AONB Management Plan principles and relevant landscape character assessment guidelines</p> <p>d. Integrate biodiversity objectives with other objectives wherever feasible and not undermining the biodiversity objective</p> <p>i. Existing interests such as AONB / Landscape, Conservation areas and Heritage assets</p> <p>ii. Potential additional benefits such as community benefits e.g. enhanced access such as improved surfacing, increased connectivity with the surrounding ProW network, artwork and benches, visitor/ public Information/ education boards and signage in relation to biodiversity, the benefits of natural regeneration and the Kent Downs AONB</p> <p>iii. Habitat creation shall be designed to conserve and enhance the existing landscape character of the Kent Downs AONB</p>
<p><b>Code of Construction Practice [<a href="#">REP9-184</a>]</b></p>		

Reference	Title	Reference to AONB
LV005	Landscape – siting of construction compounds	No main compounds, as defined in the Project description presented in ES Chapter 2, (Application Document 6.1), would be located within the Kent Downs Area of Outstanding Natural Beauty (AONB).
LV007	Landscape – A2 compound, construction compounds facilities	Construction compound facilities greater than 6m in height would be located as south-westerly as is reasonably practicable to maximise distance from nearby residential properties on Thong Lane and from the adjacent boundary of the Kent Downs AONB.
LV009	Landscape – Southern tunnel entrance compound, stockpile slopes	Softening the appearance of temporary earthwork stockpiles adjacent to the Kent Downs AONB by phasing the works to be such that south-east facing slopes are retained as grass seeded slopes for visual screening purposes for as long as reasonably practicable.

Reference	Title	Reference to AONB
LV037	Landscape – Screening of views in Kent Downs AONB	<p>In order to reduce visual effects in the opening year in the Kent Downs AONB to the north of Park Pale, the following mitigation measures would be implemented:</p> <ul style="list-style-type: none"> <li>• Existing trees and hedgerow plants along the northern boundary of Park Pale (north-west of the Park Pale overbridge) would be retained as far as reasonably practicable during the installation of utilities associated with Work No. MU1. Existing trees and hedgerow plants situated south of the Harlex Haulage access track (Work No. 1C) and on both sides of the proposed diverted footpath NS161, extending up to the Park Pale overbridge and utility works (Work No. MU1), would also be retained as far as reasonably practicable. The protection of retained trees would be achieved through the implementation of an Arboricultural Method Statement (AMS) in accordance with LV028. The AMS will specify the tree protection measures which will be applied during construction. Protection measures may include access facilitation pruning, the erection of tree protection barriers and the arboricultural supervision of work that has the potential to cause damage to roots. Implementation of commitment actions Contractor Construction EMP2 – Requirement 4</li> <li>• Proposed planting within the ancient woodland compensation site north of Park Pale and Harlex Haulage identified on the Environmental Masterplan (Sheet 2 and 4 of Section 1, Figure 2.4, Application Document 6.2) would be undertaken, in part, at the earliest practicable planting season following commencement of 24 authorized development. Early planting would be outside of the land required for construction and would maximise early screening, as well as being in accordance with the LEMP. The early planting would not be in areas identified as being suitable for ancient woodland soil receptor sites where prior translocation of soil is required.</li> </ul>

## A.4 Further requirements to consult and engage

- A.4.1 The enhanced duty requires that National Highways continues to actively seek to further the purpose of conserving and enhancing the natural beauty of the Kent Downs AONB (National Landscape). This duty is secured through a number of measures within the draft Development Consent Order and the associated control documents, which require that National Highways consult with bodies including Natural England and Kent Downs National Landscape team.
- A.4.2 Within the draft Development Consent Order **[Document Reference 3.1 (v.15.0)]**:
- a. Requirement 4 – requires that the development of an EMP (Second iteration) in accordance with the Code of Constitution Practice (EMP First iteration) which includes a requirement to consult with relevant local planning authorities, Natural England and the Kent Downs AONB Unit
  - b. Requirement 5 – requires that the Applicant consults relevant local planning authorities, Natural England and the Kent Downs AONB Unit on the Landscape and Ecology Management Plan that must be prepared, setting out the details of all proposed hard and soft landscaping works
- A.4.3 Within the outline Landscape and Ecology Management Plan **[REP9-207]**:
- a. Representatives from Natural England and Kent Downs National Landscape Team will sit on an advisory group, with a remit of overseeing the implementation of the oLEMP and subsequent LEMP
- A.4.4 Within the Design Principles **[REP9-227]**:
- a. S1.08 – requires that the design of the new woodland east of Shorne Woods Country Park be developed through collaboration and engagement with Shorne Woods Country Park, Natural England, Kent Downs AONB and relevant local stakeholders
  - b. PRO.07 – requires that key elements of the detailed design shall be subject to structured stakeholder engagement on their spatial arrangement (within the parameters of the DCO), user experience, appearance ('look and feel'), integration with the surrounding context and, where relevant, signage and interpretation.
- A.4.5 Through this continuing engagement, the Applicant is obligated to seek advice from Natural England and Kent Downs National Landscape Team. The enhanced duty places an obligation on those parties to give advice that seeks to further the purpose of conserving and enhancing the natural beauty of the Kent Downs AONB (National Landscape). The draft Development

Consent Order requires the Applicant give due consideration to any representations, and the Countryside and Rights of Way Act 2000 as amended requires that National Highways is cognisant of the enhanced duty during the process of giving said consideration.

## A.5 National Policy Statement Compliance

A.5.1 It is the Applicant's position is that the Project complies with paragraphs 5.130 to 5.153 of the 2014 NPSNN, and by extension complies with section 85 of the CroW as amended.

A.5.2 This is set out in full in Planning Statement Appendix F [\[REP9-225\]](#), in summary:

- a. There are exceptional circumstances for development of the Project within the AONB (National Landscape) and to do so would be in the public interest. This is demonstrated by:
  - i. A strong need and benefits case for the Project;
  - ii. An absence of viable alternative route options that would meet the need and deliver those benefits;
  - iii. Proposals that would meet high environment standards and incorporation of appropriate mitigation, compensation and enhancement.
- b. There are compelling reasons for the Project in terms of enhancing capacity and the benefits of the Project significantly outweigh the costs

A.5.3 The 2024 NNNPS was published following the close of the Examination on the 20 December 2023. Under the transitional arrangements set out in paragraphs 1.16 and 1.17 the 2014 NPSNN continues to have effect for decision making on the application. However, to aid the Secretary of State Table A-2 below sets out the policy changes between the 2014 NPSNN which has effect and the revised 2024 NNNPS. Table A-2 then shows how compliance with the policy in the 2014 NPSNN also leads to compliance with the enhanced duty under Section 85.



**Table A-2 Consideration of the National Policy Statements and the enhanced duty**

NPS NN (2014) paragraph and summary of application to AONBs (National Landscapes)	NPS NN (2024) paragraph and summary of application to AONBs (National Landscapes)	Effect of Section 85 of CRoW 2000 (as amended) duty
<p><b>Paragraph 5.150</b> – provides that: <i>“Great weight should be given to conserving landscape and scenic beauty in nationally designated areas. National Parks, the Broads and Areas of Outstanding Natural Beauty have the highest status of protection in relation to landscape and scenic beauty. Each of these designated areas has specific statutory purposes which help ensure their continued protection and which the Secretary of State has a statutory duty to have regard to in decisions”.</i></p>	<p><b>Paragraph 5.170</b> – replaces the text at 5.150 with similar but revised text including reference to the enhanced duties introduced by section 245 and any regulations making provision about how the duty is to be complied with (which have not yet been provided): <i>“England’s National Parks, the Broads and National Landscapes have been confirmed by the government as having the highest status of protection in relation to landscape and natural beauty. Each of these designated areas has specific statutory purposes. The conservation and enhancement of the natural beauty of the landscape and countryside should be given great weight by the Secretary of State in deciding on applications for development consent in these areas. The Secretary of State should be satisfied that the scheme’s design and delivery complies with the duty as revised by section 245 of the Levelling Up and Regeneration Act 2023 and any regulations making provision about how</i></p>	<p>Paragraph 5.150 in the 2014 NPSNN references statutory purposes for the protection of designated areas to which the Secretary of State has a duty to <i>“have regard”</i>. That duty has changed to <i>“seek to further”</i> in the context of AONBs (National Landscapes) (as reflected in the 2024 NNNPS paragraph 5.170). However, paragraph 5.150 already requires <i>“great weight”</i> to be attached to conserving landscape and scenic beauty, which have the <i>“highest status of protection”</i>. Accordingly, the Applicant does not consider the LURA amendment to section 85 materially changes the effect of paragraph 5.150 of the 2014 NPSNN.</p>

NPS NN (2014) paragraph and summary of application to AONBs (National Landscapes)	NPS NN (2024) paragraph and summary of application to AONBs (National Landscapes)	Effect of Section 85 of CRoW 2000 (as amended) duty
	<i>the duty is to be complied with. Regard should also be had to any relevant Defra guidance”.</i>	
<p><b>Paragraph 5.151</b> – which provides that <i>“The Secretary of State should refuse development consent in these areas except in exceptional circumstances and where it can be demonstrated that it is in the public interest. Consideration of such applications should include an assessment of:</i></p> <ul style="list-style-type: none"> <li>- <i>the need for the development, including in terms of any national considerations, and the impact of consenting, or not consenting it, upon the local economy;</i></li> <li>-<i>the cost of, and scope for, developing elsewhere, outside the designated area, or meeting the need for it in some other way; and</i></li> <li>- <i>any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated”</i></li> </ul>	<p><b>Paragraph 5.171</b> – retains similar wording to the 2014 NPSNN paragraph 5.151: <i>“The Secretary of State should refuse development consent in England’s National Parks, the Broads and National Landscapes unless there are exceptional circumstances, where the benefits outweigh the harm and where it can be demonstrated that it is in the public interest. Consideration of such applications should include an assessment of:</i></p> <ul style="list-style-type: none"> <li>- <i>the need for the development, including any national considerations, and the impact of consenting, or not consenting it, upon the local economy</i></li> <li>- <i>the cost of, and scope for, developing elsewhere, outside the designated area, or meeting the need for it in some other way, taking account of the policy on alternatives set out in paragraphs 4.20 to 4.22</i></li> </ul>	<p>Paragraph 5.151 replaced by paragraph 5.171 in the 2024 NNNPS establishes a rebuttable presumption against development in an AONB (National Landscape) – a high level of protection – and requires the Secretary of State to have regard to the existence of alternatives which would avoid impact on an AONB (National Landscape), and the extent to which impacts could be moderated.</p> <p>The Applicant’s view is that this balancing exercise is consistent with the duty to <i>“seek to further”</i> the purpose of conserving and enhancing the natural beauty of an AONB (National Landscape) when exercising a planning function which permits, in principle, development which may result in net adverse effects in an AONB (National Landscape).</p>

NPS NN (2014) paragraph and summary of application to AONBs (National Landscapes)	NPS NN (2024) paragraph and summary of application to AONBs (National Landscapes)	Effect of Section 85 of CRoW 2000 (as amended) duty
	- any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that would be moderated”	
<p><b>Paragraph 5.152</b> – which establishes that there is a strong presumption against any significant road widening in nationally designated landscapes, unless it can be shown there are compelling reasons for the new or enhanced capacity and with any benefits outweighing the costs very significantly.</p>	<p>Paragraph 5.172 – retains the wording as set out in the original NPSNN paragraph 5.152 (updated to refer to National Landscapes).</p>	<p>The analysis above in relation to paragraph 5.151 (paragraph 5.171 of the revised NNNPS (2024)) applies in the same way to paragraph 5.152 (paragraph 5.172 of the revised NPSNN (2024)).</p>
<p><b>Paragraph 5.153</b> – which provides that where consent is given in nationally designated landscape, the Secretary of State should be satisfied that the applicant has ensured that the project will be carried out to high environmental standards and “where possible” includes measures to enhance other aspects of the environment. Where necessary, the Secretary of State should consider the imposition of appropriate requirements to ensure these standards are delivered.</p>	<p>Paragraph 5.173 retains the majority of the policy words, with one change removing the words ‘<i>where possible</i>’.</p>	<p>The Applicant considers that paragraph 5.153 is consistent with the revised section 85 duty. It is clear that development in AONBs (National Landscapes) must satisfy a more stringent test – “<i>high environmental standards</i>”. Furthermore, as noted above, the Applicant’s view of the practical application of “<i>seek to further</i>” in the DCO decision-making context is that the Secretary of State must consider whether there is anything more that reasonably and proportionately could be done by the project in the context of its objectives to further the purpose of conserving and</p>

NPS NN (2014) paragraph and summary of application to AONBs (National Landscapes)	NPS NN (2024) paragraph and summary of application to AONBs (National Landscapes)	Effect of Section 85 of CRoW 2000 (as amended) duty
		<p>enhancing the natural beauty of the AONB beyond that which is proposed.</p> <p>For the reasons set out in this document, the Applicant is confident that it has proposed all such reasonable and proportionate measures.</p> <p>Noting the removal of words “where possible” from paragraph 5.173 of the 2024 NPSNN, this document highlights the numerous measures adopted by the Applicant which will enhance the Kent Downs AONB, consistent with the 2024 NPSNN. It should be emphasized, however, that paragraph 5.153 of the 2014 NPSNN continues to have effect for the purposes of deciding this DCO application.</p>

## A.6 Engagement with Natural England on their recommendations of 1 May

- A.6.1 The Applicant and Natural England held a meeting to further explore if an agreement to the position with regards the impact of the proposal on the Kent Downs National Landscape and the enhanced duty introduced through the amendment to section 85 of the Countryside and Rights of Way (CRoW) Act 2000. The meeting was set up by National Highways and held on the 16 May 2024, a set of slides outlining the projects understanding of Natural England's concerns and areas of opportunity (as detailed in their [letter](#) of 19 April 2024) was shared in advance of the meeting to ensure discussions were focussed on reaching an agreement. It was attended by two Natural England officers and five team members from the Applicant.
- A.6.2 The Applicant presented against the following three topics, which were explicitly raised in Natural England's correspondence:
- i. Green Bridges (over the A2/M2)
  - ii. Recreational routes along the A2 – noise reduction measures
  - iii. Planting along Park Pale
- A.6.3 The Applicant discussed the concerns which Natural England expressed in the meeting, namely that in Natural England's view, these elements represent mitigation rather than opportunities for enhancement.
- A.6.4 The Applicant disagrees with this appraisal. As set out above, these mitigation proposals, notwithstanding that there remains residual harm, will also contribute to conserving and enhancing the natural beauty of the Kent Downs AONB (National Landscape).
- A.6.5 The Applicant has acknowledged this within their application and made the case that the overwhelming need for the project, combined with the mitigation, compensation and enhancement embedded into the design outweigh the residual effects.
- A.6.6 Specific requests set out by Natural England in their submission of 1 May 2024 are detailed below in Table A-3. The Applicant has provided a response to these requests, setting out how, consistent with the Section 85 enhanced duty, it has actively considered these proposals and why changes to incorporate the request are either not feasible or not proportionate.

**Table A-3 Specific requests from Natural England and the Applicant’s response**

Reference	Natural England request	Applicant’s response
<p>Paragraph 1.5, which references NE’s Written Representation <a href="#">[REP1-262]</a> Section 6.1.62</p>	<p>Use of natural stone or other finishes appropriate to the location, for example in the construction of retaining structures, to face bridge headwalls;</p>	<p>Design Principles <a href="#">[REP9-227]</a> have been included to commit to the use of natural finishes appropriate to the AONB including:</p> <ul style="list-style-type: none"> <li>• STR.03 (Project Enhanced Structures: Thong Lane green bridge north (Work No 3B))</li> <li>• STR.06 (Project Enhanced Structures: consistent design approach)</li> <li>• STR.07 (Bridge structures)</li> </ul> <p>It is the Applicants view that these measures seek to enhance the proposed structures within the Kent Downs National Landscape.</p>
	<p>Greater consideration of the colour of materials used, with regard to the Kent Downs AONB Guidance on the selection and use of colour in development (2019);</p>	<p>Design Principle STR.06 Project Enhanced Structures: consistent design approach has been updated to include ‘<i>Materials shall be self-finished, (as far as technically practicable whilst complying with DMRB standards), minimising maintenance while being consistent and appropriate to the colour palette required in the Kent Downs AONB</i>’. Design Principle S1.09 also commits to ‘<i>Retaining structures and bridge abutments within the Kent Downs AONB and its setting, shall be either green walls, earth banks, or clad with hard materials in accordance with the Kent Downs AONB Landscape Design Handbook, to be reflective of the local vernacular</i>’.</p> <p>The use of materials to align with the Kent Downs AONB guidance is an example of where the Applicant has sought to enhance the design approach within the Kent Downs National Landscape.</p>

Reference	Natural England request	Applicant's response
	<p>Greater consideration of the finishes to the built structures / street furniture</p>	<p>The Applicant included a new Design Principle S1.24 at Deadline 8, which commits to finishing street furniture within the Kent Downs AONB (National Landscape) to accord with the Kent Downs AONB Guidance on the selection and use of colour in development:</p> <p><i>'Where technically and reasonably practicable and following agreement with the relevant Highway Authority, roadside furniture within the AONB including (but not limited to):</i></p> <ul style="list-style-type: none"> <li>• <i>Gantries</i></li> <li>• <i>Lighting columns</i></li> <li>• <i>Signage</i></li> <li>• <i>Technology</i></li> </ul> <p><i>Shall be finished to accord with the Kent Downs ONB Guidance on the selection and use of colour in development.'</i></p> <p>Aligning the finish of street furniture with the National Landscape's guidance is an example of where opportunities to enhance the design have been taken.</p>



Reference	Natural England request	Applicant's response
	<p>Potential for an additional green bridge at the Park Pale overbridge, to provide habitat connectivity and enhance the experience of recreational users crossing the A2 at this location</p>	<p>As the project does not intend to remove and replace Park Pale bridge, it is not proportionate or sustainable to introduce additional works, with an associated implications for increased carbon emissions, disruption and cost. The response to paragraph 1.8 of Natural England's letter on widening is provided later on in this table.</p> <p>In Issue Specific Hearing 6 while discussing green bridges the Applicant responded on the feasibility of a green bridge at Park Pale highlighting that a new green bridge at Park Pale would impact the sole access to the golf course to the south of High Speed 1 and to and from the Harlex Haulage business. The Applicant was cognisant of the significant disruption that would be caused to these businesses by works to the existing Park Pale bridge. Further to this a green bridge at this location would offer limited landscape and ecological benefits. This was set out in examination in the Post-event submissions for ISH6 <a href="#">[REP4-182]</a> Para 4.1.19.</p> <p>The Applicant is already providing two green bridges across the A2 which, as set out above, provide enhancement benefits.</p> <p>Furthermore, there is extensive replacement tree and shrub planting and ancient woodland compensation planting proposed in the Park Pale area to help reduce the landscape and visual effects associated with the Project.</p>

Reference	Natural England request	Applicant's response
	<p>Woodland planting to south of the High Speed 1 Rail Line (instead of 'shrubs with intermittent trees') to provide long-term filtering and screening of views towards the Project and help integrate it with its landscape setting;</p>	<p>Space for proposed reinstatement planting to the north of HS1 (between the railway line and M2/A2 corridor) is limited and constrained by utility corridors. Therefore, to create a sense of woodland character, proposed mitigation planting shown in the Environmental Masterplan comprises a linear belt of shrubs and trees between the M2/A2/A12 Lower Thames Crossing junction and the Halfpence Lane roundabout, shrubs with intermittent trees between the Halfpence Lane roundabout and Brewers Road green bridge and a principally linear belt of shrubs and trees between Brewers Road green bridge and Park Pale bridge.</p>

Reference	Natural England request	Applicant's response
	<p>Use of sensitively designed, sympathetic visual and noise barriers comprising close boarded fence with associated screening with hedge and/or woodland planting, or vertical 'green wall' visual/acoustic barriers, to reduce effects on recreational receptors using proposed paths in proximity to the carriageway, in replacement of standard 'highway estate boundary fencing'.</p>	<p>The Applicant has proposed the use of a Road Surface Influence of -3.5dB(A) on the A2 through the Kent Downs AONB (National Landscape) and -2.5dB(A) on Thong Land south green bridge and Brewers Road green bridge.</p> <p>Opening year <a href="#">[APP-315]</a> and design year noise modelling <a href="#">[APP-316]</a>, with the proposed low noise surfacing included, shows that there will be a reduction in noise along the A2 corridor.</p> <p>The Applicant had previously proposed an acoustic barrier near Park Pale bridge. This proposal was removed following the landowner engagement in May 2022, following feedback from Kent Downs Area of Outstanding Natural Beauty (AONB) Unit, expressing concern about the visual impact. This removal is a matter agreed with Natural England, documented as issue 2.1.30 in the Statement of Common Ground <a href="#">[REP9A-014]</a>.</p> <p>As set out in the Applicant's comments on Interested Parties' submissions at Deadline 9 and Deadline 9A <a href="#">[REP10-020]</a>, noise attenuation measures such as barriers on the bridges would need to be of such size that they could not be sympathetically integrated into the structural design without creating a significant visual impact, through introducing urbanising features.</p> <p>The Applicant has sought to reduce noise levels and thereby improve user experience by using low noise surfacing and has also fully explored other measures which need to be balanced against other features of the National Landscape designation.</p>

Reference	Natural England request	Applicant's response
	Only use indigenous species grown from seeds of local provenance to tie in with local vegetation	<p>Clause LSP.02 of the Design Principles states that proposed planting mixes '<i>will include native species of local provenance</i>'.</p> <p>This demonstrates the Applicants commitment to the special qualities of the National Landscape designation and where the Applicant has sought opportunities to conserve and enhance it.</p>
	Creation of a more naturalistic edge to proposed attenuation ponds/wetland areas, to avoid an overly engineered appearance, and greater diversity of planting than the 'Marsh and Wet Grassland' and 'Species Rich Grassland' currently proposed around the pond	<p>Design Principle LSP.17 '<i>Integration of infiltration basins and retention ponds</i>' commits that '<i>Infiltration basins and retention ponds shall not appear utilitarian or urban and shall be designed to appear as naturalistic elements within the wider setting, that take account of existing topography, gradients and field boundaries. Planting shall be provided to soften edges where this is appropriate to the context.</i>'</p> <p>This Design Principle seeks to ensure that the infrastructure required integrates into the landscape and conserves and enhances the National Landscape.</p>
	Relaxation of normal highway design standards on side roads.	<p>Where works are undertaken on local highways (rather than the strategic road network) the design will be developed in accordance with the local highway authorities relevant standards and guidance. This could include Manual for Streets, and any applicable local design guide. Article 10 of the draft Development Consent Order <b>[Document Reference 3.1 (v.15.0)]</b> secures that these highways "<i>must be completed to the reasonable satisfaction of the relevant local highway authority in whose area the highway lies</i>".</p> <p>In the implementation of this process, the enhanced duty will apply to the local highway authority, as well as the Applicant.</p>

Reference	Natural England request	Applicant's response
	<p>In relation to wider offsite and 'compensatory' planting, the Project should ensure that this respects local landscape character as described in the Kent AONB Landscape Character Assessment Update (2020) for the West Kent Downs Local Landscape Character Area.</p>	<p>Outline Landscape and Ecology Management Plan <a href="#">[REP9-207]</a> includes detail of steps required for each area of planting, including specific requirements in relation to the Kent Downs. An Advisory group is also stipulated of which both Natural England and the Kent Downs are members.</p>

<p>NE's letter to SoS 1<sup>st</sup> May 2024, paragraph 1.8</p>	<p>[Green bridge designs] 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).</p>	<p>Green bridge design has sought to maximise the width, within the engineering and environmental constraints presented by their location (including span, weight bearing capacity, safety, impact of landing on designated sites). The best practice guidance from the Landscape Institute has shaped the design, within the confines of the aforementioned constraints. The width of both bridges over the A2 were widened to maximise the green element of these two road bridges. The Applicant provided an explanation of the constraints on further widening of the green bridges as a response to Hearing Action Pont 7, within section A.7 Annex A of the 7 Post-event submissions, including written submissions of oral comments, for ISH11 <a href="#">[REP8-110]</a>.</p> <p>The following excerpt, taken from Issue Specific Hearing 6 <a href="#">[REP4-182]</a> Para 4.1.14, provides the applicants response to the Examining Authority in relation to the widening of green bridges in the AONB.</p> <p><i>'In response to the ExA's question regarding widening the bridges further, EL explained that the reason for not doing so is due to a number of constraints. If the Applicant were to widen them to the extent that it would require closing the A2, that would be untenable. The Applicant is therefore bound by the maximum width, bearing in mind issues such as contraflow whilst the works for the Project are ongoing. EL added that this would also potentially lengthen the amount of time those bridges are unusable and the severance caused for communities trying to commute along Thong Lane.'</i></p> <p>And in Para 4.1.15 <i>'In relation to Brewers Road bridge, EL explained that widening this further east would potentially affect a landing outside of the Order Limits, and further west would impinge on SSSI woodland, thereby requiring the removal of SSSI woodland in order to install a Green Bridge, which the Applicant did not feel was appropriate.'</i></p> <p>Design Principle S1.04 includes explicit provisions around design.</p>
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Reference	Natural England request	Applicant's response
		<p>In response to concerns raised by Natural England about the ecological connectivity the proposed green bridges would provide, the applicant amended the Design Principles at Deadline 6 <a href="#">[REP-047]</a> with the addition of Clause no. S1.23 Brewers Road green bridge: Habitat Connectivity and Clause no. S2.15 Thong Lane green bridge south: Habitat connectivity. These secure the provision of a culvert (1.5m diameter) at each green bridge to facilitate wildlife crossing beneath Brewers Lane and beneath the southern connector road respectively. The position of the culverts ties into landscape planting to guide species including great crested newts, reptiles, badgers and dormice towards their entrance. The upsized 1.5m diameter exceeds standard minimum sizes for species such as badgers and great crested newts, and the provision of rope or a high-level walkway through the culverts and tying into planting either side would create an arboreal link for dormice. The Applicant believes these measures maximise the connectivity to wildlife from these two green bridges.</p>
<p>NE's letter to SoS 1<sup>st</sup> May 2024, Paragraph 1.9</p>	<p>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.</p>	<p>The woodland planting at Park Pale is multifunctional, having been developed with the intent of retaining parkland views, providing replacement open space, providing '<i>woodland creation linking Great Crabbles and Randall Woods</i>' as requested by the DEFRA family and compensation planting for ancient woodland loss. In recognition of the desire to retain more of the panoramic view the Applicant proposes an additional Design Principle ensuring that the view is maintained. Wording of the proposed Design Principle is provided below.</p>



A.6.7 In response to Natural England’s concern that planting around Park Pale changes the landscape character of the area from parkland with mature trees to planted woodland, the Applicant notes that this design was in direct response to this submission of environmental legacy projects by the Defra family (including Natural England), comprising the “*Woodland creation linking Great Crabbles and Randall Woods*”. However, recognising this concern, the Applicant’s view is that an open character and retained panoramic views can be achieved during detailed design with reference to the existing Design Principles [REP9-227], specifically clauses nos. LSP.19 and S1.19; and the outline Landscape and Ecology Management Plan [REP9-207], specifically 8.5 Woodland and 8.24 Ancient Woodland compensation planting. If it is considered that greater security for this commitment is required, the Applicant proposes the following addition could be made to the Design Principles clauses<sup>3</sup>.

S1.25	Maintaining existing landscape character, seen from public right of way NS161, south of Representative Viewpoint S-03.	The detail design of ancient woodland compensation planting shall maintain the existing open landscape character with occasional mature trees and the associated panoramic views of woodland within the Kent Downs National Landscape to the south of the M2/A2 corridor (Refer to Figure 7.17 Representative Viewpoint S-03 photograph view (Application Document 6.2)) for users of public right of way NS161. The open landscape character and views shall be maintained from and to the south of Representative Viewpoint S-03 (Refer to Viewpoint S-03 location on Figure 7.16 (Application Document 6.2)). This shall be achieved by maintaining a predominantly open view cone of species rich grassland, looking south from public right of way NS161, with the angle of the cone from Representative Viewpoint S-03 extending south-west to south-east.
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A.6.8 In achieving this commitment, although there would be a small reduction in woodland planting, the extent of woodland planting in this area would still align with the outline measures of success detailed in the outline Landscape and Ecology Management Plan which include “*temporary open scape recorded across 21% - 40% of the woodland*”. The design of the planting would still provide a continuous woodland link between Great Crabbles and Randalls Woods which would therefore retain the required efficacy in mitigation for other ecological receptors including dormice and bats; both

<sup>3</sup> The Applicant commented on the mechanism to enable this amendment to be made in paragraph 1.5.8 of the Response to Secretary of State letter from 19 April 2024, submitted on 9 May 2024.

European Protected Species and both including woodland planting in this area as part of the overall mitigation strategy to maintain favourable conservation status for the species.

## A.7 The Applicant's commentary on what, if any, amendments should be made to the Development Consent Order to address the enhanced duty

A.7.1 For the reasons outlined in this submission, the Applicant does not consider that any amendment to the draft Development Consent Order [**Document Reference 3.1 (v.15.0)**] is necessary to address the enhanced duty.

Nevertheless that Applicant is aware of the following precedents:

- a. Paragraph 12 (detailed design requirement) of Schedule 2 to the M3 Junction 9 DCO states at sub-paragraph (2): "*The undertaker in relation to the detailed design of the authorised development must have regard to the amended duty to seek to further the purposes specified in section 5(1) of the National Parks and Access to Countryside Act 1949 as set out in section 11A of that Act<sup>4</sup>.*"
- b. Article 54 (detailed designed) of the A66 Northern Trans-Pennine DCO states at paragraph (2) that: "*The undertaker in relation to the detailed design of the authorised development must have regard to the amended duty to further the purpose of conserving and enhancing the protected landscapes set out in—(a) section 11A of the National Parks and Access to the Countryside Act 1949; and (b) section 85 of the Countryside and Rights of Way Act 2000*".

A.7.2 If, contrary to the Applicant's view, the Secretary of State considers it necessary to introduce an equivalent provision into the Lower Thames Crossing DCO (if granted consent), then the Applicant observes that this would logically be inserted into paragraph 3 of Schedule 2 (the Requirement which controls the detailed design) as a new sub-paragraph 3(2):

### **Detailed design**

*3.—(1) The authorised development must be designed in detail and carried out in accordance with the design principles document and the preliminary scheme design shown on the engineering drawings and sections, and the general arrangement drawings, unless otherwise agreed in writing by the Secretary of State following consultation by the undertaker with the relevant planning authority and, in respect of the authorised development comprising highways other than a special road or trunk road, the relevant local highway*

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<sup>4</sup> The amended duty under the National Parks and Access to Countryside Act 1949 is substantively the same (in relation to National Parks) as the amended duty under section 85 of the 2000 Act.

*authority on matters related to their functions, provided that the Secretary of State is satisfied that any amendments to those documents showing departures from the preliminary scheme design would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.*

***(2) The undertaker in relation to the detailed design of the authorised development must have regard to the amended duty to further the purpose of conserving and enhancing areas of outstanding natural beauty in section 85 of the Countryside and Rights of Way Act 2000.***

*(3) Where amended details are approved by the Secretary of State under sub-paragraph (1), those details are deemed to be substituted for the corresponding engineering drawings and sections and the undertaker must make those amended details available in electronic form for inspection by members of the public.*

# Annex B: Response to: Amendment of section 85 of the Countryside and Rights of Way (CRoW) Act 2000 – response to submissions by others

## B.1 Applicant's response

B.1.1 It states within the Secretary of State's letter of 10 May 2024 that:

*The Secretary of State also notes the comments from the Kent Downs National Landscape Team, Gravesham Borough Council and Thames Crossing Action Group regarding the enhanced duty, and invites the Applicant to respond.*

B.1.2 The Applicant has reviewed the submissions by Kent Downs National Landscape Team, Gravesham Borough Council and Thames Crossing Action Group and provides responses to:

- a. Submissions relating to the enhanced duty and the consideration of alternatives.
- a. Submissions relating to the consideration of possible impacts on the A229 (Blue Bell Hill)
- b. Submissions relating to the compensation scheme.

## B.2 Consideration of Alternatives

B.2.1 Representations from the Thames Crossing Action Group state that National Highways failed to consider the harm to Kent Downs AONB (National Landscape) during the route selection process, while the representations from Gravesham Borough Council and Kent Downs National Landscape Team suggest that the revised statutory duty under Section 85 would have led to a different weight being given to the impacts on the Kent Downs AONB (National Landscape).

B.2.2 The National Policy Statement for National Networks (Department for Transport, 2014) sets out at paragraph 4.21 that:

*“National road or rail schemes that have been identified in relevant Road or Rail Investment Strategies will have been subject to an options appraisal process where relevant in line with existing Transport Analysis Guidance, and proportionate consideration of alternatives will have been undertaken as part of the investment decision making process. The options appraisal may include other viable options for achieving the objectives of the project,*

*including (where appropriate) other modes of travel, regulation, or other ways of influencing behaviour in line with Department for Transport guidance. The Examining Authority and the Secretary of State should satisfy themselves that the options appraisal process has been undertaken.”*

B.2.3 Paragraph 5.152 of the National Policy Statement for National Networks (Department for Transport, 2014), to which the Applicant has demonstrated compliance within the Planning Statement [REP9-215], states:

*“There is a strong presumption against any significant road widening or the building of new roads and strategic rail freight interchanges in a National Park, the Broads and Areas of Outstanding Natural Beauty, unless it can be shown there are compelling reasons for the new or enhanced capacity and with any benefits outweighing the costs very significantly. Planning of the Strategic Road Network should encourage routes that avoid National Parks, the Broads and Areas of Outstanding Natural Beauty.”*

B.2.4 In the development of the A122 Lower Thames Crossing, there was an extensive options appraisal process. Decisions made during this options appraisal process were revisited prior to submission of the application in 2022. Early in the development of the project, an assessment was undertaken of alternative modes of transport, as reported in section 5.3 of the Planning Statement. This assessment found that:

*“The assessment of alternative modes demonstrates that the need for the Project, stemming from existing congestion at the Dartford Crossing, cannot be resolved by provision of a new rail crossing, provision of a ferry service, or provision of active travel measures. While road based public transport may be a contributory element to the solution, this is not achievable without the provision of a new road crossing.”*

B.2.5 Following the determination that a highways solution was necessary, careful selection of the route was undertaken. As set out in the Planning Statement within section 5.4, and summarised within Table 5.1, impacts on Kent Downs AONB (National Landscape) were an important consideration during the route selection as were the scheme objectives, and consideration of other impacts that were likely to arise from the proposals. Specifically, two decisions were informed by this consideration:

- a. The decision to choose location C, rather than locations A and B to the west or locations D1, D2 and E to the east, made progressively between 2009 and 216 (see Plate 5.1 of the Planning Statement).
- b. The decision to develop the Western Southern Link (WSL) rather than the Eastern Southern Link (ESL) (see Plate 5.10 of the Planning Statement).

- B.2.6 The decision to choose location C considered carefully the impacts on the Kent Downs AONB (National Landscape). As set out in paragraph 5.4.37 of the Planning Statement, routes at Location Option D (both D1 and D2) and Location Option E would fail to meet the objective of relieving the congested Dartford Crossing. As reported in paragraph 5.4.83 of the Planning Statement, the Location A (considered as Route 1) did not meet the traffic-related Scheme Objectives. Consequently, locations A, D and E were not feasible alternatives.
- B.2.7 Location B, as set out in paragraph 5.4.47 of the Planning Statement, was found likely to cause a significant adverse effect on committed development, in particular the Ebbsfleet Valley Development, adverse impacts on the transport network through worsening of congestion on the A13 eastbound, and additional pressure on the A2.
- B.2.8 The selection of the WSL was informed by impacts on the Kent Downs AONB (National Landscape). Changes were made to the WSL proposals following the preferred route announcement, and so reappraisals took place in 2018 and prior to the submission of the application in 2022. These showed that the conclusions of the route selection process in 2017, to proceed with the WSL, remained valid.
- B.2.9 Table 5.17 of the Planning Statement sets out the landscape/townscape impacts of both the western southern link and the eastern southern link, stating:
- “The reappraisal found that compared to the WSL, the ESL would result in comparable impacts to the AONB and Green Belt designations due to the scale of the A2/M2 junction and widening along the A2/M2. The ESL would have slightly lesser impacts to areas of Tree Preservation Order (TPO) woodland than with the WSL, though impacts to wooded sites north of the A2, which form part of the setting of the AONB, would be heavily impacted by the ESL. The ESL would result in similar levels of impact to National Character Areas as the WSL. Visibility of the M2/A2/A122 Lower Thames Crossing junction was likely to be very prominent within the AONB and its setting as a result of the ESL (similar to the visual impact of the A122 Lower Thames Crossing/A2 junction for the WSL).”*
- B.2.10 As set out above, had the ESL been selected it would have resulted in comparable impacts to the AONB and Green Belt designations due to the scale of the A2/M2 junction and widening along the A2/M2.
- B.2.11 As such, had the revised statutory duty been in place at the time of the decision, it would not have changed the decision not to proceed with locations A, B, D1, D2 and the ESL.



## B.3 Wider Network Impacts

- B.3.1 Both Gravesham Borough Council and the Thames Crossing Action Group state that the changes in traffic flows on the A229 resulting from the opening of the A122 Lower Thames Crossing would lead to a need to upgrade highways infrastructure at Blue Bell Hill, leading to adverse impacts on the Kent Downs AONB (National Landscape), and that this potential harm to the National Landscape in that area is material to the determination of this application.
- B.3.2 The Applicant set out in paragraph 8.4.24 of the Closing Submissions [\[REP10-021\]](#) that the assessments set out across the application do not rely on the delivery of the A229 Blue Bell Hill Improvement Scheme to achieve any of the benefits, or for mitigation of any of the impacts, and as such the Project does not rely on the delivery of this scheme. Any future intervention at Blue Bell Hill would have to be assessed on its own merits, and would be considered carefully in light of the enhanced section 85 duty brought in by the Levelling Up and Regeneration Act 2023.
- B.3.3 The Applicant set out in the Wider Network Impacts Position Paper [\[REP6-092\]](#) the policy support for this approach, and assessed specifically the need for mitigation at Blue Bell Hill, concluding that while there were adverse impacts on traffic flows, there were no unacceptable impacts which would require mitigation, and consequently no necessary works that should be considered as part of the assessment of impacts on the Kent Downs AONB (National Landscape).
- B.3.4 Following the conclusion of the examination, the revised National Networks National Policy Statement (Department for Transport, 2024) (the 2024 NNNPS) was published. That publication modified the decision making requirements in relation to impacts on transport networks compared to the draft NNNPS published in March 2023, providing important clarity.
- B.3.5 Specifically, the text in paragraphs 5.213 and 5.214 in the National Policy Statement for National Networks (Department for Transport, 2014) designated in 2015 (the 2015 NPSNN), stated:

*“5.213 Projects may give rise to impacts on the surrounding transport infrastructure including connecting transport networks. The Secretary of State should therefore ensure that the applicant has taken reasonable steps to mitigate these impacts. Where the proposed mitigation measures are insufficient to reduce the impact on the transport infrastructure to acceptable levels, the Secretary of State should expect applicants to accept requirements and/or obligations for funding*



*5.214 Provided that the applicant is willing to commit to transport planning obligations and, to mitigate transport impacts identified in the WebTAG transport assessment (including environment and social impacts), with attribution of costs calculated in accordance with the Department's guidance, then development consent should not be withheld. Appropriately limited weight should be applied to residual effects on the surrounding transport infrastructure”.*

- B.3.6 These paragraphs of the 2015 NPSNN sit under the sub-heading “Strategic Rail Freight Interchanges”, indicating that the applicability of the test is limited to rail freight facilities. In the draft National Policy Statement for National Networks (Department for Transport, 2023) (the 2023 draft NPSNN), the text for paragraph 5.213 was modified, and along with 5.214 were relocated to paragraphs 5.280 and 5.281, remaining within the decision making section, but no longer under a sub-heading of “Strategic Rail Freight Interchanges”, as the sub-division within the decision making section was removed entirely. During the examination, a number of interested parties, including Gravesham Borough Council, in paragraph 11, page 4 of their Final Position Statement [\[REP9A-107\]](#), suggested that this indicated that the transport impacts identified within the transport assessment should be mitigated.
- B.3.7 The 2024 NNNPS reinstated the sub-division, again placing the paragraphs (now numbered 5.290 and 5.291), under a sub-heading of Strategic Rail Freight Interchanges. This re-confirmed the intended policy position of the tests put in place by paragraphs 5.213 and 5.214 in the 2015 NPSNN.
- B.3.8 As stipulated in the 2024 NNNPS at paragraph 1.16, as the A122 Lower Thames Crossing project was accepted for examination prior to the designation of the new national policy statement the 2015 NPSNN has effect. Nevertheless, interested parties made representations that the 2023 draft NPSNN was important and relevant, in accordance with paragraph 1.17 of the 2023 draft NPSNN. Following the designation of the 2024 NNNPS, however, the 2023 draft NPSNN is superseded and no longer important and relevant. The revised drafting, however, reconfirms the original policy intent in this area set out in the 2015 NPSNN.

## **B.4 Compensation scheme value and administration**

- B.4.1 Gravesham Borough Council draw attention to the Compensation Enhancement Fund. As detailed in s106 unilateral undertaking from the Applicant to Kent County Council that was submitted at Deadline 10 [\[REP10-014\]](#) an agreement to provide £4.24 million for an AONB Compensatory Enhancement Fund to fund and measures and projects that meet funding criterion that primarily conserves and enhances the natural beauty and special qualities of the Kent Downs AONB and its setting.

- B.4.2 A sum is included to meet the costs in managing and administering the fund (£600,000 of the £4.24 million). It is clear from Schedule 3 paragraph 1.1 of the S106 unilateral undertaking [\[REP10-014\]](#) that the £600,000 is included within the £4.24M fund.
- B.4.3 The agreement between the Kent Downs AONB unit, Kent County Council and the Applicant is and has always been based on the £600,000 being part of the £4.24 million to ensure that it is administered properly.
- B.4.4 The Applicant strongly disagrees that this in anyway shows that it is not doing all it reasonably can and would point to a doubling of the administrative allowance through the negotiations with Kent Downs AONB and Kent County Council.

## **B.5 Relationship of Compensatory Enhancement Fund and Combined Modelling and Appraisal Report**

- B.5.1 Both Kent Down's National Landscape team and Gravesham Borough Council choose to highlight that the agreed value of the Compensatory Enhancement Fund is different to the monetary value placed on landscape in Submission Doc 7.7 Combined Modelling and Appraisal Report, Appendix D Economic Appraisal Report: Economic Appraisal Package [\[APP-526\]](#). This matter was responded to on page 38 of the Applicant's comments on Interested Parties' submissions at D9 and D9A [\[REP10-020\]](#).
- B.5.2 The landscape disbenefit value of £93m (which is expressed in 2010 prices and values) that is reported in the Combined Modelling and Appraisal Report - Appendix D - Economic Appraisal Package: Economic Appraisal Report [\[APP-526\]](#) was calculated for the purpose of providing appraisal evidence to help decision makers understand the potential impacts and value for money of the Project. It is inappropriate to use the figures contained within the Economic Appraisal Report as a basis for calculating a compensatory enhancement fund.
- B.5.3 The value is based on the methodology in the Department for Transport's Value for Money Supplementary Guidance on Landscape (Department for Transport, 2021). Within the guidance the Department recognises there are concerns about the robustness of the landscape valuation methodology and therefore states that valuations calculated using the methodology should not be included within the Benefit Cost Ratio and Net Present Value metrics used in transport appraisals.

## Annex C: Agreements Update

C.1.1 Table C-1 below sets out the updated position of the agreements identified in the letter from the 10 May 2024.

**Table C-1 Updated position on requested agreements**

Interested Party	Agreement Type	Agreements Update	Status of Agreement at 23 May 2024
Network Rail		<p>NR and the Applicant have been engaging regularly throughout the Project's development and most recently, since the close of examination, have scheduled regular legal and periodic client organisation meetings. The Applicant understands both parties (NH &amp; NR) have reached an advanced position in relation to agreeing protective provisions by way of a side agreement. In addition, the Applicant has proposed amendments to the Protective Provisions to be incorporated into the DCO which clarify the extent of Compulsory Acquisition powers over the operational railway. Although progress is being made and regular meetings are being held between the parties, no agreements have been completed as yet. Accordingly, the Applicant's position remains as set out in response to the SoS consultation letter of 28 March 2024.</p> <p>The Applicant will continue discussions with NR with the aim of concluding an agreed position in relation to the side agreement.</p>	Draft agreements under negotiation.

Interested Party	Agreement Type	Agreements Update	Status of Agreement at 23 May 2024
The Mee Family	Side Legal Agreement including a voluntary public right of way dedication agreement	The Applicant continues to actively engage with the Mee Family, their agent and solicitor in drafting a side legal agreement which further protects the landowner's interests in terms of the following: (i) farm water resources and irrigation; (ii) Manor Farm shop; (iii) field accesses; (iv) WCH routes and (v) an access track. This agreement is now at an advanced stage.	Completion of draft agreement expected in decision stage. Latest meeting 13/05/24 with an updated draft circulated 17/05/2024. Further progress meeting scheduled for week commencing 27/05/24.
Hill Residential Ltd.	Voluntary public right of way Dedication Agreement	The Applicant continues to actively engage with Hill Residential Ltd and their agent (DWD Property & Planning Ltd). Heads of Terms have been agreed and an initial agreement drafted and circulated. The Applicant does not see an impediment to agreement being reached before the end of the decision stage.	Draft agreements under negotiation. Agreement expected in decision stage. Applicant has received further draft agreement from Hill Residential (22/05/24) and will respond by return.
MOPAC & RSPB	Side agreement	The Applicant met with RSPB and MOPAC on 10 May 2024, following which the Applicant provided an updated draft to the legal agreement on 14 May 2024. The Applicant understands that the agreement is now in agreed form and, subject to final RSPB/MOPAC legal reviews and governance approval, will be signed in the coming weeks.	In agreed form awaiting Interested Parties' governance. Likely to complete after decision phase.

C.1.2 Table C-2 below sets out the updated position on other agreements in development.

**Table C-2 Updated position on other agreements in development**

Interested Party	Agreement Type	Agreements Update	Status of Agreement at 23 May 2024
Port of Tilbury London Limited (PoTLL)	Protective Provisions and Framework Agreement	<p>National Highways continues to discuss the Framework Agreement with PoTLL.</p> <p>National Highways has reviewed the alternative Protective Provisions proposed by PoTLL in their submission dated 10 May 2024.</p> <p>The Applicant has responded to the additional proposed drafting, but to aid the Secretary of State a summary is provided below.</p> <p>Paragraph 129 – the reference to ‘operation and maintenance’ in the application provision. The Applicant has explained to PoTLL that it does not consider this necessary, nor justified and would highlight that no other protective provisions include such an expansive application. The provisions themselves relates to construction.</p> <p>Paragraph 130(2) – specified work definition (e), which proposes the inclusion of traffic, rail and vessel movements into the definition of specified works, and paragraph 136 (Construction traffic management protocol within the Port)– the Applicant has set out through the examination, and summarised within the Closing Submissions (at paragraphs 8.5.11 to 8.5.15) <a href="#">[REP10-021]</a> how the control documents, particularly the oTMPfC <a href="#">[REP9-235]</a> would seek to minimise the impacts of the construction activities. The Applicant also explained that introducing controls such as this which</p>	<p>Completion of agreement expected in decision stage.</p> <p>Latest meeting was 02/05/2024 with an updated draft circulated on 21/05/2024.</p> <p>Further progress meeting scheduled for week commencing 27/05/24.</p>

Interested Party	Agreement Type	Agreements Update	Status of Agreement at 23 May 2024
		<p>overlapped with Requirement 10 would give rise to practical issues and potentially inconsistent, or insufficiently holistic measures.</p> <p>Paragraph 131(9) – restricting the use of article 29 (private rights) and Paragraph 140, which provides PoTLL with a consent provision over the use of land powers (articles 24, 33, 35 and 36) – the Applicant does not agree PoTLL’s request that it must reserve an ability to exercise a right of consent, or veto over the exercise of compulsory acquisition or temporary possession powers in respect of its land interests. The Applicant does not agree as it considers that such a provision (i) is unnecessary and (ii) would risk compromising the efficient and effective exercise of those powers. Full reasoning is provided by the Applicant at Annex B of Post-event submissions, including written submission of oral comments, for CAH3 <a href="#">[REP6-087]</a>, and a further submission was made in section 7.5 of the Applicant’s responses to Interested Parties’ comments on the draft DCO at Deadline 6 <a href="#">[REP7-190]</a>. As noted by the Applicant in the Response to Secretary of State letter from 19 April 2024 submitted on the 9<sup>th</sup> May 2024, the Secretary of State published in April 2024 guidance on the “Content of a Development Consent Order” which sets out in relation to Protective Provisions that, “<i>They [i.e. protective provisions] should also not simply negate other provisions of the DCO, particularly concerning proposed compulsory acquisition of statutory undertakers’ land.</i>” This is, in the Applicant’s view, a clear statement that Government policy supports the Applicant’s resistance to a consent provision in relation to compulsory acquisition and the Applicant would request that guidance is followed in this instance.</p> <p>Paragraph 133 (Restoration of Port Land) – The Applicant does not agree to the proposed drafting, as article 35 of the draft DCO makes</p>	

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		<p>provision for handing back land which is subject to temporary possession. This is set out at issue 2.1.12 of the Statement of Common Ground between National Highways and Port of Tilbury London Limited <a href="#">[REP10-008]</a>. The Applicant also notes that following the end of the Examination, PoTLL have revised their proposed wording, to remove the obligation for PoTLL to act reasonably in specifying their wishes regarding restoration. This is not acceptable to the Applicant as it means that PoTLL could stipulate any restoration condition it desires regardless of the original condition of the site. This proposed drafting could lead to the situation where further consent (e.g. planning permission) was needed to meet the restoration requirements set out by PoTLL, and reaffirms the need to rely on the well-precedented drafting of Article 35.</p> <p>Paragraph 134(1)(b) proposes that PoTLL be consulted on the LEMP – the Applicant considers that this is not appropriate, as this document will provide information on the management of land permanently acquired by the Applicant. This reasoning is set out in section 17 of the Applicant's comments on Interested Parties' submissions at D9 and D9A <a href="#">[REP10-020]</a>.</p> <p>Paragraph 134(4) proposes that PoTLL be consulted on the development of a traffic management plan for the preliminary works – the Applicant considers that the inclusion of PoTLL as an attendee of the Traffic Management Forum during the preliminary works, as set out in the outline Traffic Management Plan for Construction (oTMPfC) <a href="#">[REP9-235]</a> provides appropriate protection. This reasoning is set out in section 17 of the Applicant's comments on Interested Parties' submissions at D9 and D9A <a href="#">[REP10-020]</a>.</p>	



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		<p>Paragraph 134(5) proposes that PoTLL be made a member of certain groups, including the Travel Plan Liaison Group, the traffic management forum the Materials Handling sub-group of the TMF, and the LEMP advisory group. The Applicant set out within section 17 of the Applicant's comments on Interested Parties' submissions at D9 and D9A <a href="#">[REP10-020]</a> that:</p> <ul style="list-style-type: none"> <li>- PoTLL are already a member of the traffic management forum</li> <li>- There is nothing that precludes PoTLL becoming a member of the Travel Plan Liaison Group where this is relevant</li> <li>- That the Port of London Authority is the only identified stakeholder in the Materials Handling sub-group, due to their purview across the whole of the River</li> <li>- That PoTLL has no relevant statutory duties or no interest in the land covered by the LEMP and subject to discussion by the LEMP advisory group</li> </ul> <p>Paragraph 145 (Interaction with the T2 Order) – the Applicant set out that the Protective Provisions, through inclusion of a plan approval right for works on Port land, would provide further protection to PoTLL with respect to their Tilbury2 obligations. This is set out at issue 2.1.5 of the Statement of Common Ground between National Highways and Port of Tilbury London Limited <a href="#">[REP10-008]</a>.</p>	