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Our ref: 482070
Your ref: -



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By email only, no hard copy to follow

Dear Transport Infrastructure Planning Unit

Planning Act 2008 and the Infrastructure Planning (Examination Procedure) Rules 2010

Application by National Highways for an Order Granting Development Consent for the proposed Lower Thames Crossing

Request for comments from the Applicant, Natura England, The Crown Estate and all other interested parties

Thank you for your letter of the 9 July 2024 seeking Natural England's further advice in relation to the Lower Thames Crossing project which we are pleased to provide.

For ease, we have reproduced the questions specific to Natural England and then provided our response.

Amendment of Section 85 of the Countryside and Rights of Way Act 2000

3. Noting the amendments proposed by the Applicant to paragraph 3 (detailed design) of Schedule 2 to the draft Development Consent Order, found at A.7.2 of their letter of the 23 May, Natural England is invited to provide any comments on this.

Natural England notes the Applicant's suggested addition to paragraph 3 (detailed design) of Schedule 2 (the Requirement which controls the detailed design) with a proposed additional sub-paragraph 3(2) detailing:

'(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.'

During the Examination, Natural England expressed concern regarding the ambiguity of the wording within the Development Consent Order and the various control documents and sought clearer wording. As with our previous comments, we feel that the phrase 'must have regard to the amended duty' could be open to interpretation. We would therefore recommend that clearer wording is included and have suggested a minor amendment below:

'(2) The undertaker in relation to the detailed design of the authorised development must ~~have regard to~~ **comply with** 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.'

We consider that 'must comply with' is clearer, less open to interpretation and is more able to be enforced, if required. Natural England would welcome this minor amendment to the wording being made.

4. Without prejudice to the final decision and subject to the above, both parties are invited to set out what, if any, further enhancement measures they agree could be brought forward should it be decided further measures are necessary to assure compliance with the amended duty.

Natural England recognises the unusual set of circumstances for the Lower Thames Crossing project with the enhanced duty coming late in the Examination and the Defra guidance on the duty is still to be published. Whilst our previous advice in relation to the nature and scale of the impacts to the Kent Downs National Landscape and concerns regarding the effectiveness of the mitigation measures remains, we have discussed a potential approach with the Applicant for this specific project.

Natural England in this case considers an acceptable approach could be that National Highways provide a substantial financial package to fund projects that further the purpose of conserving and enhancing the natural beauty of the Kent Downs National Landscape affected by the project.

The detail of the projects that the financial package would deliver could be agreed subsequently, should the project be consented, and should deliver key outcomes within the Management Plan for the Kent Downs National Landscape.

We advise that such a funding package would be in addition, but separate, to the compensatory enhancement fund proposed by National Highways in recognition of the significant residual impacts to the Kent Downs National Landscape resulting from the scheme. We have discussed such an approach with the Applicant, and we would recommend a similar governance arrangement to that proposed for the compensatory enhancement fund if this approach is taken forward and would expect the two funding streams to be complementary.

Given the timeframe for providing our response, it has not been possible to provide or agree detailed proposals but potential projects that could be considered as part of the financial package could, for example, include:

- Delivery of landscape scale nature recovery opportunities for people and wildlife within the areas of the Kent Downs National Landscape most affected by the project;
- Provision of sympathetic access enhancement measures to help facilitate opportunities for local communities along the route to benefit from and enjoy recreational access within the Kent Downs National Landscape; and
- Providing funding for the continuation of the Farming in Protected Landscape scheme which we understand the Applicant has discussed with the Kent Downs National Landscape Unit.

We will continue to work with the Applicant and the Kent Downs National Landscape Unit to

progress these matters as best we are able.

Thames Estuary and Marshes Special Protection Area (SPA) and Thames Estuary and Marshes Ramsar site

7. Natural England is invited to confirm that it agrees with the conclusion that likely significant effects alone and in combination from changes in air quality impacts from construction dust emissions can be ruled out, noting the use of dust control measures set out in the Code of Construction Practice, for the qualifying features of the Thames Estuary and Marshes SPA and for the Ramsar Criteria 2, 5, 6 for the Thames Estuary and Marshes Ramsar site

Natural England confirm that we agree with the conclusion within the Report on the Implications for European Sites that a likely significant effect in respect of dust deposition, both alone or in combination with other plans or projects, for the Thames Estuary and Marshes SPA and Ramsar site can be screened out. This conclusion was reached, subject to the good practice measures embedded within the project design (which are required irrespective of any potential impact pathways to the designated sites), being secured and implemented in full.

We trust these comments are helpful.

Yours faithfully

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