

Lower Thames Crossing TR010032

Response to Secretary of State Consultation Letter of 9th July 2024 Thames Crossing Action Group

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Introduction

1. Thames Crossing Action Group (TCAG) is a community action group who represent those that are opposed to the proposed Lower Thames Crossing (LTC).
2. We have and continue to present evidence that shows that the proposed LTC would be hugely destructive and harmful, fails to meet scheme objectives, is not fit for purpose, and would be a waste of taxpayers' money.
3. We acknowledge the Secretary of State's further post examination consultation letters.
4. We remain strongly and completely opposed to the proposed £10bn+ Lower Thames Crossing.
5. TCAG is responding to the fifth consultation initiated by the Secretary of State's letter of 9th July 2024.

Response to the Applicant's and Natural England's comments on the implications of the amendment of section 85 of the Countryside and Rights of Way Act, in relation to Areas of Outstanding Natural Beauty by the Levelling Up and Regeneration Act 2023

Background

The Secretary of State (SoS)'s first consultation (letter 28th March) invited the Applicant to provide comments on the implications of the amendment of section 85 of the Countryside and Rights of Way Act (CRoW), in relation to Areas of Outstanding Natural Beauty (AONB, now National Landscape) by the Levelling Up and Regeneration Act 2023 (LURA). In particular, whether and if so, why it considers the SoS could be satisfied that the amended duty placed on him under section 85 would be complied with if development consent were to be given to the Proposed Development.

The Applicant concluded in its response [A.2.19-A.2.20] that the SoS can be satisfied that all necessary steps have been taken to comply with the amended enhanced statutory duty as *'The A122 Lower Thames Crossing project meets the policy tests for the following reasons:*

a. The Applicant has considered alternatives to avoid development in, or harm to the AONB (National Landscape). Such alternatives do not meet the Scheme Objectives, which are described in detail in Chapter 3 Assessment of Reasonable Alternatives of the ES [APP-141] and Chapter 5 Project Evolution and Alternatives of the Planning Statement [REP9-215].

b. The Applicant has included in the Project design a raft of measures which has the effect of mitigating the impacts on the AONB (National Landscape), as well as providing enhancements – these include woodland planting on a landscape scale, a number of green bridges and the enhancement of walking, cycling and horse riding networks in the AONB (National Landscape). These measures are secured through the certification of the project's Design Principles [REP9-227] of particular note are S1.03, S1.04, S1.06, S1.07, S1.08, S1.09 and S1.24.

c. Additionally the Applicant has reached agreement with the AONB Unit to provide a fund of £4.24 million to enable further compensatory enhancements to other aspects of the environment within the AONB (National Landscape).'

The SoS's second consultation (letter 19th April) invited Natural England and interested parties to respond to the Applicant's comments. Natural England concluded (letter 1st May) that the Applicant has not sought to further the conservation and enhancement of the natural beauty of the Kent Downs AONB. Given the nature and scale of the significant residual landscape and visual impacts on the AONB, the Applicant should have more fully explored further mitigation measures. It also stated that a *'compensatory enhancement' fund was proposed by the Applicant in acknowledgement that the scheme will result in a significant number of residual adverse impacts to the Kent Downs... Given this Natural England does not consider this funding has been provided to further the conservation and enhancement of the natural beauty of the National Landscape as detailed by the Applicant in Section A.2.219C (sic) of their response to the Secretary of State's request.'*

The Thames Action Crossing Group (TCAG) also submitted a response to the Applicant's comments. In summary, it found that the Examination documents supply no evidence that the duty incumbent on the SoS to seek to further the AONB purpose would be met. The Applicant was not working towards meeting the new enhanced duty when developing the scheme and dismissed the need to do anything different as a result of it. All its claims are an afterthought and reactive in an attempt to address the new duty retrospectively. The new duty requires a fundamentally different approach which must be (a) embedded from the outset when developing a scheme that would impact on a nationally designated landscape and its setting; and (b) based on outcomes that seek to further the statutory purposes of that designated landscape. Therefore, contrary to what the

Applicant says the SoS cannot be satisfied that the enhanced duty has been met. Consenting the development would be unlawful.

Applicant's non-compliance with the enhanced duty

In the third consultation (letter 10th May) the SoS explored the ongoing disagreement between the Applicant and Natural England, requesting that they should seek to agree a position on compliance with the LURA duty 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. It is apparent from the Applicant's response (letter 23rd May Appendix A) and Natural England's response (letter 23rd May) that, despite a constructive meeting on 16th May between the parties, a fundamental disagreement remains in the interpretation of the nature of the enhanced duty.

Although the discussion between Natural England and the Applicant on 16th May identified additional mitigation measures that the Applicant could deliver, Natural England found these inadequate to make the scheme compliant with the enhanced duty. *'Such measures are mitigation for the landscape and visual impacts of the scheme rather than enhancements so do not appear to further the conservation and enhancement of the natural beauty of the Kent Downs.'* Instead Natural England recommended *'that the Applicant provide details of one or more projects, funded by the Lower Thames Crossing project, that deliver tangible outcomes within the adopted the Kent Downs Area of Outstanding Natural Beauty Management Plan 2021-2026 for consideration by the Secretary of State.'*

We fully support Natural England's interpretation of the enhanced duty which aligns with TCAG's interpretation. Compliance requires that (a) the duty must be embedded from the outset when developing a scheme that would impact on a nationally designated landscape and its setting; and (b) objectives and outcomes for the scheme must seek to further the statutory purposes of that designated landscape.

- (a) The Applicant did not seek to further the AONB purpose from the instant it began planning to solve the traffic problems of the Dartford Crossing. The 2106 scheme assessment¹ identified a study area which encompassed part of the AONB but the impacts of the scheme on the AONB were given cursory attention, recognised only as 'potential effects on AONB'. The Applicant ignored the requests of the Kent Downs AONB Unit to consider other alternatives [REP1-241 Local Impact Report]. The impact of the proposed works to the A2 on the AONB were not assessed at the time of the decision to progress the current proposal [Kent Downs AONB Unit Consultation 2 response]. The Applicant therefore failed to understand the requirements of

¹ Route Consultation 2016 Highways England, PRE-CONSULTATION SCHEME ASSESSMENT REPORT (VOLUME 7) – APPRAISAL CONCLUSIONS AND RECOMMENDATIONS

National Policy Statement for National Networks 2014 (NPSNN) 5.152 to avoid the AONB in its plans for the statutory road network.

(b) The scheme objectives make no reference to conserving and enhancing the AONB [REP9-215 Planning Statement, Table 4.1]. They refer to the environment in a general way – ‘minimise the impacts on health and the environment.’ If the proposed scheme were to comply with the enhanced duty it would have had a specific objective to conserve and enhance the Kent Downs AONB and would have shown, as advised by Natural England (both in REP9A-122 and its letter 1st May), that the proposed measures to further the statutory purpose of the AONB aligned with and help to deliver the aims and objectives of the designated landscape's statutory management plan. The table below shows in summary how the scheme fails completely to align with the Kent Downs AONB Management Plan 2021-2026 and therefore the Applicant's claim to have complied with the enhanced duty also fails.

Conclusion

Our conclusion therefore remains the same as in our response to the second consultation only with more weight behind it. There is much more the Applicant could have reasonably done to seek to further the purpose of the AONB. The SoS cannot rely on the Applicant's evidence in order to demonstrate they have met the enhanced duty. A decision based on current evidence would be unlawful.

The NPSNN 5.152 requires great weight to be given to the conservation and enhancement of AONBs and sets out a strong presumption against road widening in an AONB, *'unless it can be shown that there are compelling reasons for the new or enhanced capacity and with any benefits outweighing the costs very significantly.'* Compelling reasons for the Project have not been proven, alternatives were considered too late and discounted too readily, and the scheme benefits do not outweigh the costs. The scheme would impose significant residual impacts to the AONB. Even without the enhanced duty the scheme fails to pass the NPSNN 5.151 test of major development in an AONB – there are no exceptional circumstances and the scheme would not be in the public interest. In the context of the enhanced duty the process of developing the scheme falls well short of the requirements to seek to further the purpose of the AONB to conserve and enhance its natural beauty.

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TABLE 1 SUSTAINABLE DEVELOPMENT AIMS FOR THE KENT DOWNS v. IMPACTS OF LOWER THAMES CROSSING

Harmful impact
Neutral impact
Beneficial impact

No.	AIM	IMPACT OF LOWER THAMES CROSSING ON THE AIM	
1	AONB conservation and enhancement, sustainable development goals and the vision aims and principles of the AONB Management Plan are the starting point of net gain and green infrastructure investments, plans, projects and policies affecting the Kent Downs.	This aim was not the starting point for the Applicant when considering the traffic issues around the Dartford Tunnel. There was no systematic investigation of alternatives that avoided the AONB and could improve the existing traffic situation, instead of expanding road capacity. The Applicant failed to comply with NPSNN 5.152 <i>There is a strong presumption against any significant road widening or the building of new roads ... in ... 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 ... Areas of Outstanding Natural Beauty.</i>	
2	The character and distinctiveness of villages, farmsteads and individual buildings are conserved and enhanced by combining the best traditions of the past with the best technologies of the present to create environmentally sustainable and locally enhancing development	Not directly impacted	
3	A positive, proactive and urgent approach is taken to the implications of climate change and intelligent and effective mitigation and adaptation responses are chosen which support landscape character, resilient ecosystem services and drive rapid greenhouse gas reductions and increase in sequestration.	The LTC would drive rapid <u>increases</u> in GHG emissions. The LTC has construction emissions of 1,762,967 tCO ₂ e and opening year (2030) traffic model DS operation emissions of 8,996,305 tCO ₂ e [Table 15.16].	
4	All development achieves landscape enhancement, biodiversity gain and supports carbon neutrality; conservation and mitigation is	The LTC would harm the landscape, destroy ancient woodland and increase carbon emissions. Conservation of the AONB would not be delivered. The impact of mitigation is overestimated. The applicant has used mitigation measures to reduce the harm imposed by the LTC, not to	

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	delivered in every case.	actually enhance the AONB. The scheme is not compliant with the Lawton principles - Manage existing sites better; Make existing sites larger; Create new sites; Enhance connectivity; Create new corridors. There is unacceptable destruction of nature by felling of 8ha of irreplaceable ancient woodland, loss or deterioration of 12 veteran trees, and degradation of habitats from nitrogen polluting traffic.	
5	A comparatively tranquil environment is protected, conserved and enhanced.	Much of the AONB provides surprisingly tranquil and remote countryside – dark night skies, space, beauty and peace. A further reduction in relative tranquillity would be experienced along the existing A2 within the West Kent Downs Local Landscape Character Area due to increased noise and lighting; and increase in scale of structures - taller lighting columns, higher bridges, wider gantries and 23 massive retaining walls. Traffic displacement onto roads elsewhere in the AONB e.g. onto the A229 Blue Bell Hill would further reduce tranquillity. Nocturnal effects on landscape receptors would result in a ‘perceived change’ to the West Kent Downs.	
6	The setting and views in and out of the AONB are conserved and enhanced.	The setting of the AONB would be harmed by a large scale multilevel junction, new highway outside the boundary of the Downs and loss of the adjacent mature Gravel Hill Wood.	
7	The detrimental impact of existing infrastructure on the qualities of the AONB is significantly reduced	Removal of existing screening vegetation within the central reservation of the A2 and beside the A2 and HS1 coupled with new infrastructure and more traffic would worsen the existing situation, <u>not</u> significantly reduce it. Replacement planting would be limited due to relocation of utilities.	
8	Individual and cumulative development and change contribute to the conservation and enhancement of the AONB rather than detracting from it.	The development and its cumulative impacts (on landscape, visual amenity, habitats, wildlife, climate change, tranquillity) would detract and significantly harm the valued qualities of the AONB, which together constitute its natural beauty, and its purpose to conserve and enhance natural beauty.	
9	The AONB partnership takes an active and appropriate role in supporting the economic and societal recovery from the Covid-19 pandemic.	Not relevant	