



**Kent Downs  
National  
Landscape**

**Interested party Ref no: 20035310**

**KENT DOWNS NATIONAL LANDSCAPE TEAM**

**RESPONSE TO**

**REQUEST FOR COMMENTS FROM THE APPLICANT, NATURAL  
ENGLAND, THE CROWN ESTATE AND ALL OTHER INTERESTED  
PARTIES DATED 9<sup>TH</sup> JULY 2024**

**Amendment of section 85 of the Countryside and Rights of Way  
(CRoW) Act 2000**

- 1. Responses were provided by the Applicant and Natural England in relation to paragraph 3 of the Secretary of State's consultation letter of the 10 May 2024.**
- 2. Noting the comments from Natural England regarding the provision of mitigation and enhancement measures respectively, the Applicant is invited to respond to these comments.**
- 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 23 May, Natural England is invited to provide any comments on this.**
- 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.**

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## Summary.

- The Kent Downs National Landscape (KDNL) Team wishes to submit advice to the Secretary of State on issues raised in their letter of 9th July 2024.
- In their submitted Economic Appraisal Report ([APP-526](#)), the Applicant provided a residual landscape impact cost of £93.35M – this should be taken into account by the Secretary of State.
- As requested by the Secretary of State, the KDNL Team have welcomed discussions with both Natural England and the Applicant to discuss and seek to agree further enhancement measures which could be brought forward, necessary to assure compliance with the amended duty towards Protected Landscapes.
- In a short timescale, the KDNL Team have provided a costed figure (£38M) of additional funding which would help secure the requirement of the amended duty.
- We have been advised by the Applicant that they would be willing to offer £3M. There was no evidence provided to us to support this figure, so, from what we have seen, we think it arbitrary.
- We argue that the Applicant is ill equipped to describe and define how to seek to further the conservation and enhancement of the natural beauty of a Protected Landscape, in the same way that the KDNL team is ill equipped to provide structural calculations for a road tunnel.
- The new duty is significant, important and clear in its intent that where one nationally important priority (transport infrastructure, in this case) may act counter to the purpose of the Protected Landscape (to conserve and enhance natural beauty) the relevant authority has a legal requirement to actively seek to further the purpose of the landscape, equal weight should be afforded to both priorities.
- The Unilateral Undertaking and subsequent further offer in our view significantly under values the nationally Protected Landscape and therefore the applicant would fail to meet their legal obligations.

The Kent Downs National Landscape Team notes that the current consultation set out above is directed specifically to the Applicant and Natural England. However, we provide the following response to point 4, which we hope it is of assistance to the Secretary of State.

The Kent Downs National Landscape Team is well placed to respond to this query, given we are the organisation which leads the preparation and review of the National Landscape Management Plan (on behalf of the constituent local authorities) and its subsequent delivery on the ground. We are an organisation directly funded by Government and supported by DEFRA to achieve the AONB purpose. We are also closely focussed on the new duty; indeed it was our organisation that alerted the ExA to the new legislation, at Issue Specific Hearing 11, having first advised the Applicant to our intention to do so. Furthermore, given our extensive, detailed and local

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knowledge of the Kent Downs, we feel we are particularly well placed to advise on how the conservation and enhancement of natural beauty in the Kent Downs could potentially be furthered, relating this to the vision, aims and principles of the Management Plan. Finally it is the Kent Downs National Landscape Team (through Kent County Council, the Team's host employer) with whom a Unilateral Undertaking is proposed to secure compensatory enhancement elsewhere in the Kent Downs and with whom an additional Stakeholder Action Commitment is proposed in respect of the further offer from the Applicant.

The Kent Downs National Landscape Team has previously set out its view that the proposal in its current form would not meet the requirements of the new duty to seek to further the purpose of the Kent Downs National Landscape (as advised in our [response to the Secretary of State for Transport's letter dated 19<sup>th</sup> April 2024](#) and [Final Position Statement](#)) and we note that this is a view shared by Natural England.

While a *compensatory enhancement fund* is proposed by the Applicant and the subject of a Unilateral Undertaking, to enable works to be undertaken elsewhere in the Kent Downs, as advised by Natural England (in their consultation response dated 01 May 2024, paragraph 1.10 [link](#)) this is put forward by the Applicant in acknowledgement of the significant residual adverse impacts to the Kent Downs which are not avoided or mitigated by the submitted scheme, rather than as funding proposed to enable the furthering of the purposes of conserving and enhancing the natural beauty of the Kent Downs, as required by the amended duty.

Furthermore, as set out in our Final Position Statement ([link](#)), we have raised concerns that the Applicant did not commence negotiations on a Fund amount earlier in the process, nor share the findings in the Economic Appraisal Report ([APP-526](#)) resulting in the funding amount being significantly below the assessed monetary valuation of the impact of the Project on the landscape of the Kent Downs landscape. (The Appraisal calculates the valuation of the landscape impacted by the Project to result in a disbenefit of £149.78M. The figure is then amended to take into account proposed landscape mitigation and additional ecosystem services benefits which reduces the landscape disbenefits to £93.35M. While the valuation is applicable to the entire scheme, the higher baseline of the AONB receiving landscape and consequent higher assigned values results in the impacts to the AONB landscape forming a substantial proportion of this total figure).

Should the Secretary of State determine that further enhancement measures are necessary to assure compliance with the new duty, we consider that in view of the short timescales available to secure any specified enhancements, this would be best achieved through a commitment to further substantial financial investment, of the scale we have advised, based on evidence, to enable a range of measures that individually and collectively provide conservation and enhancement to the natural beauty of the Kent Downs.

At the request of the Applicant, the Kent Downs National Landscape Team met on 19/07/2024 to discuss, on a non-prejudicial basis, what such measures could entail.

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Following on from the meeting, we have made the following costed suggestions with input from relevant colleagues and partners:

- a. Through its Designated Funds Programme, National Highways has provided funds to enable the initial stages in the preparation of land in the immediate vicinity of the LTC and almost all of which would be within the Kent Downs National Landscape to be declared as a super National Nature Reserve by Natural England (sNNR). The sNNR is a positive, assertive and (detailed) evidence-based programme, one that is better researched than most and has the potential to make a massive positive change for nature, natural beauty and people. An investment to secure the exemplary delivery of the sNNR would assist in the direct furthering of the conservation and enhancement of the Kent Downs and in the closest proximity to the where the direct impacts of the LTC would occur.

Having discussed potential costings with the Manager of Shorne Woods Country Park, the team developing the declaration documents, the Kent Downs Farming in Protected Landscapes Team and access management specialists, it is considered that a **total delivery budget of £20M** be secured which could be allocated for a delivery time period of a minimum of 9 years (to correspond with the anticipated construction period for the LTC of 6 years, plus 3 years to align with the specified timeframe set out in the Compensatory Enhancement Fund).

This would provide funding to cover a wide variety of evidence based and justified work (from the research and implementation planning which is advanced) to include habitat management, implementing joint grazing schemes, nature enhancement and restoration, landscape character enhancement, significant investment in securing a future for the ancient trees, significant people engagement and access enhancements, management and delivery plans for rare and threatened species etc. Such an investment could assist in helping to make the sNNR a national exemplar and provide for investment in the area closest to the impacted part of the Kent Downs National Landscape and close to many of the affected communities. Furthermore, in time it is anticipated that the affiliate members of the sNNR could be broadened and as such this could encompass land that was purchased and is managed as mitigation/compensation land as part of the LTC project.

- b. In addition to the above, the Kent Downs National Landscape Team confirmed we can deliver a scheme to follow on from the recent Farming in Protected Landscape (FiPL) Grant Scheme, funded by DEFRA, where we successfully delivered an annual grant of £1.3M. Funding for a 'follow-on' scheme, tailored to the purposes of conservation and enhancement and framed by the Kent Downs Management Plan, targeted as close to the LTC as possible but available across the Kent Downs of **at least** £1.3M each year for 10 years

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would help contribute to the furthering of the AONB purposes. This figure is based on proven annual outturn which could probably be exceeded.

- c. We also suggest further support for access enhancements across the Kent Downs and consider that a £5M budget over the same period specified above would enable us to make significant enhancements across the National Landscape. Such a figure is based on substantial investment already made around the North Downs Way National Trail, the main promoted route through the Kent Downs and Surrey Hills National Landscapes and this work would provide a template for further investment to secure access improvements in the vicinity of the LTC works.

**Taking the above into account, it is suggested that a total further investment of at least £38M should be made to secure the above identified enhancements to the Kent Downs.**

While securing the above would not, in our view, further the purposes of conserving and enhancing natural beauty of the Kent Downs in view of the acknowledged and undisputed significant residual harm arising to the Kent Downs National Landscape from the LTC scheme, **investment at the scale we identify above would, in our view, demonstrate compliance with the new duty to seek to further the conservation and enhancement of natural beauty of the AONB.**

Following a further meeting with the Applicant on 22/07/2024, we have been advised that the Kent Downs request for £38M is considered to be disproportionate to the level of harm and area of the Kent Downs affected and that it would not be in the public benefit to provide such an amount. In light of this, it is the Applicant's intention to suggest an additional financial investment to the Kent Downs of £3M (on a non-prejudicial basis, should the Secretary of State consider additional enhancement measures are required). In response, we would advise that it is unclear on what basis such an amount has been derived, unlike our considered and costed analysis of what enhancements could be achieved, as set out above, based on a detailed understanding of landscape character and quality and the conservation and enhancement of natural beauty. The Applicant's proposals represent little more than 3% of their own economic costings of the landscape harm. We would re-iterate that the identified residual harm to the Kent Downs, as acknowledged in the ES, is significant.

Furthermore, we would contend that both the conservation and enhancement of the natural beauty of a nationally and internationally important landscape (IUCN Cat V) and national transport infrastructure are both important for the public good, they should be weighed equally. In order to demonstrate a genuine intent to seek to further the purposes of the designation, particularly in view of the identified irreversible and unmitigable damage to the Kent Downs, a substantial investment is necessary, calculated to reflect identified harm. The suggested amount of £38M still

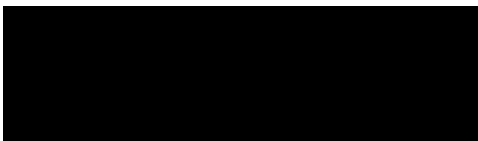
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falls far short of the assessed level of harm to landscape calculated in the Applicant's Economic Appraisal Report.

The Applicant, has also advised (on a non-prejudicial basis), that any financial investment could be secured through inclusion of a commitment in [the Stakeholder Actions and Commitments Register](#) to fund appropriate projects to a specified value, which align with the objectives of the Management Plan for a period during construction and 3 years following road opening. The Kent Downs National Landscape Team agree that this would be an appropriate mechanism to secure the additional funding.

It is hoped that setting out our views on this matter is of assistance to the Secretary of State and we would be happy to provide further detail if this would be helpful.



Nick Johannsen FLI

Director, Kent Downs National Landscape Team

23 July 2024