

Date: 07 August 2024
Our ref: 483795
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 all Interested Parties

Natural England Interested Party reference number: 20034784

Thank you for your letter of the 26 July 2024 seeking further advice in relation to the Lower Thames Crossing project from Interested Parties which Natural England is pleased to provide below.

For ease, we have reproduced the questions and then provided our response.

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

2. The proposal to provide funding to deliver enhancement measures to the Kent Downs National Landscape (formerly AONB) is noted, but the appropriate amount of funding or non-financial measures remains a point of disagreement. Without prejudice to any final decision on this matter, it is proposed that the following provision is included within the Schedule 2, Part 1, requirement 3 (detailed design) of the Development Consent Order:

(3) Prior to the commencement of the operation of the authorised development, the undertaker and Natural England must agree to a written proposal regarding measures, which may include a financial payment or other non-financial measures, for the benefit of the Kent Downs National Landscape having regard to the duty of section 85 of the Countryside and Rights of Way Act 2000. Projects to be supported financially or by non-financial measures will be in accordance with the principles of the Kent Downs AONB Management Plan or any superseding document, and will be agreed with the Kent Downs National Landscape team.

(4) Any dispute under sub-paragraph (3) above as to the measure or measures to be agreed, including the quantum of any financial payment if

included, shall be referred to an independent expert agreed by all parties in accordance with article 64 (arbitration).

3. All interested parties are invited to provide any comments they may have on the responses provided, as well as the proposed provision.

Natural England's response

1. Tigger point for agreeing proposal of measures

Natural England notes the addition to the Development Consent Order (DCO) proposed by the Secretary of State. Having considered the proposals, and in the absence of (and not wishing to prejudice) the Defra guidance on the enhanced duty, we consider that the wording could be strengthened to help achieve a clearer outcome for the National Landscape and timescale in accordance with the enhanced duty.

If the scheme is consented, we are concerned that the greatest landscape impacts from the scheme in relation to the Kent Downs National Landscape will occur during the construction phase. We would therefore support the need for the package of measures to be agreed 'prior to the commencement of the development' rather than the 'commencement of the operation' which we understand to mean the point of completion of the scheme, currently proposed to be 2033. The agreed projects should then be delivered during the construction and early operational phases of the development. Such an approach would help to ensure the conservation and enhancement benefits to the National Landscape are realised as early as possible in the project, and at the time of maximum construction impacts.

2. Addition of Kent Downs National Landscape Unit as key partner

In addition, Natural England considers that it is important for the Kent Downs National Landscape Unit to be a key partner, alongside Natural England and the Applicant, in agreeing the written proposal of measures. This is in addition to the Kent Downs National Landscape Unit agreeing the specific projects, which Natural England would also expect to be consulted upon. Without prejudicing our previous advice, we have suggested amended wording below which we hope is helpful.

~~(3) Prior to the commencement of the operation of the authorised development, the undertaker, and Natural England and the Kent Downs National Landscape Unit must agree to a written proposal regarding measures, which may include a financial payment or other non-financial measures, for the benefit of the Kent Downs National Landscape having regard to the duty of section 85 of the Countryside and Rights of Way Act 2000. The agreed pProjects to be supported financially or by non-financial measures will be in accordance with the principles of the Kent Downs AONB Management Plan or any superseding document, and will be agreed with the Kent Downs National Landscape team.~~

3. Use of control documents

For other elements secured through the DCO, there is further detail within the various control documents to guide the post consent discussions and agreements. If the Secretary of State is minded to grant consent with the proposed additional wording, then it feels appropriate to include further detail on the nature and scope of projects and/or broad outcomes within the control documents. We note that, in addition to the potential projects included in our letter of the 23 July 2024 (our reference 482070), additional opportunities have been proposed by the Applicant and the Kent Downs National Landscape Unit in their

responses to your letter of the 9 July. We acknowledge that the suggested additional DCO wording allows for the detail to be agreed post consent, but we consider it important to reference the projects currently proposed and/or the broad outcome that the measures hope to achieve within any consent. Such an approach may help ensure that, if consent is granted, greater clarity can be provided that delivery of the scheme has sought to further the purpose of conserving and enhancing the natural beauty of the Kent Downs.

The Code of Construction Practice, incorporating the Register of Environmental Actions and Commitments, provides detail on other measures secured by the DCO and may be an appropriate vehicle. An addition to the Stakeholder Actions and Commitments Register may be an alternative approach. Natural England therefore supports further clarity on the objectives and outcomes being provided within the broader suite of control documents if consent is granted. This would be in addition to the mitigation measures and compensatory enhancement fund proposed for the residual impacts to the Kent Downs National Landscape detailed within the application documents.

4. Arbitrator

Natural England notes the proposed dispute resolution mechanism, if required, via an arbitrator and has no comments to make in this respect. If consent is issued, we will use our best endeavours to work collaboratively with all partners to deliver the agreed environmental outcomes for landscapes, nature and people.

The advice above is provided in relation to the proposed amendment to the DCO; our advice provided during the Examination 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 remain.

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

Natural England has no further comments to make to those detailed within our letter of the 23 July 2024 in relation to the Thames Estuary and Marshes Special Protection Area and Ramsar site.

We trust these comments are helpful.

Yours faithfully

James Seymour
Deputy Director, Sussex and Kent Team

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