

Appendix 1
TR010032: Proposed Lower Thames Crossing Scheme (LTC)

Thames Crossing Action Group
Unique Reference: 20035660

Response to the applicant'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

1. The Secretary of State's (SoS) letter of 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) 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.
2. In summary, the applicant has failed to show that all necessary steps have been taken to seek to further the AONB statutory purpose. The scheme was developed before the amendment became law under the less onerous duty 'to have regard to' this purpose. Hence, the applicant's attempts to meet the more onerous new duty are retrospective and not proactive. There is also substantial evidence to show the applicant failed to recognise the significance and importance of the AONB designation and purpose. This creates a problem for the decision maker. More evidence is required before the SoS can demonstrate that he has sought to further the statutory purpose of the Kent Downs AONB.

LEVELLING UP AND REGENERATION ACT DUTY

3. An AONB has a primary single statutory purpose to **conserve and enhance natural beauty**. The CROW section 85 places a general duty on statutory undertakers to have regard to that purpose when coming to decisions or carrying out their activities relating to or affecting land within the AONB. The LURA, Part 12, 245 (6) (a) (A1) amends this to: *'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'*. (emphasis added)
4. Natural England's statutory advice [REP9A-122, para 2.13] states:
'The new duty underlines the importance of avoiding harm to the statutory purposes of protected landscapes but also to seek to further the conservation and enhancement of a

protected landscape. That goes beyond mitigation and like for like measures and replacement. A relevant authority must be able to demonstrate with reasoned evidence what measures can be taken to further the statutory purpose.'

5. *'The proposed measures to further the statutory purposes of a protected landscape, should explore what is possible in addition to avoiding and mitigating the effects of the development, and should be appropriate, proportionate to the type and scale of the development and its implications for the area and effectively secured. Natural England's view is that the proposed measures should align with and help to deliver the aims and objectives of the designated landscape's statutory management plan. The relevant protected landscape team/body should be consulted.'*
6. In January 2024 Campaign for National Parks sought a legal opinion from Alex Shattock at Landmark Chambers, which was submitted in response to the application of the new duty with respect to the A66 Northern Trans-Pennines Project (TR010062). It is attached with this submission. The amending clauses are considered to impose a more onerous duty on public bodies than existed previously. The duty is now pro-active, not an afterthought. It is not enough to not conflict with those purposes. The decision maker must seek to further the statutory purposes of designated landscapes through an **outcome based** approach. Parliament should not be assumed to legislate in vain. The change in duty is clearly a material change.

IMPACTS ON THE KENT DOWNS AONB

7. The Project falls within the Kent Downs AONB and would result in severe direct and indirect permanent harm to the AONB and its setting, from the following:
 - Widening of the A2 corridor from 8 to 14 lanes over a length of 2km to produce an unbroken expanse of highway infrastructure, severing the northern tip of the AONB from the rest of it. Two new connector lanes on either side of the aligned A2 would further increase highway width.
 - Removal of existing screening vegetation within the central reservation of the A2 and beside the A2 and HS1. Replacement planting is limited due to relocation of utilities.
 - A large scale multilevel junction outside the boundary of the Downs coupled with the loss of the adjacent mature Gravel Hill Wood.
 - Permanent loss of nearly 8ha of ancient woodland at Ashenbank Wood and Shorne Woods SSSIs, further isolation of Shorne Woods from Cobham Country Park and Ashenbank Wood, and loss or deterioration of 12 veteran trees.
 - Relocation of access to Harlex Haulage Depot encroaching on undeveloped areas of the AONB.
 - Loss of tranquillity 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.

- Nocturnal effects on landscape receptors resulting in a ‘perceived change’ to the West Kent Downs.
- Impacts on biodiversity rich habitats within the AONB due to nitrogen deposition.
- Traffic displacement onto roads elsewhere in the AONB, e.g. onto the A229 Blue Bell Hill, leading to further pressure for an increase in their capacity [REP1-241].
- Adverse visual amenity for those recreating in the AONB including in Shorne Woods Country Park and on the public rights of way network and long distance paths.

FAILURE TO SEEK TO FURTHER THE AONB STATUTORY PURPOSE

8. The applicant claims that the SoS can be satisfied that the LURA duty has been met, as the project complies with the National Policy Statement for National Networks 2014 (NPSNN) and by extension with section 85 of the CRoW as amended. It does not. The evidence shows that the project is not compliant with the NPSNN or with the duty to ‘seek to further’ the AONB statutory purpose.

NPSNN 5.150

9. **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.** The applicant failed to give great weight to conserving the scenic beauty of the Kent Downs AONB for the following reasons.

Failure to understand the integrity of the AONB designation

10. The applicant claims that the integrity of the AONB is not compromised as the scheme would take only 1.61km² or 0.18% of the AONB [APP-501]. This quantitative reduction of impact to a unit of measurement of land area shows a complete lack of understanding of the designation and its purpose. It fails to acknowledge the three dimensional wider impacts such as from the proposed multilevel junction on the AONB setting and increased traffic on other roads within the AONB or the qualitative impacts that would be imposed on landscape, visual amenity and habitats. The single designation applies to all parts of the AONB which are of equal value and equally subject to the statutory duty.

Options appraisal failed to fully consider the harm to the AONB

11. The route selection process failed to consider the harm to the nationally protected AONB, as required by NPSNN 150-152 [see below and REP9A-010].

Scale of impact on the AONB underestimated by applicant

12. The existence of a major 8-lane highway and traffic crossing the northern tip of the Kent Downs is the baseline from which the applicant had to seek to further the conservation and enhancement of the AONB’s natural beauty. Instead the applicant pursued a scheme that would impose severe direct and indirect permanent harm to the natural beauty of

the Kent Downs AONB and its setting, thereby worsening the existing situation. The scale of the impacts of the LTC on the AONB have been underestimated, as considered by both Natural England [REP1-262] and the Kent Downs AONB Unit [REP1-378]. Their and TCAG concerns have not been addressed [REP9A-014, REP9A-010, REP8-191].

Scale of impacts reduced by applicant

13. The scale of adverse impacts has been significantly reduced from that presented in the Environmental Statement (ES) accompanying the 2020 DCO submission, despite (a) there having been no change in mitigation that would justify such an assessment [REP9A-010 & REP9A-014]; and (b) the design changes between the two DCO submissions not significantly reducing the level of harm. In the 2020 withdrawn ES, all Local Landscape Character Areas within the Kent Downs AONB were assessed as being of 'Very High' susceptibility. In the ES accompanying the current DCO their susceptibility is judged to be either 'Medium' or 'High', with 'Medium Susceptibility' defined as the 'Ability to accommodate some change (relating to landscapes of local or regional recognition of importance)'. Such an assessment is totally at odds with the statutory purpose of the AONB to conserve and enhance natural beauty. The AONB is a national designation, not a local or regional designation, which confers by default 'Very High' susceptibility.
14. The Appraisal Summary Table (AST) mirrors this reductive change. The October 2020 AST recorded the impact on the Kent Downs as 'large adverse'¹. The AST submitted with the 2022 DCO [APP-524] recorded the impact as only 'moderate adverse'.

Incorrect assessment by applicant

15. The assessment of landscape and visual effects within the ES are incorrect. The boundaries of some of the Local Landscape Character Areas within the Kent Downs AONB was incorrectly transposed within the ES. The ES shows incorrect boundaries for the contiguous West Kent Downs (sub area Cobham) and West Kent Downs (sub area Shorne) Local Character Areas. The Cobham sub area boundary largely follows the northern boundary of the existing A2/High Speed 1 Rail Line alignment whereas the ES shows the same Character Area boundary running to the south of the A2/High Speed 1 Rail Line. The incorrect transposition of the boundaries for these two Character Areas is likely to mean that landscape and visual effects are incorrect. This error has not been corrected and both Natural England and the Kent Downs AONB partnership maintain their objection to the change in boundary according to both their final Statement of Common Ground (SoCG) [REP9A-014 & REP9A-010]. This means the SoS cannot rely on the ES to make a decision.

¹ FoI request through 'what do they know'

https://www.whatdotheyknow.com/request/lower_thames_crossing_appraisal/response/1711296/attach/3/Appraisal%20Summary%20Table%20only.pdf?cookie_passthrough=1

Limited and overstated mitigation effects

16. The proposed mitigation impacts are overstated in the Planning Statement Appendix F [APP-501] and fall far short of what is required to adequately modify the harm to the AONB [REP9-225]. Natural England (the Government's statutory landscape adviser) recommended that the applicant should be obligated to provide a more comprehensive and greater mitigation package [REP1-262]. This recommendation has not been followed as the final SoCG between Natural England and the applicant shows [REP9A-014].
17. The attempt to mitigate the severance of the AONB landscape by using green bridges fails. Their widths - 11.5m and 21.5m with only a 1.5m strip of vegetation - far fall short of the Landscape Institute's recommendation that in order to reconnect the landscape green bridges need to be 50m-80m wide [REP4-330]. This best practice must be followed if the applicant is to show it has sought to further the AONB purpose. It may cost more but there are no other reasons why this should not be followed.
18. The wider impacts of the scheme on the AONB have not been addressed. For example, increased traffic on the A229 Blue Bell Hill would increase pressure for capacity enhancements which would impact negatively and directly on the AONB. The A229 is the shortest link between the M20 and the M2 and cuts through the escarpment of the North Downs. Both junctions with the motorway at either end of this road are already over capacity at peak times, and upgrading both the junctions, as well as widening the route itself, would have a significant adverse impact on the AONB.
19. The applicant's reductive assessment, coupled with the failure to appraise alternatives that would avoid the Downs, the underestimation and diminution of the harm that would be imposed on the Downs and the failure to provide mitigation as advised demonstrate that the applicant has failed to give great weight to conserving the scenic beauty of the Downs, and by extension to meet the LURA duty. Instead it shows little regard or understanding for seeking to further the purpose of the AONB.

NPSNN 5.151

20. **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:**
 - **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;**
21. The need for the development has not been justified as alternatives have not been fully appraised (see below). In terms of national considerations the LTC would worsen the climate emergency by emitting 1.73MtCO₂e from construction and 4.833MtCO₂e from its operation. It would also increase air pollution emissions of NO₂ and PM_{2.5}, lead to

direct loss and deterioration of nationally significant habitats and SSSIs, take Green Belt and valuable agricultural land and destroy highly valued cultural heritage. The claimed journey time improvements would be short lived due to induced traffic and the economic benefits according to the AST are poor value for money. In this context the scheme cannot be justified.

22. The impact on the local economy has not been fully assessed. Gravesham is the only borough south of the Thames that is directly impacted by the LTC. The Council is concerned about impacts on its local economy including on heritage, agricultural land take and its unique tourist offer which includes the AONB [REP1-228]. Land take would be profound and the scheme would lead to congestion and rat running on particularly the A227. The Council's concerns are valid e.g. the claimed alleviation of the Dartford Crossing congestion would not occur, as evidenced by Thurrock Council and there would be a 50% increase in cross river traffic, from induced demand, if the proposed LTC is consented. These impacts have not been addressed in the relevant economic appraisal documents [APP-518, APP-525, APP-527].

- **the cost of, and scope for, developing elsewhere, outside the designated area, or meeting the need for it in some other way;**

23. This has not been demonstrated. Only the cost of the scheme is available. The cost and scope of rail freight and of alternative routes which would avoid the impacts on the AONB, and potentially enhance the AONB, have not been appraised. The assessment of alternatives for developments in National Parks, the Broads and Areas of Outstanding Natural Beauty (AONBs) is required by NPSNN 4.26. For national road schemes, NPSNN 4.27 notes that **'proportionate option consideration of alternatives will have been undertaken as part of the investment decision making process. It is not necessary for the Examining Authority and the decision maker to reconsider this process, but they should be satisfied that this assessment has been undertaken'**. Given there is a strong presumption against road building or widening in the AONB (NPSNN 5.152, see below) a 'proportionate option consideration of alternatives' in this case requires a rigorous assessment of options. The SoS must reconsider the options appraisal.

24. The initial 2009 DfT study dismissed cross-river rail connections options after which rail was not considered again (APP-141). The applicant's 2016 Pre-Consultation Scheme Assessment Report is concerned only with route options. A package of sustainable options, preferred by a majority of respondents, was ignored by the applicant who promoted the LTC in its current form and did not consider sustainable options to reduce car dependency or modal shift of long distance road freight to rail. Alternative routes that avoided AONB impacts were discounted before the impacts on the AONB were known. AONB impacts only became apparent once the route choice was finalised with the need to increase the capacity of the A2 and relocate utilities adjacent to it, requiring

the widening of a 2 km section of the A2 through the AONB with associated loss of Ancient Woodland and SSSI habitat. Alternatives were therefore dismissed too soon and without adequate information and have not been developed or costed as a least intrusive option for comparison with the LTC. If the SoS is to demonstrate proactively that he has sought to further the purpose of the AONB, he must now cost and scope (a) the alternative routes that were dismissed and (b) rail freight.

- **any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.**
25. Both Natural England and the Kent Downs AONB partnership have emphasised the detrimental effect of the scheme on the environment, the landscape and recreational opportunities. They have shown the harm cannot be moderated sufficiently to allow the scheme to progress as a route through the AONB.
26. Thus there are no exceptional circumstances which would allow the SoS to consent the DCO. Solutions that would avoid the AONB have either not been sufficiently assessed or not assessed at all. The scheme is not in the public interest as the harm inflicted on the Kent Downs AONB is unacceptable and cannot be mitigated; the wider adverse impacts of the scheme are counter to sustainable national considerations. The public interest would be served by reducing the impact of existing traffic on the AONB.

NPSNN 5.152

27. **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.**
28. The applicant has not worked from a strong presumption against significant road widening in the AONB. The failure to examine a rail freight option and the superficial assessment and dismissal of route options outside the AONB before the final route was chosen undermines the claimed compelling reasons for the new capacity. Furthermore, at an estimated cost of £9bn and with an initial BCR of 0.48, the benefits of the LTC do not outweigh costs 'very significantly'.

NPSNN 5.32

29. **The Secretary of State should not grant development consent for any development that would result in the loss or deterioration of irreplaceable habitats including ancient woodland and the loss of aged or veteran trees found outside ancient woodland,**

unless the national need for and benefits of the development, in that location, clearly outweigh the loss.

30. The loss of 8ha of ancient woodland and of veteran trees, the special characteristics and qualities of which are irreplaceable, is in direct contravention to NPSNN 5.32. Woodland planting proposed as mitigation is no compensation for this loss. Ancient woodland is a key component of the wooded landscape of the Kent Downs in this area and contributes to both the AONB's statutory purpose and the public's enjoyment of its amenities. As the transport problems could be solved in other ways there is no justification for the very severe harm that the loss of these ancient woods and veteran trees would impose.
31. All of the evidence presented above demonstrates that the Applicant has failed to meet the policy requirements of NPSNN as applied to the AONB. This means the SoS, if minded to consent the DCO, cannot comply with NPSNN 5.153. **Where consent is given in these areas, 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.**
32. The project has not been planned to meet the highest environmental standards and would severely harm the special qualities and environment of the Kent Downs AONB. The applicant has failed to provide reasonable justification for not pursuing measures that could 'seek to further' the AONB purpose.

CONCLUSION

33. 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 LURA duty when developing the scheme and has 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.
34. Therefore, contrary to what the applicant says the new duty does have an impact on the decision-making for this DCO. There is much more the applicant could reasonably do to seek to further the purpose of the AONB. Therefore the SoS cannot rely on the applicant's evidence in order to demonstrate he has met the LURA duty. A fresh assessment is required to show where and how the proposed DCO could seek to further

that purpose. This requires personal attention from the SoS as decision maker. He must himself apply the new LURA duty to the LTC project and, if he decides to consent the DCO, demonstrate how he has met that duty.

Prepared for TCAG by Anne Robinson