

## TR010032 - The A122 (Lower Thames Crossing) Development Consent Order 2025

### NMC-2 - Non-Material Change Application 2 - Kent Downs National Landscape

#### Supporting Statement

## 1 Introduction

- 1.1 National Highways (the Applicant) intends to apply for a non-material change to The A122 (Lower Thames Crossing) Development Consent Order 2025 (DCO). The application is made pursuant to Schedule 6 of the Planning Act 2008 and Part 1 of the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011, as amended (2011 Regulations).

## 2 Background

- 2.1 In March 2025, the Secretary of State for Transport made the DCO authorising the construction and operation of the authorised development of the A122 (Lower Thames Crossing). The DCO came into force on 15 April 2025.
- 2.2 When making the decision, the Secretary of State introduced (at article 65) a requirement for a financial contribution to be made available by the Applicant for the benefit of the Kent Downs National Landscape having regard to the amended duty under section 85 of the Countryside and Rights of Way Act 2000.
- 2.3 Paragraphs (1)-(2) of the article stipulate that:
- “(1) The undertaker, Natural England and the Kent Downs National Landscape Unit (“the parties”) are to agree in writing the financial contribution to be made available by the Applicant for the benefit of the Kent Downs National Landscape having regard to the amended duty under section 85 of the Countryside and Rights of Way Act 2000(1).*
- (2) The agreement referred to in paragraph (1) is to be made prior to the commencement of the authorised development or the tunnel being open for use, whichever is the earlier.”*

## 3 Proposed Change

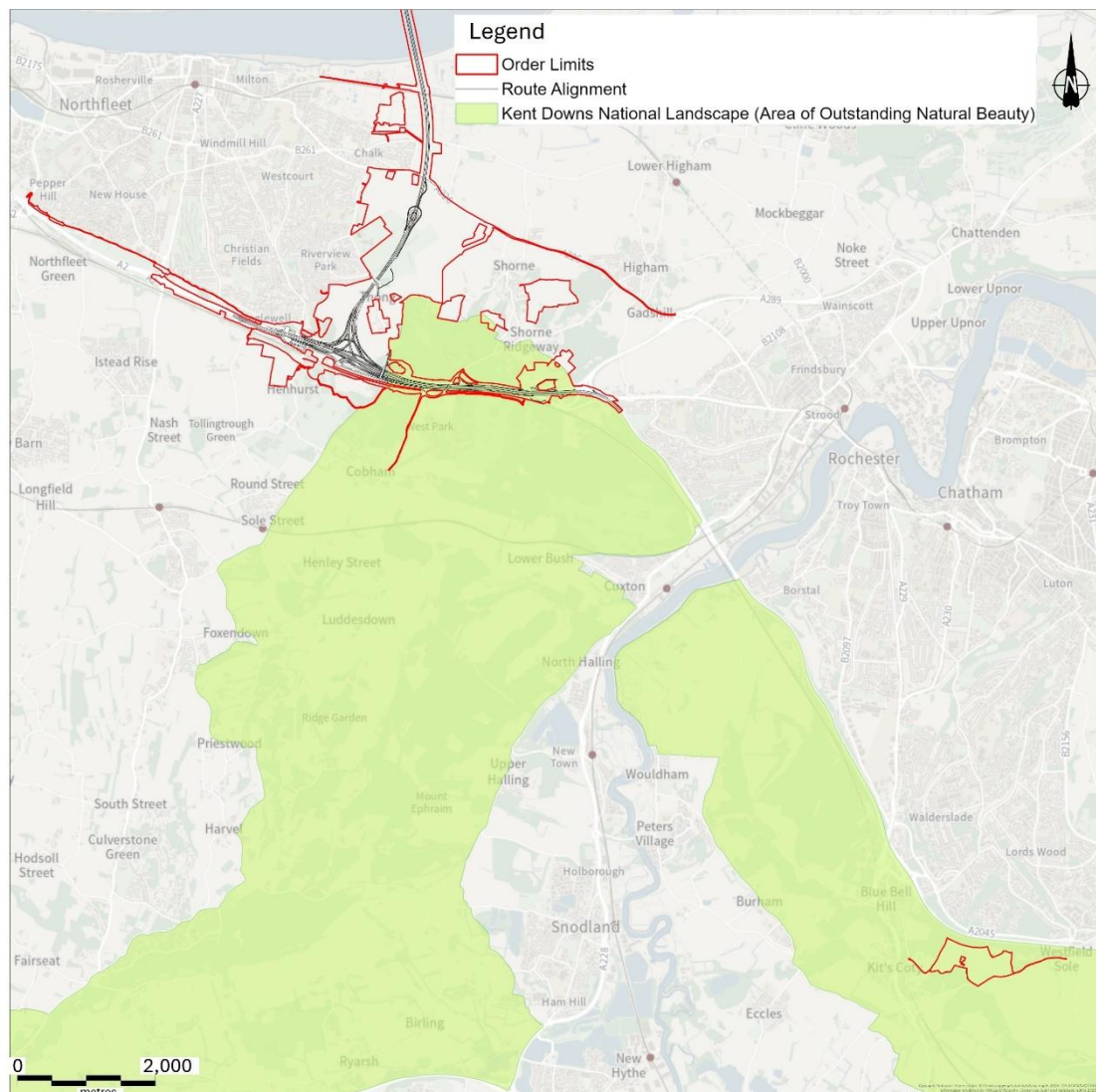
- 3.1 The Application comprises of a non-material change to the DCO (NMC 2), comprising modification of the wording of article 65, with the intent of changing the timing to reach agreement.
- 3.2 The amended provision and justification are set out in Table 1.

**Table 1: Applicant's amended provisions and justifications**

| Ref.    | Provision and Proposed Change  | Justification  |
|---------|--|--|
| NMC-2-a | <p><b>Article 65(2)</b></p> <p>Amend paragraph (2) and insert new paragraph (8), as follows:</p> <p>(2) The agreement referred to in paragraph (1) is to be made prior to the commencement of <b>any part of the authorised development located south of the River Thames</b> <del>or the tunnel being open for use, whichever is the earlier.</del></p> <p><b>(8) For the avoidance of doubt, in this article "commencement" has the same meaning as in Schedule 2.</b></p> | <p>The made DCO introduced article 65 as a new provision. Its purpose is to establish a mechanism to determine the quantum of a funding to be provided Kent Downs National Landscape in response to the enhanced duty under section 85 of the Countryside and Rights of Way Act 2000.</p> <p>Article 65 of the made DCO provides that the fund must be agreed, or failing that determined by arbitration and a Secretary of State decision, prior to commencement of the authorised development. The effect of this this is that prior to the funding quantum being settled, the Project can only undertake those preliminary works listed in Schedule 2 to the DCO which are excluded from the definition of "commencement".</p> <p>The definition of "commencement" of the Project is comprehensive across the whole project. The intent of this change is to de-link this requirement from commencement of DCO works north of the River Thames, which have no impact upon the National Landscape. This prevents the resolution of the funding being a constraint on planned commencement of works north of the River.</p> <p>It is requested that the Secretary of State amend article 65(2) as shown in column 2, such that the pre-commencement commitment is limited to works south of</p> |

| Ref. | Provision and Proposed Change | Justification  |
|------|-------------------------------|--|
|      |                               | <p>the River Thames. This will align with the intent of the Decision Letter, i.e. to ensure the fund has been agreed before “commencement” works take place in and around the Kent Down Protected Landscape</p> <p>In connection with this, the Applicant requests two further amendments to article 65:</p> <p>Paragraph (2) of the made DCO contains redundant drafting because “commencement” will always come before the tunnel opens. The proposed correction to paragraph (2) would remove the redundant drafting; and</p> <p>New paragraph (8) would confirm, for the avoidance of doubt, that “commencement” in this article has the same meaning as in Schedule 2, which also aligns with the definition of “commencement” in the SAC-R itself.</p> |

### 3.3 The extent of the Order limits south of the River Thames, are shown in Plate 1.



**Plate 1 Extent of the Lower Thames Crossing order limits south of the River Thames.**

## 4 Non-Material Change

- 4.1 There is no statutory definition of what constitutes a material or non-material amendment for the purposes of Schedule 6 of the Planning Act 2008 and Part 1 of the 2011 Regulations. However, the Government has issued guidance on this point and this is outlined in the Department for Communities and Local Government “Planning Act 2008: Guidance on Changes to Development Consent Orders” (December 2015) (the DCO Changes Guidance)
- 4.2 Paragraphs 9 – 16 of the DCO Changes Guidance set out the four characteristics which indicate whether a proposed change to a DCO is material

or non-material. The following characteristics are stated to indicate that an amendment is more likely to be considered 'material':

- a. A change should be treated as material if it would require an updated Environmental Statement (from that at the time the original DCO was made) to take account of new, or materially different, likely significant effects on the environment.
- b. A change is likely to be material if it would invoke a need for a Habitats Regulations Assessment. Similarly, the need for a new or additional licence in respect of European Protected Species is also likely to be indicative of a material change.
- c. A change should be treated as material that would authorise the compulsory acquisition of any land, or an interest in or rights over land that was not authorised through the existing DCO.
- d. The potential impact of the proposed changes on local people will also be a consideration in determining whether a change is material.

4.3 Each of these is considered in turn below, in light of the change being applied for.

- a. Environmental Statement – amending the drafting of the requirement does not give rise to any new environmental effects. Both the original and revised drafting requires that the agreement be in place prior to commencement of works that might affect the Kent Downs National Landscape. No updated environmental statement is needed.
- b. Habitats Regulation Assessment - amending the drafting of the requirement does not give rise to any new environmental effects. Both the original and revised drafting requires that the agreement be in place prior to commencement of works that might affect the Kent Downs National Landscape. No updated Habitats Regulation Assessment is needed.
- c. Compulsory Acquisition of Land - there is no change in the land, interest in or rights over land being acquired, to that presented in the DCO.
- d. Impact on local people - there will be no change in impact on local people as a result of the proposed changes.

## 5 Conclusion

- 5.1 The Applicant is seeking to amend the A122 (Lower Thames Crossing) DCO in relation to Article 65
- 5.2 Consideration has been given to the tests outlined in the relevant DCO Changes Guidance, and it has been demonstrated that the proposed amendment would be non-material in nature.