



**Cotswolds  
National  
Landscape**

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17 December 2024

Dear Sir / Madam,

### **M5 JUNCTION 9 AND A46 (ASHCHURCH) TRANSPORT SCHEME**

The Cotswolds National Landscape Board ('the Board') is pleased to provide comments in response to the public engagement consultation on the 'M5 Junction 9 and A46 (Ashchurch) Transport Scheme' ('the scheme'). We are a statutory consultee on nationally significant infrastructure projects (NSIPs) such as this and our comments are provided in that capacity.

The proposed scheme would be located within the setting of the Cotswolds National Landscape (CNL) and Option A is likely to extend into the CNL. As such, consideration should be given to the potential impacts of the scheme on the natural beauty of the CNL. Great weight should be given to conserving and enhancing the natural beauty of the CNL. The relevant authorities involved in the scheme must seek to ensure that the scheme furthers this purpose.

In addition to the shortlisted options, the Board recommends that consideration should also be given to an alternative Option B option, in which the 2km length of the A435 between the A435 / B4079 junction and the Teddington village turn off would be closed to traffic and would be re-purposed and re-landscaped as a recreational route. Ideally, the Option B route should be located further away from the CNL boundary and should align more closely with existing field boundaries.

All of the scheme options would adversely affect the natural beauty of the CNL to some degree. However, the Board acknowledges the need for the scheme and acknowledges the reasons provided for rejecting other options. Therefore, in principle, we support the scheme, provided that preference is given to the scheme option that would result in the least harmful - and the most beneficial - effects on the natural beauty of the CNL.

The most significant effects on the natural beauty of the CNL relate to Options A and B. The single, largest adverse effect is likely to be the impact of Option B (i.e. the new road on an embankment) on views from the CNL. However, Option A would have a more significant adverse effect than Option B in relation to the landscape character / quality of the CNL and on the tranquillity of the CNL.

#### **Cotswolds Conservation Board**

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The Cotswolds National Landscape is a designated Area of Outstanding Natural Beauty (AONB), managed and looked after by the Cotswolds Conservation Board.

[cotswoldsaonb.org.uk](http://cotswoldsaonb.org.uk)

*Chairman:*  
**Brendan McCarthy**  
*Vice Chair:*  
**Rebecca Charley**

Given the adverse effects associated with Option A, it is doubtful whether the 'exceptional circumstances' threshold that would be required to justify this option could be reached. However, further assessments of all of the shortlisted options (particularly Options A and B), as well as the Board's alternative Option B, are required before a definitive conclusion can be reached as to:

- which option would result in the least harmful effects - and most beneficial effects - on the natural beauty of the CNL;
- whether there are exceptional circumstances to justify Option A.

Our assessment shows that the Board's alternative Option B would result in fewer adverse effects - and more beneficial effects - than the currently proposed Option B in relation to all of the factors that contribute to the natural beauty of the CNL. This alternative option would also provide significant benefits with regards to opportunities for walking, cycling and horse riding. Therefore, we recommend that the Board's alternative Option B should be given preference over the currently proposed Option B.

With regards to Options 1-3, we consider that Option 1 would result in the least harm to the natural beauty of the CNL.

If it is shown that exceptional circumstances do not apply to justify Option A, the Board's preferred option would be the Board's alternative Option B in combination with Option 1.

Consideration will also need to be given to the impacts of the scheme options on the dark skies, natural heritage and cultural heritage of the CNL, both in their own right and as components of the CNL's natural beauty.

As part of fulfilling the 'seek to further' duty, relevant authorities should identify what measures can be taken, over and above avoidance and mitigation of harm, to further this purpose. In addition, we recommend that the scheme objectives should be amended to include an objective that explicitly addresses the CNL. As a last resort, it may be necessary to provide some level of compensation for the harm that the scheme would cause to the natural beauty of the CNL.

Further detailed comments are provided in Appendix 1, below. If you have any queries regarding the information provided in this response, please do not hesitate to get in touch.

Yours faithfully,

A handwritten signature in black ink that reads "John Mills". The signature is written in a cursive style with a long, sweeping underline.

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## **APPENDIX 1. DETAILED COMMENTS ON THE M5 J9 AND A46 (ASHCHURCH) TRANSPORT SCHEME**

### **1.0 SUMMARY**

The M5 Junction 9 and A46 (Ashchurch) Transport scheme is a nationally significant infrastructure project (NSIP). The Board is a statutory consultee on such schemes and, as such, should be pro-actively consulted on this scheme.

The scheme would primarily be located within the setting of the Cotswolds National Landscape (CNL), although it is likely that Option A would extend into the CNL. As such, consideration should be given to the potential impacts of the scheme on the natural beauty of the CNL, including its landscape quality, scenic quality, tranquillity, dark skies, natural heritage and cultural heritage. Great weight should be given conserving and enhancing the natural beauty of the CNL, including with regards to the impact of development outside the CNL on views from the CNL. The relevant authorities involved in the scheme must seek to ensure that the scheme furthers the purpose of conserving and enhancing the natural beauty of the CNL.

The consultation documents address six potential options. However, the Board recommends that consideration should also be given to an additional option, which would involve the Option B route (or a variation of it) and the closure of the section of the A435 between the A435 / B4079 junction and the Teddington turn-off. In this option, the closed section of the A435 could be re-purposed and re-landscaped into a recreational route, which could potentially be extended further north and south. We refer to this option as the Board's alternative Option B.

All of the scheme options would adversely affect the natural beauty of the CNL to some degree. However, the Board acknowledges the need for the scheme and acknowledges the reasons provided for rejecting other options. Therefore, in principle, we support the scheme. As part of fulfilling the 'seek to further' duty, preference should be given to the scheme option that would have the least harmful - and most beneficial - effects on the natural beauty of the CNL. Given the likelihood of a net adverse effect on the natural beauty of the CNL, consideration should be given to providing some degree of compensation for the harm caused.

The fact that Option A would extend into the CNL would significantly affect the decision-making process. This is because exceptional circumstances need to be demonstrated to justify NSIP projects within a national landscape.

The Board's assessment primarily relates to the long-term, residual impacts of the scheme options, during the operational phase of the scheme. However, short term impacts, such as the removal of hedgerows along the CNL boundary are also addressed where appropriate.

From the information provided, it appears that Option A, which would use the existing section of the A435 that abuts the CNL boundary, would intrude directly into the CNL as a result of the associated road widening. There is likely to be at least a minor alteration, or slight loss, to the key features / characteristics of Landscape Character Type 18 (Settled Unwooded Vale). The significance of this change is likely to be at least 'moderate', which, in National Highways assessments, would be classed as 'significant'.

The Board's alternative Option B is likely to have the least harmful / most beneficial effect, in relation to landscape character / quality, at least in the long term, as it would allow for the boundary of the CNL to be enhanced to a greater degree than the other options.

The adverse effects of Option B on views from the CNL are likely to be more significant than for Option A (i.e. at least major / moderate significance for Option B, compared to moderate significance for Option A). This is because Option B would introduce a new road and associated vehicle movements, on an embankment, which would be clearly visible from the CNL. Option B would also keep the current A435 open for local traffic.

The Board's alternative Option B would have less significant visual effects than the currently proposed Option B but these effects would be more significant than for Option A.

The adverse effects of Option A on the tranquillity of the CNL are likely to be more significant than for Option B. This is because it would result in a three-fold increase in traffic movements on the A435 on the boundary of the CNL, with an associated increase in noise levels. A key consideration would be the increase in noise levels that would be experienced within the CNL, including on public rights of way, as a result of Options A and B. This needs further assessment.

The Board's alternative Option B would have the smallest adverse effects, in relation to tranquillity, as there would be no vehicle movements directly on the CNL boundary.

The consultation documents have not addressed the issue of lighting and dark skies. We recommend that lighting should be (i) avoided and (ii) minimised as far as reasonably practicable. If lighting is introduced at the roundabouts, then Option A would potentially have the most significant adverse effect because lighting at the new roundabout east of Teddington Hands would result in a greater adverse effect on the dark skies of the CNL than for Option B. However, the relative significance of the different options in this regard is not likely to be a deciding factor.

The adverse effects of Option A on the natural heritage of the CNL, are likely to be more significant than Option B, at least in the short term. However, in the long term, all options could potentially deliver biodiversity net gain (BNG), with the Board's alternative Option B providing the greatest opportunity for biodiversity and habitat enhancement on the CNL boundary. The potential impact of the scheme options on international conservation designations within this part of the CNL requires further assessment but is not likely to be significant.

The adverse effects of Option B on the cultural heritage of the CNL are likely to be more significant than for Option A. This is because the new road in Option B is likely to adversely affect the setting of designated heritage assets within the CNL, such as St John the Baptist Church in Oxenton, to a greater degree than Option A. However, the relative significance of the different options in this regard is not likely to be a deciding factor.

Options 1 -3 (primarily, the western section of the scheme) could potentially have adverse effects on the setting of the CNL, with Option 3 intruding into - and extending across - the setting of the CNL to the greatest degree (and Option 1 the least). As such, Option 1 would be our preferred option. However, the impacts of Options A and B on the natural beauty of the CNL are likely to be more significant than Options 1-3.

A summary of the comparative ranking of the different options, in relation their effect on factors that contribute to the natural beauty of the CNL, is provided in Table 1, below.

Overall, the adverse effects of Option B on views from the CNL could potentially be more significant than the adverse effects of Option A on landscape character / quality in the CNL. However, the adverse effects of Option A on the tranquillity of the CNL could potentially be more significant than for Option B.

Given the adverse effects associated with Option A, it is doubtful whether the 'exceptional circumstances' threshold could be reached. However, further assessments of all of the shortlisted options (particularly Options A and B), as well as the Board's alternative Option B, are required before a definitive conclusion can be reached as to:

- which option would result in the least harmful effects - and most beneficial effects - on the natural beauty of the CNL;
- whether there are exceptional circumstances to justify Option A.

Our assessment shows that the Board's alternative Option B would result in fewer adverse effects - and more beneficial effects - than the currently proposed Option B in relation to all of the factors that contribute to the natural beauty of the CNL. Therefore, we recommend that the Board's alternative Option B should be given preference over the currently proposed Option B.

If it is shown that exceptional circumstances do not apply to justify Option A, the Board's preferred option would be Board's alternative Option B, in combination with Option 1.

Finally, we recommend that the scheme objectives should be amended to include an objective that explicitly addresses the CNL.

**Table 1. Comparative ranking of the scheme options, in relation to their effect on factors that contribute to the natural beauty of the CNL (1 = preferred / least harmful option; 7 = least preferred / most harmful option)**

Option	CNL landscape quality <sup>1</sup>	CNL scenic quality <sup>2</sup>	CNL tranquillity <sup>3</sup>	CNL dark skies	CNL natural heritage	CNL cultural heritage
Option 1A	=5	1	5	=5	=2	1
Option 1B	=2	5	2	=2	=5	5
Option 2A	=5	2	6	=5	=2	2
Option 2B	=2	6	3	=2	=5	6
Option 3A	=5	3	7	=5	=2	3
Option 3B	=2	7	4	=2	=5	7
CNLB alternative Option B (+ Options 1, 2 or 3)	1	4	1	1	1	4

## 2.0 THE PROPOSED SCHEME

### 2.1 Context

The M5 Junction 9 and A46 (Ashchurch) Transport Scheme would provide a new M5 Junction 9a south of Tewkesbury and re-route a section of the A46 between the M5 and Teddington Hands roundabout.

The consultation documents state that:

<sup>1</sup> This relates to the impact of works directly within the CNL, for which the main impact would be the widening of the A435 associated with Option A.

<sup>2</sup> This primarily relates to impacts on views from the CNL, although impacts on views looking towards the CNL are also a relevant consideration.

<sup>3</sup> For the purposes of the assessment, consideration of tranquillity primarily relates to traffic movements and noise. The visual disturbance caused by traffic movements is primarily addressed in relation to CNL scenic quality.

- the scheme would provide benefits to Tewkesbury and Ashchurch residents and business by improving journey times and reliability on the local highway network to M5 Junction 9;
- diverting long-distance traffic - including heavy goods vehicles - from the A46 through Ashchurch onto a new road will provide capacity for housing and employment opportunities, and crucially provide benefits to the existing communities, offering a more pleasant environment for residents and greater opportunities for walking, cycling and sustainable travel along the existing road.<sup>4</sup>

## 2.2 Shortlisted options

The shortlisted route options are presented in Figure 1, below.

Figure 1. Route Options<sup>5</sup>

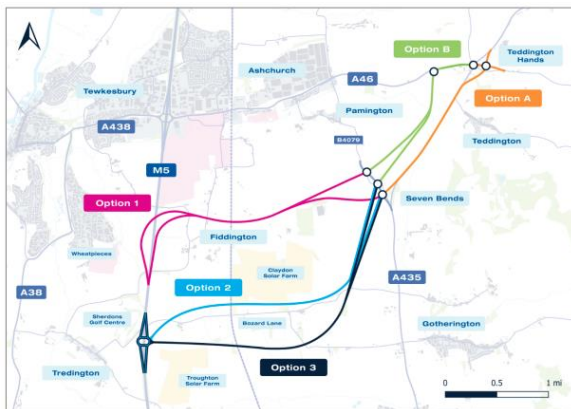
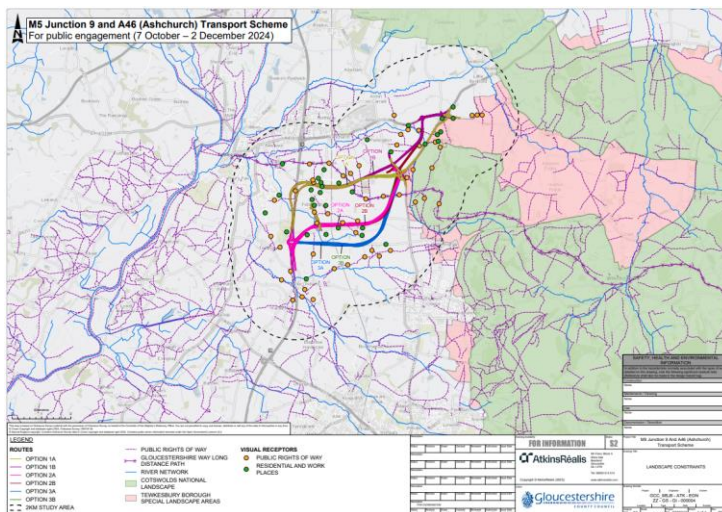


Figure 2, below, shows the shortlisted route options, the Cotswolds National Landscape (green shading) and Tewkesbury Borough's Special Landscape Area (pink shading).

Figure 2. Environmental Constraints Mapping - Landscape Constraints<sup>6</sup>



<sup>4</sup> Atkins Realis / Gloucestershire County Council (2024) *M5 Junction 9 and A46 (Ashchurch) Transport Scheme - Public Engagement Frequently Asked Questions* ([link](#)).

<sup>5</sup> Atkins Realis / Gloucestershire County Council (2024) *M5 Junction 9 and A46 (Ashchurch) Transport Scheme - Public Engagement Frequently Asked Questions* ([link](#)). Figure on page 2.

<sup>6</sup> Atkins Realis / Gloucestershire County Council (2024) *M5 Junction 9 and A46 (Ashchurch) Transport Scheme - Environmental Constraints Mapping* ([link](#)). Page 5 - Landscape Constraints.

## 2.3 Alternative Option B

The Board acknowledges that, to-date, over fifty different options have been considered. We accept the reasons provided, in the 'Frequently Asked Questions document'<sup>7</sup> and in the 'Option generation and sifting' document<sup>8</sup>, for ruling out other options such as A46 'online' improvements (along the existing A46) and having a route to the north of Ashchurch.

However, in the process of assessing the different route options, the Board has identified an additional option that we would like to be included in future assessments. This option is a variation on Option B. It would involve closing the A435 between the junction of the A435 / B4079 and the Teddington turn-off, which is a length of approximately 2km. So, rather than having vehicles on both the Option B route and on the A435 (which would be the scenario in Option B), there would only be vehicles on the Option B route. Ideally, the Option B route would be located further west, further away from the CNL.

In this response we will refer to this additional option as the Board's alternative Option B. This option is addressed in more detail in the assessment below.

The 2km section of the A435 that would be closed in this option could be re-purposed and re-landscaped as a recreational route for walkers, cyclists and horse riders. The width of this section could be significantly reduced, tarmac could be removed and the road could be landscaped to provide a more 'natural' looking recreational route (along the lines of the re-purposed A417 in the A417 Missing Link scheme).

The section of the A435 between the Teddington turn-off and Teddington Hands roundabout could be downgraded to a minor road, at least for the section south of the entrances to the Teddington Hands Inn, the petrol station and the truck stop.

Further comments relating to the re-purposed section of the A435 are provided in the section on walking, cycling and horse-riding opportunities, below.

This option would have the benefit of *all* traffic being routed further away from the CNL, with associated benefits, particularly in relation to visual impacts and tranquillity.

Ideally, in this alternative option, the Option B route would also be moved as far west as practicable and would align more closely with field boundaries rather than cutting diagonally across the large fields that are directly adjacent to the A435, as indicated in Figure 3, below. However, if it is not practicable to move the Option B route further west, consideration should still be given to the Board's alternative Option B using a combination of the proposed Option B route and a closed section of the A435.

The currently proposed Option A route and Option B route would both be single carriageway. Presumably, the Board's alternative Option B route could also be single carriageway as the traffic movements on this route would not exceed the traffic movements on the A435 / A46 single carriageway in Option A.

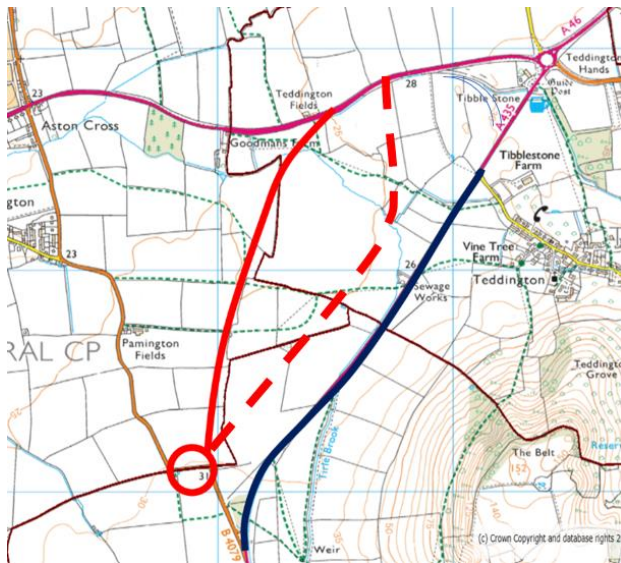
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<sup>7</sup> Atkins Realis / Gloucestershire County Council (2024) *M5 Junction 9 and A46 (Ashchurch) Transport Scheme - public engagement frequently asked questions* ([link](#)).

<sup>8</sup> Atkins Realis / Gloucestershire County Council (2024) *M5 Junction 9 and A46 (Ashchurch) Transport Scheme - option generation and sifting* ([link](#)).



**Figure 3. Map showing the approximate route of the currently proposed Option B route (dashed red line), the Board’s suggested variation to the Option B route (solid red line), the approximate location of the proposed Seven Bends roundabout (red circle) and the section of the A435 that the Board proposes should be closed and re-purposed as a recreational route (thick black line).<sup>9</sup>**



A relevant consideration, in relation to the currently proposed Option B route and the Board’s alternative Option B route is the extent to which they would overlap with plans for future development as part of the Tewkesbury Garden Communities proposal. These plans are shown in Figure 4 and Figure 5 below.

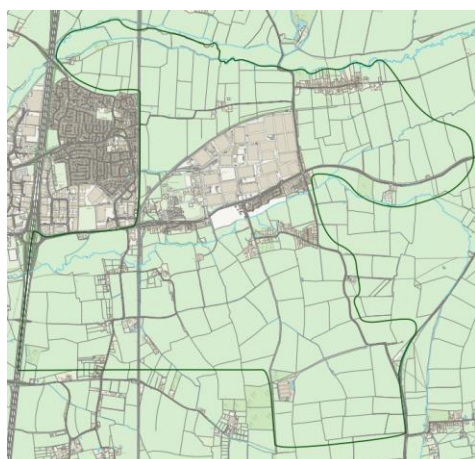
**Figure 4. Extract from the map of indicative Garden Communities locations, as shown in the Tewkesbury Garden Communities Charter<sup>10</sup>**



<sup>9</sup> The parish boundaries are also shown in this figure, with the suggested alternative route closely following (and being immediately to the west of) sections of the boundary between Ashchurch and Teddington parishes.

<sup>10</sup> Tewkesbury Borough Council (2024) *Tewkesbury Garden Communities - our charter for promoting good growth* ([link](#)). Page 8.

**Figure 5. Indicative Tewkesbury Garden Town area<sup>11</sup>**



Both the currently proposed Option B route and the Board's alternative Option B route would overlap with the area of development that is proposed in the Garden Communities propose to a limited degree. However, in both cases, the majority of the length of the routes would be outside of the area of proposed development. The Board's alternative Option B route would overlap with the area of proposed development to a slightly greater degree than the currently proposed Option B route. However, in the context of the overall area of proposed development, the difference is very small.

## **2.4 Additional Options**

In Options 2 and 3, we recommend that consideration should be given to moving the dual carriageway section, south of Seven Bends, further west, closer to the eastern edge of the Claydon Solar Farm development (i.e. further away from the CNL). We also recommend that the 'north-south' sections of Options 2 and 3 should more closely follow existing field boundaries rather than cutting diagonally across open fields. These measures would help to reduce the impacts of Options 2 and 3 on the natural beauty of the CNL, particularly with regards to impacts on views from the CNL.

## **3.0 COTSWOLDS NATIONAL LANDSCAPE BOARD**

The Cotswolds National Landscape (CNL) Board ('the Board') was established by Parliamentary Order in 2004. It is the statutory duty of the Conservation Board to seek to further:

- a) The purpose of conserving and enhancing the natural beauty of the CNL;
- b) The purpose of increasing the understanding and enjoyment, by the public, of the special qualities of the CNL.

Whilst fulfilling these duties, the Board shall seek to foster the economic and social well-being of local communities within the CNL.<sup>12</sup>

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<sup>11</sup> [https://tewkesbury.gov.uk/wp-content/uploads/2023/10/Tewkesbury\\_GT\\_map.pdf](https://tewkesbury.gov.uk/wp-content/uploads/2023/10/Tewkesbury_GT_map.pdf). The Garden Town proposal, shown in this map, has been superseded by the Garden Communities proposal. However, the area of proposed development in the vicinity of the M5 Junction 9 and A46 (Ashchurch) Transport Scheme, which is shown in more detail in this map, is broadly the same in both the Garden Communities proposal and in the Garden Town proposal.

<sup>12</sup> Section 87 of the Countryside and Rights of Way Act 2000 ([link](#)).

The Board's input into the M5 Junction 9 and A46 (Ashchurch) Transport Scheme is intended to help ensure that the scheme furthers these purposes.

The scheme would be a Nationally Significant Infrastructure Project (NSIP) and, as such, would require a Development Consent Order (DCO).<sup>13</sup> In this regard, it is important to note that the Board is a statutory consultee on all NSIP projects that are likely to affect the CNL.<sup>14</sup> As such, the Board *must* be consulted on the scheme.<sup>15</sup>

It is, therefore, disappointing that the Board has not been proactively consulted on the current public engagement consultation (we became aware of the consultation by other means). In order for Gloucestershire County Council and / or National Highways to fulfil their statutory obligations, in this regard, it is essential that the Board is proactively consulted on any future consultations, including any statutory consultations during the DCO process.

## 4.0 COTSWOLDS NATIONAL LANDSCAPE

### 4.1 Purpose of designation

The Cotswolds National Landscape (CNL) is the largest of 34 national landscapes in England and is also third largest protected landscape in England (after the Lake District National Park and Yorkshire Dales National Park).

As with all national landscapes, the CNL is designated for the purpose of conserving and enhancing the area's natural beauty.<sup>16</sup>

*Natural beauty 'is not just the look of the landscape, but includes landform and geology, plants and animals, landscape features, and the rich history of human settlement over the centuries'.*<sup>17</sup> Natural England's guidance for assessing landscapes for designation as protected landscapes identifies six factors that contribute to natural beauty:<sup>18</sup>

- landscape quality;
- scenic quality;
- relative wildness;
- relative tranquillity;
- natural heritage;
- cultural heritage.

The assessment of potential impacts on the CNL should address all of these factors, with the possible exception of relative wildness.

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<sup>13</sup> Atkins Realis / Gloucestershire County Council (2024) *M5 Junction 9 and A46 (Ashchurch) Transport Scheme - Public Engagement Frequently Asked Questions* ([link](#)). Page 16.

<sup>14</sup> Schedule 1 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 ([link](#)).

<sup>15</sup> <https://infrastructure.planninginspectorate.gov.uk/application-process/frequently-asked-questions/>. FAQ 18.

<sup>16</sup> Section 82 of the Countryside and Rights of Way Act 2000 ([link](#)).

<sup>17</sup> Countryside Agency (2001) *Areas of Outstanding Natural Beauty – a guide for AONB partnership members* ([link](#)).

<sup>18</sup> Natural England (2011) *Guidance for assessing landscapes for designation as National Park or Area of Outstanding Natural Beauty in England* ([link](#)). See Table 3 (page 13) and Appendix 1.

## 4.2 Great weight

Paragraph 5.170 of the Government's National Networks National Policy Statement states, in relation to national landscapes, that '*the conservation and enhancement of the natural beauty of the landscape and countryside should be given great weight by the Secretary of State in deciding on applications for development consent in these areas*'.<sup>19</sup>

## 4.3 Development in the setting of the CNL

All of the route options are located within the setting of the CNL. In other words, although the route options are (for the most part) located outside of the CNL, they have the potential to have an impact on the natural beauty of the CNL.

Case law has clarified that the great weight that should be given to conserving and enhancing landscape and scenic beauty applies to development in the setting of the CNL as well as to development within the CNL.<sup>20</sup>

The case law in question addressed this issue in relation to impacts on views from the CNL. However, we consider that this great weight would also apply to other considerations such as impacts on the tranquillity of the CNL (for example, as a result of increases in vehicle movements on roads within the CNL and along its boundary).

Further guidance on this topic is provided in the Board's Position Statement on 'Development in the Setting of the Cotswolds Area of Outstanding Natural Beauty'.<sup>21</sup>

## 4.4 Development within the CNL

The CNL boundary runs along the eastern edge of the A435, between Oxenton and Teddington, for a distance of approximately 580m. The definitive boundary is shown in Figure 6, below.

The consultation documents indicate that Option A (of the two eastern section options) would include this section of the A435 and that this section would remain as a single carriageway. However, the 'Summary of shortlisted options' document indicates that this section of the A435 '*would need to be upgraded to meet trunk road standards*' and that '*this is likely to include some widening, carriageway strengthening, and drainage works*', adding that '*widening of the A435 would most likely be on the eastern side of the road to avoid impacting properties on the western side*'. In addition, it states that '*consideration would also need to be given to the need for walking, cycling and horse-riding facilities along this section of the route as it will continue to provide a local function including access to Teddington village*'.<sup>22</sup>

The need to widen this section of the A435 (in Option A) is reflected in the 'Analysis of shortlisted options' document, which states that '*the 'A' options would also require removal of*

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<sup>19</sup> Department for Transport (2024) *National Networks National Policy Statement* ([link](#)). Paragraph 5.170, page 87.

<sup>20</sup> *Stroud District Council v Secretary of State for Communities and Local Government v Gladman Developments Limited* [2015] EWHC 488 (Admin) ([link](#)). Paragraph 22: *In my view, the Inspector would have been unrealistic in adopting so narrow a view as to ignore, for the purposes of paragraph 115 [currently paragraph 182], views out of the AONB and the effect of the development upon them*'.

<sup>21</sup> Cotswolds National Landscape Board (2016) *Development in the Setting of the Cotswolds Area of Outstanding Natural Beauty Position Statement* ([link](#)).

<sup>22</sup> Atkins Realis / Gloucestershire County Council (2024) M5 Junction 9 and A46 (Ashchurch) Transport Scheme - summary of shortlisted options ([link](#)). Section 4.1.1. Page 16.

hedgerows and trees along eastern side of the A435 to enable widening, as well as including an additional offline section east of Teddington Hands'.<sup>23</sup>

**Figure 6. Definitive boundary of the Cotswolds National Landscape in the vicinity of the A435<sup>24</sup>**



The 'Analysis of shortlisted options' document also states that 'the 'A' options run along the northwestern boundary of the Cotswolds National Landscape and there may be some slight encroachment into the designation'.<sup>25</sup>

This commentary indicates that the scheme *would* extend into the CNL.

This significantly alters the policy context of the decision-making process for this scheme. In particular, the Government's 'National Networks National Policy Statement' states:

- *The Secretary of State should refuse development consent in England's ... National Landscapes unless there are exceptional circumstances, where the benefits outweigh the harm and where it can be demonstrated that it is in the public interest.*<sup>26</sup>
- *There is a strong presumption against any significant road widening ... in ... National Landscapes, unless it can be shown there are exceptionally circumstances for the ... enhanced capacity and with any benefits very significantly outweighing the harm.*<sup>27</sup>

<sup>23</sup> Atkins Realis / Gloucestershire County Council (2024) *M5 Junction 9 and A46 (Ashchurch) Transport Scheme - summary of shortlisted options* ([link](#)). Section 4.1.1, page 16.

<sup>24</sup> The definitive boundary of the CNL is shown on a set of paper maps that were produced by the Countryside Commission in 1990. These maps are stored at the Board's office at Greystones Farm, Bourton on the Water. Figure 6 is a photocopy of the section of these maps that is relevant to the scheme. The boundary was confirmed, with modification, by the Cotswolds AONB (Designation) Variation Order 1989, by the Secretary of State for the Environment on 21 December 1990. The boundary of the AONB unaffected by the Variation order is based on the Cotswolds AONB (Designation) Order 1966, at the scale of 1:63,360 which was confirmed by the Minister for Housing and Local Government on 19 August 1966.

<sup>25</sup> Atkins Realis / Gloucestershire County Council (2024) *M5 Junction 9 and A46 (Ashchurch) Transport Scheme - summary of shortlisted options* ([link](#)). Section 2.2, page 12.

<sup>26</sup> Department for Transport (2024) *National Networks National Policy Statement* ([link](#)). Paragraph 5.171, page 88.

<sup>27</sup> Department for Transport (2024) *National Networks National Policy Statement* ([link](#)). Paragraph 5.172, page 88.

This is acknowledged in the 'Analysis of shortlisted options' document, which states that *'if the scheme was to encroach on the Cotswolds National Landscape, exceptional circumstances would need to be proven to justify such an approach'*.<sup>28</sup>

We recommend that, if the 'A' options are taken forward, robust justification should be provided to demonstrate that exceptional circumstances apply and that the scheme would be in the public interest.

The Board considers that there is currently insufficient information to come to a definitive opinion as to whether exceptional circumstances apply to justify Option A. However, the evidence base and justification for this would need to be very robust.

Further assessments are required in this regard, particularly in relation to landscape and visual effects and effects on tranquillity (including noise and traffic movements).

Further commentary on this issue is provided in the assessments, below.

#### **4.5 Seek to further duty**

Section 85 of the Countryside and Rights of Way Act 2000, as amended by Section 245 of the Levelling Up and Regeneration Act 2023, states that:

- *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 ... must seek to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty.*<sup>29</sup>

In the context of the proposed scheme, relevant authorities include Gloucestershire County Council (and other local authorities), National Highways, the Planning Inspectorate, the Department for Transport (and other Government departments) and the Secretary of State for Transport (and other secretaries of state).

This 'seek to further' duty is referenced in the Government's National Networks National Policy Statement, which states:

- *Any statutory undertaker commissioning or undertaking works in relation to, or so as to affect land in England's ... National Landscapes, must comply with the duties in ... section 85 of the Countryside and Rights of Way Act 2000, as amended by Section 245 of the Levelling Up and Regeneration Act 2023.*<sup>30</sup>
- *The Secretary of State should be satisfied that the scheme's design and delivery complies with the duty as revised by section 245 of the Levelling Up and Regeneration Act 2023 and any regulations making provision about how the duty is to be complied with.*<sup>31</sup>

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<sup>28</sup> Atkins Realis / Gloucestershire County Council (2024) *M5 Junction 9 and A46 (Ashchurch) Transport Scheme - summary of shortlisted options* ([link](#)). Section 2.2, page 12.

<sup>29</sup> Section 85 of the Countryside and Rights of Way Act 2000 ([link](#)).

<sup>30</sup> Department for Transport (2024) *National Networks National Policy Statement* ([link](#)). Paragraph 5.163, page 86.

<sup>31</sup> Department for Transport (2024) *National Networks National Policy Statement* ([link](#)). Paragraph 5.170, page 87.

- *The duty to seek to further the purposes of national designated landscapes also applies when considering applications for projects outside the boundaries of these areas (in their 'setting') which may have impacts upon them.*<sup>32</sup>

Natural England's advice on the 'seek to further' duty<sup>33</sup> states, inter alia, that:

- *A relevant authority must be able to demonstrate with reasoned evidence what measures can be taken to further the statutory purpose. If it is not practicable or feasible to take those measures the relevant authority should provide evidence to show why it is not practicable or feasible.*
- *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.*

Further guidance on the 'seek to further' duty is provided in Appendix 1 below and in the guidance published by the National Landscapes Association<sup>34</sup>.

Some suggestions are made, in the assessments below, with regards to how the scheme could potentially seek to further the purpose of CNL designation.

#### **4.6 Relevant special qualities**

A key component of the CNL's natural beauty is its special qualities. The special qualities are those aspects of the area's natural beauty which make the area distinctive and which are considered valuable, especially at a national scale. They are the key attributes on which the priorities for the CNL's conservation, enhancement and management are based. The special qualities of the CNL are listed in the 'statement of significance' in Chapter 4 of the Cotswolds National Landscape Management Plan 2023-2025.<sup>35</sup>

The special qualities that could potentially be affected by the proposed scheme are outlined below. The potential impacts of the proposed scheme on these special qualities are addressed in more detail in a later section.

##### Cotswold escarpment

One of the special qualities of the CNL is:

- *The Cotswold escarpment, including views from and to the National Landscape.*

The scheme would come within approximately 3km of the foot of the escarpment at Nottingham Hill and within 4km of elevated views from public rights of way near the top of the escarpment at Nottingham Hill (Gotherington Footpath 38).

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<sup>32</sup> Department for Transport (2024) *National Networks National Policy Statement* ([link](#)). Paragraph 5.174, page 88.

<sup>33</sup> Natural England's advice ([link](#) – Annex 2) was submitted, in December 2023, by Natural England, as a statutory consultee, to the Examining Authority for the examination of the Lower Thames Crossing, which is a Nationally Significant Infrastructure Project (NSIP).

<sup>34</sup> National Landscapes Association (2024) *Applying the CROW Act section 85 duty to 'seek to further the purpose' in National Landscapes (AONBs) - Guidance for local planning authorities* ([link](#)).

<sup>35</sup> Cotswolds National Landscape Board (2023) *Cotswolds National Landscape Management Plan 2023-2025* ([link](#)). Chapter 4 (The special qualities of the Cotswolds National Landscape).

Given the distances involved it is unlikely that the scheme would adversely affect views from or to the escarpment. On this basis, we consider that further assessment is not required.

It is worth noting that views from or to the escarpment outliers are a separate consideration.

### High Wolds

One of the special qualities of the CNL is:

- *The high wolds - a large, open, elevated, predominantly arable landscape with commons, 'big skies' and long-distance views.*

The scheme would come within approximately 4km of the high wolds, for example, at the top of Nottingham Hill. Given the distances involved it is unlikely that the scheme options would adversely affect the long-distance views from the high wolds. On this basis, we consider that further assessment is not required.

### Ancient broadleaved woodland

One of the special qualities of the CNL is:

- *Ancient broadleaved woodland particularly along the crest of the escarpment.*

There are two areas of ancient woodland within the CNL that could potentially be affected by the scheme:

- Dixon Wood (which is also a SSSI and SAC) @ 2.2km from the proposed scheme.
- Teddington Grove (ancient, replanted woodland; also an LWS) @ 700m from the proposed scheme.

The potential impacts of the scheme on these ancient woodlands are addressed in more detail in a later section.

### Tranquillity

One of the special qualities of the CNL is:

- *The tranquillity of the area, away from major sources of inappropriate noise, development, visual clutter and pollution.*

The potential impacts of the scheme on this special quality are addressed in more detail in a later section.

### Dark skies

One of the special qualities of the CNL is:

- *Extensive dark sky areas.*

The potential impacts of the scheme on this special quality are addressed in more detail in a later section.

### Significant archaeological, prehistoric and historic associations

One of the special qualities of the CNL is:



- *Significant archaeological, prehistoric and historic associations dating back 6,000 years, including Neolithic stone monuments, ancient drove roads, Iron Age forts, Roman villas, ridge and furrow fields, medieval wool churches and country estates and parks.*

The most relevant designated, heritage assets within this part of the CNL are:

- The Church of St John the Baptist, Oxenton (a Grade 1 listed building) - the proposed scheme comes within approximately 700m of the church.
- The Knolls camp scheduled monument on Oxenton Hill - the proposed scheme comes within approximately 2km this scheduled monument.
- Multiple listed buildings.

Other relevant designated, heritage assets within this part of the CNL include:

- Nottingham Hill camp scheduled monument - the proposed scheme comes within approximately 4km of this scheduled monument.
- Conderton camp scheduled monument - the proposed scheme comes within approximately 4km of this scheduled monument.

However, given the distances involved, the scheme is unlikely to affect these two heritage assets. On this basis, we consider that further assessment, in relation to these two heritage assets, is not required.

The potential impacts of the scheme on this special quality are addressed in more detail in a later section, in relation to cultural heritage.

#### Special qualities - summary

The special qualities that merit further assessment of potential impacts are:

- tranquillity;
- dark skies;
- ancient broadleaved woodland (in relation to Teddington Grove and Dixton Wood);
- significant archaeological, prehistoric and historic associations (in relation to the Church of St John the Baptist, Oxenton, and the Knolls scheduled monument, on Oxenton Hill).

#### **4.7 Relevant key features / characteristics**

The CNL has 19 different landscape character types (LCTs). Five of these LCTs would potentially be affected by the proposed scheme:

- LCT 1 - Escarpment Outliers;<sup>36</sup>
- LCT 2- Escarpment;<sup>37</sup>
- LCT 7 - High Wold;<sup>38</sup>
- LCT 18 - Settled Unwooded Vale;<sup>39</sup>
- LCT 19 - Unwooded Vale.<sup>40</sup>

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<sup>36</sup> <https://www.cotswolds-nl.org.uk/wp-content/uploads/2017/07/lct-1-escarpment-outliers-2016.pdf>

<sup>37</sup> <https://www.cotswolds-nl.org.uk/wp-content/uploads/2017/07/lct-2-escarpment-2016.pdf>

<sup>38</sup> <https://www.cotswolds-nl.org.uk/wp-content/uploads/2017/07/lct-7-high-wold-2016.pdf>

<sup>39</sup> <https://www.cotswolds-nl.org.uk/wp-content/uploads/2017/07/lct-18-settled-unwooded-vale-june-2016.pdf>

<sup>40</sup> <https://www.cotswolds-nl.org.uk/wp-content/uploads/2017/07/lct-19-unwooded-vale-june-2016.pdf>

### LCT 1 - Escarpment Outliers

The scheme would come within approximately 300m of LCT 1 - specifically Landscape Character Area 1C (Oxenton and Dixton Hills) - and within approximately 600m of elevated viewpoints on public rights of way on Oxenton Hill. The key features / characteristics of LCT 1 include:

- *Dramatic panoramic views ... over the Severn Vale to the Welsh borders.*
- *Hills criss-crossed by footpaths ... link hill tops to the vale villages.*
- *Distinctive hills detached from the main Cotswolds escarpment and rising above the neighbouring vale, forming prominent landscape features visible from great distances.*
- *Hilltops often the site of prehistoric hillforts or other defensive enclosures.*
- *Woodlands and belts of trees often occupy steeper slopes of the outliers and also border the gullies of brooks draining radially into the vale. Veteran trees, scrub and ancient woodlands provide important habitats for a range of species.*

With regards to the first two bullet points, a key consideration in any assessment should be the effect that the scheme options would have on the views from public rights of way in LCT 1, including the Gloucestershire Way (Oxenton Footpath 14) and Oxenton Footpath 13,

With regards to the third bullet point, any assessment should give consideration to the effect of the proposed scheme on views looking towards Oxenton Hill, including:

- from public rights of way in the vicinity of the potential roundabouts at Seven Bends and at Teddington Hands;
- where the scheme would overlap with the Gloucestershire Way (in Options 2 and 3).

With regards to prehistoric hillforts, a relevant consideration is the scheduled monument of Knolls camp, as mentioned above. Although there are no public rights of way on the scheduled monument, the effect of the proposed scheme on the setting of the scheduled monument will still need to be assessed.

The last bullet point, relating to woodlands, is relevant in the context of the ancient, replanted woodland at Teddington Grove and the ancient woodland at Dixton Wood, as mentioned above in relation to special qualities.

### LCT 2 - Escarpment

The scheme would come within approximately 3km of LCT 1 - specifically Landscape Character Area 2D (Cooper's Hill to Winchcombe) - and within approximately 4km of elevated views from public rights of way on Nottingham Hill).

As outlined above, the views from and to the escarpment are one of the 'special qualities' of the CNL. This is reflected in the key features / characteristics of LCT 1, which include:

- *Strong sense of elevation with dramatic panoramic views over the Severn Vale ... from open areas on the upper escarpment.*
- *Steep exposed and elevated west facing escarpment slope ... forming a dramatic relief feature visible from the Forest of Dean and Malverns and a backdrop to neighbouring lowlands.*

However, given the distances involved it is unlikely that the scheme would adversely affect views from or to the escarpment. On this basis, we consider that no further assessment is required in this regard.

#### LCT 7 - High Wold

The scheme would come within approximately 4km of LCT 7 - specifically Landscape Character Area 7C (Cotswolds High Wold Plateau) - at Nottingham Hill.

As outlined above, the long-distance views of the high wolds are one of the special qualities of the CNL. This is reflected in the key features / characteristics of LCT 7, which include:

- *Expansive, long-distance views ... to the distant hills beyond the Severn Vale.*

However, given the distances involved it is unlikely that the scheme would adversely affect the long-distance views from the high wolds. On this basis, we consider that no further assessment is required in this regard.

#### LCT 18 - Settled Unwooded Vale

LCT 18 abuts the A435 for a distance of approximately 580m. The Option A route would extend into LCT 18.

Relevant key features / characteristics include:

- *Well maintained hedgerows forming a strong landscape pattern.*
- *Mixed arable and pasture land use with occasional orchards, indicates a productive agricultural landscape and varying growing conditions.*

The scheme could potentially affect these key features / characteristics so further assessment is required.

Given that Option A would extend into LCT 18 as a result of road widening, it is important to note that the Landscape Strategy & Guidelines for LCT 18m, explicitly addresses the issues of road upgrading and traffic.<sup>41</sup>

#### LCT 19 - Unwooded Vale

The proposed scheme comes within approximately 1.2km of LCT 19 in the vicinity of Bengrove, on the north side of Oxenton Hill. However, there would be no visual connectivity between the scheme and LCT 19 and the scheme would not directly affect LCT 19.

On this basis, we consider that no further assessment would be required in relation to LCT 19.

#### LCT Summary

Further assessments are required in relation to some of the key features / characteristics of LCT 1 (Escarpment Outlier) and LCT 18 (Settled Unwooded Vale). Further assessments are not required in relation to LCT 2 (Escarpment), LCT 7 (High Wold) and LCT 19 (Unwooded Vale).

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<sup>41</sup> <https://www.cotswolds-nl.org.uk/wp-content/uploads/2017/07/lct-18-settled-unwooded-vale-june-2016.pdf>. Sections 18.7 and 18.8.

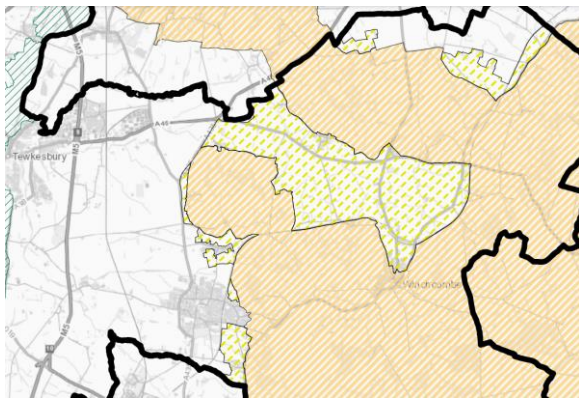
## 4.8 Special Landscape Area

The Tewkesbury Borough Plan identifies some of the areas adjacent to the CNL as being Special Landscape Areas (SLAs), which is a local landscape designation.<sup>42</sup> The SLA is shown in Figure 7, below.

SLAs are defined as areas of high-quality countryside of local significance. While SLAs are of a quality worthy of protection in their own right, they also play a role in protecting the foreground setting for the adjacent CNL. The SLA is defined where the topography is a continuation of the adjacent CNL and/or where the vegetation and associated features are characteristic of the CNL. For the above reasons, Tewkesbury Borough Council considers the SLA to be a valued landscape having regard to paragraph 170 of the NPPF.<sup>43</sup>

As such, the SLA designation clearly plays a key role in helping to protect the setting of the CNL.

**Figure 7. Extract from Pre-Submission Tewkesbury Borough Plan Special Landscape Area and Landscape Protection Zone Map showing the Cotswolds National Landscape (orange hatching) and Special Landscape Areas (yellow dashed hatching) in the vicinity of the proposed scheme<sup>44</sup>**



## 5.0 ASSESSMENT OF EFFECTS IN RELATION TO THE NATURAL BEAUTY OF THE CNL

### 5.1 Landscape quality

#### Option A

The main, direct impact of the scheme on the landscape character / quality of the CNL is likely to be in relation to the Option A, which would involve using the section of the A435 that abuts the CNL for a distance of approximately 580m.

The Board acknowledges that the proximity to the CNL was a factor in not dualling the eastern section of the scheme between Seven Bends and Teddington Hands roundabout.<sup>45</sup> We support the proposal not to dual this section of the scheme, particularly given that it has been identified that a single carriageway A46 would provide sufficient capacity.

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<sup>42</sup> Tewkesbury Borough Council (2022) *Tewkesbury Borough Plan 2011-2031* ([link](#)). Policy LAN1 - Special Landscape Areas, p.102-103 (digital pages 103-104).

<sup>43</sup> Tewkesbury Borough Council (2022) *Tewkesbury Borough Plan 2011-2031* ([link](#)). Paragraph 8.3, p.103 (digital pages 104).

<sup>44</sup> <https://tewkesbury.gov.uk/wp-content/uploads/2022/Planning%20policy/Pre-submission%20Tewkesbury%20Borough%20Plan/Pre-Sub%20TBP%20SLA%20LPZ%20Maps%202019.pdf>

<sup>45</sup> Atkins Realis / Gloucestershire County Council (2024) *M5 Junction 9 and A46 (Ashchurch) Transport Scheme - option generation and sifting* (2024). Section 5.2.2, page 24.

However, this section of the A435 would still need to be upgraded to meet trunk road standards. This is likely to include some widening, carriageway strengthening, and drainage works. The consultation documents state that the widening of the A435 would most likely be on the eastern side of the road to avoid impacting properties on the western side. This widening would involve the removal of hedgerows and trees on the eastern side of the A435.

The landscape character type (LCT) that would be directly affected by this road widening would be LCT 18 (Settled Unwooded Vale),

Well maintained hedgerows, forming a strong landscape pattern, are one of the key features / characteristics of LCT 18, as outlined above. This key feature / characteristic would be adversely affected by the removal of hedgerows on the eastern side of the A435, at least in the short term. However, it is likely that these hedgerows could be reinstated, albeit slightly further east (into the CNL) than their current position, such that by Year 15 of the operational phase, the effect is likely to be negligible in this regard (subject to an appropriate environmental management plan).

Option A would result in the permanent loss of some '*mixed arable and pasture land use*' in the CNL, which is another of the key features / characteristics of LCT 18. The significance of this loss would depend on the overall extent of the loss. It is currently unclear what the extent of this loss would be, although it would presumably affect the entire 580m length of LCT 18 that abuts the A435. As such, there is likely to be at least a minor alteration, or slight loss, to this key feature / characteristic. When combined with the relatively high sensitivity of the landscape, the significance of this effect is likely to be at least 'moderate' adverse. In LVIA assessments undertaken by National Highways, a moderate adverse effect would be classed as significant.

Option A would also adversely affect the Special Landscape Area designation (referred to above). This is because Option A would involve a new single carriageway link that bypasses the existing business and roundabout at Teddington Hands and, instead, links with a new roundabout east of the current Teddington Hands roundabout. The new link road would cut across the Special Landscape Area designation (referred to above). Again, there is likely to be at least a minor alteration, or slight loss, to this designation, resulting in a moderate adverse effect, which would be classed as significant.

The 'Analysis of shortlisted options' document states that the works to the A435, in Option A, could see '*temporary changes to adjacent landscape, with potential for a moderate significance of effect*'.<sup>46</sup> However, the changes wouldn't be temporary if it involved extending the A435 into the CNL on what is currently agricultural land - it would be a permanent change.

We acknowledge the desire to avoid impacting on properties on the west side of the A435. However, the section of the A435 that abuts the CNL boundary does not have properties on the west side of the A435, south of the Teddington Sewage Treatment Works (STW). As such, we recommend that, for the section that abuts the CNL boundary, consideration should be given to undertaking the road widening on the west side of the road rather than the east. This would potentially entail re-aligning the Tirlle Brook but this would potentially be preferable to a scheme that: (i) widened the road into the CNL; and (ii) would need to demonstrate that exceptional circumstances apply.

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<sup>46</sup> Atkins Realis / Gloucestershire County Council (2024) *M5 Junction 9 and A46 (Ashchurch) Transport Scheme - analysis of shortlisted options* ([link](#)). Section 11.6.3 - Landscape and Visual - Comparative Assessment. Page 63.

### Option B, the Board's alternative Option B and Options 1-3

Option B, the Board's alternative Option B and Options 1-3 would not have a direct impact on the landscape quality of the CNL, as they would not extend into the CNL.

The Board's alternative Option B is likely to have the smallest, direct adverse impact on the landscape quality of the CNL, in the long term, and could potentially enhance the boundary of the CNL as a result of the A435 being re-purposed and re-landscaped.

### Landscape and Visual Impact Assessment (LVIA)

Additional key considerations, in relation to landscape quality, include the special qualities of the CNL and the key features / characteristics of the relevant landscape character types, as outlined above.

For the purposes of this document, aspects of the CNL's special qualities and the key features / characteristics of the relevant landscape character types that relate to scenic quality, tranquillity, dark skies, natural heritage and cultural heritage are addressed separately below. However, in a LVIA these special qualities and key features / characteristics would also need to be addressed in the context of landscape character / quality.

### Ranking

Overall, based on the information provided, our ranking of the options in relation to direct impacts on the landscape character / quality of the CNL (with 1 being the least harmful / most preferable and 7 being the most harmful / least preferable) is as follows:

1: CNL alternative Option B

=2: Options 1B, 2B, 3B

=5: Options 1A, 2A, 3A.

## **5.2 Scenic quality**

### Options A and B

The 'Analysis of shortlisted options' document states that *'all options have the potential to cause moderate significance of visual effect to Public Rights of Way, particularly to those that are on high ground along Oxenton and Crane Hill, where elevated and expansive views can be obtained. Significance of these visual effects should reduce in time once mitigation planting helps to assimilate the new or modified roads into the landscape'*.<sup>47</sup>

The 'Public engagement brochure' states that Options A and B (i.e. the eastern section options) will both have *'visual impacts along the Cotswolds National Landscape boundary'* and that, in this regard, the impact of Option A would be less than the impact of Option B.<sup>48</sup>

Overall, we would agree with the assertion that the visual impact of Option A would be less than the visual impact of Option B, in relation to views from the CNL. As stated in the 'Analysis of shortlisted options' document:

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<sup>47</sup> Atkins Realis / Gloucestershire County Council (2024) *M5 Junction 9 and A46 (Ashchurch) Transport Scheme - analysis of shortlisted options* ([link](#)). Section 11.6.3 - Landscape and Visual - Comparative Assessment. Page 64.

<sup>48</sup> Gloucestershire County Council (2024) *M5 Junction 9 and A46 (Ashchurch) Transport Scheme - potential route options engagement* ([link](#)). Page 18.

- *This is mostly because the 'B' options include a new offline road to the west side of the existing A435. These are adjacent to the National Landscape edge, resulting in the potential loss of hedgerows and trees, change in field pattern, change in established road alignment and additional presence of highway infrastructure. These factors would see the greater sum of changes to the landscape character and views from Public Rights of Way in the area, while also having a potential negative effect on the setting of the Cotswolds National Landscape.*<sup>49</sup>

The 'Analysis of shortlisted options' document states that '*adverse effects are more likely in the east of the study area, as proposed link roads would be elevated on embankments and more visible throughout the landscape*'.<sup>50</sup> This presumably relates primarily to the visual impacts of Option B, which would be exacerbated by the fact that '*the new A46 link would cross the Tirlle Brook flood zone to the west of the A435 on embankment*' (N.B. Underlining added for emphasis).<sup>51</sup> As such, the Option B route would be elevated above the surrounding land, which would make it much more difficult to mitigate visual impacts in relation to views from the CNL, for example, through landscape planting.

Option A would involve more vehicle movements on the A425, along the CNL boundary, than Option B and considerably more vehicle movements than the current baseline. These vehicle movements are likely to be visible in views from the CNL. The vehicle movements would be a detracting feature in these views. However, the vehicle movements on the new Option B route are also likely to be clearly visible in views from the CNL. Although the vehicle movements on the Option B route would be further away from the CNL, they would be on an embankment. As such, the vehicle movements on the new Option B route would potentially be more visible, or prominent, in views from the CNL, than vehicle movements in Option A.

The total number of vehicle movements on the A435 and the Option B route, combined, is likely to be similar in Option A and Option B.

The new road (in Option B) would cut across fields in the setting of the CNL, which would adversely affect the views of the historic field patterns that can be seen from the CNL. Again, whilst the adverse visual effect could potentially be reduced over time, there is likely to be a residual adverse effect because of the permanent change to traditional field patterns in views from the CNL.

The Option B route could potentially act as a limit to any future planned development as part of the Tewkesbury Garden Communities proposal. As such, it could potentially help to limit the encroachment of further built development into the setting of the CNL. However, whilst this is a relevant consideration (particularly with regards to the statutory duty to seek to further the purpose of CNL designation) it probably doesn't merit as much weight being given to it as the direct impacts of the route options themselves.

Overall, we consider that Option B is likely to have at least a medium (and potentially large) magnitude of change in views from the CNL. When combined with the high sensitivity of visual receptors on public rights of way in the CNL (particularly on Oxenton Hill), the level of

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<sup>49</sup> Atkins Realis / Gloucestershire County Council (2024) *M5 Junction 9 and A46 (Ashchurch) Transport Scheme - analysis of shortlisted options* ([link](#)). Section 11.6.3 - Landscape and Visual - Comparative Assessment. Page 64.

<sup>50</sup> Atkins Realis / Gloucestershire County Council (2024) *M5 Junction 9 and A46 (Ashchurch) Transport Scheme - analysis of shortlisted options* ([link](#)). Section 11.6.3 - Landscape and Visual - Comparative Assessment. Page 65.

<sup>51</sup> Atkins Realis / Gloucestershire County Council (2024) *M5 Junction 9 and A46 (Ashchurch) Transport Scheme - summary of shortlisted options* ([link](#)). Section 5.2, page 22.

significance is likely to be at least 'major / moderate' and potentially 'major' (i.e. significant). Option A be is likely to have at least a small magnitude of change, due to the significant increase in vehicle movements. When combined with the high sensitivity of visual receptors on public rights of way in the CNL, the level of significance is likely to be at least 'moderate' (i.e. significant).

### The Board's alternative Option B

In the Board's alternative Option B, the visual impacts on views from the CNL are likely to be smaller than for Option B. This is because there would be no vehicle movements on the re-purposed section of the A435 (between the Seven Bends roundabout and the Teddington turn-off) and the re-purposed A435 would be perceived as a public right of way, or recreational route, rather than as a road. However, the visual impacts would probably still be greater than for Option A as it would still involve the creation of some version of the Option B route, including crossing the Tirl Brook flood zone on an embankment.

### Options 1, 2 and 3

The public engagement brochure does not refer to the CNL in its comparison of Options 1, 2 and 3 (i.e. the western section options).<sup>52</sup> However, these options would be in the setting of the CNL and all have the potential to adversely affect views from the CNL.

In terms of impacts on views from the CNL, Option 1 is likely to have the least impact. This is because it would not extend south of Oxenton, so it would intrude into - and overlap with - the setting of the CNL to the smallest extent. Option 3 would have the greatest impact. This is because it would extend further south so it would overlap with the setting of the CNL to the greatest extent.

The Option 1 route could potentially act as a limit to any future planned development as part of the Tewkesbury Garden Communities proposal. As such, it could potentially help to limit the encroachment of further built development into the setting of the CNL, to a greater degree than Options 2 and 3. However, whilst this is a relevant consideration (particularly with regards to the statutory duty to seek to further the purpose of CNL designation) it probably doesn't merit as much weight being given to it as the direct impacts of the route options themselves.

With regards to impacts on views from the CNL, Options A and B would be a more significant consideration than Options 1 to 3.

### Seven Bends roundabout

The 'Analysis of shortlisted options' document states *that 'in relation to the Cotswolds National Landscape, all route options require a new roundabout junction to the north of Oxenton, where the existing B4079 (and A435 for the 'A' options) would join the new A46 link. This feature would be out of character here and cause adverse effects until new planting has established, with only slight effects remaining'*.<sup>53</sup>

The visual impact of the roundabout, in relation to views from the CNL, could potentially be minimised by locating the roundabout to the west of the existing woodland near the A435 /

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<sup>52</sup> Gloucestershire County Council (2024) *M5 Junction 9 and A46 (Ashchurch) Transport Scheme - potential route options engagement* ([link](#)). Page 15.

<sup>53</sup> Atkins Realis / Gloucestershire County Council (2024) *M5 Junction 9 and A46 (Ashchurch) Transport Scheme - analysis of shortlisted options* ([link](#)). Section 11.6.3 - Landscape and Visual - Comparative Assessment. Page 63.



B4079 junction, such that the existing woodland (if retained) could provide some degree of screening immediately. Additional landscape planting may also be required to mitigate adverse visual impacts.

The visual impact of the roundabout could also be minimised by having a standard roundabout rather than an extended roundabout. The 'Summary of shortlisted options' document indicates that a standard roundabout would also be cheaper to build and would be sufficient to cope with future traffic growth on the A46.<sup>54</sup>

Please also see our comments relating to lighting and dark skies, below.

#### Landscape and Visual Impact Assessment

A full Landscape and Visual Impact Assessment (LVIA) should be undertaken of all of the shortlisted options (or at least Options A and B) and the Board's alternative Option B, at least in relation to landscape and visual impacts on the CNL. The Board would like to be consulted on the scope of - and methodology for - this LVIA.

The LVIA should include an assessment of the significance of the landscape and visual effects of the proposed widening of the A425 in Option A. It should also assess the significance of visual effects in relation to receptors on public rights of way (ProW) in the CNL. The Gloucestershire Way (Oxenton Footpath 14), east of Oxenton and around Crane Hill, is particularly important in this regard. The elevated footpath between Oxenton and Teddington (Oxenton Footpath 13) is also an important consideration.

Ideally, the LVIA would include photomontages of the different options as seen in views from these public rights of way.

The issue of traffic movements also affects the tranquillity of the CNL (see below). A detailed EIA will be required to assess the relative significance of the visual impacts and the impacts on tranquillity for each of the shortlisted options and the Board's alternative Option B.

#### Ranking

Overall, based on the information provided, our ranking of the options in relation to visual effects and impacts on scenic quality (with 1 being the least harmful / most preferable and 7 being the most harmful / least preferable) is as follows:

- 1: Option 1A
- 2: Option 2A
- 3: Option 3A
- 4: Option: the Board's alternative Option B
- 5: Option 1B
- 6: Option 2B
- 7: Option 3B

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<sup>54</sup> Atkins Realis / Gloucestershire County Council (2024) *M5 Junction 9 and A46 (Ashchurch) Transport Scheme - summary of shortlisted options* ([link](#)). Section 4.

## 5.3 Tranquillity

### Context

Tranquillity can be defined as a state of calm and quietude associated with peace, experienced in places with mainly natural features and / or historic character, free from man-made noise and other aural and visual disturbance. It is a valuable resource, which can add considerably to people's quality of life.<sup>55</sup> As outlined above, the relative tranquillity of the CNL is one of the area's special qualities.

### Visual disturbance

Visual impacts have been assessed above, in relation to scenic quality. As outlined above, Option 1A is likely to have the least adverse visual effects and Option 3B is likely to have the greatest adverse visual effects. The Board's alternative Option B would result in less visual disturbance than the currently proposed Option B.

### Traffic movements

A key consideration, in relation to tranquillity, is the extent to which the scheme would increase traffic movements on roads within the CNL and along its boundary. In the context of the proposed scheme, this includes the section of the A435 that abuts the CNL boundary and the section of the A46, north of Teddington Hands, that passes through the CNL between Beckford and Ashton-under-Hill.

As outlined in the Board's Tranquillity Position Statement, an increase in traffic movements (and / or heavy good vehicle (HGV) movements) on roads with the CNL, or along its boundary, of 10% or more indicates that significant adverse effects are likely and merits being addressed in an Environmental Impact Assessment (EIA).<sup>56</sup> For vehicle movements elsewhere, the threshold would be 30%.

An estimate of the anticipated traffic movements resulting from each of the shortlisted options in 2031, compared to a 'no scheme' baseline, is provided in Figure 8, below.

Figure 8 shows the following scenarios for the section of the A435 that abuts the CNL boundary (location 9):

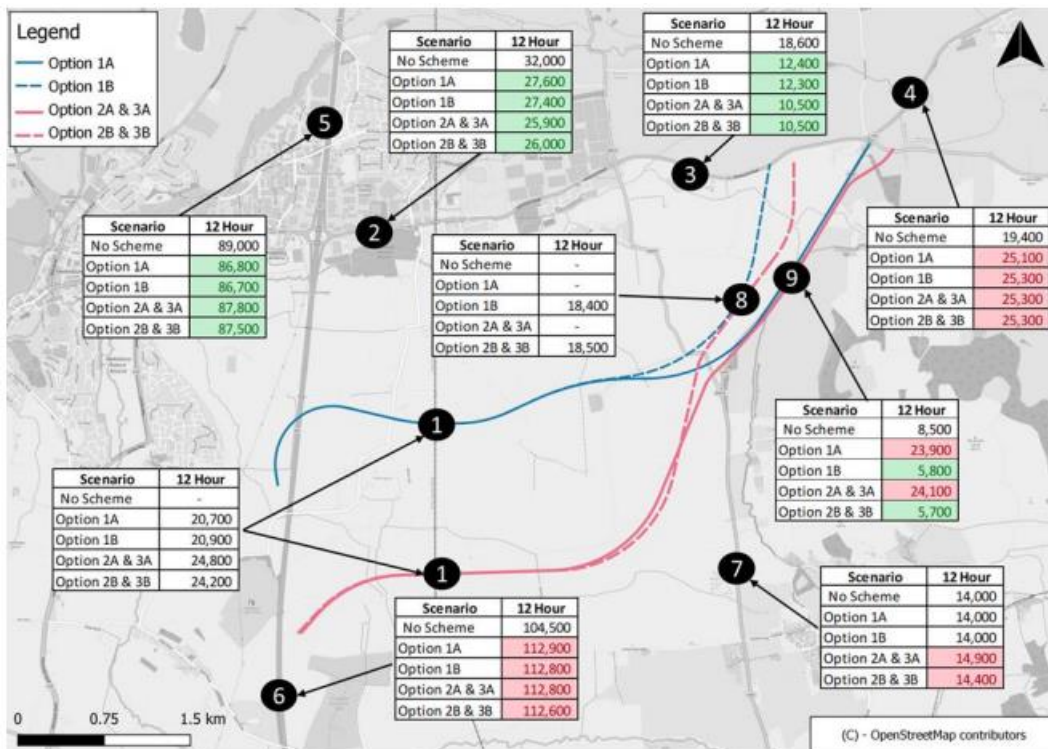
- No scheme: 8,500 2-way 12-hour traffic movements.
- Option 1A: 23,900 movements.
- Option 1B: 5,800 movements.
- Option 2A & 3A: 24,100 movements
- Option 2B & 3B: 5,700 movements.

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<sup>55</sup> Cotswolds National Landscape Board (2019) *Tranquillity Position Statement* ([link](#)). Section 1.0, page 3.

<sup>56</sup> Cotswolds National Landscape Board (2019) *Tranquillity Position Statement* ([link](#)). Section 4.5, pages 12-13.

Figure 8. 2031 2-way 12-hour traffic flows for shortlisted options versus No Scheme (Total vehicles)<sup>57</sup>



### Options A and B

Option A (i.e. using the existing A435) would result in 23,900 - 24,100 vehicle movements on the section of the A435 that abuts the CNL boundary. This would increase the number of vehicle movements on this section by between 15,400 and 15,600 movements, compared to a 'no scheme' scenario (which would have 8,500 vehicle movements). The increase in vehicle movements would be almost three-fold (i.e. an increase of almost 300%).

Given that a 10% increase should be considered significant, a three-fold increase (which is 30 times larger than the 10% 'rule of thumb' threshold) is very significant indeed. We consider that this increase would result in a significant adverse effect on the special quality of the CNL's relative tranquillity and, by extension, a significant adverse effect on the CNL's natural beauty.

In contrast, Option B would reduce the number of vehicle movements on this section of the A435, compared to a 'no scheme' scenario, by approximately 32% (i.e. approximately 5,800 vehicle movements, compared to the 'no scheme' scenario of 8,500 vehicle movements).

So, in theory, Option B should be considered to be preferable to the 'A' options, in the context of the relative tranquillity of the CNL.

However, Option B would introduce a significant number of vehicle movements (approximately 18,500) within approximately 250m of the CNL boundary, in addition to having approximately 5,800 vehicle movements on this section of the A435.

<sup>57</sup> Atkins Realis / Gloucestershire County Council (2024) *M5 Junction 9 and A46 (Ashchurch) Transport Scheme - analysis of shortlisted options* ([link](#)).

The combined number of vehicle movements would be approximately 24,300. This total is similar to Option A. In fact, it is slightly larger. These movements would be seen (from CNL viewpoints) on two separate roads, rather than just one, which could increase their visual impact. Also, the vehicle movements on the Option B route would probably be more prominent than for Option A as the vehicles on the Option B route would be on an embankment.

These factors make the comparison between the A and B options less clear cut.

A key consideration will be the extent to which the A and B options increase noise levels within the CNL, compared to a 'no scheme' baseline, as a result of the associated vehicle movements (i.e. the noise generated by the sound of the vehicle tyres moving along the roads). Traffic noise is already very noticeable when walking on the footpaths on Oxenton Hill. A three-fold increase in traffic is likely to significantly increase these noise levels.

To address this issue, we recommend that an assessment should be undertaken of noise levels within the CNL in options A and B, compared to a 'no scheme' option. See the 'Noise' section, below, for further comments on this issue.

In Option B, it is currently proposed that *'the A435 would remain fully open for local traffic movements between Teddington Hands roundabout and Bishops Cleeve, but some measures may be required to discourage A46 traffic (in particular HGVs) from using this route and to improve safety of the business accesses on the A435 for right-turning vehicles'*.<sup>58</sup>

It is not clear, from the information provided, what these measures would be or how effective they are likely to be. For example, satnav devices would potentially still direct vehicles (including HGVs) along the A435, as the most direct route, rather than along the Option B route. As such, we consider that there is a significant risk that, in Option B, the vehicle movements on the A435 could be much larger than forecast. This would significantly reduce the benefits of Option B compared to Option A, in relation to tranquillity.

Another area of uncertainty is the vehicle movements that would occur once the proposed Tewkesbury Garden Communities have been fully developed. For example, if this development extends as far as the section of the A435 that abuts the CNL then this could result in a further increase in vehicle movements on this section of the A435.

### *The Board's alternative Option B*

In the Board's alternative Option B, the section of the A435 between the A435 / B4079 junction and the Teddington turn off would be closed and re-purposed. As such, there would be no vehicle movements on this road, which would be a significant improvement on the current baseline. Instead, all of the vehicle movements would be on the Option B route (either as currently proposed or the Board's suggested variation).

This would be a better option than Option A or the currently proposed Option B, in relation to tranquillity, as it would have the least amount of traffic (i.e. none) along the boundary of the CNL. It would negate the risk of vehicles using the A435 instead of the Option B route. It would also negate the risk of vehicles 'rat-running', through Teddington and Alstone, between the A435 and the B4077. It would add approximately one mile to the journey for people travelling between Teddington / Alstone and Bishop's Cleeve, compared to leaving the A435 open.

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<sup>58</sup> Atkins Realis / Gloucestershire County Council (2024) *M5 Junction 9 and A46 (Ashchurch) Transport Scheme - summary of shortlisted options* ([link](#)). Section 5.2, page 23.

However, this would only add a minute or two to these journeys, with these journeys being a very small minority of the overall vehicle movements in this locality.

### *Options 1-3*

Overall, Option 1 would be preferable to Options 2 and 3, in relation to impacts on the tranquillity of the CNL. There are several reasons for this.

Firstly, Option 1 intrudes into - and extends across - the setting of the CNL to a lesser degree than Options 2 or 3. As such, the vehicle movements on the Option 1 route (particularly west and south of the proposed Seven Bends roundabout) would have less of an impact on the tranquillity of the CNL than Options 2 and 3, including in relation to views from the CNL and noise. Secondly, Options 1A and 1B would result in no increase in vehicle movements on the A435 south of the A435/B4079 junction, which comes within approximately 100m of the CNL, whereas Options 2A and 2B would result in a 6%<sup>59</sup> increase and Options 3A and 3B would result in a 3% increase<sup>60</sup>.

There is a slight anomaly in that Option 1B would result in 5,800 vehicle movements on the section of the A435 that abuts the CNL boundary, whereas Options 2B and 3B would only have 5,700 vehicle movements. However, the difference is only 2% so this difference is not significant. In Option B, the total vehicle movements on the Option B route and the A435, combined, would be the same for Options 1B, 2B, and 3B at 24,200 vehicle movements,

Option 3 would be the most intrusive as this option intrudes into - and extends across - the setting of the CNL to the greatest degree (out of these three options).

However, with regards to tranquillity, the relative merits of Options 1-3 would be less significant than the relative merits of Options A and B.

### *A46 north east of Teddington Hands (all options)*

Another important consideration is the extent to which the scheme would increase traffic movements on the A46 north east of Teddington Hands - location 4 in **Figure X**, above. This is because this section of the A46 passes through the CNL, between Beckford and Ashton-under-Hill, so the 10% 'rule-of-thumb' threshold applies in relation to increases in traffic movements on this section of road as well.

The information in Figure X indicates that there would be 19,400 vehicle movements at location 4 in a 'no scheme' scenario and 25,100 - 25,300 vehicle movements in any of the scheme options. This would be an increase of 5,700-5,900 vehicle movements - an increase of approximately 30%. This increase is three times larger than the 'rule of thumb' threshold of 10%. Again, we consider that this increase would result in a significant adverse effect on the special quality of the CNL's relative tranquillity and, by extension, a significant adverse effect on the CNL's natural beauty. However, the difference in vehicle movements in each option, for this section of road, is minimal. As such, it is not a deciding factor in deciding which option would be least harmful to the CNL.

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<sup>59</sup> 14,900 vehicle movements compared to a no-scheme figure of 14,000.

<sup>60</sup> 14,400 vehicle movements compared to a no-scheme figure of 14,000.

## Noise

The 'Analysis of shortlisted options' document assesses potential noise and vibration impacts in relation to each of the scheme options.<sup>61</sup> This includes consideration of effects on 'noise sensitive receptors' within, inter alia, 50m of each option during the operational phase.

The assessment states that *'the 'A' options are predicted to bring about a small number of potential significant adverse effects on residential receptors located along the A435 between Seven Bends and Teddington Hands roundabout due to increased traffic flow on this route resulting from it being upgraded to form part of the A46'*. Given that this section abuts the CNL boundary, this should be considered to be an additional significant adverse effect on the special quality of the CNL's tranquillity.

Noise levels in the CNL associated with Option A are likely to be more significant than for Option B (or the Board's alternative Option B), given the larger volume of traffic on the section of the A435 that abuts the CNL. However, a full assessment of noise levels is required in order to identify the significance of the increase in noise levels, in the CNL, for each option. This will be crucial in helping to decide the overall significance of effects, for each option, on the natural beauty of the CNL. By extension it will also be crucial in helping to decide if exceptional circumstances apply to justify Option A.

We recommend that there should also be an assessment of the noise levels that would be experienced by users of the public rights of way on Oxenton Hill, including the Gloucestershire Way, and users of the public rights of way on the CNL boundary, at the foot of Oxenton Hill. This assessment should at least include Options A and B, the Board's alternative Option B and the 'no scheme' option. The assessment should take into consideration the fact that Option B would be on an embankment. This might result in vehicle noise affecting a wider area than if it was at ground level.

We acknowledge that it is probably not standard practice to assess noise levels along public rights of way. However, this was recognised as an important consideration for the A417 Missing Link scheme and an assessment of noise levels along public rights of way was undertaken for that scheme. We recommend that a similar approach should be taken for this scheme and that noise and vibration section of the Environmental Statement for the A417 Missing Link scheme<sup>62</sup> should be used as a model for this approach, including the use of noise contour maps to show the spatial, long-term change in noise levels<sup>63</sup>.

If Option B is selected (or the Board's alternative Option B), the noise contour mapping could be used to help decide the exact location of the Option B route, for example, by locating it far enough away from the CNL that there wouldn't be a (significant) increase in noise levels within the CNL (i.e. beyond the CNL boundary).

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<sup>61</sup> Atkins Realis / Gloucestershire County Council (2024) *M5 Junction 9 and A46 (Ashchurch) Transport Scheme - analysis of shortlisted options* ([link](#)). Section 11.3.

<sup>62</sup> National Highways (2021) *A417 Missing Link Environmental Statement - Chapter 11 Noise and Vibration* ([link](#)).

<sup>63</sup> <https://virtualengage.arup.com/A417-missing-link/pei-report/17782ddc8f20aec90c138d473512435a/Chapter-11-Figures.pdf>

### Minimising adverse effects

In order to minimise adverse effects on tranquillity resulting from any of the shortlisted options, we recommend:

- avoiding / minimising signage and other highways infrastructure that could be seen from CNL, as far as reasonably practicable;
- installing quiet road surfaces, both on the new roads and on existing roads that would form part of the selected route (e.g. the section of the A435 that would be included in Option A or the section of the A46 that would be included in Option B).

To help fulfil the statutory duty to seek to further the purpose of conserving and enhancing the natural beauty of the CNL, in relation to tranquillity, we recommend that quiet road surfaces should also be installed (and 'excess' signage / infrastructure removed) on:

- the A435 between Teddington Hands and Bishops Cleeve (for example, as far as Dean Brook / the junction with Evesham Road on the northern edge of Bishop's Cleeve);
- the current A46 between Teddington Hands and Aston Cross;
- the B4077 between Teddington Hands and the junction with the minor road to Alstone;
- the entire length of the B4079 between the A435 and the current A46 at Aston Cross;
- the A46 between Teddington Hands and Sedgeberrow (or, at the very least, the section of the A46 that passes through the CNL, ease of Beckford).

This is an important consideration because the road traffic noise that is experienced when walking on footpaths Oxenton Hill seems to come from a wider area than just the nearby A435.

### Environmental Impact Assessment

The above points should be addressed in any future Environmental Impact Assessment (EIA), which should address all of the shortlisted options as well as the Board's alternative Option B. The EIA should include the use of the 10% 'rule of thumb' threshold in relation to traffic movements on roads within the CNL and along its boundary. The EIA should explicitly address HGV movements as well as overall traffic movements.

### Rankings

Overall, based on the information provided, our ranking of the options in relation to impacts on the tranquillity of the CN: (with 1 being the least harmful / most preferable and 7 being the most harmful / least preferable) is as follows:

- 1: The Board's alternative Option B
- 2: Option 1B
- 3: Option 2B
- 4: Option 3B
- 5: Option 1A
- 6: Option 2A
- 7: Option 3A

It is important to note that these ranking relate primarily to traffic movement and noise. If visual effects are factored in then the rankings given in relation to scenic quality (above) also come into play.

## 5.4 Dark Skies

The issue of lighting and impacts on dark skies does not appear to have been addressed in the 'Analysis of shortlisted options' document. Nor do the consultation documents indicate whether any lighting is likely to be incorporated into the scheme.

Figure 9, below, shows the extent to which the scheme study area is already affected by light pollution. This shows that the lighting in Teddington Hands roundabout area already adversely affects the dark skies in the CNL (as it results in parts of the CNL being 'light blue' rather than 'dark blue'). The area between Tewkesbury and Bishop's Cleeve is also affected, to some degree, by the lighting in these towns, although the area between Claydon Farm and Fiddington currently has dark skies.

If additional lighting is installed as part of the scheme, for example, at roundabouts in the vicinity of Teddington Hands or at the proposed Seven Bends roundabout, this could have a significant adverse effect on the dark skies of the CNL. For example, lighting at Seven Bends roundabout could result in the lighting levels in the Oxenton section of the CNL changing from 'dark blue' to 'light blue', 'green' or even 'yellow'. Lighting at the proposed roundabout east of Teddington Hands, in Option A, would have the most significant adverse effect in this regard.

To address this issue, we recommend that lighting should be avoided unless absolutely essential for safety purposes. It is worth noting that the A417 Missing Link scheme did not include any lighting, even at roundabouts.

If lighting is installed, it should be a requirement that this complies with good practice lighting principles and guidance, such as the guidance on dark skies for protected landscapes<sup>64</sup> and in the guidance published by the Institution of Lighting Professionals<sup>65</sup>.

Consideration should also be given to reducing or removing existing sources of lighting in the study area, for example, at Teddington Hands.

The adverse effect of vehicle lights is also a relevant consideration in relation to dark skies. The Board's alternative Option B would move vehicle movements away from the CNL to the greatest degree (as there would be no vehicle movements on the section of the A435 that abuts the CNL), followed by the currently proposed Option B and then Option A.

There is unlikely to be much difference in the effects of Options 1-3, west / south of the proposed Seven Bends roundabout, on the dark skies of the CNL.

Further guidance on this topic is provided in the Board's Dark Skies & Artificial Light Position Statement.<sup>66</sup>

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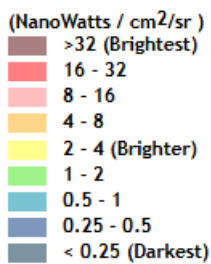
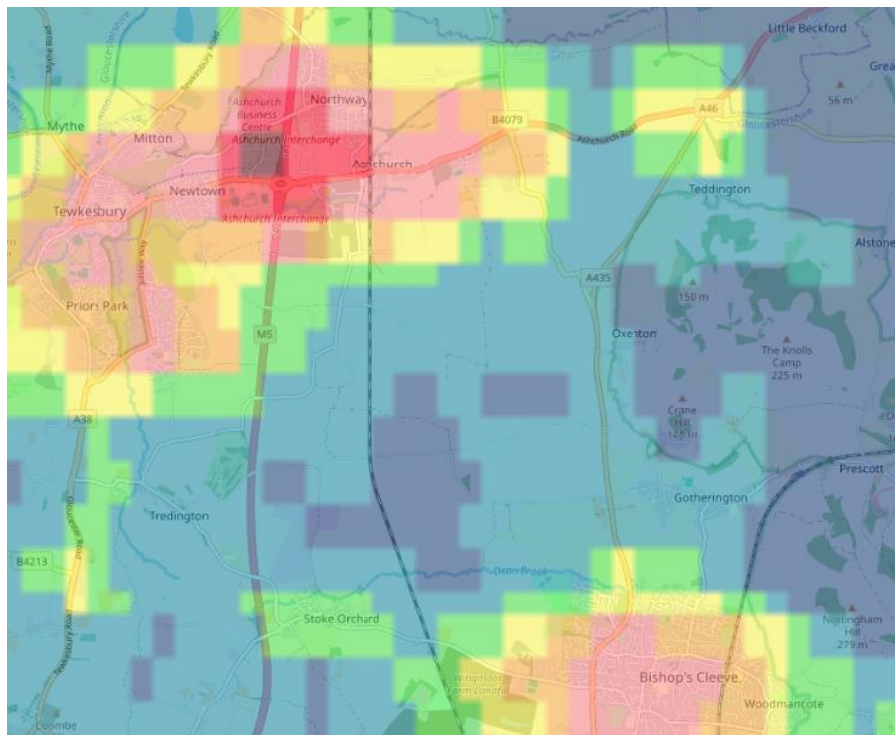
<sup>64</sup> It is anticipated that the Board will adopt and publish its own lighting guidance in February 2025. Other useful reference points include the Lighting Design Guide for Dedham Vale National Landscape and Coast & Heaths National Landscape ([link](#)).

<sup>65</sup> <https://theilp.org.uk/resources/>

<sup>66</sup> Cotswolds National Landscape Board (2019) *Dark Skies & Artificial Light Position Statement* ([link 1](#) - main document; [link 2](#) - Appendix A; [link 3](#) - Appendix B; [link 4](#) - Appendix C).



Figure 9. Extract from CPRE's Light Pollution and Dark Skies map<sup>67</sup>



### Rankings

Overall, based on the information provided, our ranking of the options in relation to impacts on the dark skies of the CNL (with 1 being the least harmful / most preferable and 7 being the most harmful / least preferable) is as follows:

1: the Board's alternative Option B

=2: Options 1B, 2B and 3B

=3: Options 1A, 2A and 3A

### 5.5 Natural heritage

As outlined above, in relation to the special qualities of the CNL, relevant, designated natural heritage assets within the CNL include:

- Dixton Woods Special Area of Conservation (SAC) / Site of Special Scientific Interest (SSSI) (ancient woodland).
- Teddington Grove Local Wildlife Site (replanted ancient woodland).

<sup>67</sup> <https://www.cpre.org.uk/light-pollution-dark-skies-map/>

Another relevant, designated natural heritage asset is Bredon Hill SAC / SSSI.

In relation to these assets, the 'Analysis of shortlisted options' document states (underlining added for emphasis):<sup>68</sup>

- *With regards to statutory designated nature conservation sites (e.g. Special Areas of Conservation, Ramsar sites), with mitigation in place, none of the route options would result in significant effects. Any impacts will be avoided, temporary and/or reversible. However, mitigations for European sites are still to be confirmed through the Habitat Regulation Assessment process. Similarly, with regards to Local Wildlife Sites, no direct losses to habitat are anticipated, and none of the route options would have an observable impact, either positive or negative.*
- *All options may lead to the temporary and reversible damage to protected species and their habitats, which through mitigation is considered to be negligible. All options may lead to the permanent loss of bat roosts and or important foraging/commuting habitats (impacting the Forest of Dean Bat Sites Special Area of Conservation) or the permanent loss of habitats used by an Annex II species (violet click beetle) that form functionally linked land of the Bredon Hill Special Area of Conservation and/or Dixton Wood Special Area of Conservation. This is to be determined by the results of further, detailed survey work. However, through following general and species-specific mitigation measures, impacts would not affect the integrity of these species.*
- *Due to the distance and lack of hydrological connection between all options and the ancient woodland site (Teddington Grove), no impacts are considered likely during the construction and operational phases.*

More broadly, the 'Analysis of shortlisted options' document also states:

- *All options may lead to the permanent loss of priority habitats and land within Network Enhancement Zones, resulting in slight adverse effects. Options 3A and 3B may result in the greatest direct losses of priority habitat, based on current route alignments. However, the number of priority habitats directly impacted by each option is not substantially different across all options. With regards to other habitats, all options will lead to temporary and reversible damage to these resources. Through mitigation this is considered to be a negligible impact.*
- *All options will lead to both temporary and reversible damage to waterbodies and watercourses, as well as localised permanent and irreversible damage (for example new/extended permanent crossings and associated infrastructure). With mitigation these effects are considered not to be significant.*
- *It is important to note that the 'B' options (Options 1B / 2B / 3B) include an additional length of new offline road in the region of 1.9 km, compared to the 'A' options (Options 1A / 2A / 3A) which join online to the existing A435. The B options may therefore result in increased loss of non-priority habitat or impacts to protected and priority species, compared to the A options. However, it could also be argued that B options pass through open farmland with limited biodiversity value, whereas A options will have larger impacts on hedgerows and trees along existing A435. These impacts will be explored in more detail once more design detail is available.*

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<sup>68</sup> Atkins Realis / Gloucestershire County Council (2024) *M5 Junction 9 and A46 (Ashchurch) Transport Scheme - analysis of shortlisted options* ([link](#)). Section 11.4.3 - Biodiversity - Comparative Assessment. Page 59.

In relation to this last point, it is important to note that the impacts of the A options on hedgerows and trees would be within / along the boundary of the CNL, whereas the impacts of other options on biodiversity would be outside of the CNL. As such, the A options would have the largest direct impact on habitats within the CNL. The Board's alternative Option B could have the least harmful, or most beneficial, effect in relation to natural heritage as it would involve re-purposing and re-landscaping the section of the A435 that abuts the CNL. This could include 'strengthening' the hedgerows along this section of the road.

The 'Public Engagement Frequently Asked Questions' document (in relation to the question 'How would the scheme impact on protected animal species?') acknowledges that '*there is a legal requirement for the scheme to provide Biodiversity Net Gain to make sure that habitats for wildlife are left in a measurably better state than they were before the development*'.<sup>69</sup> In this regard, it is important to note that Policy CE7 of the CNL Management Plan 2023-2025 advocates 20%+ biodiversity net gain (BNG).<sup>70</sup> We recommend that this 20%+ BNG threshold should be applied to the scheme. At the very least, it should be applied with regards to any biodiversity loss within the CNL, with the BNG that relates to this loss being delivered within the CNL.

The 'red line' boundary for the scheme should be large enough to allow for this BNG delivery within the red line boundary.

One way to contribute to this 20% BNG target would be to provide a net increase in the length and quality of hedgerows within the CNL. For example, we recommend that this 20% BNG target should be applied in relation to the loss and replacement of hedgerows along the section of the A435 that abuts the CNL. This could include the reinstatement of other hedges that have been removed and / or filling in 'gappy' hedges, for example, in hedgerows on the western slopes of Oxenton Hill. It could also include 'strengthening' the hedgerows along other sections of the A435 that can be seen from the CNL. Such measures could potentially contribute to 'seeking to further' the purpose of conserving and enhancing the natural beauty of the CNL.

The biodiversity value of the reinstated hedges could potentially be enhanced by managing them for wildlife. For example, the hedges could be cut on a two, or three, year rotation, targeting different sections each year.<sup>71</sup>

The removal of the hedgerows should be undertaken outside of the bird nesting season (i.e. between October and February) to avoid any potential adverse impacts on nesting birds.

Overall, it appears that the scheme would have very limited, long-term effects on natural heritage / biodiversity within the CNL. The main impact would be the loss of hedgerows / trees along the A435 in the 'A' options, although any adverse effects are likely to be short term.

To contribute to furthering the purpose of conserving and enhancing the natural beauty of the CNL, consideration should be given to taking additional measures to contribute to nature recovery within this part of the CNL. For example, consideration should be given to how the scheme can contribute to the Gloucestershire nature recovery network<sup>72</sup> and to the targets

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<sup>69</sup> Atkins Realis / Gloucestershire County Council (2024) *M5 Junction 9 and A46 (Ashchurch) Transport Scheme - Public Engagement Frequently Asked Questions* ([link](#)). Page 11.

<sup>70</sup> Cotswolds National Landscape Board (2023) *Cotswolds National Landscape Management Plan 2023-2025* ([link](#)).

<sup>71</sup> <https://www.wildlifetrusts.org/wildlife/managing-land-wildlife/how-manage-hedgerow-wildlife>

<sup>72</sup> <https://naturalcapital.gcerdata.com/>

that are set out in the Cotswolds Nature Recovery Plan<sup>73</sup>. If woodland planting is considered, then care will need to be taken not to obscure views from the public rights of way on Oxenton Hill and not to adversely affect landscape character or other priority habitats.

Finally, it is important to note that potential impacts on biodiversity within the CNL, including designated assets and priority habitats and species, should be considered and assessed in the context of the contribution that this biodiversity makes to the natural beauty of the CNL, including its special qualities, as well as in their own right.

### Rankings

Overall, based on the information provided, our ranking of the options in relation to direct impacts on the natural heritage of the CNL (with 1 being the least harmful / most preferable and 7 being the most harmful / least preferable) is as follows:

1: the Board's alternative Option B

=2: Options 1B, 2B and 3B

=5: Options 1A, 2A and 3A

It is important to note that we consider that the impacts of the scheme options on the natural heritage of the CNL are likely to be less significant than for other factors that contribute to the natural beauty of the CNL, including landscape quality, scenic quality and tranquillity.

## **5.6 Cultural heritage**

The section of the 'Analysis of shortlisted options' document that addresses cultural heritage does not explicitly address any cultural heritage assets / features within the CNL.<sup>74</sup> All of the cultural heritage features that are explicitly referred to are outside of the CNL.

The assessment states that '*Option 1 may be considered to have the most adverse impact of all options overall, followed by Options 3A, 1B, 3B, 2A and finally 2B*'. However, this doesn't necessarily equate to the ranking that would apply to impacts on cultural heritage assets / features within the CNL.

The main factor affecting heritage assets within the CNL is likely to be the visual impact of the new road (and associated vehicle movements) that would be created, in Option B, between Seven Bends and Teddington Hands. To a lesser degree, the noise associated with vehicle movements in Option A and Option B would also be a relevant consideration.

With regards to Options 1, 2 and 3, Option 3 would probably have the most adverse effect as this option would extend across the setting of the CNL to the greatest extent.

As outlined above, in relation to the special qualities of the CNL and in relation to the key features / characteristics of LCT 1, relevant, designated cultural heritage assets within the CNL include:

- The Church of St John the Baptist, Oxenton (Grade I listed building) - within approximately 700m of the scheme.

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<sup>73</sup> Cotswolds National Landscape Board (2023) *Cotswolds Nature Recovery Plan* ([link](#)).

<sup>74</sup> Atkins Realis / Gloucestershire County Council (2024) *M5 Junction 9 and A46 (Ashchurch) Transport Scheme - analysis of shortlisted options* ([link](#)). Section 11.8.

- Knolls Camp scheduled monument, on the top of Oxenton Hill - within approximately 2km of the scheme.

With regards to the Church of St John the Baptist, there is very little intervisibility directly between the church and scheme options because of the conifers on the western boundary of church grounds (although this could change if the conifers were removed at some point in the future). However, the scheme options would be visible from elevated viewpoints on the Gloucestershire Way overlooking the church. So, in that respect, the scheme options would clearly be in the setting of the church. As such, we recommend that the church should be included in any future assessment of potential impacts of the scheme on cultural heritage.

The 'Scheme context and existing conditions' document states that the study area includes a 1000m buffer for designated heritage assets to also incorporate possible indirect impacts such as those on setting and landscape.<sup>75</sup> The Knolls Camp scheduled monument is just outside this buffer zone. However, given that it is an important designated asset on Oxenton Hill and is likely to have intervisibility with the scheme options, we recommend that it should be included in any future assessment of potential impacts of the scheme on cultural heritage.

As outlined above, in relation to scenic quality, we consider that Option B is likely to have a more significant adverse effect on views from the CNL. This would include from viewpoints near the Church of St John the Baptist and near the Knolls Camp, which take in the setting of these heritage assets. On this basis, we consider that Option A is likely to be less harmful to the setting of these heritage assets than Option B. The Board's alternative Option B would be less harmful than the currently proposed option B. Option 1 would intrude into - and cut across - the setting of these heritage asset than Options 2 and 3.

Finally, we recommend that cultural heritage assets / features within the CNL should be considered and assessed in the context of the contribution that they make to the natural beauty of the CNL, including its special qualities, as well as in their own right.

### Rankings

Overall, based on the information provided, our ranking of the options in relation to impacts on the cultural heritage of the CNL (with 1 being the least harmful / most preferable and 7 being the most harmful / least preferable) is as follows:

- 1: Option 1A
- 2: Option 2A
- 3: Option 3A
- 4: the Board's alternative Option B
- 5: Option 1B
- 6: Option 2B
- 7: Option 3B

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<sup>75</sup> Gloucestershire County Council (2024) *M5 Junction 9 and A46 (Ashchurch) Transport Scheme - Scheme context and existing conditions* ([link](#)). Section 5.8, page 53.

It is important to note that we consider that the impacts of the scheme options on the natural heritage of the CNL are likely to be less significant than for other factors that contribute to the natural beauty of the CNL, including landscape quality, scenic quality and tranquillity.

## **5.7 Overall impact on the natural beauty of the CNL**

All of the shortlisted options are likely to have some adverse effects on the natural beauty of the CNL. The main potential impacts on the natural beauty of the CNL relate to Options A and B (i.e. the options for the 'eastern' section of the scheme), as these are the sections of the scheme that are closest to the CNL.

The largest single, adverse effect on the natural beauty of the CNL is likely to be the impact of Option B on views from the CNL, particularly with regards to the new road, which would be on an embankment in the setting of the CNL. So, on the face of it, Option A would be the preferred (less harmful) option.

However, Option A would have a more significant adverse effect than Option B in relation to: (i) the landscape character / quality of the CNL; and (ii) the tranquillity of the CNL. As such, the assessment of which option would be least harmful to the natural beauty of the CNL is not clear cut.

A deciding factor could be the magnitude of change in noise levels that would be experienced in the CNL, for example, by users of the public rights of way on Oxenton Hill, as a result of Option A and Option B (and in the Board's alternative Option B). At present, there isn't sufficient information to reach a conclusion on this.

To address this issue, we recommend that an Environmental Impact Assessment (EIA) should be undertaken to assess the impacts of Option A, Option B and the Board's alternative Option B on the natural beauty of the CNL. In particular, this should address impacts on the landscape character / quality of the CNL, the scenic quality of the CNL (including impacts on views from the CNL) and the tranquillity of the CNL (including vehicle movements and noise levels).

The Board's alternative Option B would be less harmful to the natural beauty of the CNL than the currently proposed Option B. As such, we recommend that the alternative Option B should be treated as a more preferable option than the currently proposed Option B.

All of the options have the potential to adversely affect other factors that contribute to the natural beauty of the CNL, including dark skies, natural heritage and cultural heritage. However, whilst steps should be taken to avoid and minimise adverse effects, in this regard, these are not likely to be deciding factors.

Option 1-3 (i.e. the options for the 'western' section of the scheme) would all affect the natural beauty of the CNL to some degree, albeit to a lesser degree than Options A and B. This is because they all intrude into - and extend across - the setting of the CNL. Option 1 would be less harmful than Option 2, which, in turn, would be less harmful than Option 3. On this basis, the Board's preferred option, out of Option 1-3, would be Option 1.

## **5.8 Whether exceptional circumstances apply to justify Option A**

The Board recognises the need for the scheme. However, in order for exceptional circumstances to apply, for Option A, it would be necessary to demonstrate that there wasn't a viable alternative option that: (i) didn't intrude into the CNL; and (ii) was less harmful to the natural beauty of the CNL.

As indicated above, the assessment of which option would be least harmful to the natural beauty of the CNL is not clear cut. Further assessments are required.

If the assessment identifies relative merits of Option A, Option B and the Board's alternative Option B are borderline then it is unlikely that exceptional circumstances could be demonstrated to justify Option A. Exceptional circumstances would only be demonstrated if Option A was shown to be significantly less harmful to the natural beauty of the CNL, overall, than Option B. Also, for Option A, it would need to be demonstrated that the need for the scheme was met in a way that, *to the extent possible*, moderated detrimental effects on the environment, landscape and recreational opportunities<sup>76</sup> (although, under the 'seek to further' duty, it could be argued that the same principle should apply to all of the scheme options in relation to the natural beauty of the CNL).

Given the adverse effects associated with Option A, it is doubtful whether the 'exceptional circumstances' threshold could be reached.

If it is concluded that there aren't exceptional circumstances to justify Option A, we recommend that preference should be given to the Board's alternative Option B rather than the currently proposed Option B.

## **5.9 Seeking to further the purpose of conserving and enhancing the natural beauty of the CNL**

As outlined earlier in this response, all of the relevant authorities involved in this scheme<sup>77</sup> must seek to further the purpose of conserving and enhancing the natural beauty of the CNL.

However, as indicated above, all of the shortlisted options, as well as the Board's alternative Option B, are likely to have a net adverse effect on the natural beauty of the CNL (albeit that the alternative Option B would be less harmful than the currently proposed Option B). As such, they are unlikely to further the purpose of conserving and enhancing the natural beauty of the CNL.

The 'seek to further' duty does not rule out harmful development. However, the relevant authorities must demonstrate that they have taken all reasonably practicable steps to further the purpose of conserving and enhancing the natural beauty of the CNL. This includes identifying what measures can be taken, over and above avoidance and mitigation of harm, to further this purpose.

A key priority should be to choose the option that would be least harmful / most beneficial to the natural beauty of the CNL.

As a last resort, it may be necessary to provide some level of compensation for the harm that the scheme would cause to the natural beauty of the CNL. For example, this could include providing funding for projects to conserve and enhance the natural beauty of the CNL, in line with the aspirations of the CNL Management Plan.

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<sup>76</sup> R (Advearse) v Dorset Council v Hallam Land Management Ltd [2020] EWHC 807 ([link](#)). Paragraph 35: *No permission should be given for major development save to the extent the development was needed in the public interest, met a need that could not be addressed elsewhere or in some other way and met that need in a way that to the extent possible, moderated detrimental effect on the environment, landscape and recreational opportunities.*

<sup>77</sup> This includes Gloucestershire County Council (and other local authorities), National Highways, the Planning Inspectorate and the Secretary of State for Transport.

## 6.0 WALKING, CYCLING AND HORSE-RIDING OPPORTUNITIES

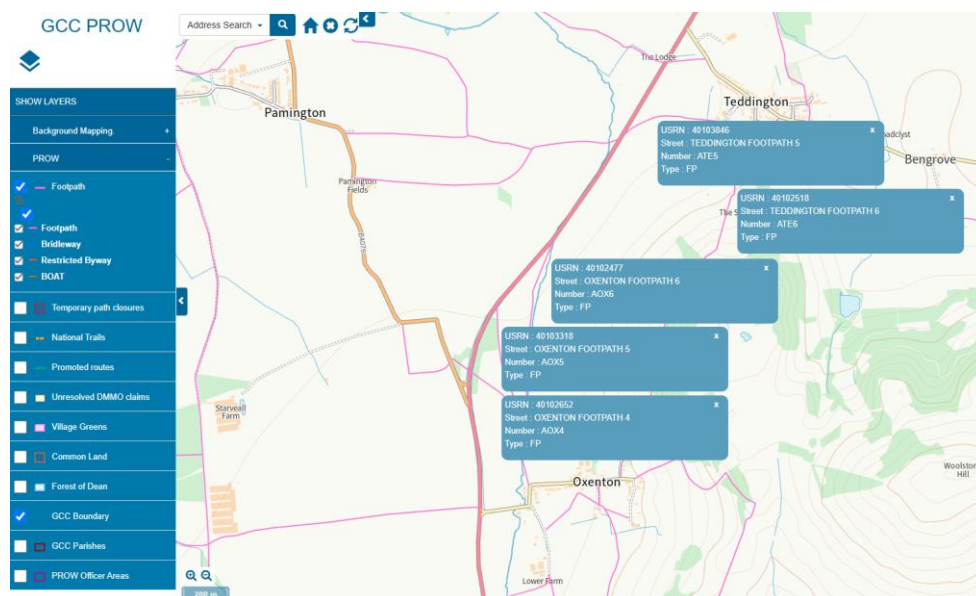
The consultation documents include a 'Summary of walking, cycling and horse-riding (WCH) opportunities'.<sup>78</sup> This is of relevance to the CNL and the Board because the Board has a statutory duty to seek to further the purpose of increasing the understanding and enjoyment, by the public, of the special qualities of the CNL.<sup>79</sup> This includes seeking to further the provision of opportunities for (quiet) open-air recreation, including walking, cycling and horse-riding.

In the context of the proposed scheme, there is a footpath (Oxenton Footpath 6) that heads northwards from the western end of Oxenton, alongside Tirlle Brook (with this brook forming the boundary of the CNL). However, the footpath abruptly stops where Tirlle Brook meets the A435. There is no connecting footpath on the other side of the A435 and no pedestrian access alongside the A436 in either a north-easterly or south-westerly direction.

Where Oxenton Footpath 6 crosses over the Tirlle Brook, it is joined by two other footpaths, Oxenton Footpath 4 and Oxenton Footpath 5, which also end abruptly at the A435.

We recommend that the scheme should include new footpath provision alongside the A435 to connect these three footpaths with Teddington Footpath 5. This would facilitate a circular walk between Oxenton and Teddington, by also make use of Teddington Footpath 6, rather than just having three, dead-end footpaths.

Figure 10. Extract from Gloucestershire County Council's Public Rights of Way map<sup>80</sup>



The Board's alternative Option B would facilitate this option as it would involve closing this section of the A435 and re-purposing it and re-landscaping it as a recreational route.

The recreational route could be extended northwards to Teddington Hands (with appropriate access / connectivity being provided to the minor road that heads northwards to Overbury and

<sup>78</sup> Gloucestershire County Council (2024) *M5 Junction 9 and A46 (Ashchurch) Transport Scheme - Summary of walking, cycling and horse-riding opportunities* ([link](#)).

<sup>79</sup> Section 87 of the Countryside and Rights of Way Act 2000 ([link](#)).

<sup>80</sup> <https://gcc.dynamicmaps.co.uk/MapThatPublic/Default.aspx?treeid=81@82@83>



Conderton). The downgrading of the A435, between Teddington Hands and the Teddington turn off, to a minor road would facilitate this.

The recreational route could also be extended southwards, alongside the still operational section of the A435, to the Woolstone turn-off (or further, to the Gotherington turn-off or onwards towards Bishop's Cleeve).

This recreational route could then form part of a longer, circular, recreational route around Oxenton Hill, making use of the minor road between Teddington and Alstone, the minor road between Alstone and Dixton (or, for walkers, the Winchcombe Way), the bridleway between Dixton and Woolstone (Oxenton Bridleway 21) (or, for walkers, the Gloucestershire Way) and the minor road between Woolstone and the A435 - a total distance of approximately 11.5km.

The potential 'Seven Bends' roundabout would also need to be carefully designed in order to maintain connectivity / ease of access between Oxenton Footpath 4 and Oxenton Footpath 3, in the vicinity of the roundabout.

Consideration would also need to be given to the effect of the scheme on connectivity / ease of access between Teddington Footpath 4 and Teddington Footpath 5, across the A435. This connectivity would be enhanced in the Board's alternative Option B as this section of the A435 would be closed to traffic.

All of these points could potentially be addressed under 'Opportunity 14' in Table 3-1 of the WCH opportunities document, which is to '*provide / improve pedestrian facilities along the A435 and B4079*'.<sup>81</sup>

Figure 3-1 of the WCH document identifies a number 'key WCH desire lines'.<sup>82</sup> Three of these desire lines pass into / out of the CNL. These are the Gloucestershire Way, the Oxen & Gloucester National Byway and the Sabrina Way. 'Opportunity 1', in Table 3-1 of the WCH document, is to '*ensure GCC Local Transport Plan Cycle Desire Lines are supported by the scheme*'.<sup>83</sup> The Board would support measures that address this strategic opportunity.

## 7.0 SCHEME OBJECTIVES

The 'Development of scheme objectives' document states that the scheme objectives as follows:<sup>84</sup>

- Improve local journey times and reliability.
- Improve the overall performance of the A46 strategic corridor.
- Improve safety performance.
- Reduce severance and improve the experience for walking and cycling journeys.
- Ensure the Strategic Road Network meets likely future development needs in the Ashchurch area.

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<sup>81</sup> Gloucestershire County Council (2024) *M5 Junction 9 and A46 (Ashchurch) Transport Scheme - Summary of walking, cycling and horse-riding opportunities* ([link](#)). Table 3-1.

<sup>82</sup> Gloucestershire County Council (2024) *M5 Junction 9 and A46 (Ashchurch) Transport Scheme - Summary of walking, cycling and horse-riding opportunities* ([link](#)). Figure 3-1.

<sup>83</sup> Gloucestershire County Council (2024) *M5 Junction 9 and A46 (Ashchurch) Transport Scheme - Summary of walking, cycling and horse-riding opportunities* ([link](#)). Table 3-1.

<sup>84</sup> Atkins Realis / Gloucestershire County Council (2024) *M5 Junction 9 and A46 (Ashchurch) Transport Scheme - development of scheme objectives* ([link](#)).

The Board acknowledges that these objectives reflect the key drivers for the scheme.

However, we recommend that there should be an additional objective that explicitly addresses the Cotswolds National Landscape (CNL). This is because:

- i. The proposed scheme is located within the setting of the CNL.
- ii. The requirement to give great weight to conserving and enhancing the natural beauty of the CNL applies to such development.
- iii. The proposed scheme is likely to have significant adverse effects on the natural beauty of the CNL.
- iv. Relevant authorities have a statutory duty to seek to further the purpose of conserving and enhancing the natural beauty of the CNL.
- v. The 'seek to further' duty applies to development within the setting of the CNL.
- vi. It is highly likely that the 'A' options would intrude into the CNL.

We also recommend that there should be outcomes / measures that support this additional objective.

This would be in-line with the approach taken with the A417 Missing Link scheme, where:

- The scheme vision was 'a landscape-led highways improvement scheme ...'
- The scheme design principles included:
  - Any solution involving a new road must ensure that the scheme is designed to meet the character of the landscape, not the other way round.
  - Any scheme should bring about substantial benefits for the Cotswolds landscape and environment as well as people's enjoyment of the area.
  - Any scheme must have substantially more benefits than negative impacts for the Cotswolds AONB.
- The scheme objectives included:
  - Improving the natural environment and heritage: to maximise opportunities for landscape, historic and natural environment enhancements within the Cotswolds AONB and to reduce the negative impacts of the scheme on the surrounding environment.

There were also multiple scheme sub-objectives which addressed a wide range environmental considerations, including in relation to the CNL.

The full suite of vision, design principles, scheme objective and scheme sub-objectives are listed in Chapter 2 of the Environmental Statement for the A417 Missing Link scheme.<sup>85</sup>

We acknowledge that the proposed scheme would, for the most part, be located within the setting of the CNL, rather than within the CNL itself, whereas the A417 Missing Link scheme was located entirely within the CNL. However, for the reasons outlined above, we consider that a similar approach would be appropriate. In particular, we consider that applying this approach would help the relevant authorities to fulfil their statutory duty to seek to further the purpose of conserving and enhancing the natural beauty of the CNL.

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<sup>85</sup> National Highways (2021) *A417 Missing Link Environmental Statement: Chapter 2 - The Project* ([link](#)). Table 2-1, page 5.

## APPENDIX 2. THE 'SEEK TO FURTHER' DUTY

Section 245 of the Levelling Up and Regeneration Act 2023<sup>86</sup> places a duty on relevant authorities<sup>87</sup> to seek to further the statutory purposes of protected landscapes<sup>88</sup> (the 'seek to further' duty). With regards to national landscapes, this requirement has been incorporated into Section 85 of the Countryside and Rights of Way (CROW) Act, which now states:

- *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.*<sup>89</sup>

This replaces the previous version of Section 85 of the CROW Act, which required relevant authorities to have regard to the statutory purpose of national landscapes.

Section 245 was inserted into the Levelling Up and Regeneration Bill by the House of Lords as it made its way through Parliament. The Government's Explanatory Notes on the Lords Amendments to the Bill for this Act provide that (emphasis added):

- *The clause strengthens the duty on certain public authorities when carrying out functions in relation to these landscapes to seek to further the statutory purposes and confers a power to make provision as to how they should do this.*<sup>90</sup>

The 'seek to further' duty is, therefore, clearly intended to impose new and more onerous requirements with respect to the statutory purposes than existed before.<sup>91</sup>

In this regard, the Government's press release, when the Levelling Up and Regeneration Bill became law in October 2023, stated that (emphasis added):

- *The Act will enhance our national network of beautiful, nature-rich protected landscapes that can be enjoyed right across the country.*<sup>92</sup>

The 'seek to further' duty is, therefore, clearly intended to ensure that the natural beauty of protected landscapes (including national landscapes) will be enhanced as a result of relevant authorities exercising or performing their functions.

The LURA confers powers on the Secretary of State to make provisions for how a relevant authority is to comply with the 'seek to further' duty, including what the authority may, must or must not do to comply with the duty. It is also anticipated that the Government will provide guidance on how the duty should be applied in due course. However, the duty is not dependent

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<sup>86</sup> Section 245 of the Levelling Up and Regeneration Act 2023 ([link](#)).

<sup>87</sup> 'Relevant authority', in this context, includes any Minister of the Crown, public body, statutory undertaker or person holding public office.

<sup>88</sup> 'Protected landscapes' means national parks, the Broads and national landscapes.

<sup>89</sup> Section 85 of the Countryside and Rights of Way Act 2000 ([link](#)).

<sup>90</sup> UK Parliament (2023) *Levelling Up and Regeneration Bill – Explanatory Notes on Lords Amendments*. Updated version, 12 October 2023 ([link](#)). Page 35.

<sup>91</sup> Landmark Chambers (2024) *Re: section 245 of the Levelling Up and Regeneration Act 2023*. Instructed by the Campaign for National Parks ([link](#)). Paragraph 6.

<sup>92</sup> <https://www.gov.uk/government/news/new-laws-to-speed-up-planning-build-homes-and-level-up>

on these provisions or on this guidance – it is in force now, and must be complied with as part of any decision or course of action that has implications for these protected areas.<sup>93</sup>

At the present time, the two most useful reference points relating to the ‘seek to further’ duty are the advice produced by Natural England<sup>94</sup> and the legal opinion obtained by Campaign for National Parks (CNP)<sup>95</sup>.

The Natural England advice states that:

- *The duty to ‘seek to further’ is an active duty, not a passive one. Any relevant authority must take all reasonable steps to explore how the statutory purposes of the protected landscape (A National Park, the Broads, or an AONB) can be furthered.*
- *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. If it is not practicable or feasible to take those measures the relevant authority should provide evidence to show why it is not practicable or feasible.*
- *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.*

The CNP’s legal opinion sets out a number of principles to help ensure compliance with the ‘seek to further’ duty:<sup>96</sup>

- (a) The new duties are very broad in scope, applying to “any functions” in relation to, or so as to affect, land in the protected areas. Relevant authorities would do well to assume that if their decision touches in any way upon an AONB, National Park or the Broads, the relevant duty is engaged.*
- (b) The duties are pro-active, and not merely an afterthought: the authority must “seek to further” the stated purposes in the exercise of their functions. That means that the duties should be pro-actively considered as part of any decision to which the duty applies. A failure to consider those duties, or a failure to understand their pro-active and mandatory nature, would be an error of law.*
- (c) An authority must factor in the relevant duty before the adoption of a proposed policy and not merely as a “rearguard action”, following a concluded decision.*

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<sup>93</sup> Landmark Chambers (2024) *Re: section 245 of the Levelling Up and Regeneration Act 2023*. Instructed by the Campaign for National Parks. ([link](#)). Paragraph 2a.

<sup>94</sup> This advice ([link](#) – Annex 2) was submitted, in December 2023, by Natural England, as a statutory consultee, to the Examining Authority for the examination of the Lower Thames Crossing, which is a Nationally Significant Infrastructure Project (NSIP).

<sup>95</sup> Landmark Chambers (2024) *Re: section 245 of the Levelling Up and Regeneration Act 2023*. Instructed by the Campaign for National Parks ([link](#)).

<sup>96</sup> Landmark Chambers (2024) *Re: section 245 of the Levelling Up and Regeneration Act 2023*. Instructed by the Campaign for National Parks ([link](#)). Paragraph 17.

- (d) *It will be important for relevant authorities to record the steps taken by the decision maker in seeking to meet the statutory requirements and demonstrate how the decision complies with the duty.*
- (e) *While there is no obvious requirement to expressly reference the new duties in every decision, they are not merely a box-ticking exercise, and they must be rigorously applied as part of any relevant decision.*
- (f) *General regard to the benefit of protecting these landscapes is not the same as having specific regard to the statutory purposes, by way of conscious approach to the statutory criteria.*
- (g) *These duties are outcome-based: they do not simply require “due regard” to be had to them. If, having considered the implications of a decision, an authority reaches the view that the decision does not “seek to further” the applicable legislative purpose, it would be hard to argue that the decision would in fact be open to the relevant authority: because it would appear to be in breach of the applicable duty. In those circumstances, the decision would need to either be withdrawn or modified such that the relevant authority could confidently say that it did seek to further the relevant purpose.*
- (h) *To be clear, however, this does not mean that the duty precludes decisions that are “net harmful” to an AONB, National Park of the Broads: if that were so, the duty would be to “further the purpose” rather than to “seek to further the purpose.” But what is required is positive evidence that the relevant authority has, in all the circumstances, sought to further the purpose: not merely through mitigation of harm but by taking all reasonable steps to further the purpose.*
- (i) *As to whether a decision or course of action in fact seeks to further the relevant purpose ... this is a question for the relevant authority in the first instance, subject to challenge on Wednesbury principles. But a positive conclusion that the decision or course of action does seek to further that purpose is clearly required.*

The legal opinion goes on to pose a number of questions that a relevant authority should ask itself when considering whether it has complied with the duty:<sup>97</sup>

- i. *What are the required statutory purposes my decision must seek to further?*
- ii. *Does my decision in fact pro-actively seek to further those purposes? If so, how does it do so? If not, how can my decision be modified so that I can confidently conclude that it does seek to further the relevant purposes?*
- iii. *As a matter of best practice, have I recorded how I have concluded that my decision seeks to further the required purposes, which I can produce in the event of a subsequent legal challenge?*

The legal opinion makes the following additional points:<sup>98</sup>

- *[Relevant authorities] would be well-advised not treat the new duties as “business as usual” and to consider the pro-active duties now placed on them to seek to further the purposes of AONBs, National Parks and the Broads. I agree with Natural England that this means that relevant authorities should ensure, with evidence, that their decisions do all they reasonably can to further the statutory purposes, including going beyond merely*

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<sup>97</sup> Landmark Chambers (2024) *Re: section 245 of the Levelling Up and Regeneration Act 2023*. Instructed by the Campaign for National Parks ([link](#)). Paragraph 19.

<sup>98</sup> Landmark Chambers (2024) *Re: section 245 of the Levelling Up and Regeneration Act 2023*. Instructed by the Campaign for National Parks ([link](#)). Paragraph 21.

*mitigating harm. This could include, for example, delivering enhancements to the natural beauty of the area, or creating new opportunities for the understanding and enjoyment of the special qualities of national parks by the public (rather than merely maintaining or supporting existing opportunities). Moreover, if there is an obvious alternative approach that better furthers the statutory purposes and the relevant authority cannot evidence (1) why it cannot reasonably adopt that approach or (2) that its chosen approach also seeks to further the statutory purposes, the decision will be open to legal challenge.*