

21<sup>st</sup> June 2019

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Major Casework Directorate  
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Bristol BS1 6PN



By email to [A417MissingLink@PlanningInspectorate.gov.uk](mailto:A417MissingLink@PlanningInspectorate.gov.uk)

Dear Sir / Madam

## **A417 Missing Link Environmental Impact Assessment Scoping Report**

Thank you for consulting the Cotswolds Conservation Board ('the Board') on the A417 Missing Link Environmental Impact Assessment (EIA) Scoping Report. Thank you, also, for giving the Board until the 24<sup>th</sup> June 2019 to respond due to the delay in notifying the Board of the EIA Scoping Report consultation.

### **Context**

The proposed A417 Missing Link scheme is located entirely within the Cotswolds Area of Outstanding Natural Beauty (AONB). The statutory purpose of AONB designation - and the Board's primary statutory purpose<sup>1</sup> - is to conserve and enhance the natural beauty of the AONB. 'Relevant authorities', including Highways England and the Planning Inspectorate, have a statutory duty to have regard to this purpose ('the duty of regard'). This duty is reiterated in the National Policy Statement for National Networks (NPSNN). The expectation of this duty is that adverse impacts will be avoided or mitigated where possible. The fact that the A417 Missing Link is wholly located within an AONB is the only national policy test which, on that basis alone (regardless of the degree of harm to the environment), triggers a presumption of refusal unless a series of stringent tests of 'exceptional circumstances' are met to justify its being in the public interest.

The Board accepts that there is a pressing need for a scheme to improve the Missing Link section of the A417. But we have also stressed from the outset that this must be a landscape-led scheme which delivers the agreed Vision, Design Principles, Objectives and Sub-Objectives (see Annex 1). We have played a very active role in working with Highways England and other stakeholders in defining and drafting these goals and trying to ensure that the scheme delivers these aspirations. We appreciate where our suggestions have been taken on board.

However, as stated in the *Scheme Assessment Report* (pp 172-3), the effects of the proposed scheme (option 30) on landscape, heritage, wildlife and water environment – all of which contribute to the character of the AONB – would be 'large adverse' in each case, and for water 'very large adverse'. We are very concerned that the scheme as presented cannot adequately deliver its overall Vision, Design Principles and Objectives. Critically, the proposed scope of the EIA does not provide the framework for an adequately robust assessment to address the key policy tests of the NPSNN and other relevant policies and legislative duties and requirements that represent the material considerations that must

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<sup>1</sup> The Board's two purposes are::

- To conserve and enhance the natural beauty of the Cotswolds AONB.
- To increase the understanding and enjoyment of the special qualities of the Cotswolds AONB.

inform the determination of any application based on this scheme in accordance with s.104 and s.105 of the Planning Act 2008 (see Annex 2)

### **Alternative Options to Achieve Scheme Vision Design Principles and Objectives**

The Board is very concerned that there is a lack of detail regarding exactly which alternative options will be considered in the EIA. We accept that any alternative options considered in terms of comparing their environmental effects with the preferred scheme need to be proportionate, reasonable and viable, and as such, we recognise that it would not be appropriate to include all previously considered options in the EIA. But this must also be considered in the context of the NSPNN tests for infrastructure development within the AONB

We have advised Highways England that there are alternative options that were not identified in the options appraisal process that could meet (or at very least much more fully address) the scheme Vision, Design Principles and Objectives. These would also much more fully inform the NPSNN tests to demonstrate the 'exceptional circumstances' required to justify construction of new infrastructure in an AONB; and would fully take into account other relevant policies and legislation.

We believe that this policy context means the EIA must consider more ambitious but still – in a national context – proportionate measures to 'ameliorate' (ie 'avoid', 'remedy' and 'reduce') adverse environmental effects, taking account of costs and achieving high environmental standards ( Annex 4). For example, given the substantial depth of cuttings that are now being proposed through a very sensitive part of the Cotswolds escarpment and the potentially difficult ground and groundwater conditions, the Board has identified that the cost difference between the cuttings proposed and an alternative involving a 'cut-and-cover' tunnel may not be significant.

Taking these points into account, the Board's principle recommendation is that the alternative options that are assessed and compared in the EIA should include the 'Gold', 'Red' and 'Blue' options shown in Annex 3. It is worth noting that:

- all three alternatives are significantly different from tunnel options considered prior to public consultation
- all of the Board's alternatives are presented as holistic landscape-led vision incorporating other beneficial considerations such as a Birdlip relief road instead of the proposed Birdlip Link.
- all the options are within the range of best past practice for protected landscapes (Annex 4).

### **Information provided**

The Board is concerned that there are shortcomings in terms of the information presented to inform the scope of the EIA. Examples are:

- absence of plans, long sections and cross sections to define the scheme
- absence of any preliminary quantification of cut and fill balance; overall surplus of the main scheme (figures only presented for A436 options)
- lack of sufficient information or plans to demonstrate the basis for defining the draft 'red line' boundary
- lack of systematic identification of the sources of different impacts relative to different permanent, temporary, indirect effects
- lack of systematic identification of interactive effects especially in respect of different characteristics of the AONB that contribute to its special qualities and character

- overall failure to recognise the national policy, legislative and scheme specific standards against which significant effects need to be identified, assessed and addressed through design and other mitigation
- lack of information on policy and legislative basis for consideration of scope of cumulative effects.

## **Recommendations**

The following recommendations are made to address shortcomings in the proposed scope of the EIA. These are based on more detailed analysis to follow, which includes more topic specific issues.

### **Recommendation 1**

We request that these observations and recommendations be considered within the context of how the Environmental Impact assessment, EIA should be shaped by and meet the statutory requirement for PINS to be fully informed of all matters falling under s.104 of the Planning Act 2008.

The whole scope of the EIA needs to be far better anchored into the stated vision, design principles and objectives of the scheme when set within the relevant statutory requirements and policy frameworks. In particular this must recognise the implications of the National Policy Statement for National Networks, NPSNN paragraph 1.150 and the tests that flow from that, giving full weight to the interactive environmental characteristics and qualities that underpin the natural beauty of the Cotswolds AONB and the additional legislative and policy considerations that apply to them.

### **Recommendation 2**

The overall statement of legislative and policy framework and assessment methods and reporting need to be radically overhauled to:

- Ensure that all legislative and policy considerations relevant to compliance with s.104 of the Planning Act 2008 are fully explained.
- Ensure that the methods and criteria used in the identification and assessment of environmental effects, including interactive, indirect and cumulative effects fully reflect the weight to be accorded to relevant aspects of the environment in accordance with national policy statements, tests and criteria and relevant statutory duties.
- In particular to reflect all issues relevant to the tests set out in NPSNN (especially para 5.150 to 5.153); the frameworks set by para 2.10; and requirements for assessment of cumulative effects (including consideration of whether or not 'upstream' plans and programmes that set the delivery framework of which this scheme is part have been subject to Strategic Environmental Assessment, SEA).

### **Recommendation 3**

The approach to describing all relevant alternatives studied by the developer/applicant should be brought fully in line with EIA requirements to include actual alternatives put before Highways England and sufficiently 'studied' to have been rejected hitherto as well as those accepted for further consideration.

In particular suggestions for modifications and alternative solutions already made by the Conservation Board (and/or other statutory consultees) that would substantially improve the likelihood of the scheme meeting key statutory duties, policy criteria and tests and scheme specific environmental objectives should be included in the consideration of alternatives, fully comparing their adverse and beneficial environmental effects.

#### **Recommendation 4**

In order to address the need to meet NPSNN policy tests in respect of the AONB and other national or international designations and to ensure that PINS will be in a position to advise the Secretary of State.

- The red line boundary needs to be altered to accommodate these suggestions; areas representing alternative options not all of which would be adopted should be indicated.
- Provision of evidence and conclusions reached in respect of meeting the criteria and tests set by NPSNN in this context should be taken into account by PINS both in respect of whether an application is adequately documented and in its determination.
- Where it appears that nationally protected landscape sites, features or resources could be substantially better protected or enhanced by adopting such solutions, but only at a cost outside the current budget, this should be identified within the ES so that PINS may
  - Consider this within the wider strategic framework in which the cumulative effects of this scheme need to be judged; and
  - As appropriate, advise the Secretary of State and Highways England whether under s.3 of the Infrastructure Act any variation of the RIS would be required to meet the environmental standards set by NPSNN and the statutory environmental duties set by the Infrastructure Act and other legislation.

#### **Recommendation 5**

The description of the development needs substantial expansion to ensure:

- The scope of the EIA properly covers issues that are likely to have substantial implications for the environmental effects of the scheme.
- It is clear what the baseline design is and what measures to avoid, reduce remedy or offset environmental effects are already built in.
- It is clear what further adjustments of alignment, structures and other measures are incorporated to avoid, reduce, remedy or offset environmental effects.
- It is clear what further mitigation is needed to offset residual environmental effects.
- How these considerations relate to NPSNN policy requirements especially with reference to effects currently assessed as 'large adverse' or 'very large adverse'.

#### **Recommendation 6**

General methodology for the environmental assessment needs to be revised so that it is far more explicitly anchored in providing the information required to meet EIA regulatory requirements within the specific context of:

- National legislative and policy tests for conserving and enhancing the natural beauty of the AONB and its intrinsic characteristics that are covered by comparable legislative and policy requirements.
- Scheme-specific vision, design principles, objectives, sub-objectives and the register of design principles.
- The context of this scheme in relation to 'individual networks and as an integrated system'.

The EIA scope needs to have much clearer regard to the implications of paragraph 1.150 of the NPSNN and the tests related to the AONB including:

- The tests that apply in relation to the baseline presumption against infrastructure development within AONBs.

- The relevance of the interactive contributions that different aspects of the environment make to the natural beauty of the Cotswolds AONB as set out in the AONB management plan, position statements and landscape strategy and guidelines.

The EIA scope needs to be revised to ensure that the EIA meets regulatory requirements especially with regard to:

- A much clearer, more precautionary approach to explaining difficulties, technical and scientific limitations and uncertainties arising from methods adopted for forecasting baseline conditions, effects of the scheme and evolution of the baseline without the scheme – and on the basis of this risks to people and the environment.
- A much clearer basis for what effects are ‘significant’ in terms of being material considerations including policy and legislative tests and benchmarks.
- What additional surveys are being undertaken or will be undertaken to ensure that an adequate baseline scenario is developed for making a robust identification and assessment of impacts and effects, and what measures are needed to address them.
- Interactive impacts and effects especially with regard to all aspects of the environmental that contribute to the natural beauty of the AONB.
- Means of avoiding, reducing, remedying or offsetting environmental harm – including especially interactive and cumulative effects as well as individual ones and the risks of not doing so.
- What assumptions are to be adopted regarding the evolution of the baseline environment without the development, given the key issues of the ‘natural beauty’ of the AONB.
- Identification of specialist expertise involved in each EIA topic.

### **Recommendation 7**

We have drawn attention to numerous specific weaknesses in issues to be addressed and/or methodologies and basis for identifying and explaining significant effects.

There is a particular need to address the serious problems that arise in respect of:

- Issues related to not identifying key characteristics of the scheme as currently envisaged in the preliminary design to date resulting in insufficient emphasis being given to key issues, how they might be addressed and how effective any changes in design or other mitigation might be.
- Insufficient illustration of the scheme proposals to justify the red line boundary, or judge potential impacts and effects (especially interactive and cumulative effects).
- Insufficient explanation of off-site issues to understand the likely occurrence of impacts and matters arising for off-site mitigation.
- Apart from specific regulatory standards for some topics – but not others – there is no systematic benchmarking of the identification of impacts and effects against relevant national policies and legislation that set the framework of material considerations for compliance with s.104 of the planning act. The Design Manual for Roads and Bridges, DMRB volume 11 (but with no reference at all to volume 10 except in relation to otters) has been presented as if it was the main ‘material consideration’ basis for judging the acceptability of the proposals. It needs to be seen more clearly as a technical mechanism for trying to ensure a consistent and adequate basis for judging the real ‘material considerations’ enshrined in policy and statute, much of which is topic-specific.

### **Recommendation 8**

As a scheme entirely located within the Cotswolds AONB, the approach to describing and assessing impact interactions needs to be founded much more clearly in how different aspects of the environment contribute to the character and natural beauty of the AONB and its natural and cultural capital as reflected in the AONB Management Plan, Position Statements and Landscape Strategy and Guidelines, and in related environmental policies and statutory considerations. The approach needs to be brought into line with what is required to ensure that the decision-maker is fully informed on all EIA issues that are relevant to compliance with s.104 of the Planning Act 2008.

### **Recommendation 9**

The approach to describing and assessing cumulative effects for this scheme in particular is badly flawed because so little attention has been paid to policy and statute, and needs to be radically rethought and brought into line with what is required to ensure that the decision-maker is fully informed on all EIA issues that are relevant to compliance with s.104 of the Planning Act 2008, especially as a scheme that is:

- Part of a national delivery plan and programme for road infrastructure.
- Wholly affecting a nationally protected landscape.
- Being promoted by a national statutory developer with statutory duties to have regard to conserve and enhance the protected landscape and more generally have regard to effects on the environment across all their national functions, including advising the Secretary of State and other decision-makers.
- Subject to national policy and statutory tests of acceptability that are also reflected in the scheme's core vision, design principles and objectives.

The Board will be providing additional, detailed comments on the individual sections of the EIA Scoping Report by midday on 24<sup>th</sup> June, to support this initial, over-arching response.

Should you require any further clarification on any of the points raised above please do not hesitate to contact me.

Yours faithfully,

**Martin Lane**  
**Director**

## **ANNEX 1. VISION, DESIGN PRINCIPLES AND OBJECTIVES FOR THE A417 MISSING LINK SCHEME<sup>2</sup>**

### Client Scheme Requirements

- Improve the operation and efficiency of the existing transport network
- Support economic growth
- Improve connectivity and community cohesion
- Safety improvements for customers and operational staff\*
- Deliver capacity enhancements to the strategic road network
- Enhance and protect the quality of the surrounding environment\* while conforming to the principles of sustainable transport
- Minimise the environmental impact of construction, operating, maintaining and improving the network\*\*

\*elements to which there is a statutory duty of have ‘special regard’

\*\* added since publication of the Preferred Route Assessment Report

### Scheme Vision

- A landscape-led highways improvement scheme that will deliver a safe and resilient free-flowing road whilst conserving and enhancing the special character of the Cotswolds AONB; reconnecting landscape and ecology; bringing about landscape, wildlife and heritage benefits, including enhanced visitors’ enjoyment of the area; improving local communities’ quality of life; and contributing to the health of the economy and local businesses.

### Scheme design principles

- 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.

### Scheme Objectives

- **Safe, resilient and efficient network:** to create a high quality resilient route that helps to resolve traffic problems and achieves reliable journey times between the Thames Valley and West Midlands as well as providing appropriate connections to the local road network.
- **Improving the natural environment and heritage:** to maximise opportunities for landscape, historic and natural environment enhancement within the Cotswolds AONB and to minimise negative impacts of the scheme on the surrounding environment.
- **Community & access:** to enhance the quality of life for local residents and visitors by reducing traffic intrusion and pollution, discouraging rat-running through villages and substantially improving public access for the enjoyment of the countryside.
- **Supporting economic growth:** to facilitate economic growth, benefit local businesses and improve prosperity by the provision of a free-flowing road giving people more reliable local and strategic journeys.

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<sup>2</sup> As set out in the table on pp. 63 to 64 of the *Preferred Route Assessment Report*.

## ANNEX 2. SUMMARY OF THE KEY LEGISLATIVE AND POLICY CONTEXTS OF THE A417 MISSING LINK SCHEME

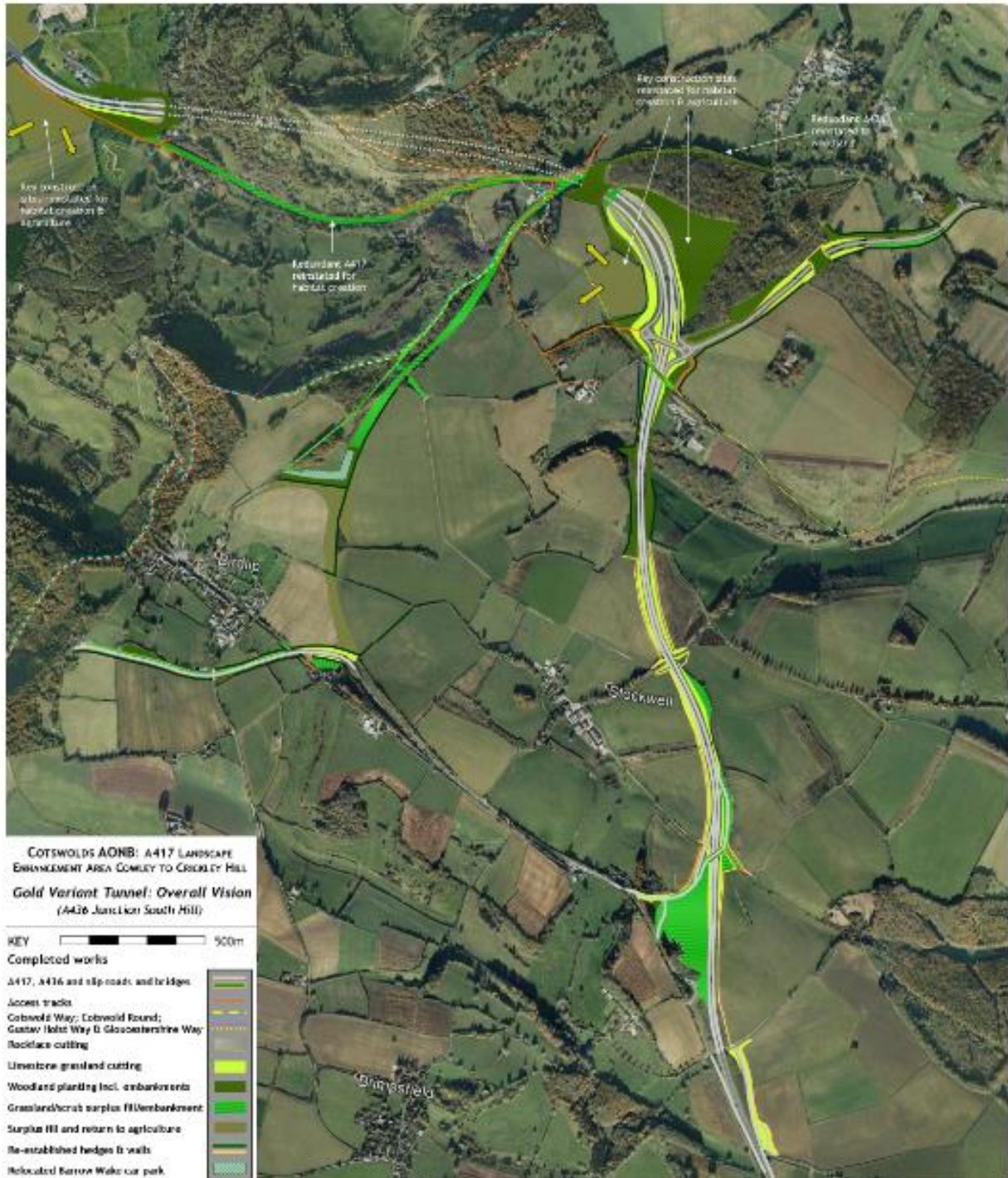
Any application for the A417 Missing Link scheme as currently proposed will need to be determined in accordance with the requirements of s.104 and s.105 of the 2008 Planning Act, which in particular require consideration of relevant national policy frameworks and legislative duties and requirements. In this context, key considerations of the A417 Missing Link are that:

- it is a 'Nationally Significant Infrastructure Project' that is...
- ...wholly contained within the Cotswolds AONB, a nationally protected landscape...
- ...and part of a national Road Investment Strategy for delivery by...
- ...the national strategic highways company responsible for the whole of England, which by law must
  - *'in exercising its functions, have regard to the effect of the exercise of those functions on— (a) the environment..'* (Infrastructure Act 2015) and
  - *'have regard to conserving and enhancing the natural beauty of the AONB (CROW Act 2000)...*
- ...noting that paragraphs 5.150 to 5.153 of the National Policy Statement for National Networks in respect of nationally protected landscapes, establish a presumption of refusal of new infrastructure in AONBs unless exceptional circumstances are demonstrated based on key tests including consideration of
  - *...any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated*
  - *the cost of and scope for .... meeting the need for the scheme in some other way, and*
  - *the need for the development, including in terms of any national considerations.....*
- ...when these tests are judged within the context of the Infrastructure Act 2015, under which...
  - ...s.3(5) the Secretary of State is obliged in setting a RIS to *'have regard in particular to the its effects on the environment'* and, in the context of this duty...
  - ...s.3(1)(b) may at any time vary a Road Investment Strategy which under s.3(3) must *specify objectives to be achieved by the strategic highways company* (including environmental objectives) AND *the financial resources to be provided by the Secretary of State for the purpose of achieving those objectives*

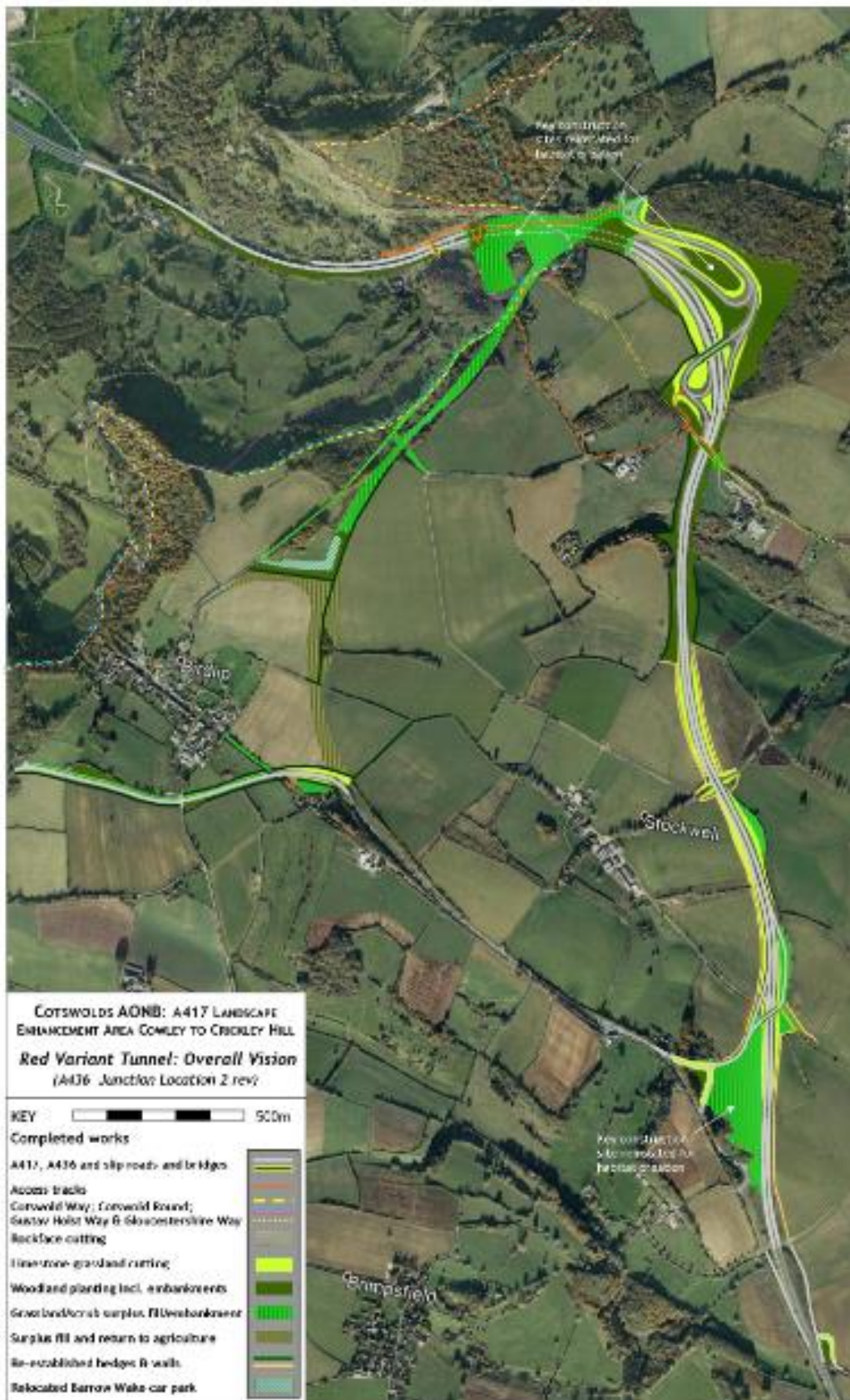


# ANNEX 3. ALTERNATIVE VISIONS RECOMMENDED BY THE COTSWOLDS CONSERVATION BOARD FOR CONSIDERATION IN THE A417 MISSING LINK ENVIRONMENTAL IMPACT ASSESSMENT

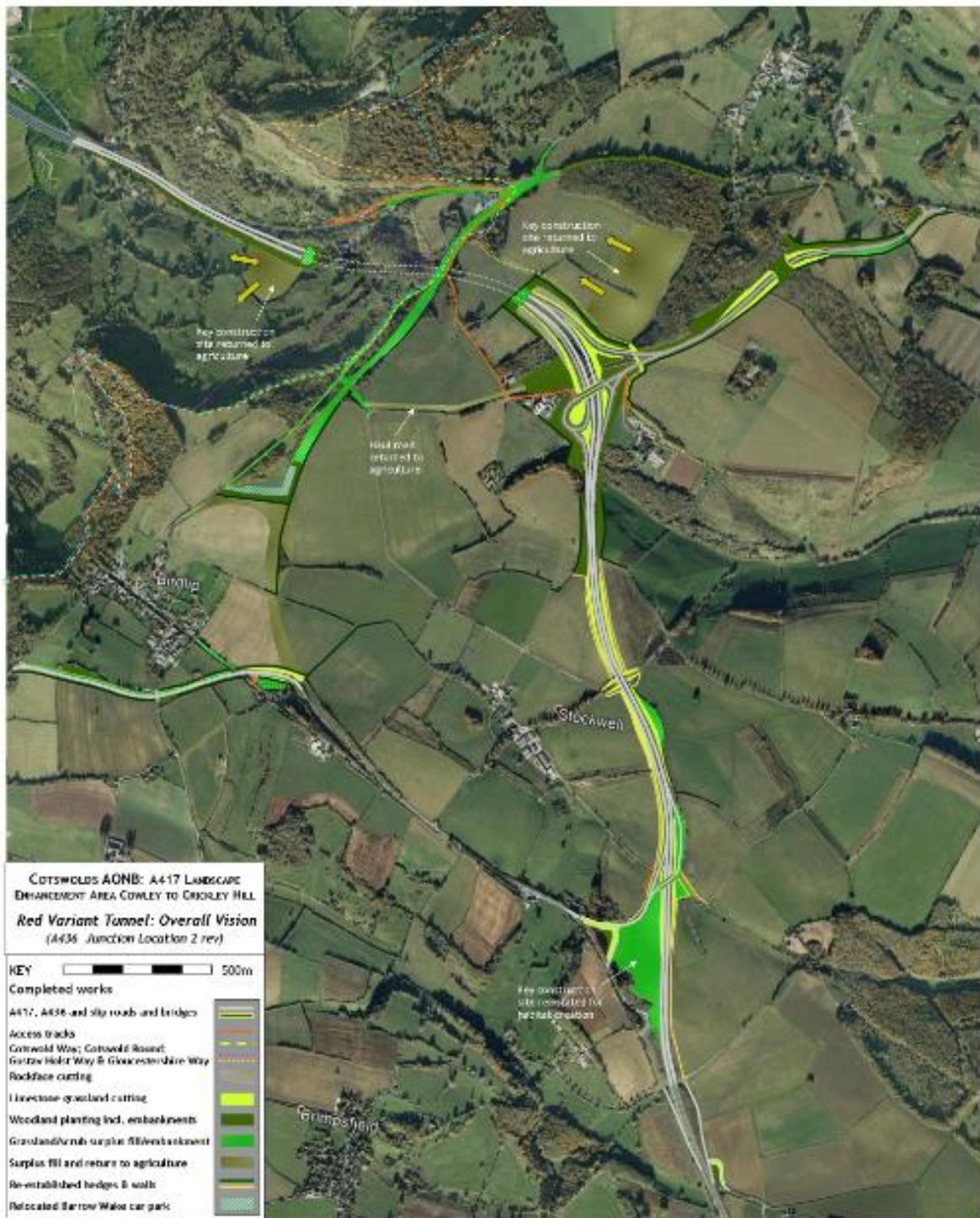
## 'Gold' option



# 'Red' option



# 'Blue' Option



## ANNEX 4. A417 NATIONAL CONTEXT OF TUNNEL ALTERNATIVES

<b>UK tunnel locations and traffic throughputs per tunnel length</b>					
<small>(sources: <a href="http://www.rtoa.org.uk/Directory.html">http://www.rtoa.org.uk/Directory.html</a>; HE A417 and A303 consultation documents; HE Cross Pennine)</small>					
<i>Tunnels (Road No. and Location) - ranked by traffic throughput per metre</i>	<i>Context</i>	<i>Daily traffic</i>	<i>Annual traffic</i>	<i>Length (m)</i>	<i>Annual traffic per tunnel m</i>
<b>M25 Bell Common</b>	<b>rural COMMON</b>		<b>48,830,000</b>	<b>515</b>	<b>94,816</b>
M4 Brynglas	suburb		29,000,000	360	80,556
M25 Holmesdale	suburb		46,830,000	684	68,465
A40 Gibraltar Hill	rural		11,000,000	188	58,511
A505 Baldock	rural	27,000	9,855,000	224	43,996
<b>A20 Roundhill</b>	<b>rural AONB pt SAC</b>		<b>14,600,000</b>	<b>370</b>	<b>39,459</b>
<b>A417 (CCB Red option not agreed)</b>	<b>rural AONB</b>	<b>46,500</b>	<b>16,972,500</b>	<b>500</b>	<b>33,945</b>
<b>A27 Southwick Hill</b>	<b>rural NAT PARK NT</b>		<b>17,110,000</b>	<b>510</b>	<b>33,549</b>
A739 Clyde	estuary		22,000,000	756	29,101
<b>A417 (CCB Blue option not agreed)</b>	<b>rural AONB</b>	<b>46,500</b>	<b>16,972,500</b>	<b>750</b>	<b>22,630</b>
A289 Medway	estuary		15,300,000	725	21,103
Dartford	estuary		25,350,000	1,430	17,727
<b>A417 Option 3 (HE shortest tunnel rejected)</b>	<b>rural AONB</b>	<b>46,500</b>	<b>14,235,000</b>	<b>1,000</b>	<b>14,235</b>
A102 Blackwall	estuary		18,250,000	1,350	13,519
<b>A417 (CCB Gold option not agreed)</b>	<b>rural AONB</b>	<b>46,500</b>	<b>16,972,500</b>	<b>1,600</b>	<b>10,608</b>
<b>A3 Hindhead Common</b>	<b>rural AONB SPA NT</b>	<b>35,000</b>	<b>12,775,000</b>	<b>1,830</b>	<b>6,981</b>
<b>(A59) Kingsway Wallasey</b>	<b>estuary (WHS)</b>		<b>15,640,000</b>	<b>2,260</b>	<b>6,920</b>
<b>A55 Conwy</b>	<b>estuary WHS</b>		<b>5,500,000</b>	<b>1,089</b>	<b>5,051</b>
<b>(A41) Queensway Birkenhead</b>	<b>estuary (WHS)</b>		<b>11,000,000</b>	<b>3,260</b>	<b>3,374</b>
A303 Stonehenge	rural WHS	30,300	11,059,500	3,530	3,133
Cross Pennine	rural NAT PARK		48,830,000	16,000	3,052
<i>NOTE: Traffic throughput for Cross Pennine scheme unknown. For illustrative purposes the following is used to maximise traffic per tunnel metre: shortest option (10 miles) and maximum throughput above (Bell Common)</i>					