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12 May 2022

Dear Sir/Madam,

Planning Act 2008

Application for the Proposed M25 Junction 10/A3 Wisley Interchange Development Consent Order

1. I am directed by the Secretary of State for Transport ('the Secretary of State') to say that consideration has been given to:

- The report dated 12 October 2020 of the Examining Authority ('ExA') Gavin Jones BSc MA MA MRTPI (Panel Lead) and Grahame Gould BA MPhil MRTPI, who conducted an Examination into the application made by Highways England (now known as National Highways; referred to here as "the Applicant") for the M25 Junction 10/A3 Wisley Interchange Development Consent Order ('the DCO') under section 37 of the Planning Act 2008 as amended ('the 2008 Act');
- The consultation responses received to the further consultations undertaken by the Secretary of State following the close of the Examination in respect of the application; and
- Other late representations received by the Secretary of State following the close of the Examination.

2. The application was accepted for Examination on 17 July 2019. The Examination began on 12 November 2019 and was completed on 12 July 2020, following a two-month extension necessitated by the beginning of the COVID-19 pandemic. The Examination was conducted on the basis of written and oral submissions submitted to the ExA and by a series of hearings. The ExA also undertook an accompanied site inspection and three unaccompanied site inspections.

3. The DCO as applied for would grant development consent for the alteration and upgrading of the existing roundabout junction between the M25 (junction 10) and A3 (Wisley Interchange) – referred to below as 'Junction 10' – the elements of which (collectively referred to as 'the Development') are:

- alteration and upgrading of the existing M25 Junction 10 roundabout, including: elongation and widening of the circulatory carriageway to increase capacity for right-

turning traffic; realignment, lengthening and widening of the junction entry and exit slip roads; and demolition of redundant bridge structures;

- provision of four new dedicated free-flow slip lanes at Junction 10, to enable all left-turning traffic to pass through the junction unimpeded by traffic signals;
- conversion of the existing hard shoulders on the M25 through Junction 10 to provide an additional running lane for traffic in both directions, including emergency refuge areas and associated modifications to the M25's gantries, signage and road markings;
- widening of the A3 to dual four lanes between the Ockham Park junction and the Painshill junction, except where the A3 crosses over Junction 10, where the overbridge will remain as two lanes in each direction;
- new sign gantries on the A3 to provide variable speed limits and lane control between the Ockham Park and Painshill junctions;
- widening of the A245 Byfleet Road to dual three lanes between the Painshill junction and the Seven Hills Road junction to the west;
- provision of two new dedicated slip lanes at the Painshill junction, to enable traffic leaving the northbound A3 to join the westbound A245 and traffic leaving the eastbound A245 to join the northbound A3 to avoid having to use the roundabout;
- improvement of the Ockham Park junction, including installation of traffic signals at the entries to the roundabout and for new crossing facilities for pedestrians and cyclists;
- modification of A3 side road junctions, including: improvement of the Old Lane junction; closure of the Wisley Lane junction and construction of a new road bridging over the A3 to connect Wisley Lane directly with the A3 at Ockham Park junction; and closure of the Elm Lane junction and provision of an alternative access to Elm Corner via Old Lane and an improved section of byway open to all traffic;
- closure of private accesses from the A3 carriageways and the provision of substitute local access arrangements, including: a substitute access for properties between Redhill Road and Seven Hills Road (South) via a new highway running alongside the A3 northbound carriageway;
- a substitute access for properties on the edge of Painshill park via the A3 southbound on-slip; and a substitute access for properties at Wisley Common from Old Lane and crossing the A3 via the replacement Cockcrow Overbridge;
- provision of new and improved facilities for pedestrians, cyclists and horse riders, including: a new 6.3 kilometre (km) long route along the A3 corridor between the Ockham Park and Painshill junctions; new and replacement bridges for the benefit of non-motorised users to cross both the M25 and the A3; and new and upgraded public rights of way in the area around M25 Junction 10;
- provision of 39.8 hectares (ha) of replacement common land ('CL') and open space ('OS') in exchange for that needing to be acquired for the Development; and
- extensive areas of habitat creation and enhancement and other environmental mitigation work including: measures to compensate for the impacts of the Development on the Thames Basin Heaths Special Protection Area ('SPA') and on Bolder Mere; the provision of a new wildlife bridge crossing over the A3 as part of a replacement Cockcrow Overbridge; and the reinstatement of landscape and habitats on land used temporarily for Development construction.

4. The location of the Development lies within the administrative county of Surrey County Council ('SCC') and is also within the areas of Elmbridge Borough Council ('EBC') and Guildford Borough Council ('GBC').

5. The powers applied for are detailed at ER 1.1.2. The Secretary of State is content that the proposals qualify as a Nationally Significant Infrastructure Project ('NSIP') under sections 14(1)(h) and 22(1)(b) and (3) of the 2008 Act.

6. Published alongside this letter on the Planning Inspectorate's website is a copy of the ExA's Report of Findings and Conclusions and Recommendation to the Secretary of State ('the Report'). All 'ER' references are to the specified paragraph in the Report. Paragraph numbers in the Report are quoted in the form 'ER x.xx.xx' as appropriate. References to 'requirements' are to those in Schedule 2 of the DCO as the ExA recommended at Appendix D to the Report.

Summary of ExA's Recommendations

7. The principal issues considered during the Examination on which the ExA reached conclusions on the case for development consent are set out in the Report under the following broad headings:

- Legal and Policy Context (Chapter 3);
- The Planning Issues (Chapter 4);
- Findings and Conclusions in relation to the Planning Issues (Chapter 5);
- Findings and conclusions in Relation to the Habitats Regulations Assessment ('HRA') (Chapter 6)
- Conclusion on the case for Development Consent (Chapter 7)
- Compulsory Acquisition and Related Matters (Chapter 8); and
- Draft Development Consent Order and Related Matters (Chapter 9).

8. For the reasons set out in the Report, the ExA recommended that the DCO be made in the form set out in Appendix D to the Report.

Summary of Secretary of State's Decision

9. **The Secretary of State has decided under section 114 of the 2008 Act to make with modifications an Order granting development consent for the proposals in this application.** The letter is the statement of reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and regulation 31(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ('the 2017 Regulations').

Secretary of State's Consideration

10. The Secretary of State's consideration of the Report, responses to his further consultations of 4 November 2020, 16 November 2020, 27 November 2020, 20 January 2021, 15 February 2021, 26 July 2021, 16 August 2021, 22 December 2021 and 4 February 2022, representations received after the close of Examination and all other material considerations are set out in the following paragraphs. Where consultation responses are not otherwise mentioned in this letter, it is the Secretary of State's view that these

representations do not raise any new issues that were not considered by the ExA and also do not give rise to an alternative conclusion or decision on the DCO.

11. Where not otherwise stated in this letter, the Secretary of State can be taken to agree with the findings, conclusions and recommendations as set out in the Report and the reasons given for the Secretary of State's decision are those given by the ExA in support of the conclusions and recommendations.

12. The National Planning Policy Statement for National Networks ('NPSNN') is the relevant national policy statement to be used by the Secretary of State for making decisions on development consent applications for nationally significant national networks infrastructure projects in England. In a Ministerial Statement issued on 22 July 2021, the Secretary of State for Transport advised that a review of the NPSNN would begin later in 2021 and would be completed no later than Spring 2023. While the review is undertaken, the NPSNN remains relevant government policy and has effect for the purposes of the Planning Act 2008. The NPSNN will, therefore, continue to provide a proper basis on which the Planning Inspectorate can examine, and the Secretary of State can make decisions on, applications for development consent.

13. The Secretary of State has also had regard to: the Local Impact Report submitted by EBC, GBC and SCC (ER 4.3); the Development Plan (ER 4.5); environmental information as defined in regulation 3(1) of the 2017 Regulations; and to all other matters which are considered to be important and relevant to the Secretary of State's decision as required by section 104 of the 2008 Act. In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.

14. The Secretary of State notes that the Design Manual for Roads and Bridges ('DMRB'), whilst not a statutory policy, was relied upon by the Applicant in the preparation of assessments in the Environmental Statement ('ES'). The Secretary of State notes the DMRB was updated following the preparation of those assessments contained in the ES. The Secretary of State is satisfied that this does not materially impact the Applicant's assessment on this matter or the ExA's conclusions on this matter.

15. The Secretary of State notes that the issue of the impacts of the Covid-19 pandemic was raised by the ExA, and in a response to the Secretary of State's consultation of 4 February 2022, but that the ExA was unable to examine it in any detail because it was too early to ascertain with any degree of certainty what the longer term effects (if any) might be on traffic, environmental or socio-economic matters (ER 4.9). The Secretary of State notes that restrictions in England have only recently been relaxed and it is too early to fully understand the impacts of Covid-19 (if any) on future travel demand. The Secretary of State is satisfied, based on the information available, that there is no evidence of change to the long-term need and benefits of the scheme or that pre-pandemic predictions around travel have significantly changed. In all the circumstances, the Secretary of State does not consider that any update from the Applicant as to the potential impacts of Covid-19 (if any) would be meaningful or required in order to decide this application. Taking this into consideration, the Secretary of State is content that the approach to the assessments undertaken by the Applicant in this regard are reasonable and contain sufficient information to make a decision about the Development.

Need for the Development

16. The Secretary of State notes the ExA's consideration of the Applicant's case for the need for the Development at ER 5.2.14-5.2.25. The Applicant has indicated that this is one of the busiest sections of the Strategic Road Network ('SRN') (ER 5.2.14), with Junction 10's journey time reliability being "particularly poor" (ER 5.2.17) and a high accident rate (ER 5.2.23), and that these issues will increase over the next 20 years with predicted housing and economic growth (ER 5.2.24). The objectives of the Development are to improve journey time reliability, improve safety, improve crossing facilities for non-motorised users, minimise the impacts on the surrounding local road network ('LRN'), and support projected population and economic growth in the area (ER 5.2.27). The Secretary of State notes that there is strong policy support for proposals which seek to deliver improvements to the SRN (ER 7.3.1). The ExA considered that the strategic benefits of the Development in terms of addressing existing and predicted congestion around Junction 10 and the stretch of the A3 from the Ockham Park Junction ('OPJ') to Painshill roundabout, improving road safety and facilitating planned economic growth in the area, would be significant. The Secretary of State concurs with the ExA's broad agreement with the position that the Development is in conformity with the Development Plans of EBC, GBC and SCC (ER 7.2.3) and the ExA's conclusion that, subject to caveats, the Development is in general conformity with the NPSNN (ER 7.2.2). In particular, paragraph 2.2 of the NPSNN identifies a critical need to improve national networks to address road congestion to provide safe, expeditious and resilient networks that better support social and economic activity (ER 5.2.3). The Secretary of State agrees with the ExA's conclusion that the Development would reduce congestion and would give the potential for fewer accidents to arise (ER 5.2.224), in line with paragraph 2.2 of the NPSNN. The Secretary of State notes the ExA's conclusion that the need for the Development is established through the NPSNN (ER 7.2.2). The Secretary of State considers that the need for the Development has been established in light of the NPSNN.

Traffic and Transportation

17. The Secretary of State notes that a number of transportation concerns were raised during the course of the Examination and that the ExA's consideration of these matters is set out at ER 5.2.

18. As detailed above at paragraph 15, the Secretary of State notes the key objectives that the Applicant has identified for the Development (ER 5.2.27), the ExA's assessment (ER 5.2.68-5.2.79) and agrees with the ExA that the Development would address congestion and improvement performance and resilience within and adjoining Junction 10 (ER 5.2.79). The Secretary of State notes and accepts the policy considerations outlined by the ExA at ER 5.2.2-5.2.11.

19. The Secretary of State notes the ExA's explanation of alternatives to the scheme that were considered by the ExA (ER 5.2.28-5.2.32) and the description of the process by which alternatives were assessed and through which 'option 14' emerged as the preferred scheme and was taken forward in the submitted application for the Development. The Secretary of State is satisfied that alternatives have been considered in line with paragraphs 4.26 and 4.27 of the NPSNN, including through the ExA's consideration of alternatives in its report and the Secretary of State's consideration of alternatives that meet the need for the scheme (as set out below) in detail and in his HRA. The Secretary of State also agrees

with the ExA's conclusion that the alternative options put forward by some members of the local community, such as lane management and signage, would be insufficient to meet the scheme objectives (ER 5.2.223). The Secretary of State is satisfied that the need for the improvement of the national road network is established through the NPSNN.

Access to RHS Wisley including the RHS Alternative

20. The Secretary of State notes that as a result of the Development, visitors to and members of staff of Royal Horticultural Society ('RHS') Wisley would no longer be able to enter or exit the southern end of Wisley Lane directly from the A3 northbound. Instead, visitors arriving or leaving RHS Wisley via the A3 and OPJ would use the Wisley Lane diversion (ER 5.2.81).

21. The Secretary of State notes that this could result in additional journey lengths and travel times for visitors to RHS Wisley. Consequently, the RHS's contentions included that this would: be a deterrent to visitors (ER 5.2.96) and compromise predicted visitor growth (ER 5.2.102), given their plans for expansion (ER 2.3.5); and undermine or threaten RHS Wisley's long term operational viability (ER 5.2.96, 5.2.102). RHS Wisley also set out that based on attitudinal surveys it had undertaken, by the time the Development becomes potentially fully operational in 2024 (and in subsequent years), there will be a reduction in the estimated number of visitors to its garden as a result of the Development (ER 5.2.88), although the Secretary of State agrees with the ExA's consideration that this reduction is likely to be an overestimate, with it not reflecting the significant differences in visitor numbers arriving at RHS Wisley via the four different routes (ER 5.2.91).

22. The RHS promoted the 'RHS Alternative' (ER 5.2.88), under which a left turn from Wisley Lane directly onto the A3 would be available and south facing slips ('SFS') would be installed at the OPJ (ER 5.2.92). The Secretary of State notes that a number of representations have been made to him in support of the RHS Alternative.

23. The Secretary of State notes that there was disagreement between the Applicant and RHS as to whether the provision of a left turn from Wisley Lane and SFS could be safely accommodated. The Secretary of State notes the ExA's consideration of the RHS Alternative at ER 5.2.88-5.2.148 and agrees with its conclusion that a left turn from Wisley Lane onto the A3 northbound could not be safely provided due to the potential for the poor accident record for the A3 northbound to be perpetuated and exacerbated. The Secretary of State has no reason to disagree with this conclusion and therefore agrees with the ExA that this would be contrary to one of the objectives of the Development to reduce the number of accidents on this part of the SRN (ER 5.2.149).

24. The Secretary of State notes that the RHS Alternative does not form part of the Development and that the provision of SFS at the OPJ would involve land beyond that covered by the red line for the Development (ER 5.2.93) and is therefore outside the scope of this application.

25. The Secretary of State notes the ExA went on to consider the RHS Alternative on the basis of whether the absence of SFS at the OPJ and a left turn from Wisley Lane onto the A3 would materially affect travel distances and journey times for visitors to RHS Wisley to the point of making the Development unacceptable (ER 5.2.94). The Secretary of State agrees that whilst the absence of a left turn from Wisley Lane onto the A3 would require

some increase in distance travelled for visitors to RHS Wisley, the ensuing road safety benefits resulting from the Development would also accrue for RHS Wisley visitors (ER 5.2.149).

26. The Secretary of State also notes the ExA's view that the modelling of the SFS shows that the scale of use and resultant reduction in traffic routing via the LRN would not be of such significance to warrant their provision as part of the RHS Alternative, such that whether they can be safely accommodated is somewhat academic (ER 5.2.150). The Secretary of State agrees with this conclusion.

27. Overall, the Secretary of State agrees with the ExA that the disbenefit of the Development on RHS Wisley visitors would be outweighed by the Development's objective to reduce accidents in the area (ER 5.2.149). The Secretary of State further agrees with the ExA that although there would be some negative effects for those getting to and from RHS Wisley, like the ExA he is not persuaded that the absence of SFS at the OPJ and a left turn from Wisley Lane onto the A3 would create conditions for visitors to RHS Wisley of such significance so as to render the Development unacceptable in traffic and transportation terms (ER 5.2.151).

Operational effects on the Local Road Network ('LRN')

28. The Secretary of State notes that a number of issues regarding the impact of the Development of the LRN were raised and notes the consideration of this matter at ER 5.2.152-5.2.209.

29. The Secretary of State notes that a number of parties, including in late representations, voiced concerns about traffic routing through Ripley on the B2215 because of the absence of SFS at the OPJ (ER 5.2.152). The Secretary of State notes that the RHS has also made criticisms of the Applicant's traffic modelling of the Development's implications for the operation of the LRN (ER 5.2.154). The Secretary of State notes the Statement of Common Ground ('SoCG') signed between SCC and the Applicant agreeing the traffic modelling and Transport Assessment matters set out in ER 5.2.155. The Secretary of State agrees with the ExA that given that traffic modelling matters have been agreed by SCC in its capacity as the local highway authority responsible for the day-to-day management and operation of the LRN, little weight should be attached to the RHS's concerns about the quality of modelling for the Development's effects upon the operation of the LRN in and around Ripley (ER 5.2.156). The Secretary of State agrees with the ExA's view that the caveats SCC expressed in agreeing its position with the Applicant do not go to the heart of the quality of the Applicant's modelling (ER 5.2.156).

30. The Secretary of State notes the late representation from Richard Harvey submitted on 19 July 2021 and responses to the consultation letter of 4 February 2022 regarding an anticipated application for the redevelopment of Wisley Airfield and its impact on the surrounding road network. This follows an earlier similar application for which an appeal was dismissed (ER 2.3.4). The Secretary of State notes that the airfield development has been accounted for in the Applicant's modelling as it is subject to an allocation in the Guildford Local Plan 2019 for 2,000 dwellings, employment space and other associated development (ER 5.2.114). The Secretary of State is therefore content that the impact of the airfield development on the LRN has been considered by the Applicant in its traffic

modelling (ER 5.2.114), and has been considered by the ExA (ER 5.2.120-5.2.121, 5.2.157-5.2.158, 5.2.191-5.2.192) in reaching its conclusions.

31. The Secretary of State notes the concerns regarding the Development's likely increasing of traffic through Ripley, notes SCC's concern that this could worsen the local environment for pedestrians and cyclists (ER 5.2.159), and agrees with the ExA that mitigation is required against any severance effect within Ripley High Street (ER 5.2.166). As a result, the ExA has recommended a requirement to be added to the DCO to ensure traffic management measures along the B2215 through Ripley have been approved by the Secretary of State before the Wisley Lane diversion is open (ER 5.2.167). The Secretary of State agrees to the inclusion of this requirement with the amendment set out by the ExA (ER 5.2.168).

32. The Secretary of State agrees that proposed changes 6 and 8 should be included in the Development for the reasons given in ER 5.2.176. The Secretary of State also agrees that the stopping up of Elm Lane's junction with the A3 would be justified by strong safety reasons (ER 5.2.177), that the western end of Elm Lane should be retained as a bridleway to assist with public access to nearby recreational space (ER 5.2.179), and that the proposed turning area next to Orchard Cottage would be appropriately located given the installation of a nearby vehicular barrier (ER 5.2.180).

33. The Secretary of State agrees with the ExA's conclusion that options avoiding the need for Wisley Lane to cross the A3 via an overbridge either have no evidence for their feasibility or would have an unacceptable effect on RHS Wisley as a Registered Park and Garden ('RPG') (ER 5.2.184) due to the adverse heritage and landscape effects of taking land from the RPG and associated tree loss leaving the widened A3 visible to visitors to RHS Wisley (ER 5.2.183).

34. The Secretary of State notes that whilst SCC expressed a number of concerns regarding the LRN, the majority of these have been addressed through the DCO or a legally binding highways side agreement (ER 5.2.185-5.2.186) and notes the ExA's conclusion that the outstanding areas of disagreement between SCC and the Applicant on this matter are now quite limited (ER 5.2.193). The side agreement was not fully executed at the end of the Examination (ER 5.2.187). Following the ExA's recommendation (ER 5.2.189), the Secretary of State asked for an update on this agreement and it was confirmed on 19 November 2020 by the Applicant and SCC that this agreement was now finalised.

Private means of access

35. The Secretary of State notes the concerns and discussions around the three private means of access ('PMA') between Painshill roundabout and Junction 10 for five properties/premises that provide direct access to the A3 southbound (ER 5.2.194-5.2.202). The Secretary of State agrees with the ExA that for reasons of securing safe operation of the SRN, it would be necessary for the three existing direct means of access to be stopped up and that the alternative proposed PMA ('the Heyswood/Court Close PMA') to be provided by the Development would have the capacity to accommodate the volume of traffic that would use it (ER 5.2.202). The Secretary of State also agrees that this would be in accordance with the provisions of the NPSNN (ER 5.2.202).

36. The Secretary of State agrees with the ExA's view that it is necessary to stop up the access to the former San Domenico hotel site for safety reasons (ER 5.2.206), noting the ExA's consideration in reaching this conclusion of the economic disbenefits (ER 5.2.207-5.2.208). The Secretary of State agrees with the ExA that there would be no conflict with the NPSNN arising from the loss of this direct access (ER 5.2.208). The Secretary of State notes that the ExA draws his attention to a then-ongoing planning appeal for a new petrol filling station with associated shop (ER 5.2.209), but considers that this issue has fallen away as the appeal was dismissed on 18 August 2020¹.

Non-Motorised Users

37. The Secretary of State notes the ExA's consideration of issues relating to non-motorised users ('NMUs'), especially equestrians, including: the regard required to the needs of carriage driving users (ER 5.2.212-5.2.13); the route of the proposed bridleway (ER 5.2.214); access for NMUs including equestrians to the CL and OS (ER 5.2.215-5.2.216); and the removal of the Pegasus crossings (ER 5.2.217-5.2.218). The Secretary of State agrees with the ExA's conclusion that the proposals for NMUs would not discriminate against equestrians, as submitted by the British Horse Society (ER 5.2.219). The Secretary of State further notes Bob Milton's representation of 13 May 2021, which raised an issue as to confusion around the situation of land over which equestrians have rights but which is only accessible via footpaths or areas of common land over which only pedestrians have access. The Secretary of State notes that this representation is referring to a situation which already exists around Junction 10 and considers that the introduction of a number of new bridleways through the Development would improve access in the area for equestrians. Mr Milton, in his representation of 10 February 2021, suggested that some of the replacement land ('RL') would not be accessible to equestrians; however, the Secretary of State notes that all proposed RL would be next to or crossed by a bridleway or road. Mr Milton also considered the NMU routes around the OPJ to be dangerous; however, the Secretary of State has not been provided with any evidence to support this claim, does not agree with it, and notes that the Development would introduce signal-controlled crossing points at this junction (ER 5.2.51) so would introduce some safety improvements in any event.

Conclusion on traffic and transportation

38. The Secretary of State agrees with the ExA that although there would be negative effects during the construction phase of the Development, these negative effects would be unavoidable given the nature of the Development and would last for so long as the construction works were being undertaken. The Secretary of State agrees with the ExA's conclusion that the overall transport effects of the Development during its operational phase would be positive for road users, with there being improved journey time reliability in and around Junction 10 for users of the M25 and A3 through the reduction in congestion and the potential for fewer accidents to arise (ER 5.2.224).

39. The Secretary of State also agrees with the ExA that the effects of the Development would be positive for NMUs with the available routes for pedestrians, cyclists and horse riders being safer and of a quality that would be conducive for their use. The Secretary of

¹ This decision is available at the Planning Inspectorate's website:
<https://acp.planninginspectorate.gov.uk/ViewCase.aspx?caseid=3235260>

State agrees with the ExA's conclusion that the absence of a left turn from Wisley Lane onto the A3 and/or the provision of SFS at the OPJ would not make the Proposed Development unacceptable in traffic and transportation terms. The Secretary of State accepts the ExA's conclusion that there would be compliance with the NPSNN because the Development would bring forward improvements and enhancements to the SRN that would provide additional capacity for existing and future volumes of traffic and improved safety (ER 5.2.224).

Air quality and human health

40. Paragraphs 5.3 to 5.15 of the NPSNN sets out specific policy advice on air quality matters (ER 5.3.3). Paragraph 5.10 states that the Secretary of State must consider air quality impacts over the wider area likely to be affected as well as the near vicinity of the Development. It also states that he must also, in all cases, take account of the relevant statutory air quality thresholds set out in domestic and European legislation (ER 5.3.4). The NPSNN recognises that for national networks infrastructure projects some impact on amenity on local communities is likely to be unavoidable, and as such, the Secretary of State must satisfy himself that all reasonable steps have been taken to minimise any detrimental impact on amenity from a range of emissions (ER 5.3.5). The Secretary of State accepts the ExA's assessment of policy considerations that apply to this decision (ER 5.3.2-5.3.6).

41. The Secretary of State notes that a number of parties raised concerns in relation to air quality and notes the consideration of this matter at ER 5.3. The Secretary of State notes the ExA's assessment of effects on air quality during operation and construction including the ExA's analysis of the relevant data (ER 5.3.27-5.3.39).

42. The ExA set out that the Air Quality Assessment undertaken by the Applicant indicated that during operation there would be exceedances of the NO₂ annual mean objective in the Air Quality Strategy for England, Scotland, Wales and Northern Ireland 2007 at three receptor locations under the Do-Minimum ('DM') or Do-Something ('DS') scenarios and at one additional receptor in the DS scenario. However, in all four cases the exceedances were classified as imperceptible or small (ER 5.3.40). The Secretary of State notes that EBC raised the possibility of a new Air Quality Management Area ('AQMA') being declared by it within the vicinity of the Painshill roundabout (ER 5.3.28) but that at the close of Examination there was no designated AQMA affecting Painshill roundabout and that the ExA was content that the Development would not have an adverse effect on the air quality within the vicinity of the Painshill roundabout (ER 5.3.30). Following the ExA's recommendation at ER 5.3.30, the Secretary of State consulted EBC on 4 November 2020 to establish whether there have been any changes to the air quality within this area. EBC's letter dated 18 November 2020 set out preliminary data indicating that the roundabout could be declared an AQMA in the future but that corrected data would not be available until around April 2021. On 26 July 2021 the Secretary of State consulted EBC further, who provided their 2020 Air Quality Annual Status report. This report did not state that an AQMA was likely to be designated at the Painshill roundabout, and the Applicant (in its response of 6 September to the Secretary of State's 16 August consultation letter) considered that the information EBC provided would not be expected to change the conclusions of the Air Quality Assessment. The Secretary of State therefore considers that this does not change the ExA's conclusion on this matter and agrees that on the evidence available, the

Development would not have an adverse effect on the air quality within the vicinity of the Painshill roundabout (ER 5.3.30).

43. The Secretary of State notes that concern was raised about air quality effects in Ripley, Ockham and Elm Corner (ER 5.3.31-5.3.34) but that the ExA concluded that there was no evidence to indicate that the traffic flows associated with the Development would give rise to a significant adverse effect on air quality in Ripley (ER 5.3.35), and that changes in air quality in Ockham and Elm Corner were predicted to be imperceptible (ER 5.3.34). Overall, the Secretary of State agrees with the ExA that for the operational phase of the Development the Applicant's Air Quality Assessment ('AQA') has taken account of the cumulative effects of traffic growth in the area including that expected from known committed new development in the area (ER 5.3.36).

44. The Secretary of State notes that the Applicant has recognised in the ES that during the construction period there would be potential for dust to be deposited temporarily at properties adjoining the works site and/or construction compounds (ER 5.3.37). The Secretary of State notes that the Applicant has proposed that the control of dust emissions would be a matter for inclusion within a management plan that would also address odour and smoke (ER 5.3.37). The Secretary of State agrees with the ExA that with an approved Construction Environment Management Plan ('CEMP') in place there would be appropriate mitigation available to ensure that the occupiers of properties adjoining the works site and construction compounds were not adversely affected by construction emissions (ER 5.3.39). The Secretary of State is content that the CEMP is secured in requirement 3 of the DCO and notes that the wording of this has been agreed by EBC and GBC (ER 5.3.39).

45. The Secretary of State notes comments in response to his consultation letter of 4 February 2022 which questioned the effects of tree removal on air quality. Particulate matter and dust impacts were assessed by the Applicant and considered by the ExA (ER 5.3). The Secretary of State notes that the Applicant has identified adverse impacts from construction dust, but that effect would be mitigated to an acceptable level and that such mitigation is secured in the DCO through the operation of the CEMP (ER 7.2.8). The particulate matter impacts of the Development's operation are considered by the Applicant in ES Chapter 5 and Appendix 5.1 and by the ExA in ER 5.3. The Secretary of State notes the ExA's conclusion that, regarding air quality, during operation there would be no significant adverse effect for human health (ER 7.2.9). The Secretary of State has no reason to disagree with this.

46. The Secretary of State is satisfied with the conclusions of the Applicant's air quality assessment. The Secretary of State agrees with the ExA that the Development would not give rise to significant adverse air quality effects for human health, with the reduction in congestion in and around Junction 10 having a beneficial effect for air quality (ER 5.3.41). The Secretary of State agrees with the ExA that in terms of the effects of air quality on human health, the Development would not give rise to conflict with paragraphs 5.10 to 5.15 of the NPSNN (R 5.3.41). The Secretary of State agrees with the ExA that in respect of air quality effects during construction, the Applicant has demonstrated that there would be no significant effects and that the air quality for humans would be capable of being managed to an acceptable level during the construction phase (ER 5.3.42).

Noise and Vibration

47. The NPSNN addresses noise and vibration considerations at paragraphs 5.186 and 5.200. Paragraph 5.186 makes clear that in addition to meeting the statutory requirements for noise, regard must be paid to the Government's Noise Policy Statement for England (ER 5.4.2). The Secretary of State accepts the ExA's assessment of policy considerations that apply to decision making around these matters (ER 5.4.2-5.4.4).

48. The Secretary of State notes concerns raised by the Elm Corner Residents Group ('ECRG') regarding the potential noise disturbance caused by the use of the proposed former Wisley airfield construction compounds and that traffic using the Wisley Lane diversion overbridge would cause noise disturbance (ER 5.4.32). The Secretary of State notes ECRG's response of 18 November 2020 to the Secretary of State's letter of 4 November 2020 which reiterates their concerns about increased noise during the construction phase and finished works. The Secretary of State notes that Ockham Parish Council ('OPC') has also raised concerns about the generation of noise during the operation and construction of the Development within the wider Ockham area, including the operation of the proposed main worksite at Nutberry Farm (ER 5.4.32). The Secretary of State notes that in their letter of 17 November 2020 in response to the Secretary of State's letter of 4 November 2020, OPC reiterates concerns regarding increased noise as a result of the works. The Secretary of State also notes that the residents of Painshill raised concerns that there would be increased noise disturbance through the removal of trees along the eastern side of the A3 and that the additional noise would not be capable of being mitigated through the installation of double glazing as the properties at Painshill are listed (ER 5.4.33).

49. The Secretary of State notes the ExA's assessment of operational and construction noise effects including the ExA's analysis of the relevant data (ER 5.4.34-5.4.55). The Secretary notes that the occupiers of the dwellings at Elm Corner would experience minor decreases in the level of road traffic noise during the Development's operational phase (ER 5.4.38). The ExA considered that the use of the Wisley Lane overbridge would not be a source of intrusive road traffic noise and noted that the Applicant had identified no adverse noise effects associated with the overbridge's use (ER 5.4.39). The Secretary of State notes that GBC, as the relevant environmental health authority for the area in and around Elm Corner and the wider environs of Ockham, is content that the Applicant has appropriately assessed the Development's noise and vibration impacts and has no objections in this regard (ER 5.4.41).

50. The Secretary of State agrees with the ExA's conclusions that the Development, in itself, would not result in the residents of Elm Corner being subjected to adverse levels of road traffic noise (ER 5.4.42). The Secretary of State agrees that the noise effects of the Development for the occupiers of Elm Corner would not cause there to be conflict with the policy for noise and vibration stated in the NPSNN (ER 5.4.42).

51. The Secretary of State notes that the ExA concluded that the Painshill residents would not experience adverse noise or vibration effects as a consequence of the Development (ER 5.4.45). The Secretary of State notes the Applicant's comments that the tree loss associated with the Development would have a negligible impact on the receipt of road traffic noise by Painshill residents because any noise attenuation by trees is usually small (ER 5.4.44), and that this is consistent with the ExA's understanding (ER 5.4.45). The Secretary of State further notes the ExA's views that any effect of tree loss on noise would

be offset by the use of low noise road surfacing (ER 5.4.45) and that the Painshill PMA would not generate intrusive road traffic noise for the residents of Painshill (ER 5.4.46). The Secretary of State notes that the ExA's views on the operational noise effects on Painshill are supported by the SoCG between the Applicant and EBC, as the relevant environmental health authority. This SoCG agrees that the operational noise impacts of the Development have been appropriately assessed, and with the ExA agrees that there would be no adverse operational noise or vibration effects for the residents of Painshill arising from the Development (ER 5.4.46).

52. With regard to construction, the Secretary of State notes that while there would be some adverse noise or vibration effects for the residents of Elm Corner during the construction period associated with the A3 mainline works and the operation of the airfield construction compound site, he agrees with the ExA that those adverse effects would be capable of being managed so that unacceptable levels of construction noise would not be experienced by the occupiers of Elm Corner (ER 5.4.54). The Secretary of State notes that while there would be the potential for the residents of Painshill to experience some disturbance during the construction period, he agrees with the ExA that those adverse effects would be capable of being managed to minimise their effect to acceptable levels (ER 5.4.55).

53. The Secretary of State agrees with the ExA's conclusion that while there would be some adverse impacts with respect to noise and vibration during the construction phase of the Development, these impacts would be capable of being mitigated to an acceptable level (ER 5.4.56). The Secretary of State also agrees with the ExA that in relation to noise during the operational phase of the Development, there would be beneficial effects for the occupiers and users of noise sensitive locations in the area – though these benefits would be likely to occur in any event given the likelihood of the A3 being resurfaced with low noise road surfacing as part of routine maintenance (ER 5.4.57). The Secretary of State accepts that the Development has been designed with mitigation to minimise noise emissions and to avoid significant adverse impacts on health and quality of life from noise and is content that, with the proposed mitigation that would be secured through the DCO, the Development accords with paragraphs 5.194 to 5.198 of the NPSNN (ER 5.4.58).

Biodiversity and the Natural Environment

54. Paragraphs 5.20 to 5.38 of the NPSNN relate to biodiversity and ecological conservation and paragraph 5.23 indicates that the Applicant should show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests (ER 5.5.2). The Secretary of State accepts the ExA's assessment of policy considerations that apply to this decision (ER 5.5.2-5.5.4).

55. The Secretary of State notes the ExA's consideration of the Development in relation to biodiversity and the natural environment as set out in ER 5.5. The Secretary of State notes that concerns were raised regarding the effect of the Development on toads and potentially other amphibians (ER 5.5.27), including in response to the Secretary of State's consultation letter of 15 February 2021. The Secretary of State notes that concerns were raised about the precise location of the proposed toad tunnels at Old Lane and that it was contended that additional underpasses should be created (ER 5.5.27). The Secretary of State agrees with the ExA that the current location of the proposed toad tunnels would provide adequate mitigation for the effects of the Development and would represent an

improvement on the current situation, and agrees with the ExA that further consideration of this matter outside of the DCO process would be welcome for the reasons set out in ER 5.5.39.

56. The Secretary of State notes the responses to his consultation letter of 4 February 2022 regarding impacts on badgers. The Secretary of State is satisfied that the Development's impact on badgers was considered by the ExA (ER 5.5), that the specific measures to protect badgers, as set out in Chapter 7 of the ES, will ensure the protection of badgers, and that these measures are secured in the CEMP. The measures outlined by the Applicant include a pre-construction badger survey, securing appropriate licence from Natural England ('NE') prior to closure of active badger sett(s), creation of an artificial badger sett, and undertaking precautions during construction by covering over excavations at night.

57. The Secretary of State notes the ExA's view that the green corridor element of the Cockcrow Bridge would potentially provide additional mitigation by providing a wildlife corridor over the A3, but notes that the ExA did not consider any resultant biodiversity benefits in the balancing exercise as the green corridor element was not funded (ER 5.5.37). The Applicant confirmed in its response of 23 November 2020 that it has secured Designated Funds to construct the green element of the Cockcrow Bridge, so the Secretary of State considers that the potential additional mitigation provided weighs in favour of the DCO being made.

58. The Secretary of State notes that the Development will result in a loss of 0.4ha of ancient woodland from two parcels: at Elm Court and Heyswood (ER 5.5.11) and the loss of two veteran trees and depending on the detailed design, the potential for impacts on a further nine veteran trees (ER 5.5.14) (further consideration of the impact of the Development on veteran trees is set out at paragraph 89). The ExA highlighted the mitigation to be put in place but concurred with the Woodland Trust, as does the Secretary of State, that such measures can be considered to be compensation but cannot make up for the loss of irreplaceable ancient woodland (ER 5.5.42). As set out by the ExA, the NPSNN places a strong emphasis on preserving irreplaceable habitats including ancient woodland. The Secretary of State notes that the SoCGs with EBC and NE have agreed that the potential impact on ancient woodland has been reduced as far as feasibly and practicably and agrees with the ExA that the loss of 0.4 ha of ancient woodland would not be sufficiently significant on its own for the DCO not to be made, but is a detrimental impact that weighs against the Development (ER 5.5.43).

59. The Secretary of State notes comments on the assessment of ancient woodland in response to the Secretary of State's consultation letter of 4 February 2022, but is satisfied that the impact on ancient woodland has been adequately considered by the ExA. The objector considers that the Applicant has omitted various compensatory measures recommended in the published guidance; the Secretary of State notes that the measures listed are only suggestions and is satisfied with the Applicant's proposed compensation (elaborated below at paragraph 207). The Secretary of State further notes that the Applicant has concluded a SoCG with NE which sets out that all matters relating to non-HRA issues, including the survey methodology and measures in regard to ancient woodland, have been agreed (ER 5.5.30); NE's view on the Applicant's assessment of the environmental effects of the proposed reduction in replacement land ('RL') is considered at paragraph 211 below.

60. Noting the above, as well as the ExA's consideration that there are no instances of non-compliance with the NPSNN when considered in conjunction with the relevant caveats in regard to the loss of ancient woodland and veteran trees (ER 7.2.2), the Secretary of State concludes that the national need for and benefits of the Development in the proposed location clearly outweigh the loss of ancient woodland, and that the Development would therefore comply with NPSNN paragraph 5.32. The Secretary of State however concurs with the ExA's noting of conflict with Development Plan policies on ancient woodland, and considers that this weighs against the Development. The Secretary of State also considers that the Development is a nationally significant infrastructure project where the public benefit would clearly outweigh the loss or deterioration of habitat, and considers that the proposed compensation strategy is suitable. The Secretary of State is therefore satisfied that the Development would comply with National Planning Policy Framework paragraph 180(c).

61. The Secretary of State agrees with the ExA that the Handover Environment Management Plan ('HEMP') would take proper account of future environmental management commitments and that this has been adequately secured in the DCO (ER 5.5.32). The Secretary of State agrees with the ExA that there would be sufficient funding to deliver the biodiversity mitigation and enhancement measures secured in the DCO (ER 5.5.34).

62. The Secretary of State notes the ExA considers that there would be some impact on biodiversity arising from its recommended reduction in the amount of RL to be provided as part of the Development (ER 5.5.49). Following the ExA's recommendation that the Secretary of State considers this matter if he accepts the ExA's recommendation to reduce RL provision (ER 5.5.50), this is further considered below at paragraphs 206 to 211.

63. The Secretary of State notes that concerns about the impact on biodiversity were raised in response to the Secretary of State's consultations but the Secretary of State is satisfied that the SoCG between the Applicant and NE demonstrates NE's agreement that the biodiversity impacts for matters outside of the scope of the Habitats Regulations have been adequately assessed by the Applicant (ER 5.5.57) and the Secretary of State agrees with this. The Secretary of State notes that the SoCG with NE also agrees that the proposed mitigation and longer-term management is appropriate and has been effectively secured in the DCO (ER 5.5.57) and the Secretary of State agrees. The Secretary of State notes Bob Milton's representation of 13 May 2021, which objects to the planting of wood pasture rather than heathland on one specific plot of common land, but considers that adequate heathland restoration is included in the Development, as outlined at ES Appendix 7.19. In his representation of 10 February, Mr Milton claims that one parcel of land would be subject to unlawful enclosure under the Development; the Secretary of State notes that ES Appendix 7.19 describes the compensation land owned by RHS Wisley as already being used for grazing and notes the ExA's consideration that such issues are not directly related to any changes that might arise from the Development (ER 5.2.216). The Secretary of State notes the impacts on biodiversity during the construction phase and the biodiversity enhancements to be delivered by the Development as set out by the ExA at ER 5.5.58-5.5.59. The Secretary of State further notes the ExA's conclusion that when considered as a whole, the biodiversity benefits of the Development would outweigh the disbenefits and that this would weigh in favour of the DCO being made, subject to the Secretary of State considering any reduction in RL (a matter considered at paragraphs 177 to 221) (ER 5.5.60).

64. The Secretary of State notes that the issue of biodiversity net gain and the Environment Act 2021 was raised in response to his consultation of 4 February 2022. The Secretary of State notes that the biodiversity net gain obligation under the Environment Act does not affect accepted DCO applications such as the application for the Development but notes that biodiversity net gain is included in policy CS15 of the EBC and GBC development plans (ER 3.9.1). The Secretary of State agrees with the ExA that when considered in its entirety, the biodiversity benefits of the Development would outweigh the disbenefits and this weighs in favour of the DCO being made. In reaching this conclusion, the Secretary of State has taken into account the reduction in the RL proposed (and the implications of less RL being available to provide biodiversity mitigation) and the Secretary of State agrees that the Development would comply with the NPSNN and relevant development plan policies in regard of biodiversity (ER 5.5.60).

Flood Risk and the Water Environment

65. The Secretary of State accepts the ExA's assessment of relevant policy considerations (ER 5.6.2-5.6.5). Paragraph 5.98 of the NPSNN says that where flood risk is a factor in determining an application then an appropriate Flood Risk Assessment ('FRA') should be provided and the SoS should be satisfied that the Sequential Test has been applied and, if required, the Exception Test (ER 5.6.2). Paragraph 5.99 says that when determining an application for development consent, the Secretary of State should be satisfied that flood risk will not be increased elsewhere and should only consider development in areas of flooding where (informed by a FRA and those tests) it can be demonstrated that the specified requirements are met relating to the location of the most vulnerable development, development is appropriately flood resilient and resistant, any residual risk can be safely managed, and priority is given to the use of sustainable drainage systems (ER 5.6.3). The Secretary of State notes that the Applicant's FRA found that the majority of the Development lies within Flood Zone 1 but that there are also areas in Flood Zones 2 and 3 (ER 5.6.8). The Secretary of State notes from paragraph 1.4.2 of the FRA that a sequential approach was taken where possible for the road improvements, such as when locating balancing ponds and site compounds. In terms of the Sequential Test the Applicant in paragraph 3.1.1 of the FRA contends that the Development is considered as essential infrastructure and would be acceptable for flood risk if a passed Exception Test can be demonstrated (ER 5.6.8). The FRA considers that the second element of the Exception Test is passed as the Development would remain safe from flooding without it increasing flood risk elsewhere over its lifetime, taking into account climate change (ER 5.6.8). The Secretary of State is satisfied with the approach taken and that the sequential and exception tests have been met.

66. The Secretary of State notes the ExA's consideration of flood risk and water environment matters at ER 5.6 and that the Development will entail the construction of a drainage network to serve the new highway sections (ER 5.6.15).

67. The Secretary of State notes that the final SoCG with the Environment Agency agrees all matters in relation to flood risk and water resources, and the initial matters raised by SCC in its role as Lead Local Flood Authority in relation to the management of water bodies have been confirmed as agreed in the final SoCG (ER 5.6.19).

68. The Secretary of State notes that the ExA considered it necessary to amend the DCO to specifically refer to the submission of a detailed drainage strategy (ER 5.6.18) and

notes the ExA's proposed wording at ER Table 9.2. The Secretary of State agrees with this provision and has included it in the DCO.

69. The Secretary of State notes that in response to OPC's concerns about the potential for increased flood risk as a result of the Development, citing the localised flooding experienced during Storms Ciara and Dennis (ER 5.6.12), the Applicant stated that it is aware of flood concerns and the Development would improve highway drainage performance through new drainage collection systems and attenuation (ER 5.6.20). The Secretary of State agrees with the ExA that the Development would not cause any detrimental effects in this regard and would give rise to an improvement in the overall drainage network (ER 5.6.20). The Secretary of State notes the ExA's view that there would be wider sustainability benefits to the community arising from the Development that outweigh the flood risk, and that the Applicant has adequately demonstrated that the Development would be safe from the risk of flooding for its lifetime and would not increase the risk of flooding elsewhere, therefore passing the Exception Test (ER 5.6.21).

70. The Secretary of State accepts the ExA's conclusion that subject to a detailed drainage survey and subsequent detailed drainage design (ER 5.6.22) the Development would not give rise to any significant impacts, either alone or cumulatively, on either flood risk or water resources, and complies with the NPSNN and policy CS26 of the Elmbridge Core Strategy (ER 5.6.23).

Heritage and the Historic Environment

71. Paragraphs 5.126 to 5.142 of the NPSNN identify the historic environment decision-making considerations to be taken account by the Secretary of State (ER 5.7.2). The Secretary of State accepts the ExA's assessment of policy considerations in the NPSNN and the Development Plan policies (ER 5.7.2-5.7.5). The Secretary of State notes the assessment of the effects of the development on both designated and non-designated heritage assets and their significance, identified by the ExA in ER 5.7.

72. The Secretary of State notes that the main objections and concerns raised by Interested Parties ('IPs') relate to the potential impact on the heritage significance of the RPGs at Painshill Park and RHS Wisley and the listed buildings within (ER 5.7.19). Objections from Painshill Park Trust ('PPT'), the organisation responsible for the management of Painshill Park (ER 5.7.21), include the loss of its existing western access that leads directly off/on to the A3 near the Gothic Tower, while the Gardens Trust and the Georgian Group made representations supporting PPT in relation to the loss of the western access (ER 5.7.22). PPT also raised concerns about the loss of land in the north-western part of the park that is proposed to be used to form the Heyswood/Court Close Farm PMA (ER 5.7.27). The Secretary of State notes that RHS Wisley has raised a number of concerns about the Development's effects on both the RHS Wisley site and its operations and submitted a Heritage Report from Dr Chris Miele. The RHS's concerns in relation to heritage assets included those related to impacts on the trees, in particular the redwood trees, that lie along the boundary of the site adjacent to the A3 as the result of potential root damage (ER 5.7.28). The RHS argued that the amended access to the RHS site as a result of the proposed overbridge for the Wisley Lane diversion, and the resultant loss of trees and vegetation, would harm the visitor experience of the designated heritage asset (ER 5.7.28). The Secretary of State notes that the Heritage Report submitted by the RHS states that the

economic harm to RHS Wisley arising from the Development would give rise to harm to the designated heritage asset and that this harm could be severe or serious (ER 5.7.29).

73. The Secretary of State notes that the crux of PPT's objection concerns the operational and associated financial effects that would arise from the loss of the western access and the lack of a suitable replacement (ER 5.7.30). The Secretary of State notes that the ExA does not consider that the effects of losing the western access would represent a direct impact on the significance of the Grade I RPG (ER 5.7.39). The Secretary of State notes that the ExA considered it had not been presented with any conclusive evidence that the loss of the western access would have such a significant effect so as to seriously jeopardise the future operation of Painshill Park in terms of its ability to hold large events or carry out essential maintenance work, and that the loss of the western access would not have a direct physical impact on the park landscape or its setting (ER 5.7.40). The Secretary of State further notes the ExA's consideration that a route would be available within the park for emergency and maintenance purposes (ER 5.7.38). The Secretary of State agrees with the ExA's consideration of the lack of a western access to Painshill Park and has further considered the matter in relation to economic and social considerations at paragraph 141 below.

74. The Secretary of State notes that PPT, in its letter of 16 November 2020 in response to Secretary of State's letter of 4 November 2020, sets out its concern that the loss of the second entrance would prevent the emergency services from meeting operational requirements. The Secretary of State notes that in its letter of 7 December 2020, the Applicant states that, as PPT has not provided the report from the South East Coast Ambulance Service as part of their Examination submissions, it is therefore not in a position to respond. The Secretary of State accepts this and considers that there is no sufficient evidence to support those concerns as a basis for refusing consent for the Development.

75. The Secretary of State notes the agreement in the final SoCG between the Applicant and Historic England ('HistE') that the loss of the area of land in the north-western part of Painshill Park in order to construct the Heyswood/Court Close Farm PMA would "not have a significant impact on the park" and notes the ExA's consideration that the loss of this land would not have any significant impact on the settings on the listed buildings within Painshill Park because landscaping would become established to mitigate such an impact (ER 5.7.43). The Secretary of State notes that all of the matters in relation to Painshill Park have been agreed between the Applicant and HistE and agrees that less than substantial harm to the significance of the Grade I RPG of Painshill Park would arise from the physical works proposed in the north-western part of the Park and the loss of the western access off the A3 (ER 5.7.48). The Secretary of State agrees with the ExA that the Development would give rise to less than substantial harm to the significance of the Gothic Tower and that the impact of the Development on other listed buildings within Painshill Park would be neutral (ER 5.7.49).

76. The ExA considered that there are likely to be some short-term impacts on visitor numbers to RHS Wisley during the construction stage of the Development (ER 5.7.53). The Secretary of State notes that RHS Wisley does not rely solely on visitor income to support its operation and accepts the ExA's view that the economic effects of the Development on RHS Wisley would not give rise to anything other than minor, if any, impact on the significance of the designated heritage assets of the RPG and the Grade II listed building (ER 5.7.53).

77. The Secretary of State notes that the Applicant does not agree with the RHS's Cultural Heritage Report that the proposed changes to the approach to RHS Wisley would have any detrimental effect on the RPG's heritage value. The Secretary of State further notes the Applicant's contention that the changes to the car park and other new buildings made by the RHS have already significantly altered the setting of this area of the RPG (ER 5.7.55). The Secretary of State agrees with the ExA that the Wisley Lane diversion works and associated loss of trees and vegetation would not have any detrimental impact on the significance of the listed Laboratory building which is located further into the site, though the Wisley Lane diversion works and the associated loss of trees would physically alter the experience for most visitors via the south-eastern part of Wisley Lane from what is proposed, with the resultant loss of vegetation, and this would alter the experience for visitors entering and leaving RHS Wisley (ER 5.7.56). The Secretary of State agrees with the ExA that the classification system for trees applied in the RHS's Cultural Heritage Report is not recognised in the NPSNN or relevant Development Plan policies (ER 5.7.57) and affords this system little weight (ER 5.8.36). For the reasons listed by the ExA, the Secretary of State agrees that the Development would give rise to less than substantial harm to the significance of the Grade II* RPG and that the effect of the Development on the Grade II listed Laboratory Building would be neutral given its location further into the site (ER 5.7.58).

78. In addition to the above, the Secretary of State notes the ExA's consideration of archaeology and other designated and non-designated heritage assets (ER 5.7.59-5.7.66). The Secretary of State concurs with the ExA's agreement with the Applicant's assessment in ES Chapter 11 that the Development would give rise to less than substantial harm to the significance of the designated heritage assets of Bell Barrow on Cockcrow Hill, Bell Barrow west of Cockcrow Hill, Redhill hengiform and Foxwarren Cottage (ER 5.7.65) and agrees with the ExA's reasoning and conclusions as to the absence of any significant impacts on the significance of either of Ockham Mill and Ripley Conservation Areas or on any non-designated heritage assets (ER 5.7.66). The Secretary of State agrees with the ExA's conclusions as to harm (ER 5.7.67-5.7.68) as well as its conclusions on the considerable public benefits, and agrees that those benefits would outweigh the less than substantial harm to the significance of the heritage assets the ExA identified (ER 5.7.70), giving great weight to the existence of that heritage harm.

79. The Secretary of State agrees with the ExA that the impact on the historic environment of the Development alone and cumulatively has been adequately assessed by the Applicant and that the Development would give rise to alterations to the existing SRN rather than bringing an entirely new road into close proximity with heritage assets (ER 5.7.71). The Secretary of State agrees with the ExA's view that the public benefits of the Development would clearly outweigh the less than substantial harm to the significance of a number of designated heritage assets that has been identified and that the Development therefore complies with the NPSNN. The Secretary of State however notes the ExA's conclusion that the less than substantial harm to the significance of some designated heritage assets would conflict with local policies, and notes that the ExA has carried the less than substantial harm that has been identified to the significance of some designated heritage assets through to the overall planning balance (ER 5.7.72) and the Secretary of State has done the same.

Landscape and Visual Impact

80. The Secretary of State notes the ExA's consideration of this matter at ER 5.8 and the ExA's overall assessment of the landscape impacts of the Development (ER 5.8.22-5.8.28). The Secretary of State notes that issues were raised around the absence of photomontages, impact on trees (including veteran trees) (ER 5.8.17-5.8.19), lighting impacts (ER 5.8.49-5.8.52) and impacts on the landscape of RHS Wisley and Painshill Park (the latter issue is considered above).

81. Paragraph 5.144 of the NPSNN guides that the applicant's assessment should include any significant effects during both the construction and operation stages, and states that having regard to siting, operational and other relevant constraints, the aim should be to avoid or minimise harm to the landscape, providing reasonable mitigation where possible and appropriate (ER 5.8.2). The relevant policy considerations are outlined by the ExA (ER 5.8.2-5.8.5).

Landscape and Visual Impact Assessment Methodology

82. The Secretary of State notes that the SoCGs with EBC, GBC and SCC record that all matters in regard to landscape and visual impact are agreed except for the lack of photomontages (ER 5.8.26). The Secretary of State agrees with the ExA that a landscaping scheme is adequately secured in the DCO in requirement 6 and in requirement 7 in relation to RL (ER 5.8.28). The Secretary of State notes the ExA's view that it is essential that the proposed landscaping has the best possible chance of becoming established to achieve its objectives and that one important aspect of this is the period for requiring replacement planting for any trees or shrubs that may die or become damaged (ER 5.8.28). The Secretary of State agrees with the ExA that the five-year aftercare period for replacement planting specified in requirement 6(5) of the draft DCO should be extended to ten years (ER 5.8.28).

83. The Secretary of State notes the Applicant's view that the submission of photomontages is not a requirement under the DMRB and that its assessment has been carried out in accordance with the DMRB (ER 5.8.29) and also that photomontages would not provide benefit in this instance as no significant views were identified that would experience a noticeable change (ER 5.8.30). The Secretary of State notes that SCC disagreed with this but agreed that existing woodland would provide good levels of screening (ER 5.8.30). The Secretary of State notes the ExA considered the absence of photomontages as disappointing and the fact that they are not specifically required by the DMRB should not automatically preclude them from being provided where appropriate. The ExA however agreed with the Applicant that the surrounding topography and the location within a well-wooded landscape would contain the distant views of the Development, and that the Development would also primarily entail alterations and improvements to the existing SRN that is already a dominant feature in the local landscape. The Secretary of State notes and agrees with the ExA that, for the reasons stated, in this particular case the absence of photomontages and to a lesser extent a Zone of Theoretical Visibility are not such significant emissions so as to undermine the Applicant's Landscape and Visual Impact Assessment conclusions (ER 5.8.32).

Trees at RHS Wisley

84. The Secretary of State notes that an area containing trees and other vegetation is to be lost as a result of the Wisley Lane diversion (ER 5.8.33). Like the ExA, the Secretary of State acknowledges the landscape importance and significance to RHS Wisley of the trees that border the A3 (5.8.53), but like the ExA (and as set out above at paragraph 77) attaches little weight to the heritage tree classification system and monetisation approach advocated by RHS for the reasons set out in ER 5.8.36.

85. The Secretary of State notes that the Applicant and RHS disagree on the exact number of trees that would need to be removed in the vicinity of the A3/Wisley Lane junction, with the Applicant stating eleven trees would need removal and RHS stating that seventeen trees would need removal and a further twenty seven trees would be at risk as their root protection areas extend into the Applicant's land (ER 5.8.39).

86. The Applicant set out that there was potential to amend the alignment of the A3 to allow an increase in the root protection area for the trees in the RHS boundary (ER 5.8.40). The Applicant reflected this in an updated Tree Protection Plan [REP12-020] which precludes any intrusive works or storage of materials within the relevant structural root area and is secured in requirement 18 of the DCO. As this was submitted at Deadline 12, the ExA highlighted that the RHS and IPs had not had a chance to comment on this. On the ExA's recommendation (ER 5.8.41), on 4 November 2020 the Secretary of State invited views on all submissions received at Deadline 12 (and 11), which included this submission. No comments were received on this updated plan.

87. The Secretary of State notes that the ExA shared the concerns raised by the RHS on the accuracy of the root survey technology which the Applicant used (ER 5.8.43). The ExA concluded that they did not have any conclusive evidence that the significant trees within RHS Wisley that border the A3 would be severely damaged or would require removal as a result of the Development, but accepted that the wording of requirement 18 should ensure the use of effective tree root protection methodology once the detailed design for the works along this stretch of the A3 has been finalised (ER 5.8.43). The Secretary of State notes and agrees with the ExA's suggested changes to the proposed wording of requirement 18 with for the reasons set out in ER 5.8.44 and 9.3.36.

88. Overall, the Secretary of State agrees with the ExA that the proposed minor realignment of the A3 and the tree protection measures secured in requirement 18 provide sufficient comfort that the trees within the RHS site that border the A3 would be adequately protected and that the loss of the seventeen trees bordering Wisley Lane as a result of the Wisley Lane diversion would not give rise to unacceptable impacts on the landscape (ER 5.8.45). The little weight afforded by the ExA to the RHS's heritage tree classification system and monetisation approach does not alter this overall conclusion that the Secretary of State has reached on the effects on trees at RHS Wisley based on all the information available.

Veteran Trees and Tree Protection Order ('TPO') Trees

89. The Secretary of State notes that the Development would entail the loss of two veteran trees, with a further nine veteran trees potentially requiring removal, but that the Applicant believes that these nine veteran trees would be able to be retained through the

use of careful design (ER 5.8.46). The ExA considered that the Applicant had taken adequate measures that the minimum number of veteran trees would be lost (ER 5.8.46) and the Secretary of State has no reason to disagree with this. The Secretary of State notes that paragraph 5.32 of the NPSNN states that for the loss of veteran trees, account needs to be given to whether the need for and benefits of the Development clearly outweigh the loss (ER 5.8.59). The Secretary of State notes that the Applicant has stated that all of the trees subject to TPOs are to be retained, and notes that all TPO trees would be identified in the landscaping scheme to be provided under requirement 6 with appropriate measures for their protection to be provided (ER 5.8.48).

Lighting

90. The Secretary of State notes that construction works are predominantly limited to daytime hours, except for works including bridge demolition and installation that would require the full or partial closure of the M25 and A3 carriageways (ER 5.8.49). The Secretary of State notes that requirement 3 of the DCO requires a management plan for construction site artificial lighting, and agrees with the ExA that potential lighting impacts arising from the Development have been properly accounted for and would be adequately controlled through the CEMP that is secured in requirement 3 in the DCO (ER 5.8.52).

Conclusion on landscape and visual impact

91. The Secretary of State accepts the ExA's conclusion that landscape and visual impacts of the Development have been adequately assessed and that the negative visual impacts that arise from construction operations are reasonably short term and the CEMP that is secured in requirement 3 of the DCO will ensure construction impacts are capable of being mitigated to an acceptable level (ER 5.8.56) and the proposed landscaping scheme will mitigate the impact of construction operations (ER 5.8.57). The Secretary of State has noted and accepts the ExA's conclusions that, when considered as whole with the amendments to requirements 6 and 18, the Development either alone or cumulatively would be acceptable in terms of its landscape and visual impacts and is compliant in this regard with the NPSNN and the relevant Development Plan policies (ER 5.8.58). The Secretary of State accepts the ExA's conclusion that any negative landscape and visual impacts either alone or cumulatively, including the loss of veteran trees, would not be significant enough to weigh against the DCO being made (ER 7.2.19).

Ground Conditions, Contamination and Waste Management

92. Paragraphs 5.40 and 5.42 of the NPSNN refer to the waste hierarchy and state that the Applicant should set out arrangements for managing any waste produced, while paragraph 5.43 guides that the Secretary of State should be satisfied that the Applicant has proposed an effective process for the management of waste (ER 5.9.2). Paragraph 5.118 of the NPSNN guides that a preliminary assessment of land instability should be carried out at the earliest possible stage (ER 5.9.2). The Secretary of State accepts the ExA's assessment of policy considerations (ER 5.9.2-5.9.3).

93. The Secretary of State notes that some IPs, including OPC, have expressed concerns about the location and scope of the activities at the construction compounds (ER 5.9.9).

94. The Secretary of State notes that in order to comply with the waste hierarchy that seeks to minimise waste by, among other matters, re-using and recycling materials, it is necessary that on-site or nearby facilities are provided (ER 5.9.10). The Secretary of State agrees that the use of the former Wisley airfield construction compound for materials storage, processing and recycling operations for construction, demolition and excavation waste accords with sustainable waste management principles that are detailed in the waste hierarchy (ER 5.9.10). The Secretary of State agrees with the ExA that the final CEMP would provide an adequate means of addressing waste management in accordance with the principles in the waste hierarchy (ER 5.9.11). The Secretary of State notes that the duty of care legislation would add an additional degree of control to ensure that waste management matters will be properly accounted for during the construction phase (ER 5.9.12).

95. The Secretary of State notes that in the final SoCG with SCC, all matters pertaining to minerals, waste and ground conditions are recorded as being agreed (ER 5.9.13) and that in the final SoCG with the EA, all matters in relation to geology and soils, pollution and waste are recorded as being agreed (ER 5.9.13). The Secretary of State agrees with the ExA's conclusions at ER 5.9.15-5.9.16, including that overall, the Development would not give rise to any significant adverse effects either alone or cumulatively in regard to ground conditions, geology, land contamination and waste and therefore would accord with the NPSNN and the policies contained in the Surrey Waste Plan 2008.

Climate Change

Background

96. The Secretary of State notes the ExA's consideration of this matter at ER 5.10 and that concerns were raised that the Development's climate change implications had not been properly assessed and on the viability of the Development in light of environmental considerations (ER 5.10.7-5.10.8).

97. Paragraph 4.40 of the NPSNN states that new national networks infrastructure will typically be long-term investments and that applicants will need to consider the impacts of climate change when planning their location, design, build and operation (ER 5.10.2).

98. The Secretary of State agrees with the ExA that as the Development is predicted to improve the performance of Junction 10 and Painshill roundabout this would reduce peak hour congestion and thereby would be likely to assist with reducing emissions produced by stationary and slow-moving traffic (ER 5.10.14).

99. Section 104(3) of the 2008 Act states that the Secretary of State must decide an application for a national network NSIP in accordance with the NPSNN except to the extent that one or more of subsections 104 (4) to (8) of the 2008 Act apply. These include not only where the Secretary of State is satisfied that the adverse impact of the proposed development would outweigh its benefits, but where the Secretary of State is satisfied that deciding the application in accordance with the NPSNN would: lead to the UK being in breach of any of its international obligations; lead to him being in breach of any duty imposed on him by or under any enactment; or be unlawful by virtue of any enactment (ER 3.1.2). The UK's international obligations include the Paris Agreement, which was ratified

by the UK Government in 2016, after the NPSNN was designated in 2014. This is translated in the UK by way of the carbon budgets set under the Climate Change Act 2008.

100. In June 2019 the Government announced a new carbon reduction 'net zero target' for 2050 which was given effect by the Climate Change Act 2008 (2050 Target Amendment Order 2019). This is a legally binding target for the Government to cut net carbon emissions to zero by 2050 against the 1990 baseline ('the 2050 target', ER 5.10.2). The Climate Change Act requires five-yearly carbon budgets to be set 12 years in advance so as to meet the 2050 target. Six carbon budgets have been adopted. The time periods covering the fourth, fifth and sixth budget are 2023-2027, 2028-2032 and 2033-2037 respectively. Achieving net zero will require future greenhouse gas emissions to be aligned with these and any future new or revised carbon budgets that may be set out by Government to achieve the 2050 target.

101. NPSNN paragraph 3.8 sets out that the impact of road development on aggregate levels of emissions is likely to be very small and that the impacts of road development need to be seen against significant projected reductions in carbon emissions as a result of current and future policies to meet the Government's legally binding carbon budgets. Paragraph 5.17 sets out that it is very unlikely that the impact of a road project will, in isolation, affect the ability of Government to meet its carbon reduction plan targets. The Secretary of State also notes NPSNN paragraph 5.18, which states that increased carbon emissions is not a reason to refuse development consent unless this increase is so significant that it would have a material impact on the Government's ability to meet carbon reduction targets.

102. Greenhouse gas ('GHG') emissions (measured as carbon dioxide equivalent and referred to as 'carbon emissions') for the Development were set out in net terms between the DS and DM scenarios by the Applicant in its ES. The Secretary of State notes that the ExA considered the Development against the Government's third carbon budget ('3CB', 2018-2022) (ER 5.10.18), based on the Applicant's conclusion that the construction phase and opening year for the Development would together contribute less than 0.004% to this carbon budget (ER 5.10.5). The Applicant did not carry out an assessment against the fourth, fifth or sixth carbon budgets in its ES.

103. The Secretary of State notes that during the Examination, whilst the sixth carbon budget ('6CB') was not available, the ExA asked about whether the amended duty of achieving net zero greenhouse gas emissions would have any implications for the assessment carried out in the ES (ER 5.10.10). The Applicant stated that its assessment would not change as 3CB had not been amended and remained the relevant comparator, while 2037 was not (at that time) covered by a carbon budget (ER 5.10.11). The ExA therefore recommended that the Secretary of State should satisfy himself on the acceptability of the Development against the revised carbon budget (ER 5.10.18), which the Secretary of State has taken to mean 6CB which runs from 2033-2037.

104. The ExA also recommended that the Secretary of State should satisfy himself on the acceptability of the Development against the cumulative and in-combination effects of the Road Investment Strategy ('RIS') (ER 5.10.18).

105. The Secretary of State therefore in his consultation letter of 26 July 2021 requested additional information from the Applicant on the Development's compliance with the 6CB and the direct, indirect and cumulative likely significant effects of the Development with

other existing and/or approved projects on climate. The Secretary of State also issued a follow-up consultation letter on 22 December 2021 asking the Applicant to update its response to the 26 July consultation letter to provide or identify an assessment of the cumulative effects of GHG emissions from the scheme with other existing and/or approved projects on a local, regional and national level on a consistent geographical scale.

Carbon Budgets

106. The Applicant responded on 9 August 2021, setting out that the Development's net carbon emissions would equate to 0.0009% of the UK's carbon budget for the fourth carbon budget ('4CB') period, 0.0010% of the UK's carbon budget for the fifth carbon budget ('5CB') period, and 0.0018% of 6CB. The Applicant however noted that this assessment is conservative and likely an overestimate as the projected uptake of new electric vehicles is higher than the projections used in the national projections included in the version of Defra's Emissions Factor Toolkit ('EFT') that was available at the time and used to provide the assessment. The Secretary of State considers that this accords with the ExA's conclusion that the Applicant's ES assessment was conservative as it did not account for the move away from petrol and diesel cars and vans (ER 5.10.16). The Applicant also referenced the Department for Transport's, 'Decarbonising Transport: A Better, Greener Britain' ('the Transport Decarbonisation Plan'), published in July 2021, as outlining a number of commitments by the Government to remove all emissions from road transport to achieve the net zero target by 2050. The Applicant argued this would have a direct impact on road user emissions and was also not captured in its assessment. The Applicant also highlighted that in July 2021, it published its own 2030/2040/2050 Net Zero Highways plan that included a commitment to ensure its maintenance and construction activities reach net zero by 2040 and road user emissions on the strategic road network reach net zero by 2050.

107. In his consultation letter of 22 December 2021, the Secretary of State requested clarification from the Applicant on the difference between the figures presented in Chapter 15 of the ES and the figures in the Applicant's response of 9 August 2021 on the Development's impact on the carbon budgets. The Applicant, in its response of 26 January, explained that the figures in the ES were derived from the local air quality study area only, while those in the response of 9 August 2021 were derived from all road links in the traffic model provided for the air quality assessment. The Applicant stated that the latter figures should be used as they conform with guidance. The Applicant clarified the definition of 'all road links in the traffic model provided for the air quality assessment' in its response of 2 March 2022 to the Secretary of State's consultation letter of 4 February 2022. The Secretary of State therefore has considered the figures in the Applicant's response of 9 August as updated by its response of 26 January 2022 in his conclusion on the matter.

108. The Secretary of State notes that the Applicant concluded in its letter of 9 August 2021 that the then predicted maximum net impact on any carbon budget (including 6CB) would be 0.0038% and that this would not have a material effect on the Government's ability to comply with carbon budgets. In response to the Secretary of State's follow up request of 22 December 2021 for additional information relating to the cumulative effects of the scheme on climate, the Applicant on 26 January 2022 provided updated figures on the impact of the scheme on each of the carbon budgets using the newly available EFT v11 (as opposed to v8 used in the original assessment) which took account of the higher predicted uptake rates of electric vehicles. The Applicant also presented the results of its sensitivity test to reflect the policies in the Transport Decarbonisation Plan in relation to

operational emissions. The Secretary of State notes that the result of the revised assessment using EFT v11 set out by the Applicant is that the Development's net contribution to any carbon budget will be a maximum of 0.0034% (0.0870 Mt CO_{2e} comprising 0.0034% of 3CB, 0.0189Mt CO_{2e} comprising 0.00097% of 4CB, 0.0163Mt CO_{2e} comprising 0.00094% of 5CB and 0.0138Mt CO_{2e} comprising 0.0014% of 6CB). The Secretary of State notes that these figures represent a lower impact on each of the carbon budgets than that considered by the ExA except for 4CB where the impact is now assessed as being slightly higher than that considered by the ExA (0.0189Mt CO_{2e} in contrast to 0.0172Mt CO_{2e}). The Secretary of State is aware however that the EFT v11 toolkit has some limitations around its use for predictions beyond 2030 where it is being used to estimate carbon for schemes that take traffic on or off London roads. But the Secretary of State recognises that all modelling has limits and includes a level of uncertainty. In this case, this issue could impact the predictions for CB5 and CB6 as undertaken in their response of 26 January 2022 as these fall in the period after 2030. However, the figures for these carbon budgets using EFTv8 (for which there are no known issues but which does not account for the current predicted uptake of electric vehicles) suggest that, as set out above, the carbon emissions from the scheme will account for 0.001% of 5CB and 0.0018% of 6CB, meaning that overall, the impact on any carbon budget will not be more than 0.0034% (for 3CB). The Secretary of State is content that these figures present a worst-case scenario and a precautionary approach.

109. The Secretary of State considers that the majority of operational emissions related to the scheme result from vehicle usage and that the Transport Decarbonisation Plan includes a range of non-planning policies which will help to reduce carbon emissions over the transport network as a whole over time (including policies to decarbonise vehicles and radically reduce vehicle emissions) and help to ensure that carbon reduction commitments are met. Beyond transport, Government's wider policies around net zero such as 'The Net Zero Strategy: Build Back Greener' ('Net Zero Strategy'), published by Government in October 2021 sets out policies and proposals for decarbonising all sectors of the UK economy to meet the net zero target by 2050. It is against this background that the Secretary of State has considered the Development. The Secretary of State notes the Applicant's most recent assessment of the Development's impact on the carbon budgets takes account of the Transport Decarbonisation Plan and that no other party has questioned this assessment.

110. The Secretary of State acknowledges the importance of climate change at the local, national and international level and the contribution GHGs make to this. Section 6.2 of the latest IEMA guidance 'Assessing Greenhouse Gas Emissions and Evaluating their Significance' ('the IEMA Guidance') notes that "The 2050 target (and interim budgets set to date) are, according to the CCC, compatible with the required magnitude and rate of GHG emissions reductions required in the UK to meet the goals of the Paris Agreement, thereby limiting severe adverse effects". This guidance also sets out that, "Carbon budgets allow for continuing economic activity, including projects in the built environment, in a controlled manner".

111. The Secretary of State considers that there is no set significance threshold for carbon. The latest IEMA guidance at section 6.1 refers back to three overarching principles in its original 2010 guidance that it considered to be particularly relevant in considering significance: GHG emissions from all projects will contribute to climate change, the largest

interrelated cumulative environmental effect; the consequences of a changing climate have the potential to lead to significant environmental effects on all EIA topics; and that GHG emissions have a combined environmental effect that is approaching a scientifically defined environmental limit and as such any GHG emission or reductions in these might be considered significant. The latest IEMA guidance states that it builds on those principles noting: when evaluating significance, all new GHG emissions contribute to a negative environmental impact, but some projects will replace existing development or baseline activity that has a higher GHG profile and the significance of a project's emissions should therefore be based on its net impact over its life time, which may be positive, negative or negligible; where GHG emissions cannot be avoided, the goal of the EIA process should be to reduce the project's residual emissions at all stages; and where GHG emissions remain significant, but cannot be further reduced, approaches to compensate the project's remaining emissions should be considered.

112. The IEMA guidance considers that the crux of significance is not whether a project emits GHG emissions, nor even the magnitude of GHG emissions alone, but whether it contributes to reducing GHG emissions relative to a comparable baseline consistent with a trajectory towards net zero by 2050 (section 6.2). The IEMA guidance addresses significance principles and criteria in section 6.3 and Figure 5 and advises (amongst other things) that: a project that follows a 'business-as-usual' or 'do minimum' approach and is not compatible with the UK's net zero trajectory, or accepted aligned practice or area-based transition targets, results in significant adverse effects; a project that is compatible with the budgeted science-based 1.5 degree Celsius trajectory (in terms of rate of emissions reduction) and which complies with up-to-date policy and 'good practice' reduction measures to achieve that has a minor adverse effect that is not significant – such a project may have residual emissions but it is doing enough to align with and contribute to the relevant transition scenario to keep the UK on track towards net zero by 2050 with at least a 78% reduction by 2035 and thereby potentially avoiding significant adverse effects; and a project that achieves emissions mitigation that goes substantially beyond the reduction trajectory, or substantially beyond existing and emerging policy compatible with that trajectory, and has minimal residual emissions, is considered to have negligible effect that is not significant and such a project is playing a part in achieving the rate of transition required by nationally set policy commitments.

113. The Secretary of State notes that the scheme will result in an increase in carbon emissions. The Secretary of State does not consider that net zero means consent cannot be granted for development that will increase carbon emissions. The Secretary of State considers that, as set out in NPSNN paragraph 5.18, it is necessary to continue to evaluate whether (amongst other things) the increase in carbon emissions resulting from the Development would have a material impact on the ability of Government to meet its carbon reduction targets. As set out above, the carbon budgets should meet the goals of the Paris Agreement meaning a proposal which is compatible with the 2050 target and interim carbon budgets is consistent with the approach to addressing the severe adverse effects of climate change. The Secretary of State considers this aligns with the approach to significance set out in the most recent IEMA Guidance. The Secretary of State considers that the approach set out in the NPSNN continues to be relevant in light of international obligations and domestic obligations related to reducing carbon emissions that have been introduced since the NPSNN was designated. The Secretary of State notes that the carbon budgets are economy-wide and not just targets in relation to transport. The Secretary of State considers that the Development's contribution to overall carbon levels is very low and the Secretary

of State considers that its contribution will not have a material impact on the ability of Government to meet its legally binding carbon reduction targets, including those targets which have now been considered after the Examination concluded.

114. The Secretary of State notes that the ES sets out how construction impacts will be mitigated including through the CEMP. Emissions relating to the operational phase, other than vehicle usage, will be reduced where possible through measures such as the use of energy efficient lighting and the inclusion of NMU routes (see ES Chapter 15, section 15.1.9). The Secretary of State is content that these measures will help to reduce carbon emissions where this is possible and that such measures are secured by requirements in the DCO.

115. With regard to the Paris Agreement, the UK announced its Nationally Determined Contribution ('NDC') in December 2020. NDCs are commitments made by the Parties (including the UK) under the Paris Agreement. Each Party's NDC shows how it intends to reduce its greenhouse gas emissions to meet the temperature goal of the Paris Agreement. The UK's NDC commits it to reduce net GHG emissions by at least 68% by 2030 compared to 1990. This represents an increase of ambition on the 5CB, which covers the period 2028-2032. The Net Zero Strategy published by Government in October 2021, sets out how the UK will therefore need to overachieve on 5CB to meet its international climate targets and stay on track for 6CB. This strategy sets out the action Government will take to keep the UK on track for meeting the UK's carbon budgets and 2030 NDC and establishes the UK's longer-term pathway towards net zero by 2050. The Secretary of State is satisfied in light of the net construction and operation emissions that have been identified, that consenting the Development will not impact on the delivery of this strategy and will not lead to a breach of the UK's international obligations in relation to the Paris Agreement or any domestic enactments or duties.

116. Overall, the Secretary of State considers that: over time the net carbon emissions resulting from the Development's operation will decrease as measures to reduce emissions from vehicle usage are delivered; the magnitude of the increase in carbon emissions resulting from the Development is below 0.01% of any carbon budget and therefore small; and there are policies in place to ensure these carbon budgets are met, such as the Transport Decarbonation Plan and NH's own Net Zero Highways plan published in July 2021. The Secretary of State is satisfied that the Development is compatible with these policies and that the small increase in emissions that will result from the Development can be managed within Government's overall strategy for meeting net zero and the relevant carbon budgets. The Secretary of State considers that there are appropriate mitigation measures secured in the DCO to ensure carbon emissions are kept as low as possible and that the scheme will not materially impact the Government's ability to meet its net zero targets.

Assessment of Cumulative Impact of GHG emissions

117. The Secretary of State sought additional information from the Applicant on 9 August 2021 on the cumulative impact of GHG emissions. Following the Applicant's response of 23 August 2022, the Secretary of State made a further request for information relating to this matter on 22 December 2021. The Applicant responded to this on 26 January 2022.

118. The Applicant sets out that an assessment of GHG emissions (assessed as carbon dioxide equivalent emissions and referred to here as carbon emissions) with regard to construction and operational effects of the Development is included in Chapter 15 (Climate) of the ES. The Secretary of State also notes that as stated in the Applicant's response of 9 August 2021, the Applicant's ES sets out that the study area adopted for the carbon emissions assessment covers all direct carbon emissions (those arising from construction and operational activities undertaken within the Development's boundary) and indirect carbon emissions (those associated with construction materials and the transportation of materials and waste). The spatial extent of this assessment comprises the area of construction works falling within the Development's boundary and with regard to operational carbon emissions, the study area includes both direct emissions arising from energy use within the Development's boundary as well as emissions from road users on the road network within and beyond the Development's boundary, as set out in the Development's traffic model contained in the Transport Assessment Report.

119. The Secretary of State notes that the Applicant's response of 26 January 2022 set out that the traffic model used to support the scheme assessment is inherently cumulative with regard to operational carbon emissions. This is because traffic models include data on the emissions resulting from the proposed scheme and the adjoining Strategic Road Network and the LRN as well as other schemes promoted by the Applicant in the vicinity of the scheme that have a high certainty of being progressed. The Applicant also sets out that this was informed by discussion with the local planning authorities and took account of national Government regional growth rates.

120. With regard to operational carbon, the Applicant's approach to assessing the impact on carbon emissions is to consider the changes in carbon emissions resulting from the Development by comparing changes in the road traffic on the Strategic Road Network and LRN between the 'without scheme scenario' and the 'with scheme scenario', with the former providing the baseline for assessment. The Applicant considers that this takes into account the Development and all other developments likely to have an influence on the Development and on the area the Development is likely to influence. The Applicant considers that as both the with and without scheme scenario includes all likely developments and traffic growth factors the assessment is inherently cumulative. Comments received in response to the Secretary of State's consultation letter of 16 August 2021 argued that the Applicant had failed to provide evidence of the Development's cumulative impacts with other proposed road and housing schemes. The Secretary of State however considers that the Applicant has provided evidence as to cumulative effects with other proposed road and housing schemes in the traffic model and is satisfied overall that the Applicant has provided sufficient information in respect of existing and approved projects for the purposes of the EIA Regulations, as well as proposed projects to consider the cumulative effects of the Development.

121. The Secretary of State notes that the ExA suggested that the Secretary of State should satisfy himself on the acceptability of the Development against the cumulative effects of the RIS (ER 5.10.18). The Secretary of State also notes that the Applicant has sought to rely on *R (Transport Action Network) v Secretary of State for Transport and Highways England* (2021) EWHC 2095 in its response of 9 August 2021 to the effect that the total amount of GHG emissions from the schemes listed in RIS2 is de minimis in the context of appropriate comparators for assessing the effect on climate change. However, the Secretary of State notes the context of that case and the Court's conclusion that a RIS

is essentially a high level strategy document, rather than an environmental-decision making document which was required to be supported by an environmental assessment of the type required for the Development.

122. The Secretary of State considers that as there is no single prescribed approach to assessing the cumulative impacts of carbon emissions, there are a number of ways such an assessment can acceptably be undertaken and that this does not necessarily need to be done at RIS level. Furthermore, the Secretary of State considers that whilst an assessment at RIS level would provide a cumulative assessment of the RIS schemes that are planned or being delivered and the combined emissions from the RIS2 schemes are considered to be de minimis, it would not capture development in the surrounding area to the Development that could also have an impact. The Secretary of State also notes that the impact and effect of carbon emissions on climate change, unlike other EIA topics, is not limited to a specific geographical boundary and that the approach that needs to be taken to assess the cumulative impact of carbon emissions is different than for other EIA topics. Noting this and that there is no defined distance for assessing the impact of carbon emissions, the Secretary of State considers that the Applicant's approach to assessing the impact of the Development on carbon is acceptable as it takes into account the Development as well as all other developments likely to have an influence both on the Development and on the area the Development is likely to influence. The Secretary of State considers the assessment that has been undertaken is proportionate and reasonable in relation to the information the Applicant has access to and it enables the impacts of carbon to be understood and accounted for in the decision making process. The Secretary of State considers that the Applicant's approach overall, to both the assessments of the Development's impact on carbon emissions and its cumulative impact, is adequate, as journeys will not begin and end within the Development's boundary.

123. With regard to assessing the cumulative impact of the emissions on climate and the scale used in this assessment, the Applicant has set out that carbon budgets (which as set out above aim to limit the significant effects of climate change) are only set out at a national scale and that these are themselves cumulative as they are a sum of carbon emissions for a range of sectors. The Applicant considered that it was unable to produce a baseline at a local or regional scale and that there was therefore no reasonable basis upon which it can assess the effects of carbon emissions for anything other than at the national level. The Secretary of State accepts that the only statutory carbon targets are those at a national level and notes that neither the Applicant nor any other party has suggested that there are non-statutory carbon targets at any other level that may need to be considered. However, the Secretary of State notes the non-statutory target set out in SCC's 2020 Climate Change Strategy for emissions reduction in the transport sector in Surrey. As neither SCC nor any other party raised a conflict with this Climate Change Strategy, the Secretary of State has no evidence to suggest that the Development would cause this target not to be met. The Secretary of State does not consider that the Development would give rise to conflicts with SCC's Climate Change Strategy.

124. As well as being a requirement of the NPSNN, the Secretary of State considers that assessing a scheme against the national carbon budgets is an acceptable cumulative benchmark for the assessment for EIA purposes with regard to both construction and operation. This is because carbon budgets account for the cumulative emissions from a number of sectors and it is therefore appropriate to consider how the carbon emissions of the Development compare against this.

125. Overall, the Secretary of State considers that the information provided by the Applicant on the impact of the Development on carbon emissions (including the cumulative effects of carbon emissions from the Development with other existing and/or approved projects in relation to construction and operation) is sufficient to assess the effect of the Development on climate matters and represents the information that the Applicant can reasonably be required to compile having regard to current knowledge and in light of the information about the national carbon budgets.

126. With regard to climate change vulnerability, the Applicant in its response of 9 August 2021 supplemented its assessment in ES Chapter 15 with an additional assessment of the cumulative climate change vulnerability effects of the Development. The Applicant concluded that the assessment demonstrated that the Development will improve the resilience of the Strategic Road Network to the effects of climate change. The Secretary of State notes that this was not disputed by any party.

127. Overall, the Applicant set out in its response of 9 August 2021 that there would be no change in the significance of cumulative climate vulnerability effects associated with the Development. The Secretary of State accepts this conclusion.

Other matters

128. The Secretary of State notes the RHS's response of 6 September 2021 to the Secretary of State's consultation letter of 16 August 2021, which claims that the RHS Alternative would produce fewer carbon emissions than the Applicant's proposal due to the shorter distances travelled by traffic travelling to or from RHS Wisley. The RHS claims that the RHS Alternative would reduce the scheme's overall increase in emissions by more than 16%, though the Applicant outlined during the Examination that this increase was negligible as it represents 0.04% of the Development's total opening year emissions. The Secretary of State considers that the climate change benefits mentioned by the RHS would weigh positively for the RHS Alternative, but does not consider that they would overcome or be so significant as to outweigh the drawbacks of the RHS Alternative including that a left turn from Wisley Lane onto the A3 northbound could not be safely provided and that the scale of use and resultant reduction in traffic routing via the LRN would not be of such significance to warrant the provision of SFS at the OPJ (as set out at paragraphs 20-27).

129. The Secretary of State notes comments in response to his consultation letter of 16 August 2021 and 3 March 2022 as to the carbon impacts of the removal of green spaces and vegetation. The Secretary of State is satisfied that the Applicant has thoroughly assessed the emissions impact of the Development's construction and operation, in line with the relevant legislation and policy as set out at ES paragraph 15.1.3. The Secretary of State is therefore content that the assessment undertaken is reasonable, given the information available to the applicant, to enable the Secretary of State to understand the impacts of the Development on climate change.

Conclusion on climate change

130. The Secretary of State is satisfied that both the assessment in the ES and the Applicant's responses to the Secretary of State's consultation questions relating to climate have been drafted by competent experts. The Secretary of State considers that the information provided by the Applicant in response to its consultations is 'any other

information' for the purposes of the EIA Regulations as it builds on previously provided information, and that parties have been given sufficient opportunity to comment on this. The Secretary of State is content that the Applicant has adequately assessed the likely significant effects of the Development on climate and its cumulative impacts on climate taking account of both construction and operation as required by the 2017 Regulations and this information has been taken into consideration when assessing whether development consent should be granted.

131. The Secretary of State is aware that all emissions contribute to climate change. Whilst the Development will result in an increase in carbon emissions, as set out above, the Secretary of State considers that the Development is consistent with existing and emerging policy requirements to achieve the UK's trajectory towards net zero. The Secretary of State therefore considers the Development's effect on climate change would be minor adverse and not significant and this assessment aligns with the IEMA guidance. The Secretary of State is satisfied that that the scheme complies with the NPSNN, will not lead to a breach of any international obligations that result from the Paris Agreement or Government's own policies and legislation relating to net zero.

132. Given that the scheme will increase carbon emissions, it is given negative weight in the planning balance. In relation to climate change vulnerability and adaptation, the Development attracts positive weight in the planning balance.

Economic and Social Considerations

133. Paragraph 2.1 of the NPSNN refers to the important role that the national road network plays in supporting economic growth, as well as existing economic activity and productivity (ER 5.11.2). NPSNN paragraph 3.2 states that for the development of the national road network to be sustainable it should be designed to minimise social and environmental impacts and improve quality of life (ER 5.11.3). The Secretary of State notes and accepts the policy considerations outlined by the ExA (ER 5.11.2-5.11.4).

RHS Wisley

134. The Secretary of State notes that the RHS has raised issues concerning the financial impact that would arise for RHS Wisley as a result of both the construction and operational phases of the Development and that its economic investment programme and the economic viability of RHS Wisley could be at risk as a result of the Development (ER 5.11.11). The Secretary of State notes that to support its arguments the RHS has submitted two economic analyses from Hatch Regeneris with accompanying market research questionnaires HRR1 and HRR2 (ER 5.11.12).

135. The Secretary of State agrees with the ExA's analysis of the RHS's visitor questionnaires and the concerns the ExA raises about the approach taken (ER 5.11.23-5.11.36). The Secretary of State notes that the Applicant has drawn attention to an absence of views being sought amongst the survey respondents regarding the improvements to road safety, one of the primary objectives for the Development (ER 5.11.23). Although it is noted that RHS dispute there would be safety benefits, like the ExA, the Secretary of State does not agree with the RHS's case with regard to highway safety (ER 5.11.35).

136. The Secretary of State agrees with the ExA's view that it is reasonable to consider that perceived improvements in road safety would to some degree offset increased journey times and this could have the potential to influence attitudes of visitors to RHS Wisley (ER 5.11.36). The Secretary of State agrees with the ExA on the significance of the omission from the attitudinal surveying conducted on behalf of the RHS that should there be a reduction in the frequency and severity of accidents as a result of the Development there would be benefits to journey reliability for all users of the SRN (including those making visits to RHS Wisley) (ER 5.11.36).

137. The Secretary of State notes that the RHS's argument concerning the economic impacts of the Development on its operations at RHS Wisley is largely derived from applying the current and projected numbers of annual visits on the basis of the results of the attitudinal surveys reported in HRR1 and HRR2 (ER 5.11.37). The Secretary of State notes the ExA's analysis of the data presented by the RHS on its assessment of visitor numbers and economic impacts and agrees with the issues highlighted by the ExA (ER 5.11.37-5.11.45). The Secretary of State also notes the RHS's arguments that, once operational, the RHS Alternative would have less economic impact and a positive transport user impact, but for the reasons set out above, the Secretary of State does not consider this an acceptable alternative Development and agrees with the ExA that no weight should therefore be attached to the economic benefits that the RHS has attached to the RHS Alternative (ER 5.11.45). The ExA's overall assessment of the RHS's economic arguments (ER 5.11.46-5.11.53) is that the negative economic impacts ascribed to the Development in HRR1 and HRR2 have been overstated by the RHS as they are assessed using the output from a biased attitudinal survey. The Secretary of State agrees with this and the ExA's conclusion that very little weight should be attached to the RHS's assessment of economic effects on RHS Wisley and, like the ExA, he is not persuaded that the Development will have a significant impact on its operation (ER 5.11.51). The Secretary of State also agrees with the ExA that the increase in journey time by a few minutes is unlikely to impact on the frequency of visits for most visitors to RHS Wisley (ER 5.11.49). The Secretary of State does however agree with the ExA that there would be some adverse economic impacts for RHS Wisley for the reasons set out by the ExA, but that these would primarily be short-term effects associated with the construction phase, and agrees with the ExA that this weighs against the Development albeit not to a significant degree (ER 5.11.53).

Heyswood Campsite

138. The Secretary of State notes that Girlguiding Greater London West ('GGLW') made representations regarding the effect of the Development on the Heyswood Campsite and that its main concerns are due to the severance of the campsite and the loss of its existing direct and secure access off the A3 (ER 5.11.20).

139. The Secretary of State notes GGLW's concerns about the Development's effect on its activities if the originally proposed PMA route through the campsite is provided (ER 5.11.54). The Secretary of State notes that the ExA asked the Applicant to consider the feasibility of an alternative route that would run on the north-western side of the bungalow at the campsite, adjacent to the fencing for the southbound carriageway of the A3, to assuage GGLW's concerns (ER 5.11.55). The Secretary of State notes that this alternative route is supported by the owner of Court Close Farm but would entail the loss of an additional 0.11ha of ancient woodland, and has been objected to by the Woodland Trust

and NE (ER 5.11.55). It is noted that the results from the Applicant's further tree survey work undertaken in June 2020 were not provided at Examination, as the Applicant considered that prior to detailed design work it was not possible to confirm that all the trees could be retained. The ExA was therefore unsure as to the number of trees in the campsite that may be lost or have their roots damaged as the result of the alternative PMA or the PMA as originally proposed (ER 5.11.56). The ExA considered that the need to protect the irreplaceable asset of ancient woodland must take precedence in accordance with the NPSNN (ER 5.11.58) and that the original route through the Heyswood Campsite would be the ExA's preferred option as it would avoid the loss of the additional ancient woodland, calculated to be 0.11ha (ER 5.11.59). Following the ExA's recommendation, the Secretary of State requested on 4 November 2020 that the Applicant provide him with the further tree survey information of June 2020. The Applicant stated that this has been provided to GGLW on 19 November 2020, and GGLW stated in their response to the Secretary of State dated 19 November 2020 that they received this letter on 17 November 2020. Having taken account of the tree survey information, the Secretary of State agrees with the ExA's recommendation for the original PMA to avoid the additional loss of ancient woodland (ER 7.3.6).

Painshill Park

140. The Secretary of State notes that the potential economic and social impacts of the Development on Painshill Park, as cited by PPT, primarily relate to the loss of the western access and any subsequent impacts on the ability for the Park to host large events or for the Gothic Tower to be used in an alternative manner, for example to provide residential accommodation (ER 5.11.16).

141. The Secretary of State agrees with the ExA that in addition to the heritage impacts, any potential exclusion of the larger public events at Painshill Park would give rise to a detrimental effect on the community and loss of income for both Painshill Park and any traders at such events but notes that the ExA did not consider that it had been presented with any substantive evidence that such events could not take place in the future due to the loss of the western access (ER 5.11.60, 5.11.71). The Secretary of State therefore agrees with the ExA not to afford significant weight to this in terms of community impacts or loss of income for traders (ER 5.11.60). Overall, the Secretary of State considers that the proposal not to provide a western access is acceptable on social and economic terms. The Secretary of State further notes the Painshill Residents Association's letter of 9 February 2021 mentioning previous consultation over an alternative PMA to Heyswood and Court Close Farm using a bridge over the A3, which would have included a western access to Painshill Park (ER 5.7.23). As the Secretary of State is content with the proposal not to provide a western access, he is also content with the acceptability of the Heyswood/Court Close PMA as applied for on social and economic terms.

Economic impacts on other businesses

142. The Secretary of State notes that the site owner and operator of the former San Domenico Hotel building have objected on the grounds that the loss of a direct access from the A3 would make this site no longer economically viable for a commercial operation relying on passing trade (ER 5.11.17).

143. The Secretary of State notes the potential impact on Nutberry Farm and the San Domenico Hotel site summarised at ER 5.11.61-5.11.63 and agrees with the ExA's conclusions on these matters. The Secretary of State also notes the wider economic benefits of the Development set out in ER 5.11.64-5.11.65 and that, as recorded in the final SoCGs with SCC, EBC and GBC, it is agreed that the Development would provide additional highway capacity that is required to facilitate the delivery of new development being planned to meet housing and other community needs in the area (ER 5.11.65). The Secretary of State notes that it is also agreed in the SoCGs with GBC and EBC that improved journey times and reduced congestion as a result of the Development would bring economic benefits for businesses and will improve access to employment opportunities, including Brooklands Business Park (ER 5.11.65).

Social considerations

144. The Secretary of State notes the ExA's description of Development's effects on members of the public as users of the Special Category Land ('SCL') (ER 5.11.18). The Secretary of State notes the ExA's view that the Development would have implications for the availability of informal recreation space in the local area through the direct loss of SCL and the acquisition of rights over parts of the retained SCL (ER 5.11.66). The Secretary of State notes the need for RL to be provided as part of the Development.

145. The Secretary of State agrees with the ExA that there would be operational impacts on Heyswood Campsite resulting from the construction and use of the PMA. This was further highlighted by GGWL in their response of 19 November 2020. This represents a social disbenefit which the Secretary of State agrees with the ExA carries a moderate degree of weight (ER 5.11.72).

146. The Applicant acknowledges in ES Chapter 13 that there would be some large adverse and moderate adverse amenity and severance effects on NMUs during construction but that the effects on NMUs during operation would be predominantly positive (ER 5.11.69). The Secretary of State agrees with the ExA that the impacts on NMUs during the construction works would be an unavoidable consequence of works taking place, but that the long-term beneficial effects would be considerable and would far outweigh any temporary effects or longer-term impacts caused by the loss of the footway along Old Byfleet Road and the abandonment of the Cockcrow Hill permissive equestrian route (ER 5.11.69).

Conclusion on economic and social considerations

147. The Secretary of State accepts the ExA's conclusions at ER 5.11.70-5.11.75 and accepts that when considered in its entirety, the economic and social benefits arising from the Development would significantly outweigh the negative economic and social impacts on local businesses and organisations (ER 5.11.75). The Secretary of State agrees that the Development would accord with the NPSNN and relevant Development Plan policies in this regard (ER 5.11.75).

Land Use, Including Green Belt

148. The Secretary of State notes the ExA's consideration of the impacts of the Development on land use matters at ER 5.12. The Secretary of State notes that the

Development is located within the Green Belt and that as indicated in paragraph 5.170 of the NPSNN there is a general presumption against inappropriate development in the Green Belt and such development should not be approved except in very special circumstances (ER 5.12.2). The Secretary of State notes and accepts the policy considerations outlined by the ExA (ER 5.12.2-5.12.3).

149. The Secretary of State agrees with the ExA's view that the harm to the Green Belt carries significant weight, but that this would be outweighed by the very special circumstances of the considerable benefits of the Development as outlined in Chapter 5 of the Report. The Secretary of State agrees with the ExA that the considerable benefits would justify inappropriate development in the Green Belt (ER 5.12.7). The Secretary of State agrees with the ExA that the loss of best and most versatile agricultural land cannot be mitigated, but that due to the amount of best and most versatile land to be lost, the effects on agricultural land would not give rise to any significant harm from the Development (ER 5.12.9). The Secretary of State agrees that the impact of the Development on minerals has been adequately assessed and accounted for (ER 5.12.11). The Secretary of State agrees with the ExA's conclusion that the very special circumstances would justify inappropriate development in the Green Belt, and that there would be no other land use impacts significant enough to weigh against the DCO being made. The Development therefore complies with the NPSNN in this regard (ER 5.12.12).

Findings and Conclusions in Relation to the Habitats Regulations Assessment

Habitats Regulations Assessment ('HRA')

150. Under Regulation 63 of the Conservation of Habitats and Species Regulations 2017, as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 ('the Habitats Regulations'), the Secretary of State as the competent authority is required to consider whether the Development (which is a project for the purposes of the Habitats Regulations) would be likely, either alone or in-combination with other plans and projects, to have a significant effect on a European site.

151. Where likely significant effects cannot be ruled out, the Secretary of State must undertake an appropriate assessment ('AA') under Regulation 63(1) of the Habitats Regulations to assess potential adverse effects on site integrity. Such an assessment must be made before any decision is made on undertaking a plan or project or any decision giving consent, permission or other authorisation to that plan or project. In light of any such assessment, the Secretary of State may grant development consent only if it has been ascertained that the plan or project will not, either on its own or in-combination with other plans and projects, adversely affect the integrity of such a site, unless there are no feasible alternatives and imperative reasons of overriding public interest ('IROPI') apply (Regulation 64). Where a plan or project is agreed to in accordance with Regulation 64, notwithstanding a negative assessment of the implications for a European site, Regulation 68 also requires that the appropriate authority must secure that any necessary compensatory measures are taken to ensure the overall coherence of the national site network is protected.

152. The Secretary of State notes that the Applicant concluded that no likely significant effects were anticipated to occur at the following sites and this conclusion was not disputed:

- Mole Gap to Reigate Escarpment Special Area of Conservation (SAC); and
- Ebernoe Common SAC.

153. The Secretary of State notes the Applicant identified potential likely significant effects on the Thames Basin Heaths Special Protection Area (SPA).

154. The Applicant identified a number of potential impact pathways where likely significant effects on the three qualifying features of the Thames Basin Heaths SPA, namely Dartford warbler, woodlark and nightjar, could not be ruled out. These included: habitat loss (both temporary and permanent); habitat degradation from air quality changes; habitat degradation from water quality changes; disturbance from noise, lighting and recreational pressure; habitat degradation arising from the spread of invasive non-native species; and in-combination effects with other plans or projects.

155. The Applicant concluded that adverse effects on integrity, either alone or in-combination, could be ruled out for all effects except for habitat loss. The Applicant therefore submitted an assessment of alternative solutions, a case for IROPI, and proposed compensation measures.

Secretary of State HRA conclusions

156. Having considered the assessment material submitted during and since the Examination, the Secretary of State considers that likely significant effects in relation to construction and operation could not be ruled out. The Secretary of State therefore considered that an AA should be undertaken to discharge his obligations under the Habitats Regulations. The AA is summarised at Sections 1 to 5 of the HRA Report published alongside this letter.

157. In the Secretary of State's view, the material provided during and since the Examination contained sufficient information to inform consideration under Regulation 63 of the Habitats Regulations as to the likely impact on the European sites. The AA takes into consideration the conclusions and recommendation of the ExA. The AA also takes into account the advice of NE and the views of other IPs as submitted during and since the Examination.

158. The Secretary of State concurs with the Applicant, ExA and NE that there would be no likely significant effects arising from the Development, either alone or in-combination with other plans or projects, on Mole Gap to Reigate Escarpment SAC and Ebernoe Common SAC.

159. The Secretary of State is satisfied that, given the relative scale and magnitude of the identified effects on the qualifying features of the Thames Basin Heaths SPA and where relevant, the measures in place to avoid and reduce the potential harmful effects, there would not be any implications for the achievement of the conservation objectives for the SPA arising from changes to air quality, changes to hydrology/water quality, spread of invasive non-native species, or disturbance due to noise, lighting or recreational pressure.

160. The Secretary of State concurs with the Applicant, the ExA and NE that adverse effects to the integrity of the SPA could occur as a result of permanent and temporary loss of habitat within the SPA due to the construction of the Development. The Secretary of State has not identified any further mitigation measures that could be imposed in respect of the effect of habitat loss which would remove the potential adverse effects on integrity

identified and has therefore proceeded to consider the derogation provisions of the Habitats Regulations (Regulations 64 and 68).

161. Section 6 of the HRA Report accompanying this letter describes the Secretary of State's consideration of alternative solutions. Having identified the objectives of the Development and considered all alternative solutions that would provide a means of fulfilling these objectives, the Secretary of State is satisfied that no feasible alternative solutions are available.

162. The Secretary of State agrees with the conclusions of the ExA as set out in ER 6.8.8 and is satisfied that there are IROPI for the Development to proceed, subject to compensatory measures being taken. The Secretary of State's consideration of IROPI is presented in Section 7 of the HRA Report. In arriving at this decision, the Secretary of State has reviewed how the Development provides a long-term public benefit which is essential despite the harm to the integrity of the Thames Basin Heaths SPA.

163. The subject of compensatory measures was given substantial consideration during the Examination, with the Applicant's proposed compensation package examined in detail. The recommendation of the ExA is that the compensation package as proposed is feasible and appropriate and is adequately secured in the DCO (ER 6.10.6).

164. The Secretary of State's consideration of compensatory measures is included at Section 8 of the HRA Report published alongside this letter. The Secretary of State has considered the proposed compensation package and information provided by the Applicant and other IPs and is content that the proposed compensation measures will be effective and are appropriate, secured and agreed with NE as the appropriate nature conservation body. The Secretary of State concludes that they are legally, financially and technically feasible and that monitoring is in place to ensure the compensatory measures are delivered and are in place for the timescales needed.

165. The Secretary of State has considered the provisions of Regulation 68 of the Habitats Regulations to secure the necessary compensatory measures are taken to ensure that the overall coherence of the national site network is protected and concludes that this would be satisfied with the compensatory measures in place.

Securing the designation of the SPA compensatory land as a European site

166. The ExA (ER 6.9.2) describes the process by which the Applicant and NE expect the SPA compensation land to become designated as part of the Thames Basin Heaths SPA. Paragraph 5.1.10 of the Applicant's HRA Stage 3-5 report and paragraph 7.2.3.5 of the SPA Management and Monitoring Plan explain that following an approval by the Secretary of State, the SPA compensation land would be recorded by the NE Geographical Information System database as SPA land and would be shown on the Multi-Agency Geographic Information for the Countryside (MAGIC) system, to ensure that the SPA compensation land is given the same protection as SPA land with regards to future planning proposals. Additionally, it is UK Government policy in England that sites identified, or required, as compensatory measures for adverse effects on European sites are afforded the same protection as European sites (as stipulated in the National Planning Policy Framework at paragraph 176).

167. The Secretary of State understands that the appropriate authority has a duty to classify SPAs as a European site; however, the former obligation on the appropriate authority to provide information to the European Commission about the site no longer applies.

168. Regulation 16 of the Habitats Regulations continues to provide that if the appropriate authority proposes to classify a site as a SPA under Regulation 15, it must give to the appropriate nature conservation body: (a) notice of that proposal and (b) an accompanying statement of the reasons for that proposal. In turn, the appropriate nature conservation body must give notice of the proposal to various other parties and produce a report to the appropriate authority. Until the point at which the compensatory land located outside of the existing SPA boundary becomes part of the European site, protection is provided by Government policy.

Conclusion on the Case for Development Consent

169. The Secretary of State agrees with the ExA's finding that the Development is in general conformity with the NPSNN and, when considered in conjunction with the relevant caveats (see e.g. paragraphs 60 and 79 above), there are no instances of non-compliance with the NPSNN (ER 7.2.2). The Secretary of State also agrees with the ExA's broad agreement that the Development is in conformity with local Development Plans of EBC, GBC and SCC, but notes the ExA's outlining of limited conflicts with Development Plan policies over the impacts on designated heritage assets, ancient woodland and veteran trees as these policies do not contain the balancing considerations that are contained in the NPSNN (ER 7.2.3). The Secretary of State notes the ExA's view that the Development would address existing capacity and safety issues, as well as address modelled traffic growth arising from national trends, local and regional growth (ER 7.2.4). The Secretary of State accepts the ExA's view that there would be no unacceptable effect upon the operation of the LRN and that the new replacement accesses provided as part of the Development to replace direct accesses to the A3 would be acceptable (ER 7.2.6). The Secretary of State accepts that the operational transportation and traffic effects would be strongly positive and that the Applicant has made reasonable provision to minimise the effects of the construction works on the operation of the SRN and LRN, and a traffic management plan which would be secured through requirement 4 of the DCO (ER 7.2.7). The Secretary of State also considers that there would be benefits in terms of improvements to NMU routes and recreational and biodiversity benefits, although agrees with the ExA that, as these would be associated benefits rather than key traffic-related objectives of the Development, less weight should be accorded to any benefits for either recreational opportunities or biodiversity (ER 7.3.2). The Secretary of State also agrees with the ExA's conclusions on significant effects as set out at ER 7.2.4-7.2.24.

170. The Secretary of State agrees with the ExA that there are a number of harms associated with the Development as set out at ER 7.3.3 including: most significantly, the direct loss of part of the Thames Basin Heaths SPA for which SPA compensation areas and enhancement areas are to be provided; loss of 0.4ha of ancient woodland and at least two veteran trees; less than substantial harm to the significance of designated heritage assets to which harm the Secretary of State attaches great weight; adverse socio-economic impacts on the Heyswood campsite, RHS Wisley and Nutberry Farm; some negative landscape and visual impacts until the proposed planting matures; limited adverse impacts on human health. As outlined above at paragraph 132, the Secretary of State also considers

that there would be minor adverse effects caused by increased carbon emissions. There would also be the potential some noise and dust impacts from construction (ER 7.3.4) but mitigation for this is secured by requirement 3 in the DCO (e.g. ER 5.3.37, 5.4.51).

171. Overall the Secretary of State agrees with the ExA's assessment at ER 7.3 of benefits and impacts of the Development and the consideration of matters against the NPSNN. The Secretary of State also agrees with the ExA that the benefits of the Development would be considerable and clearly outweigh the harms and that none of the adverse effects identified, either alone or cumulatively/in-combination, would be significant enough that the DCO should not be made (ER 7.3.7). The Secretary of State notes the caveat to the ExA's recommendation in ER 7.3.7 and has addressed this above at paragraphs 106-132 including in concluding that the increase in carbon emissions from the Development would attract negative weight in the planning balance but having done so is satisfied that in terms of the overall planning balance the DCO should be made.

Compulsory Acquisition and Related Matters

172. The Secretary of State notes that the submitted application includes proposals for the Compulsory Acquisition ('CA'), i.e. the acquisition of land (outright acquisition) or the acquisition of rights over land, and the Temporary Possession ('TP') of land during the construction period for the Development (ER 8.1.1). The Secretary of State agrees with the ExA that the changes to CA and TP provisions during the Examination are non-material, and the condition in section 123(3) of the 2008 Act was met in relation to this land and that the prescribed procedures in the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 do not apply (ER 8.3.1).

173. The Secretary of State notes the ExA's consideration of the powers sought by the Applicant in Chapter 8 of the Report for CA and TP. In particular, the Secretary of State notes that objections (of which a number were outstanding at the end of the Examination) were raised in relation to: the effects on local businesses; new access arrangements including stopping up of direct accesses to the A3 and concerns with replacement PMAs; a gas main diversion; acquisition and transfer of land occupied by the local highway authority; the effect on the RHS Wisley RPG; the effect on trees and other vegetation; conflict with the proposed development at Wisley Airfield; and the public interest in, human rights implications of, and legal basis for acquiring compensatory land at Park Barn Farm ('PBF'). The ExA's consideration of these can be found at ER 8.8-8.10.

174. The Secretary of State notes the purposes for which CA and TP land is required (ER 8.4.1 to 8.4.6) and accepts the description of the legislative requirements and national guidance as set out by the ExA at ER 8.5.1-8.5.23. The Secretary of State notes the ExA's examination of the case for CA and TP (ER 8.6).

175. The Secretary of State notes that sections 122 and 123 of the 2008 Act set out the purposes for which CA may be authorised and the descriptions of land to which CA can relate. The Secretary of State agrees with the ExA that, with the exception of some of the land plots relating to the provision of RL for the SCL that would be affected by the Development, the legal interests in all the plots of land included in the Book of Reference and shown on the Land Plans would be required for the Development with respect to both CA and TP powers (ER 8.13.1). Following the Secretary of State's further consultation and consideration (as set out below at paragraphs 222-227), the Secretary of State also

considers that this applies to plot 7/1. The Secretary of State accepts that land subject to CA as part of the Development, with the exception of proposals for RL, is no more than would reasonably be required and the proposed land take would be proportionate. Therefore, the Secretary of State agrees with the ExA that the public benefit associated with the Development would outweigh the private loss (ER 8.13.2).

176. The Secretary of State notes the objections and representations made by affected persons excluding SCL considerations, and accepts the ExA's conclusions (ER 8.9). The Secretary of State considers GGLW's objection in further detail below.

Replacement Land for Special Category Land Subject to CA

177. The Development includes acquisition of 13.77ha of SCL, namely Common Land ('CL') and Open Space ('OS') (ER 8.8.1). To satisfy the Secretary of State that section 131(4) of the 2008 Act applies, the Applicant proposes to provide 31.35ha of RL (ER 8.8.79). The Applicant is also looking to acquire permanent rights over 8.5ha of SCL, and to satisfy the Secretary of State that section 132(4) of the 2008 Act applies, the Applicant proposes to provide 8.5ha of RL (ER 8.8.2). Permanent acquisition of rights is also sought over an additional area in the region of 62.29ha of SCL, but the Applicant does not propose to provide RL for that land as the Applicant considers that the exercising of rights would not be disadvantageous to users of the SCL (ER 8.8.3).

178. The Secretary of State notes the Applicant's consideration of ratios of RL and that the Applicant identified a need to provide the 39.8ha of RL spread across 9 sites (ER 8.8.10). This would be at the following ratios (ER 8.8.8):

- 2.5:1 for CL subject to permanent acquisition
- 2:1 for OS subject to permanent acquisition
- 1:1 for the permanent acquisition of rights over CL and OS along bridleways and associated routes where those are separate from the M25 and A3 and associated overbridges (land that the Applicant considers would be 'burdened' by Order rights (ER 8.8.2))
- No RL for the acquisition of permanent rights over SCL for the undertaking of works to, and the initial management of, SPA compensation land and enhancement areas

179. The Secretary of State notes that the Applicant considers this to be proportionate and justified having regard to sections 122, 131 and 132 of the 2008 Act (ER 8.8.4-15). The Secretary of State notes that SCC confirmed that the Applicant's proposals for CA and TP of SCL were appropriate and that the DCO made suitable provision for RL (ER 8.8.16).

180. The Secretary of State notes however that PBF's owner objected to the acquisition of PBF1, PBF2 and PBF3 (plots 11/7, 11/12, 11/17, 11/17a, 11/8, 11/8a, 12/3 and 28/2) as RL (ER 8.8.18). The Secretary of State notes the ExA's summary of the objection at 8.8.18-32 and that this covers three main areas: that the proposed provision of RL amounts to over-compensation for the loss of SCL; that there is not a compelling case in the public interest; and that there are alternatives for RL that would not impact PBF. The PBF objector argued that the proposed acquisition of RL at PBF was unnecessary and would result in significant harm to the human rights of the owners and occupiers of PBF (ER 8.8.19). The PBF objector also argued that the Applicant's use of historic RL ratios to calculate RL for this Development was inappropriate (ER 8.8.21). The PBF objector contended that as the

owners of CF1 to CF4 and HF1 and HF2 have not raised objection to the CA of that land, then there would be no interference with human rights of those landowners and that is a factor that should be taken into consideration (ER 8.8.30).

Legislation and policy consideration

181. As mentioned above, under the DCO, existing SCL is subject in some cases to outright CA, and in other cases it is subject to the acquisition of rights permanently. That means sections 131 and 132 of the 2008 Act are engaged. Those sections provide that Special Parliamentary Procedure ('SPP') applies to the DCO if made, unless the Secretary of State is satisfied that one of the relevant exceptions set out in the subsections in each of the sections apply. The relevant subsections in this case are sections 131(4) and 132(4) which make provisions about RL.

182. The NPSNN says at paragraph 5.181 that where sections 131 or 132 of the 2008 Act apply, any RL provided under those sections will need to conform to the requirements of those sections.

183. The Department for Communities and Local Government (now Department for Levelling Up, Housing and Communities) Planning Act Guidance related to procedures for the compulsory acquisition of land ('the CA Guidance') says, in paragraph 8 of Annex A, that where either sections 131(4) or 132(4) of the 2008 Act apply, the Secretary of State will have regard to such matters as relative size and proximity of the RL when compared with the land it is proposed to compulsorily acquire through the DCO.

184. The ExA said that with respect to the provision of RL for SCL that would be subject to outright acquisition, section 131 of the 2008 Act contains the relevant legislative requirements and that under section 131(3) an Order granting development consent will be subject to SPP, unless among other things, RL has been or will be given (ER 8.8.71). Section 131(12) says that "replacement land means land which is not less in area than the order land and is no less advantageous to the persons, if any, entitled to rights of common or other rights, and to the public" (ER 8.8.71). The ExA highlighted that neither the 2008 Act nor the CA guidance state that RL should not offer more advantage than SCL that it would be exchanged for (ER 8.8.72).

185. The ExA said that paragraph 5.166 of the NPSNN seeks to ensure that applicants provide RL, which at a minimum is equivalent in quality to the land it would be exchanged for, whilst under paragraph 5.174 any positive proposals for RL provision are to be looked upon favourably in decision making, and that therefore the NPSNN allows for RL provision to be of better quality than the SCL it would replace (ER 8.8.73).

186. The ExA said that the degree of disadvantage that the public as users of the SCL might encounter through the outright loss of some of the SCL and the exercising of the rights to be permanently acquired over other parts of the SCL is of significance as it is that factor that has driven the Applicant's approach to determining how much RL it considers needs to be provided and ensuring SPP would not be invoked (ER 8.8.38).

Special Category Land subject to acquisition

187. Much of the SCL subject to outright acquisition is close to the running lanes of the existing M25 and A3. The Applicant, SCC and PBF generally agreed that the affected land is not of the highest recreational/functional quality when compared with other parts of the SCL (ER 8.8.39). The ExA noted the land's physical buffering function but considered that this has been somewhat overstated as the reduction in the physical extent of the woodland buffer would be at the margins of the wooded areas and so users of the SCL would experience only a limited change in the extent of the woodland buffer (ER 8.8.41). The ExA summarised that it is likely that the areas of SCL intended for outright acquisition are not heavily used by visitors to either Ockham Common or Wisley Common as they are situated on the periphery of the main bodies of the CL and OS and are more likely to be used for getting to and from the CL or the OS rather as part of the main purpose for visiting either of the commons (ER 8.8.42). The ExA further noted that the plots they considered are not representative of much of Ockham Common or Wisley Common and do not contribute significantly to the recreational quality of the SCL (ER 8.8.43). The ExA also considered that generally the SCL land plots close to either the M25 or A3 and which had been identified by the Applicant as requiring RL for acquisition of rights do not perform as publicly accessible outdoor space in the same way as the other more extensive parts of Ockham Common and Wisley Common that are more distant from the M25 or A3 as these plots are at the margins of Ockham Common and Wisley Common and are not as well suited to undertaking recreational activities when compared with the main bodies of the CL and OS (ER 8.8.46).

188. The ExA noted that there is agreement that nothing in user experience terms significantly differentiates the CL from the OS. The ExA therefore considered that when assessing how much RL would be required to mitigate any loss of advantage for SCL users arising from the Development, the same ratio/multiplier should be applied to the affected CL as the OS (ER 8.8.49). The ExA saw no need for CL to be replaced at a rate of around one fifth more than OS as identified in the Applicant's target ratios, and therefore considered that for the purposes of section 122(3) of the 2008 Act there is no compelling case in the public interest for compensating for the loss of CL at a higher ratio than would be the case for OS (ER 8.8.50). The Secretary of State agrees with this approach.

189. For SCL that is subject to outright acquisition, the Secretary of State notes that section 131(12) of the 2008 Act requires that the area of RL provided in exchange should be no less than the area of SCL for which outright acquisition is proposed and that this would mean that in this instance a minimum of 13.77ha of RL should be provided, which is equivalent to an RL ratio of 1:1, otherwise SPP may be engaged under section 131(3) (ER 8.8.76).

190. The Secretary of State notes the ExA said that there is a need to consider whether the recreational quality of the 13.77ha of SCL would warrant RL being provided at a ratio greater than 1:1 so that RL would be no less advantageous for SCL users. The ExA considered that a ratio greater than 1:1 is not required, because the SCL subject to outright acquisition is of a much lower recreational quality and is subject to high levels of daytime road traffic noise, being peripherally located to the main bodies of Ockham Common or Wisley Common (ER 8.8.77).

191. The Secretary of State notes that in support of the proposed RL ratios for the outright acquisition of SCL, the Applicant referred to the exchange land ratios used for the M25 when it was first built, the A3 Hindhead Tunnel and the A244 Walton Bridge schemes. However, the ExA considered that the circumstances of this Development, which involves the upgrading of the existing SRN in the vicinity of Junction 10, are different from those relating to the construction of the other schemes and that little weight should be attached to those precedents when working out RL because each individual case should be considered on the basis of its particular circumstances (ER 8.8.84). The Secretary of State agrees with this point.

192. The ExA was of the view that the 13.77ha of SCL subject to outright acquisition is of relatively poor recreational quality and was not persuaded that the scale of disadvantage for SCL users would be anything like as significant as that which arose when the M25 was first built and exchange ratios in excess of 1:1 were applied (ER 8.8.78).

193. The ExA was therefore of the view that the Applicant's use of the target RL ratios of 2.5:1 for CL and 2.1:1 for OS represent an over-inflated allowance for loss of advantage and thus considered that the acquisition of 31.35ha of RL to compensate for the acquisition of 13.77ha of SCL cannot be justified under the particular circumstances of the case (ER 8.8.79). Instead, the ExA considered that the amount of RL that should be provided should be 13.77ha, or a ratio of 1:1 (ER 8.8.76).

Special Category Land subject to the permanent acquisition of rights

194. With regard to the provision of RL for SCL that would be subject to the acquisition of permanent rights, the ExA noted that the plots affected are close to either the M25 or A3 and at the margins of Ockham Common and Wisley Common and not as well situated as other parts of CL and OS for recreational activities (ER 8.8.46). The Secretary of State notes the categorisation of the rights to be exercised on a plot by plot basis on the relevant SCL as set out at ER 8.8.57. The Secretary of State notes the ExA's consideration of these categories and in particular the ExA's view that only those rights the exercise of which would impede movement or prevent access would be burdensome for SCL users (ER 8.8.60). He also notes the ExA's concerns about double counting (ER 8.8.58-59) and that together, these issues led the ExA to conclude that the area of RL that should be provided for the SCL over which permanent rights are to be taken should be 2.63ha (ER 8.8.60). The Secretary of State has no reason to disagree with this conclusion.

195. The Secretary of State notes that the ExA considered that the Applicant's proposals for the provision of 8.51ha of RL for the SCL burdened by the acquisition of permanent rights would be excessive and has accordingly concluded that for the purposes of section 122(3) of the 2008 Act, there would not be a compelling case in the public interest justifying the CA for 8.51ha of RL (ER 8.8.99), and considers that there would be no less advantage for SCL users should 2.63ha of RL instead be provided (ER 8.8.100).

Combined totals

196. Adding the amount of land that the ExA concluded should be provided as RL for SCL subject to acquisition of rights (2.63ha) to the amount of RL for SCL subject to acquisition (13.77ha), the ExA concluded that there is therefore a need for the Development to provide a minimum total of 16.40ha of RL (ER 8.8.100).

Replacement Land and biodiversity mitigation

197. The ExA said that concern was raised about whether the amount of RL proposed was driven by the purpose of providing mitigation for any adverse biodiversity effects resulting from the Development (ER 8.8.85). The Secretary of State notes that this matter has been raised in correspondence to him in response to the consultations. The ExA considered that it was clear that there would be some biodiversity benefits associated with the provision of 39.8ha of RL but was satisfied that any of the biodiversity mitigation measures to be undertaken within any of the RL sites would be incidental to the primary recreational role for those areas (ER 8.8.88). The ExA was therefore satisfied that the Applicant's proposals for RL had not been inflated by any need to mitigate the impacts of the Development on biodiversity. The ExA was also content that if RL was to be significantly reduced, there would be no inadequacy in the mitigation for the Development's effects on biodiversity, most particularly in the SPA, in the Site of Special Scientific Interest ('SSSI') or amongst the protected species directly or indirectly affected by the Development (ER 8.8.89). The Secretary of State agrees with this.

The ExA's Recommendation

198. The ExA is of the view that the proposed 16.40ha of RL made up of PBF1, PBF2 and part of PBF3 would be the most suitable to address the disadvantage for SCL users arising from the outright acquisition of 13.77 SCL and the acquisition and exercising of rights over 2.63ha of the SCL and this is because the land at PBF scores well in terms of: being contiguous with the SCL that lies to the north east of Junction 10; the potential for this RL to provide consolidated and recreationally attractive areas of outdoor recreational space; and its proximity to the built up area of Byfleet increasing the chances of the SCL being used by people walking to and from it, thereby reducing reliance upon the use of private motor vehicles. The ExA further considers that PBF should be preferred to CF1 to CF4, HF1 and HF2 as the location for RL provision because those other locations would either be subject to higher levels of noise and/or would not be as well related to the existing SCL (ER 8.8.106). The ExA also considered land at Pond Farm, but dismissed this due to adverse impacts upon the SPA and SWT's farming operations (ER 8.8.112-8.8.114); the Secretary of State has no reason to disagree with this consideration.

199. The ExA therefore recommended that it would be appropriate for all of PBF1, PBF2 and the southern part of PBF3 to be acquired and that limiting the land take in PBF3 would leave the ponds and the area where a summer house has been sited available for use by the residential occupiers (ER 8.8.107). The ExA noted that the provision of RL at PBF would interfere with the human rights of the owners and occupiers but highlighted that the total landholding at PBF was 40.5ha so even with the proposed reduction in outdoor space, the ExA was not persuaded that the occupiers of the three dwellings would be severely compromised or that it would result in unreasonable living conditions for them (ER 8.8.109-8.8.10).

The Secretary of State's consultation and consideration

200. The Secretary of State issued a consultation letter on 4 November 2020 seeking views from the Applicant and other parties on the proposal to provide the substantially reduced amount of RL as recommended by the ExA.

201. The Applicant, in its response of 19 November 2020, disagreed with this proposal, maintaining its position that the RL provision proposed as part of the Development is appropriate and proportionate and that the extent of RL suggested does not reflect previous precedents such as A3 Hindhead, A3 Esher bypass and the original M25 Wisley interchange. The Applicant suggested that, if the Secretary of State were minded to reduce the proposed RL, a more appropriate proposal ('the Applicant's revised proposal') would be the inclusion of PBF1, PBF2 and the south part of PBF3 at PBF (i.e. the ExA's proposal) as well as the inclusion of areas CF1 and CF2.

202. The Applicant also said that land parcel 28/2 adjacent to plot 11/17i should be acquired in order to avoid severing a small parcel of land from the landowner's remaining retained land. The Applicant stated that the removal of parcels CF1 to CF4 at Chatley Farm ('CF') and HF1 and HF2 at Hatchford End would mean the scheme would not include any RL in the north-eastern and south-eastern quadrants around Junction 10, meaning that some of the RL at PBF would in effect be RL for Chatley Heath land even though it would not be contiguous with it or even close to any of the affected parcels of Chatley Heath land. It also said that for the same reasons, land at PBF should be retained as RL in order to ensure the Scheme provides an area of RL that is contiguous with Wisley Common. The Applicant said that its revised proposal would provide a total area of approximately 26.5ha of RL, which would equate to a ratio of provision of approximately 1.74:1 for land to be acquired.

203. The Secretary of State notes the responses from NE, the Royal Society for the Protection of Birds ('RSPB'), Surrey Wildlife Trust ('SWT') and SCC which included support for the Applicant's original proposal, alongside concerns about loss of opportunity for NMUs, pressure on the SPA, and lost opportunity for biodiversity enhancement.

204. The RHS, in its response of 19 November 2020, raised concerns that the removal of RL would make the ES inaccurate, result in loss of biodiversity enhancements and have impacts for the SPA. OPC, in its response of 17 November 2020, stated that it does not support any reductions in RL, raising concerns about biodiversity and stating that the sites HF1 and HF2 which are within its parish would provide community benefit and preserve and protect the natural environment. OPC, as well as the Elm Corner Residents Group in its response of 18 November 2020, also argued that the part of Elm Lane that will no longer be required for access to Elm Corner should be included as RL and rewilded. The Secretary of State notes that this matter has already been considered by the ExA (ER 5.2.178). PBF's response of 19 October 2020 said that the Applicant has not set out a compelling case in the public interest as to why PBF should be subject to CA or why other sites would not achieve a minimum of equivalence of public advantage, and stated that a reduction in RL should have no impact upon biodiversity mitigation.

205. On 27 November 2020 the Secretary of State consulted on the Applicant's revised proposal. Responses were received from RSPB, SWT and SCC which continued to support the Applicant's original proposal, noting that the Applicant's revised proposal did not reflect previous precedents. The RHS, in its response of 7 December 2020, stated that if an assessment of environmental impacts is to take into account environmental information beyond that contained in the existing ES, it would be necessary to abandon the DCO application and start again with a new ES. PBF, in its response of 7 December 2020, set out that they support parcels of land at CF1 and CF2 being included but not the overall total of RL as they did not consider this was justified. PBF also considered that the inclusion of

CF1 and CF2 should result in an equivalent removal of PBF land and that whilst they were prepared to relinquish 5.10ha of land at PBF1 they resisted the acquisition of PBF2 and PBF3 on the grounds of its valuable contribution to residential amenity. A response was received on 7 December 2020 from Mr Norman, the owner of plots 26/5, 26/5A and 26/6 (i.e. HF2), welcoming the proposal not to include these plots in the DCO. The Applicant responded to highlight that in its response to the Secretary of State's letter of 4 November 2020, that the RL package would be enhanced by the inclusion of CF3 in addition to CF1 and CF2.

206. The Secretary of State notes concerns raised about the environmental implications of removing the plots at Chatley Farm in particular and at Hatchford End from the DCO. The ExA also recommended that the Secretary of State should consult on the impacts of any reduction in RL on biodiversity. The Secretary of State therefore asked the Applicant to provide additional environmental information on the proposals in a consultation letter of 20 January 2021. In this letter, the Secretary of State proposed including land plot 28/2 as RL, but the Applicant clarified in its response of 19 November 2020 that plot 28/2 is already registered as CL. The Secretary of State accepts this and does not consider this to be RL in his analysis. The Applicant further responded that the western end of plot 13/9 (part of CF2) was required for use as a construction compound; the Secretary of State has therefore included this area in the DCO as land for TP but does not consider it to be RL.

207. The Applicant further detailed the environmental impacts of the RL proposals included in the Secretary of State's 20 January consultation letter. Regarding biodiversity, the Applicant concluded that no further mitigation and compensation would be required for the reduction in RL, as all residual impacts either remain the same or, for the case of the SSSI, would remain positive but be at lower magnitude. The Secretary of State notes the Applicant's consideration of some biodiversity drawbacks, including a reduction in the extent and quality of wet habitat mitigation due to the removal of enhancement of Chatley Wood pond in CF1, and the reduction in woodland enhancements at PBF3 and CF reducing mitigation for the loss of habitats of principal importance (albeit that, even with the reduced RL, more woodland would be planted than lost) and ancient woodland (albeit that the residual impact assessment for ancient woodland would not change). NE, in its response of 23 February 2021 to the Secretary of State's consultation letter of 15 February 2021, considered that the reduction in mitigation at CF for the loss of ancient woodland makes it less clear how the Development meets the published guidance on compensating for unavoidable loss of ancient woodland. However, the Applicant in its response of 26 January 2022 to the Secretary of State's consultation letter of 22 December 2021 notes that, even with a reduction in RL, the Development would still include compensatory measures for ancient woodland, including woodland planting, enhancement at Elm Corner ancient woodland, woodland linkages and the translocation of ancient woodland soils. The Applicant states that these measures meet the published guidance as they are "appropriate for the site and for the scale and nature of the impacts on it". The Secretary of State notes that NE did not take issue with this, has no reason to disagree with the Applicant's assessment and is satisfied that the guidance is complied with. Although the Secretary of State notes that the primary purpose of the provision of RL is to replace OS and CL, he has also considered the effect on biodiversity and considers that, because the reduction in RL would not require further biodiversity mitigation or compensation, and because the residual impacts on biodiversity would remain broadly the same, the proposed reduction in RL is acceptable in biodiversity terms.

208. Regarding road drainage and the water environment, the Applicant further contends that the baseline conditions in the ES would not change due to a reduction in RL. However, the Applicant further states that the removal of enhancement at Chatley Wood pond would reduce the extent and quality of mitigation for ephemeral ditch habitat, though it would not materially change the outcome of the Water Framework Directive Compliance Assessment.

209. The Applicant considers that the reduction in RL would have a number of visual and landscape impacts, including reducing visual impact during construction but causing a possible adverse visual impact in operation due to a removal of the benefit to local residents and users of the adjacent commons and rights of way. The Applicant considers that the reduction in RL would avoid a significant construction phase landscape impact on CF and the north of PBF3, but would also avoid operational phase landscape impact benefits at CF, PBF3 and Hatchford End. The Applicant concludes that the lack of woodland planting would increase the adverse effects of the Development but not its overall impact on the landscape.

210. The Applicant considers that reducing the RL would cause a number of effects on people and communities. The Applicant considers that the landowner's loss of the PBF holding would fall from 53% to 40% but that this would still be significant. The Applicant considers that the original assessment of the impacts of the loss of grassland/pasture capable of viable agricultural use would be unlikely to materially change, as the proportion of the reduction in RL which could be used as pasture is small – though it may reduce in magnitude from major to moderate. The Applicant further considers that the removal of Hatchford End would avoid a non-significant slight adverse effect on the equestrian unit but would not change the conclusion of slight adverse effects on agricultural land quality, and that the loss of NMU routes that would have run over the replacement land would remove their significant beneficial effects.

211. Overall, the Applicant concludes that the reduction in RL would likely cause no new or different significant environmental effects. In its 23 February response to the Secretary of State's consultation letter of 15 February 2021, NE expresses disappointment in the reduction in RL but is satisfied the Applicant has carefully considered the potential environmental effects of the proposed reduction in Replacement Land provision, and is satisfied that, should the Secretary of State be minded to approve an amended DCO with reduced Replacement Land, this would be compliant with the 2017 Regulations. The Secretary of State has no reason to disagree with this conclusion.

212. In response to the Secretary of State's 15 February 2021 consultation Mr Alexander welcomed the retention of RL at PBF but also detailed the user communities which use the CL and OS. The Secretary of State notes this but considers that the uses of this land have been adequately assessed in the Applicant's ES, particularly Chapter 13 (people and communities) and considered by the ExA. Mr Alexander also considers that the loss of the land will reduce the quality of the 'next layer' of land which will in turn become closer to the M25 and A3, and argues that these two factors mean the ratio of land lost to RL must be higher than 1:1. The Secretary of State considers that in assessing the adequacy of RL provision, the 2008 Act requires regard to be paid only to the land to be lost and the RL, and the ExA has complied with the 2008 Act in doing so. The Secretary of State considers that the Development's effects on the 'next layer' of land have been considered separately in the ES and in the Examination.

213. The PBF objector, in its representation of 16 March 2021, further set out its position that the case for acquiring land at PBF must fall away if other RL can be secured by private treaty and/or there is no objection to its acquisition. The Secretary of State notes the ExA's reasoning for including the proposed RL as discussed at paragraph 194 above, notes that the ExA is not persuaded by the argument that the absence of objections and/or human rights concerns from the owners of the other proposed RL means that those sites should automatically be considered preferable to the PBF land (ER 8.8.111), and notes Mr Norman's (owner of HF2) letter of 7 December 2020 welcoming the prospect of his land's removal from the DCO. The PBF objector further contends that it is not sufficient to say that the PBF land may be better RL, and that it must be shown there is no alternative to its acquisition.

214. In considering the tests in sections 131(4) and 132(4), the Secretary of State is of the view that these are not about which of a number of alternative areas of RL is best, but that the RL must be no less advantageous to the public. In coming to the conclusion that this test is met, the Secretary of State notes the ExA's view that all of the proposed RL at PBF would be of a more consolidated character than the fragmented plots of SCL it would be exchanged for and thus would be capable of providing more recreationally useful areas and that because it would also be physically well-related to the existing CL and OS to the north of the M25 and west of the A3 that form part of Wisley Common, such proximity would make the RL at PBF better placed to provide publicly accessible outdoor space when compared with the other RL locations at the CF and Hatchford End land (ER 8.8.75). The Secretary of State therefore considers that the tests in sections 131(4) and 132(4) are met in relation to the proposal to provide RL at PBF. In coming to that conclusion, the Secretary of State has taken into account Annex A of the CA Guidance.

215. The Secretary of State has also considered section 122(3) of the 2008 Act which requires a compelling case in the public interest for the land to be acquired compulsorily. The PBF owner contends that acquisition of the PBF land would interfere with rights under Article 8(1) of the ECHR due to its residential amenity, and contends that the Secretary of State cannot conclude that the acquisition of PBF land is necessary as acquisition of the other RL would not interfere with Article 8 rights. The Secretary of State notes the PBF objector's position and agrees with the ExA that acquisition of RL at PBF would result in interference with the human rights of the owners and occupiers of the property (ER 8.8.109). However, the Secretary of State considers that the acquisition of the PBF land as part of the RL proposed above would be in pursuance of a legitimate aim (replacing SCL affected by the Development), would be in accordance with the relevant sections of the 2008 Act (including by meeting the tests in sections 131(4) and 132(4) for the reasons mentioned in the preceding paragraph), would be proportionate and would strike a fair balance between the demands of the general interest of the community and the requirements of the protection of the landowner's rights, taking account in particular of the availability of compensation. The Secretary of State notes that the absence of CA objections and/or human rights concerns from the owners of the six other proposed RL sites did not persuade the ExA that those sites should in effect automatically be considered as being preferable RL locations ahead of the land at PBF (ER 8.8.111) and agrees with that conclusion. The Secretary of State also considers there to be a compelling case in the public interest for the acquisition of land at PBF given the way it will provide publicly accessible outdoor space by being physically well-related to the existing CL and OS to the north of the M25 and west of the A3 that form part of Wisley Common (ER 8.8.75) and having regard to the significant advantages and benefits it would deliver as compared with

other possible sites at CF and Hatchford End even if they could be acquired by private treaty or without objection to their compulsory acquisition. The Secretary of State notes the ExA's consideration of the interference with the rights of the PBF owners and occupiers at ER 8.8.109 to 8.8.110 and agrees with the ExA that such interference would not severely compromise the occupiers of PBF (ER 8.8.110). The Secretary of State therefore considers that the public benefits of providing the RL at PBF in order to compensate for the loss of SCL and deliver a Development with appropriate RL outweigh the private loss to those affected by compulsory acquisition who would suffer interference with their human rights. In considering this matter, the Secretary of State has taken into account the CA Guidance. The Secretary of State also agrees with the ExA that the RL at PBF would be a positive RL proposal, in line with NPSNN 5.174 (ER 8.8.111).

The amount of Replacement Land to be acquired

216. The ExA considered that the ratio of 1:1 would be most appropriate (ER 8.8.77), and therefore proposed that 16.40ha of RL should be acquired (ER 8.8.100). The ExA set out that this should consist of the entirety of PBF1 and PBF2 in addition to 2.95ha of land from PBF3 (ER 8.8.107). However, in the Applicant's response of 3 February 2021 to the Secretary of State's consultation letter of 20 January 2021, the Applicant outlined that the ExA's proposed RL would in fact constitute 16.52ha of land, resulting in a ratio greater than 1:1. The Secretary of State, having had regard to the Book of Reference, agrees with this. The Secretary of State therefore considers that, in order to achieve the ExA's recommended ratio, an amount of RL should be proposed which is 0.12ha lower than that proposed by the ExA ('the updated RL proposal'). The Secretary of State proposed in his consultation of 22 December 2021 that this further reduction of 0.12ha should be entirely from plot 11/17h. This is in line with the ExA's recommendation that the area of PBF3 to be acquired should be taken from the southern part of the plot (ER 8.8.116).

217. The Secretary of State issued a consultation letter on 22 December 2021 asking the Applicant to provide documentation to match his updated RL proposal, including whether any new or different significant environmental effects of any nature would be likely as a consequence of the updated RL proposal. The Applicant, in its response of 26 January 2022, stated that given the very small area of land in question the updated RL proposal would not give rise to any new or different significant environmental effects in comparison to those set out in its response of 3 February 2021 or reported in the ES. The Secretary of State requested other IPs' comments on the Applicant's response in his 4 February 2022 consultation letter, and did not receive any responses on this point. The Secretary of State has no reason to disagree with the Applicant's conclusion on the environmental effects of the updated RL proposal.

The Secretary of State's conclusion on Replacement Land

218. In his consideration the various replacement land proposals (the Applicant's original RL proposal, the ExA's recommendation on RL, and the Applicant's revised proposal), the Secretary of State notes the ExA's conclusion that the recreational quality of the lost SCL would not warrant a RL ratio of more than 1:1 (ER 8.8.77). The Secretary of State also notes consultees' comments on the drawbacks of a reduction in RL as discussed above, but agrees with the ExA's conclusion that the purpose of the acquisition of RL under section 122(2)(c) of the 2008 Act is, in this case, solely to address any recreational disadvantage that SCL users would experience (ER 8.8.86). Therefore, while the Secretary of State has

taken into account consultees' comments, he does not consider that the issues raised in them persuade him that a ratio of RL above 1:1 would be necessary to meet the requirement that replacement land be no less advantageous to the public. The Secretary of State has considered the environmental effects of a reduction in RL, and considers that no materially new or different effects would arise due to the reduction in RL proposed by the ExA. Therefore, the Secretary of State agrees with the ExA's reasoning for recommending that only PBF1, PBF2 and part of PBF3 be included as RL as set out at paragraph 215 above, subject to the minor modifications set out in paragraph 217 above.

219. The Secretary of State considers that accepting the ExA's RL proposal would meet the requirements of sections 131(4) and 132(4) of the 2008 Act. First, it delivers a total area of RL that is no less than the area of SCL to be acquired and is no less advantageous to the persons entitled to rights and to the public. Secondly, it is adequate to compensate the relevant persons (including the public) for the disadvantages which result from the compulsory acquisition of rights. For the reasons given in paragraph 215, the Secretary of State concludes that there is a necessary and compelling case in the public interest for the CA of RL at PBF (and that its merits as compared to alternative RL proposals create such a compelling case), the relevant conditions in section 122 of the 2008 Act have been met, and that the interference with the landowners' human rights is justified and proportionate in all the circumstances of the case. The Secretary of State also considers that the proposal complies with NPSNN paragraph 5.174, which advises that positive proposals for RL should be looked upon favourably, because it allows for a better quality of land to be delivered. The Secretary of State is satisfied this will not amount to over-compensation as it takes appropriate account of quality and location of the SCL to be lost as well as the amount of RL, which the Secretary of State considers is appropriate in relation to this particular Development. As discussed above in paragraph 211, the Secretary of State is satisfied that the reduction in RL would likely cause no new or different significant environmental effects to those reported in the ES.

220. The Secretary of State has considered the location of the RL to be acquired and, in agreement with the ExA, considers that the land at PBF would be the most appropriate proposal. This is because it would be of a more consolidated character than the fragmented plots of SCL it would be exchanged for and thus would be capable of providing more recreationally useful areas, and its physical good relation to the existing CL and OS would make the RL at PBF better placed to provide publicly accessible outdoor space when compared with CF and Hatchford End (ER 8.8.75). The Secretary of State has considered the Applicant's argument that, under the ExA's proposal, some of the RL at PBF would in effect be RL for Chatley Heath land even though it will not be contiguous with it or close to any of the affected parcels of Chatley Heath land. In coming to his conclusion on the location of the RL, the Secretary of State has considered the proximity of the RL to the existing CL and OS, but for the above reasons considers that, if RL was provided in fragmented plots in close proximity to SCL to be lost (rather than as a whole at PBF), it would be less clear how the RL would meet the test under section 131(12) of the 2008 Act of being no less advantageous to the existing users of the existing SCL.

221. Therefore, the Secretary of State has included PBF1, PBF2 and part of PBF3 in the DCO as RL. The Secretary of State has authorised the CA of plot 28/2 in the DCO but has not included this as RL. The Secretary of State has authorised the TP of part of plot 13/9 in the DCO for use as a construction compound, but has not included this as RL.

Diversion of Gas Main via Heyswood Campsite

222. The Secretary of State notes that GGLW's objection concerns Heyswood Campsite and relates to the proposed CA of plot 7/1 (ER 8.9.73) and notes the ExA's view that GGLW's representations should be considered as being representative as the owner and occupier of that plot (ER 8.9.74). The Secretary of State notes that plot 7/1 forms part of the grounds of Heyswood Campsite and provides a vehicle entry to and exit from the Campsite, and the Applicant seeks to acquire this plot to provide a replacement PMA and accommodate a gas main diversion (ER 8.9.75). As part of the Development, the direct access to the A3 southbound that the Heyswood Campsite shares with the neighbouring residential property to the south, Court Close Farm, would be stopped up, necessitating a replacement or new PMA (ER 8.9.76). The Secretary of State notes GGLW's concern about the section of the replacement Heyswood/Court Close PMA that would pass through Heyswood Campsite and would be used on a shared basis with the owners and occupiers of Court Close Farm. The concern relates to safeguarding issues for the operation of the campsite and the need to erect fencing along both sides of the PMA which will cause severance of a wooded strip of land within the Campsite (ER 8.9.79). The Secretary of State notes that an alternative PMA route was proposed that would allow vehicles from Court Close Farm to bypass Heyswood Campsite (ER 8.9.80) and which would require additional land take within the Campsite (ER 8.9.81).

223. The ExA recognises that the shared use of the Heyswood/Court Close PMA would create some operational issues for GGLW, which would result in some interference with the use of Heyswood Campsite as a property. The Secretary of State notes however that the ExA considers that this interference would be proportionate and would not be of such significance as to outweigh the compelling case in the public interest for acquiring plot 7/1 compulsorily to facilitate the provision of a PMA providing access to both the Campsite and Court Close Farm (ER 8.9.92). The ExA states however that there is a need to consider whether there is a compelling case in the public interest for the CA of part of plot 7/1 to facilitate the proposed gas main diversion (ER 8.9.92). The Secretary of State notes that the ExA considers that for him to be satisfied that the acquisition of plot 7/1 would be for a legitimate purpose, it would need to be demonstrated to him that there were no other alternatives relating to the routing of the diversion of the gas main through Heyswood Campsite (ER 8.9.97).

224. The Secretary of State in his consultation letter of 4 November 2020 asked for the Applicant and GGLW to provide details of other routes considered for the gas main diversion and an update on discussions they had had. In its response of 19 November 2020, GGLW described a virtual meeting with the Applicant on 12 November 2020 at which, among other matters, alternative routes were discussed. In its response of 19 November 2020, the Applicant confirmed that during the Examination it considered an alternative access to Court Close Farm in view of concerns raised by GGLW. The Secretary of State notes the Applicant's view that it is not possible to route the gas main along this alternative PMA as the required working width of 12m and the easement of 6m for the gas main would require additional land and would adversely affect significantly more ancient woodland. The Secretary of State further notes the Applicant's consideration that the potential of routing the gas main on its own through the open area of the campsite would potentially disrupt the campsite's operation during its installation and, once complete, it would prevent planting within the 6m operational easement corridor, with further associated planting restrictions outside the easement corridor.

225. The Secretary of State in his letter of 27 November 2020 sought further comments from the Applicant and GGLW following their responses to his letter of 4 November 2020. GGLW in its letter of 7 December 2020 reiterated its concern around the safeguarding of the young people who use the campsite if the Heyswood/Court Close PMA goes through the site, and stated its concern that there would be a significant loss of trees caused by the currently-proposed route of the gas main. The Secretary of State notes that Mrs Engelen in her letter of 7 December 2020 supported the potential realignment of the proposed gas pipe. The Secretary of State notes that the Applicant in its letter of 7 December 2020 stated that following further consideration, it is of the view that the alternative route mentioned by GGLW, SGN (in their letter of 11 November 2020) and Mrs Engelen is not feasible as additional land would be required which is ancient woodland, and that the environmental effects of a diversion on the alternative route have not been assessed. Furthermore, the Applicant states that the option of diverting the gas main through the camping field used by GGLW (which would avoid the trees GGLW has raised concern over) is similarly not feasible as there has been no assessment of the environmental effects of that alternative, which may be more disruptive to GGLW given that construction works would need to be undertaken within a core area of the GGLW site. The Secretary of State considers that the possible adverse effects of the two alternatives on ancient woodland and the operation of the core area of the GGLW site respectively mean that the only practicable solution within the DCO limits is the alignment of the gas main diversion as applied for. The Secretary of State is content that all reasonable alternatives to CA have been explored.

226. The Secretary of State agrees with the ExA that the quantum of the land take of plot 7/1 for the Development is proportionate, with it being possible for it to be kept to the necessary minimum once the design for the gas main diversion is finalised (ER 8.9.96). The Secretary of State considers that the Applicant has demonstrated that with regard to section 122(3) of the 2008 Act, there is a compelling case in the public interest for the land to be acquired compulsorily and the acquisition of plot 7/1 would be for a legitimate purpose.

227. The Secretary of State notes Andrew and Robert Macateer's letter of 18 November 2020 in response to the Secretary of State's consultation letter of 4 November 2020 in which they object to the CA of the land including plots 7/11a and 7/12 to provide an access road, if it is an inadequate width to accommodate the number of identified users. The Applicant, in its letter of 7 December 2020, responded that a road width of 4.8m is acceptable for the proposed access road from the Painshill junction to the Heyswood Campsite car park, and that SCC in its SoCG with the Applicant has mentioned that it considers that the proposed new Heyswood/Court Close PMA is fit for purpose as currently designed. The Secretary of State accepts this.

SCL Subject to Incomplete 'Historic Exchange' of Land Subject to Compulsory Purchase Orders ('CPO') of 1979 and 1982

228. The Secretary of State notes that parts of Ockham Common and Wisley Common were affected by the original construction of Junction 10 and that the affected SCL was authorised for acquisition under two CPOs. The Secretary of State notes that some of the land covered by the historic CPOs was CL and these CPOs were authorised on the basis that exchange land would be provided in exchange for the loss of the affected CL. The Secretary of State notes that SCC has submitted that there are around 20 plots of land affected by this matter, some of those being unregistered, and that neither SCC nor the Applicant have been able to confirm that no party other than SCC has a landowning

interested in that land that should have been acquired pursuant to the historic CPOs (ER 8.8.120). The Secretary of State notes that some registered CL, now occupied by the M25 and the A3's slip roads, has not yet been acquired by either the Department for Transport or the Applicant, and consequently there are parts of the M25 and A3 which continue to be registered as CL ('the Highways Common Land'), while the Applicant continues to be the owner of some exchange land which should have been vested in SCC (ER 8.8.121).

229. The ExA considered that if the exchange of land envisaged under the terms of the historic CPOs has not been completed and the CL in question has not been de-registered, the Secretary of State should satisfy himself that it would be lawful for the DCO to be made under those circumstances (ER 8.8.126). As such, the Secretary of State in his consultation letter of 4 November 2020 sought an update from the Applicant and SCC on the current status of the historic exchange land and the Highways Common Land, and whether this matter has been resolved. The Secretary of State also sought comment from the Applicant on the potential impact on the Development if the Highways Common Land is not acquired by the Applicant and deregistered as common land. The Applicant, in its response of 19 November 2020, stated that the parties (SCC and the Applicant) are not in a position to complete the transfer and it is unlikely that, even were the transfers to be completed before the decision deadline, the transfers would be registered at the Land Registry and the commons register updated to reflect the intended position. The Applicant also stated that the making of the DCO does not depend upon the completion of the transfers or the consequential amendments to the commons register. The Secretary of State is satisfied with the Applicant's response and accepts that the making of the DCO is not dependent on the completion of the aforementioned transfers.

Conclusions on CA and TP

230. The Secretary of State considers that the CA and TP of all land subject to CA and TP in the DCO (including of the modified area of RL and of plot 7/1 for the diversion of the gas main through Heyswood Campsite) is acceptable as there is a compelling case in the public interest for this land to be subject to CA for the following reasons:

- The Proposed Development for which the land would be compulsorily acquired would be in accordance with the national policy stated in the NPSNN and there is a case for development consent as set out in paragraphs 169 to 171 above;
- There is general support for the Development from the majority of IPs and/or affected persons, including EBC, GBC and SCC;
- The NPSNN identifies a critical need for enhancing SRN capacity and the Development seeks to achieve that;
- There is a need to secure the land and rights subject to the CA powers sought and to construct the Development within a reasonable timeframe and the Development would represent significant public benefits that weigh the balance in favour of the affected land being acquired compulsorily;
- Affected persons' private losses have been mitigated as far as possible through the selection of the land and the minimisation of the extent of the rights and interests proposed to be acquired;
- The Applicant has explored reasonable alternatives to the CA of the rights and interests sought and it is reasonable that the Applicant should have CA and TP powers as a guarantee against the possible failure of voluntary agreements being secured;

- There are no alternatives which ought to be preferred; and
- Funding is available to meet any compensation liabilities for CA and TP and for any blight claims and the Applicant's standing in relation to public funds is such that there is no need for any special or additional guarantees for this funding (ER 8.3.6).

231. The Secretary of State notes that with respect to considerations under sections 127 and 138 of the 2008 Act, by the close of the Examination there were no outstanding issues relating to statutory undertaker land and apparatus, with the objections raised by Affinity Water Limited and National Grid Electricity Transmission PLC having been withdrawn (ER 8.13.7).

232. The Secretary of State notes that with respect to Crown Land, by the close of the Examination the only land subject to section 135 of the 2008 Act was six land plots in which Defra has an interest. The Secretary of State notes that Defra has written to the Applicant confirming its agreement to any made DCO including powers that relate to this land in which it has an interest (ER 8.13.9).

233. The Secretary of State notes the funding position as set out in the Applicant's Funding Statement that while the period for RIS1 was originally intended to expire by the end of March 2020, funding for the Development will continue to be committed to it through to the end of March 2021 (ER 8.7.14). The Secretary of State in March 2020 included the Development in RIS2, funding for which lasts until 2025. Furthermore, the Applicant confirmed in its response of 23 November 2020 that it has secured Designated Funds to construct the green element of the Cockcrow Bridge, which is a 25m-wide green bridge. The Secretary of State therefore accepts that the Development would be fully funded.

234. The Secretary of State is satisfied that, with the modifications in the DCO, the CA powers sought by the Applicant would be justified and should be granted. The Secretary of State agrees with the ExA that there would be a compelling case in the public interest for the land and interests to be acquired compulsorily and that there would be compliance with the CA Guidance and the requirements of the 2008 Act, most particularly sections 122, 131 and 132. The Secretary of State agrees with the ExA that with respect to TP, the powers sought in the DCO are necessary for the delivery of the Development (ER 8.13.10).

235. The Secretary of State notes the position of the PBF objector, in its representation of 16 March 2021, that the fact that no hearing had been carried out examining the specific RL proposals advocated by the ExA (and included in the DCO as made) breaches the requirements of section 92 of the 2008 Act and is unlawful. The Secretary of State considers that the compulsory acquisition hearings which took place were sufficient to comply with section 92, and considers that the ExA provided an opportunity for all parties to present evidence and made conclusions based on this. The Secretary of State also considers that all IPs have had adequate opportunity to comment on the reduced RL proposals through the post-Examination consultation process. The Secretary of State therefore agrees with the ExA's conclusion (ER 8.13.12) that in relation to human rights, the Examination has ensured a fair and public hearing, and that any interference with human rights arising from the Development's implementation would be proportionate and would strike a fair balance between the rights of the individual and the public interest. The Secretary of State also accepts the ExA's conclusion (ER 8.13.12) that compensation would be available for any quantifiable loss and there would be no disproportionate or unjustified interference with human rights so as to conflict with the provisions of the Human Rights Act 1998.

Draft Development Consent Order and Related Matters

236. The ExA's consideration of the draft development consent order ('dDCO') is set out in Chapter 9 of its Report. The Applicant submitted a dDCO and Explanatory Memorandum ('EM') describing the purpose and effect of the provisions in the dDCO as part of the application for development consent (ER 9.2.1). The Secretary of State notes that a number of revisions were to the dDCO and EM were submitted during the Examination (ER 9.3.3-9.3.6).

237. Where not previously stated, the Secretary of State is satisfied with the recommended changes set out in Table 9.2 of the ER. The modifications which the Secretary of State has decided to make to the recommended draft DCO at Appendix D to the ER are as follows (references to article numbers, paragraphs and requirements in this paragraph are to the same as numbered in the DCO as made):

- article 2 (interpretation) – the definition of the 2017 Regulations has been removed to reflect the removal of the article modifying the 2017 Regulations;
- article 2 (interpretation) – the definition of “electronic transmission” has been amended so as to define what is meant by “electronic communications network”;
- article 9 (consent to transfer benefit of Order) – the Secretary of State has included new paragraph (4) that follows the A30 Chiverton to Carland Cross DCO 2020 (‘the A30 Chiverton DCO’) to make clear that where there has been a transfer it is the undertaker that is responsible for payment of any compensation that may become payable. In relation to paragraph (5), the Secretary of State has removed reference to the UK Power Networks and National Grid as no work numbers have been provided in relation to these statutory undertakers in line with the third consultation letter dated 27 November 2020;
- article 13 (classification of roads, etc) – the Secretary of State has noted that there is reference to special roads contained in Part 1 of Schedule 3 but the usual provision for the Secretary of State to be notified has been omitted. This article has been amended so as to include such notification, but it has necessitated the slight reworking of all the provisions.
- article 26 (extinguishment of public rights of way) – the Secretary of State has included new paragraph (3) setting out the contents to be included in the notice to be erected at each of the rights of way to be extinguished (as precedented in the A30 Chiverton DCO);
- article 29 (application of the 1981 Act) – the Secretary of State is content to leave provisions in article 25 (compulsory acquisition of rights and restrictive covenants) regarding the acquisition of rights for the benefit of statutory undertakers and other persons, because while not commonly used it is precedented. However, paragraphs (4) and (10) to (12) contain totally unprecedented amendments and it is insufficient to say in the EM that these amendments are consequential on those contained in article 25 when such amendments have not been required in other precedent orders. The EM sets out that the amendments are intended to clarify that the Acquisition of Land Act 1981 can be used to acquire rights and land on behalf of third parties without the need to acquire such rights and land in favour of National Highways and then transfer such land or rights to a third party. The rationale is to avoid any delay to such transfers but this has not appeared to be a problem, or caused difficulties, in relation to other highways orders. There is no reference to problems or difficulties having arisen and it is therefore unclear to the Secretary of

State whether these amendments are in fact needed, and without an explanation that they are intended to address a problem or difficulty that has arisen, he is unable to agree to the inclusion of these unprecedented amendments.

- article 30 (modification of the 2017 Regulations) – for the reasons outlined in relation to article 29, the Secretary of State has removed the provisions contained in this article.
- article 32 (temporary use of land for carrying out the authorised development) – Paragraph (3)(a) and (b) refer to a period of two years for remaining in possession of land. The Secretary of State notes that the usual period is for one year and further notes that there is no explanation provided in the EM for the need to have an extended period. The Secretary of State has thus replaced the two year period with the usual period of one year.
- article 34 (Crown rights) – the Secretary of State has removed the reference to ‘or any licensee’ it is not a term used in the DCO and has reverted the more usual wording used for this provision;
- article 48 (arbitration) – the Secretary of State has reverted back to the wording normally used;

Schedule 2 (requirements)

- requirement 21 (applications made under requirements) – sub-paragraph (1)(c) has been amended so that a longer period may be agreed between the parties; and a new sub-paragraph (3) has been inserted so that an application is deemed to have been refused if the application gives rise to material new different environmental effects from those approved in the authorised development
- requirement 22 (pre-application consultation) has been reworked to follow the more usual wording. The final sub-paragraph detailing the way in which a consultee is to be consulted is unprecedented and the Secretary of State is concerned that it has the effect of working against the consultee. There is no explanation provided in the EM for the need of this provision. It is for these reasons the Secretary of State has removed this provision.

General Considerations

Equality Act 2010

238. The Secretary of State has complied with the public sector equality duty and has had due regard to the matters set out in section 149(1) of the Equality Act 2010 in accordance with section 149(3) to (5) concerning the need to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic or persons who do not. The Secretary of State notes the ExA’s conclusion that the Development’s characteristics and the proposed mitigation mean that there would be no harm to the interests of persons who share a protected characteristic or any adverse effect on the relationships between such person and any person who does not have a protected characteristic (ER 10.3.6). The Secretary of State does not consider that a decision to grant development consent would have significant differential impacts on any of the protected characteristics.

Natural Environment and Rural Communities Act 2006

239. The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006 ('the 2006 Act') has to have regard to conserving biodiversity and in particular to the United Nations Environmental Programme on Biological Diversity of 1992 when deciding on whether to grant development consent. The Secretary of State notes that the ExA has had regard to the 2006 Act and biodiversity duty in the relevant sections of the Report. In reaching a decision to grant development consent, the Secretary of State has had due regard to conserving biodiversity.

Secretary of State's overall conclusion and Decision

240. For all the reasons set out in this letter, the Secretary of State considers that there is a clear justification for authorising the Development. The Secretary of State has therefore decided to accept the ExA's recommendation at ER 10.4.1 and grant development consent, subject to changes in the DCO mentioned in paragraph 237. The Secretary of State is satisfied that none of these changes constitute a material change and is therefore satisfied that it is within the powers of section 114 of the 2008 Act for the Secretary of State to make the DCO as now proposed.

Challenge to Decision

241. The circumstances in which the Secretary of State's decision may be challenged are set out in Annex A of this letter.

Publicity for the Decision

242. The Secretary of State's decision on this application is being publicised as required by section 116 of the 2008 Act and regulation 31 of the 2017 Regulations.

Yours faithfully,

Natasha Kopala

ANNEX A

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks beginning with the day after the day on which the Order is published. Please also copy any claim that is made to the High Court to the address at the top of this letter.

The M25 Junction 10/A3 Wisley Interchange Development Consent Order 2022 (as made) is being published on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/south-east/m25-junction-10a3-wisley-interchange-improvement/>

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (020 7947 6655).