



# Department for Transport

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14 October 2022

National Highways  
Bridge House  
1 Walnut Tree Close  
GU1 4LZ

Dear Sir,

## **PLANNING ACT 2008 APPLICATION FOR THE PROPOSED A47/A11 THICKTHORN JUNCTION 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 20 June 2022, of the Examining Authority (“ExA”), Matthew Shrigley BSc MPlan MRTPI who conducted an Examination into the application made by National Highways (“the Applicant”) for the A47/A11 Thickthorn Junction Development Consent Order (“the DCO”) under section 37 of the Planning Act 2008 as amended (“the 2008 Act”);
  - post examination correspondence received by the Secretary of State; and
  - responses to post-examination consultations undertaken by the Secretary of State in respect of the application.
2. The application was submitted on 31 March 2021 and accepted for Examination on 28 April 2021. The Examination began on 23 September 2021 and concluded on 23 March 2022. 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 site inspections.
3. The DCO as applied for would grant development consent for works (“the Proposed Development”) which includes:
  - a single-lane free-flowing link road connecting the A11 northbound to the A47 eastbound via two underpasses (under the A11 and A47 respectively);
  - improvements to the Thickthorn junction;
  - removal of the Cantley Lane South direct connections between the A11 and A47 exit slip roads;
  - a new link road connecting Cantley Lane South with the new B1172 Norwich Road; to the north and construction of two new bridges;
  - a new junction connecting the B1172 Norwich Road to Cantley Lane Link;
  - a new junction connecting Cantley Lane South to Cantley Lane Link;

- existing Cantley Lane stream and access track realigned and a new stream culvert constructed;
  - a new footbridge over the A47 for walkers, cyclists and horse riders; and
  - paths for walking and cycling along the new Cantley Lane Link.
4. The Proposed Development is located wholly within the administrative areas of Norfolk County Council (“NCC”) and South Norfolk District Council (“SNC”).
  5. 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 and references to “Requirements” are to those in Schedule 2 to the DCO as recommended by the ExA at Appendix D to the Report.

### **Summary of ExA’s Report and Recommendations**

6. The principal issues considered during the Examination on which the ExA has 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);
  - 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 (Chapter 6);
  - Conclusions 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).
7. For the reasons set out in the Report, the ExA recommend that the Secretary of State makes the DCO in the form recommended at Appendix D to the Report (ER 10.3.2).

### **Summary of Secretary of State’s Decision**

8. **The Secretary of State has carefully considered the Report, post examination correspondence and responses to consultation and has decided under section 114 of the 2008 Act to make with modifications an Order granting development consent for the proposals in this Application.** This 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 (“2017 Regulations”).

### **Secretary of State’s Consideration**

9. The Secretary of State’s consideration of the Report, post examination correspondence and responses to the Secretary of State’s consultation letters of 25 July 2022 and 19 August 2022, 28 September 2022 and 6 October and 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.

10. Where not otherwise stated in this letter, the Secretary of State can be taken to agree with the findings, conclusions and recommendations 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.

## **Legal and Policy Context**

11. For the reasons set out in ER 3.2.1 the Secretary of State is content that the Development qualifies as a Nationally Significant Infrastructure Project under sections 14(1)(h) and 22(1)(b), 22(3) of the 2008 Act. Under section 104(3) of the 2008 Act the Secretary of State must decide this application in accordance with any relevant National Policy Statements which in this case is the National Policy Statement for National Networks ("NPSNN") subject to certain exceptions set out in section 104(4) to (8) of the 2008 Act, which are not relevant in this case. The Secretary of State agrees with the ExA's assessment of the legislation and other matters that are relevant and important considerations in relation to this application as set out in Chapter 3 of the Report.
12. In a Ministerial Statement issued on 22 July 2021 the Secretary of State for Transport advised that a review of the NPSNN will begin in 2021 to 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 2008 Act. The NPSNN will, therefore continue to provide a proper basis on which Examination Authorities can examine, and the Secretary of State can make decisions on, applications for development consent.
13. The Secretary of State notes the main planning issues as set out in Chapter 4 of the ExA's report. In accordance with section 104(2) of the 2008 Act in addition to the NPSNN, the Secretary of State has had regard to the Local Impact Reports ("LIR") submitted by NCC and SNC. The Secretary of State notes the key areas of these LIRs as set out in ER 4.3.
14. The Secretary of State notes that the application had 3 amendments during the Examination as set out in ER 2.3 and agrees with the ExA that the proposed changes are not material so as to constitute a new application (ER 3.11.3). The Secretary of State is therefore satisfied that it is within the powers of section 114 of the 2008 Act for her to make the Order in the form recommended by the ExA with modifications.
15. 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.
16. The Secretary of State notes that Hornsea Three Offshore Wind Farm is a consented nationally significant infrastructure project which impacts the Proposed Development. The applicant for the Hornsea Three DCO has indicated that it does not have in principle objections to the Proposed Development and is seeking to work with the Applicant to ensure there are no implications to any proved cabling routes (ER 3.7.2). At the end of the examination, the Statement of Common Ground ("SoCG") between the Applicant and the Hornsea applicant had not been signed (ER 1.4.40) and in the Secretary of State's consultation letter of 25 July 2022, the Secretary of State asked the parties to confirm the status of the SoCG and if it had been signed. The Secretary

of State notes that there has been no signed SoCG between the parties. However, the Secretary of State notes the proposal by Hornsea Three, which is not opposed by the Applicant, in its 16 September 2022 response to the Secretary of State's consultation letter dated 14 September, that Requirement 10 be amended to include Hornsea Three as a consultee in relation to any impact on construction traffic in respect of The Hornsea Three DCO. The Secretary of State agrees with this proposal and additionally notes that the Traffic Management Plan once finalised would be shared with Hornsea Three and this would include providing them with not less than 7 working days' notice of any road closures, diversions or alternative access arrangements that may affect travel on these routes and (if available) the agreed hours of working (ER 5.6.33). The Secretary of State considers these should alleviate the concerns of Hornsea Three.

## **FINDINGS AND CONCLUSION IN RELATION TO PLANNING ISSUES**

### **Alternatives**

17. Paragraph 4.27 of the NPSNN states that all projects should be subject to an options appraisal. The Secretary of State notes that Chapter 3 of the Environmental Statement ("ES") reviewed the alternatives which were considered during the initial design stages for the development. Of the seven alternatives the option of a connection with Cantley Lane South to B1172 with Norwich Road was taken forward though design consultation changes (ER 5.2.8-5.2.9). The Secretary of State notes the challenge to the options by interested parties ("IPs") at ER.5.2.10 and as detailed in section 2.4 of the Report, the suggestions for further alternatives being available. The ExA found there is no convincing basis that any alternatives not detailed by the Applicant would be viable options taking on board all relevant factors (which are considerable) and the overarching delivery aims needed to formulate a viable initial option list. Overall, having regard to the options presented and assessed by the Applicant, the ExA found the NPSNN to be fully complied with (ER 5.2.12). The Secretary of State agrees with this assessment.

### **The need for the Development / Traffic Transportation Matters**

18. The Secretary of State notes the policy considerations of the NPSNN and the LIRs as summarised in ER 5.3.5- 5.3.16.
19. The Secretary of State notes the ExA's consideration of the Applicant's case for the need for the Proposed Development as set out in ER 5.3.18 – 5.3.26. Chapter 2 of the Applicant's ES highlights that the A47 experiences high levels of congestion especially at peak times and has a poor safety record (ER 5.3.19). Traffic studies referred to in the ES, as undertaken by the Applicant, indicate that congestion is predicted to get worse due to the proposed growth in residential development and the fact that increasing traffic is outgrowing the capacity of the road, causing tailbacks and delays (ER 5.3.24). The Applicant's objectives for the scheme are set out at ER 5.3.27 and include supporting economic growth, a safer and more reliable network, improved journey time reliability, improving the environment, providing safer routes for non-motorised users and providing value for money.
20. The Secretary of State notes the Applicant's Case for the Scheme as set out in the document of that name (ER 5.3.30 - 5.3.42). Base year information is taken from

2015 and future year traffic forecasts with and without the Proposed Development were prepared for the opening year (2025) and design year (2040). Forecasts took account of planned changes to the highways network and changes in trip demand, which included consideration of specific development sites. Do Minimum (“DM”) and Do something (“DS”) network scenarios were subsequently modelled (ER 5.3.35). The Secretary of State notes the Applicant’s Case for the Scheme conclusions at ER 5.3.42. The DS scenario significantly reduces delays in year 2025 and 2040 and would result in an improvement in journey times in these years. The DS scenario also significantly reduces accidents and improves safety. The scheme also improves accessibility for local communities by reducing congestion along the B1172 and A11 corridors.

21. The Secretary of State notes the issues considered during the Examination at ER 5.3.52, including:
- The overall need for the Proposed Development and public transport considerations;
  - The adequacy of the baseline and modelling information;
  - The impact of the scheme at specific road network nodes;
  - B road classification of the Cantley Lane Link and overall asset transfer to NCC.

Overall need for the Proposed Development and public transport considerations

22. The Secretary of State notes that IPs raised concerns about the need for the Proposed Development and the impact on public transport including buses (ER 5.3.53-5.3.55). The ExA is satisfied the Applicant’s need case for the Proposed Development is aligned with Government’s national road investment strategy and policies within the NPSNN (ER 5.3.62). Additionally, the ExA is content that the Applicant has provided a satisfactory assessment of potential impacts on bus services due to the Proposed Development. The ExA noted that although no changes are proposed to existing public transportation provision in the area, the evidence provided by the Applicant suggests that the scheme would improve bus journey times by reducing traffic delays (ER 5.3.64). The ExA is satisfied that public transport considerations do not weight against the development (ER 5.3.66). The Secretary of State agrees.

The adequacy of the baseline and modelling information

23. The Secretary of State notes the adequacy of the baseline and modelling information was questioned during the Examination as summarised at ER 5.3.67–5.3.79. Concern was expressed about the lack of detail on the nature of traffic movements being referred to by the Applicant as well as the lack of availability of core data backing up the Applicant’s surveys (ER 5.3.70). The Applicant highlighted that the traffic modelling assessment had been internally reviewed and approved by National Highways Transport Planning Guidance. Furthermore, the results had also been reviewed by NCC who did not raise specific objections to that aspect of the application documentation during the Examination (ER 5.3.79). The Secretary of State notes the ExA’s conclusion at ER 5.3.80 -5.3.83. Overall, the ExA considered that there was no strong reason not to take the Applicant’s summary statements on data collection and modelling on face value given the process documented in the ES (ER 5.3.81). The ExA concluded that there is nothing convincing which persuaded him to discount the findings of the modelling work undertaken, that the baseline and survey work

undertaken is evidenced to be comprehensive and that the ES and associated information accompanying it provides a good overall indication of the nature of existing and future traffic movements (ER 5.3.83). The Secretary of State agrees with the ExA's conclusions.

*The impact of the scheme at specific road network nodes*

24. The Secretary of State notes Hethersett Parish Council's written submission questioning the need for the scheme altogether and other aspects including the T-junction design of the new Cantley Link Road (with no signal control or roundabout) as set out in ER 5.3.85. The ExA's view is that the modelling process work provides a reliable indication that the T-Junction design proposed would be able to function satisfactorily without causing a significant queuing point for vehicles exiting the junctions to the B1172 (Norwich Road). Whilst the Parish Council's concerns have not been withdrawn the ExA's view is that the Applicant has addressed the issues in full (ER 5.3.92). The Secretary of State agrees with the ExA on this issue.
25. The Secretary of State notes that at the first issue specific hearing the A11 approach from Norwich was identified as the worst performing arms of the scheme as referred in NCC's LIR ( ER 5.3.93) and further notes the points summarised at ER 5.3.94 – 5.3.95. The ExA accepts that although the A11 approach from Norwich would be the worst performing arm post competition of the scheme there is no compelling evidence pointing to it resulting in unacceptable levels of delay or posing a significant safety risk (ER 5.3.96). The Secretary of State agrees.

*B road classification of the Cantley Lane Link and overall asset transfer to NCC.*

26. The Secretary of State notes that at the start of the Examination, B Road Classification for the new Cantley Lane Link was strongly opposed. However, the Applicant actively collaborated with NCC to resolve road classification issues. The Applicant was content to be guided by NCC in such matters including appropriate signage for their network, the outcome being that a C road classification would be apparent for the new link road (ER 5.3.103 – 5.3.105).
27. The Secretary of State notes the issue of projected future maintenance costs and subsequent agreement to facilitate asset transfer to NCC was problematic during the Examination (ER 5.3.108). The Applicant advised that Article 12 of the draft DCO ("dDCO") governs how roads that are not trunk roads pass to NCC as the local highway authority. As currently drafted paragraphs (1) and (2) of the Article specifically require that any works are completed to the reasonable satisfaction of NCC and that, unless otherwise agreed in writing with NCC, must be maintained by NCC from the point of completion (ER 5.3.110). At the end of the Examination formal asset transfer was not agreed by the NCC, however the ExA considered the asset transfer mechanisms in Article 12 to be appropriate (ER 5.3.112). The Secretary of State notes NCC's post examination correspondence dated 15 June 2022 setting out that they are satisfied on matters relating to the future maintenance of assets to be transferred to it on satisfactory completion of the Proposed Development. Having previously submitted protective provisions for inclusion in the DCO. NCC also confirmed its request for protective provisions was withdrawn.

## Overall Conclusions

28. The Secretary of State notes the ExA's overall conclusions on need, traffic and transportation, policy and factual issues set out in ER 5.3.113- 5.3.129. In the ExA's view, appropriate mitigation has been secured in the DCO during construction, taking into account the first reiteration of the Environmental Management Plan ("EMP") and the Outline Traffic Management Plan (ER 5.3.121). The ExA accepts that the existing Thickthorn junction is operating above capacity and that this will significantly worsen in the long term and that there is a convincing case made that the Proposed Development, during operation, is likely to reduce journey times and release capacity in the overall road network for residents and businesses (ER 5.3.122). The ExA considers that overall journey time improvements during the operational phase detailed by the Applicant leading to a greater free flowing road network weighs significantly in favour of the DCO being made (ER 5.3.129). The Secretary of State agrees with these conclusions.
29. The Secretary of State considers that the need for the Proposed Development has been established in accordance with the NPSNN and that the presumption in favour of granting development consent (in accordance with NPSNN paragraph 4.2) is engaged.

## **Landscape and Visual Impacts**

30. The Secretary of State notes the ExA's consideration of this matter at ER 5.4. The Secretary of State further notes the study area for both the landscape and visual assessments (ER 5.4.16- 5.4.21); the potential impacts (ER 5.4.22 -5.4.24); design of the proposals and mitigation (ER 5.4.25 – 5.4.28) and the summary of effects on landscape and visual receptors (ER 5.4.29 – 5.4.42).
31. The Secretary of State further notes the topics considered during the Examination (ER 5.4.43 – 5.4.75).
32. In its overall conclusions, the ExA is satisfied that the methodology of the assessment provided by the Applicant is robust and allows the effects of the Proposed Development to be properly considered in accordance with paragraphs 5.144 to 5.146 of the NPSNN (ER 5.4.76). The Secretary of State agrees with the ExA on this matter.
33. The Secretary of State notes that the visual effect of the new footbridge and the appropriateness of its future design over the A47 was the subject of debate during the Examination. The ExA noted that although engineering and section drawings have been produced, they were not final design versions and therefore subject to change (ER 5.4.77). The ExA stated that national policy supports seeking design outcomes that are sustainable which includes the encouragement of beauty and considered that feasible opportunities to improve the overall aesthetics of the scheme (landscaping and structures) should be fully exhausted in accordance with the adopted Development Plan for the area (ER 5.4.78). The use of an independent Design Review was explored during the Examination (ER 5.4.72). The ExA considered that the facilitation of further meaningful enhancement with regard to the new footbridge, landscaping and other engineering infrastructures should be achieved through a formal independent Design Review and recommended that

Requirements 3 and 5 of the rDCO be amended to secure this (ER 5.4.79 and 9.4.39). The ExA considered that this approach would be in accordance with the National Planning Policy Framework (“NPPF”) (ER 5.4.83). Whilst noting the ExA’s consideration of the proposed amendments to Requirement 3 (ER 5.4.83), the Secretary of State also notes that the local authority input did not reveal any specific objection to the Applicant’s design rationale (ER 5.4.74). The Secretary of State considers that it would be reasonable for the Applicant to conduct the review, having first consulted the relevant planning and highway authorities. The Secretary of State has therefore modified the new wording proposed by the ExA in Requirements 3 and 5 of the rDCO to reflect this. The Secretary of State considers that with this wording in place, the Proposed Development would meet the criteria for good design set out in the NPSNN and NPPF. With regard to the proposal for similar wording to be added to Requirement 5, the Secretary of State considers that the submission of a landscaping scheme to her for approval provides sufficient scrutiny.

34. The Secretary of State notes that considerable concern was raised during the Examination by IPs in relation to expected tree loss, including the loss of veteran trees and the uncertainty about the number that would be lost (ER 5.4.57-5.4.59). The Applicant confirmed that the total number of trees to be removed would be determined during the detailed design stage as secured in Requirement 3 of the rDCO (ER 5.4.61). The ExA set out that they considered all relevant documentation informing the design approach undertaken and agrees that the Applicant has sought to limit potential tree loss as far as possible and is committed to safeguarding trees as far as possible. The Secretary of State is satisfied with the measures contained in Requirements 4 and 5 of the rDCO and within the EMP (ER 5.4.85).
35. The Secretary of State notes that with regard to landscaping, SNC requested in Requirement 5 a ten-year rather than five-year replacement provision for failed planting as used in the Hornsea Project Three DCO nearby. The Applicant responded that a five-year maintenance period would be appropriate having regard to landscape and visual impacts. Nonetheless, the maintenance period for landscape planting would need to be addressed in the Landscape Ecology Management Plan (“LEMP”). (ER 5.4.66- 5.4.67). The ExA considered a minimum period of five years to be satisfactory and the Secretary of State agrees, noting that the LEMP could also specify a longer period.
36. Noting the different approach to assessing the impact on landscape and visual impact by the ExA compared to the Applicant (ER 5.4.89-5.4.92) the ExA concluded that for the reasons set out in ER 5.4.93 the following weigh significantly against the DCO being made:
  - A moderate adverse permanent effect on landscape character during construction principally associated with the removal of areas of woodland and individual veteran trees.
  - The very large to moderate adverse visual effects to specific receptors during construction.
  - The moderate adverse effects on landscape character in the opening year reducing to slight adverse by year 15.
  - The moderate to large adverse effects during operation on some visual receptors.
37. The Secretary of State agrees with the ExA in its assessment.



## Historical Environment

38. The Secretary of State notes there are no registered parks and gardens, registered battlefields or conservation areas within the DCO boundary of the Proposed Development but there are 37 heritage assets identified, including a scheduled monument and six listed buildings (Grade II) within the DCO boundary (ER 5.5.1). The Secretary of State notes the national and local policy context as summarised in ER 5.5.2 - 5.5.9 and the Applicant's historic environment assessment as set out in ER 5.5.11 – 5.5.28.
39. The Secretary of State notes the issues considered during the Examination included (i) the level of harm attributed to the scheduled monument Two Tumuli (two bronze age burrows) in Big Wood, (ii) the effectiveness of the Environmental Masterplan as mitigation and (iii) archaeological trenching and human burial matters (ER 5.5.29).
40. With regard to the harm to Two Tumuli, it was submitted by the Applicant during the Examination that there are no mitigation measures available to fully ameliorate the permanent operational impact of the Proposed Development upon the scheduled ancient monument but that efforts had been incorporated into the design to enhance awareness of the scheduled monument as it was largely inaccessible in its current location (ER 5.5.32-5.5.33). The Secretary of State notes that the ExA agrees that the Examination material does provide a convincing case that the Proposed Development has been designed to be located as far as possible from the scheduled monument, accepting the existing position of the Thickthorn junction is fixed (ER 5.5.67).
41. Historic England ("HE") requested further clarification on planting which was deemed necessary to ensure that the level of mitigation planting along the Cantley Lane Link Road would be sufficient to effectively reduce the harm to the setting of the scheduled monument (ER 5.5.35- 5.5.36). In response, the Applicant referred to their response to the ExA's first written questions and the Environmental Masterplan which shows the proposed planting and vegetation to be retained (ER 5.5.37)
42. The Secretary of State notes at ER 5.5.46–5.5.50 the matters raised on archaeological trenching and human burial during the Examination. HE requested to be included as a consultee on the approval of the Archaeological Written Scheme of Investigation in conjunction with NCC. The Applicant subsequently updated the DCO to include HE as a consultee in Requirement 9 (ER 5.5.49). In addition, following written questions from NCC the Applicant incorporated a provision into its DCO specifically dealing with unexpected human burial finds should those arise (ER 5.5.50).
43. The Secretary of State notes the ExA's conclusions on the historic environment at ER 5.5.51–5.5.75. The Applicant's assessment found that the proposed development would have a large major adverse temporary effect during construction and a significant moderate residual adverse permanent effect on Two Tumuli stemming from the operation of the Proposed Development. Construction of the proposed embanked Cantley Lane link road immediately adjacent to the western barrow would cause severance from the monument's associated landscape to the south, from where the barrows are currently viewed prominently, the effect being to remove the last remaining preserved part of the setting permanently. The same effects will occur

but be of reduced magnitude for the eastern barrow due to the thicker vegetation present providing improved screening. Following application of the mitigation proposals, including focused planting and screening of new infrastructure, an improved understanding of the context of the barrows through excavation, and introduction of a heritage information board, the ExA concluded that the residual effect on the scheduled monument is assessed as moderate (ER 5.5.68 first bullet point).

44. The Applicant also concluded that there would be slight (but not significant) residual operational effects on two Grade II listed buildings, six undesignated heritage assets and upon historic landscape character within the DCO boundary (ER 5.5.68 second and third bullet points).
45. HE and the relevant Local Planning Authorities have not objected to impacts on designated heritage assets or on the basis that potential impacts have not been properly assessed. On that basis, the ExA considered there was no strong reason to disagree with the Applicant's assessment of the effect of the Proposed Development on individual designated heritage assets post mitigation taking place (ER 5.5.69).
46. The ExA noted regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010 and the desirability of preserving listed buildings and scheduled monuments, their setting, and any features of special architectural or historic interest that they possess (ER 3.5.11). The ExA concluded that the Proposed Development would result in less than substantial harm to a scheduled ancient monument and to the settings of nearby designated heritage assets for the purposes of applying paragraphs 5.134 and 5.135 of the NPSNN (ER 5.5.72). The ExA attached considerable weight and importance to these harms, particularly the very high significance of the scheduled monument Tumuli in Big Woods as required by paragraph 5.131 of the NPSNN. This harm needs to be balanced against the public benefits of the proposal (ER 5.5.72), but the ExA concluded that the public benefits of the Proposed Development would overcome the harm identified to heritage assets (ER 10.2.7). The Secretary of State agrees with the ExA's conclusions.
47. In terms of archaeological impacts, the Applicant's assessment found that the Proposed Development would not affect any designated archaeological assets. NCC was broadly satisfied that archaeological matters had been properly considered in the Applicant's assessment and the matter was not raised as an objection during the Examination. The ExA considers the rDCO and the EMP secure a thorough programme of archaeological investigation and evaluation and recording. Therefore, the ExA considered there was no basis to disagree with the Applicant's assessment on the effect of the Proposed Development on the archaeological interests (ER 5.5.74). The Secretary of State concurs with the ExA's findings.
48. Overall, the Secretary of State agrees with the ExA that the factors weighing against the Proposed Development were less than substantial harm to a scheduled monument, less than substantial harm to the settings of two listed buildings, slight adverse effects on the setting of several non-designated heritage assets and slight adverse impacts on non-designated historic landscape character within the DCO boundary (ER 5.5.75).

## Land Use, Social and Economic

49. The Secretary of State notes the issues that this section deals with at ER 5.6.1, the national policy context as summarised at ER 5.6.2 to 5.6.14 and in the context of the Development Plan Policies as summarised at ER 5.6.15 to 5.6.17. The Secretary of State further notes the summary of likely effects during construction and operation of the Proposed Development as summarised at ER 5.6.37 – 5.6.47 and the Applicant’s safety benefit case (ER 5.6.48 – 5.6.51), the Applicant’s case for walking, cycling and horse-riding facilities as a proposed improvement (ER 5.6.52- 5.6.58) and the Applicant’s economic case (ER 5.6.59- 5.6.65).
50. The Secretary of State notes the issues surrounding replacement of planned public open space provision which were discussed during the Examination. Several representations were made by Brown and Co on behalf of Big Sky Developments Ltd (“Big Sky”) during the Examination. Big Sky is responsible for the planning, development and construction of the Cringleford residential development (ER 5.6.68). Part of the land take proposed by the Applicant involves land for a planned sports pitch serving an approved housing development at Cringleford (ER 5.6.70). In its Statement of Reasons (“SoR”) the Applicant states the sports pitches and other recreational areas are yet to be marked out and delivered as part of the approved housing development and so those planned areas cannot in a formal legislative sense be classed as a public open space. For the purposes of making the Order the Applicant argued that this area should be treated as being ‘ordinary’ land (ER 5.6.71). The Applicant set out that it agreed in principle to mitigate the loss of a planned football pitch which would not be possible should the DCO for the Proposed Development be made (ER 5.6.72). It was confirmed by Big Sky that an application was already in hand to vary the delivery of the public open space with SNC and anticipated to be approved subject to Planning Committee approval (ER 5.6.74). In Big Sky’s letter dated 2 September 2022, sent in response to the Secretary of State consultation request dated 19 August 2022, Big Sky confirmed that their application to vary the proposed public open space scheme has not yet been approved by SNC. However, Big Sky understand the application is acceptable in principle. Big Sky also confirmed that a deed of variation to the associated section 106 agreement is being negotiated with SNC and, while Big Sky are awaiting SNC’s minor comments on the draft deed, Big Sky understand that none of the comments disagree with the key principles of the proposed variation. On 5 September 2022, SNC sent a similar reply in response to the same consultation request. Towards the end of the Examination agreement on public space matters was recorded in the SoCG made between the Applicant and Big Sky (ER 5.6.74).
51. Big Sky raised specific concerns in relation to the impact of the proposed compound and welfare facilities (ER 5.6.79). The proposed compound (at Plot reference 7/7c) would occupy land designed for three houses and will affect the ones immediately to the north, as services and accesses would not be able to be completed (ER 5.6.80). The Applicant clarified that Plot 7/7c would be required for a site compound, welfare facility, parking and some storage and that it could only confirm the exact area required once the detailed design had been prepared. In any event, it would try to minimise the temporary land take in the area of concern (ER 5.6.81). The ExA inquired into the steps which would be taken to remove the welfare facilities from the land and any measures that may be available to remove facilities at an earlier stage where that is feasible (ER 5.6.91). The Secretary of State notes that Article 34 as

drafted in the dDCO provides for conditions of restoration to be agreed with the landowners and in regard to the practicalities of removing the facilities the Applicant confirmed that it would look to minimise the time Plot 7/7c is required for (ER 5.6.93). The Secretary of State notes that towards the end of the Examination, agreement on Plot 7/7c matters was recorded in the SoCG between the Applicant and Big Sky (ER 5.6.96).

52. The Secretary of State notes the potential for further benefits arising from inclusive growth and social mobility as summarised at ER 5.6.97- 5.6.101 and that the ExA accepts that potential additional local benefits for employment opportunities referenced in NCC's LIR which could be achieved would be better left outside the provisions of the DCO. That is because appropriate procurement process channels can be broached and taken up in dialogue with Galliford Try as the Principal Contractor (ER 5.6.101).
53. The Secretary of State notes local access/ amenity considerations and related matters as summarised at ER 5.6.102- 5.6.106 and that the Applicant made a non-material change request around Deadline 4 within the Examination which sought to deal with accessibility and hedgerow concerns (ER 5.6.107). The Secretary of state further notes the Applicant clarified that Article 17(2) of the dDCO ensures that the existing private means of access cannot be stopped up unless and until the substitute access has been provided. The Applicant also referred to the scope for side agreement with landowners to deal with the provision of appropriate access rights not covered by article 17(2) having regard to farm access provision interests (ER 5.6.108).
54. The Secretary of State notes the ExA's overall conclusions on land use, social and economic considerations at ER 5.6.122 – 5.6.137. The Secretary of State agrees with the ExA that beneficial effects would be experienced by non-motorised users (including horse-riders, cyclists and pedestrians from the Proposed Development) (ER 5.6.127) and third bullet point at ER 5.6.136.
55. The ExA set out that the Proposed Development would deliver significant economic benefits for the local area in order of £119.8 million over the 60-year appraisal period (ER 5.6.134). The ExA accepts on the basis of the evidence provided that accident benefits generated by the Proposed Development is forecasted to be in the order of £7.16m in monetarised human health and economic benefit terms (ER 5.6.135).
56. The Secretary of State notes that the ExA concluded that the following weight in favour of making the Order; the overall economic betterment that will be delivered, improvements to safety and permanent beneficial effects to NMU's. The Secretary of State notes the ExA also concluded that a number of issues weigh against the DCO being made. This includes the fact that during the construction works, there is potential for disruption to all of the agricultural holdings. In particular, considerable disruption to access of adjacent agricultural blocks farmed by Holding 2 (ER 5.6.130) and fourth bullet point at ER 5.6.137. During construction there are likely to be some effects on local communities and potentially their health in terms of temporary noise and dust (ER 5.6.132 and first bullet point ER 5.6.137). The existing users of Cringleford Footpath 4A would experience a moderate adverse effect to journey increases associated with the permanent diversion of the footpath across the new Cantley Lane Footbridge (Cringleford) (ER 5.6.137 second bullet point). The loss of

a proposed area of public open space at Cringleford residential development would result in a significant large effect should an alternative solution not be agreed between Big Sky and SNC as the planning authority (ER 5.6.129 and ER 5.6.137 third bullet point). The Secretary of State notes at the time of this letter despite Big Sky's letter dated 2 September 2022 and SNC's email dated 5 September 2022 no alternative solution had been agreed. The Secretary of State agrees with the ExA that these issues weigh against the DCO being made.

## **Air Quality**

57. The Secretary of State notes that the Proposed Development is not located in an Air Quality Management Area and no exceedances of the UK Air Quality Strategy objectives were measured by the Applicant. (ER 5.7.18).
58. The Secretary of State notes the issues considered during the Examination summarised at ER 5.7.31–5.7.59. On the appropriateness of baseline conditions and overall assessment methodology, the ExA noted that neither NCC nor SNC sought to disagree with any of the Applicant's findings on baseline conditions and the overall assessment methodology applied for air quality matters (ER 5.7.37). The ExA concluded that it was satisfied that the Applicant's baseline condition justification and methodology applied are both proportionate and reasonable (ER 5.7.63). On construction dust and vehicle emissions during the operational phase, both NCC and SNC have not identified any specific problems in the Applicant pursuing the general approach outlined in the EMP (ER 5.7.39- 5.7.40). The ExA considers the First iteration EMP makes an acceptable level of provision for dust control and further controls to be agreed where necessary and is content that there would be adequate controls in place to effectively manage construction dust through the provisions available in the dDCO and EMP which is to be updated (ER 5.7.52- 5.7.53). The ExA accepts the Applicant's justifications for the Proposed Development not leading to significant air quality related health impacts (ER 5.7.54). On compliance with the Air Quality Directive ("AQD") the Applicant's Air Quality Assessment has concluded there are no significant adverse effects with the Proposed Development for human health and ecological receptors (ER 5.7.55). The ExA highlighted that neither NCC or SNC (or any other neighbouring local authorities) submitted statements contrary to the Applicant's overall findings on air quality (ER 5.7.57) and concluded that there was sufficient evidence that the Proposed Development would accord with provisions in the AQD (ER 5.7.59).
59. Overall, the ExA found that subject to the provisions of the rDCO, the Proposed Development would be unlikely to result in any significant effects in respect to air quality inclusive of dust management provision. Accordingly, it is the ExA's finding that air quality effects do not weigh significantly for or against the DCO being made (ER 5.7.64 -5.7.65). The Secretary of State agrees with this conclusion.

## **Noise and Vibration**

60. The Secretary of State notes the issues considered by the ExA during the Examination (ER 5.8.39-5.8.64). Matters considered included baseline conditions, study area, receptors and overall assessment methodology. The Trustee of the CM Watt Residual Trust raised concerns that the noise impacts were more severe than the Applicant's assessment implied and considered that additional receptors should

be assessed in the noise assessment, in particular, “The Old Stables’ and ‘Wychwood House” (ER 5.8.45). In response the Applicant stated that its assessment was based on representative receptors on the basis that it is not proportionate to assess the impacts of every dwelling and therefore argued that an assessment of the impact on ‘The Old Stables’ and ‘Wychwood House’ was not necessary (ER 5.8.46). The ExA considered that the Applicant’s information is adequate in order to gauge potential noise impacts (ER 5.8.47). The ExA concluded it was content that the noise assessment base line conditions and the rationale of representative receptor locators utilised in the ES is suitably robust, that the receptors otherwise considered are appropriately extensive and that the overall methodology employed is reasonable (ER 5.8.52). The Secretary of State has no reason to disagree with this conclusion.

61. On operational noise concerns, the Secretary of State notes the Applicant stated there are no significant adverse or beneficial impacts expected due to changes in road traffic noise. It was highlighted by the Applicant that the scheme includes low noise surfacing on the new A11-A47 link road as embedded noise mitigation features that will further minimise noise impacts on sensitive receptors (ER 5.8.71). In its conclusion the ExA agrees that the Applicant has provided sufficiently robust evidence of the operational noise and vibration effects of the Proposed Development (ER 5.8.80).
62. The Secretary of State notes that ExA’s consideration of construction noise and vibration (ER 5.8.53 – 5.8.64) and that SNC have not argued against the credibility of the Applicant’s construction, noise and vibration conclusions, or the underpinning methodology that was applied (ER 5.8.65). The ExA concluded that where all mitigation for construction noise and vibration detailed by the Applicant is implemented effectively, no significant residual construction noise effects are likely to ensue and that there is no strong reason to consider that planned mitigation would not be successful (ER 5.8.69). The Secretary of State concurs with the ExA’s findings.
63. Overall, the ExA was content that there would be no conflict with local development plan policies related to noise (ER 5.8.93) and that appropriate mitigation was secured in the rDCO (ER 5.8.94). The Secretary of State agrees with the ExA that subject to the mitigation provisions in the rDCO noise and vibration considerations do not weigh considerably in favour or against the DCO being made (ER 5.8.95).

### **The Water Environment, Drainage and Flood Risk**

64. The Secretary of State notes requirements of the NPSNN and NPFF summarised under the sub-heading Policy Context (ER 5.9.2–5.9.14). The Secretary of State further notes the Applicant’s assessment of drainage water quality (ER 5.9.31-5.9.42); the Applicant’s flood risk assessment (“FRA”) (ER5.9.43 – 5.9.56) and its assessment with regard to the Water Framework Directive (ER 5.9.57 – 5.9.63).
65. The Secretary of State notes that the majority of the Proposed Development is in Flood Zone 1 with areas identified in Flood Zone 2, 3a and indicative extent of 3b. Those areas are associated with the Cantley stream and its floodplain (ER 5.9.44). The Secretary of State notes that the FRA was updated during the course of the Examination (ER 5.9.66) and the ExA was satisfied that the risks posed to and by the Proposed Development had been properly assessed and an appropriate pack of mitigation measures had been proposed and secured in the DCO (ER 5.9.78).

66. The Secretary of State has considered the Sequential and Exception tests required by paragraphs 5.105 – 5.109 of the NPSNN. With regard to the former, paragraph 6.1.2 of the FRA states: “Alternative options for the junction improvements were considered at Stage 2 (Option Selection)”. With regard to the Exception Test, the Secretary of State notes paragraphs 6.1.5 – 6.1.6 of the FRA, which outline that the proposed scheme will deliver wider benefits to the strategic road network (noting the role that the A47 plays in linking the A1 with Norfolk and Suffolk), support regional housing and economic growth in Norwich and the surrounding area and provide safer routes for non-motorist groups. The Secretary of State also notes ER 5.9.80 – 5.9.82 and the conclusion at paragraph 11.1.18 of the FRA: “With mitigation as part of the Proposed Scheme will be safe for its lifetime and will not cause any increase in surface water and groundwater flood risk elsewhere. The Proposed Scheme will not increase fluvial flood risk, with mitigation to “more vulnerable” receptors. There are changes to the patterns of flood risk resulting from the removal of the Existing Cantley Lane South culvert throttle and the stream realignment to downstream farmland and amenity areas. However, the development is considered appropriate under the requirements of the NPPF and NPSNN”. Noting the ExA’s satisfaction with the revised FRA, the Secretary of State has no reason to disagree with the conclusions in it and is content that both the Sequential and Exception tests are satisfied.
67. On drainage design, the Secretary of State notes the Environment Agency’s (“EA”) views in relation to compensatory storage and they only agree that no compensatory storage would be required provided that any further assessments highlighted in the Applicant’s overall evidence continue to show that the Proposed Development would result in no significant adverse impacts on flood risk. The Applicant’s revised FRA responds to this issue and maintains the findings of no significant adverse impacts (ER 5.9.71).
68. The ExA concluded that the Proposed Development would not result in fluvial or surface water flood risks and that potential impacts from construction could be mitigated through the EMP secured in the DCO (ER 5.9.81). The ExA is content that the Proposed Development’s use of a Sustainable Drainage System meets the requirements of the NPSNN and NPPF (ER 5.9.83).
69. With regard to compliance with the Water Framework Directive compliance assessments, the Secretary of State notes that the Applicant’s findings were not disputed and that the ExA found the conclusions reasonable and that the Proposed Development would be unlikely to hinder the overarching aim of the WFD (ER 5.9.84).

### Overall Conclusions

70. The Secretary of State agrees with the ExA that with the measures secured in the DCO, the Proposed Development would be unlikely to result in significant effects on the water environment and that this matter does not weight significantly for or against the DCO (ER 5.9.85).

### **Biodiversity and Ecology**

71. The Secretary of State notes the issues considered during the Examination. These included baseline/survey information with regard to bats, barn owls, great crested

newts, water vole and otter (ER 5.10.60- 5.10.69). The ExA concluded that the scope and baseline surveys were generally agreed by relevant authorities as being sufficient (ER 5.10.103). Noting the concerns raised regarding bats, the ExA concluded that there was little evidence to support these concerns and that the Applicant's assessment of the impact on these and other species was sound (ER 5.10.109). Natural England ("NE")<sup>1</sup> also stated that they saw no impediment to the issuing of bat or water vole licences (ER 5.10.104) and the ExA noted that within the mitigation licence statement, mitigation would be required and developed to remove any harm from occurring to these species, though bats will experience a slight adverse residual effect overall due to the time lag between loss of habitat and the remediated habitats reaching maturity (ER 7.4.40). The Secretary of State notes the ExA considered the Applicant's "assessment methodology is comprehensive and transparent leaving little doubt as to how the effects of the proposal has been quantified. It also makes use of competent person and expert level advice in reaching its overall conclusions which the ExA gives considerable weight to" (ER 5.10.105).

72. The Secretary of State notes that the survey work for otters has been undertaken throughout the study area in 2016, 2018 and 2020. Signs of otter were recorded along Cantley Stream throughout the study area and suggest that Cantley Stream is used by commuting otters. Camera trap surveys undertaken by the Applicant did not identify otters being present in the Order limits (ER 6.2.13).
73. The Secretary of State notes that with respect to the Otter and Water Vole Report [APP-095] the Applicant confirmed that its assessment considers a worst-case scenario for otters and water vole impacts arising from the proposed Cantley Stream works. Safeguard surveys for otters and water voles were planned to be repeated in 2022 (ER 5.10.69) and, in its response dated 6 October 2022 to the Secretary of State's third request for comments, the Applicant confirmed that updated surveys for otters had been undertaken throughout 2022. In that response the Applicant also confirmed that, in the light of the exercise undertaken, it was not anticipated that the works would be licensable with regard to otters and will be carried out under a sensitive working method statement. The Secretary of State notes that, in addition to the Conclusions and Requirements for otters set out in the Otter and Water Vole Report section 5, the Applicant will carry out its works in accordance with a sensitive working method statement, which is currently being developed. The Secretary of State also notes that, in NE's response dated 13 October 2022 to the Secretary of State's third request for comments, NE confirmed it was satisfied with the Applicant's response regarding otters and further notes NE's comment that "where a scheme and ecologist are satisfied that actions will not impact otters to the extent that wildlife legislation would be breached these are the applicant's own legal risk to justify". In respect of protected species (including otter) the Secretary of State notes the regime for their protection and mitigation in requirement 7 of the made Order. The Secretary of State notes further that, in its statement of common ground between NE and the Applicant (22 August 2022), NE agrees with the proposed approach to the realignment of Cantley Stream. In any event, and as a further safeguard the Secretary of State has amended requirement 4 to ensure NE are consulted on the EMP (second iteration) allowing for further consultation on proposed mitigation. In addition, and for the same reason, the Secretary of State has amended requirement 7(3) to provide that NE must be consulted before a scheme of protection and mitigation measures in

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<sup>1</sup> The Applicant and NE's signed SoCG was received by the Secretary of State on 6 September 2022.



respect of European or nationally protected species is submitted by the Applicant to the Secretary of State. The Secretary of State is content that these revised Requirements plus the outlined responses from the Applicant and NE address the concerns raised by Dr Andrew Boswell in his correspondence dated 11 September and 11 October to the Secretary of State's second and third requests for comments. On 6 October 2022, Anglian Water requested that they also be added as a consultee to requirement 4 (and requirement 8). Having considered this late request, the Secretary of State does not consider it necessary to make these changes.

74. The Secretary of State agrees with the conclusion of the ExA that, in respect of bats, there is a well evidenced and extensive package of mitigation measures provided by the Applicant which can be properly secured with added built in flexibility to deal with any changes in circumstances affecting the mitigations overall potential effectiveness. The incorporation of important best practice principles is also demonstrated by the Applicant. The detailed content of those provided at Application stage has not attracted any notable objections which would be insurmountable to overcome in accepting the approach of reliance on requirements for more detailed stages of design (ER 5.10.110).
75. The Secretary of State's position on tree loss has been set out at paragraph. On ancient woodland loss, NE and the Forestry Commission have both been consulted on the scheme details and have not raised any concerns about ancient woodland (ER 5.10.78).
76. The Secretary of State notes that two veteran trees are proposed to be removed as a result of the Proposed Development (ER 5.10.75). The ExA accepted this as an unavoidable consequence of the new road alignment (ER 5.10.106) for the reasons set out in ER 5.10.107.
77. On opportunities for biodiversity and ecological enhancement, both NCC and Anglian Water expressed strong encouragement for biodiversity net gains ("BNG") to be provided by the scheme (ER 5.10.99). The Applicant responded that there is no mandated framework for calculating and reporting on BNG, which is dependent on the coming into force of the relevant provisions of the Environment Act 2021. The ExA noted that the Defra Metric 2.0 was replaced by Defra Metric 3.0 and that this post-dates the surveys carried out by the Applicant meaning new surveys would need to be carried out to assess the potential BNG in accordance with Defra Metric 3.0. The ExA therefore accepted that the Applicant could not commit to providing an overall BNG or indicate the extent of BNG because it was not possible to provide an accurate or meaningful calculation to the Examination (ER 5.10.115). The Secretary of State accepts this and is satisfied that the relevant provisions in the Environment Act relating to BNG are not yet in force. The Secretary of State notes the assessment of net gain or loss by habitat type presented at Table 8-11 of Chapter 8 of the ES, the predicted significance of residual effects on biodiversity resources following implementation of committed mitigation at Table 8.12 of that Chapter and the areas of proposed mitigation for enhancement of habitats and biodiversity shown in the Environmental Masterplan at Chapter 6.8 of the ES seeks to maximise biodiversity delivery in its overall design approach (ER 5.10.101).
78. The Secretary of State agrees with the ExA that the obligation in section 40 of the National Environment and Rural Communities Act 2006 to have regard to the purpose

of conserving biodiversity has been complied with (ER 5.10.118). The Secretary of State agrees that subject to the provisions of the rDCO, the likely reasonable worst-case effects have been identified in respect to biodiversity and ecological conservation (ER 5.10.120).

79. The Secretary of State agrees that the loss of two veteran trees weighs substantially against the DCO being made (ER 5.10.119) but agrees with the ExA that the benefits of the Proposed Development as set out in this letter clearly outweigh veteran tree loss.

## **Climate Change**

### Background

80. The Secretary of State notes the consideration of the effects of the Proposed Development on climate change and the vulnerability of the Proposed Development to climate change (ER 5.11).
81. Section 104(4) 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 section 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 the Secretary of State being in breach of any duty imposed on the Secretary of State by or under any enactment; or be unlawful by virtue of any enactment. 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. The Paris Agreement does not set out a specific commitment on carbon emissions for the UK. This is provided for in the UK by way of the carbon budgets set under the Climate Change Act 2008 ('CCA2008').
82. Paragraphs 5.16 to 5.19 of the NPSNN (ER 5.11.3 – 5.11.6) set out the necessary consideration of carbon emissions and climate change adaptation is addressed in paragraphs 4.36 to 4.47 of the NPSNN (ER 5.11.7 – 5.11.10).
83. In June 2019, after the application was submitted, the Government announced a new carbon reduction 'net zero target' for 2050 which was given effect by the Climate Change Act (Amendment) Order 2019, which amends section 1 of the CCA2008. This is a legally binding target for the Government to cut net carbon emissions to zero by 2050 against the 1990 baseline. This amends the previous legally binding target to cut net carbon emissions by 80% by 2050 against the 1990 baseline.
84. The CCA2008 requires five-yearly carbon budgets to be set 12 years in advance to meet the 2050 target. Six carbon budgets have been adopted. The time periods covering the fourth ('4CB'), fifth ('5CB') and sixth ('6CB') carbon budgets are 2023-2027, 2028-2032 and 2033-2037 respectively. Only 6CB has been set against the new legally binding target to cut net carbon emission to net zero by 2050. 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. As stated by the ExA, compliance with the CCA2008 would provide a route towards compliance with the Paris Agreement 2015 (ER 5.11.72).

### Carbon Budgets, Net Zero and the Paris Agreement

85. The Secretary of State notes the main sections of the Applicant's application documents that are relevant to climate change matters are set out in ER 5.11.14. It is noted that the Applicant's assessment of Greenhouse gas emissions (assessed as carbon dioxide equivalent emissions and referred to here as carbon emissions) with regard to construction and operational effects of the Proposed Development is included in Chapter 14 (Climate) of its ES. The Applicant produced its ES before the publication of the sixth carbon budget, but the Secretary of State notes that the Applicant subsequently assessed the Proposed Development against the sixth budget through an updated chapter in its ES ("Updated ES") (ER 5.11.55).
86. The Secretary of State notes the baseline and study area used by the Applicant in their assessment is as set out in ER 5.11.17-5.11.21. The Secretary of State notes Chapter 14 of the Applicant's ES sets out that the carbon baseline has been taken as the current situation in which no proposed additional infrastructure is built, considering existing travel and traffic patterns. The baseline against which the Applicant has then compared the Proposed Development is the Do-Minimum scenario. Potential impacts from emissions associated with the construction and operation of the road infrastructure has then been assessed against this baseline. The net change in emissions has been calculated by comparing the Do-Minimum scenario with the Do-Something scenario.
87. The Secretary of State notes that the total increase in carbon emissions over the 60-year appraisal period associated with the Proposed Development (excluding construction emissions) is estimated by the Applicant to be 137,805 tCO<sub>2</sub>e (ER 5.11.26). The Secretary of State notes that construction is due to take place during the fourth carbon budget (ER 5.11.27). The ExA noted that the Applicant identified that the operational and construction emissions arising as a result of the Proposed Development would represent no greater than 0.0015% of the total emissions in any five year carbon budget period (ER 5.11.28) and that, on its own, would be unlikely to have a material impact on the UK Government meeting the carbon reduction targets in place at the time of the assessment. The ExA also noted that with a sensitivity test aligned to the Transport Decarbonisation Plan, that figure is lower (ER 5.11.74).
88. The Secretary of State acknowledges that the construction and operation of the Proposed Development would result in additional carbon emissions. The ExA noted that following submission of the application national commitments have been made in the form of, Government's Net Zero Strategy: Build Back Greener ("the Net Zero Strategy"), the Transport Decarbonisation Plan and National Highway's Net Zero Highways 2030/2040/2050 Plan which are important material changes to factor in (ER 5.11.82). The ExA also noted that these Plans and Strategies apply at both an individual scheme and cumulative level (ER 5.11.86).
89. The Secretary of State considers that the majority of operational emissions related to the scheme result from vehicle usage and that the Government's 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. The Secretary of State is satisfied that this accords with the guidance set out in paragraph 3.8 of the NPSNN, which identifies 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.

90. Beyond transport, Government's wider policies around net zero such as The Net Zero Strategy: Build Back Greener ('Net Zero Strategy'), published in October 2021 sets out policies and proposals to decarbonise all sectors of the UK economy to meet the 2050 target. The Secretary of State acknowledges that since the close of the Examination, there has been a successful challenge to the Net Zero Strategy as raised by Climate Emergency Planning and Policy ("CEPP") in correspondence to the Secretary of State following the close of Examination. Whilst the Strategy has not been quashed and remains government policy, a new report is required to be produced in accordance with the order made by the Court as a result of that successful challenge. As things stand, the Secretary of State has no reason to consider that the Proposed Development will hinder delivery of either the Transport Decarbonisation Plan or net zero strategy (whether in its current form or any future updated form). It is against this background that the Secretary of State has considered the Proposed Development.
91. The Secretary of State agrees with the ExA that Government's strategy and policy commitments provide a clear and convincing basis that the proposed Development would not have a likely impact on the UK meeting its existing and future carbon targets when considered together with the information provided by the Applicant (ER 5.11.83).
92. 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 fifth carbon budget which covers the period 2028-2032. The Net Zero Strategy identified how the UK will therefore need to overachieve on 5CB to meet its international climate targets and stay on track for 6CB. This strategy set out the action Government will take to keep the UK on track for meeting the UK's carbon budgets and 2030 NDC commitment and establishes the UK's longer-term pathway towards net zero by 2050. The Secretary of State has already noted that there has been a successful legal challenge to the Net Zero Strategy and it may need to be updated to address the matters in the challenge. In the meantime, the Secretary of State is satisfied, in light of the net construction and operation emissions that have been identified, that consenting the Proposed Development will not affect the delivery of the Net Zero Strategy (whether in its current form or any future updated form), net zero in principle nor will it have a material impact on the ability to meet the national targets including the 6CB and it will not lead to a breach of the UK's international obligations in relation to the Paris Agreement or any domestic enactments or duties.

## Assessing carbon emissions and their significance

93. The Secretary of State is aware that all emissions contribute to climate change but considers that there is no set significance threshold for carbon. 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 Proposed Development would be so significant that it would have a material impact on the ability of Government to meet its carbon reduction targets. The Secretary of State considers that the NPSNN allows for development consent if the Proposed Development's carbon emissions do not have a material impact on the Government's ability to meet its carbon reduction targets. Though the Secretary of State acknowledges that the Proposed Development will result in an increase in carbon emissions, adversely affecting efforts to meet the 2050 target, he does not consider that this means the increase would be so significant as to have a material impact on the Government's ability to meet its carbon reduction targets.
94. 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 and aligns with the approach to significance set out in the Institute of Environmental Management & Assessment ('IEMA') 2022 guidance Assessing Greenhouse Gas Emissions and Evaluating their Significance ('the IEMA Guidance'). This sets out 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).
95. The IEMA guidance also 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.
96. The Secretary of State notes the measures the Applicant will impose to minimise carbon emissions (ER 5.11.30-5.11.34). The Secretary of State is content that these measures will help to reduce carbon emissions where this is possible.

97. 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 Proposed Development's contribution to overall carbon levels is very low and that this contribution will not have a material impact on the ability of Government to meet its legally binding carbon reduction targets. The Secretary of State therefore considers that the Proposed Development would comply with NPSNN paragraph 5.18. The Secretary of State also considers that the Proposed Development's effect on climate change would be minor adverse and not significant and this assessment aligns with section 6.3 and Figure 5 of the IEMA guidance.
98. The Secretary of State notes that concern was raised by CEPP that the Applicant had not taken account of new carbon pricing data published by Government in 2021 which it is argued, necessitates recalculation of the benefit cost ratio of the scheme. The ExA set out that the Applicant made the case that quantification of carbon would remain unaltered in the ES if there is a monetary change in carbon value and that in line with best practice, it is intended by the Applicant that further work on the schemes economic benefit cost ratio analysis would be applied late in the year as part of the major projects governance process (ER 5.11.70). The Secretary of State has no reason to disagree with this response and considers that the benefit cost ratio is a matter for decisions relating to funding and is satisfied that funding for this scheme has been secured.
99. Overall, the Secretary of State considers that: over time the net carbon emissions resulting from the Proposed Development's operation will decrease as measures to reduce emissions from vehicle usage are delivered; the magnitude of the increase in carbon emissions (from construction and operation) resulting from the Proposed Development is predicted to be a maximum of 0.0015% of any carbon budget and therefore very small; the Government has legally binding obligations to comply with its objectives under the Paris Agreement; and there are policies in place to ensure these carbon budgets are met, such as the Transport Decarbonisation Plan and the Applicant's own Net Zero Highways plan. The Secretary of State is satisfied that the Proposed Development is compatible with these policies and that the small increase in emissions that will result from the Proposed Development can be managed within Government's overall strategy for meeting the 2050 target and the relevant carbon budgets. The Secretary of State considers that there are appropriate mitigation measures in place to ensure carbon emissions are kept as low as possible. The Secretary of State is therefore satisfied that the Proposed Development would comply with NPSNN paragraph 5.19. The Secretary of State also considers that the Proposed Development will not materially impact the Government's ability to meet the 2050 target.

### Cumulative Effects

100. The Secretary of State notes that contentions on the assessment of cumulative effects on carbon from the Proposed Development with other existing and/or approved projects were major areas of disagreement throughout the Examination (ER 5.11.50).
101. The Secretary of State notes concerns raised by parties including CEPP as referenced at ER 5.11.47 and in a series of representations submitted to the

Secretary of State after the Examination closed, all of which the Secretary of State has taken into account. The Secretary of State notes the concerns include that the Applicant:

- has not undertaken a cumulative assessment of the Proposed Development's environmental impacts with other road schemes and other land-based development but rather a 'solus' quantification of carbon emissions associated with the Proposed Development; moreover, the wrong solus calculation had been used, generating an underestimate of carbon emissions;
- has not generated a cumulative carbon emissions assessment of the Proposed Development, together with the two other A47 DCOs being promoted by the Applicant (i.e. the A47 Blofield to North Burlington and A47 North Tuddenham), which constitutes non-compliance with the cumulative carbon assessment requirement of the 2017 Regulations; and
- has used of out-of-date models, data and assessment methods including: an out-of-date Emission Factor Toolkit, inaccurate application of the Transport Decarbonisation Plan Sensitivity Test assessment and an out-of-date traffic model (NATS 2015 rather than NATS 2019- this is addressed in the Traffic and Transport section above).

102. The Applicant set out its position that the traffic modelling for the Proposed Development was undertaken in line with Transport Appraisal Guidance published by DfT Guidance and is inherently cumulative (ER 5.11.51). That is because the Proposed Development contains data about the following:

- The Proposed Development and adjoining Strategic Road Network and local road network;
- Other proposed developments promoted by the Applicant in the near vicinity of the Proposed Development with high certainty that they are to be progressed (i.e. progressed beyond preferred route announcement stage) including A47 Blofield to North Burlington and A47 Tuddenham; and
- National government regional growth rates which include a representation of likely growth rates excluding known planning developments already included in the traffic model. (ER 5.11.52)

103. The ExA set out that they considered that in terms of operational emissions, in evaluating the change in carbon emissions, the Applicant had done this by comparing changes in road traffic on the SRN and local road network between the 'without Proposed Development' scenario and the 'with the Proposed Development' and this takes account of the Proposed Development and all other developments likely to have an influence on the proposed road development and on the area the proposed road development is likely to influence (ER 5.11.53).

104. The ExA concluded that the Applicant had provided a comprehensive set of information showing how the Proposed Development would impact national carbon budgets and noted that national budgets are themselves cumulative measures (ER 5.11.78). The Secretary of State agrees 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 Proposed Development compare against this

105. Whilst noting the concerns raised and proposals by IP's around alternative approaches to assessing carbon cumulatively, the Secretary of State considers that there is no single or agreed approach to assessing the cumulative impacts of carbon emissions as there are a number of ways such an assessment can acceptably be undertaken. The ExA accepted that the assessment provided by the Applicant can be deemed as inherently cumulative and the Secretary of State agrees with this. With regard to the Applicant's methodology for assessing emissions from the Proposed Development, the ExA concluded that it did not appear to conflict with current policy or guidance, also having regard to wider regulatory requirements (ER 5.11.75). The Secretary of State also agrees with this conclusion.
106. NCC confirmed on 26 July in response to the Secretary of State's consultation letter of 25 July 2022 that the Norfolk Local Transport Plan ('LTP') 4 was adopted in July 2022, replacing LTP3. In anticipation that it would be adopted, the Secretary of State, in the same consultation letter, invited the Applicant to provide an assessment against the carbon targets contained within the Plan. The Applicant responded on 9 August 2022 that the LTP4 targets follow the same trajectory for tailpipe emissions and is thus aligned with the Transport Decarbonisation Plan and the National Highways Net Zero Highways Plan with regard to reaching net zero by 2050. The Applicant also stated that their assessment of end-user (operational) emissions is conservative and likely overestimated as the uptake of new electric vehicles in future years is expected to be higher than the proportions used to assess the Proposed Development.
107. The Applicant goes on to state that carbon budgets are set at a national level and that the LTP does not present methodology to determine what would be a significant impact. The Applicant therefore argued that there is no statutory carbon budget or carbon reduction targets at less than a national level and the only relevant policy guidance is that set out in the NPSNN.
108. Following the invitation from the Secretary of State for comments on this response, CEPP in their response of 5 September 2022 set out that they considered that an assessment at sub-national level is necessary to understand the impacts of emissions from the Proposed Development and to comply with the EIA Regulations, the NPSNN and the IEMA Guidance. CEPP disagreed with the Applicant's reasons for not providing an assessment of impact of the Proposed Development at a sub-national level including against the LTP targets and set out findings from their own such assessment which they argued demonstrated that the Proposed Development was not consistent with LTP4 and that the Proposed Development would make the LTP4 targets undeliverable.
109. The Secretary of State has considered all responses on this matter and notes that whilst various guidance may recommend an assessment of environmental impacts at a sub-national level, in relation to carbon emissions, the Secretary of State agrees with the ExA that the Applicant is not able to meaningfully assess the cumulative effects of carbon from the Proposed Development against anything other than the national level carbon budget (ER 5.11.81). Furthermore, and in any event, the Secretary of State 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 would be used to assess the cumulative impacts associated with other EIA topics. The Secretary of State therefore considers that there is no defined boundary for assessing the impact of carbon emissions. The Secretary of State therefore agrees with the Applicant that the only statutory budgets are those at a national level. The Secretary of State is satisfied that an assessment against these budgets, as provided by the Applicant, is consistent with the NPSNN. Given this, the Secretary of State considers that the assessment carried out by the Applicant is reasonable against the information available, sufficient to understand the impacts of the Proposed Development on climate and is therefore compliant with the EIA Regulations.

110. In the circumstances, the Secretary of State therefore does not consider it is necessary in this case for the Applicant to provide an assessment against LTP4 targets. In addition, in the absence of a specific methodology to determine what would constitute a significant impact for any assessment carried out under LTP4 for a nationally significant infrastructure project of this kind, the Secretary of State considers there would be a practical difficulty in attempting to carry out an assessment against the LTP4 targets for this kind of scheme. In all the circumstances, having taken into account the existence of the LTP4 targets, the Secretary of State considers that the absence of an assessment against the LTP4 targets is not a matter to which he attaches any material weight in this case.
111. The Secretary of State notes that IPs like CEPP have also argued that a cumulative assessment requires consideration of the combined emissions from the Proposed Development alongside other developments that are included within the Do Minimum scenario, as against the Carbon Budgets. Whilst the Secretary of State does not agree that it is necessary to do this in addition to what has been done by the Applicant (for the reasons already stated) the Secretary of State notes that such combined emissions are reported within Table 14-9 of the Updated ES. This identifies that the total emissions in the Do-Something Scenario would be 12,128.090 tCO<sub>2</sub>e over the fourth, fifth and sixth carbon budget periods (i.e. 2025 to 2037) where the relevant carbon budget periods are set out in the same Table and then 41,539,627 for the period 2038-2087. The combined emissions in the Do-Something Scenario covering 4CB, 5CCB and 6CB would equate to approximately 0.261% of those combined budgets. The Secretary of State considers such combined emissions also to be very small and not significant, and not likely to affect the ability of the Government to meet its carbon reduction plan targets in any event. The Secretary of State similarly regards the combined emissions in the period 2038-2087 to be very small and not significant in all the circumstances. Accordingly, even if one were to carry out a cumulative assessment of the type that CEPP suggests is necessary, the Secretary of State considers that the reported combined emissions would be very small and not significant and they would not be likely to affect the ability of the Government to meet its carbon reduction targets and they would not alter the Secretary of State's overall assessment set out below. The Secretary of State also notes the Applicant's response to Deadline 10 submission documents (AS-041), which indicates that these figures are likely to be an overestimate as demonstrated by the sensitivity test undertaken by the Applicant in its response in relation to the Transport Decarbonisation plan.

## Vulnerability to Climate Change

112. In terms of vulnerability of the Proposed Development to climate change, the Secretary of State notes the ExA's consideration of this matter at ER 5.11.35-5.11.45. The ExA concluded that during operation, no significant effects are expected as a result of climate change and that the Proposed Development this has been deemed to be resilient (ER 5.11.45). The Secretary of State has no reason to disagree with this.

## Conclusion

113. Overall, the Secretary of State considers that the information provided by the Applicant on the impact of the Proposed Development on carbon emissions (including the cumulative effects of carbon emissions from the Proposed Development with other existing and/or approved projects in relation to construction and operation) is proportionate and reasonable and is sufficient to assess the effect of the Proposed Development on climate matters. The Secretary of State is satisfied that the assessment reflects 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 and that it enables the impacts of carbon to be understood and fully accounted for in the decision making process.
114. The Secretary of State is content that the Applicant has adequately assessed the likely significant effects of the Proposed 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.
115. Whilst the Proposed Development will result in an increase in carbon emissions, as set out above, Government is legally required to meet the carbon budgets which provide a pathway to net zero and the Secretary of State considers that the Proposed 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 Proposed Development's effect on climate change would be minor adverse and not significant and this assessment aligns with section 6.3 and Figure 5 of the IEMA guidance. The Secretary of State considers that the Proposed Development would accord with section 104 of the 2008 Act and paragraphs 5.16 to 5.19 of the NPSNN and is satisfied that that the Proposed Development 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.
116. The Secretary of State notes the ExA concluded that with regard to climate change impacts, there are no significant effects which weigh against the DCO being made (ER 5.11.89). The Secretary of State considers that the Proposed Development would result in an overall increase of emissions and that as there is a need to reduce emissions, this weighs against the Order being made. Nevertheless, due to the likelihood of the Government's legally binding targets decreasing carbon emissions over the lifetime of the Proposed Development, along with the mitigation measures which will be adopted to reduce emissions during construction, the Secretary of State attaches limited weight to this harm.

## Other Policy Issues and Related Matters

117. The Secretary of State notes the other matters set out at ER 5.12.1 - 5.12.2 which require consideration when making a decision on the Proposed Development. Whilst land stability issues were not raised in the Examination, contamination issues raised included whether the Proposed Development would adequately deal with the risk of ground contamination and subsequent impacts on groundwater, drainage and potential remediation (ER 5.12.36). The Secretary of State notes that the Applicant and EA agreed on a number of contamination impacts during the Examination and amendments were made to the mitigation measures in the DCO to ensure the EA would be consulted on the discharge of Requirement 8, which concerns surface water drainage (ER 5.12.38-5.12.39). No issues were raised by SNC and NCC (ER 5.12.40).
118. On waste management and material assets, the SoCG between the EA and the Applicant sets out various technical issues agreed during the Examination. There were no substantial issues of disagreement when the Examination closed (ER 5.12.65).
119. On common law nuisance and statutory nuisance, the Secretary of State notes the policy and legal context as summarised at ER 5.12.74 – 5.12.82. The main issues considered during the Examination related to the likelihood of statutory nuisance occurring and whether the provisions of the DCO adequately deal with statutory nuisance should the situation arise (ER 5.12.83). The ExA stated that the impact of lighting was raised by several parties during the Examination (ER 5.12.84). The Secretary of State notes it was agreed by the NCC in their SoCG that the need for lighting should be carefully considered and, where required, lighting design should be informed by current best practice guidelines from the Institute of Lighting Engineers (ER 5.12.86). It was generally accepted that Article 44 in the rDCO would allow for a suitable mechanism to deal with nuisance issues should they be encountered (ER 5.12.87).
120. Regarding safety, the Secretary of State notes that overall, the Applicant considers the Proposed Development is likely to save 242 accidents when compared with the do-nothing scenario (ER 5.12.97).
121. The Secretary of State notes safety concerns were raised in relation to Station Lane and the A11 and proposed ways to improve this (Work No. 29) (ER 5.12.101 - 5.12.106). The Secretary of State notes that the ExA explored this matter during the Examination and concluded that they did not find the Applicant's safety assessment in the ES to be flawed and that the ExA did not consider road safety would be compromised by works proposed at Station Lane at the A11 junction (ER 5.12.107 - 5.12.108).
122. In terms of cumulative effects, the Applicant's assessment considered the impacts resulting from multiple actions on receptors over time, and also identified incremental changes likely to be caused by certain other developments and the Proposed Development itself (ER 5.12.115). With regard to single project cumulative effects, the Applicant found there would not be any significant effects resulting from construction or operation (ER 5.12.118). With regard to multiple projects, the Secretary of State notes the other considered developments listed at ER 5.12.119.

The Applicant found that the residual cumulative effects during the construction and operational phases of the Proposed Development with all of the other developments are not anticipated to contribute beyond the effects identified in relevant ES chapters (ER 5.12.120). There were inferred suggestions during the Examination to consider additional developments beyond the short list compiled by the Applicant and include other wider A47 RIS2 schemes. However, the ExA considers doing so would result in an unfocused and overly excessive assessment where it would not add to the quality of information considered bearing in mind the overall methodology and rationale provided by the Applicant alongside its approach to other chapters in the ES (ER 5.12.121).

123. In its overall conclusions, the ExA concludes that the risk posed by the Proposed Development regarding land instability and contaminated land would be minor at worst and not significant for the purposes of the overall planning balance. As such, the ExA is satisfied that the proposal would comply with paragraphs 5.117 and 5.118 of the NPSNN and paragraphs 183 to 188 of the NPFF (ER 5.12.126). The Secretary of State agrees.
124. On waste management and material assets, the EMP would require the Site Waste Management Plan (“SWMP”) to seek to minimise waste and put in place measures to control the disposal of waste. A Material Management Plan would be implemented to mitigate the risk arising from the re-use of materials in addition to the SWMP. The ExA finds that the proposals for waste management and the use of material assets would be satisfactory and accord with paragraphs 5.42 and 5.43 of the NPSNN. As such, the ExA is satisfied the issue does not weigh significantly for or against the DCO being made (ER 5.12.127). The Secretary of State concurs with these findings.
125. The Secretary of State notes that Article 44 of the rDCO (defence to proceedings in respect of statutory nuisance) provides a defence to proceedings brought in a magistrates’ court under section 82(1) of the Environmental Protection Act 1990 in relation to certain nuisances set out in section 79(1) of that Act (ER 5.12.131). Although none of the statutory nuisances identified in section 79(1) of the Environmental Protection Act 1990 are predicted to result in significant issues there could be unforeseen effects and nuisance that could occasionally occur. Thus, the ExA concludes that appropriate mitigation has been provided for relevant effects and that nuisance does not add any significant weight for or against the DCO being made (ER 5.12.132). The Secretary of State agrees.
126. With regard to safety, the ExA concludes that the Applicant’s assessment of safety is robust and accords with the requirements of paragraphs 4.61, 4.62 and 4.64 of the NPSNN. The Secretary of States notes the likely savings in accidents and that the ExA finds the evidence provided by the Applicant on those matters is deemed to be credible and weighs significantly in favour of the DCO being made. (ER 5.12.134). The Secretary of State concurs.
127. The Secretary of State agrees with the ExA that there no strong basis to disagree with the Applicant’s Cumulative Effects Assessment conclusions (ER 5.12.138).

## **FINDINGS AND CONCLUSION IN RELATION TO HABITATS REGULATIONS ASSESSMENT**

128. Under regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended) (“the Habitats Regulations”), before granting any development consent, the Secretary of State (as the Competent Authority) is required to consider whether the scheme (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. Where a scheme is likely to have such a significant effect, the Secretary of State must undertake an Appropriate Assessment (“AA”) of the implications of the scheme for that site in view of that site’s conservation objectives. In the light of any such assessment, the Secretary of State may grant development consent only if it has been ascertained that the scheme will not, either on its own or in combination with other plans and projects, adversely affect the integrity of such a European Site, subject to regulation 64. By regulation 64, if the Secretary of State is satisfied that, there being no alternative solutions, the scheme must be carried out for imperative reasons of overriding public interest, it may agree to the scheme notwithstanding a negative assessment of the implications for the European site.
129. The Secretary of State notes that the Proposed Development is not directly connected with or necessary to the management of any European sites (ER 6.2.1). The screening assessment was undertaken to identify potential likely significant effect between the Proposed Development on the following international sites; the Broads SAC; Broadland SPA; and the Broadland Ramsar site (ER 6.2.8). Based on screening matrices it was considered by the Applicant that there were no likely significant effects on any of the European sites arising from the Proposed Development during construction or operation and, following assessment of each potential effect, that there will be no likely significant effect on any of those sites (ER 6.2.11 – 6.2.12 and 6.3.3). In November 2020, the Applicant undertook consultation with NE pertaining to the findings with the No Significant Effects Report (“NSER”) to inform the Habitats Regulations Assessment (“HRA”), which were subsequently reviewed and approved by NE (ER 6.2.16). No convincing evidence came to light during the Examination to cast any significant doubt on the findings of the NSER provided by the Applicant (ER 6.2.21).
130. The Secretary of State notes the ExA is satisfied that the Applicant has correctly identified the relevant European sites and qualifying features/interests for consideration within the NSER (ER 6.2.23) and that it has not relied on mitigation measures in reaching its conclusion of no likely significant effects on European Site (ER 6.2.24). The Secretary of State agrees with the ExA that sufficient consideration has been given to potential likely significant effects arising from the Proposed Development and that such effects can be ruled out due to the nature of the pathways involved and, on that basis, there is no requirement to undertake an AA of the Proposed Development (ER 6.3.3). The Secretary of State agrees.

#### Nutrient Neutrality

131. The Secretary of State notes the post examination correspondence of 8 April 2022 from Richard Hawker raising concerns about the Proposed Development’s potential to increase the volumes of nutrients, in particular nitrogen and phosphorus, discharged into the ground and waterways particularly the Cantley stream (a tributary of the Yare). Mr Hawker’s correspondence enclosed a copy of NE’s letter dated 16 March 2022 which sets out its advice for development proposals that have the

potential to affect water quality in such a way that adverse nutrient impacts on designated habitats sites cannot be ruled out. Annex C, Table 2 to that letter lists additional habitats sites in unfavourable condition due to excessive nutrients which require a HRA and where nutrient neutrality is a potential solution to enable development to proceed.

132. As listed in the Habitat Regulations Assessment section above, sites which are relevant to this application include the Broads SAC/Ramsar. The Secretary of State notes that during the Examination it was concluded and accepted by NE (the Government's statutory nature conservation advisor) that the Proposed Development will have no likely significant effect on Broads SAC and Ramsar (ER 6.2.14, 7.4.6 and 7.5.14).
133. NE agreed with the Applicant's conclusion that the application, with the adoption of embedded design measures, does not give rise to significant adverse residual effects during the construction or operational phases and therefore, Defra's advice in relation to nutrient pollution does not change any of the assessments carried out in relation to this application. The Secretary of State has no reason to disagree.

## **OVERALL CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT**

134. The Secretary of State notes the ExA's overall conclusions on benefits weighing significantly in favour of the DCO being made at ER 7.5.8 and the adverse impacts weighing significantly against the DCO being made at ER 7.5.9.
135. The Secretary of State further agrees with the ExA that, overall, bringing all relevant points together, the national need for, and considerable public benefits of, the Proposed Development outweigh all the adverse effects identified (ER 7.5.12). The Secretary of State notes, subject to the detailed policies of the NPSNN and section 104 of the 2008 Act, the presumption at NPSNN paragraph 4.2 in favour of granting development consent for national networks NSIPs which fall within the need for infrastructure in the NPSNN. In the light of these matters, the Secretary of State considers there to be a case for development consent to be granted.

## **Compulsory Acquisition and Related Matters**

136. The Secretary of State notes that the application includes proposals for the compulsory acquisition ('CA') and temporary possession ('TP') of land and rights over land, including Statutory Undertakers ('SU') land, Special Category Land, and Crown land (ER). The Secretary of State notes the Applicant has sought CA powers for the works described at ER 8.5.2, for the rights described at ER 8.5.3, and TP powers for the works listed at paragraph ER 8.5.4 and set out further in the Applicant's SoR.
137. The Secretary of State notes that the Examination included consideration of all written and oral submissions relevant to CA and TP (ER 8.6.1). The Secretary of State notes that the ExA carried out two unaccompanied site inspections to help them develop a clear understanding of the plots of land proposed to be subject to CA and TP powers (ER 8.6.7).
138. The Secretary of State notes that the ExA is satisfied that the condition applicable in s123(2) of the 2008 Act is met because the application for the DCO included a request

for CA of the land to be authorised. The ExA is also satisfied that the Applicant has properly considered the statutory tests overall, the Department for Levelling Up, Housing and Communities' Guidance on compulsory purchase dated 16 July 2019, and the Proposed Development's interference with human rights (ER 8.8.18). The Secretary of State also notes that the ExA is satisfied that the need case has been made (ER 8.8.19) and that the ExA finds that the CA and TP powers are required for the delivery of the Proposed Development (ER 8.8.20). The ExA is also satisfied with the Applicant's reasons and associated information supporting the application about the land required for environmental mitigation and enhancement, dealing with drainage and flood risk works, cycleways, utilities, and other works areas, and is also satisfied that the Applicant has a clear idea of how it intends to use the land (ER 8.8.20).

139. The Secretary of State agrees with the ExA that the Applicant has explored all reasonable alternatives to CA and no other credible alternatives could be identified (ER 8.8.24). There is no compelling evidence to disagree with the Applicant's proposals with respect to the provisions for maintenance, lateral deviation, and the potential to reduce CA and TP during the detailed design stage (ER 8.8.24).
140. The ExA is satisfied that sufficient evidence has been provided to conclude that costings, including the costs of acquisition and compensation, have been sufficiently identified (ER 8.8.25). The Secretary of State finds no reason to disagree.
141. With respect to the acquisition of any unknown third-party rights the ExA considered the information provided by the Applicant is reasonable and regard has been given to the Equalities Act 2010 and Public Sector Equality duty within the examination as a whole (ER 8.8.26). The Secretary of State has no reason to disagree.
142. The ExA considers that the Secretary of State can be satisfied that there is a compelling case in the public interest for CA and that the Proposed Development would comply with the 2008 Act (ER 8.11.9), given the ExA's conclusions on the issues listed at ER 8.11.8. The Secretary of State notes that the ExA is satisfied that: the land to be subject to TP, the purposes for which it would be required and the period for which land might be subject to TP, have been identified; and it has been demonstrated that the TP powers are compatible with the relevant human rights tests and that there are suitable compensation provisions (ER 8.11.10). On that basis, in respect of TP, the ExA finds that the Proposed Development would comply with the 2008 Act (ER 8.11.11). The Secretary of State has no reason to disagree.

#### Individual Objections and Issues

143. The Secretary of State notes the individual objections and issues raised on various access and related matters at ER 8.9 and set out in Chapter 5 of the Report. The Secretary of State agrees with the ExA that all reasonable steps have been explored to resolve all the issuing arising (ER 8.9.6). The Secretary of State also notes (ER 8.9.7) that whilst the subsoil concerns of CM Watt Residual Trust and The Trustees of the Mackintosh Trust have not been withdrawn, the ExA does not consider that any further steps are needed and that the other issues have been addressed.
144. On 31 August 2022, after the close of the examination, Birketts LLP, on behalf of Mr and Mrs Thompson, re-submitted a Written Representation that had been submitted

during the Examination and which had not been withdrawn. Mr and Mrs Thompson live at The Sycamores, which adjoins Cantley Lane South and the proposed new overbridge. Birketts LLP said the document, which did not contain any new information, was being re-submitted because they wished to make a holding objection until Mr and Mrs Thompson had entered into an agreement with the Applicant in respect of Mr and Mrs Thompson's concerns. The Secretary of State notes that the Applicant responded to the points raised in the Written Representation in its Responses to the Relevant Representations and Written Representations and that the ExA considered the Written Representation and the responses to it in its Report (for instance, ER 5.6.105, 8.6.2, 8.9.3, 9.3.2, 9.3.3). The Secretary of State is satisfied that the Written Representation has been taken into account by the ExA. On 3 October 2022, Birketts LLP sent a further representation on behalf of the Thompsons which the Secretary of State has considered in making this decision. The Secretary of State does not consider it necessary to depart from the ExA's recommendation in the light of the further representation.

## **Special Considerations**

### Crown Land

145. Section 135(1) of the 2008 Act precludes the CA of interests in Crown Land unless the land is held "otherwise than by or on behalf of the Crown" and the appropriate Crown authority consents to the acquisition (ER 8.10.2). Section 135(2) precludes a DCO from including any provision applying to Crown land or Crown rights without consent from the appropriate Crown authority (ER 8.10.3).
146. The Secretary of State notes that the Applicant's Book of Reference ("BoR") identified plots which are subject to Crown interests, and the CA and TP powers requested by the Applicant in respect of those plots (ER 8.10.4). Towards the end of the Examination, the Applicant obtained a letter from the Department for Transport which confirms that the appropriate Crown authority (as defined in section 227 of the 2008 Act) is the Secretary of State for Transport (ER 8.10.6). The submitted letter 1) gives consent pursuant to section 135(1) and 135(2) of the 2008 Act, and Article 53 of the DCO as drafted, to the inclusion of provisions within the DCO which would apply to the Crown land (to the extent that they relate to the detail specified in the Application) and 2) agrees to the wording of Article 53 of the DCO as drafted (ER 8.10.7).

### Special Category Land

147. Sections 131 and 132 of the 2008 Act make provision for a Special Parliamentary Procedure ("SPP") in respect of the acquisition of common, open space or fuel or field garden allotments. (ER 8.10.9). The Secretary of State notes that in this case CA powers are sought for the acquisition of land (plots as set out in ER 8.10.15) required for the Proposed Development that is planned to become open space i.e. it is not yet open space. There are no areas of existing public open space proposed to be permanently or temporarily acquired (ER 8.10.13).
148. Planned open space impacts were referred to in Section 5.6 (Land use, social and economic) of the ExA's report and the ExA accepted the land included for acquisition constitutes ordinary land (ER 8.10.14).



149. If the required land was existing open space and the Proposed Development wanted to avoid SPP, then sections 131 and 132 would require the Secretary of State to be satisfied that one of a number of circumstances applied, including, for instance, that replacement land has been or would be given in exchange for the land to be compulsorily acquired. The Secretary of State notes that that the ExA considered that, notwithstanding the fact that the DCO seeks the acquisition of prospective open space land, there would be sufficient justification under section 131 and 132 to avoid SPP.

#### Statutory Undertakers (“SUs”)

150. Section 127 of the 2008 Act has provisions in relation to CA of land or rights over SUs land. If a SU had made a representation that has not been withdrawn before the end of the Examination, then CA may only be authorised if there is no serious detriment to the carrying on of the undertaking (section 127(3)(b) concerns the acquisition of land; section 127(6)(5) concerns the acquisition of a right) (ER 8.10.26). Section 138(4) of the 2008 Act provides for the extinguishment of a right or the removal of a SU’s apparatus if the Secretary of State is satisfied that it is necessary for the carrying out of the Proposed Development (ER 8.10.27). The Secretary of State notes the SUs identified as having interests in plots for which powers are requested at ER 8.10.28. Towards the end of the Examination, the Applicant provided a Statutory Undertaker’s Schedule which identifies outstanding concerns with respect to National Grid Electricity Transmission PLC (“National Grid”), Cadent Gas Limited (“Cadent”), and Network Rail (“NR”) (ER 8.10.34).
151. The Secretary of State notes the concerns of National Grid and Cadent Limited and further notes that, following negotiations, the Applicant and these parties' reached agreement on the form of Protective Provisions (“PP”) included in the rDCO (ER 8.10.35 – 8.10.43). The ExA concludes that the tests in section 127(3)(b) (in respect of National Grid) and 127(6)(b) (in respect of Cadent) can be met through the respective PPs (ER 8.10.37 and 8.10.43). The Secretary of State agrees.
152. The Secretary of State notes that the Applicant proposes to carry out works to the Cringleford Rail Bridge and in close proximity to the railway. NR objected to the making of the Order on the grounds that the proposed works might interfere with the safe and efficient operation of the railway (ER 8.10.46). To enable it to withdraw its objection, NR sought adequate protective provisions and/or requirements to be included within the Order and an agreement with the Promoter to ensure that the works for the scheme are carried out in a regulated matter to prevent adverse impacts on the railway (ER 8.10.47). The Applicant and NR have been in discussion in the form of protective provisions and the Applicant included its preferred form of PPs protective provisions in the DCO submitted at Deadline 9 (ER 8.10.53). On 16 September 2022, in response to consultation NR set out that protective provisions have been agreed with the Applicant and with the inclusion of these protective provisions in the DCO its objection to the scheme is withdrawn. The Applicant forwarded these PPs on 16 September 2022 and these have been included in the made DCO.
153. In its Conclusions and Recommendations on the Special Considerations sections, the ExA states that, in some cases, there would be interference with the peaceful

enjoyment of possessions, which would engage Article 1 of the First Protocol of the Human Rights Act 1998. It concludes the Examination ensured a fair and public hearing and that any interference with human rights arising from the implementation of the Proposed Development would be proportionate and would strike a fair balance between the rights of the individual and the public interest (ER 8.11.12 – 8.11.13). The Secretary of State agrees.

## **General Considerations**

### Natural Environment and Rural Communities Act 2006

154. The Secretary of State, in accordance with the duty under section 40(1) of the Natural Environment and Rural Community Act 2006 (“the 2006 Act”), must have regard to the purpose of conserving biodiversity and, in particular, to the United Nations Environmental Programme Convention 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 the biodiversity duty in the relevant sections of the Report (ER 3.5.7). In reaching a decision to grant development consent, the Secretary of State has had due regard to conserving biodiversity.

### **Draft Development Consent Order and Related Matters**

155. The Secretary of States notes the changes made to the dDCO during the Examination that the ExA considers to be significant because of their effect or because they gave rise to important reasoning, additional submissions or questions (ER 9.4.3).

156. The Secretary of State also notes Table 2 (DCO provisions recommended to be changed) in ER 9.5. Where not previously stated otherwise, the Secretary of State is satisfied with the recommended changes.

157. In addition, the Secretary of State has made a number of other minor textual amendments to the draft DCO in the interests of clarity, consistency and precision. Further to the textual amendments the Secretary of State also makes the following modifications:

- in the preamble, paragraph 16 of Schedule 5 to the 2008 Act has been cited as the proposed development includes the realignment of part of Cantley Stream;
- in article 2(1) (interpretation):
  - the definition of “Cadent” has been amended to include its current registered office address;
  - the definition of “maintain” has been amended to improve clarity regarding the scope of such works where they differ from those reported in the environmental statement;
  - the definition of “relevant highway authority” has been omitted as it is unnecessary in the Order due to there being a single local highway authority concerned” and references throughout the Order have been amended accordingly; and
  - the definition of UKPN is amended to include the correct company number and registered office address;
- in article 3 (disapplication of legislative provisions):

- paragraph (3) has been omitted as the Applicant has neither demonstrated difficulties that have occurred due to the application of the forms designated by the Compulsory Purchase of Land (Vesting Declarations) (England) Regulations 2017 nor how the proposed text would improve the situation and allow it to make a vesting declaration under section 4(1) of the Compulsory Purchase (Vesting Declarations) Act 1981 on a third party, and the definition of “the 2017 Regulations” has been omitted accordingly; and
- paragraph (4) has been omitted as the Secretary of State agrees with the ExA’s recommendation at Table 2 of ER 9.5.2, and the definition of “section 106 agreement in article 2(1) is omitted accordingly;
- in article 6 (maintenance of authorised development), the references to “construction” have been removed to maintain consistency with highways DCOs as no justification is given for the variation in the Explanatory Memorandum (“the EM”);
- in article 10 (consent to transfer benefit of Order), paragraphs (4) to (10) have been omitted as the Secretary of State is not persuaded by the assertion in the EM that there is uncertainty in the precedented procedure;
- in article 12 (construction and maintenance of new, altered or divided streets and other structures), “with the street authority” has been inserted into paragraph (4) to improve clarity;
- in articles:
  - 14 (power to alter layout etc. of streets),
  - 16 (temporary stopping up and restriction of use of streets),
  - 21 (discharge of water),
  - 23 (authority to survey and investigate land), and
  - 39 (felling or lopping of trees and removal of hedgerows),
 paragraphs have been inserted requiring the Applicant to include in an application to the relevant authority to which a deeming provision applies, notification that the application will be deemed as being consented to if the authority does not notify the Applicant of its decision before the end of the relevant specified period;
- in article 15 (street works), paragraph (1)(c) is omitted (and paragraph (1)(e) amended accordingly) as it is not precedented in other highways DCOs and since no justification for its inclusion is given in the EM;
- in article 16 (temporary stopping up and restriction of use of streets) the title is amended (and references throughout the Order amended accordingly) to follow precedent, as the Secretary of State is not persuaded that references to “temporary stopping up”, a longstanding (see, for example, section 261 of the Town and Country Planning Act 1990) and well-understood term, need to be replaced;
- in articles:
  - 16 (temporary stopping up and restriction of use of streets),
  - 17 (permanent stopping up and restriction of the use of streets and private means of access),
  - 22 (protective work to buildings),
  - 23 (authority to survey and investigate the lands),
  - 29 (private rights over land),
  - 33 (rights over or under streets),
  - 34 (temporary use of land for carrying out the authorised development),
  - 35 (temporary use of land for maintaining the authorised development),
  - 39 (felling or lopping of trees and removal of hedgerows), and
  - 40 (trees subject to tree preservation orders),
 “as if it were a dispute” is inserted to improve clarity.
- in article 19 (clearways):

- the title is amended to maintain consistency with highways DCOs,
- paragraph (2)(a)(iii) is amended to cite the correct Schedule to the Communications Act 2003, and
- paragraph (2)(b)(iv), the reference to the repealed definition within the Postal Services Act 2011 is replaced with the legislation containing the current equivalent definition;
- in article 21 (discharge of water), “urban development corporation” has been added to paragraph (9)(b) to maintain consistency with other highways DCOs;
- In articles:
  - 21(1)(a) (time limit for exercise of authority to acquire land compulsorily), and
  - 32(3)(a) (acquisition of subsoil or airspace only),
 preceded text is added to make it clear that Part 1 of the Compulsory Purchase Act 1965 should be read as being modified by article 30 (modification of Part 1 of the 1965 Act);
- in article 30 (modification of Part 1 of the 1965 Act), the numbering and modified text are corrected with the two sub-paragraphs modifying section 4A(1) of the Compulsory Purchase Act 1965 being combined in paragraph (2).
- in article 31 (application of the 1981 Act), paragraphs (4) and (9) have been amended to follow the approach used in the majority of highways DCOs, noting that no justification is provided in the EM for following the much less common approach proposed, and the two sub-paragraphs in paragraph (6) have been combined;
- in article 34 (temporary use of land for carrying out the authorised development), paragraph (4)(f) is omitted and the words “necessary mitigation works” are added to the end of sub-paragraph (e) to maintain consistency with highways DCOs and since no justification for the discrete sub-paragraph (f) is given in the EM, and
- in article 35 (temporary use of land for maintaining the authorised development), reference to the notice stating the purpose for which entry is taken in inserted in paragraph (3), as no reason is given for its omission;
- in article 39 (felling or lopping of trees and removal of hedgerows) the reference to the revoked Conservation of Habitats and Species Regulations 2010 is replaced with the current legislation, and paragraph (4) is amended to make clear that it is subject to paragraph (2);
- in article 41 (removal of human remains) “must” is substituted for “is to” to follow standard drafting practice and a preceded definition of “the specified land” is inserted to avoid there being an undefined term;
- in article 44(1) (defence to proceedings in respect of statutory nuisance) the Secretary of State accepts, based on ER 5.12.83 – 5.12.88, the inclusion of a reference to section 79(1)(fb) (artificial light from premises) in addition to (g) (noise emitted from premises) but is not persuaded that a need for the inclusion of subsection (1)(d) (dust) and (ga) (noise emitted from or caused by a vehicle, machinery or equipment in a street) has been demonstrated;
- ex-article 48 (appeals relating to the Control of Pollution Act 1974) is omitted as the EM, beyond a brief reference to streamlining the appeal process, neither provides a justification for its inclusion nor an explanation of why the 1974 Act process is inadequate for the purposes of the Order, and subsequent articles and cross-references throughout the Order are modified accordingly;
- Schedule 1 (authorised development) has been amended so that the additional works permitted where they are connected to the specific works identified in the Schedule, are limited to which does not give rise to any materially new or materially different environmental effects compared to those reported in the environmental statement, which maintains consistency with highways DCOs;

- in Part 1 of Schedule 2 (requirements):
  - in paragraph 1, a definition of “Ørsted” has been inserted;
  - in paragraph 3(1) and (3), amendments are made to provide for a design review report, as discussed at paragraph 33 of this letter;
  - in paragraph 4, Natural England are added to the list of bodies to be consulted under sub-paragraph (1) where the content of the Environmental Management Plan (Second Iteration) relates to matters relevant to their functions, as discussed in paragraph 73 of this letter and undefined acronyms in sub-paragraph (2) are replaced with the full title of the plans;
  - in paragraph 7(2)(a) the use of “European or nationally protected species” in paragraph (1) is maintained;
  - in paragraph 7(3) the words from “, except” to the end are omitted, as described in paragraph 73 above.
  - in paragraph 10(1), additional text is inserted at the request of Ørsted Hornsea Project Three (UK) Limited, and is not opposed by the Applicant in its letter dated 20 September 2022; and
  - the final part of paragraph 13(3)(c) is converted to a tailpiece, in line with precedent;
- in Schedule 3 (classification of roads etc.), Part 2A (classified C roads) is re-numbered as Part 3 to follow standard drafting practice, with the remaining Parts of that Schedule and cross-references being renumbered accordingly;
- in Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants), paragraph 8 is amended so that references to “the acquiring authority” are substituted for those to “the undertaker”, to maintain consistency with highways DCOs;
- in Schedule 9 (protective provisions):
  - the title of Part 3 (for the protection of National Grid as electricity undertaker) is amended as National Grid are the electricity undertaker only;
  - in Part 4 (for the protection of Anglian Water), paragraph 40(3) is corrected so that it refers to the Environmental Permitting (England and Wales) Regulations 2016;
  - in Part 5 (for the protection of Cadent as gas undertaker), cross-references in paragraphs 49, 54(1) and (2), 55(2), 56(8) and (10)(b), 57(1)(a)(i), 60(1), 62 and 63 are corrected and the final part of paragraph 57(3)(b) is converted to a tailpiece, as per precedent; and
  - a new Part 6 (for the protection of railway interests), has been substituted at the request of the Applicant and Network Rail in the former’s letter dated 16 September 2022, plus a precedented definition of “protective works” is inserted in paragraph 65 to avoid the use of an undefined term;
- in Schedule 10 (documents etc. to be certified), the revision numbers for the book of reference, classification of road plans, EMP (first iteration), environmental statement and traffic regulation plans are corrected.

## **Secretary of State’s overall conclusion and Decision**

158. For 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 decided to grant development consent, subject to the changes in the Order mentioned above. The Secretary of State is satisfied that none of these changes constitutes 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 Order as now proposed.

### **Challenge to Decision**

159. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at Annex A to this letter.

### **Publicity for the Decision**

160. 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,

Martin Gilmour

## LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the 2008 Act, 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 A47/A11 Thickthorn Junction Development Consent Order 2022 (as made) is being published on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/eastern/a47-a11-thickthorn-junction/>

**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).**